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THE BUSINESS BRIEF

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This issue brings together timely analyses of India's evolving regulatory and corporate landscape. It examines data protection, AI in finance, securities and insurance reforms, competition law, insolvency outcomes, gaming regulation, and policy signals from financial regulators capturing how law, markets, and governance are being recalibrated in response to emerging economic realities.

GNLU CENTRE FOR BUSINESS AND PUBLIC POLICY

Welcome to the latest edition of the GNLU Centre for Business and Public Policy's newsletter. This edition curates critical developments at the intersection of law, markets, and public policy racking legislative reforms, regulatory shifts, and landmark judgments that are reshaping India's business ecosystem and governance framework in an increasingly complex economic environment.

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GNLU CENTRE FOR BUSINESS AND PUBLIC POLICY

The Business Brief
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What's inside?

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India's New Data Protection Regime and The Role of AI in Financial Decision Making

~Yuvika Agarwal and Kanishka Ajwani

When algorithms decide your financial future, data protection becomes financial protection. From fraud detection and risk assessment to credit scoring and digital lending, AI algorithms find themselves deeply intertwined in the Indian financial landscape. A customer may consent to the use of their personal data, but may not realise how their data may actually be used in automated risk assessments, pricing decisions, or future prospects. Consent tends to become a mere checkbox rather than a meaningful safety net. The growing use of AI places India's Data Protection Statute at the forefront of financial governance.

Having a consent- centric approach, the Digital Personal Data Protection (DPDP) Act, 2023 necessitates data fiduciaries to obtain valid and transparent consent, and enforce safeguards. Clear consent, data minimization and accuracy standards, breach-reporting timelines, and stricter enforcement for Significant Data Fiduciaries (including banks and FinTech firms) have been mandated by the DPDP Rules of 2025. These statutory provisions highlight the State's efforts to impose accountability in the digital economy.

However, consent is a limited safeguard and there has been a growing recognition that individuals in AI-based systems cannot be protected solely by user consent. Algorithms are dynamic and ever-adapting, producing outcomes that may be difficult for individuals to predict and understand, thereby creating a requirement for active institutional control and accountability over their data-processing systems.

Although consent is stipulated under the DPDP Act, it does not contain explicit provisions to regulate the manner in which automated financial decisions are formulated, monitored, and interpreted.

Recent regulatory projections suggest growing awareness of this gap, with an emphasis on robust internal governance and accountability over technology use. Against this backdrop, while the DPDP Act and Rules provide a crucial starting point, they cannot function as a comprehensive solution. Bridging these gaps require coordination between regulatory and institutional bodies, such as the RBI, which can help provide guidance on explainability, fairness, and human supervision in AI-driven financial decisions.

Organizations must adopt privacy-by-design and ethical practices (such as regular bias and accuracy audits). Transparent governance and effective grievance mechanisms can further build confidence among stakeholders of the financial sectors. The real policy is not how frequently and easily individuals click “I agree,” but how responsibly institutions formulate, monitor, and are held accountable for the technologies that increasingly determine financial outcomes.

The Constitutional Standing of the Promotion and Regulation of Online Gaming Act, 2025

~ Soham Gupta

The Promotion and Regulation of Online Gaming Act, 2025, represents one of the most consequential legislative interventions in India's digital economy. Enacted to address concerns of addiction, financial fraud, and national security, the bill nonetheless raises foundational constitutional questions. Its validity must be assessed not merely against policy objectives, but against India's federal structure, fundamental rights jurisprudence, and due process guarantees.

At the threshold lies the issue of legislative competence. Betting and gambling fall squarely within Entry 34 of the State List, with taxation powers further reinforced under Entry 62. Despite this, Parliament enacted a comprehensive prohibition without invoking constitutionally sanctioned mechanisms such as Article 249 (Rajya Sabha resolution in national interest) or Article 252 (state consent). The Union's reliance on residuary powers and interstate commerce arguments remains fragile. While online gaming implicates digital infrastructure and cross-border data flows, its regulatory core continues to govern wagering activity. Applying the pith and substance doctrine, courts may find that the bill substantially encroaches upon the State legislative domain, unsettling the federal balance recognised as part of the Constitution's basic structure.

The bill also confronts serious challenges under Article 19(1)(g). Indian constitutional jurisprudence has consistently distinguished games of skill from games of chance, recognising the former as legitimate commercial activities. From *Chamarbaugwala* through *K. Satyanarayana* and *K.R. Lakshmanan*, the Supreme Court has affirmed that the presence of stakes does not, by itself, convert skill-based games into gambling. The bill discards this settled distinction by criminalising all online money games irrespective of skill. Such a blanket ban must satisfy the proportionality standard under Article 19(6), as articulated in *Modern Dental College*.

While the objectives of public health and financial integrity are legitimate, the measure fails the tests of rational connection and the least restrictive alternative. Regulatory tools: licensing, consumer safeguards, algorithmic transparency, and transaction controls, were available but ignored. The ban's disproportionate economic impact further undermines its reasonableness.

Under Article 14, the Act's classifications are equally vulnerable. By grouping skill-based and chance-based games together, it collapses constitutionally distinct activities without intelligible differentia. Moreover, by prohibiting online skill games while permitting their offline counterparts, the bill introduces what may be termed "medium arbitrariness." Courts have previously held that the nature of a game is not altered by the medium of play. The Act's distinctions are thus both over-inclusive and under-inclusive, failing to achieve its stated objectives while encouraging migration to unregulated offshore platforms.

The most acute constitutional concern arises from the enforcement architecture. The bill authorises warrantless searches, arrests, and access to digital systems, expressly overriding procedural safeguards under the Bharatiya Nagarik Suraksha Sanhita. These powers extend to virtual spaces, encrypted data, and intermediaries, with minimal oversight. In light of K.S. Puttaswamy, such intrusions into privacy must satisfy legality, necessity, proportionality, and procedural safeguards. The bill fails this test, particularly given that the offences regulated are economic and regulatory in nature rather than threats to physical security.

In sum, while the bill pursues legitimate ends, it does so through constitutionally precarious means. Its centralisation of legislative power, abandonment of settled rights jurisprudence, arbitrary classifications, and sweeping enforcement mechanisms render it vulnerable on multiple fronts. The forthcoming judicial scrutiny will not merely determine the fate of online gaming but will recalibrate the boundaries of federalism, proportionality, and executive power in India's digital regulatory state.

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From Municipality to Codification: An Overview of Labour Law Reforms

~ Disha Joshi and Rutva Shah

The Indian workforce has traditionally been regulated by the multitude of legislation enacted in response to specific moments in the country's industrial relations and welfare, and post-colonial state formation. This ad hoc development has resulted in a well-intentioned and protective legal regime, but it has become uneven in its coverage and increasingly outdated in relation to the changing workforce in India.

Liberalization, the growth of platform labour, and the need for greater regulatory certainty revealed the weaknesses of a system over-regulated but poorly integrated. The consolidation of 29 labour laws into 4 broad Codes - Code on Wages, the Industrial Relations Code, the Occupational Safety, Health and Working Conditions (OSH) Code, and the Code on Social Security - speaks to attempts at recasting the inherited regime: to simplify without erasing protection, to universalize cover without flattening difference, and to harmonize economic flexibility with social justice.

Various key changes have been brought about impacting workers and businesses alike. A uniform minimum wage applicable to all workers has been introduced. Also, a standardised definition of wages has been laid down and a national floor wage will be established. This requires businesses to restructure salary components, as higher basic wages will impact provident fund, gratuity, and social security contributions. Social security coverage has been expanded to include gig, platform, and unorganised workers. It will create greater obligations of businesses towards workers previously not considered employees.

In the area of industrial relations, the threshold for prior approval of layoffs or closures has been raised to apply to establishments employing 300 or more workers. Also, a reskilling fund for retrenched employees is introduced. This gives transitioning workers and businesses the ease and support they need.

Further mandatory appointment letters have been introduced which lead to formalisation and transparency in the employment process. Increased emphasis has been placed on workplace safety, such as annual health checkups adding compliance requirements for businesses. Provisions promoting gender parity have enabled women to work across establishments with equal pay.

The Codes thus emerge not merely as legislative reform, but as a normative reimagining of labour governance, one that seeks coherence, inclusion, and adaptability in an era of structural change.

The Sabka Bima Sabki Raksha (Amendment of Insurance Laws) Bill, 2025

~ Diksha Lal

On December 30, 2025, the Ministry of Finance notified the Indian Insurance Companies (Foreign Investment) Amendment Rules, 2025, signalling a transformative shift in the legal framework of the same. With the new Sabka Bima Sabki Raksha (Amendment of Insurance Laws) Bill, 2025, India's insurance sector is on the verge of its most sweeping reform in about a decade. The intended outcome of the amendment is to align foreign investment norms with contemporary financial regulations and enhance operational flexibility.

The Bill has introduced the expansion of investment limits. While the investments were previously capped at 74%, according to the new rules, it may go up to 100% paid-up equity capital, subject to conditions and manners prescribed by the Central Government. Furthermore, the definition of Foreign Direct Investment has been expanded to include equity share investments by non-resident entities and specifically recognizes Foreign Venture Capital Investors as permissible. Adding on, references to the 'FEMA 2000 Regulations' have been replaced with the Foreign Exchange Management (Non - Debt Instruments) Rules, 2019.

The amendment has also proposed significant "Ease of Doing Business" measures, such as raising the prior-approval requirement for share transfers from 1% to 5%. For global reinsurers, the minimum net-owned fund requirement has been reduced from 5,000 crore to 1,000 crore. This encourages more foreign participation while retaining substantial capital. The scope of "insurance intermediaries" has also been expanded to include Managing General Agents and insurance repositories, reflecting global market practices. Moreover, the Bill codifies "health insurance business" as a distinct class. Earlier, health insurance was treated as a part of general insurance as per the combined reading of the definitions of 'general insurance' and 'miscellaneous insurance'.

The Bill provides for the constitution of a Policyholders' Education and Protection Fund, an initiative to be managed by the IRDAI, with the specific goal of educating insurance consumers and safeguarding their interests. Financial Support for the fund will be drawn from several sources, including grants or donations provided by the central and state governments.

In conclusion, India's insurance sector is on the verge of its most sweeping reform in about a decade. Through 100% foreign investment, the market gets access to more competition, capital and potentially sharper pricing alongside innovative products over time.

Indigo, Pricing Power and the Competition Law Question

~ Kavinayaa R

IndiGo's recent operational disruptions and the sharp rise in airfares have once again pushed competition law into the corporate conversation, turning an operational issue into a market-wide governance concern. Given IndiGo's dominant position, pricing decisions made during periods of disruption inevitably attract scrutiny beyond ordinary commercial assessment. In concentrated markets, corporate conduct is rarely viewed in isolation, market leadership amplifies both influence and responsibility. What might otherwise be explained as a demand-supply imbalance is therefore examined through the lens of dominance, consumer impact, and competitive fairness.

At the core of the debate is the distinction between legitimate dynamic pricing and potentially exploitative conduct. Competition law does not penalise high prices as such, but it becomes relevant when dominance, limited consumer choice, and market entry barriers coexist. IndiGo's scale-driven efficiencies and network strength allow it to respond quickly to disruptions, yet the same scale can shape price expectations across the sector. For regulators, the challenge lies in avoiding over-regulation while ensuring that market power is not exercised in a manner detrimental to consumer welfare. For corporates, this episode reinforces that pricing strategy, especially during crises, is no longer just a revenue decision but a compliance-sensitive one.

The broader managerial takeaway is clear. Dominance in modern markets demands strategic alignment between business decisions and competition law principles. Transparent pricing rationale, strong internal compliance, and reputational risk management are now integral to corporate governance. As consolidation becomes inevitable across sectors, competition law will increasingly act as a framework for responsible market leadership rather than a constraint on growth. IndiGo's experience thus serves as a concise reminder for corporate India that sustainable scale is as much about legal and policy awareness as it is about operational efficiency.

Securities Markets Code Bill, 2025

~ Amay Bhat

The Securities Markets Code Bill, 2025, introduced in the Lok Sabha on 18 December 2025, marks a historic and very important overhaul of India's securities regulatory framework by consolidating multiple legacy and decade old statutes into a single comprehensive code.

Historically, India's capital markets have been governed by three separate laws: the Securities Contracts (Regulation) Act, 1956, which regulated stock exchanges and securities contracts, the Securities and Exchange Board of India (SEBI) Act, 1992, which established SEBI as the principal market regulator and the Depositories Act, 1996, which provided the legal framework for dematerialisation and the regulation of depositories. Over time, these independent statutes, though critical, resulted in a fragmented regulatory architecture with overlapping provisions, compliance complexities, and interpretational difficulties, often creating discrepancies and being time-consuming.

The new Code proposes to repeal and replace the three statutes, bringing them under one umbrella to create a principle based, modern regulatory framework. It widens SEBI's governance structure by increasing board strength and revising conflict of interest norms. The new code also enhances investor protection through codified charters and structured grievance redressal and rationalises enforcement with clearer timelines for investigations and interim orders. The bill also proposes to widen the definition of securities by adding new instruments like electronic gold receipts and hybrid instrument. Notably, it also decriminalises minor procedural breaches, replacing criminal sanctions with administrative penalties by adding a two-tier system which bifurcates minor crimes with serious market abuse. The main aim of the bill is to align with India's regulatory approach with global best practices.

The Bill's primary goals are to streamline the legal system, lessen regulatory duplication, improve enforcement, and promote ease of doing business in the capital markets. Regulators and market actors will gain more clarity, consistency, and response to technology and product developments by combining three distinct rules into a cohesive code.

But there are still issues. Critics contend that decriminalizing some offences might lessen the motivation against wrongdoing and that giving SEBI more authority could result in fewer monitoring inspections. Strong parliamentary and judicial oversight has been demanded by several stakeholders to guarantee that SEBI has balanced regulatory authority.

In conclusion, the Securities Markets Code Bill, 2025 coming in the right time when number of demat accounts in India are in record highs represents a landmark reform with the potential to reshape India's capital markets, balancing investor protection with regulatory efficiency while addressing long-standing legal fragmentation.

Sterling Biotech Fraud Case: How the Supreme Court Judgment Impacts IBC Efficiency

~ Aditi Rathi

The Supreme Court, in its order dated November 24, 2025 approved a ₹5,100 crore settlement by the Sandesara brothers in the Sterling Biotech bank-fraud case, quashing all criminal and enforcement proceedings against them upon due payment. While the court noted that the ruling lacked precedential value, it is a landmark development in India's regulatory landscape, signalling a shift towards a more balanced approach to economic recovery while promoting public interest. The ruling also highlighted the role of the Insolvency and Bankruptcy Code (IBC) in recovering public funds, shielding new owners and in the revival of a firm despite promoter misconduct.

The IBC prioritised the creditors through a Committee of Creditors (CoC) led process. In this case, it rejected One- Time Settlement (OTS) bids by the promoters, approving foreign buyouts and shielding the new owners from past cases using the shield under IBC's Section 32A.

In 2018, the National Company Law Tribunal (NCLT) admitted a Section 7 petition by the Andhra Bank after multiple loan defaults by Sterling Biotech Limited (SBL). The case, in turn, exposed a huge fraud in which the promoters, Nitin and Chetan Sandesara, allegedly siphoned funds through shell companies, subsequently fleeing India using Albanian passports. The petition was admitted by NCLT Mumbai, triggering the Corporate Insolvency Resolution Process (CIRP). However, as no viable plan could be formulated, liquidation proceedings commenced in May 2019. Following a liquidation valuation of ₹1,192 crore, Perfect Day, Inc., a U.S.-based food technology company specialising in precision fermentation, successfully bid to acquire Sterling Biotech Limited as a going concern. The company was granted immunity from liabilities arising from pre-CIRP actions under Section 32 A of IBC.

By 2025, with ₹4,700 crore recovered, the Supreme Court mandated the final deposit by December 17, quashing all cases against the former promoters and exemplifying IBC's creditor-first efficiency; disbursing funds to lenders according to their dues. Economic restitution was prioritised over punitive enforcement operating on the logic that once public funds are fully repaid, further criminal proceedings add little value, hence promoting case consolidation to fast-track litigation.

The government, meanwhile, has initiated a review to examine the ruling's implications for other high-value economic-offence cases, amid concerns that other defaulters could seek similar settlement routes. The initial review is being conducted internally by the Finance Ministry. There is significant worry that other offenders, particularly among the 14 designated fugitive economic offenders, might seek similar repayment deals to escape criminal prosecution.

The IBC would consequently lose its power if this ruling were to be implemented in other fraud cases. A settlement-based approach as applied by the court contradicts the Code's core purpose as a deterrent. IBC's intent as demonstrated by Section 29 A (inserted in 2018), is to prevent errant promoters from regaining control of companies they have run into the ground. By creating strict ineligibility bars, the legislature sought to ensure that the insolvency process is not used as a backdoor for the management to benefit from their own defaults.

The judgment disturbs the established principle that a debt settlement doesn't grant immunity from criminal proceedings. By shielding promoters from liability through the insolvency process, this ruling sets a dangerous trend in motion, undermining both corporate accountability and the integrity of the IBC itself.

RBI's Policy Signals For Startups And MSMEs

~ Shristi Chaudhary

In the second half of 2025 and into early 2026, the Reserve Bank of India (RBI) has adopted a cautiously supportive monetary and regulatory stance aimed at sustaining growth while maintaining price stability, a shift that carries important implications for both startups and Micro, Small and Medium Enterprises (MSMEs). Most recently, the Monetary Policy Committee of the RBI announced a cut of 25 basis points in the repo rate to 5.25%, leaving the overall policy stance neutral. The cut signifies softer inflation and a desire to drive up economic activity as global uncertainty continues to loom large. However, RBI shows a strong desire for regulation. Recent actions against fintechs, including enforcement against unauthorised payment operations, show that innovation must be within the framework of the law.

The policy environment has progressively become more favourable for MSMEs. Apart from interest rate cuts, the RBI has directed banks to link MSME loans with external benchmarks having a shorter reset period so as to improve the transmission of monetary easing to the borrowers. This measure allows enterprises to reap the benefits of policy rate changes sooner.

The targets of Priority Sector Lending, which is a regulatory instrument designed to ensure that banks cater to vital sectors has remained an important route for MSMEs' credit access. In FY25, banks surpassed such targets by a wide margin, and MSME credit grew significantly, indicating continuous financing to the small business segment.

As the 2026 Union Budget approaches, industry bodies have called for greater liquidity relief and simplified compliance for small firms, startups and MSMEs, and the need for continued policy alignment across the fiscal and monetary domains. To sum it up, RBI's recent stance of making accommodative rate decisions, taking steps towards better credit transmission, and ensuring robust regulation, offers a nuanced but positive ecosystem to weather the macroeconomic headwinds and turbocharge growth for startups and MSMEs.

SEBI's 2026 Stock Broker Regulations: Recalibrating India's Securities Market Governance

~ Adarsh Kumar

On 7th January 2026, SEBI repealed a three-decade old regulation (SEBI Stock Brokers Regulations 1992), enacted during the era of market reforms following the breakdown and Governance hiatus of the early 1990s. Since then, the Indian Securities market has undergone tremendous technological advancements (electronic, High-Frequency, algorithmic trading, etc.), along with the dynamic evolution of brokers in the integrated financial ecosystem, gave way to ambiguous interpretations. This pivotal regulatory intervention has not only updated the framework but also re-engineered the legal underpinning, consolidating and enhancing legal predictability, which aligns with contemporary market realities.

This consolidation included different facets of governance, like enforcement, registration, inspection, and grievance redressal, into a unified framework, thus reducing dependence on different instruments. Furthermore, keeping the normative resilience, registrations, inspections and investigations under the old regime will continue.

Grasping the essence of integrated financial service, SEBI allowed brokers to undertake other financial activities subject to regulatory conditions. This demonstrates that flexibility cannot come at the cost of regulatory oversight. However, the manner in which brokers navigate this labyrinth of multiple regulatory systems remains to be seen. Moreover, SEBI revised financial thresholds, i.e. minimum 1 crore and 50 crores for trading and professional clearing members, respectively. Applicants are now required to have a minimum of two years of experience in trading or transactions in securities, which in turn will reduce risk and instil calibre and professionalism. Furthermore, to vitalise the preventive compliance, brokers are proscribed from executing schemes of indicative or guaranteed returns.

Further, broking firms must be chaired by at least one director who is a resident of India for a minimum of 182 days in a financial year, for financial and tax responsibility.

Client protection is paramount in this domain, to ensure that brokers must disclose relevant information like a change in firm name, address, financial threshold, and mandatory allotment of UCC (Unique Client Code) for traceability, transparency and prompt actions. Furthermore, the much-needed regulation for compulsory segregation of individual client funds to prevent the illegal use and extension of record-keeping timeline from 5 to 8 years, and will also ameliorate grievance redressal, investigation and effective audits. Regulation also mandates establishing a system for cybersecurity to prevent suspicious activities and the submission of a half-yearly report on the same. In addition to this, firms must establish whistle-blower policies with confidential reporting channels, channelling complaints directly to SEBI.

The regulation aligns with the contemporary ecosystem, robust execution, diversification and embedding investor safeguards into statutory mandates rather than mere guidelines. Overall, this recalibrates and sets in motion a professionalised sector where investor/client interests are at utmost priority.

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Handing over the reins? Private Investment in India's Nuclear Energy Sector under the SHANTI Act

~ Sunniva Das

Putting an end to a long-standing stagnancy in the nuclear energy sector, the Sustainable Harnessing and Advancement of Nuclear Energy for Transforming India (SHANTI) Bill was recently passed in both Houses and received Presidential assent on December 20, 2025. India has long articulated ambitious goals for nuclear energy, targeting 100GW by 2047. In the current landscape, the nation is operating at a modest capacity of 8.8GW, the country aims for a tenfold increase over the next two decades. Achieving this requires robust infrastructure and a strategic financial framework in place.

The Bill marks a departure from the former overarching State control by allowing private participation and repealing two foundational legislations - the Atomic Energy Act 1962 and the Civil Liability for Nuclear Damage Act 2010. Contrary to popular misconceptions, the State has not relinquished absolute control, rather, sensitive segments such as uranium enrichment, heavy water production, fuel reprocessing, exploration, and mining remain deliberately reserved.

With a population of nearly 1.4 billion and rising, India's shift towards sustainable energy alternatives has become imperative. Section 3(2)(a) of the bill permits private entities to build, own, operate, or decommission nuclear power plants or reactors, ending the State's monopoly. For decades, firms like Larsen & Toubro (L&T), Tata Power, and the Adani Group were limited to peripheral roles. The new legislation enables them to obtain licenses and grants operational authority and long-term revenue generating opportunities. Investment thus becomes not merely a step towards further liberalisation but a necessity to meet the objectives of the Viksit Bharat Mission. The estimated fiscal requirement of INR 19.3 trillion is difficult for the government to finance alone.

For foreign investors, the bill represents a significant shift. Under the Civil Liability for Nuclear Damage Act, heavy supplier liabilities deterred investment. India's earlier framework did not align with the Convention on Supplementary Compensation (CSC), keeping major investors at bay. Notably, the bill caps Foreign Direct Investment in Indian companies and joint ventures at 49% to retain majority control.

The economy can expect long-term institutional capital due to streamlining initiatives that recognise nuclear energy as a legitimate infrastructure asset class, providing much-needed regulatory predictability. The Act introduces a radical change by moving from supplier liability to capped operational liability, with liability borne by the government. However, concerns persist regarding the use of taxpayer funds to cover industrial liabilities. The nuclear energy market is likely to expand with growing demand for Small Modular Reactors and High-Temperature Gas-Cooled Reactors (HTGRs) for hydrogen generation.

The ultimate success of the SHANTI Act depends on the effective implementation of its far-sighted provisions. With strong regulatory oversight, environmental safeguards, and transparency, this step may translate into sustainable growth.

SC Upholds Gaar Over DTAA in Tiger Global Flipkart Case: End of Future Treaty Shopping.

~ Mrudul Mandowara

The Supreme Court has redrawn the Indian taxation landscape by upholding the reach of General Anti-Avoidance Rules (GAAR) provision over the Double Taxation Avoidance Agreement (DTAA) provisions of the Income Tax Act 1961. This ruling, in Authority for Advance Rulings (Income Tax) v. Tiger Global International II Holdings indicates a shift towards substance over form. This key judgement was given in a long ongoing case involving Tiger Global, one of the most influential investors for Indian startups. The issue pertains to Walmart's acquisition of stakes in Flipkart in 2018 and the subsequent exit of Tiger Global Ltd from Flipkart which made them capital gains of 1.6 billion dollars and consequent taxability of these gains.

Tiger Global Management is a US-based entity that provides investment support to new startups, and for this specific investment, it routed its sale of investment in the Flipkart-Walmart deal via Mauritius to claim benefit from the Mauritius DTAA, i.e. capital gains on the sale of shares will be taxed only in Mauritius and not in India.

Tiger Global made a regular submission of Tax Residency Certificate (TRC; an official document confirming tax residency to claim benefits under a tax treaty) to the revenue department. This was done for an implicit claim for capital gains exemptions or reduced tax rates under the DTAA as this was market standard practice for foreign fund investing in Indian equity and startups, which were mostly routed through Mauritius.

However, Indian tax authorities and Authority for advanced rulings (AAR) argued that even though Tiger Global had obtained TRC,

they did not hold any economic substance in Mauritius and it was a mere conduit specifically set up to avoid taxes which is against GAAR provisions effective from 2017 well before the deal. The Supreme Court supported the earlier ruling of AAR and overruled the Delhi High Court judgement that the provisions of DTAA applied and cannot be denied solely on the basis of investment structure.

The Supreme Court judgement underscores India's firm stance against tax avoidance, and it sets the tone for heightened scrutiny of investment structures in future, suggesting an end to treaty shopping and more compliance with GAAR.

NSE's IPO Breakthrough: What it Says About SEBI's Dispute Settlement Framework

~ Ishita Singh

National Stock Exchange (NSE) has cleared a major hurdle for its initial public offering (IPO): NSE's settlement application in a decade-old co-location case has received in-principle approval from SEBI. But is a financial settlement enough to demonstrate NSE's integrity for public listing?

India's largest stock exchange first faced allegations of granting preferential access through its co-location facilities back in 2015. Certain brokers were allowed faster access to the exchange's server through dark fibre, with the whistleblower's letter to SEBI claiming that such market manipulation had been ongoing for years. The resulting regulatory proceedings had stalled NSE's plan for an IPO since 2016.

NSE's plan to settle these disputes for approximately Rs. 1,388 Cr. has now been approved 'in principle' by SEBI. Although a formalised final settlement order and no-objection certificate are yet to be issued, the in-principle approval indicates that SEBI broadly agrees to the plan. However, SEBI's settlement framework is insufficient. The regulatory body itself is an appellant before the Supreme Court for this case, and would need their permission to dispose of the appeal to close the matter. Only if the Supreme Court is satisfied with the settlement can the IPO process go through.

Recent policy discussions have centred around whether mere settlement through monetary payments, without any admission or denial of guilt, is enough to bring the dispute to a close. These settlements don't legally establish any wrongdoing on NSE's part. Is regulatory compliance without establishing any substantive accountability, especially for such a large institution, enough?

Clearly, SEBI has been placed at a crossroads. Enabling NSE's IPO could lead to significant market growth, with their shareholder base expanding with just news of a possible listing in the near future. Public ownership might even help enhance the stock exchange's transparency. But on the other hand, a settlement-based closure can be seen as leniency, eroding public confidence in the regulator.

More than the IPO, the spotlight is on how SEBI will balance enforcement of regulations with market development. Concrete standards on when such settlement-based resolution of disputes by SEBI is enough to establish credibility for listing are the need of the hour.

MESSAGE FROM THE NEWSLETTER TEAM

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Our aim is to keep you updated on recent developments by offering a variety of information for your consideration. We welcome your feedback and suggestions to help us improve future editions. Feel free to reach out to us with any thoughts. Stay connected!

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