

## INTELLECTUAL PROPERTY RIGHTS

### Delhi High Court injuncts against unauthorised use of well-known trademarks "COLIN" and "HARPIC"

In a suit for trademark infringement (*Reckitt Benckiser India Pvt Ltd v. Ms Super Shine Industries*), Reckitt Benckiser sought an injunction against the unauthorised use of their well-known trademarks "COLIN and HARPIC" by the Defendants by using the same artwork on their labels and product packaging.

While allowing the application for interim injunction filed by Reckitt, the High Court observed that the Defendant is not in the actual business of selling glass and toilet lavatory cleaners, which were the products for which the trade marks in question were being used by Reckitt. Further, the Defendant's trade mark is "SUPER SHINE" which was also not in use. The Court held that there was a prime facie case in

favour of Reckitt and also observed that the activities of the Defendant were jeopardising the commercial and statutory interests of Reckitt. Hence, the Court ordered an interim injunction restraining the Defendant from using Reckitt's registered trademarks "COLIN" and "HARPIC" and the label connected thereto or any other trademarks/trade dress/label, which may be deceptively similar.



## **Herbicide Patent Infringement: Delhi High Court**

In a suit for patent infringement (*UPL Limited vs Modern Insecticides Limited*), UPL Limited sought an injunction against MIL for exporting and manufacturing the herbicide with the exact same mixture of chemicals used by UPL in their patented herbicide mixture.

While allowing the application for grant of interim injunction against MIL, the Delhi High Court held that, UPL's herbicide mixture was a patented invention which was effective in controlling variety of weeds and that UPL had already obtained a license under Section 9(4) of the Insecticides Act, 1968. Whereas, MIL had not yet

commenced its business in India, and even if it were to do so, irreparable damage would be caused to the commercial and statutory interests of UPL. The Court, accordingly, restrained all the activities of MIL concerning the herbicide mixture and ordered MIL to disclose the composition of their product called "FINISHER" as well.

## **Obvious similarity between Patanjali Ayurveda's "CORONIL" and Arudra Engineering's "CORONIL-92B" : Madras High Court**

In a suit for trademark infringement (*M/s.Arudra Engineering Private Limited v. M/s.Patanjali Ayurved Limited*), Arudra Engineering sought an injunction against Patanjali for

unauthorised use of their registered trademark "CORONIL-95 B" which is starkly similar to "CORONIL" as was being used by Patanjali.

The High Court granted interim injunction against Patanjali by observing that the two names sound "same" to each other and their spellings are same as well. That Arudra Engineering had registered their trademark as early as in the year of 1993, which is still valid and the products being sold thereunder have huge clientele catering to companies like BHEL, NTPC and Indian Oil Corporation etc. Further, Arudra Engineering had established a substantial reputation in the market for their product under the trade mark of "CORONIL-95B".

# INSOLVENCY & BANKRUPTCY



## **Section 10A of IBC Ordinance 2020 to be applied retrospectively for defaults after 25 March 2020 : NCLT Chennai**

The main case of *M/s Siemens Gamesa Renewable Power Pvt. Ltd. V. Ramesh Kymal*, wherein a Section 9 application for insolvency under

Insolvency and Bankruptcy Code, 2018 was pending against the Corporate Debtor, for a default that occurred in April 2020, was dismissed by NCLT Chennai.

This was done on the basis of the Insolvency and Bankruptcy Code (Amendment) Ordinance 2020

whereby insolvency proceedings under Section 7, 9 and 10 of the IBC were suspended for a period of 6 months to one year and a new provision under Section 10A which protects defaulters under IBC for a default occurring on or after 25 March, 2020.

NCLT Chennai held that while the Ordinance was passed in June, 2020, it would be made applicable to pending applications for

default after March 25, 2020; thereby making it retrospectively applicable.

## **'Default' Under Settlement Agreement Not "Operational Debt" : NCLT New Delhi**

In the case of *Brand Realty Services*

*Limited v. Sir John Bakeries India Private Limited*, Brand Realty had filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2018 against Sir John Bakeries Private Limited (*Corporate Debtor*) seeking initiation of Corporate Insolvency Resolution Process (CIRP). It was alleged by the Applicant that the Corporate Debtor had violated the terms of the Account Settlement Agreement and defaulted in the payments agreed under the said Account Settlement Agreement. The said

application under Section 9 of the Code was dismissed by NCLT with the observation that the default by the Corporate Debtor in this case related to instalment of the settlement agreement and hence, it does not amount to an operational debt under Section 5(21) of the Code

#### **Foreign Entity can file for initiation of CIRP under Section 9 IBC : NCLT Mumbai**

In the case of *Forever Glory Trading Limited vs Global Powersource (India) Limited*, wherein the Petitioner, a foreign entity, filed an

application under Section 9 of the IBC seeking initiation of CIRP against the Corporate Debtor, one of the objections raised by the Corporate Debtor was that the said application was not maintainable since the Petitioner was a foreign entity. However, the Court while allowing the application on merits, observed that the said objection was not tenable as Sec 3(23) and (25) of the IBC does include in its definition a person who is resident outside India. Hence, admitting the application on maintainability.

## COMPETITION LAWS

### **Restraining Order against MSMEs indulging in price-fixing: CCI.**

In a complaint filed before the Competition Commission of India (CCI) titled *South Eastern Railway West Bengal v. Hindustan Composites Ltd.* against MSMEs indulging in cartelization (*price-fixing*) in the Composite Brake Blocks (CBB) market in India from the year 2009 to 2017, it was alleged that the MSMEs were directly or indirectly determining prices, allocating markets, co-ordinating bid responses among each other and manipulating the bidding process, which had an "appreciable adverse effect on competition" (AAEC) within India.

While conducting an interim investigation in the complaint, it was brought to the notice of CCI that eight (8) out of ten (10) Opposite Parties were responsible for forming a cartel in order to manipulate the rates of the tenders and the other



two got involved in manipulative practices to exchange bid related information. Hence, they were held to be in violation of Section 3 of Competition Act, 2002. While CCI passed a restraining order against any such future malpractices, no monetary penalty was meted out keeping in mind the adverse monetary situations the MSMEs are in due to COVID-19.

### **Unfair Pricing Complaint against SWIGGY dismissed: CCI**

A complaint filed against SWIGGY alleging unfair pricing in the case of (*Prachi Agarwal v. Swiggy*) was dismissed by the Competition Commission of India (CCI). The

Informants alleged that SWIGGY charges higher than the rate offered by respective restaurants in their outlets, over and above the delivery charges. The Informants believed that this has resulted in SWIGGY contravening Section 4 of the Competition Act, 2002; whereas SWIGGY responded that it only operates as an intermediary and the prices displayed on

the platform are directly uploaded by the restaurants and the decision with regard to the prices solely depends on the restaurants. The price fixing is out of the domain of swiggy with reference to the contractual agreement it has entered into with its Partners (restaurants), which gives authority to the restaurants to maintain uniform prices and not SWIGGY.

CCI accepted the above submissions by SWIGGY and observed it to be just an intermediary. Accordingly, no *prima facie* case was made out, given that the allegations against SWIGGY did not appear to be substantiated.

# ARBITRATION



observed that as per the agreement entered into between the parties, the place for carrying out the tasks were Ranchi, Lucknow and Patna.

The Court noticed that while there is a right given to the parties under Section 20 to decide a "neutral seat of arbitration", there was no such provision in the agreement between the Parties which mentioned the seat to be Delhi.

**IN CASE THE SEAT IS NOT FIXED IN THE ARBITRATION AGREEMENT, THE COURT COMPETENT UNDER SECTION 11 OF ARBITRATION AND CONCILIATION ACT TO HEAR THE PLEA FOR APPOINTING SOLE ARBITRATOR SHALL HAVE THE JURISDICTION.**

## **Delhi High Court**

In the case of *Aarka Sports Management vs Kalsi Buildcon Pvt Ltd*, the Petitioner had filed a petition under Section 11 against the Respondent, which was dismissed by the Delhi High Court on the ground of jurisdiction. The Court

Accordingly, the Court held that it lacks the territorial jurisdiction to entertain this matter, as it is not a court which is competent under Section 11 of the Act, since the seat of Arbitration is not Delhi and further, no cause of action arose therein.

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