Mr. Suman Jyoti Khaitan, Advocate, Founder of the Firm Suman Khaitan & Co., Advocates, New Delhi, is pleased to offer you the newsletter for the month of August 2023 published by Suman Khaitan & Co.

Suman Khaitan & Co. is a full-service law firm covering a comprehensive range of legal areas. The firm has been established with a view to blend the experience of several generations of lawyers with young talent with a dynamic business-oriented approach.

The newsletter is a compilation of judgments and recent news associated with the legal industry.

We heartily thank all the readers for their warm response and welcome your views, comments, and suggestions on the cases, content, and further improvement of the newsletter. Furthermore, if you would like any other information from the legal world to be made available to you, please do write to us at info@sumankhaitanco.in

Happy Reading!

NEWSLETTER

AUGUST 2023

Suman Jyoti Khaitan
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ARBITRATION:

- In *EDAC Engineering v. Industrial Fans (India) Pvt Ltd.*[1] the Hon'ble High Court of Madras has clarified that the arbitral tribunal possesses a lien on the award to cover any outstanding arbitration costs, and it has the authority to withhold the award's delivery until these costs are settled. Additionally, the Court emphasized that once a party unconditionally accepts the fees set by the tribunal during arbitration, they cannot later challenge the fees as unreasonable and request the release of the lien under the Arbitration and Conciliation Act, 1996.

- In *Amit Guglani v. L&T Housing Finance*[2] the Hon'ble High Court of Delhi has observed that where there are two agreements which are connected and interlinked and both contain arbitration clauses, which are not similar to one another, in order to determine the nature of the arbitral proceedings, the two documents have to be read in harmony or reconciled and parties should get the disputes resolved under the main or umbrella agreement.

- In *Ministry of Youth Affairs and Sports v. ERNST and YOUNG Pvt. Ltd*.[3] the Hon'ble High Court of Delhi has held that when service by email is an accepted mode of service, then sending scanned signed copy of the award/order of the Arbitral Tribunal to the parties would be a valid delivery as envisaged under the Arbitration and Conciliation Act, 1996.

INSOLVENCY AND BANKRUPTCY:

- In *Indian Overseas Bank v. M/s. Rathi TMT Saria Pvt. Ltd. & Ors.*[4], the National Company Law Appellate Tribunal has held that when Resolution Plan is approved by the Committee of Crditors ("CoC") and is pending consideration before the Adjudicating Authority, CoC cannot be allowed to hold the meeting for the purpose of considering other Plans.

[1] Application No.s 2080 and 4609 of 2021.
[2] ARB.P. 1317/2022.
[3] O.M.P. (COMM) 377/2018.
[4] Comp. App. (AT) (Ins) No.1134 of 2023.

- In *Amluckie Investment Company Limited v. Skill Infrastructure Limited*[5], the National Company Law Tribunal, Mumbai Bench, has held that the Insolvency and Bankruptcy Code, 2016 does not contain any provision for restoration of Corporate Insolvency Resolution Process ("CIRP") which has once been closed by the Tribunal. If liberty is given to restore the company petition in case settlement between parties fail, then that would mean restoration of the petition for fresh admission and not restoration of the CIRP.

DIRECT TAXATION:

- In *DCIT v. Total Energies Marketing India Pvt. Ltd.*[6] the Income Tax Appellate Tribunal, Mumbai Bench, has observed that the basic objective of Tax Deducted at Source ("TDS") is to pay tax as you earn, and the taxes are not required to be deducted at source at the time of grant of an Employee Stock Option ("ESOP"), but at the time the option is exercised by employees of the assessee and shares are allotted to the employees, because at that time it is taxable in the hands of employees.

- In *Pr. Commissioner Of Income Tax -1, Chandigarh Versus M/S Kuantum Papers Ltd.*[7] the Hon'ble High Court of Delhi observed that brand names are included under the expression "trademarks" and are amenable to depreciation under the Income Tax Act, 1961.

- In *Sant Kabir Mahasabha v. The CIT (Exemption)*[8], the Income Tax Appellate Tribunal, Chandigarh Bench, has held that merely uploading of information about the date of hearing on the Income Tax Portal is not an effective service of notice as per the provisions of the Income Tax Act, 1961.

[5] CP (IB) No.834/MB-IV/2020.
[6] ITA Nos. 127 to 133/MUM/2023.
[7] 2023:DHC:6548-DB.
[8] ITA No 84/CHD/2023.

INDIRECT TAXATION:

- In *M/S Frequent Logistics Services Pvt. Ltd. v. Commissioner Goods and Service Tax Department and Ors.*[9] the Hon'ble High Court of Delhi has observed that the Show Cause Notice must clearly indicate the reasons for which GST registration cancellation is proposed.
- In *M/S. Hanuman Enterprises Pvt. Ltd. v. The Additional Director General Directorate General of GST Intelligence & Ors.,*[10] the Hon'ble High Court of Delhi has ruled that the Directorate General of Goods and Service Tax Intelligence ("DGGI") cannot be stopped from taking intelligence-based enforcement action when investigations by other authorities are going on.

INTELLECTUAL PROPERTY RIGHTS:

- In *Sun Pharma Laboratories Ltd. v. Finecure Pharmaceuticals Ltd. & Ors.*[11], the Hon'ble High Court of Delhi has held that the rights to claim exclusivity over the trademark and to obtain relief against its infringement, as envisaged under the Trade Marks Act, 1999, are conditional on the trademark registration being valid.

[9] W.P.(C) 11311/2023.
[10] W.P.(C) 2900/2023.
[11] CS(COMM) 283/2023.