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Dear Readers,

Greetings from SA Law!

We are excited to launch the first 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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E- Commerce to Protect IP Rights

The Hon'ble Delhi High Court has issued an injunction against IndiaMART InterMESH Ltd in response to a trademark infringement case brought by PUMA SE. The case alleges the presence of counterfeit PUMA goods on the e-commerce platform. Justice C Hari Shankar's interim order prohibits IndiaMART from displaying any registered PUMA trademarks during seller registrations. The court emphasised that e-commerce platforms cannot be safe havens for infringers and ordered the removal of all infringing listings. The injunction will endure until the court adjudicates PUMA's trademark infringement suit, with the option for IndiaMART to seek modifications by implementing regulatory and protective measures.

Apple's patent issue: US court of Appeal upholds ban on sale of Apple Watch

In a recent legal development, the United States Court of Appeals for the Federal Circuit dismissed Apple Inc.'s appeal against the International Trade Commission's (ITC) limited exclusion order. The case revolved around certain light-based physiological measurement devices and their components. The ITC's investigation stemmed from a complaint filed by medical technology companies Masimo Corporation and Cercacor Laboratories, Inc., alleging violations of Section 337 of the Tariff Act of 1930.

Section 337 deems unfair methods of competition and acts in the importation of articles into the United States unlawful. The ITC found Apple in violation, leading to the issuance of a limited exclusion order preventing the unlicensed entry of wearable electronic devices with light-based pulse oximetry functionality covered by specific patents. Additionally, a cease and desist order was imposed on Apple and its affiliated companies.

Apple sought an appeal, arguing against the exclusion order. However, the Court, comprising Judges Alan D. Lourie, Sharon Prost, and Richard G. Taranto, dismissed Apple's appeal and lifted the interim stay. The decision was based on a thorough examination of factors such as the likelihood of success on the merits, irreparable harm to the movement, potential injury to other parties, and the public interest. Despite Apple's arguments, the Court upheld the ITC's exclusion order, reinforcing the importance of patent protection in the realm of innovative technology.

Forcing to buy Water: Unfair Trade Practice

The District Consumer Disputes Redressal Commission (DCDRC) in Jodhpur recently ruled in favor of consumers who complained about being compelled to purchase bottled mineral water at Foresta Café, as the establishment did not offer free regular drinking water. Citing legal and moral obligations based on precedent, the Commission found Foresta Café deficient in service and engaged in unfair trade practices. The complainants, disappointed by the unavailability of free drinking water, ordered fast food instead. Despite Foresta Café selling the bottled water above the printed MRP, the Commission upheld their right to do so. However, it emphasised the obligation for cafes and restaurants to provide free drinking water and awarded compensation of Rs 20,000 for the mental and physical distress caused to the complainants, along with Rs 5,000 as the cost of proceedings. This ruling underscores the importance of establishments meeting their moral and legal obligations to consumers.

The Bilikis Bano verdict; Hon'ble Supreme Court Says Gujrat Government not having Jurisdiction to decide on remiss

The Hon'ble Supreme Court, in its recent verdict, set aside orders granting remission and early release to 11 convicts involved in heinous crimes during the 2002 Gujarat riots. The court, comprising of Justice BV Nagarathna and Justice Ujjal Bhuyan, held that the State of Gujarat lacked jurisdiction to entertain remission applications.

The ruling declared the orders void, citing fraud in obtaining them and emphasised that the government must consider the opinion of the court where the conviction occurred. The case involved the gang rape and murder of Bilkis Bano's family members during the riots. The court also clarified the definition of "appropriate Government" under Section 432 of the CrPC, highlighting that the convict's sentencing state holds jurisdiction. The judgment underscores the importance of legal procedures in remission cases and upholds the rule of law.



- Remission under Section 432 of the CrPC is applicable only within the territorial jurisdiction of the State Government where the applicant was convicted.

- Remission applications must comply with Section 432 CrPC and consider eligibility under Section 433-A, ensuring a minimum of fourteen years of imprisonment for life sentence convicts.

- Mandatory compliance with guidelines under Section 432(2), including obtaining the Presiding Judge's opinion from the convict's trial court.

- The applicable remission policy is determined by the State that serves as the appropriate Government with jurisdiction over the application.

- Factors considered in remission applications: a) Individual nature of the crime, b) Risk of future criminal behavior, c) Loss of criminal potential, d) Purpose of continued confinement, e) Socio-economic conditions of the convict's family.

- Consultation in accordance with Section 435 CrPC is required when necessary.

- The Jail Advisory Committee may exclude the District Judge as a member to avoid potential conflicts of interest.

- Grant or refusal of remission must be clearly outlined in a speaking order.

Judicial review of remission orders may be sought based on grounds such as lack of application of mind, malice, extraneous considerations, exclusion of relevant materials, and arbitrariness.

DNA Indexing to seek identity of the Dead bodies: Supreme Court Issues notice in the PIL

The Hon'ble Supreme Court of India issues notice in PIL urging the Union Government to establish a DNA Index to aid in the identification of deceased individuals.



The bench, led by Hon'ble Chief Justice DY Chandrachud and comprising of Justice JB Pardiwala and Justice Manoj Misra, was informed that an alarming 40,000 dead bodies are discovered annually, remaining unidentified and unclaimed.

The petitioner's counsel highlighted previous efforts, citing a statement by the Union of India in response to a court order on May 1, 2018. The Union had assured legislation in this regard, with a bill introduced in the Lok Sabha. However, the bill lapsed after passage and subsequent reintroduction, eventually being withdrawn on July 24, 2023.

In response to the Chief Justice's inquiry about directing Parliament to enact a law, the counsel clarified that the petition seeks the Union to establish a DNA index. Emphasizing the use of technology to locate missing individuals, the counsel outlined the plea's objective.

The Hon'ble Supreme Court agreed to issue notice on the petition, scheduling its return after six weeks for further deliberation on the crucial matter concerning the identification of the deceased through advanced DNA technology

Supreme Court on Adani vs. Hindenburg

The Supreme Court, led by Chief Justice DY Chandrachud, has directed the Securities and Exchange Board of India (SEBI) to utilise its investigative powers to examine whether the Hindenburg report on short-selling violated laws and harmed investors. The court dismissed findings from the NGO, Organised Crime and Corruption Reporting Project (OCCRP) concerning alleged stock manipulation and accounting fraud against the Adani Group, stating that third-party reports lacked substantiation and couldn't serve as conclusive proof against a statutory regulator like SEBI.

Hon'ble Chief Justice of India emphasised that the judiciary's review of SEBI's regulatory framework aimed to check for arbitrariness or fundamental rights violations, finding no irregularities in SEBI's completed investigations against Adani Group. The court instructed SEBI to expedite the remaining two investigations within three months.

The judgment rejected allegations that SEBI suppressed information from the Directorate of Revenue Intelligence (DRI) about Adani's financial activities. The DRI had reportedly alerted SEBI about potential stock market manipulation by the Adani Group, but the court upheld SEBI's argument that the DRI probe was closed in 2016.

Additionally, the court dismissed claims of a conflict of interest regarding the Justice AM Sapre Committee, formed to investigate regulatory failures following the Hindenburg report. The petition, presented by advocate Shri Prashant Bhushan, argued that committee members had conflicts, but the court found no evidence of such conflicts. The committee is tasked with examining the causes of investor losses following allegations against the Adani Group.

Supreme Court reframes prerequisites for Bail Applications

In case of *Kusha Daruka vs. State of Orissa* [2024 SCC Online SC 56], the Hon'ble Supreme Court, on January 19, issued a set of prerequisites for grant of bail applications, emphasizing the need for clarity and coherence in proceedings. The directives, outlined by the Division Bench of Hon'ble Justices Rajesh Bindal and Vikram Nath, aim to streamline processes and prevent anomalies in bail applications.

The Court reiterated a prior directive from the judgment in *Pradhani Jani v. The State of Odisha 2023*, stating that all bail applications related to different accused in the same FIR should be listed before the same Judge. Additionally, the Court issued several key directions:

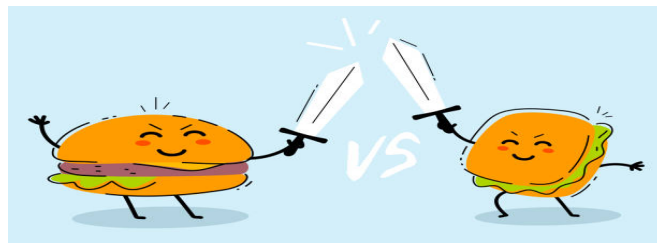
- Inclusion of details and copies of orders from previous bail applications filed by the petitioner.
- Disclosure of any pending bail applications in other courts and clear statements if none are pending.
- Explicit mention in the application of whether it is the first, second, or subsequent bail application.
- The court registry to provide a system-generated report on decided or pending bail applications in the relevant crime case.
- Duty of the Investigating Officer or State Counsel's assistant to appraise the court of any relevant orders in the case.

The Hon'ble Supreme Court made these observations during the hearing of a bail application related to two individuals accused under the Narcotic Drugs and Psychotropic Substances Act. The Court highlighted the importance of transparency in presenting facts, citing a case where crucial information was omitted in a second bail application. While dismissing the application, the Court underscored its option to cancel bail based on party conduct, emphasizing the need for adherence to procedural fairness.

Delhi High Court

The tale of “Butter-Chicken” and “Dal Makhni”: Daryaganj vs. Moti Mahal before Delhi High Court

In a culinary clash, the proprietors of Moti Mahal have taken legal action against the owners of Daryaganj restaurant, alleging deceptive use of the tagline "Inventors of Butter Chicken and Dal Makhani." Moti Mahal contends that Daryaganj is misleading the public by implying a connection between the two establishments, particularly since Moti Mahal's first branch was located in the Daryaganj neighborhood of Delhi.



The case, presided over by Justice Sanjeev Narula on January 16, resulted in the issuance of summons to Daryaganj restaurant owners, requiring a written response within a month. Additionally, Justice Narula scheduled a hearing on Moti Mahal's application for an interim injunction on May 29. Both restaurant chains have long claimed to be the pioneers of Butter Chicken and Dal Makhani. Moti Mahal attributes the culinary innovations to their predecessor, Late Kundal Lal Gujral, while Daryaganj restaurant credits Late Kundan Lal Jaggi. Moti Mahal's suit details Gujral's invention of the famous Tandoori Chicken, followed by the creation of Butter Chicken and Dal Makhani. The latter dish, according to Moti Mahal, was born out of Gujral's concern about unsold chicken leftovers, leading to the creation of the iconic 'makhani' or butter sauce.

While Daryaganj is yet to respond formally, their lawyers dismissed the allegations as baseless during the January 16 court appearance, asserting that no false representation had occurred. They pointed out that the first Moti Mahal restaurant was a joint establishment involving predecessors of both parties in Peshawar. The courtroom showdown awaits further developments in this flavorful legal dispute.

Regulatory updates

SEBI's framework on Short Sellings



Following the Hon'ble Supreme Court's dismissal of Adani-Hindenburg petitions, the Securities and Exchange Board of India (Sebi) has unveiled a comprehensive framework for Short Selling. Sebi's definition of "Short Selling" involves selling stocks not owned at the time of trade, permitting all classes of investors to engage in short selling, but prohibiting naked short selling. Investors must honor their obligations of delivering securities during settlement.

The framework aligns with the 2007 circular, emphasizing the institutional investors cannot engage in day trading, necessitating gross transactions at custodians' levels. Custodians will settle deliveries on a net basis with stock exchanges. Stock exchanges are urged to establish deterrent provisions against brokers failing to deliver securities at settlement, and SEB advocates implementing a Securities Lending and Borrowing (SLB) scheme to boost short selling.

MoRTH Revises Requirements for Emission standards



On January 5, 2024, the Ministry of Road Transport and Highways introduced amendments to the Central Motor Vehicles Rules, 1989, through the Central Motor Vehicles (First Amendment) Rules, 2024. The revisions primarily focus on refining the application of test requirements for Type-Approval-BS VI in vehicles of Category M and N with a gross weight not exceeding 3000 Kg. The Chassis Dynamometer will be utilized for testing, and strict conformity of production ('CoP') norms without relaxation is emphasised, following the AIS-137 procedure.

The amendment also addresses crankcase ventilation systems, prohibiting the release of crankcase gases into the atmosphere. Gasoline-fueled vehicles are restricted to evaporative emissions not exceeding 2.0g/test. Additionally, a separate testing protocol for vehicles of Category M and N with a gross weight exceeding 3500 Kg under BS-VI is outlined, involving engine dynamometer testing and specific guidelines for positive ignition engines as per the Worldwide Harmonised Test Cycle. These regulations aim to enhance emission standards and testing procedures, contributing to a cleaner and more sustainable automotive landscape.

IBBI introduces Amendment to CIRP Regulations

The Insolvency and Bankruptcy Board of India (IBBI) has issued crucial amendments to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) through a notification dated September 18, 2023, effective from the same date.

In a subsequent press release on September 19, 2023, the IBBI outlined the key modifications aimed at enhancing the Corporate Insolvency Resolution Process (CIRP).

To ensure the smooth conduct of CIRP, the amendments outline a detailed procedure for the Resolution Professional (RP) to take custody and control of assets and records of the Corporate Debtor (CD) with the expected assistance from CD personnel.

To ease the burden on the Adjudicating Authority (AA) handling delayed claim applications, the amendments extend timelines for filing claims, empowering the RP to provide views on claim acceptance even beyond stipulated times.

Specially addressing the concerns of home buyers, the amendments enhance the role and responsibilities of the Authorized Representative (AR), including reviewing RP minutes, aiding in resolution plan evaluation, providing regular updates, and facilitating plan modifications. Committee members can now conduct an audit of the CD, with audit costs becoming part of CIRP expenses for enhanced transparency.

The amendments align timelines for various procedural aspects, introduce changes to Form G to provide more information to prospective resolution applicants, and mandate the inclusion of committee of creditors' minutes in the compliance certificate (Form H) for better understanding of CoC decisions by the AA.

In cases of debt assignment, creditors must now provide details within seven days, streamlining Committee of Creditors meetings. Additionally, detailed chronologies of debt, default, and limitation must be submitted with evidence in applications under Section 7 or Section 9 of the Insolvency and Bankruptcy Code, facilitating AA adjudication. These amendments collectively aim to fortify the transparency, efficiency, and value of the resolution process.

Parliament passes the revolutionary Telecommunication Bill 2023

The Indian Parliament recently passed the Telecommunications Bill, 2023, heralding a significant overhaul of the country's antiquated telecom laws dating back to the 19th century. The legislation, a reform of the Indian Telegraph Act of 1885, the Wireless Telegraphy Act of 1933, and the Telegraph Wires (Unlawful Possession) Act of 1950, addresses key issues in the modern telecommunications landscape. Notable provisions include rules for spectrum allocation, a non-auction avenue for satellite-based communication services, and stringent measures against phone number spoofing for fraudulent activities.

The bill also introduces a robust online grievance redressal mechanism, emphasizing a "digital-by-design" approach. Noteworthy impacts on consumers include penalties for obtaining telecom resources through fraud, stricter measures against SIM card cloning, the necessity of user consent for promotional messages, protection of press correspondents' messages, and a mandate for telecom operators to collect verifiable biometric data for new connections. With approval from both Lok Sabha and Rajya Sabha, the bill is poised to become law pending presidential assent.

Miscellaneous

The New Dawn of Competition Law: Panel Submits report on Digital Competition Law



Competition Commission of India

The 16-member Inter-Ministerial Committee on Digital Competition Law, instituted by the Ministry of Corporate Affairs in February, 2023, is anticipated to receive an additional extension for submitting its report. Initially granted three months, the committee has already received four extensions, with the latest permitting a report submission deadline of August 31. A parliamentary panel chaired by Shri Jayant Sinha, which initially proposed the digital competition law idea, has urged the government for prompt insights into the committee's findings.

The digital competition law seeks to address concerns regarding anti-competitive practices, data protection, and fair competition in the evolving digital landscape, crucial for the nation's digital economy growth. Amidst these developments, global efforts, such as the European Union's Digital Markets Act (DMA), illustrate a proactive approach to digital market regulation. The DMA aims to foster fair and contestable digital markets by curbing the dominance of major players, termed 'gatekeepers.' It outlines guidelines for gatekeepers, preventing preferential treatment of their services, and ensuring data portability and interoperability.

The DMA's ex-ante regulation approach stands in contrast to reactive ex-post regulations, offering a model for jurisdictions

considering similar measures to establish equity and innovation in digital markets.

Though its impact is yet to be fully assessed, the DMA represents a crucial step towards fostering competition, innovation, and consumer protection in the digital realm.

CCI to conduct 'Effect Analysis' for proving abuse of dominance

The National Company Law Appellate Tribunal (NCLAT) has ruled in the case of Google LLC & Anr v Competition Commission of India & Others that the Competition Commission of India (CCI) must perform an "effects analysis" to establish abuse of dominant position under Section 4 of the Competition Act. Contrary to the Act's language, the NCLAT mandates the CCI to assess the anticompetitive impact of alleged misconduct.

Notably, the decision prevents the imposition of behavioral remedies on dominant enterprises without specific findings of abuse. This marks a departure from past practices where the CCI found violations irrespective of anticompetitive effects. The ruling necessitates a comprehensive evaluation of a dominant entity's conduct by the CCI before determining infringement and imposing remedies. The decision is under appeal before the Supreme Court, but no stay has been issued. This development holds implications for ongoing and future competition law cases in India.



ICJ issues Instruction to Israel

In a significant development, the International Court of Justice (ICJ) has issued provisional measures against Israel in response to allegations by South Africa regarding Genocide Convention violations in the Gaza Strip. The 17-Judge Bench ordered Israel to prevent acts of genocide against Palestinians, ensure military compliance, curb incitement, provide humanitarian aid, preserve evidence, and submit a report within a month. The legal trajectory began with South Africa's filing in December 2023, citing Israel's alleged breaches after a Hamas attack. The ICJ found plausible rights and urgency, establishing prima facie jurisdiction and confirming South Africa's standing. The Court highlighted concerns about hostages held by armed groups.

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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