



SAGA LEGAL

COMMUNIQUE

NOVEMBER 2024



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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of *Central Organisation for Railway Electrification vs. M/s ECI SPIC SMO MCML (JV) A Joint Venture Company (Civil Appeal Nos. 9486-9487 of 2019)* has held that the unilateral arbitrator appointment clauses in public-private contracts are violative of Article 14 of the Constitution of India. The Bench comprising Chief Justice of India D.Y. Chandrachud, Justice Hrishikesh Roy, Justice P.S. Narasimha, Justice Pardiwala, and Justice Manoj Misra observed that *"A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators... Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution...The real issue is about the imbalance caused due to unilateral power of one of the parties to the contract to constitute the arbitral tribunal. Composition of the arbitral tribunal is part of party autonomy but there is always the power, coupled with duty, of the court to ensure that procedure under the arbitration clause enables constitution of an independent arbitral tribunal"*.
- The Hon'ble Supreme Court in the case of *Property Owners Association vs. State of Maharashtra (W.P.(C) No. 934 of 1992)* by a majority of 7:2 held that all privately owned property is not a "material resource of the community" and be distributed by the State for the common good as per Article 39(b) of the Indian Constitution which imposes a positive obligation on the government to frame policy to ensure that the "ownership and control of material resources of the community" are distributed in such a way that they "subserve the common good". The Constitutional Bench comprising Chief Justice of India D.Y. Chandrachud, Justice Hrishikesh Roy, Justice B.V. Nagarathna, Justice Sudhanshu Dhulia, Justice J.B. Pardiwala, Justice Manoj Misra, Justice Rajesh Bindal and Justice S.C. Sharma observed that *"The direct question referred to this bench is whether the phrase 'material resources of the community' used in Article 39(b) includes privately owned resources. Theoretically, the answer is yes, the phrase may include privately owned resources. However, this Court is unable to subscribe to the expansive view adopted in the minority judgement authored by Justice Krishna Iyer in Ranganatha Reddy and subsequently relied on by this Court in Sanjeev Coke. Not every resource owned by an individual can be considered a 'material resource of the community' merely because it meets the qualifier of 'material needs'"*.
- The Hon'ble Supreme Court in the case of *Ganapati Bhikarao Nail vs. Nuclear Power Corporation of India Limited (Civil Appeal Nos. 6591-6592 of 2024)*, has opined that the factual findings conducted by the labour courts should not be disturbed by the writ courts without any compelling reasons. The Bench comprising Justice Hrishikesh Roy and Justice S.V.N. Bhatti observed that *"The relevant materials reflecting the marriage of the appellant with Smt. Ganga was however ignored by the Writ Court. The Court also failed to*



appreciate that the learned Labour Court reached the factual conclusion, after due consideration of the material evidence. Such factual finding of the Labour Court should not normally be disturbed by a Writ Court without compelling reason. Such reasons are absent. Therefore, we feel that the Award in favour of the appellant, granted by the Labour Court, was erroneously disturbed by the learned Single Judge.”

- The Hon'ble Supreme Court in the case of *Manjit Singh & Anr. vs. Darshana Devi & Ors, (Civil Appeal No. 13066 of 2024)* has stated that under Section 19(b) of the Specific Relief Act, 1963 (“**the Act**”) for a subsequent purchaser to claim ‘Bona Fide Purchaser’ protection, there must be due care and inquiries conducted by the subsequent purchaser. The court further stated that if there is a lack of due diligence on the purchase from the subsequent purchaser, then that amounts to disqualification from protection under Section 19(b) of the Act. The Bench comprising of Justice J.B. Pardiwala and Justice R.Mahadevan observed, “*The abovesaid definitions and the meaning of the term ‘good faith’ indicate that in order to come to a conclusion that an act was done in good faith it must have been done with due care and attention and there should not be any negligence or dishonesty. Each aspect is a complement to the other and not an exclusion of the other. The definition of the Penal Code, 1860 emphasises due care and attention whereas General Clauses Act emphasises honesty*”.
- The Hon'ble Supreme Court in case of *State of Punjab & Anr. vs. M/s Ferrous Alloy Forgings P Ltd. (Civil Appeal No. 12527 of 2024)*, has clarified that a sale certificate issued to a purchaser after an auction sale is merely given as evidence for acquiring such title and the said sale certificate is not mandated to be registered under Section 17(1) of the Registration Act, 1908 (“**the Act**”). The Court further added that such sale certificate would attract stamp duty only when the auction purchaser presents it for registration. The Bench comprising Justice J.B Pardiwala and Justice R. Mahadevan noted that “*The position of law is thus settled that a sale certificate issued to the purchaser in pursuance of the confirmation of an auction sale is merely evidence of such title and does not require registration under Section 17(1) of the Registration Act*”.
- While upholding a settlement deed where the transferee was required to take care of the transferors and perform charity work, instead of paying money, the Hon'ble Supreme Court in the case of *Ramachandra Reddy & Ors. vs. Ramuli Ammal (Civil Appeal No. 3034 of 2012)* has stated that in settlement deeds, ‘consideration’ need not mandatorily be monetary in nature. The Bench comprising Justice CT Ravikumar and Justice Sanjay Karol observed that “*...‘consideration’ need not always be in monetary terms. It can be in other forms as well. In the present case, it is seen that the transfer of property in favour of Govindammal was in recognition of the fact that she had been taking care of the transferors and would continue to do so while also using the same to carry out charitable work.*”



- The Hon'ble Supreme Court in the case of *Kallakuri Pattabhiramaswamy vs. Kallakuri Kamaraju & Ors (Civil Appeal No. 5389 of 2012)* has ruled that when a Hindu woman is given only a restricted estate in the property, she cannot claim to be the absolute owner of the property due to the application of Section 14(2) of the Hindu Succession Act 1956 ("**the Act**"). The Court clarified that to claim absolute ownership, the Hindu women should by virtue of Section 14(1) of the Act have pre-existing rights or in lieu of maintenance for the same, but when the deed itself is limited to its power, it will not transform the same into an absolute ownership. The Bench of Justice C.T. Ravikumar and Justice Sanjay Karol held that "*Property given in lieu of maintenance would solidify into absolute ownership by action of Section 14(1) of HSA, 1956. In other words, the right of maintenance on its own is apposite for such property to transfer into her sole, unquestionable, and absolute right. The partition deed of 1933, it has been held, is clear that 3.55 Cents of land would be enjoyed by Smt. Veerabhadramma as a life interest and thereafter would devolve upon the two lines of succession...*".

High Court

- The High Court of Kerala in the case of *Pooja Anand vs. Ashokan K. & Anr. (CRL.MC NO. 2811 of 2019)* has held that the complaint filed before a lawful authority, which was subsequently investigated, does not constitute an offence of defamation under Section 500 of the Indian Penal Code 1860 ("**IPC**"). While referring to the fourth exception under Section 499 of the IPC, which states that publishing a substantially true report of court proceedings or the results of such proceedings does not amount to defamation, the Single-Judge Bench comprising Justice P.V. Kunhikrishnan observed that "*...a complaint is filed before the Chief Minister and before the Director of Pariyaram Medical College, where the 1st respondent was working, in which certain allegations are made by the petitioner and her mother. The Chief Minister forwarded the same to the police station concerned. In such circumstances, it cannot be said that defamation as defined under Sec.499 IPC is made out. There is no publication of any imputation or making any imputation. The complaint is filed before a lawful authority, which was enquired by the authority concerned. That will not attract the offence under Sec.500 IPC...*"
- The High Court of Delhi in case of *Delhivery Limited vs. Sterne India Private Limited (ARB.P. 992 of 2024)* has held that when exclusive jurisdiction is expressly conferred upon a Court in matters related to arbitration, it should be interpreted as a definitive "contrary indication". While dealing with a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, which sought the appointment of a Sole Arbitrator, the Single-Judge Bench of Justice Sachin Datta observed that "*...this Court has taken the view that where exclusive jurisdiction has been conferred on a Court in respect of matters relating to arbitration, the same shall be construed to be a clear 'contrary indicia' and that the said court, upon which exclusive jurisdiction has been conferred, would be the juridical seat of arbitration...It is thus*



evident that the arbitration mechanism created under Clause 19 has been made, by the very same clause, to be subject to the exclusive jurisdiction of Courts in New Delhi.”

- The High Court of Telangana in the case of *The Commissioner Of Income Tax vs. M/s. Satiofi Healthcare India Private Limited (Income Tax Tribunal Appeal No. 138 of 2007)* has ruled that an amount received under an agreement to not carry on competitive business is in nature of a capital receipt and that it is not taxable as revenue, as it involved the surrender of rights in a capital asset and restrictive covenants. While upholding the finding of the tribunal which emphasised that such payments impair the profit-making apparatus of the business, the Division Bench of Chief Justice Alok Aradhe and Justice J. Sreenivas Rao observed that *“The finding recorded by the Tribunal that the amount received under the agreement is a capital receipt, which has been recorded on the basis of meticulous appreciation of evidence on record. The aforesaid finding cannot be termed as perverse. It is well settled in law that this Court in exercise of powers under Section 260A of the Act cannot interfere with the finding of fact until and unless the same is demonstrated to be perverse.”*
- The High Court of Delhi in the case of *Indian Oil Corporation Ltd. vs. M/s. Fiberfill Engineers (2024: DHC:8911-DB)*, has stated that the scope of examination under Section 34 of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”) does not extend to re-adjudication of the disputes but can be considered to decide

whether the Arbitral Award can be set aside based on the grounds of Section 34 of the A&C Act. The Division Bench comprising Justice Vibhu Bakhru and Justice Sachin Datta observed, *“... the impugned award to the extent rejecting fiberfill’s claim for recovery of the amount withheld by IOCL along with interest has been rightly set aside by the learned Single Judge. However, as observed at the outset, the decision of the learned Single Judge to award the said claim or interest at the rate of 8% per annum cannot be sustained, given that the scope of examination under Section 34 of the A&C Act does not extend to re-adjudication of the disputes but merely to consider whether the arbitral award is liable to be set aside on the grounds as set under Section 34 of the A&C Act.”*

- The High Court of Madhya Pradesh in case of *Child In Conflict with Law vs. Vinod Kumar Jain & Anr. (Criminal Revision No. 3522 of 2024)* has ruled that the age of a Juvenile mentioned in Aadhaar Card is not material and that the age must be determined strictly as per Section 94 of the Juvenile Justice Act, 2015 (“**the Act**”). The Court was dealing with criminal revision filed against the order of the trial Court by which it remanded the case to the Judicial Magistrate First Class to find as to whether the accused in conflict with law was below 18 years of age on the date of offence. The Single Judge Bench of Justice Rajendra Kumar observed that *“...it is crystal clear that the age mentioned in Adhar card or Samgra Parivar Card or voter list is not material. The age of the revisionist is to be determined strictly in the light of the provisions as contained in*



Section 94 of the Act of 2015..... the purpose of Adhar card is different. It cannot be resorted to/for determining the age of card holder... Adhar card is not a proof of age of the prosecutrix. Her age is to be necessarily determined in terms of Rule 12 of the Rules of 2007 or Section 94 of the Act of 2015”

- The High Court of Bombay in the case of *BKS Galaxy Realtors LLP vs. Sharp Properties (Arbitration Appeal No.72 of 2024)* has held that an arbitration clause in the agreement for sale does not have any legal effect once the sale deed has been executed. The Court was considering an appeal against an order that rejected the application filed by the Appellants under Section 8 of the Arbitration and Conciliation Act, 1996 (“**the A&C Act**”), seeking a reference of the suit to arbitration. The Single-Judge Bench comprising of Justice R.I. Chagla observed “*In my view, the Agreement for sale has come to an end by the execution of the Deed of Conveyance / Sale Deed...The Suit is for declaration, injunction, recovery and specific performance in respect of the MoU and Allotment Letter and not in respect of the said Agreement which has comes to an end by execution of the Conveyance*”
- The High Court of Kerala in the case of *Muppathadam Service Co-Operative Bank Ltd. vs. The State Chief Information Commissioner (WP(C) NO. 30694 OF 2024)* has held that the Registrar of Co-operative Societies must provide the requested information to an applicant under the Right to Information Act, 2005 (“**the RTI Act**”) if the information is within their possession and is not exempt from

disclosure under Section 8(1) of the RTI Act. The Single Judge bench of Justice D. K. Singh observed that “*The question which needs to be considered is whether the Registrar of the Co-operative Society would have access to the documents / information of the Petitioner-Society, which have been sought for by the fourth respondent. If the documents and information are accessible to the Registrar of the Co-operative Society and are not exempted from disclosure under Section 8 of the Right to Information Act, the Registrar can collect such information from the Society, which he is otherwise empowered to collect under the Kerala Co-operative Societies Act and furnish that information to the applicant.*” On November 26, 2024, the Securities and Exchange Board of India (“**SEBI**”) has issued a circular no. SEBI / HO / IMD / IMD-I PoD-1 / P / CIR / 2024 / 163, introducing new valuation guidelines for repurchase (repo) transactions by mutual funds. Under the new framework, securities used in such transactions will be valued on a mark-to-market basis. The new valuation metrics aim to standardize the valuation methodology for all money market and debt instruments, while also addressing concerns related to unintended regulatory arbitrage that may arise from the use of different valuation methods. The said notification will come into effect on January 1, 2025.

- The Reserve Bank of India (“**RBI**”) on November 11, 2024, vide notification no. RBI / 2024 – 25 / 90, has introduced an operation framework for reclassification of Foreign Portfolio Investment (“**FPI**”), to Foreign Direct Investment (“**FDI**”). Under



this reclassification, if an FPI through its investments exceeds the prescribed threshold of 10 per cent of the total paid-up equity capital of the Indian investee company on a fully diluted basis, then the FPI will become an FDI. If the FPI exceeds the 10% limit, then there are two options, i.e either they can divest their holdings in order to return to compliance with the prescribed investment limits or they can reclassify their holdings as FDI subject to the conditions set by RBI and Securities Exchange Board of India (SEBI).

- The Reserve Bank of India (“**RBI**”) on November 08, 2024, vide Circular RBI / 2024-25 / 89 has expanded the reporting requirement of forex transactions and has included foreign exchange spot deals in the trade repository (“**TR**”) of the Clearing Corporation of India. Now transactions in foreign exchange cash; foreign exchange tom; and foreign exchange spot, involving

the rupee or otherwise shall be reported to the TR. The rationale behind the same is to enhance the transparency and data completeness in the foreign exchange market.

- The Securities and Exchange Board of India (“**SEBI**”) on November 04, 2024, vide Circular SEBI / HO / IMD / IMD-I POD1 / P / CIR / 2024 / 149, has allowed Mutual Funds to invest in overseas mutual funds or unit trusts that invest a specific portion of their assets in Indian securities. This is subject to the total exposure to Indian securities by such overseas funds not exceeding 25 per cent of their net assets. This is ensured to ease the investments in overseas mutual funds and to enable them to diversify their overseas investments. The corpus of an overseas mutual fund should be a blind pool with no segregated portfolios, ensuring all investors have equal and proportionate rights in the fund.



DEALS THIS MONTH

- Industrial supply chain SaaS platform, Unicommerce eSolutions Limited (“**Unicommerce**”) has announced the acquisition of Shipway Technology Private Limited (“**Shipway**”) which is an all-in-one shipping solution that helps e-commerce businesses automate their fulfilment, shipping, and returns operations. Unicommerce provides a unified commerce solution for brands and retailers. This acquisition will allow Unicommerce to cross-sell courier aggregation and shipping automation services to its 4,000 clients while also gaining access to Shipway’s network of 3,000 partners, expanding its client base.
- Mirae Asset Financial Group has successfully acquired stock broking company, Sharekhan Limited after receiving all necessary regulatory approvals. Mirae Asset is a global enterprise offering financial services expertise worldwide. Sharekhan provides a comprehensive range of trading and investment solutions, including equities, futures and options, portfolio management services, research, mutual funds, and investor education. This acquisition aims to enable Sharekhan to further develop its business and activities by leveraging Mirae Asset’s global expertise to enhance its offerings and expand financial services for clients across India. The integration of Mirae Asset’s international resources with Sharekhan’s strong market presence seeks to establish a comprehensive financial services platform catering to a diverse clientele.
- The Competition Commission of India has approved the proposal by Danish transport and logistics group De Sammensluttede Vognmænd A/S (DSV) to acquire the integrated logistics group Schenker Aktiengesellschaft (Schenker) for 14.3 billion Euros. Schenker is a global logistics company and provides international air and ocean freight services alongside integrated logistics solutions. This acquisition aims to expand DSV’s supply chain solutions in India as well as globally, strengthening its logistics and freight forwarding capabilities.
- Tube Investments of India Limited has entered into an agreement to acquire a 67 per cent ownership stake in Kcaltech System India Pvt. Ltd. (“**KCAL India**”) for INR 62 crore in cash. KCAL India is a subsidiary of South Korea-based KC Altech Co. Ltd., which specializes in manufacturing aluminium tubes and components for HVAC systems in the automotive sector. This investment is intended to support KCAL India’s growth plans, including expanding its production capabilities. The acquisition is in line with Tube Investment’s strategic objective to broaden its business portfolio by entering complementary sectors that enhance its core operations.



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📍 BENGALURU : 2216, FIRST FLOOR, UKS STEEL PLAZA, 80 FEET ROAD, HAL 3RD STAGE,
INDIRANAGAR, OPP. ISRO, BENGALURU - 560 075

📍 MUMBAI : 3/A-3, 3RD FLOOR, COURT CHAMBERS, NEW MARINE LINES,
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