



SAGA LEGAL

COMMUNIQUE
NOVEMBER 2023



TABLE OF CONTENTS

Courts this Month	1
Notifications/Amendments Insight	8
Deals of the Month	9



COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of *Munishamappa vs. M. Rama Reddy & Ors. (Civil Appeal No. 10327 of 2011)* has reiterated that an Agreement to Sell does not transfer ownership rights or confer any title on the purchaser of the property. The Bench comprising of Justice Vikram Nath and Justice Rajesh Bindal had set aside the order passed by the Karnataka High Court that had dismissed the suit for specific performance of a contract. The Court observed that *"...What is prohibited or barred under the Fragmentation Act was the lease/sale/conveyance or transfer of rights. Therefore, the Agreement to Sell cannot be said to be barred under the Fragmentation Act. The appellant filed the suit for specific performance after the repeal of the Fragmentation Act. The suit could have been decreed without there being any violation of the law once the Fragmentation Act itself had been repealed in February 1991..."*
- In the case of *State of Punjab vs. Principal Secretary to the Governor of Punjab and Another (Writ Petition (Civil) No 1224 of 2023)*, the Hon'ble Supreme Court has clarified that if a Governor, as an unelected Head of the State decides to withhold assent to a Bill, then he has to return the bill to the legislature for reconsideration as Article 200 of the Constitution does not expressly state what should be the next course of action after a Governor withholds assent for a Bill. The Bench of Chief Justice of India D.Y. Chandrachud, Justice J.B. Pardiwala, and Justice Manoj Misra observed that *"The substantive part of Article 200 empowers the Governor to withhold assent to the Bill. In such an event, the Governor must mandatorily follow the course of action which is indicated in the first proviso of communicating to the State Legislature "as soon as possible" a message warranting the reconsideration of the Bill. The expression "as soon as possible" is significant. It conveys a constitutional imperative of expedition. Failure to take a call and keeping a Bill duly passed for indeterminate periods is a course of action inconsistent with that expression. Constitutional language is not surplusage..."*
- The Hon'ble Supreme Court in the case of *Moturu Nalini Kanth vs. Gainedi Kaliprasad (deceased, through LRs.) (C.A. No. 2435 of 2010)* has stated that mere registration of adoption deed does not exempt the person claiming such adoption from proving the said fact by cogent evidence and the person contesting it from adducing evidence to the contrary. The Bench of Justice C.T. Ravikumar and Justice Sanjay Kumar while considering the respective age gap between the alleged 70-year-old adoptive mother (deceased), and the purported adopted son, noted that *"...the document also records that the adoptive child would perform the annual shraddha ceremonies and offering of Pinda and water, as her natural son, to her ancestors. Nalini Kanth was aged less than a year when this adoption deed was executed whereas the adoptive mother, going by the document itself, was aged 70 years.*



Being of that age, it is strange that Venkubayamma would have expected this toddler to perform her obsequies after her death and such other ceremonies for her and her ancestors. Further, it is difficult to believe that a woman of such advanced years would willingly take on the responsibility of caring for an infant at that age.”

- The Hon’ble Supreme Court in the matter of *Shah Originals vs. Commissioner of Income Tax-24, Mumbai (Civil Appeal No. 2664-2265 of 2011)* has held that the profit from foreign exchange fluctuation in Exchange Earners' Foreign Currency is independent of export earnings and no deductions can be claimed on it as per Section 80 HHC of the Income Tax Act, 1961. While disallowing Shah Originals, a 100% export-oriented unit, from claiming deductions earned from foreign exchange fluctuations, the Bench comprising of Justice B.V. Nagarathna and Justice S.V.N. Bhatti observed that “Section 80 HHC provides for the deduction of profits the assessee derives from exporting such goods/merchandise. The operation of Section 80 HHC is substantially dependent on two sets of expressions, viz., (a) is engaged in the business of export outside India of any goods/merchandise; (b) a deduction to the extent of profits defined in subsection (1B) derived by the assessee from the export of such goods/merchandise. The main point of discussion is on the gain in foreign exchange vis-à-vis the export business of the assessee.”
- In the case of *Tarun Kumar vs. Assistant Director Directorate of Enforcement, (SLP (Crl.) No. 9431 of 2023)*, the Supreme Court has reiterated that the compulsory nature of the twin bail conditions specified in Section 45 of the Prevention of Money Laundering Act, 2002 (“**the Act**”). The Appellant in the present case was arrested in relation to an ongoing money laundering investigation for financial irregularities, wherein the Bench comprising of Justice Aniruddha Bose and Justice Bela M. Trivedi observed that “...the appellant has not been able to overcome the threshold stipulations contemplated in Section 45 of the Act namely he has failed to prima facie prove that he is not guilty of the alleged offence and is not likely to commit any offence while on bail. It cannot be gainsaid that the burden of proof lies on the accused for the purpose of the condition set out in the Section 45 that he is not guilty of such offence. Of course, such discharge of burden could be on the probabilities...”
- The Hon’ble Supreme Court in the case of *Shakeel Ahmed vs. Syed Akhlaq Hussain (Civil Appeal No.1598 of 2023)*, has held that title with respect to immovable properties cannot be transferred on the basis of an unregistered Agreement to Sell or a General Power of Attorney. The Bench comprising of Justice Vikram Nath and Justice Rajesh Bindal observed that “Law is well settled that no right, title or interest in immovable property can be conferred without a registered document. Even the judgment of this



Court in the case of Suraj Lamps & Industries (supra) lays down the same proposition...The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property. Once this is the settled position, the respondent could not have maintained the suit for possession and mesne profits against the appellant, who was admittedly in possession of the property in question whether as an owner or a licensee. ”

- In the case of *BT (India) Private Limited vs. Union of India & Ors, (W.P.(C)-13968 of 2021)*, the High Court of Delhi has held that self-assessment under Section 70 of the Finance Act, 1994 (“**the Act**”) is also an ‘assessment’, and it can only be questioned in the manner as prescribed under the statute, that is, either by issuing a show cause notice under Section 73 of the Act or by filing an appeal. Undisputed self-assessed returns cannot be questioned in refund proceedings, the Court held. The Division Bench comprising of Justice Yashwant Varma and Justice Dharmesh Sharma observed that “...we thus come to the firm conclusion that in the absence of the self-assessed return having been questioned, reviewed or re-assessed, the claim for refund of CENVAT credit could not have been denied by the respondents. When confronted with the application for refund, all that the respondents could have possibly examined or evaluated was whether the provisions of Rule 5 read along with the various

prescriptions contained in the notification dated 18 June 2012 had been complied with. The respondents, at this stage of the proceedings, could not have doubted, questioned or undertaken a merit review of the self-assessed return which had been submitted.”

- The Delhi High Court in the case of *Pooja Menghani vs. Insolvency and Bankruptcy Board of India & Anr., (W.P.(C)-8696 of 2022)*, has ruled that an individual must fulfil certain criteria to be eligible for registration as a Resolution Professional and upon satisfaction of Insolvency and Bankruptcy Board of India, the banker did not meet those requirements in this case. The Petitioner approached the court contending that she could not be condemned forever for events for which she was found guilty 11 years ago. A Single-Judge Bench comprising of Justice Subramonium Prasad observed that “...*the Petitioner has been found guilty of fraudulent practices of violating market integrity and the decision of the Respondent Board to refuse the registration of the Petitioner as an Insolvency Professional on the basis of the decision of the Apex Court cannot be said to be so perverse or irrational warranting interference under Article 226 of the Constitution of India...Though the Petitioner might be eligible to be considered to be appointed as an Insolvency Resolution Professional the decision of the Board not to permit the Petitioner to function as an Insolvency Professional cannot be said to be arbitrary...the fact that the*



immediate past was clean does not give a clean chit to the person that his candidature will be considered.”

- In the case of *Bolt Technology Ou vs. Ujoy Technology Private Limited & Anr.*, (FAO(OS) (COMM) 45 of 2023), the High Court of Delhi has held that it is imperative for the claimant, who seeks protection of a trademark, to prove and establish the existence of a significant and substantial reputation and goodwill of the mark in the concerned territory. A Division Bench comprising of Justice Yashwant Varma and Justice Dharmesh Sharma opined that “*Unless a sizeable imprint of the presence of the mark is established amongst the consuming public, a claimant would not be entitled to protection. In fact, knowledge amongst a sizeable and noteworthy number of the concerned segment would be a sine qua non for proving reputation itself...We further find that a mere global reputation or asserted goodwill has neither been accorded a judicial imprimatur nor accepted as being sufficient by our courts to answer a claim of transborder reputation.... The adoption of the aforesaid standard would also subserve the imperatives of avoiding the stifling of local industry and enterprise. This in our considered opinion would be the correct approach and strike the right balance between brands whose reputation transcends territories and the interest of national enterprise and that of consumers on the other.*”
- The High Court of Delhi in the case of *Ischemix LLC vs. The Controller of Patents*, (C.A.(COMM.IPD-PAT) 33 of 2022), has ruled that any patent applicant who seeks to demonstrate enhancement in therapeutic efficacy under the terms of Section 3(d) of the Patents Act, 1970, must do the same ‘precisely’ by filing data before the Patent Office during prosecution of the application. A Single-Judge Bench comprising of Justice Prathiba M Singh stated that “*the Applicant must ensure that comparative tables, and a clear explanation as to the manner in which the new form of the known substance has significant enhancement in therapeutic efficacy are placed before the Patent Office during prosecution of the application. The same could be in the form of comparative tables, in-vitro and in-vivo data as also clinical trial data.*”
- In the case of *Anuradha Kapoor and Ors. vs. State of Maharashtra and Ors.*, (Criminal Application (APL) No. 566 of 2023), the High Court of Bombay has held that where an application is filed under Section 138 of the Negotiable Instruments Act of 1881 (“**NI Act**”), a court may have the authority to compound the offence in check bounce cases without requiring the complainant's consent. This is contingent upon certain conditions, including the accused initiating the compounding process at the early stages of the case and ensuring that the complainant receives sufficient compensation. A Single-Judge Bench comprising of Justice Anil Pansare



observed that *“...in normal circumstances, when the application for compounding offences u/s 138 of the NI Act is made at the initial stage of the case and if the complainant is duly compensated, the trial Court will be fully justified in compounding the offence without consent of the complainant.”*

- After receiving clarification from the Maharashtra State Electricity Distribution Company Limited, the High Court of Bombay on its own motion against the State of Maharashtra through Principal Secretary & Ors. (Suo Motu Writ Petition No. 2 of 2023) has ruled that the electricity bills cannot be termed as a proof of the legitimacy of a building structure and a building cannot be termed authorized merely on account of the existence of an electricity connection to it. A Division Bench comprising of Justice Gautam S Patel and Justice Kamal Khata observed that *“All that the licensee requires to know is the address to which power is to be supplied and in whose name it is to be billed. It is impossible to expect a distribution licensee to act beyond the remit of the statute to assess questions of title to*

the property in question let alone assess questions of whether the structure or structures or apartments or units do or do not have the requisite planning permissions.”

- In the case of *Ajitsingh Ghorbade vs. State of Maharashtra & Ors. (PIL(L) No. 35723 of 2023)*, the High Court of Bombay has ruled that the information gathered from social media platforms cannot be a part of the pleadings in a public interest litigation. The division bench comprising Chief Justice Devendra Upadhyaya and Justice Arif Doctor was dealing with a petition seeking direction to the Maharashtra government to take measures to safeguard waterfalls and water bodies in the state. The Court further remarked that *“...information gathered from social media cannot be part of pleadings in a PIL. You cannot be so irresponsible while filing PILs. You are wasting judicial time. Somebody goes for a picnic and accidentally drowns, therefore a PIL? Someone drowns in an accident, how is it a violation of fundamental rights under Articles 14 and 21.”*



NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Notification Ref. no. RBI/2023-2024/83 of A.P. (DIR Series) Circular No. 07 dated 10.11.2023, the Reserve Bank of India (“**RBI**”) has issued Guidelines on the import of silver by Qualified Jewellers as notified by – The International Financial Services Centres Authority (“**IFSCA**”). Accordingly, it has been decided that AD Category-I banks may allow Qualified Jewellers to remit advance payment for eleven days for the import of silver through India International Bullion Exchange IFSC Limited subject to the conditions mentioned in A.P. (DIR Series) Circular No.04 dated 25.04.2022.
- Vide Notification Ref. no. RBI/2023-24 / 81 of FMRD.FMID.No. 04 / 14.01.006 / 2023-24 dated 08.11.2023, the Reserve Bank of India (“**RBI**”) has issued a ‘Fully Accessible Route’ for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds. Furthermore, it has now been decided to also designate all Sovereign Green Bonds issued by the Government in the fiscal year 2023-24 as ‘specified securities’ under the Fully Accessible Route with immediate effect.
- Vide Circular no. SEBI / HO / MIRSD / MIRSD-PoD-1 / P / CIR / 2023 / 180 dated 13.11.2023, the Securities and Exchange Board of India (“**SEBI**”), has incorporated additional clause 20.1.6. - “*Most Important Terms and Conditions (“MITC”)*” and amended clause 20.4 - “*...in the future. The client would also be required to give acknowledgment of MITC*” of the master circular on stock brokers dated 17.05.2023. Accordingly, the stock exchanges are directed to bring the said provisions to the notice of stock brokers, and also disseminate the same on their websites; and make amendments to the relevant bye-laws, rules, and regulations for the implementation of the same.
- Vide Circular no. SEBI / HO / MIRSD / MIRSD-PoD-1 / P / CIR / 2023 / 181 dated 17.11.2023, the Securities and Exchange Board of India, (“**SEBI**”) has simplified the norms for processing investor’s service requests by Registrars to an Issue and Share Transfer Agents (“**RTAs**”) and the norms for furnishing PAN, KYC details, and nomination. Accordingly, the Stock Exchanges, Depositories, RTAs, and listed companies are advised to comply with the same and make necessary amendments to the relevant bye-laws, rules, and regulations for the implementation of the same.
- The Central Board of Direct Taxes (“**CBDT**”) vide Notification No. 97 of 2023 and F. No. 196/25/2021-ITA-I has issued certain conditions for the Punjab Infrastructure Regulatory Authority (“**PIRA**”). Accordingly, PIRA shall (a) *not engage in any commercial activity;* (b) *activities and the nature of the specified income shall remain unchanged throughout the financial years; and (c) shall file return of income in accordance with the provision of clause(g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.*



DEALS THIS MONTH

- BharatPe, a fintech company that sells digital payment and financial services to small merchants and grocery stores is all set to launch a new lending vertical, called BharatPe Money. The firm is separating its lending service provider business from the main entity to a new 100% (one hundred percent) owned subsidiary. Apart from credit card and utility bill payments, BharatPe Money shall likely offer tailor-made loan solutions as well as added services to the Ministry of Micro, Small & Medium Enterprises and consumers.
- Kota-based-Indian Ed-tech, Allen Career Institute is all set to acquire doubt-clearing Ed-tech startup DoubtNut. Founded in 1988, Allen Career Institute is renowned for its coaching programs that provide offline, digital, and distance courses for IIT JEE, AIPMT, NEET-UG, KVPY, and the Olympiads. The following acquisition will mark Allen's first foray into the flourishing Indian Ed-tech sector underscoring the Institute's commitment to enhancing its presence in the evolving landscape of educational technology.



SAGA LEGAL



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.