SAGA LEGAL

COMMUNIQUE

OCTOBER 2023

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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of*Dr.Balram Singh vs. Union of India (Writ Petition (Civil) Nos. 324 of 2020)* has issued a slew of directions to ensure that manual sewer cleaning is completely eradicated in a phased manner by strict implementation of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. The Bench comprising of Justice S Ravindra Bhat and Justice Aravind Kumar has mandated at least Rs. Thirty lakh as compensation for sewer deaths, Rs. Twenty lakh for permanent disablement, and Rs. Ten lakh for other disablement cases. The Court recognized that *"If we are to be truly equal, in all respects the commitment that the constitution makers gave to all sections of the society, by entrenching emancipatory provisions, such as Articles 15 (2), 17, 23 and 24, each of us must live up to its promise. The Union and the States are duty-bound to ensure that the practice of manual scavenging is completely eradicated. Each of us owes it to this large segment of our population, who have remained unseen, unheard, and muted, in bondage, systematically trapped in inhumane conditions…"*

- The Hon'ble Supreme Court in the case of*Supriyo and Anr. vs. Union of India (Writ Petition (Civil) No. 1011 of 2022) [Same-Sex Marriage]* has refused to grant legal recognition for queer marriages in India stating that only Parliament and state legislatures can validate marital unions. The verdict weaves together four separate judgments composed by Chief Justice of India D.Y. Chandrachud, Justice S.K. Kaul, Justice Ravindra Bhat, Justice HimaKohli, and Justice P.S. Narasimha documenting "a degree of agreements and disagreements". The Bench has acknowledged the various forms of discrimination faced by the Queer community and issued directions to various authorities to protect queer couples from threats, coercion, or false criminal complaints. However, the right of unmarried couples, including queer couples, can jointly adopt a child has not been recognized by the 3:2 Majority.

- In the case of *Assessing Officer Circle (International Taxation) New Delhi vs. M/s Nestle (SA C.A. No. 1420 of 2023)and other connected matters*, the Hon'ble Supreme Court has ruled that a Double Taxation Avoidance Agreement ("**DTAA**") cannot be enforced for any court, authority, or tribunal unless the same has been notified under Section 90(1) of the Income Tax Act, 1961. The Bench comprising of Justice S Ravindra Bhat and Justice DipankarDatta while dealing with a batch of Appeals filed by the Income Tax Department observed that *"The fact that a stipulation in a DTAA or a Protocol with one nation, requires same treatment in respect to a matter covered by its terms, subsequent to its being entered into when another nation (which is member of a multilateral organization such as OECD), is given better treatment, does not automatically lead to integration of such term extending the same benefit in regard to a matter covered in the DTAA of the first nation, which entered*

into DTAA with India. In such event, the terms of the earlier DTAA require to be amended through a separate notification under Section 90."

- The Hon'ble Supreme Court in the case of *CIT, Delhi vs. Bharti Hexacom (Civil Appeal No(S). 11128 of 2016)* has ruled that the payment of entry fees as well as variable annual license fees made by the telecom companies to the Department of Telecommunications on revenue sharing basis under the Telecom Policy of 1999, shall be considered as capital expenditure and not revenue expenditure, and hence, shall be taxed accordingly. The Bench comprising of Justice B.V. Nagarathna and Justice UjjalBhuyan while allowing the revenue's appeals against Telecom companies observed that *"Where the subsequent payments, are towards a purpose which is identifiably distinct from the original obligation of the assessee, the same would constitute revenue expenditure. However, where each of the successive installments relates to the same obligation or purpose, the cumulative expenditure would be capital in nature."*

- The Hon'ble Supreme Court in the matter of *M/S Triveni Glass Limited vs. Commissioner of Trade Tax, U.P. (Civil Appeal No. 3773 of 2011)* has held that under Entry 4 of Notification No. 5784, the 'Tinted Glass Sheet' is different from 'Plain Glass Sheet' and is thus liable to be taxed as "goods or wares made of glass." The Bench comprising of Justice S. Ravindra Bhat and Justice Aravind Kumar was dealing with a batch of Civil Appeals challenging the said Notification wherein, the manufacturer of Tinted Glass was liable to pay tax @15% (Fifteen percent) on the said goods. The Court observed that *"There is no vagueness in the notification dated 07.09.1981 and the entry No. 4 is clear and unambiguous namely it has brought within the sweep "all goods and wares made of glass" exigible to tax but not including "plain glass panes" and the exemption being the creation of the statute itself, it has to be construed strictly and even if there is any vagueness in the exemption clause must go to the benefit of the revenue."*

- The Hon'ble Supreme Court in the matter of *KalyaniRajan vs. Indraprastha Apollo Hospital &Ors. (Civil Appeal No. 10347 of 2010)* has ruled that in order to apply the principles of Res Ipsa Loquitur (the thing speaks for itself), it is necessary that a 'Res' (thing) is present to establish the allegation of medical negligence. The Bench comprising of Justice A.S. Bopanna and Justice Prashant Kumar while dismissing an Appeal filed by a widow observed that *"There is no evidence put forth by the complainant to establish that heart attack suffered by the patient had any connection with the operation in question or that it was on account of negligent post-operative care…The case in hand stands on a better footing, in as much as there was no mistake in diagnosis or a negligent diagnosis by Respondent No. 2. In the absence of the patient having any history of diabetes, hypertension, or cardiac problem, it is difficult to foresee a*

possible cardiac problem only because the patient had suffered pain in the neck region."

- The High Court of Delhi in the case of *Wow Momo Foods Private Limited vs. Franchisebyte (CS(COMM) 778 of 2023)* has restrained Franchisebyte, a website providing franchises for various Indian start-ups, from advertising or publishing videos from using the trademark 'WOW! MOMO' or any other mark identical or deceptively similar to the said trademark and further directed to take down all videos and content related to Wow Momo from its website and YouTube channel. A Single-Judge Bench comprising of Justice C Hari Shankar held that *"Inasmuch as the assertions in the plaint indicated that a is calculated fraud being perpetrated by the defendant, by luring persons into applying for becoming franchisees of the plaintiff, where no such franchises actually extended by the plaintiff and, in the process, is also infringing the plaintiff's registered trade mark by making unauthorised use thereof, a case for grant of interlocutory injunction is made out."*

- In the case of *Syngenta Limited vs. Controller of Patents and Designs (C.A.(COMM.IPD-PAT) 471 of 2022),* the High Court of Delhi has overruled the decision passed by a Single-judge Bench in *BoehringerIngelheim International GMBHvs. The Controller of Patents* which held that if the plurality of inventions is not contained in the claims of the parent application, the divisional application would not be maintainable in India. The Division Bench comprising of Justice Yashwant Varma and Justice Dharmesh Sharma held that *"a Divisional Application moved in terms of Section 16 of the Act would be maintainable provided the plurality of inventions is disclosed in the provisional or complete specification that may have been filed. We are further of the considered opinion that Section 16 does not suggest or conceive of a distinction between the contingency of a Divisional Application when moved by the applicant of its own motion or where it comes to be made to remedy an objection raised by the Controller. In either of those situations, the plurality of inventions would have to be tested based upon the disclosures made in either the provisional or complete specification."*

- The High Court of Kerala in the case of *M/S Sama Rubbers and Ors. vs. South Indian Bank Ltd. and Anr. (OP (DRT) No. 392 of 2023)* has stated that all orders of the Tribunal, including the interim order challenged in the present proceedings, are appealable under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. A Single-Judge Bench comprising of Justice K. Babu while refusing to interfere in a petition filed under Article 227 of the Constitution observed that *"The materials placed before this Court do not demonstrate that the Tribunal has failed to exercise its jurisdiction in a manner negating justice. It is difficult to hold that the approach adopted by the Tribunal has*

occasioned a failure of justice…It is trite that whenever the Tribunal has considered the matter in its proper perspective and where the impugned order shows the application of mind by the Tribunal, this Court will not entertain a petition under Article 227 merely because another view could have been taken." The Bench, however, has granted liberty to invoke their statutory remedies if they approach the appropriate statutory forum.

- In the case of *Vodafone Idea Limited vs. Union Of India and Ors. (W.P.(C) No. 2472 of 2023)*, the High Court of Delhi has directed the GST Authorities to refund IGST (Integrated Goods and Service Tax) rendered by Vodafone Idea on the export of international roaming and long-distance services. The Division Bench comprising of Justice VibhuBakhru and Justice Amit Mahajan was hearing a Petition filed under Section 107 of the Central Goods and Service Tax Act, 2017. The Court observed that *"It is apparent that the provisions for ascertaining the place of supply of services under Rule 6A of the ST Rules are similar to Section 2(6) of the IGST Act inasmuch as the services will be treated as export of services when (a) the provider of service is located in the taxable territory, (b) the recipient of the service is located outside India, and (d) the place of provision of the service is outside India. There is no cavil that the decisions rendered on the question of export of services in the context of Rule 3 of the Export of Services Rules, 2005 are also applicable to the controversy in question"*

- The High Court of Karnataka in the matter of *Rajarajeshwari Dental College and Hospital vs. Dr. Sanjay Murgod (Writ Appeal No. 580 of 2023 (S-RES))* has ruled that the provisions of Section 98 of the Karnataka Education Act, 1983 pertaining to retrenchment of the employees shall be applicable to the unaided educational institutions run by the linguistic minority institution. The Division Bench comprising of Chief Justice Prasanna B Varale and Justice Krishna S Dixit added that *"...Section 98 secures the tenure by restricting management's power to remove or retrench the employees. The underlining philosophy of these provisions is that an employee whose tenure is secured will be in a better position to discharge his duties efficiently and that is necessary in public interest. it hardly needs to be emphasized that the education and educational institutions play a pivotal role in nation building and therefore a legislature rightly feels the need for protecting tenure of service and its conditions of these employees. In a sense, these provisions aim at social security as well, like the Labour Laws do for the workmen."*

- The High Court of Allahabad in the case of *Mohd Imran Kazi vs. State of U.P. and another (Application u/S 482 No. - 31091 of 2023)* has stated that merely liking provocative post on Facebook or on any other social media platform would not constitute an offence

under Section 67 of the Information Technology (Amendment) Act, 2008 ("**I.T. Act**"). A Single-Judge comprising of Justice Arun Kumar Singh Deshwal while quashing the chargesheet, cognizance order, and non-bailable warrant against an individual who was indicted for liking a provocative post on social media, clarified that *"...Section 67 of the I.T. Act is for the obscene material and not for provocative material. The words "lascivious or appeals to the prurient interest" mean relating to sexual interest and desire, therefore, Section 67 I.T. Act does not prescribe any punishment for other provocative material."*

- The High Court of Kerala in the case of *Jayaprakash A. vs. Union Bank of India and Ors. (WP(C) No. 30803 of 2023)* has ruled that in cases of recovery under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**"), with respect to secured assets would prevail over recovery under the provisions of the Micro, Small, and Medium Enterprises Development Act, 2006 ("**MSMED Act**"). A Single-Judge Bench comprising of Justice K. Babu observed that *"...the MSMED Act being a subsequent legislation against the SARFAESI Act, the Parliament has purposefully and knowingly superseded all the recovery proceedings by virtue of the nonobstante clause contained in Section 24. The MSMED Act is an extension of the welfare policy of the State and, therefore, the same is to be considered in such a way as to balance the larger interest of the small and medium enterprises. The provisions of the MSMED Act, a socio-economic legislation, are to be interpreted as broadly as possible."*

- While quashing the final assessment order passed in consequence of revisionary proceedings holding that the exercise of revisionary powers does not dilute the compliance of Section 144C of the Income Tax Act, 1961, the High Court of Delhi in the case of *Sinogas Management Pte Ltd vs. Deputy Commissioner of Income Tax and another (W.P.(C) 1879 of 2023)* has ruled that failure to adhere with the mandatory requirements of passing a draft assessment order invalidates the final assessment order and the consequent demand notice and penalty proceedings. The Division Bench comprising of Chief Justice Satish Chandra Sharma and Justice Sanjeev Narula observed that *"...to pass a draft assessment order is not merely a procedural oversight, but a substantive lapse, which renders the subsequent impugned order devoid of jurisdiction. The question whether the final assessment order stands vitiated for failure to adhere to the mandatory requirement of first passing the draft assessment order in terms of Section 144C(1) of the Act is no longer res integra; there is a long series of decisions where the Court has explained the legal provision/ position."*

NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Notification Ref. no. RBI/2023-24 / 78 of DoR.REG / LIC.No.54 / 19.51.052 / 2023-24 dated 30.10.2023, the Reserve Bank of India ("**RBI**") has issued Guidelines on Closure of Branches and Extension Counters by District Central Co-operative Banks ("**DCCBs**") which shall come into effect from the date of issue of this circular. The RBI has further clarified that within the provisions of Section 23(a), read with Section 56 of the Banking Regulation Act, 1949, the DCCBs may shift their Branches/Offices/ Extension Counters located in the rural or semi-urban, or urban/metropolitan areas, within the same village or town or locality/municipal ward respectively, without prior permission of Reserve Bank.

- Vide Notification Ref. no. RBI / 2023-24 / 70 of DOR.HGG.GOV.REC.46 / 29.67.001 / 2023-24 dated 25.10.2023, the Reserve Bank of India ("**RBI**") has advised the banks to ensure the presence of at least two Whole Time Directors ("**WTDs**"), including the MD and CEO, on their Boards. Accordingly, it has been directed that *"the number of WTDs shall be decided by the Board of the bank by taking into account factors such as the size of operations, business complexity, and other relevant aspects. In compliance with these instructions, banks that currently do not meet the minimum requirement as above are advised to submit their proposals for the appointment of WTD(s) under Section 35B(1)(b) of the Banking Regulation Act, 1949, within a period of four months from the date of issuance of this circular. Those banks which do not already have the enabling provisions regarding the appointment of WTDs in their Articles of Association may first seek necessary approvals under Section 35B(1)(a) of the Act, expeditiously, so as to be in a position to comply with the requirements under these instructions. While ensuring compliance with the above instructions, careful consideration shall also be given to meet the requirements under other applicable statutory/regulatory provisions."*

- Vide Circular no. SEBI / HO / CFD / CFD-PoD-2 / P / CIR / 2023 / 167 dated 07.10.2023, the Securities and Exchange Board of India, 1992, (**"SEBI"**) in relation to compliance with the provisions of SEBI Listing Obligations and Disclosure Requirements Regulations, 2015 ("**LODR Regulations**") by listed entities inter alia has relaxed the applicability of regulation 36(1)(b) of the LODR Regulations for Annual General Meetings and regulation 44(4) of the LODR Regulations for general meetings (in electronic mode) held till September 30, 2024.

- Vide Circular no. SEBI / HO / MIRSD / MIRSD - PoD-2 / P / CIR/2023 / 168 dated 10.10.2023, the Securities and Exchange Board of India, 1992, (**"SEBI"**) has extended the timeline for compliance with qualification and experience requirements under Regulation 7(1) of SEBI (Investment Advisers) Regulations, 2013. Based on the representations received from

various stakeholders and in view of the emerging landscape of the domain of investment advice, it has been specified that the timeline to comply with the enhanced qualification and experience requirements under the said regulation is extended to 30.09.2025.

- In consideration of difficulties arising to the taxpayers and other stakeholders in the timely filing of the report of the accountant, the Central Board of Direct Taxes (**"CBDT"**) vide Circular no. 18 of 2023 and F.No. 370142140/2023-TPL dated 20.10.2023, has extended the due date of filing of the report of the accountant as required to be filed under clause (8) of section 10AA read with clause (5) of section 10A of the Income-tax Act, 1961, for Assessment Year 2023-24 to 31.12.2023.

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DEALS THIS MONTH

- Bengaluru- based anonymous social media platform start-up, Grapevine, which focuses on unrestricted and anonymous conversations on career, finance, professional, and personal lives, has raised over USD three million in its seed round led by Peak XV Partners (formerly Sequoia India). While the concept of an anonymous platform for office-related discussions is not new, Grapevine has gained popularity in the country within a short span of six months, claiming to have over 30,000 users, especially among India's growing startup community.

- Honasa Consumer Ltd, the parent firm of renowned D2C brands such as Mamaearth, The Derma Co, and BBlunt, has raised USD Ninty-two million, a day ahead of its initial public offering (IPO) opening from its 49 (forty-nine) anchor investors including Smallcap World Fund Inc, Goldman Sachs, Fidelity International, Abu Dhabi Investment Authority, and many others in the list. The investor also includes as many as 7 (seven) mutual funds via their 19 (nineteen) schemes.

- The tech giant, Google India has recently launched a new program called 'DigiKavach' to combat online financial fraud in India. Digikavach is an early threat detection program and warning system aimed at identifying financial fraud patterns and blocking them before they can cause widespread harm. Google has collaborated with The Fintech Association for Consumer Empowerment and onboarded them as a priority flagger to combat predatory digital lending apps on the Play Store in India.

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