SAGA LEGAL

COMMUNIQUE

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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of *Ajay Madhusudan Patel & Ors. vs. Jyotrindra S. Patel & Ors. (Arbitration Petition No. 19 of 2024)* has stated that factors such as the mutual intent of the parties, the relationship between a non-signatory and a signatory, the commonality of the subject matter, the composite nature of the transactions, and contract performance can indicate a non-signatory's intention to be bound by an arbitration agreement. The Court clarified that for this intention to be established, the non-signatory's involvement in the negotiation or performance of the contract must be positive, direct, and substantial, rather than merely incidental. The Bench comprising of Chief Justice of India D.Y. Chandrachud, Justice J.B. Pardiwala, and Justice Manoj Misra observed, *" ..the courts and tribunals should not adopt a conservative approach to exclude all persons or entities who intended to be bound by the underlying contract containing the arbitration agreement through their conduct and their relationship with the signatory parties…"*

- The Hon'ble Supreme Court in the case of *Rashmi Kant Vijay Chandra & Ors. vs. Baijnath Choubey & Company (2024 INSC 688),* has held that a High Court, while hearing a second appeal, cannot reverse the factual findings made by the First Appellate Court unless a substantial question of law is established. The Court further held that it is the duty of the High Court to frame substantial questions of law before hearing an appeal under Section 100 of the Code of Civil Procedure 1908 ("**CPC**"). The Bench comprising of Justice J.K. Maheshwari and Justice Sanjay Karol observed, *"There is no question framed about lack of evidence, sub-letting or incorrect appreciation of facts by the learned First Appellate Court, on which the final finding of the High Court is returned. Furthermore, there is no discussion by the High Court, as to the reasons required for the departure from the substantial questions of law framed at the stage of admission or in the impugned order. The impugned judgment overturns the finding of fact of the First Appellate Court qua sub-letting without framing a substantial question of law in this regard at any stage.*

- The Hon'ble Supreme Court in the case of *Baljinder Singh @ Ladoo & Ors. vs. State of Punjab (Criminal Appeal No. 1389 of 2012)*, has held that under Section 464 of the Code of Criminal Procedure, 1973 ("**Cr.PC.**"), an appellant cannot challenge their conviction solely on the ground of a conversion of charges unless they can prove that such conversion caused a 'failure of justice,' which would then entitle them to relief. The Bench comprising of Justice Dipankar Datta and Justice Augustine George Masih observed, "*Law is well-settled that in order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself……the appellants have fairly and squarely failed in their pursuit to demonstrate any failure of justice, which would impel us to exercise power of the nature contemplated in sub-section (2) of section 464, Cr. PC."*

- The Hon'ble Supreme Court in the case of *Rohan Builders (India) Private Limited vs. Berger Paints India Limited (2024 INSC 686),* has clarified that an application for an extension of the time period for passing an arbitral award under Section 29A of the Arbitration and Conciliation Act, 1996 ("**A&C Act**") is maintainable even after the expiration of the twelve-month period or the extended six-month period. The Court states that the power to extend time under Section 29A(5) of the A&C Act should only be used when there is sufficient justification. The Bench of Justice Sanjiv Khanna and Justice R. Mahadevan observed *"While interpreting*

a statute, we must strive to give meaningful life to an enactment or rule and avoid cadaveric consequences that result in unworkable or impracticable scenarios…. an application for extension of the time period for passing an arbitral award under Section 29A(4) read with Section 29A(5) is maintainable even after the expiry of the twelve-month or the extended six-month period, as the case may be."

- The Hon'ble Supreme Court in the case of *Nilay Rai & Ors vs. Bar Council of India (W.P.(C) No. 577 of 2024)*, has permitted final-year law students to appear in the All India Bar Examination ("**AIBE**") scheduled for the end of this year. This decision was made through an interim order in response to a petition challenging the Bar Council of India's ("**BCI**") decision to exclude final-year students from appearing in AIBE who have cleared all previous exams to take the AIBE. The Bench comprising of Chief Justice D.Y. Chandrachud, Justice J.B. Pardiwala, and Justice Manoj Misra directed that *"...the BCI shall permit the registration of all students who fall within the ambit of Paragraph 38 of the Bonnie Foi Decision. This direction shall apply to all final-year students, not just the petitioners..."*

- The Hon'ble Supreme Court in the case of *Just Rights for Children Alliance vs. S. Harish (Criminal Appeal Nos. 2161-2162 of 2024)* has reiterated that storage of child pornography without deletion or reporting indicates an intention to transmit which constitutes an offense under Protection of Children from Sexual Offences Act, 2012 as well as under Section 67B of the Information Technology Act 2000. The Bench comprising of Chief Justice D.Y. Chandrachud and Justice J.B. Pardiwala opined that "*Even, if the said 'storage' or 'possession' no longer exists at the time of registration of the FIR, nonetheless an offence can be made out under Section 15 if it is established that the person accused had 'stored' or 'possessed' of any child pornographic material with the specified intention at any particular point of time even if it is anterior in time."*

- The Hon'ble Supreme Court in the case of *S.K. Golam Lalchand vs. Nandu Lal Shaw @ Nand Lal Keshri & Ors. (Civil Appeal No. 4177 of 2024)* has held that when a sale deed is executed between the parties, a person not a party to such sale deed cannot be required to file a separate application for cancellation of the sale deed under Section 31 of the Specific Relief Act, 1963. The Bench comprising of Justice Sudhanshu Dhulia and Justice Pankaj Mithal observed *"A faint effort was made in the end to contend that the plaintiff-respondent…….. had not asked for any relief of cancellation of the sale deed by which the property was purchased by the defendant-appellant… …and, therefore, is not entitle to any relief in this suit. The argument has been noted only to be rejected for the simple reason that Section 31 of the Specific Relief Act, 1963 uses the word 'may' for getting declared the instrument as void which is not imperative in every case, more particularly when the person is not a party to such an instrument."*

- The Hon'ble Supreme Court, in the case of *Udaya Shankar & Ors. vs. M/s. Lexus Technologies Pvt. Ltd. & Ors.* (Civil Appeal Nos. 5735-5736 of 2023) has ruled that Company Law Tribunals, under the Companies Act, 2013 (**"the Act"**), have the power to rectify the register of members if the applicant is a victim of an 'open-and-shut' case of fraud by the opponents. The Court further held that tribunals should carefully consider the facts, arguments, and evidence placed on record when deciding the issue of rectification under Section 59 of the Act. The Bench comprising of Justice Sanjiv Khanna and Justice Sanjay Kumar while relying on Adesh Kaur vs. Eicher Motors Limited and Ors., observed *"...if, on facts, an open-and-shut case of fraud is made out and the person seeking rectification was the victim,*

the National Company Law Tribunal would be entitled to exercise such power under Section 59 of the Act of 2013. This Court rejected the contention that, as criminal proceedings had been initiated, there was a serious dispute and it was not correct for the National Company Law Tribunal to exercise power under Section 59 of the Act of 2013. The contention that the shares had been dematted and were in the name of another person and, therefore, the power of rectification should not have been exercised, was also rejected."

- **High Court**
  The High Court of Karnataka, in the case of *Advocates Association Bengaluru vs. Union of India (Writ Petition No. 26229 of 2024 (GM-RES))*, has upheld Rule 10(2) of the Karnataka Rules on Live Streaming and Recording of Court Proceedings, 2021 ("**the Rules**"), which prohibits unauthorized media agencies from using videos of court proceedings. A disclaimer is also displayed during live streams, warning against the unauthorized use of these videos. A Single-Judge Bench, led by Justice Hemant Chandangoudar, observed *"Till the next date, respondents R6 to R8 [YouTube, Facebook, and X (formerly Twitter)] are restrained from sharing live-streamed videos, and respondents R9 to R13 [various media agencies] are restrained from displaying these videos on their platforms. Respondents R6 to R8 are further directed to delete any live-streamed videos that were posted in violation of the rules."*

- The High Court of Chhattisgarh in the case of *Parisha Trivedi & Anr. vs. the State of Chhattisgarh (MCRCA No. 944 of 2024)* has held that the removal of the guiding factors such as nature and severity of the accusations, the accused's criminal history, and the likelihood of fleeing justice under Section 438 of the Criminal Procedure Code, 1973 ("**CrPC**") for granting anticipatory bail, as brought about by Section 482 of the Bhartiya Nyaya Sanhita, 2023 ("**BNSS**"), has expanded the discretionary powers of courts in handling such applications. A Single-Judge Bench of Justice Goutam Bhaduri noted, *"The amendment seems to broaden the scope of anticipatory bail, suggesting that when there are reasonable grounds to believe that the accused is unlikely to abscond or misuse bail, there is no justification for requiring them to submit to custody, remain in prison for a few days, and then apply for bail. This point is quite significant."*

- The High Court of Kerela in the case of *P. Udaya Bhaskara Reddy vs. M/s. Sreepada Real Estates & Developers Hyderabad and Another (Civil Revision Petition No. 900 of 2024)* has clarified that the restriction under Section 8 of the Commercial Courts Act, 2015 ("**the Act**") is limited to Civil Revision Petitions filed under Section 115 of the Civil Procedure Code ("**CPC"**) and does not extend to bar the maintainability or jurisdiction under Article 227 of the Constitution of India. The Division Bench comprising of Justice Ravi Nath Tilhari and Justice Nyapathy Vijay opined that *"It is well settled in law that the remedy provided by the Constitution and before the Constitutional Court cannot be barred by any provision of any statute…..We are not oblivious that when a statutory remedy is available, this Court would ordinarily refrain from invoking the jurisdiction under Article 227 of the Constitution of India, but that is self imposed restriction and even statutory remedy would not bar the maintainability or entertainability of the petitioner under Article 227 of the Constitution of India. The remedy against the impugned order is available, but not at this stage."*

- The High Court of Delhi in the case of *Director General, Project Varsha, Ministry of Defence (Navy), Union of India vs. M/s Navayuga-Van OORD JV (Neutral Citation: 2024: DHC:738)* has stated that an arbitral

tribunal cannot compel parties to produce any document classified as "Top Secret" by the Government of India, especially if it directly pertains to the defense of India under the provisions of the Official Secrets Act, 1923 ("**the Act**"). The Single Judge Bench comprising of Justice Manoj Jain observed that *"... in my humble opinion, should not have insisted for production of any such document in a sealed cover either, as at any subsequent stage also, it is, virtually, beyond its purview to open such sealed cover and to ponder over whether these were rightly labelled as "classified" or not. Even if these were to be opened and evaluated, it could not have been "declassified" in the proceedings of this kind. To venture into any such exercise and to scrutinize and evaluate any such thing does not seem permissible."*

- The High Court of Gujarat in the case of *M. Procon Pvt Ltd vs. Assistant Director Of Income Tax (R/Special Civil Application No. 9707 of 2024)* has ruled that a mere delay in filing Form 10-IC does not negatively impact the reduced tax rate if the taxpayer meets the conditions outlined in Section 115BAA of the Income Tax Act, 1961 ("**IT Act**") as it permits domestic companies to opt for a reduced tax rate of 22%, along with a 10% surcharge and 4% education cess, subject to the conditions specified in the section. The Division Bench comprising of Justice Bhargav D. Karia and Justice Niral R. Mehta opined that *"...the petitioner has exercised option merely because in absence of any provision for exercising the option in Column (e) as per the Circular No. 19/2023, the petitioner cannot be deprived of lower rate of tax."*

- The High Court Telangana in the case of *Vasundhara Chary Ravulakola vs. the State of Telangana (CRLP No. 9953 of 2024)* has quashed a cheating case registered against a two-wheeler driver and ruled that the allegation of driving a vehicle without a number plate does not attract Section 420 of the Indian Penal Code ("**IPC**"). The Court further held that Section 80(a) of the Motor Vehicles Act, 1988 ("**the Act**") deals with the procedure for applying and granting permits to vehicles and does not specifically address the offence of driving without a number plate. A single judge bench of Justice K. Sujana observed *"In the light of the submissions made by both the learned counsel and a perusal of the material available on record, it appears that the only allegation against the petitioner is that he drove the vehicle without number plate, as such, the vehicle was seized, which does not come under the purview of Section 420 of IPC. Further, the petitioner was also charged for the offence punishable under Section 80(a) of the Act and the said Section speaks about the procedure in applying for and granting permits to the vehicles. Therefore, driving the vehicle without number plate does not attract Section 80(a) of the Act."*

- The High Court of Madhya Pradesh in the case of *State of Madhya Pradesh & Ors. vs. Rajeev Singh & Ors. (Writ Appeal No. 607 of 2023)* has justified that a contractual employee cannot demand regularization, on basis of mere contract extensions as it does not grant him the right to be made a permanent employee. The Division Bench comprising of Acting Chief Justice Sanjeev Sachdeva and Justice Vinay Saraf observed that *"It is trite law that contractual employee cannot claim regularization or permanent status and his services are co-terminus with the period of contract. If it is contractual appointment, the appointment comes to an end with the term of contract and contractual employee cannot claim to be made permanent on the expiry of his contract/term of appointment. Merely because a contractual employee has continued beyond the term of his appointment, he would not be entitled to be absorbed in regular services or made permanent merely on the strength of such continuation."*

- The High Court of Calcutta in the case of *Gita Refractories Pvt Ltd vs. Tuaman Engineering Limited (AP-COM no. 707 of 2024)* has held that Section 18 of the Micro Small and Medium Enterprises Act ("**the MSME Act**") offers an alternative dispute resolution process but does not prevent parties from pursuing arbitration under the Arbitration and Conciliation Act, 1996, if an arbitration clause exists. The petitioner contended before the court that the use of the term "may" in Section 18 of the MSME Act, suggests that the parties are not obligated to follow the process outlined in the provision. The Single Judge Bench comprising of Justice Sabyasachi Bhattacharyya observed, **"** *In any event, Section 18 of the MSME Act does not envisage any substantive relief or creation of rights and liabilities but merely provides one of the available modalities for parties to resolve their disputes alternatively than a court proceeding. If the disputing party chooses to opt for arbitration independently under the Arbitration and Conciliation Act, 1996 on the strength of an arbitration clause in the agreement between the parties, there is nothing in the MSME Act to prevent the claimant from doing so."*

NOTIFICATIONS / AMENDMENTS INSIGHTS

- The Ministry of Finance (Department of Economic Affairs) on September 12, 2024 vide notification G.S.R. 566 (E). has released the Foreign Exchange (Compounding Proceedings) Rules, 2024 ("**FE Rules**") in supersession of the previously applicable Foreign Exchange (Compounding Proceedings) Rules, 2000, setting out the provisions and mechanism for handling compounding applications towards breaches under the Foreign Exchange Management Act, 1999. The significant changes in the FE Rules include simplifying procedures, introducing digital payment options for fees, and expanding the authority of the Reserve Bank of India officers by raising the monetary limits at various levels for adjudicating compounding matters.

- The Securities and Exchange Board of India ("**SEBI**") on September 19, 2024, vide circular no. SEBI / HO / AFD / PoD-1 / P / CIR / 2024 / 123 has amended the valuation framework for Alternative Investment Funds ("**AIFs**"). The amendments now provide that the valuation of securities, other than unlisted securities and listed securities that are non-traded and thinly traded, for which valuation norms have been prescribed under SEBI Mutual Funds Regulations, 1996, shall be carried out as per the norms prescribed under such Regulations. These valuation changes will not be considered as 'Material Change' but the same has to be disclosed. The circular was issued in exercise of powers conferred under Section 11(1) of the SEBI Act, 1992 read with Regulation 23 and Regulation 36 of AIF Regulations, 2012.

- The Securities and Exchange Board of India ("**SEBI**") on September 26, 2024, vide circular no. SEBI / HO / DDHS / DDHS-PoD-1 / P / CIR / 2024 / 129 has reduced the timeline for listing debt securities and non-convertible redeemable preference shares to T+3 working days from the existing T+6 working days. The older option will be available to issuers for a period of one year, after which all listings will permanently occur on a T+3 basis. It is also mandatory that the T+3 timeline for listing is disclosed in the offer documents for all public issues.

- The Reserve Bank of India ("**RBI**") on September 6, 2024, vide a circular no. RBI/2024-25/74 has discontinued the requirement for Authorized Dealer Category-I Banks ("**AD Category-I Banks**") to submit a monthly return under the Liberalized Remittance Scheme ("**LRS**"). Now, AD Category-1 Banks will only be required to submit transaction-level details for the LRS on a daily basis, with the information to be uploaded by the end of the following business day. In cases where no data is reported, the banks must submit a 'NIL' report. The said circular has come into effect from the reporting month of September.

- The Ministry of Corporate Affairs ("**MCA**") on September 9, 2024, vide a circular G.S.R. 555 (E) introduced significant amendments to the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 ("**Merger Rules**"). These amendments address 'reverse flipping' norms, referring to Indian startups that had moved their headquarters overseas and are now returning to India. The amendment introduces Rule 25A(5) to the Merger Rules, allowing the merger or amalgamation of a foreign holding company into its Indian subsidiary to be conducted through the fast-track merger scheme under Section 233 of the Companies Act, 2013. A fast-track merger does not require approval from the NCLT, streamlining the process and significantly reducing both the costs and time involved.

- The Ministry of Corporate Affairs ("**MCA**") on September 9, 2024, vide circular G.S.R. 547(E) has notified Competition (Minimum Value of Assets or Turnover) Rules, 2024. As per the notified rules, the transactions where the value of assets or turnover of the

enterprise being acquired, controlled, merged, or amalgamated in India does not exceed INR 450 crore and INR 1250 crore, respectively, shall not be considered a combination under Section 5 of the Competition Act, 2002. These thresholds ensure that only larger transactions, which could impact market competition, are examined by the Competition Commission of India (CCI). The aim is to regulate anti-competitive practices while encouraging a fair and open market, particularly given the rise in mergers and acquisitions.

DEALS THIS MONTH

- Homevista Decor and Furnishings Private Limited, a home interiors startup, has announced its acquisition of Design Cafe, a company operating in the same space, through a share swap deal. Following the acquisition, both companies will continue to operate as distinct interior brands, each catering to different market segments. This acquisition will help Homevista to unlock significant synergies across areas such as manufacturing, design, procurement, and technology.

- Redcliffe Lifetech Private Limited ("**Redcliffe**"), is all set to acquire Celara Diagnostics Private Limited ("**Celara**"). Redcliffe has passed a resolution approving the acquisition of Celara's shares for an amount not exceeding INR 60 crore. Redcliffe is an omnichannel diagnostics service provider, while Celara offers comprehensive diagnostic services in radiology and pathology. The purpose of the acquisition is for Redcliffe to deploy funds towards opening more labs and collection centers, expanding its presence in tier II and III cities.

- OYO Hotels & Homes Private Limited ("**OYO**") has agreed to acquire G6 Hospitality, a major player in the United States hospitality industry and the operator of Motel 6 and Studio 6, for USD 525 million in an all-cash transaction. This move is expected to strengthen OYO's presence in the budget hotel sector and drive its expansion in the United States market.

- Nazara Technology, a gaming company has announced an investment of INR 982 crore in Moonshine Technology which is the parent company of Baazi Networks Private Limited known for its platform PokerBaazi. Accordingly, Nazara Technology will acquire a 47.7% stake through a mix of secondary and primary share purchases. The investment is part of a broader acquisition strategy by Nazara to diversify its gaming portfolio and expand internationally.

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