

INTELLECTUAL PROPERTY RIGHTS



Recently in news

Personal Data Protection (PDP) Bill, 2019 withdrawn

The Personal Data Protection Bill was first introduced in Lok Sabha on 11th December 2019. Initially, it was referred to Joint Parliamentary Committee and later tabled its report in Lok Sabha on December 16, 2021. The Bill was mainly introduced with the aim to regulate the manner in which personal data is processed and also the penalties and remedies for affected people.

The Bill had previously criticized for its provision under Section 35 and Section 12 (a). Section 35 provided power to the government to exempt any government agency from the provision of this law and section 12 allowed for non-consensual processing of personal data by the State for the public interest.

Check this space for more updates on this issue in our next Newsletter.

Interim Relief Denied To 'TV Today' In the Case of Defamation & Copyright Infringement Suit Against Newslaundry by Delhi High Court

The Delhi High Court, in *TV Today Network Pvt Ltd v. Newslaundry & Ors*, refused to grant interim relief to TV Today Network in the suit filed by it against news portal Newslaundry, its CEO Abhinandan Sekhri and others, for Copyright Infringement and Defamation seeking damages of Rs. Two crores. It was alleged by Plaintiff that the Defen-

dant used unlicensed and unauthorized original cinematograph films and sound recordings on its website and social media platforms, thereby, infringing the copyright of TV Today. It has also been alleged that Newslaundry had made "unfair, untrue and disparaging defamatory remarks" about TV Today's anchors and management.

On the contrary, the defendants contended that mere expression of opinion cannot be considered defamation and that TV Today should not be

granted interim relief because it filed "misleading documents" to support its claims. The Delhi High Court held that no interim relief shall be granted to the Plaintiff as neither the element of any balance of convenience nor the element of irreparable loss were satisfied. The Court also ruled that broadcast rights should be used to debate the case rather than copyright.

Telegram And Mega directed to take down illegal content relating to Doctutorials uploaded on their platform

The Delhi High Court, in *Doctutorials Edutech Private Limited v. Telegram FZ-LLC & Ors.*, has directed Telegram and Mega that any unauthorized content, copyrighted data, or any content which has the DocTutorials mark is to be taken down by the platforms within 48 hours if notice in respect of such material is issued by Plaintiff.

DocTutorials Edutech Private Limited (Plaintiff) is an online medical entrance examination coaching platform offering paid content for preparation, such as videos, test papers, etc. It was submitted that the Plaintiff's

copyrighted content is being transmitted and uploaded by unknown persons on the messaging platform and made available to the public causing loss to the plaintiff.

The Delhi High Court also ordered the Department of Telecommunications to block such URLs or channels as communicated by Plaintiff from time to time, within 48 hours of such communication.

Delhi High Court orders MeitY, DoT and others to provide recommendation regarding the rapid increase of imposter domain names.

The Delhi High Court in *Dabur India Limited v. Ashok Kumar and ors.* [CS (COMM) 135/2022 & I.As. 3423/2022, 9363/2022] and other connected matters ordered the Ministry of Electronics and Information Technology (MeitY) and Department of Telecommunications (DoT) to provide recommendations regarding the surge of imposter domain names in the industry.

The above suit was filed by trademark owners seeking relief against

infringement of their mark by unauthorized persons, who registered such marks as similar domain names. The court said that such cases could be 'cyber-squatting' cases.

SIMPLIFY

What is Cyber-Squatting?

The High Court of Delhi in the case of *Manish Vij v. Indra Chugh (AIR 2002 Delhi 243)* has defined *cyber-squatting* as "an act of obtaining fraudulent registration with an intent to sell the domain name to the lawful owner of the name at a premium."

The main issue raised before the court was that such proliferation of domain names is not only detrimental to the reputation of the trademark but also leads to damage and confusion among the public, who were led to believe that the infringing domain name was in fact that of the owner.

Thus, the court ordered DOT and MeitY to provide recommendations regarding the manner in which the Domain Name Registrar (DNRs) can verify the details of the domain name registrants, at the time of registration of domain names.

Delhi High Court: Directed Telegram to disclose information about the users involved in the infringement of copyright

The Delhi High Court in *Neetu Singh & Anr. v. Telegram FZ LLC & Ors.* observed that copyright infringers cannot be permitted to seek shelter under messaging platform Telegram's policies merely because its physical server is in Singapore. The plaintiff filed a suit against the defendant Telegram and various unknown persons, praying for a permanent injunction restraining infringement of copyright in connection with the unauthorized distribution of their videos and books. It was alleged that the users on Telegram created new

channels and operated the same in private mode, masking their identity. Telegram pleaded that it could not disclose the data of the persons using the application, as the said data is stored in servers situated in Singapore and Singaporean laws prohibit such disclosure.

The Court observed that the jurisdiction of this Court cannot be ousted merely because the persons disseminating the copyrighted works use the Telegram app and the said app retains its data outside India, on Telegram servers.

The Court also ascertained that the communication and circulation of the plaintiff's work on Telegram channels

would amount to infringement of Copyright under Section 2(m) of the Copyright Act. Further, if infringers are allowed to mask their identity using technological means provided by messaging apps and their identity is not directed to be disclosed, the remedy of infringement damages would be rendered completely nugatory.

The Court thus directed Telegram to disclose the details of the channels or devices used in disseminating the infringing content, mobile numbers, IP addresses, email addresses, etc., used to upload the infringing material and communicate the same, as per the list of channels filed.

COMPETITION LAW

Delhi High Court stays guidelines notified by the Central Consumer Protection Authority for the prohibition of levy of Service Charge by restaurants

The Delhi High Court, in the *National Restaurant Association of India v. Union of India*, stayed the guidelines dated 20th July

2022 passed by Central Consumer Protection Authority that prohibited restaurants and hotels from levying service charges on bills. The said regulations were instituted for the prevention of unfair trade practices to protect customer interest. The Court observed that Clause (i) of Section 2(47) of the Consumers Protec-

tion Act referred to the pricing of items in the context of "unfair trade practice".

Charging anything other than the said amount would amount to unfair trade practice under the Act and the instant petition challenges the above. The Delhi High Court stayed the impugned



guidelines till the next date subject to certain conditions, that the Petitioner Association must adhere to. Further, the Court observed that its members shall ensure that the additional proposed service charge and the obligation of customers to pay such charges is displayed prominently on the menu or other places and that the same was not to be levied on takeaway items.

Delhi High Court: Jurisdiction of CCI cannot be ousted merely because information received pertains to Patents

The Delhi High Court, in *Vifor International Ltd. v. Competition Commission of India, W.P.(C) 11263/2022* held that the jurisdiction of the Competition Commission of India (CCI) cannot be ousted merely because the information based on which it seeks to initiate action relates to a patent. The

present writ petition was filed to challenge the CCI's orders in *XYZ (confidential) v. Vifor International (AG) [Case No. 05 of 2022]*, wherein the Regulator received information against the Petitioner alleging discriminatory pricing of a drug.

SIMPLIFY

What is AAEC?

AAEC or Adverse Effect on Competition is a term used for practices which restrict competition in the market as under Section 3 of the Act, 2002. The CCI determines AAEC on the basis of:

- Anti-Competitive Agreements
- Abuse of Dominance
- Combinations such as mergers, amalgamation and acquisition of shares.

Petitioner submitted that the subject matter of the information related to the rights of a Patent holder under the Patents Act, 1970; therefore, the Com-

mission had overstepped its jurisdiction by taking cognizance of the information and initiating an enquiry. Invoking Section 3(5) of the Competition Act, 2000, they contended that the said provision safeguards the right of any person to avert the infringement of their Intellectual Property Rights or to impose any reasonable conditions for protecting the same. He further maintained that several provisions of the Patent Act protected the rights that a patent holder could assert.

The Court observed that the information received disclosed the anti-competitive practices adopted by the Petitioner which caused substantial harm to the competition as well as consumers; therefore, initiation of enquiry by the Commission was justified. Only when the information relates to rights and liabilities *solely resting* on the provisions of the Patent

Act, 1970, and does not relate to any of the matters, would it fall outside the purview of the Commission.

Delhi High Court: CCI's jurisdiction to investigate Whatsapp's alleged anti-competitive Privacy Policy upheld

The Delhi High Court, in *Whatsapp LLC v. CCI*, *Facebook v. CCI* upheld CCI's jurisdiction to direct an investigation into Whatsapp's 2021 Privacy Policy on its alleged violation of the Competition Act, 2002.

The factual matrix is as follows: Whatsapp underwent an update of its privacy policy in 2021, which

is currently under challenge before the Supreme Court. The Commission, having taken suo motu cognizance under Section 26(1) of the Act, issued directions to the Director-General (DG) for probing into the potential abuse of the dominant position by Whatsapp & Meta through the said policy. A petition was filed challenging these directions which were dismissed by the Single Judge. Thus, the current appeals have been filed on the question of whether the CCI should wait until the final adjudication of the issues pending before the Supreme Court.

The appellant contended that judicial principle pre-

cludes any authority from examining the validity of privacy policy while the same being adjudicated by the Supreme Court. To this, the Court responded by emphasizing that the issue before the Supreme Court is whether the policy violates the right to privacy under Article 21 of the Constitution, whereas the CCI is examining whether the policy furthers WhatsApp's dominant position and institutes anti-competitive practices. Relying on *CCI v. Bharti Airtel [(2019) 2 SCC 521]* the Court ruled that since the spheres of operations of both authorities are widely different, the investigation by CCI shall not be affected by the Apex Court's decision.

INSOLVENCY AND BANKRUPTCY



Supreme Court: Liability in respect of a claim arising out of a "Recovery Certificate" shall be included within the meaning of "Financial Debt"

The Supreme Court, in *Kotak Mahindra Bank Ltd v. A. Balakrishnan*, has held that the language of Section 5 (8) includes the liability for a claim that is due and payable through

a recovery certificate. The Court explained that the legislative intent could not be to possibly exclude a liability arising out of a recovery certificate and rejected the respondent's

contention that a "recovery certificate" could not be treated as a decree to initiate a CIRP by filing a Section 7 petition under the Insolvency & Bankruptcy Code (hereinafter, IBC) as a "financial creditor" or "decree holder".

In the present case, Kotak Mahindra Bank (hereinafter "the appellant") was the assignee of certain loans for which the second respondent stood as a guarantor for the borrower entities.

NCLAT Chennai: Resolution Professional's legal authority extends only to the exercise of control over bank accounts operated by the Corporate Debtor.

The National Company Law Appellate Tribunal (NCLAT) of Chennai in *Beauty Etiole Pvt. Ltd. v. C. Sanjeevi and Ors* has held that as per the language of Section 18 (1)(f) of the IBC, a resolution professional can take control and custody of those assets that are in the corporate debtor ownership and not of any other third party. The Resolution professional thus could not freeze the four bank accounts of the appellant, as it was a third party whose assets did not belong to the corporate debtor.

In this case, the appellant had entered into a joint development agreement with the third respondent, who was the corporate debtor and had borrowed money through a secured mortgage. The corporate debtor has defaulted on the payment of the loan, and the resolution professional wrote to the bank, asking it to freeze the appellant's accounts. The National Company Law Tribunal (NCLT) also passed an order to pay the salary, loan and interest from the frozen bank accounts. In this case, the Court considered the language of Section 18 (1)(f) and stated that the resolution professional could not freeze the bank accounts of the guarantor.

Supreme Court: The Insolvency and Bankruptcy Code, 2016 will prevail over the Customs Act, 1962.

In a landmark decision, the Supreme Court in the matter of *Sundaresh Bhatt vs. Central Board of Indirect Taxes & Customs [Civil Appeal No. 7667 of 2021]* held that the provisions of the Insolvency and Bankruptcy Code, 2016 will prevail over the provisions of the Customs Act. The facts of the case were as follows-

The issues raised before

the Court were, whether the Provisions of the Insolvency and Bankruptcy Code, 2016 will prevail over those of the Customs Act and whether the Customs Authority is entitled to confiscate the goods of the Corporate Debtor which is currently undergoing liquidation in accordance with Insolvency and Bankruptcy Code, 2016. The Court held that once the moratorium is imposed according to the provisions of the Insolvency and Bankruptcy Code, 2016, the Customs Authority can only assess the quantum of duties and cannot initiate/ continue proceedings against the Corporate Debtor. The court further held, that after such assessment, the Customs Authority must submit claims regarding the customs dues. Operational debt, before the adjudging authority.

The court, thus, allowed the appeal and set aside the impugned order and judgment of NCLAT.

NCLAT, Chennai Bench: The Tribunals cannot interfere with the decisions of the Committee of Creditors unless they are arbitrary or illegal in nature.

The NCLAT, Chennai Bench, in the matter of *M/s IDBI Bank Limited v*

C.J. Davis held that the commercial wisdom of the Committee of Creditors is paramount, and can only be interfered with if it is arbitrary, illegal, irrational or against the provisions of Insolvency and Bankruptcy Code, 2016. The background facts of the case are:

The Appellant, who is a majority member of the Committee of Creditors, filed an application before the Adjudicating Authority, seeking to appoint the Resolution Professional as Mr. Suresh. However, the

Adjudicating Authority rejected the application on the ground that the incumbent Interim Resolution Professional was eligible to be the Resolution Professional since there are no adverse comments against him, there is no reason to replace him. The NCLAT Bench observed that the CoC has the right to either continue the IRP as Resolution Professional or replace him by filing an application before the Adjudicating Authority. The Appellant had complied with the provisions and the Adjudi-

cating Authority had no reason to reject the application.

“When the Applicant comply with the provisions of law and there is no scope to reject the prayer or relief as sought by the Applicant.”

Thus, the bench directed the Adjudicating Authority to appoint Mr. Suresh as the Resolution Professional, setting aside the impugned order of the Adjudicating Authority.

ALTERNATIVE DISPUTE RESOLUTION



Supreme Court: Arbitration award cannot be modified by Courts under Section 34, 37 of Arbitration Act; It can only be set aside or remanded

The Supreme Court in *National Highways Au-*

thority of India v. P. Nagaraju @ Cheluvaiah stated that under Section 34 or 37 of the Arbitration and Conciliation Act, a Court cannot modify the Arbitrator's award, and that it may either set aside the order completely or

remand the matter back to the Arbitral Tribunal to adjudicate again. The Court relied on its decision in *NHAI v. M Hakeemmand & Anr*, and reiterated that proceedings under Section 34 are not an “*Appeal in disguise*”.

Supreme Court: Two Arbitration Proceedings with Respect to Same Contract/Transaction Not Permissible

The Supreme Court, in *M/S Tantia Constructions Limited v. Union of India*, dismissed a Special Leave Petition filed against an order assed by the Calcutta High Court's September 2021 dismissing the Petitioner's request for the appointment of an arbitrator for resolving the parties' dispute. The Supreme Court ruled that when a dispute has already been referred to arbitration and an award has been rendered on the claims made, it is "rightful" to refuse to refer to arbitration - in the exercise of Section 11(6) of the Arbitration and Conciliation Act, 1996 - a new arbitration proceeding requested to be launched for some further claims.

The Supreme Court observed that it is of the strong belief that there must not be two arbitration proceedings about the same agreement.

Bombay High Court: Arbitral Award need not be set aside entirely, merely because of incorrect application of the law

The Bombay High Court, in *National Highways Authority of India v. The Additional Commissioner, Nagpur & Ors.*, reiterated when the Arbitrator has erred only on specific issues in an otherwise sustainable arbitral award, the Court is not bound to set aside the whole award under Section 34 of the Arbitration and Conciliation Act, 1996.

Herein, the Respondents' lands were acquired under the National Highways Act, 1956 (NHA) by the National Highways Authority of India (hereafter, 'NHA'). Subsequently, the Land Acquisition Commissioner issued an order compensating the respondent-landowners. The respondent-landowners then initiated arbitration seeking enhancement of the compensation, which the arbitrator partially allowed.

The NHA challenged the arbitral award before the District Court under Section 34 of the Act. The District Court set aside the arbitral award partially, compelling the NHA to file an appeal before the Bombay High Court.

The NHA contended that partly setting aside the

arbitral award amounted to modifying the award which was not permitted by law. Thus, the award should have been set aside entirely under Section 34 of the A&C Act.

In response, the High Court observed that the judicial discretion vested in the Court under Section 34 includes the power to set aside the arbitral award, entirely or partially, based on the facts and circumstances of the case. Further, it held that the view that arbitral award must be set aside entirely, and arbitral proceedings must be reopened, is inequitable and fails to meet the ends of justice. The Court has the authority to separate the award on items that do not suffer any infirmities and uphold the award to that extent.

Supreme Court: 'The arbitrators do not have the power to unilaterally fix their fees without the consent of the parties'

The Supreme Court in *Oil & Natural Gas Corporation Ltd. vs Afcons Gunanusa JV* held that the arbitrators cannot unilaterally decide upon their fees without the consent of the parties.

Recently in News

Key Highlights of NPCI Guidelines

India's National Payments Corporation of India (NPCI) has ordered that all UPI-based apps obtain the user's permission before recording their location.

The NPCI also stated that the option to enable or cancel consent to share your location should be made mandatory for the app. In such instances, sending inaccurate location coordinates will result in severe punishment from the NPCI.

These restrictions apply solely to domestic UPI transactions between persons and must be observed by all members by December 1, 2022.

The NPCI intends to expand the UPI into international markets. It will be a homegrown alternative to SWIFT, a cross-border payment system operator located in Belgium.

The Court held:

1. Schedule IV which determines the fees of the arbitrators of the Act is not mandatory in nature.
2. Arbitrators cannot unilaterally issue binding orders regarding their fees as it violates the doctrine that the arbitrators cannot be a judge of their own private claim against the parties regarding their remuneration.
3. Arbitral fees determined without the agreement of the parties in the case cannot be enforced in favour of the Arbitrator.
4. Fees should be decided at the start of the hearing to avoid later conflicts between arbitrators and parties.
5. In ad hoc arbitration, arbitrators would be permitted to charge separate fees for claim and counterclaim, and the fees listed in the fourth schedule would apply to both.

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