

## INTELLECTUAL PROPERTY LAW



### SIMPLIFY

#### What are John Doe Orders?

A John Doe Order refers to a remedy to protect the owners of Intellectual Property Rights **against anonymous and/or unidentifiable persons and entities**. This remedy was first introduced by the Queen's Bench in the UK to grant an extraordinary and equitable remedy against an unknown defendant. The Delhi High Court in ***Tej Television Ltd Vs Rajan Mandal*** for the first time passed a John Doe order under the.

#### Delhi High Court: Disabling access to websites streaming content illegally

In a recent judgement in ***Universal City Studios LLC. & Ors Vs 123Movie-shub.TC & Ors***, the Delhi High Court directed the Department of Telecommunications (DoT) and Ministry of Electronics and Information Technology (MeitY) to issue notifications calling upon telecom service providers to disable access to thirty four independent websites in India which are indulging in online piracy by illegally streaming video content

owned by the Plaintiffs. The Court observed that the websites were anonymous in nature and the information provided regarding the owners was incorrect or protected by secrecy, and thus, found force in the contention of the Plaintiffs that it was virtually impossible to summon the owners of the websites before the court.

The court while deciding in favour of the plaintiffs, also reiterated that it was not proper on the part of the plaintiffs to join hands in a single action against the defendants regardless of the similarity in the cause of action. The

Court held that the plaintiffs were different corporate entities, and while they may have had a common grievance against the defendants for uploading and streaming their copyrighted work without any authority or license, the creative content of each plaintiff was not identical to that of the other. The Court thus discredited the Plaintiffs contention that their cause of action had arisen from making available identical content on the defendants' websites.

### **Madras High Court on whether comparison of ingredients of rival business amounts to Disparagement**

The Calcutta High court in the case of *Dabur India*

*Limited v. Shree Baidyanath Ayurved Bhawan Pvt. Ltd.*, decided on the issue of whether the advertisements by the Respondent amounted to disparagement, on account of the publication being injurious and purporting false statements which may have been demeaning to rival products or businesses.

The Court observed that the Respondent's attempt to make a comparison with the number of ingredients in the rival Plaintiff's product pointed towards the deficiencies in the latter's products, noting that,



“Ergo, a comparison with a fictitious number that is lesser than the minimum requirement, insinuates that those products are not in compliance with the Drugs and Cosmetics Act, 1940. Such a comparison is slanderous and mischievous, and accordingly, amounts to disparagement”.

The court allowed a modified version of the video advertisement with a caveat that the part containing the reference to the '42 ingredients' shall be removed and the bottle shown in the video shall only have the word "CHYAWANPRASH" printed on it.

## **INSOLVENCY & BANKRUPTCY CODE**

### **NCLAT: Go Airlines plea challenging NCLT order rejected**

The National Company Law Appellate Tribunal in the case of *Go Airlines (India) Ltd. v/s Sovika Aviation Services Pvt. Ltd. & Ors*, dismissed an appeal filed by Go Airlines challenging the order of the National Company Law Tribunal which allowed the with-

drawal of insolvency proceedings against Sovika Aviation Services.

The Resolution Professional was in the process of verifying the claims when the Adjudicating Authority granted the application under Section 12A, while noting that the Committee of Creditors had decided to withdraw the Corporate Insolvency Resolution

Process ("CIRP") against the Corporate Debtor. The Court held that after the Committee of Creditors approved the withdrawal of the CIRP proceedings against the Corporate Debtor following a settlement between the parties, the tribunal did not find any error in the Adjudicating Authority's order permitting the withdrawal of the CIRP.





**NCLT, Mumbai:**  
**Non-payment of stamp duty on agreements irrelevant for insolvency proceedings if debt proved otherwise.**

The National Company Law Tribunal ("NCLT"), Mumbai bench, in *Vistra ITCL (India) Ltd. v. Satra Properties (India) Ltd.*, held that insufficiency of stamp duty is not to be considered in an application filed under Section 7 IBC, especially when "debt" and "default" are proven otherwise than by looking into the documents on record. The Corporate Debtor raised an objection on the application on the grounds that the Financial Creditors could not rely on the Secured Redeemable Non-Convertible Debenture Subscription Agreement and Debenture Subscription and Debenture Trust Deed until the deficit stamp duty on the abovementioned two

instruments was paid.

The NCLT allowed the application to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, holding that the debt and default were proven against the corporate debtor even without relying on the Debtor Trust Deed or the NCD Subscription Agreement.

**NCLT, Chennai: Suspended Board of Directors not qualified to replace Resolution Professional**

The National Company Law Tribunal, Chennai in *Anil Kumar Ojha Vs. Chandramouli Ramasubramaniam Resolution Professional of SLO Industrial Ltd. & Anr*, under the Insolvency and Bankruptcy Code, 2016 ("IBC") held that a suspended Board of Directors has no right to appoint a new Resolu-

tion Professional. According to the court, Section 22 of the IBC allows the appointment of the Resolution Professional to be made by the financial creditors. In order to replace the Resolution Professional, an application is to be filed before the Adjudicating Authority which further refers it to the Insolvency and Bankruptcy Board of India. The committee of creditors with a majority vote of 66%, can replace the Resolution Professional under Section 27 of the IBC.

The court rejected the appeal challenging the order of the Adjudicating Authority that refused to accept the Appellant's application and stated that the suspended Board of Directors was not authorized to replace the Resolution Professional and also imposed a cost of Rs. 1 Lakh on the Appellant.



# — ARBITRATION, MEDIATION & CONCILIATION —



## SIMPLIFY

### What do you mean by Conciliation?

Conciliation refers to a mode of settling disputes without litigation where a third-party (neutral) Conciliator brings the parties to a mutual agreement regarding resolution of the dispute. Part III of the Arbitration and Conciliation Act, 2002 deals with the concept.

### Karnataka High Court on jurisdiction of Indian Courts to enforce international commercial arbitration awards

The question before the Karnataka High Court in the case of *CTI Future Corporation Vs Ducgiang Chemical and Detergent Powder Joint Stock Company*, was whether an International Commercial Arbitral award rendered

outside India, between parties with a connection to India, can be enforced by an Indian court.

The Karnataka High Court affirmed that the court could exercise its jurisdiction to enforce a foreign award within the territorial limits of the court in view of Section 2 (e) (ii) and Section 47 of the Arbitration and Conciliation Act, 1996, which describes "court", and states that the high court having jurisdiction to decide the questions forming the subject matter of the arbitral award can enforce such award. It also held that the Central Government by its notification dated 06.07.1999 has declared an arbitral award rendered in the Republic of Singapore can be enforced in India.



### Bombay High Court : Whether dispute on account of fraud is arbitrable

The High Court in *One Point One Solutions Limited Vs Reliance Nippon Life Insurance* decided on the issue of whether a dispute on account of fraud can be referred to arbitration. An application was filed before the High Court, for appointment of a sole arbitrator to decide upon the disputes arising out of the Service Level Agreement. The ground on which the application was opposed was that the dispute between the parties did not fall under the arbitrable category as it was outside the terms of the Service level agreement.

The Respondent alleged fraud since the applicant as well as the former employees of the applicant siphoned off money of the

Respondent after the expiration of the above-mentioned Service Level Agreement.

The High Court appointed a Sole Arbitrator with the consent of the parties to decide on the disputes arising out of the Service level agreement. The Court relied on principles elucidated by the Supreme Court in *N N Global Mercantile (P) Ltd*

*V Indo Unique Flame Ltd* wherein it was held that all commercial and civil disputes both contractual and non-contractual which may be decided by the Civil Court may go into arbitration given that the same is not barred by any statute in force. The Court noted that,

“*Finally, the Supreme Court has held that the civil aspect of fraud is consid-*

*ered to be arbitrable in contemporary arbitration jurisprudence with the only exception being where the allegation is that the Arbitration Agreement itself is vitiated by fraud or fraudulent inducement, or the fraud goes to the validity of the underlying contract, and impeaches the arbitration clause itself.*”

## COMPETITION LAW

### **CCI orders investigation against Chandigarh Housing Board for indulging in alleged abuse of dominant position.**

The CCI received a complaint against Chandigarh Housing Board (“CHB”) for indulging in alleged abuse of dominant position by imposing unfair, exploitative, and arbitrary clauses on the allottees who purchased flats under the housing scheme of CHB in Chandigarh, under Section 4 of the Competition Act. The complainant inter alia alleged that the CHB: (i) arbitrarily charged a high-interest rate towards payment of installments even during the construction period; (ii) purposefully did not disclose the

date of possession, to avoid any liability in case of delay in allotment of flats; and (iii) imposed high penal interest in case of delayed payment by allottees and there was no provision to pay corresponding interest to allottees for the delay on the part of CHB in allotment of flats (hereinafter referred to as the ‘Alleged Conduct’). The CCI defined the relevant market as ‘market for the provision of services for development and sale of residential flats in the Union Territory of Chandigarh’ since residential property cannot be substituted with commercial property and noted that the CHB is dominant in the relevant market as it appears to enjoy a statutory monopoly in the provision of

housing facility to the persons who desire to own a residential flat in Chandigarh. The CCI also noted that CHB received more than 5000 applications against 160 flats in response to the scheme that was opened in 2010, which is a testament of its dominance in the relevant market. In relation to the Alleged Conduct, the CCI noted that CHB appears to have abused its dominant position by imposing unfair, exploitative, and arbitrary clauses on allottees. Accordingly, the CCI directed the DG to investigate the alleged conduct of CHB.





# COMPANY LAW

## SIMPLIFY

### What is insider trading?

Insider Trading refers to act of publishing or sharing unpublished / unpublic price sensitive information to corporations or third parties to gain some benefit, monetary or otherwise. Insider Trading is prohibited under the Companies Act, 2013 and the SEBI Act, 2015. In fact, SEBI has also published guidelines called the SEBI (Prohibition of Insider Trading) Regulations, 2015 which govern and prohibit the same.



### SEBI on how matters of insider trading are to be tested in absence of direct evidence

The Securities and Exchange Board of India in the matter of *Insider trading in the shares of Zee Entertainment Enterprises Ltd. and Others*, lifted restrictions on ten entities who were allegedly involved in insider trading. It stated that in the preliminary examination prima facie certain persons/entities traded in the scrip of ZEEL while they had Unpublished Price Sensitive Information (USPI) about the company. It further stated *"...even in the absence of any direct evidence, such matters of insider trading allegations are to be tested on the circumstantial evidence including the*

*facts surrounding the conduct of parties and abnormal trading practices adopted by them which defy normal logic and business prudence. What is needed in such matters is to appreciate from a factual matrix, the preponderance of probabilities of happening of such an event."*

While concluding, the Tribunal found that the entities in the present matter were all regular and habitual traders and the UPSI was received by the two cousin brothers and was immediately put to use for monetary gain in as many as seven trading accounts, all belonging to their family members, which glaringly exposed the illicit intent of the entities to commit violations of securities law.

## 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](mailto:info@jusip.in).



**JusIP**  
Legal is Simple

### Corporate Office:

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

Ph.: +91 172 4015405

Mob: +91991 413 1579

[info@jusip.in](mailto:info@jusip.in)

[www.jusip.in](http://www.jusip.in)

New Delhi | Mumbai | Bengaluru | Chennai