



ARCHER & ANGEL  
Advocates and Legal Consultants

## INDIA BUSINESS BULLETIN

### CORPORATE LAW UPDATES

◆ **Ministry of Corporate Affairs (MCA) notifies the Companies (Specification of definition details) Second Amendment Rules, 2021**

The MCA has specified the class of companies which shall not be covered under the definition of 'listed companies' as contained in section 2(52) of the Companies Act, 2013 (the 'Act'). The specified classes of companies broadly include private companies and public companies which have not listed their equity shares on a recognised stock exchange, but have listed their non-convertible debt securities and/or non-convertible redeemable preference shares issued on private placement basis as per applicable regulations. Further, public companies which have not listed their equity shares in a recognised stock exchange but have listed the same on a stock exchange in any other jurisdiction as specified under the Act are also not to be considered as a listed company.

◆ **MCA notifies the Companies (Share Capital and Debentures) Amendment Rules, 2021**

The MCA has notified the Companies (Share Capital and Debentures) Amendment Rules, 2021 wherein the minimum time period for opening of offer, in case of rights issue of shares has been reduced from 15 days to 7 days.

◆ **MCA notifies the sections of Companies (Amendment) Act, 2020 along with the Producer Companies Rules, 2021 with effect from 11 February 2021**

The MCA has notified the sections of the Companies (Amendment) Act, 2020 which prescribe regulations for producer companies, including but not limited to, incorporation process, management and administration, accounts and audit, compromise and arrangement. The MCA has also notified the Producer Companies Rules, 2021 which covers the provisions regarding change of registered office of such companies, and the instruments in which such companies may make investments out of its general reserves.

◆ **Government releases sweeping rules to regulate social media intermediary and digital media**

The Ministry of Electronics and Information Technology ("Meity") notified the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules 2021 ("Rules 2021") on 25<sup>th</sup> February 2021 to regulate the Over-The-Top (OTT) players, apps and digital media.

The Rules 2021 are framed to ensure that social media intermediaries are held accountable for infringement of users' rights or the abuse of digitized content and bear far reaching implications. Further, it empowers users to seek redressal of grievances by establishing an online grievance portal as the central repository for receiving and processing complaints. The basic framework of the Rules 2021, inter alia, prescribes regulations for observance of due diligence by Intermediaries such as formulating adequate policies and regulations, timely removal of unlawful content and information sharing with authorities and a three-tier regulatory structure for Code of Ethics and Procedure. The Rules 2021, further prescribe appointment of an officer to ensure compliance, a Resident Grievance Officers for grievance redressals and also Nodal Contact Person who shall liaise with statutory authorities and agencies.

The Rules 2021 have come into effect from 25 February 2021, except for the additional due diligence for significant social media intermediaries which would be enforceable within 25<sup>th</sup> May 2021. Interestingly the announcement for release of Rules 2021 poses mammoth challenge for the streaming services and digital platforms like Netflix, Facebook and particularly Twitter which had refused to comply with many of the Centre's orders to takedown content and accounts amidst the aggressive farmers protest lately.

### LABOUR LAW UPDATE

◆ **Limit of carry forward of leaves of employees increased in Karnataka**

The Government of Karnataka has issued a notification to amend Section 15 (7) of the Karnataka Shops and Commercial Establishments Act, 1961, which increased limit of carry forward of leaves to a succeeding year to 45 (forty-five) days, from erstwhile limit of 30 (thirty) days.

◆ **Rules pertaining to provision of creche facility have been amended in Tamil Nadu**

Government of Tamil Nadu has issued a notification amending the Tamil Nadu Maternity Benefit Rules 1967 pertaining to provision of creche facility. The amendments broadly prescribe limit of children in each creche, determination of location of creche, conditions for appointment of staff, maintenance of records, monitoring by employer, and provision of various facilities in the creche such as provision of essential items, washrooms, medical arrangements, etc.

◆ **Employee Provident Fund Organization (EPFO) has issued new guidelines for corrections in registered records**

With a view to curb fraudulent withdrawals from provident funds, the EPFO has issued new guidelines for making changes in a member's profile. The guidelines specify certain instances as 'minor corrections', and all other corrections including complete change in name or where corrections are required in more than two fields are treated as 'major corrections'. Major corrections shall not be done in the online process without obtaining proper documentary proof, including an explanation from the employer, and verification of the genuineness of the case as deemed appropriate by the concerned authority.

◆ **Amendments proposed in Apprenticeship Act, 1961 to widen scope of engaging apprentices**

The Government of India is considering to amend the Apprenticeship Act, 1961 to allow outsourcing of apprentice aggregation to third parties (including staffing companies), expand the definition of establishment to include new sectors such as services and open up apprenticeship opportunities for students to improve their employability. The proposed amendment will also reduce burden of paperwork for apprenticeship which can be taken care of by third parties and also enable deploying apprentices in operations abroad.

### RECENT CASE LAW

◆ **Calcutta High Court (CHC) quashes removal of employee on the ground of physical disability**

In a recent judgement, CHC set aside the order of an employer removing the employee from service due to physical disability i.e., blindness, on the ground that such action is in direct violation and contravention of the provisions of the Rights of Persons with Disabilities Act, 2016 ("RPDA").

The court observed that save and except the ground of eye blindness, the memo issued by the employer did not mention any other ground to justify the impugned action, and therefore it was held that such dismissal was violative of the protections granted to disabled persons under the RPDA.

### INTELLECTUAL PROPERTY LAW UPDATES

◆ **Draft Patents Amendment (Rules), 2021 released by the Government of India**

The Ministry of Commerce and Industry (Department for Promotion of Industry and Internal Trade) has notified the Draft Patents Amendment (Rules), 2021 on February 09, 2021. The draft rules broadly propose including 'eligible educational institutions' as a new category for filing patent application, eligibility for expedited examination and reduction in the official fees for filing and prosecution of patent application. The draft rules also list out the documentary evidence required to be produced for claiming the status of eligible educational institutions. The official fees for eligible educational institutions are proposed to be equivalent to that of Natural Person / Start-Up / Small

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Entities. Comments and suggestions have been sought till March 09, 2021, post which said draft rules will be taken into consideration.

◆ **A bill to abolish certain tribunals in India tabled in the Indian Parliament**

A bill for the Tribunals Reforms (Rationalisation and Conditions of Service) Act, 2021 has been tabled in the Lower House of the Indian Parliament for abolition of Tribunals or Appellate Authorities under certain Acts (“Bill”). The Bill provides a mechanism for filing appeals directly to Commercial Courts or the High Courts along with transferring of the pending matters at Tribunals or Appellate Authorities to the Commercial Courts or the High Courts.

The Bill has been proposed as most of the cases decided by Tribunals or Appellate Authorities do not achieve finality and eventually litigated further in High Courts and Supreme Court which results in Tribunals or Appellate Authorities being just an extra layer of litigation. The streamlining of Tribunals or Appellate Authorities is also being considered necessary for speedy disposal of cases, delivery of justice and to reduce considerable expense of the exchequer.

The Tribunals or Appellate Authorities which are proposed to be abolished are the Appellate Tribunal under the Cinematograph Act, 1952; the Authority for Advance Rulings, Income Tax; the Airport Appellate Tribunal; the Intellectual Property Appellate Board and the Plant Varieties Protection Appellate Tribunal.

◆ **Delhi High Court (DHC) to determine subsequent requirements on a ‘well-known’ trademark as declared by a court**

The question whether a separate registration is required for a trademark declared ‘well known’ in a judicial order is to be determined by the Delhi High Court. As a background of the instant case, DHC had passed an order in August 2019, observing that ‘VISTARA’ is a well-known mark. However, when TATA SIA Airlines Limited (Tata) thereafter approached the Indian Trade Marks Registry (Registry) for inclusion of their trademark in their list of well-known marks, Tata was directed to file a statutory form along with the official fee of INR 1,00,000 (approximately US \$1,400) as per the Trade Marks Rules, 2017. Aggrieved by such direction, a writ petition was filed seeking to order the Registry to include VISTARA in the list of well-known marks on the grounds that once an Indian Court has determined the mark to be well known, there is no need to make separate statutory filings and pay fees in that regard.

The matter is currently pending adjudication and the next date of hearing in this matter is scheduled for May 20, 2021.

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