



## 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 December 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!

## **INSOLVENCY AND BANKRUPTCY:**

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- ❖ The National Company Law Appellate Tribunal issued Order dated 24.12.2022 regarding computation of limitation for the purposes of filing an Appeal in the Appellate Tribunal. It is clarified that limitation shall be computed from the date of e-filing and hard copy has to be filed within 7 days of e-filing.
- ❖ In 'Mathuraprasad C Pandey & Ors. v. Partiv Parikh & Anr.'<sup>1</sup> the National Company Law Appellate Tribunal, Principal Bench, observed that the Adjudicating Authority, under Section 31 of the Insolvency and Bankruptcy Code, 2016 can either approve the resolution plan or reject it. There is no provision for making alteration or modification in the resolution plan.
- ❖ In 'Rajesh Kumar & Ors. v. Rabindra Kumar Mintri & Anr.'<sup>2</sup> the National Company Law Appellate Tribunal, Principal Bench, held that if the Resolution Plan is approved by the Committee of Creditors ("CoC"), the Tribunal cannot interfere with the commercial wisdom of the CoC. Approval by the CoC suggests that the plan is viable and feasible.

## **DIRECT TAXATION:**

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- ❖ In 'S.M. Overseas (P) Ltd. v. Commissioner of Income Tax'<sup>3</sup> the Hon'ble Supreme Court of India observed that during the pendency of the rectification proceedings under Section 154 of the Income Tax Act, 1961 ("IT Act"), it was not permissible on the part of the Revenue to initiate reassessment proceedings under Section 147/148 of the IT Act pending the proceedings under Section 154 of the Act.
- ❖ In 'M/S Construction Engineers v. Union of India'<sup>4</sup> the Hon'ble High Court of Jammu & Kashmir and Ladakh ruled that a challenge to the notices issued by the Assessing Authority under Section 226 (3) of the IT Act which provides for other modes of recovery, without challenging the intimation of demand made by the Assessing Authority under Section 200A of the IT Act which provides for processing of statements of tax deducted at source, is not maintainable.

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<sup>1</sup> COMPANY APPEAL (AT)(Ins) No.201/2021.

<sup>2</sup> Company Appeal (AT) (Insolvency) No.1489 of 2022.

<sup>3</sup> Civil Appeal No. 3612-3613 Of 2012.

<sup>4</sup> OWP No. 1019/2016.

## **INDIRECT TAXATION:**

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- ❖ In 'Matta Paints And Hardware Store v. The Commissioner'<sup>5</sup> the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Delhi Bench, observed that the amount seized in cash by the anti-evasion authorities is to be refunded along with the interest on grounds that the currency in question is the appellant's property and he cannot be deprived of the same and is entitled for benefits arising out of the said property.
- ❖ In 'J M Huber India Pvt Ltd. v. C.C.E. & S.T.-Surat-ii'<sup>6</sup> the Ahmedabad Bench of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) observed that the Commission Agent Service provided to foreign based entity to promote or market the entity's goods in India amounts to export of service and is not taxable particularly when such commission received in convertible foreign exchange given that the Indian agent's activity includes providing promotion or marketing, technical support, installation, commission, etc. for the sale of goods by foreign-based entities in India on a commission basis.

## **ARBITRATION:**

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- ❖ In 'Bennett Coleman & Co. Ltd v. MAD (India) Pvt. Ltd'<sup>7</sup> the Hon'ble High Court of Bombay observed that any document in writing exchanged between the parties which provide a record of the agreement and in respect of which there is no denial by the other side, would squarely fall within the ambit of Section 7 of the Arbitration and Conciliation Act, 1996 and would amount to an arbitration clause.
- ❖ In 'M/s Simplex Infrastructure Ltd. & Anr. v. M/s J.P. Singla Engineers and Contractor'<sup>8</sup> the Hon'ble High Court of Punjab and Haryana ruled that where the liability to pay dues under a Contract is admitted by the parties, the dispute between them relating to non-payment cannot be said to be a dispute that 'arose out of' or 'in connection with' the Contract and thus, it cannot be referred to arbitration.

## **MERGERS AND ACQUISITIONS:**

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- ❖ Direct-to-Consumer group Good Glamm Group, beauty and personal care conglomerate, has acquired a 51% stake in digital media company Tweak India in a cash-plus-stock deal. Tweak India is a new-age digital company which has garnered a highly-engaged following comprising urban, upwardly mobile women.
- ❖ Telecom operator Bharti Airtel has acquired a "strategic stake" in Lemnisk (Immensitas Private Limited) under its Start-Up Accelerator Programme. The Airtel Start-up

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<sup>5</sup> Excise Appeal No. 51493 Of 2022.

<sup>6</sup> Service Tax Appeal No.589 of 2012.

<sup>7</sup> Commercial Arbitration Application No. 211 of 2022.

<sup>8</sup> CR 6634/2019.

Accelerator Programme, a part of Airtel Digital, invests in early-stage start-ups working on technologies that add strategic value to Airtel's business offerings. The program gives start-ups the opportunity to deploy their technologies and applications at a massive scale.

- ❖ Chennai headquartered IppoPay Technologies, a verticalized payments infrastructure company has acquired the business of Roamsoft Technologies Pvt Ltd, a fintech-focused IT products and services company also headquartered in Chennai.

## **INTELLECTUAL PROPERTY LAW:**

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- ❖ In 'Hamdard National Foundation (India) & Anr. v. Sadar Laboratories Pvt. Ltd.'<sup>9</sup> the Hon'ble High Court of Delhi held that the propensity for confusion on account of a similar meaning has to be understood in a wider sense. It is not essential that the competing brands be synonymous. Given that the chords of memory are also connected by association of ideas and subjects; a wider conceptual association between the meaning of the competing brands may be sufficient to add to consumer confusion.

## **EMPLOYMENT AND LABOUR:**

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- ❖ In 'Secretary, DAV College Managing Committee and another v. District Judge, Karnal and others'<sup>10</sup> the Hon'ble High Court of Punjab and Haryana observed and reiterated that besides the claim of "equal pay for equal work" emerging from Article 39 of the Indian Constitution, the concept of equality is also to be made applicable on the issue of pay parity and thus, by applying Article 14 of the Constitution even a temporary employee (differently designated as work-charge, daily wage, casual, ad-hoc, contractual, and the like), *de hors* the manner of selection and appointment can be directed to be paid wages equal to the salary at the lowest grade of a regular employee, discharging the same duties.

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<sup>9</sup> CM No. 13491/2022.

<sup>10</sup> CR-1706-2022 (O&M).