



SAGA LEGAL

# COMMUNIQUE

NOVEMBER 2022



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## COURTS THIS MONTH

- The Supreme Court in the case of *Gurdev Singh vs. Harvinder Singh (Special Leave to Appeal (C) No. 19018 of 2022)* has observed that a Plea under Order VII Rule 11 of the Code of Civil Procedure Code, 1908 (“**CPC**”) cannot be rejected on the mere ground that ‘the plaintiff is not being entitled to any relief in the suit’. The Bench comprising of Justice M.R. Shah and Justice M.M. Sundresh heard the petition, where Hon’ble High Court of Punjab and Haryana dismissed the case wherein it was contended that a simpliciter suit of permanent injunction is not maintainable as no declaration has been sought by the plaintiff. The Court observed that “...the aforesaid cannot be a ground to reject the plea at the threshold in the exercise of powers under Order 7, Rule 11 of the CPC. The learned Trial court has rightly rejected the application under Order 7, Rule 11 of the CPC, which is rightly not interfered with by the High Court.”
- The Supreme Court in the case of *Intelligence Officer, Thiruvananthapuram vs. Naushad K.K. and Ors. (Criminal Appeal No. 1726 of 2019)* has reiterated that the quantity of neutral substances under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“**NDPS Act**”) cannot be ignored while labelling of the quantity contraband recovered as ‘small quantity or the ‘commercial quantity. The Bench comprising of Justice S.K. Kaul and Justice Abhay S. Oka was dealing with an appeal challenging the order passed by the Hon’ble Kerala High Court that had allowed an appeal filed by the accused who was convicted in an NDPS case. The Court noted that “*There is no cavil to the issue that the judicial pronouncement now settles the issue in “Hira Singh &Anr. Vs. Union of India &Anr.” reported as 2020 SCC Online SC 382 opining that the decision of this Court relied upon in the impugned judgment- “E. Micheal Raj V. Intelligence Officer, Narcotic Control Bureau, (2008) 5 SCC 161” is no more good law and in determining as to what is the quantity, the neutral substance quantity is not be ignored.*”
- In the case of *The State Of Madhya Pradesh vs. M/s Sew Construction Limited & Ors. (Civil Appeal No. 8571 of 2022)* the Supreme Court has held that ‘discretion’ has no place in contractual matters unless the parties have expressly incorporated it as a part of the contract. The Bench comprising of Justice A.S. Bopanna and P.S. Narasimha while dismissing the appeal, observed that “*The rights and duties of the parties to the contract subsist or perish in terms of the contract itself. Even if a party to the contract is a governmental authority, there is no place for discretion vested in the officers administering the contract. Discretion, a principle within the province of administrative law, has no place in contractual matters unless, of course, the parties have expressly incorporated it as a part of the contract. It is the bounden duty of the court while interpreting the terms of the contracts, to reject the exercise of any such*



*discretion that is entirely outside the realm of the contract.”*

- The Supreme Court in the case of *the Commissioner Of Income Tax - I vs. M/s Balak Capital Pvt. Ltd (Special Leave to Appeal (C) No. 7019 of 2017)* has clarified that an Appeal under Section 260A of the Income Tax Act, 1961 (“**IT Act**”) against orders of the Income Tax Appellate Tribunal (“**ITAT**”) lies only before the High Court within whose territorial jurisdiction the assessing officer is located. The Bench comprising of Justice K.M. Joseph and Justice Hrishikesh Roy further added that “...Even if the case or cases of an assessee are transferred in the exercise of power under Section 127 of the Act, the High Court within whose jurisdiction the assessing officer has passed the order shall continue to exercise the jurisdiction of the appeal. This principle is applicable even if the transfer is under Section 127 for the same assessment year(s).”
- The Supreme Court in the matter of *The Regional Director / Recovery Officer & Anr. vs. Nitinbhai Vallabhai Panchasara (Special Leave Petition (C) No. 16380 of 2022)* has stated that neither the Employee State Insurance (“**ESI**”) Authority nor the Court has any authority to restrict the period during which the interest is payable under Section 39(5)(a) of the Employees State Insurance Act, 1948 (“**the Act**”). The Bench comprising of Justice M.R. Shah and Justice M.M. Sundresh observed that Section 39(5)(a) of the

Act provides that if any contribution payable is not paid by the principal employer on the date on which such contribution has become due, thus, he shall be liable to pay simple interest at the rate of 12% (twelve percent) per annum or at a such higher rate as which may be specified in the regulations till the date of its actual payment is to be made. The Court opined that “...the interest leviable/payable is a statutory liability to pay the interest. Neither the Authority nor the Court have any authority to either waive the interest and/or reduce the interest and/or the period during which the interest is payable.”

- In the matter of *The Commissioner of Income Tax vs. M/s. Mansukh Dyeing and Printing Mills (Civil Appeal No. 8258 & 8259 Of 2022)* the Supreme Court has clarified that Section 45(4) of the Income Tax Act, 1961 (“**IT Act**”) was applicable to not only the cases of dissolution but also cases of subsisting partners of a partnership, transferring the assets in favor of a retiring partner. The Bench comprising of Justice M.R. Shah and Justice M.M. Sundresh observed that “...in view of the amended Section 45(4) of the Income Tax Act inserted vide Finance Act, 1987, by which, “OR OTHERWISE” is specifically added, the aforesaid submission on behalf of the assessee has no substance. The Bombay High Court in the case of *A.N. Naik Associates and Ors., (supra)* had an occasion to elaborately consider the word “OTHERWISE” used in Section



45(4). After a detailed analysis of Section 45(4), it is observed and held that the word “OTHERWISE” used in Section 45(4) takes into its sweep not only the cases of dissolution but also cases of subsisting partners of a partnership, transferring the assets in favour of a retiring partner...”

- The Supreme Court in the case of the *C.C.E. And S.T., Surat I vs. Bilfinder Neo Structo Construction Ltd. (Civil Appeal No. 674 of 2021)* has directed the Union Government to take necessary measures in order to ensure that all the filings of revenue matters before the High courts and Tribunals like the Customs Excise and Service Tax Appellate Tribunal (“CESTAT”) and the Income Tax Appellate Tribunal (“ITAT”) are in the e-filing mode within the period of three months. The Bench comprising of Chief Justice of India D.Y. Chandrachud and Justice J.B. Pardiwala affirmed the suggestions of the Centre that “...the issue of the GST tribunal and submitted that since this is a green field institution, all filings right from the inception should be in the electronic form.”
- The Supreme Court in the case of *Bank of Rajasthan Ltd. vs. VCK Shares & Stock Broking Services Ltd. (Civil Appeal Nos. 8972-8973 Of 2014)* has stated that the Civil Courts are not barred from entertaining a counter lawsuit of a borrower against a lending bank or financial institution. The Bench comprising of Justice Sanjay Kishan Kaul, Justice Abhay S. Oka, and

Justice Vikram Nath dealt with the vexed legal question of whether a borrower, facing the recovery proceedings by a lending bank under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (“RBD Act”) before the Debts Recovery Tribunal (“DRT”), can file a counterclaim case in civil court against the lending financial institutions instead of filing it in the DRT itself. Upon which the Court opined that “...there is no provision in the RDB Act by which the remedy of a civil suit by a defendant in a claim by the bank is ousted, but it is the matter of choice of that defendant. Such a defendant may file a counterclaim, or may be desirous of availing of the more strenuous procedure established under the Code, and that is a choice which he takes with the consequences thereof.”

- The Supreme Court in the matter of *Mohd. Abid & Ors. vs. Ravi Naresh & Ors. (Special Leave to Appeal (Crl.) No(s). 5444 of 2022)* has observed that the proceedings under Section 145 or Section 146 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”) shall come to an end once the Civil Court is seized of the matter. The Bench comprising of Justice Surya Kant and Justice J.B. Pardiwala held that once the Civil Court is involved in the matter, then the respective Court will ultimately decide the party’s respective rights to whether ownership or possession. Additionally, the Court in order to avoid multiplicity of proceedings directed that “...both the parties shall not create any



*third party rights or encumbrances over the property in dispute.”*

- The High Court of Madras in the case of *G. Deepa and another vs. The General Manager and others (W.P. No.18656 of 2008)* observed that the circular of the Reserve Bank of India (“RBI”) in non-base branches recommending banks to frame their own policy for the purpose of restricting ceiling limit is not violative of the Banking Regulation Act, 1949. A Single-Judge Bench of Justice N. Sathish Kumar was dealing with a writ petition filed against the circular of the Department of Banking Operations & Development (“DBOD”) of the RBI. The Court held that “...When the account holder consciously opened the account with all the restrictions in honouring the cheques in non-base branch cannot complain that the same is violative of the property right. When the Reserve Bank have power under the statute to frame necessary guidelines and the banks also framed their own policy to prevent the fraud, it cannot be said that such restrictions in fact, violate the property right of the writ petitioners.”
- The High Court of Delhi in the matter of *State vs. Mohd. Javed Nasir & Ors. (CRL.REV.P. 268 of 2018)* has ruled that Statement made under Section 164 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”) disclosing the commission of rape is sufficient to frame charges under Section 376 of the Indian Penal Code, 1860 (“IPC”). A

Single-Judge Bench of Justice Swarana Kanta Sharma while setting aside the order passed by the Trial Court observed that “*The courts must give careful consideration to the aftermath of an incident of sexual violence against any person. There is no doubt about the trauma which a victim goes has to face, both physically and emotionally, after incidents of such a nature. Many a times, a person may not be in an emotional or physical state to take an immediate stand against the assailant or to go through further trauma of investigation by the police or through an intrusive medical examination, and an accused should not merely be discharged under Section 376 because the prosecutrix has not stated about the same in her FIR or during MLC.*”

- The High Court of Allahabad in the case of *Vidya Devi and Others vs. State of U.P. (Criminal Appeal No. - 3333 of 1984)* has stated that even if the accused has not been arrested and a dead body is discovered based on information revealed by the accused during interrogation, then such information shall be admissible under Section 27 of the Indian Evidence Act, 1872. The Division Bench comprising of Justice Arvind Kumar Mishra-I and Justice Mayank Kumar Jain relied upon the High Court’s ruling in *Sangam Lal vs. State of U.P. 2002 (44) ACC 288* and opined that “...since the appellant Vidya Devi was interrogated by the investigating officer and consequently she stated the manner of commission of the crime by her along with the other



- family members and that on her pointing out, the dead body of the deceased was recovered from the well which was later identified...” “...therefore, the recovery of the dead body of the deceased Asha Devi on the pointing out of the appellant Vidya Devi is admissible under Section 27 of the Evidence Act.” Moreover, the Court observed that “...the appellant failed to discharge her burden as cast upon her u/s 106 of the Evidence Act, 1872.”
- While determining the compensation payable to the representatives of the deceased employee under the Motor Vehicles Act, 1988 (“**MV Act**”), the High Court of Bombay in the case of *Anjali Vilas Deshpande vs. Prabha Rajendra Gupta (First Appeal No. 17 Of 2022)* has ruled that ‘Form 16’ submitted under the Income Tax Act, 1961, is a shred of reliable evidence to determine the real income of the deceased. The Division Bench comprising of Justice Gautam Patel and Justice Gauri Godse heard an Appeal filed by the wife of the deceased challenging the order passed by the Motor Accident Claims Tribunal. The Court held that “*The Tribunal has erred in taking into consideration only the income as shown in the salary slip. As stated hereinabove, evidence and documents produced on record shows that over and above the basic salary, the deceased was also entitled to an additional remuneration on account of his performance...*” “...Thus, the total income of the deceased shown in Form 16 can be attributed to his earnings.”
  - In the case of *Aboil alias Yugandhara w/o Tejpal Patil vs. Tejpal S/o Premchand Patil (Writ Petition No.2668 Of 2021)*, the High Court of Bombay has granted interim maintenance to a woman, observing that a mere social media post about a job or educational qualifications are no grounds to deny her maintenance. A Single-Judge Bench comprising of Justice Sandeep V. Marne opined that “...It is difficult to determine at this stage whether she was actually deceived or was merely attempting to gain praises and popularity on social media platforms by posting factually incorrect information. In absence of any concrete proof of actual employment, an inference cannot be drawn that the offer actually fructified in a job for her. Having arrived at a conclusion the Petitioner-wife is actually not employed, in my view, the doors of the Courts cannot be shut on her, even if her conduct may not be completely free from blemish.”
  - In the matter of *R.K. Tarun vs. Union of India & Ors. (W.P.(C) 5434 of 2017)* the High Court of Delhi has reiterated that the offence under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (“**POCSO Act**”) for sexually abusing a Child is a cognizable and non-bailable offence. The Division Bench comprising of Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad held that “*Section 12 of the POCSO stipulates that whoever commits sexual harassment upon a child shall be punished with imprisonment which may*



*extend to three years. A perusal of Part II of Schedule I of the CrPC enumerates that if an offence is punishable with imprisonment for 3 years and upwards, but not more than 7 years, then it will be a cognizable and non-bailable offence, and shall be triable by a Magistrate of the first class (second category). However, if an offence is punishable with imprisonment for less than 3 years or with fine only, then it will be a non-cognizable and bailable offence that shall be tried by any Magistrate (third category)”*

- The High Court of Kerala in the case of *Union of India & Anr v. Pavithran K. & Anr and other connected cases (O.P. (CAT) No. 111 Of 2020)* has ruled that a government servant who retires on the last working day of the preceding month and whose annual increment falls due on the first of the succeeding month is not entitled to sanction of annual increment for the purpose of pension and gratuity. The Division Bench comprising of Justice A.K. Jayasankaran Nambiar and Justice Mohammed Nias C.P. observed that “...As on 01/01/1986, the day when the annual increment fell due, the applicant was not in service. He became a pensioner already. He cannot draw any pay and allowances from 01/01/1996. In that view of the matter, he will not be

*entitled to claim any annual increment which fell due on 01/01/1996 as he had already retired from service. The employer employee relationship has already ceased. The view taken by the Tribunal, therefore, cannot be accepted.”*

- The High Court of Delhi in the case of *Harnam Singh vs. Government of NCT of Delhi & Ors. (W.P.(C) 1396 of 2021 & CM APPLs. 3972-73 of 2021)* has directed the State Government to ensure strict compliance with the statutory provisions of the Employment As Manual Scavengers And Their Rehabilitation Act, 2013 and the rules framed under the Act. The Division Bench comprising of Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad were dealing with a PIL filed by former Chairman of the Delhi Commission for Safai Karamcharis (“**DCSK**”) and social activist Harnaam Singh raising concern in respect of conditions and facilities provided to various sanitation workers NCT-Delhi. The Court also directed that “...the Government shall also keep in mind the various recommendations submitted by the DCSK from time to time and shall take a decision positively within a period of 60 days of any such recommendation being made by the Commission to the Government.”





## NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Circular no. 23 of 2022 and F. No. 3701142 / 48 / 202-TPL dated 03.11.2022, the Central Board of Direct Taxes (“**CBDT**”) has issued Explanatory Notes to the Provisions of the Finance Act, 2022 (“**FA 2022**”). The said circular, explains the substance of the provisions of the FA 2022 relating to direct taxes. The FA 2022 which was passed by the Parliament and received the assent of the President on 30.03.2022 has been enacted as Act No. 6 of 2022. It specifies the existing rates of income-tax for the assessment year 2022-23 and the rates of income-tax on the basis of which tax has to be deducted at source and advance tax has to be paid during the financial year 2022-23 and amended sections of the Income-tax Act, 1961
- Vide Circular no. SEBI / HO / IMD / IMD-I DOF2 / P / CIR / 2022 / 161 dated 25.11.2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued Timelines for transfer of dividend and redemption proceeds to unitholders. Accordingly, SEBI has decided that the payment of dividends to the unitholders shall be made within seven working days from the record date and the transfer of redemption or repurchase proceeds to the unitholders shall be made within three working days from the date of redemption or repurchase. Consequently, interest for the period of delay in transfer of redemption or repurchase or dividend shall be payable to unitholders at the rate of 15% (Fifteen percent) per annum along with the proceeds of redemption or repurchase or dividend, as the case may be.
- Vide Circular no. SEBI / HO / DDHS / DDHS\_Div1 / P / CIR / 2022 / 158 dated 24.11.2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued disclosures and compliance requirements for Issuance and Listing of Municipal Debt Securities (“**ILMDS**”) under SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015, (“**NCS Regulations**”) which fall within the definition of Green Debt Security (“**GDS**”). Accordingly, an issuer under the ILMDS Regulations may issue a GDS if it falls within the definition of GDS, as per Regulation 2(1)(q) of the NCS Regulations. Such issuer, shall in addition to the requirements prescribed under the ILMDS Regulations and circulars issued thereunder, shall comply with the provisions for GDS, as specified under the NCS Regulations and circulars issued thereunder.
- Vide Circular no. SEBI / HO / DDHS / DDHS-RACPOD1 / P / CIR / 2022 / 154 dated 14.11.2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued Registration and Regulatory framework for Online Bond Platform Providers (“**OBPPs**”). The framework has been prescribed for entities operating/desirous of operating as OBPPs under regulation 51A of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations,



2021 (“**NCS Regulations**”) in order to streamline the operations of the Online Bond Platforms and to facilitate the participation of investors in the bond market.

- Vide Notification Ref. no. RBI / 2022-23 / 135 of DoR.AUT.REC.81 / 24.01.001 / 2022-23 dated 01.11.2022, the Reserve Bank of India (“**RBI**”) has issued the Eligibility Criteria for offering Internet Banking Facility by Regional Rural Banks, 2022 (“**RRBs**”). The said circular came into force on 01.11.2022, and is applicable to all RRBs. The eligibility criteria have been revised keeping in view the need to promote the spread of digital banking for customers in rural areas.
- Vide Notification Ref. no. RBI/2022-23 /140 of DoR.FIN.REC.82 / 03.10.123 / 2022-23 dated 23.11.2022, the Reserve Bank of India (“**RBI**”) with a view to facilitating cash flow-based lending to the Ministry of Micro, Small & Medium Enterprises (“**MSMEs**”) has decided to include Goods and Services Tax Network (“**GSTN**”) as a Financial Information Provider under the Account Aggregator framework. Accordingly, the Department of Revenue shall be the regulator of GSTN for this specific purpose, and Goods and Services Tax (GST) Returns, viz. Form GSTR-1 and Form GSTR-3B, shall be the Financial Information.



## DEALS THIS MONTH

- Ghost Kitchens Private Limited has acquired a Bengaluru-based Foodtech firm Where's The Food for an undisclosed amount in a share swap deal. Founded in 2019, Where's the Food helps restaurants to onboard new customers, retain old customers and improve overall operations. With this acquisition, the Mumbai-based Ghost Kitchens hopes to expand its business operations including, among other things, partner scrutinizing on-boarding procedures, inventory information, and financial reconciliations.
- New Delhi-based Aakash Healthcare Private Limited has acquired Asia Med Centre in Uzbekistan's Tashkent for USD Four million. Following this Acquisition, the multi-specialty hospital-Aakash Healthcare has been upgraded to 60 (Sixty) Beds and has absorbed all 57 (Fifty-seven) employees at the Asia Med Centre. Aakash Healthcare is now planning to expand to South Asia and Dubai, through its sister concern ANVKA Healthcare.
- Engineering-focused Edtech startup Skill-Lync backed by Y Combinator has acquired an Experiential Learning platform for tech careers Crio for an undisclosed amount. The acquisition will help Skill-Lync to enhance its offerings in the online education segment. Binny Bansal-backed Crio, founded in 2018 will work as an independent firm under the Skill-Lync Group. Both companies aim to support over 25,000 (Twenty-five thousand) students with relevant jobs in the next 2-3 years.
- The Global leader in Cloud-based media SaaS technology company Amagi has acquired Streamwise, a US-based data platform for content distributors for an undisclosed amount. The acquisition will help Amagi to scale up its data analytics solutions capabilities with comprehensive, more streamlined reporting and dashboards. The transaction will also enable Amagi to integrate proprietary and third-party data to provide unified analytics to its customers.
- A high-speed, long-distance Trucking aggregator Onmove ran by ZastLogisolutions Private Limited has acquired a 100% (One Hundred percent) stake of Transin Logistics, a Hyderabad based trucking aggregation platform in all Cash Deal. The partnership will help Onmove broaden its customer base in the commodity segment and enter the Port logistics business with a focus on the Port to Plant movement. Accordingly, Transin will be able to expand its user services by offering end-to-end logistical assistance for the transport of final products from plant facilities to the end market.



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