

# NEWSLETTER

FEBRUARY, 2022

## EDITOR'S DESK



Mr. Suman Jyoti Khaitan, Founder & CEO of Suman Khaitan & Co., Advocates, New Delhi, an Indian Law Firm is pleased to offer you the newsletter for the month of February, 2022 published by the Suman Khaitan & Co.

The newsletter is a compilation of news items, national and international, related to field of Arbitration, Data Privacy, Corporate, Taxation, Merger - Acquisitions and recent news associated with legal industry.

We heartily thank all the readers for their warm response and welcome your further views, comments and suggestions on the cases, contents 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 in to us on [info@sumankhaitanco.in](mailto:info@sumankhaitanco.in)

Happy Reading!

With warm regards,

(Suman Jyoti Khaitan)  
Editor

Co-Editor:  
Mr. Saurabh Kumar Yadav  
Ms. Vibhana Anand

**SUMAN KHAITAN & CO.**

ADVOCATES

## **ARBITRATION:**

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- ❖ An international arbitration centre will be established in GIFT (Gujarat International Finance Tec-City) to ensure the fast disposal of international disputes. Various Foreign universities and institutions will be asked and allowed to offer courses in Financial Management, FinTech, Science, Technology, Engineering, and Mathematics at the Centre.
  
- ❖ The 3-Judge bench of Chief Justice of India N.V. Ramana, Justice A.S. Bopanna and Justice Hima Kohli in the case of UHL Power Company Ltd. Vs. State of Himachal Pradesh reiterated that the post-award interest can be granted by an arbitrator on the interest amount awarded. The findings of the appellate court were quashed and set aside wherein it was recorded that the arbitral tribunal was not empowered to grant compound interest or interest upon interest and only simple interest can be awarded in favour of UHL on the principal amount.
  
- ❖ Indian government will oppose international award granted to the Bengaluru-based Devas Multimedia Ltd. As per 2005 agreement, Antrix, the commercial arm of the ISRO had agreed to build, launch and operate two satellites and lease out 90% of the satellite transponder capacity to Devas. However, then existing government cancelled the deal in 2011, but Devas challenged the decision and was awarded 150 billion rupees (\$2 billion).
  
- ❖ International Chamber of Commerce gave new report, reflecting how technology is a new aid for fair, effective and efficient international arbitration proceedings. Impact of COVID-19, has accelerated the technological development and it is essential that the arbitration community assess how they can best utilize digital tools and solutions to meet today's challenges and future demands on arbitration.
  
- ❖ Bharat Pe Cofounder and Managing Director Ashneer Grover failed to secure the relief from the Singapore International Arbitration Centre (SIAC), SIAC allowed probe into alleged financial irregularities and governance lapses at Bharat Pe.

- ❖ The High Court of Delhi in the case of Cars24 Services Pvt. Ltd. Vs Workspace LLP held that exclusive jurisdiction clause in the arbitration agreements will prevail over existing seat clause present in the agreements.
- ❖ Supreme Court in the case of M/s N.N. Global Mercantile Pvt Ltd. v. M/s Indo Unique Flame Ltd. & Ors. held that non-payment of stamp duty on the underlying contract does not affect the validity of the arbitration agreements.

## **COMPETITION:**

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- ❖ Competition Commission of India approves acquisition by GlaxoSmithKline Consumer Healthcare Overseas Limited and GlaxoSmithKline Consumer Healthcare UK Trading Limited (Acquirers) of shareholding in GlaxoSmithKline Asia Private Limited (Target) under Section 31(1) of the Competition Act, 2002 on 21st January 2022.
- ❖ The Competition Commission of India approves acquisition of shares of Future Generali India Life Insurance Company Limited (FGLIC) by Generali Participations Netherlands N.V (GPN), The acquisition will increase GPN's shareholding in FGLIC to 71% from 49%.
- ❖ Competition Commission of India has approved acquisition of shareholding in Air India Limited, Air India Express Limited and Air India SATS Airport Services Private Limited by Talace Private Limited on 20th December 2021.
- ❖ Competition Commission of India approves acquisition of 96.42% equity shareholding in Jindal Power Limited by Worldone Private Limited on 30th December 2021.

## **CRYPTOCURRENCY:**

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- ❖ Union Minister for Finance and Corporate Affairs Smt. Nirmala Sitharaman while presenting the Union Budget in Parliament introduced that income from the transfer of digital assets such as cryptocurrency will be taxed at a rate of 30%. Except for the expense of acquiring digital assets, no deductions will be allowed. Losses on the sale of digital assets cannot be offset against other sources of income. TDS of 1% will be imposed if the threshold is exceeded. Gifts of digital assets will be taxable on the receiver's end.
- ❖ Several crypto exchanges are apprehensive and moving their bases out of the country. As they fear that investors might move to Chinese crypto market due to the 30% tax proposal on digital assets. In 2018, when RBI banned cryptocurrencies in India, several exchanges moved out of India and set up their bases in countries inclined towards promotion of-crypto markets.

## **DATA PRIVACY:**

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- ❖ On 16 December 2021, the Joint Parliamentary Committee published its report on PDPB, 2019 along with the finalised Data Protection Bill, 2021. The Joint Parliamentary committee has recommended inclusion of non-personal data within the scope of the new bill. The timeline for reporting breach has been defined as within 72 hours of becoming aware of a breach. A provision has been added where the Data Protection Authority can direct the data fiduciary to implement urgent mechanism to remedy such a breach or mitigate any harm caused to the data principal. In addition, various compliances for business had been introduced which they need to comply with if they want to do business in India.
- ❖ Facebook, now renamed as Meta Platforms, is facing a £2.3 billion plus (\$3.2 billion plus) class action in Britain over allegations of abusing its market dominance by exploiting the personal data of 44 million users for its specific business purposes.

- ❖ Twitter is concerned about its data protection compliance, and the possibility of India imposing a fine on the company in response to its failure to remove certain types of content not in compliance with upcoming Data Protection Bill.
- ❖ Meta Platforms formerly known as Facebook is concerned about India's upcoming privacy legislation which seeks local storage and in-house processing of data. It feels that India's proposal would trigger enhanced privacy rules for people under age 18, requiring firms to verify a child's age and obtain parental consent before processing any personal data.
- ❖ The United Arab Emirates ("UAE") has introduced its first data protection law; the Federal Decree-Law No. 45 of 2021 on the Protection of Personal Data on 27th November 2021.

## **EMPLOYMENT:**

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- ❖ The Hon'ble Punjab and Haryana High Court stayed the implementation of the Haryana State Employment of Local Candidates Act, 2020 by an interim order dated 3rd February, 2022. The matter is now pending before the Hon'ble Supreme Court.

## **INSOLVENCY AND BANKRUPTCY:**

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- ❖ Operational creditor under the Insolvency and Bankruptcy code includes purchaser of goods and services. On 4<sup>th</sup> Feb, 2022, in the matter of Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd, it was held that the definition of Operational Creditor under the code encompasses purchaser of goods and services.

- ❖ In the case of Hasan Shafiq v. CT– Technologies Aps and Anr, NCLT via its order dated 14.02.2022 held that an arbitration clause in the contract does not bar a creditor from making an application to initiate Corporate Insolvency Resolution Process of its corporate debtor.

## **INFRASTRUCTURE:**

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- ❖ The Ministry of Power, Government of India issued the 'Charging Infrastructure for Electric Vehicles (EV) – revised Guidelines on January 14, 2022. The Guidelines seek to amend the existing guidelines. The Guidelines are: (a) Owners can charge their EVs at their residence/office using existing electric connections; (b) Any individual/entity can set up public charging stations that meet the applicable technical, safety and performance standards.
- ❖ The Ministry of Road Transport & Highways, Government of India, vide circular no. COVID19/RoadMap/JS(H)/2020 dated January 04, 2022, has provided relief measures to Contractors/Bidders. In order to improve liquidity of the funds available with the contractors and bidders, the relaxation in Schedule H/G of model concession agreements for road projects has been extended till March 31, 2022.

## **MERGER AND ACQUISITIONS:**

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- ❖ SEBI has amended the SAST (Substantial Acquisition of Shares and Takeovers) Regulations which came into effect from 6th December. The promoters or acquirers have to disclose their intention to delist the firm through an initial public announcement (IPO). The revised rules and regulations aim to make merger and acquisition (M&A transactions) for listed companies a more practical, logical, rational and convenient, balancing the interest of all investors in the process.

- ❖ M2P Fintech, a Chennai-based application programming interface (API) infrastructure company, on 16th February announced that it has signed a definitive agreement to acquire BSG ITSOFT, a leading provider of core banking solutions.
- ❖ Logistics services aggregator Shiprocket on 14th February announced that it has acquired a majority stake in supply chain management company Glaucus Supply Chain Solutions. The companies have agreed to merge eventually.
- ❖ Tech Mahindra Acquires 100% stake in Activus Connect, a Leading Provider of Work at Home Customer Experience Management Solutions.

## **TAXATION:**

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- ❖ The CBDT vide Circular No. 5/2012, dated 01-08-2012, stated that expenses incurred by pharmaceutical and health sector industries in the distribution of freebies, donations and gifts to medical practitioners/doctors are not eligible for deduction under Income Tax Act. The benefit of the deduction cannot be claimed, as it is denied in view of Explanation 1 to Section 37(1) of Income Tax Act. The Supreme Court of India further clarified the controversy. The Apex Court held that when acceptance of freebies is punishable under Indian Medical Council Regulations, pharmaceutical companies cannot be granted the tax benefit for providing such freebies.
- ❖ Gujarat high Court in the case of Samay Alloys India (P.) Ltd. v. State of Gujarat, has held that blocking of Electronic Credit Ledger and insertion of negative balance in the ledger, when no ITC was available is without jurisdiction and illegal. Rule 86 allows the officer to disallow debit from Electronic Credit Ledger for a limited period of time and not to make debit entries in ECL. The Department has no power to freeze credit to be availed in future.

## **BUDGET HIGHLIGHTS:**

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- ❖ There is amendment in definition of income tax authority under section 133A of the IT Act. It is amended to include the positions subordinate to Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner, as the case may be, specified by CBDT. This shall ensure the flexibility in conducting proceedings under the IT Act.
- ❖ Concessional customs duty on import of capital goods to be phased out, the initial rate of 7.5% to be imposed.
- ❖ States to get Rs 1 lakh crore as 50-year interest-free loans to help fund PM Gati Shakti-related investments.
- ❖ Levying additional excise duty at Rs.2 per litre on unblended fuel to encourage fuel blending.
- ❖ Increase the threshold of employer's contribution to the National Pension Scheme (NPS) Tier-I account from 10% to 14%.
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- ❖ Sections 16, 34, 37, 39, and 52 of the Central Goods and Services Tax Act have been amended significantly. The deadline for making modifications, corrections, uploading missing sales invoices or notes, or claiming any lost Input Tax Credit or ITC for one financial year is no longer September 30th, but November 30th of the following year.
- ❖ Cancellation of GSTIN by official is now allowed under Section 29 of the CGST Act. A composition taxable person's registration may be revoked if he fails to file an annual return for three months after the due date of April 30th of the following year. Similarly, for any other taxpayer, the six-month consecutive return-filing default is substituted with a consecutive tax-period default as determined by the IRS.



- ❖ Operation Green scheme to be extended to 22 perishable products, to boost agriculture and allied products.
- ❖ The residency limit for an Indian citizen has been reduced from 182 days to 120 days for setting up of an OPC. In turn allowing Non-Resident (NRIs) to incorporate OPCs in India.