



SAGA LEGAL

# COMMUNIQUE

APRIL 2022



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## COURTS THIS MONTH

- The Supreme Court in the case of *Union of India and Ors. vs. M/s. Willowood Chemicals Pvt. Ltd. (CA 2997-2998 of 2022)* held that in cases of delay in processing GST refund by the Tax Department, the interest payable shall not exceed 6% (Six Percent), especially when the delay is not inordinate. In this case, the Supreme Court was dealing with an appeal filed by the Centre challenging the verdict passed by the Gujarat High Court. The High Court had asked the Tax department to pay interest at the rate of 9% (Nine Percent), per annum, for delay in refund which was between 94 (Ninety-Four) to 290 (Two Hundred Ninety) days. However, the Bench comprising Justice U.U. Lalit and Justice S. Ravindra Bhat observed that since the present matter did not arise from the orders passed by the Adjudicating Authority or Appellate Authority or Tribunal or Court, it was governed by the principal provision of Section 56 of the Central Goods and Services Tax Act, 2017, which deals with interest on delayed refunds. The Court further observed that “...*interest at the rate of 9% would be attracted only if the matter was covered by the proviso to Section 56 of the Act. The High Court was in error in awarding interest at the rate exceeding 6 percent in the instant matters.*”
- The Supreme Court in the case of *Riyansh Shripad (Minor) through his father & Ors. vs. Ministry of Education & Ors. (SLP (C) 7374 of 2022)* has upheld that the minimum age criteria for Class I students in schools operated by Kendriya Vidyalaya Sangathan (“KVS”) to be 6 (Six) years. The Bench presiding Justice S.K. Kaul and Justice M.M. Sundresh affirmed the Delhi High Court’s order by dismissing the appeal filed by the group of parents challenging the decision of KVS to increase the minimum age for Class I admissions to six years from five years from the academic year 2022-2023. The Court has observed that the age criteria was in accordance with the National Education Policy, 2020. Additionally, the Court also held that, it is settled law that the executive has the competence to decide how a policy should be shaped or implemented.
- The Apex Court while upholding the judgment of the Allahabad High Court in the case of *Ramveer Upadhyay vs. State of U.P. (SLP (Crl) 2953 of 2022)* observed that criminal proceedings cannot be quashed under Section 482 of the Criminal Procedure Code, 1973 (“Cr.P.C.”) merely because the complaint was lodged by a political rival. The Bench comprising of Justice Indira Banerjee and Justice A.S. Bopanna held that the fact that the complaint may have been initiated for political reasons cannot be the sole ground for dismissing the criminal proceedings. The Bench was dealing with the petition filed by Mr. Ramveer Upadhyay who contended that this case is a classic example of malicious prosecution due to political animosity. The Bench noted that, “*The allegations in the complaint constitute offence*”



*under the Atrocities Act and whether the allegations are true or untrue, would have to be decided in trial.”*

- The Supreme Court in the matter of *Kalyani (dead) through Irs. & Ors. vs. Sulthan Bathery Municipality (CA 3189 of 2022)* has reiterated that the right to claim compensation for land acquired by the government is in-built under Article 300A of the Indian Constitution and no person shall be deprived of their property except by the authority of the law. In this case, the Bench comprising of Justice Vikram Nath and Justice Dinesh Maheshwari was dealing with an appeal challenging the order of the Kerala High Court which had ruled against the farmers who were claiming compensation for their land acquired towards building and widening the public bypass road. Upon which, the Supreme Court had set aside the High Court's order and ruled that, *“The appellants are farmers and the land utilized is agricultural land. It was part of their livelihood. Depriving them of their part of their livelihood and also of their property without authority of law would be violative of Article 21 and Article 300A of the Constitution.”*
- The Supreme Court in the case of *Asset Reconstruction Co. (India) Ltd vs. Chief Controlling Revenue Authority (CA 3070 of 2022)* has held that as per Article 20 (a) of the Bombay Stamp Act, 1958, the stamp duty for Power of Attorney (“**PoA**”) shall not be separately chargeable if it is executed along with the debt assignment deed

under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”). In this case, the Supreme Court had set aside a verdict passed by the Full Bench of the Gujarat High Court which had held that stamp duty has to be independently paid for a PoA executed along with the deed assigning debt, even if the stamp duty has been paid on the assignment deed. The Bench comprising of Justice Hemant Gupta and Justice V. Ramasubramanian observed that *“Once a single instrument has been charged 8 under a correct charging provision of the Statute, namely Article 20(a), the Revenue cannot split the instrument into two, because of the reduction in the stamp duty facilitated by a notification of the Government issued under Section 9(a). In other words after having accepted the deed of assignment as an instrument chargeable to duty as a conveyance under Article 20(a) and after having collected the duty payable on the same, it is not open to the respondent to subject the same instrument to duty once again under Article 45(f), merely because the appellant had the benefit of the notifications under Section 9(a). Since the impugned order of the High Court did not address these issues and went solely on the interpretation of Article 45(f), the same is unsustainable.”*

- The Supreme Court in the matter of *Mahesh Kumar Kejriwal & Anr. vs. Bhanuj Jindal & Anr. (Special Leave to*





*Appeal (Crl.) No. 3382/2022*) has held that in cases pertaining to the offence under Section 138 of the Negotiable Instruments Act, 1881, (“**NI Act**”) the accused cannot claim a blanket exemption from appearance on all dates. The Bench presiding Justice Dinesh Maheshwari and Justice Aniruddha Bose affirmed the Punjab & Haryana High Court’s order and dismissed the petition filed by the Accused who sought permanent exemption from his personal appearances. The Bench observed that, “...*in appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel but such discretion needs to be exercised only in rare instances and there ought to be good reasons for dispensing with the presence.*”

- In the case of *Medicos Legal Action Group vs. Union of India (SLP (Civil) 19374/2021)*, the Supreme Court has ruled that healthcare services provided by doctors shall be covered under Consumer Protection Act, 2019. The Bench comprising Justice D.Y. Chandrachud and Justice Hima Kohli affirmed the Bombay High Court’s order and dismissed the petition filed by an organisation named Medicos Legal Action Group, who pleaded that consumer complaints can’t be filed against doctors under the provisions of the Consumer Protection Act, 2019. In the present matter the Court has observed that “*The definition of "Service" is wide enough under the Act. If the Parliament wanted to exclude,*

*they would have said it expressly...We, therefore, hold that the mere repeal of the 1986 Act by the 2019 Act, without anything more, would not result in exclusion of 'health care' services rendered by doctors to patients from the definition of the term 'service'.*”

- The Supreme Court of India in the case of *M/s Tirupati Steels vs. M/s Shubh Industrial Component & Anr. (Civil Appeal No. 2941 Of 2022)* has observed that the pre deposit of 75% (Seventy-Five Percent) of the awarded amount as per Section 19 of the Micro, Small and Medium Enterprise Development Act, 2006, (“**MSMED Act**”) is mandatory to challenge the award under Section 34 of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”). In this case, the Bench of Justice M. R. Shah and Justice B.V. Nagarathna has set aside the order passed by the Punjab and Haryana High Court which held that the pre-deposit of 75% (Seventy-Five Percent) of the arbitral award under Section 19 of the MSMED Act, 2006 is directory and not mandatory and had permitted the proceedings under Section 34 of the Arbitration Act, 1996 to continue without insistence on making the said pre-deposit of the awarded amount. Upon which the Court observed that “...*considering the hardship which may be projected before the appellate court and if the appellate court is satisfied that there shall be undue hardship caused to the appellant/applicant to deposit 75% of the awarded amount as a pre-deposit at a time, the court may*



*allow the pre-deposit to be made in instalments. Therefore, it is specifically observed and held that pre-deposit of 75% of the awarded amount under section 19 of the MSMED Act, 2006 is a mandatory requirement.”*

- The Supreme Court in the matter of *Hyundai Motor India Limited vs. Shailendra Bhatnagar (Civil Appeal No. 3001 Of 2022)* has ruled that a faulty airbag system which is not deployed at the time of a car accident shall lead to punitive damages from the concerned car manufacturers. The Bench comprising Justice Vineet Saran and Justice Aniruddha Bose dismissed the appeal filed by Hyundai Motor India Limited against the order passed by the National Consumer Disputes Redressal Commission (“NCDRC”) which directed Hyundai to pay compensation to a consumer who suffered head, chest as also dental injuries due to non-deployment of airbags of the Hyundai Creta car at the time of accident. The Bench observed that, *“The failure to provide an airbag system which would meet the safety standards as perceived by a car-buyer of reasonable prudence, in our view, should be subject to punitive damages which can have deterrent effect. And in computing such punitive damages, the capacity of the manufacturing enterprise should also be a factor...”*
- The Bombay High Court in the case of *Nitin Navindas Hundiwala vs. Union of India, through the General Manager, Western Railway (FA 597 of 2017)* has

directed the Western Railways to pay Rs. 3,00,000/- (Rupees Three Lakhs only) under Section 124A of the Railways Act, 1989, to a 70 (Seventy) year old man who had suffered injuries to his leg and head after falling off from an overcrowded local train in 2011. A Single Judge Bench of Justice Bharati Dangre has set aside the Railways Claims Tribunal's order rejecting the senior citizen's plea and observed that boarding a crowded train for a Mumbaikar was a ‘calculated risk’ and not a ‘criminal act’, hence the incident would fall within the meaning of ‘untoward incident’ under Section 123 (c)(2) and 124A of the said Act.

- The High Court of Delhi in the case of *The British School Society vs. Sanjay Gandhi Educational Society & Anr. (CS (COMM) 509/2021)* has restrained four schools run by the Sanjay Gandhi Educational Society from using the name ‘*The British School*’ with effect from 1<sup>st</sup> May, 2022, with whom they are presently affiliated. In this case, a Single Judge Bench of Justice Pratibha M. Singh was dealing with a trademark infringement suit filed by the British School Society over the mark ‘*The British School*’. The Court noted that the British School Society running ‘*The British School*’ in New Delhi has been attached to the High Commission of the United Kingdom for more than 60 (Sixty) years and it continues to impart a high level of education to its students. The Court further held that, *“This court has, no doubt, in concluding that continued use of the mark ‘The British*



*School' for schools of defendants would constitute misrepresentation in the course of rendering educational services to the effect that defendants' schools are in some way connected or affiliated with the plaintiff. Further, such continuous use may cause irreparable prejudice and damage not merely to the plaintiff's goodwill alone but to various students who may be enrolled and studying in the said school..."*

- The High Court of Telangana in the case of *M/S.United India Insurance Co Ltd vs. Sri Rama Swamy & 2 Ors (C.M.A. 221 of 2007)* has held that an insurance company is not liable to pay compensation under the Motor Vehicle Act, 1988 ("**MV Act**"), if the vehicle at the time of the accident was in breach of terms of the Insurance Policy. In this case, a Single Judge Bench comprising Justice P. Sree Sudha on perusal of the charge sheet observed that the deceased and injured were labourers who were returning from a marriage party, hence the accident had not occurred during the course of employment and the insurance policy coverage was only at the time of loading and unloading operations for five coolies. The Court further held that, the same amounts to breach of the terms and conditions of the policy and the said insurance company is not liable to pay the compensation.
- The Karnataka High Court in the case of *Hubballi Dharwad Advertisers Association And Others vs. State Of Karnataka and Others (W.P. NO.*

*104172 of 2021)* held that there is no conflict between the power to levy GST under the Goods and Services Tax Act, 2017, ("**GST Act**") and power of Municipal Corporation to levy advertisement fee or advertisement tax under Section 134 of the Karnataka Municipal Corporations Act, 1976, ("**KMC Act**"). In the present case, a Single Judge Bench of Justice Suraj Govindaraj while dealing with the petition noted that, "*The GST as stated above is levied on any supply of goods or services. The petitioners carrying on advertisement business it is during the course of the said business that the petitioner is required to collect GST from any of its/their clients and remit it to the authorities.*" "*..In this transaction the petitioners are only a collecting agency who collects the GST payable on the service rendered and deposits the same with the authorities, the incidence of tax, i.e., GST being on the services rendered or goods supplied, the obligation of payment being on the person availing the service and or receiving the goods*". Further, the Court opined that, "*The incidence of GST is on the service rendered by the petitioner to its clients and has nothing to do with respondent No.2-HDMC. The transaction with HDMC is the permission and or license granted by the HDMC to put up hoarding and or use a hoarding either on the land belonging to the HDMC and or on land belonging to a private party.*"

- The High Court of Allahabad in the case of *Chhotey Lal & Anr. vs. Union of*





*India (N.C.B.) (Criminal Misc. Bail Application No. - 6298 of 2020 & 1347 of 2022)* observed that a minor difference in the weight of the sample sent to a forensic laboratory cannot shake the foundation of the prosecution's case. A Single Judge Bench of Justice Krishan Pahal dismissed two bail Applications filed by the accused who were booked under Sections 8(C), 18 and 29 of the Narcotic Drug and Psychotropic Substances Act, 1985, (“**NDPS Act**”) for allegedly being in possession of a total of 7 (Seven) kgs of opium. The Court observed that *“The recovered contraband is heavy in quantity. There is compliance with the mandatory provision of NDPS Act. The presence of applicants far away from their usual place of residence further casts shadow on his defence. The sample has been taken before the concerned Magistrate, which negates the theory of any kind of adulteration. There is nothing on record to suggest that there is any animosity of the accused to the officials of the N.C.B.”*

- The High Court of Gujarat in the case of *Bhupatbhai Pujabhai Bhoi vs. Hiraben Wo Somaji Bhoi & 2 Others (R/SCR.A/2522/2013)* has held that, where the offence has been committed outside of the Court, before presenting the document in evidence, the bar on taking cognizance of a private complaint under Section 195(1)(b)(ii) of Cr.P.C will not get attracted. The Single Judge Bench of Justice Nikhil Kariel set aside the order passed by the

Additional Sessions Judge and further held that *“The bar of Section 195(1)(b)(ii) of Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in ‘custodia legis’ (the custody of law).”*

- The High Court of Madras in the case of *M/s. Color Home Developers Pvt. Ltd. vs. M/s. Color Castle Owners Society, (Arb.O.P. (Com.Div.)No.157 of 2022)* observed that the challenge proceedings under Section 34 of Arbitration and Conciliation Act, 1996 is a summary procedure, and therefore, the same shall be decided on basis of the record that was available with the arbitral tribunal and no additional document shall be permitted unless absolutely necessary. In this case, the Single-Judge Bench of Justice M. Sundar was hearing an Arbitration petition filed by the Petitioner challenging arbitral award u/s 34 of the said Act. The High Court rejected the plea on the ground that *“...the petitioner has clearly failed to adduce any evidence before the arbitrator to bring home his preliminary objections. Therefore, in absence of any pleadings the tribunal was correct in not deciding the objection raised by the petitioner...”*





## NOTIFICATIONS/AMENDMENTS INSIGHTS

- Vide Notification no. 42/2022 dated 22<sup>nd</sup> April 2022, the Central Board of Direct Taxes (“**CBDT**”) has amended Income Tax Rules, 1962 (“**IT Rules**”). As per the said amendment, in the IT Rules, Rule 17C, after clause (va), the following clause shall be inserted, i.e.:-  
*“(vb) investment made by a person, authorised under section 4 of the Payment and Settlement Systems Act, 2007 (51 of 2007), in the equity share capital or bonds or debentures of Open Network for Digital Commerce Ltd, being a company incorporated under sub-section (2) of section 7 read with sub-section (1) of section 8 of the Companies Act, 2013 (18 of 2013), for participating in network based open protocol models which enable digital commerce and interoperable digital payments in India;”*. This shall come into force on the date of their publication in the Official Gazette.
- Vide Circular bearing reference no. SEBI/HO/MIRSD/DoP/P/CIR/2022/46 dated 6<sup>th</sup> April 2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued additional guidelines in pursuance of amendment to SEBI KYC (Know Your Client) Registration Agency (“**KRA**”) Regulations, 2011 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets. In the said Circular SEBI talks about the roles / functions of KRA. The validation of all KYC records (new and existing) shall commence from 1<sup>st</sup> July 2022.
- The Ministry of Corporate Affairs (“**MCA**”) vide Notification dated 8<sup>th</sup> April 2022, has amended Rule 12 and Form no. INC 20A and Form no. INC 32 of the Companies (Incorporation) Rules, 2014. In Rule 12 of the said rules, the following proviso shall be inserted, *“Provided further that in case of Company being incorporated as a Nidhi, the declaration by the Central Government under Section 406 of the Act, shall be obtained by the Nidhi before commencing the business and a declaration in this behalf shall be submitted at the stage of incorporation by the Company.”*
- The Central Board of Direct Taxes (“**CBDT**”) vide Notification No. 27/2022/F. No. 370142/5/2022-TPL-Part1(Part1) dated 05<sup>th</sup> April 2022, in exercise of the powers conferred by sub-sections (3) and (4) of section 245MA of the Income Tax Act, 1961, has enacted a scheme which may be called the e-Dispute Resolution Scheme, 2022. The said scheme includes definitions, procedures and application for dispute resolution, powers of Dispute Resolution Committee, penalties, appeals, authentication and delivery of electronic records, etc. The said Act shall come into force on the date of its publication in the Official Gazette.
- Vide Notification DOR. RET. REC. 16 / 12.01.001 / 2022-23 dated 08<sup>th</sup> April 2022, the Reserve Bank of India (“**RBI**”) under Section 24 and Section 56 of the Banking Regulation Act, 1949,



has decided to institute the Standing Deposit Facility (“**SDF**”) with immediate effect. Accordingly, it is decided that the balances held by banks with the RBI under the SDF shall be an eligible Statutory Liquidity Ratio (“**SLR**”) asset and such balances shall form part of

“Cash” for SLR maintenance. Banks shall report the SDF balances under “Cash in hand” in Form VIII or Form I, as applicable and the balances held by banks with RBI under the SDF shall not be eligible for Cash Reserve Ratio (“**CRR**”) maintenance.



## DEALS THIS MONTH

- Walmart-owned e-tailer Flipkart, has acquired direct-to-consumer (“D2C”) Software-as-a-service (“SaaS”) platform ANS Commerce for an undisclosed sum. ANS Commerce that was founded in 2017, provides various services to companies and brands looking to sell online. These include services that help brands set up digital storefronts, integration with marketplaces like Flipkart and Amazon, and warehousing and facilities maintenance services. The deal is expected to be closed in the second half of 2022.
- Reliance Industries Limited picked up a 54% (Fifty- Four Percent) stake in an Indian robotics startup - Addverb Technologies for USD 132 million. The Noida-based startup focuses on building automation and robotics solutions for warehouses and factories. Reliance has been already using Addverb’s robotic conveyors, pick-by-voice software, and semi-automated systems in its warehouses. The startup churns out around 10,000 robots in a calendar year, including mobile robots, sorting robots, pallets shuttle and carton shuttle. Addverb Technologies plans to use Reliance’s resources to achieve its goal of becoming a billion-dollar company in the next five years by targeting the global market.
- Tesla CEO Elon Musk reached an agreement to acquire Twitter Inc. for \$44 Billion with shares valued at \$54.20. The social media giant which went public in 2013, is set to become private once the deal closes later this year, subject to Twitter shareholders and regulatory approvals. Whilst the details on what Musk plans to do with Twitter are sparse, the deal will have a bearing on Twitter’s operations in India.
- Tech Mahindra, an Indian multinational information technology services and consulting company has acquired a Mumbai-based enterprise applications startup Thirdware in an all-cash deal worth USD 42 million. Thirdware was founded in 1995 and offers solutions and services in the consulting, design, development, implementation and support of packaged solutions and covers areas like Robotic Process Automation (RPA), Enterprise Resource Planning (ERP) and Enterprise Performance Management (EPM). Thirdware delivers cutting edge business solutions and services to over 300 (Three hundred) customers across the globe which includes Ford Motor Company, Pfizer, United Nations Organizations, Visteon, etc.
- Bengaluru-based Company WIPRO, is all set to acquire SAP consulting firm Rizing Intermediate Holdings Inc. in an all-cash deal worth \$540 million. Rizing industry expertise and SAP consulting capabilities in enterprise asset management, consumer industries, and human experience management, will be “instrumental” in advancing Wipro’s position as an advisor for clients’ most complex SAP transformation. The transaction is expected to be completed before quarter ending June, subject to



requisite regulatory approvals and customary closing conditions, according to the exchange filing.

- Infosys has completed the acquisition of Germany based Digital Marketing Experience, and Commerce agency named Oddity. The agency brings to Infosys a comprehensive service portfolio comprising of digital-first brand management and communication, in-house production, including virtual and augmented reality, experience design and e-commerce services as well as its metaverse-ready set-up across Europe. The acquisition further strengthens Infosys' creative, branding and experience design capabilities, and demonstrates its continued commitment to co-create with clients, and help them

navigate their digital transformation journey, according to an exchange filing.

- Bengaluru based Company Whatfix, a digital adoption platform (DAP), has announced the acquisition of Leap (previously Jiny), a mobile-first onboarding and assistance platform that caters to digital adoption platforms for mobile applications. The acquisition will augment the company's platform by extending Whatfix's mobile capabilities. Leap's toolset will integrate with Whatfix's existing applications by adding guidance to mobile apps to improve activations and adoption, reduce time-to-ship for onboarding experiences, and increase the customization of user experiences overall.



## SAGA LEGAL

📍 DELHI OFFICE: A - 55, FIRST FLOOR, HAUZ KHAS, NEW DELHI - 110 016.

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

📍 BENGALURU OFFICE: 88 BOREWELL ROAD, OPP. WHITEFIELD POST OFFICE, WHITEFIELD, BENGALURU - 560 066.

☎ +91 11 41066969 | +91 11 41076969

✉ office@sagalegal.in | admin@sagalegal.in

🌐 www.sagalegal.in

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