

## RETRACING 2021

### JANUARY

***“Utilization of song recording does not constitute utilization of underlying work”***

*The Delhi High Court in The Indian Performing Right Society Limited (IPRS) v. Entertainment Network India Limited (ENIL) and Phonographic Performance Ltd. (PPL) v. CRI Events Pvt. Ltd. made a distinction between circumstances where underlying works are exploited in the context of broadcasting sound recordings and other scenarios like live performances. It held that utilization of a song recording does not constitute the utilization of underlying works and thus, no authorisation is required from the authors of the underlying works, nor is any royalty owed to them. Further, given that the 2012 amendment doesn't have retrospective effect, the court held it has no effect on the legal position, thereby complicating interpretation, leaving authors to claim shares only from non-sound recording uses of their work, like live performances.*

### FEBRUARY

**Non-payment of Stamp Duty does not invalidate Arbitration Agreement.**

*In M/s N. N. Global Mercantile Pvt. Ltd. v. M/s Indo Unique Flame Ltd. and Ors., the Supreme Court ruled that the provision prohibiting unstamped commercial contracts from being arbitrated and invalidating arbitration agreements was improper, thus reversing the earlier decision in SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Co. Pvt. Ltd. The agreements being of standalone nature i.e., b/w two parties only, the main contract would not be completely invalidated if the stamp duty wasn't paid.*

## MARCH

### **Committee of Creditors shall determine economic issues of Bankruptcy and not the NCLT**

The Supreme Court in *Kalpraj Dharmshi v. Kotak Investment Advisors Ltd.* noted that the Law Reforms Committee, 2015 was of the clear opinion that the Committee of Creditors is the only correct forum for deciding key economics in bankruptcy issues, while referring to the process for submission and approval of the resolution plan as laid down in Section 30 & 31 of the IBC, 2016. The Court also observed that the NCLT/NCLAT lacked the jurisdiction to examine or interfere in a commercial decision made by the Committee of Creditors, relying on Section 31 of the Code which limits the Adjudicating Authority's jurisdiction.

## APRIL

### **Information Technology (Intermediary Guidelines Digital Media Ethics Code) Rules, 2021.**

On February 25, 2021, the Ministry of Electronics and Information Technology (MeitY) notified the *Information Technology (Intermediary Guidelines Digital Media Ethics Code) Rules, 2021* ("Rules") thereby superseding The IT (Intermediaries Guidelines) Rules, 2011. They consist of two parts. Firstly, messaging apps have to provide for information's first originator and the social media intermediaries have to follow due diligence by informing users about privacy policy, terms and conditions, rules etc. Secondly, it states a 'Code of Ethics' for publishers of digital media wherein a three-tier mechanism has been provided.

## MAY

### **Delhi High Court grants interim injunction against social media platform for illegally circulating Times of India e-newspaper.**

The Plaintiff in *Bennett Coleman v. WhatsApp Inc* contended that the newspaper articles constitute their original literary creations, and hence are protected by the Indian Copyright Act, 1957, under section 14. Despite subscription-based system on their website, the plaintiff's newspaper was distributed free of charge on WhatsApp groups, Telegram channels by the defendant. The Court decided that the plaintiff is the exclusive owner of the copyright to the literary work, and thus possesses the reproduction rights for the same in any form the Plaintiff may choose. The Plaintiff also has the right to protect their work from copyright infringement.

## JUNE

### **Delhi High Court- No absolute bar on arbitrability of trademark disputes.**

In the case *M/s Golden Tobie Private Ltd. v. M/s Golden Tobacco Ltd.*, The Delhi High Court interpreted Section 8 of the Arbitration and Conciliation Act, 1996 in relation to trademark licensing agreements and concluded that trademark disputes are arbitrable. The case clarified that there is a distinction between cases originating directly from IPR issues and those resulting from indirectly related matters, and that the bar on trademark disputes being arbitrable is not absolute.

## JULY

### **Amendment of the Companies (Meetings of the Board and its Powers) Amendment Rules, 2021.**

The Ministry of *Corporate Affairs (MCA)* amended the *Companies (Meetings of the Board and its powers) Rules, 2014*. By virtue of it, Rule 4 of the MBP rules, specifying Board's powers or the issues that will not be discussed in a board meeting done via video conferencing, has been omitted. As a result, the range of topics that can be discussed at board meetings done via video conferencing has been expanded significantly.

## AUGUST

### **Supreme Court: Final Judgement/Decree/Recovery Certificate will give rise to new cause of action for proceedings under Section 7 of IBC, 2016.**

In *Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy & Anr.*, the Supreme Court ruled that a court's judgement, decree, and recovery certificate would give birth to a new cause of action for a financial creditor to initiate proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016.

## SEPTEMBER

### **Supreme Court holds that Resolution Plan cannot be modified once submitted.**

In *Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (Committee of Creditors)*, the Supreme Court reiterated that IBC's structure prohibits withdrawal or amendment of a resolution plan once it has been submitted to the Adjudicating Authority. The Supreme Court thus held that the existing insolvency framework in India provides no scope for effecting further modifications once the CoC-approved Resolution Plan has been submitted.

## OCTOBER

**Arbitrator cannot grant *pendente lite* interest if the contract expressly bars the same.**

The Supreme Court in *Garg Builders v. Bharat Heavy Electricals Ltd.* held that it is not open to the Arbitrator to grant pendent lite interest when there is an express statutory provision allowing the parties to contract out of receiving interest and they have done so without any vitiation of free consent

## NOVEMBER

**Bombay High Court: An idea cannot be subject to copyright but can be subject to breach of confidentiality.**

In the case of *TarunWadhwa v. Saregama India Ltd and Anr*, while deciding on a copyright infringement issue it was held by the Bombay High court, that an idea can be subject to breach of confidentiality but cannot be subject to copyright. To prove a breach of confidentiality claim, the plaintiff must show in the plaint that the disclosure was precise, original, and comprehensive.

## DECEMBER

**Joint Committee Report on Personal Data Protection Bill.**

The Joint Parliamentary Committee Report on the Personal Data Protection Bill, 2019 was presented in the Parliament on December 16, 2021. The Bill will regulate how the government, firms incorporated in India, and international organisations dealing with personal data of Indian citizens process it. The Bill will also have an impact on other issues such as trade secrets and data localization, which affect intellectual property protections provided to foreign entities by their home regimes.





# INTELLECTUAL PROPERTY RIGHTS



## Plant Varieties Certificate held by PepsiCo for Potato Variety FC5 revoked

PepsiCo India sparked outrage two years ago when it sued nine Gujarati farmers for allegedly infringing on patent rights by growing its registered potato variety FC5, but its Plant Variety Protection (PVP) certificate has been revoked by Projection of Plant Varieties and the Farmer's Rights Authority in **Kavitha Kuruganti v. PepsiCo India Holdings**. Accordingly, it loses to the FC5 variety, which was grown exclusively by them for their popular Lay's potato chips. Kavitha Kuruganti, convenor for the Alliance for Sustainable and Holistic Agriculture filed the petition

in June 2019 to revoke the food giant's registration contending that the company violated Section 39(1)(iv) clause of the Protection of Plant Varieties & Farmers Rights Act, 2001. The Authority questioned PepsiCo's documents claiming to be the variety's owner and hence the registered breeder under the law. The Authority accepted Kuruganti's contention that

“several farmers have been put in a difficult position, with the prospect of having to pay a hefty fine for an alleged violation looming.”

The order also noted that the revocation was essential in public interest.

**Agatha Christie's "And then there were**

## **none" granted Trade-mark Protection**

The Delhi High Court in *Agatha Christie Limited v. Registrar of Trademarks* has allowed the celebrated Book Title “And Then There Were None” to be granted Trademark protection. The Court quashed an order that refused the registration of trademark to Agatha Christie Ltd. (Company established by book writer Agatha Christie herself in 1955). The Court further refused to agree with the arguments put forth by the Registrar of Trademarks' that the mark could not be called 'distinct'. The Court noted that the title did not fall under any of the categories of grounds for refusal listed

under Sections 9 or 11. The court further held that the names, words, and combinations of names/words constitute "marks" within the meaning of the Trademarks Act, 1999. It was observed that the title as a mark was not only distinctive but also not confusingly similar to any registered mark and was in fact, a well known work of fiction i.e. prima facie capable of denoting an apparent association with its author and the Plaintiff. Notably, it was also held by the Court that the right to register a Trademark is a valuable right under Article 19(1)(g) of the

Indian Constitution.

### **Madras High Court: Licenses only to be granted by Copyright Societies**

The Madras High Court in the case of *Novex Communications Pvt. Ltd vs DXC Technology Pvt. Ltd & Anr* has held that if the work is incorporated in a cinematograph film or a sound recording, the business of providing licences in any work in which copyright exists can only be done by a recognised copyright society. It was noted that a business owner is not required to join a copyright society for the

same. Further, the Court observed that the first proviso to Section 33 clarifies that an owner's right to issue licences in his personal capacity is unaffected, with the caveat that such a right must be consistent with his obligations as a member of any copyright society. However, Section 33(1) and/or Section 33(2) apply whenever the grant of licence passes from the owner's individual capacity to the sphere of a business. The statutory objective is crystal clear: all licencing transactions must go through a copyright society.

## INSOLVENCY & BANKRUPTCY



**During pendency of Corporate Insolvency Resolution Process, attachment of Bank Accounts**

**of a Corporate Debtor is violative of S. 14 of IBC**

The National Company

Law Tribunal, Mumbai Bench held that the attachment of a corporate debtor's bank



accounts by tax authorities while a corporate insolvency resolution process is in progress, is a violation of Section 14 of the Insolvency and Bankruptcy Code. The liquidator filed an interlocutory application against the respondent Deputy Commissioner of State Tax (1) and Axis Bank Limited (2), requesting that the tribunal unfreeze/lift the attachment on the Corporate Debtor's bank account held by the Respondent 2. It was claimed that the applicant informed Respondent 2 of the beginning of the corporate debtor's Corporate Insolvency Resolution Process and requested that Respondent 2 remove the attachment/lien on the abovementioned bank accounts. The Bench referred to the decision of NCLT in OM Prakash Agarwal v. Tax Recovery Officer, wherein it was held that, even if an

attachment order is issued against the Corporate Debtor's funds in the bank account, the same will be considered an asset of the Corporate Debtor. It noted that Section 178 of the Income Tax Act of 1961 had been changed to allow the Code to take precedence and ordered the Bank to de-freeze the account.

### **Supreme Court analyses the limited powers of NCLT to either admit or reject an application u/s 7(5) of IBC.**

The Supreme Court held that the powers of NCLT under S. 7(5) of IBC are limited to verifying existence of default. In view of the same the Tribunal may either admit or reject an application filed under Section 7 of the IBC. It was noted that

*“While the Adjudicating Authority and Appellate Authority can encourage*

*settlements, they cannot direct them by acting as courts of equity”.*

Therefore, the Adjudicating and Appellate Authority cannot compel a party to the proceedings before them to resolve a dispute. Under Section 7, two courses of action are available to the Adjudicating Authority. The Adjudicating Authority must either admit the application or it must reject the application under Clause (b) of sub-Section (5). The Code does not allow it to take any other action besides the two options presented to it. The Bench further concluded that the Adjudicating Authority's conclusion that the appeal was not maintainable was incorrect. The Appellate Authority dismissed the appeal as not maintainable, notwithstanding the fact that the consent terms were filed by some of the interest holders and may not be all-encompassing.

## COMPETITION LAW

### **National Company Law Appellate Tribunal stays Competition Commission of India's order imposing fine on United Breweries**

The NCLAT has granted a

stay of the CCI's order in exchange for a 10% pre-deposit of the penalty of Rs 752 Cr, imposed on the corporation. United Breweries and other businesses were found guilty of "cartelization in the sale

and supply of alcoholic beverages especially "beer" in several States and Union Territories in India, including through the platform of All India Brewers' Association (AIBA)" by the CCI in September 2021.

## The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund), Third Amendment Rules, 2021 Rules notified.

The Ministry of Corporate Affairs notified the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund), Third Amendment Rules, 2021 on 28th December 2021. Some key takeaways from the same are as follows: -

(a) **Substitution for sub-rule (9)** – Shares held in DEMAT Account not to be transferred/dealt in any manner

except for transferring them back to claimant as and when he approaches in accordance with the sub-rules 10,11 and 11A.

(b) **Insertion of Sub-rule 11A-** provides with application for purchase of shares under Section 236 by entitling the authority to receive the amount on behalf of minority shareholders from the company as per sub-Section 5 of Section 236. There is a proviso to it which states that the authority shall verify that conditions under the act and rules are satisfied and call a report before receipt of money. It also provides that the company shall be

liable to indemnify the minority shareholder or the company for any liability arising, leading to litigation or complaint thereof.

(c) **Insertion of Sub-rule 13A-** Provides that any amount credited by companies to fund under sub-rule 11A shall be remitted into the specified account of IEPF Authority and the details to be furnished to the authority video form no. IEPF-7 within 30 days from date of remittance or date of commencement of IEPF Authority Third Amendment Rules, 2021.

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