

Newsletter

A Bi-monthly Newsletter of
The Center of Excellence for Corporate and Commercial Law

ACHIEVEMENTS

- Dr. A Sreelatha, Assistant Professor, ICFAI Law School, Hyderabad, an invitee to the Research Advisory Committee (RAC) Meeting of Ph.D. students, Vel Tech University, Chennai held on 19th April 2021.

In this issue:

- Webinars
- International Conference
- Books
- Faculty Achievements
 - Recent Judgements
- Legislative Changes

Editorial Board

Dr. Veena
Associate Professor

Mrs. Sridevi D. Shet
Assistant Professor

Dr. A. Sreelatha
Assistant Professor

Center Coordinator's Message

Welcome to Corporate Law News Issue!

The ICFAI Law School, Hyderabad has constituted The Center of Excellence for Corporate and Commercial Law on January 2, 2019 with an objective to provide comprehensive and holistic knowledge (theoretical and practical) of laws governing core courses of corporate and commercial areas such as Company Law, Law of Securities and Investment, Corporate Governance and Business Ethics, Mergers and Acquisitions, Banking and Insurance Law, Law and Economics, Law of Carriage, Transportation and Insurance, and related issues. A Bi-monthly Newsletter is released to this effect. The basic objective of this newsletter is to bring awareness and disseminate knowledge in the field of corporate and commercial laws. This Newsletter brings coverage on the information that keeps the reader up to date with latest developments in corporate law and provides various events.

Faculty Participation

- Dr. A Sreelatha, Assistant Professor, ICFAI Law School, IFHE, Hyderabad presented paper in Three-Day International Conference – Lex-Fin Summit on “Techno-Legal Dynamics of Banking Laws and Regulations”, 23rd – 25th April 2021 on “Legal Audit in Indian Banking”.
- Ms. Sridevi. D Shet, Assistant Professor, ICFAI Law School, IFHE, Hyderabad presented paper in Three-Day International Conference – Lex-Fin Summit on “Techno-Legal Dynamics of Banking Laws and Regulations”, 23rd – 25th April, 2021 on “Blockchain Technology – Emergence of New Financial Inclusion Model”.

WEBINARS

Mergers in Banking Sector on March 20th, 2021

ICFAI
HYDERABAD

ICFAI Foundation
for Higher Education
University of Hyderabad, India. UGC Approved. Accredited by NAAC, AIB, by 'Grade A'

Webinar

Mergers in Banking Sector

March 20, 2021, 11.00 am (IST)

Speaker

Mr. Sanjay Mehta
Partner, Surana & Surana International Attorneys

Introductory Remarks

Prof. A V Narasimha Rao
Director
ICFAI Law School, Hyderabad

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Speaker: Sanjay Mehta, Partner, Surana and Surana International Attorneys

Mr. Mehta discussed the importance, pros and cons of mergers in the Banking sector. He highlighted the execution risk in bringing two new banking entities on the same platform. Human Resources/ Information Technology synchronization, streamlining of processes, situations of mismatch in compliance consistency and risk culture negatively affecting the profitability of the business and loss of local identity of small banks during a merger. The focus of the speaker was on practical issues like consumer perception, employee perception, change in management strategies, communication, Human Resource Management, etc, which are faced while trying to conclude a merger

with special reference to bigger banking merger of SBI and also recent merger of Punjab National Bank in 2020. He shared his experience while dealing with mergers, and addressed the challenges in compliances, dealing with regulatory framework, regulatory authorities, relevant triggering events and thresholds. He also spoke about significance of notification requirements, publicity and confidentiality, third party rights, substantive tests, remedies, penalties, appeals, joint ventures, etc.

Drafting an Arbitration Clause - Keeping it Simple, on March 7th, 2021**Speaker: Ms. Payal Chawla, Founder, JUSCONTRACTUS, New Delhi.**

ICFAI
LAW SCHOOL
HYDERABAD

Centre for Excellence of Corporate and Commercial Laws
The ICAFI Law School, Hyderabad, E-mail: centexcellcorplaw@ifheindia.org

Webinar

Drafting an Arbitration Clause - Keeping it Simple

7th March, 2021, 5.00 PM - 6.00 PM (IST)

Speaker

Ms. Payal Chawla
Founder
JUSCONTRACTUS, New Delhi

Introductory Remarks

Prof. A V Narasimha Rao
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Ms. Chawla addressed the relevant provisions of the Arbitration and Conciliation Act 1996, governing law in India that is based on UCITRAL Model Law with regard to drafting an arbitration clause. She emphasized on commercial disputes and a special reference was made of international commercial arbitration which gained greater significance in the current scenario across the globe. The parties were encouraged to resolve the disputes by arbitration which is binding rather than going to litigation to avoid enormous delays and win-lose situation. She gave reference to various contemporary case laws wherein it was very tough to determine which fraud is arbitrable and which is not. She dealt on the decisions of the various court including the apex court about seat and place of arbitration, as choice of law clause crucial in arbitration agreement Ms. Chawla stated that, while drafting an arbitration clause, one should keep the language simple, avoid verbosity, include necessary Ingredients of an Arbitration, use language that is precise and clear, avoid using 'may' and always prefer to

use 'shall' to make the consensus parties binding. The language regarding covering the dispute should be expansive and finally, avoid any 'amicable settlement' clause, as the main objective of arbitration is to arrive at amicable settlement.

INTERNATIONAL CONFERENCE

Three Day International Conference, Lex-Fin Summit on Techno-Legal Dynamics of Banking Laws and Regulations, April 23rd to 25th, 2021.



The Centre of Excellence for Corporate and Commercial Laws, ICFAI Law School, IFHE, Hyderabad hosted a virtual 3 day International Conference Lex-Fin Summit on “Techno-Legal Dynamics of Banking Laws and Regulations”, during 23-25 April, 2021.

The Chief Guest for the inaugural session of the conference was Honorable Justice Sri Challa Kondandaram, Judge, High Court of State of Telangana.



Chief Guest: Honourable Justice Sri. Challa Kodandaram,
Judge, High Court for the State of Telangana



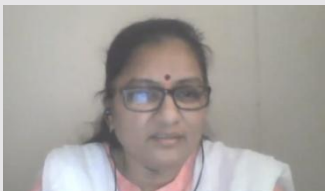
Guest of Honor: Mr. Ramchandran K,
Executive Director, Indian Bank

Guest of Honor Mr. Ramchandran K, Executive Director, Indian Bank.

The Chief Guest for the Valedictory session was Dr. Madhesh Kumar Mishra, Joint Secretary, Department of Financial Services, Government of India, who stressed upon the digital economy and its challenges at national and international scenario.



Chief Guest: Dr. Madhesh Kumar Mishra,
Joint Secretary, Department of Financial Services,
Government of India



The conference was coordinated by **Dr. Veena**, assisted by Ms. Sridevi Shet and Dr. A. Sreelatha, under the dynamic guidance of **Prof. A V Narsimha Rao**, Director, ICFAI Law School, Hyderabad. The conference was organized to bring all the experts, industrialists, bankers, academicians, research scholars on to one virtual platform to share knowledge. In this regard we received good number of participants from national and international experts, professionals, academicians, research scholars and students from various universities of the globe viz., Westminster University, Majan University UAE, Australia, National Law Universities, other conventional universities and presented their research papers.



The conference was divided into five technical sessions as follows:

1. Technology and Banking Operations: Developments and Challenges
2. Banking Consolidations, Restructuring and Mergers
3. Innovations in Banking: Socio-Political and Legal Inclusions
4. Distress Assets, Insolvency and Bankruptcy Code 2016
5. Legal Diligence, Legal Audit and ADR Mechanism.

The Technical Sessions were presided by Chair, Keynote Speakers, and a Co-chair. Some of the Eminent Keynote speakers and Chair participated in the conference are as follows:

- Mr. B Samba Murthy, Ex Chairman, Corporation Bank
- Mr. Vaibhav Joshi, Chief Digital Officer and Country Head for Digital Initiatives, Equitas Bank
- Mr. Bhaskar Katta, Head of Digital Operations (Transform), Westpac Banking Group, Australia
- Mr. Vishal Ranjan, Founder and CEO vCard India
- Mr. Ch SS Mallikarjun Rao, Managing Director and CEO, Punjab National Bank
- Mr. Ashok Chandra, CGM, Union Bank of India
- Justice B Prakash Rao, Former Judge, High Court of Andra Pradesh and Telangana
- Dr. M Sainath, Dean , Institute Innovation Centre, IFHE, Hyderabad
- Mr. Sanjay Mehta, Advocate, Surana & Surana, Chennai
- Mr. Prashant Shivadass, Advocate, Shivadass and Shivadass (Law Chambers), Bengaluru
- TSN Raja, President, Hyderabad IP Association
- Dr. SV Ramakrishna, Advocate, Hyderabad

		
Mr. Vaibhav Joshi Chief Digital Officer and Country Head for Digital Initiatives, Equitas Bank	Mr. Vishal Ranjan Founder and CEO vCard India	Mr. Ch. S.S Mallikarjuna Rao, Managing Director and CEO, Punjab National Bank
		
Mr. Sanjay Mehta Advocate, Surana and Surana, Chennai	Mr. Bhaskar Katta Head of Digital Operations (Transform), Westpac Banking Group, Australia	Mr. Ashok Chandra CGM, Union Bank of India
		
Mr. B.S. Murthy Ex-Chairman, Corporation Bank	Mr. Ram Gopal CEO, Barclays Bank	Hon'ble Mr. Justice B Prakash Rao, Former Judge, High Court of Andhra Pradesh and Telangana

CONFERENCE PROCEEDINGS

Conference Proceedings Book Titled “Proceedings of 3 Day International Conference Lex-Fin Summit on Techno-Legal Dynamics of Banking Laws and Regulations, April 23rd to 25th, 2021.”

The Centre of Excellence for Corporate and Commercial Laws based on papers received during 3 day international conference published an ISBN conference proceedings book titled “Proceedings of 3 Day International Conference Lex-Fin Summit on Techno-Legal Dynamics of Banking Laws and Regulations, April 23rd to 25th, 2021.” The book comprises of twenty-two scholarly articles contributed by academicians, professionals and scholars across the country on various contemporary issues on bank consolidations, technology and innovation in banking, legal audit and significance of Alternative Dispute Resolution mechanism in banking sector,

Editors:

Dr. Veena, Associate Professor, ICAI Law School, Hyderabad &
Ms. D Sridevi Shet, Assistant Professor, ICAI Law School, Hyderabad.



CASE LAW

Internet and Mobile Association of India v. Reserve Bank of India

Writ Petition (Civil) No.528 of 2018, Date of Judgement 4-3-2020

Backdrop of Cryptocurrency

The history of crypto currency dates back to 1983 where American developed a cryptographic system called ecash. In 1994, an American cryptographer named David Chaum developed another system, **Digi Cash**, that used cryptography to make economic transactions confidential. However, first time the idea or term “cryptocurrency” was coined in **1998**. In 2008, economic disaster (world economic recession) where sovereign currency was losing value led to the creation of cryptocurrency. A white paper on ‘bitcoin’ was published by a pseudo anonymous person named Satoshi Nakamoto. The Paper described a method in which virtual currency can be obtained by a process called mining. The mining process need not require permission of any centralized authority and thereby financial transaction can happen peer to peer without any transaction cost. Thus, the new trustless technology was born. The first bitcoin was mined in 2009 making the white paper successful. The technology behind cryptocurrency namely blockchain technology started gaining popularity and at present we have more than 2000 cryptocurrency available in the market. Thus began the crypto world.

Facts:

Reserve Bank of India issued a “Statement on Developmental and Regulatory Policies” on April 5, 2018 and also issued a circular dated **April 6, 2018** directing the entities regulated by RBI

- (i) not to deal with or provide services to any individual or business entities dealing with or settling virtual currencies and
- (ii) To exit the relationship, if they already have one, with such individuals/ business entities, dealing with or settling virtual currencies.

The RBI Statement and circular was challenged by the Petitioners on the following grounds:

- RBI has no power to prohibit the activity of trading in Virtual currencies as they are not Legal tender and do not fall within the credit system of the country and
- The guidelines issued under Payment and Settlement Systems Act, 2007 (PSSA) not applicable on virtual currency exchanges, as the services rendered by them do not fall within the definition of the expression “payment system”.

The Supreme Court after considering the factual matrix and the contentions of the petitioners has held:

The RBI Circular is primarily addressed to banks who are “system participants” regulated by the RBI under the PSS Act, 2007 and the RBI have the power to frame policies and issue directions to banks who are system participants, with respect to transactions that will fall under the category of payment obligation or payment instruction, if not a payment system. It is also to be noted that the Virtual Currencies (VC’s) are not banned by the RBI but the trading in VCs and the functioning of VC exchanges are sent to comatose by the impugned Circular by disconnecting their lifeline namely, the interface with the regular banking sector.

And hence the RBI Circular is not reasonable as in the past 5 years or more, RBI has not found any adverse impact of the activities of Virtual Currency exchanges on the way the regulated entities (such as banks) function. The access to banking is the equivalent to the supply of oxygen in any modern economy, the denial of such access to those who carry on a trade is not prohibited by law and is not a reasonable restriction and it is extremely disproportionate.

- 1) Whether the writ petition is maintainable under Article 32 of the Constitution of India since the writ petition relates to lottery, which is *res extra commercium* and the Petitioner cannot claim protection under Article 19(1)(g) of the Constitution of India?
- 2) Whether inclusion of actionable claim in the definition of goods as given in Section 2(52) of the CGST Act is contrary to the legal meaning of goods and unconstitutional?
- 3) Whether determining the face value of the lottery tickets for levy of GST, prize money is to be excluded for the purpose of levy of GST?

The Hon’ble Supreme Court held:

- The writ petition challenged CGST Act, as it imposes tax on lottery on the ground that it violates Article 14 of the Constitution of India for being discriminatory. Therefore, the writ can be entertained under Article 32 of the Constitution of India. Further, the court emphasized that Article 32 is an important and integral part of the basic structure of the Constitution. Article 32 is meant to ensure observance of rule of law.
- CGST Act defines the goods to include actionable claims and included only three categories of actionable claims, i.e., lottery, betting and gambling for purposes of levy of GST, it cannot be said that there was no rationale for including these three actionable claims for tax purposes. Regulation including taxation in one or other form on the activities namely lottery, betting and gambling has been in existence since last several decades. When the parliament has included above three for purpose of imposing GST and not taxed other actionable claims, it cannot be said that there is no rationale or reason for taxing above three and leaving others. Hence lottery and gambling under GST’s ambit is legally valid and upheld the validity of tax imposition on lottery tickets and the prize money.

Samir Agrawal v. Competition Commission of India & Ors.

Civil Appeal No. 3100 of 2020, Date of Judgement -15-12-2020

Facts:

Samir Agarwal (Informant), an independent legal practitioner, filed information before the Competition Commission of India (CCI) alleging contravention of Section 3 of the Competition Act 2002 by cab aggregator brands namely Ola and Uber. The Informant alleged that the algorithm used by cab aggregators for price fixing facilitated their collusion with drivers, and among drivers as well, thus violating Section 3 of the Competition Act.

The allegation was that due to algorithmic pricing, neither the riders were able to negotiate fares with individual drivers for rides booked through the mobile applications of the cab aggregators, nor were the drivers able to offer any discounts.

The CCI passed an order dated November 6, 2018 in which it took the view that no agreement, understanding, or arrangement appeared to exist either between the cab aggregators and their respective drivers or between the drivers inter se. The CCI therefore ruled that no prima facie case for contravention of Section 3 of the Act had been made out to order an investigation by the Director General and the matter was disposed of.

Aggrieved by the order of the CCI, the Informant assailed the same before the National Company Law Appellate Tribunal (“NCLAT”).

In the appeal before the NCLAT, cab aggregators challenged the *locus standi* of the Informant alleging that the Informant was not a “person aggrieved” and had failed to present cogent evidence of a legal injury arising as a result of the alleged conduct.

The NCLAT, before delving into the merits of the appeal, outrightly rejected the Informant’s *locus standi* to initiate and maintain an action against the cab aggregators. The NCLAT while adjudicating on the Informant’s right to approach the CCI, referred to Section 19(1) of the Act and noted that this provision stipulates three ways in which the CCI can take cognizance of an alleged contravention of the Act: (i) on its own motion; (ii) through information from any person, a consumer or a consumers’ association or a trade association; (iii) through a reference made to the CCI by the appropriate Government or statutory authority. Despite having held that the Informant had no *locus standi* to move the CCI, the NCLAT went into the merits of the case and held: Assuming though not accepting the proposition that the Informant has *locus* to lodge information qua alleged contravention of the Act and appeal at his instance is maintainable, on merits also we are of the considered opinion that business model of Ola and Uber does not support the allegation of Informant as regards price discrimination.

The Cab Aggregators used their respective algorithms to facilitate price fixing between drivers. It is significant to notice that there is no allegation of collusion between the Cab Aggregators through their algorithms which necessarily implies an admission on the part of Informant that the two taxi service providers are operating independent of each other. It is also not disputed that besides Ola and Uber there are other players also in the field who offer their services to commuters/ riders in lieu of consideration. It emerges from the record that both Ola and Uber provide radio taxi services on demand. A consumer is required to download the app before he is able to avail the services of the Cab Aggregators. A cab is booked by a rider using the respective App of the Cab Aggregators which connects the rider with the driver and provides an estimate of fare using an algorithm. The allegation of Informant that the drivers attached to Cab Aggregators are independent third-party service provider and not in their employment, thereby price

determination by Cab Aggregators amounts to price fixing on behalf of drivers, has to be outrightly rejected as no collusion is proved.

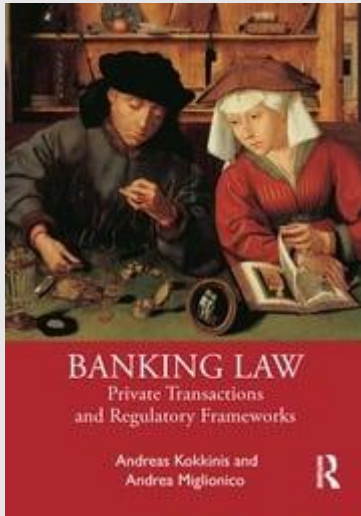
The Supreme Court held that it has been found Ola and Uber do not facilitate cartelization or anti-competitive practices between drivers, who are independent individuals, who act independently of each other, so as to attract the application of section 3 of the Act, as has been held by both the CCI and the NCLAT. Resultantly, the appeal is disposed of.

LEGISLATIVE CHANGES

- I. The Arbitration and Conciliation (Amendment) Act, 2021 seeks to amend the Arbitration and Conciliation Act, 1996 so as to:
 - a. Enable automatic stay on awards if it is prima facie satisfied that the relevant arbitration agreement or contract/ making of the award was induced by fraud or corruption and
 - b. The Schedule VII of the Act is been omitted which specified certain qualifications, experience, and accreditation norms for arbitrators. The amendment seeks to specify by regulations the qualifications, experience and norms for accreditation of arbitrators which attracts eminent international arbitrators to the country and help in promoting institutional arbitration in India. The amendment is seen as an attempt to make India a hub of international commercial arbitration.

- II. The Reserve Bank of India has introduced the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021. The RBI aims to introduce certain exemptions related to the aviation sector through the Amendment Regulations by substituting the erstwhile Regulation 4(ea.) of the Principal Regulations.
The Amendment Regulations have now provided the required clarity that the export of leased aircraft and aircraft parts are now permitted in case such aircraft and aircraft parts are in a complete or partially knocked down condition. This will essentially help the export of helicopters in India which are imported in a knocked down condition, and thus reduce the total cost of purchase, which will ultimately enable the aviation sector in India to grow even further. The Amendment Regulations can also be seen as a measure to mitigate the impact caused by COVID-19 and to enable and promote ease of doing business in India.

NEW BOOKS

Banking Law**Private Transactions and Regulatory Frameworks**

Authors: Andreas Kokkinis and Andrea Miglionico,

Price: £120.00,

Published on March 17, 2021, Routledge.

The book focus on the banking regulation, bank corporate governance and executive remuneration perils of FinTech and RegTech and the impact of Brexit on UK financial services as international regulatory initiatives transformed the structure, business practices, financial models in banking sector after the global financial crisis of 2007 -2009. It analyses modern banking law mainly focusing on UK law and practice and explores into EU law and institutions like European Banking Union and supervisory role of the European Central Bank. The book deals with systemic risk and systemic stability, bank and customers relation, money laundering and terrorist financing, regulation on non-performing loans, etc. in the digital economic world. The Authors main emphasis was on modifications and challenges in the digital world of banking and also response to the covid-19 public health emergency and consumer protection. The book is useful for scholars, regulators and other professionals interested in law of banking.

Dr. P.C. Markanda Arbitration: Step by Step

Authors: Rajesh Markanda, Dr. P.C. Markanda, Naresh Markanda

Price: ₹1,585.00, 3rd ed. 2 March 2021,

Publisher Thomson Reuters India.

The book emphasis on the importance of arbitration as one of the alternative dispute resolution mechanism and its simple, informal procedure before the arbitral tribunal. The authors share their experiences that gained during the course of arbitration hearings and on the other hand judgments of the courts. The book is written in lucid language and deals with basics of arbitration and avoid technicalities to make the reader understand and grasp the step-by-step procedure of arbitration. The book is useful equally for practicing lawyers, for the participants in arbitration matters from different professions including engineers, chartered accountants, maritime consultants and officials from the government and other public sector undertakings.

