



SAGA LEGAL

COMMUNIQUE

JUNE 2024



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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of *Satyendar Kumar Jain vs. Directorate of Enforcement (SLP(CrI) No. 8228 of 2024)*, has stated that the bail applications should not be unnecessarily adjourned. The issue before the court was whether an incomplete charge sheet could be filed by the investigating agency to defeat the right to default bail. The court stated that since a Three-Judge Bench is considering this legal point, it may not be appropriate for the present Two-Judge Bench to address the issue. The vacation Bench comprising of Justice Manoj Misra and Justice SVN Bhatti observed, *"It is understood that bail applications should not be indefinitely adjourned, and therefore, we hope and trust that the High Court will make its own decision in the matter."*
- The Hon'ble Supreme Court in the case of *Kasthuri Pandian S vs. RBL Bank Limited (Transfer Petition(s)(Criminal) No(s). 515 of 2024)*, has ruled that the transfer of a case for the offense of dishonor of cheque under Section 138 of the Negotiable Instruments Act 1881 cannot be sought at the instance of the person who is accused. The vacation Bench comprising of Justice AS Oka and Justice Rajesh Bindal observed, *"At the instance of the accused, we cannot issue an order of transfer of a complaint under Section 138 of the Negotiable Instruments Act, 1881. The petitioner can always apply for a grant of exemption from personal appearance to the concerned Court"*.
- The Hon'ble Supreme Court, in the case of *Alakh Pandey vs. National Testing Agency and Anr. (W.P.(C) No. 368 of 2024)*, addressed the issue of compensatory marks awarded to 1563 students. The Court stated that the committee's recommendations were fair, reasonable, and justified. The affected candidates will be informed of their actual scores without compensatory marks. A re-test will be conducted for those who choose to participate, and their new scores will replace the original ones. Those who opt out will have their results based on the original test scores without compensatory marks. The vacation bench, comprising Justice Vikram Nath and Justice Sandeep Mehta, observed, *"Having considered the submissions and the material placed on record, this Court finds that the recommendations made by the Committee on 12th June 2024, after deliberations held on 10th, 11th, and 12th June 2024, are fair, reasonable, and justified. Accordingly, the respondent NTA may proceed with holding the re-test as indicated above."*
- The High Court of Delhi in the case of *Vijay Maheshwari vs. Splendor Buildwell Private Limited and Anr. (O.M.P.(I) (COMM.) 42 of 2024)*, has held that for the petitions under Section 9 of the Arbitration and Conciliation Act, 1996 (**"the Act"**), the scope of inquiry is limited to grant interim relief. The Court further held that issues of fact or law, including the interpretation and scope of the contract or Memorandum of Understanding (**"MoU"**), are to be determined by the arbitral tribunal, not by the court at the Section 9 stage. The Single Judge Bench of Justice Neena Bansal Krishna observed, *"The issues of fact or law are not to be determined finally as they fall within the jurisdiction of the arbitral Tribunal. The interpretation of the terms of the Contract / MoU and also the determination of its scope would also be within the domain of the arbitral Tribunal. While dealing with the Application under section 9 of the Act, same principles as applicable to Order XXXIX Rule 1 and 2 CPC shall be applicable."*



- The High Court of Madras in the case of *R Mohanakrishnan vs. The Deputy Inspector General of Police & Ors. (W.P.No. 10707 of 2024)*, has ruled that serious allegations of molestation and harassment are considered continuing incidents of misconduct and until the situation is addressed or brought to the notice of the appropriate authority, these allegations would give rise to a fresh cause of action. The Single Judge Bench of Justice D. Bharatha Chakravarthy observed that *"In such solitary instances, victims cannot be permitted to withhold and exercise their right to remedy at their own discretion, thereby preventing the delinquent employee from having a fair and impartial hearing to effectively defend himself. However, in cases of serious allegations such as rape or continuous molestation or harassment, the misconduct is ongoing, and each day until the situation is redressed or brought to the attention of the appropriate authority constitutes a fresh cause of action. The purpose of the limitation provision in Section 9 must be understood in this context."*
- The High Court of Bombay in the case of *Piramal Enterprises Limited vs. the State of Maharashtra (Writ Petition No. 2836 of 2021)* has held that a slump sale under the Business Transfer Agreement ("**BTA**") would not amount to the sale of goods within Maharashtra Value Added Tax Act, 2002 ("**MVAT Act**"). The Division Bench of Justice G. S. Kulkarni and Justice Jitendra Jain observed that *"...further considering that the petitioner had maintained that the transaction involved under the BTA was a 'transfer of business' and not a sale of goods and that the term 'transfer of business' was not defined under the MVAT Act, therefore, the principles/criteria defining a transfer of business would be required to be culled out from various decisions which are dealt with the subject."*
- The High Court of Madras in the case of *V Sakthivel vs. The Revenue Divisional Officer (Writ Petition No. 2836 of 2021)*, has clarified that when a child is adopted, all ties with the biological family are severed and replaced by those created with the adoptive family. The Court further opined that the biological family of an adopted child cannot be considered the legal heirs of the child and cannot claim any property inherited from the adoptive family. The Single Judge Bench of Justice GK Ilanthiraiyan observed, *"Thus, it is clear that the adoptive child is construed to be a member of the adopted family, all the ties of the child are replaced in the adoptive family created by adoption.... Thus, it is made clear that on the date of adoption the ties of the adoptive child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family."*
- The High Court of Kerala in the case of *Sebin Thomas vs. the State of Kerala (CRL.REV.PET NO. 610 OF 2024)* has clarified that automatic or accidental downloading of child pornography is not an offence under Section 67B of the Information Technology Act, 2000 ("**IT Act**") unless there is evidence for a specific intention. The Single Judge Bench of Justice A Badharudeen observed, *"...it is emphatically clear that storing or possessing pornographic materials in any form involving a child for the purpose of transmitting or propagating or displaying or distributing in any manner is an offence. Therefore, mere storing or possessing pornographic materials by itself is not an offence. In order to bring home an offence under Section 15(2) of the POCSO Act, there should be materials to show that the*



accused stored or possessed pornographic materials for the purpose of transmitting or propagating or displaying or distributing the same.”

- The High Court of Patna in the case of *Kamal Kishore Prasad vs. Sri Lal Kumar Rai & Ors. (C. Misc. No. 657 of 2017)* has ruled that amendments to pleadings as provided under Order VI Rule 17 of the Code of Civil Procedure, 1908 (“**CPC**”), can be allowed even after the commencement of the trial if the amendments sought are necessary for the effective adjudication of the controversy between the parties. The Court further ruled that Order VI Rule 17 of the CPC does not generally allow amendments to pleadings after the commencement of the trial, except under certain conditions. A Single Judge Bench of Justice Arun Kumar while referring to the Supreme Court case *Life Insurance Corporation of India vs. Sanjeev Builders (P) Ltd. (2022)*, observed that *“In sum and substance, if the amendment is necessary for deciding the real controversy between the parties and for arriving at a just conclusion, such an amendment could be allowed even at a late stage. It is apparent that the amendment was sought after the plaintiffs’ evidence had started, but it is the plaintiffs’ suit, and if any delay is caused, ultimately, the plaintiffs would be the sufferers. It could not be said that allowing the amendment at this stage would not cause prejudice to the other side. However, if the other side could be compensated in terms of costs, the amendment could be allowed.”*
- The High Court of Karnataka in the case of *Dhanashree Ravindra Pandit vs. The Income Tax Department (Criminal Petition No.101368 of 2019)* has ruled that retrospective application under Section 50

of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (“**the Act**”) for failure to disclose foreign assets was unconstitutional. A Single Judge Bench of Justice M Nagaprasanna observed, *“The law on the date alleged, was not the law of such disclosure of assessment. Therefore, the criminal law cannot be set into motion against the petitioners in the aforesaid facts of the case, as it cannot pass muster of Article 20 of the Constitution of India. The Special enactment is a statute. Article 20 comes under Chapter III of the Constitution of India, a fundamental right. The Constitution of India is not a statute. It is the fountainhead of all statutes including the special statute. The rigour of any provision of the Act should pass muster of Article 20 of the Constitution of India and it fails to pass such muster in the case at hand and the failure leads to obliteration of the crime against the petitioners.”*

- In the case of *Smitha vs. Anil Kumar (OP(C) No. 154 of 2024)*, the High Court of Kerala held that under Section 120 of the Evidence Act, 1872 (“**the Act**”) a husband is permitted to testify in lieu of his wife and vice versa even without a written authority or power of attorney. The Court further stated that Section 120 of the Act deals with the competency of spouses where one spouse is competent to testify for a litigant spouse in civil and criminal proceedings. The Single Judge Bench of Justice Kauser Edappagath observed that *“On a careful reading of the above provision, it is clear that a non-litigating spouse is a competent witness for the other spouse who litigates. The expression competency of witness refers to the capacity, ability or qualification to give evidence in the Court of Law. Section 120 permits the husband to give evidence in place instead of his wife and vice versa even in the absence of a written*



authority or power of attorney. Such a witness is entitled to depose not only the facts within his/her spouse.”

- The High Court of Telangana in the case of *Ayodhya Rami Reddy Alla vs. Principal Commissioner of Income Tax Central (W.P. No. 46510 of 2022)* has held that colorable devices to evade tax cannot be considered as tax planning. The court while relying on the Hon'ble Supreme Court's decision in *McDowell & Co. Ltd. v. CTO*, stated that the focus should be on whether a transaction is a device to avoid

tax, rather than on literal or liberal interpretation of tax statutes. The Division Bench comprising of Justice P. Sam Koshy and Justice Laxmi Narayana Alishetty observed that *“Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.”*



NOTIFICATIONS / AMENDMENTS INSIGHTS

- The Reserve Bank of India (“**RBI**”), vide notification No. RBI / 2024-25 / 41 dated 07.06.2024 has amended the Foreign Exchange Management (Overseas Investment) Directions, 2022. The Investors and Companies based in India will now be able to invest in overseas funds, including those set up in the United States and Singapore, without any restrictions. Accordingly, Paragraph 1(ix)(e) is replaced with the following: *“The investment (including sponsor contribution) in units or any other instrument (by whatever name called) issued by an investment fund overseas, duly regulated by the regulator for the financial sector in the host jurisdiction, shall be treated as OPI. Accordingly, in jurisdictions other than IFSCs, listed Indian companies and resident individuals may make such investments. Whereas in IFSCs, an unlisted Indian entity also may make such OPI in units or any other instrument (by whatever name called) issued by an investment fund or vehicle, in terms of schedule V of the OI Rules subject to limits, as applicable.”*
- The Securities and Exchange Board of India (“**SEBI**”) vide Notification No. SEBI / LAD-NRO / GN / 2024 / 184 dated 25.06.2024 has amended the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015. The period between the end of a financial quarter and the declaration of results is now defined as 120 calendar days instead of six months. Further amendments address procedural aspects, such as the approval of trading plans by compliance officers within two trading days and the handling of non-implementation of plans due to unforeseen circumstances.
- The Securities and Exchange Board of India (“**SEBI**”) vide Circular No. SEBI / HO / AFD / AFD-POD-2 / P / CIR / 2024 / 76 dated 05.06.2024 has amended the Master Circular for Foreign Portfolio Investors, Designated Depository Participants, and Eligible Foreign Investors. The amendment relaxes timelines for the disclosure of material changes and events. 'Type I' material changes shall be informed by FPIs as soon as possible and within seven working days of the occurrence of the change, to be provided within 30 days of such change. 'Type II' material changes, i.e., any material changes other than those considered as 'Type I', shall be informed, by Foreign Portfolio Investor as soon as possible and within 30 days of such change.
- The Securities and Exchange Board of India (“**SEBI**”) vide Circular No. SEBI / HO / MRD / MRD-PoD-3 / P / CIR / 2024 / 82 dated 14.06.2024 has introduced changes to the Framework for the Offer for Sale of Shares to Employees through the Stock Exchange Mechanism. Accordingly, employees shall place bids only at the cut-off price of T-day. The allotment price shall be based on the T-day cut-off, subject to any discount. The provisions of the same will come into effect 30 days from the date of issuance.
- The Securities and Exchange Board of India (“**SEBI**”) vide Circular No. SEBI / HO / MRD / MRD-PoD-3 / P / CIR / 2024 / 85 dated 20.06.2024 has introduced new provisions in Stock Exchanges and Clearing Corporations to curb the misuse of the call auction session. According the pre-open session for IPOs will now last 60 minutes, from 9:00 to 10:00 am, with 45 minutes allocated for order entry, modification, and cancellation, followed by 10 minutes for order matching and trade confirmation. A 5-minute buffer period will facilitate the transition from the pre-open session to the normal trading session.



DEALS THIS MONTH

- 360 ONE, one of India's leading asset and wealth management firms formerly known as IIFL Wealth Management, has acquired ET Money, the wealth management platform owned by Times Internet, for approximately INR 365.8 crore (USD 44 million). ET Money offers business advisory, product management, and other related services. Its platform, ET Money Genius, distributes financial products such as FDs, NPS, insurance, and P2P lending, and provides advisory services. As per filings accessed from the National Stock Exchange, 360 ONE has paid INR 85.83 crore in cash for the acquisition, with the remaining amount settled through the issuance of 35,90,000 fully paid-up equity shares. With this acquisition, 360 ONE aims to enhance its client segment coverage and reinforce its position as the country's premier wealth management firm.
- The Competition Commission of India has approved the acquisition of a portion of the share capital of WeWork India Management Private Limited ("**WeWork India**") by Real Trustee Advisory Company Private Limited acting as trustee for Volrado Venture Partners Fund II (Volrado II), alongside Volrado Venture Partners Fund III - Beta (Volrado III) and other independent co-acquirers. WeWork India Management Private Limited is one of the leading providers of premium workspaces to meet the growing demand for flexible and innovative coworking space.
- Mitsui & Co., Ltd., a global trading and investment company with a diversified business portfolio across various industries, has received approval from the Competition Commission of India for the acquisition of certain equity shares of Sneha Farms. The acquisition will involve a combination of primary subscription and secondary purchase. Sneha Farms is based in Hyderabad and operates predominantly in the Indian poultry industry, engaging in activities ranging from poultry breeding to product distribution. This includes managing hatcheries, manufacturing poultry feed and pre-mixes, processing frozen and chilled chicken, and producing ready-to-cook, ready-to-eat, and marinated poultry products.
- The board of Ambuja Cements Limited has approved the merger with Adani Cementation Limited, a subsidiary of Adani Enterprises. As part of the merger, Adani Enterprises will be allotted 8,700,000 equity shares of Ambuja Cements. The swap ratio is set at 174 shares of Ambuja Cements for every 1 share of Adani Cementation, which translates to 8.7 million shares of Ambuja Cements for 50,000 shares of Adani Cementation. The aim of this merger is for Ambuja Cements to absorb the business of Adani Cementation and enhance its manufacturing capacity, enabling more effective and seamless manufacturing operations.



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