SAGA LEGAL

COMMUNIQUE

OCTOBER 2024

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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of *Chief Commissioner of Central Goods and Service Tax & Ors. vs. M/s Safari Retreats Private Ltd. & Ors. (2024 INSC 756)* has upheld the constitutional validity of clauses (c) and (d) of Section 17(5) of the Central Goods and Services Tax Act, 2017 (**"CGST Act"**), while stating that the test of vice of discrimination in a taxing statute is less rigorous. The Appeal challenged the constitutionality of Section 17(5)(c) and (d) of the CGST Act, arguing that the restriction on Input Tax Credit for goods and services used in constructing immovable properties was arbitrary, violative of Article 14 of the Constitution of India, and perpetuated the cascading effect of tax, contrary to the GST's objective of tax neutrality. The Bench comprising Justice Abhay S. Oka and Justice Sanjay Karol observed, *"We fail to understand the argument that the classification is underinclusive and creates discrimination. In this case, equals are not being treated as unequals. The test of vice of discrimination in taxing law is less rigorous. Ultimately, the legislature was dealing with a complex economic problem. By no stretch of the imagination, clauses (c) and (d) of Section 17(5) can be said to be discriminatory."*

- The Hon'ble Supreme Court in the case of *In Re Section 6A of the Citizenship Act 1955 (Writ Petition (C) No 274 of 2009),* has ruled that the fundamental right under Article 29(1) of the Constitution of India is not restricted to minorities but allows any group of citizens to conserve their distinct language, script, or culture, extends to any section of citizens residing in the territory of India. The Bench comprising Justice D.Y. Chandrachud, Justice Surya Kant, Justice M.M. Sundresh, Justice J.B. Pardiwala and Manoj Misra observed, *"The rights conferred by Article 29(1) require that the State not take any steps to erode a community's culture, language or script; and concomitantly accords to such sections of citizens the freedom and independence to preserve and conserve their culture, language and script, by themselves. At the same time, the right under Article 29(1) does not necessitate the Government to enact specific provisions for its enforcement and also does not altogether restrict the State from enacting regulations."*

- The Hon'ble Supreme Court in the case of *Saroj & Ors. vs. Iffco-Tokio General Insurance Co. & Ors. (2024 INSC 816)*, has set aside a High Court's decision that had relied on the date of birth mentioned in the aadhaar card to determine the age of a victim in a motor accident compensation case. The Court expressed reservations about accepting the aadhaar card as suitable proof of age, instead, it was observed that the age of the deceased could be more authoritatively established through the date of birth recorded in the school leaving certificate, which holds statutory recognition under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("**the Act**"). The Bench comprising Justice Sanjay Karol and Justice Ujjal Bhuyan observed, *"...being the position, as it stands with respect to the determination of age, we have no hesitation in accepting the contention of the claimant-appellants, based on the School Leaving Certificate. Thus, we find no error in the learned MACT's determination of age based on the School Leaving Certificate."*

- The Hon'ble Supreme Court in the case of *Vidyasagar Prasad vs. UCO Bank & Anr. (Civil Appeal No. 1031 of 2022)* has held that there is no compulsion to specify the names of secured or unsecured creditors

in the balance sheet only a general entry acknowledging the debt is sufficient to initiate the Corporate Insolvency Resolution Process (CIRP). The Court further ruled that the debtor could not deny its liability merely on the ground that there were no specific entries of the particular creditor in their balance sheet regarding the debt owed to that particular creditor. The Bench comprising Justice PS Narasimha and Justice Sandeep Mehta observed, *"that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act."*

- The Hon'ble Supreme Court in the case of *GLAS Trust Company LLC vs. BYJU Raveendran & Ors. (Civil Appeal No. 9986 of 2024),* has stated that the inherent powers under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 ("**the NCLAT Rules**") can't be invoked to circumvent the Corporate Insolvency Resolution Process withdrawal procedure. The Bench comprising Chief Justice Dhananjaya Y Chandrachud, Justice J.B. Pardiwala and Justice Manoj Misra observed, *"We are of the view that recourse to Rule 11 of the NCLAT Rules was not warranted in the present circumstances. As noted above, 'inherent powers' cannot be used to subvert legal provisions, which exhaustively provide for a procedure. To permit the NCLAT to circumvent this detailed procedure by invoking its inherent powers under Rule 11 would run contrary to the carefully crafted procedure for withdrawal. In the Impugned Judgement, the NCLAT does not provide any reasons for deviating from this procedure or the urgency to approve the settlement without following the procedure."*

- The Hon'ble Supreme Court in the case of *Asim Akhtar vs. State of West Bengal (2024 INSC 794),* has clarified that it is not mandatory to decide the application under Section 319 Criminal Procedure Code, 1973 ("**CrPC**") before cross-examination of witnesses. The Bench comprising Justice Vikram Nath and Justice Prasanna B. Varale observed that *"…complicity of any person sought to be arrayed as an accused can be decided with or without conducting cross-examination of the complainant and other prosecution witnesses, and there is no mandate to decide the application under section 319 CrPC before cross-examination of other witnesses…The complainant has no such mandatory right to insist that an application be decided in such a manner."*

- The Hon'ble Supreme Court in the case of *Neelam Gupta & Ors vs. Rajendra Kumar Gupta & Anr. (Civil Appeal Nos.3159-3160 of 2019)* has ruled that any transfer of immovable property made by the person upon attaining majority cannot be challenged just because he was a minor when the property was transferred to him. Also, a minor can become the transferee/owner by way of a sale deed and Section 11 of the Indian Contract Act, 1872 ("**the Act**") would not come in the way of challenging the minor's capacity to contract because a sale can't be termed as a contract. The Bench comprising Justice CT Ravikumar and Justice Sanjay Kumar observed *"Though an agreement to sell is a contract of sale, going by its definition*

under Section 54 of the Transfer of Property Act, a sale cannot be said to be a contract. Sale, going by the definition thereunder, is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. The conjoint reading of all the aforesaid relevant provisions would undoubtedly go to show that they would not come in the way of transfer of an immovable property in favour of a minor or in other words, they would invariably suggest that a minor can be a transferee though not a transferor of immovable property."

- The Hon'ble Supreme Court in the case of *Sindhi Sangat vs. Union of India (Special Leave Petition (Civil) Diary No.43504 of 2024),* has stated that Article 29 of the Constitution of India which guarantees fundamental rights, does not grant citizens the right to demand that the government start a separate television channel in their language. The court was hearing a petition seeking a directive to the Union Government and Prasar Bharati to establish a twenty-four (24) hour Sindhi language Doordarshan TV channel to preserve the language and cultural heritage of the Sindhi community, a linguistic minority in India. While dismissing the petition, the Bench comprising Chief Justice of India D.Y. Chandrachud, Justice J.B. Pardiwala and Manoj Misra observed *"Can a citizen say that there must be a mandate to start a separate channel to preserve my language under Article 29? There are other means of preserving a language. Create more awareness…Suppose there is a language which is facing extinction. No citizen can say that in pursuit of my fundamental rights, you must set up a separate TV channel. There are other ways…The right which is claimed under Article 29 for preserving the language of the Sindhi population cannot result in an absolute or indefeasible right for the commencement of a separate language channel for a particular language."*

High Court

- While effectively quashing the criminal charges against a woman who attempted suicide in 2016, the High Court of Kerala in the case of *X vs. State of Kerala & Anr. (2024:KER:77662)* opined that previously attempting to suicide was classified as a criminal offense under Section 309 of the Indian Penal Code, 1860 ("**IPC**"), however, the same has changed with the introduction of Section 115 of the Mental Healthcare Act, 2017 (the "**Act**"), which effectively decriminalized such attempts. A Single-Judge Bench of Justice C.S. Sudha observed *"Where a law is enacted for the benefit of a community as a whole, even in the absence of a provision (conferring retrospective application), the statute may be held to be retrospective in nature. There can be no doubt that MHA is a beneficial legislation and so the benefits contained therein require to be extended to the entire class of persons for whose benefit it was enacted. As it is a beneficial piece of legislation, a retrospective effect can be given to the same…The presumption would be that such a legislation, giving a purposive construction, would warrant it to be given a retrospective effect."*

- The High Court of Kerala in the case of *Vijayamma vs. the State of Kerala (CRL.A No. 797 of 2018)* has stated that ailments like depression and schizoid features do not necessarily come within the exception under Section 84 of the Indian Penal Code, 1860 (**IPC**). Section 84 IPC states that an act will not be an offence, if it is done by a person, who at the time of doing such, by reason of unsoundness of mind, is incapable of knowing the nature of the act,

or what he is doing is either wrong or contrary to law. A Division Bench comprising Justice Raja Vijayaraghavan V. and Justice G. Girish opined *"...the appellant though suffered from a mental ailment like depression and schizoid features even before and after the incident but from that, one cannot infer on a balance of preponderance of probabilities that the appellant at the time of the commission of the offence did not know the nature of her act; that it was either wrong or contrary to law. In our opinion, the plea of the appellant does not come within the exception contemplated under Section 84 of the Indian Penal Code."*

- The High Court of Delhi in the case of *Shamlaji Expressway Private Limited vs. National Highways Authority of India (ARB. A. (COMM.) 50 of 2024 and IA No.40486 of 2024)*, held that the scope of review under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 is strictly limited, prohibiting courts from modifying the Tribunal's conclusions through an in-depth examination. A Single-Judge Bench consisting of Justice Sachin Datta observed *"The view taken by the arbitral tribunal in the present case is based on a detailed factual examination, and considers all relevant aspects of the matter, including the adverse financial impact on the Appellant, of the vacation of stay on the suspension. It was found that the same does not outweigh the multiple factors which are set out in the impugned order. The view taken by the arbitral tribunal cannot be said to be perverse or irrational. Moreover, the same is inherently subject to the final outcome of arbitration and without prejudice to the right of the appellant to claim appropriate final relief/s, including damage."*

- The High Court of Delhi in the case of *Home and Soul Private Limited vs. T.V. Today Network Limited (W.P.(C) 14422 of 2024)*, held that the issue of limitation, raised as a jurisdictional challenge under Section 16 of the Arbitration and Conciliation Act, 1996 (the "**Act**"), is rarely a pure question of law. A Single-Judge Bench comprising of Justice Sanjeev Narula observed that *"Whether a claim is barred by the law of limitation depends upon the facts that determine the cause of action and the point from which the limitation period is to be computed. These facts are frequently contested and require the parties to lead evidence…If the Tribunal accepts the plea of jurisdiction under Section 16(2) or 16(3), an appeal is permissible under Section 37 of the Act. However, if the Tribunal rejects the plea or reserves its decision, as it has done here, the proceedings continue, and any challenge to the Tribunal's findings can only be made after the final award is rendered."*

- In a dispute pertaining to a clause of the Master Supply Agreement ("MSA") that restricted both parties from engaging with certain customers or suppliers independently for a period of 24 months after termination of the MSA, the High Court of Bombay in the case of *Indus Power Tech Inc. vs. M/s. Echjay Industries Pvt. Ltd. (Commercial Appeal (Lodging) No.26031 of 2023)*, stated that while a non-compete clause can operate validly during the term of the agreement, it would not be enforceable after the agreement's termination, as it would constitute a restraint of trade prohibited by Section 27 of the Indian Contract Act, 1872 ("**the Act**"). A Division Bench comprising Justice A.S. Chandurkar and Justice Rajesh S. Patil observed *"The legal issue to be considered is, whether after termination of*

the MSA the operation of the non-compete/non-solicitation clause would result in breach of the provisions of Section 27 of the Act of 1872…It thus becomes clear from the aforesaid that though a non-compete clause that can operate validly during the term of the agreement, it would not be valid post-termination of the agreement as it would result in restraint of trade prohibited by Section 27 of the Act of 1872."

- The High Court of Bombay in the case of *M/s. Duro Shox Pvt. Ltd. vs. The State of Maharashtra and Anr. (Writ Petition No. 6690 of 2024)* has ruled that when Micro and Small Enterprises the Facilitation Council or Tribunal issues an 'Award' by exercising its vested jurisdiction, any challenges to the 'Award,' regardless of alleged errors, must be pursued exclusively under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The Single-Judge Bench of Justice Arun R. Pedneker observed that *"the law on the subject of entertainment the petition by the High Court under Article 226 / 227 of the Constitution of India to challenge an 'Award' or orders passed by the Facilitation Council / Arbitral Tribunal under the MSMED Act is summarized as under…L. Chandra Kumar vs. Union of India, (1997) 3 SCC 261…the High Court under Articles 226 and 227 of the Constitution of India would interfere rarely in exceptional circumstances in the arbitral proceedings, when the order passed by the Facilitation Council / Arbitral Tribunal is perverse andpatently lacking in inherent jurisdiction and…All the grounds raised in the present petition can be taken up before the court under Section 34 of the Arbitration Act."*

- The High Court of Karnataka in the case of *Buoyant Technology Constellations Pvt. Ltd. vs. Manyata Realty & Ors. (Writ Appeal No. 498 of 2024 (GM-RES))*, ruled that the registrar of the National Company Law Tribunal (**NCLT**) does not have the authority to assess the merits or maintainability of petitions filed under Sections 94 or 95 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). The Division Bench comprising Justice N.V. Anjaria and Justice K.V. Aravind observed *"The function of registering the applications filed under Section 5 of the Insolvency Code is a ministerial function and a procedural act. This stage does not store any adjudicatory process. The role of the Registrar while registering the application under Section 95 of the Code is not adjudicatory in nature and this duty of the Registrar, NCLT was in no way adjudicatory trapping. Application of judicial mind towards merits has no place in discharge of a ministerial or clerical function. For the Registrar, it is not permissible at the time of registering the petition which is filed by the debtor or creditor……., it was in terms observed and held that no judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application."*

NOTIFICATIONS / AMENDMENTS INSIGHTS

- The Securities and Exchange Board of India ("**SEBI**") on October 3, 2024, vide circular no. SEBI / HO / CFD / CFD – PoD - 2 / P / CIR / 2024 / 133, has extended relaxations related to the requirement of sending physical copies of financial statements, board reports, auditor's reports, and other associated documents for Annual General Meetings (AGMs) under Regulation 36(1)(b) of SEBI (Listing Obligations and Disclosure Requirements) Regulation 2015 ("**LODR Regulation**"). These relaxations also apply to requirements pertaining to the need for dispatching physical copies of voting documents and other materials to shareholders during general meetings held electronically, in accordance with Regulation 44(4) of the LODR Regulations. The circular was issued under Section 11(1) of the SEBI Act, 1992, in conjunction with Regulation 101 of the LODR Regulations.

- The Securities and Exchange Board of India ("**SEBI**") on October 7, 2024, vide circular no. SEBI / HO / CFD / PoD -1 / P / CIR / 2024 / 134, has extended the timelines for disclosures by social enterprises on the Social Stock Exchange ("**SSE**") for the financial year 2023-24. SSE identifies not-for-profit organisations and organisations those are for-profit but are engaged in the activity of creating positive social impact and that meet the primacy of their social intent as social enterprises. These enterprises were required to make annual disclosures and submit an 'annual impact report' under Regulation 91C(1) and 91E(1) of the Listing Obligations and Disclosure Requirements Regulations 2015 to the SSE by October 31, 2024 these submissions have now been extended to January 31, 2025.

- The Reserve Bank of India ("**RBI**") on October 10, 2024, vide circular no. RBI / 2024 – 25 / 82, has issued new guidelines for Asset Reconstruction Companies ("**ARCs**") regarding their membership and data submission to Credit Information Companies ("**CICs**"). Under these guidelines, ARCs are required to become members of all CICs and submit data in accordance with the Uniform Credit Reporting Format. ARCs must ensure that the information is updated regularly on a fortnightly basis and rectify any rejected data within seven days. This circular aims to maintain a comprehensive credit history of borrowers even after loans are transferred to ARCs.

- The Securities and Exchange Board of India ("**SEBI**") on October 8, 2024, vide circular SEBI / HO / AFD / AFD – POD -1 / P / CIR / 2024 / 135 has implemented the amendments introduced in April 2024 to the Alternative Investment Funds ("**AIF**") Regulations. These amendments mandate specific due diligence requirements for AIF investors and investments, in response to increasing instances of circumvention of various financial sector regulations and increasing grants of loans through AIFs. The due diligence standards are available on the websites of industry associations that are part of the Standards Setting Forum for AIFs, including the Indian Venture and Alternate Capital Association (IVCA), the PE VC CFO Association, and the Trustee Association of India. AIFs are required to evaluate their existing investments and complete the necessary reporting within the next six months.

- The Ministry of Corporate Affairs ("**MCA**") on October 9, 2024, vide notification G.S.R. notified 630(E) the Companies

(Adjudication of Penalties) Second Amendment Rules, 2024, has clarified the prospective application of the earlier amendments that moved all adjudication proceedings online. In August 2024, the MCA notified the Companies (Adjudication of Penalties) Amendment Rules, 2024, introducing mandatory online adjudication of proceedings via the Central Government's e-adjudication platform from September 16, 2024. The Second Amendment adds a proviso to restrict subrule 3A's application to proceedings initiated after this date, allowing pre-existing cases to continue under the prior rules.

DEALS THIS MONTH

- Industrial research organisation, International Business Machines ("**IBM**") has acquired Prescinto Technologies Private Limited, a leading provider of asset performance management software-as-a-service (SaaS) for renewables. Prescinto helps organisations simplify operations and maintenance to maximise their Return on Investment, and their capabilities, including data capture, employing open-source protocols and a data governance layer. The acquisition will further enable IBM to support clients' sustainability initiatives and net-zero goals, allowing users to track and monitor the performance of solar, wind and energy storage assets in near real-time.

- Delightful Gourmet Private Limited popularly known as D2C brand Licious has acquired Bengaluru-based offline retailer My Chicken and More. Licious is an e-commerce service that sells seafood and meat, in addition to ready-to-cook and ready-to-eat products. My Chicken and More is known for its in-store experience and claims to process 1.6 to 1.8 million orders annually. This acquisition is part of Licious' strategy to expand its omnichannel network, with plans to open 500 offline stores in key markets in the coming years.

- Fresh fruits and vegetables platform Pluckk operated by Safresh Technology Private Limited has acquired nutrition brand Upnourish, a venture by 23BMI Life Sciences Private Limited for a deal value of USD 1.4 million. Upnourish offers personalised nutrition plans and meal replacement products like smoothies, soups, and bars. Through this acquisition, Pluckk aims to expand its product range and drive growth in a new nutrition-focused vertical. Pluckk has recently achieved annual recurring revenue (ARR) of INR 100 crore and plans to scale further by doubling this figure through geographic expansion and increased market penetration.

- Beauty and personal care brand Good Glamm Group has completed the acquisition of Sirona Hygiene Private Limited for INR 450 crore (approximately USD 60 million) in an all-cash deal. Sirona offers a range of women's health products, the company's innovations include the PeeBuddy, menstrual cups, etc. The acquisition of Sirona is strategically aligned with Good Glamm's objective to enhance its presence in the wellness sector, further strengthening its commitment to advancing women's health and hygiene solutions.

SAGA LEGAL

DELHI OFFICE: 248, THIRD FLOOR, OKHLA PHASE 3, DELHI - 110 020

CHAMBER: 238, M.C. SETALVAD CHAMBERS, SUPREME COURT OF INDIA, BHAGWAN DASS RD, NEW DELHI - 110 001

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

+91 11 4106 6969 | +91 11 4107 6969 | +91 80 4229 6819

admin@sagalegal.in | admin.blr@sagalegal.in www.sagalegal.in

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