



NEWSLETTER

NOVEMBER 2022

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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 November 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

Happy Reading!

INSOLVENCY AND BANKRUPTCY:

- ❖ In *a'XYKno Capital Services Pvt. Ltd v. Rattan India Power Ltd.*¹ the National Company Law Appellate Tribunal, Principal Bench, observed that disputes pertaining to contractual issues are not to be resolved in Section 9 proceedings under the Insolvency and Bankruptcy code, 2016.
- ❖ In *Mr. Thomas George v. K. Easwara Pillai & Ors.*² the National Company Law Appellate Tribunal, Chennai Bench has held that there is no specified look back period for fraudulent trading under Section 66 of the Insolvency and Bankruptcy Code, 2016, which provides provision for fraudulent trading or wrongful trading.
- ❖ In *Chipsan Aviation Private Limited v. Punj Llyod Aviation Limited.*³ The National Company Law Appellate Tribunal, Principal Bench observed that advance paid towards a service falls within definition of operational debt.

DIRECT TAXATION:

- ❖ In *Bholanath Precision Engineering Pvt. Ltd. v. Commissioner of Income Tax (Appeals)*⁴ the Income Tax Appellate Tribunal, Mumbai Bench observed that to claim the benefit of a reduced corporate tax rate, domestic companies have to mandatorily file Form 10-IC.
- ❖ In *ACIT v. Ascend Telcom Infrastructure (P) Ltd.*⁵ the Income Tax Appellate Tribunal, Hyderabad Bench, ruled that if Id. CIT(A) chooses to admit any additional evidence in that eventuality, he/she is under mandatory obligation to provide a reasonable opportunity to the Assessing Officer with a view to examine the evidence or document or permit to cross-examine the evidence produced by the assessee.
- ❖ In *Pooja Agarwal v. Commissioner of Income Tax-1*⁶ the Hon'ble High Court of Rajasthan observed that the Income Tax Appellate Tribunal (ITAT) is the last fact finding authority and its power in recording finding of fact is akin to that of Assessing Officer/CIT (Appeals). When there is a direction issued by the High Court, the Tribunal is expected to follow the same in pith and substance.

¹ Company Appeal (AT) (Insolvency) No. 913 of 2022.

² Company Appeal (At)(Ch) (Insolvency) No. 293 Of 2021.

³ Company Appeal (AT) (Insolvency) No. 261 of 2022.

⁴ ITA No.1997/Mum./2022.

⁵ ITA 508/Hyd/2020.

⁶ D.B. Income Tax Appeal No.38/2020.

INTELLECTUAL PROPERTY LAW:

- ❖ In *Milaap Social Ventures India Pvt. Ltd. v. Google India Pvt. Ltd.*⁷ the Hon'ble High Court of Karnataka held that in a suit against passing off, amendment to plaint is permissible to include the remedy for trademark infringement if the cause of actions are substantially identical and both the reliefs are virtually based on the same fundamental idea.
- ❖ In *Dr. Reddys Laboratories Limited & Anr. v. The Controller of Patents & Ors.*⁸ the Hon'ble High Court of Delhi held that Once orders are passed by the Patent Office on an application, any challenge to such order or direction would ordinarily lie before the High Court in whose jurisdiction such appropriate office is located.

ARBITRATION:

- ❖ In *Chemex Oil Private Limited v. Seastarr International Pvt. Ltd.*⁹ the Hon'ble High Court of Calcutta held that Section 9 of the Arbitration and Conciliation Act, 1996, which provides for interim relief by the Court applies to foreign seated arbitration. Section 2(2) states that Part I of the Act shall apply where the place of arbitration is in India, however, section 9 is an exception under proviso to section 2(2) and for exclusion of Section 9 of the Act, parties have to specifically agree to the same.
- ❖ In *M/s Karan Paper Mills v. M/s Shah Paper Pack Industries*¹⁰ the Hon'ble High Court of Gujarat observed that the Arbitrator's findings on limitation, while dealing with the Section 16 application, cannot be held as giving finality to the issue of limitation so as to permit its challenge under Section 34 of the Arbitration and Conciliation Act, 1996.

COMPETITION:

- ❖ The Competition Commission of India imposed a monetary penalty of Rs. 1337.76 crore on Google for abusing its dominant position in multiple markets in the Android Mobile device ecosystem.
- ❖ The Competition Commission of India vide Press Release No. 54/2022-23 approved the proposed combination of acquisition by the Reliance Polyester Limited (Acquirer) of the business undertakings of Shubhalakshmi Polyesters Limited (SPL) and Shubhlaxmi Polytex

⁷ WRIT PETITION NO.6220 OF 2022.

⁸ C.O.(COMM.IPD-PAT) 3/2021.

⁹ AP 707 of 2022.

¹⁰ R/SPECIAL CIVIL APPLICATION NO. 21687 of 2022.

Limited (SPTex) pertaining to the manufacture of polyester products / yarn as a going concern on a slump sale basis for a lumpsum consideration.

- ❖ The Competition Commission of India vide Press Release No. 47/2022-23 approved the proposed combination of acquisition of 100% of the equity and compulsorily convertible debentures (CCDs) of the five special purpose vehicles (SPVs) by IndInfravit and allotment of units of IndInfravit to CPHI-4 for the purpose of part-funding the acquisition of SPVs.

EMPLOYMENT AND LABOUR:

- ❖ In Divisional Manager JKSFBC Bhaderwah v. Mohammad Sharief¹¹ the Hon'ble High Court of Jammu and Kashmir and Ladakh ruled that an appeal by an employer against an award of compensation under Clause (a) of Section 30 (1) of the Workmen's Compensation Act, 1923 is barred unless memo of appeal is accompanied by a certificate issued by Commissioner to the effect that the appellant had deposited the amount payable under the order appealed against.
- ❖ In Hemendra Puri v. The Jai Narayan Vyas University and others¹² the Hon'ble High Court of Rajasthan, Jodhpur Bench, observed that child born from the second wife of the deceased employee is eligible for compassionate appointment.
- ❖ In Showkat Ahmad Najjar & Ors v. UT of J&K & Ors.¹³ the Hon'ble High Court of Jammu and Kashmir and Ladakh observed that Government in particular should not allow workers to remain as temporary employees for an unreasonable long period of time, this kind of exploitation of decades makes a temporary employee suffer to the great extent.

MERGERS AND ACQUISITIONS:

- ❖ Singapore Airlines (SIA) and Tata Sons (Tata) have agreed to merge Air India and Vistara, with SIA also investing INR 20,585 million in Air India as part of the transaction. This would give SIA a 25.1% stake in an enlarged Air India group with a significant presence in all key market segments. Currently, SIA holds a 49% and Tata holds a 51% stake in Vistara. SIA and Tata aim to complete the merger by March 2024, subject to regulatory approvals.

¹¹ MA No. 566/2010 IA No. 823/2010.

¹² D.B. Spl. Appl. Writ No. 1565/2018.

¹³ WP (C) No. 3939/2019.

SECURITIES AND EXCHANGE BOARD OF INDIA:

- ❖ The Committee on Strengthening Governance of Market Infrastructure Institutions (MIIs) submitted its report to the Securities and Exchange Board of India (SEBI) setting out various recommendations on measures for- strengthening the role played by the governing board and committees of MIIs, reviewing the requirements related to appointment and role & responsibility of directors on the board and key managerial persons (KMPs), enhancing accountability and transparency, etc. SEBI sought public opinions on the same.