



SAGA LEGAL

COMMUNIQUE

AUGUST 2024



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COURTS THIS MONTH

- The Hon'ble Supreme Court of India in the case of *Union of India vs. Bahareh Bakshi (Civil Appeal No(S).4887-4888 of 2024)* has held that the physical or virtual presence of a spouse is mandatory to process an application for Overseas Citizen of India (OCI) Card on the basis of marriage under Section 7A of the Citizenship Act, 1955 ("**the Act**"). The Bench comprising Justice Hrishikesh Roy, Justice Sudhanshu Dhulia, and Justice S.V.N. Bhatti observed, "*We are of the view that the direction issued in the impugned judgment to dispense with the presence of the applicant's spouse, has no legal basis...apart from the physical/virtual presence of the spouse other conditions are also to be satisfied by an applicant as is provided under the Citizenship Act 1955, the checklist and the Visa Manual for which even a declaration by the husband may be necessary.*"
- In the case of the *State of Punjab & Ors. vs Davinder Singh & Ors. (C.A. No. 2317 of 2011)*, the Hon'ble Supreme Court of India by the ratio of 6:1 has permitted the sub-classification within scheduled castes and scheduled tribes to give separate quotas for more backward. The Court further clarified that while sub-classification is permissible, the State cannot allocate 100% (one hundred percent) reservation to a sub-class. Additionally, the State must justify the sub-classification with empirical data showing the sub-class's inadequate representation. A seven-judge Bench comprising of Chief Justice of India D.Y . Chandrachud, Justice B.R. Gavai, Justice Vikram Nath, Justice B.M. Trivedi, Justice Pankaj Mithal, Justice Manoj Misra, and Justice S.C. Sharma observed that "*... the State must evolve a policy for identifying the creamy layer even from the Scheduled Castes and Scheduled Tribes so as exclude them from the benefit of affirmative action. In my view, only this and this alone can achieve the real equality as enshrined under the Constitution.*"
- The Hon'ble Supreme Court of India in the case of *A. B. Govardhan vs P. Ragothaman (Civil Appeal NOS. 9975-9976 of 2024)* has stated that the production of the title deeds of the property as security for a debt amounted to the creation of a 'mortgage by deposit of title deeds' under Section 58(f) of the Transfer of Property Act, 1882 ("**TPA**"). The Court while referring to the case of *State of Haryana vs. Narvir Singh, (2014)* further held a document merely recording a transaction that is already concluded and which does not create any rights and liabilities and does not require registration. The Bench comprising Justice Hima Kohli and Justice Ahsanuddin Amanullah observed "*We are of the opinion that the Single Judge has appreciated the law correctly as far as the Agreement is concerned to hold it to be a mortgage in view of Section 58(f) of the Act. We have read and re-read the Agreement. We have also minutely considered the exposition of law made in Narvir Singh (supra). We are of the opinion that the Agreement only records what has happened and does not create/extinguish rights/liabilities.*"
- The Hon'ble Supreme Court of India in the case of *Prem Prakash vs. Union of India Through the Directorate of Enforcement (Neutral Citation: 2024 INSC 637)* has observed that an incriminating statement made by an accused under Section 50 of the Prevention of Money Laundering Act, 2002 ("**PMLA**") while in custody and under investigation by the same agency is inadmissible in another money laundering case where the accused's arrest has not yet been recorded. The Bench comprising of Justice BR Gavai and Justice KV



Viswanathan observed *“when an accused is in custody under PMLA irrespective of the case for which he is under custody, any statement under Section 50 PMLA to the same Investigating Agency is inadmissible against the maker. The reason being that the person in custody pursuant to the proceeding investigated by the same Investigating Agency is not a person who can be considered as one operating with a free mind. It will be extremely unsafe to render such statements admissible against the maker, as such a course of action would be contrary to all canons of fair play and justice.”*

- The Hon'ble Supreme Court of India *In Re: Alleged Rape and Murder Incident of a Trainee Doctor in R.G. Kar Medical College and Hospital, Kolkata and Related Issues (SMW (Crl) No. 000002 of 2024)* has set up a “National Task Force” for suggestions about the safety, working conditions and well-being of the professionals in the medical field. The Court has taken *suo motu* cognizance of the rape and murder of a doctor in R.G. Kar Hospital in Kolkata, West Bengal. The Bench comprising of Chief Justice DY Chandrachud, Justice JB Pardiwala, and Justice Manoj Misra stated *“This is not just a matter of protecting doctors. Their safety and well-being as health providers is a matter of national interest. As more and more women join the workforce in cutting edge areas of knowledge and science, the nation has a vital stake in ensuring safe and dignified conditions of work. The constitutional value of equality demands nothing else and will not brook compromises on the health, wellbeing and safety of those who provide health care to others. The nation cannot await a rape or murder for real changes on the ground.”*
- The Hon'ble Supreme Court of India, in the case of *K. Ravi vs. State Of Tamil Nadu & Anr. (Special Leave Petition (Crl.) No. 2029 of 2018)* has ruled that an accused person does not have the right to submit a new discharge application under Section 216 of the Criminal Procedure Code (“CrPC”) once charges have been framed, especially if a previous discharge application under Section 227 of the CrPC has already been rejected. The Bench comprising of Justice Bela M. Trivedi and Justice Satish Chandra Sharma observed *“It is trite to say that Section 216 is an enabling provision which enables the court to alter or add to any charge at any time before judgment is pronounced, and if any alternation or addition to a charge is made, the court has to follow the procedure as contained therein. Section 216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge under Section 227 has already been dismissed. Unfortunately, such applications are being filed in the trial courts sometimes in ignorance of law and sometimes deliberately to delay the proceedings.”*
- The High Court of Calcutta in the case of *The High Court of Visa International Ltd. vs. Visa International Service Association & Anr. (IPDTMA No. 82 of 2023)* has stated that the associate managers appointed under Section 3(2) of the Trademarks Act, 1999 (“the Act”) cannot issue quasi-judicial orders, as their contractual appointment does not grant them the authority to do so. The Court further held that the personnel hired under Section 3(2) of the Act are under the registrar's control, but the quasi-judicial functions performed by them are independent, as they are not subject to the



registrar's direction or control. The Single-Judge Bench of Justice Krishna Rao observed that *"...the Registrar dealing with an application under the Trade Marks Act is a quasi judicial and delegation of power under sub-section (2) of Section 3 is an administrative power and as such the Associate Managers appointed under sub-section 2 of Section 3 are not empowered to pass quasi judicial orders."*

- The High Court of Delhi in the case of *M/s Hotel Marina & Anr. vs. Vibha Mehta (EX.P. 128 of 2012)* has held that the terms of a settlement agreement should not be interpreted as a statute; rather, the intention of the parties should be gathered from the agreement as a whole. The Bench of Justice Navin Chawla held, *"No doubt the Settlement Agreement between the parties states that it is "Upon the said payment" that the Judgement Debtor ("JD") shall "sign and execute any and all documents, papers and deeds required to give effect to the terms of this Agreement including the Dissolution Deed", the terms of the Settlement Agreement are not to be read as a statute. The intention of the parties is to be gathered from the terms of the Agreement as a whole. It was the intent of the parties that the DH shall pay Rs. 2 crores to the JD and JD shall walk out of the partnership..."*
- The High Court of Gujarat, in the case of *Maheshbhai Dhirubhai Darji vs. State of Gujarat & Anr. (R/Criminal Misc. Application No. 25398 of 2017)*, has held that insufficient evidence of direct or indirect incitement by the accused to the suicide, coupled with mere allegations of harassment without any concrete action close to the time of the incident, does not justify a conviction under Section 306 of the Indian Penal Code, 1860 ("**IPC**"). The Single Judge Bench of Justice Divyesh A

Joshi, presiding over the case, observed, *"It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide, however, merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the deceased to commit suicide, conviction recorded under Section 306 of the IPC cannot be said..."*

- The High Court of Bombay, in the case of *Anil Govind Ganu vs. Innovative Technomics Pvt. Ltd. (Writ Petition No. 160 of 2024)*, has stated that an entry in the liability column of a company's balance sheet does not constitute an 'agreement' between the company and its directors under Section 4(5) of the Payment of Gratuity Act, 1972 ("**the Act**") which provides that an employee's right to receive more favorable gratuity terms under an award or agreement with their employer cannot be limited by the Act. A Single Judge Bench of Justice Sandeep Marne observed, *"...mere 'acknowledgment' would not be sufficient to prove existence of right and liability arising out of such right must be independently established. In absence of proof of existence of 'liability in respect of a right', mere acknowledgement through a balance sheet entry would not amount to creation of such liability... Thus, it cannot be stated that mere reflection of an entry in the liability column of balance sheet would amount to creation of a right which never existed. Such right will have to be independently established either through a transaction or a document in the form of a contract."*
- The High Court of Telangana in the case of *Narayana Educational Institutions vs. Mrs.*



Paruchuri Janaki and Anr. (Civil Revision Petition No. 2243 of 2024) has clarified that commercial courts are competent to hear Commercial Original Petitions arising under Section 37 of the Arbitration and Conciliation Act, 1996 (“**the 1996 Act**”), provided the case meets the criteria of specified value, territorial jurisdiction, and the nature of the dispute, i.e., a commercial dispute. The Division Bench of Justice Moushumi Bhattacharya and Justice M.G. Priyadarsini observed “*Section 37(2) (b) provides that an appeal shall also lie from an order of the Arbitral Tribunal granting or refusing to grant an interim measure under section 17 of the 1996 Act. Hence the order appealed from under section 37(2)(b) presupposes the order passed by the arbitral tribunal to be within the contours of section 17(1) of the 1996 Act.*”

- The High Court of Delhi in the case of *Raj Kumari Taneja vs. Rajinder Kumar & Anr. (ARB.P. 862 of 2023)* has ruled that the court while exercising jurisdiction under

Section 11(5) or Section 11(6) of the Arbitration and Conciliation Act, 1996 (“**the Act**”), shall only verify the existence of an arbitration agreement between the parties and confirm that the petition under the mentioned provisions has been filed within three years of receiving the notice under Section 21 of the Act. The Single-Judge Bench of Justice C. Hari Shankar observed “*the scope of examination by a Section 11(5) and Section 11(6) Court in that regard is now circumscribed by a law enunciated by the Supreme Court in SBI General Insurance Co Ltd v. Krish Spinning. According to the said decision, the Court exercising jurisdiction under Section 11(5) or Section 11(6) of the 1996 Act has only to satisfy itself that there exists an arbitration agreement between the parties and that the petition under Section 11(5)/Section 11(6) has been moved within three years of service of Section 21 notice. Both these conditions stand satisfy in the present case.*”



NOTIFICATIONS / AMENDMENTS INSIGHTS

- The Ministry of Finance, vide notification number S.O. 3492(E) on August 16, 2024, has introduced the Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules (“**FEMA NDI Rules**”), 2024. This amendment modifies certain provisions of the FEMA NDI Rules, 2019, which regulate Foreign Direct Investment (FDI) norms in India. The new rules relax the regulations surrounding cross-border share swaps, now allowing the issuance or transfer of equity instruments of an Indian company in exchange for equity capital from a foreign company. Previously, this process required prior approval from the Reserve Bank of India (RBI). While the Overseas Investment Regulations allowed for Overseas Direct Investment (ODI) swaps, the FEMA NDI Rules, 2019 did not specifically address the transfer of shares from an Indian company to a foreign investor in exchange for shares of a foreign company.
- The Securities and Exchange Board of India (“**SEBI**”) vide circular No. SEBI / HO / DDHS / DDHS-POD-2 / P / CIR / 2024 / 115 dated August 22, 2024, has amended the Master Circular for Real Estate Investment Trusts (“**REITs**”) and Infrastructure Investment Trusts (“**InvITs**”) to review investor complaints and the timeline for disclosing statements of deviations. The amendment requires that the Trustee and the Board of Directors or Governing Body of the Manager for REITs and InvITs ensure timely resolution of all investor complaints by the Manager. Additionally, the statement of complaints must be reviewed by the Board of Directors or Governing Body and the Trustee on a quarterly basis.
- The Securities and Exchange Board of India (“**SEBI**”) vide circular SEBI / HO / AFD / AFD-POD-2 / P / CIR / 2024 / 104 dated August 01, 2024 has amended the SEBI Circular No. SEBI/ HO/ AFD/ AFD-PoD-2/CIR/P/2023/148 dated August 24, 2023. The amendment permits University Funds and University-related Endowments to register as Category I Foreign Portfolio Investors if they meet certain conditions i.e. (i) their Indian equity assets under management (“**AUM**”) must be under 25% (twenty-five percent) of global AUM; (ii) their global AUM must exceed INR 10,000 crore; and (iii) they must provide proof of non-profit tax-exempt status from their home jurisdiction. These entities are exempt from additional disclosure requirements. The eligible jurisdictions for this exemption will be specified by SEBI in consultation with pilot custodians and the designated depository participants standards setting forum.
- The Ministry of Corporate Affairs (“**MCA**”) vide notification No. G.S.R. 475(E) dated August 05, 2024, has amended Limited Liability Rules 2009. Accordingly, the amendment in Rule 37 has been made to include the Centre for Processing Accelerated Corporate Exit (“**CPACE**”), to bring efficiency into processing the strike-off applications for the Limited Liability Partnerships (“**LLPs**”). The CPACE now has the authority alongside the Registrar to strike off names of defunct LLPs.



DEALS THIS MONTH

- Food delivery giant, Zomato has acquired Paytm's subsidiaries Orbgen Technologies Private Limited and Wasteland Entertainment Private Limited, which are involved in the entertainment ticketing business. The deal is valued at INR 2,048 crores on a cash-free and debt-free basis. With the acquisition, Zomato would become the second-largest entertainment ticketing platform across the country, after Bookmyshow. As a part of the deal, about 280 existing employees from the entertainment ticketing business shall move to Zomato.
- Fintech unicorn Slice has secured approval from the National Company Law Tribunal for its merger with North East Small Finance Bank (“**NESFB**”), following its merger announcement in October 2023. Slice had previously acquired a 5% (five percent) stake in NESFB for USD 3.42 million. The merger is expected to enhance financial inclusion through advanced technology and a deeper understanding of community needs, offering customers a broader range of products and improved banking experiences. Additionally, both Slice and NESFB have received necessary clearances from the Competition Commission of India, the Registrar of Companies, the Reserve Bank of India, and the Income Tax Department.
- The Competition Commission of India (CCI) has approved Generation Investment Management's (“**GIM**”) to proceed with the proposed acquisition of a stake in Continuum Green Energy through its entity JC Infinity (B) Limited. GIM, which specializes in sustainable investing, will acquire shareholding rights in Continuum Green Energy, a company involved in renewable energy generation through wind and wind-solar hybrid projects, which are managed under various subsidiaries.
- The Competition Commission of India (“**CCI**”) has approved the merger between Disney Star India Private Limited, the local arm of The Walt Disney Company, and Reliance Industries Limited (“**RIL**”). Disney Star India and Viacom18 Private Limited owned by RIL are key players in India's media industry. The deal is valued at INR 70,350 Crore, this merger will be the largest in India's media and entertainment sector and will establish a major entertainment network.



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