



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 March 2023 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 *M/s SKC Infratech Pvt. Ltd vs M/s EOS Hospitality Pvt. Ltd.*¹ the National Company Law Tribunal, New Delhi Bench, has reiterated the well settled principle that the entries made in the Balance sheet amounts to acknowledgement of debt as per Section 18 of the Limitation Act, 1963, which provides for “effect of acknowledgment in writing”.

- ❖ In *Consolidated Finvest & Holdings v. Subhash Kumar Kundra*² the National Company Law Appellate Tribunal, Principal Bench, held that a Financial Creditor who does not attend the Corporate Insolvency Resolution Proceeding cannot be heard in saying that the process has wrongly been conducted.

- ❖ In *Mr. Rohit Prasad v. M/s S and N Lifestyle Infraventures Pvt. Ltd.*³ the National Company Law Tribunal, New Delhi Bench, observed that the status of “Financial Creditor” cannot be accorded to a person who, in the garb of a lender comes in the project as a speculative investor and for mere recovery of monies files exorbitant claims.

ARBITRATION:

- ❖ In *Cholamandalam Investment and Finance Co. Ltd. v. Amrapali Enterprises and Anr.*,⁴ the Hon’ble High Court of Calcutta has ruled that an arbitral award passed by a unilaterally appointed arbitrator cannot be considered as an award under the provisions of the Arbitration and Conciliation Act, 1996 and consequently, they have to be regarded as non est in the eyes of law.

¹ IB-356/(ND)/2020.

² Company Appeal (AT) (Insolvency) No. 312 of 2023.

³ Company Petition No. (IB)- 1026/PB/2020.

⁴ EC 122 of 2022.

- ❖ In *Goyal MG Gases Pvt. Ltd. v. Panama Infrastructure Developers Pvt. Ltd.*⁵ the Hon'ble High Court of Delhi has ruled that the Arbitral Tribunal's order rejecting the application for impleadment of parties in the arbitral proceedings, does not constitute an interim award.

- ❖ In *GTM Builders and Promoters Pvt. Ltd. v. Sneh Development Pvt. Ltd.*⁶ the Hon'ble High Court of Delhi has observed that mere existence of an arbitration agreement or arbitration clause would not be sufficient to allow the prayer for reference to an arbitrator. Even in the presence of an arbitration agreement, the court may decline the reference or appointment of an arbitrator when the dispute does not correlate to the agreement.

DIRECT TAXATION:

- ❖ In *M/s. PVR Pictures Ltd. v. Dy. CIT*⁷ the Income Tax Appellate Tribunal, Delhi Bench, has observed that lower of unabsorbed depreciation and business loss will be set off against the current year books profit in terms of the provisions of the Income Tax Act, 1961.

- ❖ In *Acit vs M/S. Serajuddin & Co.*⁸ the Hon'ble High Court of Orissa ruled that the requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement under the provisions of the Income Tax Act, 1961.

⁵ 2023 SCC OnLine Del 1894.

⁶ Arb. P. 283/2023.

⁷ I.T.A. No.3843/DEL/2017.

⁸ I.T.A. No. 39 of 2022.

MERGERS OR ACQUISITIONS:

- ❖ Mahindra & Mahindra Ltd.'s "Farm Equipment Sector" ("FES") has acquired "MITRA Agro Equipments Private Limited" ("M.I.T.R.A") by increasing its shareholding from the existing 47.33% to 100%, making it a wholly owned subsidiary of Mahindra & Mahindra Ltd. ("M&M").
- ❖ "Acko", a new age insurance firm has acquired "Parentlane", a digital health platform in the maternity and child health space. The acquisition will help deliver personalised content and services to enable better healthcare choices, informed decisions, and improved outcomes.
- ❖ Private lender "Kotak Mahindra Bank" has acquired micro-finance company "Sonata Finance" for ₹537 Crore in an all-cash deal. Sonata Finance will be a wholly owned subsidiary of the Bank after the said acquisition.

THE COMPETITION COMMISSION OF INDIA ("CCI"):

- ❖ The CCI vide Press Release No. 72/2022-23 approved the acquisition of 100% of the issued and paid-up equity share capital of METRO Cash and Carry India Private Limited (Target) by Reliance Retail Ventures Limited (Acquirer).
- ❖ The CCI vide Press Release No. 71/2022-23 approved the acquisition of 100% of the equity share capital of L&T Infrastructure Development Projects Limited ('L&T IDPL') and Kudgi Transmission Limited ('KTL'), by Epic Concesiones Private Limited ('ECPL') and Infrastructure Yield Plus II ('IYP II'), respectively.
- ❖ The CCI vide Press Release No. 74/2022-23 approved the acquisition of shareholding of JM Baxi Ports and Logistics (Target) by HL Terminal Holding B.V (Acquiring Entity), a wholly owned subsidiary of Hapag Lloyd Aktiengesellschaft.

EMPLOYMENT AND LABOUR:

- ❖ In *Staff Selection Commission v. Subhash Chand and others*⁹ the Hon'ble High Court of Punjab and Haryana observed that employment cannot be denied merely on the ground of delay in production of Economically Backward Person in General Caste ("EBPGC") Certificate.

THE SECURITIES AND EXCHANGE BOARD OF INDIA ("SEBI"):

- ❖ The SEBI has issued a Circular 23.03.2023 regarding E-wallet investments in Mutual Funds and referred to its previous Circular dated 08.05.2017 which permitted use of e- wallet for investment in Mutual Funds within the umbrella limit of INR 50,000 for investments by an investor through both e-wallet and/or cash, per Mutual Fund per financial year. The present Circular is issued to ensure that all e-wallets are fully compliant with KYC norms as prescribed by the Reserve Bank of India.

⁹ LPA-1199-2019.