

INTELLECTUAL PROPERTY RIGHTS



IPAB dismisses petition filed by Red Bull against Dr. Reddy Labs

The Intellectual Property Appellate Board (IPAB) rejected Red Bull's plea for removal of the trademark registered in the name of Dr. Reddy's Laboratories Limited. The issue surrounded the alleged similarities between the former's popular tagline "Gives you wings" to the latter's tagline "Your Wings to Life" which was registered in November, 2001.

Red Bull alleged that Dr. Reddy's tagline was similar to their popular tagline registered in the year 2001. They also submitted that Dr. Reddy's did not undertake

any activity to begin use of the said tagline and therefore, prayed before the court to cancel the same. It is interesting to note that Dr. Reddy's have not used the tagline for the past 15 years.

The IPAB ruled that the two were neither deceptively similar nor identical to each other. Additionally they noted that Dr. Reddy's tagline "Your Wings to Life" is not the main mark as the same is merely used for a sub-brand. They opined that due to the foregoing reasons, the goodwill and the reputation of the applicant Red Bull could not be said to be affected. Accordingly, the same was dismissed.

India Mart alleges data theft by Just Dial, takes them to Court

Just Dial finds itself amidst a legal battle with India Mart for alleged Copyright violations over their latest business-ecommerce platform. India Mart Inter-Mesh Ltd runs the oldest B2B e-commerce platform. In their plea, they have requested the court prevent Just Dial from launching their similar platform.

The Delhi High Court on November 11, 2020 passed an order granting an interim injunction in favour of India Mart. Just Dial in a response reported that the order was passed ex-parte and that the

company is awaiting complete paperwork. Further, they have gone a step further and accused Just Dial of illegal activities such as Cyber squatting. It remains to see what the court will decide eventually.

Patent Amendment Rules, 2020 notified

The Government of India on 19th October, 2020 published the revised Patent Rules in the Official Gazette. . The various amendments brought about by the same

are as follows:

1. Amendment to Rule 21

The recent rules have amended Rule 21 to be in line with the PCT regulations. This means that the requirement for filing a priority document will now be completed when a copy of Form PCT/IB/304 is submitted at the Indian Patent Office.

2. Amendment to Rule 131(b)

As per the new rule Form 27 which had to be

furnished within three months can now be furnished within 6 months from the expiry of each financial year. Thus, Form 27 may now be filed by September 30th.

3. With respect to Form 27

The amended rules provide that a single commercial working statement on Form 27 will be sufficient instead of filing different commercial working statements for each related patent by a sole patentee.

INSOLVENCY & BANKRUPTCY



NCLT orders dissolution for Synew Steel Private Limited

By the way of order dated 16 November, 2020, the National Company Law Tribunal (NCLT), in the case of Synew Steel Private Limited, ordered for a direct dissolution from a corporate insolvency process (CIRP), thereby waiving the mandatory liquidation process.

The corporate debtor had 'NIL' assets which further

show that the liquidation process would not have been successful. In an attempt to save the costs that would have been incurred, the corporate debtor was allowed a direct dissolution. The IBC lays down a specific procedure for distressed companies which involve compulsory insolvency process prior to liquidation and the final dissolution. However, in case of a company with 'NIL' assets the process would be

useless.

The NCLT held that, "the ultimate objective of the Code is either to resolve the issue by way of a Resolution Plan or to dissolve the Corporate Debtor, as expeditiously as possible." The order of the NCLT is in consonance with the objectives of the Code and also saves time and money that might have been incurred in an unfruitful dissolution process.

Insolvency and Bankruptcy Board of India amends Regulations relating to corporate insolvency proceedings

In a move aimed at speeding the liquidation process, the Insolvency and Bankruptcy Board of India (IBBI) notified the following Amendment Regulations, 2020:

(a) The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2016,

(b) The Insolvency and Bankruptcy Board of India (Liquidation Process) (Fourth Amendment) Regulations, 2020

(c) The Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2020.

This amendment will now allow creditors to transfer debt due to them to a third party during the liquidation process to benefit creditors who may not be willing to wait for completion of the process. The board also defined 'not readily realisable asset' and if such an asset

cannot be assigned or transferred, the liquidator may distribute the un-disposed assets among stakeholders with the approval of the adjudicating authority.

The Regulations further provide that the Interim Resolution Professional (IRP) shall verify every claim and thereupon maintain a list of creditors and update it. The Code mainly seeks to ensure early closure of the liquidation process so that the assets of the Corporate Creditor are released for alternate uses.

NCLAT decides whether corporate insolvency resolution process can be initiated against Principal Borrower and Corporate Guarantor simultaneously

In a case between State Bank of India and Athena Energy Ventures Private Limited, the National Company Appellate Tribunal (NCLAT) reinforced that in a matter of guarantee, CIRP can proceed simultaneously against the Principal Borrower as well as the Guarantor. The application was against

the respondent, the Corporate Debtor who was also the Corporate Guarantor for Athena Chhattisgarh Power Ltd.

The application was filed as the Borrower committed default in repayment of the financial assistance provided to the Borrower. The respondent, as the promoter of the Borrower executed corporate guarantee and documents in favour of the Appellant and other consortium of banks from which they had taken financial assistance. The application was then filed and the main issue was whether CIRP can be initiated against two Corporate Guarantors simultaneously for the same set of debt and default.

The Bench observed that if the provisions of Section 60 (2) and (3) are kept in mind, the IBC has no aversion to simultaneously proceeding against the Corporate Debtor and Guarantor. The Tribunal also observed that simultaneous remedy is central to a contract of guarantee.

CORPORATE



SEBI to revamp Grievance Redressal Mechanism

In a move aimed to enhance the effectiveness of

Investor Protection Fund (IPF) of stock exchanges, the Secu-

rities and Exchange Board (SEBI) has proposed the revamping of the grievance redressal mechanism at stock exchanges for clients of defaulting members. SEBI asked stock exchanges to conduct an annual review to ascertain the adequacy of the IPF corpus and recommended for it to be updated monthly. These updates are to be made regularly on the website and exchanges have to disseminate the policy for processing of investor's claims. Stock exchanges have also been advised to give adequate notice to the investors before implementing any amendment in the policy on processing of claims. Adequate steps are to be taken to make investors aware of the revised framework. The new regulation also directs a compliance report to be submitted regarding the implementation of the direction within 30 days.

IFSC Authority approves the International Financial Services Centres Authority (Banking) Regulations, 2020

The IFSC Authority has approved the International Financial Services Centres Authority (Banking) Regulations, 2020. This decision paves way for putting in place the rules for the various aspects of banking operations that would be permissible at the IFSC. The salient features of these entail laying down the requirements for setting up IFSC Banking Units (IBUs), permitting persons residing outside India (having net worth not less than USD 1

Million) to open foreign currency accounts in any freely convertible currency in IBUs and to undertake any permissible current account or capital account transaction or any combination, laying down permissible activities of IBUs and permitting the Authority to determine business that a Banking Unit may be permitted to conduct in INR with persons residing in and outside India. The Ministry of Finance stated that,

“**a self-contained regulation laying down the major principles of banking operations at IFSCs is thus an important step in the IFSC reaching its desired potential.**”

SEBI amends guidelines for preferential issue and institutional placement of units by a listed InvIT

SEBI amended guidelines pertaining to allotment of units by emerging Investment Infrastructure Trusts (InvIT) on a preferential basis. These units will not be made to any person who has sold or transferred any units of the issuer during the six months preceding the relevant date. SEBI also stated,

“**where any person belonging to sponsor(s) has sold/ transferred their units of the issuer during the six months preceding the relevant date, the sponsor(s) shall be ineligible for allotment on preferential basis.**”

REITs and InvIT Regulations in 2014 and had allowed setting up and listing such trusts. However, till date, only few have listed their units despite various relaxations given by the markets regulator.

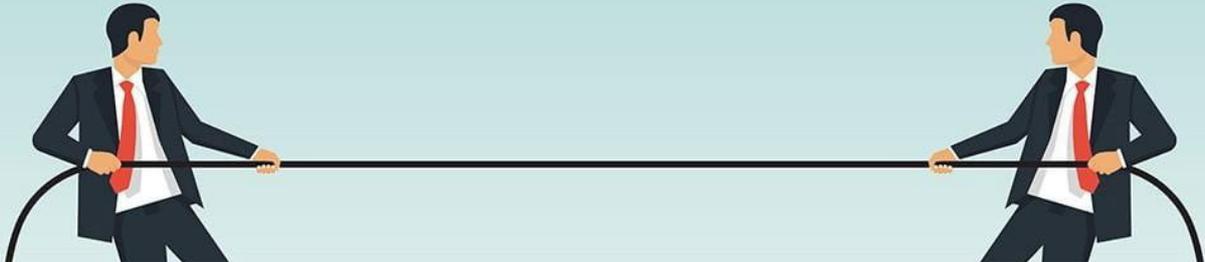
What determines commencement of period of presentation is date of cheque and not the date of delivery of cheque

The Kerala High Court reiterated, while addressing a review petition, that the relevant date which makes a post-dated cheque payable is the date which the cheque bears. The provision in Section 84 (1) of the Negotiable Instruments Act, 1881 contemplating time of issue of the cheque as the starting point for determining the reasonable time required for the presentation of cheque, can be given effect to without having regard to the Scheme and purpose of Section 138 of the same act. Date on which a cheque is drawn may not be confused with date of issue but must be understood as the date mentioned on the fact of the document. Bench further observed that the date of issue of cheque mentioned in Section 84(1) is not irrelevant and capable of rejection in cases where the date of cheque appearing on its face and the date of issue are one and the same.



COMPETITION LAW

COMPETITION LAW



Government to regulate OTT platforms

The Cabinet Secretariat, in a Gazette notification dated November 9, 2020, brought over-the-top (OTT) streaming video services such as Netflix, Amazon Prime, Hotstar, and news websites under the purview of the Information & Broadcasting Ministry. The Ministry will now have the power to draft rules and guidelines that will impact these channels and it will also create a level playing field between linear TV companies and these OTT services.

It is not decided as to what the new regulations will have in store for these channels but the problems of fake news, child pornography and seditious content will be dealt with. Previously, these autonomous bodies had the say over what content can be streamed while complaints regarding this were dealt by the communications and IT ministry. There has not been any law in place regulating digital content and with this notification the government

will regulate online content. Amazon, Netflix, Hotstar and the other news channels in question have not responded to this notification yet and are awaiting further information and guidelines.

CCI puts Google under the scanner

In an order dated November 9, 2020, the Competition Commission of India (CCI) ordered an investigation into Google's alleged antitrust practices. The CCI observed that there was prima facie evidence showing that Google may be abusing its dominant position in India, with respect to its PlayStore exclusivity and payment partner Google Pay (Gpay).

Most smart phones in India have Android OS and the Google PlayStore is the primary platform for downloading all applications. The complaint was filed by an unnamed informant who also told the CCI that Google's payment policy typically pushes app developers to use its payment system Gpay

since developers have to use 'Google Play in-app' billing as a method of payment. This in turn prevents app developers from choosing their method of payment.

The commission also noted that Google favours Gpay and recognizes it as the only valid UPI payment method. This is evidence of the fact that Google practices impose an unfair and discriminatory condition and denies market access for competing apps. Google also charges a high commission of 30% for all app and in-app purchases. According to reports, consortiums of start-up founders and CEOs have approached the CCI to discuss Google's dominance.

India bans 43 Chinese apps

The Ministry of Electronics and Information Technology banned 43 Chinese apps on November 24, 2020. Several apps from the e-commerce sector were banned, including the giant shopping platform AliExpress, the work place messaging tool DingTalk and the streaming site Taobao

past five months, including TikTok and PUBG. The order in November was issued under Section 69A of the

Information Technology Act, 2000 after comprehensive reports were received by the Indian Cyber Crime Coordina-

tion Centre, Ministry of Home Affairs.

ARBITRATION



Government amends Arbitration law

The government issued an ordinance to amend the arbitration law and ensured that all stakeholder parties get an opportunity to seek an unconditional stay on enforcement of arbitral awards where the arbitration agreement or contract is "induced by fraud or corruption". The amend-

ment also did away with the 8th Schedule which contained the necessary qualifications for accreditation of arbitrators as it had faced criticism that some conditions came in the way of India getting the benefit of having foreign arbitrators.

According to the new amendment, if the award is being given on the basis of an agreement based on fraud or corruption, then the court will

not impose a condition to stay the award and will grant an unconditional stay during the pendency of the appeal if it has been challenged under Section 34 of the Act. The Law Ministry stated that the amendment was necessary to "address the concerns raised by the stakeholders" and the provision will come into effect retrospectively from October 23, 2015.

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JusIP

www.jusip.in

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