



SAGA LEGAL

COMMUNIQUE

MARCH 2024



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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of *Naeem vs. State of Uttar Pradesh (2024 INSC 169)*, has held that if the Court determines a dying declaration to be genuine and freely given, it can serve as the sole basis for conviction without further corroboration. While upholding the order passed by the High Court, the Bench comprising of Justice B.R. Gavai and Justice Sandeep Mehta relied on the case of *Atbir vs. Government of NCT of Delhi (2010 INSC 491)*, and stated that *"...this Court has clearly held that a dying declaration can be the sole basis for conviction if it inspires full confidence in the court. The Court must satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting, or imagination. It has further been held that, where the Court is satisfied about the dying declaration being true and voluntary, it can base its conviction without any further corroboration. It has further been held that there cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence."*
- In the case of *Sita Soren vs. Union of India (Criminal Appeal No. 451 of 2019)*, the Hon'ble Supreme Court has unanimously held that the legislators, including Members of Parliament and Members of the Legislative Assembly (MPs / MLAs), cannot invoke parliamentary privilege under Articles 105 and 194 of the Constitution of India to seek immunity from prosecution for bribery charges related to a vote or speech in the legislature. The Court overturned its previous judgement in *PV Narasimha Rao vs. State (CBI/SPE) (1998) 4 SCC 626* and stated that bribery is not protected by parliamentary privilege. The Seven - Judge Constitutional Bench of Chief Justice of India Justice D.Y. Chandrachud, Justice Sanjay Kumar, Justice PS Narasimha, Justice AS Bopanna, Justice M.M. Sudresh, Justice JB Pardiwala, and Justice Manoj Misra, ruled that *"A member of Parliament or of the Legislature is immune in the performance of their functions in the House or a committee thereof from being prosecuted because the speech given or vote cast is functionally related to their performance as members of the legislature. The claim of a member to this immunity is its vital connection with the functioning of the House or committee. Privileges are not an end in themselves in a Parliamentary form of government as the majority has understood them to be... Corruption and bribery by members of the legislatures erode probity in public life."*
- In the case of *M. Radheshyاملal vs. V. Sandhya and Anr. (C.A.Nos. 4322 – 4324 Of 2024)*, the Hon'ble Supreme Court has ruled that the party claiming adverse possession must be aware of the true owners of the property. In the present case, the court was addressing a series of Appeals stemming from three separate suits. The Bench comprising of Justice Abhay S. Oka and Justice Ujjal Bhuyan observed that *"...to prove the plea of adverse possession:- (a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner; (b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner; (c) The plaintiff must also plead and establish when he came into possession; and (d) The plaintiff must establish that his possession was open and undisturbed....When a party claims adverse possession, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge."*
- In the case of *M/s Arif Azim Co. Ltd. vs. M/s Aptech Ltd. (Arbitration Petition No. 29 of 2023)*, the Hon'ble Supreme Court has



addressed the issue of limitation concerning petitions under Section 11(6) of the Arbitration and Conciliation Act, 1996 (**"the Act"**), focusing on two key factors: (i) whether the petition under Section 11(6) is time-barred, and (ii) whether the claims intended for arbitration are already time-barred. The Bench comprising Chief Justice DY Chandrachud, Justice JB Pardiwala, and Justice Manoj Misra, recommended the Parliament to amend the Act and specify a particular limitation period within which the parties can approach the court for the appointment of arbitrators. The Court observed, *"This Court has previously remarked that the absence of a statutory time limit for applications under Section 11(6) of the Act, 1996 is a result of legislative oversight. We reiterate that a three-year period is excessively long and contradicts the Act's aim of resolving commercial disputes promptly. The Act has undergone several amendments to ensure the expeditious conduct and conclusion of arbitration proceedings. We believe that Parliament should consider amending the Act, 1996 to establish a specific limitation period for parties to seek court intervention in appointing arbitrators under Section 11."*

- In the case of *M/s Global Technologies and Research vs. Principal Commissioner of Customs, New Delhi (Import)*, (C.A. No. 9385 of 2022) the Hon'ble Supreme Court has ruled that there is no specific time limit prescribed for issuing an order under Section 129A (2) of the Customs Act, 1962 (**"the Act"**). In the matter before the Court, an importer faced allegations of undervaluing a consignment of camera stabilizers, leading to their detention. The adjudicating authority rejected the declared value, ordering recovery of differential customs duty and confiscation under Section 111 of the Act. The Commissioner of Customs, under Section 129A (2) of the Act, reversed the decision, but the Customs Excise and

Service Tax Appellate Tribunal upheld the adjudicating authority's order on appeal. The Bench comprising of Justice Abhay S. Oka and Justice Pankaj Mithal observed that *"...on plain reading of Section 129A, we find that no specific time period has been prescribed for the Committee of Commissioners to exercise the power under sub-section (2) of Section 129A...In the present case, the relevant period of 10 months is covered by the COVID-19 pandemic."*

- In the case of *Satyendar Kumar Jain vs Directorate of Enforcement (2024 INSC 217)*, the Hon'ble Supreme Court has held that the entire property linked to a scheduled offence need not be considered as *"Proceeds of Crime"* under the Prevention of Money Laundering Act, 2002 (**"the Act"**). However, any property meeting the definition of *"Proceeds of Crime"* under Section 2(1)(u) of the Act will indeed be considered as crime property. The Bench comprising Justice Bela M Trivedi and Justice Pankaj Mithal was hearing the petition challenging the protections under Section 2(1)(u) of the Act. The Court observed that *"...not even in the case of existence of undisclosed income and irrespective of its volume, the definition of "Proceeds of Crime" under Section 2(1)(u) will get attracted unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. The property must qualify the definition of "Proceeds of Crime" under Section 2(1)(u) of the Act. As observed, in all or whole of the crime property linked to scheduled offense need not be regarded as proceeds of crime, but all properties qualifying the definition of proceeds of crime, but all properties qualifying the definition of "Proceeds of Crime" under Section 2(1)(u) will necessarily be the crime properties."*
- The High Court of Delhi in the case of *Peak XV Partners Advisors India LLP & Anr. vs.*



John Doe & Ors. (CS(COMM) 71 of 2024), has instructed WhatsApp to elucidate the method it employs to identify WhatsApp groups by their names, along with the technical challenges it may encounter in complying with directives such as deleting WhatsApp groups, blocking access to WhatsApp accounts associated with fraudulent activities, and obtaining IP addresses linked to suspicious WhatsApp accounts. The case before the court pertains to a fraudulent online investment and trading scheme orchestrated by one of the defendants under the plaintiff's trademark to deceive consumers. The Single-Judge Bench of Justice Sanjeev Narula observed that *"Insofar as the suspension/ deletion of the WhatsApp group Peak XV 1026 is concerned, WhatsApp LLC is directed to file an affidavit explaining the mechanism followed by them to identify a group by its name and the technical difficulties that they would face for implementing such a direction. Plaintiffs, in the meantime, are permitted to undertake attempts to ascertain another identifier that can be provided to WhatsApp LLC for implementing directions to remove/ block the group Peak XV 1026"*

- In the case of *Rajeev Dagar vs. State & Ors. (W.P.(CRL) 3080 of 2023)* the High Court of Delhi has held that cases under the Protection of Children from Sexual Offences Act, 2012 ("**POCSO Act**") cannot be referred to mediation, settled, or compromised through mediated agreements, and should not be resolved through monetary payments or similar arrangements. The Single-Judge Bench comprising of Justice Swarna Sharma has observed that *"...offences under POCSO Act, which are non-compoundable in nature and are even rarely quashed by the Constitutional Courts, cannot be referred to mediation by the Courts and cannot be settled or compromised through mediated agreements, nor should they be subject to resolution through monetary payments or similar arrangements. Allowing such serious*

and grave offences to be settled through mediated agreements, especially since such settlement is acceded to by the parent or guardian of the minor victim and not the victim himself or herself who is a minor, would amount to trivialising the gravity of the offence and undermining the rights of minor victims of sexual abuse to seek appropriate legal recourse and justice."

- In the case of *Prasar Bharti vs. Dish TV India Ltd. (FAO(OS) (COMM) 267 of 2019)*, the High Court of Delhi has ruled that Dish TV India Ltd. does not hold exclusive rights to the term 'Dish', thereby overturning an interim order that restrained Prasar Bharti from using the trademark "DD Free Dish" or any mark containing the term 'Dish'. The Division Bench comprising of Justice Vibhu Bakhru and Justice Amit Mahajan observed, *"...first of all, the decision disregards the anti-dissection rule. The words 'DISH TV' form part of the registered mark and are used in conjunction. Their appearance in the label is to be considered together. The services provided by the respondent are associated with the label 'DISH TV'; not with the word DISH. The words 'DISH TV' may have acquired distinctiveness because of long use and can be said to have acquired the secondary meaning when used together. However, this does not entitle the respondent to any exclusive right in respect of the word 'DISH'. The said word is suggestive of the DTH services as it requires a Dish Antenna to receive the signals."*
- In the case of *People Welfare Society vs. The State Information Commissioner, Nagpur & Ors. (2024: BHC-NAG:2528-DB)*, the Nagpur Bench of the Bombay High Court has clarified the obligations of public trusts registered under the Maharashtra Public Trusts Act, 1950, with regards to providing information under the Right to Information Act, 2005, ("**the RTI Act**") especially when they manage institutions receiving grants from the state government. The Full Bench



comprising of Justice Avinash G. Gharote, Justice Anil S. Kilor, and Justice Urmila Joshi-Phalke observed that *“If the information solicited under the RTI Act, is regarding the Public Trust, then there is no obligation to supply the information, if such Public Trust, does not fall within clause (i) of sec.2 (h) of the RTI Act and has not received any substantial Government largesse or land on concession, to implement the aims and objects of the said Public Trust.”*

- In the case of *The Accountant General's Office Employees Co-Operative Bank Ltd vs. Union of India (Writ Petition No. 4273 Of 2020 (Cs-Res))*, the High Court of Karnataka has quashed a circular issued by the Controller and Auditor General of India. The said circular had prohibited salary drawing and disbursing officers from deducting amounts due to the Accountant General's Office Employees Cooperative Bank Ltd (established by the employees of the Accountant General's Office) from employees' salaries, even if those employees had consented to such deductions. The Single-Judge Bench of Justice Anant Ramanath Hegde observed that *“The impugned clause conflicts with the binding provision of law. Thus, the Court in exercise of its writ jurisdiction can certainly strike down the said clause even if it is the policy decision, as such decision seeks to override the provision of law and seeks to take away certain rights conferred under the Statute. The right conferred under the Statute can be taken away only in the manner known to law and not by any executive decision taken by any authority which has no authority to meddle with the statutory rights.”*
- In the case of *Prince Pipes and Fittings Limited vs. Shree Sai Plast Private Limited (2024:BHC-OS:4767)*, the High Court of Bombay has ruled that a company's registered office may not necessarily be its principal place of business for the purposes of filing a trademark infringement suit. The

suit for infringement of trademark can be filed at the 'principal office' of the company, even if the registered office is located elsewhere. The Single Judge Bench comprising of Justice Bharati Dangre observed that *“The principal place of business need not be equated, every time with registered office, as the principal place of business of the company is the place wherefrom the company controls its business activities i.e. where the center of power of corporate body is located... It is quite possible that principal place of business is also its registered office, but it may not be true in every scenario. The principal place of business at times may not be the registered place of business, as the principal place may be distinct from its registered place as the former is the place from where the entire company business is controlled.”*

- The High Court of Karnataka, in the case of *the Retailers Association of India & Others vs. the State of Karnataka & Others (WP 7525 of 2024)*, has directed the State Government to halt the implementation of a provision within the Karnataka Language as Comprehensive Development (Amendment) Act 2024 (**“the Act”**). This provision mandates the sealing of premises failing to display 60% of signage in Kannada for businesses and establishments. The petitioners contested the constitutionality of Sections 17(6), 23, and 27 of the Act, asserting they violated fundamental rights and were *void ab initio*, also contravening the Trademarks Act. The Single-Judge Bench comprising Justice M Nagaprasanna remarked that *“The circular issued by the state government dated 26-02-2024, which is in furtherance of the Act and its implementation, would indicate that if 60 percent of the boards are not in Kannada, those business establishments or undertakings would be sealed down. This prima facie is untenable.”*



NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Circular No. 3 of 2024 dated 06.03.2024 the Central Board of Direct Taxes (“**CBDT**”) under Section 119 of the Income Tax Act, 1961 (“**the Act**”) has stated that fund, trust, institution, educational institution or any hospital or any other medical institution referred to in sub-clause (iv), (v), (vi) or (via) of Clause (23C) of Section 10 of the Act or any trust or institution registered under section 12AA or Section 12AB of the Act are exempted subject to the fulfillment of certain conditions in the Act. These conditions *inter alia* include the following for the entities: “(i) At least 85% of income of the trust/institution should be applied during the year for charitable or religious purposes; (ii) Trusts or institutions are allowed to apply mandatory 85% of their income either themselves or by making donations to the trusts with similar objectives; (iii) If donated to other trust/institution, the donation should not be towards corpus to ensure that the donations are applied by the donee trust/institution for charitable or religious purposes.”
 - Vide Notification No. SEBI / LAD-NRO / GN / 2024 / 166 dated 08.03.2024 the Securities and Exchange Board of India (“**SEBI**”) has amended the SEBI (Real Estate Investment Trusts (“**REITs**”) Regulations, 2014 in order to create a regulatory framework for the facilitation of Small and Medium REITs, with an asset value of at least INR 50 crore vis-à-vis minimum asset value of INR 500 crore for existing REITs. The Regulatory framework for Small and Medium REITs, *inter-alia* provides for its structure, migration of existing structures meeting certain specified criteria, obligations of the investment manager including net worth, experience and minimum unit-holding requirement, investment conditions, minimum subscription, distribution norms, valuation of assets, etc.
 - The Reserve Bank of India (“**RBI**”) vide Notification No. RBI / 2023-24 / 140 dated 27.03.2024 has issued a notification regarding investments in Alternative Investment Funds (“**AIFs**”). The said notification clarifies the guidelines for Regulated Entities (“**REs**”) stating that “(i) downstream investments now exclude equity shares of debtor companies but include other investments like hybrid instruments; (ii) provisioning is required only for RE investments in AIF schemes further invested in debtor companies, not on the entire investment; (iii) The scope of this circular does not include Investments by REs in AIFs through intermediaries such as fund of funds or mutual funds.
- Pursuant to the request submitted by the Association of Mutual Funds in India, the Securities and Exchange Board of India (“**SEBI**”) vide Circular No. SEBI / HO / IMD-RAC-2 / P / CIR / 2024 / 000015 dated 12.03.2024 has extended the timeline for simplification and streamlining of the offer documents of mutual funds schemes. Accordingly, it has been decided to implement the updated formats of the Scheme Information Document (“**SID**”)/ Key Information Memorandum (“**KIM**”)/ Statement of Additional Information (“**SAI**”) w.e.f. 01.05.2024. Furthermore, the draft SIDs to be filed on or before 01.04.2024 can use the old format.



DEALS THIS MONTH

- Godawari Power and Ispat Limited have announced the approval of the merger between its wholly owned subsidiary, Godawari Energy Limited, and the company itself for an undisclosed amount. Godawari Energy is primarily engaged in power generation, while Godawari Power and Ispat operate in the manufacturing of iron and steel alongside power generation. The aim behind this amalgamation of wholly owned subsidiaries with the company is to enhance capital and asset utilisation, foster a stronger base for future growth, pool resources to unlock opportunities, create shareholder value, streamline financial consolidation efforts, and enable efficient tax planning at the group level.
- Aditya Birla Capital Limited (“**ABCL**”) and Aditya Birla Finance (“**ABFL**”) have merged for an undisclosed amount, with an aim to establish a robust unified operational Non-Banking Financial Company (“**NBFC**”). ABCL, categorized as a systematically significant non-deposit-taking core investment company (NBFC-CIC), is merging with ABFL, which is a non-deposit-taking systematically important NBFC (NBFC-ICC). The rationale behind this merger is to comply with the scale-based Regulations of the RBI, which necessitate the compulsory listing of Aditya Birla Finance by September 30, 2025.
- Triveni Engineering & Industries Ltd. is all set to acquire a 25.43% stake in Sir Shadi Lal Enterprises Limited for an amount of INR 35 crore equivalent to INR 262.15 per equity share. Triveni Engineering is a prominent integrated sugar producer in the nation, and also a leading player in the engineered-to-order high-speed gears, gearboxes, and wastewater management business. With this acquisition, Triveni aims to further enhance its presence in the sugar and alcohol businesses.
- Jupiter Wagons Limited is all set to acquire a 94.25% stake in Bonatrans India Private Limited (“**Bonatrans India**”) for a consideration of INR 271 crore. Jupiter Wagon is a manufacturer of various types of railway wagons and accessories, along with containers, commercial vehicle load bodies, and commercial electric vehicles. Bonatrans India, a railway and related services provider, specializes in manufacturing components of rolling stock such as wheels, axles, and wheel sets. This acquisition is intended to fulfil the captive requirements of Jupiter Wagons Limited and to address the evolving demand in both domestic and export markets.
- The Hyderabad Industries Limited (“**HIL**”) (member of the USD 2.9 billion CK Birla Group), has signed an agreement with Crestia Polytech Private Limited (“**Crestia**”) for the acquisition of Topline, a well-known brand of pipes and fittings in Eastern India, along with Crestia's four wholly-owned subsidiaries: Topline Industries, Aditya Polytechnic, Aditya Industries, and Sainath Polymers, for a sum of INR 265 crores. Crestia and its subsidiaries are key players in the pipes, fittings, and water tank sector, featuring three flagship brands: Topline, Rockwell, and Soniplast. This acquisition marks a significant step in HIL's commitment to bolster its rapidly expanding pipes and fittings business within the Indian PVC Pipes & Fittings market, valued at approximately INR 55,000 crore. Additionally, the acquisition is anticipated to substantially enhance HIL's production capacity and nearly double its revenue stream.



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