CLASIS LAW

NEWSLETTER May 2019

Ranked amongst the TOP 40 Indian Law Firm, by RSG Consulting Rankings 2017

Welcome to the May Edition of the Clasis Law Newsletter

This edition brings to our readers

- **featured article - "Revival of Corporate Debtors under the Companies Act" and**
- **Clasis's Expertise on White Collar Crimes**

The Insolvency and Bankruptcy Board of India has issued a discussion paper, along with draft amendments, in relation to the corporate liquidation process under the Insolvency and Bankruptcy Code, 2016. One of the key proposals set out is to introduce a new regulation providing for compromise or arrangement of the corporate debtor under the provisions of section 230 of the Companies Act, 2013, as an attempt to revive the corporate debtor as a going concern before the liquidation process commences. This article highlights some of the key issues and challenges which may arise in implementation of this proposal.

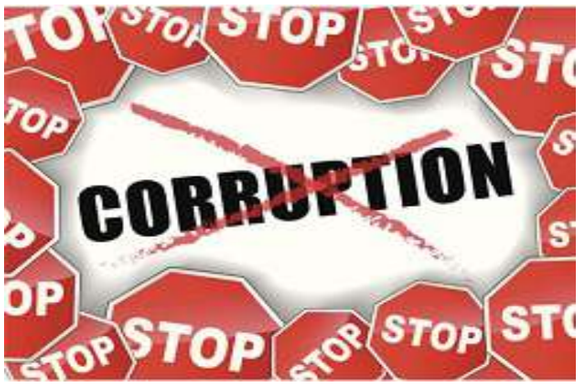
We continue to highlight certain key judgements passed by the Hon'ble Court as well as changes in Corporate and Commercial laws and updates on Intellectual Property.

Your inputs and feedback are always welcome and we look forward to our interactions with you.

Contents

"Clasis Law's Managing Partner Vineet Aneja has been included in IBLJ's A-List of the top 100 lawyers for the year 2018 and recognised as amongst India's Most Trusted Corporate Lawyers by ICCA, 2017"

Clasis's expertise on White Collar Crimes



Services Offered

- ✓ ***Legal framework*** *and compliance requirements in India;*
- ✓ *Conducting ethics and integrity* ***due diligence****;*
- ✓ *Assessing risk of non-compliances and recommending* ***mitigation measures****;*
- ✓ ***Policies*** *- employee code of conduct, disciplinary & whistleblower;*
- ✓ *Setting the procedures and internal* ***controls***
- ✓ *Conducting corporate* ***investigations***
- ✓ ***Standardizing contracts*** *– employment, commercial, third parties to include obligations to conduct business ethically and comply with applicable laws including anti-corruption laws;*
- ✓ *Assisting in investigations into* ***complaints of corruption***
- ✓ ***Trainings*** *– Employee & vendor trainings on handling external investigations and dawn raids by enforcement agencies;*
- ✓ *Advising on corporate whistleblowing and handling* ***complaints to vigilance officers****;*
- ✓ *Advising on* ***pre-litigation strategies****, handling investigations by regulatory and enforcement agencies;*
- ✓ ***Defending prosecutions****; and*
- ✓ *Advising on* ***legal recourse*** *against delinquent employees and third parties involved in corrupt practices.*

What sets us apart

Compliance with Anti-corruption laws in India, the need and significance

Corporates must comply with domestic and international anti-corruption laws of the jurisdictions where they do business, while facing growing public expectations of integrity and ethical conduct and pressure from stakeholders to be more transparent. Corrupt practices of the Indian business arm resulting in contravention of anti-corruption laws in India can have global ramifications for foreign companies doing business in India, in light of the laws applicable to their parent and group entities that are registered in the foreign countries, especially in countries like UK, France and USA.

Enforcement of anti-corruption laws is becoming increasingly stringent across jurisdictions. The Prevention of Corruption Act, 1988 is the principal anti-corruption law in India. The Prevention of Corruption Act, 1988 ("POCA") has been substantially amended vide the Prevention of Corruption (Amendment) Act, 2018 ("Amendment Act") which has been brought into effect from July 26, 2018. The Amendment Act, amongst other changes, classifies the act of bribe giving, as an offence and does not merely treat it as abetment, which was the case under the previous framework. The Amendment Act removes the blanket immunity afforded to bribe giver who makes a statement in the judicial proceedings against the bribe taker and limits it only to cases when the bribe giver was compelled to give a bribe provided he reports such an act, in a timely manner.

Further the Amendment Act, provides an express provision imputing liability on the commercial organisation (including companies) for acts of giving bribe to public servant, by individuals (including employees) associated with the organisation and imputes vicarious liability upon directors of a company, in certain cases. Furthermore, the Amendment Act introduces stringent penalties and provisions on attachment and seizure of property, in the event, such property is obtained as a result of commission of offences punishable under this Act.

Additionally, there is a duty to inform the police or investigating officer, in bribery cases, under the criminal laws. In terms of the provisions of Section 39 of the Code of Criminal Procedure, 1973, every person who is aware of the commission of an offence under POCA is duty bound to give information available with him to the police.

Thus, it has become increasingly important for companies to practice the highest standards of ethical conduct during business dealings and effectively demonstrate compliance with anti-corruption laws. A compliant and corruption free image enhances brand equity, contributes to shareholder confidence and bolsters positive market sentiment.

Clasis Law has developed expertise in handling white collar crimes. We help our clients build a pervasive culture of compliance, ethical business conduct and integrity that improves business results and mitigates risk of non-compliance. We work with our clients to design robust policies including anti-corruption policies, implement preventive measures and monitor compliance mechanisms.

Our proactive approach has always been our forte and our white collar team is recognized by clients for its ability to provide complex advice in a clear, succinct and uncomplicated manner.

Revival of Corporate Debtors under the Companies Act

On 27 April 2019, the Insolvency and Bankruptcy Board of India ("**IBBI**") issued a discussion paper along with draft regulations ("**Discussion Paper**") in relation to the corporate liquidation process under the Insolvency and Bankruptcy Code, 2016 ("**Code**"). One of the key proposals in the Discussion Paper is to introduce a new provision in the IBBI (**Liquidation Process**) Regulations, 2016 ("**Liquidation Regulations**") for compromise or arrangement of the corporate debtor under the provisions of section 230 of the Companies Act, 2013 ("**2013 Act**") as an attempt to revive the corporate debtor as a going concern before the liquidation process commences.

The scheme of compromise or arrangement under section 230 of the 2013 Act in relation to corporate debtor facing liquidation under the Code was first proposed in the case of Gujarat NRE Coke Limited ("**GNCL**"). Subsequent to the passing of liquidation order of GNCL by the adjudicating authority, the promoter/director of GNCL approached the National Company Law Tribunal ("**NCLT**") with a scheme of compromise and arrangement under section 230 of the 2013 Act for revival of GNCL. Pursuant to the promoter's proposal, the NCLT issued necessary directions for convening and holding of separate meetings of creditors and shareholders to consider and approve the scheme of arrangement. However, the National Company Law Tribunal ("**NCLAT**"), in appeal filed by Jindal Steel and Power Limited, stayed convening of the meetings of stakeholders of GNCL.

The aspect of ensuring revival corporate debtor was also discussed by the Hon'ble Supreme Court in its judgement passed in **Swiss Ribbons**[1] case. The Hon'ble Supreme Court in its order discussed the objective of the Code and stated that the Code is first and foremost a Code for **reorganization and insolvency resolution** of corporate debtors. The Hon'ble Supreme Court further observed that the liquidation should be availed of as a last resort only if there is no resolution plan or the resolution plans submitted are not up to the mark.

Following the judgements passed by the Supreme Court in **Meghal Homes**[2] and **Swiss Ribbons**, the NCLAT in its subsequent order in '**S.C. Sekaran vs. Amit Gupta & Ors**'[3] directed that the liquidator should take necessary steps in terms of Section 230 of the 2013 Act before taking steps to sell the assets of the corporate debtor. The NCLAT also directed that only in case a revival is not possible, should the NCLT and the liquidator proceed with the sale of company's assets.

While directing the liquidator to proceed for revival of corporate debtor under section 230 of the 2013 Act in the matter of '**Y Shivram Prasad vs S Dhanpal & Ors**[4] ('**Y Shivram Prasad**' case), the NCLAT held that, as the liquidation of corporate debtor would be taken up under the provisions of the Code, the arrangement of scheme should be in consonance with the statement and object of the Code only. The NCLAT also held that the scheme must ensure maximisation of the assets of the corporate debtor and balance the stakeholders without any discrimination. Before the approval of an arrangement or scheme, the NCLT should follow the same principle and should allow the liquidator to constitute a committee of creditors to find out whether the arrangement of scheme is viable, feasible and having appropriate financial matrix.

While the Hon'ble Supreme Court and the NCLAT stressed upon revival of corporate debtor, section 33 of the Code mandated the adjudicating authority to order liquidation of corporate debtors under if (a) the adjudicating authority did not receive the resolution plan before the expiry of maximum time period of two hundred and seventy (270) days (including one time of extension of ninety (90) days) or (b) the adjudicating authority had rejected the resolution plan(s) due to non-confirmation of the requirements as set out under section 31 of the Code. Further, there is no provision in the Code which gives empowered the adjudicating authority to order for revival under section 230 of the 2013 Act.

In view of the above, the orders passed by the adjudicating authority in certain cases for liquidation of

[1] Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India- MANU/SCOR/03383/2019
[2] Meghal Homes Pvt. Ltd. vs. Shree Niwas Girni K.K. Samiti & Ors.- (2007) 7 SCC 753
[3] MANU/NL/0049/2019
[4] MANU/NL/0103/2019

corporate debtors were challenged before the NCLAT wherein the NCLAT ordered for revival of corporate debtors under section 230 of the 2013 Act. In order to address this concern, the IBBI has proposed a new regulation 12A in the Liquidation Regulations.

The proposed regulation 12A permits a liquidator to file an application for compromise or arrangement of corporate debtor under section 230 of the 2013 Act within seven (7) days of the liquidation order having been passed by the adjudicating authority. Also, members or creditors of the corporate debtor are permitted to file an application under section 230 of the 2013 Act within ten (10) days of the order of liquidation.

While the proposed regulation 12A is welcome step, as it attempts to ensure revival of the corporate debtor in the interest of all the stakeholders, certain clarifications/amendments are still required for effective implementation of the proposal:

- While section 35(1)(f) of the Code prohibits sale of property of the corporate debtor in liquidation to the ineligible resolution applicants under section 29A of the Code, it is being proposed that the ineligibility norms under section 29A of the Code may not apply to scheme of compromise or arrangement under section 230 of the 2013 Act. In case the ineligibility norms are dispensed with, the proposed regulation 12A would effectively offer another lifeline to the defaulting promoters to make a bid for acquiring control and management of the corporate debtor and as such defeat the spirit of law laid down under section 35(1)(f) read with section 29A.

- There is no clarity if a third party (other than promoters, members or creditors of the corporate debtor), who is willing to acquire the corporate debtor as a going concern, can approach the liquidator and propose a scheme of compromise or arrangement for acquisition of corporate debtor under section 230.

- The proposed regulations do not clarify if there will be any requirement to apply for and obtain no-objection letters from the stock exchange in respect of such scheme of compromise or arrangement in case the corporate debtor is listed on any recognized stock exchange.

- The NCLAT, in '**Y Shivram Prasad**' case, mandated that the committee of creditors ("**CoC**") shall review and decide upon the viability and feasibility of the scheme of arrangement. However, the proposed regulation 12A does not have any such provision. Accordingly, the regulations should also clarify how the liquidator will decide upon and ascertain the credibility of the proposal of compromise or arrangement for corporate debtor.

- The members and the operational creditors do not have a right to interfere with the decision of the CoC under the Code. But a scheme of compromise or arrangement under section 230 of the 2013 Act has to be approved by the members and the creditors of the corporate debtor with prescribed supermajority. Therefore, in case the scheme of compromise or arrangement is proposed by non-promoter entity, then, the defaulting promoters and their related parties would obstruct the scheme by not approving the same. This is on account of the fact that section 230 of the 2013 Act permits the promoters also to participate in the voting process.

For any clarification or further information, please contact

Mustafa Motiwala
Partner
E: mustafa.motiwala@clasislaw.com

Dinesh Gupta
Senior Associate
E: dinesh.gupta@clasislaw.com

Legal Alerts

Workmen can be collectively represented by the trade union as an operational creditor to initiate insolvency proceedings

The Supreme Court in its recent judgement dated April 30, 2019 in ***JK Jute Mill Mazdoor Morcha vs. Juggilal Kamlapat Jute Mills Company Ltd", Civil Appeal No(s). 20978/ 2017***, has clarified an important question of law as to "whether a trade union could be said to be an operational creditor for the purpose of Insolvency and Bankruptcy Code, 2016 ("**Code**").

BRIEF FACTS

The Appellant/Trade Union, had issued Demand Notice under Section 8 of the Code for outstanding dues of roughly 3000 workers. Thereafter an application was filed before the National Company Law Tribunal ("**NCLT**"), however, the NCLT held that a Trade Union is not covered under the definition of Operational Creditor and therefore, dismissed the application. The appeal filed before the National Company Law Appellate Tribunal ("**NCLAT**") also met the same fate and was dismissed with the observation that each worker may file an individual application before the NCLT. Accordingly, an appeal was filed before the Supreme Court by the Appellant/Trade Union.

The Supreme Court, for determination of issue, essentially interpreted the definition of 'Person', 'Operational Creditor' and 'Operational Debt' as defined under Section 2(23), 5 (20) and 5 (21) of I&B Code respectively, which states:-

"Section 3 (23): -"person" includes—
(a) an individual;
(b) a Hindu Undivided Family;
(c) a company;
(d) a trust;
(e) a partnership;
(f) a limited liability partnership; and
(g) any other entity established under a statute, and includes a person resident outside India;",

Section 5 (20): -"operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

And

Section 5(21):- operational debt as a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and.....

The Hon'ble Supreme Court also referred to Form 5, which states:

"Where workmen/employees are operational creditors, the application may be made either in an individual capacity or in a joint capacity by one of them who is duly authorised for the purpose."

The Hon'ble Supreme Court also relied upon the relevant provisions of the Trade Union Act, and held that trade union is certainly an entity established under a statute, therefore would fall under the definition of "person" under Section 3 (23) of the Code. The Supreme Court held that a claim in respect of employment could be made by a person duly authorized to make such claim on behalf of a workman. The Supreme Court opined that the Rule 6, Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016("**Adjudication Rules**") also recognizes the fact that claims may be made not only in an individual capacity, but also conjointly.

The Supreme Court also opined that instead of one consolidated petition by a trade union representing a number of workmen, filing individual petitions would be burdensome as each workmen would thereafter have to pay insolvency resolution professional costs, costs of interim resolution professional, costs of appointing valuers, etc. under the provisions of the Code read with Regulations 31 and 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,2016.

In conclusion, the Supreme Court held that it is clear that trade union represents its members who are workers, to whom dues may be owed by the employer, which are certainly debts owed for services rendered by each individual workman, who are collectively represented by the trade union. Equally, to state that for each workman there will be a separate cause of action, a separate claim, and a separate date of default would ignore the fact that a joint petition could be filed under Rule 6 read with Form 5 of the Adjudication Rules, with authority from several workmen to one of them to file such petition on behalf of all.

Accordingly, the appeal was allowed and the matter was remanded to the NCLAT to decide the appeal on merits expeditiously.

Corporate and Commercial

Net worth requirements for clearing corporations in International Financial Services Centre (IFSC)

On April 26, 2019, SEBI issued a circular on the net worth requirements for clearing corporations in International Financial Services Centre ("IFSC").

Subsequent to the notification of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018, wherein it is prescribed, inter alia, that every recognized Clearing Corporation shall maintain, at all times, a minimum net worth of one hundred crore rupees or capital as determined the aforementioned regulations, whichever is higher, SEBI issued a circular captioned 'Risk-based capital and net worth requirements for Clearing Corporations under Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 on April 10,2019.

The aforementioned circular lays down the methodology for determining the minimum capital/net worth requirements for clearing corporations. In view of the above, Clause 5(2) of SEBI (IFSC) Guidelines, 2015 is being amended and shall now read as under:

"(2) (a) Every applicant seeking recognition as a clearing corporation shall have, in the form of liquid assets, a minimum net worth equivalent of fifty crore rupees.

b) Every recognized clearing corporation, on commencement of operations, shall have at all times, in the form of liquid assets, a minimum net worth equivalent of fifty crore rupees or capital as determined in accordance with the aforementioned SEBI circular dated April 10, 2019 as amended from time to time.

c) Further, every recognized clearing corporation shall enhance, over a period of three years from commencement of operations, its net worth, to be maintained in the form of liquid assets, to a minimum equivalent of one hundred crore rupees or capital as determined in accordance with aforementioned SEBI circular dated April 10, 2019 as amended from time to time."

The Clearing Corporations shall regularly review their net worth requirement and ensure that the net worth does not fall below the prescribed threshold. A certificate to this effect, as signed by the Managing Director of the Clearing Corporation, shall be submitted to SEBI within 15 days from the end of every quarter. The first such submission shall be made applicable for the April - June, 2019 quarter.

In exceptional cases where the net worth of Clearing Corporation falls below the prescribed threshold, it shall forthwith inform SEBI inter alia mentioning the reason(s) behind the same and the measure(s) it intends to adopt in order to re-attain the prescribed net worth.

Investment by Foreign Portfolio Investors (FPI) in Debt

On April 26, 2019, the RBI issued a circular, permitting Foreign Portfolio Investors (FPI) to invest in municipal bonds. Further, FPI investment in municipal bonds shall be reckoned within the limits set for FPI investment in State Development Loans (SDLs). All other existing conditions for investment by FPIs in the debt market remain unchanged.

Guidelines for determination of allotment and trading lot size for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)

On April 23, 2019, SEBI issued the guidelines for determination of allotment and trading lot size for Real Estate Investment Trusts ("REITs") and Infrastructure Investment Trusts ("InvITs"). SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations") and SEBI (Real Estate Investment Trusts) Regulations, 2014 ("REIT Regulations") were amended vide notifications dated April 22, 2019. The said amendments have, inter-alia, for publicly offered InvITs and REITs, reduced the minimum subscription requirement and has defined the trading lot in terms of number of units. Further, limits for aggregate consolidated borrowings and deferred payments, net of cash and cash equivalents, have been increased to 70 per cent of the value of the InvIT assets.

For determining the allotment in an initial offer, by a publicly offered InvITs/REITs, following guidelines shall be applicable:

(a) The value of each allotment lot shall not be less than INR 1,00,000 for InvITs and INR 50,000 for REITs, where such lot shall consist of 100 units.

(b) Allotment to any investor shall be made in the multiples of a lot.

For follow-on offer, by a publicly offered InvITs/REITs, following guidelines shall be applicable:

(a) Minimum allotment shall be of such number of lots, whose value is not less than INR 1,00,000 for InvITs and INR 50,000 for REITs, where each lot shall consist of such number of units as in its trading lot.

(b) Allotment to any investor shall be made in the multiples of a lot.

Further, InvITs, which in terms of Regulation 20(3)(b) of the InvIT Regulations, have their aggregate consolidated borrowings and deferred payments above 49 per cent, shall, in addition to financial disclosures as specified vide circular no. CIR/IMD/DF/127/2016 dated November 29, 2016, disclose following additional line items: (a) asset cover available; (b) debt-equity ratio; (c) debt service coverage ratio; (d) interest service coverage ratio; and (e) net worth.

Ombudsman Scheme for Non-Banking Financial Companies, 2018

On April 26, 2019, the RBI issued a circular directing that the Non-banking Financial Companies (NBFCs), as defined in Section 45-I(f) of the Reserve Bank of India Act, 1934 and registered with the RBI under Section 45-IA of the Reserve Bank of India Act, 1934 which

(a) are authorised to accept deposits,

(b) are Non-Deposit Taking Non-Banking Financial Companies having customer interface, with assets size of Rupees 100 crore or above, as on the date of the audited balance sheet of the previous financial year, or of any such asset size as the RBI may prescribe,

will come within the ambit, and shall comply with the provisions of the Ombudsman Scheme for Non-Banking Financial Companies, 2018. The Non-Banking Financial Company - Infrastructure Finance Company (NBFC-IFC), Core Investment Company (CIC), Infrastructure Debt Fund - Non-Banking Financial Company (IDF-NBFC) and an NBFC under liquidation are excluded from the ambit of the Ombudsman Scheme.

Streamlining the process of public issue of equity shares and convertibles

On April 3, 2019, SEBI issued a circular streamlining the process of public issue of equity shares and convertibles. SEBI had earlier introduced the use of Unified Payments Interface (UPI) as a payment mechanism with Application Supported by Block Amount (ASBA) for applications in public issues by retail individual investors through intermediaries (Syndicate members, Registered Stock Brokers, Registrar and Transfer agent and Depository Participants), effective from January 1, 2019. Implementation of the same was to be carried out in a phased manner to ensure gradual transition to UPI with ASBA. Based on the representations received from the various market intermediaries like Self Certified Syndicate Banks (SCSBs), National Payments Corporation of India (NPCI) and the Association of Investment Bankers of India (AIBI), to extend the timeline for implementation of Phase I of the aforesaid Circular and in order to ensure that the transition to UPI in ASBA is smooth for all the stakeholders, it has been decided to extend the timeline for implementation of Phase I of the aforesaid Circular by 3 months i.e. till June 30, 2019. The implementation of Phase II and III shall continue unchanged as per the aforesaid Circular from the date of completion of Phase I as above.

Disclosure in the "Notes to Accounts" to the Financial Statements - Divergence in the asset classification and provisioning

On April 1, 2019, the Reserve Bank of India ("RBI") observed that some banks, on account of low or negative net profit after tax, are required to disclose divergences even where the additional provisioning assessed by RBI is small, which is contrary to the regulatory intent that only material divergences should be disclosed. Therefore, it has been decided that henceforth, banks should disclose divergences, if either or both of the following conditions are satisfied:

(a) the additional provisioning for NPAs assessed by RBI exceeds 10 per cent of the reported profit before provisions and contingencies for the reference period, and

(b) the additional gross NPAs identified by RBI exceed 15 per cent of the published incremental gross NPAs for the reference period.

IP Updates

Tips Industries Ltd. v. Wynk Music Ltd. & Anr.

In a recent order, the Hon'ble Bombay High Court has clarified that entities providing services of streaming and/or broadcasting music on the Internet shall not be covered under the ambit of section 31-D of the Copyright Act, 1957 ("**Act**") and accordingly, shall not be permitted to avail the statutory license for broadcasting of literary and musical works as contemplated under Section 31-D of the Act.

The suit before the Hon'ble Court has been instituted by Tips Industries Limited ("Plaintiff") seeking an injunction against the Defendants, Wynk Music Limited. The case of the Plaintiff was that the Defendant, through its music platforms; upon receiving a subscription fee, provides its customers/ subscribers access to numerous sound recordings and audio-visual recordings which includes, inter alia, the Plaintiff's repertoire of about 25,000 sound recordings ("**Repertoire**"). The said Repertoire was previously licensed to the Defendants under a written license agreement dated August 22, 2016, however the said agreement expired by efflux of time on August 31, 2016. Thereafter, as the Parties failed to arrive at any mutually agreeable terms, no subsequent license agreement was executed and the Plaintiff issued a cease and desist notice to the Defendant sometime in November, 2017, calling upon them to deactivate / remove the Plaintiff's Repertoire from its platforms. In response thereto the Defendant invoked section 31-D of the Act, claiming themselves to be a broadcasting organization and that they are entitled to a statutory license under Section 31-D of the Act to communicate musical work and sound recordings to the public.

Consequently, the Plaintiff filled 2 suits before the Hon'ble Bombay High Court praying for permanent injunctions against the Defendant, restraining it from communicating/ renting/ selling the Plaintiff's Repertoire of songs, on account of infringement of the Plaintiff's copyrights and also disputed the Defendant's right to avail the statutory license under Section 31-D of the Act.

After hearing extensive submissions, six primary issues were framed for consideration by the Court. Without commenting on the significance of the issues framed by the Hon'ble Court, only the most contentious issue, having maximum practical implications has been elucidated upon herein below:

Whether the Defendants can invoke Section 31-D of the Act to exercise a statutory license in respect of the Plaintiff's Repertoire, for internet broadcasting?

Whilst submitting its arguments the Plaintiff's divided the aforesaid issue into a two pronged argument. In its first and main contention, the Plaintiff submitted that the statutory licence contemplated under section 31-D is only restricted to radio and television broadcasting and the Defendant's on-demand online music steaming services do not fall within the purview of section 31-D. The Defendant's contended that its services fall within the purview of a broadcasting organisation and supported this argument by referring to the words "any broadcasting organisation" that are found in the wordings of Section 31-D (1). Further, the Defendants relied on the definitions of "Broadcast" and "Communication to the public" under Section 2 (dd) and 2 (ff) respectively, with an attempt to expand the purview of Section 31-D and thereby extend the same to internet broadcasting services. The Defendants also argued that the essence of law lies in spirit of the legislation and not in its letter, and therefore forwarded a liberal interpretation of the Section. Further, the Defendant, by citing Section 31-D (3), pointed that internet broadcasting is a type of "audio" broadcasting and hence falls within the scope of 'radio broadcasting'. The Plaintiff, reputed the submissions of the Defendant by enumerating the rights granted and enjoyed by an owner of a sound recording under Section 14 (1) (e) and Section 30. They submitted that Section 31-D contemplates a statutory licence that permits broadcasting but subject to fulfilment of the conditions stipulated under sub sections 31-D (2) to 31-D (7). Moreover, they emphasised on strict interpretation of the statute to put least burden on the expropriated copyright owner. The Defendant raised a crucial argument that exclusion of internet broadcasting from 31-D was a delebrate and conscious legislative decision. Relying on Section 31-D read with Rules 29 and 31, they stressed that the Act only covers radio and television broadcasting under its ambit. The Hon'ble High Court held in favour of the Plaintiff, that Section 31-D must be construed strictly in conformity with the specific intention for which it was enacted (literal interpretation). Further, the Court referred to the

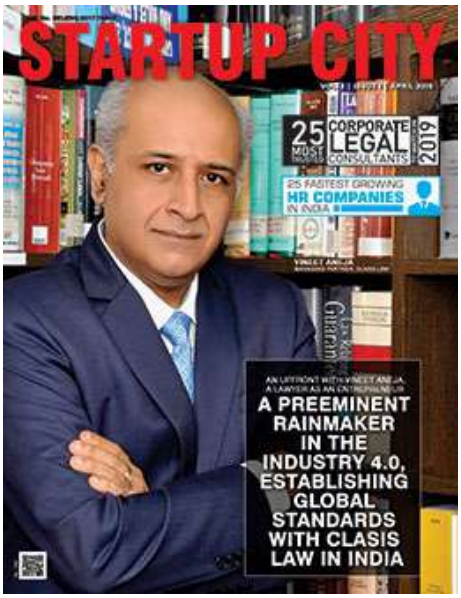
Statements of Objects and Reasons of the Copyright (Amendment) Act, 2012, Section 52 (1) (b) and the 227th Rajya Sabha Parliamentary Standing Report and held that the amended Act was relatively recent and as such the legislature was fully aware and cognizant of digital technologies when the same was passed and purposely excluded internet broadcasting from the ambit of Section 31-D which only refers to radio and television broadcasting.

The Plaintiff in its second argument laid emphasis on the conditions under Section 31-D and contended that the statutory licence under the Section is contingent upon compliance of Sections 31 (2) to 31 (8) of the Act and Rules 29 to 30, whereby prior notice is to be given to the owner of the copyright along with payment of royalty, as determined by the Appellate Board. The Plaintiff submitted that a bare perusal of Rules 29 (3) and 29 (4) reveals that the said Rules only contemplate the furnishing of details pertaining to 'radio' and / or 'television broadcasting. Further, the Plaintiff stressed that Rule 31 provides for the manner of determining royalties under Section 31-D only for 'radio' and 'television broadcasting' and as such there are no relevant provisions that may be relied upon whilst determination of royalty viz-a-viz internet broadcasting.

On a consideration of a plethora of precedents, the Rajya Sabha Standing Report and a holistic reading of various sections and rules, the Hon'ble Court categorically held that in terms of Section 31-D royalty needs to be determined by the Appellate Board prior to the grant of any statutory licences and clarified that that the provisions of Section 31-D of the Act are not applicable to internet broadcasting. The Court further opined that the use of the copyrighted works (for internet broadcasting) without obtaining a license from the owners of the copyright amounts to usurpation of the exclusive rights of the owners to commercially rent, sell or communicate to the public its sound recordings and was therefore pleased to grant an interim injunction against the Defendants.

Recent Events

Vineet Aneja, Managing Partner is recognised as one amongst the 25 Most Trusted Corporate Legal Consultants to watch in 2019 by Startup City.



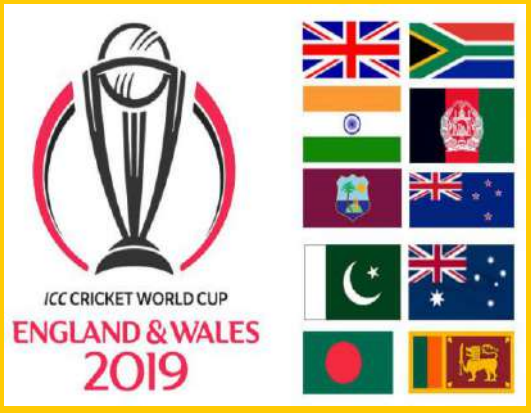
Summit on Promoting Green, Sustainable & Innovative MSMEs in India 24 April 2019, New Delhi

Lovejeet Singh, Senior Associate, attended Summit on Promoting Green, Sustainable & Innovative MSMEs in India organized by Assocham held at Indian Habitat Centre, New Delhi on April 24, 2019.

The summit was attended by several Government officials such as Additional Secretary and Development Commissioner, Ministry of Micro, Small and Medium Enterprises as well as representatives of several micro, small and medium enterprises present in India. The key points of discussion during the summit were promoting green and cleaner technologies, digital transformation and innovation in micro, small and medium enterprises.

Offbeat

Cricket World Cup



After almost 2 month's of IPL fervor, which got over on May 12, cricket fans are now looking forward to the much awaited ICC Cricket World Cup 2019 (CWC19), scheduled to be held in England and Wales, commencing from May 30, 2019, with the final to be played on July 14, 2019.

Do you consider yourself to be a true cricket fan? How much do you know about the Cricket World Cup? If you're a real fan, then you can probably ace our quiz!

Attempt the quiz and see how well you score!!

1. Which team won the last Cricket World Cup ?
   a) New Zealand
   b) India
   c) Australia
   d) South Africa

2. In which year was the first edition of the Cricket World Cup held?
   a) 1974
   b) 1975
   c) 1979
   d) 1980

3. How many teams are participating in CWC19?
   a) 10
   b) 14
   c) 12
   d) 16

4. Which team has never won the World Cup despite being in the finals' thrice?
   a) South Africa
   b) New Zealand
   c) Bangladesh
   d) England

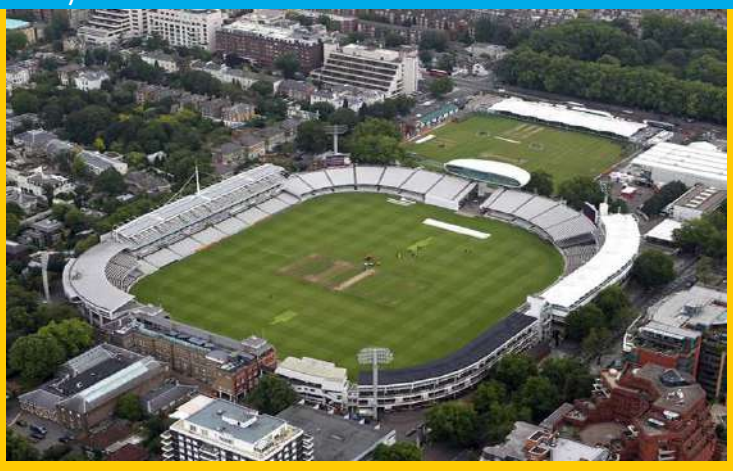
5. What is the venue for final of the forthcoming CWC19
   a) The Oval, London
   b) Lord's, London
   c) Hampshire Bowl, Southampton
   d) Old Trafford, Manchester

6. How many time(s) has Indian won the Cricket World Cup?
   a) 1
   b) 3
   c) 2
   d) None of Above

7. Which countries hosted the 2011 Cricket World Cup?
   a) India, Sri Lanka and Bangladesh
   b) India, Pakistan and Sri Lanka
   c) India, Sri Lanka, Bangladesh and Pakistan
   d) India, Pakistan and Bangladesh

8. Which player holds the record for the most runs in the World Cup ?
   a) Javed Miandad
   b) AB de Villiers
   c) Chris Gayle
   d) Sachin Tendulkar

9. The 1987 World Cup witnessed the first-ever Cricket World Cup hat-trick. Who was the bowler who achieved this feat?
   a) Chetan Sharma
   b) Chaminda Vaas
   c) Lasith Malinga
   d) Saqlain Mushtaq



#HappyCricketing

10. Which of the following happened at the 2011 World Cup?
    a) First time that a host nation won the tournament
    b) First time since 1992 that Australia was not in the final
    c) First time that two Asian teams appeared in the final
    d) All of these

Answers
1.c) 2.b) 3.a) 4.d) 5.b) 6.c) 7.a) 8.d) 9.a) 10.d)

Our Offices

New Delhi
14th Floor
Dr. Gopal Das Bhawan
28, Barakhamba Road
New Delhi 110 001
T: +91 11 4213 0000
F: +91 11 4213 0099

Mumbai
1st Floor, Bajaj Bhawan
226, Nariman Point
Mumbai 400 021
T: +91 22 49100000
F: +91 22 49100099

info@clasislaw.com
www.clasislaw.com

NEW DELHI | MUMBAI