



SAGA LEGAL

# COMMUNIQUE

SEPTEMBER 2022



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## COURTS THIS MONTH

- The Supreme Court in the case of *Vishwanath Pratap Singh vs. Election Commission of India & Anr. (Special Leave to Appeal (C) No(s).13013/2022)* has held that the right to contest an election is neither a fundamental right nor a common law right but it is a right conferred under the statute, subject to restrictions. The Bench comprising of Justice Hemant Gupta and Justice Sudhanshu Dhulia while dismissing an appeal with cost observed that “...the petitioner did not have any right to contest election to the Rajya Sabha in terms of the law made by the Parliament. The Representation of People Act, 1950 read with the Conduct of Elections Rules, 1961 has contemplated the name of a candidate to be proposed while filling the nomination form. Therefore, an individual cannot claim that he has a right to contest election and the said stipulation violates his fundamental right, so as to file his nomination without any proposer as is required under the Act.”
- The Supreme Court in the case of *Sudhamayee Pattnaik vs. Bibhu Prasad Sahoo (Civil Appeal No. 6370 Of 2022)* held that the plaintiffs are the *dominus litis* and nobody can be permitted to be impleaded as defendants against the wishes of the plaintiffs, unless the court suo motu directs the same as per Order I Rule 10 of the Civil Procedure Code (“CPC”). In the present matter, the Bench comprising of Justice M.R. Shah and Justice Krishna Murari were dealing with a suit for declaration, permanent injunction and recovery of possession. The Court, herein, further observed that “...the defendants have also filed counter-claim for declaration of their right, title and interest over the suit property and permanent injunction and in case the counter-claim is allowed, as the plaintiffs are opposing to implead the subsequent purchasers as party defendants, thereafter it will not be open for the plaintiffs to contend that no decree in the counter-claim be passed in absence of the subsequent purchasers. Therefore, nonimpleading the subsequent purchasers as defendants on the objection raised by the plaintiffs shall be at the risk of the plaintiffs.”
- In the case of *M/s Shree Enterprise Coal Sales Pvt. Ltd. vs. Union of India & Anr (Civil Appeal No 6539 of 2022)* the Supreme Court whilst overruling the order passed by the Allahabad High Court stated that the disputes pertaining to tax concessions are not arbitrable. The Bench comprising of Justice D.Y. Chandrachud and Justice Hima Kohli observed that “...the appellant is not asserting a contractual claim in pursuance of the e-auction. Undoubtedly, a contractual dispute would be amenable to be resolved by arbitration. However, in the present case, as the reliefs which have been extracted above indicate, the dispute was not of that nature...”
- The Supreme Court in the case of *S.P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan (Criminal*



*Appeal No.1586 Of 2022*) held that a case under Section 138 of the Negotiable Instruments Act, 1881 (“**NI Act**”) against Director/Partner of the firm can only be quashed if there is unimpeachable and incontrovertible evidence that they were not concerned with issuance of the cheques. The Bench comprising of Justice Surya Kant and Justice J.B. Pardiwala observed that “...*Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners ‘qua’ the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.*”

- The Supreme Court in the matter of *State of Telangana vs. B. Subba Rayadu (Special Leave Petition (C) Nos. 1565-66 Of 2021)* has clarified that there is only one domicile, which is, the domicile of the country and there is no separate domicile for a State. The Bench comprising of Justice Indira Banerjee and Justice V. Ramasubramanian was dealing with an appeal challenging an order passed by the Telangana High Court and Andhra Pradesh High Court upholding an

officer’s pleas of the Animal Husbandry department to be posted in Telangana and not Andhra Pradesh post the bifurcation of the state under the Andhra Pradesh Reorganisation Act in 2014. The Court observed that “*The Andhra Pradesh State Reorganisation Act, 2014 or any other guidelines framed thereunder, including the guidelines circulated on 30.10.2014 cannot take away from citizens the right to reside and settle in any part of the country. It is true that when a State is divided and the employees and officers of the State Government have to be allotted to the two states, such allocation has to be done on the basis of the Rules and Regulations and by guidelines. 68. However, such rules, regulations and guidelines have to be construed harmoniously with the fundamental rights guaranteed under the Constitution of India...*”

- In the matter of *Kanchan Kumar vs. State of Bihar (Criminal Appeal No. 1562 of 2022)* the Supreme Court observed that while considering an application of discharge under Section 227 of the Code of Criminal Procedure, 1973 (“**Cr.P.C.**”), a simple and necessary inquiry shall be conducted to find out whether a prima facie case is made out. The Bench comprising of Justice B.R. Gavai and P.S. Narasimha observed that “*The threshold of scrutiny required to adjudicate an application under Section 227 of the Cr.P.C., is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any*



*infirmities appearing in the case.” “...the Special Judge (Vigilance) dismissed the discharge application on the simple ground that a roving inquiry is not permitted at the stage of discharge. What we have undertaken is not a roving inquiry, but a simple and necessary inquiry for a proper adjudication of an application for discharge. The Special Judge (Vigilance) was bound to conduct a similar inquiry for coming to a conclusion that a prima facie case is made out for the Appellant to stand trial. Unfortunately, the High Court committed the same mistake as that of the Special Judge”*

- The Supreme Court in the case of *Vinod Katara vs. State of Uttar Pradesh (Writ Petition (Criminal) No. 121 Of 2022)* has stated that lodging juveniles in adult prisons amounts to violation of their right to personal liberty on multiple aspects. The Bench comprising of Justice Dinesh Maheshwari and Justice J.B. Pardiwala was hearing a writ petition seeking appropriate directions to the respondent to verify the exact age of the convict on the date of the commission of the offence. Upon which, the Court observed that *“Awareness about the rights of the child and correlated duties remain low among the functionaries of the juvenile justice system. Once a child is caught in the web of adult criminal justice system, it is difficult for the child to get out of it unscathed. The bitter truth is that even the legal aid programmes are mired in systemic bottlenecks and often it is only*

*at a considerably belated stage of the proceeding that the person becomes aware of the rights, including the right to be differently treated on the ground of juvenility.”*

- The Supreme Court in the matter of *State of Rajasthan and Ors. vs. O.P. Gupta (Special Leave Petition (Civil) No. 16734 of 2022)* observed that when the Pension Rules are subject to more than one interpretation, the Courts shall lean towards the interpretation that is favouring the employee. The Bench of Justice Indira Banerjee and Justice J.K. Maheshwari was dealing with a writ petition challenging the order passed by the Rajasthan High Court. The Court observed that *“...the Respondent-Writ Petitioner is claiming pension, which is a lifelong benefit. Denial of pension is a continuing wrong. This Court cannot also be oblivious to the difficulties of a retired employee in approaching the Court, which could include financial constraints. It is settled law that when financial rules framed by the Government such as Pension Rules are capable of more interpretations than one, the Courts should lean towards that interpretation which goes in favour of the employee.”*
- The High Court of Kerala in the case of *Aisha vs. Xavier & Ors. (MACA NO.1524 OF 2012)* has ruled that if the owner of a vehicle is satisfied that the driver has a license and is driving competently, then there would be no breach of Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988, and therefore



- the Insurance Company would not be absolved from their liability to compensate the victim under the Act. A Single-Judge Bench of Justice Sophy Thomas remarked that *“...if it is found that the licence was fake, the Insurance Company will continue to remain liable, unless they prove that the owner-insured was aware or had noticed that the licence was fake and still permitted that person to drive. Even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured.”*
- The High Court of Madhya Pradesh in the matter of *Naresh Gyanchandani vs. Shri Rameshwar Sharma (Election Petition No. 16 of 2019)* has stated that the breach of moral code of conduct cannot be made a ground to declare an election as void under Section 100 of the Representation of the People Act, 1951. A Single-Judge Bench comprising of Justice Vishal Dhagat while dismissing the Appeal, observed that *“...No ground in election petition has been raised regarding disqualification. Petitioner in election petition has made a pleading under Section 100(1) (d) (ii) of Representation of the People Act, 1951. Petitioner has not made any pleading regarding 'corrupt practices' and has submitted that respondent election be declared void for breach of 'Moral Code of Conduct'. Ground raised in election petition is not a ground in Section 100 of Representation of the People Act, 1951 for declaring election void...”*
  - The High Court of Bombay in the case of *Ramani Suchit Malushte vs. Union of India and Ors. (Writ Petition No. 9331 of 2022)* has ruled that where an Order of Cancellation of Registration under the Central Goods and Services Tax Act, 2017 was uploaded on the GST Portal without signature, the limitation for filing an appeal cannot start at all until the signature is affixed on such order. The Division Bench composed of Justice K.R. Shriram and Justice A.S. Doctor remarked that *“...only on the date on which the signature of Respondent No.4 issuing authority was put on the order dated 14th November 2019 for the purpose of attestation, time to file appeal would commence...”* *“...unless digital signature is put by the issuing authority that order will have no effect in the eyes of law.”*
  - The High Court of Delhi in the case of *Canara Bank vs. The State Trading Corporation of India Ltd. & Anr. (FAO (OS) COMM. 17 of 2022)* has stated that in view of the limited scope of judicial review under Section 34 of the Arbitration and Conciliation Act, 1996, the Court cannot award interest to the claimant even though the claimant is entitled to pre-arbitration interest on the amount of counter-guarantee released in its favour, as the same would amount to modification of the award. The Division Bench of Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad observed that *“While the Arbitral Tribunal had also duly taken notice of the contentious issue, unfortunately, the award is*



entirely silent on this issue. In the considered opinion of this Court, the Ld. Arbitral Tribunal has committed a manifest error in not coming to any finding on this issue. In light of the facts, it is apposite to state that Canara Bank was entitled to interest for the pre-arbitration period as well, as also noted by the Ld. Single Judge. However, the power of the Ld. Single and this Court to interfere with the arbitral award halts at this juncture, considering the limited scope of Sections 34 and 37 of the Arbitration Act.”

- In the case of *Siddappa vs. State of Karnataka (Criminal Appeal No.200104 of 2017)*, the High Court of Karnataka clarified that “Section 106 of the Indian Evidence Act, 1872 will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused.” The Division Bench comprising of Justice H.B. Prabhakara Sastry and Justice Anil B. Katti while setting aside the order convicting the accused observed that “...the prosecution which primarily ought to have discharged its burden of establishing that accused and the deceased were living together, more particularly, on the date of the incident, as such, certain facts were exclusively to the knowledge of the accused, ought not to have expected the accused to explain the circumstances which had led to the murder of his wife Meenaxi. Thus, the application of Section 106 of

the Evidence Act and expecting the accused to discharge the alleged burden was totally uncalled for, in the facts and circumstance of the present case.”

- In the matter of *Smt. Aruna Mohanbabu Jaiswal and Anr. vs. The Collector, State Excise Department, Amravati and Ors. (Writ Petition No. 2723 of 2022)*, the High Court of Bombay held that a liquor license cannot be suspended on the mere ground of a family dispute between the legal heirs after the death of the license holder in partnership under the Maharashtra Prohibition Act 1949 and rules thereunder. A Single-Judge Bench of Justice Manish Pitale opined that “...suspension of the CL-III license in the present case is not justified and that in any case it does not ensure to the benefit of any party, including the State, which is likely to suffer loss of revenue during the suspension of the license and consequent closing down of the country liquor business.” “...suspending the CL-III license and bringing the business of country liquor, being run for a number of years, to a halt cannot be the solution.”
- The High Court of Bombay in the case of *Anuja Arun Redij vs. State of Maharashtra (Writ Petition No. 3116 of 2022)* has observed that the state is obligated to protect wildlife and its citizens and if the said wildlife causes injury to a person, it indicates the state government’s failure to protect the right to life guaranteed under the



Constitution. In the present case, a Division Bench of Justice G.S. Patel and Justice Gauri Godse was dealing with a writ petition filed by a widow challenging the State's refusal to compensate her for the death of her husband, who was attacked by a wild boar. The Court noted that *"...it is the duty of the concerned officer of the State Government to protect wild animals and not allow them to wander outside the restricted safety zone. Similarly, as a corollary duty, it is also*

*the obligation cast upon the concerned officers to protect the citizens from any injuries by the wild animals. Thus, it is a twin obligation of the State Government. The first to protect the wild life (wild animals) and the second to protect humans from any injuries caused by any wild animal. It is thus an obligation of the State Government to protect lives of the citizens guaranteed under Article 21 of the Constitution of India"*





## NOTIFICATIONS/AMENDMENTS INSIGHTS

- Vide Circular no. 18 of 2022 and F. no. 370142 / 27 / 2022-TPL dated 13.09.2022, the Central Board of Direct Taxes (“**CBDT**”) has issued additional guidelines for removal of difficulties under sub-section (2) of section 194R of the Income-tax Act, 1961 (“**IT Act**”). The said circular has been issued only for removing difficulties in the implementation of provisions of Section 194R of the IT Act and it does not impact the taxability of income in the hands of the recipient which shall be governed by the relevant provisions of the IT Act.
- Vide Circular no. SEBI / HO / MIRSD / DOP / P / CIR / 2022 / 117 dated 02.09.2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued a circular for performance / return claimed by unregulated platforms offering algorithmic strategies for trading. Accordingly, such stock brokers shall not directly or indirectly make any reference to the past or expected future return/performance of the algorithm, or associate with any platform providing any reference to the past or expected future return/performance of the algorithm and such stock broker shall remove the same from their website.
- Vide Circular no. AFD/P/CIR/2022/125 dated 26.09.2022, the SEBI has issued some modification in the Operational Guidelines for Foreign Portfolio Investors (“**FPIs**”), Designated Depository Participants (“**DDPs**”) and Eligible Foreign Investors (“**EFIs**”) pertaining to FPIs registered under Multiple Investment Managers (“**MIM**”) structure under the SEBI (FPIs), Regulations 2019. Accordingly, it has been decided to replace clause (i) of Para 4 of Part A of the with the following: *“Where an entity engages multiple investment managers (MIM) for managing its investments, the entity can obtain multiple FPI registrations mentioning name of Investment Manager for each such registration. Such applicants can appoint different DDPs for each such registration. Investments made under such multiple registrations shall be clubbed for the purposes of monitoring of investment limits.”*
- Vide Circular no. SEBI / HO / DDHS / DDHS\_Div3 / P / CIR / 2022 / 123 dated 22.09.2022, the SEBI has issued circular for listing of commercial paper by listed All Infrastructure Investment Trusts (“**InvITs**”). Accordingly, it has been decided that, InvITs shall abide by the guidelines prescribed by Reserve Bank of India for issuances of commercial papers, conditions of listing norms prescribed by SEBI under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 and circulars issued thereunder. The issuance of listed CPs shall be within the overall debt limit permitted under SEBI (Infrastructure Investment Trusts) Regulations, 2014.
- Vide Circular Ref. DOR.CRE.REC.66 / 21.07.001 / 2022-23 dated 02.09.2022, the Reserve Bank of India (“**RBI**”) has



issued the Guidelines on Digital Lending, which shall be applicable to the 'existing customers availing fresh loans' and to 'new customers getting onboarded', from the date of this Circular. Further, it has been reiterated that the outsourcing arrangements entered by Regulated Entities ("**REs**") with a Lending Service Provider ("**LSP**")/ Digital Lending App ("**DLA**")

does not diminish the REs' obligations and they shall continue to conform to the extant guidelines on outsourcing. Accordingly, The REs are advised to ensure that the LSPs engaged by them and the DLAs (either of the RE or of the LSP engaged by the RE) comply with the guidelines contained in the said circular.



## DEALS THIS MONTH

- The Edtech Unicorn Unacademy founded in 2015 has acquired a Bengaluru-based test prep start-up Gate Academy for an undisclosed amount. With this acquisition, Unacademy has expanded its presence into the graduate aptitude test in engineering (GATE) test prep category. In addition to the same, Unacademy has also launched 50 new education channels on YouTube to scale its access for millions of learners across academic and non-academic verticals.
- IppoPay, a Chennai-based payment gateway start-up for small businesses in Tier-2 and 3 cities has acquired AI-enabled risk management start-up Tutelar for an undisclosed sum. Tutelar enables AI-based risk-free on boarding, dispute resolutions, KYC fraud detection, transaction fraud detection, mis-selling prevention etc, benefiting not only the principals such as merchants and banks but also the intermediaries such as PAPGs (payment aggregators and payment gateways), issuers and fintechs and payments processors and switch networks. With this acquisition, Tutelar will help IppoPay in preventing fraudulent activities in the payment space
- A Payroll, Compliance, & HR consulting services company AscentHR has acquired Bengaluru-based fintech company Jofin (formerly known as My Wealth Junction) for an undisclosed amount. Jofin offers a platform that provides financial wellness solutions and addresses personal financial management. This acquisition is a conscious step toward AscentHR's aspiration for horizontal diversification into the fintech space, which complements the existing payroll and HR services stack. The acquisition also helps AscentHR quickly ramp up the diversification plans.
- Direct-to-customer (D2C) E-commerce roll up company Mensa Brands has acquired health food start-up MyFitness Sports Pvt. Ltd. founded in 2019 for an undisclosed sum, with an aim to make it an INR 1,000 crore brand in the next three-four years. The transaction will help Mensa Brands launch new categories, ramp up its D2C portfolio, invest in brand-building and expand to global markets.
- Asia's leading Edtech Company, UpGrad, founded in 2015 has acquired corporate training solutions leader Centum Learning founded in 2007 in a share swap deal. Centum offers impact-based training to corporates as well as vocational, and educational training to schools and college learners to make them either self-employed or meaningfully employed. Pursuant to this transaction, Bharti Enterprises Limited and its affiliates are joining upGrad's cap table.



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