SALOT & SHAH ASSOCIATES

NEWSLETTER

OCTOBER 2024

ABOUT NEWSLETTER

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We're thrilled to share the latest updates, industry insights, and key announcements with you. In this edition, we highlight significant developments and offer practical tips to help you stay ahead.

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NAVIGATING ESG IN THE IT SECTOR: INDIA'S PATH TO SUSTAINABLE GROWTH

INTRODUCTION

As India's corporate landscape shifts towards greater sustainability, Environmental, Social, and Governance (ESG) regulations are gaining prominence. These regulations are designed to encourage companies to adopt sustainable practices, minimize environmental impact, and uphold ethical standards. For the IT sector in India, which plays a pivotal role in the global technology arena, integrating ESG principles is not just a compliance requirement but a strategic advantage. This article explores the significance of ESG regulations, their impact on the IT sector, and the way forward.

UNDERSTANDING ESG REGULATIONS

ESG regulations are a set of standards that guide companies on how to manage their environmental, social, and governance impacts. They aim to motivate businesses to implement practices that lead to sustainable and ethical outcomes, thereby protecting investors from misleading claims about green initiatives.

Environmental aspects focus on a company's ecological footprint, including carbon emissions, water usage, and waste management.

Social factors address labor practices, stakeholder management, and community engagement. Governance involves leadership quality, transparency, and ethical decision-making.

In India, ESG regulations are embedded in various legislations rather than a single statute. Key frameworks include:

- **The Companies Act, 2013:** Mandates certain companies to form committees for Corporate Social Responsibility (CSR) and requires specific governance practices, including the appointment of a female director.
- **SEBI Regulations:** The Securities and Exchange Board of India (SEBI) has played a significant role in shaping ESG practices. In 2012, SEBI introduced the Business Responsibility Report (BRR) for the top 100 listed companies. This was replaced in 2021 by the Business Responsibility and Sustainability Reporting (BRSR), which aligns with National Guidelines for Responsible Business Conduct and the UN Sustainable Development Goals (UNSDG). The BRSR framework, particularly the 2023 amendment, requires the top 1,000 listed entities to disclose their ESG policies and practices.

ESG IMPACT ON THE IT SECTOR

For the IT sector in India, which is a significant player in the global market, ESG regulations offer both challenges and opportunities. Here's how ESG considerations are influencing the industry:

Environmental Responsibility

The IT sector, known for its energy-intensive operations, is under increasing pressure to reduce its environmental impact. Some companies are adopting various measures to enhance sustainability:

- **Energy Efficiency:** IT firms are investing in green data centers and energy-efficient technologies to lower their carbon footprints. Transitioning to renewable energy sources and optimizing energy consumption in data centers are key strategies.
- **E-Waste Management:** With the rapid pace of technological advancement, e-waste is a significant concern. IT companies are developing recycling programs and implementing take-back schemes to manage electronic waste responsibly.

Social Impact

Social responsibility in the IT sector encompasses labor practices, diversity, and community engagement:

- **Diversity and Inclusion:** The IT industry is increasingly focusing on creating diverse and inclusive workplaces. Companies are implementing policies to promote gender diversity, equal opportunities, and fair labor practices.

Community Engagement: Many IT firms are involved in initiatives that support education and community development. For instance, a reputed firm runs adult literacy programs in rural areas, showcasing how IT companies can contribute positively to societal development.

Governance Practices

Effective governance is critical for maintaining transparency and ethical standards:

- **Leadership and Accountability:** IT companies are strengthening their governance frameworks by ensuring board diversity and implementing robust internal controls. This includes adhering to ethical standards and maintaining transparency in operations.
- **Regulatory Compliance:** Compliance with ESG regulations is becoming increasingly important. IT companies are aligning their practices with SEBI's BRSR guidelines to meet disclosure requirements and enhance their ESG profiles.

RECENT DEVELOPMENTS AND FUTURE OUTLOOK

The ESG landscape in India is evolving rapidly, with several companies taking proactive measures:

- **Tata Consultancy Services (TCS) has introduced policies to promote education and sustainability, including adult literacy programs and initiatives to reduce its environmental impact.**
- **Havells has made strides in reducing its use of radioactive isotopes, while Asian Paints focuses on using eco-friendly materials in production.**
- **Infosys is adopting clean technology and Dow India is working towards a circular economy and sustainable chemical innovations.**

These initiatives reflect a growing commitment to ESG principles among Indian IT companies. However, ESG practices in India are still in their nascent stages compared to global standards. The 2023 SEBI regulations, which apply to a limited number of companies, are a step towards broader ESG adoption. The Ministry of Corporate Affairs (MCA) and SEBI will play crucial roles in expanding these regulations and integrating global trends.

THE PATH FORWARD

As the IT sector continues to grow, ESG regulation will become increasingly important. Embracing ESG principles will not only enhance corporate reputation but also attract the investment and drive long-term value creation.

The future of ESG in the IT sector in India lies in:

- **Innovation: Developing and adopting new technologies that promote sustainability and reduce environmental impact.**
- **Stakeholder Engagement: Actively engaging with stakeholders to understand their expectations and incorporate their feedback into ESG strategies.**
- **Continuous Improvement: Regularly reviewing and refining ESG policies to align with evolving regulations and global best practices.**

By integrating ESG principles into their core strategies, Indian IT companies may set a precedent for sustainable business practices and contribute significantly to the country's goals for a greener and more ethical future.

NAVIGATING INDIA'S NEW DIGITAL COMPETITION BILL- A SHIFT TOWARDS EX- ANTE REGULATION FOR BIG TECH

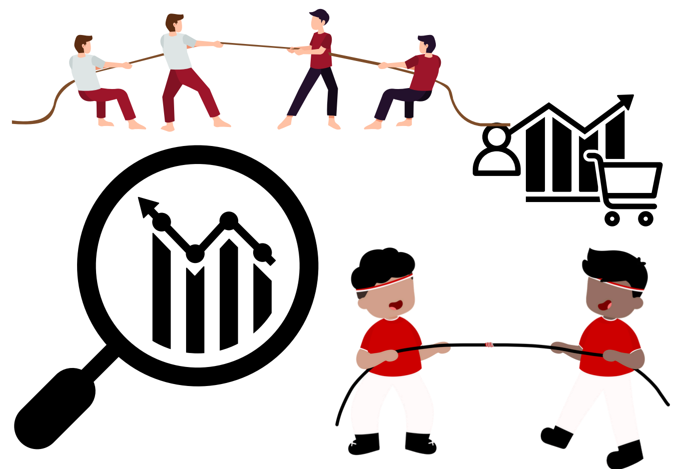
INTRODUCTION

India, a swiftly developing nation, has emerged as a hub for substantial digital market segments, resulting in exponential growth in its digital markets. This has led to various complexities associated with 'large digital enterprises' and a subsequent rise in unfair trade practices, infringements of consumer rights, and unilateral and discriminatory policies. As commercial activities in the digital realm have proliferated, there is a recognized necessity to implement appropriate ex-ante safeguards, replacing the current ex-post mechanisms for the enforcement of competition law. There is a necessity to establish robust rules in the rapidly expanding digital economy, as large corporations may leverage their scale, power, and influence, among other factors, to impede new entrants or engage in restrictive or unfair trade practices.

The Competition Act, 2002 is the principal legislation aimed at preventing actions that negatively impact competition. It designates the Competition Commission of India (CCI) as the national competition authority. The Competition Act, 2002, like competition law in other jurisdictions, is founded on an ex-post structure. The CCI can exercise its enforcement powers solely after the occurrence of anti-competitive conduct.

The Committee on Digital Competition Law (CDCL) has proposed ex-ante competition regulation for digital markets. This indicates a desire for the CCI's enforcement authority to be enhanced, enabling it to preemptively prohibit digital firms from engaging in anti-competitive behaviour initially. The final draft of the Committee was released on 12th March 2024.

The legislation forbids big digital platforms, designated as Systemically Significant Digital Enterprises, from self-referencing, limiting third-party applications, enforcing anti-steering policies, exploiting corporate user data, and bundling products and services.



FUNDAMENTAL STRUCTURE OF DRAFT

The proposed legislation adheres to the framework of the EU's Digital Markets Act. It aims to regulate only those digital enterprises that are deemed "dominant" in specific market segments. The current draft Bill delineates ten 'core digital services,' including online search engines, social networking services, and video sharing platform services, among others. The draft Bill establishes certain quantitative criteria for the CCI to ascertain the dominance of digital firms. These are predicated on the 'substantial financial strength' criterion, which examines financial characteristics, and the 'significant spread' criterion, which assesses the user base in India. Despite failing to meet quantitative criteria, the CCI may classify a business as a "systemically significant digital enterprise (SSDE)" based on qualitative assessments.

The principal duty of SSDEs is to refrain from engaging in anti-competitive practices. These need the SSDE to operate in a fair, non-discriminatory and transparent manner with its consumers. The draft Bill prohibits SSDEs from self-preferencing their own products over third-party offerings; limiting the availability of third-party applications; preventing users from modifying default settings; obstructing business users from directly communicating with their end users (anti-steering); and tying or bundling non-essential services with the requested service. SSDEs are prohibited from cross-utilizing user data obtained from the core digital service for alternative services, and non-public user data cannot be employed to confer an unfair advantage to the SSDE's own service.

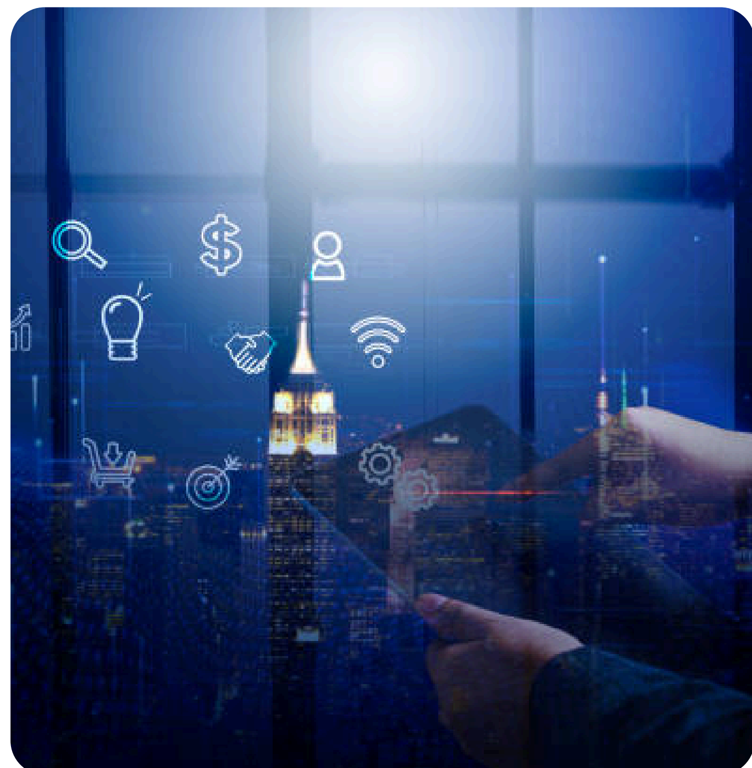
WHAT HAS BEEN THE REACTION?

The predominant sentiment on the draft Bill has been one of dissent. First, there is much skepticism about how well an ex-ante approach of regulation will function. This derives in part from the fact that it seems to be transposed from the EU to India without taking into account differentiating characteristics between the two jurisdictions and the lack of proof of it actually working successfully there. This is reinforced by fears about its potential negative consequences on investments for start-ups in India and that they could be inhibited to scale up to prevent meeting quantitative thresholds. Research indicates that limitations on tying, bundling, and data consumption would adversely affect MSMEs that have become heavily dependent on big tech to save operational expenses and improve customer engagement.

A coalition of Indian start-ups has endorsed the draft Bill, claiming that it would mitigate concerns over monopolistic behavior by major technology firms. They have advocated for a modification of financial and user-based requirements, expressing fears that this may subject domestic start-ups to regulatory oversight.

CONCLUSION

The proposed draft Digital Competition Bill in India aims to establish effective mechanisms to address anti-competitive practices and abuses of dominant positions in the digital business sector. Digitalization is thriving in India, presenting both advantages and disadvantages. On one side, it is a critical priority; on the other hand, the by-product of digitalization has introduced regulatory complexities. The proposed legislation aims to introduce specific measures for the regulation of Indian digital markets.



IBBI'S RECENT AMENDMENTS TO LIQUIDATION PROCESS REGULATIONS: A COMPREHENSIVE OVERVIEW

INTRODUCTION

On 1st October, 2016, the Insolvency and Bankruptcy Board of India (IBBI) was constituted under the Insolvency and Bankruptcy Code, 2016 (IBC). Recently, IBBI introduced amendments to the IBBI (Liquidation Process) Regulations, 2016. These amendments came into force on 12th February, 2024, and seeks to enhance transparency, streamline processes, and provide greater protection to stakeholders, particularly in the real estate sector. In this article we will discuss the key aspects of these amendments and their impact on the liquidation process under the Insolvency and Bankruptcy Code (IBC).

ENHANCED ROLE OF THE STAKEHOLDERS' CONSULTATION COMMITTEE (SCC)

One of the most notable changes is the increased involvement of the Stakeholders' Consultation Committee (SCC) in the liquidation process. This amendment requires liquidators to consult with the SCC prior to initiating several critical actions. These include:

- Filing applications for early dissolution of the corporate debtor
- Initiating or continuing legal proceedings
- Selling assets through private sales

In addition, liquidators are now expected to update the SCC regarding liquidation costs, legal proceedings, and overall progress.

The purpose of this increased consultation is to ensure that key stakeholders are included in important decision-making processes and to increase the transparency and accountability in the liquidation process.

STREAMLINING THE COMPROMISE OR ARRANGEMENT PROCESS

The IBBI has introduced a proviso to Regulation 2B that have introduced restrictions on when a liquidator can submit proposals for compromise or arrangement.

Such proposals have to be submitted within 30 days of the liquidation commencement date and only if they were suggested by the Committee of Creditors (COC) during the resolution process. It is expected that this modification will stop unnecessary delays in the process of liquidation.

SIMPLIFIED WITHDRAWALS FROM CORPORATE LIQUIDATION ACCOUNT

The process for stakeholders to claim entitlements from the corporate liquidation account has been simplified. Before the corporate person's dissolution, the stakeholder can directly approach the liquidator.

The liquidator will verify the claim and inform the IBBI, which will then release the amount. This will no doubt expedite the distribution of funds to an eligible stakeholder.

PROTECTION FOR REAL ESTATE ALLOTTEES

The most significant amendment till now would be the introduction of Regulation 46-A, which excludes specific assets from the liquidation estate. Specifically, an asset will be excluded from the liquidation estate if an allottee in a real estate project has already taken possession or occupancy of a property or unit from the corporate debtor.

With this change, homebuyers who already have possession of their properties are protected and don't run the risk of being evicted from their homes when the properties are being liquidated.

The language of this provision, however well intentioned, is ambiguous, and so the implementation could be difficult.

The amendment does not specify if title transfer through a registered sale deed is required, or if possession needs to be evidenced in the absence of title. These uncertainties may lead to disputes and require further clarification.

REVISED APPROACH TO ASSET SALES

The amendment modifies the process for reducing reserve prices in auctions. Now, if an auction fails at the reserve price, subsequent auctions can reduce the price by up to 10% at a time. An exception exists for cases where the initial reserve price was based on valuations under Regulation 35(1), allowing for a reduction of up to 25% with SCC advice. This staggered approach to price reduction aims to maximize asset value while ensuring fair market prices.

ENHANCED REPORTING AND COMPLIANCE

The amendment involves updates to Forms A and H in Schedule II, requiring more detailed reporting on stakeholder consultations and compliance. This increased emphasis on documentation and reporting is in line, with the objective of enhancing transparency during liquidations.

CONCLUSION

The recent amendments made by the IBBI to the Liquidation Process Regulations are a major step towards enhancing the efficiency, transparency, and fairness of the IBC liquidation process. Even though these changes will address a number current problems how well they are carried out in reality will ultimately determine how effective they are. It will be essential for all parties involved to stay aware of these changes as the insolvency landscape continues to change and to modify their strategies accordingly. As the liquidation process becomes more transparent and cooperative better results may be anticipated for all parties involved under such procedure.

To effectively navigate these new requirements, liquidators and other professionals may need to improve their skills and knowledge due to the increased complexity. Only time will tell how these amendments will shape the future of insolvency proceedings in India.