



INDIA BUSINESS BULLETIN

CORPORATE LAW

Strict norms for Insolvency Professionals, post Insolvency Professional (Amendment) Regulation, 2018:

The Amendment, which came into effect from 1 April 2018, has constricted the entry barriers for insolvency professionals and has also specified a time limit to identify resolution applicants to 105 days from the insolvency commencement date. According to the amendment, an individual shall be eligible for registration as an insolvency professional if he/she has passed the Limited Insolvency Examination within the preceding 12 months and has completed a pre-registration educational course from an insolvency professional agency, as per the requirement of Insolvency and Bankruptcy Board of India (“IBBI”).

Government announces Fugitive Economic Offenders Ordinance 2018 (“Ordinance”):

The Union Cabinet recently approved the Finance Ministry’s proposal of circulating the Fugitive Economic Offenders Ordinance, 2018 which will immensely empower the authorities/government to attach and confiscate properties and assets of economic offenders like loan defaulters who are absconding from India. Under the Ordinance, which works in conjunction with the Prevention of Money Laundering Act, 2002, the authorities are empowered to seize assets of declared economic offenders who either flee the country in order to avoid prosecution or fail to return, if they are abroad, to face prosecution. Assets seized may be located in India or abroad and benami assets purchased with proceeds of the crime are also covered under the Ordinance. The Ordinance will only apply to cases involving INR 100 crores and above.

ARBITRATION LAWS

Delhi High Court holds that contract is made where letter of acceptance is posted:

The Delhi High Court in the matter of OK PLAY AUTO PVT. LTD. Vs INDIAN COMMERCE & INDUSTRIES CO. PVT. LTD. held that a part of cause of action is said to be arisen where the letter of acceptance of a contract is posted and giving the courts there the territorial jurisdiction to adjudicate the matter. The court cited *Bhagwandas Goverdhandas Kedia vs. Girdharilal Parshottamdas and Co. and Ors., (1966) 1 SCR 656*, wherein the Supreme Court held that “When a contract is made by post, it is clear law

throughout the common law countries that acceptance is complete as soon as the letter is put into the post box, and that is where the contract is made.” The Court relied on the above-mentioned judgment to decide the territorial jurisdiction of courts in the present matter, where the parties failed to clearly agree upon the seat of arbitration and mechanism of appointment of an arbitrator. It was also observed that as the acceptance of the offer of the tender/contract was posted in Delhi, the courts of Delhi would have territorial jurisdiction to adjudicate the present matter for appointment of an arbitrator, even if Chennai was referred as the seat of arbitration within the contract, in respect of which the parties did not show clear consensus.

INTELLECTUAL PROPERTY LAWS

Wockhardt Limited v. Maha Avtar Healthcare Pvt. Ltd. The present suit was filed by Wockhardt Limited (Plaintiff) against Maha Avtar Healthcare Pvt. Ltd. (Defendant) for permanent injunction restraining infringement of trademark, copyright dilution, unfair competition, for rendition of accounts of profits/damages, delivery up etc. In its order dated 16 October, 2015, the Delhi High Court had granted an ex- parte ad interim injunction in favour of the Plaintiff, restraining the Defendant.

In the plaint, it was averred by the Plaintiff that it is the registered owner of the trademark PROXYVON (registered since 1976), SPASMO-PROXIVON (registered since 1977) and its three other different variations, which are valid and subsisting on the Trade Marks Register, and used in respect of medicines which are sold for treating irritable bowel syndrome and relieving muscle spasms and cramps in the gastrointestinal area. It was further stated that the Plaintiff has spent crores of rupees in advertising and other trade promotional activities to popularize its aforesaid trade mark SPASMO-PROXYVON along with its distinctive packaging. It was alleged in the plaint that the Defendant is engaged in manufacturing and marketing a pharmaceutical product under a confusingly similar mark ‘SPAS PROXIVON’ bearing a deceptively similar packaging and used for treatment identical to that of the Plaintiff’s product.

Accordingly, considering all the evidence on record, the Delhi High Court passed its judgment on March 21, 2018 in favor of the Plaintiff based on its finding that Plaintiff’s marks have acquired substantial reputation and goodwill in India by way of long usage and the Defendant’s confusingly similar mark and packaging relating thereto was bound to cause incalculable loss, harm and injury to the Plaintiff and immense public harm. The Court therefore, passed a decree of permanent injunction restraining the Defendant from using the SPAS PROXIVON trademark or any other mark similar to that of the Plaintiff.

No Copyright Protection to movie titles, rules Madras High Court

The Madras High Court, in a notable ruling, has recently held that a movie title bearing a common name cannot be protected under the laws of copyright. A Single Bench Order had earlier restrained Lyca Productions (defendant in original suit) from using the term ‘KARU’ (which means foetus literally or scientifically and means concept or theme figuratively) for its film titled ‘LYCAVIN KARU’, after taking into

account the use of the term 'KARU' by a small production house in respect of its movie title, who had also applied for its registration with the Filmmakers & Television Producers Guild of Tamil Nadu way back in 2011. An intra-court appeal was thereafter filed by the Defendant against the order of the Single Bench.

While allowing the intra court appeal preferred by Lyca Productions, it was held that no copyright exists in a movie title as it is the entire work which is protected by copyright law as per Section 13 of the Copyrights Act, 1957 and not a mere title which cannot be construed as an original literary work- since it does not qualify for being described as a work. Further, the court found that the Tamil Film Producer Council or Film and Producers Guild, with whom the title 'KARU' was initially registered, are not registered with copyright societies and thus, incompetent to administer any right in films including titles. Therefore, the Division Bench set aside the order of the Single Bench and allowed release of Appellant's Film with the title 'LYCAVIN KARU'.

Copyright over photos uploaded on Facebook recognized by Delhi High Court

The Delhi High Court in a recent judgment recognized copyright on photographs uploaded on social networking website, Facebook. The subject suit was filed for permanent injunction restraining infringement of copyright, passing off, damages and mesne profits etc. by Fairmount Hotels Pvt. Ltd. (Plaintiff) against one Bhupender Singh (Defendant), who was operating his own hotel in Manali, Himachal Pradesh by the name Mountain Inn and posted photographs of the Plaintiff's hotel on its Facebook page as his own hotel. Consequently, the Plaintiff through the suit had sought removal of the said photographs from Defendant's Facebook page.

An interim injunction was passed against the Defendant in August, 2015 following which the Defendant undertook not to repost the photographs on its Facebook page, during a recent hearing. Considering the corrective measures undertaken by the Defendant and all the evidences on record, the Delhi High Court passed an Order on April 05, 2018 disposing the matter in favour of the Plaintiff while imposing costs of Rs, 50,000 to be paid by the Defendant to the Plaintiff.

LABOUR LAW

Proposal to reduce gratuity period to 3 years

The Central Government is considering to reduce the time limit for claiming gratuity to 3 years from the existing 5 years as presently provided under the Payment of Gratuity Act, 1972. Further, the Government is also considering to change in the limit of minimum number of employees in any establishment. The issue is being discussed with industry as well as trade unions by the Government.

Employee Provident Fund Organization (EPFO) allows submission of life certificate without Aadhaar

In order to mitigate the problems faced by pensioners of submitting life certificate digitally, EPFO has

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allowed pensioners under Employee Pension Scheme to submit life certificate without Aadhaar. Non- submission of life certificate by pensioners would have resulted in stoppage of their pension. Now, alternatives to digital life certificate such as paper life certificate can be submitted for submission of proof of life for all pensioners facing problems in submitting digital life certificate.

Government not to hike PF coverage up to INR 21000

Ministry of Labour and Employment has decided, at present, not to accept the proposal approved by EPFO to increase the mandatory provident fund coverage for salary amount from INR 15000 per month to INR 21000 per month due to additional expenditure that may be incurred by Government for implementing such proposal.

EPFO withdraws its order mandatory online filing for Provident Fund Claims

In view of the problems faced by EPFO members in filing online claims, EPFO has permitted offline submission for provident fund withdrawal claims exceeding INR 10 lakh and EPS withdrawal claims exceeding INR 5 lakh. In February 2018, EPFO made it mandatory to submit these claims online only in order to simplify the process of filing provident fund claims.

Case Law

In *Netram Sahu v. State of Chhattisgarh & Anr.* (Civil Appeal NO. 1254 of 2018), the issue before Supreme Court was whether an employee, who worked for 22 years as daily wagger and only 3 years as regular employee, was entitled for gratuity. Supreme Court held that once the State has regularized the services of the appellant while he was in State services, the appellant becomes entitled to count the total period of service for claiming the gratuity amount, subject to his proving continuous service of 5 years as specified in Section 2A of the Act, which the appellant duly proved.

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