



SAGA LEGAL

COMMUNIQUE
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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of *Seema Guha and Ors. vs. The State Of Manipur and Anr. (Writ Petition (Criminal) No. 415 of 2023)* observed that making a false statement in an article does not amount to an offense under the provisions of Section 153A of the Indian Penal Code, 1860 ("**IPC**"). The Bench comprising Chief Justice D.Y. Chandrachud, Justice J.B. Pardiwala, and Justice Manoj Misra while dealing with a writ petition filed by the EGI seeking the quashing of an FIR registered against its journalists extended the interim protection granted to the journalists in Manipur. The Apex Court held that the statements made in the article might be incorrect, however, incorrect information is reported across the country on a daily basis, and solely, journalists cannot be prosecuted under Section 153A of IPC for the same.
- The Hon'ble Supreme Court in the case of *Kerala State Co-Operative Agricultural And Rural Development Bank Ltd. vs. The Assessing Officer, Trivandrum And Ors. (Civil Appeal No(S).10069 Of 2016)* observed that a cooperative bank registered under the Kerala State Co-operative (Agricultural and Rural Development Banks) Act, 1984, and not registered under the Banking Regulation Act, 1949, shall be entitled to the benefit of deduction under Section 80P of Income Tax Act, 1961 ("**the Act**"). The Bench comprising of Justice B.V. Nagarathna and Justice Ujjal Bhuyan has observed that "*under the provisions of the State Act, 1984, 'agricultural and rural development bank' means the Kerala Cooperative Central Land Mortgage Bank Limited, registered under Section 10 of the Travancore-Cochin Co-operative Societies Act, 1951, which shall be known as Kerala State Co-operative Agricultural and Rural Development Bank Limited i.e. the appellant herein. Thus, from a conjoint reading of all the relevant statutory as alluded to hereinabove, it is quite clear that the appellant is not a co-operative bank within the meaning of sub-section (4) of Section 80P of the Act. The appellant is a co-operative credit society under Section 80 P(2)(a)(i) of the Act whose primary object is to provide financial accommodation to its members who are all other co-operative societies and not members of the public.*"
- The Hon'ble Supreme Court in the case of *CBI vs. R.R Kishore (Criminal Appeal No. 377 of 2007)*, observed that once a law is declared unconstitutional on grounds of violation of the fundamental rights guaranteed under Part III of the Indian Constitution, it would be held *void-ab-initio* right from the date of enactment. The Constitutional Bench comprising of Justice Sanjay Kishan Kaul, Justice Sanjiv Khanna, Justice Abhay S. Oka, Justice Vikram Nath, and Justice J.K Maheshwari added that "*Sub-article (1) of Article 20 of the Constitution consists of two parts. The first part prohibits any law that prescribes judicial punishment for violation of law with retrospective effect. Subarticle (1) to Article 20 of the Constitution does not apply to civil liability, as distinguished from*



punishment for a criminal offence. Further, what is prohibited is conviction or sentence for any offence under an ex post facto law, albeit the trial itself is not prohibited.”

- While acquitting four accused who were sentenced to ten years of imprisonment, the Hon'ble Supreme Court in the case of *Javed Shaukat Ali Qureshi vs. the State of Gujarat (Criminal Appeal No. 1012 of 2022)* held that Courts cannot convict an accused and acquit the other when there is identical evidence ascribing same or similar role. The Bench comprising of Justice Abhay S. Oka and Justice Sanjay Karol noted that *“When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.”*
- The Hon'ble Supreme Court in the matter of *Life Insurance Corporation of India (“LIC”) vs. Dravya Finance Pvt. Ltd. & Ors. (Civil Appeal No. 4095 of 2012)* has held that LIC is not entitled to levy a service charge or fee for endorsing the assignment or transfer of a policy with respect to absence of provisions under the Insurance Regulatory and Development Authority

of India (Fee for granting written acknowledgment of the receipt of Notice of Assignment or Transfer) Regulations, 2015 (“**IRDAI**”). The Bench comprising of Justice Abhay S. Oka and Justice Sanjay Karol noted that *“...though, there was a specific provision made to levy a fee for giving acknowledgment of notice of transfer, the legislature, in its wisdom, has not provided any fee or charge for recording the assignment or transfer in the records of the insurer.”*

- The Hon'ble Supreme Court in the matter of *Rohit Chaudhary & Anr. vs. M/s Vipul Ltd. (Civil Appeal No. 5858 of 2015)* has ruled that a person buying goods either for resale or for use in large-scale profit-making activity, will not be a ‘consumer’ entitled to protection under the Consumer Protection Act, 1986 (“**the Act**”). However, if the commercial usage is by the purchasers themselves for the purpose of earning their livelihood by means of self-employment, such purchasers would continue to be a ‘consumer’ within the meaning of the Act. The Bench comprising of Justice S. Ravindra Bhat and Justice Aravind Kumar observed that *“...if the dominant purpose of purchasing the goods or services is for a profit motive and this fact is evident from record, such purchaser would not fall within the four corners of the definition of ‘consumer’. On the other hand, if the answer is in the negative, namely if such person purchases the goods or services is not for any commercial purpose and for one’s own use, it cannot be gainsaid*



even in such circumstances the transaction would be for a commercial purpose attributing profit motive and thereby excluding such person from the definition of 'consumer'."

- The High Court of Orissa in the case of *Partha Sarathi Das vs. State of Orissa & others (WPCRL No. 70 of 2023)* has emphasized that notaries are neither authorized to issue marriage certificates nor are they legally entitled to notarize any signed declaration of marriage. Such acts are beyond the scope of their functions under section 8 of the Notaries Act, 1952. The Division Bench comprising of Justice Sangam Kumar Sahoo and Justice Sibho Sankar Mishra added that *"Despite such authoritative pronouncements, this Court is vexed to observe that the Notaries are not abstaining themselves from issuing marriage certificates which have absolutely no value in the eyes of law and without any valid proof of marriage, they are allowing execution of declaration of marriage between the parties which have far-reaching consequences. Due to such extra-legal and subterfuge arrangements by the Notaries, parties are made to believe that they are legally married when in fact their marriage do not have even the slightest of legal sanctity."*
- The High Court of Delhi in the case of *DD Global Capital Pvt Ltd & Ors vs. M/S S.E. Investments Ltd. (FAO(OS) (COMM) 33 of 2018)*, has affirmed that transferring liabilities from a previous loan agreement makes arbitration clauses in subsequent agreement

binding on the parties. The Division Bench comprising of Justice Manmohan and Justice Mini Pushkarna while dismissing the Appeal observed that *"The five debit vouchers executed by appellant ex-facie show that the consideration against the five loans of the year 2010 was passed on to the appellant company by way of adjustment of outstanding dues of the year 2008. Since outstanding dues of earlier loan of the year 2008 were converted into five new loans of the year 2010 by way of adjustment, and the five Loan Agreements of the year 2010 contain arbitration clause, the present arbitration proceedings were rightly initiated pursuant to the said arbitration clause."*

- The Allahabad High Court in the case of *Mohan Lal Rathi vs. Union of India & Anr. (Application u/S 482 No. - 1663 of 2023)* has clarified that a grant of pardon under Section 306 of the Code of Criminal Procedure, 1973 ("**Cr.P.C.**") would not fall within the purview of the words 'finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the scheduled offense against him.' A Single-Judge Bench was dealing with a plea seeking the quashing of a case filed by the Enforcement Directorate under the Prevention of Money Laundering Act, 2002 ("**PMLA**"). The Court observed that *"The pardon granted under Section 306 Cr.P.C. to a person in a scheduled offence would not ipso facto result in his acquittal in the offence under the PMLA, unless, of course, the accused*



person seeks pardon in the case under PMLA also by making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence under PMLA also.”

- The High Court of Delhi in the case of *Silica Udyog India Pvt. Ltd. vs. Union of India & Ors. (W.P.(C) 5185 of 2023)*, upheld the restriction on LPG gas cylinder manufacturers having common business ownership including sister companies to quote only a single bid while applying in the tender floated by Oil Marketing Companies (“OMCs”) such as Hindustan Petroleum, Bharat Petroleum, and Indian Oil Corporation Limited. The Division Bench comprising of Chief Justice Satish Chandra Sharma and Justice Sanjeev Narula while dismissing the series of petitions challenging the eligibility criteria in the Notice Inviting Tenders floated by the three leading OMCs observed that *“...given that there is no evidence to suggest that the clause is arbitrary, discriminatory, or introduced with malafide intent, there is no compelling reason for judicial interference in this matter. In essence, the principle reaffirmed here is that courts should exhibit restraint and deference to administrative discretion in matters pertaining to tenders and policy decisions unless there is an apparent breach of established legal norms or principles.”*
- The Bombay High Court in the matter of *South Port Limited & Anr. vs. State of Goa & Anr. and connected matters*

(W.P. No. 475 of 2014) upheld the constitutional validity of the Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013 (“Act”). The Act which enables the state government to collect cess on the utilization of pollution causing hazardous products and uses it to reduce the effects of carbon footprint in the State. The Division Bench comprising of Justice M.S. Sonak and Justice Bharat P Deshpande observed that *“The contention that such measures benefit only the members of the general public and not the Petitioners upon whom such levy is imposed, cannot be accepted. The responsibility for reducing the carbon footprint or, in any case, combating the deleterious effects of such increase, is primarily on the Petitioners. Therefore, if the State levies a cess or a fee upon the Petitioners for taking measures to reduce the carbon footprint or to deal with the deleterious effects of its increase, the Petitioners cannot say that they receive no benefits.”*

- The Delhi High Court in the case of *Malini Chaudhri vs. Ranjit Chaudhri & Anr. (MAT.APP. (F.C.) 89 of 2018)* has ruled that a divorced daughter is not entitled to claim maintenance from the estate of her deceased father as she is not a “dependent” under the Hindu Adoptions and Maintenance Act, 1956 (“HAMA”). The Division Bench comprising of Justice Suresh Kumar Kait and Justice Neena Bansal Krishna observed that *“The claim for maintenance has been made under Section 21 of HAMA which provides for*



the dependents who may claim maintenance. It provides for 9 categories of relatives in which the “divorced daughter” does not feature. An unmarried or widowed daughter is recognized to have a claim in the estate of the deceased, but a “divorced daughter” does not feature in the category of dependents entitled to maintenance.”

- The Bombay High Court invoked the doctrine of unjust enrichment in the case of *Grasim Industries Ltd vs. Assistant Commissioner of Income Tax (Writ Petition No. 2505 of 2012)* and directed the Income Tax Department to refund the ad-hoc amount withholding tax deposited under protest, as the same cannot be retained construing it as TDS. The Division Bench comprising of Justice K. R. Shriram and Justice Dr. N. K. Gokhale noted that “...what Petitioner paid was ‘an ad hoc amount not technically a TDS amount’. Moreover, since it is also confirmed by this Court that the amount paid to DAVY was not chargeable to tax in India, Respondents’ insistence on Petitioner paying that amount was not in accordance with law and the amount so paid over must be refunded to Petitioner...the refusal of the Department to return the amount and retaining the same is unauthorized by

law and would only amount to unjust enrichment by the Department on technical grounds.”

- The High Court of Delhi in the case of *Anil Kapoor vs. Simply Life India & Ors. (CS(COMM) 652/2023)* has restrained social media channels, e-commerce websites, and people at large from infringing the personality and publicity rights of actor Anil Kapoor from misusing his image, voice, name, or any other elements of his persona without his consent. A Single-Judge Bench comprising of Justice Pratibha M Singh stated that “*There can be no justification for any unauthorised website or platform to mislead consumers into believing that they are permitted to collect fee by incorrectly portraying that they can bring the Plaintiff as a motivational speaker. Using a person’s name, voice, dialogues, images in an illegal manner, that too for commercial purposes, cannot be permitted. The celebrity’s right of endorsement would in fact be a major source of livelihood for the celebrity, which cannot be destroyed completely by permitting unlawful dissemination and sale of merchandise such as t-shirts, magnets, key chains, cups, stickers, masks, etc. bearing the face or attributes of their persona on it without their lawful authorisation.*”



NOTIFICATIONS / AMENDMENTS INSIGHTS

- The Reserve Bank of India (“**RBI**”) vide Notification Ref. no. *RBI/2023-24/61 of FIDD.CO.MSME.BC.No.10/06.02.031/2023-24* dated 13.09.2023, notified the ‘PM Vishwakarma Scheme,’ an initiative by Indian Government. The scheme aims to provide support to artisans and craftspeople to enable them to move up the value chain in their respective trades. The scheme envisages, among other measures, credit support to the beneficiaries at a concessional interest rate, with interest subvention support by the government. Accordingly, it has been directed that the eligible lending institutions may refer to the scheme guidelines issued by the Ministry of Micro, Small, and Medium Enterprises, for the appropriate action.
- The Reserve Bank of India (“**RBI**”) vide Notification Ref. no. *RBI/2023-24/62 of DoR.FIN.REC.39 / 20.16.056 / 2023-24* dated 20.09.2023, notified the issuance of Data Quality Index (“**DQI**”) for Commercial and Microfinance Segments by Credit Information Companies (“**CICs**”). Accordingly, Credit Institutions are advised to undertake half yearly review of the DQI for all segments to improve the quality of the data being submitted to CICs. The Notification also outlines that corrective steps be taken on the above issues along with a report on the same shall be placed before its top management by each Credit Institution for review within two months from the end of that half-year.
- The Securities and Exchange Board of India (“**SEBI**”) vide Circular no. *SEBI/HO/GSD/TAD/P/CIR/2023/149* dated 04.09.2023, has modified the Mode of Payment with SEBI Investor Protection and Education Fund Bank Account (“**IPEF**”). Hence, SEBI has opened a new bank account to facilitate market participants to make payments to SEBI IPEF, whereby, a link has been provided on the Homepage of the SEBI website i.e. www.sebi.gov.in under the head “*Click here to make payment to SEBI IPEF.*” The link enables the remitter to make payments through Net Banking, Debit cards, UPI, and NEFT/RTGS.
- The Securities and Exchange Board of India (“**SEBI**”) vide Circular no. *SEBI / HO / DDHS-PoD-2 / P / CIR / 2023 / 154* dated 11.09.2023,) has issued the framework to exercise the board nomination rights by the Eligible Unit holder(s) of the Real Estate Investment Trusts (“**REITs**”). Additionally, it has been directed that “*the Manager of the REIT shall, within ten days from the end of each calendar month, review whether the Eligible Unitholder(s) who have exercised the board nomination right, continue to have/hold the required number of units of REIT and make a report of the same. The Manager of the REIT shall submit such report to the Trustee of the REIT.*”
- In consideration of difficulties reported by the taxpayers and other stakeholders, the Central Board of Direct Taxes (“**CBDT**”) vide Circular no. 16 of 2023 and F. No. 225 / 177 /



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2023 / ITA-II dated 18.09.2023, has extended the timeline for filing Form 1B/10BB and Form ITR-7 for the Assessment Year 2023-24.

Accordingly, the timelines for filing both the forms have been extended to 31.10.2023 & 30.11.2023 respectively.



DEALS THIS MONTH

- The Life Insurance Corporation of India (“**LIC**”) has acquired a 6.66 % share in the demerged financial division of Reliance Industries, Jio Financial Services Limited (formerly Reliance Strategic Investments Limited) (“**JFSL**”). JFSL has joined the insurance market in order to provide life, general, and health insurance products through an intuitive digital interface, maybe in partnership with major players throughout the world.
- The International Finance Corporation and the Fundamentum Partnership, along with Vertex Ventures, have co-led Kuku FM's Series C round and saw a total investment of USD 25 million. Google backed Indian Platform Kuku FM is an audio content platform that creates, produces, markets, and distributes exclusive premium audio content in the form of audiobooks, stories, summaries, courses, and other categories. With this additional funding, Kuku FM intends to develop the content ecosystem, expand the breadth of material across Indian languages for its “Bharat 2.0 audience” and place a stronger emphasis on technology.
- According to a contract inked in 2021, Goat Brand Labs (“**GOAT**”) has fully acquired a children’s wear company Frangipani by paying its founders the remaining ownership. Rishi Vasudev, Founder of GOAT, acknowledged the important roles played by Sunaina and Mansi in Frangipani's expansion over the previous ten years. Now that GOAT Brand Labs is in complete command, they intend to take advantage of their direct-to-consumer (D2C) platform capabilities to advance the brand's growth.
- Hybrid Shifting Solution India Pvt. Ltd. (Hybrid Shifting) acquires IAN backed Pikkol. Hybrid Shifting recently received USD 2.5 million first investment from Transworld International. Customers can look for a custom solution to their moving needs on the Pikkol portal, which provides relocation services. In a business that is shifting towards employee reimbursement, Hybrid Shifting seeks to provide its consumers with an exceptional experience by utilizing Pikkol's direct-to-consumer approach and app-based technologies.
- Atlys, a platform for online visa applications, has secured USD 12 million in a Series A round that was co-led by Elevation Capital and Peak XV Partners (formerly Sequoia Capital India). Existing investors Andreessen Horowitz (a16z), the musical duo Chainsmokers, South Park Commons, Pinterest Founders, and others also participated in the round. According to a press release from the company, Atlys will utilize the money to hire new employees to grow the team and extend the platform’s product offerings for travellers.



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