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 May 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

MAY 2023

Suman Jyoti Khaitan
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ARBITRATION:

- In *M/S Imagine Fashion Apparels Pvt. Ltd. v. Presiding Officer Commercial Court and Anr.*[1] the Hon'ble High Court of Allahabad observed that a Commercial Court cannot reject an application for execution of arbitral award filed where the Judgment Debtor resides on the ground of lack of territorial jurisdiction.

- In *Indian Oil Corporation v. Sathyanarayana Service Station*[2] the Hon'ble Supreme Court of India held that after setting aside the award, the Court cannot proceed to grant further relief by modifying the award.

- In *M/s. Shree Vishnu Constructions vs The Engineer in Chief Military Engineering Service & Ors.*[3] the Hon'ble Supreme Court of India has held that in a case where the notice invoking arbitration is issued prior to the Arbitration and Conciliation (Amendment) Act, 2015 and the application for appointment of an arbitrator is made post the Amendment Act, 2015, the provisions of pre-Amendment Act, 2015 shall be applicable and not the Amendment Act, 2015.

INSOLVENCY AND BANKRUPTCY:

- In *M.K. Rajagopalan v Dr. Periasamy Palani Gounder*[4] the Hon'ble Supreme Court of India ruled that the principle of 'Commercial Wisdom' of the Committee of Creditors ("CoC") cannot brush aside the shortcomings of the CoC in cases where decision making was done in contravention to a law which is in force for the time being.

- In *Sanket Kumar Agarwal & Anr v. APG Logistics Private Limited*[5] the Hon'ble Supreme Court of India held that the time taken in preparation of certified copies and the day on which Order is pronounced have to be excluded from computing period of limitation in an Appeal from Order of the National Company Law Tribunal to the National Company Law Appellate Tribunal.

1 2023:AHC:109515
2 (2021) 9 SCC 1
3 Civil Appeal No. 3461 of 2023
4 C.A. No. 1756/2022.
5 Civil Appeal No. 748/2023

- In *Vikash Kumar Mishra & Ors. v. Orbis Trusteeship Service Pvt. Ltd. & Anr*6 the National Company Law Appellate Tribunal, New Delhi Bench, held that no intervention Application by the homebuyers is maintainable until the Petition for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Codes, 2016 gets admitted. The right to file such Application would accrue after admission of the Petition.

MERGERS OR ACQUISITIONS:

- "Pluckk", a digital lifestyle-oriented fresh food brand in the fruits and vegetables (F&V) space, has acquired "KOOK", an Indian food-tech startup that offers a range of Do-It-Yourself (DIY) meal kits.
- "Bonatra", a healthcare startup has acquired women's health and wellness company "MyAva". Through this acquisition, Bonatra aims to expand its holistic healthcare programmes and become a one-stop platform for the management of chronic health conditions.
- "BharatPe", a fintech platform, has acquired majority stake in "Trillion Loans", a Mumbai-based Non-Banking Financial Company (NBFC) to boost its lending business.

INTELLECTUAL PROPERTY RIGHTS:

- In *M/s Mangalore New Sultan Beedi Works v. State of Karnataka & Others*[7] the Hon'ble High Court of Karnataka observed that the Copyright Act, 1957 provides for both, civil remedy as well as filing of criminal prosecution. Merely because a civil dispute is ongoing between the parties, the criminal proceedings cannot be halted.

- In *Abu Dhabi Global Market v The Registrar of Trademarks, Delhi*[8] the Hon'ble High Court of Delhi held that an application for registration of trademark cannot be rejected on the ground that the mark is neither coined nor invented. Distinctiveness is a pre-requisite for registration of a mark but inventiveness is not. Inventiveness is required for registration

6 Comp. App. (AT) (Ins) No. 246 of 2023.
7 WP No. 10870 of 2023
8 2023:DHC:3476.

of a design or a patent, under the Designs Act, 2000 and the Patents Act, 1970, respectively.

INDIRECT TAXATION:

- In *M/s DEN Networks Limited v. The State of Bihar*[9] the Hon'ble High Court of Patna ruled that the power to collect entertainment tax no longer vests in the State after the 101st Constitution Amendment Act and the power to levy and collect entertainment tax is bestowed only upon local self-government institutions.
- In *M/s Champion Flavours, Meerut v. Commissioner CGST, Jammu*[10] the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Chandigarh Bench, has held that interest on delayed service tax refunds is payable on the expiration of 3 months from the date of application of refund.

THE COMPETITION COMMISSION OF INDIA ("CCI"):

- The CCI vide Press Release No. 07/2023-24 approved the acquisition of 100 percent of the shareholding of Tower Vision India Private Limited (Target) by Ascend Telecom Infrastructure Private Limited and GIP EM Ascend 2 Pte. Ltd. (Acquirers). The Acquirers are entirely owned by funds/investment vehicles managed by entities that are ultimately controlled by Global Infrastructure Management LLC.
- The CCI vide Press Release No. 08/2023-24 approved the acquisition by Mr. Sanjay Chamria of an aggregate of 11,500 equity shares of Jaguar Advisory Services Private Limited (Jaguar) held by Poonawalla Fincorp Limited and HDI Global SE, constituting 51.11% of the total equity share capital of Jaguar resulting in an indirect acquisition by Mr. Sanjay Chamria of approximately 5.44% of the equity share capital of Magma HDI General Insurance Company Limited.

EMPLOYMENT AND LABOUR:

- In *Badam Verva v. Delhi Building And Other Construction Workers Welfare Boards & Anr.*[11] the Hon'ble High Court of Delhi observed that the right of pension of construction

9 Civil Writ Jurisdiction Case No.24647 of 2019
10 Excise Appeal No. 60394 Of 2022.
11 W.P.(C) 15061/2022.

workers cannot be deprived of, merely due to hyper-technical issues or requirements such as production of original MR Slips or serial number of the notary records.

- In *S Raja v M/s.Hindustan Unilever Ltd and another*[12] the Hon'ble High Court of Madras observed that use of abusive language is not of such a serious nature so as to impose the "capital punishment" of dismissal from service.

[12] W.A.No.1835 of 2021.