



## NEWSLETTER

SEPTEMBER 2022

Suman Jyoti Khaitan  
(Editor)

Ms. Surabhi Chhabra  
(Co-Editor)

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 September 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 National Highway Authority of India and another v. Yashpreet Singh and another<sup>1</sup> the Hon'ble High Court of Punjab and Haryana observed that under the law of arbitration, unlike the Code of Civil Procedure which applies to suits filed in Courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause.
- ❖ In Md. Wasim and Another v. M/S. Bengal Refrigeration and Company and Others<sup>2</sup> the Hon'ble High Court of Calcutta observed that the bars for instituting a suit or any other proceeding under the Indian Partnership Act, 1932 as effect of non-registration is not applicable to arbitral proceedings under the Arbitration Act.
- ❖ In a review petition<sup>3</sup> between Nagireddy Srinivasa Rao, Petitioner and Chinnari Suryanarayana and Others, Respondents, the Hon'ble High Court of Andhra Pradesh held that there is no provision in the Arbitration and Conciliation Act, 1996, providing for a review of an order passed under Section 11 of the Act. Hence, the Hon'ble Court rejected the petition as it does not have the power to undertake review on merits.

## **INSOLVENCY AND BANKRUPTCY:**

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- ❖ In Smt. Sabita A. Biswa v Shri Vinodkumar Pukhraj Ambavat,<sup>4</sup> the National Company Law Appellate Tribunal, Principal Bench upheld the decision of the Adjudicating Authority of rejecting the application by which the Applicant sought direction to Resolution Professional to accept the claim. It was held that sale deed which is neither registered nor stamped and was executed before Notary cannot be basis for any claim with regard to the purchase of immovable property.
- ❖ In Shraddha Buildcon Pvt. Ltd. v. The Dhar Textile Mills Ltd.<sup>5</sup> the National Company Law Appellate Tribunal, Principal Bench, held that permitting successful Resolution Applicant to withdraw after the Resolution Plan has been approved will have serious disastrous effect on whole purpose and object of Insolvency and Bankruptcy Code.
- ❖ In Mr. B. Parameshwara Udpa v Assistant PF Commissioner & Anr.<sup>6</sup> the National Company Law Appellate Tribunal, Chennai Bench, held that an order issued by Employees'

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<sup>1</sup> CR No.259 of 2022(O&M).

<sup>2</sup> A.P. No. 27 of 2022.

<sup>3</sup> Rev. I.A.No.1 of 2022.

<sup>4</sup> Company Appeal (AT) (Insolvency) No. 1056 of 2022.

<sup>5</sup> Company Appeal (AT) (Ins) No. 1128 of 2022.

<sup>6</sup> Company Appeal (AT) (CH) (Ins) No. 231 of 2021.

Provident Fund Organization for attachment of bank account of Corporate Debtor cannot be continued during Moratorium period.

### **INDIRECT TAXATION:**

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- ❖ In *Emami Agrotech Ltd. v. The State of West Bengal & Ors.*,<sup>7</sup> the Hon'ble High Court of Calcutta ruled that industrial units cannot be kept in a limbo and denied the incentives which were specifically promised to these units at the time of introduction of the Scheme of change of tax regime from VAT to GST from 2008 onwards.
- ❖ In *M/s. R. P. Buildcon Private Limited & Anr. v. The Superintendent, CGST & CX*<sup>8</sup> the Hon'ble High Court of Calcutta held that since the audit proceedings under Section 65 of the Central Goods and Services Tax Act have already commenced, it is appropriate that the proceedings should be taken to their logical end. The proceedings initiated by the Anti-Evasion and Range Office for the same period shall not be continued.

### **DIRECT TAXATION:**

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- ❖ In *Radheyshyam Mandir Trust v. CIT(Exemption)*<sup>9</sup> the Income Tax Appellate Tribunal, Jaipur Bench held that self-certified copies of documents are sufficient for the purpose of claiming exemption under section 12AA of the Income Tax Act.
- ❖ In *Ramesh Jain and Anr. v. Union of India and Ors.*<sup>10</sup> the Hon'ble High Court of Madhya Pradesh observed that the Income Tax Authorities have the power to compound the offence either before or after the institution of the proceedings but certainly not after the conviction.

### **INTELLECTUAL PROPERTY LAW:**

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- ❖ In *Tata Sons Private Limited v. Hakunamatata TATA Founders & Ors.*<sup>11</sup> the Hon'ble High Court of Delhi granted permanent injunction in favour of Tata Sons Private Limited thereby restraining Hakunamatata TATA Founders from unauthorisedly using the trademark 'TATA' while selling and marketing digital token or cryptocurrency.
- ❖ In *Mohd Ershad Sole Proprietor Ek Agencies v. Registrar of Copyrights & Ors.*<sup>12</sup> the Hon'ble High Court of Delhi held that the registration of copyright in respect of artistic works is

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<sup>7</sup> WPA 4916 of 2022.

<sup>8</sup> M.A.T. No.1595 of 2022.

<sup>9</sup> I.T.A. No. 315/JP/2020.

<sup>10</sup> WRIT PETITION No. 21950 of 2022.

<sup>11</sup> CS (COMM) 316/2021 & I.A. 8000/2021.

<sup>12</sup> C.O. (COMM.IPD-CR) 17/2021.

founded on the basis of the No Objection Certificate issued by the Trademark Office. The purpose behind this provision is to ensure that there is no conflict between labels, packagings, etc. registered or used by trademark owners and registrations granted under the Trade Marks Act.

- ❖ In *Vinita Gupta v. Amit Arora*<sup>13</sup> the Hon'ble High Court of Delhi observed the semantic theory which suggests that the words in the English language system are so related that they form a complete lexical system and a grouping, i.e., genus and species. Hence, the words PLANT and TREE are a classic example of synonymy where reading one would bring to the mind of a purchaser the other, thereby enhancing confusion.

## **COMPETITION:**

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- ❖ The Competition Commission of India vide Press Release No. 39/2022-23 approves acquisition of 100% of the equity share capital of IndiaIdeas.com Limited (IIL) by PayU Payments Private Limited (PayU India).
- ❖ The Competition Commission of India vide Press Release No. 40/2022-23 approves acquisition of stake in Apraava Energy Private Limited (Target) by CDPQ Infrastructures Asia II Pte. Ltd. (Acquirer). The Proposed Combination pertains to the acquiring an additional 10% shareholding in the Target from CPL GPEC (Mauritius) Holding Limited. The Acquirer presently holds 40% shareholding in the Target.
- ❖ The Competition Commission of India vide Press Release No. 41/2022-23 approves the amalgamation of the Jio Cinema OTT platform with Viacom 18 Media Private Limited (Viacom18), following an investment by BTS Investment 1 Pte. Ltd. (BTS1) and Reliance Projects & Property Management Services Limited (RPPMSL).
- ❖ The Competition Commission of India vide Press Release No. 43/2022-23 approves acquisition by Adani Power Limited (Acquirer) of share capital of Diliigent Power Private Limited (Diliigent Power) and DB Power Limited (DB Power). The Proposed Combination involves the acquisition of the 100% of the share capital and economic rights.

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<sup>13</sup> CS(COMM) 395/2022.

## **EMPLOYMENT AND LABOUR:**

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- ❖ In *The General Manager South Railway v. R. Haridrakumar*<sup>14</sup> the Hon'ble High Court of Kerala observed that as per the provisions of the Railway Services (Pension) Rules, 1993, a railway servant does not have any vested right to stake claim for the entire pension or gratuity in cases where he is imposed a penalty of compulsory retirement. It is an absolute discretion of the employer.
- ❖ In *Rajasthan State Road Transport Corporation v. Bharat Singh Jhala (Dead) Son of Shri Nathu Singh, through Legal Heirs & Anr.*<sup>15</sup> the Hon'ble Supreme Court of India observed that once the order of termination was approved by the Industrial Tribunal on appreciation of evidence led before it, thereafter the findings recorded by the Industrial Tribunal were binding between the parties. The judgment and award passed by the Labour Court, confirmed by the High Court is unsustainable.

## **MERGERS AND ACQUISITIONS:**

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- ❖ Leading merchant commerce omnichannel platform, Pine Labs has announced the completion of the merger of Qwiksilver Solutions. With this development, the business of Qwiksilver Solutions Private Limited gets consolidated into a single legal entity i.e., Pine Labs Private Limited.

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<sup>14</sup> OP (CAT) NO. 14 OF 2022.

<sup>15</sup> CIVIL APPEAL NO. 6942 of 2022.