



SAGA LEGAL

# COMMUNIQUE

JULY 2022



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## COURTS THIS MONTH

- The Supreme Court in the case of *Union of India vs. M/s Filco Trade Centre Pvt. Ltd. and Anr. (Special Leave to Appeal (C) No(s). 32709-32710/2018)* has directed the Goods and Services Tax Network (“**GSTN**”) to allow a two month additional window i.e. from September 1, 2022 to October 31, 2022 for claiming the Transitional Credit through TRAN-1 and TRAN-2. In the present case, the Bench comprising of Justice S. Abdul Nazeer and Justice J.K. Maheswhari has observed that the taxpayers who had missed out on getting the benefit of transitional tax credits during India’s switchover to the Goods and Services Tax (“**GST**”) regime five years ago, should get a fresh window to avail the credits.
- The Supreme Court in the case of *State of Uttar Pradesh vs. Anand Engineering College (Special Leave to Appeal (Civil) Nos.10084-85/2022)* has held that the scope of section 33 of the Wild Life (Protection) Act, 1972 does not authorize the forest department to impose damages, rather the authority shall initiate proceedings before the appropriate forum/court to ascertain the damages. The Bench comprising of Justice M.R. Shah and Justice B.V. Nagarathna noticed that as per Section 33 of the Act, “...the appropriate authority shall have wide powers to take such steps as well as to ensure the security of wild animals in the sanctuary and the preservation of the sanctuary and wild animals therein. The Chief Wildlife Warden also may take such measures, in the interests of wildlife, as he may consider necessary for the improvement of any habitat and may also regulate, control or prohibit, in keeping with the interests of wildlife, the grazing or movement of livestock...”
- In the case of *M/S Tantia Constructions Limited vs. Union Of India (Special Leave to Appeal (C) No. 10722/2022)* the Supreme Court has observed that there cannot be two arbitration proceedings with respect to the same Contract or Transaction. In the present case, the Bench of Justice M.R. Shah and Justice B.V. Nagarathna was dealing with a petition challenging the decision of the Calcutta High Court that had dismissed the petitioner's application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator for resolution of dispute between the parties. The Court observed that, “...we are of the firm opinion that there cannot be two arbitration proceedings with respect to the same contract/transaction. It is not in dispute that in the present case, earlier the dispute was referred to arbitration and the Arbitrator passed an award on whatever the claims were made. Thereafter, a fresh arbitration proceeding was sought to be initiated with respect to some further claims, may be after the final bill. The same is rightly refused to be referred to arbitration in exercise of Section 11(6) of the Arbitration and Conciliation Act, 1996. We are in complete agreement with the view taken by the High Court.”



- The Supreme Court in the case of *Khasgi (Devi Ahilyabai Holkar Charities) Trust Indore vs. Vipin Dhanaikar & Ors. (Special Leave Petition (C) 12133/2022)* has observed that a trust property cannot be alienated unless it is for the benefit of the Trust and/or its beneficiaries. The bench comprising of Justice A.M. Khanwilkar, Justice Abhay S. Oka and Justice C.T. Ravikumar has set aside the directions passed by the Madhya Pradesh High Court. The Court observed that *“When a Trust property is transferred without prior sanction of the Registrar under Section 14 of Madhya Pradesh Public Trusts Act, 1951 and/or without following a fair and transparent process, it can be always said that the Trust property is not being properly managed or administered...”* *“We direct the Registrar under the Public Trusts Act, having jurisdiction over Khasgi Trust, to call for the record of the Trust relating to all the alienations made by the Trustees. After holding an inquiry as contemplated by Section 23, the Registrar after giving an opportunity of being heard to all concerned shall determine whether by virtue of the alienations made by the Trustees, any loss was caused to the Public Trust...”*
- The Supreme Court in the matter of *M/S S.S. Engineers & Ors. vs. Hindustan Petroleum Corporation Ltd. (Civil Appeal No. 4583 Of 2022)* has observed that the application of Operational Creditor for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) shall be dismissed, if the debt is disputed. The bench comprising of Justice Indira Banerjee and Justice V. Ramasubramanian remarked that *“The National Company Law Tribunal (“**NCLT**”), exercising powers under Section 7 or Section 9 of Insolvency and Bankruptcy Code (“**IBC**”), is not a debt collection forum. The IBC tackles and/or deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.”* *“...if the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.”*
- In the matter of *X vs. The Principal Secretary Health And Family Welfare Department & Anr. (Special Leave to Appeal (C) No(s).12612/2022)*, the Supreme Court has expanded the scope of the Medical Termination of Pregnancy Act, 1971 to include unmarried women and allowed a woman to abort a 24-week pregnancy arising out of a live-in relationship. A bench led by Justice D.Y. Chandrachud, Justice Surya Kant and Justice A.S. Bopanna was hearing a plea of a 25-year-old single woman seeking termination of her pregnancy that was denied by the Delhi High



Court. The Court observed that “A woman’s right to reproductive choice is an inseparable part of her personal liberty under Article 21 of Constitution. She has a sacrosanct right to bodily integrity” “...We are of the view that allowing the petitioner to suffer an unwanted pregnancy will go against the parliamentary intent and the benefits under the Act cannot be denied to her only on the basis of her being unmarried. The distinction between a married and an unmarried woman has no nexus to the object sought to be achieved by the Parliament...”

- The Supreme Court in the case of *Indian Oil Corporation Limited vs. NCC Limited (Civil Appeal no. 341 Of 2022)* has ruled that at the stage of deciding application for appointment of arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, a Court can consider whether the dispute falls within the excepted clause. A bench composed of Justice M.R. Shah and B.V. Nagarathna opined that “...we do not agree with the conclusion arrived at by the High Court that after the insertion of Sub-Section (6-A) in Section 11 of the Arbitration Act, scope of inquiry by the Court in Section 11 petition is confined only to ascertain as to whether or not a binding arbitration agreement exists qua the parties before it, which is relatable to the disputes at hand. We are of the opinion that though the Arbitral Tribunal may have jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability, the

same can also be considered by the Court at the stage of deciding Section 11 application if the facts are very clear and glaring and in view of the specific clauses in the agreement binding between the parties, whether the dispute is non-arbitrable and/or it falls within the excepted clause. Even at the stage of deciding Section 11 application, the Court may prima facie consider even the aspect with regard to ‘accord and satisfaction’ of the claims”

- The Supreme Court in the case of *Vijay Madanlal Choudhary vs. Union of India (Special Leave Petition (Criminal) No. 4634 Of 2014)* has held that the statements recorded by Directorate of Enforcement (“ED”) authorities under Section 50 of the Prevention of Money Laundering Act, 2002, (“PMLA”) while inquiring into the proceeds of crime are not hit by Article 20(3) and Article 21 of the Indian Constitution. The bench comprising of Justice A.M. Khanwilkar, Justice Dinesh Maheshwari and Justice C.T. Ravikumar observed that “The purposes and objects of the 2002 Act for which it has been enacted, is not limited to punishment for offence of money laundering, but also to provide measures for prevention of money laundering. It is also to provide for attachment of proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to confiscation of such proceeds under the 2002 Act. ...Considering the above, it is unfathomable as to how the authorities



*referred to in Section 48 can be described as police officers...*

- The Supreme Court in the matter of *M/s R.D. Jain and Co. vs. Capital First Ltd. & Ors. (Civil Appeal No. 175 of 2022)* has overruled three High Court Judgements and held that the powers under Section 14 of the The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”) can be exercised by the concerned Additional Chief Metropolitan Magistrates (“**CMM**”) of the area having jurisdiction and also by the Additional District Magistrates (“**DM**”). The Bench comprising of Justice M.R. Shah and Justice B.V. Nagarathna observed that “...As mandated by Section 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment...”
- The High Court of Delhi in the case of *Prakash Singh vs. Union Of India & Anr. (LPA 438/2022 & CM Appls. 31859&31861/2022)* has observed that the scope of Writ of Mandamus under Indian Constitution does not offer

remedy against the private wrongs. The Division Bench comprising of Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad dismissed an appeal that claimed that a French private international news agency was a subject to the High Court’s writ jurisdiction since it was a news agency fulfilling a public duty. The Court observed that “*It is well settled that a writ of mandamus lies only for the purpose of a public or statutory duty. Writs are issued for the performance of public duties. Though Article 226 of the Constitution of India is worded in such a way that a writ of mandamus could be issued even against a private authority but such private authority must be discharging a public function and the right sought to be enforced must be a public duty.*”

- The High Court of Gujarat in the case of *Vijaybhai Mansibhai Khavada (Khartani) vs. State Of Gujarat (R/CR.MA/12599/2022)* has refused to exercise its extraordinary jurisdiction under Section 482 of Code of Criminal Procedure (“**CrPC**”) to quash the F.I.R. particularly, when the offence involved Section 302 of Indian Penal Code (“**IPC**”). A Single-Judge Bench of Justice Niral R. Mehta was hearing a plea seeking quashing of the FIR for offences punishable under Sections 504, 506(2) read with Section 114 of IPC. The Court observed that “*The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for*



*quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty”*

- The High Court of Delhi in the matter of *Mondelez India Foods Pvt. Ltd. And Anr. vs. Neeraj Food Products (CS (COMM) 393 / 2018)* has ordered a permanent injunction restraining the manufacturer of 'James Bond' for infringing Cadbury's trademark 'GEMS'. A Single-Judge Bench of Justice Pratibha M Singh observed that the impugned product 'JAMES BOND' by being inspired by the character namely 'GEMS BOND', as used by Cadbury for promotion of their 'GEMS' branded products. The Court further observed that *“The ‘GEMS’ product is also usually consumed by small children, both in urban and rural areas. The test in such a matter is not that of absolute confusion. Even the likelihood of confusion is sufficient. A comparison of the Defendant’s infringing product and the packaging thereof leaves no manner of doubt that the same is a complete knock-off, of the Plaintiffs’ ‘CADBURY GEMS’. The significant fact is that these products are sold not only in bigger packs, but also in smaller pillow packs, due to which the mark may not even be fully visible.”*
- The High Court of Karnataka in the case of *Dr Narasimulu Nandini Memorial Education Trust vs. Banu Begum & Others (Misc. First Appeal no. 202022/2016)* has directed that an insurance company cannot disown its responsibility to indemnify the liability of the Insurer on the mere ground that on the date of accident, the fitness certificate and the permit of the vehicle was not in force. The Division Bench comprising of Justice Sreenivas Harish Kumar and Justice S Rachaiah were dealing with an Appeal filed by a Trust challenging the order passed by the Motor Accidents Claim Tribunal for charging the school bus owner with the liability to pay compensation to the claimants. The Court noted that *“...It is not in dispute that the offending vehicle did not possess the fitness certificate as also the permit on the day when the accident took place. It is also not in dispute that the appellant obtained both after the accident...” “...in view of section 81(5) of the Motor Vehicles Act, it should be deemed that on the day when the accident took place, the permit was in force.”*
- The High Court of Delhi in the case of *TV Today Network Private Limited vs. Newslaundry Media Private Limited & Ors. (CS(COMM) 551/2021)* has refused to grant interim relief to the TV Today Network, which owns channels India Today and Aaj Tak, in the defamation and copyright infringement suit against Independent News media company 'Newslaundry'. A Single-Judge Bench of Justice Asha Menon observed that every broadcaster has the right of fair comment and speech under article 19 of the Indian Constitution on current events and of criticism and review, including of the programmes created by others. The



Court further opined that *“Every media house and channel on T.V. or the social-media platforms, including that of the defendants No.1 to 9, have their own philosophy, which gets reflected in the manner of reportage and content of the programmes and that is not necessarily a bad thing...”* *“...The existence of a few videos with use of words listed in the written submissions of the plaintiff or articles and posts which have been in circulation for a few years now, do not, in the opinion of this Court, constitute exceptional circumstances for the issuance of directions in the nature of mandatory injunction.”*

- In the case of *Anamika vs. State of Kerala and Others. (W.P.(C) NO. 24571 OF 2022 (V))*, the High Court of Kerala has observed that due to the absence of a separate category in sporting events, the transgender persons shall be permitted to participate in their chosen category. In the present case, a Single-Judge Bench of Justice V.G. Arun was hearing a plea moved by a transwoman who wished to compete in a district-level Judo competition but was told by the organisers that transgender persons aren't allowed to participate in the event. Upon which the Court held that *“It is my considered opinion that a transgender person is having equal right to participate in competitions. Here, in the absence of any category for participating transgender persons, the petitioner is seeking to participate in her identity as woman. If the organisers have not made arrangements for*

*participating transgenders, then the petitioner will have to be permitted to participate in her chosen category...”*

- In the matter of *Sporta Technologies Pvt. Ltd. vs. Crichd and Ors. (CS (COMM) 470/2022)*, the High Court of Delhi has temporarily restrained about 26 (Twenty-six) rogue websites and mobile applications from unauthorizedly telecasting, broadcasting and streaming cricketing events and infringing the rights of Sports streaming platform 'FanCode'. A Single-Judge Bench of Justice Pratibha Singh observed that *“...Since a large number of sporting events are likely to be held over the currency of the present calendar year, an ex parte ad interim injunction deserves to be granted in order to ensure that the investment made by the Plaintiff in acquiring broadcasting rights to these events is not jeopardized in any manner. The Plaintiff has made out a prima facie case for grant of an injunction against all these rogue websites and mobile applications for blocking orders to be issued. If the interim injunction is not granted at this stage, irreparable injury would be caused to the Plaintiff...”*
- The High Court of Kerala in the case of *Kerala State Road Transport Corporation (“KSRTC”) vs. K. Venu Kumar & Ors. (WA NO. 896 Of 2022)* has held that the parties should be offered a hearing before a recovery proceeding as per principles of natural justice, even if a statute does not mandate for the same since such



proceedings may have legal and financial repercussions. A Division Bench of Justice A.K. Jayasankaran Nambiar and Justice C.S. Dias opined that *“...We are in complete agreement with the principle of law that the Government/ Administrative authority has the power to rectify mistakes at any time. The circumstances in which the recovery of excess amounts paid by mistake is not permitted is when the recovery would result in hardship of such nature which would far outweigh the equitable balance of the employer's right to recover. In other words interference would be called for only in such cases where it would be iniquitous to recover the payment made...”*

- The High Court of Allahabad in the case of *Ghulam Rasool Khan and others vs. State of U.P. and others (Criminal Appeal No. -1000 of 2018)* has clarified that Section 14A of

Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, 1989 puts no limitation on filing an appeal against an order under the provisions of the said Act. The Full Bench comprising of Chief Justice Rajesh Bindal, Justice Ajai Kumar Srivastava-I and Justice Saurabh Lavania observed that *“...while the constitutional and inherent powers of this Court are not “ousted” by Section 14A, they cannot be invoked in cases and situations where an appeal would lie under Section 14A. Insofar as the powers of the Court with respect to the revisional jurisdiction is concerned, we find that the provisions of Section 397 Cr.P.C. stand impliedly excluded by virtue of the special provisions made in Section 14A. This, we hold also in light of our finding that the word “order” as occurring in sub-section(1) of Section 14A would also include intermediate orders.”*



## NOTIFICATIONS/AMENDMENTS INSIGHTS

- Vide Notification no. 12 of 2022 and F. no. DGIT (S) / ADG(S) - I dated 26.07.2022, the Central Board of Direct Taxes (“**CBDT**”) has issued procedure of PAN application & allotment through Simplified Proforma for incorporating Limited Liability Partnerships (LLPs) electronically [Form: FiLLiP] of Ministry of Corporate Affairs. Subsequently, a Common Application Form (CAF) in the form of Simplified Proforma for incorporating Limited Liability Partnership (LLP) (Form - FiLLiP) has been notified by the Ministry of Corporate Affairs vide notification G. S. R. 173(E), dated 4.03.2022 and the Director General of Income-tax (Systems) has laid down the classes of persons, forms, format and procedure for Permanent Account Number (PAN) in the said circular.
- Vide Circular no. 17 of 2022 and F. no. 197/89/2022-IT A-I dated 19.07.2022, the Central Board of Direct Taxes (“**CBDT**”) has issued Condonation of delay under Section 119(2)(b) of the Income-tax Act, 1961 (“**IT Act**”) in filing of Form No. 9A and Form No. 10 for Assessment Year 2018-19 and subsequent years. As per the said circular, the Commissioners of Income-tax are authorized to admit applications of condonation of delay in filing Form No. 9A and Form No. 10 for A.Y. 2018-19 or for any subsequent Assessment Years where there is delay of up to 365 days and decide on merits.
- Vide Circular no. SEBI / HO / GSD / TAD / CIR / P / 2022 / 0097 dated 18.07.2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued Levy of Goods & Services Tax (“**GST**”) on the fees payable to SEBI. According to the said Circular, all the Market Infrastructure Institutions, Companies who have listed / are intending list their securities, other intermediaries and persons who are dealing in the securities market, are hereby informed that the fees and other charges payable to SEBI shall be subject to GST at the rate of 18% (Eighteen percent) with effect from 18.07.2022.
- Vide Circular no. SEBI / HO / MIRSD / SEC-5 / P / CIR / 2022 / 100 dated 27.07.2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued Implementation of Circular on ‘Guidelines in pursuance of amendment to SEBI KYC (Know Your client) Registration Agency (KRA) Regulations, 2011. Subsequently, an extension was granted by SEBI, whereby the clauses were to come into effect from 01.08.2022. In this regard, KYC records of all existing clients (who have used Aadhaar as an OVD) shall be validated within a period of 180 days from 01.11.2022 and the validation of all KYC records (new and existing) shall commence from November 01.11.2022.
- The Ministry of Corporate Affairs (“**MCA**”) vide Circular no. 08/2022



dated 26.07.2022 has issued Clarification on spending of CSR funds for "Har Ghar Tiranga" campaign. Subsequently, 'Har Ghar Tiranga', a campaign under the aegis of Azadi Ka Amrit Mahotsav, is aimed to invoke the feeling of patriotism in the hearts of the people and to promote awareness about the Indian National Flag. In this regard, it is clarified that spending of CSR funds for the activities related to this campaign, such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities, are eligible CSR activities under item no. (ii) of Schedule VII of the Companies Act, 2013 pertaining to promotion of education relating to culture.

- Vide Notification no. **RBI / 2022-23 / 94** dated 28.07.2022, the Reserve Bank of India ("RBI") has issued the Regulation of Payment Aggregators – Timeline for submission of applications for authorisation. As per the said Notification, the RBI has decided to allow another window to all such Payment Aggregators (existing as on 17.03.2020) to apply to RBI. They can apply by 30.10.2022 and shall have a net worth of Rs. Fifteen Crore as on 31.03.2022. They shall be permitted to continue their operations till they receive communication from RBI regarding the fate of their application. The timeline of March 31, 2023 for achieving the net worth of Rs. Twenty-five Crore shall, however, remain.



## DEALS THIS MONTH

- The Housing Development Finance Corporation (“**HDFC**”) is about to acquire its Housing Venture Capital subsidiary HVCL that was incorporated in 2004. HDFC will hold 80.5% (Eighty point Five per cent) equity share capital of HVCL by buying out State Bank of India's (“**SBI**”) 19.5% (Nineteen point Five per cent) stake in the company. After the proposed acquisition of shares, HVCL would become a wholly-owned subsidiary of the Corporation.
- Leading Media Company Disney Star Private Limited has outbid Sony Pictures Networks India (“**SPN**”) to pick up media rights of Cricket Australia (“**CA**”) for the next seven years which will include both television and digital rights, as well as clips and other footage, for the Indian subcontinent for around USD 280 million (Two hundred Eighty million USD). The deal will also include digital rights to the Big Bash League, the home-grown T20 format league of Australia, as well as women’s tournaments. The development came a month after Disney Star secured the TV rights of the Indian Premier League (“**IPL**”) for the next five years by bidding Rs 57.5 crore per match.
- Temasek and Zomato-backed logistics aggregator Shiprocket has acquired Omuni, the omni-channel technology business of apparel manufacturer and retailer Arvind Limited, for a total consideration of Rs 200 crore cash-and-stock deal. The acquisition will enable the Company, faster deliveries of shipments to consumers from the nearest store or warehouse. This marks another attempt by Shiprocket to double down on its direct-to-consumer (D2C) shipping business as well on boarding offline brands for their delivery requirements.
- The Indian multinational information technology company Infosys Limited is all set to acquire Denmark-based BASE life science Pharma and Technology experts for an amount of Rs. 875 crore in an all-cash deal. The acquisition will bring Infosys domain experts with commercial, medical, digital marketing, clinical, regulatory, quality knowhow and subsequently, deepen Infosys' expertise in the life sciences domain as well as strengthen its footprint across Europe. The acquisition will also help global life sciences companies realize business value from cloud-first digital platforms and data, to speed-up clinical trials and scale drug development
- Bengaluru based online tax filing service provider, Clear which was formerly known as ClearTax, has acquired company compliance automation platform CimplifyFive incorporated in 2014 for an undisclosed sum in an all cash-deal. CimplifyFive helps company secretaries automate compliance requirements with all the provisions of Companies Act, 2013, and Securities and Exchange Board of India’s (“**SEBI**”) Listing Obligations (“**LODR**”). The acquisition would allow US payments major Stripe-backed Clear to integrate compliance and governance management solutions to its existing finance cloud suite.



- Global business process management company WNS Limited is about to acquire Chennai - headquartered enterprise hyper automation services company Vuram for a consideration amount of USD 165 million including up-front payment and expected earn-outs, excluding adjustments for cash, debt, and working capital. Vuram offers end-to-end enterprise automation and the creation of custom, scalable BPM

solutions. These solutions include the ability to extract, collect, and categorize data using artificial intelligence (AI)-based document processing, develop rule-based processing engines and ML-based augmentation, and leverage advanced analytics. The acquisition will accelerate the organizational journey of the Company towards digitally-led, human-assisted services and solutions.



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