



SAGA LEGAL

COMMUNIQUE

MARCH 2022



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COURTS THIS MONTH

- The Supreme Court in the case of *State of Orissa vs. Utkal Distilleries Ltd. (CA 5666-5668 of 2009)* ruled that the State governments do not have power to levy excise duty in respect of an alcoholic liquor which is not for human consumption. In this case, the Supreme Court was dealing with an appeal against a demand notice issued to pay excise duty on the said spirit by the government of Orissa. The Bench of the Supreme Court comprising of Justice L. Nageswara Rao and Justice B. R. Gavai observed that “...alcoholic liquors, which are for human consumption, are put in Entry 51 List II authorizing the State Legislature to levy tax on them, whereas alcoholic liquors other than for human consumption have been left to the Central Legislature under Entry 84 for levy of duty of excise. It has been held that what has been excluded in Entry 84 has specifically been put within the authority of the State for purposes of taxation. The Constitution Bench clearly held that the State Legislature had no authority to levy duty or tax on alcohol, which is not for human consumption as that could be levied only by the Centre.”
- A Bench of the Supreme Court comprising of Justice M.R. Shah and Justice B.V. Nagarathna in the case of *Municipal Corporation Gondia vs. Divi Works & Suppliers (HUF CA 1538 of 2022)* observed that a writ cannot be issued in such a manner that it would amount to granting specific performance of a contract or work order. The Supreme Court was dealing with a challenge against an order of the Bombay High Court wherein the High Court had set aside the work order cancellation and had ordered that the Petitioner was entitled to supply the goods in pursuance of the work order and that it was also entitled to the requisite payments. The Supreme Court set aside the order of the High Court and held that “*In absence of any evidence and material on record and there being disputed questions of facts the High Court ought not to have passed the impugned judgment and order directing the Council to continue the work order and accept the goods from the original writ petitioner and to make the payments as per the work order as the same would be specific performance of the work order.*”
- The Supreme Court in the case of *State of Punjab vs. Mehar Din (CA 5861 of 2009)* observed that being the highest bidder does not vest any right in the said bidder and its bid. The Apex Court further stated that the position of the highest bidder is always provisional and is to be examined in the context of different conditions. In this case, the Supreme Court was dealing with the public auction of a property wherein the highest bid was provisionally accepted, but later a re-auction was declared for reasons that the said property was not put to proper publicity and that provisionally accepted bid was inadequate. The Supreme Court in the appeal observed that “*..the acceptance*



- of the highest bid or highest bidder is always subject to conditions of holding public auction and the right of the highest bidder is always provisional to be examined in the context in different conditions in which the auction has been held.*" The Supreme Court further also observed that the power of judicial review should be cautiously exercised in case of tenders, unless there is substantial public interest involved or the said transaction is *malafide*.
- The Supreme Court in the case of *State of Madhya Pradesh vs. Sadique (Review Petition (Crl) Diary No. 1930 of 2022)* held that a Magistrate cannot extend the time to complete investigations under the Unlawful Activities (Prevention) Act, 1967 ("UAPA") cases. In this case the Supreme Court was dealing with a challenge against order of a Magistrate wherein the Magistrate had extended the period to complete the investigation. Relying on Section 43D(2)(b) of the UAPA, the Supreme Court held that *"The Magistrate's jurisdiction to extend time under the first proviso in Section 43-D (2)(b) is non-existent. Consequently, in so far as "Extension of time to complete investigation" is concerned, the Magistrate would not be competent to consider the request and the only competent authority to consider such request would be "the Court" as specified in the proviso in Section 43-D (2)(b) of the UAPA."*
 - A Bench of the Supreme Court comprising of Justice Sanjiv Khanna and Justice Bela M. Trivedi in the case of *Neetu Singh vs. State of UP (SLP(Crl) 783/2020)* observed that failure to pay rent is not a penal offence under the Indian Penal Code, 1860 ("IPC"). The Supreme Court here was dealing with an appeal against an order of the Allahabad High Court wherein the High Court refused to quash an FIR registered for the offence of cheating under Section 415 and that of criminal misappropriation under Section 403 of IPC, arising from failure to pay rent by the lessee. Allowing the appeal and quashing the FIR, the Supreme Court noted that *"..no criminal offence is made out, even if we accept the factual assertions made in the complaint, which was registered as the First Information Report. Failure to pay rent may have civil consequences, but is not a penal offence under the Indian Penal Code. Mandatory legal requirements for the offence of cheating under Section 415 and that of misappropriation under Section 403 IPC are missing."*
 - The Supreme Court's Bench comprising of Justice L. Nageswara Rao and Justice B. R. Gavai in the case *Shyam Sel and Power Limited vs. Shyam Steel Industries Limited (CA 1984 of 2022)* observed that Letters Patent Appeals are not maintainable against orders that do not have the trappings of finality of being a judgment. In this case the Supreme Court was dealing with an appeal wherein the



High Court had allowed a Letters Patent Appeal against the decision of a single judge ordering defendants to file affidavit-in-opposition and postponed the hearing of the application seeking injunction. Referring to the Supreme Court decision in *Shah Babulal Khimji vs. Jayaben D. Kania and Another* ((1981) 4 SCC 8), it was observed that “...whether an order impugned would be a 'judgment' within the scope of Clause 15 of Letters Patent, would depend on facts and circumstances of each case. However, for such an order to be construed as a 'judgment', it must have the traits and trappings of finality. To come within the ambit of 'judgment', such an order must affect vital and valuable rights of the parties, which works serious injustice to the party concerned. Each and every order passed by the Court during the course of the trial, though may cause some inconvenience to one of the parties or, to some extent, some prejudice to one of the parties, cannot be treated as a 'judgment'.” In light of the aforesaid, the Supreme Court further observed that since the decision of the Single Judge was merely a postponement of the adjudication on the relief of injunction, therefore “the order might have caused some inconvenience and may be, to some extent, prejudice to the respondent plaintiff; the same could not be treated as a 'judgment' inasmuch as there was no conclusive finding as to whether the respondent plaintiff was entitled for grant of ad interim injunction or not”.

- The Supreme Court in the case of *State of Gujarat vs. R.J. Pathan* (CA 1951 of 2022) observed that High Courts do not have the authority to direct regularization of temporary employees by creating supernumerary posts. In this case the Supreme Court was dealing with an appeal arising from the decision of the Gujarat High Court, directing the State to consider the cases of some temporary employees for regularization, by creating supernumerary posts. Quashing the decision of the High Court, the Supreme Court held that “Such a direction is wholly without jurisdiction. No such direction can be issued by the High Court for absorption/regularisation of the employees who were appointed in a temporary unit which was created for a particular project and that too, by creating supernumerary posts.” The Supreme Court further noted that “even such a direction could not have been passed by the Division Bench of the High Court as there were no peculiar facts and circumstances which warranted the above observation. No such order of absorption and/or regularisation even if required for creating supernumerary posts and not to treat the same as precedent could have been passed by the High Court in exercise of powers under Article 226 of the Constitution of India.”
- The Supreme Court's Bench comprising of Justice Hemant Gupta and Justice V. Ramasubramanian in the case of *Oriental Insurance*



Company Limited vs. Sanjesh and Anr(SLP(C) 3978 of 2022) observed that an insurance policy barring the filing of the claim after the specified time period is contrary to Section 28 of the Indian Contract Act, 1872 (“ICA”). The Supreme Court was dealing with an appeal filed against the decision of the Allahabad High Court. It was claimed by the insurance company that the policy provided that claim has to be filed within 1 (One) month and that the period can be condoned by another month by the collector. However, since the claim was filed beyond the 2 (Two) months period, the claim should not be allowed. The Supreme Court relied on Section 28 of the ICA and held that “*In view of the aforesaid Section, the condition of lodging claim within a period of one month, extendable by another one month is contrary to Section 28 of the Act and thus void.*”

- The Karnataka High Court in the case of *Mahantesh vs. Netharavati (M.F.A. No.100096/2019 (MV))* held that if a heavy goods vehicle is driven by a person holding a light motor vehicle license, then the insurance company will not be liable to pay compensation to the legal heirs of the deceased. In this case, the order of the Motor Vehicle Tribunal holding that the insurer was not liable for paying compensation was challenged before the High Court. The High Court held that in this case the license of the driver was for a light weight motor vehicle, however, the gross weight of the motor vehicle fell

within the definition of heavy goods vehicle. Thus, the insurer would not be liable to pay any compensation as per the insurance policy as this was beyond the scope of the coverage provided in the said policy.

- The Karnataka High Court in the case of *Kasturi Rajupeta vs. Union of India (Writ Petition No 19203 of 2021)* held that renewal of passport does not require permission from a criminal court, if the case against the accused seeking the renewal has been stayed by a higher court. In this case, the writ was filed against the order of the Regional Passport Officer directing the accused to get an order allowing him to get his passport renewed. The High Court observed that the right to travel abroad is an important facet of Article 21 of the Indian Constitution and the Notification dated 25.08.1993, which intends to prevent people undergoing a criminal trial from travelling, is to be balanced and read in conjunction with fundamental rights. In view of the aforesaid, the High Court observed that the Notification is applicable when the proceedings are continuing, and not when the proceedings are stayed by a higher judicial authority. Further, relying on the judgment of *Chamundi Mopeds vs. Church of South India Trust (1992 (3) SCC 1)*, the High Court held that “*...merely because a criminal proceeding is said to be pending, the obtainment of permission from the Court concerned does not become*



imperative regardless of the circumstances”.

- The Division Bench of the Allahabad High Court in the case of *Gamma Gaana Limited vs. Union Of India (Writ Petition No. 173 of 2022)* held that rejection of refund application under the Central Goods and Service Tax, 2017 (“**CGST**”) merely on the ground of delay is not maintainable. The High Court relied on the Supreme Court’s decision ordering exclusion of the period from 15.03.2020 till 28.02.2022 for the purposes of limitation as may be prescribed under any general or special law. The High Court furthermore clarified that wherein the limitation would have expired during the period between 15.03.2020 and 28.02.2022, all the applicants would have a limitation period of 90 (Ninety) days from 01.03.2022. In cases wherein that the actual balance period of limitation remaining with effect from 01.03.2022 is greater than 90 (Ninety) days, the longer period shall apply.
- A Single Judge Bench of the Allahabad High Court in the case of *Amrita Nand @ Tribhuvan Arjariya @ Baba vs. State of U.P. and Anr. (Criminal Appeal No. 3169 of 2020)* observed that it is not mandatory for a child witness to get a competency certificate if the child’s testimony before the Court and during his/her course of examination is rational, unshaken, and inspires confidence of the Court. The High Court here was dealing with a challenge

against an order of the lower court convicting a man under Protection of Children from Sexual Offences Act, 2012 (“**POCSO**”). The Appellant had argued before the High Court that the lower court had not given any competency certificate to the child witness, therefore, her statement could not be relied on. Rejecting the arguments of the Appellant, the High Court held that *“...nowhere it is provided that certificate regarding the competency of the child witness is mandatory. If it is recorded, it is so far so good. But, if the court has put the question to understand his intellect to understand the question and if he replied the rational answer and thereafter his examination was recorded without recording the certificate regarding the competency of the witness and he was thereafter cross examined by counsel for the accused and had replied satisfactorily and given rational answer, therefore, in above circumstances not appending the certificate by the trial judge regarding the competency of the witness is of no consequence and it will not make his statement inadmissible”.* Further relying on the case of *Dattu Ramrao Sakhare vs. State of Maharashtra ((1997) 5 SCC 341)*, the High Court observed that where the Court is satisfied that the child witness below twelve years of age is a competent witness, such a witness can be examined without oath or affirmation.



- A Division Bench of the Allahabad High Court in the case of *Ram Harsh vs. Union of India and Others (Writ Petition No- 17043 of 2021)* observed that Armed Forces Tribunal Act, 2007 does not affect the powers of High Court under Article 226 of the Indian Constitution. In this case, the High Court was dealing with issue of maintainability of a challenge against the decision of the Armed Forces Tribunal, before a High Court. The High Court whilst dealing with the challenge observed that powers under Article 226 are discretionary and the courts should exercise the same based on the facts and situations particular to each case. The High Court also held that “*The principle that the High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternative remedy is available, is a rule of prudence and not a rule of law. The writ courts normally refrain from exercising their extraordinary power if the petitioner has an alternative efficacious remedy. The existence of such remedy however does not mean that the jurisdiction of the High Court is ousted.*” Furthermore, it was observed that the powers under Article 226 are constitutional powers and thus cannot be excluded by a legislation. Despite these observations, the High Court dismissed the writ holding that the Petitioner did not establish that there existed sufficient fact and circumstances for the Court to exercise its discretionary powers under Article 226.
 - The Karnataka High Court in the case of *Resham vs. State of Karnataka & Orsas* well as other connected cases (*W.P.No.2347/2022, W.P.No. 2146 / 2022 & W.P.No.2880/2022*) upheld the amendment made to the school regulations preventing Muslim women from wearing hijab scarfs to schools and educational institutions. The High Court further decided that wearing of hijab is not a part of the essential religious practices under the Islamic faith and thus, is not protected under Article 25 of the Constitution. In this case, the High Court was dealing with a constitutional challenge against Government Order dated 5th February, 2022 issued by the Karnataka Government. Dismissing the challenge, the High Court decided that prescription of school uniform is a reasonable restriction with respect to the fundamental rights of the students under Article 25 of the Indian Constitution and thus, the Government Order does not violate the same.
- The Bombay High Court in the case of *Pigments & Allied vs. Carboline (India) Pvt. Ltd. and Anr. (Arbitration Application No 225 of 2016)* held that insufficiency of stamp cannot be a ground to prevent the Court from disposing an application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of arbitrators. The High Court here was dealing with an application for appointment of an arbitrator where the original agreement was not available and it was claimed by



the Respondents that the stamp duty paid was insufficient. The High Court with respect to the non-placement of original agreement being filed before the Court, held that the same would not prevent appointment of the arbitrator, as in the present case, neither of the parties are challenging the existence of the arbitration agreement. Regarding the insufficiency of stamp duty, the High Court observed that stamp duty is imposed to ensure revenue for the

government, and it cannot be used as a strong arm to prevent genuine litigation. In view of the aforesaid facts and circumstances, the High Court held that “...*once parties are ad-idem on the fact that they have signed the writing containing an arbitration clause, the parties having acknowledged that an arbitration clause was embodied in the substantive contract, cannot prevent the court from disposing an application under Section 11 and the High Court*”.



NOTIFICATIONS/AMENDMENTS INSIGHTS

- Vide Notification No. S.O. 1468(E) dated 30th March, 2022, the Central Board of Direct Taxes (“**CBDT**”) has issued the Faceless Inquiry or Valuation Scheme, 2022. The said Scheme provides a faceless mechanism for the purposes of issuing of notice, direction pertaining to audit of accounts, making inquiry before assessment and valuation under Section 142 and 142A respectively of the Income Tax Act, 1961. The Scheme has to be read with the said Act, and will come into effect from the date of notification in Gazette.
- Vide Circular No. 6 of 2022 dated 17th March, 2022, the CBDT under the provisions of Section 119(2)(b) has condoned delay in filing of Form 10-1C for the assessment year 2021-22. The condonation is conditional on the return of income for A.Y 2020-21 having been filed on or before the due date specified under Section 139 of the Income Tax Act, 1961, the assessee company opting for taxation under Section 115BAA of the said Act in (e) of “Filing Status” and Form 10-1C being filed electronically on or before 30.06.2022 or 3 (Three) months from the end of the month in which this Circular is issued, whichever is later.
- Vide Circular SEBI/HO/DDHS/P/CIR/2022/028 dated 8th March, 2022, Securities and Exchange Board of India (“**SEBI**”) has made a revision to the operational circular for issue and listing of non-convertible securities, securitized debt instruments, security receipts, municipal debt securities and commercial paper. As per the said Circular, in order to bring about uniformity in the requirements and for ease of investment for investors, the limit for investment through UPI mechanism has been increased to Rs. 5,00,000 (Indian Rupees Five Lakhs only). In order to effectuate this, certain changes have been made in Chapter I & II of Circular no. SEBI/HO/DDHS/P/CIR/2021/613 dated 10th August, 2021.
- Vide Circular No. SEBI/HO/IMD/IMD-I DOF5/P/CIR/2022/29 dated 15th March, 2022, SEBI issued a clarification regarding the discontinuation of usage of pool accounts for transactions in the units of Mutual Funds. The Circular clarifies that existing mandates being used for Mutual Fund transactions can continue to remain in the name of the stock brokers / clearing members, subject to Stock Exchanges/ Clearing Corporations ensuring that the Payment Aggregator puts in place mechanisms wherein the beneficiary of the mandate can only be an Approved Account. The notification further made clarification regarding the processing of mutual fund transactions.
- Vide Circular No. SEBI / HO / CFD / CMD1 / CIR / P / 2022 / 40 dated 30th March, 2022, SEBI issued a clarification on the applicability of Regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations,



2015 in relation to Related Party Transactions. Regulation 23 was amended vide notification dated 9th November, 2021, enhancing the scope of related party, related party transactions and the materiality threshold for seeking shareholder approval. In light of these changes, the current circular was issued to give clarifications with respect to the Notifications dated 9th November, 2021.

- Vide Circular No. SEBI/HO/IMD-1/DF9/CIR/2022/032 dated 23rd March, 2022, SEBI issued a circular for change in control of sponsor and/or manager of Alternative Investment Fund (“**AIF Regulations**”) involving scheme of arrangement under the Companies Act, 2013. The amendment is made to streamline the process of providing approval to the proposed change in control of the Sponsor and/or Manager

of the AIF involving scheme of arrangement which needs sanction of the National Company Law Tribunal (“**NCLT**”), in terms of the provisions of the Companies Act, 2013. The Circular shall be applicable to all the applications for change in control of Sponsor and/or Manager of the AIF for which the scheme of arrangement is filed with NCLT on or after April 01, 2022.

- Vide Circular No. F. No. 1/3/2021- CL-V-Part IV dated 4th March, 2022, the Ministry of Corporate Affairs (“**MCA**”) has made amendments to the Limited Liability Partnership Rules, 2009. The amendment amends rules 11, 19(4), 24(6), 25(2), 34, 36, and 37. The amendment also makes changes to a few Forms and Annexures of the said Rules. The amendment shall come into effect from the date of its publication in the Official Gazette.



DEALS THIS MONTH

- AgroStar, a Pune based Agritech startup, acquired INI Farms Pvt. Ltd., a Mumbai-based food value chain company founded in 2009. The deal is for a cash and stock consideration. The deal will provide AgroStar with market linkage solutions to its farmer's network and also provide the customers of INI Farms access to a wider range of fruit and vegetable products. It is also expected that the range of fruits and vegetables being offered post the acquisition will increase significantly on the online platform.
- Byju's founder and CEO Byju Raveendran made an investment of \$400 million out of the total \$800 million in the latest round of funding of Byju's. This has increased the valuation of the Company to around \$22 billion. Byju is an edtech decacorn online tutoring company based out of Bangalore. It is a leader in the online tutoring space and is monumentally growing its market share with each passing day.
- Blinkit, an online instant grocery delivery platform is all set to merge with Zomato. The merger might lead to Blinkit losing its unicorn status and might also significantly reduce the investors interest around the concept of 10-minute grocery delivery service model. Blinkit, which was formerly known as Grofers became a Unicorn last year after crossing its \$1 billion valuation. However, post the merger following the footsteps of Zomato, Blinkit shall acquire the status of a public company.
- Razorpay Software Pvt. Ltd. acquired IZealiant Technologies. IZealiant Technologies is a payments solutions provider that was founded in the year 2015 in Pune. It provides mobile-first, API-enabled, and cloud-ready payment processing products for banks and financial institutions. Razorpay and IZealiant have been collaborating in the past and the acquisition will strengthen Razorpay's banking solutions arm which builds payment banking technologies for its partner banks.
- ANI Technologies Pvt. Ltd is set to buy Avail Finance. Avail Finance is a neo banking platform that provides financial services to the blue collared workforce. Soft Bank-backed ANI Technologies Pvt. Ltd. also operates Ola Cabs. Avail Finance is operated by Avail Financial Services Ltd. and has around 6 million users at present. The acquisition will allow Ola to grow into the fintech space to build a mobility focused financial services business under Ola Financial Services. The acquisition will further strengthen Ola's play in the 'credit underserved segments' that comprises of blue collar workers.
- PVR Ltd. and Inox Leisure Ltd. are all set to be merged with an all-stock merger of the companies. The merger will create India's largest film exhibition entity. After the merger, Inox promoters will own a 16.66% stake in the



combined entity, while PVR founders will own 10.62%. The merger is a result of the impact of the COVID-19 pandemic on both the entities. Notably, the existing multiplex screens will retain their brands, while new cinemas made post the merger will be branded as PVR Inox.

- Axis Bank is set to acquire Citibank's consumer business in India including Citi's credit cards, retail banking, wealth management and consumer loan

business facilities. The transaction also includes the sale of the consumer business of Citi's non-banking financial company, Citicorp Finance (India) Limited, comprising of the asset-backed financing business, which includes commercial vehicle and construction equipment loans, as well as the personal loans portfolio, but excludes Citi's institutional client businesses in India. Axis Bank was selected by Citi following a very competitive and exhaustive auction process.



SAGA LEGAL

📍 OFFICE: A - 55, FIRST FLOOR, HAUZ KHAS, NEW DELHI - 110 016

📍 CHAMBER: 238, M.C. SETALVAD CHAMBERS, SUPREME COURT OF INDIA, BHAGWAN DASS ROAD, NEW DELHI - 110 001

☎ +91 11 41066969 | +91 11 41076969

✉ office@sagalegal.in | admin@sagalegal.in

🌐 www.sagalegal.in

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