



SAGA LEGAL

COMMUNIQUE

MAY 2023



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COURTS THIS MONTH

- The Supreme Court in the case of *Salem Muslim Burial Ground Protection Committee vs. State of Tamil Nadu and Ors. (Civil Appeal Nos. 7467-7470 Of 2014)* has ruled that conducting a survey under Section 4 of the Waqf Act, 1954, is the *sine qua non*, an indispensable requirement before declaring a property as “Wakf property”. The Bench comprising of Justice Pankaj Mithal and Justice V. Ramasubramanian was hearing an appeal challenging the order of the Madras High Court which has declared the suit land as wakf property. The Court observed that *“It is settled that law does not permit a person to both approbate and reprobate as no party can accept and reject the same instrument. A person cannot be permitted to say at one time that the transaction is valid and to obtain advantage under it and on the other hand to say that it is invalid or incorrect for the purposes of securing some other advantage.”*
- The Supreme Court in the case of *Central GST Delhi – III vs. Delhi International Airport Ltd (Civil Appeal No(S). 8996 Of 2019)* has ruled that Private Airport developers are not obligated to pay service tax on the user development fee (“UDF”) charged by the passengers for operation, maintenance, and development of Mumbai, Delhi, and Hyderabad international airports. The bench comprising of Justice S. Ravindra Bhat and Justice Dipankar Datta were hearing an appeal challenging the decision of the Customs, Excise, and Service Tax Appellate Tribunal which had ruled that the UDF levied and collected by the assesses under Section 22A of the Airports Authority of India Act, 1994, was not liable to pay service tax. The Court observed that *“...the fact that the amount is not deposited in a government treasury, per se, does not make it any less a statutory levy or compulsory exaction. Nor does its discretionary nature, (in the sense that it may not be necessarily levied always) render it any less a statutory levy. Airport management has evolved; it is no longer the monopoly of the government; private participation is recognized.”*
- In the case of *KC Ninan vs. Kerala State Electricity Board and Ors. (Civil Appeal No 2109-2110 of 2004)* has stated that electricity dues of the previous occupier of the property can be recovered from the subsequent owner or an auction purchaser. The Bench comprising of Chief Justice DY Chandrachud, Justice Hima Kohli, and Justice Pamidighantam Sri Narasimha while dealing with a batch of Appeals noted that *“a distribution licensee can stipulate such terms necessary for the supply of electricity, including that the arrears due in regard to the supply of electricity made to the premises when they were in the occupation of the previous owner or occupant, should be cleared before the electricity supply is restored or a fresh connection is provided to the premises. Therefore, a condition enabling the distribution licensee to insist on the clearance of the arrears of electricity dues of the*



previous consumer before resuming electricity supply to the premises is valid and permissible under the scheme of the 2003 Act.”

- The Supreme Court in the case of *M/s. Tata Motors Ltd. and Ors. Vs Deputy Commissioner of Commercial Taxes (SPL) and Anr. (Civil Appeal No.1822 of 2007)* has held that a credit note issued by an automobile manufacturer to a dealer of automobiles, in consideration of the replacement of a defective part done by the dealer pursuant to a warranty agreement, is exigible for sales tax. The Bench of Justice BV Nagarathna, Justice Ahsanuddin Amanullah, and Justice KM Joseph observed that *“when the dealer receives a credit note, it is a sale within the meaning of the definition under the respective sales tax legislation under consideration, pursuant to the warranty for which the manufacturer compensates the dealer by issuance of a credit note. The value of the credit note is a valuable consideration received which is in the nature of a benefit from the manufacturer which is exigible to tax. If the dealer had sold a spare part of the automobile from his stock to any other consumer across the counter, he would have collected the requisite sales tax along with the price from that consumer but in the instant case, the consideration is received in the form of a credit note from the manufacturer which is subject to sales tax. The person who pays the valuable consideration in a sale transaction is irrelevant so long as it is paid.”*
- The Supreme Court in the matter of *M/s. D.N. Singh vs. Commissioner of Income Tax, Central, Patna &Anr. (Civil Appeal No(s).3738-3739 of 2023)* has stated that Bitumen cannot be categorized as a ‘valuable article’ for the purpose of taxation under Section 69A of the Income Tax Act, 1961. A bench comprising of Justice K.M. Joseph and Justice Hrishikesh Roy while setting aside the decision made by the Patna High Court observed that *“...gold would not be precious if we all had gold to spare...’. Taking a cue from the song’s lyrics, it can be appropriately said that the legislature while introducing section 69A to the Income Tax, Act, 1961 by the Finance Act, 1964, was concerned only with such precious and aspirational articles like bullion and jewelry which are capable of being repositories of hidden earnings but were not really concerned about common place stuff like “bitumen”, which would not attract a second glance, on any road surface of our country.”*
- While adjudicating an application for appointment of an arbitrator, the Supreme Court in the matter of *M/s Glock Asia-Pacific Ltd. vs. Union of India (Arbitration Petition No. 51 Of 2022)* has ruled that merely because a contract is entered into in the name of the President of India does not create immunity against the legal provisions of that contract under Article 299 of the Indian Constitution. The Bench comprising of Chief Justice Dhananjaya Y. Chandrachud, Justice PS Narasimha, and Justice J. B. Pardiwala



stated that *“It must be emphasized that Article 299 only lays down the formality that is necessary to bind the government with contractual liability. It is important to note that Article 299 does not lay down the substantial law relating to the contractual liability of the Government, which is to be found in the general laws of the land....We are unable to trace any immunity arising out of Article 299, to support the contention that for contracts expressed to be made by the President of India, the ineligibility of appointment as an arbitrator as contemplated under Section 12(5) of the Act, read with Schedule VII, will be inapplicable.”*

- The Supreme Court in the case of *M.K. Rajagopalan Vs. Dr.Periasamy Palani Gounder (Civil Appeal Nos. 1682-1683 of 2022)* has held that, while the commercial wisdom of the Committee of Creditors (“CoC”) must be respected, certain factors having a material bearing on the process of approval of the resolution plan should also be borne in mind. The Bench of Justice Dinesh Maheshwari observed that *“...a close look at the scheme of IBC, this irregularity of not placing the revised plan after ninth meeting before the CoC and directly placing it before Adjudicating Authority cannot be ignored as a mere technicality. As noticed hereinabove, each and every aspect relating to the resolution plan, and more particularly its financial layout, has to be considered by the CoC before it could be said to have arrived at a considered decision.”*
- The High Court of Karnataka in the case of *Rangaraju @ Vajapeyi vs. State of Karnataka (Criminal Appeal No.1610 of 2017)* has ruled that sexual assault/rape on the dead body of a woman will not attract the offense of rape punishable under Section 376 of Indian Penal Code, 1860 (“IPC”) and emphasized that it is high time for the Central Government to include ‘necrophilia’ (sadism) as an offense under the IPC provisions. The Division Bench comprising of Justice B Veerappa and Justice Venkatesh Naik while setting aside the conviction order noted that *“The dignity of dead body of a human being must be maintained and respected. Moreover, it extended the right to the homeless deceased person to have a decent cremation, according to the religious customs to which one belongs to. It is also established a corresponding duty on the State to ensure decent cremation is served to the person. Article 21 of the Constitution of India emphasized the Right of Life means a meaningful life and not merely animal existence. Right to dignity is also expanded to a dead person...”*
- The High Court of Punjab and Haryana in the case of *Amar Singh vs. Sanjeev Kumar (COCP-959 of 2023 (O&M))* has directed the State and Union Territory governments to issue guidelines to revenue courts for a faster and easier way to serve summons, notices, and pleadings to avoid delay in disposal of proceedings. A Single-Judge Bench of Justice Arvind Singh Sangwan while dealing with a contempt petition filed



alleging non-compliance of a court order, directed that *“The service of notices, summons and exchange of pleadings may be effected by e-mail, FAX and commonly used instant messaging services like WhatsApp, Telegram, Signal, etc., While accepting the pleadings, all the Revenue Courts will insist upon the parties, as well as their Advocates representing them to provide their e-mail address, Phone number with WhatsApp...all the notices to the Lawyers may be issued on e-mail or commonly used instant messaging services. Where the party is avoiding the service, the procedure of munadi be done away being an obsolete procedure in the wake of advancement of technology and if the service of the summons is not effected on the very next date, by adopting the aforesaid methods additionally to the discretion of the Revenue Courts, publication be ordered in a newspaper...”*

- In the case of *Tomorrow Sales Agency(P) Ltd. vs. SBS Holdings, Inc. (FAO(OS)(COMM) 59 of 2023)*, the High Court of Delhi has held that third-party funders i.e., a non-signatory to the arbitration agreement, who is not a party to the arbitral proceedings or the award ensure access to justice and cannot be mulcted with liability for the awarded amount merely because it has funded a party in arbitral proceedings. The Division Bench comprising of Justice Vibhu Bakhru and Justice Amit Mahajan has set aside the impugned order of a Single Judge, to the extent that it directed the appellant to disclose its assets and to furnish security for the

amount awarded in terms of the Arbitral Award and restrained it from alienating or encumbering its assets. The Court opined that *“The fact that a party is funded by a third party is a relevant fact in considering whether an order for securing the other party needs to be made. However, permitting enforcement of an arbitral award against a non-party which has not accepted any such risk, is neither desirable nor permissible...”*

- In the case of *Mantu Das vs. Union of India & Ors. (W.P.(C) No. 12966 of 2023)*, the High Court of Orissa has cautioned both the Union and State Governments that they must not deny benefits of different welfare schemes to the needy people belonging to vulnerable sections merely because they do not have identity proof like an Aadhaar Card or mobile number. The Division Bench comprising of Chief Justice Dr. S. Muralidhar and Justice Gourishankar Satapathy while hearing a plea wherein, the plight of young children suffering from chronic malnutrition, living under semistarvation, and prolonged hunger was highlighted, directed that *“...this needs to be made abundantly clear at both the State level as well as the National level since this welfare schemes are meant to cater to the needs of the most vulnerable and poor sections of our society who cannot be excluded on any ground including the lack of an Aadhaar Card or a mobile phone. The fact is that there are still several poor and vulnerable individuals,*



in the State of Odisha and in the country, who may not possess either.”

- The High Court of Karnataka in the matter of *NG & others vs. State of Karnataka &Anr. (CRL.P.NO. 201257 of 2019)* has stated that a criminal case filed by a wife against her husband and in-laws with regard to cruelty and dowry harassment loses its importance when such complaints are made after receiving a divorce notice from the husband. A Single-Judge Bench comprising of Justice S Rachaiah while quashing a First Information Report registered by a woman alleging cruelty and dowry harassment, against her in-laws and other relatives of the husband observed that *“The complaint contains several allegations against the petitioners. However, till 25.12.2018, she has not lodged any complaint against the in-laws. In the complaint, there is a specific allegation of assault made out against all the petitioners. However, it appears that the allegations are omnibus and absurd in nature and the said allegations are not sufficient to invoke the provisions as stated supra...”*
- The High Court of Delhi in the case of *Central PWD Engineers Assoc. &Anr. vs. Union of India &Ors. (W.P.(C) 11733 of 2019)* has held that government servants cannot be excluded from the protection of the rights guaranteed by Part III of the Constitution of India. The Division Bench comprising of Justice Kameswar Rao and Justice Anoop Kumar Mendiratawere dealing with the writ petition filed by the Central PWD

Engineers Association, challenging an order passed by the Central Administrative Tribunal. The Court urged that *“...the decision for ‘non-continuation of recognition’ could not have been taken by DG, CPWD in terms of OM No.18/3/2018 dated January 09, 2019, as the Competent Authority remains the Central Government in terms of the definition of ‘Government’ as per Rule 2(a) of CCS (RSA) Rules, 1993.”*

- The High Court of Orissa in the case of *Nesar Ahmed Khan vs. State of Orissa &Ors. (WPCRL No.160 of 2021)* has clarified that Muslims cannot adopt a child under Muslim personal law and in order to undertake any such adoption, they must strictly follow the prescriptions laid down under the Juvenile Justice (Care and Protection of Children) Act, 2015 (**“JJ Act”**). The Division Bench of Justice Subhasis Talapatra and Justice Savitri Ratho while passing an order for restoration of custody of a minor girl with her father, from the couple who claimed to have adopted the child, held that *“True it is that a Muslim can adopt a surrendered child but they have to follow the stringent procedure as laid down under the JJ Act and the Rules made thereunder, but not at their whim. So generally in Islamic countries instead of adoption guardianship is provided to a minor who needs care and protection. As such, we hold that the claim of adoption is unsustainable in law...”*
- The High Court of Delhi in the case of *Ritu Chernalia vs. Amar Chernalia&Ors.*



(W.P.(C) 6986 of 2023) has ruled that the daughter-in-law's right in a shared household is not an indefeasible right and the in-laws cannot be excluded from the same. A Single-Judge Bench comprising of Justice Prathiba M Singh further observed that "...The stand of the Petitioner that the in-laws should not be allowed to live in their own property is completely contrary to the

settled understanding on the subject. The daughter-in-law, while claiming rights to live in her matrimonial home or shared household, cannot be seen to argue that the in-laws ought not to live with her in the shared household. If circumstances exist which demonstrate that they cannot live together, alternate accommodation may also have to be explored for the daughter-in-law."



NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Circular no. 07 of 2023 and F. No. 312 / 63 / 2023-OT dated 31.05.2023, the Central Board of Direct Taxes (“**CBDT**”) has modified the monetary limit on the conditions to be followed for deciding applications for condonation of delay in filing Returns of Income (“**RsOI**”) claiming refund and RsOI claiming to carry forward of loss and setoff thereof under section 119(2)(b) of the Income-tax Act, 1961. Accordingly, The Principal Commissioners/ Commissioners shall be vested with the power of acceptance/rejection of such applications/ claims if the amount of such claims is not more than Rs.50 lakhs for any one assessment year, the Chief Commissioners can exceed Rs. 50 lakhs but not more than Rs.2 crores, the Principal Chief Commissioners exceed Rs.2 crores but not more than Rs.3 crores, and the applications/claims for amounts exceeding Rs.3 crores shall be considered by the Board. The said revised monetary limits for applications/ claims in respect of the competent authorities specified hereinabove shall be applicable to the applications/ claims filed on and after 01.06.2023.
- Vide Circular no. SEBI / HO / MIRSD / MIRSD-PoD-1 / P / CIR / 2023 / 73 dated 19.05.2023, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has introduced ‘Risk disclosures’ with respect to trading in equity Futures & Options segment. Accordingly, it has been directed that Stock Exchanges and Depositories shall display ‘Risk disclosures’ prominently, covering at least 50 (fifty) percent area of the screen. Further, *“to bring the provisions of this circular to the notice of their members/participants and also disseminate the same on their websites; and display the ‘Risk disclosures’ on their respective websites, with a link to study conducted by SEBI.”* The provisions of this circular shall come into force with effect from 01.07.2023.
- Vide Circular no. SEBI / HO / IMD / POD-II / CIR / P / 2023 / 0069 dated 12.05.2023, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has modified the uniform process to be followed across Asset Management Companies (“**AMCs**”) in respect of investments made in the name of a minor through a guardian. Accordingly, it has been decided that *“Payment for investment by any mode shall be accepted from the bank account of the minor, parent or legal guardian of the minor, or from a joint account of the minor with a parent or legal guardian. For existing folios, the AMCs shall insist upon a Change of Pay-out Bank mandate before redemption is processed..(ii) Irrespective of the source of payment for subscription, all redemption proceeds shall be credited only to the verified bank account of the minor, i.e. the account the minor may hold with the parent/legal guardian after completing all KYC formalities.”*
- Vide Notification Ref. no. RBI/2023-24/32 of DCM(Plg) No.S-236 / 10.27.00 / 2023-24 dated 19.05.2023, the



Reserve Bank of India (“**RBI**”) has issued a Denomination of Rs. 2000 (Rupees Two Thousand) notes - Withdrawal from circulation. As per the said circular, *“A majority of the ₹2000 denomination notes were issued prior to March 2017, have completed their estimated lifespan and are not observed to be commonly used for transactions anymore. Therefore, it has been decided that, in pursuance of the “Clean Note Policy” of the Reserve Bank of India, the ₹2000 denomination banknotes shall be withdrawn from circulation. The ₹2000 banknotes will continue to be legal tender.”*

- Vide Notification Ref. no. RBI/2023-24/29 of A.P. (DIR Series) Circular No. 04 dated 09.05.2023, the Reserve Bank of India (“**RBI**”) has issued a Levy of charges on forex prepaid cards/store value cards/travel cards, etc. as it has been observed that a few Authorised Persons are levying certain fees/charges, which are payable in India on such instruments, in foreign currency. Accordingly, it has been advised that fees/charges payable in India have to be denominated and settled in Rupees only.



DEALS THIS MONTH

- BharatPe has acquired 51 (Fifty-one) percent stake in a Mumbai-based non-banking financial company (“**NBFC**”) Trillion Loans which sells a range of secured and unsecured loans to small businesses and credit products such as auto, gold, and education loans to retail customers. With this acquisition, the fintech unicorn will get to join well-funded fintech peers like Cred, Uni, and LendingKart in acquiring NBFCs to shore up their credit play.
- Established in year 2011, the Sales SaaS platform Mindtickle has acquired Enable Us, a digital sales room provider that empowers sales teams to create digital buying experiences with their corporate branding and messaging for an undisclosed amount. The acquisition will help sales leaders align completely on gaps in knowledge and skill sets and collaborate digitally with buyers using personalized content experiences.
- AurumPropTech Limited has acquired the assets and technology platform from neo-realty investments platform MYRE Capital for an undisclosed sum and launched AurumWiseX, a digital distribution vertical for real estate investments. Under AurumWiseX, the first platform will be 'YieldWiseX', which will offer commercial real estate and Lease Rental Discounting structured debt along with other innovative frameworks for its customers. The new platform will focus on utilizing technology to offer risk-adjusted institutional-grade investment products for its rapidly growing customer segment.
- Pluckk, a digital lifestyle-oriented fresh food brand in the fruits and vegetables (F&V) space has acquired Kook, an Indian food-tech startup that offers a range of DIY meal kits, at a deal value of USD 1.3 million through a combination of cash and equity. Pluckk offers a farm-to-fork product line for health-conscious consumers and features chemical-free produce, through an ozone wash and traceability program. The acquisition will mark a significant step towards growth and its entry into the food kit market.
- Yubi, a unified credit marketplace, has acquired a 100 (one-hundred) percent stake in Bengaluru-based credit analytics company FinFort Infotech LLP for an undisclosed amount. FinFort offers advanced tech infrastructure and data analytics for private data to banks and non-banking financial companies. With this strategic move, Yubi further solidifies its position as a key player in the credit industry while expanding its product suite and enhancing its capabilities.



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