

## INTELLECTUAL PROPERTY RIGHTS



### Delhi High Court injuncts against unauthorised use of well-known trademark "TATTVA SPA"

In a suit for trademark infringement (*Elementia Wellness Pvt. Ltd. v. TES Beauty Services Pvt. Ltd.*), Elementia Wellness, owners of **TATTVA Spa**, sought an injunction against the unauthorised use of their trademark by the Defendants, based out of Goa, for identical services under the infringing and deceptively similar mark "**TATVA**".

While allowing the application for interim injunction, the High Court took note of the Plaintiff's submissions

regarding the famous **Triple Identity Test**, which envisages deceptive visual and phonetic similarity, common customers/trade channels and providing of similar services, all of which stood satisfied in the present case.

The Court directed the Defendant company to recall all marketing and promotional material bearing the mark **TATVA** which is deceptively similar to the Plaintiff's trade mark **TATTVA** for same services and to also discontinue use of any website or social media profile through which the Defendant was advertising the said infringing mark.

### Dynamic Injunctions against Rogue Websites infringing SNAPDEAL's trade mark: Delhi High Court

In a suit for trade mark infringement (*Snapdeal Pvt Ltd vs Snapdealluckydraws.org.in & Ors*), the Delhi High Court has granted injunction against 50 rogue websites that are allegedly infringing SNAPDEAL's trade mark, the famous e-commerce platform. While allowing the application for grant of interim injunction, the Delhi High Court also granted liberty to Snapdeal to approach it further to implead any other such websites carrying out infringing

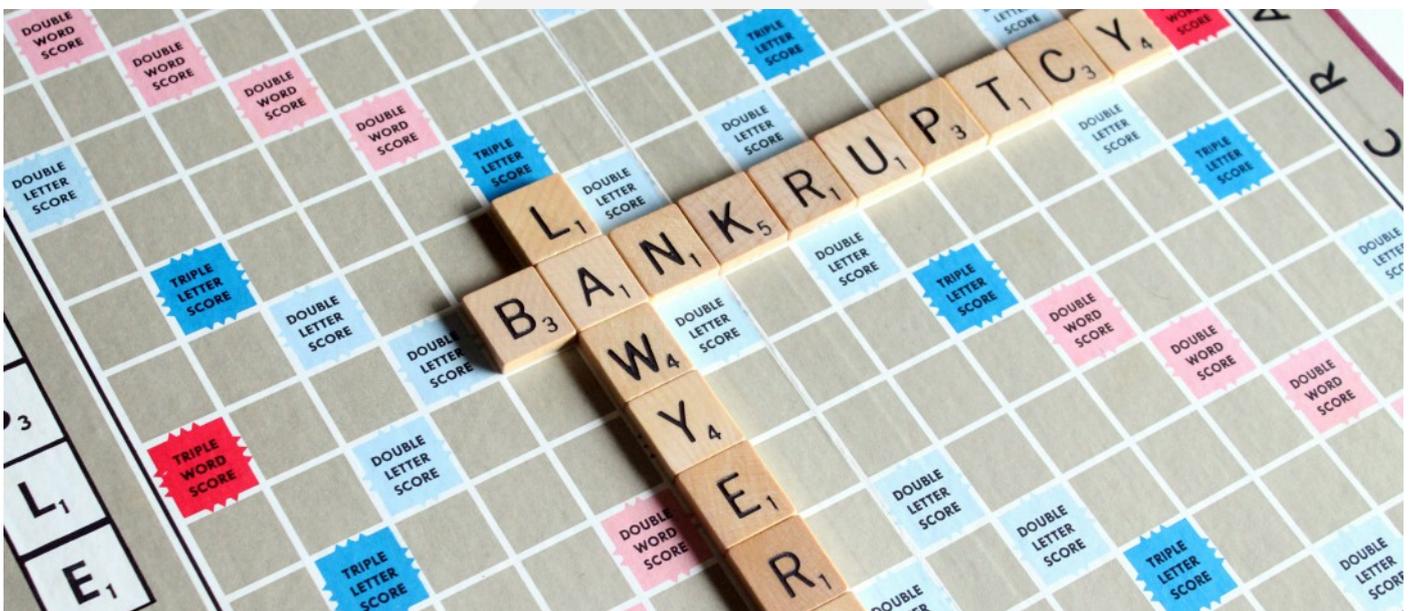
activities, that came to its notice, furthering the practice of 'dynamic injunctions'. The Court observed that the websites were carrying on commercially damaging business activities also resulting in fraud on customers by misleading them into the belief that they are connected with Snapdeal.

## IPRS Revamped

The Indian Performing Rights Society Limited (IPRS), the copyright society representing authors, composers and music publishers, has recently launched an advanced operating system based on cutting edge technology for

its members. The said platform is expected to provide a transparent database to all its members and licensees with modified additional functions such as wider access to published works, submission of new registrations and a systematic and detailed history of royalties.

# INSOLVENCY & BANKRUPTCY



## Supreme Court upholds limitation of three years for initiating CIRP under IBC:

In an appeal filed against the order of NCLAT in the case titled **Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.**, the Supreme Court recently held that the limitation for filing an application under Section 7 of IBC for initiating CIRP process is three years from the date of the alleged 'default'. In the given facts of the case, the Supreme Court observed that the CIRP process under IBC was not intended to be

adversarial in nature but rather to protect the interests of the debtors and hence, was not to be treated as a piece of legislation meant for recovering money.

The said 'default' occurs upon non-payment of the debt which has become due and payable by the Corporate Debtor and the limitation of three years would commence from the date on which the said default occurs. Hence, the Court held that an application under Section 7 for initiating CIRP filed in March, 2018 for a default occurring in July, 2011 was apparently time

barred, being beyond the statutory time period of three years.

## Defence of Pre-Existing Dispute by Corporate Debtor must be shown to exist prior to issuance of Demand Notice by Operational Creditor: NCLAT

In the appeal titled *Adish Jain V. Sumit Bansal & Ors.*, an order passed by the NCLT Delhi was challenged whereby a Section 9 application filed by Worldwide Metals Pvt Ltd (Operational Creditor) was allowed and admitted against JP Engineers Pvt. Ltd.

(Corporate Debtor). Appeal was preferred by the majority shareholder of Corporate Debtor.

The NCLAT upheld the dismissal of the plea raised by the Corporate Debtor regarding existence of dispute between the parties, as a defence to the claim raised by the Operational Creditor. The NCLAT upheld that existence of the dispute must be shown to be "pre-existing" that is, existing prior to raising of the claim by the Operational Creditor through Demand Notice.

### **NCLT Order mandating filing of default records from Information Utility Struck Down by Calcutta High Court**

In a Writ Petition titled *Univalve Projects Pvt Ltd v. Union of India*, the Calcutta High Court struck down an order of the NCLT mandating all financial creditors to file default records from Information Utility in a Section 7 application of IBC. The High Court stated that financial creditors should also be allowed to rely on any other

document as a mode of evidence which proved the existence of financial debt.

While examining the powers of NCLT to issue such a mandate as above, the High Court held that the power to regulate own procedure is to be exercised by the NCLT on the basis of principles of natural justice as well as keeping in mind the applicable Act and Rules, which do not lay down such a mandate.

## CORPORATE



### **Breach of Contract cannot justify Blacklisting from future Contracts: Delhi High Court**

In the case titled *Hariom Project Private Limited Vs. Military Engineer Services (MES), Director of Contract Management & Ors.*, the Petitioner challenged an order debarring it from participating

in the tenders issued by the MES for a period of 2 years; on the allegation of breach of contractual conditions.

The High Court held that such a blanket ban / blacklisting order on the Petitioner was totally disproportionate and arbitrary and hence, could not be sustained, especially considering that the Petitioner

had successfully performed various contracts since last 27 years. Hence, given the unblemished record of the Petitioner and in the absence of any fraud or corruption against the Petitioner, the Petitioner ought not to be subjected to civil consequences of blacklisting which would cast a stigma on its corporate identity.

# ARBITRATION



## Anti-Arbitration Injunctions permissible against foreign-seated arbitration: Calcutta High Court

In the case of *Balasure Alloys Limited v. Medima LLC*, the Calcutta High Court rules that courts in India have the power to grant anti-arbitration

injunctions even in case of *foreign seated* arbitrations, although the said power is to be exercised with abundant caution. The primary principles which would govern grant of such an injunction would comprise of:

- Ends of justice should not be defeated in case of

denial of injunction;

- Principle of comity which means respect for the arbitral court against which restraint is to be exercised;
- The defendant must be amenable to the jurisdiction of the Court.

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