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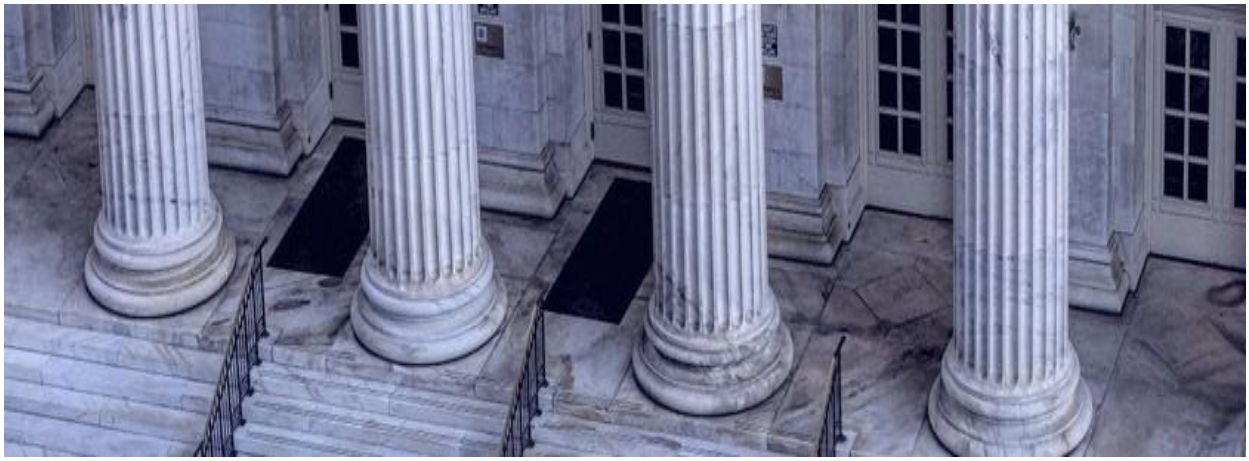
Between the lines...

A BRIEFING ON LEGAL MATTERS OF CURRENT INTEREST



KEY HIGHLIGHTS

* **Delhi High Court**: Invoking CIRP would not make the dispute non-arbitrable.
* **NCLAT**: Section 96(1)(b) of the IBC does not stay any future liability or obligation.
* **NCLAT**: The IBC does not provide for any look-back period on how far back fraudulent transactions can be investigated.
* The changing contours of employment law in India.

I. Delhi High Court: Invoking CIRP would not make the dispute non-arbitrable.

The High Court of Delhi ("**High Court**"), in its judgment dated December 15, 2022 in the matter of ***Brilltech Engineers Private Limited v. Shapoorji Pallonji and Company Private Limited [Arb. P. 790 / 2020]***, has held that invocation of proceedings under the relevant provisions of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") seeking initiation of corporate insolvency resolution process ("**CIRP**") against an entity does not make the dispute non-arbitrable in nature.

Facts

Army Welfare Housing Organization ("**AWHO**") awarded the project for construction of Twin Tower residential accommodation at Greater Noida to Shapoorji Pallonji and Company Private Limited ("**Respondent**") on March, 2011. Further, on November 16, 2011, AWHO approved Brilltech Engineers Private Limited ("**Petitioner**") as a "specialist firm" for carrying out electrification works in the aforesaid project. Thereafter, on December 19, 2011, the Respondent awarded the work order for electrical works exclusively to the Petitioner.

It was agreed between the parties that the Petitioner shall issue the running account bills for the work done, which would be approved and confirmed by the Respondent on the basis of joint inspection conducted by AWHO and the architect. Thereafter, the Petitioner shall generate tax invoices after accepting the verification and certification, which the Respondent shall receive and accept by making an endorsement and would make the payment on back-to-back basis.

Several running bills were raised by the Petitioner and duly paid from time to time. However, the Petitioner submitted the running account bill no. 40 dated October 29, 2018 for the sum of INR 37,34,229/- (Rupees Thirty-Seven Lakhs Thirty-Four Thousand Two Hundred and Twenty-Nine Only) in respect of the work done by the Petitioner, which was duly approved by the Respondent. However, the Respondent made certain deductions due to which an amount of INR 20,87,437/- (Rupees Twenty Lakhs Eighty-Seven Thousand Four Hundred and Thirty-Seven Only) was still due and payable. Subsequently, the Petitioner raised another running account bill no. 41 dated March 1, 2019 for the sum of INR 41,44,500/- (Rupees Forty-One Lakhs Forty-Four Thousand and Five Hundred Only) which was approved by the Respondent. Furthermore, the Respondent was also liable to pay the security amount along with interest at the rate of 24 per cent per annum on the security amount of INR 30,15,468/- (Rupees Thirty Lakhs Fifteen Thousand Four Hundred and Sixty-Eight Only), which was supposed to be paid after the virtual completion of the project in May, 2018.

On successful completion, a completion certificate dated March 25, 2019 and a letter of appreciation dated March 12, 2019 were awarded by AWHO in favour of the Petitioner. A total outstanding amount of INR 59,76,574/- (Rupees Fifty-Nine Lakhs Seventy-Six Thousand Five Hundred and Seventy-Four Only) was payable from the Respondent to the Petitioner along with interest thereon at the rate of 24% per annum. In view of the above-mentioned, Petitioner served a demand notice dated April 19, 2019 ("**Demand Notice**") upon the Respondent and thereafter, the Respondent served a reply to the Demand Notice dated May 8, 2019.

Further, the Petitioner had also submitted an application before the Ministry of Micro, Small and Medium Enterprises but the proceedings became void ab initio due to expiry of the statutory limit prescribed thereunder.

Thereafter, the Petitioner filed a company petition under Section 9 (*Application for initiation of corporate insolvency resolution process by operational creditor*) of the IBC before the Hon'ble National Company Law Tribunal, Mumbai ("**NCLT**"). The NCLT opined that the claim of the Petitioner was genuine and asked the Respondent to settle the matter.

Thereafter, in terms of Clause 13 of the work order, the Petitioner filed a petition under Section 11 (*Appointment of arbitrators*) of the Arbitration and Conciliation Act, 1996 ("**Act**") seeking appointment of arbitrator to resolve the dispute between the Petitioner and the Respondent. The Petitioner also filed a petition under Section 9 (*Interim measures, etc., by Court*) of the Act seeking attachment of an amount of INR 2,58,03,143/- (Rupees Two Crores Fifty-Eight Lakhs Three Thousand One Hundred and Forty-Three Only) which was due to be paid by AWHO to enable the Respondent to release the aforesaid amount in favour of the Petitioner.

Issue

Whether a dispute which was previously raised by way of filing a company petition before NCLT under Section 9 of the IBC is arbitrable, considering that a petition filed under Section 9 of the IBC is maintainable only in case of no pre-existing dispute between the parties.

Arguments

Contentions raised by the Respondent:

The Respondent contended that the very fact that the Petitioner had filed a company petition under Section 9 of the IBC proves that the nature of disputes in the present case is non-arbitrable. This is in view of the established law that a petition filed under Section 9 of the IBC is maintainable only when there is no pre-existing dispute between the parties. The Respondent submitted before the High Court that in the rejoinder filed before the NCLT, the Petitioner stated that there are no disputes between the parties, but the Respondent had delayed the payments to be made to the Petitioner.

Further, the Respondent contended that the mechanism for dispute resolution as provided in Clause 13 of the work order was not duly followed by the Petitioner. It provided for mutual discussion at first and referring the matter to regional head in case it is not resolved in the first step, and if it still remains unresolved, then to arbitration.

Further, the Respondent submitted that the mandatory notice under Section 21 (*Commencement of arbitral proceedings*) of the Act has not been served upon the Respondent by the Petitioner.

Further, the Respondent submitted that Petitioner has been indulging in forum shopping by approaching multiple courts/ tribunals for seeking the same remedy and claiming different amounts as due from the Respondent before different forums.

Observations of the High Court

On the issue as to whether the dispute is arbitrable, the High Court referred to the judgment pronounced by the Supreme Court in the matter of ***Mailbox Innovations Private Limited v. Kirusa Software Private Limited [(2018) 1 Supreme Court Cases 353]***, whereby the Supreme Court explained that in terms of

Section 9(5)(ii)(d) of the IBC, the adjudicating authority must reject an application filed under Section 9 of the IBC, if a notice of dispute is received by the operational creditor or there is record of the dispute in the information utility as stated under Section 9(5)(ii)(d) of the IBC. The High Court observed that even though a proceeding may have been initiated by the Petitioner before the NCLT asserting that there is an admitted debt, but a mere assertion would not make it into an admitted liability especially when the Respondent has been denying the same at every forum. Hence, the High Court decided that the objection raised by the Respondent in respect of non-existence of arbitrable disputes is not tenable.

On the issue of forum shopping, the High Court observed that merely because the Petitioner has approached different forums for redressal of its claims, it does not amount to forum shopping. Each provision invoked by the Petitioner has its own individual scope. Merely because the Petitioner approached NCLT prior to seeking appointment of arbitrator by the High Court, it does not mean that the Petitioner has been indulging in forum shopping.

On the issue of invocation of notice under Section 21 of the Act, the High Court analyzed Clause 13 of the work order in detail and arrived at the conclusion that the Petitioner had served the Demand Notice whereby the Petitioner had asserted that an amount of INR 99,87,763/- (Rupees Ninety-Nine Lakhs Eighty-Seven Thousand Seven Hundred and Sixty-Three Only) is due. In view thereof, the Respondent had also issued a reply to the Demand Notice. Hence, the High Court observed that in the Demand Notice, the intention of invoking legal proceedings, including arbitration, was conveyed by the Petitioner. Notwithstanding and without prejudice to the aforesaid, the High Court also noted that in the order dated October 21, 2020 passed by the High Court in the petition filed by the Petitioner under Section 9 of the Act, the Respondent had agreed for referral of disputes to arbitration.

Decision of the High Court

The High Court held that there are arbitrable disputes between the Petitioner and Respondent, which are referable for arbitration, in view of Clause 13 of the work order and therefore directed for appointment of a sole arbitrator to adjudicate the disputes between the parties.

VA View:

The High Court has rightly observed that even though during the course of proceeding before the National Company Law Tribunal seeking initiation of the corporate insolvency resolution process, the Respondent may have taken the defence of pre-existing dispute and the Petitioner may have denied the same; however, this does not make the dispute non-arbitrable in nature.

This clarity provided by the High Court is a welcome step, thereby setting the right precedent, so as to preclude a defaulter from twisting the legal provisions and taking convenient defence, with the mala fide intent to somehow wriggle out of the liability to repay the outstanding debt.

II. NCLAT: Section 96(1)(b) of the IBC does not stay any future liability or obligation.

The National Company Law Appellate Tribunal, Principal Bench, New Delhi ("**NCLAT**") has in

its order dated November 29, 2022 ("**Order**"), in the matter of ***Ashok Mahindru and Another v. Vivek Parti [Company Appeal (AT) (Insolvency) No. 1324 of 2022]***, held that Section 96(1)(b) (*Interim-moratorium*) of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") does not stay any future liability or obligation.

Facts

On September 5, 2019, Advance Home and Personal Care Limited ("**Corporate Debtor**") was admitted into Corporate Insolvency Resolution Process ("**CIRP**") by the National Company Law Tribunal, New Delhi ("**NCLT**") under Section 9 (*Application for initiation of CIRP by Operational Creditor*) of the IBC.

Thereafter, on December 4, 2019, the resolution professional filed an application under Section 19(2) (*Failure of personnel to extend co-operation to Interim Resolution Professional*) of the IBC against Mr. Ashok Mahindru and one another ("**Appellants**") who were the suspended directors of the Corporate Debtor. On July 23, 2020, the resolution professional filed an application under Section 66 (*Fraudulent trading or wrongful trading*) and Section 67 (*Proceedings under Section 66*) of the IBC.

The Appellants were also personal guarantors for another company, namely, Advance Surfactants India Limited ("**ASIL**"). By order dated December 6, 2021 and December 7, 2021, proceedings under Section 95 (*Application by creditor to initiate insolvency resolution process*) of the IBC were initiated against the Appellants as a personal guarantor for ASIL. Consequently, the interim moratorium under Section 96 of the IBC commenced in the said proceedings.

The Appellants filed an application in the CIRP proceedings under Section 9 against the Corporate Debtor seeking stay of proceedings under Section 19(2) of the IBC as well as under Section 66 and Section 67 of the IBC. However, the aforesaid application was dismissed by the NCLT by way of an order dated September 9, 2022 ("**Impugned Order**").

Aggrieved by the Impugned Order, the Appellants filed an appeal before the NCLAT ("**Appeal**").

Issue

Whether Section 96(1)(b) of the IBC contemplates a stay on any future liability or obligation.

Arguments

Contentions raised by the Appellants:

The Appellant argued that all proceedings were bound to be stayed considering the fact that interim moratorium had commenced in the proceedings under Section 95 of the IBC qua ASIL, vide order dated December 6, 2021 and December 7, 2021.

The Appellants further submitted that in proceedings under Section 19(2) of the IBC as well as proceedings under Sections 66 and 67 of the IBC, there is a possibility that an order can be passed against the Appellants in terms of monetary considerations to be paid by the Appellants and therefore, in lieu of interim moratorium, these proceedings must be stayed.

The Appellants placed reliance on the case of ***State Bank of India v V. Ramakrishnan and Another [(2018) 17 SCC 394]*** wherein the Hon'ble Supreme Court had examined the provisions under Sections 96 and Section 101 which deals with moratorium in respect of personal guarantors contrasted with Section 14 which deals with moratorium in respect of a company undergoing CIRP under the provisions of IBC and held that Section 14 could not possibly apply to a personal guarantor.

It was also argued that the NCLT had dismissed the application of the Appellants without giving any reason, except observing that it had been filed to halt all proceedings against the Corporate Debtor.

Contentions raised by the Respondent:

The respondent refuted the submissions of the Appellants and contended that Section 96 of the IBC contemplates stay of proceedings relating to the debt that is due. The said Section does not intend to stay the proceedings under Section 19(2), Section 66 and Section 67 of the IBC.

In this regard reliance was placed on the case ***Rakesh Kumar Jain, RP HBN Homes Colonizers Private Limited v. Jagdish Singh Nain, RP of HBN Foods Limited and Others [Company Appeal (AT) (Ins.) No. 425 of 2022]*** ("**Rakesh Kumar Jain Case**") wherein a question arose with regard to application of Section 14(1)(a) of the IBC to Section 66 and Section 67 of the IBC. NCLAT held that there is absolutely no inconsistency or repugnancy between Section 14 (1)(a) and Section 66 of IBC and the adjudicating authority passed the order only by exercising power that conferred on it by Section 66 of IBC. Hence, it was held that appeal may be filed during moratorium.

Observations of the NCLAT

The relevant extract of Section 96 of the IBC is reproduced herein below, which has been dealt with and interpreted by the NCLAT in the Order:

*"**96. Interim - moratorium.** –*

(1) When an application is filed under section 94 or section 95 –

(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period –

(i) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and

(ii) *the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt."*

In this regard, the NCLAT observed that the expression used in Section 96(1)(b)(i) of the IBC is "*any pending legal action or proceeding pending in respect of any debt shall be deemed to have been stayed*". The term 'debt' has been defined under Section 3(11) of the IBC as *"debt means a*

liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt".

The NCLAT observed that a conjoint reading of Section 96(1)(b) of the IBC with the definition of 'debt' in Section 3(11) of the IBC, make it evidently clear that Section 96(1)(b) contemplates to stay the proceeding relating to debt, which means a liability or obligation in respect of a claim which is due from any person. Interim moratorium applies to proceedings which relate to a liability or obligation due, that is, due on the date when such interim moratorium has been declared.

Further, in NCLAT's view, the case relied on by the Appellants did not support their submissions in the instant case.

Decision of the NCLAT

The NCLAT opined that the respondent had rightly placed reliance on the decision in the Rakesh Kumar Jain Case and held that Section 96(1)(b) of the IBC cannot be read to mean that any future liability or obligation is contemplated to be stayed. Stay of proceedings under Section 19(2), Section 66 and Section 67 of the IBC are not contemplated under Section 96(1)(b) of the IBC.

The NCLAT held that the Impugned Order deserves no interference and accordingly, dismissed the Appeal.

VA View:

The NCLAT has correctly observed that by virtue of imposition of interim moratorium under Section 96 of the IBC, other proceedings against the personal guarantors such as applications filed under Sections 19(2), 66 and 67 of the IBC cannot be stayed.

It is clear from the language used in Section 96(1)(b) of the IBC, that the effect of the interim moratorium is only in respect of the debt that is due and cannot be stretched to mean that interim moratorium contemplates to stay any future liability or obligation. Therefore, Section 96(1)(b) of the IBC in no way contemplates a stay on any future liability or obligation.

III. NCLAT: IBC does not provide for any look-back period on how far back fraudulent transactions can be investigated.

National Company Law Appellate Tribunal, Chennai ("**NCLAT**"), in the matter of ***Mr. Thomas George v. K. Easwara Pillai and Others [Company Appeal (At)(Ch) (Insolvency) No. 293 of 2021]***, held that Section 66 (*Fraudulent trading or wrongful trading*) of Insolvency and Bankruptcy Code, 2016 ("**IBC**") does not provide for any look-back period on how far back fraudulent transactions can be investigated.

Facts

Mr. Thomas George is the suspended director of the corporate debtor - M/s. Mathstraman Manufacturers and Traders Private Limited ("**Appellant**"). Corporate insolvency resolution process ("**CIRP**") was commenced against the corporate debtor and Mr. K. Easwara Pillai ("**RP**") was appointed as the resolution professional. During the CIRP, the RP found irregular business activities in

the factory and registered office of the corporate debtor. It was pleaded that as the corporate debtor was dormant during the financial year 2015-16, the RP had prepared the annual accounts for the financial year 2014-15 with limited information. The corporate debtor failed to file the statutory accounts before the registrar of companies from 2015 onwards. It was stated that all the movable and current assets were traded to respondent 3 and sold to settle the liabilities of the corporate debtor by cash mode outside the books of accounts of the corporate debtor. It was also pleaded that there were no workers and employers working on the payroll of the corporate debtor.

Though notice was served on respondents 3 to 6, they did not appear before the adjudicating authority and hence the order was passed ex-parte. Accordingly, an interim application was filed by the RP under Section 66 of the IBC against the Appellant seeking, *inter alia*, the following reliefs:

> "*II. To pass an order directing the Respondents to make good the losses caused to the creditors of the Corporate Debtor as concluded in the present Application as envisaged under Section 67(2) of the I&B Code, 2016.*
> *III. To hold the Respondents personally liable for such deliberate and wilful default.*
> *IV. To declare the transaction as concluded in the present Application as Fraudulent Transactions.*"

The adjudicating authority allowed the application filed by the RP and observed as follows ("**Impugned Order**"):

> "*From a reading of the above provision and considering the submission of the learned Resolution Professional, we are of the opinion that the suspended Directors of the Corporate Debtor have carried on the business in the factory and registered office of the Corporate Debtor were illegally continuing with M/s. Whispower Sales & Services (P) Ltd. and the Respondent No. 3 utilised the assets of the Corporate Debtor which is 100% owned by the Directors and Shareholders of the Corporate Debtor. From this it is clear that the suspended Directors were done the above act with an intent to defraud the creditors of the Corporate Debtor for fraudulent purpose. Hence, they are liable to make such contributions to the assets of the Corporate Debtor. It is also clear that suspended directors did not exercise due diligence in minimising the potential loss to the creditors of the Corporate Debtor.*
>
> *In view of what is stated above, this application is allowed declaring the transactions as fraudulent transactions and directing the Respondents to make good the losses caused to the creditors of the Corporate Debtor holding that Respondents are personally liable for such deliberate and wilful default. The Respondents are directed to furnish all documents requested for by the Resolution Professional for smooth conduct of Corporate Insolvency Resolution Process.*"

Aggrieved by the Impugned Order of the NCLT, the present appeal was preferred under Section 61 (*Appeals and appellate authority*) of the IBC.

Issue

Whether the look-back period for Section 66 of the IBC is to be construed as three years as per the Limitation Act, 1963.

Arguments

Contentions of the Appellant:

The Appellant contended that the adjudicating authority wrongfully passed an ex-parte order. It was only based on the pleadings that the transactions were 'fraudulent' as per Section 66 of the IBC, without discussing evidence to this effect. It was submitted that the application filed by the RP did not demonstrate any fraud by the Appellant nor did it set out any facts to show any elements of fraud. It is laid down by the Hon'ble Supreme Court in a catena of judgements that 'fraud' must be established beyond doubt and mere suspicion, however coinciding, can never be proof of fraud. There was no investigation nor any report to prove that there was any fraud committed by the Appellant. It was contended that the Impugned Order is non-speaking and devoid of any findings to conclude that the Appellant has done any fraudulent act.

Further, Section 66 of the IBC is covered under the provisions of the Limitation Act, 1963 which constricts the period of 'look back' to three years. In the instant case, respondent 3 took over all rights for a period of five years and therefore, it is 'barred by limitation'.

Observations of the NCLAT

NCLAT observed that the adjudicating authority had passed the Impugned Order. There was absolutely no ground for not filing the reply, despite service of notice on the Appellant. The advocate for the Appellant was present but did not choose to contest the matter. As a result, the Appellant could not wriggle out of the observations made by the adjudicating authority. Further, the NCLAT was also conscious of the fact that the Appellant did not deny, even in the present appeal, about taking over the factory, plant and machinery of the corporate debtor. Therefore, the NCLAT did not see any grounds for giving any additional opportunity to the Appellant. The RP had produced sufficient material to evidence that the Appellant had committed the fraudulent act knowingly and in a dishonest manner to hoodwink the creditors.

Regarding the look-back period for Section 66 of the IBC as per the law of limitation, the NCLAT was of the considered view that Section 66 of the IBC does not provide for any look-back period as far as fraudulent transactions are concerned. Hence, the RP was allowed to retrieve/ repossess, without any limitation of time, and correct all the wrongdoings of any relevant point in time.

Decision of the NCLAT

Therefore, the NCLAT did not find sufficient cause for setting aside the Impugned Order or giving another opportunity to the Appellant to present their case. In the absence of any substantial grounds in allowing the present appeal, the same was dismissed.

VA View:

Through this judgment, NCLAT has clarified a very important provision of the IBC. The judgment will have a significantly positive impact on creditors who wrongly suffer losses out of the malicious acts of promoters and directors of corporate debtors. By holding that there is no limitation on the look-back period on how far back fraudulent transactions can be investigated, it will ensure that *mala fide* acts are less likely to go unpunished.

IV. The changing contours of employment law in India.

Presently, platform economy is a common occurrence. There is enhanced codification of terms as companies like Zomato, Swiggy, Uber Eats and Grubhub optimise operations and consolidate market share. Serving as 'aggregators', they have revolutionised product delivery and ride-sharing sectors. However, the human capital in this sector is seen as contractors rather than workers, resulting in a dichotomy of beneficial classification.

This article will discuss how the gig economy is developing in India and other countries, so that the Indian experience may draw from the lessons learnt by other jurisdictions.

Development of the gig economy in India

The basic understanding of any platform economy is that the platform, using software applications, acts as a digital mediator by matching a large pool of workers and customers. There is a growing ecosystem of freelancers engaged in short-term contracts by companies, also known as the gig economy, sharing economy, collaborative economy, on-demand work or crowd work.

The Associated Chambers of Commerce and Industry of India has projected that India's gig economy would grow at a compounded annual rate of 17% by 2023. This growth is testament to the fact that the gig-economy has immense advantages. It provides: (i) cheap labour for businesses; (ii) more options, income and autonomy for workers and (iii) cheaper, more immediate services for consumers.

Technology opened the door for the gig economy in India when apps like Uber, Swiggy, Ola and Zomato displaced existing transportation solutions and food delivery services. While there is maximum flexibility provided to manufacturers and traders under this model, there is a flipside from a legal front as well, which employers must be aware of.

Some factors pushing lawmakers and freelancers to dismantle the system are: (i) low job security because workers feel insecure about their tenure; (ii) avoidance of companies in paying employment benefits although not legally required; and (iii) lack of conflict resolution as there is no collective bargaining power or expectation of loyalty.

Classification & Misclassification

Almost all crowd-work terms of service contain clauses wherein workers attest that they are self-employed or "independent contractors". This designation is particularly important, as many labour rights are tied to employment status.

The Code on Social Security, 2020 (which is enacted but not implemented) ("**Code**") confers legal recognition on gig and platform workers. The Code defines a gig worker as 'a person who performs work or participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship'. Platform work is defined as '*a work arrangement outside of a traditional employer-employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in*

exchange for payment'.

Some lessons may be suitably drawn from the international rulings, for example:

a. The State Supreme Court of State of California in ***Dynamex Operations West, Inc. v. Superior Court of Los Angeles [4 Cal.5th 903]***, successfully extended the traditionally available protections for labour workers to the gig workers. This was later codified, a measure which addressed the 'independent contractors' classification, but required employers to provide them with a healthcare contribution subsidy and 120% of the local minimum wage.

b. The Supreme Court of the United Kingdom ("**U.K.**") court, in ***Uber v. Aslam [(2021) UKSC 5]***, recognised certain Uber drivers as 'workers' under the Employment Rights Act, 1996. The court tried to fit new phenomena into the dated statutory framework which did not envisage workplace digitization.

It is important to note that given the progressive rulings of the courts of the U.K. and the State of California it is expected that Indian courts may adopt a similar approach. The path India has taken (of introducing the Codes) is optimal because the three disadvantages of the gig economy - job insecurity, benefit dilemmas and conflict management - can be resolved at once by enacting progressive legislation.

Fair work

As per Oxford University's project 'Fairwork', Swiggy and Zomato are the most unfair gig work companies in India. They are notoriously unwieldy and dominant. The increase of gig-economy presents a unique opportunity to prevent hurdles in implementing and establishing a robust social security mechanism, better utilising India's annual expenditure on core social protection and flagship welfare schemes.

Taking cognizance of such reporting and ground realities, the Central Government promises to universalize benefits in health and maternity matters, life and disability cover, etc. and is also in the process of amending the Industrial Disputes Act, 1947, to include gig workers under its purview, while the State Government is supposed to ensure the workers' benefits like provident fund, skill upgradation and housing are implemented.

Next Steps

It is important for employers to understand how the legal framework will change once the labour codes are in effect. For example, companies that use aggregators for transport and mobility solutions in their day-to-day operations will have to ensure compliance under the labour codes if their service providers are classified as gig-workers.

There are several possibilities to consider – including that of the employment being in the nature of:

(i) Employer – employee
(ii) Employer - contract labourer
(iii) Direct employment.

Depending on the exact delineation of their employment, it remains to be seen who is going to foot the bill for the labour welfare and social security provisions currently envisaged in the Code. If it is the obligation of the employer, such overhead costs will be passed on to the consumer in the form of increased prices and if costs are subsumed by the government, then it may factor such costs into the indirect taxes applicable on availing gig-worker's services.

Other issues that employers should account for, given the evolving state of the law, include:

i. Following international precedent: Democratic lawmakers in Washington, U.S.A. called for paid sick leave, enhanced unemployment insurance, food assistance and affordable coronavirus testing and treatment. Practice is tending towards unionization and collective bargaining under International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

ii. Leveraging the efficiency of technology: Technology can simplify contribution and benefit payments. Uruguay has introduced mandatory social security insurance for all for the self-employed and micro-enterprises starting with taxi drivers.

Facilitated by the Unified Payments Interface (UPI) and Startup India initiatives, newfound synergies can be achieved by companies that adapt in the face of regulatory headwinds.

iii. Introducing standardized employment forms: This is targeted towards platforms where unskilled employment such as food delivery and courier services, is provided. It should seek to secure workers standard legal rights such as preferring trial over arbitration or right to class action lawsuits that would have otherwise been waived.

VA View:

The growth of networked platforms has led to the question of how to modernize employment protections to fit with modern realities. The labour codes in India should strive to get a balanced regulation through the use of thresholds prescribing the daily or monthly hours clocked by the gig workers to ensure that similarly situated workers get to avail social security benefits. Overly stringent regulations can drive out smaller firms as larger companies can absorb compliance costs.

The gig economy, which is a prototype of the future, or at the least, an insight into the infrastructure for decentralized work requires aligning interests and time. Each individual's specific skill-sets can be put to use in an interdisciplinary set-up on a project-basis. Through progressive legislation, it is expected that the Government will appreciate the realities of the situation and India Inc. will plug the loopholes in the law to ensure coverage of all kinds of workers and bring clarity to the employment obligations of corporates.

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