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## Article

### Sports law reforms in India – Agenda for 2014

By **Vidushpat Singhania**

The United Nations estimates that 3% of the total economic activity globally emanates from sports. This is significant, given that most leading industries cannot boast of such a large impact on the world GDP. Further, the frenzy, patriotic fervor and passion generated by sports make it the equivalent of war leading some legends like Bill Shankly to comment: “[football] wasn’t a matter of life and death, it was far more important”. India is not a very sporting nation but interest in cricket spans the whole spectrum of the population, rich or poor, old or young with differences forgotten and the nation at a standstill whenever the Indian cricket team is playing. The importance of sports to the nation cannot be overstated.

One of the most challenging tasks while addressing sports law reforms at the national level is constitutional entry 33, which puts sports within the ambit of the state legislature, clubbing it along with other activities like theatre, dramatic performances, entertainments and amusements. This coupled with the fact that the International Olympic Committee frowns upon any government interference in the conduct of Olympic sport, makes the task of bringing reforms in sports at the national level rather delicate and difficult.

The new era of legal reforms in sports started with the judgment of the Delhi High Court

in the case of *Ajay Jadeja*<sup>1</sup> where it was held that sporting bodies perform certain public functions and therefore are amenable to the writ jurisdiction of High Court. This principle was upheld by the Supreme Court of India in the *Zee Telefilms*<sup>2</sup> case.

The National Sports Development Bill seeks to make sportspersons the focus of sports movement within the overarching objective of good governance. The Bill seeks

- To guarantee 25% representation to sportspersons in the National Sports Federations (NSF) and a requirement to establish an Athletes Commission;
- To make these sports bodies more transparent by bringing the NSF within the fold of Right to Information Act (RTI);
- To bring in fairness by enjoining upon NSFs to establish an internal procedure for grievance redressal with an appeal lying to the Sports Tribunal;
- To bring an objective system of election by creating a Sports Election Commission. This assumes great importance given that recognition of many NSFs by their parent international associations have been suspended including the Olympic Federation, which has just been granted a fresh accreditation after being suspended by the International Olympic Committee.

<sup>1</sup> *Ajay Jadeja v. Union of India*, 95 (2002) DLT 14.

<sup>2</sup> *Zee Telefilms v. Union of India*, (2005) 4 SCC 649.

- To introduce age and tenure norms, as basic tenets of good governance;
- To require the Central Government to provide for detailed rules pertaining to healthcare, education, pension and insurance for athletes;
- To curb doping, age fraud and sexual harassment in sports.

Yet another Bill in the pipeline is the Prevention of Sporting Fraud Bill. The need for this Bill is highlighted from the fact that in the recent IPL match fixing scandal, the authorities were compelled to use various provisions of the Indian Penal Code and the Maharashtra Control of Organised Crime Act, 1999 to punish the offenders though none of these provisions clearly covered fraud and crime in sports. The chargesheet filed by the police seeks to do so, by linking the sporting fraud offence to organized crime and the underworld, registering complaints of cheating from broadcasters, team owners and spectators to bring the alleged offenders within the purview of these statutes. The provisions of the Sporting Fraud Bill seek to punish sporting fraud as a specific crime. The offence of sporting fraud includes manipulation of sport event, willful underperformance, dissemination of inside information for gain and omission to inform team management or appropriate authority of possible sporting fraud commission.

Being a part of the Committee which facilitated drafting of the Bill, it is my privilege to set out some of the discussions that took place during consideration:

- a) India is full of one billion cricket experts

and each time something not contemplated happens, people are quick to draw a cynical inference that the match is fixed. In order to avoid unsubstantiated complaints a process of screening the complaints has been put in place stating, that all complaints have to be made to the appropriate authority or the NSF, before a court can take cognizance of the same;

- b) Laws dealing with sporting crimes of more than 24 countries were examined in order to clearly identify what sporting fraud should entail. Lengthy discussions also took place in order to determine the penal sanction for the offence;
- c) Another light hearted discussion that took place was on how a penalty of five times the benefit would be levied, if the benefit obtained by a person was due to “honey trapping”.

An area of sports law where reforms are badly needed is in the area of anti-doping programme implementation. World Anti Doping Association (WADA) recently completed its consultation process while deliberating reforms in anti-doping rules. As doping in sports carries a strict liability on the athletes, reforms are needed in India to provide for effective and proper awareness to athletes. All the hard work put in by athletes and investments made by the stakeholders will go waste if an athlete is suspended for a doping offence and his/her entire career and reputation come to naught. It is even more disheartening when this is because of lack of knowledge, rather than the intent to cheat. We also need to reform the process of the hearings before the Anti-Doping Disciplinary Panels. Strict liability is levied on the basis that the hearing would be

expeditious and would be completed within 3 months. In India this provision is being carelessly violated and is affecting the athletes' right to a fair and timely hearing.

One can only hope that the process of sports law reforms which has recently gained momentum does not die a quick death. It needs

to be seen whether with the elections and a possible change of government, the sporting reforms in the form of the two bills will culminate in a legislation that has teeth and can bite.

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## Notifications & Circulars

**Companies Act, 2013 – More provisions effective from 1-4-2014:** From 1st April, provisions contained in 183 sections of the new Companies Act, 2013 have come into force. Ministry of Corporate Affairs has issued notification dated 26-3-2014 in this regard. Subsequently corresponding rules have also come into force. [Refer list of Rules at the end of this section]. Further, General Circular No. 8/2014, dated 4-4-2014 of the Ministry of Corporate Affairs clarifies that financial statements, auditor's report and Board's report with respect to the previous financial years, i.e. accounts ending 31st March, 2014 shall be in accordance with the Companies Act, 1956.

**Combination regulations under Competition Act, amended:** Competition Commission of India (CCI) has amended the Competition Commission of India (Procedure in regard to the Transaction of Business relating to Combinations) Regulations, 2011. According to the amendments effective from 28th March, 2014, while fees in respect of both Forms (Form I and II) has been revised from INR 10 lakhs and INR 40 lakhs to INR 15 lakhs and INR 50 lakhs respectively, Regulation 29 relating to appeal to Competition Appellate Tribunal, has

been omitted. As per Press Release of the CCI, issued in this regard, Regulation 29 was being seen as imposing an additional condition in respect of preferring appeal in combination matters. Sub-regulation (5) has been inserted in Regulation 9 to provide for determination of requirement of filing notice (under said Regulations) with respect to substance of the transaction. According to the Press Release, scope of pre-notification consultations, which are informal and verbal, with the staff of the Commission, has also been enhanced to include substantive issues regarding filing of notice with CCI.

**Foreign investment in India in government securities:** Foreign investment by all eligible investors including registered foreign portfolio investors (RFPIs) shall now be permitted in government dated securities having residual maturity of one year and above. Reserve Bank of India A.P. (DIR Series) Circular No. 118, dated 7-4-2014 issued in this regard, further allows existing investments in T-bills and government dated securities of less than one year residual maturity to taper off on maturity/sale.

### Direct Remittance under Rupee Drawing Arrangement:

In order to facilitate receipt of foreign inward remittances directly into bank accounts of the beneficiaries, it has been decided to allow foreign inward remittances received under Rupee Drawing Arrangement (RDA) to be transferred to the beneficiary bank accounts through electronic mode, such as, NEFT, IMPS, etc. Reserve Bank of India A.P. (DIR Series) Circular No.120 dated 10-4-2014, issued for the purpose further prescribes procedure and conditions in this regard.

### Foreign Portfolio Investors - Corresponding changes in FEMA Regulations:

The Reserve

Bank of India through Notification Nos. FEMA.298/2014-RB and FEMA.297/2014-RB published in the Gazette on 19-3-2014 has notified amendments to the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 to align the regulations with the recently passed Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014. As per Notification No. FEMA.298/2014-RB, foreign direct investment can be made by way of capital contribution or acquisition/transfer of profit shares in the capital structure of a Limited Liability Partnership (LLP).

### List of Rules notified under Companies Act, 2013

The Ministry of Corporate Affairs has notified the following rules under Companies Act, 2013:

| Sl. No. | Particulars  | Date of Notification | Brief Description  |
|---------|--|----------------------|--|
| 1       | Companies (Specification of Definitions Details) Rules, 2014   | 27-3-2014            | List of definitions applicable to rules prescribed under Companies Act, 2013 in addition to definitions contained in the Act.  |
| 2       | Companies (Incorporation) Rules, 2014                          | 30-3-2014            | Incorporation of company and incidental matters, change in registered office, alteration of memorandum and articles of association and conversion of company from one form to other.   |
| 3       | Companies (Prospectus and Allotment of Securities) Rules, 2014 | 27-3-2014            | Matters related to prospectus, allotment of securities by company, variation in terms of contract or objects in prospectus, dematerialization of securities, shelf prospectus, global depository receipts, private placement and other related issues.   |
| 4       | Companies (Share Capital and Debentures) Rules, 2014           | 27-3-2014            | All matters related to share capital such as issue of shares with differential rights, issue of sweat equity, issue and redemption of preference shares, transfer and transmission of securities, further issue of shares through ESOP or preferential basis, issue of bonus shares, buy back, alteration of share capital, debentures, etc. |

| Sl. No. | Particulars  | Date of Notification | Brief Description   |
|---------|--|----------------------|---|
| 5       | Companies (Acceptance of Deposits) Rules, 2014                     | 31-3-2014            | All matters related to acceptance of deposits by companies - Meaning of deposits, depositor, terms and conditions, advertisement, meetings, deposit insurance, registers, returns and appointment of trustees in certain cases.   |
| 6       | Companies (Registration of Charges) Rules, 2014                    | 27-3-2014            | Registration, creation, modification and satisfaction of charges, registers, certificate of registration and condonation of delay.  |
| 7       | Companies (Management and Administration) Rules, 2014              | 27-3-2014            | Matters related to Register of Members, beneficial interest in shares, annual returns, extra ordinary general meetings, proxies, voting through electronic means, poll, postal ballot, Report on Annual General Meeting.  |
| 8       | Companies (Declaration and Payment of Dividend) Rules, 2014        | 27-3-2014            | Declaration of dividend, unpaid dividend to be credited to Investor Education Protection Fund (IEPF).   |
| 9       | Companies (Accounts) Rules, 2014                                   | 27-3-2014            | Manner of maintenance of books of accounts, financial statements, consolidation of accounts, transition from Accounting Standards (AS), Board's Report, disclosures related to Corporate Social Responsibility (CSR) activities and internal audit  |
| 10      | Companies (Audit and Auditors) Rules, 2014                         | 31-3-2014            | All matters related to auditors such as appointment, qualification, eligibility, powers and duties, disqualification, removal and resignation; Remuneration of cost auditors; Auditors' Report  |
| 11      | Companies (Appointment and Qualification of Directors) Rules, 2014 | 27-3-2014            | Woman director, independent directors, small shareholders' directors, procedural aspects related to Directors' Identification Number, disqualification of directors, vacation of office, resignation and maintenance of registers.  |
| 12      | Companies (Meetings of Board and its Powers) Rules, 2014           | 27-3-2014            | Meetings through electronic means, resolutions by circulation, vigil mechanism for auditing, committees of board, disclosure of interest by board, loans to directors, loans and investment by company in other companies, related party transactions, payment to director for loss of office, etc. in connection with transfer of undertaking, property or shares. |

| Sl. No. | Particulars  | Date of Notification | Brief Description  |
|---------|--|----------------------|--|
| 13      | Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 | 31-3-2014            | Procedural aspects of appointment of Managing Director, Whole Time Director, Manager and Key Managerial Personnel, limits on managerial remuneration and sitting fees, Secretarial Audit Report and duties of Company Secretary  |
| 14      | Companies (Inspection, Investigation and Inquiry) Rules, 2014                | 31-3-2014            | Matters related to Serious Fraud Investigation Office (SFIO) and other procedural aspects of investigation and inquiry   |
| 15      | Companies (Authorized to Registered) Rules, 2014                             | 31-3-2014            | Procedural aspects of conversion of partnership firms, LLPs, co-operative societies, societies and other business entities to companies.   |
| 16      | Companies (Registration of Foreign Companies) Rules, 2014                    | 31-3-2014            | Matters related to operation of foreign companies - Office where documents to be delivered, filing of information related to directors and secretary, certification, authentication of translated documents, financial statements, audit, annual returns, issue of prospectus and matters related to Indian Depository Receipts (IDRs) |
| 17      | Companies (Registration Offices and Fees) Rules, 2014                        | 31-3-2014            | Functional aspects of Registering Offices, filing, authentication and inspection of documents, fees payable and mode of payment.   |
| 18      | Nidhi Rules, 2014  | 28-3-2014            | Matters related to Nidhi Companies- incorporation, restrictions on business, share capital and allotment, net owned fund requirements, branches, acceptance of deposits, loans, directors, dividend, auditors, prudential norms, returns and other compliances.  |
| 19      | Companies (Adjudication of Appeals) Rules, 2014                              | 28-3-2014            | Matters related to adjudication of penalties and appeals.  |
| 20      | Companies (Miscellaneous) Rules, 2014  | 28-3-2014            | Procedural matters related to dormant companies, fees for application to Central Government, association or partnerships exceeding certain number  |

## Ratio Decidendi

**Arbitration – Absence of express intention of parties – Effect:** Supreme Court of India has held that in the absence of an arbitration clause (or intention for same) in an agreement, as defined in sub-section (4) of Section 7 of the Arbitration and Conciliation Act, 1996, the dispute between the parties cannot be referred to the arbitral tribunal for adjudication. The court in this regard noted that according to Section 7, there has to be intention, expressing the consensual acceptance to refer the dispute to an arbitrator. Referring to various precedents of the court relating to circumstances when a clause in an agreement can be construed as an arbitration agreement, the court while scrutinizing clause 48 of the agreement, observed that said clause provides for the parties to amicably settle any disputes or differences and that if the same related to performance of the works, to refer to and be settled by the engineer within 30 days.

Noting that it was clear that said clause did not provide any procedure which would remotely indicate that the engineer was required to act judicially as an adjudicator, the court held that the language employed did not show the intention of the parties to get disputes adjudicated through arbitration, more so as another clause provided for settlement of disputes. It was also noted that the said clause had stipulation that the decision of the engineer in respect of matter so referred to him shall be final and binding on the parties and was required to be given effect to by the contractor who shall proceed with the works with due diligence. Further, noting that elements and attributes to constitute an arbitration clause,

as stated in *Jagdish Chander* were absent, the Apex Court set aside the High Court judgment appointing an arbitrator. [*Karnataka Power Transmission Corporation Limited v. Deepak Cables (India) Ltd.* – Decision dated 7-4-2014 in Civil Appeal No. 4424 of 2014, Supreme Court]

**Target discounts when not make prices discriminatory:** Competition Appellate Tribunal (COMPAT) has held that price and conditions can be said to be discriminatory, if and only if, they are different for the same quantities of the same product. Overruling the majority order of the Competition Commission of India (CCI), the Tribunal noted the contentions of the appellant that higher discounts given by them to a particular company could have been available to others also if they (others) could assure higher off-take as assured by the particular company. Minority view in the impugned order, observing absence of any perceivable harm to competition in the downstream market and that too consumer interest, and therefore non-discriminatory nature of prices in case of target discount, was noted by the Tribunal while it found absence of violation of Section 4(2)(a) and (b) of the Competition Act. Plea of rise in profit margins of the particular company during specific period and fall in profits of others, was rejected by the Tribunal as not a competition issue.

Further, rejecting the CCI's finding of unfair Trade Mark Licensing Agreement (TMLA), spelling out exclusionary practice, while including provisions dealing with quality



control, whereby the licensor had rights of inspection and monitoring, the Tribunal held that the clauses of said agreement were drafted to save the trademark rights and there was necessity of securing trade secrets through such agreements. Noting that there was no necessity for the appellant to push amber tubes along with the clear tubes, the Tribunal also overruled the finding of the Commission that there was tying-in inasmuch as the appellant insisted on purchase of amber tubes along with clear tubes. Violation of Section 4(2)(e) was also rejected by the Tribunal observing absence of the appellant in the downstream market.

Further, the COMPAT, on the question of non-grant of opportunity to cross-examine the interested witnesses, rejected CCI's plea that specific request/application should have been made by the appellant. It was held that total reliance on the statements of such witnesses without their cross-examination was risky and uncalled for and that CCI should not have insisted on a separate application, once the question was raised before it through the pleadings. [*Schott Glass India Pvt. Ltd. v. Competition Commission of India – Order dated 2-4-2014 in Appeal No. 91/2012, COMPAT*]

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