



SAGA LEGAL

COMMUNIQUE

MARCH 2023



TABLE OF CONTENTS

Courts this Month	1
Notifications/Amendments Insight	7
Deals of the Month	9



COURTS THIS MONTH

- The Supreme Court in the case of *Debidutta Mohanty vs. Ranjan Kumar Pattanaik and Ors. (Civil Appeal No. 4939 of 2022)* has held that under the provisions of Rule 51(7) of the Orissa Minor Mineral Concession Rules, 2016 (“**OMMCR**”), the Collector is a competent authority to cancel a lease deed for non-production of the solvency certificate. A Bench comprising of Justice M.R. Shah and Justice B.V. Nagarathna had set aside the Order of the Orissa High Court which had held that Tahsildar is the competent authority to cancel a lease deed under Rule 51(7) of OMMCR. The Court upheld the order of the Collector cancelling a lease deed for a sand sairat for non-production of a valid solvency certificate along with the bid, which was one of the conditions stipulated in the auction notice.
- The Supreme Court in the case of *Ashutosh Samanta (D) by LRs. and Others vs. SM. Ranjan Bala Dasi and Others (Civil Appeal No. 7775 of 2021)* observed that presumption under Section 90 of the Indian Evidence Act, 1872 with regard to the genuineness and regularity of documents that are more than 30 years old, is inapplicable when it comes to proof of wills. The Bench comprising of Justice S. Ravindra Bhat and Justice Hima Kohli was hearing an appeal against the decision of the Calcutta High Court which had confirmed the decision of the trial court allowing a petition for the grant of letters of administration under Section 278 of the Indian Succession Act, 1925. The Court clarified that “...a presumption regarding documents 30 years old does not apply to a will. A will has to be proved in terms of Section 63(c) of the Succession Act read with Section 68 of the Evidence Act.”
- In the case of *Nand Lal and Others vs. the State of Chhattisgarh (Criminal Appeal No. 1421 Of 2015)*, the Supreme Court has reiterated that the conviction of an accused purely based on the oral testimony of interested witnesses, without sufficient corroboration, would not be sustainable. Taking into consideration the delay in lodging the FIR, with the circumstance of their names not being mentioned in the contemporaneous documents, the possibility of the said accused being falsely implicated cannot be ruled out, the Bench comprising of Justice BR Gavai, Justice Vikram Nath, and Justice Sanjay Karol reversed the conviction imposed by the Court. The Bench observed that “*The real difficulty comes in the case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial.*”
- The Supreme Court in the case of *Ajay Kumar Radheshyam Goenka vs. Tourism Finance Corporation of India Ltd. (Criminal Appeal No. 170-172 of 2023)* has clarified that the initiation of the insolvency process to recover a debt under the Insolvency and Bankruptcy Code 2016 would not absolve accused from criminal liability



in cheque dishonor cases. The Bench comprising of Justice Sanjay Kishan Kaul, Justice Abhay S Oka, and Justice J.B. Pardiwala observed that “... where the proceedings under Section 138 of the NI Act had already commenced and during the pendency, the plan is approved or the company gets dissolved, the directors and the other accused cannot escape from their liability by citing its dissolution. What is dissolved is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act. They will have to continue to face the prosecution in view of the law laid down in *Aneeta Hada (supra)*. Where the company continues to remain even at the end of the resolution process, the only consequence is that the erstwhile directors can no longer represent it.”

- The Supreme Court in the matter of *M/S. Platinum Theatre and Others vs. Competent Authority Smugglers And Foreign Exchange Manipulators (Forfeiture Of Property) Act, 1976 (“The Act”)* and another (Civil Appeal No(S). 4369 of 2009) noted that the object of the Act is to provide for forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators, and at the same time to ensure effective prevention of smuggling activities and foreign exchange manipulation. The Bench comprising of Justice Ajay Rastogi and Justice Bela M. Trivedi while upholding the order passed by the Karnataka High Court under Section 7 read with 19(1) of the Act observed that “...it is necessary to deprive persons engaged

in such activities and manipulations of their ill-gotten gains. The Act also provides that such persons have been augmenting such gains by violations of wealth tax, income tax, or other laws or by other means and have thereby been increasing their resources for operating in a clandestine manner and to nail such persons who are holding the properties acquired by them through such gains in the name of their relatives, associates, and confidants.”

- In the matter of *Sundar @ Sundarrajan vs. State by Inspector of Police (Review Petition (Crl.) Nos. 159-160 of 2013)* the Supreme Court has observed that the ‘rarest of rare’ doctrine requires that the death sentence not be imposed only by taking into account the grave nature of the crime but only if there is no possibility of reformation in a criminal. The Bench comprising of Chief Justice of India D.Y. Chandrachud, Justice Hima Kohli, and Justice P.S. Narasimha was hearing a plea to review the death penalty imposed on a convict for kidnapping and murdering a seven-year-old child. The Bench opined that “...the sex of the child cannot be in itself considered as an aggravating circumstance by a constitutional court. The murder of a young child is unquestionably a grievous crime and the young age of such a victim as well as the trauma that it causes for the entire family is in itself, undoubtedly, an aggravating circumstance. In such a circumstance, it does not and should not matter for a constitutional court whether the young child was a male child or a female child. The murder



remains equally tragic. Courts should also not indulge in furthering the notion that only a male child furthers family lineage or is able to assist the parents in old age. Such remarks involuntarily further patriarchal value judgements that courts should avoid regardless of the context.”

- The Supreme Court in the case of *Mah. Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and Ors. (SLP (C) No. 24894 of 2009)* has ruled that an affinity test is not a conclusive test to decide caste claims and is not an essential part of the verification process of the caste/tribe claims. The Bench comprising of Justice S.K. Kaul, Justice A.S. Oka, and Justice Manoj Misra answered a reference pertaining to the question of whether the affinity test is integral for determining the Scheduled Caste or Scheduled Tribe status of an applicant by a ‘scrutiny committee’. The Court observed that *“Only when the Scrutiny Committee after holding an inquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making an inquiry, an occasion for the conduct of affinity test will arise...”*
- The National Company Law Tribunal in the matter of *IDBI Bank Limited vs. Jaypee Infratech Limited (“JIL”)* (IA. NO. 2836/PB/2021) has approved a bid by Suraksha Realty and Lakshdeep Investments and Finance to buy JIL, spelling relief for more than 20,000 homebuyers in NCR nearly six years after the debt-ridden company entered into the insolvency process. The Special Bench (New Delhi), comprising of Justice Ramalingam Sudhakar (Judicial Member) and Shri L.N. Gupta (Technical Member) held that *“...The Monitoring Committee will supervise and monitor the progress of construction of units and related infrastructure developments on a day-to-day basis and file the progress report before this Adjudicating Authority on monthly basis;”* The said order has further been challenged before the National Company Law Appellate Tribunal.
- The High Court of Bombay in the case of *Ram Omprakash Patil vs. Secretary, Government of India (“GOI”) and Ors. (Writ Petition (L) No. 31918 of 2022)* has ruled that once the highest bidder of a tender has accepted the refund of the deposit paid to confirm the contract without any reservations, he cannot challenge the cancellation of the tender as the contract would stand rescinded. A Division Bench comprising of acting Chief Justice S.V. Gangapurwala and Justice Sandeep V. Marne observed that *“Once having accepted the refund of the amount deposited by him pursuant to the auction, it will not be open for the Petitioner (Winning Bidder) to turn around... Encashing the cheque of the amount refunded by the Respondents (GOI) is not compatible*



with the plea of the Petitioner to proceed ahead with the alleged contract. Accepting the amount of earnest money of 25% deposit by the Petitioner from the Respondents would be a death knell for the Petitioner. Accepting the refund of the amount from the Respondents would demonstrate that if at all there is a contract, the parties have rescinded the same.”

- The High Court of Karnataka in the case of *Basangouda vs. Muddangouda & Others (Regular Second Appeal No. 7094 Of 2010)* has held that upon acquiring the partition of the property agreed upon by the family, a Hindu female becomes the absolute owner of the said property in such a way that it cannot be termed as acquisition by inheritance and hence, the same shall not devolve upon her siblings, upon her death. A Single-Judge Bench comprising of Justice C.M. Joshi while setting aside the order passed by the Trial Court observed that *“Once there is a partition and properties have been divided by metes and bounds, it becomes absolute property of such sharer. If the sharer had any surviving heirs at the time of partition, the property may become the joint family property of the acquirer and his family members. Therefore, Ex.P1 cannot be construed to convey the property by way of inheritance at any stretch of the imagination...”*
- In the case of *Liladhar @ Vijay Lodhi and Pratap Judishthir Hajra vs. the State of Maharashtra (Criminal Appeal*

No. 134 & 1190 Of 2022), the High Court of Bombay has granted bail to two accused members of ‘Sanatan Sanstha’ in the Sunburn Terror Attack Conspiracy 2017 and Nallasopara Arms Haul Case 2018. A Division Bench comprising of Justice Sunil B Shukre and Justice Kamal Khata noted that *“Sanatan Sanstha’ is an organization which has not been declared to be a banned or terrorist organization or a frontal organization of any banned terrorist group within the meaning and contemplation of Unlawful Activities (Prevention) Act, 2004. In fact, the official website of ‘Sanatan Sanstha’ shows that it is a registered charitable trust and its aim is to impart spiritual knowledge to the curious in society, inculcate religious behavior in the masses, and provide personal guidance to seekers for their spiritual upliftment...”*

- In the matter of *Kalpesh Ghevarchand Jain vs. Union of India and Ors. (Writ Petition No. 782 of 2023)*, the High Court of Bombay has ruled that the customs authorities have no power to seal the immovable property of a person allegedly involved in smuggling goods. A Division Bench comprising of Justice Sunil B. Shukre and Justice Kamal Khata was dealing with a Writ petition seeking the de-sealing of the premises and his statement under Section 108 of the Customs Act, 1962 be recorded in a visible but not audible distance of his advocate. The Court noted that *“...Section 110 and Section 121 respectively empower the customs authorities to seize the goods liable to*



confiscation and confiscate the sale proceeds of the smuggled goods, which are sold by the person, having knowledge or reasons to believe that the goods are smuggled goods...Even otherwise no immovable property can be seized and confiscated, though it can be attached and sold for making recovery of loss to or dues of the government as for example, when done in exercise of the power under Section 142(1)(c)(ii) of the Customs Act, 1962, but that stage, however, is yet to reach in this case.”

- The High Court of Delhi in the case of *Union Of India vs. Arvind M Kapoor and Anr & other connected matters (W.P.(C) 8381 of 2016)* has observed that anti-dumping proceedings under the Customs Tariff Act, 1975, are business sensitive and ruled that confidential information relating to a particular industry, involving the assessment of trade relations between India and other countries cannot be disclosed through the Right to Information Act, 2005 (“**RTI Act**”). A Single-Judge Bench comprising of Justice Prathiba M. Singh opined that “...the imposition of anti-dumping duty and confidential information disclosed in such proceedings would have a significant impact on the economic interest and trade relations of India...” “...The entire purpose of having a complete and self-sufficient scheme for disclosure of confidential information under the Anti-Dumping Rules would be defeated if persons who are participating in the anti-dumping investigation are permitted to

tangentially seek information under the RTI Act.”

- The High Court of Bombay in the case of *Zoru Bhathena vs. Tree Authority, MCGM & Ors (P.I.L (L) No. 8655 Of 2023)* has restrained Mumbai Metro Rail Corporation Ltd (“**MMRCL**”) from felling 177 trees in Aarey, Mumbai for the metro rail project till it seeks clarification from the Supreme Court on its order permitting MMRCL to approach local authorities for felling of trees. A Division Bench comprising of Acting Chief Justice S.V. Gangapurwala and Justice Sandeep Marne held that “*It is not a matter of debate that the Hon’ble Apex Court has granted permission to the MMRCL to move the Tree Authority, to the extent of 84 trees. However, the impugned permission is for 177 trees. The same is beyond the liberty granted by the Apex Court...*” “*There is no doubt that the metro project involves public interest and public purpose. There cannot be any debate in the proposition that the balance has to be struck between sustainable development and ecology.*”
- The High Court of Bombay in the case of *Uday vs. Rupali (Family Court Appeal No. 36 Of 2021)* has observed that the allegations and accusations against the spouse in the newspaper itself, whether defamatory or not, have an effect of lowering the reputation in the eyes of peers and colleagues. A Division Bench comprising of Justice R.D. Dhanuka and Justice M.M. Sathaye while upholding the divorce



decree granted by a family court against a husband on the grounds of mental cruelty held that “...a partner in a matrimonial relationship who goes to the extent of filing police complaints

against mother, friend, well-wishers, Prosecutor or Advocate of his own wife, is a kind of person who is difficult to deal with and certainly causing mental harassment.”



NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Circular no. 3 of 2023 and F. No. 370142 / 14 / 2022 - TPL dated 28.03.2023, the Central Board of Direct Taxes (“**CBDT**”) has issued Consequences of PAN becoming inoperative as per the newly substituted rule 114AAA of the Income-tax Rules, 1962. Accordingly, whoever fails to link the Aadhaar number and PAN shall not be refunded any amount of tax, and interest shall not be payable on such refund for the period till PAN becomes operative, and where tax is deductible under Chapter XVJJ-B and XVJJ-BB in case of such person, such tax shall be deducted at a higher rate. These consequences shall take effect from 1.07.2023 and continue till the PAN becomes operative. A fee of one thousand rupees will continue to apply to make the PAN operative by intimating the Aadhaar number.
- Vide Notification no. 13420 of 2023 and F. No. DGIT(S) - ADG(S)-3 dated 28.03.2023, the Central Board of Direct Taxes (“**CBDT**”) has issued Partial relaxation with respect to the electronic submission of Form 10F by select category of taxpayers in accordance with the DGIT (Systems) where non-resident (NR) taxpayers who were not having PAN and not required to have PAN as per relevant provisions of the Income-tax Act, 1961 read with Income-tax Rules, 1962, were exempted from mandatory electronic filing of Form 10F till 31.03.2023 by the competent authority. Accordingly, it has been decided to extend the above-mentioned partial relaxation further till 30.09.2023.
- Vide Circular no. SEBI / HO / AFD / P / CIR / 2023 / 043 dated 27.03.2023, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has streamlined the on boarding process of Foreign Portfolio Investors (“**FPIs**”). Accordingly, in order to reduce the time taken for granting registration and opening of DEMAT, trading, and bank accounts of FPIs, the following modifications to the ‘Master Circular for Foreign Portfolio Investors, Designated Depository Participants, and Eligible Foreign Investors are specified, i.e. Grant of FPI registration on the basis of scanned copies of application forms and supporting documents, Use of Digital Signatures by FPIs, Certification of copies of original documents by authorized bank officials using SWIFT mechanism, Verification of PAN through the CAF module available on the websites of the Depositories, and Submission of unique investor group ID by FPI applicants in lieu of complete details of group constituents.
- Vide Circular no. SEBI / HO / DDHS / DDHS-RACPOD1 / P/ CIR / 2023 / 049 dated 31.03.2023, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued an Extension of the compliance period – Fundraising by large corporates through the issuance of debt securities to the extent of 25% (Twenty - five percent) of their incremental borrowings in a financial year. *“Taking into account the representations from the market participants and on a review of the matter, it has been decided that the contiguous block of two years over*



which large corporates need to meet the mandatory requirement of raising a minimum of 25% of their incremental borrowings in a financial year through issuance of debt securities will be extended to a contiguous block of three years (from the present requirement of two years) reckoned from FY 2021-22 onwards.”

- Vide a press release dated 19.03.2023, the Bar Council of India (“**BCI**”) has issued True Facts about BCI’s Rules regarding Entry, Rules, and Regulations of Foreign Lawyers and Law Firms in India. Accordingly, it has been informed that foreign lawyers and law firms are allowed to advise their clients only regarding foreign laws and international laws; to render advisory work about those laws only for their foreign clients; to function in non-litigation areas only; to appear for

clients in International Commercial Arbitration. Furthermore, it has been clarified that they are not allowed to appear in any Court, Tribunal, Board, Statutory or Regulatory Authority or any forum legally entitled to taking evidence on oath or having trappings of a Court. BCI rules allow foreign lawyers and law firms not to be misconstrued to allow any non-lawyers or BPO, etc. To come to India and start practicing in any sphere if it amounts to the practice of law as held in *the Bar Council of India vs. A.K. Balaji*.

- Vide Notification Ref. no. RBI / 2022-23 / 188 of DOR.RET.REC.108/12.07.160/2022-23 dated 27.03.2023, the Reserve Bank of India (“**RBI**”) has ceased “the Abu Dhabi Commercial Bank PJSC” as a banking company within the meaning of sub-section (2) of Section 36 A of the Banking Regulation Act, 1949.



DEALS THIS MONTH

- Delhi-based Ed-tech unicorn, founded in 2020, Physics Wallah has acquired UAE-based startup Knowledge Planet which has been offering JEE/NEET test preparations over the past 16 (sixteen) years for an undisclosed amount. With this partnership, Physics Wallah plans to leverage Knowledge Planet's established school partnership machinery to reach the maximum number of students in the Middle East and North African ("**MENA**") region.
- Founded in 1945, Mahindra & Mahindra Ltd.'s Farm Equipment Sector (FES) has acquired a 100% (One hundred percent) stake in MITRA Agro Equipments Private Limited ("**M.I.T.R.A**") from the existing 47.33% (Forty-seven point thirty three percent). Founded in 2012, M.I.T.R.A is the Indian market leader in high-precision orchard sprayers and a trusted brand for farmers growing fruits like grapes, pomegranates, and oranges. Post-acquisition, M.I.T.R.A. plans to accelerate the expansion of its product portfolio alongside its network in India and overseas markets.
- Global IT services company Accenture has acquired Flutura Decision Sciences and Analytics, a Bengaluru-based industrial artificial intelligence ("**AI**") startup, for an undisclosed amount. Its AI platform provides self-service solutions for advanced analytics. The solutions help process, asset management, and reliability engineering teams assess, predict, and improve the asset performance, reliability, throughput, and energy efficiency outcomes of production and manufacturing facilities. With this acquisition, Accenture plans to bring Flutura's capabilities to clients in the energy, chemicals, metals, mining, and pharmaceutical industries.
- Absolute Sports, the parent company of Sportskeeda and a Nazara subsidiary, a sports news and analysis website with over 76 (Seventy-six) million monthly active users, has acquired a 73.27% (Seventy-three point twenty-seven percent) stake in Pro Football Network LLC (PFN), a premier source of coverage and analysis of the NFL (United States' most watched sport) and college football for USD 1.82 (One point eighty-two) million through the primary infusion of capital and secondary stock purchases.
- ACKO Technology and Services, the parent company of ACKO General Insurance, has acquired the digital health platform Parentlane for an undisclosed amount. Founded in December 2015, Parentlane provides young millennial parents with healthcare solutions from preconception to the early childhood development phase. With this acquisition, the combined entity will deliver personalized content and services to enable better healthcare choices, informed decisions, and improved outcomes.
- PAG-backed alternative investment firm Nuvama Wealth Management Limited (formerly known as Edelweiss Personal Wealth) has bought a majority stake in



a wealth tech platform. The company has acquired a 74% (Seventy-four percent) stake in Bengaluru-based startup Pickright Technologies Limited for an undisclosed amount. Founded in 2019, Pickright offers 'Investpacks' that help investors create customized

investment portfolios based on their financial goals and risk appetite. The acquisition will help Nuvama tap into Pickright's platform, particularly its user interface and user experience capabilities.



SAGA LEGAL

- 📍 DELHI OFFICE: A - 55, FIRST FLOOR, HAUZ KHAS, NEW DELHI - 110 016.
 - 📍 CHAMBER: 238, M.C. SETALVAD CHAMBERS, SUPREME COURT OF INDIA, BHAGWAN DASS RD, NEW DELHI - 110 001.
 - 📍 BENGALURU OFFICE: 88 BOREWELL ROAD, OPP. WHITEFIELD POST OFFICE, WHITEFIELD, BENGALURU - 560 066.
- ☎ +91 11 41066969 | +91 11 41076969 ✉ office@sagalegal.in | admin@sagalegal.in 🌐 www.sagalegal.in

DISCLAIMER

This publication is intended to be circulated for informational purposes only. The publication in no way constitutes legal advice/opinion being provided by Saga Legal to its readers or the public at large. Saga Legal encourages the readers to seek professional legal advice before acting upon the contents provided herein. The firm shall not be responsible for any liability or loss that may be attributed to the contents of this publication. This publication is property of Saga Legal, and the same may not be circulated, distributed, reproduced or otherwise used by anyone without the prior express permission of its creators.