

# INDIA: LEGAL UPDATE

While the impact of Sikkim's new iGaming licences will be limited by an intrastate provision, other developments with the potential to shake up India's gaming market are also underway, as **Gowree Gokhale, Ranjana Adhikari** and **Aaron Kamath** of Nishith Desai Associates explain.

**There has been** a fair amount of activity and developments in the field of gaming law in India in recent months, involving the judiciary and state governments. While the Sikkim Government has granted licences for operating gaming websites, the Supreme Court of India (Supreme Court) has been proactive in protecting the transparency, fairness and integrity of the game of cricket. The gaming community has also been following arguments in the case of *Mahalakshmi Cultural Assn. v. Dir. Inspector Gen. of Police & Ors*<sup>1</sup> (Mahalakshmi Case), which will have a significant impact on the laws governing online gaming businesses in India. A public interest litigation has also been filed seeking a directive for the State Government of Maharashtra to pass near four-decade-old legislation to license and regulate casinos in the state. Here we update on the most important developments.

## Sikkim Government issues online gaming licences

The Sikkim Government recently issued 'go live' licenses to a few companies holding provisional licenses under the Sikkim Online Gaming (Regulation) Act, 2008 and rules. Best & Co. (a subsidiary of Future Gaming Solutions Private Limited), Maarm International Private Limited and Pan India Network Limited (part of the Essel Group that runs Playwin Lotteries in Sikkim) have reportedly received full licences to carry out iGaming operations. The other provisional licence holders are positive that they shall

receive full licences in the near future.

Under the Sikkim laws, licensees can conduct online games such as roulette, blackjack, pontoon, punto banco, bingo, casino brag, poker, poker dice, baccarat, chemin-de-for, backgammon, keno, Super Pan 9 and sports betting. A licensee can also assume the prior approval of the state government to offer any other/additional online games under the licence.

However, one of the licence conditions is that online gaming services may only be offered within the state of Sikkim, through an intranet connection, therefore appearing to restrict services to people located within the geographical territory of Sikkim. Given licensees have paid huge amounts for having procured licences and committed to pay a further 'gross gaming yield' at a minimum of INR50,000,000 per annum, such a restriction may greatly affect profitability.

## Supreme Court to decide on legality of rummy stakes

The legality of playing skill-based games has been the subject of discussion under several case laws in India. Until recently, the position was fairly settled in that the prohibitions under the Indian gaming legislation did not apply in the case of games of skill and therefore one could collect stakes or make profits from games of skill. However, in 2012, the Madras High Court held that although rummy is a game of skill, it would if played with stakes amount to gambling. The matter was appealed before

the Supreme Court and the operative part of the lower court's order has been stayed. The outcome of this case will have an impact on the method by which one can profit from a game of skill.

The arguments have been interesting. Initially, they related only to brick 'n' mortar rummy clubs. But later, some online rummy websites intervened and joined the matter, stating that a number were having difficulties receiving payments from payment gateway operators owing to the Madras High Court order. The intervening parties urged the Supreme Court to specifically deal with the issue of the legality of online gaming websites providing rummy played for stakes. It was explained to the Supreme Court that these websites only take a facilitation fee from players, approximating to 10% of the amount won in a rummy game, and hence were not making profits from such fees.

The Union of India was impleaded as a party, since there were a number of issues raised in relation to Central Government laws such as the Information Technology Act 2000 and anti-money laundering laws that applied to iGaming businesses. However, it is unlikely that the Centre will express its views on these matters, as the Additional Solicitor General representing the Union of India at the hearing in September suggested that since gaming and gambling came under the State List of the Constitution of India, the state would be the correct authority to legislate and take decisions on these matters.

The matter is tentatively listed for August 12, 2015, and all eyes of the gaming community will be watching how the court action unfolds.

### Supreme Court adopts zero tolerance approach to betting-related match fixing

On January 22, 2015, a division bench of the Supreme Court passed an order in relation to an Indian Premier League (IPL) match-fixing case.<sup>2</sup> One of the main issues before the Supreme Court, inter alia, was an amendment to Regulation 6.24 of the *BCCI Regulations for Players, Team Officials, Managers, Umpires & Administrators*, which provided that “no administrator could have, directly or indirectly, any commercial interest in the matches or events conducted by the Board of Control for Cricket in India” (BCCI). This provision was amended to exclude from its operation events such as the IPL and Champions’ League Twenty-20 cricket tournaments.

The issue for the Supreme Court to adjudicate on was whether the amendment to Regulation 6.24 was legally sound. It was alleged to have been made in a hurried manner, without any supporting documentation from any committee or as an agenda item for the BCCI to deliberate. It was further alleged that this amendment was opposed to public policy and good conscience, as it “fell foul of the concept of fairness, transparency and probity in the discharge of public functions by the BCCI”.

After examining judicial precedents on the meaning and scope of public policy, the Supreme Court found that the amendment to Regulation 6.24 “permits, protects and even perpetuates situations where administrators can have commercial interests in breach or conflict with the duty they owe to the BCCI or to the people at large must be held against public policy, hence illegal.” Citing the need to protect the transparency and integrity of cricket in the eyes of the

supporters, the Supreme Court observed that regardless of the format or commercial aspect, it only constituted a proper game if played in its pristine form free from any sporting fraud. The Supreme Court declared the amendment to Regulation 6.24 as void and ineffective. This precedent shows the increasingly intolerant mindset of the Indian judiciary towards match fixing, willing to go the extra mile to ensure the fairness and integrity of the game is upheld at all times.

### PIL filed to enforce casino legislation in Maharashtra

Recently, a public interest litigation (PIL) was filed in the High Court of Bombay seeking a writ of *mandamus* directing the Maharashtra Government to enforce the Maharashtra Casinos (Control and Tax) Act, 1976 (Maharashtra Casinos Act). The Act was passed by the State Legislative Assembly and subsequently received the assent of the Governor more than 35 years ago, however, this state-level legislation was never notified or enforced. It is understood that the reasons for its introduction were primarily to increase tourism, and raise revenue in Maharashtra by licensing and regulating casinos, as well as taxing betting and wagering games.

The Maharashtra Casinos Act aims to “provide for the control and regulation of casinos, and to impose a tax on betting in casinos, in the state of Maharashtra”, and would introduce a tax of 25 percent on all stakes or bets placed on any casino game at a casino licensed under the legislation to be paid to the Maharashtra Government.<sup>3</sup> The law would not allow casino games (defined as all or any such games of wagering or betting, including games of chance by

means of any machine or instrument, as may be prescribed) to be played, organised or exhibited by a person at any public place, except at a casino in respect of which a licence is granted. However, the potential for the litigation to kickstart casino regulation in India’s most populous and wealthy state, with 110 million inhabitants and contributing a quarter of the country’s wealth, means stakeholders will again be paying close attention.

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<sup>2</sup> Board of Control for Cricket in India v. Cricket Association of Bihar & Ors., Civil Appeal No. 4235 of 2014.

<sup>3</sup> Section 7 of the Maharashtra Casinos Act