SAGA LEGAL

COMMUNIQUE

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COURTS THIS MONTH

- The Hon'ble Supreme Court *In Re: Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act 1996 And the Indian Stamp Act 189, (Curative Petition (C) No. 44 of 2023)*, has held that the arbitration agreements can be valid even if they are not stamped or have insufficient stamp duty. A seven-judge Constitution Bench led by Chief Justice D.Y. Chandrachud unanimously held that unstamped arbitration was deemed inadmissible under the Stamp Act of 1899. However, it was not considered *void ab initio,* indicating that it was not invalid from the outset. The court while overruling its earlier judgment in *NN Global Mercantile vs. Indo Unique Flame* observed that "*The nature of objections to the jurisdiction of an arbitral tribunal on the basis that Stamp duty has not been paid or is inadequate in such as cannot be decided on a prima facie basis. Objection of this kind will require a detailed consideration of evidence and submissions and the finding as to the law as well as the facts. Obligating the courts to decide the issue of stamping under Section 8 or Section 11 stage will defeat the legislative intent underlying the Arbitration Act*".

- The Hon'ble Supreme Court *In Re: Article 370 of The Constitution, (W.P. (Civil) No. 1099 of 2019),* has held that Jammu and Kashmir did not attain any sovereignty post its accession to India. The Court further clarified that Article 370 of the Constitution of India was of a temporary nature, and it found no evidence of malice in the exercise of power under Article 370(3) of the Constitution by the President. A five-judge bench, led by Chief Justice of India ("**CJI**") D.Y. Chandrachud and including Justice Sanjay Kishan Kaul, Justice Sanjiv Khanna, Justice B.R. Gavai, and Justice Surya Kant, delivered three separate and concurring judgments. The CJI at the outset stated "*...here are three judgments of this Court – one authored by the CJI for himself, for Justice Gavai and Justice Surya Kant. There is a concurring opinion authored by Justice Kaul. Justice Sanjiv Khanna has concurred with both judgments*", the court in its conclusive part of the judgment stated, "*The State of Jammu and Kashmir does not retain any element of sovereignty after the execution of the IoA and the issuance of the Proclamation dated 25 November 1949 by which the Constitution of India was adopted. The State of Jammu and Kashmir does not have 'internal sovereignty' which is distinguishable from the powers and privileges enjoyed by other States in the country. Article 370 was a feature of asymmetric federalism and not sovereignty; b. The petitioners did not challenge the issuance of the Proclamations under Section 92 of the Jammu and Kashmir Constitution and Article 35622 of the Indian Constitution until the special status of Jammu and Kashmir was abrogated. The challenge to the Proclamations does not merit adjudication because the principal challenge is to the actions which were taken after the Proclamation was issued*."

- In the case of *Amanat Ali vs. the State of Karnataka and Others (W.P.(Criminal) No. 432 Of 2022)*, the Hon'ble Supreme Court has held that multiplicity of proceedings is not in the larger public interest. The Bench comprising of Justice B.R. Gavai and Justice Aravind Kumar was dealing with a writ petition seeking to consolidate or club all the FIRs registered against a man in different States at various police stations to the Court of competent jurisdiction at Guna, Madhya Pradesh. The Court observed that "*...following the principles laid down in Amish Devgan vs. Union of India and others (2021) 1 SCC 1, we deem it appropriate to exercise power conferred under Article 142 of the Constitution of India to accede to the relief claimed to the extent of consolidation of the FIRs registered in the State of Madhya Pradesh for being tried together as one trial as far as possible, as we are of the opinion that multiplicity of the proceedings will not be in the larger public interest and State also*".

- The Hon'ble Supreme Court in the case of *Sushma Shivkumar Daga & Anr. vs. Madhurkumar Ramkrishnaji Bajaj &Ors., (Civil Appeal No.1854 of 2023)*, has reiterated that a plea of fraud must be serious in nature in order to oust the jurisdiction of an Arbitrator. The Court further held that the Arbitral Tribunal has the authority to address all jurisdictional matters, including the existence and validity of an arbitration clause. This implies that the tribunal is empowered to determine its own competence. The Bench comprising of Justice Aniruddha Bose and Justice Sudhanshu Dhulia was hearing an appeal that sought a declaration that renders the Conveyance Deed void and validates the termination of registered Development Agreements. The Court observed that "*The plea of fraud raised by the appellants in their objection to the Section 8 application has never been substantiated. Except for making a bald allegation of fraud there is nothing else. This Court has consistently held that a plea of fraud must be serious in nature in order to oust the jurisdiction of an Arbitrator.*"

- In the case of *Union of India &Ors. vs. AIR Commodore NK Sharma (17038) ADM/LGL, (Civil Appeal No. 14524 Of 2015)*, the Hon'ble Supreme Court has ruled that making a policy is not in the domain of the Judiciary and the Tribunal is also a quasi-judicial body, functioning within the parameters set out in the governing legislation. The Division Bench comprising of Justice Abhay S. Oka and Justice Sanjay Karol was hearing an appeal filed by the Union of India under Section 31(1) of the Armed Forces Tribunal Act, 2007 against the judgment of the Armed Forces Tribunal, New Delhi. The court observed that "*...making policy, as is well recognized, is not in the domain of the Judiciary. The Tribunal is also a quasi-judicial body, functioning within the parameters set out in the governing legislation. Although it cannot be questioned that disputes in respect of promotions*

and/or filling up of vacancies is within the jurisdiction of the Tribunal, it cannot direct those responsible for making policy, to make a policy in a particular manner".

- The Hon'ble Supreme Court in the case of *Manik Hiru Jhangiani vs. the State of M.P., (Criminal Appeal No. 3864 of 2023),* has held that a violator engaged in misbranding is not subject to punishment under the Prevention of Food Adulteration Act, 1954 ("**PFA**") but is instead liable to pay penalties under the Food Safety and Standards Act, 1954 ("**FSSA**"). The Bench comprising of Justice Abhay S. Oka and Justice Sanjay Karol was hearing a criminal appeal that has been lodged by the Director of Bharti Retail Limited, a company involved in the operation of retail stores named 'Easy Day' with outlets across the country. The Court observed that *"In a case where after coming into force of Section 52 of the FSSA, if an act of misbranding is committed by anyone, which is an offence punishable under Section 16 of PFA and which attracts penalty under Section 52 of the FSSA, Section 52 of the FSSA will override the provisions of PFA. Therefore, in such a situation, in view of the overriding effect given to the provisions of the FSSA, the violator who indulges in misbranding cannot be punished under the PFA and he will be liable to pay penalty under the FSSA in accordance with Section 52 thereof."*

- In the case of *Shakti Yezdani & Anr. vs. Jayanand Jayant Salgaonkar & Ors., (Civil Appeal No. 7107 of 2017)*, the Hon'ble Supreme Court has clarified that the non-obstante clause in both, Section 109A(3) of the Companies Act, 1956, and Bye-law 9.11.7 of the Depositories Act, 1996, does not exclude the legal heirs from rightfully asserting their claim over the securities in comparison to the nominee. The Bench comprising of Justice Hrishikesh Roy and Justice Pankaj Mithal, while explaining the purpose for vesting of securities in favour of the nominee, observed that *"The vesting of securities in favour of the nominee contemplated under S. 109A of the Companies Act 1956 (parimateria S. 72 of Companies Act, 2013) & Bye-Law 9.11.1 of Depositories Act, 1996 is for a limited purpose i.e., to ensure that there exists no confusion pertaining to legal formalities that are to be undertaken upon the death of the holder and by extension, to protect the subject matter of nomination from any protracted litigation until the legal representatives of the deceased holder are able to take appropriate steps. The object of introduction of nomination facility vide the Companies (Amendment) Act, 1999 was only to provide an impetus to the investment climate and ease the cumbersome process of obtaining various letters of succession, from different authorities upon the shareholder's death."*

- The Hon'ble Supreme Court in the case of *Ram Kishor Arora vs. Directorate of Enforcement, (Criminal Appeal No. 3865 of 2023),* has held that in money laundering cases, the

written grounds of arrest must be given to the arrested person within 24 hours, further clarifying that the judgment in *Pankaj Bansal vs. Union of India* doesn't apply retrospectively. The failure to provide written grounds until the Pankaj Bansal judgment was not deemed illegal and the officer's actions were not in fault.The Bench comprising Justice Bela M. Trivedi and Justice Satish Chandra Sharma was hearing an appeal in which it dismissed the petition seeking a declaration that the arrest by the Directorate of Enforcement (ED) was illegal and violative of fundamental rights under Articles 14, 20, and 21 of the Constitution. The Court observed that "*the person arrested, if he is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written communication about the grounds of arrest as soon as may be i.e as early as possible and within reasonably convenient and requisite time of twenty-four hours of his arrest, that would be sufficient compliance of not only Section 19 of PMLA but also of Article 22(1) of the Constitution of India.*"

- The High Court of Bombay in the case of *Atos India Private Limited vs. The State of Maharashtra, (Maharashtra VAT Appeal No. 21 of 2015),*has ruled that intellectual property can be classified as 'goods' under the Maharashtra Value Added Tax Act, 2002 ("**the Act**") only if it is put on a medium for sale. The Court was hearing an appeal against the decision of the Commissioner of Sales Tax for categorizing the appellant's services under Section 2(24) of the Act, as subject to VAT. The Division Bench comprising of Justice KR Shriram and Justice Neela Gokhale observed that "*Intellect is not the property by itself. It is intellectual property which will become goods once put on a medium for sale. Intellectual property does not exist in the mind of the technician. What exists in his mind is the intellect and using that intellect the technician can create or develop goods. It is those goods which is the intellectual property when put on a medium for sale."*

- The High Court of Delhi in the case of *Telecom Regulatory Authority of India vs. Kabir Shankar Bose &Ors., (LPA 721 of 2018 & CM APPL. 53526 of 2018),* has ruled that the information related to the interception, tapping, or tracking of a phone fall within the exempt category for disclosure under Section 8 of the Right to Information Act, 2005 ("**RTI Act**"). The Telecom Regulatory Authority of India ("**TRAI**") has approached the Court under Clause 10 of the Letters Patent, against a directive issued by the Central Information Commission ("**CIC**") to collect information regarding the surveillance and tracking of phone calls under the provisions of the RTI Act. The Division Bench of Justice Vibhu Bakhru and Justice Amit Mahajan held that *"Any order passed by the concerned Government in relation to interception or tapping or tracking of a phone is passed when the*

authorized officer is satisfied that it is necessary or expedient so to do in the interest of sovereignty and integrity of India, the security of the State, friendly relations with the foreign states or public order or for preventing incitement to the commission of an offence. Such order, therefore, by its very nature may have been passed in the process of investigation."

- The High Court of Delhi in the case of *Ashwini Kumar Upadhyay vs. Union of India & Anr, (W.P.(C) 7566 of 2019)*, has noted that the act of linking Aadhar Cards with property transactions, whether movable or immovable, is a policy matter beyond the scope of judicial intervention. The Division Bench comprising of Justice Rajiv Shakdher and Justice Girish Kathpalia while hearing the petition observed that *"We are of the considered view that the exercise of linking Aadhar Cards with transactions related to property – movable as well as immovable, basically falls in the domain of policy making and consequently, beyond the scope of judicial intervention. It is only once a policy is framed and/or acted upon by the executive that the decision would be open to judicial scrutiny".*

- The High Court of Delhi in the case of *Randa Chehab vs. Union of India &Ors. (W.P.(C) 1250 of 2023)*, has ruled that foreigners collecting funds ostensibly for charitable activities while on a business visa is not permitted. The Court was hearing a Writ Petition under Article 226 of the Constitution of India contesting the blacklisting and deportation from the Trivandrum Airport. A Single-Judge Bench comprising of Justice Subramonium Prasad observed, "*...collecting money ostensibly for charitable activity is not permitted when a foreigner comes to India on a business visa. Since the Petitioner has admittedly acted contrary to what is permitted, the decision taken by the authorities to blacklist the Petitioner cannot be said to arbitrary and as such requiring any interference under Article 226 of the Constitution of India*".

- In the case of *Global Health Care Products vs. Krantikari Kamgar Union, (W.P. No.1164 of 2022)*, the High Court of Bombay has ruled that despite an illegal closure, the workers must prove that they were not gainfully employed to be eligible for benefits under the law. A Single-Judge Bench comprising Justice NJ Jamadar observed that *"...a special mechanism is provided for authorizing closure of the establishment. If an employer resorts to the closure of the establishment in flagrant violation of statutory provisions, in my considered view, such employer deserves to be visited with the consequences which emanate from mandatory statutory provisions. In such a case, the employer cannot be permitted to urge that notwithstanding the illegal closure the workmen must establish that he was not gainfully employed to be entitled to claim the benefits which are available under the law."*

- The High Court of Bombay in the case of *Star Engineers (I) Pvt. Ltd. vs. Union of India, (W.P. No.15368 of 2023)*, has stated that a genuine and unintentional mistake in providing information in a GST return should be acknowledged, and the department should allow for its correction. A Division Bench comprising of Justice G.S. Kulkarni and Justice Jitendra Jain observed that *"…the situation like in the present case, was also the situation in the proceedings before the different High Courts as noted by us above, wherein the errors of the assessee were inadvertent and bonafide. There was not an iota of an illegal gain being derived by the assessees. In fact, the scheme of the GST laws itself would contemplate correct data to be available in each and every return of tax, being filed by the assessees. Any incorrect particulars on the varied aspects touching the GST returns would have serious cascading effect, prejudicial not only to the assessee, but also to the third parties."*

- The High Court of Karnataka in the case of *Nitin Shambhukumar Kasliwal vs. Debt Recovery Tribunal & Anr, (W.P. No. 26333 of 2023)* has observed that the very act of the Tribunal in directing the surrender of the passport of a citizen or its detention before it would amount to the impounding of the passport, and such power is unavailable to the Tribunal. Relying on the case of *Suresh Nanda vs. CBI,* the Single-Judge Bench comprising of Justice M Nagaprasanna noted that, *"...the very act of the Tribunal in directing surrender of the passport of a citizen or its detention before it, would amount to impounding of passport. Such power is unavailable to the Tribunal."*

- The High Court of Delhi in the case of *M/s Suman International & Anr. vs. Mahendra Gulwani & Anr*., *(FAO (COMM) 199 of 2021)* has ruled that the party holding a trademark registration in one mark or shape cannot be allowed to monopolize every variant of the said shape. The present Appeal challenged a decision that prohibited the Appellants from undertaking activities such as manufacturing, selling, and advertising goods featuring the disputed mark. The contested mark was considered to infringe upon the registered trademark granted to the Respondent. The Division Bench of Justice Vibhu Bakhru and Justice Amit Mahajan observed that *"The party having registration in one mark / shape cannot be allowed to monopolise each and every variant of the said shape only because both happened to be flowers. If that argument is accepted then the respondents would be entitled to seek injunction against every manufacturer who wants to manufacture a confectionary in a shape of a flower."*

NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Notification Ref. no. RBI/2023-24 / 100 of FIDD.MSME & NFS. BC. No.13 / 06.02.31 / 2023-24 dated 28.12.2023, the Reserve Bank of India ("**RBI**") has issued a classification of enterprises as Micro, Small and Medium enterprises ("**MSME**"). Accordingly, the following amendments are made in the Master Direction- Lending to MSMEs Sector dated 24.07.2017: *"Clause 2.2: All the above enterprises are required to register online on the Udyam Registration portal and obtain 'Udyam Registration Certificate'. For PSL purposes banks shall be guided by the classification recorded in the Udyam Registration Certificate (URC)."*

- In order to develop secondary market operations of receivables acquired as part of 'factoring business' as defined under the Factoring Regulation Act, 2011, the Reserve Bank of India ("**RBI**") vide Notification Ref. no. RBI / 2023-24 / 99 of DOR.STR.REC.60 / 21.04.048 / 2023-24 dated 28.12.2023, has decided that transfer of such receivables by eligible transferors will be exempted from the Minimum Holding Period requirement, subject to fulfilment of the following conditions: (i) The residual maturity of such receivables, at the time of transfer, should not be more than 90 days, and (ii) The transferee conducts proper credit appraisal of the drawee of the bill, before acquiring such receivables.

- Based on representations received from the market participants and for ease of compliance and investor convenience, the Securities and Exchange Board of India, (**"SEBI"**) vide Circular no. SEBI / HO / MIRSD / MIRSD-PoD-1 / P / CIR / 2023 / 193 dated 27.12.2023 has extended the last date for submission of 'choice of nomination' for Demat accounts and Mutual Fund folios to 30.06.2024. However, all other provisions related to the requirement of Nomination as provided in SEBI Master Circular dated 19.05.2023 for Mutual Funds and SEBI Master Circular dated 06.10.2023 for Depositories shall remain unchanged.

- Vide Circular no. SEBI / HO / MIRSD / MIRSD-PoD1 / P / CIR / 2023 / 197 dated 28.12.2023, the Securities and Exchange Board of India, (**"SEBI"**) has mandated settlement of running account of the client's funds lying with the Trading Member ("**TM**"). Accordingly, the TM, after considering the End of the Day obligation of funds across all the Exchanges, shall settle the running accounts at the choice of the clients on a quarterly and monthly basis, on the dates stipulated by the Stock Exchanges Stock exchanges shall, jointly, issue the annual calendar for the settlement of running account (quarterly and monthly) at the beginning of the financial year.

DEALS THIS MONTH

- Competition Commission of India has given the green light to Philips Carbon Black Limited's ("**PCBL**") acquisition of Aquapharm Chemicals, making Aquapharm a 100 (One hundred) percent wholly-owned subsidiary of PCBL. PCBL is a specialty chemicals company involved in carbon black manufacturing and green power generation, while Aquapharm specializes in manufacturing water treatment chemicals and is based in Pune.

- Adani Enterprises' subsidiary AMG Media Networks has acquired a 50.5% (Fifty-point five percent) stake in Indo-Asian News Service India Pvt. Ltd. ("**IANS**"), a newswire agency, for an amount of INR 5,10,000/- (Rupees Five Lakh Ten Thousand only), as a part of Adani's efforts to strengthen its presence in the media sector, according to a regulatory filing. The said acquisition is a part of Adani Enterprises' strategy to consolidate its media interests.

  Luxembourg Specialist Investment Fund FCP-RAIF – M&G Catalyst Capital Fund, Asia Pacific Fund, and the Prudential Assurance Company Limited, collectively part of M & G Group, have received the Competition Commission of India's approval to acquire 11% (Eleven) percent of the share capital in Trustroot Internet Private Limited, the owner of the 'Udaan' online B2B e-commerce platform, which facilitates the sale and purchase of goods. M&G Group is the ultimate holding company, that operates a global savings and investments business, managing investments for individuals and institutional investors worldwide, and has no direct physical presence in India.

- Alpha Alternatives Holdings Pvt. Ltd. ("**AAHPL**"), and its other entities, have received approval from the Competition Commission of India (CCI) for the acquisition of a 10% (Ten) percent stake in Dilip Buildcon, an engineering procurement and construction firm. AAHPL is a multi-asset class asset management firm that raises capital and manages investments on behalf of its clients.

- IndusInd International Holdings Ltd, ("**IIHL**") BFSI (India) Ltd and Aasia Enterprises collectively being the acquirers have been cleared of the acquisition of a controlling stake in Reliance Capital. The Mauritius-registered IIHL increased its holding to 26 (Twenty-Six 15 (Fifteen) percent and INR 9,661 crores bid by IIHL was also accepted by Reliance Capital.

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