

INTELLECTUAL PROPERTY RIGHTS

“Simplicity” not a ground for rejection of an application for Patent: Delhi High Court

In a case where an appeal was filed against the order of Controller General of Patents and Designs (Respondent) refusing the application

for grant of patent “Notched Fastener”, the Delhi High Court held that **simplicity would not defeat the grant of patent** and ‘Notched Fastener’ does not lack an inventive step, hence, it is patentable. In this case, The Court noted that the subject patent application was

filed almost 18 years after the filing of the prior art. The Court determined that the improvement between the subject invention and the prior art in the current case was plainly discernible and did not lack inventive step. Last but not least, the Court held that the patent in the present

Recently in News

Rome Court clarifies whether NFT infringes own trade mark rights

In *Case No 32072/2022, Juventus F C*, the Rome Court of First Instance heard the case filed by the Club against the Blockchain Platform, Blockeras who minted and advertised for sale an NFT with the image of former Juventus Footballer Bobo Vieri wearing his uniform. Blockeras submitted that no injunction could be granted since the trade mark “JUVENTUS” was not registered for down-loadable virtual goods such as NFTs.

The Court however, noted that the submission was unsustainable as down-loadable virtual goods are included in Class 9 which incorporates “down-loadable digital files authenticated by NFTs”. In any case the court also stated that Juventus FC had itself ventured into the NFT space and thus there was likelihood of confusion to the unsuspecting consumer. Accordingly, the conduct of Blockeras was deemed as unfair competition and the Trademark, “Juventus” was held to be infringed.



case should be granted as simple inventions are also patentable.

Delhi High Court awards 13 Lakhs as Damages and Cost in favour of STARBUCKS in a Trademark Infringement Case

A Trademark Infringement suit was filed by Tata Starbucks Private Limited against a Rajasthan based café/restaurant seeking permanent injunction barring the defendants from infringing or/and passing off the Starbucks' registered trade mark '*Frappuccino*'.

In 2018, it was brought to the notice of the plaintiff that the defendants were selling a beverage under the name of '*Brownie Chips Frappuccino*' in their café without the plaintiff's authorization or license. Plaintiff issued a Cease and Desist Notice to the

defendants and since no reply received, a civil suit for infringement was filed before the Delhi High Court.

The Delhi High Court held that the usage of mark '*Frappuccino*' by the defendants was dishonest and was intended to deceive consumers and it amounted to infringement of plaintiff's trademark. Hence the Court awarded damages in favour of plaintiff and a legal fees of around 13 lakh rupees filed as 'Advocate Fee Certificate' in favour of plaintiff and against defendants.

Permanent Injunction for Star India Pvt. Ltd. against rogue websites streaming cinematograph film 'Bhuj: The Pride of India'

Delhi High Court granted a permanent injunction to the plaintiff, Star India Pvt.

Ltd., against numerous rogue websites and Domain Name Registrars (DNRs) of some of the domain names, Internet Service Providers (ISPs), as well as Department of Telecommunications (DoT) & The Ministry of Electronics and Information Technology (MeitY), who were accused of illegitimately streaming the motion picture "*Bhuj: The Pride of India*".

Plaintiffs contented that they were the creators, producers and owners of a number of television channels as well as the OTT platform and "*Disney + Hotsar*" streaming service. The plaintiffs had concerns that the defendant rogue websites and DNRs may engage in the illicit streaming of the cinematograph film "*Bhuj: The Pride of India*" infringing on their exclusive

copyrights leading to financial damage. Consequently, plaintiffs brought a claim against these rogue websites and DNRs seeking permanent injunction barring these rogue websites

from illegally streaming the cinematograph film 'Bhuj: The Pride of India'. The High Court ruled that because the film had already been released, a permanent injunction may be imposed against

all illegal websites and other domain names. Regarding DNRs, the Court ruled that DNRs must make sure that the contested domain names are suspended, locked, and treated otherwise.

INSOLVENCY & BANKRUPTCY CODE & COMPANY LAW



Calcutta High Court : ROC can initiate multiple/parallel proceedings upon discovery of additional material under Section 206 of Companies Act

The High Court of Calcutta recently dismissed a writ petition that questioned the Registrar of Companies' (ROC) ability to begin multiple/parallel proceedings under Section 206 of the Companies Act, 2013, which

empowers the Registrar to request any further information, justification, or document pertaining to the firm by written notice.

Upon receiving the notice, the company and its officers are required to provide all the information, justification, and further documents pertaining to the company that are requested in the notice, including any previous officers. The Court

held that Section 206 of the Act does not prevent the Registrar from starting parallel proceedings in the event that new information is discovered that calls for further investigation.

The petitioners in the case *Shree Radhe Tea Plantation (P) Ltd. v. Registrar of Companies*, argued that the inquiry report begun under S. 206 could only have

been made under S. 208 of the Act after completion of inspection and inquiry. The defendants argued that the discovery of additional financial irregularities in the petitioners' firm required the initiation of separate proceedings under S. 206(4).

The Court noted that before submitting the written report to the central government for additional inquiry into the petitioners' business, the ROC was required to take the necessary action. The petitioners had every opportunity to oppose the report as part of their defence in the winding up procedures, according to the Court's opinion. Based on Section 273 of the Act, the Court declined to intervene with the inquiry report because the winding up processes had already started.

NCLAT Delhi Upholds Dismissal of Section 9 Petition in Absence Of Cogent Evidence To Prove Supply Of Goods.

The National Company Law Appellate Tribunal (NCLAT) has ruled in 2022 11 NCLAT CK 0126, *M/s Mahadev Trading Company v. M/s Supreet*

Chemicals Pvt. Ltd. that an Operational Creditor's petition under Section 9 of the IBC cannot be admitted because there is no convincing evidence to show that goods were supplied to the corporate debtor. Additionally, the corporate debtor had also offered to pay the operational creditor's claim amount in exchange for supporting documentation. The Adjudicating Authority had dismissed the petition on the grounds that there was insufficient proof that the purported products had been given. All of the allegedly submitted invoices and transactions were found to be for anything other than supplies. Therefore, the appeal was dismissed by the NCLAT because it lacked merit because there was no evidence to support the claim that items were given to the corporate debtor.

Past Tax Liabilities That Are Not Part Of Resolution Plan Shall Stand Extinguished: NCLT Mumbai

In *Subodh Kumar Agrawal v. Taguda Pte. Limited*, the National Company Law Tribunal (NCLT), Mumbai held that all past liabilities

arising out of any levies or tax obligations to any governmental entities, etc., that accrued during the CIRP period but are not included in the resolution plan, shall stand extinguished as of the date the resolution plan was approved. As a result, the court waived the corporate debtor's incurred income tax and GST liabilities that had occurred after the start of CIRP.

It was noted that before the Committee of Creditors (CoC) approves the resolution plan, the authorities must submit a claim to the resolution professional. After the resolution plan has been approved, the resolution applicant cannot be made responsible for the liabilities. In response, the Court excused the unpaid income tax and GST. Further the court also noted that the income tax obligation on notional revenue that would have resulted from the resolution plan's adoption due to the writing down of creditors' unpaid debts in the corporate debtor's books would also be waived. As a result, these liabilities were also discharged.



Karnataka High Court Dismisses Plea Against WIPRO And deems that the Grievance Redressal Committees of Startups & IT Companies Can't Decide Disputes Qua Termination:

The Karnataka High Court in the case of *AP v. WIPRO LIMITED REPRESENTED* has made it plain that disputes involving termination of employment cannot be resolved by the Grievance Redressal Committees constituted by various startups and IT businesses in accordance with the State government's notification pub-

lished in 2014. The Court held that an ex-employee cannot dispute his termination on the grounds that the investigation against him was not carried out by the Grievance Redressal Committee because the aforementioned notification relates to grievances of an "existing employee" (GRC). It observed:

“Though there may be grievance as regards the dismissal of the petitioner, the same, in my considered opinion, would not come within the ambit of para-II of the notification inasmuch as the same

relates to any particular grievance of an existing employee. The termination of the employment and otherwise would not come within the purview of the words "complaints" or "grievance" under the notification dated 25.01.2014.

The Indian multinational business WIPRO terminated its former Senior Project Manager with a termination order that included the phrase "dishonest," but the Court declined to require its erasure.

ALTERNATIVE DISPUTE RESOLUTION

SIMPLIFY

What are Trade Usages?

Trade usages in layman's terms are generally accepted practices, standards, benchmarks, etc known to all those who work in the same field.

These rationally drawn conclusions are essential when dealing with commercial disputes that usually arise due to ambiguous or unclear contract terms. This is why trade usages become pivotal in the Arbitration of Commercial Disputes.

They are used to bring clarity by providing contextual information specific to the field/nature of the dispute. In India, the scope of Section 28(3) of the Arbitration and Conciliation Act, 1996 was amended by the 246th Law Commission Report to empower the Arbitrators to take the aid of trade usages while interpreting terms of the agreement.

'Trade Usages' Cannot Be Applied By Arbitrator against The Express Understanding Of The Parties: Calcutta High Court

The Calcutta High Court, in the case of *EC/98/2022, M/S Universal Seaport Private Limited vs The Chairman, Board Of Trustees For The Port Of Kolkata*, held that the Arbitrator is not permitted to apply 'Trade Usages' that go against the stated provisions of the parties' agreement when deciding their dispute. In accordance with Section 28(3) of the Arbitration & Conciliation Act, it was decided that an arbitrator can apply trade usage to settle a dispute between the parties, but only when the contract was silent or ambiguous about a particular issue. It was decided that the arbitration law is subservient to party autonomy.

The Court determined that an arbitral award made after disregarding the terms of the agreement fell under the cat-

egory of "patent illegality." It was decided that when the arbitrator imposes a deal on a party that wasn't willing to sign it and forges a new agreement between the parties, the arbitral judgement can also be overturned for violating the most fundamental principles of justice.

The Court further concluded that an arbitrator must be bound by the contract's four walls since he is the product of the contract, acquires his jurisdiction from it, and cannot invoke Article 14 when resolving a contractual disagreement between the parties. It was decided that an arbitrator cannot resolve a dispute between private parties by additionally using "public law". The Court ruled that an arbitrator may rely on trade usage when the parties' agreement is either vague or silent on a particular point, but it may not be used to challenge the parties' clear understanding as set down in the agreement.

SIMPLIFY

What are the circumstances defined under Schedule V?

Schedule V discusses various relationships which are forbid an arbitrator to arbitrate a dispute namely

- Arbitrator's relationship with the parties or counsel.
- Relationship of the arbitrator to the dispute.
- Arbitrator's direct or indirect relation to the dispute.
- Previous services for one of the parties or other involvement in the case.
- Relationship between an arbitrator and another arbitrator or counsel.
- Relationship between arbitrator and party and others involved in the arbitration.
- Other circumstances.

Schedule V Do Not Render the Arbitrator Ineligible Per Se: Delhi High Court

The High Court of Delhi, in the case of *2022/DH-C/004553, Bharat Foundry and Engineering Works v. Intec Capital Limited*, has ruled that unlike Schedule VII, the circumstances listed in Schedule V do not automatically disqualify an arbitrator from appointment unless it is proven that the arbitrator's impartiality was actually compromised. The Court ruled that until

a firm basis is established for questioning the independence and impartiality of the arbitrator, the award cannot be set aside just because an Arbitrator has been appointed in more than two arbitral proceedings between the parties or their affiliates. The Court determined that the issue is a factual one and is not covered by Section 37. As a result, it sees no basis to overturn the lower Court's conclusion, which was based on the evaluation of the facts.



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JusIP
Legal is Simple

Corporate Office:

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

Mob: +91991 413 1579

info@jusip.in
www.jusip.in

New Delhi | Mumbai | Bengaluru | Chennai