



SAGA LEGAL

COMMUNIQUE

JUNE 2023



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COURTS THIS MONTH

- The Supreme Court in the case of *Ghanshyam vs. Yogendra Rathi (Civil Appeal Nos.7527-7528 Of 2012)* has clarified that an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires the possessory title and the same is protectable in view of Section 53A of the Transfer of Property Act, 1882. The Bench comprising of Justice Dipankar Datta and Justice Pankaj Mithal, while adjudicating the appeal observed that *“...the defendant-appellant parted with the possession of the suit property by putting the plaintiff-respondent in possession of it under an agreement to sell. The plaintiff-respondent in this way came to acquire possessory title over the same. The defendant-appellant, as such, ceased to be in possession of it as an owner rather occupied it as a licensee for a fixed period which stood determined by valid notice, leaving the defendant-appellant with no subsisting right to remain in possession of the suit premises.”*
- The Supreme Court in the case of *Hasmukhlal Madhavlal Patel and Anr. vs Ambika Food Products Pvt Ltd. and Ors. (Civil Appeal No. 8194-8195 of 2018)* has ruled that the decision to allot additional shares under the Companies Act, 1956 cannot be invalidated solely on the basis that the promoters of the company have also gained from it. The Bench comprising of Justice K.M. Joseph and Justice B.V. Nagarathna has upheld a decision regarding the disproportionate allotment of rights shares in a private limited company, which significantly increased the shareholding percentage of one shareholder group over another. The Court while setting aside the decision of the National Company Law Appellate Tribunal held that *“...the appellants cannot be described as having acted in a defective or in an unfair manner, in the matter of allotment of further shares particularly when the contention of the respondents about the bona fides of the decision to increase the authorised capital has been found in favour of the appellants.”*
- In the case of *Coal India Limited vs. Competition Commission of India (Civil Appeal No. 2845 of 2017)*, the Supreme Court has observed that Public sector undertakings and government enterprises including State monopolies are required to avoid anti-competitive agreements and abuse of dominant position as per the provisions of the Competition Act 2002. The Bench comprising of Justice K.M. Joseph, Justice B.V. Nagarathna and Justice Ahsanuddin Amanullah while holding that the Competition Act is applicable to Coal India Ltd., held that *“The role which was envisaged for the public sector company could not permit them to outlive their utility or abuse their unique position. Disinvestment done in a proper manner was perceived as a solution. However, sans disinvestment, State Monopolies, Public Sector Companies and Government*



Companies were expected to imbibe the new economic 85 philosophy. The novel idea, which permeates the Act, would stand frustrated, in fact, if State monopolies, Government Companies and Public Sector Units are left free to contravene the Act..."

- The Supreme Court in the case of *Laxman Prasad @ Laxman vs. State of Madhya Pradesh (Criminal Appeal No(S). 821 of 2012)* has reiterated that in a case of circumstantial evidence, the chain of evidence has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The Bench comprising of Justice Vikram Nath and Justice Ahsanuddin Amanullah while acquitting a man in the murder case held that *"We do not find such conclusion of the High Court to be strictly in accordance with law...if the High Court found one of the links to be missing and not proved in view of the settled law on the point, the conviction ought to have been interfered with."*
- The Supreme Court in the matter of *Jitendra Nath Mishra vs. State of U.P. & Anr. (Criminal Appeal No. 978 of 2022)* has held that as per Section 319 of the Code of Criminal Procedure, 1973 ("**Cr.P.C.**") a person not named in the FIR can be added as accused if there's sufficient evidence of his involvement. The Bench comprising of Justice Dipankar Datta and Justice Pankaj Mithal while upholding the decision of Allahabad High Court observed that *"Section 319, Cr.PC, which envisages a discretionary power, empowers the*

court holding a trial to proceed against any person not shown or mentioned as an accused if it appears from the evidence that such person has committed a crime for which he ought to be tried together with the accused who is facing trial. Such power can be exercised by the court qua a person who is not named in the FIR, or named in the FIR but not shown as an accused in the charge-sheet. Therefore, what is essential for exercise of the power under section 319, Cr. PC is that the evidence on record must show the involvement of a person in the commission of a crime and that the said person, who has not been arraigned as an accused, should face trial together with the accused already arraigned..."

- The Supreme Court in the matter of *A Srinivasulu vs. The State represented by the Inspector of Police (Criminal Appeal No. 2417 of 2010 and other connected matters)* has emphasized that sanction for prosecution as per Section 197(1) of the Code of Criminal Procedure, 1973 ("**Cr.P.C.**") despite the fact that the official was acting outside the scope of his official duties. The bench comprising of Justice V. Ramasubramanian and Justice Pankaj Mithal referring to various precedents stated that *"...to decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty...Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under*



Section 197 Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.”

- The High Court of Bombay in the case of *PVR Ltd. vs. M/S Proetus Ventures LLP and Ors. (CS Suit No. 53 of 2023)* has held that merely because Payee’s bank account is in a particular city does not amount to the bill being payable to that particular city only. A Single-judge Bench of Justice Arif S Doctor observed and opined that *“The common law proposition is undoubtedly based on the doctrine of forum conveniens, it is basis this that the Plaintiff has filed the present suit in this Court only to be told by the Defendant who neither disputes nor denies the Plaintiffs claim that Suit must necessarily be instituted in a Court which for the Plaintiff is clearly not forum conveniens and within which, no part of the cause of action has arisen. Such a contention must only be stated to be rejected...In today’s times of electronic transfers payment can be effected from anywhere in the world. Merely because the details of the receiving bank are within the jurisdiction of another city, this fact alone would not mean (a) that the amounts are payable in that city and (b) that part of the cause of action had arisen in that city. ”*
- The High Court of Kerala in the case of *Mohan V.V and others vs. the State Of Kerala and others (WP(C) NO. 18952 of 2023)* has stated that Installation of Artificial Intelligence cameras (AI cameras) on roads to

detect violations of traffic rules, is an innovative step and it should not be discouraged over mere allegations of corruption or lack of transparency on the government's part in installing such cameras. A Single-Judge Bench comprising of Justice P V Kunhikrishnan observed that *“There may be objections regarding the transparency in the decision making by which the cameras and other equipment are purchased. It appears that, even allegations of corruption are raised. That is a different matter which is to be dealt separately. For that reason, an innovative venture initiated by the Motor Vehicle department may not be discouraged. Since it is introduced recently, there may be some technical defects and lapses...”*

- In the case of *Bharat Parihar vs. the State of Maharashtra (Writ Petition No.3742 of 2023)*, the High Court of Bombay has held that under Section 83 of the Goods and Service Tax Act, 2017 (**“GST Act”**) the provisional attachment order is not valid after a period of one year from the date of the order made. The Division Bench comprising of Justice G.S. Kulkarni and Justice Jitendra Jain was dealing with a series of petitions challenging the provisional attachment of the bank account of the Petitioner. The Court held that *“...the communication dated 21st April 2022 (Exhibit “B” to the petition) provisionally attaching the Petitioner’s bank account is rendered illegal and invalid by virtue of the provisions of Section 83(2) of the CGST Act. The extension of the provisional*



attachment by communication dated 19th April 2023 (Exhibit "G-1" to the petition) is hereby quashed and set aside"

- In the case of *Bina Saxena w/o Late Ravendra Kumar Saxena vs. Union of India (Writ Petition No. 628 of 2020)* the High Court of Bombay has ruled that a retired central government employee, who did not obtain prior approval for treatment, is not entitled to medical reimbursement above Central Government Health Scheme ("CGHS") rates. A Division Bench of Acting Chief Justice Nitin Jamdar and Justice Sandeep V Marne while upholding the decision of the Tribunal held that "even if it is to be assumed that admission of Petitioner's husband was an emergency case, the only amount to which Petitioner would be entitled to is as per CGHS rates. In short, expenditure for the entire treatment availed at Ruby Hall Clinic by Petitioner's husband is reimbursed, albeit at CGHS rates. No rule or administrative instruction is placed on record by Petitioner to show that any amount over and above CGHS rates can be reimbursed. Therefore, no fault can be found in the action of the Respondents who have taken sympathetic view of the matter and have reimbursed the entire costs of medical treatment (at CGHS rates) by ignoring the fact that Referral Memo was not obtained from CGHS Wellness Centre and Petitioner's husband was not admitted in emergency situation."
- The High Court of Chattisgarh in the matter of *State of Chhattisgarh & Ors. vs. Umesh Thakur (Writ Appeal No. 236 of 2022)* has stated that if Rules for 'compassionate appointment' prohibits the appointment of family members of a deceased government employee on the ground that a family member is already in government service then the Court cannot direct for holding inquiry qua dependency as it would mean rephrasing of the terms of the applicable scheme. The Full Bench comprising of Chief Justice Ramesh Sinha, Justice Sanjay K. Agrawal, and Justice Parth Prateem Sahu observed that "*In the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to rewrite the terms of the Policy. It is well settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee...*"
- The High Court of Bombay in the case of *Hemant Dhirajlal Banker vs. the State of Maharashtra with Meenakshi Rupin Banker vs. the State of Maharashtra (Criminal Application No. 488 of 2020)* has held that threatening someone into giving up his demand for the repayment of money is out of the scope of the offense of Extortion as defined under Section 383 of the Indian Penal Code, 1860 ("IPC"). The Division Bench comprising of Justice Sunil B. Shukre and Justice M.M. Sathaye referring to precedents observed that



“...not only putting a person under fear of any injury and dishonestly inducing the person so put in fear to deliver the property but also actual delivery of property are a sine-qua-non of the offence of extortion, as defined under Section 383 IPC...”

- The High Court of Madras in the case of *Elephant G Rajendran vs. The Registrar General and others (WP No.22460 of 2012)* has observed that ‘Untouchability’ is not merely caste-based but included all practices of social ostracism and exclusion that have their bases in ritual ideas of purity/pollution and hierarchy/subordination. A Single-Judge Bench comprising of Justice SM Subramaniam highlighted that *“A broad reading of Article 17 means that not only the caste-based practice of untouchability falls within the ambit of the constitutional prohibition, but practices that bear a family resemblance to “untouchability” are captured as well. This requires the Court to ask whether a particular practice, like untouchability, is a practice of social subordination, exclusion, and segregation, based upon an idea that certain personal characteristics (whether caste, or gender, or menstruation) can justify relegating individuals to an inferior position in society.”*
- The High Court of Karnataka in the case of *B S Kumar Swamy vs. the State Of Karnataka (Writ Petition No. 2130 of 2022)* has directed State and Government agencies to determine the tax difference calculation for pre-GST works contracts. A Single-Judge Bench of Justice S. Sunil Dutt Yadav issued the following guidelines: *“(a) Calculate the works executed pre-GST (prior to 01.07.2017) under KVAT regime and payments received by the Petitioners. (b) The payments received by the Petitioners pre-GST for such of the works executed before 01.07.2017 are to be assessed under KVAT tax regime – either under COT or VAT scheme as applicable. (c) Calculate the balance works to be completed or completed after 01.07.2017, in the original contract. (d) Derive the rate of materials, KVAT items required or used to complete the balance works. (e) Deduct the “KVAT” amount from those materials and the service tax, if applicable. (f) Add the applicable “GST” on those items. (g) Input Credit on the materials is to be arrived at and be set off as against the output GST, for those assessed under regular VAT. (h) Further, the “tax difference” should be calculated on such balance works executed or to be executed after 01.07.2017 separately...”*



NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Circular no. 09 of 2023 and F. No. 370149 / 109 / 2023 - TPL dated 28.06.2023, the Central Board of Direct Taxes (“**CBDT**”) has issued an order under section 119 of the Income-tax Act, 1961 for extension of time limits for submission of certain TDS/TCS Statements. Accordingly, it has been stated that *“(i) The statement of deduction of tax for the first quarter of the financial year 2023-24, required to be furnished in Form No. 26Q or Form No. 27Q, on or before 31st July 2023 under Rule 31A of the Income-tax Rules, 1962 (“the Rules”), may be furnished on or before 30th September 2023. (ii) The statement of collection of tax for the first quarter of the financial year 2023-24, required to be furnished in Form No. 27EQ, on or before 15th July 2023 under Rule 31AA of the Rules, may be furnished on or before 30th September 2023.”*
- Vide Circular no. SEBI / HO / DDHS / DDHS-POD2 / P / CIR / 2023 / 105 dated 27.06.2023, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has directed the All Credit Rating Agencies (“**CRAs**”) to disclose information on Issuers Not Cooperating (“**INC**”). Accordingly, a CRA shall disclose two lists of issuers who are non-cooperative with the CRA, separately for (i) Securities that are listed, or proposed to be listed, on a recognized stock exchange, and (ii) Other ratings. The said circular shall come into force with effect from 15.07.2023.
- Vide Circular no. SEBI / HO / AFD / PoD1 / CIR / 2023 / 96 dated 21.06.2023, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued units of Alternative Investment Funds (“**AIFs**”) in dematerialized form. Accordingly, the terms of transfer of units of AIF held by an investor in the dematerialized form shall continue to be governed by the terms of the private placement memorandum, agreements entered between the AIF and the investors, and any other fund documents. In addition to this, the Depositories are directed to bring the provisions of the said circular to the notice of their members/participants and also disseminate the same on their websites and make necessary amendments to the relevant Bye-laws, Rules, and Regulations.
- Vide Notification Ref. no. RBI/2023-24/45 A.P. (DIR Series) Circular No. 06 dated 22.06.2023, the Reserve Bank of India (“**RBI**”) has issued Remittances to International Financial Services Centres (“**IFSCs**”) under the Liberalised Remittance Scheme (“**LRS**”). Presently, remittances to IFSCs under LRS can be made only for making investments in securities. As per the said circular, it is directed that Authorised Persons may facilitate remittances by resident individuals under the purpose of ‘studies abroad’ as mentioned in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000 for payment of fees to foreign universities or foreign



institutions in IFSCs for pursuing courses

- Vide Notification Ref. no. RBI/2023-24/46 FMRD.FMSD.03/03.07.25/2023-24 dated 23.06.2023, the Reserve Bank of India (“**RBI**”) has updated the list of ‘significant benchmarks’ administered by Financial Benchmarks India Pvt. Ltd.

(“**FBIL**”). The said list is as follows: (i) Overnight Mumbai Interbank Outright Rate (MIBOR); (ii) USD/INR Reference Rate; (iii) Treasury Bill Rates; (iv) Valuation of Government Securities; (v) Valuation of State Development Loans (SDL); (vi) Modified Mumbai Interbank Forward Outright Rate (MMIFOR).



DEALS THIS MONTH

- Adani Enterprises Limited is all set to acquire 100% (One hundred percent) equity shares in the online train booking and information platform Trainman via its wholly-owned subsidiary Adani Digital Labs. Founded in 2011, Trainman is an Indian travel booking application that enables passengers to check the PNR (Passenger Name Record) status, predicts the possibility of getting a confirmed seat in case of a wait list, and also provides real-time updates on seat availability, running status, time table, coach position, fare calculator, etc. The acquisition is a step forward for Adani Group in its digital journey and gives it a foothold in the travel space.
- India's premium beauty and skincare brand VLCC has announced the acquisition of Happily Unmarried Marketing Private Limited, which owns men's grooming brand Ustraa, for an undisclosed amount. Founded in 2015 Ustraa was one of India's first D2C brands focused on men's grooming. The acquisition is expected to enable VLCC to foray into the men's grooming space and leverage Ustraa's tech stack to scale its presence online.
- Edtech Unicorn Physics Wallah has entered an equity partnership with Kerala-based hybrid learning platform Xylem Learning. Physics Wallah has acquired a 50% (Fifty percent) stake, and the cash and equity deal is valued at Rs. 500 crore, which it will be investing over the course of the next three years. The partnership is aimed at strengthening the presence of Physics Wallah in the southern market.
- Bengaluru-based UrbanPiper, a software-as-a-service platform for restaurants, has acquired the US business of food delivery aggregator Ordermark for an undisclosed amount with an intention to expand its global footprint. The addition of Ordermark's technology and business expertise will enhance UrbanPiper's capabilities and accelerate its growth, particularly in the United States and Canada.
- E-commerce enabler GoKwik has acquired chat commerce startup Tellephant to help tap into the potential of conversational commerce. Tellephant is a Bangalore based, artificial intelligence and machine learning software company that specializes in omni channel conversations that create delightful user experiences. With this acquisition, GoKwik has launched its third product KwikChat on Whatsapp, catering to multiple use cases across the ecommerce funnel.



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