



SAGA LEGAL

# COMMUNIQUE

AUGUST 2022



## TABLE OF CONTENTS

Courts this Month .....	1
Notifications/Amendments Insight .....	8
Deals of the Month .....	10



## COURTS THIS MONTH

- The Supreme Court in the case of *Sanjeet Kumar Singh @ Munna Kumar Singh vs. State of Chhattisgarh (Criminal Appeal No. 871 Of 2021)* has observed that as per Section 54 of Narcotic Drugs and Psychotropic Substances Act, 1985 (“**NDPS Act**”) it is presumed that the accused is required to explain how he came into possession of the contraband. However, in order to invoke the assumption as per the Act, it must first be proven that recovery was accomplished from the accused. The bench comprising of Justice Indira Banerjee and Justice V. Ramasubramanian while allowing the appeal of an accused convicted and sentenced for committing an offence under Section 20(b)(ii)(c) of the NDPS Act held that “...to raise the presumption under Section 54 of the Act, it must first be established that a recovery was made from the accused. The moment a doubt is cast upon the most fundamental aspect, namely the search and seizure, the appellant, in our considered opinion, will also be entitled to the same benefit as given by the Special Court to the co-accused.”
- The Supreme Court in the case of *Oil and Natural Gas Corporation Ltd. vs. Afcons Gunanusa JV (Arbitration Petition (Civil) No. 05 of 2022)* has ruled that the Arbitrators in a dispute do not have the power to determine their fees unilaterally and make it binding on the parties. The Bench comprising of Justice D. Y. Chandrachud, Justice Sanjiv Khanna and Justice Surya Kant observed that “Arbitrators do not have the power to unilaterally issue binding and enforceable orders determining their own fees. A unilateral determination of fees violates the principles of party autonomy and the doctrine of the prohibition of in rem suam decisions, i.e., the arbitrators cannot be a judge PART G 132 of their own private claim against the parties regarding their remuneration. However, the arbitral tribunal has the discretion to apportion the costs (including arbitrators’ fee and expenses) between the parties in terms of Section 31(8) and Section 31A of the Arbitration Act and also demand a deposit (advance on costs) in accordance with Section 38 of the Arbitration Act...”
- In the case of *Oriental Bank of Commerce vs. Prabodh Kumar Tewar (Criminal Appeal No. 1260 of 2022)* the Supreme Court has observed that the presumption as per Section 139 of the Negotiable Instruments Act, 1881 (“**NI Act**”) cannot be disproved merely by the report of a hand-writing expert. The bench comprising of Justice D.Y. Chandrachud and Justice A.S. Bopanna opined that “For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have



*not been filled up by the drawer but by another person, this is not relevant to the defence whether the cheque was issued towards payment of a debt or in discharge of a liability. ”*

- The Supreme Court in the case of *My Palace Mutually Aided Cooperative Society vs. B. Mahesh (Civil Appeal No. 5784 of 2022)* has ruled that the inherent powers of the court under Section 151 of the Code of Civil Procedure (“**CPC**”) can only be invoked if there is no alternate remedy available in accordance with the law. The bench comprising of Chief Justice N.V. Ramana, Justice Krishna Murari and Justice Hima Kohli while allowing the appeal observed that “...*the High Court should not have decided the recall application filed by the respondents, let alone pass such extensive orders which has the effect of unsettling proceedings and transactions which have a history of more than 60 years in a proceeding, basing on an application filed under Section 151 of the CPC*”. The Court further opined that “...*Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs and*

*bypass procedural safeguards inbuilt in the CPC.*”

- The Supreme Court in the matter of *Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes and Customs (Civil Appeal No. 7667 of 2021)* has clarified that the provisions of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) would prevail over the Customs Act, 1962 to the extent that once a moratorium is executed under the IBC, the customs authority does not have the power to initiate any recovery actions for dues from the corporate debtor. The bench comprising of Chief Justice N.V. Ramana, Justice J.K. Maheshwari and Justice Hima Kohli observed that “*The NCLAT, by deciding the question of passing of title from the Corporate Debtor to the respondent authority, has clearly ignored the mandate of Section 72(2) of the Customs Act relating to sale. This interpretation of the NCLAT clearly ignores the effects of the moratorium under Sections 14 and 33(5) of the IBC. The fact is that the duty demand notice and notice under Section 72(2) of the Customs Act, were issued during the moratorium period, which has been completely ignored by NCLAT and has resulted in rendering the moratorium otiose...*”
- In the matter of *HS Deekshit & Anr. vs. Metropoli Overseas Limited & Ors. (Special Leave to Appeal (C) No. 2177/2022)* the Supreme Court



observed that the averments in the plaint alone shall be examined while considering an application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“**CPC**”). The Bench of Justice Hemant Gupta and Justice Vikram Nath was dealing with an appeal against the order passed by the High Court of Karnataka who had rejected the plaint in terms of Order VII Rule 11(a) and (b) of the CPC. The Court while allowing the appeal observed that *“It is well-settled that while considering an application under Order 7 Rule 11 of the Code, the averments in the plaint alone are to be examined and no other extraneous factor can be taken into consideration.”*

- The Supreme Court in the case of *Union of India vs. Ex. HC/GD Virender Singh (C.A. No.-005545-005545 / 2022)* has clarified that the Modified Assured Career Progression Scheme (“**MACP Scheme**”) is applicable with effective from 01.09.2008 and not from 01.01.2006 i.e. the date from which the Central Civil Service (Revised Pay) Rules, 2008 were enforced. The bench comprising of Justice Sanjiv Khanna and Justice Bela M. Trivedi set aside the order passed by the Delhi High Court which had held that MACP scheme is applicable with effect from 01.01.2006 and that under the MACP Scheme the employees are entitled to financial upgradation. The Court further opined that *“...MACP Scheme is applicable with effect from 1.9.2008 and as per the MACP Scheme, the*

*entitlement is to financial upgradation equivalent to the immediate next grade pay in the hierarchy of the pay bands as stated in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008...”*

- The Supreme Court in the case of *Union of India vs. Ganpati Dealcom Pvt. Ltd. (Civil Appeal No. 5783 of 2022)* has observed that it’s interpretation of Section 8(4) of the Prevention of Money Laundering Act, 2002 (“**PMLA**”) in an earlier judgement which allowed Enforcement Directorate to take possession of the property before trial in exceptional circumstances has left much room for arbitrary application. The Bench led by Chief Justice N.V. Ramana, Justice Krishna Murari and Justice Hima Kohli while dealing with the constitutionality of certain provisions of the Benami Transactions Prohibition Act, 1988 observed that *“...this Court dealt with confiscation proceedings under Section 8 of the PMLA and limited the application of Section 8(4) of PMLA concerning interim possession by authority before conclusion of final trial to exceptional cases. The Court distinguished the earlier cases in view of the unique scheme under the impugned legislation therein. Having perused the said judgment, we are of the opinion that the aforesaid ratio requires further expounding in an appropriate case, without which, much scope is left for arbitrary application.”*



- The Supreme Court in the matter of *My Palace Mutually Aided Co-Operative Society vs. B. Mahesh & Ors. (Civil Appeal No. 5784 Of 2022)* has held that a person who is affected by a judgment/decreed but is not a party to the suit, can prefer an appeal with the leave of the Court. The bench comprising of Chief Justice NV Ramana, Justice Krishna Murari and Justice Hima Kohli was hearing an appeal contending that the High Court erred in exercising jurisdiction under Section 151 of the Code of Civil Procedure, 1908 (“**CPC**”), when alternate remedies exist under the Code. The Court opined that “...Sections 96 to 100 of CPC deals with the procedure for filing appeals from original decrees. A perusal of the above provision makes it clear that the provisions are silent about the category of persons who can prefer an appeal. But it is well settled legal position that a person who is affected by a judgment but is not a party to the suit, can prefer an appeal with the leave of the Court. The sine qua non for filing an appeal by a third party is that he must have been affected by reason of the judgment and decree which is sought to be impugned. In the light of the above, it can be safely concluded any aggrieved party can prefer an appeal with the leave of the Court.”
- The High Court of Bombay in the case of *Unichem Laboratories Limited vs. Union of India and Ors. (Writ Petition No. 109 of 2020)* has directed the Central Board of Indirect Taxes and Customs (“**CBIC**”) to issue a clarification in relation to the distribution /reporting of the Input Service Distributor (“**ISD**”) credit. In the present case, the Division Bench of Justice K.R. Shriram and Justice Gauri Godse were dealing with a bunch of writ petitions, highlighting the difficulties faced in the distribution / utilisation / eligibility of the ISD credit of Service Tax/excise duty under Section 140 of the Central Goods and Service Tax Act, 2017 (“**CGST Act**”). The Court held that “*All Petitioners, through their respective units/offices registered under CGST Act and/or State Acts, as the case may be, can avail this window and file GST TRAN-1/revised GST TRAN-1 at the units/offices between 01.09.2022 to 31.10.2022...*”. The Court further directed CBIC “...to issue a clarification, after due deliberation, in relation to the distribution / reporting of ISD credit preferably within 21 days from the date this order is uploaded...”
- The High Court of Delhi in the case of *Dominos IP Holder LLC & Anr. vs. Ms Dominick Pizza & Anr. (CS (Comm) 587/2022)* has restrained a pizzeria from using the name ‘Dominick Pizza’ to sell and advertise its products which is deceptively similar and identical trademark registered in favour of ‘Domino’s Pizza’. A Single-Judge Bench of Justice Pratibha M. Singh observed that “*The reviews of the consumers on Google Reviews, also re-affirms this fact that apart from the*



- confusion that is taking place, there is severe tarnishment and dilution of the Plaintiffs' mark and business. Accordingly, as per the facts and circumstances of this matter, the Plaintiffs have made out a prima facie case in their favour for grant of an ex-parte ad interim injunction. The balance of convenience lies in favour of the Plaintiffs, and irreparable injury would be caused if the injunction is not granted."*
- The High Court of Allahabad in the matter of *Rajdhari Yadav vs. State of U.P. and Another (Criminal Revision No. - 3607 of 2021)* observed that under the provision of Section 451 and Section 457 of the Code of Criminal Procedure, 1973 ("**Cr.P.C**") the Magistrate/Special Judge has the power to consider the application for the interim custody of the conveyance/ vehicle seized under the Narcotic Drugs and Psychotropic Substances Act, 1985 ("**NDPS Act**"). A Single-Judge Bench of Justice Sadhna Rani (Thakur) observed that "*A perusal of Section 36-C and 51 of the NDPS Act indicates that the provisions of Cr.P.C. so far as, they are not in contradictions with the special Act NDPS Act, shall be applicable to the NDPS Act and as in the NDPS Act no procedure for interim custody of the vehicle is prescribed Sections 451 and 457 of Cr.P.C. specifically deal with the custody and disposal of property pending trial and the procedure to be followed by the police upon seizure of property...*"
  - The High Court of Bombay in the case of *Relcon Infroprojects Ltd. & Anr. vs. Ridhi Sidhi Sadan, Unit of Shree Ridhi Co.op. Housing Society Ltd. & Ors. (Arbitration Petition (L) No. 12317 Of 2022)* reiterated that the Court is not barred from exercising jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996 ("**A&C Act**") for interim measures on the mere ground that a notice under Section 21 of the A&C Act to refer the disputes to arbitration have been issued. The Single Judge Bench of Justice G.S. Kulkarni held that "*The insistence on behalf of respondent no. 2 and 4 is that merely because a notice under section 21 of the Act to refer the disputes to an arbitral tribunal was issued, the sequel to it would be that the Court ought not to exercise jurisdiction under section 9 and refer the disputes to arbitration... Such contention is not only against the principles of law governing the powers of the Court to pass appropriate interim orders under section 9, as the facts and circumstances of the case may warrant, however, it goes contrary to the very statutory provision.*"
  - The High Court of Gujarat in the case of *Rajesh Sukamaran Nambiar vs. The Central Bank Of India Through The Chief Manager (C/SCA/11149/2021)* held that issuance of notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") is not sufficient for instituting legal challenge



until the adjudication of matter under Section 13(4) of the Act is reached. A Single Judge Bench Justice Vaibhavi Nanavati explained that *“It is open for the petitioners to avail statutory remedy by preferring an appeal/application under Section 17 of the SARFAESI Act, as per the ratio as referred hereinabove. No interference is called for at the stage of issuance of notice under Section 13(2) of the SARFAESI act. Consequently, the question of examining legality and validity of such demand notice would not arise. The adjudication would have to wait till the stage of Section 13(4) is reached...”*

- In the case of *Rithala Education Society Applicant Society Running/Owning Citizen Model School Rithala vs. Union Of India and Ors. (W.P.(C) 11334/2022 & C.M. No. 33392/2022)* observed that the reassessment order cannot be passed without considering the detailed reply of the assessee. The Division Bench comprising of Justice Manmohan and Justice Manmeet Pritam Singh were dealing with a writ petition challenging the order passed under Section 148A(d) of the Income Tax Act, 1961 (“**IT Act**”). Upon which, the Court observed that *“...the significance of issuance of a show cause notice at a stage prior to issuance of a re-assessment notice under Section 148 of the Act has been lost on the respondents in as much as the impugned order under Section 148A(d) of the Act has been passed without considering the detailed reply*

*filed by the petitioner... It is pertinent to mention that though the impugned order notes that the Citizen Model School is being run by the petitioner-society, yet it goes on to hold that income had escaped assessment as no return of income had been filed by the school without dealing with the contention of the petitioner-society that all the financial transactions of the school had been accounted for in its return of income...”*

- In the matter of *Jayrajsinh Madhubha Gadhvi vs. State Of Gujarat (R/SCR.A/2410/2019)* the High Court of Gujarat clarified that a Court cannot Order Registration Of FIR Against an Investigating Officer under Section 218 and Section 219 of the Indian Penal Code, 1860 (“**IPC**”) which pertain to a public servant framing incorrect records for saving a person from punishment and making reports in a corrupt manner. The Bench comprising of Justice Vaibhavi Nanavati stated that *“...sections invoked by the Court below against the writ-applicant would result in imprisonment for a period of 03 years or fine or both under Section 218 of the Code, imprisonment that would extend upto 07 years or fine or both for the offence committed under Section 219 of the Code and imprisonment for term which would extend upto 10 years under Section 221 of the Code. The aforesaid sections have been invoked without initiation of any inquiry or any material on record and in absence of any evidence and the same amounts to*



*prejudice to the writ-applicant causing irreparable injury to the writ-applicant and the same would also amount to adversely affect and prejudice the career of the writ-applicant”*

- The High Court of Delhi in the case of *Sanjay Sarin vs. The Authorised Officer, Canara Bank & Ors. (W.P.(C) 2983/2022)* ruled that the sanction of resolution plan under Section 31 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) does not discharge liability of guarantor towards loan agreement. A Single-Judge Bench of Justice Sanjeev

Narula further held that “...where proceedings are initiated under the SARFAESI Act, and the borrower is aggrieved by any of the actions of the bank for which the borrower has remedy under the SARFAESI Act, no writ petition should be entertained” “...the extent of liability of a personal guarantor is concerned, the same would have to be determined in light of the agreement between the borrower, i.e., the corporate debtor, and the personal guarantor, for which the appropriate forum would be the Debt Recovery Tribunal and not this Court.”



## NOTIFICATIONS/AMENDMENTS INSIGHTS

- Vide Notification no. 102 of 2022 and F. no. 285/13/2022-IT dated 22.08.2022, the Central Board of Direct Taxes (“**CBDT**”) in exercise of the powers conferred by Section 280A(1) of the Income-tax Act, 1961 (“**IT Act**”) read with Section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the Central Government, in consultation with the Chief Justice of the High Court of Chhattisgarh, has designated all the Chief Judicial Magistrate Courts of the State of Chhattisgarh as Special Courts, for the areas falling within the respective territorial jurisdictions of the Chief Judicial Magistrate Courts in the State of Chhattisgarh.
- Vide Circular no. SEBI / HO / AFD-1 / PoD / CIR / P / 2022 / 108 dated 17.08.2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued Guidelines for overseas investment by Alternative Investment Funds (“**AIF**”) / Venture Capital Funds (“**VCF**”). Accordingly, AIF/VCF shall invest in an overseas investee company, which is incorporated in a country whose securities market regulator is a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding or a signatory to the bilateral Memorandum of Understanding with SEBI.
- Vide Circular no. SEBI/HO/ISD/ISD-SEC-4 / P / CIR / 2022 / 107 dated 05.08.2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 – Framework for restricting trading by Designated Persons by freezing PAN at security level. The provisions of this circular shall be applicable to declaration of financial results of the listed company that is or was part of benchmark indices i.e. NIFTY 50 and SENSEX from the date of implementation of this circular. Further, the restriction on trading shall be for on-market transactions, off-market transfers and creation of pledge in equity shares and equity derivatives contracts of such listed companies. The circular shall come into force with effect from the quarter ending September 30, 2022.
- Vide Circular Ref. CEPD. PRD. No. S544 / 13.01.001 / 2022-23 dated 05.08.2022, the Reserve Bank of India (“**RBI**”) has issued the Reserve Bank - Integrated Ombudsman Scheme, 2021 (“**RBIOS**”) w.e.f. September 1, 2022. As per the circular, the ‘Credit Information Company’ as defined in the Credit Information Companies (Regulation) Act, 2005, shall also be treated as a ‘Regulated Entity’ for the purpose of the Scheme. The Scheme shall also be applicable to Credit Information Companies to the extent



not specifically excluded under the Scheme.

- The Reserve Bank of India (“**RBI**”) vide Notification no. RBI/2022-23/103 dated 05.08.2022 has issued a circular for change in Bank rates. Accordingly, as reported in Monetary Policy Statement 2022-23, the Bank Rate is revised upwards by 50 (Fifty) basis points from 5.15% (Five point one five percent) to 5.65 (Five point six five percent) with immediate effect. Additionally, all penal interest rates on shortfall in reserve requirements, which are specifically linked to the Bank Rate, also stand revised.
- Vide Notification no. RBI/2022-23/105 dated 08.08.2022, the Reserve Bank of

India (“**RBI**”) has issued Rupee Interest Rate Derivatives (Reserve Bank) Directions. Accordingly, Banks in India having Authorised Dealer Category-I (“**AD Cat-I**”) license under Foreign Exchange Management Act, 1999 (“**FEMA**”) have been permitted under the said Directions to offer Foreign Currency Settled Overnight Indexed Swaps (“**FCS-OIS**”) to persons not resident in India as well as to other AD Cat-I banks. On a review, it has been decided that stand-alone primary dealers, authorized under section 10(1) of FEMA shall also be eligible to offer FCS-OIS to persons not resident in India as well as to other AD Cat-I banks and eligible stand-alone primary dealers.



## DEALS THIS MONTH

- The business-focused payment gateway-aggregator and neo banking platform Razorpay has acquired Ezetap Mobile Solutions Pvt. Ltd. - a digital payments solution provider in a primary and secondary deal. The company bought an 80% (Eighty percent) stake in Ezetap Solutions Pte Ltd., the Singapore-based parent entity of Ezetap Solutions Pvt. Ltd., for around USD 100 million to USD 120 million.
- Miami-based online learning firm Open English has made its first bet in India with the acquisition of Bengaluru-based mobile language-learning app Enguru, a platform that's reached over 16 million downloads across India and average monthly use of over 10 hours per paid student for an undisclosed amount in a share swap deal. Founded in 2015- Enguru will continue operating under the same name, both companies will benefit from leveraging each other's experience, ultimately providing a better student experience throughout the Indian market.
- Online fashion retailer Nykaa's parent company FSN E-Commerce Ventures Ltd. has fully acquired iluminar Media, known as Little Black Book, for an undisclosed sum. Little Black Book, which was founded in 2015 focuses on audience engagement through content and discovery. The acquisition would help Nykaa to strengthen its content delivery, drive discovery for brands and make shopping experience more engaging for the customers.
- Bengaluru based Edtech major upGrad has announced a 100% (One Hundred percent) merger of Noida-based test-prep company Exampur for an undisclosed amount. Founded in 2018, Exampur is an online learning startup for several competitive examinations which offers courses for government exam preparation, with a hybrid model comprising offline and online teaching facilities to aspirants from Tier-II, III, and IV cities.
- One of India's leading equity houses ICICIdirect has acquired Multipie, a networking platform for investors to discuss and exchange ideas on stocks and other investment assets. Set up in October 2021, Multipie has features like stock discovery ideas, import stock portfolio, content creation with stock tags, user tags with Twitter integration and others. Being social, the platform enables members to follow each other and also share their portfolio only with people they chose to.



SAGA LEGAL



**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

## **DISCLAIMER**

This publication is intended to be circulated for informational purposes only. The publication in no way constitutes legal advice/opinion being provided by Saga Legal to its readers or the public at large. Saga Legal encourages the readers to seek professional legal advice before acting upon the contents provided herein. The firm shall not be responsible for any liability or loss that may be attributed to the contents of this publication. This publication is property of Saga Legal, and the same may not be circulated, distributed, reproduced or otherwise used by anyone without the prior express permission of its creators.