



SAGA LEGAL

COMMUNIQUE

JANUARY 2024



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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of *Bharti Airtel Limited & Anr. vs. Vijaykumar V Iyer & Ors.*, (Civil Appeal Nos. 3088-3089 of 2020), has held that the Liquidation Regulations allow for statutory set-off or insolvency set-off, but these provisions cannot be applied to a Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 (**"the Code"**). The Bench comprising Justice Sanjiv Khanna and Justice SVN Bhatti was dealing with an Appeal against the NCLAT order which prohibited set-offs stating they contradicted the code's objective. The Court further laid down two exceptions to the Application of statutory or insolvency set-off to Corporate Insolvency Resolution Process (CIRP) proceedings: (i) contractual set-off and (ii) equitable set-off/transactional set-off. The Court observed that *"we do not think that the provisions of statutory set-off in terms of Order VIII Rule 6 of CPC or insolvency set-off as permitted by Regulation 29 of the Liquidation Regulations can be applied to the Corporate Insolvency Resolution Process."*
- The Hon'ble Supreme Court in the case of *S.V. Samudram vs. State of Karnataka & Anr.* (Civil Appeal No. 8067 of 2019), has clarified that a Court under Section 34 of the Arbitration and Conciliation Act, 1996 (**"the Act"**) does not have jurisdiction to modify an Arbitral Award. The Bench comprising Justice Abhay S. Oka and Justice Sanjay Karol, was deciding an appeal against the judgment passed by the Karnataka High Court under Section 37(1) of the Act wherein the High Court had modified the award passed by the Arbitrator and the awarded amount was reduced. Upon which, the Court observed that *"Any court under Section 34 would have no jurisdiction to modify the arbitral award, which at best, given the same to be in conflict with the grounds specified under Section 34."*
- In the case of *Reliance Life Insurance Company Ltd. & Anr. vs. Jaya Wadhvani*, (SLP(Civil) No.10954 of 2019), the Hon'ble Supreme Court has held that the date of issuance of the insurance policy is the relevant date for all the purposes, instead of the date of proposal or the date of issuance of the receipt. The Court addressed two Appeals filed by Reliance Life Insurance Company Ltd., both raising a common question of law regarding the effective date of the policy. The challenge was against the orders of the National Consumer Disputes Redressal Commission (NCDRC). The Bench comprising Justice Vikram Nath and Justice Rajesh Bindal noted, *"In the present appeals, we do not find any such issue of backdating, but the date of issuance of the policy would be the relevant date for all purposes and not the date of proposal or the date of issuance of the receipt. In view of the above, the stand taken by the appellant is approved. The impugned orders are thus liable to be set aside."*
- The Hon'ble Supreme Court in the case of *Jaipur Vidyut Vitran Nigam Ltd. & Ors. vs. MB Power (Madhya Pradesh)*



Ltd. & Ors., (Civil Appeal No.6503 of 2022), has determined that the Electricity Act of 2003 (“the Act”) empowers the State Commission to oversee the electricity purchasing and procurement procedures. This Authority extends to assessing whether the bids submitted by the bidders align with the current market prices or not. The Bench comprising Justice BR Gavai and Justice Prashant Kumar Mishra observed that “...when the Bidding Guidelines itself permit the BEC to reject all price bids if the rates quoted are not aligned to the prevailing market prices, there is no question of the State Commission being not in a position to go into the question, as to whether the rates quoted are market aligned or not, specifically, in the light of ample powers vested with the State Commission under Section 86(1)(b) of the Electricity Act, which also includes the power to regulate the prices at which electricity shall be procured from the generating companies, etc.”

- The Hon’ble Supreme Court in the case of *Brij Narayan Shukla vs. Sudesh Kumar Alias Suresh Kumar & Ors., (Civil Appeal No. 7502 of 2012)*, has stated that the ownership and possession of land cannot be established through permissive possession arising from tenancy. The Court was hearing an Appeal against the Order passed by the Allahabad High Court that had allowed a suit for claiming rights by adverse possession. The Bench comprising Justice Vikram Nath and Justice Rajesh Bindal has observed that “*Even if it is assumed*

that the defendant respondents were in possession from prior to 1944, their possession could not have been adverse even to the Zamindars as they were tenants and their tenancy would be permissible in nature and not adverse.”

- The Hon’ble Supreme Court in the case of *Adv Babasaheb Wasade & Ors vs. Manohar Gangadhar Muddeshwar & Ors., (Civil Appeal No. 10846 of 2018)*, has held that under Section 15 of the Societies Registration Act, 1860 (“the Act”), members of a society who are in default, even if their membership has not been terminated or ceased, are not entitled to receive a notice for meetings or elections. The Court observed that while the society's bye-laws do not provide for automatic termination of defaulting members, the proviso to Section 15 of the Act specifies that objectors are considered suspended members. As such, they are ineligible for notice, lack voting rights, and do not hold member status. The Bench comprising Justice Vikram Nath and Justice Ahsanuddin Amanullah observed, “*...a clear reading and interpretation of the proviso to Section 15 of the Registration Act would disentitle such defaulting members from being given any notice even if their membership was not terminated or ceased*”.
- The Hon’ble Supreme Court in the case of *Raja Gounder & Ors. vs. M. Sengodan & Ors., (SLP(C) No. 13486 of 2007)*, has held that children born out of a void or voidable marriage are



entitled to a share of the notionally partitioned property of their parents. In the matter before the Court regarding the partition and possession of agricultural lands treated as joint family or ancestral properties, the claim for partition in the share of the property was notionally allotted to the deceased. The claim was not pressed as coparceners but as legal heirs of the deceased. The Bench comprising of Justice M.M. Sundresh and Justice S.V.N. Bhatti opined that *“In the present case, the claim as a coparcenary is unacceptable for want of evidence on the factum of the marriage of Muthusamy Gounder with Appellant No. 2 and Respondent No. 2; the courts below ought to have considered the relief from admitted circumstances on record... Irrespective of whether the marriages of Appellant No. 2 and Respondent No. 2 with Muthusamy Gounder are void or voidable, denying the children of Muthusamy Gounder a share in the property of notional partitioned in favour of Muthusamy Gounder, is unsustainable in law and fact.”*

- In the case of *Bilkis Yakub Rasool vs. Union of India and Others*, (Writ Petition (Crl.) No. 491 of 2022), the Hon'ble Supreme Court while quashing the remission granted to the 11 convicts in Bilkis Bano's rape case has held that that the earlier order dated May 17, 2022, was a nullity and bad in law, being *per incuriam*, which means it lacked due regard to the fact or law. The Court further added that the order was obtained by suppressing material

facts and misleading the Court, which constitutes *suppressio veri suggestio falsi*. The Bench comprising Justice B.V. Nagarathna and Justice Ujjal Bhuyan observed that *“We are of the considered view that the writ proceedings before this Court is pursuant to suppression and misleading of this Court and a result of suppressio veri suggestio falsi. Hence, in our view, the said order was obtained by fraud played on this Court and hence, is a nullity and non est in law. In view of the aforesaid discussion, we hold that consequently the order dated 13.05.2022 passed by this Court in Writ Petition (Crl.) No.135 of 2022 in the case of Radheshyam Bhagwandas Shah is hit by fraud and is a nullity and non est in the eye of law and therefore cannot be given effect to and hence, all proceedings pursuant to the said order are vitiated”*.

- The High Court of Bombay in the case of *M/s. A. Navinchandra Steels Pvt. Ltd. & Anr. vs. Union of India & Ors.*, (Writ Petition No. 4620 of 2022), has held that Bank and Non-Banking Financial Institutions (“**NBFCs**”) are not obliged to adopt the restructuring process on their own without there being any application by Micro Small Medium Enterprises (“**MSMEs**”). In this case, two writ petitions challenged the procedure adopted by Banks and NBFC to classify MSMEs' accounts as Non-Performing Assets under Section 13(2) of the SARFAESI Act, 2002 (“**the Act**”). The Division Bench comprising Justice BP Collabawalla and Justice MM Sathaye observed that *“Unless*



such knowledge of incipient stress on the financial condition of MSME is brought to the notice of the Bank it is next to impossible, in our opinion, to be identified on its own by the Banks or NBFCs. The persons in charge of the MSMEs are most likely to sense or understand the beginning of the stress on their financial capacity, simply because they are at the helm of the things so far as a particular MSME is concerned."

- In the case of *Novex Communications Pvt Ltd. vs. Trade Wings Hotels Limited*, (Commercial IP Suit No. 264 of 2022), the High Court of Bombay has ruled that music rights holders such as Phonographic Performance Ltd. and Novex are recognized as the copyright owners. They have the authority to issue music licenses even if they are not registered as copyright societies under Section 33(1) of the Copyrights Act 1957 ("**the Act**"). A Single-Judge Bench comprising Justice R.I. Chagla ruled that "*If such interpretation is accepted, Section 33(1) of the Act would take away the power of owner and /or the right of the owner to grant any interest in the copyright by license. This would emasculate right of the owner under Section 30..... Section 33(1) of the Act cannot curtail the power of the owner to grant any interest in the copyright by license under Section 30 of the Act*". Further the Court relying on its own ruling in case of *Entertainment Network India Ltd. v. Super Cassette Industries Ltd.* (2005), quoted that "*The idea of a Copyright Society is to assist*

the owner and not take away rights from an owner."

- The High Court of Delhi in the case of *M/S K S Jain Builders vs. Indian Railway Welfare Organization*, (O.M.P. (COMM) 456 of 2022) has held that after accepting benefits from an Arbitral award, a party is barred from partially contesting any aspect of the award. The Court further stated that proving patent illegality while determining a threshold for patent infringement demands a significantly stringent standard and emphasizing on the prohibition against altering or modifying an arbitral award, the Court highlighted the careful application of the doctrine of severability. The Single-Judge Bench comprising Justice Sanjeev Narula observed that "*it is an undisputed fact that on 18th August, 2022, Petitioner has already received the awarded amount under Claim no. 5. This acceptance would estop them from challenging the award*"
- The High Court of Delhi in the case of *Vingro Developments Pvt. Ltd. vs. Nitya Shree Developers Pvt. Ltd.*, (ARB.P. 667 of 2023) has held that the relationship between the company and its director(s) is that of a 'Principal' and 'Agent' as defined in Section 182 of the Indian Contract Act, 1872 ("**the Act**") and according to Section 230 of the Act, the agent cannot be held personally liable for actions conducted on behalf of the principal. Relying upon these provisions the Court ruled that directors of a company cannot be included as parties to arbitration



proceedings through the 'Group of Companies' doctrine. A Single-Judge Bench comprising Justice Dinesh Kumar Sharma stated that “...in light of the relationship of principal, agent existing between the respondent no.1 and respondent 2, 3 respectively as under Section 182 and Section 230 and the jurisprudence stemming from the same, it is abundantly clear that in absence of the conditions under the proviso being fulfilled, the agent cannot be held liable for or be bound by contracts entered into on behalf of the principal.”

- In the case of *Arjun Mall Retail Holdings Pvt. Ltd. & Ors. vs. Gunocen Inc.*, (FAO(COMM) 31 of 2021), the Delhi High Court determined that the unilateral appointment of the arbitrator cannot be contested if such a challenge was not raised during an earlier stage, either by filing an application under Section 11(6) the Arbitration and Conciliation Act, 1996 (“**the Act**”) or an application under Sections 13 and 14 of the Act. The Court dismissed the challenge and upheld the award as the arbitral proceedings only commenced after eight months from the notice of appointment of the Arbitrator. The Division Bench comprising Justice Suresh Kumar Kait and Justice Neena Bansal Krishna observed that “...the fact remains that the appointment was never challenged under the provisions of Section 11(6) of the Act, 1996 nor did the appellants participate in arbitral proceedings, despite having knowledge of the same. Instead of contesting the respondent’s claim before the learned

Arbitrator, the appellants remained mute spectator and only after losing the battle in arbitral proceedings, the appellants preferred appeal under Section 34 of the Act, challenging the appointment of Arbitrator as well as the Arbitral Award. Therefore, the challenge against the appointment of the learned Sole Arbitrator is not tenable in the present case.”

- In the case of *Neetu Grover vs. Union of India & Ors.*, (W.P.(C) 910 of 2024), the High Court of Delhi has upheld the constitutional validity of Section 5(v) of the Hindu Marriage Act, 1955 (“**the HMA Act**”) that prohibits ‘Sapinda’ marriages i.e., the marriages between the parties who are related to each other in Hinduism. ‘Sapinda’ is a term used in the context of cousin marriages. The Court was deliberating on a writ petition requesting the issuance of a suitable writ to invalidate Section 5(v) of the HMA Act. The Division Bench comprising acting Chief Justice Manmohan and Justice Manmeet Pritam Singh Arora observed, “*The impugned Section has been dealt with in the aforesaid opinion of the Hon’ble Judge and its regulatory nature has been noted with approval at paragraph 591 therein. The discussion in the aforesaid concurring opinion of the judgment negates the challenge raised by the Petitioner on the grounds of violation of Article 21 of the Constitution of India inasmuch as the Hon’ble Judge has held that the choice of a partner in marriage is not absolute and is subject to regulations, which includes the exclusions to prohibited degrees. The*



Supreme Court in the aforesaid opinion noted that Section 5(v) of HMA Act is the State's intent at societal reform through codification. We are of the opinion that if the choice of a partner in a marriage is left unregulated incestuous relationship may gain legitimacy."

- In the case of the *Management of M/s Tata Advanced System Limited vs. The Secretary to Department of Labour & Others, (Writ Petition No.7674 of 2023 (L-RES))*, the High Court of Karnataka has stated that an individual workman's claim regarding their absorption and regularization in a company can only be brought forth through a union representing the workman, not by the workman alone, before the Industrial Tribunal. A Single-Judge Bench comprising Justice K S Hemalekha observed that *"In light of the provisions enumerated and the decisions stated supra, the proposition is well settled and no more res integra that an individual workman can raise a dispute, it can only be for removal, termination or dismissal and if the workman wants to raise a dispute with regard to absorption and regularization, that can only be done by a union, which can raise a dispute on behalf of the workman."*
- The High Court of Bombay in the case of *Shri Shanmukhananda Fine Arts and Sangeetha Sabha vs. The Deputy Director of Income Tax (Exemptions) & Ors., (Writ Petition No. 2689 of 2015)*, has held that an Assessing Officer ("A.O.") lacks jurisdiction to assess or reassess any income that was the subject matter of an appeal. The Court relied on the third proviso to Section 147 of the Income Tax Act 1961 ("**the Act**") and concluded that since the grant of benefit under Section 11 of the Act was the subject of an appeal initiated by the petitioner against the assessment order, the A.O. couldn't reopen the assessment based on this ground. The Division Bench comprising Justice K.R. Shriram and Justice Neela Gokhale, observed, *"Therefore, as stated in the third proviso to Section 147 of the Act, the A.O. has no jurisdiction to assess or reassess any income which was the subject matter of an appeal. Since the grant of benefit of Section 11 of the Act was the subject matter of appeal and has been held in favour of assessee, the matter cannot be reopened. As regards the issue of disallowance of depreciation claim, the Hon'ble Apex Court in Rajasthan and Gujarati Charitable Foundation, Poona (supra) has held that a Charitable Trust is eligible for claiming depreciation."*



NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Notification No. SEBI / HO / MIRSD / MIRSD-PoD-1 / P / CIR / 2024 / 03 dated 12.01.2024, the Security and Exchange Board of India (“**SEBI**”), has simplified the reporting for stock brokers, addressing the concerns raised by stakeholders regarding the efficiency of monitoring mechanisms. Accordingly, the Clause pertaining to mechanisms for monitoring clients’ funds lying with the stock broker has been deleted. SEBI further modified a clause emphasizing the ‘G’ principle for monitoring clients’ funds with stock brokers and clearing corporations. Additionally, clauses pertaining to the reconciliation of funds of credit balance clients used for settlement obligation of debit balance clients or their own purpose, or proprietary trading have also been deleted.
- The Reserve Bank of India (“**RBI**”), vide circular no, RBI / 2023-24 / 108 dated 05.01.2024, has introduced significant amendments and additions to existing regulations concerning foreign exchange derivative contracts. The circular, with the purpose of streamlining and simplifying the regulatory framework, provides for the incorporation of directions from the Currency Futures (Reserve Bank) Directions, 2008, and Exchange-Traded Currency Options (Reserve Bank) Directions, 2010, into the Master Direction for Risk Management and Inter-Bank Dealings. Furthermore, to underscore the diverse participants in the foreign exchange market, the term “Authorized Persons” was introduced, referring to Authorized Dealer Category – I banks. For exchange-traded currency derivatives, Recognized Stock Exchanges and Recognized Clearing Corporations are encompassed within this category.
- Vide Circular No. SEBI / HO / AFD / PoD1 / CIR / 2024 / 2, dated 11.01.2024, the Securities and Exchange Board of India (“**SEBI**”), has modified the framework for onboarding investors by Alternative Investment Funds (“**AIFs**”). The circular came in view of amendments to the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005. Accordingly, while onboarding the investors, the AIF manager must ensure that the investor or its beneficial owner is not listed in the sanctions list by the United Nations Security Council and should not be a resident of a country identified by the Financial Action Task Force. Additionally, for any existing investor who does not meet the revised condition, his or her AIF manager shall not draw down any further capital contribution from him, until he complies with these conditions.
- The Securities and Exchange Board of India (“**SEBI**”), vide Circular No. SEBI / HO / MRD / MRD-PoD-3 / P / CIR / 2024 / 6, dated 23.01.2024 has allowed for an Offer for Sale (“**OFS**”) of shares to employees through stock exchanges. The circular provides for detailed framework for OFS, some of the key provisions include the following: (i) Bidding will be allowed during trading



hours on T+1 day only, (ii) Bids can only be placed at cut-off price of T+1 day, (iii) The maximum bid amount will be Rs. 5,00,000 and (iv) Each employee is eligible for allotment of equity shares up to Rs. 2,00,000. SEBI also mandates stock exchanges and clearing corporations to employ necessary systems for the implementation of these provisions.

- Vide Circular No. SEBI / HO / MRD / MRD-PoD-3 / P / CIR / 2024 / 1, dated 05.01.2024, the Securities and Exchange Board of India (“SEBI”) has added the remaining provisions of Master Circular No. SEBI / HO /MRD2 / PoD-2 / CIR / P / 2023 / 171, dated 16.10.2023 pertaining to Short Selling and Securities Lending and Borrowing Scheme. It is now mandatory for the institutional investor to disclose, upfront at the time of placement, whether the transaction is a short sale. Furthermore, the Retail investor has to make the same disclosure by the end of the trading hours on transaction day.

Additionally, for the brokers, it is mandatory to collect the details on scrip-wise short-sell positions.

- Vide The Department of Economic Affairs under the Ministry of Finance vide Notification No. S.O. 332(E), has notified the Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2024. Simultaneously the Ministry of Corporate Affairs (“MCA”) has issued Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024. Both the notifications together provide a regulatory framework to enable public Indian companies to issue and list their shares on the permitted international exchanges. The international stock exchanges operating within GIFT-IFSC and overseen by IFSCA, including the India International Exchange and NSE International Exchange, are currently designated as authorized stock exchanges according to the Rules and the Scheme.



DEALS THIS MONTH

- Nazara Technologies' e-sports subsidiary, NODWIN Gaming Pvt. Ltd., is about to acquire 100% of the shares of Comic Con India Pvt Ltd. within 90 (Ninety) days through a combination of cash and a share swap deal. Comic Con India has been valued at Rs. 55 crores, and Nodwin Gaming has agreed to pay Rs. 27.5 crores in exchange for Comic Con's shares and Rs. 27.4 crores in cash. Nazara Technologies aims to fortify its position in the gaming market through this acquisition, intending to diversify its product line and expand its customer base. This strategic move presents new opportunities for Nazara Technologies to establish a stronger foothold in India's flourishing gaming industry.
- Travel service provider MakeMyTrip (India) Pvt. Ltd. has acquired a majority stake in Savaari Car Rentals Pvt. Ltd., a prominent player in the car rental industry, revealed in its second quarter FY23-24 results. Post this acquisition, Savaari Car Rentals will remain an independent entity led by its current management. The rationale behind this acquisition is to capitalize on the three billion plus unorganized intercity market of cab services and transform the space through the use of technology, including a deeper understanding of consumers facilitated by MakeMyTrip.
- Digital Healthcare service provider Innovaccer Inc. has acquired a 100% stake in Cured Inc., a Denver-based software company that designs and builds digital marketing tools and CRM platforms for the healthcare sector.

With the following deal, Innovaccer gains more than 20 customers to add to its current portfolio of about 95 health system and digital health clients. The acquisition aims to leverage mutual clients shared by both companies and access Innovaccer's EHR data directly, enabling Cured to concentrate on delivering the highest quality product.

- US-based review management and social media marketing solutions company, Synup Inc. has acquired the Ahmedabad-based SaaS platform offering CRM software for businesses, Clientjoy (Pivoting Softwares Private Limited), for an undisclosed amount. Synup platform has been known for its robust capabilities in multi-location management, including listings management, reputation management, store locator, and social media management. Clientjoy has over 16000 clients across 90 countries and offers CRM capabilities, docu-signing, invoicing, and more. The acquisition underscores the company's commitment to its agency and reseller clients. By expanding its agency business suite, the platform reaffirms its status as a crucial tool in the agency toolkit.
- Financial services firm DMI Group has acquired the troubled buy-now-pay-later startup ZestMoney (Camden Town Technologies Pvt. Ltd). at a valuation below the market price. This acquisition grants DMI exclusive rights to utilize all ZestMoney brands, with its non-banking finance company (NBFC) arm, DMI Finance, becoming the preferred lender



on Zest's platform. DMI will integrate ZestMoney's checkout financing platform into its product lineup, leveraging its customer base, robust balance sheet, and extensive risk-management expertise to fuel growth across Zest's online and offline merchant network.

- Qlik Technologies Inc., a global leader in data integration, analytics, and AI, has revealed its acquisition of crucial

intellectual property (patents and technology) from Kyndi Inc., a trailblazer in natural language processing, search, and generative AI. This acquisition of intellectual property rights is to capitalize on the fusion of Qlik Cloud's expertise in structured data with Kyndi's innovative unstructured data technologies, solidifying Qlik's status as a pioneering market leader in revolutionizing how organizations harness data.



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