



## NEWSLETTER

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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 2022 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](mailto:info@sumankhaitanco.in)

Happy Reading!

## **ARBITRATION:**

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- ❖ In *Yashovardhan Sinha HUF v. Satyatej Vyapaar Pvt. Ltd.*<sup>1</sup> the Hon'ble High Court of Calcutta observed that the Court has the power to sever portion(s) of the arbitration agreement and invalidate only those specific portion(s) that are hit by illegality.
- ❖ In *Eastern Coalfields Ltd. v. RREPL-KIPL (JV)*,<sup>2</sup> the Hon'ble Calcutta High Court of Calcutta observed that in absence of a written agreement to refer the present and future disputes to the contract to arbitration, the conduct between the parties cannot be construed to mean that, the parties had agreed to arbitration.
- ❖ In *M/s. Dalapathi Constructions v. The State of Andhra Pradesh & Ors.*<sup>3</sup> the Hon'ble High Court of Andhra Pradesh held that a reference to the Facilitation Council for conciliation and subsequent arbitration if required, is not barred on account of the presence of an arbitration agreement.
- ❖ In *Chokhi Dhani v. JS Construction*,<sup>4</sup> the Hon'ble High Court of Madhya Pradesh observed that if the arbitration agreement provides for certain qualifications of the arbitrator, the appointment of arbitrator must comply with the mentioned qualifications.

## **INSOLVENCY AND BANKRUPTCY:**

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- ❖ In *M/s IDBI Bank Limited v C.J. Davis*,<sup>5</sup> the National Company Law Appellate Tribunal, Chennai Bench, held that the commercial wisdom of Committee of Creditors(CoC) is paramount and can only be interfered by the Tribunal if the same is arbitrary, illegal, irrational and de hors the IBC and its rules. The Tribunal set aside the Adjudicating Authority's order disallowing the CoC to replace the Resolution Professional under the IBC, 2016.
- ❖ In *V. Venkata Sivakumar v IDBI Bank Ltd.*,<sup>6</sup> the National Company Law Appellate Tribunal, Chennai Bench, held that the Insolvency and Bankruptcy Code, 2016 has no provision that enables the 'Creditors' other than those who triggered the 'Insolvency Resolution Process', to be impleaded as 'Parties'.

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<sup>1</sup>A.P. No. 156 of 2022.

<sup>2</sup>RVWO No. 2 of 2022.

<sup>3</sup> W.P.No.4652 of 2022.

<sup>4</sup>Arbitration Appeal No. 15 of 2016.

<sup>5</sup>Company Appeal (AT) (CH) (Ins) No. 116 of 2022.

<sup>6</sup>Comp. App (AT) (CH) (INS) No. 269 of 2022.

- ❖ In *M/s Quippo Infrastructure Limited v. M.R. Nirman Private Limited*,<sup>7</sup>the National Company Law Appellate Tribunal, New Delhi Bench, held that a Banker's Certificate is not mandatorily required to trigger Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code.
- ❖ In *M/s. Cimco Projects Ltd. &Ors. v. Mr. Anup Kumar*,<sup>8</sup>the National Company Law Appellate tribunal, Principal Bench, held that non serious and casual conduct of a resolution applicant is a sufficient ground to reject the resolution plan filed by such resolution applicant and approved by the Committee of Creditors of the Corporate Debtor.

### **INDIRECT TAXATION:**

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- ❖ In Advance Ruling of *M/s. Bhagyam Binding Works*,<sup>9</sup>the AAR ruled that the Karnataka Textbook Society is not an institution providing services by way of pre-school or higher secondary education or education as a part of curriculum or as a part of approved vocational education course, but it is society which is only into supply of textbooks to students. Hence, it cannot be classified as “educational institution” for the purposes of applicability of GST on printing services provided to it by Applicant.
- ❖ In *Roushan Kumar Chouhan Versus Commissioner of State Tax*<sup>10</sup>the Hon’ble High Court of Jharkhand observed that summary of show cause notice in Form GST DRC-01 cannot substitute the requirement of a proper show cause notice under section 73(1) of the Central Goods and Services Tax Act, 2017.

### **DIRECT TAXATION:**

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- ❖ In *DZ Bank v. DCIT*<sup>11</sup> the Income Tax Appellate Tribunal, Mumbai Bench, ruled that if there is no TDS Certificate, the assessee has to furnish necessary documentary evidence to claim TDS credit.

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<sup>7</sup>Company Appeal (AT) (Insolvency) No. 1516 of 2019.

<sup>8</sup> Company Appeal (AT) (Insolvency) No. 128 of 2022

<sup>9</sup>Advance Ruling No. KAR ADRG 25/2022.

<sup>10</sup>W.P.(T) No. 1849 of 2022.

<sup>11</sup>ITA No. 1812/MUM/2018.

- ❖ In ACIT v. M/s Hare Krishna Orchid,<sup>12</sup>the Income Tax Appellate Tribunal Delhi Bench observed that the non-existence of the parties who have given loan to the assessee is clear indication of their nature being prima facie bogus.
- ❖ In Pr. Commissioner of Income Tax-I, Chandigarh v. M/s. ABC Papers Limited<sup>13</sup> the Hon'ble Supreme Court of India held that that appeals against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the Assessing Officer who passed the assessment order is situated.

### **INTELLECTUAL PROPERTY LAW:**

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- ❖ In Kei Industries Limited v. The Registrar of Trade Marks,<sup>14</sup>the Hon'ble High Court of Delhi has observed that the Registrar of Trademarks should consider 'special circumstances' mentioned under Section 12 of the Trade Marks Act, 1999 before rejecting the applications filed with it seeking registration of marks.
- ❖ In Impresario Entertainment and Hospitality Pvt. Ltd. v. Social 75 Through Its Proprietor,<sup>15</sup>the Hon'ble High Court of Delhi granted ex-parte ad -interim injunction in favour of famous restaurant and bar chain 'SOCIAL' and restrained a Jharkhand based restaurant 'SOCIAL 75' from using its registered trademark 'SOCIAL'.

### **SECURITIES AND EXCHANGE BOARD OF INDIA**

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- ❖ The Securities and Exchange Board of India (SEBI) vide Press Release No. 26/2022 constituted 'FPI Advisory Committee (FAC)' on policy matters relating to Foreign Portfolio Investors ('FPIs'). SEBI has constituted a Standing Committee for facilitation of FPI investments.

### **COMPETITION:**

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- ❖ The Competition Commission of India vide Press Release No. 38/2022-23 approved acquisition of shares in Olam Agri Holdings Pte. Ltd. by SALIC International Investment Company. The proposed combination pertains to acquisition of 35.43% stake in Olam Agri Holdings Pte. Ltd. (Olam Agri / Target) by SALIC International Investment Company (SIIC / Acquirer).

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<sup>12</sup>ITA No.662/DEL/2020.

<sup>13</sup> CIVIL APPEAL NO. 4252 OF 2022.

<sup>14</sup> C.A.(COMM.IPD-TM) 84/2022.

<sup>15</sup>CS(COMM) 597/2022.

- ❖ The Competition Commission of India vide Press Release no. 37/2022-23 approved the merger of Aditya Marketing and Manufacturing Private Limited (Target) into Umang Commercial Company Private Limited (Acquirer). Aditya Marketing and Manufacturing Private Limited is a part of B K Birla Group, a diversified group having businesses in various industry sectors. Umang Commercial Company Private Limited is a part of Aditya Birla Group, an Indian multinational conglomerate.
  
- ❖ The Competition Commission of India vide Press Release No. 25/2022-23 approved acquisition of stake in IDFC Asset Management Company Limited and IDFC AMC Trustee Company Limited by Bandhan Financial Holdings Limited, Chrys Capital and GIC. The proposed combination envisages acquisition of 99.96% stake in IDFC Asset Management Company Limited (IDFC AMC) and 100% stake in IDFC AMC Trustee Company Limited (IDFC Trustee) by Bandhan Financial Holdings Limited (BFHL), Lathe Investment Pte. Ltd. (Lathe), Tangerine Investments Limited (CC Entity 1) and Infinity Partners (CC Entity 2).