



SAGA LEGAL

COMMUNIQUE

MAY 2024



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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of *Bar of Indian Lawyers through its President Jasbir Singh Malik vs. D.K. Gandhi, PS National Institute of Communicable Diseases & Anr. (Civil Appeal No. 2646 of 2009)* has held that advocates cannot be held liable under the Consumer Protection Act ("CPA"), 1986, which was re-enacted in 2019 for deficiency of services. The Court emphasized that professionals must be treated differently from individuals engaged in business and trade. While setting aside the National Consumer Disputes Redressal Commission's order, which had ruled that the services rendered by lawyers were covered under Section 2(o) of the CPA, 1986, the Bench comprising of Justice Bela M Trivedi and Justice Pankaj Mithal observed that *"...the very purpose and object of CPA, 1986 and thereafter CPA, 2019 to provide protection to the consumer from unfair practices and unethical business practices only...there is nothing to suggest that the legislature ever intended to include professions or professionals within the purposes.... The legal profession is sui generis and cannot be compared with other professions...All these attributes and strengthen our opinion that services of an advocate would, therefore, stand excluded from the definition of 'service' under Section 2."*
- The Hon'ble Supreme Court in the case of *Tarsem Lal vs. Directorate of Enforcement Jalandhar Zonal Office, (Special Leave to Appeal (Crl.) No(s). 121 of 2024)* has ruled that the Enforcement Directorate ("ED") and any of its officers cannot arrest an accused exercising powers under Section 19 of the Prevention of Money Laundering Act, 2002 ("PMLA") after the Special Court has taken cognizance of the complaint of money laundering. The Bench comprising of Justice Abhay S. Oka and Justice Ujjal Bhuyan observed that *"After cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint under Section 44 (1)(b), the ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19."*
- The Hon'ble Supreme Court in the case of *Rajendra Bhagwanji Umraniya vs. the State of Gujarat (Criminal Appeal Nos. 2481-82 of 2024)* has held that an order for the convict to pay compensation to the victim shall not result in a reduction of the sentence imposed on the convict. The Bench comprising of Justice JB Pardiwala and Justice Manoj Misra while setting aside the order passed by the High Court, observed that *"if payment of compensation becomes a consideration for reducing sentence, then the same will have a catastrophic effect on the criminal justice administration.... in criminal proceedings the courts should not conflate sentence with compensation to victims. Sentences such as imprisonment and / or fine are imposed independently of any victim compensation and thus, the two stands on a completely different footing, either of them cannot vary the other."*



- The Hon'ble Supreme Court in the case of *Prabir Purkayastha vs. State (2024 INSC 414)* held that the ratio laid down in the judgement in the case of *Pankaj Bansal vs. Union of India (2023 SCC OnLine SC 1244)*, which mandates that grounds of arrest must be supplied to the accused in writing, will also apply to cases registered under the Unlawful Activities (Prevention) Act, 1967 ("**the Act**"). The Court further held that the constitutional safeguard provided under Article 22(1) of the Constitution of India would apply to both Section 19 of the PMLA and Section 43 of the Act, ensuring that no person who is arrested shall be detained in custody without being informed of the grounds for such arrest. The Bench of Justice BR Gavai and Justice Sandeep Mehtawe reiterated that *".. the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be."*
 - The Hon'ble Supreme Court in the case of *Shaji Paulose vs. Institute of Chartered Accountants of India Transfer Case (Transferred Case (Civil) No.29 of 2021)* has upheld a rule issued by the Institute of Chartered Accountants of India (ICAI) that bars Chartered Accountants from accepting more than the specified number of tax audit assignments in a financial year, currently set at 60. The Court further held that the ICAI is at liberty to increase the number in the future if it wishes to do so.
- The Bench comprising of Justice BV Nagarathna and Justice Augustine George Masih observed that *"the measures taken, intended to maintain and improve the quality of work and ensure equitable distribution of work among the Chartered Accountants could not be held to be an unreasonable restriction since such restrictions are necessary for maintaining the status of the Chartered Accountants and also for ensuring the quality of the work by them."*
- The Hon'ble Supreme Court in the case of *United India Insurance Co. Ltd. vs. M/s Hyundai Engineering & Construction Co. Ltd. & Ors., (Civil Appeal No. 1496 of 2023)* has held that the burden of proving the applicability of exclusionary clauses in insurance contracts lies with the insurer, and such clauses must be interpreted strictly against the insurer, as they may completely exempt the insurer from its liability. The Bench comprising of Justice PS Narasimha and Justice Aravind Kumar opined that *"The courts have to read the insurance contract strictly. Essentially, the insurer cannot be asked to cover a loss that is not mentioned. Exclusion clauses in insurance contracts are interpreted strictly and against the insurer as they have the effect of completely exempting the insurer of its liabilities... It is, therefore, the duty of the insurer to plead and lead cogent evidence to establish the application of such a clause. The evidence must unequivocally establish that the event sought to be excluded is specifically covered by the exclusionary clause."*
 - The Hon'ble Supreme Court in the case of *Sunita Devi vs. The State of Bihar & Anr. (Criminal Appeal No. 3924 of 2023)* has emphasized the need for adequate guidelines for exercising sentencing



- discretion, and avoiding unwanted disparity in sentencing. The Bench comprising Justice MM Sundresh and Justice SVN Bhatti recommended *“...the Department of Justice, Ministry of Law and Justice, Government of India, to consider introducing a comprehensive policy, possibly by way of getting an appropriate report from a duly constituted Sentencing Commission consisting of experts in different fields for the purpose of having a distinct sentencing policy. We request the Union of India to respond to our suggestion by way of an affidavit within a period of six months from today.... Unfortunately, we do not have a clear policy or legislation when it comes to sentencing. Over the years, it has become judge-centric and there are admitted disparities in awarding a sentence.”*
- The High Court of Allahabad in the case of *Sehrun Nisha vs. State of UP and Others (Writ - A No. - 6402 of 2024)*, has stated that the gratuity payable to a government employee would be based on his years of service and not on the age at which he retires from such services. The Court further clarified that gratuity is not an entitlement only for people retiring at the age of 60; it is earned by employees based on the number of years of their service. Accordingly, the Single Judge Bench comprising of Justice J.J. Munir ordered that *“...A mandamus is issued to the respondents to sanction and calculate gratuity to the petitioner, of course, taking into account the total number of completed years of service rendered by him before prematurely retiring. The reckoning of the petitioner's entitlement to gratuity shall be done within a period of fifteen days hence and gratuity determined shall be paid to the petitioner within next fifteen days thereafter.”*
 - The High Court of Bombay in the case of *Dattaram Sawant & Anr. vs. Vidarbha Konkan Gramin Bank (Writ Petition No. 12161 of 2019)*, has held that the leave encashment paid for unutilized leave is not a bounty, but rather a right of the employee. In the present case, the Court was dealing with a petition seeking encashment of the privileged leaves that were rejected by the employer. The Division Bench of Justice Nitin Jamdar and Justice MM Sathaye observed that *“Leave encashment is akin to a salary, which is property. Depriving a person of his property without any valid statutory provision would violate Article 300 A of the Constitution of India. Leave encashment paid on account of unutilised leave is not a bounty. If an employee has earned it and the employee has chosen to accumulate his earned leave to his credit, then encashment becomes his right”*.
 - The High Court of Karnataka in the case of *Chinnaswamy K vs. Theosophy Company (Mysore) Pvt. Ltd. (Civil Revision Petition No. 483 of 2023)* has held that providing a rent-free accommodation as a term of employment creates a jural relationship of 'landlord and tenant' between the employer and the employee. In the current case, the tenant claimed adverse possession, arguing that the building was in a dilapidated condition, and his family restored it and began living there. A Single-Judge Bench comprising of Justice N.S. Sanjay Gowda dismissed the petition and observed that *“...the component of rent is a part of his emolument which results in an employee getting a reduced salary. The Trial Court was thus justified in coming to the conclusion that there did exist a jural relationship and the suit filed for eviction was perfectly maintainable and the plea of*



adverse possession sought to be raised was a false and specious plea.”

- The High Court of Calcutta in the case of *Vodafone Idea Limited vs. Saregama India Limited & Anr.* (CS No. 23 of 2018) has clarified that as per the Copyright Act, 1957 (“**the Act**”), the right of equal sharing of royalty to the authors of literary and musical works has been provided, and under Sections 33, 34, and 34A of the Act, authors cannot renounce their royalty rights for works exploited in forms other than cinema films. A Single Judge Bench of Justice Ravi Krishan Kapur observed, “As a consequence, authors of original literary and musical works, who had always been given unsympathetic treatment are now entitled to claim mandatory royalty sharing on each occasion when a sound recording is communicated to the public. The amendments cannot be interpreted to be merely clarificatory in nature. Post amendment, substantive rights have now been granted to the authors of original works which prohibit contracts whereby authors were forced to license away their rights for even future technologies.”
- The High Court of Delhi in the case of *Rekha Oberoi vs. Amit Oberoi* (CS(OS) 366 of 2020), has observed that under Section 15(1) of the Hindu Succession Act, 1956 (“**the Act**”), the property of a female Hindu dying intestate shall devolve in the following order: firstly, upon her sons and daughters (including children of any pre-deceased son or daughter) and her husband; secondly, upon the husband's heirs; thirdly, upon her mother and father; fourthly, upon the father's heirs; and lastly, upon the mother's heirs. This provision disadvantages the widow of a pre-deceased son while intending to benefit another woman, the deceased female. The

Single Judge Bench of Justice Neena Bansal Krishna observed that “*While the intention of the legislature under Section 15(1) of the Act, 1956 may have been bona fide; however, the present case is demonstrative of how Section 15 (1) of the Act, 1956 unfortunately, works against the woman herself i.e. the widow of a pre-deceased son. ... Merely because a case appears to be hard, it cannot permit the invocation of a different interpretation of a statutory provision which is otherwise impermissible. This Court, therefore, has no option but to interpret Section 15 of the Act, 1956 as it exists, even if it is unjust towards the plaintiff.*”

- The High Court of Allahabad in the case of *Commissioner Commercial Tax, UP vs. M/s Pan Parag India Limited* (Neutral Citation : 2024 : AHC : 94356) has stated that franchise agreements are fundamentally licensing agreements, rather than sales of goods. The Court further added that licensing entails granting permission to utilise intellectual property rights, while the sale of goods involves transferring ownership of tangible items. The Single Judge Bench of Justice Shekhar B. Saraf opined that “*Franchise agreements have become a ubiquitous feature of modern commerce, facilitating the expansion of businesses across diverse industries and geographies. However, the tax treatment of franchise agreements poses intricate challenges, with implications for both franchisors and franchisees. Transfer of the right to use a trademark does not necessitate the physical handover or control of the trademark. Instead, it can be affected by authorizing the transferee to use the trademark in accordance with the law. This underscores the intangible nature of trademark rights and their transferability*



without the need for physical possession. Franchise agreements primarily grant a representational right rather than an exclusive right to sell or manufacture goods, thereby categorizing such transactions as services rather than sales of goods. Franchise agreements are fundamentally licensing agreements rather than sales of goods.”

- The High Court of Gujarat in the case of *Deputy Collector & Anr. vs. Meera S. Desai & Anr. (R/Civil Application (For Condonation Of Delay) No. 1716 of 2024)* has ruled that the Stamp Authorities cannot levy stamp duty twice on the same sale consideration for the transfer of immovable

property when sale consideration was paid at the stage of execution of the Agreement to Sell and the Stamp Duty was paid on the entire sale consideration at the time of registration of the said instrument. The Division Bench comprising of Chief Justice Sunita Agrawal and Justice Aniruddha Mayee observed that, *“in the instant case, the stamp duty was paid at the time of registration of the agreement to sale, as it was with possession. ... The stamp duty was, thus, not leviable on the sale deed executed pursuant to the agreement to sale with possession as no stamp duty can be twice levied on the sale consideration with respect to one transfer.”*



NOTIFICATIONS / AMENDMENTS INSIGHTS

- The Reserve Bank of India (“**RBI**”), vide notification No. **FEMA 5(R) / (4) / 2024 -RB** dated **06.05.2024** has amended Foreign Exchange Management (Deposit) (Fourth Amendment) Regulation, 2024. Accordingly, sub-regulation (6) has been inserted in Regulation 7 of the principal regulation: “ *An authorized dealer in India may allow a person resident outside India to open, hold and maintain an interest-bearing account in Indian Rupees and/or foreign currency for the purpose of posting and collecting margin in India, for a permitted derivative contract entered into by such person in terms of Foreign Exchange Management (Margin for Derivative Contracts) Regulations, 2020, dated October 23, 2020, as amended from time to time, subject to directions issued by the Reserve Bank in this regard.*”
- The Ministry of Corporate Affairs (“**MCA**”), vide Circular No. **03 of 2024** dated **07.05.2024**, issued a relaxation of additional fees and extension of filing forms under the Limited Liability Partnership (“**LLP**”) Act, 2008. Through this Circular, MCA has announced that with due consideration of the transition in MCA-21 from version 2 to version 3 and to promote compliance with the reporting requirements for the LLPs, the due date for filing Forms LLP BEN-2 and LLP Form 4D has been extended to **July 01, 2024** without the payment of any additional fees.
- The Securities and Exchange Board of India (“**SEBI**”) vide Circular No. **SEBI / HO / MIRSD / MIRSD-PoD-2 / P / CIR / 2024 / 38** dated **07.05.2024** has issued a periodic reporting format for investment advisers. Through the said circular, SEBI has recognized the Investment Advisers Administration and Supervisory Body (“**IAASB**”) for administering and supervising Investment Advisers (“**IAs**”). Currently, IAASB requests reports from IAs on an ad-hoc basis. To standardize reporting, a standardized format for periodic reporting for IAs has been specified. Accordingly, IAs must submit reports for half-yearly periods ending on September 30 and March 31 of each financial year. The report for the half-year ending on March 31, 2024, must be submitted to IAASB within fifteen days of the circular's issuance. For subsequent half-yearly periods, reports must be submitted within seven working days from the end of the respective half-yearly period.
- The Securities and Exchange Board of India (“**SEBI**”) vide circular no. **SEBI/HO/MRD-PoD-1/P/CIR/2024/62** dated **27.05.2024** has issued a standard operating procedure for handling stock exchange outages and extension of trading hours in the commodity derivatives segment. Accordingly, SEBI has advised that the stock exchanges should ensure necessary changes in the systems to extend market hours. The Circular shall be effective from July 01, 2024.
- The Securities and Exchange Board of India (“**SEBI**”) vide Circular no. **SEBI / HO / CFD / PoD-1 / P / CIR 2024 / 0059** dated **27.05.2024** has issued timelines for disclosures by social enterprises on the Social Stock Exchange (“**SSE**”). Accordingly, all the social enterprises that have registered or have raised funds through SSE shall be required to submit an Annual Impact Report to SSE by October 31, 2024, for the financial year 2023-2024.



DEALS THIS MONTH

- Fix My Curls, a leading curly and wavy hair-focused brand, raised an undisclosed amount in a seed funding round led by Amazon's small and medium businesses-focused venture fund Smbhav Venture Fund, India Quotient, and DSG Consumer Fund. **Saga Legal** represented India Quotient Fund as well as the DSG Consumer Fund in their investment in Fix My Curls. Saga Legal's role was to review and negotiate transaction documents on behalf of both clients. Fix My Curls plans to use the fresh funding to scale up its product stack, advance innovations, strengthen its leadership team, and boosting customers base in Tier II and III cities. Team Involved: Neeraj Vyas (Partner).
- Coforge, a leading global Digital Services and IT Solutions company is all set to acquire a 54% (fifty-four percent) stake in Hyderabad-based Cigniti Technologies at a per share price of INR 1,415 (Indian Rupees One thousand Four Hundred Fifteen). Cigniti is an established company dealing in digital assurance and digital engineering services. The acquisition will help Coforge grow to USD 2 billion and improve its operating margin by 150-200BPS by FY 2027.
- Niyogin Fintech Limited has successfully acquired Superscan from Orbo.ai for an undisclosed amount. Superscan is an AI-powered document imaging, automation, and fraud detection platform. Its AI-driven Optical Character Recognition technology operates entirely on the device, eliminating the need for heavy-duty Graphics Processing Units. With this acquisition, Niyogin's commitment to spearheading digital transformation encourages the widespread adoption of cutting-edge technologies.
- CashFlo is all set to acquire a tax compliance management solution provider LogiTax, an all-in-one GST and E-invoicing Compliance platform for an undisclosed amount. CashFlo helps vendors to access short-term capital while it enables corporations to optimize working capital flow and increase the top line by managing their supply chain's finances efficiently. With this acquisition, CashFlo tends to expand its portfolio to offer a comprehensive full suite of finance automation products in the Accounts Payables and Receivables Management category. Among these offerings are AP Automation, Payments and Reconciliation, GST filing and reconciliation, Supply Chain Financing, and GST ITC maximization.
- A non-banking company, Ugro Capital has acquired a Fintech lending startup MyShubhLife ("**MSL**") for INR 45 crores in a stock-and-cash deal. Through this acquisition, Ugro Capital will be enabled to enter the tech-enabled embedded finance market. Ugro Capital is a data-tech NBFC focused on MSME lending, while MSL specializes in offerings tailored for small shopkeepers and distributors. Ugro Capital has also approved raising equity capital of INR 1,322 crore through Compulsory Convertible Debentures and Warrants.



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