JusIP
Legal is Simple

Aug 2021

Volume II, Issue VIII

JUSIP LISTICLE

GUEST POST

Whether A Subsequent Buyer Is Equivalent To An Original Alottee?

A Case Comment On Laureate Buildwell Pvt. Ltd. V. Charanjeet Singh

Yosha Dogra, Intern

The Supreme Court in various decisions had held that the rights of a subsequent buyer who purchases from an original alottee were not equal to that of the original alottee. For instance, in ***HUDA v. Raje Ram*** and ***Wing Commander Arifur Rahman Khan & Anr. V. DLF Southern Homes Pvt. Ltd.*** the Court held that if an original alottee in a housing project transfers their rights to another person, also called the 'subsequent buyer', the third party could not claim rights to the same extent as the original alottee, especially in claims for interest. However, this stance of the Supreme Court has changed with a recent landmark judgment overruling the above decisions. The Apex Court in the case ***Laureate Buildwell Pvt. Ltd. v. Charanjeet Singh*** has noted that the rights of the subsequent buyer are equal to that of the original alottee, not only changing the jurisprudence behind the rights of homebuyers but also expanding the scope of remedies available to them.

To read more, visit- - https://www.jusip.in/whether-a-subsequent-buyer-is-equivalent-to-an-original-alottee/

TRIVIA

RERA v. Consumer Protection Act v. Insolvency and Bankruptcy Code

In the case ***M/s M3M India Pvt. Ltd. v. Dr Dinesh Sharma and Anr.***, the Delhi High Court considered the question of whether proceedings under the Consumer Protection Act, 1986 could be initiated by homebuyers against the developers after the commencement of RERA, 2016. The High Court relied on the Supreme Court decision in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India*** where it was held that the remedies available to allottees of flats are concurrent and they can avail them under the Consumer Protection Act, Real Estate (Regulation and Development) Act and also the Insolvency & Bankruptcy Code. It was observed that the provisions of RERA are not exclusive and can be availed parallel to the other remedies. The following table compares the said remedies:-

Name of the Act	Real Estate (Regulation & Development) Act 2016, (RERA)	Consumer Protection Act, 1986 (CPA)	Insolvency and Bankruptcy Code, 2016 (IBC)
Objective	The main objective of the act is to provide uniform laws throughout the country. This act seeks to protect the interests of home buyers and increase transparency in the functioning of construction companies. It also aims to reduce cases of misappropriation of funds/ frauds or misrepresentation by builders.	The main objective of this act is to provide redressal to "Consumers" who suffer because of Unfair Trade Practices or Deficiency in Goods and Services. Under this act, home buyers are also seen as consumers since they are availing the service pertaining to construction.	This is one of the most effective mechanisms for timely recovery of money and revival of companies. The allottees of a project are seen as financial creditors within the meaning of the act, thereby qualifying to avail yet another alternative remedy.
Accessibility	There are 1-2 RERA offices found in each State for easy accessibility.	Redressal of grievances by consumer forums takes about at an average of 5 to 6 years. There are district forums in every district of each State. State forums are located in the capital of each state.	The NCLT has 16 benches governing different jurisdictions all over India.
Reliefs	RERA usually exercises its power by imposing a fine, deregistering the project, directing completion of the project provided in a manner in consultation with the State Government, and classifies the promoter in the list of defaulters.	The Consumer Forum has the power to execute their own orders. It makes the execution of orders a prompt process in comparison to regular suits since the scope of the Consumer Act is limited in terms of relief.	In an Insolvency Resolution Process, an IRP is appointed to manage the affairs of the company. In case the resolution fails, the NCLT can pass a liquidation order. Reports are filed with the NCLT from time to time as it monitors the entire process.

INTELLECTUAL PROPERTY RIGHTS

The First AI Invention Granted a Patent

DABUS (Device for AutonomousBootstrapping of Unified Sentience), an artificial intelligence developed by Missouri physicist Stephen Thaler, has become the world's first AI to be granted a patent for its food container invention that is based on fractal geometry. On September 17, 2019 the patent application was filed under the Patent Cooperation Treaty, with DABUS named as the "inventor". Since the invention was solely the result of artificial intelligence without any human intervention, no natural person could be given the credit for this invention as per the current statutes. As there is no formalized procedure for patent examination of patent applications in South Africa, Stephen Thaler capitalised on the opportunity to revolutionize the IP norms globally. Countries like USA, Europe and Canada are yet to come up with their legal theories and pave way for accepting AI as an inventor. This would not only change the grant of patent to natural persons regime but its acceptance would also have to broaden the definitions of "obviousness" and "conception" in patent law.

Bombay High Court grants relief to Radico Khaitan in Trade Mark infringement matter pertaining to ASAVA

In ***Meher Distilleries Pvt.***

Ltd. vs. SG Worldwide Inc. and Radico Khaitan Ltd., Meher Distilleries, a registered proprietor for the trademark THE ASWA of class 33 that includes alcoholic beverages, had filed an appeal in the commercial court against Radio Khaitan Ltd. for launching a single malt whiskey under class 33 with the brand name ASAVA. A suit for trademark infringement was filed and a grant for interim injunction was also requested to stop Radio Khaitan Ltd. from further bringing this product in the market. The interim application was not granted and the learned single judge concluded that it is not ASAVA but "RAMPUR ASAVA" that is the trademark of Radio Khaitan Ltd. Moreover, no visual, structural and phonetic similarity was found between the two trademarks. It was also observed that the similarity shall be decided with respect to the use of house mark along with the product mark in case of expensive products that are consumable as this will obviate the likelihood of confusion among the consumers. Unsatisfied by the decision, the appellant further filed an application challenging the previous judgement as per the provisions of Section13 of the Commercial Courts Act, 2015. The court here, set aside the previous judgement and the appeal was allowed.

Madras High Court rejects Sun Pharma's Plea of Medical Necessity due to COVID for Passing Off

The defendants, Sun Pharma, allegedly infringed Cipla's copyright and registered trademark. A suit was filed for permanent injunction against the defendants for producing, advertising, trading and packaging medicative commodities or other products with the mark 'RESPULE' as it was owned by the Plaintiff. Sun Pharma prayed to be allowed to market the pharmaceutical drugs and medical supplies with different packaging in public interest as they were important for the treatment of COVID-19 related symptoms. The High Court held that no harm would be caused to the Defendant if the interim order is allowed to continue till the disposal of the suit. It also opined that the release of the products in the market would lead to incalculable damage to the proprietary rights of the plaintiff and would further lead to the dilution of the rights of the plaintiff. The High Court, therefore, rejected medical necessity due to COVID-19 as an excuse for passing off.

Competition Commission of India (CCI) rules UBER does not have "Dominance" in market

As per Section3(4) read with Section3(1) of the Competition Act, 2002 concerns against Uber were raised pertaining to abuse of power under Section4 of the Act. Constant competition could be seen between both Ola and Uber repeatedly. It was said that just because of fluctuating market shares of both the cab service companies due to high competition in the market, Uber does not hold a dominant position in the market and the market power does not rest specifically with this company alone. It was observed that the drivers are not restricted from connecting to a competitors' network and these drivers get themselves registered on more than one platform. Even though some agreements between Uber and the drivers in purview of incentives are there but the same cannot be understood to be exclusive. Hence, there is no exclusive agreement between Uber and the drivers. Further, this incentives agreement does not surpass the legality of an exclusionary contract and has no adverse effect on competition. Since there are a lot of drivers available, an incentives agreement with one company cannot be construed as a restriction as it cannot stop the entry of new drivers in the market or expansion of cab service provider companies. Thus, the Competition Commission of India in ***Meru Travel Solutions Pvt. Ltd. v. Uber India Systems Pvt. Ltd.*** held that such expansion of Uber cannot be looked upon as dominance in the market and hence, allegations under Section3(4) & 3(1) do not hold value; neither does the false allegation of abuse under Section4 of the Act.

ARBITRATION, MEDIATION AND CONCILIATION UPDATES

Delhi High Court: The term Arbitrator includes in its ambit "Emergency Arbitrator"

In ***Amazon.com NV Investment holdings LLC v. Future Coupons Private Limited and Ors.,*** the issue was whether the word arbitrator mentioned in Section2(1) (d) of the Arbitration & Conciliation Act, 1996 includes "emergency arbitrator". The Court held that since the law allows parties to choose their arbitrator, the same applies to the appointment of an emergency arbitrator as well. The parties can choose such an arbitrator for all purposes. The parties are bound to abide by the orders of the emergency arbitrator but such orders shall not be binding on the arbitral tribunal that has the power to modify or annul such order or award given by the emergency arbitrator. The court also held that an order passed by such arbitrator shall be considered an order as per the provisions of Section17(1) and the same shall be enforceable as a court order as per the provisions of Section17(2) of the Act.

Supreme Court: When Petition under Section7, Insolvency and Bankruptcy Code pending, Application under Section8, Arbitration and Conciliation Act, 1996 not maintainable

In ***Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore fund) & Ors.*** the court held that if there is a pending petition under Section7 of the Insolvency and Bankruptcy Code, an application filed under

Section 8 of the Arbitration and Conciliation Act, 1996 cannot be maintainable. But if the petition is in the process of getting admitted when application is filed under Section8 of the Arbitration and Conciliation Act, 1996, then the adjudicating authority shall give priority to the petition under Section 7 of IBC and shall record a satisfaction for the same in case of default or no default. Only after this, the application under Section 8 shall be considered.

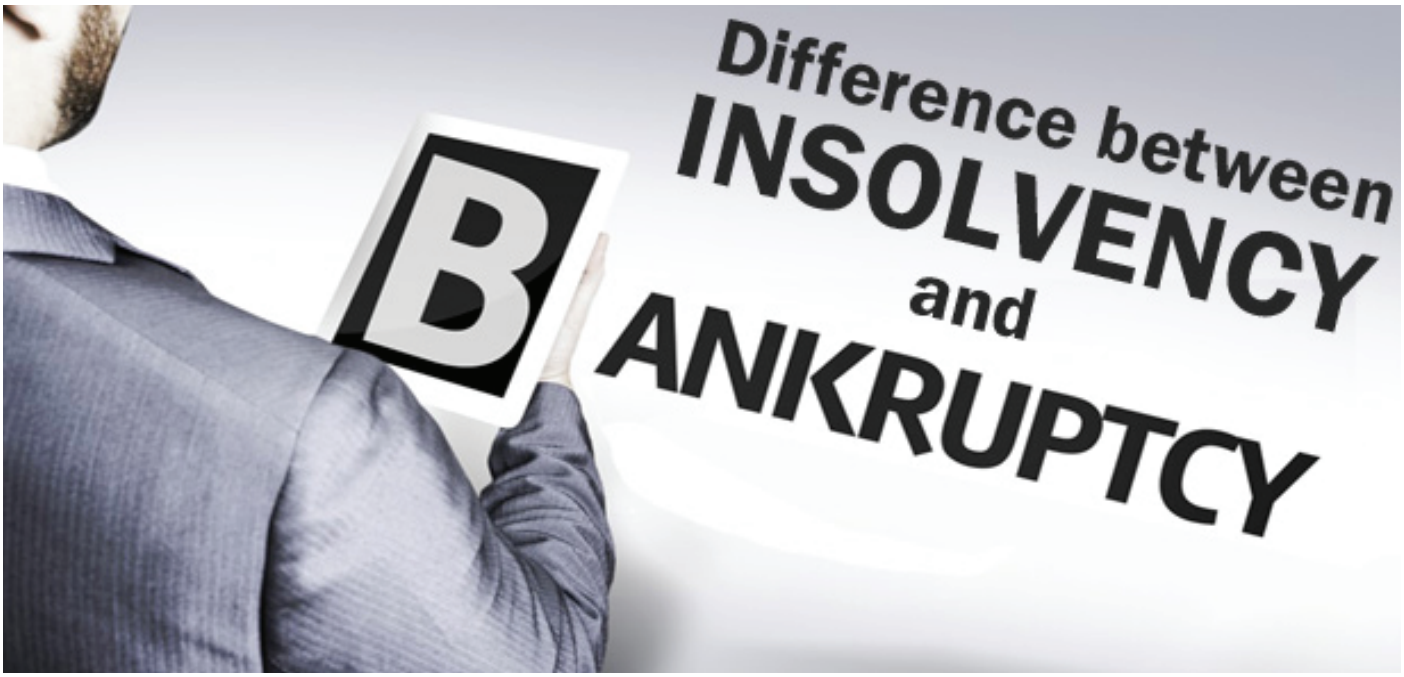
Supreme Court: Section 9 would apply in a post-award scenario when the seat of arbitration is outside India

In ***Medima LLC v. Balasore Alloys Ltd*** the ICC proceedings governed by British Law with the seat in London granted an award in favour of Medima. To protect the amount payable by the respondent Balasore, the petitioner filed a post-award application under Section 9 of the Arbitration and Conciliation Act, 1996. The main issue was concerning whether Section 9 can be applicable to a foreign award under the rules of ICC in arbitration proceedings governed by British Law with the seat in London? The court held that the 246th Law Commission Report recommended a wider scope of Indian jurisdiction in arbitration. Section 2(2) proviso was analysed to be important for interim orders in a foreign-seated arbitration where the assets were in India. The court held that the interpretation of the proviso to Section 2(2) indicated that Section 9 would apply in a post-award scenario where the seat of arbitration is outside India. The court opined that an award-holder of an arbitration that took place outside India would be left hopeless if interim measures are not granted with respect to the assets situated in India.

Supreme Court: Non Signatory to Award cannot object to a Foreign Award

In ***Gemini Bay Transcription Pvt. Ltd. V. Integrated Sales Service Limited &Anr.*** the Supreme Court discussed the provisions of the Arbitration and Conciliation Act, 1996. In particular, Section 48, which deals with the 'conditions for enforcement of foreign awards' and held that a non-signatory to an arbitration agreement cannot object to a foreign award being binding on it under Section 48(1)(a) and the provisions under Section 47 were considered to be merely procedural with no burden of proof imposed that such non-signatory is bound to the foreign award.

INSOLVENCY AND BANKRUPTCY LAW



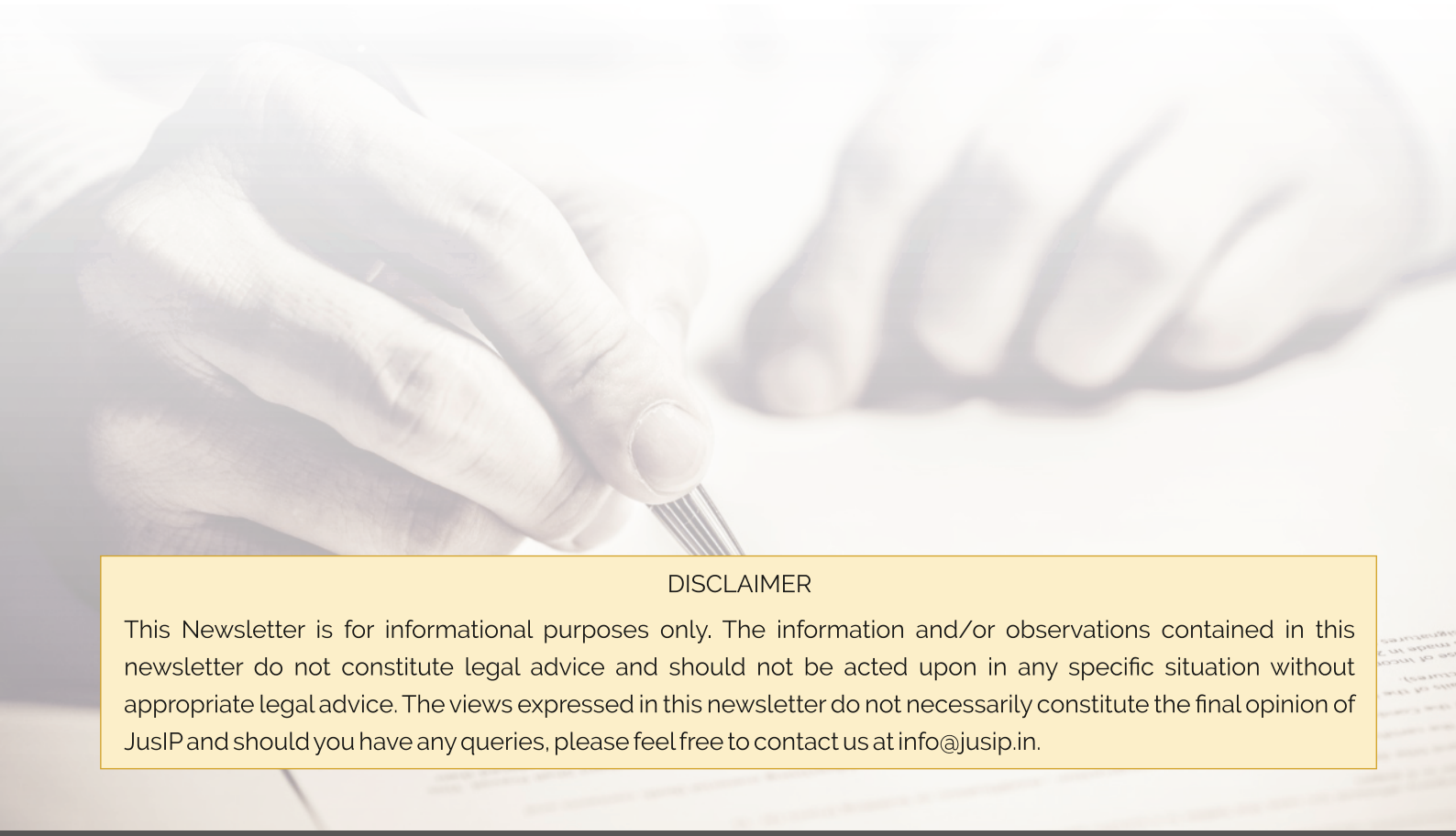
Supreme Court: Final Judgement/Decree/Recovery Certificate will give rise to new cause of action for proceedings under Section7

In ***Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy and Anr.*** the Supreme Court held that a final judgment, decree and recovery certificate passed by the court/ tribunal would give rise to a new cause of action for a financial creditor to initiate proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016.
The court held that once a claim turns into a final judgment/order/decree upon adjudication and a certificate of recovery is issued, it gives rise to a fresh right to the creditor to recover the amount mentioned in the certificate of recovery. It was further held that if provisions of the IBC are read together it becomes clear that a final judgment or decree of any court/tribunal or arbitral award for payment of dues, if not satisfied would fall within the ambit of "financial debt" enabling a creditor to initiate proceedings under Section 7 of the said Code.

Supreme Court: Whether a Term Loan to Corporate Debtor be considered Financial Debt

In ***Orator Marketing Pvt Ltc v. Samtex Desinz Pvt. Ltd.,*** a term loan which was assigned to Orator Marketing Pvt. Ltd. was given to the Corporate Debtor for two years in order to meet working capital requirements. The due remained pending and a petition for initiating proceedings were filed under Section 7 of the IBC. The NCLT rejected the same holding that the same did not constitute a Financial Debt. The NCLAT rejected the appeal on similar grounds. Aggrieved by

the same, the Appellant filed an appeal before the Supreme Court where it was held that when a provision of the IBC is being interpreted, the same must be done purposively, i.e. in line with the legislative intent of the statue. Thereby, the court held that Section 5(8) which defines 'Financial Debt' refers to it as 'a debt along with interest if any which is disbursed against the consideration of time value of money and includes money borrowed against the payment of interest.' The term 'if any' shows that the same is illustrative and not exhaustive. Thus, 'financial debt' would include interest free loans as well.



JusIP
Legal is Simple

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