

NEWSLETTER

APRIL 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 April 2022 published by the Suman Khaitan & Co.



The newsletter is a compilation of news items, national and international, related to field of Arbitration, Insolvency, Intellectual Property, Competition, Indirect 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

Happy Reading!

With warm regards,

(Suman Jyoti Khaitan)
Editor

Co-Editor:
Ms. Surabhi Chhabra

SUMAN KHAITAN & CO.

ADVOCATES

ARBITRATION:

- ❖ On 14th April 2022, the Union Minister for Law and Justice inaugurated the new premises of the Jammu and Kashmir International Arbitration Centre (JKIAC).

- ❖ The Single Bench in the case of Parenteral Drugs (India) Limited v. Gati Kintetsu Express Pvt Ltd.¹, the Hon'ble Madhya Pradesh High Court held that even if a party disputes the existence of an arbitration agreement, an application under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside an arbitral award cannot be filed in a Court not having jurisdiction under the arbitration agreement, solely on the ground that cause of action arose within its jurisdiction.

- ❖ In the matter of National Highways Authority of India v. Continental Engineering Corporation (CEC),² the Hon'ble Delhi High Court observed that failure of the contractor to issue notice under the contract does not deprive him of his right to claim additional payment before the arbitral tribunal.

- ❖ In the matter of M/s. Satyen Construction v. State of West Bengal & Ors.,³ the Hon'ble Calcutta High Court analysed the scope of section 9 of the Arbitration and Conciliation Act and held that scope of Section 9 does not include the right to withdraw the amount the deposited amount by the judgment debtor as it does not constitute an interim protection.

¹ Arbitration Appeal No. 16 of 2022.

² 2022 SCC OnLine Del 1051.

³ MANU/WB/0513/2022.

- ❖ In the matter of Future Market Networks Limited v. Laxmi Pat Surana & Anr.,⁴ the Hon'ble Calcutta High Court held that post-award interest is a mandate of the Arbitration and Conciliation Act and therefore should be given due weightage.

COMPETITION:

- ❖ On 04.04.2022, The Competition Commission of India via Press Release No. 02/2022-23 approved the acquisition of certain compulsorily convertible preference shares of Hero FinCorp Limited (Target) by AHVF II Holdings Singapore II Pte. Ltd. (Acquirer) under Section 31(1) of the Competition Act, 2002.
- ❖ On 18.04.2022, The Competition Commission of India via Press Release 04/2022-23 approved acquisition of minority stake of BDR Pharmaceuticals International Private Limited (BDR/Target) by Multiples Private Equity Fund III, SRF Transnational Holdings Limited (SRF Transnational), Balkrishna Industries Limited (BIL), Dharmayug Investments Limited (DIL), QRG Investments and Holdings Limited (QRG), Mr. Nishant K. Agarwal and Ms. Mallika Srinivasan (Acquirers).
- ❖ The Competition Commission of India via Press Release No. 03/2022-23 announced that a final order against 11 companies/firms which were found to have contravened sections 3(3)(a), 3(3)(b), 3(3)(c) and 3(3)(d) read with Section 3(1) of The Competition Act, 2002, which proscribe anti-competitive agreements has been issued. The companies/firms are found to have been indulged in supply of High Performance Polyamide Bushes and Self Lubricating Polyester Resin Bushes to the Indian Railways through directly or indirectly determining prices, controlling supply and market, allocating tenders, co-ordinating bid prices and manipulating the bidding process.

⁴ MANU/WB/0625/2022.

- ❖ The Competition Commission of India has revised the Long Form of Merger & Acquisitions, i.e. Form II vide Notification no. CCI/CD/Amend/Comb. Regl./2022. The revised Form II will be effective from 1st May 2022.

EMPLOYMENT AND LABOUR:

- ❖ On 06.04.2022, the Hon'ble Gujarat High Court in the case of Sardar Patel Seva Trust v. The Regional Provident Fund Commissioner II⁵ restrained the Regional Provident Fund Commissioner from initiating recovery proceedings against an employer under the Employee's Provident Fund and Miscellaneous Act, 1952, citing non-availability of the Central Government Industrial Tribunal, Ahmedabad.
- ❖ In the matter of Indira Gandhi Centre for Atomic Research v. D Ganeshlan and Anr.⁶ the Hon'ble Madras High Court pronounced through its order that appointment through fake caste certificate is 'void ab initio' and thereby ordered compulsory retirement of the employee.

INSOLVENCY AND BANKRUPTCY:

- ❖ In the matter of Steel Strips Wheels Ltd. v. Shri Avil Menezes, Resolution Professional of AMW Autocomponent Ltd. & Ors.,⁷ the National Company Law Appellate Tribunal held that once Committee of Creditors has already approved the Resolution Plan by requisite votes, after the expiry period of the CIRP it cannot consider a fresh Resolution Plan which might be a better plan.

⁵ MANU/GJ/0984/2022.

⁶ W.P. No. 54 of 2020.

⁷ MANU/NL/0269/2022.

- ❖ In the matter of Coworking Spaces Smarkworks Pvt. Ltd v Turbot HQ India Pvt. Ltd.⁸ an order was passed by the NCLT Cuttack on 08.04.2022 holding that Corporate Insolvency Resolution Process ("CIRP") cannot be initiated based on undecided claims and/or unstamped and unregistered agreements, for which registration is compulsory.

- ❖ In the matter of Pramod Sharma v Karanaya HeartCare Pvt. Ltd.,⁹ the NCLAT Principal Bench on 21.04.2022 has held that 'Share Application Money' cannot be treated as a financial debt in order to initiate Corporate Insolvency Resolution Process ("CIRP") under Section 7 of the Insolvency and Bankruptcy Code, 2016.

- ❖ The NCLT, Amravati Bench in M/s Pridhvi Asset Reconstruction and Securitisation Company Ltd. v. M/s Andhra Cements Ltd.¹⁰ initiated CIRP against Andhra Cements Ltd and appointed Mr. Nirav Kirit Pujara as Interim Resolution Professional.

- ❖ In the matter of IndusInd Bank Ltd. v. Mr. Rajendra K Bhuta¹¹ the NCLAT principal bench held that during the period of stay on CIRP, Resolution Professional is not entitled for professional fees.

INDIRECT TAXATION:

-
- ❖ The Karnataka Authority of Advance Ruling in Advance Ruling No. KAR ADRG 11/2022 ruled that 5% GST is payable on computer software supplied to public-funded research institutions.

⁸ CP (IB) No 181/CB (2020).

⁹ Company Appeal (AT) (Insolvency) No. 426 of 2022.

¹⁰ CP (IB) No. 37/7/AMR.2022.

¹¹ Company Appeal (AT) (Insolvency) No. 177 of 2022.

DIRECT TAXATION:

- ❖ The Central Government vide Central Board of Direct Taxes Notification dated 22.04.2022 amended Rule 17C of the Income Tax Rules, 1962 which provides for forms or modes of investment or deposits by a charitable or religious trust or institution through Income-tax (10th Amendment) Rules and added clause (vb) regarding investment by a person authorised under section 4 of the Payment and Settlement Systems Act, 2007.
- ❖ In the matter of Wipro Finance Ltd. vs Commissioner of Income Tax,¹² the Hon'ble Supreme Court in its order held that loss suffered due to exchange fluctuation while repaying loan can be regarded as revenue expenditure and thus an allowable deduction.

INTELLECTUAL PROPERTY LAW:

- ❖ On 19.04.2022, in the matter of Britannia Industries Ltd. v. Parle Biscuits Pvt. Ltd. & Anr.,¹³ the Hon'ble Delhi High Court granted relief to Britannia by directing Parle to modify two of its advertisements with regard to trademark infringement.
- ❖ On 25.04.2022, the Hon'ble Delhi High Court in the matter of The British School Society v. Sanjay Gandhi Educational Society & Anr.,¹⁴ directed the defendants to change names of 4 schools run by them, purportedly using identical name w.e.f 01.05.2022.

❖

¹² MANU/SC/0528/2022.

¹³ CS (COMM) 129/2021 & I.A. 14331/2021.

¹⁴ MANU/DE/1333/2022.

- ❖ In the matter of Red Bull AG v. PepsiCo India Holdings Pvt. Ltd. & Anr.,¹⁵ the Hon'ble Delhi High Court refused to restrain PepsiCo from using the tagline 'STIMULATES MIND. ENERGIZES BODY' while selling its energy drink 'Sting'.
- ❖ In the matter of Sirona Hygiene Private Limited v. Parulben Navnath Chothani Trading as Shiv Enterprise & Ors.¹⁶ the Hon'ble Delhi High Court through its order observed that sale of counterfeit products has become prolific on internet and needs to be arrested to protect owners of trademark and customers who purchase such products.
- ❖ In the matter of HT Media Limited & Anr. v. Dipali Santosh Rao & Ors.¹⁷ the Hon'ble Delhi High Court granted ex-parte interim injunction in favour of HT Media Ltd. against party using a deceptively similar logo as well as domain name.
- ❖ In the matter of Universal City Studios LLC & Ors. v. Vegamovies.run & Ors.¹⁸ the Hon'ble Delhi High Court ordered blocking of 12 websites for illegally streaming and making available to public original content of Universal City Studios LLC without its authorization.

MERGER AND ACQUISITIONS:

- ❖ On 4th April 2022, HDFC Limited, India's largest Housing Finance Company announced a merger with HDFC Bank, India's largest private sector bank. As per the proposed scheme of amalgamation, the subsidiaries and associates of HDFC Ltd will be transferred to HDFC Bank.

¹⁵ MANU/DE/1112/2022.

¹⁶ CS(COMM) 260/2022.

¹⁷ CS (COMM) 249/2022.

¹⁸ CS (COMM) 265/2022.

- ❖ Unecops Business Solutions, a leader in Business Automation Services has announced its acquisition of digiCloud, a Salesforce Partner based in Pune, India.
- ❖ Air India Ltd. has proposed to acquire AirAsia (India) Limited and the proposed combination is currently under review by the Competition Commission of India.

SECURITIES AND EXCHANGE BOARD OF INDIA

- ❖ On 04.04.2022, the Securities and Exchange Board of India via Press Release No. 10/2022 constituted an ad-hoc Committee with the objective to further strengthen governance of Market Infrastructure Institutions (MIIs).