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GNOSIS

Victoriam Legalis - Advocates & Solicitors | Newsletter



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We here, at Victoriam Legalis, believe in continuous learning and growth, and agree that one way to do the same is to keep up with the developments and changes taking place around us.

We live in an Information Age, and while there is no dearth of knowledge and information, we, through this newsletter, hope to give you a consolidated account of relevant updates and developments.

In light of the same, we present to you the first issue of our newsletter, which we hope, you find beneficial!

Happy Reading!



Media and Entertainment

1. Delhi High Court ordered interim injunction to restrain uploading of copyrighted lectures/study material through Telegram

In the case of *M/s Allen Career Institute v. Telegram FZ – LLC & Ors.*, the plaintiff, an entity engaged in the business of coaching for entrance exams was aggrieved by the defendants' activity of uploading its copyrighted study material/lectures on one of the defendant's online platforms. It was alleged that the defendants' actions amounted to violation of copyright embedded in the plaintiff's study material/lectures. In view of this, the Hon'ble Delhi High Court passed an ex parte ad interim injunction restraining the defendants from uploading the study material/lectures in which plaintiff's copyright subsisted. Further, the Court also directed Telegram FZ-LLC to take down/disable the channels/accounts detailed by the plaintiff.

M/s Allen Career Institute v. Telegram FZ – LLC & Ors. (CS COMM 505/2020), Delhi High Court [18th November 2020]

2. Delhi High Court restrains use of infringing marks on tobacco products

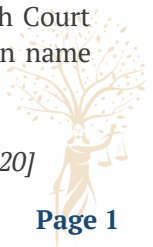
In the case of *Sopariwala Exports & Anr. v. M/s Afzal Bidi Co. & Anr.*, the plaintiff, an entity using AFZAL formative marks on and in relation to tobacco products since 1977, alleged that the defendant's use of the marks AFZAL BIDI No. 90 and AFZAL TAMBAKU No. 90 on and in relation to tobacco products amounted to infringement of its registered trademarks namely, AFZAL and AFZAL DE. OF HUKKA Device and common law rights in these marks in respect of tobacco products. Based on the averments and documents brought on record by the plaintiff, the Hon'ble Delhi High Court held that a prima facie case had been made out; balance of convenience was in the plaintiff's favour; and if interim relief was not granted the plaintiff would suffer irreparable loss. In view of the above, an ex parte ad interim injunction was granted in favour of the plaintiff.

Sopariwala Exports & Anr. v. M/s Afzal Bidi Co. & Anr. (CS COMM 512/2020), Delhi High Court [19th November 2020]

3. Interim Relief for proprietor of the marks POLICYBAZAAR and PAISABAZAAR against Rogue Websites

In the case of *PB Fintech Pvt. Ltd. v. Policy Bazar Finance & Ors.*, the plaintiff being the proprietor of trademarks namely, POLICYBAZAAR and PAISABAZAAR in respect of insurance products and other financial services, filed a suit against multiple defendants including Policy Bazar Finance alleging infringement of trademark, passing off and cybersquatting. It was further alleged that the defendants were operating rogue websites incorporating the plaintiff's marks due to which public at large was being misled into believing that the websites were associated with the plaintiff. It was held that a prima facie case had been established and the balance of convenience was also in the plaintiff's favour. Further, it was observed that irreparable harm would be caused to the plaintiff as well as public at large if operation of such rogue websites persists. Accordingly, the Hon'ble Delhi High Court passed an order restraining the defendants from using of above marks along with directions to domain name registrar or telecom/internet service providers to suspend/block such websites.

PB Fintech Pvt. Ltd. v. Policy Bazar Finance & Ors. (CS COMM 471/2020) Delhi High Court [11th November 2020]





Technology and E-Commerce Updates

1. Italy's antitrust fines Apple 10 million euros for misleading commercial practices

Italy's antitrust authority said on Monday it had fined Apple 10 million euros (\$12 million) for "aggressive and misleading" commercial practices regarding its iPhones. The regulator said in a statement the company advertised that several iPhone models were water-resistant without clarifying they were only so under certain circumstances. It added that the company's disclaimer, saying that its phones were not covered by warranty in case of damage from liquids, tricked clients, who were also not provided support when their phones were damaged by water or other liquids.

2. Australia to make Facebook, Google pay news outlets for content

Australia finalised plans on Tuesday to make Facebook Inc and Google pay its media outlets for news content, a world-first move aimed at protecting independent journalism that has been strongly opposed by the internet giants. Big Tech firms must negotiate payments for content that appears on their platforms with local publishers and broadcasters. If they can't strike a deal, a government-appointed arbitrator will decide for them.

3. North Korea passes laws banning 'reactionary thought'

North Korea's Supreme People's Assembly convened Friday, and it passed several new laws aimed at culture and technology. The body has passed a new law banning the spread of certain foreign cultures and further cementing strict ideological policies. In addition, the new body passed laws boosting sci-tech policies, forestry policies and control over telecom networks. The law on rejecting the reactionary ideology and culture specifies the principles to be certainly observed by all the institutions, enterprises, organizations and citizens in further cementing our ideological, revolutionary and class positions by thoroughly preventing the inroads and spread of the anti-socialist ideology and culture and firmly maintaining our idea, spirit and culture, Yonhap News Agency quoted the state media as saying. Meanwhile, Korea JoongAng Daily reported that "the new law may be related to corruption or the popularity of foreign cultural influences spurred on by the growth of the private economy."

4. Amazon eyes potential \$100 million investment in India's Apollo Pharmacy

Amazon.com Inc is considering a nearly \$100 million investment in India's pharmacy chain Apollo Pharmacy, facing up to Reliance Industries Ltd and Tata Group in the country's fast-growing drug market. Amazon already delivers medicines in India and the potential investment would come amid rising competition from Mukesh Ambani's Reliance, which bought a majority stake in online pharmacy Netmeds. Tata Group meanwhile, was reportedly in talks to pick up a majority stake in e-pharmacy firm 1mg.

5. Walmart's Flipkart to partially spin off digital payments business

Walmart Inc-controlled Indian e-commerce firm Flipkart said on Thursday it was partially spinning off PhonePe in a move aimed at widening the digital payments platform's access to capital to fuel its growth. PhonePe, which competes with Alibaba-backed homegrown payments pioneer Paytm and GooglePay, will raise \$700 million in primary capital, Bengaluru-based Flipkart said in a statement. The funds will be raised at a post-money valuation of \$5.5 billion from existing Flipkart investors led by Walmart and Flipkart will continue to be PhonePe's majority shareholder. PhonePe has more than 100 million monthly active users which helped it clock nearly one billion digital payment transactions in October.



Fashion & Sports Law Updates

1. Post Sale Confusion- A significant development in fashion protection laws in UK

A recent decision in the case of *Freddy SPA v Hugz Clothing Ltd & Ors* over a pair of “body enhancing” jeans stands to have significant ramifications when it comes to the protection of fashion designs in the United Kingdom. The Intellectual Property Enterprise Court held that due to the sheer similarity between the designs of the two companies’ jeans, it is clear that HUGZ’s jeans are an obvious rip-off of Freddy’s WR.UP jeans. The unique element in this passing off case is the reliance made on the concept of post sale confusion. It was stated that post-sale confusion occurs where a consumer knows they are purchasing a knock-off when they buy the goods, but they do so because they want other consumers to believe that the jeans are associated with Freddy and its products. The court determined that HUGZ jeans continue to make misrepresentations to consumers whenever they are worn, and that misrepresentation damages Freddy, thereby giving rise to passing off at the initial point of sale and in a post-sale content.

Freddy SPA v Hugz Clothing Ltd & Ors- [2020] EWHC 3032 (IPEC)

2. Notorious Markets- Amazon, Facebook for counterfeit products

The American Apparel & Footwear Association (AAFA) in a new submission to the U.S. Trade Representative stated that the volume of counterfeit goods being offered online has exploded due to the Covid-19 pandemic and the lack of sufficient brand protection measures on Amazon, Facebook and Instagram is contributing to the sale of such illicit products. The AAFA asserted that the line between e-commerce and social media platforms has blurred in recent years and has resulted in a boom in social commerce and has ripped a new home for the offering up of counterfeit goods via otherwise legitimate marketplaces. It has been stated that brands such as Calvin Klein, Canada Goose, Jimmy Choo, Marc Jacobs, Stuart Weitzman and Ralph Lauren have been directly and adversely impacted by the sale of counterfeit goods through online third-party marketplaces. This has been cited as a reason for re-nominating Amazon, whose foreign domains were included in the 2019 Notorious Market report. The AAFA has recommended the inclusion of Facebook, including its Instagram platform, as part of the Notorious Markets report due to prevalence of counterfeit and false advertising on such platforms.

3. The Off-White Case- Take on registration of color work mark

In the case of *Off-White LLC v European Union Intellectual Property Office*, the issue with respect to registration of the logo with the term Off White has cropped up. The Virgil Abloh-owned Off White had filed a trademark application with the European Union Intellectual Property Office (EUIPO), for utilization of the logo that features its name for use on an array of goods – from sunglasses and perfumes to jewelry and home wares.

The EUIPO was skeptical of the mark and a trademark examiner refused the application for several classes of goods – classes 9 (primarily for eyewear), 14 (jewelry), and 20 (pillows and cushions) – on the basis that the mark is devoid of any distinctive character. The unfavorable decision from appeals court let Off White to sought intervention from the EU General Court, which did not shoot down the application on descriptiveness grounds and instead determined that in order for the mark to be barred from registration, the color would need to be inherent to the nature of – and have a direct and specific relationship to – the goods/services listed in the trademark application.

The case is one worth noting, as the General Court's decision may be useful to deploy where marks consisting of color names face objection on the basis that they are descriptive of the goods. It was also noted that while the outcome in the Off-White case could prove favorable for others looking to claim rights in marks that co-opt the names of colors, other instances will, of course, depend on the specific mark at play, and the nature of the goods/services concerned.

Off-White LLC v European Union Intellectual Property Office- T 133/19

4. Penalty for Chanel over false advertising in China

The French luxury brand Chanel has been hit with a \$30,500 administrative penalty and a formal order barring it from unsubstantiated claims in connection with its marketing of skin lightening products in China. After receiving consumer complaints about the effectiveness of Chanel's Le Blanc Masque and Sublimage La Crème, namely, in connection with the products' advertised skin-lightening capabilities, the Jing'an District Administration for Market Regulation initiated a probe and found that despite Chanel's marketing messages, neither of the two creams contain ingredients capable of performing such functions. Moreover, the market regulator stated that Chanel could not provide clinical substantiation to prove the merit of its product-performance claims, such as that they could "inhibit melanin" and "fade dark spots." Chanel has since amended its advertising in China, according to the Jing'an District Administration for Market Regulation.

5. ASCI issues guidelines for regulating real money advertisements in India

The Advertising Standards Council of India (ASCI) has introduced guidelines to make real-money gaming advertising safer and more responsible. The guidelines have been developed to ensure that such advertising makes users aware about financial and other risks that are associated with playing online games with real money winnings. The government, via the Ministry of Information & Broadcasting, The Department of Consumer Affairs as well as Ministry of Electronics & Information Technology, has given these ASCI guidelines their full support and backing to comprehensively address growing concerns about the potential misleading and harmful advertisements in the sector. The guidelines will be effective from the 15th of December 2020, and apply to advertisements that are legally permitted.

6. Volleyball Federation of Indian to pay 4 Crores to Baseline Ventures

Sports marketing firm Baseline Ventures, which organised the first season of the Pro Volleyball League in February 2019, has won the wrongful termination case against the Volleyball Federation of India (VFI). Arbitrator Justice K. Kannan (Retd.) has ordered VFI to pay Rs. 4 crore to Baseline Ventures (India) Pvt. Ltd as compensation on the latter's claim against the termination of the contract. In an award (50-page order) delivered by sole arbitrator, set up on the orders of the Madras High Court, VFI has been asked to pay an addition of Rs. 5 lakh in legal fees along with 12 per cent interest from the date of commencement of arbitral proceedings till the date of payment.

7. Introduction of new regulations by FIFA for females

The FIFA Football Stakeholders Committee has introduced new regulations to strengthen the protection of female players, as well as football coaches. The regulations, will establish new global minimum standards for female players, particularly in relation to maternity. The players will now get a 14 weeks mandatory maternity leave paid at a minimum of two-thirds of a player's salary. The club will be under an obligation to reintegrate the females into football activity and provide adequate ongoing medical support. As per new rules, if any club ends a player's contract for becoming pregnant, it will have to pay compensation and a fine, and will also be banned from the transfer market for one year.

8. Andhra Pradesh- Gaming Amendment Bill to ban online gaming

The Andhra Pradesh Legislative Assembly on December 1, 2020 passed the AP Gaming (Amendment) Bill 2020 through voice vote, banning online gaming in the state. This was done to bring online gaming within the ambit of Andhra Pradesh gaming Act, 1974. The bill was brought in after some youngsters in the state committed suicide after being pushed into debts by playing online games. The main objective behind amending the gaming law is to

curb organised crimes such as money laundering and fraud in the state. According to the state's Home Minister, online gambling could induce criminal behaviour in society and lead to an increase in the number of organised crimes such as fraud and money laundering. Under the amendment bill, the penalty for the first offence will be imprisonment up to one year and a fine of Rs 5,000. The term of imprisonment might extend up to two years and a fine of Rs 10,000 for every subsequent offence.



Corporate & Commercial Law Updates

1. Indian Parties to choose foreign law in arbitration

The Delhi High Court in *Dholi Spintex Pvt. Ltd. v. Louis Dreyfus Company India Pvt. Ltd.* has held that two Indian parties can choose a foreign law as the law governing the arbitration between them. It observed that it was well-settled that even though an agreement to refer disputes to arbitration may be a part of the substantive contract, the said agreement is independent of the substantive contract and survives despite termination/ repudiation/ frustration of the substantive contract. Thus, an arbitration agreement/ clause do not govern the rights and obligations arising out of the substantive contract and only governs the manner of settling disputes between the parties. Accordingly, it was held that since the arbitration agreement is an independent agreement, it may be governed by a proper law of its own, which need not be the same as the law governing the substantive contract. The Court held that two Indian parties could choose a foreign law as the law governing arbitration. The Court reiterated that the scope of interference by a Court in an International arbitration is limited to the Court determining whether a valid arbitration agreement exists between the parties and whether the agreement is null and void, inoperative or incapable of being performed.

Dholi Spintex Pvt. Ltd. v. Louis Dreyfus Company India Pvt. Ltd CS (COMM) 286/ 2020

2. Denial of permissions to foreign law firms for opening branch offices in India

The Reserve Bank of India asked banks not to grant fresh permissions or renew permissions of foreign law firms to open a branch office, project office or liaison office in the country under FEMA for the purpose of practicing legal profession. The RBI has issued a circular in this regard, in view of a Supreme Court order wherein the apex court held that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and foreign law firms or foreign lawyers cannot practice the profession of law. RBI reiterated the 2015 ruling by the Hon'ble Supreme Court which stated that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that foreign law firms/companies or foreign lawyers cannot practice profession of law in India. As such, foreign law firms/companies or foreign lawyers or any other person resident outside India, are not permitted to establish any branch office, project office, liaison office or other place of business in India for the purpose of practicing legal profession. Further banks shall bring to the notice of the Reserve Bank in case any such violation of the provisions of the Advocates Act comes to their notice.

3. Introduction of Fine and Penalty structure by SEBI under Listing Regulations, 2015

The Securities and Exchange Board of India has come up with a structure for imposing fines for non-compliance of disclosure requirements by issuers of listed debt securities. The stock exchanges will levy fine and take action in case of non-compliance with continuous disclosure requirements by issuers of listed non-convertible debt securities (NCDs), non-convertible redeemable preference shares (NCRPS) and commercial papers, Sebi said in a circular. The fine ranging from ₹1,000-50,000 per day could be levied for non compliance with disclosure norms related to payment obligations, non-submission of deviations in utilization of issue proceeds, and failure to obtain prior approval of the bourses for any structural change in terms of NCDs or NCRPS. The fine structure prescribed will be effective from compliance periods on or after December 31, 2020.



4. Any Creditor of company can seek transfer of winding up proceedings from HC to NCLT

The Supreme Court, in the case of Kaledonia Jute Fibers Pvt. Ltd. V. Axis Nirman and Industries Ltd., held that any creditor of a company in liquidation can become party to the winding petition against the defaulting company and seek transfer of the plea from high court to a National Company Law Tribunal, set up on law of insolvency and bankruptcy code. It was stated that the proceedings for winding up of a company are actually proceedings in rem to which entire body of creditors is a party. The proceedings might have initiated by one or more creditors, but it is ultimately treated as a joint petition. The official liquidator acts for and on behalf of the entire body of creditors. Therefore, the word party appearing in the 5th proviso to Clause (c) of Sub Section (1) of section 434 cannot be construed to mean only the single petitioning creditor or the company or the official liquidator. The words “party or parties” appearing would take within its fold any creditor of the company in liquidation.

Kaledonia Jute and Fibers Pvt. Ltd. V. Axis Nirman and Industries Ltd. And Others CIVIL APPEAL NO. 3735 OF 2020



Hospitality & Real Estate

1. Settlement between Sangeetha Caterers and Hotel Sangeetha Grand

Recently, in the case of *M/s Sangeetha Caterers and Consultants LLP v. M/s Hotel Sangeetha Grand*, the plaintiff being the proprietor of the several SANGEETHA formative trademarks in the catering and hospitality business, alleged that the defendant was using deceptively marks in relation to its restaurant. Subsequently, the parties entered into Joint Compromise Memo wherein the defendant agreed to change its name from HOTEL SANGEETHA to HOTEL HIGHWAY GRAND.

M/s Sangeetha Caterers and Consultants LLP v. M/s Hotel Sangeetha Grand (CS No. 703 of 2019, Madras HC [3rd November, 2020]

2. Litigation on the mark AACHI in hotel, restaurant and food preparations business

Recently, in the case of *AD Padmnasingh Isaac v. Aachi's Village Restaurant*, Plaintiff being the registered proprietor of the trademark AACHI and a few AACHI-formative marks in relation to its restaurant business as well as food preparations for human consumption such as coffee, tea, biscuits, cakes etc. was aggrieved the Defendant's adoption and use of the mark Aachi's Village Restaurant in relation to its hotel. It was held that such adoption and use by the Defendant can cause confusion in the minds of the general public and hence, the suit was decreed in favour of the plaintiffs.

AD Padmnasingh Isaac v. Aachi's Village Restaurant (CS 132 of 2020, Madras HC) [23rd November 2020]

3. Warning signs for illegal hotels, guest houses and accommodations in Goa

Recently, Goa's tourism department had drafted rules pursuant amendments in the Goa, Daman and Diu Registration of Tourist Trade Act, 1982. These rules mandate all tourist trades to be registered with the tourism department. Further, the department had also devised fee structures for various trades. The department now aims at implementing these laws by starting to take action against hotels, accommodations and guest houses taking bookings illegally.

4. Centre of Excellence: MoU between India Tourism Development Corporation Ltd. and Andhra Pradesh State Skill Development Corporation

A Public Sector Undertaking under the aegis of Ministry of Tourism (Government of India), India Tourism Development Corporation ("ITDC") and Andhra Pradesh State Skill Development Corporation ("APSSDC"), recently entered into a Memorandum of Understanding to set up a Centre of Excellence to enhance skilled youth in the hospitality sector. Students registered with APSSDC under this project will be provided training as per ITDC's courses and curriculums for hospitality education.



5. Film on the Constitution of India released by the Ministry of Tourism

The Ministry of Tourism (Government of India) on 25th November 2020 released a documentary on the Constitution of India by Dr. Ambedkar International Centre in collaboration with Ministry of Social Justice and Empowerment (Government of India). The documentary features and celebrates the illustrations and calligraphy in the Constitution of India.



Litigation & Dispute Resolution

1. Hate speech repudiates right to equality in a polity committed to pluralism: Supreme Court

The Supreme Court in *Amish Devgan v Union of India* elaborated the concept of Hate Speech and discussed the distinction between Hate Speech and Free Speech. The Bench comprising Justices A M Khanwilkar and Sanjay Khanna also observed that object of criminalizing the hate speech is to protect the dignity of the individual regardless of caste creed, race, religion, sex, linguistic preference and to create socio-political equality between difference groups.

Amish Devgan v Union of India 2020 SCC OnLine SC 560

2. Rape trial: supreme court issues notice on bail application upon accused's plea that victim aged 17 yrs 8 months had consented to act

The Supreme Court Bench of Justices L. Nageswara Rao, Hemant Gupta and Ajay Rastogi in SLP filed by accused against the order of the order of Bombay High Court denying bail to accused who is charged under Sections 376, 354-D, 506 of the IPC, and since the victim was a minor, provisions of Sections 3, 4, 11 and 12 of the POCSO were also invoked. The Counsel for the accused urged that the victim was 17 years and 8 months old at the time of the act has expressly consented for the same. The Bench after the brief conference issued notice on the plea.

3. UK Supreme Court Rules on the Law Applicable to Silent Arbitration Agreements

The United Kingdom Supreme Court in *Enka Insaat Ve Sanayi AS v OOO Insurance Co Chubb* (2020) clarified the long pending dispute in respect of law applicable to arbitration agreement where parties are silent on governing law of the agreement. The Supreme Court held that where the arbitration agreement is silent on the law governing it, but the main contract contains a governing law clause, this will generally apply by extension to the arbitration agreement.

Enka Insaat Ve Sanayi AS v OOO Insurance Co Chubb 2020 SCC OnLine SC 743

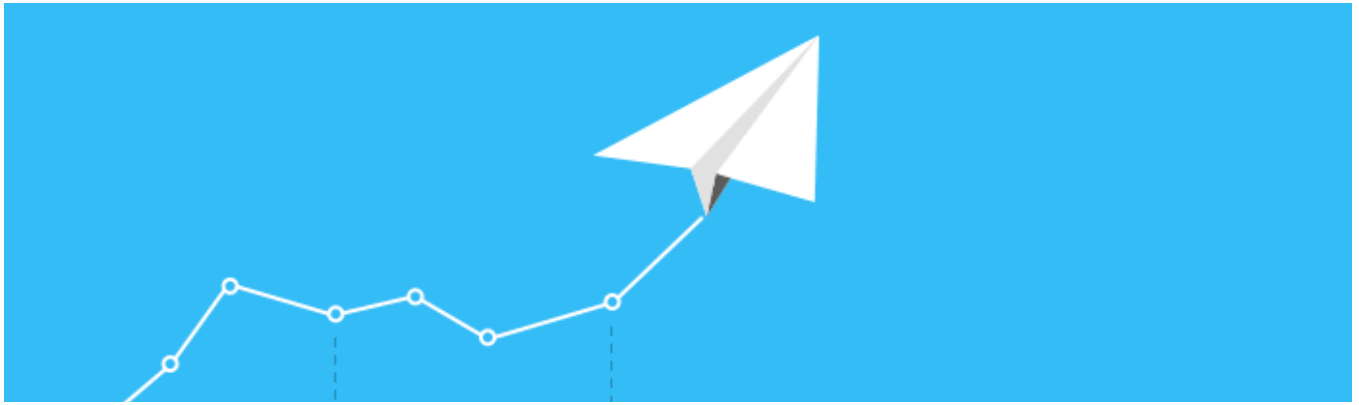
4. Interpretation and Enforcement of Parallel Arbitration Clauses

The Supreme Court in *Balasore Alloys Ltd. Vs Medima LLC* laid down the interpretation and enforcement of parallel arbitration clause. The Supreme Court observed that in such situation the principle of harmony and reconciliation shall in interpretation of clauses. The Hon'ble Court further observed that the nature of claim shall be deciding factor between parallel arbitration clauses.

5. Government of India issues ordinance to amend arbitration law

The Government of India on 02.12.2020 issued an ordinance to amend the Arbitration and Conciliation Act 1996 ensuring opportunity to every stakeholder under the arbitral award to seek stay on enforcement on the arbitration awards where the contract is induced by fraud or corruption. The ordinance also repeals the 8th schedule under the act which contained the necessary qualifications for accreditation of arbitrators.





Start-Up, Advisory & Consultancy

1. Partnership between Razor Pay and PayPal to enable MSMEs from India in globalizing their ventures

The India's leading full-stack financial solutions company Razor Pay announced the partnership with PayPal a global leader in digital payments to enable uninterrupted international payments for MSMEs and Freelancers. In the back drop of Covid 19 pandemic the MSME and freelancer are regaining control of their business with the help of digital technologies. As per the recent studies India saw 46% increase in freelancer due to lockdown imposed by the Government. The collaboration will enable further growth avenues for them not just within India but internationally.

2. MobiKwik raises ₹52 crore from HT group, Kris Gopalakrishnan's family office

In the fresh round of funding led by Hindustan Media Venture, digital payment and financial service provider MobiKwik raised 52 crore. The round also saw participation of Insosys Co-founder Kris Gopalakrishnan's family office Pratithi. As per the statement of the MobiKwik the said shall be utilized for growing its key business segments.

3. China's Ant considers Paytm stake sale amid tensions with India

Amidst tension between India & China standoff in the north, China's largest fintech giant Ant Corporation is in consideration of selling 30% stakes in the online payment platform Paytm.

4. Honeywell partners IISc's SID to fund deep science startups

Honeywell International Inc has partner with Indian Institute of Science (IISc) to fund and support deep science startups with societal impact. Deep science and technologies refer to those work and novel game changing technologies offering significant advancement in the current technologies.



Get in Touch

We hope you enjoyed reading the newsletter, and we would love to hear your thoughts on what you want to be covered in our next edition!

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