



SAGA LEGAL

COMMUNIQUE

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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of *Association for Democratic Reforms and Anr. vs. Union of India and Ors.* (Writ Petition (C) No. 880 of 2017), has held that the Electoral Bond Scheme is unconstitutional and the doctrine of manifest arbitrariness can be used to strike down the said laws. The Constitutional Bench comprising of Chief Justice of India DY Chandrachud, Justice BR Gavi, Justice Manoj Misra, Justice Sanjiv Khanna, and Justice JB Pardiwala was dealing with a petition challenging changes made by the Finance Act 2017 to several laws including the Reserve Bank of India Act 1934, the Representation of the People Act 1951, the Income Tax Act 1961, and the Companies Act 2013. The Court unanimously ruled that *"Information about the funding of political parties is essential for the effective exercise of the choice of voting.... The doctrine of manifest arbitrariness can be used to strike down a provision where: (a) the legislature fails to make a classification by recognizing the degrees of harm, and (b) the purpose is not in consonance with constitutional values."*
- In the case of *Lucknow Nagar Nigam & Others Versus Kohli Brothers Colour Lab. Pvt. Ltd. & Others* (CA No. 2878 of 2024), the Hon'ble Supreme Court has held that the right to property as enshrined under Article 300A of the Constitution extends to persons who are not citizens of India. The question before the Court was whether the statutory vesting of property classified as enemy property under the Enemy Property Act, 1968 ("**the Act**"), amounts to expropriation, resulting in its ownership being transferred to the Union of India. Furthermore, if ownership is transferred through statutory vesting to the Custodian for Enemy Property to the Union, would they be exempt from paying property or local taxes to the Municipal Corporation under the provisions of the UP Municipal Corporation Adhiniyam 1959, as per Article 285 of the Constitution. The Bench of Justice BV Nagarathna and Justice Ujjal Bhuyan stated that enemy property is not exempted from municipal laws as it is not vested with the Union Government as such transfer would be a deprivation of the property of the true owner who may be an enemy or an enemy subject or enemy firm but such deprivation of property cannot be without payment of compensation and observed that *"The expression person in Article 300-A covers not only a legal or juristic person but also a person who is not a citizen of India. The expression property is also of wide scope and includes not only tangible or intangible property but also all rights, title, and interest in a property"*.
- The Hon'ble Supreme Court in the case of *Ram Nath v. The State of Uttar Pradesh & Ors.*, (Criminal Appeal No. 472 of 2012), that Section 59 of the Food Safety and Standards Act, 2006 ("**FSSA**"), will override the provisions of Sections 272 and 273 of the Indian Penal Code, 1860 ("**IPC**"). The Bench of Justice Abhay S. Oka and Justice Sanjay Karol observed, *"The settled law*



is that if the main Section is unambiguous, the aid of the title of the Section or its marginal note cannot be taken to interpret the same. Only if it is ambiguous, the title of the section or the marginal note can be looked into to understand the intention of the legislature. Therefore, the main Section clearly gives overriding effect to the provisions of the FSSA over any other law in so far as the law applies to the aspects of food in the field covered by the FSSA. In this case, we are concerned only with Sections 272 and 273 of the IPC. When the offenses under Section 272 and 273 of the IPC are made out, even the offence under Section 59 of the FSSA will be attracted. In fact, the offence under Section 59 of the FSSA is more stringent.”

- In the case of *Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr.*, (CA Nos. 7590-7591 of 2023), the Hon'ble Supreme Court has held that claims in the Corporate Insolvency Resolution Process (“CIRP”) cannot be rejected based solely on their form if the substance is clear and aligns with the purpose of the process. In the present case, the Appellant submitted Form C which is meant for financial creditor in place of Form B meant for operational creditor. The Bench comprising of Chief Justice DY Chandrachud, Justice JB Pardiwala, and Justice Manoj Misra observed that “even if a claim submitted by a creditor against the CD is in a Form not as specified in the CIRP Regulations, 2016, the same has to be given due

consideration by the IRP or the RP, as the case may be, if it is otherwise verifiable, either from the proof submitted by the creditor or from the records maintained by the CD. A fortiori, if a claim is submitted by an operational creditor claiming itself as a financial creditor, the claim would have to be accorded due consideration in the category to which it belongs provided it is verifiable.”

- The Hon'ble Supreme Court in the case of *Kuldeep Kumar vs. U.T. Chandigarh*, (SLP (Civil) No. 2998 of 2024), has initiated criminal proceedings under Section 340 of the Code of Criminal Procedure, 1973 against the Presiding Officer of Chandigarh Mayor Elections Mr. Anil Masih for making false statements before the Court. The Court was hearing the petition alleging a deliberate attempt to meddle with the election results during the vote-counting process. The Bench of Chief Justice of India DY Chandrachud, Justice J.B. Pardiwala, and Justice Manoj Misra set aside election results and declared Mr Kuldeep Kumar of the AAP-INC Alliance as the rightful mayor of Chandigarh while observing that “*This Court is duty bound, particularly in the context of Article 142 to do complete justice to ensure that the process of electoral democracy is not allowed to be thwarted by such subterfuge. By allowing such a step to take place would be disruptive of the most valued principles in the edifice of democracy in our country depends... Before recording the statement of the Presiding Officer in the above terms,*



we had placed him on notice of the serious consequences which are liable to ensue if he has found to have made a statement before this court which was incorrect.”

- In the case of the *Union of India & Ors. vs. M/S. B.T. Patil and Sons Belgaum (Construction) Pvt. Ltd. (CA No. 7238 of 2009)*, the Hon'ble Supreme Court has held that as per Section 75A of the Customs Act, 1962 (“**the Act**”), if the duty drawback remains unpaid three months after the claim is filed, the claimant is entitled to an interest in addition to the drawback amount. Further, the Court emphasized Section 11A of the Act, detailing the recovery of duties and specifying notice periods and interest rates. Duty payers must pay interest in addition to duty, determined by the Central Government. Section 11B allows for refund claims, while Section 11BB addresses interest on delayed refunds. The Bench comprising Justice Abhay S. Oka and Justice Ujjal Bhuyan while dismissing the appeal filed by the Union observed that “*under sub-section (1) of Section 75A of the Customs Act, where duty drawback is not paid within a period of three months from the date of filing of claim, the claimant would be entitled to interest in addition to the amount of drawback.*”
- The Hon'ble Supreme Court in the case of *Venkataraman Krishnamurthy & Anr. vs. Lodha Crown Buildmart Pvt. Ltd., (CA No. 971 of 2023)*, has held that the National Consumer Disputes Redressal Commission (“**NCDRC**”) cannot rewrite

terms and conditions of an agreement. The aggrieved approached NCDRC for a refund of the amount paid by them with a compound interest along with compensation for the harassment, mental agony, and torture suffered by them apart from litigation costs, but the same was disposed of in their case with certain directions. The Bench comprising of Justice Aniruddha Bose and Justice Sanjay Kumar opined that “*...it was not open to the NCDRC to apply its own standards and conclude that, though there was a delay in handing over possession of the apartment, such delay was not unreasonable enough to warrant cancellation of the Agreement. It was not for the NCDRC to rewrite the terms and conditions of the contract between the parties and apply its own subjective criteria to determine the course of action to be adopted by either of them.*”

- In the case of the *Principal Commissioner of Income Tax vs. Videocon Industries Ltd. & Anr., (Income Tax Appeal (ITA) No.434 of 2018 with ITA No.863 of 2017)*, the High Court of Bombay has held that if an assessee for commercial expediency and in the normal course of its business activities takes loan to invest in shares of its subsidiary, the interest paid on these advances utilised is allowable expenditure under Section 36(1)(iii) of the Income Tax Act (“**the Act**”). In the present case, the Division Bench of Justices K. R. Shriram and Justice Neela Gokhale considered whether the loan amount from the CBI, used by the subsidiary for increasing



- share capital, was excessive. The assessee provided interest-free deposits to the subsidiary for commercial reasons. Since investing in shares and securities was one of the assessee's activities, they argued that no interest disallowance should have occurred. The Court further observed that *“it was concluded that assessee had an aggregate shareholding of 64% in the subsidiary and, therefore, it cannot be contended that share application money made is not for business purpose.”*
- The High Court of Bombay in the case of *Jijaba Dashrath Shinde vs. State of Maharashtra, (Writ Petition (L) No. 5671 of 2024)* has directed the Slum Rehabilitation Authority not to issue eviction notices scheduled for weekends, as the Courts are not accessible to affected individuals on those days. The Bench also observed that slum residents are humans and “should not be treated like pieces on a chessboard”. The Division Bench comprising of Justice GS Patel and Justice Kamal Khata observed that *“Even if a statute prescribes periods of 24 hours, 36 hours or 72 hours, it does not mean that the authority has to give only that period to vacate. We now propose to take the liberty of issuing a direction applicable to all authorities everywhere that no notices for eviction are to be given mentioning only hours. A specific date must be mentioned, and that date cannot be over a weekend when courts are unavailable to the affected persons,”*.
 - In the case of *Prime Interglobe Private Limited vs. Super Milk Products Private Limited, (ARB. P. 337 of 2023)*, the High Court of Delhi has ruled that in cases where there are analogous arbitration proceedings related to other agreements, there is no need to invoke fresh arbitration by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (**“the A&C Act”**) as there isn't a notice requirement under Section 11(6) of the A&C Act. A Single-Judge Bench of Justice Manoj Kumar Ohri observed that *“The issue that arises for consideration is whether before filing the present petition, the petitioner is also separately required to invoke arbitration afresh by issuing notice under Section 21 of the A&C Act. The issue also came up for consideration before this Court in Zion Promoters and Developers Pvt. Ltd. v. Ferrous Infrastructure Pvt. Ltd.1, wherein it was observed as under: - There is a clear distinction in the scope of Sections 11(5) and 11(6) of the Arbitration and Conciliation Act... there is no requirement of notice in Section 11(6) which provides for failure of procedure/ mechanism for appointment meaning thereby that a party can invoke Section 11(6) even if no notice has been given.”*
 - The High Court of Karnataka in the case of *M/s. ICDS Ltd vs. Sri Bhaskaran Pillai and Others, (M.F.A. NO.6319 of 2014(AA))*, has ruled that even if an arbitration agreement erroneously refers to the Arbitration Act, 1940 after the enactment of the Arbitration and Conciliation Act, 1996



("the Act"), it does not render the agreement invalid. Also, arbitral proceedings initiated under it before the enactment of the Act could continue under the old Act unless the parties agreed otherwise. A Single-Judge Bench comprising of Justice HP Sandesh observed that *"..an incorrect reference or recital regarding applicability of the 1940 Act would not render the entire arbitration agreement invalid and such stipulation will have to be read in the light of Section of the 1996 Act and principles governing such relationship have to be under and in tune with the 1996 Act."*

- In the case of *Alka Shrivastava vs. Indian Council of Social Science Research & Ors. (W.P.(C) 9434 of 2022)*, the High Court of Delhi has reiterated that an ad-hoc/temporary/contractual employee does not have the vested right to seek regularization despite the fact that such an employee has been working for a long time with the public authority. A Single-Judge Bench comprising of Justice Chandra Dhari Singh opined that *"...It is a settled position of law that the ad- hoc /temporary/ contractual employee does not have the vested right to seek regularization despite the fact that such employee has been working for a long time with the public authority. An exception is carved out in this regard that a temporary employee who has been appointed at a sanctioned post in accordance with the recruitment rules*

by the competent authority can seek regularization on his/her post."

- The High Court of Karnataka in the case of *MG Purushotham & Ors. vs. NK Srinivasan & Ors. (R.S.A. No. 498 of 2007 (DEC/INJ))*, has held that except the adoptive parents and adoptive son, others have no *locus standi* to question the validity of the adoption deed. IN the present case, the dispute arose when the defendant, claimed to be an adopted son and sought succession rights. The plaintiff contested the validity of an adoption deed, arguing that the defendant was a minor at the time and not represented by a guardian. As the half-brother, the plaintiff asserted his entitlement to the properties. A Single-Judge Bench comprising of Justice HP Sandesh observed that *"...this Court in the judgment in Veerabhadrappa R. Hiremath (D) By L.Rs. Vs. Irayya A.F. Basayya Hiremath reported .., held that except the adoptive parents and adoptive son, others have no locus standi to question the validity of the adoption deed.... The principles laid down by co-ordinate Bench of this Court is squarely applicable to the instant case which has been considered in the judgment of this Court in R.S.A.NO.200036 OF 2014 dated 10.10.2023. Hence, the plaintiff cannot question the adoption and validity of the adoption deed and the plaintiff has no locus standi to question the same."*



NOTIFICATIONS / AMENDMENTS INSIGHTS

- The Ministry of Corporate Affairs (“**MCA**”) vide Circular No. 02 of 2024 dated 19.02.2024 has notified that the Change Request Form (“**CRF**”) is now available on the V3 portal for MCA-21 services users that is to be used only for exceptional circumstances, such as making requests to the Registrar of Companies (“**RoCs**”) that cannot be accommodated through existing forms or services. The CRF is not a substitute for statutory reporting or registration requirements under the Companies Act, 2013, and LLP Act, 2008. It should not be used for approval or registration-related queries. The CRF primarily addresses Master Data correction and compliance with Court/Tribunal directives. The Form filed should be processed by RoCs within 3 days, and then forwarded to the Joint Director (e-governance cell) for a decision within 7 days.
- The Security and Exchange Board of India (“**SEBI**”), through Circular No. SEBI / HO / DDHS / DDHS-PoD / P / CIR / 2024 / 10 dated 08.02.2024 has revised the pricing methodology for institutional placements of privately placed Infrastructure Investment Trusts (“**InvITs**”). Regulation 14(4) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 allows subsequent unit issues after the initial public offer via institutional placement. The circular modifies pricing guidelines, stipulating that institutional placements for privately placed InvITs shall be based on the Net Asset Value per unit of the InvIT's assets. For publicly listed InvITs, pricing remains based on the average of weekly high and low closing prices, with a discount of up to five per cent, subject to unitholder approval. The circular takes immediate effect under the authority of Section 11(1) of the SEBI Act, 1992, and Regulation 33 of the InvIT Regulations.
- The Security and Exchange Board of India (“**SEBI**”), vide Circular No. SEBI/HO/MIRSD/SECFATF/P/CIR/2024/12 dated 20.02.2024 has mandated intermediaries registered with SEBI under Section 12 to centralize Foreign Account Tax Compliance Act (“**FATCA**”) and Common Reporting Standard (“**CRS**”) certifications at KYC Registration Agencies (“**KRAs**”). With effect from July 01, 2024, intermediaries acting as RFI must upload certifications onto KRA systems. Existing certifications before July 01, 2024, require uploading within 90 days. Intermediaries are responsible for obtaining and reporting certifications, ensuring reasonableness and timely updates based on client-reported changes. KRAs are tasked with developing coordinated systems and adhering to uniform guidelines. Issued under Section 11(1) of the SEBI Act, 1992, and Regulation 17 of the SEBI (KYC Registration Agency) Regulations, 2011, the circular aims to protect investor interests and regulate securities markets.
- The Reserve Bank of India (“**RBI**”) vide Notification no. RBI/2023-24/126, dated 23.02.2024 has amended the Master Direction on Prepaid Payment Instruments (MD-PPIs) to enable



authorized bank and non-bank PPI issuers to issue PPIs for payments across public transport systems. This decision aims to enhance digital payment convenience, speed, affordability, and safety for commuters. The amendment revises paragraph 10.2 of the MD-PPIs. Issued under Section 18 read with Section 10 (2) of the Payment and Settlement Systems Act, 2007, these instructions come into immediate effect.

- The Ministry of Corporate Affairs (“MCA”) on 12.02.2024 has notified that

the incorporation-related services can also be accessed through the National Single Window System (“NSWS”). The NSWS serves as a digital platform guiding users to identify and apply for approvals as per their business needs. It hosts applications for approvals from 31 Central Departments and 22 State Governments, facilitating streamlined processes. The platform acts as an advisory tool to identify approvals based on user input and is meant for guidance purposes only.



DEALS THIS MONTH

- CRED, an Indian fintech company is about to acquire the online wealth management startup Kuvera for an undisclosed amount, marking its entry into the mutual funds market. Founded in 2016, Kuvera is a platform for direct investment in mutual funds, digital gold, fixed deposits, Indian, and US stocks. This collaboration aims to leverage Kuvera's expertise and CRED's network to enhance brand visibility and distribution channels.
- Payment infrastructure company Juspay has acquired LotusPay in an all-cash deal, strengthening its offerings to the Banking Financial Services, and Insurance (BFSI) segment and merchants. Founded in 2016 LotusPay specializes in National Automated Clearing House (“**NACH**”) debit and provides cloud-based software for merchants and banks. In 2023, LotusPay processed over 20 million transactions, totaling Rs. 20,000 crore. LotusPay's NACH solutions augment Juspay recurring payment offerings. Juspay plans to integrate LotusPay NACH into its HyperCheckout and Express Checkout products, continuing it as a standalone service. Juspay processes over 100 million transactions daily, with a total payment value of USD 500 billion annually.
- Diagnostic and preventive healthcare service provider Thyrocare has announced the acquisition of a one hundred percent stake in Chennai-based Think Health Diagnostics for an undisclosed sum. Thyrocare Technologies operates an automated laboratory chain with a presence in over 2000 cities across the country and internationally. Think Health specializes in home healthcare technology and ECG services. The merger also established a network of over 100 phlebotomists trained to provide home ECGs, thereby enhancing service delivery and patient experience. Thyrocare's acquisition expands its role in insurance pre-policy medical checks, providing a unified solution for blood tests and ECGs, thus reinforcing its position in annual health check-ups and pre-policy assessments. Additionally, in 2021, Pharmeasy acquired a 66% stake in Thyrocare Technologies for Rs. 4,546 crore.
- DroneAcharya Aerial Innovations Ltd., an industrial drone solution provider, is poised to acquire a 76% stake in Aerophile Academy Pvt. Ltd., a DGCA-certified drone pilot training company. Aerophile Academy is a Remote Pilot Training Organisation (RPTO) based in Bengaluru, Karnataka. In collaboration with Skyvenger Aviation, it offers drone services across various sectors such as aerial surveying, corporate videos, agriculture, mining, transportation, construction, forestry, and disaster management. This strategic move enhances DroneAcharya's presence in South India's drone pilot training sector, complementing its operations in Central, North, and West India.
- Onsitego, a device-care provider, has acquired Qdigi Services from Quess Corp, India's business services provider. Qdigi offers installation, repair,



and maintenance services to OEMs and online retailers, complementing Onsitego's device protection business. As part of the transaction, Qdigi's entire team and business will be transferred to Onsitego, with Onsitego paying a total cash consideration of Rs 80 crore. Additionally, Quess will acquire a minority stake in Onsitego. The acquisition aims to enhance Onsitego's customer service experience and explore new growth opportunities by engaging OEM partners and retailers with new market offerings. Furthermore, Onsitego plans to strengthen existing relationships with Qdigi and target new OEM partners and retailers to accelerate growth.

- Xoriant US-based software development and technology services company has acquired Bengaluru-based cloud management solutions provider MapleLabs Inc. for an undisclosed amount. The acquisition is poised to enhance Xoriant's core competencies in platform engineering and expand its capabilities in product conceptualization, design, development, and upkeep of cloud-native applications. The merger with Xoriant provides a broader platform for MapleLabs IPs to grow and scale.



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