

2023 | ROUND UP LEGAL NEWSLETTER

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FOREWORD

BY OUR FOUNDER

Greetings! Here's our annual roundup of the legal landscape in 2023. This newsletter caters to those with a keen interest in legal insights but lack the time or appropriate medium to stay informed. We've deciphered the pivotal judgments and laws of 2023, delving into topics that sparked national and international interest.

Having successfully argued numerous cases before the Supreme Court and High Courts myself, and after carefully understanding the judicial climate, it leads me to believe that 2024 will be a defining year for various corporate stakeholders.

Through this newsletter, we commit to deliver concise updates and captivating insights, every month!

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COMMERCIAL & ARBITRATION LAWS

Inadequacy of stamp in Arbitration Agreements

A seven-judge bench of the Supreme Court in *In Re Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and The India Stamp Act 1899* overruled its earlier judgment by a five-judge bench in *N.N. Global Merchantile Pvt. Ltd. v. M/s Indo Unique Flame Ltd.*, whereby it was held that unstamped Arbitration Agreements are not enforceable. The Hon'ble Court stated that the arbitration clauses in unstamped or inadequately stamped agreements are enforceable. Insufficiency of stamping does not make the agreement void or unenforceable but it makes an admission in evidence, and it is a curable defect.

Existence and validity of Arbitration Agreement

The Supreme Court in *Magic Eye Developers Pvt. Ltd. v. Green Edge Infrastructure Pvt. Ltd.* held that the issue of the existence and validity of an arbitration agreement cannot be left to the Arbitral Tribunal, as that would be in contradiction to Section 11 (6) of the Arbitration Act and Conciliation Act, 1996.

In this, the issue was that the Parties were bound by Shareholding Agreements and two Memoranda of Understanding (MoUs). The Shareholding Agreement included an Arbitration Clause, however, the same was not included in the MoU-2. The Respondent sought Arbitration under Section 11 of the Arbitration Act and Conciliation Act, 1996, arguing that MoU-2 is linked to agreements containing arbitration clauses. The Appellant disagreed, and emphasizing that the dispute is solely about MoU-2, which lacks an arbitration clause.

Thus, it was held that the issue regarding the existence and validity of an arbitration agreement, if raised at the pre-referral stage, then the Courts are duty bound to decide it conclusively.

Effect of Death of Partner in a Partnership on Arbitration

The arbitration provision will continue in effect even after the death of a partner causes the dissolution of the Partnership. Thus, a Partnership Firm is nothing more than a compendium of the partner's names and an act done by a firm is an act done by its partners.

Therefore, for the purposes of winding up or dissolution, it is necessary to complete the entire transaction pending between the firm and the third party. Consequently, the said firm shall not be barred from invoking the arbitration clause. (*Shyamjee Prepaid Services v. Top Steels*)

Negotiation between Parties Cannot Defer the Cause of Action

The cause of action in the matter cannot be postponed merely on the basis of negotiations between the parties. The Legislature has prescribed a limit of three years to file an Application for the appointment of Arbitrator under Clause 6 of Section 11 of the Arbitration Act and Conciliation Act, 1996 and this statutory time period as per the Limitation Act, 1963 cannot be defeated on the ground that the parties were negotiating. (*B and T AG v. Ministry of Defence*)

Condonation of Delay in Suo Motu Correction of Arbitration Award

In *USS Alliance v. State of Uttar Pradesh* the Supreme Court held that, the Court has the discretion or power to condone the delay under Proviso to Section 34(3) of the Arbitration Act and Conciliation Act, 1996 for a period of upto 30 days and an Application for the same can be filled at any time till the proceedings can be pending, where the Arbitration Award was corrected *suo motu* by the Arbitrator.



INTELLECTUAL PROPERTY LAWS

Jan Vishwas Act, 2023

The Jan Vishwas (Amendment of Provisions) Bill 2022, was passed by the parliament on 2nd August, 2023. The Bill was enforced with the purpose of "Ease of Living and Doing Business in India. Furthermore, the Act decriminalizing multiple offences under various legislations,, such as Copyright Act, 1957, the Patents Act, 1970, the Trade Marks Act, 1999 and the Geographical Indications Act, 1999.

The Act also provides for a reduction in the penalty for non-filing or refusal to file Form 27 potentially undermining the effectiveness of the safeguard.

Institute of Cost Accountants of India Prohibited from Using The Acronym "ICAI"

In response to a lawsuit by the Institute of Chartered Accountants of India (ICAI), the Delhi High Court granted an injunction against the Institute of Cost Accountants of India, prohibiting the use of the acronym "ICAI." The legal dispute revolved around the similarity of marks and services, raising concerns about potential confusion under the Trade Marks Act, 1999. The Court rejected the arguments of delay and acquiescence by the Institute of Cost Accountants of India, emphasizing the infringement based on identical marks and services, citing the principle of 'initial interest confusion.' The Institute of Cost Accountants of India was instructed to discontinue using "ICAI" and remove the acronym from all media within three months from the date of the order.

Madras High Court Upholds Compulsory License Royalty Rates for Radio Broadcasters

The Madras High Court rejected an Appeal challenging the 2010 Copyright Board's Order that established compulsory license royalty rates for radio broadcasters under Section 31(1)(b) of the Copyright Act 1957. Earlier, the fixed rate of 2% of Net Advertisement Revenue (NAR) for all music providers was revisited by the Court. It set aside the 2010 Copyright Board's Order application on all parties involved, clarifying that it would only apply to the parties in the dispute. The Court upheld the 2% NAR rate while introducing a minimum platform rate of INR 660 (Per Needle Hour approach). Despite several Special Leave Petitions (SLPs) filed in the Supreme Court against this decision, the order remains in effect.

Delhi High Court Introduces Dynamic+ Injunction

The Delhi High Court, in *Universal City Studios LLC and Ors. v. DotMovies.Baby and Ors.*, introduced a judicial mechanism to address innovative forms of copyright infringement, issuing the Dynamic+ injunction, for the first time, in favor of Universal City Studios LLC., Warner Bros. Entertainment Inc., Columbia Pictures Industries, Inc., Netflix Studios, LLC, Paramount Pictures Corporation, Disney Enterprises, Inc. (the Plaintiffs). This injunction targets infringing online locations (FIOLs) that illicitly distribute the Plaintiffs' content on the internet patently. While the Dynamic injunctions safeguard existing copyrighted work, Dynamic+ Injunctions instantly protect any future works of the Plaintiff from infringement. This landmark decision is poised to significantly impact future cases, potentially leading to the more common use of Dynamic+ Injunctions.

Right of A Pre-Grant Opponent To Be Informed In Patent Application

The Delhi High Court in *Natco Pharma Limited v. Assistant Controller of Patents* issued a significant ruling emphasizing that a pre-grant opponent must be kept informed about the status of the relevant patent application. The judgment clarified that the Controller should not conduct unilateral hearings, excluding the pre-grant opponent. This ruling came in response to a Writ Petition filed by Natco Pharma against the Controller's order granting Novartis a patent for a form of the Valsartan-Sacubitril complex. The Petition did not challenge the order on its merits but on procedural irregularities and violation of the principle of natural justice, as the Controller conducted an ex-parte hearing excluding Natco. The court held that the Controller should have kept the other party informed of all developments in the case, thereby, setting aside of the impugned order.

Internet Broadcasting is Outside the Scope of Section 31D Copyright Act, 1957

The Bombay High Court in *Wynk Limited and Others v. TIPS Industries Limited*, held that Section 31D of the Copyright Act, 1957 does not encompass internet broadcasting. Building on the rationale of the Single Judge's order, that the Division Bench upheld emphasized that Section 31D which provides for the scheme for statutory licensing, exclusively pertains to Radio and Television Broadcasting. It was stated that when the Act was amended in 2012, internet broadcasting was already prevalent in India, and if the Legislature intended Section 31D to include internet broadcasting, it would have explicitly amended the provision. Thus, it was the intent of the Legislature to exclude internet broadcasting from the purview of Section 31D of the Copyright Act.



WHITE COLLAR AND CRIMINAL LAW

The Supreme Court upholds the unconstitutionality of Section 6A DSPE, 1946

The Supreme Court while considering the constitutionality of Section 6A of the Delhi Special Police Establishment Act, 1946 in *Central Bureau of Investigation v. Dr. RR Kishore* held that once a law is declared unconstitutional on grounds of it infringing any of the fundamental rights guaranteed under Part III of the Constitution, it would be held to be unenforceable right from the date of Enactment. Thus, the declaration made by the Constitution Bench in the case of '*Subramanian Swamy v. CBI*' that the said provision was invalid and unconstitutional and in violation of Article 14 of the Indian Constitution, will have a retrospective operation. Section 6A of the DSPE Act is held to be inoperative from the date of its insertion i.e. 11.09.2003.

Manish Sisodia Denied Bail In The Liquor Policy Scam Case

The Supreme Court denied the bail to one of the founding members of Aam Aadmi Party Manish Sisodia, who was arrested in connection with the Liquor Policy Scam case, while denying the bail the Hon'ble Court observed that "Detention or jail before being pronounced guilty of an offence should not become punishment without trial".

It was also observed that there is lack of clarity regarding his involvement in the direct or indirect transfer of Rs. 45 Crores out of Rs. 100 Crore to the AAP Government for the Goa elections and since AAP is not an accused in the Liquor Policy Scam case, he cannot be held vicariously liable for the same.

Criminal Activity and The Generation of The Proceeds of Crime Are Like 'Siamese Twins' In The Case of An Offence of Corruption

The Supreme Court in *Y. Balaji v. Karthik Desari & Another*, while hearing an Appeal against the Order of Madras High Court related to cash-for-jobs scam, in which the Tamil Nadu's Minister and DMK MLA V Senthil Balaji, among others, who have been accused of accepting bribes from job aspirants in exchange for appointments to the state transport corporation between 2011 and 2015, clarified that criminal activity and the generation of the proceeds of crime are like 'Siamese twins' in the case of an offence of corruption and the acquisition of the proceeds of crime in such cases would itself tantamount to money laundering. The direction of the High Court staying the proceedings in the money laundering case lodged by the Directorate of Enforcement was also set aside.

Trial Courts Have A Duty To Ascertain The Validity of Arrest While Remanding The Accused

The Supreme Court reminded the trial courts regarding their duty to ascertain the validity of the arrest while remanding the accused. It also laid down that the Directorate of Enforcement (ED) should inform the grounds of arrest to the accused in writing and merely, reading out the grounds orally will not suffice. Furthermore, it was held that the ED cannot arrest a person citing mere non-cooperation to the Summons. If the arrest is invalid, then the subsequent remand order will also fail, hence, the judicial order of remand cannot validate an illegal arrest. (*Pankaj Bansal v. Union of India*)

The Supreme Court Made An Order For Anticipatory Bail Absolute, Granted Relief To The Persons Aggrieved By Local Politicians

The Supreme Court in *Muniappan v. The State*, granted Anticipatory Bail to an individual engaged in quarrying and mining activities in the state of Tamil Nadu.

The Petitioner was aggrieved by an Order passed by the Madras High Court, wherein it arbitrarily dismissed Petitioner's Anticipatory Bail Application, and sought to conduct a roving enquiry for the mining activities conducted by him and his associates.

The matter was argued by our founder, who submitted that the High Court exceeded its jurisdiction under Section 482 of the Code of Criminal Procedure, by doing so and also submitted that the local politicians have been demanding illicit payments from the Petitioner and other miners in the area.

As a result, the Hon'ble Supreme Court took cognizance of the matter and issued notice to the State and the Complainant, while granting interim reliefs the aggrieved person.



OTHER HIGHLIGHTS

Supreme Court Validates The 2016 Demonetization

The issue regarding the validity of the demonetization of Rs.500 and Rs.1000 currency notes was settled by the Supreme Court with a 4:1 majority, asserting the constitutional validity of the Union Government's decision. Furthermore, the Supreme Court also held that the 52-day period given for exchanging the currency was unreasonable.

Ashneer Grover Restricted from Creating Third party Rights In The Share of BharatPe

The Delhi High Court denied an interim application by Shashvat Nakrani to restrain BharatPe's former Managing Director, Ashneer Grover, in *Shashvat Nakrani v. Ashneer Grover* from dealing with the "unpaid shares" obtained from co-founder Shashvat Nakrani. Justice Sachin Datta rejected the plea, stating that the admitted shareholding status of Grover disentitles Nakrani to interim relief. The Hon'ble Court, however, directed Grover to inform the Court before transferring the shares. Justice Datta noted that the concluded sale and transfer of shares indicated no reservation of disposal rights for Nakrani. Earlier, a similar suit was filed by co-founder Bhavik Koladiya, seeking to prevent Grover from creating third-party rights in his BharatPe shares. Grover had orally assured the Court that the shares would not be transferred, subject to further orders.

**CONTRACT & COMPANY RESTRUCTURING
LAWS**

Estoppel Applies Where Parties Intentionally Enter into Contract

In the case of the *Chief engineer, Water Resources Department & Ors. v. Rattan India Power Limited Through its Director & Ors.* it was held that a party to the contract is not entitled to question the amount of consideration after signing the contract. In this, the contractual party contested the demand letter issued by the Chief Engineer. The contract, executed by both parties, explicitly stipulated a specific amount, and the party had willingly agreed to fulfil the consideration and issued an undertaking for the same.

Thus, in such a case the principle of estoppel applies and the Parties shall be bound by the agreement entered by it wilfully and deliberately knowing fully well the legal and business consequences.

Promoter of a Corporate Debtor Can Submit the Resolution Plan Post The Commencement of CIRP

The Supreme Court in *Hari Babu Thota* has ruled that a resolution plan can be submitted by the promoter of a Corporate Debtor under Section 240A of the Insolvency and Bankruptcy Code, 2016 (IBC), even if the Corporate Debtor was registered as a Micro Small Medium Enterprise (MSME) after the initiation of Corporate Insolvency Resolution Process (CIRP). The court overturned the National Company Law Appellate Tribunal's (NCLAT) order, which had declared the promoter of Corporate Debtors of an MSME is ineligible due to obtaining the MSME certificate post commencement of CIRP. The Supreme Court emphasized that the objective of Section 29A of IBC is to address financial mismanagement, and specific disqualifications under Sub Sections (c), (g), and (h) of Section 29A IBC do not apply in this scenario. The Hon'ble Court highlighted the exemption of MSMEs from Section 29A, as indicated in the Insolvency Law Committee's Report 2018, emphasizing the importance of preserving MSMEs and their promoters.



While entering into a contract for employment it is essential that employees are aware of the purpose and the period for which their services are hired. Special attention should be paid to the terms and conditions that are being specified in the contract and whether they align with their ideal work experience



**Kartika Sharma, Advocate
Supreme Court of India**

Trading Supported By Blocked Amount In Secondary Market Approved By SEBI

The National Payments Corporation of India (NPCI), established in 2008, functions as an umbrella organization for retail payments and settlement systems in India. NPCI is dedicated to enhancing the country's payment infrastructure through technological innovations, aiming to advance India's transition into a digital economy. In line with this, the upcoming 'UPI for Secondary Market' launch, scheduled for the Beta phase next week, will be implemented in collaboration with key stakeholders such as clearing corporations, stock exchanges, depositories, stockbrokers, banks, and UPI app providers. Initially available to a limited set of pilot customers, this functionality allows investors to block funds in their bank accounts, with the debiting taking place upon trade confirmation during settlement. Groww, alongside BHIM, Groww, and YES PAY NEXT as UPI apps, facilitates this Beta launch. Initially accessible to HDFC Bank and ICICI Bank customers, other banks, stockbrokers like Zerodha, and UPI-enabled apps like Paytm and PhonePe are in the certification stage, preparing to join the Beta launch soon. HDFC Bank, HSBC, ICICI Bank, and Yes Bank serve as sponsor banks for the clearing corporation and exchanges during this initiative.

UPI TAP & PAY Mode of Payments To Be Implemented From January 31, 2024

A new mode, "UPI Tap & Pay," has been introduced for UPI transactions in addition to existing methods like Scan & Pay and Pay to Contact. To utilize this mode, UPI apps must ensure that they operate only on mobile devices equipped with Near Field Communication (NFC) capability, with customer permission for NFC activation. The process involves a separate call-to-action button on the homepage for Tap & Pay, and transactions below Rs.500 will use the UPI LITE account or UPI PIN, depending on user preferences. Transactions exceeding Rs.500 require a UPI PIN and are processed online. Compliance with NPCI brand guidelines for UPI Tap & Pay is mandatory. This payment mode is available on mobile devices with Android/iOS operating systems. The initiation mode '06' is designated for UPI Tap & Pay transactions, and acquiring banks must ensure the NFC tag's certification (Type 2) and non-rewritable post personalization. Acquiring banks shall be liable for the loss that occurred due to tampering, if any, and periodic checks of UPI Smart QRs at merchants are required. Acquiring banks should procure NFC tags from NPCI-approved vendors. UPI QR specifications are embedded in the UPI Smart Tag or paper-based UPI Smart QR. Transactions using UPI Tap & Pay follow the existing dispute management process, and UPI members are urged to implement this functionality by January 31, 2024.



The Reserve Bank of India released a statement on Development and Regulatory Policies relating to Payments, Regulation, and FinTech

- **FRAMEWORK TO SUGGEST TRANSPARENCY IN INTEREST RATES OF EMI:**

To enhance responsible conduct in Interest Rate Reset of Equated Monthly Instalments (EMI) based Floating Interest Loans, the Reserve Bank is addressing instances of unjustifiable prolongation of tenors in floating-rate loans without proper borrower consent. A proposed conduct framework for all Regulated Entities (RE's) aims to tackle this issue.

The framework suggests that lenders must transparently communicate with borrowers about resetting tenors and/or EMI. It emphasizes providing options such as switching to fixed-rate loans or foreclosure, transparent disclosure of associated charges, and clear communication of essential information to borrowers. Detailed guidelines on this framework will be issued soon.

The Reserve Bank has set limits of ₹200 per transaction and ₹2000 overall for small value digital payments in offline mode, including National Common Mobility Card (NCMC) and UPI Lite. These channels, exempt from two-factor authentication for small transactions, facilitate faster and contactless payments for everyday needs.

Due to increasing demands, it is proposed to raise the per transaction limit to ₹500, aiming to encourage wider adoption and expand the use cases for such payments. However, the overall limit will remain at ₹2000 to manage the risks associated with relaxing two-factor authentication. Instructions on this proposal will be issued soon.

In response to the challenges posed by the fragmentation of digital credit data across various entities, the Reserve Bank of India has initiated a pilot project for the digitalization of Kisan Credit Card (KCC) loans below ₹1.60 lakh, starting in September 2022. The pilot, currently active in select districts of Madhya Pradesh, Tamil Nadu, Karnataka, UP, and Maharashtra, aims to streamline the lending process by leveraging end-to-end digitalization in a paperless manner. Encouraging initial results have prompted the extension of a similar pilot for dairy loans with Amul in Gujarat, utilizing milk pouring data. Building upon these pilot learnings, the Reserve Bank Innovation Hub (RBIH) is developing a digital Public Tech Platform for frictionless credit delivery. This platform, with an open architecture and Application Programming Interfaces (API's), will facilitate seamless information flow for lenders, promoting a 'plug and play' model. The platform is set to be introduced gradually in a pilot project, enhancing lending efficiency by reducing costs, expediting disbursement, and ensuring scalability.



ABOUT US

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Our vision is to be recognized as a leading legal firm in the country, known for advancing the cause of justice and setting benchmarks in ethical legal practice.

We aspire to contribute significantly to the legal profession by upholding the principles of fairness, transparency, and accountability. Through our work, we aim to not only serve our clients with excellence but also to enhance the public's trust in the legal system, thereby promoting the greater good and strengthening the rule of law in our country

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