SA LAW
Attorneys & Solicitors

April, 2024

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Dear Readers,

Greetings from SA Law!

We are excited to present this month's edition of our Newsletter "Salah".

This newsletter is our attempt to bring industry-wide curated updates for our trusted clients and partners who look to us for timely inputs regarding their industry. We aim to cover the latest updates in law, policy and regulatory landscape through this endeavour.

We hope that you find this newsletter enlightening and insightful.

Regards,

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INDEX

HON'BLE SUPREME COURT

Supreme Court rejects call for full EVM VVPAT Cross- Verification: Issues crucial directives for electoral integrity

In a significant development crucial for the Parliamentary Elections in the country, the Hon'ble Supreme Court on 26.04.2024, has rejected requests for full cross-verification of all Electronic Voting Machines (EVMs) data with Voter Verifiable Paper Audit Trail (VVPAT) records.

The said petitions were filed by the NGO named Association for Democratic Reforms, and two individuals praying for the Hon'ble Court's directions to ECI for 100% cross-verifications of VVPATs instead of the present scenerio, where the Election Commission cross-verifies EVM votes with VVPATs in only 5 randomly selected polling stations in each assembly constituency. The petitioners also sought measures to ensure that a vote is 'recorded as cast' and 'counted as recorded'.

The judgment authored by Hon'ble Justice Sanjeev Khanna stated that though the bench could have dismissed the said petition solely on the basis of the precedents as settled by the Hon'ble Supreme Court but it found it imperative to put on record the procedure and safeguards adopted by the ECI to ensure free and fair elections and the integrity of the electoral process.

Accordingly the judgment consists of the elucidation of the technical working of the EVM and VVPATs and thereafter two directions were issued as follows:

1. Upon completion of the symbol loading process in the VVPAT, undertaken on or after 01.05.2024, the Symbol Loading Unit (SLU) shall be securely sealed in containers. The seals shall bear the signatures of the candidates or their representatives. These sealed containers, housing the SLUs, shall be stored in the strong rooms alongside the EVMs for a minimum of 45 days post the declaration of results. They shall be opened, scrutinized, and treated akin to EVMs.

2. The burnt memory/microcontroller in 5% of the EVMs, that is, the control unit, ballot unit and the VVPAT, per assembly constituency/assembly segment of a parliamentary constituency shall be checked and verified by the team of engineers from the manufacturers of the EVMs, post the announcement of the results, for any tampering or modification, on a written request made by candidates who are at serial no. 2 or serial no. 3, behind the highest polled candidate. Such candidates or their representatives shall identify the EVMs by the polling station or serial number. All the candidates and their representatives shall have an option to remain present at the time of verification. Such a request should be made within a period of 7 days from the date of declaration of the result. The District Election Officer, in consultation with the team of engineers, shall certify the authenticity/intactness of the burnt memory/ microcontroller after the verification process is conducted. The actual cost or expenses for the said verification will be notified by the ECI, and the candidate making the said

request will pay for such expenses. The expenses will be refunded, in case the EVM is found to be tampered.

Association for Democratic Reforms vs Election Commission of India and another 2024 INSC 341, Judgment dated 26.04.2024

Supreme Court flags lack of guidelines for trials involving individuals with hearing and speech diasbilities

The Hon'ble Supreme Court, on 16.04.2024, highlighted a crucial issue concerning the lack of guidelines for conducting trials involving accused individuals with hearing and speech disabilities. The Hon'ble Supreme Court acknowledged the absence of established parameters for such cases, particularly in instances where the accused is deaf and dumb but mentally capable of committing serious crimes like rape.

The concern arose during the hearing of an appeal against the conviction wherein the Trial Court found the accused having hearing and speech impairments guilty of raping two young girls aged 7 and 8 years. Despite the conviction by the trial court, the case was forwarded to the High Court as per Section 318 of the CrPC citing the accused's inability to comprehend the proceedings. The High Court, upon reviewing the evidence also upheld the conviction.

The Hon'ble Supreme Court, after examining the material on record, affirmed the trial Court and the High Court's decisions but also noted the absence of specific guidelines for such cases. Consequently, the Court issued a notice to the Union of India and the State and scheduled the matter for further consideration on 26.07.2024.

Ramnarayan Manhar vs State of Chattisgarh, Diary No(s).15153/2024, Order dated 16.04.2024

Supreme Court observes commercial transactions are outside the purview of the Consumer Protection Act, 1986

The case involved an appeal challenging the order passed by the National Consumer Disputes Redressal Commission (NCDRC) whereby it upheld the order passed by the State Commission and the District commission allowing the Complaint.

The Complainant's case was that he had invested Rs 5 lakhs in the partnership firm of the Appellant which was repayable after 120 months with an interest of 18% P.A. However, allegedly upon being asked for the premature payment, the complainant was denied the same. The repayment was denied even on the maturity, after which he filed a complaint against the partnership firm (Appellant) alleging deficiency in service before the District Consumer Forum.

During the proceedings, the legal heirs of the erstwhile partners of the firm contested the complaint, arguing that the complainant was not a consumer to pursue the remedy under the Consumer Protection Act, the Complainant was also a partner of the said firm and that the complaint was not maintainable in view of section 63 of the Partnership Act, 1932. Despite these

contentions being made before the District Commission, the Commission ruled in favour of the complainant and awarded compensation and costs. The decision of the District Commission was upheld by the State Commission and revision against the same was dismissed by the National Commission.

An appeal was filed before the Hon'ble Supreme Court against the order of the National Commission dismissing the revision petition. The Hon'ble Supreme Court while allowing the Appeal observed that the complainant had been a partner in the firm as per a registered partnership deed, and the investment was a commercial transaction aimed at profit/gain and hence outside the purview of the Consumer Protection Act, 1986. It concluded that the complaint was not maintainable under the 1986 Act and the appellants could not be held liable for the firm's liabilities as legal heirs upon death of former Partners. The Hon'ble Supreme Court thereby allowed the appeal and set aside the impugned orders and also dismissed the complaint. However, the complainant was given the option to pursue other legal remedies available to them before any competent Forum.

Annapurna B. Uppin & Ors vs Malsiddappa & Anr, 2024 INSC 276, Order dated 05.04.2024.

Maximum Stamp duty on Articles of Association is a one- time measure, stamp duty not to be paid on every increase in the share capital.

The Hon'ble Supreme Court was dealing with a case wherein the Appellant-State demanded the respondent company to pay stamp duty on the increase in its share capital, citing a notice sent by the company in Form No. 5 to the Registrar of Companies as an 'instrument' under the Stamp Act.

The respondent in the year 1992 had paid stamp duty on its initial increase in the share capital as per Article 10 of Schedule-I of the Bombay Stamp Act, 1958. However, later on in 1994, the Appellant amended the said Article 10 and introduced a maximum cap of Rs. 25 lakhs on stamp duty to be chargeable on Articles of Association. The Respondent had again increased its share capital but inadvertently paid Rs. 25 lakhs in stamp duty, whose refund it sought from the Appellant, arguing that the maximum cap of Rs 25 lakh had already been paid. The Appellant turned down the request of the Respondent to refund the said amount. The Respondent later on filed a writ petition before the Hon'ble Bombay High Court challenging the order of the Appellant refusing the refund.

The Hon'ble High Court allowed the Writ Petition filed by the respondent and directed the Appellant to refund the stamp duty of Rs 25 lakhs along with the interest. The Appellant challenged this order of the Hon'ble High Court in an Appeal before the Hon'ble Supreme Court.

The Hon'ble Supreme Court, while dismissing the Appeal filed by the State, observed that the ceiling of Rs. 25 lakhs is applicable on Articles of Association and the increased share capital therein, not on every increase individually. In case stamp duty equivalent to or more than the cap has

already been paid no further stamp duty can be levied.

The Court further observed that by taking into account the Maharashtra Stamp (Amendment) Act, 2015 which amended the charging section for Articles of Association i.e., Article 10 of the Stamp Act, the maximum cap of Rs. 25 lakhs would be applicable as a one-time measure and not on each subsequent increase in the share capital of a company. The court further observed that it is only the Articles of Association which are an instrument within the meaning of section 2 (l) of the 1958 Act. The Hon'ble Supreme Court then directed the Appellants to refund the stamp duty paid by the respondent, along with 6% interest P.A.

State of Maharashtra vs National Organic Chemical Industries Ltd., 2024 INSC 270, Order dated 05.04.2024

Supreme Court clarifies circumstances in which egg-shell rule is to be applied in cases of medical negligence

The Hon'ble Supreme Court was dealing with a case wherein the Appellant (patient) was seeking compensation from the Respondent (Hospital) for deficiency in services. The Appellant following a surgery conducted at the Respondent-Hospital continued to experience pain near the surgical site. Upon informing the hospital about the pain, she was admitted and discharged the next day, with assurance that the pain would cease. Despite this assurance, she continued to experience pain for four years. After which the Appellant sought treatment from another hospital, wherein it was discovered that a foreign body akin to needle was left behind in her body during her operation at the Respondent-hospital which resulted in continuous pain requiring further treatment.

After discovering about the existence of such foreign body left behind because of the negligence of the doctors in the earlier treatment, the Appellant filed a complaint before the District Forum seeking compensation of Rs. 19,80,000, but the District Forum awarded only Rs. 5 Lakhs of compensation. The Respondent- Hospital thereafter filed an appeal assailing the order of the District Forum before the State Commission which reduced the amount of the Compensation to Rs. 1 Lakh, which was then increased to Rs. 2 Lakhs by the National Commission by applying the egg skull rule. The Appellant thereafter preferred an appeal before the Supreme Court challenging the order of the National Commission.

The Supreme Court while allowing the appeal increased the amount of the compensation to Rs. 5 lakh and observed that egg-skull rule ought not to have been applied by the National Commission.

The Hon'ble Court while deliberating on decision of granting compensation observed that the court must balance between inflated demands of the victim and claims of non-liability of the Opposite Party. Sympathy for the victim shouldn't cloud fair assessment; however, if a case merits it, the court should not hesitate to award adequate compensation. The Hon'ble Court while enumerating on the term just compensation observed that the concept is based on the idea of restoring someone to the position they were in before

the loss, as much as money can. Just compensation thus must be adequate, fair, and equitable considering the specific situation.

While concluding upon the National Commission's wrong approach in applying the egg shell rule in the given case, the Hon'ble Supreme Court provided the circumstances under which the egg-skull/ shell rule can be rightfully applied-

1. when a latent condition of the plaintiff has been unearthed
2. when the negligence on the part of the wrongdoer re-activates a plaintiff's pre-existing condition that had subsided due to treatment
3. when wrongdoer's actions aggravate known, pre-existing conditions, that have not yet received medical attention
4. when the wrongdoer's actions accelerate an inevitable disability or loss of life due to a condition possessed by the plaintiff, even when the eventuality would have occurred with time, in the absence of the wrongdoer's actions.

Thus, the Hon'ble Court observed that for egg shell/skull rule to be applicable there must be a pre-existing condition falling into either of the four categories described above.

Jyoti devi vs Suket Hospital and Ors, 2024 INSC 330, Judgment dated 23.04.2024

Supreme Court strengthens oversight on deceptive advertising of Medical products- A case of Patanjali Ayurveda

In an ongoing court battle regarding misleading advertisements by Patanjali's Ayurvedic products, the court has steadily escalated its scrutiny over the past two months, requiring in person appearance of both Baba Ramdev and Acharya Balkrishna, Co-founder and Managing Director of the Patanjali Ayurveda respectively.

In April 2024, the case was heard on five different occasions, starting on 02.04.2024, the court expressed a strong observation that Baba Ramdev and Acharya Balkrishna had violated the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 read with Rule 6 of the Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955. The Hon'ble court also expressed its displeasure on the Licensing authority of the State of Uttarkhand which waited for the Court order to take any action against Divya Pharmacy (one of the subsidiary of Patanjali Ayurveda).

On the next date i.e. on 10.04.2024, Baba Ramdev and Acharya Balkrishna submitted their apologies in the form of affidavits for misleading advertisements and for releasing press statements contrary to the orders passed by the Hon'ble Supreme Court on 21.11.2023 (On 21.11.2023 the Court had directed that no casual statements claiming medicinal efficacy or against any system of medicine shall be released to the media in any form). But the court remained unconvinced by the affidavits owing to the past conduct exhibited by the top representatives of Patanjali Ayurveda. Additionally, the State Licensing Authority, responsible for enforcing advertising regulations in the State of Uttarkhand, submitted an affidavit explaining their actions regarding the concerned advertisements. However, the court found the said explanation insufficient and observed that the Authority

had neglected its duties and had done nothing of any consequence.

As the case progressed, the court took a stricter stance. On 16.04.2024, Baba Ramdev and Acharya Balkrishna requested more time to take some steps unilaterally to demonstrate their bona fides. The court then heard assurances from both of them that they will be careful in the future and will not violate the orders of the Court and the provisions of the law.

On 23.04.2024, the Hon'ble Court further broadened its focus and observed that the petitioner i.e. Indian Medical Association also needs to put its house in order and highlighted several complaints against the organisation relating to alleged unethical acts on the part of the members of the Association

As regards Patanjali Ayurveda, while Baba Ramdev and Acharya Balkrishna submitted public apologies in newspapers as instructed, the court directed additional apologies for the lapses on the part of Baba Ramdev and Acharya Balkrishna. The court also opined that there a need to examine the enforcement of multiple laws, especially the Drug and Magic Remedies (Objectionable Advertisements) Act, 1954 and the Rules therein, the Drugs and Cosmetics Act, 1940 and the Consumer Protection Ac, 1986 and the Rules.

The Court further called upon the Union of India to explain the letter dated 29.08.2023 issued by the Under Secretary, Ministry of AYUSH, Government of India addressed to all States/UT Licensing Authorities and Drug Controllers of AYUSH informing them that the Ayurvedic Siddha and Unani Drugs Technical Advisory Board (ASUDTAB) which had recommended to proceed with the final Notification omitting Rule 170 of the Drugs and Cosmetics Rules, 1945 and its related provisions and in the meantime, and all authorities were directed not to initiate/take any action under Rule 170 (Rule 170 prohibits advertisements of Ayurvedic, Siddha, or Unani drugs without approval of the licensing authority)

The Court observed that during all this duration, the said Rule has not been deleted and at the same time, it is not being enforced on the strength of the aforesaid letter. The Court further directed the said Ministries to file their respective affidavits explaining the action taken by them to prevent misuse/abuse of the aforesaid statutes along with the relevant data from the year 2018 onwards and the action taken on complaints/ Grievances received on Misleading Advertisements portal (GAMA) or from any other source.

The Hon'ble Court further directed impleadment of the National Medical Commission as a co-respondent for effective assistance of the Court.

On 30.04.2024, the Court granted Baba Ramdev and Acharya Balkrishna the permission to file the relevant pages of each newspaper, in original wherein a public apology was published, the State Licensing Authority and related officers also faced criticism for their inaction in taking actions on such misleading advertisement and directed further affidavits explaining their actions.

Following the proceedings in the Hon'ble Supreme Court, the Uttarkhand Government on 29.04.2024 has revoked the licenses of 14

products sold by Patanjali Ayurveda and Divya Pharmacy. Invoking the power under Rule 159(1) of the Drugs and Cosmetic Rules 1954, the licenses of these products were suspended with "immediate effect". The products whose licenses have been suspended are Swasari Gold, Swasari Vati, Bronchom, Swasari Pravahi, Swasari Avaleh, Mukta Vati Extra Power, Lipidom, Bp Grit, Madhugrit, Madhunashini Vati Extra Power, Livamrit Advance, Livogrit, Eyegrit Gold and Patanjali Drishti Eye Drops.

Indian Medical Association V. Union Of India W.P.(C) No. 645/2022, Order dated 02.04.2024, 10.04.2024, 16.04.2024, 23.04.2024, 30.04.2024

Hon'ble High Courts

Bombay High Court directs Medical Aid without insistence on Police Complaint

The Hon'ble Bombay High Court in a recent case observed that the grant of medical aid is an intrinsic component of Article 21, which ensures the right to life and livelihood, encompassing access to necessary healthcare. The court emphasized that in a civilized society no individual should be denied medical assistance. The court underscored that such assistance is fundamental and the same cannot be denied for want of filing of a Police complaint.

The Hon'ble High Court was dealing with a case where XYZ, acting as a petitioner, sought legal intervention to safeguard her daughter's rights and health. The daughter, aged 17 years and 4 months, was discovered to be seven months pregnant and was refusing to disclose the details in that regard, asserting it was consensual. XYZ, concerned for her daughter's well-being, approached medical facilities for treatment but was consistently asked for a police complaint, which she was unwilling to file.

The Hon'ble High court while recognizing the urgency of the situation directed XYZ to submit an Emergency Police Report (EPR) through her advocate which would be kept sealed and will be utilized only if necessary with the court's permission.

XYZ v. State of Maharashtra, 2024 SCC OnLine Bom 1026

Bombay High Court observes that the panel of Arbitrators must be broad enough to save the arbitration proceedings from allegations of bias and partiality

The Hon'ble High Court was dealing with the case wherein an issue of appointing an independent and impartial arbitrator in distinct dispute involving the Central Railway, Western Railway, and the Airport Authority of India as respondents. The provisions of the arbitration agreement had provided for the respondents to furnish a list of five potential arbitrators for the applicant to choose from. However, this arrangement was challenged on grounds of bias and non-compliance with the Arbitration and Conciliation Act, 1996.

Drawing from the Hon'ble Supreme Court's Judgment in the case of *Voestalpine Schienen GmbH v. Delhi Metro Rail Corpn. Ltd*., (2017) 4 SCC 665, the court highlighted the significance of upholding principles of impartiality and fairness in arbitration. The Hon'ble Court further observed that limiting the choice to a select pool of five arbitrators could potentially undermine the integrity of the process and breed suspicion. The court stressed the need for a more inclusive approach, advocating for a broad-based panel of arbitrators that encompasses expertise from both public and private sectors.

Furthermore, the court addressed the issue of managing director's eligibility as an arbitrator. It clarified that if the managing director is ineligible to be appointed as an arbitrator, the same cannot nominate another person due to the ineligibility, thus ensuring consistency in the application of legal principles.

The Hon'ble Court while allowing the application appointed the arbitrators for the respective arbitral proceedings.

Telex Advertising Pvt Ltd. vs Central Railway, N.P. Enterprises vs General Manager, Western Railway and ors, Anjali Hotels Pvt Ltd vs Airport Authority of India, Pune, 2024: BHC- OS: 6304 Judgment dated 27.03.2024

Delhi High Court observes- Arbitrators empowered to use "guesswork" in determining damages

In a recent judgment, the Hon'ble Delhi High Court addressed a significant question regarding the power of arbitrators in determining liquidated damages/ compensation particularly when the exact amount of losses is difficult to quantify.

The Hon'ble Delhi High Court was dealing with a dispute concerning the Haryana Power System Improvement Project. The Appellant had failed to deliver the project in time citing reasons beyond their control. However, the Arbitrator upon examining the material on record came to the conclusion that some of the reasons for the delay were attributable to the conduct of the Appellant while some were beyond their control. Due to the concerned delay the Respondent suffered the losses however the said losses were difficult to ascertain. The arbitrator, acknowledging the difficulty in proving the exact losses suffered by the other party, employed an estimation approach, essentially "guesswork," to determine a fair damage compensation and thereby awarded a 50% of the liquidated damages of the contractual terms along with the interest.

Aggrieved by the award, both parties filed applications under section 34 of the Arbitration and Conciliation Act, 1996. The Single Judge bench set aside the award and observed that the imposition of the damages on the basis of "guesswork" or similar methodology can only be done by the Supreme Court while exercising powers under Article 142 of the Constitution of India citing the decision of the Hon'ble Supreme Court in the case of *Construction and Design Services v. Delhi Development Authority*, (2015) 14 SCC 263.

The Appellant filed an Appeal against the order of the Single Judge bench under section 37 of the Arbitration and Conciliation Act, 1996. The Hon'ble High Court partly allowed the Appeal and set aside the order of the Ld. Single Judge observing that the Hon'ble Supreme Court in the Construction and Design Services case made no such observation as regards the imposition of damages based on "guesswork" can only be done under Article 142.

The Hon'ble High Court further held that in order to exercise such methodology firstly, there must be some evidence on record indicating that losses were incurred preventing arbitrators from simply pulling figures out of thin air. Secondly, the "guesswork" employed should be a reasonable estimation based on the available evidence ensuring a semblance of fairness and logic in the damage/ compensation awarded.

Thus, in effect the decision of the Hon'ble Delhi High Court enables the arbitrators to employ rough and ready method/ guesswork under circumstances as have been specified in the judgment.

M/s Cobra Instalaciones Y Servicios, S.A & Shyam Indus Power Solutions Pvt. Ltd. (J.V.) vs Haryana Vidyut Prasaran Nigam Ltd. (HVPNL), 2024: DHC: 2880- DB, Order dated 10.04.2024

Delhi High Court clarifies- Proceedings under SARFAESI Act and RDDB Act are complementary to each other

The Hon'ble High Court was dealing with a case wherein Petitioners had executed a loan agreement with the Respondent against a mortgage of the secured asset. When the loan account of the Petitioner was declared a non-performing asset (NPA), Respondent issued a Notice under section 13 (2) of SARFAESI Act, 2002 seeking repayment of the alleged debt along with future interest and charges. In addition to the said notice, the Respondent also filed an application under section 19 of the RDDB Act before the DRT for recovery of the alleged debts. Thereafter, Respondent filed an application under section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate (CMM) for appointment of a receiver to take possession of the secured assets of the Petitioner. The said application was allowed and the receiver was appointed. Subsequently, DRT also allowed section 19 application filed under the RDDB Act and directed the Petitioners to pay the alleged debt. The said order was not challenged by the Petitioners.

Subsequently the Petitioners challenged the Notice under section 13 (2) of the SARFAESI Act and the order passed by the CMM before the DRT by filing an application under section 17 of the SARFAESI Act. The said application was dismissed by the DRT.

Upon dismissal of the said application the Petitioners filed a Writ Petition before the Hon'ble High Court challenging the earlier order passed by the DRT allowing section 19 application filed under the RDDB Act. The Petitioners contended that the appellate remedy under the RDDB Act is not an efficacious remedy as it mandates pre-

deposit. The Petitioners further argued that since the Respondent invoked the provisions of SARFAESI Act, they were precluded from invoking section 19 of the RDDB Act without withdrawing the proceedings under the SARFAESI Act.

The Hon'ble High Court while dismissing the said petition observed that the provisions of the RDDB Act are not inconsistent with the provisions of the SARFAESI Act and the application of both the Acts are complementary to each other. The same cannot be made to be a case of election of remedy. The Hon'ble Court further held that in view of section 37 of the SARFAESI Act, the application of the said act will be in addition to and not in derogation of the RDDB Act.

Magnum Steels Ltd & Ors vs Asset Reconstruction Company (India) Ltd. & Anr., 2024: DHC: 2952- DB Order dated 10.04.2024

Delhi High Court observes- Terms and Conditions on the website when referred in the Arbitration agreement are binding on the parties

The Hon'ble High Court was addressing a case wherein the general-complementary terms of the contractual relations were referenced through a hyperlink in the Marketing and Operational Consulting Agreement (MOCA) entered into by the parties.

The facts of the case were as such that when the Respondent had filed a suit for recovery in the Commercial Court for the non-payment of assured monthly revenue by the appellant, the Appellant came to oppose the same by filing an application under section 8 of the Arbitration and Conciliation Act, 1996. The said application was rejected by the Commercial Court, holding that the scope of the arbitration clause extends solely to the disputes regarding the "construction," "interpretation," or "application" of MOCA's and not to the terms and conditions as provided on the website. The appellant, upon filing an appeal, argued for the integration of the Terms and Conditions as provided on the website with that of MOCA, whereas the other party disputed the existence of such an arbitration agreement, asserting that the digitally accepted MOCA lacked explicit reference to this clause.

The first crucial question addressed by the Hon'ble High Court was whether the Commercial Court erred in its assumption of that the arbitration agreement did not apply to the terms and conditions on the website referenced through hyperlink. The Hon'ble Court observed that the link to the website for accessing the Terms and Conditions was provided within the MOCA itself whose existence is not disputed. Thus, the MOCA unambiguously referred to the Terms and Conditions on the website and provided a direct link for such access.

The Hon'ble High Court further observed that parties to MOCA were obliged to follow the MOCA including the terms and conditions referenced through hyperlink.

The incorporation of the Terms and Conditions into the MOCA by reference was examined in light of Section 7 of the A&C Act, which defines an arbitration agreement.

Applying this test, the Hon'ble High Court opined that it was apparent that the entire Terms and Conditions on the website as referenced in the MOCA, was incorporated as part of the MOCA. Any contention that the link in Clause 15 did not lead to the Terms and Conditions was refuted. And the Hon'ble High Court while allowing the appeal held that the dispute as before the Commercial Court is covered by the Arbitration agreement between the parties and thereby terminated the proceedings before the Commercial Court referring the parties to the arbitration.

M/s Oravel Stays Private Limited vs Nikhil Bhalla, 2024 DHC 3136 DB, Judgment dated 23.04.2024

Meghalaya High Court holds that the Principal Civil Court of Original Jurisdiction can extend the timeframe under section 29A if the appointment of the Arbitrator is not by the High Court

The Hon'ble High Court of Meghalaya dealt with an important case as to the interpretation of section 29A of the Arbitration and Conciliation Act, 1996. The case involved an Arbitral Tribunal failing to deliver an award within the specified time, prompting the respondent to seek an extension under Section 29A of the Arbitration and Conciliation Act, 1996 by filing an application before the Commercial Court. The petitioner then filed an application under section 11 of the Commercial Courts Act, read with Order 7 Rule 11 CPC, challenging the jurisdiction of the Commercial Court to entertain an application under Section 29A of the A&C Act, 1996.

The Ld. District Judge, Commercial Court held that the Commercial Court (in the particular context) has the jurisdiction to entertain an application for extension of the mandate of the Arbitral Tribunal under Section 29A of the Arbitration and Conciliation Act, 1996. Aggrieved by the order of the Commercial Court, the Petitioner filed a revision application before the Commercial Court raising the issue of interpretation of the term "Court" in Section 29A, and that whether it refers to the High Court or the Principal Civil Court in a District.

The Hon'ble High Court observed that if the appointment of the arbitrator is not by the High Court under Section 11, the Principal Civil Court of Original Jurisdiction will have the power to entertain an application under Section 29A for extension of the term.

Accordingly, the Hon'ble High Court dismissed the petition holding that since the High Court of Meghalaya does not possess Original Civil Jurisdiction, the Principal Court of Original Jurisdiction will have the jurisdiction to extend the timeframe as prescribed under Section 29A of the Act.

Chief Engineer (NH) PED (Roads), Govt. of Meghalaya vs M/s BSC&C of C JV, CRP No. 2 of 2024, High Court of Meghayala at Shillong, Order dated 22.04.2024

IBC

NCLAT Observes- Favourable RERA Order doesn't alter Allottee status, compliance under section 7 (1) mandatory

The Delhi Bench of NCLAT recently dealt with a case wherein four Appellants (Homebuyers) had obtained a favourable decree from the Real Estate Regulatory Authority (RERA) directing the builder to refund the amount of units paid for by the Appellant. As the Respondent- Builder failed to comply with the said order Appellants filed a petition under section 7 of the Insolvency and Bankruptcy Code, 2016 praying for initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor (Builder), for having committed default by not refunding the amount payable to all the Appellants as directed under the order passed by RERA.

The said petition was rejected by the NCLT on the ground of non-compliance of Section 7, sub-section (1), 2nd Proviso which provides that a petition on behalf of the Homebuyers (as Financial Creditors in a class) is maintainable only if either 100 in number or 10% of the allottees join the petition. As the said petition was preferred by 4 Petitioners while the total number of allottees was 488 the said petition was dismissed by the NCLT.

Against this order the Appellant preferred an appeal before the Ld. Tribunal wherein it was argued that the Appellant had preferred the petition under 7 of the IBC, 2016 in their capacity as a not as an allottee but as decree holder (as class of creditors) as defined under Section 3, sub-section (10), which provides that decree-holder is a class of Financial Creditor. Therefore, they are not required to meet the threshold/eligibility under Section 7, sub-section (1), 2nd Proviso.

The Ld. Tribunal while referring to the decision of the Hon'ble Supreme Court in the case of *Kotak Mahindra Bank Ltd. v. A. Balakrishnan*, (2022) 9 SCC 186 wherein it was held that once the Recovery Certificate has been issued, the party in possession of the Recovery Certificate is to be considered as a Financial Creditor.

The Ld. Tribunal further observed that the Appellant cannot be said to go out of the definition of 'allottees' merely because they have an order in their favour by RERA and be treated in a different category, i.e., category of 'Decree Holder' and are not required to comply with Section 7, sub-section (1), 2nd Proviso. A Financial Creditor even after order of the RERA, directing for refund by the Corporate Debtor, continues to be allottees and are mandatorily required to comply with Section 7, sub-section (1), 2nd Proviso.

While dismissing the Appeal, it further observed that the distinction between the Decree Holder and Homebuyers, who do not have order of RERA, was held to be artificial. Thus, Homebuyers, whether they have an order or Decree from the RERA or who do not have any Decree or order from RERA, belong to same category of allottees and no distinction can be made on the said ground.

Rahul Gyanchandani v. Parsvnath Landmark Developers (P) Ltd., 2024 SCC OnLine NCLAT 469, order dated 09-04-2024.

NCLAT Chennai holds free cost copy of the Judgment invalid for the purpose of Rule 22 of the NCLAT Rules, 2016

The Chennai bench of NCLAT in a recent case held that the free of cost copy of impugned judgment is not a certified copy for filing an appeal in the NCLAT.

The factual background of the case was as such that on 24.11.2022, the NCLT pronounced the impugned order and the Appellant received the free cost certified copy of the NCLT order dated 24.11.2022 on 07.12.2022,. Thereafter, on 19.01.2023 the Appellant e-filed an appeal before the NCLAT against the NCLT order dated 24.11.2022. Alongside, an application for condonation of delay in filing of appeal was also filed by the Appellant.

The Appellant submitted that the limitation for filing of appeal would be computed from 07.12.2022 i.e. when the free of cost certified copy was received from NCLT Registry. Accordingly, the limitation period of 30 days to file the appeal would end on 06.01.2023. Hence, the appeal being filed on 19.01.2023, is within condonable limit of 45 days as per Section 61(2) proviso

The 'Respondent' argued that the 'Petitioner/Appellant', had not applied for a 'Certified Copy' of the 'Impugned Order', dated 24.11.2022 and has placed reliance only upon the 'Free of Cost' 'Certified Copy', and therefore, is incorrect, in computing the 'period of limitation', from the date on which the 'Free of Cost Copy' was received.

The Ld. Tribunal while dismissing the appeal observed that the 'Petitioner/Appellant', had not applied for a 'Certified Copy' as per Section 76 of the Indian Evidence Act, 1872, contemplated under Rule 2(9) of the National Company Law Tribunal Rules, 2016, and has not obtained the 'certified copy', on payment of, 'Requisite Fee', as per 'Rules'. Therefore, the 'Free Cost copy' of the 'Impugned Order' dated 24.11.2022 passed by the 'Adjudicating Authority/Tribunal' in CP (IB) No.45/7/AMR/2020, is not a 'Copy Certified', contemplated as per Rule 22 of the National Company Law Appellate Tribunal Rules, 2016(Rule 22 states that every 'Appeal' shall be accompanied by a 'Certified Copy of the Impugned Order')

Munagala Roja Harsha Vardhini v Vardhansmart Private Limited, Company

Appeal (AT CH) Ins No.232024, NCLAT Chennai, Order dated 15.03.2024

MISCELLANEOUS

RBI places business restrictions on Kotak Mahindra Bank over IT Management concerns

The Reserve Bank of India has taken stringent action against Kotak Mahindra Bank Limited, directing the bank to halt onboarding of new customers through its online and mobile banking channels and also the issuance of fresh credit cards, with immediate effect. The action was taken under Section 35A of the Banking Regulation Act, 1949, as significant concerns gave rise from the IT Examination of the bank conducted by the RBI for the years 2022 and 2023. Serious deficiencies and non-compliances were found in various areas of IT management, resulting in frequent and significant outages in the bank's Core Banking System and digital banking channels. According to the Press Release as published on the RBI's official website, the frequency and severity of outages in Kotak's Core Banking System and digital platforms have raised serious questions about operational resilience.

The press release further clarifies that the restrictions imposed on the Kotak Bank will be reviewed upon completion of a comprehensive external audit to be commissioned by the bank with the prior approval of RBI, and remediation of all deficiencies that may be pointed out in the external audit as well as the observations contained in the RBI Inspections, to the satisfaction of the Reserve Bank of India.

Supervisory action against Kotak Mahindra Bank Limited under section 35A of the Banking Regulation Act, 1949, dated 24.04.2024

ABOUT THE FIRM

SA Law is a full service law firm based in New Delhi with a focus on dispute resolution. We offer services throughout India and our services include Litigation, Transactions, Arbitration, Mediation, Conciliation, Compliance and Regulatory matters We handle myriad legal issues including Domestic and International Arbitration, Anti-Trust, Competition Law, Civil and Commercial Laws, Family Law, Insolvency and Bankruptcy Laws, Intellectual Property Laws, Tax Laws, Criminal Laws, Service Law, Family Law, Property Laws, etc to name a few.

Our Partners oversee legal services for several clients located pan India. Our practice areas extend to key judicial forums including the Supreme Court, High Courts, NCLAT, NCLT, Electricity Appellate Tribunals (APTEL), Competition Commission of India, NCDRC, and various Trial courts at Delhi and at several other locations in India.

Over the years, our team has handled several high stakes litigation from the Trial Court up to Supreme Court and before several other forums and tribunals. We have carved a niche for ourselves and advise several Fintech, Edutech and Meditech companies for their various requirements including regulatory advice, compliance, transactions and litigation. We have several corporate companies as our clients who turn to us for our counsel on legal challenges faced by them. SA Law has also advised several Start-Ups to build their companies from scratch starting from the founders' agreement to raising capital or day to day running of the companies. Our core value is to offer most practical and legally sound advice in the most affordable and time-bound manner.

SA Law also believes in giving back and collaborates with several law colleges to train future lawyers on latest nuances of the law.

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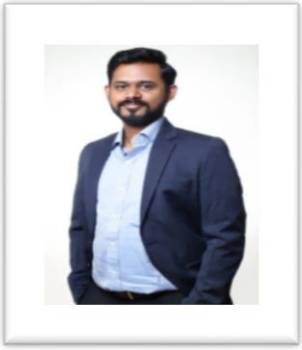

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