

INTELLECTUAL PROPERTY RIGHTS



Fair Dealing not applicable to Unauthorised Commercial Activity pertaining to Architectural Drawings: Delhi High Court

In a suit for copyright infringement (GE Power India Limited v. NHPC Limited). GE Power sought injunction against unauthorised publication of copyrighted and highly confidential architectural drawings by the Defendant with third parties without any license. While the suit was dismissed on technical grounds of ascertaining ownership in the said drawings, the Court made some pertinent

observations regarding fair dealing in architectural drawings under the Copyright Act.

The Court held that the plea of fair dealing with respect to architectural drawings or plans is permitted only for personal or private use such as research and reconstruction of an original building or structure and is not applicable in case of commercial activity involving completion of an ongoing project.

Pharma Trade Mark Dispute : IPAB holds SOXPLAT deceptively similar to OXIPLAT

In the case of *Sun Pharma*

Laboratories Ltd. v. Agila Specialties Pvt. Ltd., the Intellectual Property Appellate Board (IPAB) held the trade mark SOXPLAT is deceptively similar to OXIPLAT, both being used for drugs treating colon cancer. Even though it was argued by Agila that Sun Pharma's trade mark OXIPLAT is merely an abbreviation of a generic salt and hence, cannot be deemed a distinctive mark, the IPAB held that Sun Pharma had established its prior right in the use and adoption of OXIPLAT clubbed with extensive commercial use. Hence, the trade mark OXIPLAT had acquired goodwill and reputation in the trade and all offending marks ought to be removed from the Register of Trade Marks.

Madras High Court dismisses ITC's monopoly claim over "Magic Masala"

In a passing off suit (*ITC Limited v. Nestle India Limited*), it was alleged by ITC that Nestle was passing off its noodle product *Maggi noodles* with the phrase "*Magical Masala*" while describing its flavour, which was deceptively similar to the use of the same phrase "*Magic Masala*" by ITC for its *Sunfeast Yippee!*

However, dismissing the suit filed by ITC, the Madras High Court observed that ITC never intended to

use the phrase *Magic Masalaas* a trade mark, since no application had been filed to register the same as such. Even if that had been the case, any application for registration of such common words as "*Magic*" and "*Masala*" was bound to be rejected under the *absolute grounds* for refusal, as no monopoly could be claimed over such common and laudatory words.

The Court, accordingly, held that since words like "*Magic*", "*Magical*" and "*Masala*" are common to trade of Indian food industry, no one can appropriate and claim monopoly over the same and such adoption by Nestle cannot be said to be *mala fide*.

Interim Injunction against Publication of Advertisements comparing Corona Beer to Coronavirus : Trade Mark Disparagement

In a suit preferred by the owner of

registered trade mark "*Corona*" and manufacturer of Corona Beer (*Cerveceria Modelo De Mexico vs Whiskin Spirits*), a restraining order has been passed by the High Court of Delhi against publication of advertisements by the Defendants on social media comparing Corona Beer with the Corona virus.

The Court held that there was a *prima facie* case of disparagement made out against the Defendant and the balance of convenience was in the favour of the Plaintiff as, not only its statutory rights, but even commercial interests stood at risk in case an interim injunction was not granted.

ISKCON a "well-known trade mark": Bombay High Court

In a suit for trade mark infringement (*ISKCON v. Iskcon Apparel Pvt. Ltd. & Anr.*), the High Court of Bombay ruled that the trade mark "*ISKCON*",

being used since 1971, had come to enjoy reputation beyond the services it was being used for and is recognised, reputed and enjoys goodwill across all classes of goods and services. In view of the same, the Court declared the registered trademark '*ISKCON*' of the religious organisation *International Society for Krishna Consciousness* as a '*well-known mark*' in India.

Regarding the Defendant, the Court was apprised during the pendency of the proceedings, that it had already ceased use of the trade mark "*ISKCON*". The Court, while considering all the material placed on record by the Plaintiff in this regard, held that the trade mark "*ISKCON*" meets all requirements of a well-known trade mark under the Trade Mark Act, 1999 and enjoys a wider and broader protection than ordinary trade marks.

INSOLVENCY & BANKRUPTCY

NCLT holds minimum threshold of Rs. 1 crore for initiating IBC proceedings to be prospective in nature

In the case of *Arrowline v. Rockwell*, the Chennai Bench of NCLT held that the earlier notification dated 24th March, 2020 issued by the Central Government to enhance the minimum limit of initiating insolvency proceedings from Rs 1 lakh to Rs 1 crore is only prospective in nature. The Court observed that since the default in the instant case had occurred much prior to the issuance of the said Notification and since the said Notification did not mention any date on which it was to come effect, the same was to be given effect prospectively.

Only Committee of Creditors to enjoy power of replacing IRP,



without any recorded reasons : NCLT Hyderabad

In the case of *Power Finance Corporation Ltd vs Mahender Khandelwal*, the Hyderabad Bench

of National Company Law Tribunal (NCLT) has held that only the Committee of Creditors is vested with the sole authority and power to appoint a new Interim Resolution Professional (IRP) and replace the

earlier one. The Court further held that such an activity can even be carried out with recordal of any substantive reasons provided the necessary pre-requisites laid down under the Insolvency & Bankruptcy Code (IBC) stand fulfilled.

Parties can be referred to arbitration while deciding plea under Section 7 IBC: NCLT Mumbai

In the case of *Kotak India Venture Fund-I vs Indus Biotech Private Limited*, the Mumbai Bench of NCLT has recently held that while

adjudicating a Section 7 application under the IBC, NCLT can refer the parties (Financial Creditor and Corporate Debtor) to Arbitration in case the dispute is arbitrable.

In the instant case, Indus had filed an application before the NCLT under Section 8 of *Arbitration & Conciliation Act, 1996* to refer the parties to arbitration pleading that there existed a substantial dispute between the two parties regarding the default amount and fixing of valuation of shares by the parties which were governed by a specific

arbitration clause.

NCLT, while taking this into consideration, held that it is important for the Court to ascertain that there is an occurrence of default and simply filing of claim for default would not suffice. Hence, there has to be a judicial determination regarding occurrence of "default" and in this case, there are certain facts relating to the dispute which are arbitrable in nature and which must be considered to confirm the exact nature of dispute.

CORPORATE

Upward Revision in MSME definition and criteria w.e.f. 1st July

Central Government issued another Gazette notification with respect to a further revision of MSME definition and criteria to come into effect from 1st July, 2020, which includes a new definition limit for *medium unit* increased to Rs 50 Crore of investment (from Rs 20 crore) and Rs 250 Crore of turnover (from Rs 100 crore). Furthermore, it has been decided that exports would not be counted towards turnover for any kind of enterprises under MSME.

Plea of Tortious Interference to

warrant Cause of Action under Contracts Law: Delhi High Court

In a suit filed by INOX Leisure Limited against PVR Ltd. before the High Court of Delhi, seeking injunction against PVR, it was alleged that PVR was interfering with its contracts with other developers of properties in Amritsar and Mumbai. However, the said suit was dismissed by a Single Judge of the High Court owing to lack of cause of action and that the plea of tortious interference was barred under the Contracts Act, while also imposing a cost of Rs. 5 lakh on INOX for indulging in "*judicial*

adventurism".

In view of the above, INOX preferred an appeal before the Division Bench, which set aside the said order *qua* cost imposed and finding of "*judicial adventurism*". The Division Bench observed that the concept of tortious interference in relation to binding contracts was a well-known concept under Contracts law to give rise to cause of action for filing a suit for injunction or damages. Hence, it cannot be held that the same is barred by law, even though it was not made out by INOX in the present case.



ARBITRATION



Directions issued by the Delhi High Court to avoid Multiplicity of Arbitral Tribunals

The Delhi High Court has passed certain directives to be kept in mind while filing petitions under Section 11 (*appointment of arbitrator*) and Section 34 (*setting aside of arbitral award*) of the Arbitration and Conciliation Act, 1996 in order to avoid multiplicity from same contract and passing of contradictory arbitral awards. The directions include, *inter alia*, the following:

- Parties to disclose complete details of existence and

pendency of any proceeding in respect of the same contract while making a petition under Section 34;

- Seek disposal of all pending Section 34 petitions together, arising out of the same contract between same parties, in order to avoid conflicting judgements;
- In a Section 11 petition, the parties are required to disclose complete details of existing or pending claims before an existing Tribunal so that disputes arising out of the same contract can be appointed to the same Tribunal;

Foreign Awards Enforceable at the location of assets of Judgement Debtor : Delhi High Court

Adjudicating on the issue of territorial jurisdiction vis-à-vis enforcement of a foreign award in an execution application filed by a Decree Holder, the High Court of Delhi held that the same can be ascertained on the basis of the location of the assets of the Judgement Debtor.

Given the nature of execution proceedings, the Court held that what is to be taken into account is the subject matter of the Arbitral Award. For instance, in case the Award is a money Award, then only such Court will have territorial jurisdiction which can enforce such money Award. In case of moveable or immovable properties forming subject matter of the Award, the place where the same are located would ascertain jurisdiction for enforcement. Accordingly, in such matters, it is immaterial whether the Judgement Debtor resides or carries on business in such a place or not.

DISCLAIMER

This Newsletter is for informational purposes only. The information and/or observations contained in this newsletter do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. The views expressed in this newsletter do not necessarily constitute the final opinion of JusIP and should you have any queries, please feel free to contact us at info@jusip.in.



JusIP

Corporate Office:
Chamber No. 2 & 3, Hotel Shivalikview
Sector 17-E, Chandigarh 160 017

Ph.: +91 172 4015405
Mob: +91 70874 21063

info@jusip.in
www.jusip.in

New Delhi | Mumbai | Bengaluru | Chennai