AU COURANT

RGNUL FINANCIAL AND MERCANTILE LAW REVIEW

JANUARY 2023

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PREFACE

It gives us immense joy to share with our readers the January edition of our monthly newsletter, "Au Courant".

In this edition, the current on-goings in various fields of law have been analysed succinctly in the 'Highlights' section to provide readers with some food for thought. This includes a brief comment on the judgement of Supreme Court that Held exclusion of 'Old Indian Settlers' from definition of Sikkimese in Section 10(26aaa) of Income Tax Act as unconstitutional, another judgement by the Supreme Court that held recovery proceedings under SARFAESI Act will prevail over those under MSMED Act, NCLAT judgement that held IBC overrides Limitation Act and Supreme Court judgement that upheld NCLAT judgement order that refused to stay the CCI Order in android dominance case.

Major happenings in various fields of law such as alternate dispute resolution, banking and finance, competition law, insolvency and bankruptcy, intellectual property rights law, mergers and acquisitions, securities law, taxation law, and TMT Law have been recorded in the 'News Updates' segment to keep the readers abreast of latest legal developments.

The section 'Call for Comments' encourages readers to express their views and concerns on the measures under development and provide critical suggestions on issues that may have a bearing on financial and mercantile laws. In this Edition, Ministry of Corporate Affairs is asking for public comments for amending the Insolvency and Bankruptcy Code, 2016 on thirteen point agenda as circulated by the ministry.

Further, the 'Recent on the Blog' section provides the readers with a quick guide to the latest pieces published on the blog. The 'Editorial Column' section contains a piece from Mr. Yuvraj Mathur, (Associate Editor, RFMLR) titled 'The Enigma of Execution of Arbitral Awards in India'.

We hope that this Edition of the Au Courant finds you well and is once again an enjoyable and illuminating read for you!

HIGHLIGHTS

1. THE SUPREME COURT OF INDIA HAS HELD EXCLUSION OF 'OLD INDIAN SETTLERS' FROM DEFINITION OF SIKKIMESE IN SECTION 10(26AAA) OF INCOME TAX ACT UNCONSTITUTIONAL

BY RAGHAV SEHGAL

The Apex Court of India on 13th January 2023 has struck down the proviso to Section 10 (26AAA) of the Income Tax Act, 1961 as being ultra vires Articles 14, 15, and 21 of the Constitution of India, insofar as excludes from income-tax exemption "a Sikkimese woman who marries a non-Sikkimese individual on or after 1st April 2008". The petition was filed by the Association of Old Settlers of Sikkim and challenged the constitutional validity of the definition of "Sikkimese" in Section 10 (26AAA) to the extent it excludes Indians who have settled in Sikkim prior to the merger of Sikkim with India on 26th April 1975. They also sought to strike down the proviso to this provision insofar as it excludes from the exempted category, "Sikkimese women" who marry a non-Sikkimese after 1st April 2008.

While referring to the challenge made to the Proviso to Section 10(26AAA) insofar as it excludes from the exempted category "a Sikkimese woman, who marries a non-Sikkimese after 1st April 2008" the bench of Justices B.V. Nagarathna and M.R. Shah held that there was no justification shown for the same. The court stated that all citizens of India, having a domicile in Sikkim on the day it merged with India i.e., 26th April 1975 must be covered under the Explanation to avail the benefit of the exemption under Section 10(26AAA) of the I.T. Act, 1961. The Union of India shall make an amendment to Explanation to Section 10 (26AAA) of I.T. Act, 1961, so as to suitably include a clause to extend the exemption from payment of income tax to all Indian citizens domiciled in Sikkim on or before 26th April 1975. Furthermore, the benefits of the exemption are also extended to those individuals whose name is recorded in the Register of Sikkim Subject by virtue of the Government of India order no. 26030/36/90-I.C.I., dated the 7th August 1990 and order of even number dated the 8th April 1991 and also includes the person whose name is not recorded in the aforementioned register but it is established beyond doubt that the name of such individual's father or husband or paternal grandfather or brother from the same father has been recorded in that register.

However, the exemption to Section 10(26AAA) is not available to a Sikkimese woman who on or after 1st April 2008 marries an individual who is not a Sikkimese as per the aforementioned definition. The Exemption benefits are also not available to the Individual Indians who have settled in the state of Sikkim prior to the merger of Sikkim with Independent India on 26th April 1975 and resulting in discrimination.

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2. RECOVERY PROCEEDINGS UNDER SARFAESI ACT WILL PREVAIL OVER THOSE UNDER MSMED ACT

BY SHASHWAT SHARMA

The Supreme Court of India has on 5 January 2023 allowed an appeal against the decision of the Madhya Pradesh High Court which had held that Micro, Small and Medium Enterprises Development Act, 2006 ('MSMED Act') will prevail over Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act').

It held that a priority conferred under Section 26E of the SARFAESI Act would prevail over the recovery mechanism of the MSMED Act. The Court in this regard noted that in the entire MSMED Act, there is no specific express provision giving 'priority' for payments under the MSMED Act over the dues of the secured creditors or over any taxes or cesses payable to the Central Government or the State Government or the Local Authority, as the case may be.

The Court further noted that in sharp contrast to this, Section 26E of the SARFAESI Act, inserted vide Amendment in 2016, provides that notwithstanding anything inconsistent therewith contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in 'priority' over all other debts and Government revenues.

The Supreme Court further held that if two enactments have competing non-obstante provision and nothing repugnant, then the non-obstante clause of the subsequent statute would prevail over the earlier enactments. It observed that if the legislature confers the later enactment with a non-obstante clause, it means the legislature wanted the subsequent / later enactment to prevail. Hence, in the case Kotak Mahindra Bank Limited v. Girnar Corrugators Pvt. Ltd. the court held as wholly without jurisdiction, the order passed by the Naib Tehsildar refusing to take possession of the secured assets / properties despite the order passed under Section 14 of the SARFAESI Act on the ground that recovery certificates issued by respondent for recovery of the orders passed by the Facilitation Council are pending.

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3. IBC OVERRIDES LIMITATION ACT, NO CONDONATION BEYOND 45 DAYS: NCLAT

BY TARPAN SONI,

The Chennai Bench of the National Company Law Appellate Tribunal (NCLAT) in the case of M/s. Platinum Rent A Car (India) Pvt. Ltd. v M/s. Quest Offices Limited has held that Section 12 of the Limitation Act, 1963 is overridden by Section 238 of the Insolvency and Bankruptcy Code, 2016 (IBC) . In the instant matter, the respondent, M/s. Quest Offices Limited (Financial Creditor) had filed an application under S. 7 IBC before the Adjudicating Authority seeking initiation of Corporate Insolvency Resolution Process (CIRP) of the appellant, the Corporate Debtor. The Adjudicating Authority allowed the CIRP of the Corporate Debtor. Aggrieved by the impugned order of the Adjudicating Authority, the appellant filed an appeal challenging the same. The appeal was filed with an application for condonation of delay of 55 days due to time taken to obtain certified copy of order.

The Bench did not condone the delay in filing of appeal, which was caused due to time taken to obtain a certified copy of order. The Bench further held that Rules of Procedure neither create any right in favour of a person, nor create a cause of action. If a Statute requires a certain remedy to be exercised in a particular manner and time, then the same cannot be exercised in any other manner except for the one specified.
The Bench observed that an appeal can be filed before NCLAT against an order passed by the Adjudicating Authority within 30 days of such order. The permissible delay for filing of an appeal is 15 days under IBC. Therefore, the prescribed time to file a reply can be of maximum 45 days in total. Further, the procedural formalities (including the time limit) given under IBC must be followed in true 'letter and spirit', as speed is the essence of IBC. The Rules of Procedure neither create any right in favour of a person, nor create a Cause of Action. If a Statute requires a certain remedy to be exercised in a particular manner and time, then the same cannot be exercised in any other manner except for the one specified. The Bench held that NCLAT does not have any power to condone a delay beyond 45 days and cannot extend its Judicial arm of generosity, as IBC is a self-contained and inbuilt legislation. The Bench held that Section 12 of the Limitation Act, 1963 cannot be invoked as Section 238 of IBC has an overriding effect. The application for condonation of delay was dismissed. Accordingly, the Bench also dismissed the appeal.

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4. SUPREME COURT UPHOLDS THE NCLAT ORDER REFUSING TO STAY THE CCI ORDER IN THE ANDROID DOMINANCE CASE

BY QAZI AHMAD MASOOD

The Supreme Court refused to stay an order by the National Company Law Appellate Tribunal (NCLAT) asking Google to deposit 10% of the Rs. 1,337 crore penalty issued by the Competition Commission of India (CCI) for misuse of its dominant position in the Android ecosystem. A bench led by Chief Justice of India (CJI) Dhananjaya Y Chandrachud stated, "Findings of CCI cannot be said to be without jurisdiction or suffering from manifest error," and refrained from making any observations on the arguments made by CCI and other app manufacturers, realising that it could impact Google's proceedings before the NCLAT in its appeal against the CCI's October 20 order. Despite Google's agreement to comply with the CCI ruling in part, the court issued its order. The court had previously questioned Google whether it was willing to have the same set of compliance for the Indian market as required by the European Commission (EC) in July 2018 on a finding of Google's dominance in the Android ecosystem.

Google argued that its foothold in the Indian market was based on excellence rather than dominance. "If people select Google, this is not dominance but greatness. I am the market leader due to my excellence, and this court encourages greatness in all trades." He outlined the magnitude of Google's coverage across 500 million devices spanning 1,500 Android models, emphasizing the relevance of the Android system driving the smartphone explosion in India. "This data contradicts your submission," the court stated. When you have such market penetration, taking your bouquet compromises the open platform and works against the Android ecosystem. It also has an impact on customer choice. According to Additional Solicitor General (ASG) N Venkatraman, who represented CCI, the October 20 judgement came after a four-year investigation that determined Google's rules were anti-competitive, limiting consumer and manufacturer choice. He objected to the stay of the CCI directive, claiming that the corporation had followed comparable directives in the EU within three months and was seeking a delay from taking the same step in India. According to CCI data, Google was the operating system of over 98% of smartphones in 2018, and its App store for Android smartphones had 100% dominance due to pre-installation. Since 2009, Google has enjoyed a 98% dominance in general web search in India, and Google-owned YouTube has an 88% coverage of the online video hosting platform. The court refused to rule on the competing claims, stating that "any statement of opinion by this court on merits will have an impact on the dispute before NCLAT." "Because the appellant (Google) is seeking their remedy in NCLAT, the time for compliance with the order of CCI is prolonged by one week".

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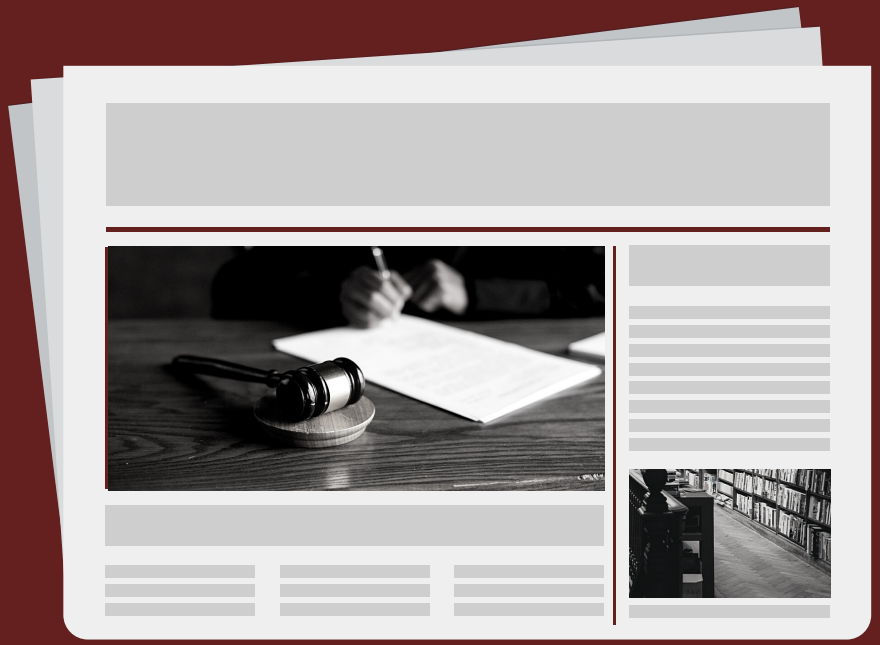

NEWS UPDATES

ALTERNATE DISPUTE RESOLUTION (ADR)

BY ARNAV MAHAJAN

1. ARBITRATION CLAUSE CONTINUES TO OPERATE EVEN AFTER DISSOLUTION OF PARTNERSHIP: DELHI HIGH COURT

The Delhi High court in the case of M/s Shyamjee Prepaid Services versus M/s Top Steels & Mrs. Renu Devi & Anr. has ruled that an arbitration clause contained in a contract executed with a partnership firm remains in effect even after the death of the partner causes the dissolution of the partnership.

After certain disputes arose between parties, the petitioner firm invoked the arbitration clause and filed a petition under Section 11 of the Arbitration & Conciliation Act before the Delhi High Court. The respondent firm argued that since the petitioner firm consisted of only two partners, the petitioner firm dissolved automatically with the demise of one of its partners. The court ruled that A combined interpretation of Section 16(1)(a) and Section 40(1) of the A&C Act, 1996 demonstrates unequivocally that the arbitration provision will continue in effect even after the death of a partner causes the dissolution of the partnership
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2. COURT NOT POWERLESS TO APPOINT APPROPRIATE ARBITRAL TRIBUNAL, EVEN IF PARTY FORFEITS ITS RIGHT UNDER ARBITRATION CLAUSE: BOMBAY HIGH COURT

The Bombay High Court in the case titled PSP Projects Limited versus Bhiwandi Nizampur City Municipal Corp. has ruled that even if a party's right to appoint its nominee in the Arbitral Tribunal as per the arbitration clause, is forfeited because it failed to exercise its right within the statutory period after receiving the notice invoking arbitration, it would not render the Court powerless to appoint an appropriate Arbitral Tribunal, after considering the nature of the disputes.

The petitioner had filed a petition under Section 11(6) of the A&C Act before the Bombay High Court, seeking appointment of Sole Arbitrator. The petitioner argued that the respondents had lost its right to appoint an

arbitrator as they failed to appoint the arbitrator within the notice period. The court ruled that the Bench is not constrained to only appoint a sole arbitrator on the insistence of the petitioner.

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3. DELIVERY OF ARBITRATION AWARD TO EMPLOYEE/AGENT OF PARTY, NOT A VALID DELIVERY UNDER ARBITRATION ACT: DELHI HIGH COURT

The Delhi High Court in the case of Monika Oli versus M/s CL Educate Ltd. has ruled that delivery of arbitral award, to be effective under the Arbitration and Conciliation Act, 1996 (A&C Act), must be made to a person who has direct knowledge of the arbitral proceedings. The Bench further held that the word 'party' in Section 34(3) of the A&C Act means party to the arbitral proceedings and does not include an agent of the party as well.

After certain disputes arose between the parties under the Agreement, the respondent invoked the arbitration clause and an ex-parte arbitral award was passed against the petitioner. Challenging the arbitral award, the petitioner filed a petition under Section 34 of the A&C Act before the Delhi High Court. The petitioner submitted before the High Court that the arbitral award was illegal as she never received the notice under Section 21 of the A&C Act. Observing that the petitioner was involved in the dispute in an individual capacity and not in relation to her position as a minority shareholder of her Company, the Court concluded that no valid delivery of arbitral award was affected in the present case
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ALTERNATE DISPUTE RESOLUTION (ADR)

4. AWARD OF COSTS BY ARBITRATOR, NOT CONTAINING QUANTIFICATION AND REASONS, IS ARBITRARY: DELHI HIGH COURT

The Delhi High Court in the case of *Union of India & Anr. versus Alcon Builders and Engineer Pvt. Ltd* has ruled that the mandate contained in Section 31(3) of the A&C Act, 1996, as per which an arbitral award shall state the reasons on which it is based, must pervade every aspect of the award, including the award of costs.

The disputes that arose between the parties was referred to a sole arbitrator and an arbitration award was passed in the favour of the respondent. The petitioner challenged the award of pendente-lite interest and costs of proceedings imposed on the petitioner, by filing a petition under Section 34 of the A&C Act before the Delhi High Court. The bench ruled that a court exercising power under Section 34 cannot "modify" an arbitral award, while holding that "modification" means to substitute the court's own decision for the decision made by the arbitrator on any given claim or counter-claim.

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COMPETITION LAW

BY QAZI AHMAD MASOOD

1. GOOGLE MODIFIES ITS POLICIES IN ACCORDANCE WITH CCI'S DIRECTIVES

Google said that it would amend its Android and Play policies in India to comply with the Competition Commission of India's (CCI) guidelines, following the Supreme Court's announcement last week that it would not stop the CCI's measures for antitrust reasons. On January 25, the search engine behemoth detailed some of the planned changes in a blog post. Users will have alternative billing options for applications and games starting in February, which is a significant improvement.

"Beginning next month, all apps and games will be able to use user-choice charging with user-choice billing, developers may offer consumers the opportunity to choose an alternative paying system in addition to Google Play's billing system when purchasing in-app digital content," Google stated in a blog post. Additionally, Original Equipment Manufacturers will be able to licence individual apps for pre-installation on devices, and Indian customers will be able to choose their favorite search engine when setting up a new Android smartphone.

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2. IN THE MIDST OF PENDING DEAL APPROVALS, INDUSTRY PARTICIPANTS POINT TO A LACK OF QUORUM AT CCI

With several mergers and acquisitions awaiting CCI approval, industry participants have sought solutions to the issue of a quorum at the competition watchdog, which has been without a chairwoman for more than two months. Under the Competition Act, 2022, mergers and acquisitions beyond a particular level require the clearance of the Competition Commission of India (CCI). Sections 5 and 6 of the Act deal with combination regulation in the country. A quorum of three members is required for the regulator to approve combinations.

However, with Chairperson Ashok Kumar Gupta's retirement on 25 October 2022, there are just two members, resulting in a lack of quorum at CCI. Against this context, numerous sector participants have sought measures to address the existing situation until a new chairperson is chosen, claiming that the absence of a quorum is creating delays in clearances for already notified combinations. Concerns have been raised with the corporate affairs ministry, which serves as CCI's administrative ministry.

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3. THE CABINET HAS APPROVED A REVISED COMPETITION BILL

Official sources revealed that the Union Cabinet adopted the revamped Competition (Amendment) Bill on Tuesday, which seeks to make comprehensive changes to the current competition law. This revised Bill is expected to be debated during the forthcoming Budget session of Parliament, which begins on January 31. After the Standing Committee on Finance issued its report on the Bill last month, it was reworked. This is the first time the administration has proposed major modifications to the Competition Act since it went into effect in 2009.

The Bill seeks to broaden the scope of anti-competitive agreements; reduce the time limit for merger and acquisition approval from 210 days to 150 days; introduce a deal value threshold as an additional criterion for notifying M&As to capture killer acquisitions in digital markets that were previously falling below the notification criteria due to asset and revenue light business models of new age companies; and provide a three-year limitation period (leniency plus).

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4. STARTUPS ACCUSE GOOGLE OF USING "DELAYING TACTICS" AND EXPLOITING LOOPHOLES

Google's recent revisions to its Android operating system and Play Store restrictions are "delaying tactics" and "cosmetic in character" (ET). The IT behemoth has filed an appeal against the Competition Commission of India's (CCI) judgement, which imposed a Rs 1,337 crore fine for anti-competitive actions. According to the startups, the corporation is using the same "playbook" it used in Europe and

COMPETITION LAW

South Korea and utilising "loopholes" to comply with the ban, which went into force on January 26.

On Wednesday, Google announced five changes to its business model. These include allowing Indian device manufacturers to licence specific apps for pre-installation and allowing users to select their default search engine. "Implementing these changes across the ecosystem will be a complicated process that will necessitate significant work on our end as well as, in many cases, significant efforts from partners, original equipment manufacturers (OEMs), and developers," Google wrote in a blog post.

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INSOLVENCY LAW

BY DHIREN GUPTA

1. AFTER ADOPTION OF SWISS CHALLENGE METHOD, RA NOT ALLOWED TO SUBMIT REVISED PLAN: NCLAT DELHI

The National Company Law Appellate Tribunal (NCLAT), Principal Bench, while adjudicating an appeal filed in Jindal Stainless Ltd. v Mr. Shailendra Ajmera & Anr., has held that after adoption of Swiss Challenge Method to find out the best plan, one Resolution Applicant cannot be allowed to submit a revised plan. The Bench placed reliance on the Supreme Court judgment in Ngaitlang Dhar vs. Panna Pragati Infrastructure Private Limited & Ors., Civil Appeal Nos. 3665-3666 of 2020, and held that after adoption of Swiss Challenge Method to find out the best plan, one Resolution Applicant cannot be allowed to submit a revised plan.

The Bench observed that the decision of CoC to vote on the Resolution Plan after completion of Challenge Process and not to further accept any modification of the plan, should not be interfered with. The Application was filed by Shyam Sel and Power Ltd. on 07.08.2022, when CoC had already resolved the vote on all the plans and voting had also commenced w.e.f. 07.08.2022. The Bench set aside the Order dated 11.08.2022 passed by the Adjudicating Authority. Further, the Resolution Professional has been directed to initiate fresh voting process on the Resolution Plans received in the process which may be completed within the period of one month. Finally, the case was disposed off.

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2. NO CONDONATION BEYOND 45 DAYS, IBC OVERRIDES LIMITATION ACT : NCLAT CHENNAI

The National Company Law Appellate Tribunal (NCLAT), Chennai Bench, while adjudicating an appeal filed in M/s. Platinum Rent A Car (India) Pvt. Ltd. v M/s. Quest Offices Limited, has held that Section 238 of IBC overrides Section 12 of the Limitation Act, 1963. The Bench declined to condone a delay of 55 days in filing of appeal, which was caused due to time taken to obtain certified copy of order. The Bench further held that Rules of Procedure neither create any right in favour of a person, nor create a Cause of Action. If a Statute requires a certain remedy to be exercised in a particular manner and time, then the same cannot be exercised in any other manner except for the one specified.

INSOLVENCY LAW

The Bench observed that an appeal can be filed before NCLAT against an order passed by the Adjudicating Authority within 30 days of such order. The permissible delay for filing of an appeal is 15 days under IBC. Therefore, the prescribed time to file a reply can be of maximum 45 days in total. Further, the procedural formalities (including the time limit) given under IBC must be followed in true 'letter and spirit', as Speed is essence of IBC. The Rules of Procedure neither create any right in favour of a person, nor create a Cause of Action. If a Statute requires a certain remedy to be exercised in a particular manner and time, then the same cannot be exercised in any other manner except for the one specified. The Bench held that NCLAT does not have any power to condone a delay beyond 45 days and cannot extend its Judicial arm of generosity, as IBC is a self-contained and inbuilt legislation.

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3 OPERATIONAL CREDITORS ONLY ENTITLED TO MINIMUM OF THE LIQUIDATION VALUE: NCLAT DELHI

The National Company Law Appellate Tribunal (NCLAT), Principal Bench, while adjudicating an appeal filed in Dharmindra Constructions Pvt. Ltd. & Anr. v Rajendra Kumar Jain, has held that Operational Creditors are only entitled for minimum of the liquidation value. The Bench observed that the Liquidation value of the Appellant/Operational Creditor was Nil. Even the Operational Creditors which are Government and whose verified claim is Rs. 295.18 Crores, were paid NIL. The requirement for the obligation for payment of amount to the Operational Creditor is under Section 30(2)(b) and the plan had not violated the said provision.

They are of the view that as per the law as exist today, the Operational Creditors are only entitled for minimum of the liquidation value and there being no breach of any of the provisions of the Code, we are unable to interfere with the impugned order. The Bench held that the Operational Creditors are only entitled for minimum of the liquidation value. Accordingly, the Appeal was dismissed.

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INSOLVENCY LAW

4 WITHDRAWAL APPLICATION U/S 12A CAN'T BE ENTERTAINED AFTER APPROVAL OF RESOLUTION PLAN BY COC: NCLAT DELHI

The National Company Law Appellate Tribunal (NCLAT), Principal Bench, while adjudicating an appeal filed in Hem Singh Bharana v M/s Pawan Doot Estate Pvt. Ltd. & Ors., has held that once the Committee of Creditors approve a resolution plan, no withdrawal application under Section 12A of IBC can be entertained. Approval of a Resolution Plan by the CoC prohibits the Resolution Applicant to modify or withdraw from the Plan, the same embargo is placed on CoC from changing its stand.

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The Bench observed that under Regulation 30A of CIRP Regulations, an application for withdrawal under Section 12A can be made after issuance of 'Expression of Interest' only when sufficient reasons exist to justify the withdrawal.

If Section 12A application was contemplated to be filed even after approval of the Resolution Plan by the CoC, then Regulations 30A(2)(a) and 30A(2)(b) ought to have included the expenses both under Regulations 33 and 34. Non-mention of Resolution Professional costs in Regulation 30A(2) supports the contention that Section 12A Application cannot be filed after approval of Resolution Plan by the CoC. Reliance was placed on the Supreme Court judgment in Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Limited and Anr., Civil Appeal No.3224 of 2020.

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5 AVOIDANCE APPLICATIONS SURVIVE CIRP, CAN BE HEARD AFTER APPROVAL OF RESOLUTION PLAN: DELHI HIGH COURT

The Bench while adjudicating an appeal filed in Tata Steel BSL Limited v. Venus Recruiter Pvt. Ltd. & Ors., has held that that avoidance applications filed under IBC survive even after approval of the resolution plan, in cases

INSOLVENCY LAW

where Resolution Plans are unable to account for such applications. These applications can be heard even after CIRP stands concluded. The Bench observed that phrase "arising out of" or "in relation to" under Section 60(5)(c) of the IBC is of a wide import. Such applications must be appropriately adjudicated by either NCLT or NCLAT, notwithstanding that the CIRP has concluded and the SRA has stepped into the shoes of the promoter of the Corporate Debtor.

Further, CIRP and avoidance applications are separate set of proceedings. While CIRP is time bound, the avoidance applications require a proper discovery of suspect transactions that are to be avoided by Adjudicating Authority. IBC reinforces this difference and therefore adjudication of an avoidance application is independent of the resolution of the Corporate Debtor and can survive CIRP. The Bench set aside the order dated 26.11.2022. The NCLT has been directed to proceed with the hearing of avoidance application. It has been directed that in accordance with Sections 44 to 51 of the IBC, 2016, the amount which is recovered can be distributed amongst the secure creditors in accordance with law as determined by the NCLT.

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INTELLECTUAL PROPERTY LAW

BY ISHANI CHAKRABORTY

1. INDIAN ARMY OBTAINS INTELLECTUAL PROPERTY RIGHTS OF NEW COMBAT UNIFORM

The Indian Army has obtained Intellectual property Rights (IPR) of the design and camouflage pattern of its newly introduced camouflage pattern dress. The improved combat uniform was unveiled by the Chief of Army Staff during Army Day 2022, a defense press release said. The release further said that the copyright of the design is with the Indian Army for 10 years extendable by another five years. It has been done to prevent unauthorized vendors from manufacturing and selling the combat pattern dress in the open market as it was posing a serious security threat to the Indian Army and the nation as a whole.

As per orders on the subject, these uniforms will only be sold in the unit-run canteens of the Indian Army. Due to this IPR, the Indian Army now possesses exclusive rights to the design and can file a legal suit against any design infringement and unauthorized reproduction of this design, it said. In collaboration with the civil authorities and police, the headquarters in Maharashtra, Gujarat, and Goa area has proactively disseminated the above information to all the vendors in all states under its area of responsibility, the release said.

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2. INVENTION HAS TO BE SEEN AS A WHOLE AND NOT IN ISOLATED ELEMENTS

The Calcutta High Court opined that merely because the individual parts of the claim are known or obvious when considered separately is not a ground to categorize the inventions as obvious. Instead of considering it partially, the whole invention has to be seen. The High Court expounded that the conclusion that any invention is obvious must be reached at with care, caution, and precision. The present appeal has been preferred against the order of the Assistant Controller of Patents and Designs vide which the patent application of the Appellant was rejected.

It was opined by the Bench that the invention has to be seen as a whole to ascertain the inventive steps. Further, merely because the individual parts of the claim are known or obvious when considered separately is not a ground to categorize the inventions as obvious. Instead of considering it partially, the whole invention has to be seen. The High Court expounded that the conclusion that any particular invention is obvious must be reached at with care, caution, and precision.

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INTELLECTUAL PROPERTY LAW

3. SUBWAY CANNOT CLAIM MONOPOLY OVER USE OF 'SUB' IN TRADEMARKS

The Delhi High Court has refused to restrain for the time being the sale of sandwiches under the name 'Suberb' by a city-based outlet and observed that global restaurant chain Subway could not claim monopoly over all two-syllable words. Justice C Hari Shankar, while dealing with the lawsuit by Subway IP LLC, said 'Subway' and 'Suberb', when used in the context of eateries serving submarine sandwiches, were not "deceptively similar" and their lettering, font and appearance were also easily distinguishable from each other in the present case.

Rejecting the plaintiff's plea for interim injunction, the judge observed that 'sub' was an abbreviation for 'Submarine', which represented a well-known variety of long-bodied sandwiches and it could not be said that the defendant's 'Suberb' mark infringed the 'Subway' wordmark. In its order, the court also observed that there was substance in the defendant's contention that the 'Subway' brand was so well known that there was hardly any chance that a person who wished to partake from a Subway outlet would walk into a Suberb outlet.

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4. PRESENCE OF PENAL CONSEQUENCE DOESN'T EXEMPT TRADEMARK SUITS FROM PRE-INSTITUTION MEDIATION

The Madras High Court has held that mere presence of penal consequence doesn't exempt Trademark Suits from being referring to pre-institution mediation as manadatorily required under Section 12A of the Commercial Courts Act. The bench in this view rejected the petition for leave to sue filed by Aachi Spices and Foods in a suit seeking an injunction restraining Karaikudi Achi Mess from using trademark name or similar sounding expression in any media, websites and other platforms.

The Court cited Premier Distilleries wherein it was held that the cause of action is something which has occurred and which gives a right to take action and the cause must precede the action and not follow it. "This Commercial Division has also held that Section 12A having been held to be mandatory by Hon'ble Supreme Court, any such manoeuvre qua the rigour of Section 12A of CCA either by way of dispensing with or post suit exercise when the law specifically talks about a pre-suit legal drill is impermissible."

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MERGERS & ACQUISITIONS

BY QAZI AHMAD MASOOD

1. 1.INDIA M&A DEAL SIZE HAS REACHED NEW HIGHS, INCREASING 139%: BAIN & CO.

According to the current Bain & Company's annual Global Mergers & Acquisitions Report, India has seen a 139% increase in overall M&A deal size, driven by record levels of cash and asset availability. In 2022, India will have experienced $138 billion in M&A transactions. Strong corporate balance sheets and plenty of private equity (PE) dry powder to deploy have contributed to a favorable M&A climate.

The ambitious energy transformation policies of the Indian government are creating new economic prospects. Renewable energy acquisitions have seen considerable accelerations as conglomerates and traditional energy corporations expand their renewable presence in India, according to the report. India is quickly becoming a top choice for multinational corporations looking to diversify their supply networks. According to the report, the trend is propelling acquisitions in fields such as active pharmaceutical ingredients, specialized chemicals, and contract manufacturing, where private equity firms are acquiring serial businesses and rolling them up to build one giant platform.

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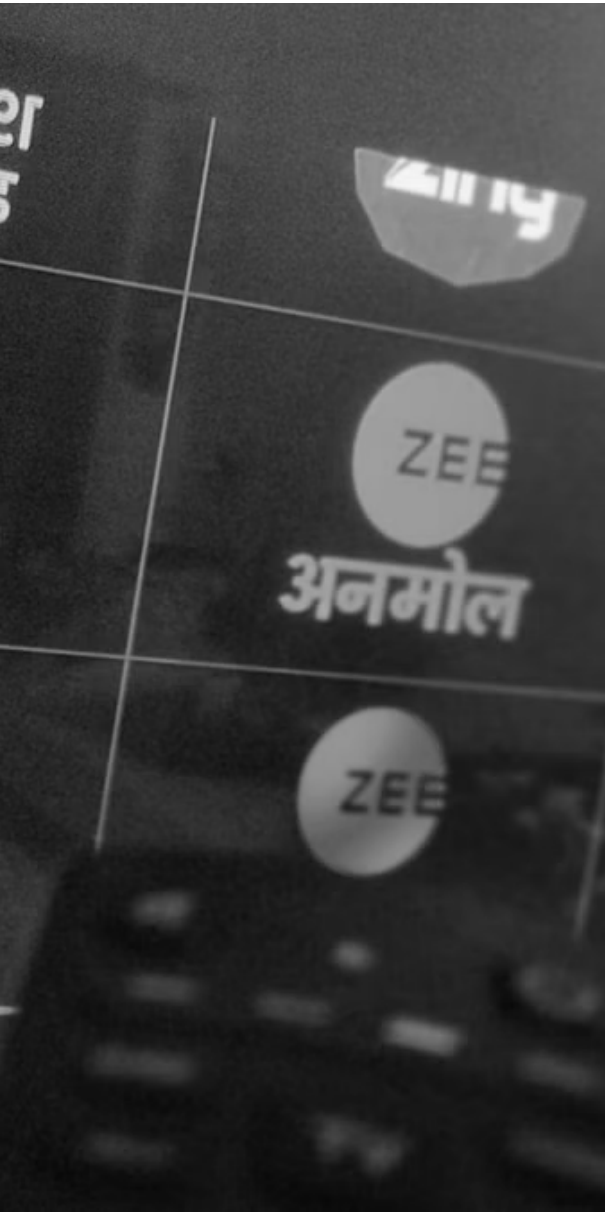
2. SUN PHARMA PURCHASES THREE PRODUCTS FROM AKSIGEN HOSPITAL CARE IN MUMBAI TO EXPAND ITS ANTI-INFLAMMATORY PORTFOLIO

Sun Pharma's growth strategy has included both organic and inorganic growth. In addition, the corporation has been introducing new pharmaceuticals to domestic and foreign markets. Sun Pharmaceutical Industries Limited announced the purchase of three brands from Mumbai-based Aksigen Hospital Care on Monday in an effort to expand its anti-inflammatory portfolio. The products are used in post-operative inflammation in patients following minor surgery and dentistry treatments. Aksigen registered and launched the brands in India in 2013.

Sun Pharma's growth strategy has included both organic and inorganic growth. In addition, the corporation has been introducing new pharmaceuticals to domestic and foreign markets. Sun Pharma launched SEZABY (phenobarbital sodium) in the United States last week for the treatment of newborn seizures. The US Food and Drug Administration (US FDA) approved SEZABY as the first and only product for the treatment of newborn seizures in term and preterm infants. SEZABY is a phenobarbital sodium powder injection formulation free of

MERGERS & ACQUISITIONS



benzyl alcohol and propylene glycol. Sun Pharma paid $576 million in cash to acquire Concert Pharmaceuticals last month to gain access to Deuxolitinib, a potential treatment for Alopecia Areata, a skin disorder that causes partial or full hair loss on the scalp and body.

Read More

3. .VIAS3D OF THE UNITED STATES ACQUIRED CADMARC SOFTWARE, ITS FIRST PURCHASE IN INDIA

VIAS3D, a specialized provider of digital engineering solutions based in the United States, and its subsidiary in India have announced the acquisition of India-based CADmarC Software, marking the company's first acquisition in India. The Houston, Texas-based company says it has already made successful acquisitions in the United States and Mexico as part of its expansion strategy, which will dramatically expand its presence in both traditional and new markets. CADmarC Software is a specialized engineering firm that provides enterprises with customized design-based solutions, allowing them to expand their products and services to numerous industries and areas in India.

With India's strong economic expansion, VIAS3D intends to establish a foothold and treble its total install base in the next three years. It plans to double its income by 2025, rising at a CAGR of 30 to 50% each year by assisting industries such as electric vehicles, high technology, manufacturing, and aerospace defence and space in product development. At the moment, VIAS3D's simulation and software solutions for the automotive sector assist customers in developing their electric, connected, and autonomous vehicles by requiring creative design, shared information, systems engineering, and multi-domain collaboration. It also aids in the creation of innovative client experiences. It also aids in meeting quality, regulatory, and economic requirements, as well as offering mass manufacturing to bulk customization possibilities.

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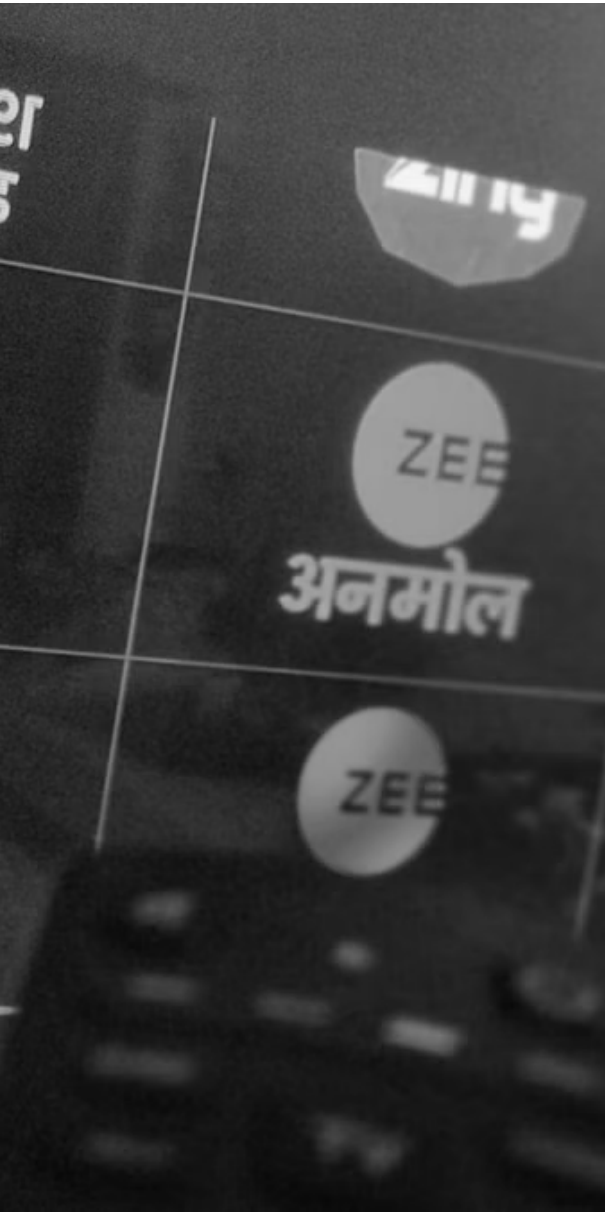

4. .RELIANCE RETAIL ACQUIRES FOOTWEAR RETAILER V RETAIL

V Retail Pvt Ltd, a Telangana and Andhra Pradesh-based footwear and apparel retailer that operates a retail chain under the brand name 'Centro Style,' has been bought by Reliance Retail. V Retail runs 32 Centro stores in the Andhra Pradesh, Telangana, and Karnataka markets. "With the acquisition of V Retail (Centro Footwear), Reliance Retail strengthened its product range," said Reliance Industries' earnings statement.

V-Retail began as a distribution firm in April 2009 and has since grown to become one of the leading retail, distribution, and franchising enterprises in South India. As part of their FMCG aspirations, Reliance Retail has bought various brands in the previous 2-3 months, including Sosyo, Lotus Chocolate, and Campa Cola. Independence, its consumer-packaged goods brand, was introduced earlier in December. The company will sell a variety of products under this brand, including staples, processed foods, and other daily necessities.

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5. HAPPIEST MINDS PAYS RS 111 CRORE FOR MADURAI-BASED IT BUSINESS SMI

Happiest Minds Technologies Ltd announced the purchase of Madurai-based IT services provider Sri Mookambika Infosolutions on Wednesday (SMI). The transaction included 111 crore in upfront and deferred stock considerations. Happiest Minds will absorb around 400 SMI workers based in offshore locations as part of the agreement. As of December 31, the Bengaluru-based IT services firm employed 4,611 people.

In a regulatory filing, Happiest Minds stated that SMI is a 'profitable' company with an annual revenue run rate of $9 million as of FY22. "SMI delivers strong domain expertise, which adds to our healthcare vertical strength — and aligns nicely with our 'Product Engineering Services business unit,'" says the company "said Joseph Anantharaju, Happiest Minds' executive vice-chairman and chief executive of Product Engineering Services. Happiest Minds' managing director and chief financial officer, Venkatraman Narayanan, stated that SMI will provide "expertise in healthcare, as well as a vibrant talent pool in the emerging tier-II towns of Madurai and Coimbatore." "to the company's portfolio. According to Happiest Minds, SMI primarily serves organisations based in the United States.

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BANKING & FINANCE

BY ISHANI CHAKRABORTY

1. HDFC BANK HIKES FD RATES AS SENIOR CITIZENS GET UP TO 7.75%

The largest private lender in the nation, HDFC Bank, raises interest rates on fixed deposits under ₹2 Cr. The bank is now giving an interest rate of 3% on deposits that mature in the next 7 to 29 days, while HDFC Bank is now offering an interest rate of 3.50% on deposits that mature in the next 30 to 45 days. HDFC Bank will provide an interest rate of 4.50% for deposits made between 46 and 6 months, and it will provide 5.75% for deposits made between 6 months and 9 months. A 6.00% interest rate will be paid on deposits maturing in 9 months, 1 day to 1 year, and a 6.60% interest rate will be charged on deposits maturing in 1 year to 15 months. HDFC Bank will now grant the general public an interest rate of 7.00% on deposits that mature in 15 months to 10 years.

Read more

2. BANK LOCKER RULES DEADLINE EXTENDED

The Reserve Bank of India (RBI) on Monday extended the deadline for banks to finish the process of renewing agreements with safe deposit locker customers in a phased manner to address the concerns of customers. The central bank directed lenders to unfreeze the lockers that were frozen for non-execution of agreement by 1 January. Further, RBI sought revision in the model agreement drafted by the Indian Banks' Association to comply with its revised guidelines.

In August 2021, RBI revised the regulations on maintaining bank lockers, making them applicable to new customers from January 2022 and existing customers from January 2023. The central bank asked banks to put in place a board-approved agreement format for safe deposit locker customers and allowed them to adopt an agreement framed by the Indian Banks' Association. It directed banks to notify all customers of the requirements by 30 April and ensure 50% and 75% of existing customers execute the revised agreement by 30 June and 30 September, respectively. Banks will need to report compliance status on its Daksh supervisory portal, RBI said.

Read more

BANKING & FINANCE

3. SBI RAISES RS.9,718 CRORES IN SECOND TRANCHE OF INFRASTRUCTURE BONDS

Public lender State Bank of India (SBI) on Wednesday said it has raised ₹9,718 crore through its second infrastructure bond issuance at a coupon rate of 7.70 per cent per annum for the 15-year money. This is the second fund-raising since early December when SBI had mopped up ₹10,000 crore via infrastructure bond. The fund proceeds will be utilised for enhancing long-term resources for funding infrastructure and affordable housing, the bank said in a statement.

The issue attracted good response from investors with bids of ₹14,805 crore, indicating an oversubscription of 2.96 times from 118 bidders, SBI said, adding investors were mutual funds, provident and pension funds, and insurers. The pricing of 7.70 per cent represents a spread of 17 bps over the G-Sec curve. Before this, the bank had raised ₹10,000 crore through infrastructure bonds on December 6, 2022, at a spread of 17 bps over the corresponding G-Sec curve.

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4. HDFC BANK MARGIN EXPANSION CONTINGENT UPON GETTING MORE RETAIL DEPOSITS

The mix of deposits at India's largest private lender HDFC Bank needs to shift in favour of retail for its margins to widen. Despite a 5% sequential growth in retail deposits in the December quarter sequentially, the ratio of retail to wholesale deposits is 45:55. A couple of years before covid-19, retail deposits were at 53-55% of the total. The bank's core net interest margin was at 4.1% on total assets in the three months through December, unchanged from the previous quarter.

Margin pickup is a function of a mix of products and to as deposit prices go up, asset prices also go up to keep the margin constant or within a within a small range. But the margin going into the middle to the higher end of the four 4.4-4.5% is a function of the mix of wholesale and retail. The bank's total deposits were at ₹17.3 trillion of 31 December, up 19.9% over the same period last year. Its current and savings deposits or CASA grew 12%, with savings account deposits at ₹5.4 trillion and current account deposits at ₹2.3 trillion. Time deposits were at ₹9.7 trillion, up 26.9% over the corresponding quarter of the previous year, resulting in CASA deposits comprising 44.0% of total deposits as of 31 December.

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SECURITIES RIGHTS

BY ARNAV MAHAJAN

1.SEBI ALLOWS NON-PROMOTER SHAREHOLDERS TO SELL SHARES VIA OFFER FOR SALE

Securities and Exchange Board of India (SEBI) has modified certain provisions of the existing offer for sale (OFS) through stock exchanges, wherein, it has allowed non-promoter shareholders to sell their equity shares in a company through OFS. Notably, the facility of OFS shares will be available on BSE, NSE, and the Metropolitan Stock Exchange of India (MSEI).

Under the modified guidelines, SEBI said, OFS mechanism shall also be available to companies with market capitalization of ₹1,000 crore and above, with the threshold of market capitalization computed as the average daily market capitalization for six months' period prior to the month in which the OFS opens. All investors who are registered with the brokers of stock exchanges other than promoters are eligible to participate under the OFS to buy shares. SEBI directed that promoters of eligible companies are permitted to sell shares within a period of two weeks from the OFS transaction to the employees of such companies. This would be considered part of the said OFS transaction.

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2. SECTION 59 COMPANIES ACT 2013 - NCLT CANNOT EXERCISE PARALLEL JURISDICTION WITH SEBI FOR ADDRESSING VIOLATIONS OF SEBI REGULATIONS: SUPREME COURT

The Supreme Court has held National Company Law Tribunal (NCLT) under Section 59 of Companies Act, 2013, cannot exercise a parallel jurisdiction with Securities and Exchange Board of India6 for addressing violations of the Regulations framed under the SEBI Act.

In this case, NCLT allowed a company petition filed by IFB Agro Industries Ltd. under Section 111A of the Companies Act, 1956 (presently Section 59 of the 2013 Act), for rectification of Members Register. The Tribunal directed the petitioner company to buy-back its shares which were held by SICGIL India Ltd. In appeal, the Appellate Tribunal set aside this direction on the ground that the NCLT exceeded its jurisdiction. The court said that the company petition under Section 111A of the 1956 Act for a declaration that the acquisition of shares by the Respondents as null and void is misconceived.

Read more

SECURITIES RIGHTS

3. SEBI ISSUES GUIDELINES FOR EXCHANGES TO HANDLE OUTRAGES, EXTENSION OF TRADING HOURS.

To ensure seamless trading, market regulator SEBI on Monday announced standard operating procedure (SOP) for the handling of stock exchange outages and extension of trading hours thereof. The watchdog has directed stock exchanges to report the outage immediately as it occurs but not later than 15 minutes. Also, exchanges are asked to intimate about an extension in trading hours due to the outage.

According to the Sebi's circular, if the affected stock exchange resumes to normalcy at least one hour (excluding 15 minutes of pre-opening session, if applicable) before the normal scheduled market closure -- then trading hours on that day will remain unchanged. According to the Sebi's circular, if the affected stock exchange resumes to normalcy at least one hour (excluding 15 minutes of pre-opening session, if applicable) before the normal scheduled market closure -- then trading hours on that day will remain unchanged. Sebi has asked exchanges to put in place a common close-out policy, within 30 days of the SOP circular.

Read more

4. INDIA BECAME THE SECOND COUNTRY IN THE WORLD TO START THE 'TRADE-PLUS-ONE' (T+1) SETTLEMENT CYCLE IN TOP LISTED SECURITIES.

After China, India will become the second country in the world to start the T+1 system in top listed securities, bringing operational efficiency, faster fund remittances, share delivery, and ease for stock market participants. As many as 256 large-cap and top mid-cap stocks, including Nifty and Sensex stocks, will come under the T+1 settlement from Friday.

The T+1 settlement cycle means that trade-related settlements must be done within a day, or 24 hours, of the completion of a transaction. As a result, buyers and sellers will be able to receive shares and corporate actions like dividends and bonus shares in their accounts one day after the market closes. According to a paper published by the Securities and Exchange Board of India (SEBI), a T+1 settlement cycle not only reduces the timeframe but also reduces and frees up capital required to collateralise that risk. Read more

SECURITIES RIGHTS

5. SEBI AMENDS RULES FOR ALTERNATIVE INVESTMENT FUNDS

Capital markets regulator SEBI has amended the rules governing Alternative Investment Funds (AIFs), Registrars to an Issue and Share Transfer Agents. Under the new rules, SEBI said Category I AIFS may engage in hedging, including credit default swaps. Further, Category II and Category III AIFs may buy or sell credit default instruments. The sponsor or manager of the Category I and Category I AIF transacting in credit default swaps will have to appoint a custodian registered with the Sebi, according to a notification.

AIFs, in market parlance, refers to a privately-pooled investment vehicle which collects funds from investors whether Indian or foreign for investing these funds in the country. Broadly, AIF rules govern venture capital funds, private equity funds, SME funds, hedge funds among others. A Registrar to an Issue and Share Transfer Agent falling under Category I will have to pay a fee of Rs 2.75 lakh while the one falling under Category II will pay a fee of Rs 90,000.

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TAXATION LAW

BY ISHANI CHAKRABORTY

1. GST COUNCIL DOUBLES LIMIT FOR LAUNCHING PROSECUTION TO RS 2 CRORE; DEFINES SUVS FOR 22 PERCENT CESS

The GST Council on Saturday agreed to decriminalize certain offenses and doubled the threshold for launching prosecution under the tax law to Rs 2 crore, but retained the limit at Rs 1 crore for fake invoicing. The Council also clarified the definition of SUVs (sports utility vehicles) for the levy of a 22 percent compensation cess over the 28 percent GST and decided to come out with parameters to define MUVs (multi-utility vehicles).

Briefing reporters after the 48th GST Council meeting, Finance Minister Nirmala Sitharaman said the Council could decide on only eight out of the 15 agenda items due to paucity of time, but added that no new taxes have been brought in. The agenda items which could not be considered included taxation for pan masala and gutkha firms and a report by a Group of Ministers (GoM) on setting up of appellate tribunals. The report of another GoM, chaired by Meghalaya Chief Minister Conrad Sangma, on GST levy on online gaming, casinos, and horse racing was also not part of the agenda for Saturday's meeting.

Read more

2. WRIT PETITION CAN BE ENTERTAINED TO EXAMINE IF CONDITIONS TO ISSUE SECTION 148 NOTICE UNDER INCOME TAX ACT ARE SATISFIED

The Supreme Court recently set aside an order of the Punjab and Haryana High Court which dismissed a writ petition filed by an assessee against a notice issued under Section 148A of the Income Tax Act 1961 for reopening the assessment. The High Court had dismissed the writ petition on the ground of the availability of alternative remedies. Taking exception to the High Court's approach, the Supreme Court observed that writ petitions have been entertained to examine whether the conditions for the issuance of notice under Section 148 of the Income Tax Act have been satisfied.

The petitioner received notice under Section 148A(b). The details of the information that led to the issuance of a notice under Section 148A(b) were also provided to the petitioner. The petitioner responded and raised objections.

The objections were decided by an order passed under Section 148A(d). Along with the order, the petitioner was also served with notice under Section 148. The petitioner objected to both the order issued under Section 148 A(d) and the notice issued under Section 148 of the event date, claiming that the petitioner's response to the notice under Section 148A(b) was ignored.

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4. .BOMBAY HIGH COURT QUASHES REASSESSMENT ORDER ON ASIAN PAINTS IN VIEW OF FULL DISCLOSURE

The Bombay High Court has quashed the reassessment order as the assessee, Asian Paints, disclosed fully and truly all facts material and necessary for the assessment. The bench has observed that the reasons do not disclose what material or fact was not disclosed by the assessee. The petitioner/assessee is a public limited company engaged in the business of manufacturing and selling paints, varnish, primer, etc. The business is carried on through various dealers who purchase the goods from the petitioner on a principal-to-principal basis and sell them to the ultimate customers.

The petitioner urged that there was no failure to disclose fully and truly any material fact necessary for the assessment, which was a condition precedent for reopening the assessment in terms of Section 148. The department contended that the reassessment proceedings would not be held to be bad as the AO while passing the order of assessment, had not expressed any specific opinion in regard to the expenditure incurred on "Colour Idea Stores." Therefore, the reassessment proceedings could not be scuttled.

Read more

4. HIGH COURT CANNOT INTERFERE UNLESS PERVERSITY IS SHOWN AS TRIBUNAL IS A FACT-FINDING BODY

The Calcutta High Court has held that unless and until the order passed by the Tribunal suffers from any perversity or ignores any vital fact in an appeal under Section 260A of the Income Tax Act, the Court is not

TAXATION LAW

expected to interfere with the order. The bench has observed that the issues related to an erroneous and prejudicial order and the lack of proper inquiry on which the show-cause notice under Section 263 was issued are fully factual. The Tribunal, which is the last fact-finding authority, has elaborately considered the factual position and granted relief to the assessee.

The court held that every loss of revenue cannot be treated as prejudicial to the interest of revenue, and if the assessing officer has adopted one of the courses permissible under law, or where two views are possible and the assessing officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order, unless the view taken by the assessing officer is unsustainable under law.

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TMT LAW

BY DHIREN GUPTA

1. U.S. SUPREME COURT LETS META'S WHATSAPP PURSUE 'PEGASUS' SPYWARE SUIT

The US Supreme court has let Meta Platforms Inc's WhatsApp pursue a lawsuit accusing Israel's NSO Group of exploiting a bug in its WhatsApp messaging app to install spy software allowing the surveillance of 1,400 people, including journalists, human rights activists and dissidents. The justices turned away NSO's appeal over a lower court's decision that the lawsuit could move forward. NSO has argued that it is immune to being sued because it was acting as an agent for unidentified foreign governments when it installed the Pegasus spyware.

WhatsApp in 2019 sued NSO seeking an injunction and damages, accusing it of accessing WhatsApp servers without permission six months earlier to install the Pegasus software on victims' mobile devices. NSO has argued that Pegasus helps law enforcement and intelligence agencies fight crime and protect national security and that its technology is intended to help catch terrorists, child abusers and hardened criminals. In court papers, NSO said WhatsApp's notification to users scuttled a foreign government's investigation into an Islamic State militant who was using the app to plan an attack.

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2. U.S. SUPREME COURT PUNTS ON TEXAS AND FLORIDA SOCIAL MEDIA CASES THAT COULD UPEND PLATFORM MODERATION

The Supreme Court delayed a decision on whether to take up a pair of cases challenging social media laws in Texas and Florida that could upend the way platforms decide which posts they remove and which ones they promote. Republican leaders in Texas and Florida have promoted the legislation as a way to counteract what they call unjust censorship of conservative viewpoints on social media. Major platforms have maintained that they simply enforce their terms of service. NetChoice and CCIA warned that if allowed to take effect, the social media laws would force platforms to keep messages even if they make false claims on very sensitive subjects.

The Supreme Court had ruled in favour of the temporary block on the Texas law, without ruling on the merits of the case. An appeals court also temporarily prevented Florida's law from taking effect. The laws remain in limbo pending a high court decision on whether to take up the cases. The court is scheduled to hear two other cases next month that could also alter the business models of major platforms. One in particular, Gonzalez v. Google, looks

directly at whether algorithms that promote and organize information on websites can be protected by Section 230 of the Communications Decency Act, which shields online services from being held liable for their users' posts. If the court decides websites should be more responsible for how third-party messages are spread, social media companies could alter the way they operate to reduce their legal exposure.

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3. SINGAPORE CAN NOW ORDER SOCIAL MEDIA SITES TO BLOCK ACCESS, AS 'ONLINE SAFETY' LAW KICKS IN

Effective from 1st February 2023, Singapore's Online Safety Act comprises a new section that regulates online communication services, specifically, social media platforms that must comply with directives to block local access to "egregious" content or face potential fines. the Online Safety (Miscellaneous Amendments) Act enables industry regulator Infocomm Media Development Authority (IMDA) to direct "online communication services" to disable local access to harmful content. This includes, amongst others, content advocating or instructing on physical violence and terrorism, as well as content that pose public health risks in Singapore, said the Ministry of Communications and Information (MCI).

First mooted in parliament last October and passed the following month, the Act introduces a section to the Broadcasting Act that allows for the regulation of online communication services. For now, only social media services are specified and subject to the provisions outlined in the new section. If issued with directives to disable access, social media platforms are expected to do so by blocking the "flow of content" from a specific source, such as an account, group, or channel, that is feeding the egregious content to their site. Operators of online communication services that have been issued such directives must comply or face possible fines.

Read More

4. ZELENSKY GOVERNMENT EXPANDS MEDIA CENSORSHIP

Amid the intensification of its NATO-backed war with Russia, the government of Ukrainian President Volodymyr Zelensky has passed a bill that grants Ukraine's National Council of Broadcasting sweeping and arbitrary powers of censorship over nearly all of the country's media. The 279-page bill, which has existed in various forms since Zelensky first ordered its creation in 2019, essentially permits the National Council of Broadcasting to censor television, print and online journalism, as well as social media and search engines such as Google. News sites that fail to officially "register as media" with the right-wing Ukrainian government may be shut down without a court ruling. Moreover, the National Council of Broadcasting itself will be filled with appointees by Zelensky and the Ukrainian parliament, which is currently dominated by the president's Servant of the People party.
While the bill was passed under the guise of "media reform" to comply with EU "press freedom" standards, the law violates the most basic democratic freedoms. Both the European Federation of Journalists and the Committee to Protect Journalists have opposed the measure, and in September Ukraine's own National Union of Journalists called the law "the biggest threat to press freedom in (Ukraine's) independent history.

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4. BROADCOM ADDRESSES UNFAIR PRACTICES, PROPOSES MEASURES WORTH $15.8 MILLION

The Fair Trade Commission (FTC) has been looking into allegations that Broadcom violated local laws by pressing Samsung Electronics Co. to ink long-term contracts for the supply of smart device parts. US chipmaker Broadcom offered 20 billion won ($15.8 million) worth of programmes to address concerns about its alleged violation of competition law, South Korea's antitrust regulator said on Monday.

The Fair Trade Commission (FTC) has been looking into allegations that Broadcom violated local laws by pressing Samsung Electronics Co. to ink long-term contracts for the supply of smart device parts. The regulator believed that Broadcom has abused its position to force its partner to sign contracts with its capability to cut off shipments and technology support, reports Yonhap news agency. Under the proposal, the U.S. chipmaker vowed to avoid limiting its business partners' right to choose components or trade with its rivals. The company added it will offer warranty services of three years for components purchased by Samsung from March 2020 to July 2021. The smartphones installed with such parts include the Galaxy Z Flip 3 and the Galaxy S22. Read more

CALL FOR COMMENTS

CALL FOR COMMENTS

THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC) IS BEING CHANGED, AND THE MINISTRY OF CORPORATE AFFAIRS, GOVERNMENT OF INDIA, HAS PUBLISHED A CIRCULAR ASKING FOR PUBLIC COMMENT.

The reformed liquidation procedure, expediting the insolvency resolution process, admission of corporate insolvency resolution process (CIRP) applications, and the function of service providers under the IBC are among the modifications that are being considered. In a circular issued on 18.01.2023, the Ministry of Corporate Affairs has proposed numerous changes in IBC, they are:

1. Mandatory to admit Section 7 application where occurrence of a default is established
2. Approval of multiple resolution plans in respect of the same CD
3. Improving recoveries for operational creditors in liquidation
4. Improving outcomes in real estate cases
5. Reinstating CIRP
6. Intermingling the assets of the CD and its guarantors
7. Protection of a resolution applicant post implementation of the resolution plan concerning civil liabilities
8. Direct Dissolution of the CD
9. Replacement of the liquidator
10. Increasing reliance on the record submitted with the Information Utilities during the Admission Process
11. Restricting the right of the promoters to propose an Interim Resolution Professional.
12. Empowering the AA to impose penalties for violations of IBC.
13. Expanding the applicability of the Pre-packaged Insolvency Resolution framework

The Circular mentions that suggestion/comments on the proposed changes, along with brief justification, may be submitted online by 5:30 PM on 07.02.2023 at the link here

Read the official circular by the ministry of corporate affairs here

RECENT BLOGS

THE INTERPLAY OF IBC AND CONTRACT LAW: ASCERTAINING THE NATURE OF A RESOLUTION PLAN

THIS POST IS AUTHORED BY BHARAT MANWANI, A SECOND-YEAR B.B.A. LL. B (HONS.) STUDENT AT THE GUJARAT NATIONAL LAW UNIVERSITY, GANDHINAGAR.

1. INTRODUCTION

The Corporate Insolvency Resolution Process (CIRP) comprises three stages; the first stage concludes with the approval of a Resolution Plan by the Committee of Creditors (CoC) whereas the third stage concludes with such Resolution Plan being approved by the Adjudicating Authority. The second stage lies in the interim, where the plan has already been approved by a CoC but awaiting approval by the Adjudicating Authority i.e., the National Company Law Tribunal (NCLT). Both the first and third stages are explicitly governed by the conditions laid down in the Insolvency and Bankruptcy Code 2016 (IBC), through which the relationship of the parties is clearly determinable. However, there exists a lack of clarity with regard to the relationship between the successful resolution applicant and corporate debtor during the second stage of the CIRP process.

The Courts have previously had the chance to review the nature of a Resolution Plan at the second stage, but have not arrived at a consensus regarding its nature. By ascertaining the nature of the Resolution Plan, we could easily determine the source of legal force on the plan and whether it is the IBC or contract law. The Supreme Court and NCLAT have attempted to answer this exact question in the case of Ebix Singapore Pvt Ltd. vs Committee of Creditors of Educomp Solutions Ltd. & Anr. and the case of Piramal Capital & Housing Finance vs Kapil Wadhawan And Ors. respectively. However, the authorities have failed to come up with a straightforward answer to the nature of a Resolution Plan during the second stage of the CIRP.

In this research piece, the author attempts to argue that the nature of a Resolution Plan is to be ascertained in the form of a contract, which in turn would benefit several successful resolution applicants and further the objectives of the code. By way of interpreting a Resolution Plan in the

form of a contract, successful resolution applicants would have access to various remedies such as restitution, novation, and liquidated and unliquidated damages, which are not specifically available to them at the second stage, as per the conditions laid down in the IBC. The claim that the nature of a Resolution Plan is in the form of a contract finds backing in the Bankruptcy Law Reforms Committee Report of 2015 (BLRC). The BLRC is a pre-legislative text that was utilized in the formation of the IBC, which has referred to the Resolution Plan as a 'binding contract' and 'binding agreement' on several occasions. Additionally, this article provides a brief overview of the CIRP process and explains how the stages are analogous to the formation of a contract. Moreover, it refers to the bankruptcy laws of several foreign jurisdictions that have established the nature of a Resolution Plan to be in the form of a contract, such as the United Kingdom, the United States of America, and Singapore.

2. THE INTENTION OF THE LEGISLATORS

The Ministry of Finance constituted the Bankruptcy Legislative Reforms Commission (BLRC) on 22 August 2014. The Committee issued two volumes of reports along with a draft insolvency bill. Through their draft bill, they suggested harmonized legislation for resolving both corporate and personal insolvencies, which later came to be known as the Insolvency and Bankruptcy Code 2016. Their reports and draft bill are essentially a pre-legislative text which was unreservedly incorporated into the IBC. The BLRC in Volume 1 of its report has referred to the Resolution Plan as a 'binding contract', 'binding agreement' on numerous occasions. In Paragraph 5.3.3, the committee has remarked the following, "The RP must ensure that the solution agreed upon by majority vote in the creditors committee is presented as a binding contract signed by the majority to the Adjudicator within the time limit available." (emphasis supplied) Furthermore, in Paragraph 5.3.4, the committee has instructed the Resolution Professional (RP) to submit a "binding agreement" before the prescribed date or otherwise proceed with the liquidation process. Apart from this, there have been several other mentions in the BLRC Report which indicate the clear intention of the commission to characterize the Resolution Plan in the form of a contract. Such characterization would supposedly enable the Resolution Plan to have a binding effect which would consequently prevent a CoC to renege from the conditions stipulated in the Resolution Plan.

3. CIRP'S RESEMBLANCE TO THE FORMATION OF A CONTRACT

The rationale for ascertaining a Resolution Plan in the form of a contract also arises from the fact that the entire CIRP process resembles the formation of a contract. When a Request for Resolution Plan is issued by the corporate debtor, it corresponds to an invitation to offer. The response to such a request is the submission of a Resolution Plan, which in turn resembles an offer made. Subsequently, such an offer is accepted and approved by the CoC through their voting mechanism and bears resemblance to the acceptance of an offer. The terms of a

Resolution Plan are nothing but a commercial bargain between the resolution applicant and the CoC, which is combined with the intention to establish a binding legal relationship. The commercial bargain between the parties suggests the fact that an agreement has been reached through negotiation that has been facilitated with the element of contractual freedom.

4. FOREIGN JURISPRUDENCE ON THE NATURE OF A RESOLUTION PLAN

The argument that a Resolution Plan is in the nature of a contract is further strengthened by the interpretations of foreign jurisdictions. For instance, the Singapore Court of Appeal has confirmed a Resolution Plan to have a "contractual scheme". This verdict relied on the fact that the legislation in Singapore, more particularly the Companies (Amendment) Act of 2017, postulates the arrangement to have the effect of a binding contract.

The United States of America follows an identical interpretation of such Resolution Plans. A Resolution Plan is characterized as a contract and the violation of its provisions enables the parties to seek contractual remedies, as was held in the landmark case of In re Hoffinger Indus, Inc. Additionally, Section 1141 of the United States Bankruptcy Code has been a useful aid in determining the binding effect of a Resolution Plan. While interpreting Section 1141, the US Bankruptcy Court in In Re Shenandoah Realty Partners L.P. v. Ascend Health Care, has held that "the plan proponent and has the same effect as contract."

In the United Kingdom, the power to propose a Company Voluntary Arrangement (CVA) which is much like a Resolution Plan, is provided through the UK Insolvency Act 1986. Section 5(2)(b) of the same Act dictates that once a CVA is approved by creditors having a voting share of at least 75% of total creditors, then all parties are bound by the provisions of such CVA. Professor Roy Goode in his authoritative book titled "Principles of Corporate Insolvency Law" has remarked that "the wording of s.5(2)(b) has led the courts to characterize the relationship between the parties to a CVA as essentially contractual in nature and its scope and effect are determined by its terms, which fall to be interpreted by application of the ordinary principles of contractual interpretation." (emphasis supplied) This interpretation has been further strengthened by subsequent rulings of the English Court of Appeal, wherein they have held that such CVAs establish contractual obligations and are subject to the usual principles utilized in the interpretation of contracts.

5. CONCLUSION

In the case of Ebix Singapore Pvt Ltd. vs Committee of Creditors of Educomp, the Supreme Court of India held that a submitted Resolution Plan cannot be regarded as a contract. However, in light of the fact that the BLRC report itself has made references to indicate otherwise, the CIRP process illustrated to be analogous to the formation of a contract along with interpretations made in foreign jurisdictions, it is clearly evinced that a submitted Resolution Plan is in the nature of a contract. By ascertaining the nature of a Resolution Plan in the form

of a contract, the Courts could entitle successful resolution applicants to have access to a host of remedies in the second stage of the CIRP such as restitution, novation, liquidated, and unliquidated damages. Additionally, it would help determine the relationship between the successful resolution applicant and the corporate debtor, and provide clarity on the expected conduct of involved parties during the second stage. This would fill the gap in the current Insolvency and Bankruptcy framework, enabling the growth of credit markets in India.

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THE ENIGMA OF EXECUTION OF ARBITRAL AWARDS IN INDIA

AUTHORED BY YUVRAJ MATHUR, ASSOCIATE EDITOR

INTRODUCTION

Globalization has entailed the development of proficient techniques of dispute resolution. The accomplishment of any dispute resolution framework is contingent significantly on the efficacy of the enforcement mechanism that it commends. The ease of enforceability of an arbitral award makes it a successful ADR mechanism. In India, the Arbitration and Conciliation Act, 1996 ("Act") and the Code of Civil Procedure, 1908 ("Code") essentially address the mechanism for execution and implementation of arbitral awards. Although an arbitral tribunal passing a domestic award enforce it similarly to a court decree, an arbitral tribunal under no legal presumption is treated as a court.

JURISDICTION AS PER CODE

Civil actions are contested in courts within whose local limits the cause of action has arisen, the subject property is situated, or the defendant resides. The court's jurisdiction in which a case can be instituted is dealt with under Sections 5 to 21 of the Code. Sections 36 to 74 provide for the execution of decrees and orders. Once a decree is passed, it may be executed either by the passing Court or transferred to a competent court with proper jurisdiction over the individual against whom the decree is passed or in the area within which the property is situated. In Sundaram Finance Ltd. v. Abdul Samad and Anr, Hon'ble Supreme Court held that the execution proceedings could be instituted by an award holder before any Indian court where assets are placed.

Provisions governing the transfer of decree are provided under section 39 of the Code. It stipulates that a decree passed by the concerned court in no way be sceptered to effectuate that particular decree against any individual or property beyond the legal scope of its jurisdiction. Moreover, Order 21 Rules 26 and 29 deal with incidents where the execution of the decree may be stayed to empower the judgement debtor to file an appeal.

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JURISDICTION AS PER THE ARBITRATION AND CONCILIATION ACT, 1996

UNCITRAL Model Law was adopted in 1985, with the need to reconcile domestic laws concerning international commercial arbitration. India later ratified it in the form of the Arbitration and Conciliation Act, 1996.

The definition of 'Court' with original jurisdiction to decide on the questions of formation on the subject matter of arbitration in case the subject matter of the suit is the same is mentioned in Section 2(1)(e) of the Act. Jurisdiction to hear awards deriving from that place arbitral agreements are determined in Sections 20, 31(4), and 42.

The place of arbitration and differences between the juridical seat and venue is enshrined under Section 20 of the Act. The Supreme Court in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc recognized the concept of the supervisory court, where the court practices supervisory jurisdiction over the arbitral proceedings. Later, in Indus Mobile Distribution (P) Ltd v. Datawind Innovations (P) Ltd. the court held that the jurisdiction of the court under the arbitration law is seat-centric because once the place of arbitration is determined, it is the judicial seat, irrespective of where the course of action took place.

The grounds for setting aside the arbitral award are mentioned under section 34 of the act. As per Section 34(6), the period for disposal of the application is within one year from the date of service of notice. As per section 35 of the act, an arbitral award is decisive and conclusive on the parties claiming under them. According to section 36 of the act, the arbitral award shall be enforced under the CPC just as if it were a decree of the court, unlike the 1940 Arbitration Act where the award was not at all binding and for the decree to be enforceable, it needed the judgement pronounced by the court.

In the Board of Control for Cricket in India v. Kochi Cricket (P) Ltd Supreme Court finally settled the position that section 36 would be applicable regarding the legal actions instituted before the 2015 amendment became effective.

THE SECTION 42 PREDICAMENT

Section 42's bare perusal manifests that it has a superseding impact on the other mentioned provisions of the Act. According to S.42 of the Act, the court where the primary application exuding from the arbitral proceedings or agreement of arbitration is made will have exclusive jurisdiction over all forthcoming court cases as well as power and jurisdiction over the arbitral processes. This runs counter to the 1996 Act which etched deeply the concept of the seat and supervisory jurisdiction. Therefore, Supreme Court in order to avoid conflict in BGS SGS Soma JV v. NHPC Ltd. held that once the parties choose the seat, Exclusive jurisdiction over any proceedings arising from the arbitration agreement has been accorded to the Court of the seat.

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RECIPROCITY BETWEEN SECTION 36 AND 42 OF THE ARBITRATION AND CONCILIATION ACT, 1996

According to section 38 of CPC, the decree can be executed either by the court which passed the order or by the court in which it was sent for execution. Furthermore, section 39 of CPC talks about the conditions for the transfer of any decree for execution by the court that passed the order or another court with competent jurisdiction. The first part of Section 38 of CPC talks about the enforcement of any decree by the court which passed it, however, it does not apply to the case of an arbitral award because, unlike judgments, an arbitral award is given by an Arbitral tribunal that lacks the power of the enforcement of the decree.

In this regard, Section 39 also cannot be applied because there is no such court that can transfer the decree for execution. Moreover, enforcement by the court to which the decree is sent also does not apply due to the lack of any deeming fiction. However, while determining the jurisdiction of the court to execute an award, Section 39 comes into the picture as it lays down specific essential indicators needed for the determination of the appropriate court in case of filing of execution petition.

According to Daelim Industrial Co. Ltd. v. Numaligarh Refinery Ltd., an arbitral award can be executed with a judgment debtor or his property at any particular place in close nexus, and in order to transfer the award to the court where, among other things, the judgement debtor's assets or possessions are located, the person in whose respect the award is not passed must bring an execution petition with the district court under whose jurisdiction the award was passed.

FILING OF EXECUTION APPLICATION

In Sundaram Finance Ltd. v. Abdul Samad, the Supreme Court held that S.42 of the Arbitration and Conciliation Act would not be applicable to execution applications. Execution can be filed throughout the country where the award can be enforced or executed, and the condition of requirement of obtaining a transfer of decree is not essential. However, the court failed to explain the situation where neither the judgment debtor resides, nor its property located under the court's jurisdiction is empowered or not to deal with the execution application for enforcement of the award. In Mohit Bhargava v. Bharat Bhushan Bhargava and ors., the Supreme Court concerning section 39(4) of CPC held that the executing court does not have the authority to entertain proceedings against the property located beyond its jurisdiction unless it falls under Order XXI Rule 3 of the Code.

In this regard, the Bombay High Court in Global Asia Venture Company v. Arup Parimal Deb and ors., with regards to territorial barriers, held that Section 39(4) talks about territoriality limitation. Thus, the court is well within its power to retain its jurisdiction to enforce the arbitral award. The court asserted that if the restrictions contained in CPC are applied to the enforcement of arbitral awards, it would be contrary to the very essence of the Act.

On the preliminary grounds, the judgement of the Bombay High Court was dismissed on maintainability by the Divisional Bench of the Bombay High Court. Furthermore, the Supreme Court stayed the whole execution proceedings concerning the assets present outside Mumbai.

Recently the Supreme Court in Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation Ltd said that "The law with regard to execution is not different for statutory corporations or the government." Despite terminating the contract for operating the airport metro line before the end of the allotted timeframe, the Delhi Metro Rail Corporation failed to pay termination costs to DAMEPL, which is owned by Anil Ambani's Reliance Infrastructure Limited.

CONCLUSION

There has been a substantial modification in the corporate and commercial legal regime in the past several years. Some standard practices must be prohibited, and only when it cannot seek relief from the arbitral tribunal, the victim may knock at the doors of the Court. This is aligned with the aims of the Act to minimize the Court's involvement in the arbitration. In Sundaram Finance, the Supreme Court deliberately constructed the authorization provisions pursuant to section 36 of the Act, given the statutory aim to permit the easy implementation of arbitration decisions as decrees. The courts must follow the judgment of Sundaram finance while executing any arbitral awards. With the transnational character of arbitration proceedings, the Supreme Court should also explain the territorial constraints indicated in Section 39(4) of the Code. To ensure dispute resolution is absolutely practicable in this situation, the courts will need to address the issues raised above and ensure that future rulings offer remedies that take into account the actual realities of conflict resolution for India.

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