



SAGA LEGAL

COMMUNIQUE

JULY 2024



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COURTS THIS MONTH

- While highlighting the challenges faced by uninformed or illiterate individuals in rural areas, particularly in Assam, to prove Indian citizenship without having official documents, the Hon'ble Supreme Court of India in the case of *Md. Rahim Ali @ Abdur Rahim vs. State of Assam & Ors.* (Diary no. 20674 of 2017) has held that minor variations in name spellings in electoral rolls or government records should not cast doubt on someone's citizenship. The Bench comprising of Justice Vikram Nath and Justice Ahsanuddin Amanullah noted that such discrepancies are common in India due to differences in language and pronunciation and are insufficient grounds to declare someone a foreigner.
- The Hon'ble Supreme Court in the case of *Shri Gurudatta Sugars Marketing Pvt. Ltd. vs. Prithviraj Sayajirao Deshmukh & Ors.* (Special Leave to Petition (Crl.) Nos. 8849-8850 of 2023) has held that an authorized signatory of a company is not a "drawer" under Section 143A of the Negotiable Instrument Act, 1881, and therefore cannot be directed to pay interim compensation under the Act. The Bench comprising of Justice Vikram Nath and Justice Prashant Kumar Mishra observed, "*The distinction between legal entities and individuals acting as authorized signatories is crucial. Authorized signatories act on behalf of the company but do not assume the company's legal identity. This principle, fundamental to corporate law, ensures that while authorized signatories can bind the company through their actions, they do not merge their legal status with that of the company. This distinction supports the High Court's interpretation that the drawer under Section 143A refers specifically to the issuer of the cheque, not the authorized signatories.*"
- The Hon'ble Supreme Court in the case of *Mineral Area Development Authority Etc. vs. M/S Steel Authority of India & Ors.* (Civil Appeal Nos. 4056-4064 of 1999) has held that the royalty paid by mining operators to the Central government is not a tax under the Mines and Minerals (Development and Regulation) Act 1957, and the States have the power to levy cesses on mining and mineral-use activities. The Bench led by Chief Justice DY Chandrachud, Justice Hrishikesh Roy, Justice Abhay S. Oka, Justice J.B. Pardiwala, Justice Manoj Misra, Justice Ujjal Bhuyan, Justice Satish Chandra Sharma and Justice Augustine George Masih held, "*...royalty is a contractual consideration paid by the mining lessee to the lessor for enjoyment of mineral rights. The Liability to pay royalties arises out of the contractual conditions of the mining leads. The payments made to the government cannot be deemed to be taxes mainly because the statute provides further recovery as arrears... The state legislature has the legislative competence under Article 246 read with Entry 49 of List 2 to tax mineral bearing lands.*"
- The Hon'ble Supreme Court in the case of *M/s Navayuga Engineering Co. Ltd. vs. Union of India & Anr.* (Civil Appeal No. 1024 of 2014) has ruled that the owner of goods is responsible for paying customs duty even after the goods have been confiscated and later redeemed by paying a fine and other charges, as per Section 125 of the Customs Act, 1962 ("**the Act**"). The Bench comprising of Justice P.S. Narasimha and Justice Aravind Kumar clarified that "*The Parliament introduced subsection (2) to Section 125 to clarify and declare that the owner of goods, in addition to payment of fine, shall also be liable to pay duty and other charges upon exercising the option to pay fine to redeem*"



goods. Thus, the owner of goods has a liability to pay customs duty, even after confiscated goods are redeemed after payment of fine and other charges under Section 125 of the Act. This is the first principle.”

- The Hon'ble Supreme Court in the case of *Kaushik Premkumar Mishra & Anr vs. Kanji Ravaria & Anr. (Civil Appeal No. 1573 of 2023)* has stated that the pendency of registration due to deficiency in the stamp duty cannot benefit the vendor who executed sale deed received consideration. The Court further clarified that by executing the sale deed, the seller has forfeited all rights and therefore cannot reclaim ownership of the transferred land merely because the document of sale is pending registration. The Bench of Justice Vikram Nath and Justice Ahsanuddin Amanullah observed, *"...it is the purchaser who cannot produce such document which is pending registration with respect to the immovable property in evidence before the Court of law as the same would be inadmissible in view of statutory provision contained in the TP Act as also the Act, 1908."*
- The Hon'ble Supreme Court in the case of *BRS Ventures Investments Ltd. vs. SREI Infrastructure Finance Ltd. & Anr. (Civil Appeal No. 4565 of 2021)*, has held that the insolvency resolution of a corporate guarantor does not prevent the creditor from initiating another insolvency process against the corporate debtor for the balance debt. The Bench comprising Justice Abhay S Oka and Justice Pankaj Mithal observed, *"...where a company furnishes a corporate guarantee for securing a loan taken by another company and if the CIRP of the corporate guarantor ends in a resolution plan, it will bind the creditor of the corporate guarantor. The corporate guarantor's liability may end in such a case by operation of law. However, such a resolution plan of the corporate guarantor will not affect the liability of the principal borrower to repay the loan amount to the creditor after deducting the amount recovered from the corporate guarantor or the amount paid by the resolution applicant on behalf of the corporate guarantor as per the resolution plan."*
- The Hon'ble Supreme Court in the case of *State of Madhya Pradesh & Ors. vs. Shyam Kumar Yadav & Anr. (Special Leave to Appeal (C) No. 25609 of 2018)* has ruled that although daily wage employees do not possess a legally vested right to seek regularization, any policy decision made by the competent authority regarding regularization must be applied to all eligible individuals. While upholding the order passed by the Madhya Pradesh High Court to regularise the appointment of a daily wage worker in a government college, the Bench comprising Justice Surya Kant and Justice Ujjal Bhuyan observed, *"It is true that an employee engaged on daily wages has no legally vested right to seek regularisation of his services. However, if the competent authority takes a policy decision within the permissible framework, its benefit must be extended to all those who fall within the parameters of such a policy. Authorities cannot be permitted to pick and choose in such circumstances"*
- The High Court of Kerala in the case of *The Principal Commissioner of Income Tax vs. Arun Majeed (ITA No.229 of 2019)* has held that if a property kept for an investment purpose is sold, such gain will fall under the head 'Capital Gains' and not under 'Adventure of Trade'. The issue before that court was pertaining to the correctness of taxing profits from the sale



of lands as 'business income' instead of treating the same as 'capital gain'. The Division bench comprising of Justice A.K. Jayasankaran Nambiar and Justice Syam Kumar V.M. observed, *"When a property kept not for trade, but for an investment purpose is sold, the gain has to fall under head 'capital gains' and such transaction is only taxable under capital gain and not under adventure of trade. If the Revenue intends to prove the contrary, then the burden is upon it to prove it by reliable evidence. Merely because the assessee makes some profit in a particular transaction, it cannot be treated as an adventure in the nature of trade so long as the initial intention or a reason investing money was to hold the property and utilise it for a different purpose."*

- The High Court of Delhi in the case of *Loreal India vs. Rajesh Kumar Taneja Trading (CM APPL 23440-41 of 2023)* has held that no interference with the registration of the trademark would be warranted, unless it is *prima facie* established that the registration of the trademark falls foul of the provisions of the Trademarks Act, 1999 ("**the Act**"). The Division Bench of Justice Vibhu Bakhru and Justice Tara Vitasta Ganju observed that *"..It would not be apposite to cancel the registration of the trademark, in respect of which there are no grounds for refusing registration under the Act, merely because of some error in the procedure adopted by the Registrar at the material time..... It is settled law that the trademarks have to be viewed as a whole and it would not be permissible to compare the competing trademarks by dissecting parts of the trademarks and comparing them. It may, in certain circumstances, be apposite to compare the dominant part of the competing trademarks if it results in an*

overall commercial impression of the two competing trademarks being similar".

- The High Court of Delhi, in the case of *Commissioner of Income Tax (Exemptions) Delhi vs. NIIT Foundation (ITA 141 of 2021)*, has held that if an assessee is carrying on educational activities that are covered by the provisions of Section 2(15) of the Income Tax Act, 1961 ("**the Act**"), then such activities do not qualify as either a business or a profession. The Division Bench comprising of Justice Yashwant Varma and Justice Ravinder Dudeja observed that *"... It definitely constitutes a charitable activity as it does not charge the fees at the level of market rate and even otherwise the surplus generated is also used for charitable activities of education."*
- The High Court of Delhi, in the case of *Adidas AG vs. Keshav H Tulsiani & Ors. (CS(COMM) 582 of 2018)*, has issued an injunction restraining an industrialist and his entities from manufacturing, selling, or dealing in textile goods under the 'Adidas' marks or any similar names. A Single Judge bench of Justice Sanjeev Narula observed, *"Given the intrinsic relationship between textiles (raw materials) and garments (finished products), the goods are undeniably similar in nature and purpose. This similarity meets the requirement of Section 29(2)(a) of the Act where the identity of the mark and the similarity of the goods covered by the trademark registration can lead to public confusion. The identity of the marks combined with the similarity between the goods-textiles and garments-creates a real likelihood of confusion. Consumers encountering Defendants' "ADIDAS" branded textiles could logically assume that they originate from or are associated with the same source as the Plaintiff's*



“ADIDAS” branded garments due to the use of the identical mark.”

- The High Court of Karnataka, in the case of *Ajay Kumar Behera vs. the State of Karnataka (Criminal Petition No. 4074 of 2024)*, has proposed an amendment to Section 184 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“**BNSS**”), to mandate that medical examinations of rape victims be conducted under the supervision of female medical practitioners. A Single Bench of Justice M.G. Uma observed, “*I deem it appropriate to request both the learned Additional Solicitor General of*

India and the learned State Public Prosecutor to take note of the situation and to draw the attention of the concerned, atleast to suggest an amendment to Section 184 of BNSS and to educate and sensitize all the stakeholders viz., Police officials, Prosecutors, Doctors and other Medical Officials who respond to the victim in the system. There may be instances where even the judicial officers may act insensitively and they also may require sensitization periodically. Moreover, there must be constant overseeing the functioning of the sub-ordinates by the superior officers to make them accountable for any lapse in this regard.”



NOTIFICATIONS / AMENDMENTS INSIGHTS

1. The Securities and Exchange Board of India (“**SEBI**”) vide Circular No. SEBI / HO / DDHS / DDHS-PoD-1 / P / CIR / 2024 / 94 dated 03.07.2024 has amended Chapter V of its Master Circular on the issuance and trading of the new provisions which allow for the issuance of debt securities and non-convertible redeemable preference shares at a face value of INR 10,000, down from the previous minimum of INR 1 lakh, subject to certain conditions including the appointment of a Merchant Banker and adherence to specific credit enhancement requirements. Additionally, previously applicable clauses setting higher minimum face values for private placements and listed securities have been removed, and the trading lot for such securities will now match the face value.
 2. The Reserve Bank of India (“**RBI**”) vide notification No. RBI / 2024-25 / 47 dated 03.07.2024 has revised its guidelines regarding the release of foreign exchange for miscellaneous remittances. Previously, Authorized Dealers (ADs) were permitted to release foreign exchange for current account transactions up to USD 25,000 or its equivalent without requiring Form A2. Payments could be made via Demand Draft or cheque. Under the new guidelines, ADs must now obtain Form A2 in either physical or digital form for all cross-border remittances, irrespective of the transaction amount.
 3. The Securities and Exchange Board of India (“**SEBI**”) vide Circular No. SEBI / HO / DDHS / DDHS-POD3 / P / CIR / 2024 / 102 dated 19.07.2024 has updated its regulations to include the International Financial Services Centres Authority (“**IFSCA**”) as an additional financial sector regulator for credit rating agencies (“**CRAs**”) operating in the International Financial Services Centre-Gujarat International Finance Tech-city (IFSC-GIFT City). Effective immediately, CRAs conducting ratings under IFSCA guidelines will be governed by IFSCA's regulations, which will handle any issues, complaints, or enforcement actions related to these activities.
- The Ministry of Corporate Affairs (“**MCA**”), through Notification No. G.S.R. 412(E) dated 16.07.2024, has relaxed the KYC (Know Your Customer) rules for directors of companies. This allows directors to update basic details, such as their email IDs or mobile numbers, multiple times in a year by paying a fee of INR 500 using the DIR-3 KYC Form, provided these updates are made on or before 30th September of the financial year.



DEALS THIS MONTH

- 360 AI-based HR tech firm Phenom has acquired Tydy, a startup specializing in pre-boarding and onboarding solutions. Tydy, an Employee Data Platform that is currently operational in over 30 countries will integrate its Employee Data Platform into Phenom's systems, offering a unified interface for HR practitioners. Both companies are based in the United States with development centers across India. Phenom aims to provide end-to-end HR solutions that address the evolving needs of the HR tech industry.
- India-based crypto exchange CoinDCX has acquired 100% (one hundred percent) ownership of Dubai-based crypto platform BitOasis. BitOasis is a virtual asset trading platform with a presence in the Middle East and North Africa. The terms of the deal are not disclosed. Following the acquisition, BitOasis will retain its brand and leadership, aiming to strengthen its presence across 15 countries in the Middle East. CoinDcx aims to broaden its product portfolio, expand its range of tokens, increase liquidity, and improve trading options.
- Mankind Pharma Limited has entered into a definitive agreement to acquire a 100% (one hundred percent) stake in Bharat Serums and Vaccines Limited ("**BSV**") from private equity firm Advent International for INR 13,630 crore. Mankind Pharma is a leading manufacturer of medicines in India, while BSV is engaged in the development, manufacturing, and marketing of biological, biotech, and pharmaceutical formulations. This acquisition, which includes the transfer of over 2,500 BSV employees to Mankind, marks a significant milestone for Mankind and aligns with its strategic goal to dominate high entry-barrier segments.
- Fast-moving consumer goods company Emami Ltd. is set to acquire a full 100% (one hundred percent) stake in the men's grooming brand, The Man Company. The Man Company specializes in the design, manufacturing, and packaging of cosmetics and perfumes. The deal is valued at approximately INR 400 crore. As of July 2022, Emami already held just over 50% ownership of The Man Company.



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