

Guest Post

ART INSTALLATIONS AN AMBIGUOUS AFFAIR WITH LAW

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Artistic works are defined under *Section 2 (c) of The Copyright Act, 1957*. This section states that a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; a [work of architecture]; and any other work of artistic craftsmanship will be deemed as an artistic work.

As we can clearly see art installations are not included in the above definition. Whether art installations are protected under *The Copyright Act, 1957* has always been a topic of heavy debate and even after multiple judgments being passed on said topic, there still isn't a conclusive answer to this question. The Indian judiciary has passed two very important judgments regarding this particular question.

In the case of *Jatin Das*

v. Union of India, CS (COMM) 559/2018, the Delhi High Court while upholding the moral rights of the artist, restrained the defendant, the Steel Authority of India from carrying out any further distortion of the artist's iconic art installation 'Flight of Steel'. In 1995, the Plaintiff, Jatin Das was invited by Steel Authority of India to create a welded sculpture. Das created a 30 feet high and 30 feet round steel sculpture, "Flight of Steel" in November 1995 and it was installed at CEZ

Square, Bhilai. In March 2012, much to his dismay Das was informed that his iconic art installation had been removed, dismantled and relocated by SAIL to a zoo. Das rushing to the zoo, found disfigured, twisted bits and pieces of the sculpture dumped and scattered.

Please visit [<https://www.jusip.in/art-installations-an-ambiguous-affair-with-law/>] to read the complete article.

INTERESTING ART-FACTS

Japan's Goldfish Phone Booth



In Japan, artist Nobuki Yamamoto won a copyright battle against a

Co-operative union of merchants in Nara Prefecture. The artist claimed that the defendants had set up their own versions of his installation featuring a goldfish telephone booth without his consent.

While the District Court ruled against Yamamoto, the High Court held that his artwork was covered by Copyright Law including his

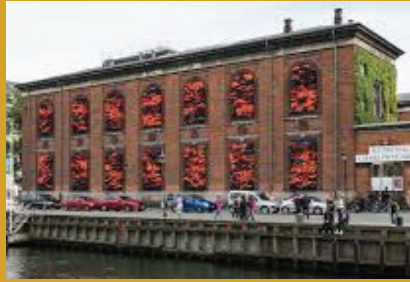
idea of generating bubbles out of the telephone receiver which as per the court constituted 'creative expression'.

Jeff Koons adaption of Art Roger's Photograph



When Jeff Koons adapted Art Roger's photograph to create statues of the same in USA, he was faced with a famous lawsuit surrounding art installations. The Court without a doubt held that the two works were obvious to the 'typical person'. While Koons paid compensation to Rogers, the case bears significance to the subject of copyright infringement that also dealt with the aspect of art appropriation.

The Bright Orange Life Jackets



A Berlin based Chinese artist Ai Wewei conceptualised the "Soleil Levant-Sunrise", an art installation displaying orange jackets as worn by refugees at

Copenhagen. While creating an advertisement for Volkswagen, he used the installation as a backdrop. The artist sued the dealer on the ground that his work was used for commercial purposes without prior consent or credits. The Court ruled in favour of the artist holding the defendant liable for copyright infringement and violation of moral rights held by the artist.

INTELLECTUAL PROPERTY RIGHTS

INTELLECTUAL PROPERTY

Delhi High Court on whether authors to get royalties in underlying works

The Delhi High Court in *IPRS v. ENIL and PPL v. CRI Events* has held that underlying works incorporated in sound recordings are not utilized and do not incur royalty when the sound recording is used. The order goes on to interpret the 2012 Amendment in a manner that almost completely extinguishes the rights of authors of underlying works. The order also speaks about

how the 2012 Amendment was brought in to recognize authors of underlying works' inalienable right to royalty. In this order, the court has accepted the argument that it is the producer of a sound recording who owns copyright over it as the underlying works are not independently commercially viable. It further holds that utilization of a sound recording does not amount to utilization of the underlying works and neither authorization nor royalty is owed to the latter's authors. It is also to be noted that sound

recordings are works of joint authorship contradicts the other observations of the order.

Michal Jordan loses trademark dispute against Qiaodan Sports

In an interesting set of circumstances, the famous NBA star, Michael Jordan lost a legal battle with a sportswear company based out in China. The company was sued by the basketball player for reason that they continue to use the term 'Qiaodan'

which translates to 'Jordan' in Chinese. Jordan alleged that they have been using the same without any authorization from him and with an intention to deceive the public.

While the court agreed with Michael Jordan and ordered

the defendants to issue an apology alongside declare that they were in no manner associated with the Plaintiff, the court refused to restrain the brand from using the mark for reason that they have been continuously using the same since the past

5 years and as per Chinese Trademark Law they could order the same. As for the plaintiff, the court ordered for damages of \$50,000 for 'emotional distress' and litigation costs.

INSOLVENCY & BANKRUPTCY



Supreme Court Upholds Sections 3, 4 & 10 of IBC Amendment Act, 2020

The Supreme Court has upheld the validity of recent amendments made to the Insolvency and Bankruptcy Code (IBC), that is, to Sections 3, 4 and 10 vide the Insolvency and Bankruptcy Code (Amendment) Act 2020. The impugned amendments mandated a minimum of 100 home buyers to collectively file an insolvency application in the National Company Law Tribunal to initiate application of IBC against a defaulting developer. The Court rejected contention of the Petitioners that the changes made in 2020 were “created by way of pandering to the real estate lobby and succumbing to their

pressure or by way of placating their vested interests”.

The Apex Court opined that insisting on a threshold in regard to creditors will ensure that there is a stop to indiscriminate litigation. They further noted that the amendment will ensure that there is consensus even if by a small percentage of similarly placed creditors. Lastly, the court was also of the opinion that it was not important whether a person has one or more allotments in his own name or family's name as all of them would account for separate allottees.

India Contemplates Pre-Packaged Insolvency Resolution Option

India has proposed a pre-packaged insolvency

option that will allow creditors and debtors to work on an informal plan without the involvement of a court or a tribunal and then submit it for approval even as the nation braces for a spike in bankruptcies once the freeze on filings is lifted. The Ministry of Corporate Affairs has invited comments on the proposal that, if accepted, will become part of the Insolvency and Bankruptcy Code, 2016, according to a statement. The aim, the proposal says, is to aid the existing insolvency framework and cut the cost and time of the resolution process. The plan, if the parties agree, can be presented to the adjudicating authority for approval.

NCLT cannot accept a revised offer if it comes too late : NCLAT

The National Company Law Appellate Tribunal (NCLAT) has ruled that the National Company Law Tribunal (NCLT) cannot accept a revised offer from a bidder who enters the fray late even if the offer is higher than that

of other bidders that have adhered to the bidding timeline in the case of *Oriental Bank of Commerce Vs. Bindals Sponge Industries*. The Court has held that the only power the NCLT has is to adjudicate whether the bids that were

placed in time and approved by the Committee of Creditors (CoC) of the corporate debtors stand the test of the rules of plan approval under the IBC.

CORPORATE



SEBI fines Mukesh Ambani, Reliance Industries for Rupees 40 Cr. over "Manipulative Trades"

India's market regulator SEBI ordered billionaire Mukesh Ambani and his conglomerate Reliance Industries Ltd. to pay a combined penalty of Rs 400 million (\$5.5 million) for allegedly violating share-trading rules about 13 years ago. In its order dated January 1, the SEBI said Reliance and its agents operated to allegedly earn undue profits from the sale of shares in Reliance Petroleum Ltd., a former unit, in both the cash and futures markets. Reliance Industries needs to pay 250 million rupees and Ambani, the chairman, is liable for the alleged manipulative trading, SEBI said.

SEBI relaxes eligibility norms for Fintech companies for entering mutual fund business

SEBI, vide its board meeting amended SEBI (Mutual Fund) Regulations, 1996 (Regulations) to relax profitability norms applicable to sponsors of mutual funds. As per the Amendment, sponsors having a net worth of not less than INR 100 crore will be considered as eligible sponsors for the purpose of contributing towards the net-worth of the Asset Management Company (AMC) and will not be required to fulfil the profitability criteria under the Regulations at the time of making an application to act as a sponsor. The Amendment endeavours not only to attract current fintech companies to apply as

sponsors, but it also foresees the mutual fund customer base to increase in light of heightened participation by the tech-savvy younger generation, many of whom may also be first-time savers and investors. SEBI believes that the Amendment will facilitate innovation, enhance reach and accelerate tech-enabled solutions in this industry.

Ex-parte order passed against CNBC Awaaz TV anchor Hemant Ghai

SEBI, in a recent interim order, has restrained Hemant Ghai, co-anchor of a television show Stock 20-20 on TV Channel CNBC Awaaz, along with his wife and mother from directly or indirectly dealing in securities until further orders. On analyzing the trading pattern of Jaya

Hemant Ghai and Shyam Mohini Ghai (wife and mother of Hemant Ghai) for the period between January 1, 2019 to May 31, 2020, it was seen that Hemant Ghai in the name of his wife and mother undertook a large number of "Buy-Today-Sell-Tomorrow" trades in synchronization with the recommendations made

in his morning show. Shares were bought on the previous day to the recommendations being made on the Stock 20-20 show and sold immediately on the recommendation day.

SEBI passed an ex-parte order to protect the interests of investors and preserve the safety and integrity of the

securities market, granting the accused 21 days to file a reply or seek in-person hearings. Besides the bar or trading in securities and the freezing of their bank accounts, SEBI also impounded the banks accounts of the accused to the extent of Rs 2.95 crore.

COMPETITION LAW



CCI to probe Amazon, Flipkart for deep discounts, preferred seller(s) mode

The Competition Commission of India (CCI) has ordered investigation against Amazon and Walmart owned Flipkart on complaints of deep discounting practices and tie-ups with preferred sellers. The anti-trust watchdog said it had found *prima facie* evidence necessitating a probe by the Director General (DG)-Investigation to look into alleged anti-competition discounts by the two online marketplaces. The CCI has directed the DG office to complete the probe within 60 days. The CCI investigation is based on a complaint by traders' body Delhi Vyapar

Mahasangh regarding online sale of smartphones. The CCI said it has studied the original and discounted prices for smartphone brands sold on Flipkart and Amazon and has found that certain brands/-models are available at significantly discounted prices and sold largely through 'preferred sellers'.

The CCI order said it needs to be investigated whether the alleged exclusive arrangements, deep discounting, and preferential listing by the online platforms are being used as an exclusionary tactic to foreclose competition and resulting in an appreciable adverse effect on competition contravening the provisions of Section 3(1) read with Section 3(4) of the

Competition Act

CCI's gives go ahead in Facebook-Jio deal

The CCI approved the acquisition of 9.99% equity share capital in Jio Platforms Limited (Jio Platforms) by Facebook, Inc. (Facebook), through its indirect wholly owned subsidiary Jaadhu Holdings LLC (Jaadhu). Valued at USD 5.7 billion, the mega-deal is positioned to drive synergies in the Indian digital economy. As a result of the acquisition, Jaadhu will secure certain rights conferring it control over Jio Platforms. Jio Platform and its sister company Reliance Retail Limited (Reliance Retail) also

acquired a go-ahead for their commercial arrangement with WhatsApp Inc. (WhatsApp), another subsidiary of Facebook. The commercial arrangement concerns the development of an electronic chat feature by WhatsApp to connect its users with "JioMart", a new e-commerce marketplace of Reliance Retail. The case instantiates a growing synergy between the telecommunication industry and the digital technology space.

Eliminating competition in business using writ jurisdiction not permissible: Allahabad High Court

A Division Bench of the Allahabad High Court in Prince Filling Station Vs. UOI, reiterated the settled position that in normal course, it is not open for a person to seek to prevent a rival from exercising the right to carry on business. The instant petition was filed to raise a grievance with regard to issuance of a 'Letter

of Intent' and Addendum to LOI whereunder it was proposed to offer a retail outlet dealership of Bharat Petroleum Corporation Limited pursuant to an advertisement issued for the purpose. The Court reiterated the position that in normal course it would not be open to a competitor in business to seek to prevent a rival from exercising a right to carry on business.

ARBITRATION



Arbitration Clause in an Unstamped Contract Is Valid

Nearly after a decade of deciding that an arbitration clause contained in an unstamped or deficiently stamped contract is not valid and hence, not enforceable until such deficiency is removed, in the case of *SMS Tea Estates Vs. M/s Chandmari Tea Co. Pvt. Ltd.*, the Hon'ble Supreme Court overruled the said judgment in

case of *SMS Tea Estates* (supra) and held that arbitration clause contained in an unstamped or deficiently stamped instrument, being an independent contract, is valid and enforceable.

Conflicting Positions on whether two parties may chose a Foreign Seat

Whether or not two Indian Parties may choose to have an arbitration seat outside India has been a

vexed and often debated position. On one hand the Madhya Pradesh High Court in *Sasan Power Limited vs. North American Coal Corporation India Pvt. Ltd.*, had allowed two Indian parties to choose a foreign seat. Though this decision was appealed to the Supreme Court of India, it did not delve into this issue. Similarly, the Delhi High Court in the *GMR Energy Limited vs. Doosan Power Systems India* had also permitted two Indian

parties to choose a foreign seat. On the other hand, the Bombay High Court in *Addhar Mercantile Private Limited vs. Shree Jagdamba Agrico Exports Pvt. Ltd.*, relying on *TDM Infrastructure Pvt. Ltd. vs.*

Union of India held that a clause where two Indian parties had opted for a foreign seat was invalid. In *TDM Infrastructure*, the Supreme Court had said that two Indian parties cannot

derogate from Indian substantive law. It did not make any specific observations on two Indian parties choosing a foreign seat but is often cited as a reason for them not being permitted to do so.

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