JusIP
Legal is Simple

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JUSIP LISTICLE

INTELLECTUAL PROPERTY RIGHTS

Delhi High Court Broadens The Scope Of Section 57 Of The Indian Copyright Act, 1957

In recent times several artists have debated the absolute power and authority exercised by big music labels in deciding the fate of music. These labels have continuously abused their power to mould and present musical composition in newer appealing form while paying no heed to the original artists such as the singer, songwriter's intent behind creating the composition. For a long time, artists have assigned their copyright to big music labels for the purpose of composing, recording and distributing their work. Therefore, the music industry gets a free pass to record and re-record these composition according to their fancies however the question remains as to whether the artist has some legal remedy in such circumstances.

The Delhi High Court in the case of *Amarnath Sehgal v Union of India and Anr (2005 (30) PTC 253 Del)* broaden the scope of S. 57 of the Indian Copyright Act, 1957 and ruled that "*S. 57 need not be restricted to injunction or damages. The action could well be*

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What are Moral Rights?

Moral/Incidental rights held by a copyright holder include the right to attribution, the right to publication under a pseudonym or anonymously, and the right to the integrity of the work. The preservation of the work's integrity prevents it from being changed, distorted, or mutilated.

to preserve the ethic of the work." The court reiterated the principles of integrity and attribution as laid down in the Berne convention and ruled that even when the artist has assigned his/ her copyright, the moral rights of the artist would still survive.

Delhi High Court Defines The Term "Import" In Section 51 And 53, Copyright Act To Mean Importation For Commerce As Well As For Transit

The Delhi High Court, while dealing with a suit for Copyright infringement in the case of ***Colgate Palmolive Company v. John Doe***, ruled that "the word "import" in Sections 51 and 53 of the Copyright Act means "bringing into India from outside India", that it is not limited to importation for commerce only, but includes importation for transit across the country." The Court noted that the Intellectual Property Rights (Imported Items) Enforcement Rules, 2007 control the import of goods that violate intellectual property rights. It states that counterfeit goods or goods that infringe on the intellectual property rights of trademark, copyright, or other owners cannot be imported.

The plaintiffs in the given case i.e. Colgate Palmolive Company alleged that a container containing roughly 3,600 pieces of infringing toothpaste, bearing the mark/name "CONAETE COOL-ICE," had been shipped from Yiwu City to Ningbo Port (China) in October 2021 and was then scheduled to be discharged at Mundra Port, India. The products in the said container were named as "CONAETE COOL-ICE," and were allegedly nearly identical to or confusingly/deceptively similar to the Plaintiffs' well known product. The striking colour scheme—blue and red with a white cap and bold font—as well as the arrangement of the different components were said to have been imitated.

Delhi High Court Deems Mere Presence Of A Website In Geographical Location As "Targeting" Potential Markets And Customers

The court in Tata Sons Private Limited vs Hakunamatata Tata Founders & Ors. CS (COMM) 316/2021 decided on 27 September, 2022 ruled that

> *"Targeting need not be a very aggressive act of marketing aiming at a particular set of customers. Mere looming presence of a website in a geography and ability of the customers therein to access the website is sufficient.*"

Tata Sons had filed a suit for interim injunction against the respondents before the Delhi High Court alleging that the respondents Hakunamatat Tata Founders and Others using websites named www.tatabonus.com and "www.hakunamatata.finance" to sell cryptocurrency by the name of " TATA COIN" online. The respondents as hereinabove contended that since their websites did not target the Indian market and they were functioning in a completely different commercial space their action did not amount to infringement.

Delhi High Court Restrains Nic Ice Creams From Using The Mark "Naturals"

Natural Ice Cream is an Indian brand started in 1984 and now has over 140 franchises in 42 cities across the country. They filed a suit for trademark infringement against 'NIC

Natural Ice Creams' which was started by a partner of one of its franchises for using the marks deceptively similar to Natural Ice Cream titled *Siddhant Ice Creams LLP & Ors. vs. Ameet Pahilani & Ors Delhi High Court, CS (COMM) 735/2022)* As per the Plaintiff the mark also uses the identical shade of green as that of the plaintiff's brand.

The Delhi High Court passed an interim order restraining the makers of 'NIC Natural Ice Creams' from using the trademarks 'NATURALS' and held that balance of convenience lies in the favour of the plaintiffs and they will suffer irreparable loss if the order is not granted in their favour.

Madras High Court Direct Mobilepe To Abandon All UPI And BHIM Services

A Trademark Infringement suit was filed by PhonePe against MobilePe as the logos of the two apps were similar there was case of deception. The Plaintiff was the registrant/proprietor of the PhonePe trademark. The plaintiff had sent Cease and Desist Notice to the defendants which were followed by a reply, rejoinder, and sur-rejoinder in July, 2022. After the sur-rejoinder, the plaintiff was made to believe that the defendant company would not move forward with their trademark application. However, on 29th August, the plaintiff came to know that the defendant's trademark application was accepted. Following this, the plaintiff moved to the High Court.

The Madras High Court in *Phonepe Private Limited, Vs. D- Mobilepe E-Commerce Private Limited & Mobilepe Fintech Private Limited And 8 Others, O.A.No.651 of 2022 in C.S (Comm.Div.) No.205 of 2022* held that Contemplation of Urgent Interim relief was made out under Section 12A of the Commercial Courts Act is made out. The court relied a previous judgment of the Supreme Court in *Parle Products (P) Ltd v. JP and Co* and held that by applying the principles laid down in this case i.e., *avoiding side by side comparison, stepping into the shoes of a common man with average intelligence , logos of the two app appear similar. Thus, prima facie case of possible deception is made out.*

However, the court also held that MobilePe and its related companies can continue with other business activities like wallet recharge except UPI and BHIM services.

COMPETITION LAW

Analysis Of The Competition Amendment Bill, 2022

Hub and Spoke cartels: The Bill expands the presumption of responsibility for active members of so-called "hub and spoke" cartels, which are anti-competitive agreements that are neither purely vertical nor horizontal. This presumption is intended to hold true even in cases where the parties to the agreements in question are not engaged in the same type of business as one another.

- **Leniency Framework:** gives CCI the authority to reduce relevant fines on an organisation under investigation if it discloses other cartels. The amendment seeks to strengthen CCI's power to monitor the formation of cartels

- **Transparency in Penalty Guidelines:** The Bill proposes a section requiring the CCI to establish recommendations that specify how the level of punishment for violations of the Competition Act, 2002, is assessed by the CCI in order to promote predictability for parties.

- **Expedited Mergers:** Mandates that the CCI must approve merger related transactions in 150 days with a maximum extendable period of 30 days.

CCI rejected a complaint against INOX- PVR merger and stated that a complaint against the proposed merger of PVR and INOX Leisure, ruling that an entity's suspicion of possible anticompetitive behaviour cannot be the focus of an investigation

The Competition Commission Of India Imposes A Penalty Of Rs 936.44 Crore On Google For Abusing Its Dominant Position

The CCI has recently observed that Google is a dominant player in the markets for licensable Operating Systems. Google's Android System has successfully reaped the mobile network effects and therefore most android users are by default using Google's operating system. The bone of contention in the present issue was that while most of these Apps sell in house digital goods or have in App purchases which the user undertakes after installing the app but Google has a policy that every distributor has to configure to Google's payment policy to enlist their app on play store. Thus, those who failed to comply were not permitted to enlist their app on play store. Google's Play Store policy mandated that app developers use the Google Play's Billing System (GPBS) exclusively for collecting payments for apps.

The commission made the following observations:

• Imposing a constraint on app developers which requires them to use GPBS in order to access the Play Store for their paid apps and in-app purchases is an unfair condition.

• Google engaged in discriminatory practice by not imposing a similar policy on its own apps, such as YouTube.

• The mandatory implementation of GPBS interferes with the incentives for innovation and the capacity of payment processors and app developers to innovate and develop new technologies

• Imposition of GPBS as a requirement, denies pay-

ment aggregators and app developers entry into the market;

CCI Fines Make My Trip And Oyo For Denial Of Market Access To Other Players In The Industry

In *In Re: Federation of Hotel & Restaurant Associations of India (FHRAI)* | Case No. 14 of 2019 an application under Sec. 33 of the Competition Act, 2002 was moved by FabHotels and Treebo requesting the commission to direct Make My Trip ("MMT") and Go Ibibo ("Go") platforms to re list their properties on all their portals. The applicants submitted that Make My Trip and OYO allegedly engaged into a secret business arrangement whereby
Make My Trip committed to provide OYO preferred treatment on its platform. This massively interfered with the business of the petitioners and denied them reasonable "market access," in violation of sections 3(4) and 4 of the Act. The petitioners cited the Hon'ble Supreme Court in *Competition Commission of India vs. Steel Authority of India Ltd., (2010) 10 SCC 744* wherein it was laid down that for an order under Section 33 of the Act, three requirements that must be met (i) existence of a prima facie case; (ii) balance of convenience in favour of the claimant; and (iii) that irreparable damage would be caused to the claimant if the interim relief is not provided. MMT-Go submitted that the Agreement with oyo was made to provide consumers with better and reasonable prices andit did not cause an AAEC in India. Neither did it create any entry barriers for the new players (as the restrictions therein apply against two existing players) nor it weakened the performance of Treebo and FabHotels.

The Commission observed that the MMT Go did indeed enter into an agreement that specified delisting of fab hotel and Treebo and therefore an adverse impact was made on the two. It was further held that denial of market access need not be complete and absolute in nature, denial of market access in any manner that takes away the freedom of a substitute to compete effectively and on the merits in the relevant market can amount to denial of market access under the provisions of the Act. The commission observed that all the conditions mentioned in the sail judgement were duly satisfied and therefore an interim order in favour of Treebo and Fab Hotels was issued.

INSOLVENCY AND BANKRUPTCY

Supreme Court: Cirp Proceedings Can Be Initiated Against Two Corporate Debtors But Same Amount Cannot Be Realised From Both

The Supreme Court dismissed the appeal in *Maitreya Doshi v. Anand Rathi Global Finance Limited, 2022 SCC Online SC 1276* and refused to interfere with the orders of NCLAT. The Hon'ble Court held that if there are two corporate debtors, CIRP proceedings under Section 7 of Insolvency and Bankruptcy Code, 2016 can be initiated against both of them. The court further stated that if the dues are paid by one debtor, then the balance must be realized from the other corporate debtor. The court relied on the judgment of *Lalit Kumar Jain v. Union of India, Transferred Case*

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CIRP PROCESS
The corporate insolvency resolution process is a mechanism by which a financial creditor, operational creditor or corporate debtor, itself can approach the Adjudicating authority for insolvency resolution process. The process is available under section 7, 9 and 10 of the Insolvency and Bankruptcy Code, respectively.

(Civil) No. 245/2020, where it was observed that the guarantor of the Corporate Debtor and the co-borrower are not discharged if the resolution plan is approved.

Supreme Court: The Date On Which The Right To Sue Accrues Is The Relevant Date For The Purpose Of Limitation.

Supreme Court in the case of *Tech Sharp Engineers Pvt Ltd v. Sanghvi Movers Pvt. Ltd, (Civil Appeal No. 296 of 2020)*, observed that the onus is on the appellant to show the sufficient cause for the delay in filing the application. While computing the limitation the date of enforcement of IBC or when the application was to be filed under IBC are not relevant. The court while relying on *B.K. Educational Services Pvt. Ltd v.Parag Gupta and Associates (Civil Appeal No.23988 of 2017)*, held that Tribunals have the discretion to entertain the application after the prescribed period of limitation after the applicant is able to show cause the existence of sufficient reason for the delay. This court further stated that for the purpose of limitation, the relevant date for the purpose of limitation is the date on which the right to sue accrues which is the date when a default occurs.

Supreme Court: Cirp Can Proceeded Against The Guarantor Without First Suing The Principal Borrower

In the case of *K Parmasivam v. the Karur Vyasa Bank Ltd (Civil Appeal 9286 of 2019)*, the court held that even if the principal borrower is not a corporate person if he extends a guarantee for the loan transaction, principal borrower would still be covered within the meaning of the expres-

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IBBI recently amended its regulation to be enforced from September 16 where it allowed insolvency professional entities to act as insolvency professional. Also, committee of creditors can now examine whether an arrangement can be explored for a corporate debtor during the liquidation period

sion 'corporate debtor' as given under section 3(8) of Insolvency and Bankruptcy Code, 2016. The Hon'ble Supreme Court also held in this case that Resolution Process (CIRP) can be initiated against the Corporate Guarantor without proceeding against the principal borrower. The liability of the corporate guarantor is coincident with that of principal borrower. The reliance was made on *Laxmi Pat Surana v. Union Bank of India &Anr((2021) 8 SCC 481).*

NCALT: Upheld The Penalty Imposed By Cci And Observed That Amazon Concealed Its Violations By Intentionally Concealed The `Real Ambit And Purpose' Of The `Combination.

In *Amazon.com NV Investment Holdings LLC v Competition Commission of India &Ors.*, Amazon filed an appeal before the National Company Law Appellate Tribunal aggrieved by the order of the CCI imposing a penalty of Rs 202 cr. According to the CCI

> *Amazon violated the obligation contained in sub-section (2) of Section 6 of the Act read with Regulation 5 and sub-regulations (4) and (5) of Regulation 9 of the Combination Regulations by failing to notify FRL Share Holders Agreement and the commercial arrangements, as parts of the combination between the parties, and by suppressing the actual purpose and particulars of the combination.*

Amazon, claimed that Section 5 of the Competition Act, 2002 was not invoked because the Investor Affiliate, Amazon Seller Services Private Limited ("ASSPL"), was not acquiring any "Shares," "Voting Rights," or "Assets" or "Control" in "Future Retail Limited" ("FRL") as a result. Further it was also argued that proviso to Section 20(1) prevents the CCI from conducting an investigation into a consummated transaction after a year has gone since the transaction's effective date.

The NCLAT upheld the penalty imposed by CCI and observed that Amazon in order to conceal its violations, had intentionally concealed the `real ambit and purpose' of the `Combination. It stated that *"the appellant Amazon has not made full, complete, direct and frank disclosures of relevant materials. He had only provided limited disclosures related to the acquisition of his rights and strategic interests in FRL (Future Retail Ltd) and the execution of the commercial contract."*

INFORMATION TECHNOLOGY

Karnataka High court | Regulation of the emergence of "pseudo-therapists" in the public sphere who are simply disguised Instagram influencers is necessary.

The petitioner in the present case had filed an application for quashing of a criminal complaint filed against her on behalf of the complainant. The petitioner had been in contact with the complainant through Instagram and on discovering that the complainant was dealing with some amount of stress in his life, directed him to her wellness page, through

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No prosecutions under Section 66A, Information Technology Act 2005

Despite striking down Section 66A, IT Act by the Supreme Court in *Shreya Singhla Vs Union of India* in 2015 cases were still being filed under the provision. The Supreme Court has now in has conclusively held that no citizens should be prosecuted for the alleged violation under Section 66A and all such cases currently ongoing under the above shall stand deleted. The Court also advised Home Secretaries, Director General of Police and relevant authorities to ensure that the said provision shall not be used.

the course several sessions the complainant had transferred an amount of Rs. 3.15 to the petitioner. However, it was later discovered that the complainant had been running various fake wellness accounts and was not designated therapist.

The court dismissed the application of the petitioner and directed for the proceedings to continue in the magisterial court. The court observed that the petitioner had failed to demonstrate such grounds that would justify the interference of the court in the judicial proceedings which were already undertaken. The court relied on the case of *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*, which states that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule and the inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself.".

ALTERNATIVE DISPUTE RESOLUTION

Supreme Court: To Apply Provision Of Section 9 Arbitration & Conciliation Act, Conditions Given Under Order 38 Rule 5 To Be Satisfied.

Recently an appeal was filed before the Supreme Court in *Sanghi Industries Limited v. Ravin Cables Ltd, 2022 SCC Online SC 1329* against the judgment passed by the Gujarat High Court where the High Court dismissed the appeal filed by appellant against Section 9 order and affirmed the order passed by Commercial Court, Bhuj where Sanghi Industries were directed to deposit the amounts under the respective bank guarantees pertaining to some purchase orders to the court.

The Hon'ble Supreme Court ruled that until and unless the conditions mentioned in Order 38 Rule 5 of the CPC are satisfied, the commercial courts cannot pass an order to exercise their powers under Section 9 of Arbitration and Conciliation Act, 1996. The court also held that such courts cannot pass order under section 9 of the Act unless there are specific allegations with cogent material and unless prima-facie the Court is satisfied that the appellant is likely to conquest the decree/award that was passed by the arbitrator.

Delhi High Court | If The Claim Is Time Bared, Arbitration Cannot Be Invoked Even By Consent Of The Parties.

The Delhi High Court in *Extramarks Education India Private Limited v. Sri Ram School, 2022 SCC Online Del 3123*, held that the claim by the petitioner against the respondent is ex-facie time barred by the Limitation Act, 1963. The court further stated that arbitration in such cases cannot be invoked even by the consent of parties. The court remarked that limitation bars a legal remedy and not legal right. Legal remedies are not available endlessly but only up-to a certain point in time.
The Court relied on BSNL v. Nortel Networks India Pvt. Ltd., (2021) 5 SCC 738 where it was observed that the limitation period for issuing notice of arbitration would not get extended by mere exchange of letters, or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. The court further stated that clear notice invoking arbitration must be received by other party within a period of 3 years from the rejection of a final bill. Time-bar will prevail, if parties fail to do so.

Delhi High Court | Administrative Mechanism For Resolution Of Disputes Does Not Substitute To Arbitration Where A Valid Arbitration Agreement Already Exists

In *Prasar Bharti versus National Brain Research Centre & Anr.*, the Petitioner Prasar Bharti under section 14(1)(b) of the Arbitration & Conciliation Act, 1996 ('A&C Act' for short) filed for a termination of the mandate of the Sole Arbitrator appointed by a Co-ordinate Bench of the Delhi high court under section 11(6) of the A&C Act. The petitioner submitted before the Court that after an arbitrator was appointed by the High Court, the Ministry of Law & Justice, Department of Legal Affairs issued an Office Memorandum with details regarding the Administrative Mechanism for Resolution of Disputes ("AMRD").

The petitioners submitted that in reference to the said office memorandum both the parties had mutually agreed via a memorandum of settlement to abide by the administrative mechanism and set

aside the mandate of the arbitrator. The respondents submitted that even though they had signed the settlement agreement it did not consent to set aside the mandate of the arbitrator, and the initial agreement between the parties already contained a valid arbitration clause to resolve any issues.

The court held that though AMRD was applicable in the present case it is only a mechanism for settlement of disputes and not a substitute to arbitration where a valid arbitration agreement already exists. The court relied on the case of *Northern Coalfields Ltd. versus Heavy Engg. Corpn. Ltd. (2016)*, whereby it was laid down that the Permanent Machinery of Arbitration was and continues to be outside the purview of the Arbitration Act, 1940, which is now replaced by the Arbitration and Conciliation Act, 1996.

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