



SAGA LEGAL

COMMUNIQUE

APRIL 2024



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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of **Level 9 Biz Private Limited vs. Himachal Pradesh Housing & Urban Development Authority & Anr. (C.A. No. 4626 of 2024)**, has reiterated that a 'Letter of Intent' is an expression of intention to enter into a formal contract and does not create any right in favor of the party to whom it is issued. The Bench comprising of Justice Bela M. Trivedi and Justice Pankaj Mithal was dealing with a Petition challenging the High Court's order to permit the withdrawal of the cancellation of the tender process. The Court observed that, *"It hardly needs to be reiterated that the Letter of Intent is merely an expression of intention to enter into a contract. It does not create any right in favour of the party to whom it is issued. There is no binding legal relationship between the party issuing the LOI and the party to whom such LOI is issued. A detailed agreement/contract is required to be drawn up between the parties after the LOI is received by the other party more particularly in case of contract of such a mega scale."*
- In the case of **Seema Girija Lal & Anr. vs. Union of India & Ors. (WP(C) Diary No(s). 29329 of 2021)**, the Hon'ble Supreme Court has emphasized the necessity to address the implementation status of the Rights of Persons with Disabilities Act, 2016 (**"the Act"**). The court was hearing a writ petition filed by a group advocating for the enforcement of the rights of individuals with disabilities, as guaranteed by the Constitution of India and enshrined in the Act. The Bench comprising of Chief Justice DY Chandrachud and Justice JB Pardiwala held that, *"Though over five years have elapsed since the enactment of the law, the implementation across the country is still in a dismal stage. As already noticed earlier, many States had not even framed the rules under the Act which under Section 101(1), were required to frame within 6 months from the date of the commencement.... We are of the view that the status of the implementation of the Act needs to be set right. The Department of Empowerment of Persons with Disabilities and the Ministry of Social Justice And Empowerment shall duly take up the issue with all their counterparts and report the updated status of compliance before this court on or before the next date...So we have asked all the Chief Secretaries to at least appoint the Commissioners and report the compliance."*
- The Hon'ble Supreme Court in the case of **Manisha Mahendra Gala and Ors. vs. Shalini Bhagwan Avatramani and Ors. (C.A. No. 9642-43 of 2010)**, has reiterated that a Power of Attorney holder is only permitted to testify regarding facts within their personal knowledge, and not concerning matters outside their scope of knowledge. The Court was addressing a batch of Appeals involving disputes concerning the easement rights over a 20 ft. wide road situated on a piece of land. The Bench comprising of Justice Pankaj Mithal and Justice Prashant Kumar Mishra observed that *"The easementary right by necessity could be acquired only in accordance with Section 13 of the Act which provides that such easementary right would arise if it is necessary for enjoying the Dominant Heritage. It is, therefore, settled in law that Power of Attorney holder can only depose about the facts within his personal knowledge and not about those facts which are not within his knowledge or are within the personal knowledge of the person who he represents or about the facts that may have transpired much before he entered the scene."*



- In the case of ***Mahakali Sujatha vs. The Branch Manager, Future Generali India Life Insurance Company Limited & Anr. (C.A. No. 3821 of 2024)*** the Hon'ble Supreme Court has held that the burden of proving allegations of non-disclosure of material facts or fraud, which would absolve the insurance company from compensating the insured person or their nominee, rests solely on the insurance company. The court further ruled that the burden cannot be shifted onto the insured person to address issues merely alleged by the insurance company without producing any evidence to substantiate the allegation. The Bench comprising of Justice BV Nagarathna and Justice Augustine George Masih observed that, *"In other words, it is incumbent on each party to discharge the burden of proof, which rests upon him. In the context of insurance contracts, the burden is on the insurer to prove the allegation of non-disclosure of a material fact and that the non-disclosure was fraudulent. Thus, the burden of proving the fact, which excludes the liability of the insurer to pay compensation, lies on the insurer alone and no one else..."*
- The Hon'ble Supreme Court in the case of ***Navneet Kaur Harbhajansing Kundles vs. State of Maharashtra and Ors., (Civil Appeal No(S). 2741--43 of 2024)***, has ruled that the High Court should refrain from intervening in a writ for certiorari if the challenge is based on the grounds of insufficiency or inadequacy of material to support the impugned finding. The Court was dealing with an Appeal challenging the High Court's decision to cancel the caste certificate on the basis of alleged fraudulent procurement. The Bench of Justice JK Maheshwari and Justice Sanjay Karol observed that *"the writ of certiorari being a writ of high prerogative, should not be invoked on mere asking. The purpose of a writ of certiorari for a superior Court is not to review or reweigh the evidence to adjudicate unless warranted. The jurisdiction is supervisory and the Court exercising it, ought to refrain to act as an appellate court unless the facts so warrant. It also ought not re-appreciate the evidence and substitute its own conclusion interfering with a finding unless perverse..."*
- The Hon'ble Supreme Court in the case of ***Karikho Kri vs. Nuney Tayang and Anr (C.A. No. 4615 of 2023)*** has held that it is not necessary for a candidate to declare every item of movable property that they or their dependent family members own unless the item is of significant value or reflects upon the candidate's lifestyle and candidacy. The Bench comprising of Justice Aniruddha Bose and Justice Sanjay Kumar observed that *"Though it has been strenuously contended before us that the voter's 'right to know' is absolute and a candidate contesting the election must be forthright about all his particulars, we are not inclined to accept the blanket proposition that a candidate is required to lay his life out threadbare for examination by the electorate. His 'right to privacy' would still survive as regards matters which are of no concern to the voter or are irrelevant to his candidature for public office. In that respect, non-disclosure of each and every asset owned by a candidate would not amount to a defect, much less, a defect of a substantial character..."*
- The Hon'ble Supreme Court in the case of ***Global Credit Capital Limited & Anr. vs. Sach Marketing Pvt. Ltd. & Anr. (C.A. No. 1143 of 2022)***, has ruled that a debt cannot be recognized under Section 5(11) of the Insolvency and Bankruptcy Code,



2016 (“**the IBC**”) unless there is a corresponding claim under Section 5(6) of the IBC. The Court was dealing with a batch of Appeals challenging the rulings made by the National Company Law Appellate Tribunal. The Bench comprising of Justice Abhay S. Oka and Justice Pankaj Mithal noted that “*Sub-section (8) of Section 5 of the IBC defines “financial debt” ... The definition incorporates the expression “means and includes”. The first part of the definition, which starts with the word “means”, provides that there has to be a debt along with interest, if any, which is disbursed against the consideration for the time value of money. The word “and” appears after the word “money”. Before the words “and includes”, the legislature has not incorporated a comma. After the word “includes”, the legislature has incorporated categories (a) to (i) of financial debts. Hence, the cases covered by categories (a) to (i) must satisfy the test laid down by the earlier part of the sub-section (8).*”

- The Hon’ble Supreme Court in the case of **Association of Democratic Reforms vs. Election Commission of India & Anr. (W.P. (Civil) No. 434 of 2023)** has allowed runner-up candidates in an election to request verification of the burnt memory of 5% of Electronic Voting Machines (“**EVMs**”) per assembly segment. However, the expenses of the verification process shall be borne by the candidate making such request. The Bench comprising of Justice Sanjiv Khanna and Justice Dipankar Datta observed “*The burnt memory semi-controller in 5% of the EVMs that is the Control Unit, Ballot Unit and the VVPAT per assembly segment of the parliamentary constituency shall be checked and verified by a team of engineers from the manufacturers of the EVM post the announcement of results, for*

any tampering or modification, on a written request made by candidates who are at serial no. 2 or 3 behind the highest polled candidate...After the verification process is conducted, the actual cost or expenses for the said verification is to be notified by the ECI and the candidate making the said request will make payment of the said expenses”.

- The High Court of Karnataka in the case of **M/s Azeem Infinite Dwelling (India) Pvt. Ltd. vs. M/s Patel Engineering Ltd. (Commercial Appeal No. 60 of 2024)** has ruled that the term sheet for a buyout serves as an offer and remains valid until a definitive agreement is entered into. The Division Bench comprising of Justice Anu Sivaraman and Justice Anant Ramanath Hegde observed that “*From a reading of the Termsheet for Buyout dated 08.12.2022, it is clear that the said document is only in the nature of an offer, which is valid till definitive agreement is entered into or for a period of 90 days from the date of execution, whichever is earlier. It is not in dispute before us that no Definitive Agreements had been entered into within a period of 60 days from the date of execution of the Termsheet for Buyout. It is also not in dispute that no amount has changed hands on the basis of the Termsheet for Buyout between the parties to the same.*”
- The High Court of Delhi in the case of **Delhi State Legal Services Authority vs. Annwasha Deb (LPA 701 of 2023)**, has opined that the advocates empanelled with the Delhi State Legal Services Authority (“**DSL**A”) are not 'employees' and therefore are not eligible for maternity benefits under the Maternity Benefit Act, 1961 (“**the Act**”). The Division Bench of Justice V Kameswar Rao and Justice Saurabh Banerjee while



overruling Single Judge's decision to direct the DSLA to provide medical, financial, and other benefits to its empanelled legal aid counsel held that *"We are not in agreement with the parity sought to be drawn by the Learned Single Judge between Authority and the respondent, for the reason that there cannot be a comparison between an Advocate who continues to act as such and an employee who is appointed as per the Recruitment Rules of the Authority..."*

- The High Court of Kerala in the case of ***Cherplassery Co-Operative Hospital Ltd vs State of Kerala (WP(C) NO. 32291 OF 2014)***, has distinguished between labor laws and the Act, stating that while labor laws focus on welfare and social security measures, the Act primarily deals with the conditions of service of employees within the society. These conditions include post-creation, qualifications for appointment, methods of appointment, payment of salary, promotion, and retirement. The Single Judge bench of Justice Murali Purushothaman observed, *"The employees of the Co-operative Societies are entitled to the benefits of the said labour legislations (Kerala Shops and Commercial Establishments Act, 1960, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961 and the Festival Holidays Act). The Kerala Co-operative Societies Act and Rules do not exclude the operation and applicability of the aforesaid labour laws to Co-operative Societies and the petitioner is bound to comply with the provisions of the said labour enactments."*
- The High Court of Madhya Pradesh in the case of ***Pawan Kumar vs. Dr. Babita Jain (First Appeal No. 375 of 2023)*** has ruled that if a husband objects to his wife financially supporting her parents, the same shall be considered as cruelty. While

rejecting the appeal challenging the decision of the Family Court that granted the wife a decree of divorce, the Division Bench of Justice Rohit Arya and Justice Sanjeev S Kalgaonkar observed that *"The contention of learned counsel for the appellant that owing to greed of her parents nuptial ties have been severed cannot be countenanced, inasmuch as the learned Trial Court in this regard has rightly found that being a daughter, the respondent/wife was always free to financially support her parents and if there was any objection in this behalf of the appellant/husband, the same in fact amounted to cruelty"*.

- The High Court of Telangana in the case of ***Shameen Sultana Khan vs. Faizunnisaa Begum (Arbitration Application No. 164 of 2023)*** held that disputes related to insolvency and winding-up of a partnership concerning partners' rights and obligations are arbitrable. The court also held that under Section 16(1) of the Arbitration and Conciliation Act, 1996, arbitral tribunals have the authority to determine their own jurisdiction, which includes deciding on the non-arbitrability of a dispute. The Single-Judge Bench comprising of Chief Justice Alok Aradhe observed *"that all the objections with regard to jurisdiction of the arbitrator to deal with the claim made on behalf of the applicant can be raised and can be urged before the arbitral Tribunal itself. In Booz Allen & Hamilton Inc. (supra) in paragraph 36 while referring to well recognized examples of non-arbitrable disputes, the Supreme Court, by way of illustration, referred to insolvency and winding-up of a company, whereas the instant dispute is between the partners under the Indian Partnership Act, 1932."*



- The High Court of Gujarat in the case of ***Gopalbhai Naranbhai Vaghela vs. Union of India & Anr. (R/Special Civil Application No. 16484 of 2022)*** has held that the date of birth mentioned in the school leaving certificate can be considered valid for determining the pension payment upon superannuation, even if it differs from the date on the Aadhar Card. The factual background of the case involved a petitioner who had served for over 30 years and encountered pension payment issues due to a

discrepancy between his service record and Aadhar Card. A Single-Judge Bench of Justice Mauna M. Bhatt observed that “...it appears that due to some inadvertent error, some other date has been mentioned in the Aadhar Card, than mentioned in the School Leaving Certificate. He could not dispute that date of birth referred in the School Leaving Certificate is required to be taken into consideration for the purpose of date of birth, if any dispute arose.”



NOTIFICATIONS / AMENDMENTS INSIGHTS

- The Reserve Bank of India (“**RBI**”) vide Circular No. **FEMA.10(R)(3)/2024-RB** dated **23.04.2024**, has issued an amendment to Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2024. Accordingly, sub-regulation (F)(1) of Regulation (5) of the Principal regulation has been substituted as follows: *“Subject to compliance with the conditions in regard to raising of External Commercial Borrowings (“**ECB**”) or raising of resources through American Depository Receipts (“**ADRs**”) or Global Depository Receipts (“**GDRs**”) or through direct listing of equity shares of companies incorporated in India on International Exchanges, the funds so raised may, pending their utilization or repatriation to India, be held in foreign currency accounts with a bank outside India.”*
- The Securities and Exchange Board of India (“**SEBI**”) vide Circular No. **SEBI / HO / AFD / SEC-1 / P / CIR / 2024 / 22** dated **18.04.2024**; has standardized the Private Placement Memorandum (“**PPM**”) Audit report. Accordingly, a consultation has been prepared with the pilot Standard Setting Forum for alternative investment funds (“**AIFs**”) (“**SFA**”) to ensure a standard reporting format for the PPM Audit Report. The said standardized reporting format has been made available on the websites of the AIF Association participating in the SFA. Subsequently, AIFs are required to submit the PPM audit report to SEBI online through the SEBI Intermediary Portal in accordance with the specified format. This reporting requirement is applicable for the PPM audit report to be filed for the financial year ending 31 March 2024 and onwards.
- The Reserve Bank of India (“**RBI**”) vide Circular No. **FEMA. 395(2)/2024-RB** dated **23.04.2024**, has amended Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2024. Accordingly, it has been decided that sub-regulation (8) of Regulation (4) of the Principal regulation shall be substituted with the following: *“(i) the authorized dealer Category-I banks shall report to the RBI in Form LEC(FII) the purchase/transfer of the equity instruments by FPIs on the stock exchanges in India. (ii) the investee Indian Company through Authorized dealer Category I bank shall report to the RBI in Form LEC (FII) the purchase/subscription of equity shares (where such purchase/subscription is classified as Foreign Portfolio Investment under the rules) by the permissible holder, other than transfers between permissible holders, on an International Exchange.”*
- The Central Board of Direct Taxes (“**CBDT**”) vide Circular No. **07 of 2024** dated **25.04.2024**; has extended the due date for filing of Form 10A/Form 10AB under the Income Tax Act, 1961 (“the **Act**”) from **30th September 2023** to **30th June 2024**. The circular further clarified the following: (a) *“The existing trust, institution or fund who failed to file Form 10A for AY 2022-23 within the extended due date and also applied for provisional registration as a new entity and received Form 10AC, such trust, institution or fund can surrender the Form 10AC and apply for registration for AY 2022-23 as an existing trust, institution, or fund in Form 10A till aforesaid extended deadline”;* (b) *“The trusts, institutions or funds whose applications were rejected on the ground of late filing or filing under wrong section code, such trusts, institutions or funds may also submit fresh application in Form 10AB within the aforesaid extended deadline.”*



DEALS THIS MONTH

- Sanlayan Technologies Private Limited has raised their Seed Funding Round from non-residents as well as resident investors. The deal amount as well as the details of the investors are confidential in nature. Sanlayan Technologies is operating in the aerospace sector and the funding will help the company in expanding its business going forward. Sanlayan Technologies was represented by **Saga Legal**, the team comprised of Neeraj Vyas (Partner), Antra Ahuja (Senior Associate) and Abhishek Malhotra (Associate).
- Mumbai-based global digital technologies, operations, and experiences company - Datamatics Global Services Limited is all set to acquire a 100% stake in Dextara Digital for a sum amounting to Rs. 143.4 Crore. With a stellar 5-star rating in the salesforce partner ecosystem, Dextara Digital has established a reputation for delivering innovative solutions customized to meet the unique needs of customers across diverse industries. The acquisition will help Datamatics to expand its capabilities in the salesforce ecosystem, enabling it to tap into the growing sales force market while further strengthening its position as a leading digital technologies provider.
- Mumbai-based Company, Zeno Health, an omni-channel platform for quality and affordable generic medicines is all set to acquire a Kolkata-based startup TABLT Pharmacy for an undisclosed amount. With this acquisition, Zeno Health intends to expand its network in semi-urban and rural parts of Bengal, Odisha, Bihar and Jharkhand. Zeno Health also tends to partner with local medicine shops across the state in order to meet with the demands of the customers in the future.
- Bengaluru-based startup, VerSe Innovation, the Parent firm of news aggregator Dailyhunt is all set to acquire Magzter, a New York-headquartered cross-platform global digital newsstand with a library of over 8,500 premium magazines and newspapers for an undisclosed amount. The transaction involves a combination of stock and cash. The acquisition will help VerSe Innovation to diversify Dailyhunt's revenue streams from a pure advertising-driven model to include digital subscription.
- Aurionpro Solutions Limited has acquired Mumbai-Based banking and insurance-focused Platform as a Service ("**PaaS**"), Arya.ai for a sum amounting to approximately USD 16.5 million. The acquisition will result in holding a majority stake of 67% in Arya.ai which will help Aurionpro to bring products and expertise in artificial intelligence, deep learning, intelligent automation, PaaS, autonomous AI platforms, and industry solutions, to complement and strengthen Aurionpro's existing portfolio.



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