



SAGA LEGAL

COMMUNIQUE

FEBRUARY 2022



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COURTS THIS MONTH

- A Bench of the Supreme Court comprising of Justice K.M Joseph and Justice PS Narasimha in the case of *Amar Nath vs. Gian Chand (Civil Appeal 5797 of 2009)* held that if the document is presented for registration by the power of attorney holder who executed the said document in the first place by way of the authority vested in him/her through the said power of attorney, then the production of the original power of attorney is not required. The Supreme Court here was dealing with a challenge against a decision of the High Court holding that under Section 18A of the Registration Act, 1908 that the true and original copy of the special power of authority must be presented before the registering authority for registration of a document (in this case a sale deed). Disagreeing with the view of the High Court, the Supreme Court held that “*Section 18A was enacted only to ensure that the copying process is hastened, as noticed from the Objects and Reasons. The Trial Court was right when it held that Section 18A is concerned only with the document which is presented for registration. The Trial Court clearly erred relying upon Section 18(A) to hold that certified copy however being produced of the power of attorney was in conformity with Section 18A and the High Court was equally in error to hold that Section 18A contemplated production of true copy of the power of attorney.*” The Supreme Court, setting aside the order of the High Court, further observed that “*The inquiry contemplated under the Registration Act, cannot extend to question as to whether the person who executed the document in his capacity of the power of attorney holder of the principal, was indeed having a valid power of attorney or not to execute the document or not.*”
- The Supreme Court’s Bench comprising of Justice Sanjay Kishan Kaul and Justice M.M Sundresh in the case of *Dayalu Kashyap vs. State of Chhattisgarh (Criminal Appeal 130 of 2022)* held that recovery under the Narcotic Drugs and Psychotropic Substances Act, 1985 (‘NDPS’) is not vitiated due to the violation of Section 50 of the said Act. In this case the Supreme Court was dealing with an appeal filed by the accused who was convicted by the Trial Court which came to be upheld by the High Court of Chhattisgarh. The Supreme Court dismissing the appeal relied on its earlier judgment in the cases of *State of Rajasthan vs. Parmanand & Anr ((2014) 5 SCC 345)*, and *State of Punjab vs. Baldev Singh 1999 ((6) SCC 172)* to decide that it is an incorrect proposition to say that if the provisions for personal search are vitiated by violation of Section 50 of the NDPS Act, the recovery made otherwise also would stand vitiated and evidence cannot be relied upon.
- The Apex Court’s Bench comprising of Justice D.Y Chandrachud and Justice Dinesh Maheshwari in the case of *Ajaya Kumar Das vs. Divisional*



Manager (Civil Appeal 447 of 2022) observed that the interest calculated on compensation under the Workmen Compensation Act, 1923 has to be paid from the date of the accident and not from the date of adjudication of the claim. Section 4A of the said Act provides for payment of interest at the rate of 12% (Twelve Percent) or at a higher rate, not exceeding the lending rates of any scheduled banks, if the employer fails to pay the compensation within one month from the date it was supposed to be paid, i.e the date of the accident. The Apex Court answering the question, relied on its earlier decisions of *Saberabibi Yakubhai Shaikh vs. National Insurance Co. Ltd. (2014 (2) SLJ 139 (SC))* and *Oriental Insurance Co. Ltd. vs. Siby George (AIR 2012 SC 3144)* to hold that the calculation of interest as laid down under Section 4A of the Act interest runs from the date of incident itself.

- The Supreme Court in the case of *Shiv Developers through its Partner Sunilbhai Somabhai Ajmeri vs. Aksharay Developers (Civil Appeal 785 of 2022)* observed that the bar on unregistered partnership firms regarding institution of proceedings before a court of law under Section 69(2) of the Indian Partnership Act, 1932 is not applicable when the proceedings initiated is for a contract that is not in the course of its business dealings. In this case the Supreme Court was dealing with an appeal against the decision of the High Court,

which had rejected to entertain a suit seeking perpetual injunction and declaration of a sale deed as null and void due to bar under Section 69(2) of the said Act. The Supreme Court disagreeing with the decision of the High Court held that the suit would be maintainable as the bar under Section 69(2) only applies to proceedings in course of business of the partnership firm. The Supreme Court further observed the sale in question does not arise out of the business of the firm and that the suit is for enforcing a statutory right.

- The Supreme Court's Bench comprising of Justice D.Y Chandrachud and Justice Dinesh Maheshwari in the case of *A Devesh Chourasia vs. District Magistrate, Jabalpur (Criminal Appeal 125 of 2022)* reiterated that the government must communicate the rejection of the representation to the detenu in a time bound manner, and a failure to do so would vitiate the order of detention made under the National Security Act, 1980. The Supreme Court was dealing with an appeal filed against the order of the Madhya Pradesh High Court which had upheld the detention order passed against a person under Section 3 of the said Act. The Bench while allowing the appeal and quashing the detention order held that "*The detenu was deprived of the right arising from the provisions of Section 8(1); and that the failure of the Central and the State governments to communicate the rejection of the representation in a time*



bound manner would vitiate the order of detention.”

- The Supreme Court's Bench comprising of Justice D.Y Chandrachud, Justice Surya Kant and Justice Vikram Nath in the case of *Consolidated Construction Consortium Limited vs. Hitro Energy Solutions Private Limited (Civil Appeal Nos. 2839 of 2022)* held that as per Insolvency & Bankruptcy Code, 2016 limitation commences when a default occurs, and not when debt becomes due. In this case the Supreme Court was dealing with an appeal against the National Company Law Appellate Tribunal's decision regarding commencement of limitation period under the provisions of the said Code. Relying on the decision in *B.K. Educational Services (P) Ltd. vs. Parag Gupta & Associates ((2019) 11 SCC 633)*, the Supreme Court observed that *"...limitation does not commence when the debt becomes due but only when a default occurs. As noted earlier in the judgment, default is defined under Section 3(12) of the IBC as the non-payment of the debt by the corporate debtor when it has become due."*
- The Supreme Court in the case of *Mutha Construction vs. Strategic Brand Solutions (I) Pvt. Ltd.(SLP(C) 1105 of 2022)* held that wherein an arbitral tribunal has given decision on merits of the case, then a court while deciding a petition under Section 34 of the Arbitration and Conciliation Act, 1996

has no jurisdiction to remand the matter to the Arbitrator. In this case the Supreme Court was dealing with an appeal arising from the decision of the Bombay High Court where the High Court in a Section 34 petition of the said Act remitted the matter back to the Arbitrator for a fresh reasoned order to be passed, pursuant to the consent of both the parties. One of the parties in the petition sought modification of the order and approached the Supreme Court contending that the High Court under a Section 34 petition of the Arbitration Act could not remit the matter back to arbitral tribunal for a reasoned award. Disposing off the petition, the Supreme Court noted that *"...even in a case where the award is set aside under Section 34 of the Act on whatever the grounds which may be available under Section 34 of the Act, in that case the parties can still agree for the fresh arbitration may be by the same arbitrator. In the present case both the parties agreed to set aside the award and to remit the matter to the learned Sole Arbitrator for fresh reasoned Award. Therefore, once the order was passed by the learned Single Judge on consent, thereafter it was not open for the petitioner to contend that the matter may not be and/or ought not to have been remanded to the same sole arbitrator."*

- The Apex Court's Bench comprising of Justice K.M Joseph and Justice P.S Narasimha in the case of *Union Bank of India vs. Rajasthan Real Estate*



Regulatory Authority (Special Leave to Appeal (C) Nos.1861-1871/2022) upheld a decision holding that Real Estate Regulatory Authority (“**RERA**”) can entertain complaints by home buyers against the bank which took possession of a real estate project as a secured creditor. In this case the Supreme Court was dealing with a challenge against the decision of the Rajasthan High Court where the High Court upheld the directions issued by the said Authority against a bank or financial institution claiming security interest over the properties, i.e. subject matter of agreement between the allottee and the developers. Reiterating the observations made by the High Court, the Supreme court dismissed the appeal and affirmed the view of the High Court, clarifying that where proceedings before RERA are initiated by the homebuyers to protect their rights, RERA authority has the jurisdiction to entertain a complaint by an aggrieved person against the bank as a secured creditor if the bank takes recourse under any of the provisions contained in Section 13(4) of the Securitization and Reconstruction of Financial Association and Enforcement of Security Interest Act, 2002.

- The Allahabad High Court in the case of *Tarun Pandit vs. State of U.P. and Another (Criminal Revision No. 1154 of 2021)* held that a wife who has challenged a divorce decree can seek maintenance under Section 125 of Criminal Procedure Code (“**CrPC**”)

even if she has not accepted alimony under Section 25 of Hindu Marriage Act, 1955. In this case the High Court was dealing with a revision petition against the order of the family court. The High Court relied on the Supreme Court’s decision of *Rajnesh vs. Neha, and Rohtash Singh vs. Ramendri ((2000) 3 SCC 180)* to hold that since the appeal against the divorce petition is pending and the wife has not accepted the alimony given under Section 25 of the said Act, it is open for her to claim maintenance under Section 125 of the CrPC.

- The Bombay High Court on its own motion in the matter of *Jilani Building at Bhiwandi vs. Bhiwandi Nizampur Municipal Corporation & Ors. (Suo Moto Public Interest Litigation no 1 of 2020)* passed a slew of guidelines regarding illegal construction of building structures. The High Court observed that if an illegal and unauthorized construction is found to have subsisted and/or its non-removal is aided and/or abetted by the municipal officers or its employees for a substantial time of more than 6 (Six) months, the Municipal Commissioner shall take penal action against such municipal officers at fault. This would include taking relevant actions under the Indian Penal Code, 1860. The High Court further directed planning authorities to keep the Urban Development Department of the State informed on the number of illegal constructions in the respective municipal and jurisdictional areas and



the action being taken with regard to such illegal constructions. The High Court further directed that in case there is a collapse of a building, the Principal Secretary and / or Municipal Commissioner would have to conduct an inquiry that has to be completed in 15 (Fifteen) days, and the responsible persons would face criminal prosecution under the provisions of the municipal laws and also under the provisions of the Indian Penal Code, 1860.

- The division Bench of the Bombay High Court in the case of *Ramesh Tukaram Vavekar vs. State of Maharashtra & Anr.* (Criminal Appeal 1430 of 2018) held that a child born out of a crime under Protection of Children from Sexual Offences (POCSO) Act, 2012 ("**POCSO Act**"), is a victim under the definition of section 2(wa) of CrPC. In this case the appellant had challenged his conviction and sentence under Section 4 of the POCSO Act by which he was imprisoned for life and directed to pay a fine of Rs 2,000 (Indian Rupees Two Thousand only). Allowing the appeal, the High Court observed that "*In view of Section 2(wa) of the Code of Criminal Procedure, the "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and expression "victim" includes his or her guardian or legal heir. The child born to the victim is indeed her legal heir and also a victim in view of the*

definition of "victim" and therefore, he must be adequately compensated for as it was the appellant who is responsible for bringing him in this world and then abandoning him at the mercy of an Orphanage". Further reducing the sentence to 10 (Ten) years and increasing the amount of compensation to Rs. 2,00,000 (Indian Rupees Two Lakhs only), the High Court observed that "*Looking to the young age of the appellant and his future prospects in his profession as a Disk Jockey as well as the fact of his willingness to provide adequate compensation to the child, we are of the considered view that, no fruitful purpose would be served in detaining the appellant for his entire life, instead, if the amount of compensation to be awarded to the child, is adequate, it would serve the ends of justice".*

- The Delhi High Court in the case of *BW Business world Media Pvt. Ltd. vs. India Railway Catering and Tourism Corporation Ltd.* (OMP (T) (Comm.) 3/2020), held that participating and not objecting to arbitral proceedings does not constitute waiver of the right to challenge the appointment of the arbitrator. In this case the sole arbitrator was appointed unilaterally at the instance of one of the contracting parties. However, no objections were made to the same. Disposing of the petition and allowing the party to raise objections, the High Court held that "*The language of the proviso to Section 12(5) of the A&C Act makes it amply*



clear that any waiver is required to be made by an agreement in writing and that too, after the disputes have arisen. This is a distinct departure from the language of Section 4 of the A&C Act. Thus, the contention that the petitioner has waived its right to object to the appointment of the learned Arbitrator, cannot be accepted.”

- A division Bench of the Delhi High Court in the case of *Dharamraj vs. Income Tax Officer Writ Petition ((Civil) 9227 of 2021)* held that a reassessment notice under Section 148 of Income Tax Act, 1961 if issued against a dead person is null. The High Court here was dealing with a challenge against a notice issued under Section 148 of the Income Tax Act, 1961 and all consequential proceedings that emanated thereafter. The High Court set aside the notice and observed that *“In the present case also, as the notice under Section 148 of the Act was issued against a dead person, the same is null and void and all consequent proceedings/orders, including the assessment order and the subsequent notices, being equally tainted, are liable to be set aside”*.
- The Delhi High Court in the case of *Joginder Tuli vs. State NCT of Delhi & Ors. (Writ Petition (Criminal) 1006 of 2020)* held that in order to seek benefit under Section 53A of the Transfer of Property Act (“TPA”) the documents relied upon must be a registered document. Justice Subramonium

Prasad held that, *“Any unregistered document cannot be looked into by the court and cannot be relied upon on or taken into evidence in view of Section 17(1A) read with Section 49 of the Registration Act.”* The High Court relied on its decision in *Earthtech Enterprises Ltd. vs. Kuljit Singh Bautalia (199 (2013) DLT 194)*, wherein the court had dismissed the petition holding that the documents were not registered as per section 17(1)A of the Registration Act, 1908. It is relevant to note that, Section 53 of the TP Act deals with fraudulent transfers of property.

- A division Bench of the Delhi High Court in the case of *Commissioner Of Income Tax (Exemptions) vs. Hamdard National Foundation (India) (ITA 142 of 2021)* held that adequacy of rent received for invoking Section 13(2)(b) of the Income Tax Act, 1961 cannot be determined by solely relying on the opinion put forth on property broker firms and websites. The High Court here was dealing with an appeal against the order of the Income Tax Appellate Tribunal, New Delhi (“ITAT”), wherein the ITAT held that the Assessing Officer did not bring any cogent evidence on record regarding the rent. Upholding the stance of the ITAT, the court held that *“In the present case, the Assessing Officer, apart from relying upon some opinion of rent from property broker firms and websites, does not appear to have made any independent inquiry on the adequacy of the rent being charged by the*



respondent / assessee from Hamdard Dawakhana (Wakf). It is not shown that the Assessing Officer made any independent inquiry on the age and condition of the building of the assessee situated at Asaf Ali Road, New Delhi". The High Court further observed that "under Section 13(2)(b), the burden of showing that the rent charged by the respondent/assessee was not "adequate" is on the revenue. Unless the price/rent was such as to shock the conscience of the Court and to hold that it cannot be the reasonable consideration at all, it would not be possible to hold that the transaction is otherwise bereft of adequate consideration. It is necessary for the Assessing Officer to show that the property has been made available for the use of any person referred to in Sub-section (3) of Section 13 otherwise than for adequate consideration. In order to determine the same, the context of the facts of the particular case needs to be appreciated. For determining "Adequate" consideration / rent, however, market rent or rate is not

the sole yardstick; other circumstances of the case also need to be considered."

- A single judge Bench of the Karnataka High Court in the case of *Rajeev Chandrasekhar vs. K. Koteswar Rao (Criminal Petition No.101127 of 2015)* held that vicarious liability needs to be specifically provided in the statute if a person is to be held vicariously liable for criminal offence. In this case the High Court was dealing with a criminal defamation case against the managing director of a news broadcasting company. The Court held that the complaint was made only against the Managing Director, without making the broadcasting company a party. Dismissing the petition, the High Court observed that "*The submission of the learned senior counsel representing the respondent that for the acts of the company the petitioner would become vicariously liable, is unacceptable, as there cannot be vicarious liability in criminal law under the Indian Penal Code.*"



NOTIFICATIONS/AMENDMENTS INSIGHTS

- Vide Circular No. SEBI / HO / IMD / IMD-I DOF2 / P / CIR / 2022 / 17, Securities and Exchange Board of India (“SEBI”) by way of its Circular dated 09.02.2022 specified that asset management companies (“AMC(s)”) of mutual funds will be required to constitute an audit committee. The Circular specifies roles, responsibilities, membership and features of the audit committee of an AMC. The audit committee of AMC will have to comply with the guidelines under the Circular in addition to the requirements of the Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The Circular will come into effect from 1.08.2022.
- Vide Notification No. 01/2022, the Central Board of Indirect Taxes and Customs has amended its previous Notification No. 13/2020 dated 21.03.2020, so as to notify the turnover limit for issuance of an e-Invoice in terms of Rule 48(4) of the Central Goods and Services Tax Rules, 2017. In terms thereof, specified class of registered persons are mandatorily required to issue the e-Invoice, provided their aggregate turnover in any preceding financial year from 2017-18 onwards exceeds INR 20 crores. The said amendment will be applicable with effect from 01.04.2022.
- Vide Circular No. SEBI / HO / DDHS / DDHS_Div3 / P / CIR / 2022 / 16 dated 9.02.2022 the Securities and Exchange Board of India (“SEBI”) has notified the framework for conversion of Private Unlisted Investment Trusts into Private Listed Investment Trusts. A Private Unlisted Investment Trusts may list its units and convert it into a Private Listed Investment Trusts on making a private placement of units through a fresh issue and/or an offer for sale in terms of Chapter IV of the Investment Trusts Regulations, in the manner provided in the Circular. After the transformation, the Private Unlisted Investment Trusts will be considered a Private Listed Investment Trusts and will be required to comply with the provisions of the Regulations prescribed for Private Listed Investment Trusts.
- Vide Circular No. SEBI / HO / MIRSD / MIRSD_RTAMB / P / CIR / 2022 / 23 dated 24.02.2022, SEBI has given extension of timelines and relaxations for nomination for eligible trading and demat accounts for existing account holders. SEBI, vide circular no. SEBI / HO / MIRSD / RTAMB / CIR / P / 2021 / 601 dated 23.07.2021 had mandated submission of nomination details / declaration for opting out of nomination for investors opening new trading and or demat account on or after 01.10.2021. The current Circular of 24.02.2022, has given extension to submit nomination details, thereby mandating that the consequence of non-compliance will not be applicable until March, 2023.



- Vide Gazette Notification No. G.S.R. 107(E) dated 11.02.2022 the Ministry of Corporate Affairs (“**MCA**”) has notified the amendment to the Companies (Accounts) Rules, 2014. The amendment introduces Rule 12(1B), as per which companies are required to submit a report on Corporate Social Responsibility (“**CSR**”) in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC. In furtherance of the same, the amendment also introduces a form for reporting CSR.
- Vide Gazette Notification No. S.O. 622(E) dated 11.02.2022, the MCA has appointed the Registrar of Companies as adjudicating officers for the purpose of the Limited Liability Partnership Act, 2008. The jurisdiction of each Registrar of Companies has also been specified in the said notification.
- Vide Gazette Notification NoG.S.R. 109(E) dated 11.02.2022, MCA has notified the amendment to the Limited Liability Partnership Rules, 2009. The amendment will be effective from 1.04.2022 and provides the mechanism for adjudication of penalties, registration of appeal, and disposal of appeal. The amendment also introduces Rule 19A for allotment of a new name to existing LLP.



DEALS THIS MONTH

- The Indian Government intends to sell a 5% (Five percent) stake in Life Insurance Corporation of India (LIC) through an IPO. The government has filed the draft red herring prospectus with SEBI and will put 31,62,49,885 (Thirty-One Crores Sixty-Two Lakhs Forty-Nine Thousand Eight Hundred Eighty Five) equity on sale shares through an offer for sale.
- Shiprocket has acquired a majority stake in Glaucus Supply Chain Solutions. Shiprocket is Zomato-backed e-commerce shipping and enablement platform, while Glaucus is a Delhi based company launched in 2015 and offers business to business (B2B) distribution, sales return management, direct to consumer marketplace fulfilment and managed transportation. The deal will help Shiprocket increase speed of solutions development and improve accuracy and efficiency in the post-purchase process across trade channels.
- Cult.fit acquired majority stake in F2 Fun & Fitness India Pvt. Ltd. to become the master franchise partner for Gold's Gym in India. Cult.fit continue scaling its business nationally, across non-metro cities and towns, as well as with respect to in-house brands like Gold's Gym. The partnership will help Gold's Gym centers to expand the brand across Sri Lanka, Bangladesh, Maldives, Nepal and Bhutan.
- Wegohas signed an agreement with the Flipkart Group to buy the Middle East business of its online travel portal Cleartrip. Cleartrip had expanded into the middle east region in 2010 and later acquired Riyadh-based company, namely Flyin.com, which led to the company starting operations in Saudi Arabia. This transaction also includes the sale of Flyin.com and a technology co-operation agreement between Wego and Flipkart.
- BYJU's owned Great Learning acquired recruitment firm Superset, which is backed by Blume Ventures. Great Learning is an up skilling platform that is part of the BYJU's group. Superset, operated by Weblength Infonet Pvt. Ltd., was founded in 2017 with an aim to harness technology to make campus recruitments easier and more efficient. The acquisition is based on improving campus placement and creating a level playing field for all companies.
- IndiaMART's InterMESH has acquired up 26% (Twenty Six percent) stake in IB Monotaro Pvt. Ltd. ('IMPL'). IMPL is an industrial e-commerce platform engaged in the e-commerce business for industrial and business supplies in India. Post-acquisition, InterMESH Ltd will hold 26% (Twenty Six percent) stake, Japan-based Monotaro will own 51.6%, (Fifty One point Six percent) and Emtex Engineering will hold 22.4% (Twenty Two point Four percent). IB Monotaro is specifically going to focus upon maintenance, repair and



operating supplies, industrial good, consumables etc.

- Bharti Airtel Ltd. intends to buy a 4.7% (Four point seven percent) stake in cell phone towers firm Indus Towers Ltd.

from Vodafone Group Plc. Indus Towers is India's largest cell phone tower company. Vodafone recently announced that it is planning to sell its 28.1% (Twenty Eight point one percent) of the its stake in the said tower company.



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