



Newsletter

December 2017

CLASIS LAW

Clasis Law has been ranked amongst the Top 40 Indian Law Firms by RSG Consulting Rankings 2017

Contents

Bombay High Court upholds the Constitutional Validity of Real Estate (Regulation and Development) Act, 2016

Page 2

Legal Alerts

Page 5

Corporate and Commercial

Page 6

Projects, Energy and Natural Resources

Page 8

IP Update

Page 9

Banking and Project Finance

Page 10

Recent Events

Page 11

Offbeat

Page 13

New Year Wishes

Page 14

Welcome to the December Edition of the Clasis Law Newsletter

This edition brings to our readers a featured article titled “Bombay High Court upholds the Constitutional Validity of Real Estate (Regulation and Development) Act, 2016”.

Bombay High Court upholds the validity of some of the provisions of RERA challenged by certain Builders in joint writ petitions. Amongst other things, the High Court primarily holds that the registration of ongoing projects under RERA cannot be seen as retrospective application of the Act. High Court has further allowed longer extension to Builders, in certain exceptional cases, to complete the projects.

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 Projects, Intellectual Property and Banking.

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

“Clasis Law’s Head of Pan India Operations & Corporate Practice, Vineet Aneja is recognized as one of India’s Most Trusted Corporate Lawyers by ICCA, 2017”

www.clasislaw.com



Bombay High Court upholds the Constitutional Validity of Real Estate (Regulation and Development) Act, 2016

The Division Bench of the Bombay High Court in its recent judgment passed in the batch of joint Writ Petitions, preferred by various Builders/ Promoters (one of them being, *Neelkamal Realtors Suburban Pvt. Ltd. and Anr. vs. Union of India and Ors., Writ Petition No. 2737 of 2017*), has upheld the legality and constitutional validity of certain provisions of the Real Estate (Regulation and Development) Act, 2016 (the “RERA”).

These Writ Petitions were filed as the Builders/ Promoters at large were facing difficulties and challenges under RERA with respect to several issues. Builders/Promoters felt compelled by the mandate to have their ongoing/ pre-existing projects registered under RERA, which they understood as retrospective application of the provisions of RERA. The Builders/Promoters further felt restricted by the fact that RERA allowed only one year extension for registration in case the Builders/Promoters failed to complete the project on time. Therefore, the need to have a longer extension under RERA was another challenge which was being faced by the Builders/Promoters at large.

Accordingly, in light of the above and other restrictions being faced by the Builders/Promoters, multiple Writ Petitions challenging the legality and constitutional validity of certain provisions of RERA were filed on the ground that arbitrary and unreasonable restrictions are being levied on the Builders/Promoters under RERA. In these petitions, questions with regard to the validity of Sections 3(1), Section 3(2)(a), explanation to Section 3, Section 4(2)(l)(C), Section 4(2)(l)(D), Section 5(3), first proviso to Section 6, Sections 7, 8, 18, 38, 40, 46(1)(b), 59, 60, 61, 63, 64 of RERA were raised.

Contesting the validity of Section 3 of RERA which provides for the registration of projects, including current and ongoing projects, that commenced prior to the enforcement of RERA, it was argued by the Petitioners that the provision has retrospective application and hence is arbitrary. Further, the provision of interests payable for delay under Section 18 of RERA were understood as penal interest and in light of retrospective nature of RERA could not be validated as per the Petitioners. In addition to the aforementioned arguments, it was further contested that the application of the new rules on ongoing developments would violate the contract between the parties that were not in consonance with the RERA Rules but still demanded its application due to registration under RERA.

Furthermore, Section 6 of RERA provides for strict implication in cases of delay in delivery of possession by the Builders/Promoters, however, the Authority, in cases of *Force Majeure*, may extend the time period of delivery of project by way of extending the Registration up to one year only. On this aspect, the Petitioners argued that by interpreting the definition of “*Force Majeure*” in a narrow manner, RERA has completely disregarded the compelling socio-economic conditions that may also hinder the completion of a project and hence such rules are being applied strictly and arbitrarily. It was further argued that the maximum extension of one year under RERA is inadequate and longer extension should be provided.

The most elaborate argument submitted by the Petitioners, with respect to the revocation of registration under Section 7 of RERA, involved multi-fold questions. The Petitioners argued that while the revocation of registration could be done on the basis of default in delivery, violation of terms of approval of project or for unfair practice, the consequence and method of revocation remained unclear. Section 8 of RERA, a provision underlining the obligations of the authority in situation of revocation was challenged on the grounds that it did not provide any yardsticks or procedure by which the remaining development was to be carried out post the revocation.

The Petitioners expressed doubts with regards to transfer of charge of project for further development, confiscation and transfer of accounts, process of transferring the property to the allottee when the same has been transferred from the Builder’s/Promoter’s charge, and the means of payment to the allottee if the account of the Builders/Promoters remains in the custody of the RERA Authority. Additionally, if 70 per cent funds, deposited in the separate account, were to be confiscated under the aforementioned provision, the demand of reimbursement in case of withdrawal under Section 18 of RERA seemed highly unreasonable to the Petitioners.

In response to the aforementioned arguments raised by the Petitioners, the learned counsel on behalf of the Union of India, the Respondent, stated that the legislature has the competence to rewrite a contract executed by private parties. Bringing ongoing projects under the ambit of RERA under Section 3, in view of the Respondent, would not violate the parties’ rights or make RERA retrospectively applicable as it does not take away or impairs rights of the parties.



It was argued on behalf of Respondent that under Section 6 of RERA, the extension of registration granted to projects in light of Force Majeure could not be made a discretionary provision as the same would defeat the purpose of RERA of timely delivery of possession. Clarifying the application of Section 8 of RERA, the Counsel stated that it would merely create an agency in the project and the agent shall not replace the Builder/ Promoter but only aim at completing the project on their behalf and return the possession of the same upon its completion. Additionally, the authorities may allow timely delivery of possession. Clarifying the application of Section 8 of RERA, the Counsel stated that it would merely create an agency in the project and the agent shall not replace the Builder/ Promoter but only aim at completing the project on their behalf and return the possession of the same upon its completion. Additionally, the authorities may allow the Builder/Promoter to continue with the development under their direct guidance. Lastly, it was submitted that the provision for payment of interest for delay, in case the buyer wishes to continue, and reimbursement in case where the buyer wishes to withdraw, are aimed at compensating the allottees who have invested large sums in the undertaking and not to penalize the promoter.

The High Court, in an attempt to reasonably approach the problem, appointed an amicus curiae to address the matter at hand with a wider perspective at the law. On the question of retrospective application, the High Court explained that the application of the RERA to all pre-RERA transactions, contracts and projects that are functional at the moment shall not be confused as being a retrospective application. In light of any developmental project that has not received its certificate of completion, an ongoing transaction between the allottee and Builder/ Promoter has been included within the ambit of RERA to protect and foster the interest of the consumers and regulate the real estate market, and hence, the High Court upheld the validity of Section 3 of RERA.

The High Court further upheld the validity of Section 4 of RERA which requires disclosure of the timeline at the time of registration and maintenance of 70 per cent of the amount, collected from the allottees for the purpose of funding development, in a separate bank account. This provision was upheld for the fair reason of protecting the rights of the consumers and restraining the misuse of the Builders'/Promoters' powers. The High Court observed that in addition to controlling the misuse of power, if the Builder/Promoter utilized the funds fairly, with production of necessary certificates, the question of maintaining 70 per cent funds does not arise. As such, it actually provided relaxation to genuine promoters.

Deciding on the validity of Section 6 of RERA, the High Court held that the Builders/Promoters, while registering their projects under Section 4 have the liberty to extend the date of completion even if it does not conform to the contractual term. This liberty is granted to allow reasonable time to the Builders/Promoters to complete their projects and thereby promoting timely handing over of the possession. In light of extension of one year, the High Court held that in case the Authority is satisfied that there are exceptional and compelling circumstances due to which the Builder/ Promoter could not complete the project in spite of the extension granted under Section 6 of RERA, then the Authority would be entitled to continue the registration of the project on case to case basis.

Further, while addressing the issue with regard to revocation under Section 7 & 8 of RERA, Hon'ble Mr. Justice Naresh Patil stated as under:

"We are of the view that a proper construction of the provisions would mean that even in case of lapsing of or on revocation of registration, the authority shall not mechanically terminate the registration of the promoter or injunct him to act as a promoter, but in the facts of a case would take necessary steps in the interest of allottees permitting the promoter to carry on the remaining development work...It shall not be interpreted to mean that in every case a promoter who fails to complete the project under the extended time under Section 6 would get further extension as of right. In that sense, there is no divesting of rights in the property from the promoter to the authority."

Lastly, while addressing a misguided argument by the Petitioner with regard to the interest payable on default and delay under Section 18 of RERA, the High Court clarified that the rate of interest as mentioned under RERA is of a compensatory nature for the investment made by the people and shall not be perceived as a penal provision.

On the issue of Section 46(1) (b) of RERA, that discussed the appointment of members to the adjudicating authority, the High Court, holding in favour of the arguments advanced by the Petitioner declared that Section 46(1)(b) of RERA was bad in law to the extent of allowing a member of non-judicial, Indian Legal Services to hold a judicial position in the tribunal and hence is being struck down to that extent.

Further, Sections 59 to 64 of RERA, dealing with punishment with regards to non-registration under Section 3,



penalty for contravention of other provisions of the RERA, penalty for non-registration and contravention under Sections 9 and 10, penalty for failure to comply with orders of Authority by promoter and penalty for failure to comply with orders of Appellate Tribunal by promoter respectively, were challenged on grounds of retrospective application. However, the Court, clarifying the point of retrospective application, mentioned that RERA was enacted in the larger public interest and did not retrospectively penalize the act done by a person prior to registration under RERA.

Therefore, the High Court held that these provisions were not contrary to Articles 14, 19(1) (g) and 20 of the Constitution of India. Therefore, this judgment has not only turned out to be a major relief for the home-buyers, protecting their interests under RERA but is also a respite for the Builders/Promoters as it has enlarged RERA authority's powers to grant an extension of time in exceptional cases to the Builders/Promoters to complete a project. Since, RERA remains in its natal stage, it is required to wait and test the implementation of the provisions in the real fact situation emerging from case to case. Irrespective, this judgment has certainly brought clarity on many aspects with a view to correctly implement the provisions of RERA.

For any clarification or further information, please contact

Mustafa Motiwala

Partner

E:mustafa.motiwala@clasislaw.com

Pragya Nalwa

Associate

E:pragya.nalwa@clasislaw.com



Legal Alerts

Supreme Court considers whether the owner of a newspaper can be held liable for Defamation

The Supreme Court of India in its recent judgment dated December 4, 2017 has aimed to clarify the position of the liability of the owner of a newspaper in the cases of defamation. The present criminal appeal titled *Mohammed Abdulla Khan Vs. Prakash K* arises out of a criminal defamation complaint filed against the owner and editors of a newspaper for an article alleged to be defamatory.

Mohammed Abdulla Khan ("The Appellant") approached the concerned Magistrate's Court in Karnataka following the inaction on the part of the police when a complaint for defamation had been lodged. The learned Magistrate took cognizance of the matter on April 15, 2014 for offences punishable under Section 500 (Punishment for defamation), Section 501 (Printing or engraving matter known to be defamatory) and Section 502 (Sale of printed or engraved substance containing defamatory matter) of the Indian Penal Code, 1860 ("IPC").

Aggrieved by the aforesaid order, Prakash K. ("The Respondent") filed a Revision Petition, which was dismissed. The Respondent further carried the matter to the Karnataka High Court invoking Section 482 (saving of inherent powers of High Court) of the Code of Criminal Procedure, 1973. The said petition was allowed and proceedings against the Respondent were quashed. The impugned order relied upon the judgment of the Supreme Court i.e. *K.M. Mathew Vs. K.A. Abraham*, (2002) 6 SCC 670 and did not provide any reason whatsoever for quashing the complaint except that "it would lead to a miscarriage of justice".

The Supreme Court, in the Special Leave Petition filed against the High Court, analyzed the offence of defamation as provided in the IPC. It noted that to constitute an offence of defamation, a person is required to make some imputation concerning any other person. Such imputation must be made either with intention, or Knowledge, or having a reason to believe.

Further, such an imputation will have to harm the reputation of the person against whom the imputation is made by making signs or visual representations and can either be made or be published.

The Court further differentiated between making or an imputation and publishing of it by stating the following examples:

(i) If 'X' tells 'Y' that 'Y' is a criminal- 'X' makes an imputation.

(ii) If 'X' tells 'Z' that 'Y' is a criminal- 'X' publishes the imputation.

In other words, the essence of publication in the context of Section 499 is the communication of defamatory imputation to persons other than the person against whom the imputation is made.

The Court noted that in the context of the present case, first of all, it must be established that the matter printed and offered for sale is defamatory within the meaning of the expression under Section 499 IPC. If so proved, the next step would be to examine the question whether the accused committed the acts which constitute the offence of which he is charged with the requisite intention or knowledge etc. to make his acts culpable.

It has further been clarified that answer to the question depends upon the facts of each case. If the respondent is the person who either made or published the defamatory imputation, he would be liable for punishment under Section 500 IPC. If he is the person who "printed" the matter within the meaning of the expression under Section 501 IPC. Similarly to constitute an offence under Section 502 IPC, it must be established that the respondent is not only the owner of the newspaper but also sold or offered the newspaper for sale. It has been made clear that for the acts of printing or selling or offering to sell need not only be the physical acts but include the legal right to sell i.e. to transfer the title in the goods - the newspaper.

The Court additionally considered the *K.M. Mathew* case and noted that if a complaint contains allegations (which if proved would constitute defamation), person other than the one who is declared to be the editor of the newspapers can be prosecuted if they are alleged to be responsible for the publication of such defamatory material.

The Court after considering the applicability of the *K.M. Mathew* case and the facts of the present matter held that whether the owner can be made vicariously liable or not requires a critical examination and each case would require a careful scrutiny. The present appeal was allowed and the order of the High Court was set aside.



Corporate and Commercial

Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017

The MCA has amended Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Rules, 2015 vide its notifications dated November 6, 2017. According to the amended rules, the following class of companies are required to submit their financial statement and other documents with the Registrar of Companies in e-form AOC-4 XBRL:

- i. companies listed with stock exchanges in India and their Indian subsidiaries;
- ii. companies having paid up capital of five crore rupees or above;
- iii. companies having turnover of one hundred crore rupees or above;
- iv. all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.

Further, the e-form AOC-4 XBRL, was revised to include the details of Specified Bank Notes (SBN) held and transacted by a company during the period from November 8, 2016 to December 30, 2016.

The Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2017

On November 21, 2017, the Securities Exchange Board of India has issued the Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2017. In terms of these amendment regulations, the concept of an "Executive Director" and his role has been added. An executive director shall mean an officer of the Board who is appointed as such by the Board. Further, in terms of regulation 24 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, the executive director shall have a right to appoint an officer not below the rank of a Division Chief, as a designated authority in cases of default (as envisaged in regulation 23).

Amendments to the Insolvency and Bankruptcy Code, 2016

On November 23, 2017, the Government of India had promulgated the ordinance to amend the Insolvency and Bankruptcy Code, 2016 ("the Code"). The Ordinance aims at putting in place safeguards to prevent unscrupulous, undesirable persons from misusing or vitiating the provisions of the Code. The Ordinance amends Sections 2, 5, 25, 30,

35 and 240 of the Code, and inserts new Sections 29A (persons not eligible to be a resolution applicant) and 235A (punishment where no specific penalty is provided) in the Code. In terms of the newly inserted Section 29A of the Code, many instances of when a person cannot be eligible to be a resolution applicant have been provided, such as, (i) an undischarged insolvent; (ii) willful defaulter in accordance with the guidelines of the Reserve Bank of India; (iii) whose account is classified as a non-performing asset; (iv) convicted for an offence punishable with imprisonment of two year so more; (v) has been prohibited by SEBI from trading in securities, etc. Further, in terms of the punishment (Section 235A of the Code), if any person contravenes with the provisions of the Code, for which no punishment or penalty has been provided, such person shall be punishable with a fine which shall not be less than one lakh rupees but which may extend to two crore rupees.

IBBI issues the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017

On November 7, 2017, the Insolvency and Bankruptcy Board of India issued the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017. These regulations amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In terms of the amended regulations, a resolution plan must now contain details of the resolution applicant and other connected persons to enable the committee to assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval. Further, the resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of certain transactions (as mentioned in the amended regulations), if any, observed, found or determined by him.

Online Registration Mechanism and Filing System for Clearing Corporations

On November 3, 2017, the Securities and Exchange Board of India issued a circular introducing a digital platform for online filings related to Clearing Corporations, in order to ease the process of application for recognition / renewal, reporting and other filings in terms Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 and other circulars issued from time to time.



RBI issues the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017

On November 7, 2017, the Reserve Bank of India released the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 ("Regulations"). The Regulations came into effect on November 7, 2017 except proviso (ii) to sub-regulation 1 of regulation 10 and proviso (ii) to sub-regulation 2 of regulation 10 of these Regulations, which will come into effect from a date to be notified.

Some of the key amendments relate to the inclusion of definition of 'capital instrument', 'foreign direct investment', 'foreign portfolio investment', 'resident Indian citizen', 'non-resident Indian' and 'overseas citizen of India. Further, the Regulations also provide that any Indian company making downstream investment in another Indian company has to be notified in Form DI within 30 days of such investment. With respect to issue of capital instruments, the erstwhile regulations mandated issuance of capital instruments within 180 days from receipt of inward remittance, while the Companies Act, 2013 ("Act") provides allotment of securities within 60 days of receipt of application money or advance for such securities. This inconsistency has now been rectified and the Regulations align the requirement to issue capital instruments with the Act.

Contract Labour (Regulation and Abolition) Haryana Amendment Act, 2016

The Haryana government vide the Contract Labour (Regulation and Abolition) Haryana Amendment Act, 2016 has extended the applicability of the Contract Labour (Regulation and Abolition) Act, 1970 ("CLRA") to establishments employing 50 or more workmen in the state of Haryana. Previously, in Haryana, CLRA was applicable to establishments employing 20 or more workmen.

States to frame rules for crèche facilities

In terms of the amendment to the Maternity Benefit Act, 1961, it was made mandatory for every establishment having 50 or more employees to provide for crèche facilities from July 1, 2017. The state governments had to formulate rules regarding the implementation of these crèche facilities by the employer.

Since the respective state governments have not presently formed any rules, the Ministry of Labour and Employment has issued a notification dated November 17, 2017, to all state governments to frame and notify rules to provide crèche facilities in establishments employing 50 or more persons. The notification states that the state governments are the 'appropriate government' under the Maternity Benefit Act, 1961 and are therefore required to take immediate action to frame and notify the rules for crèche facilities as the provision of crèche is already effective from July 1, 2017.

The rules once framed should provide clarity on various aspects such as the prescribed distance within which the crèche should be located, whether the crèche facility costs would be borne by the employer or employees or shared between both and what would be the maximum age group of the children for whom such facility will be provided.



Projects, Energy and Natural Resources

Hyderabad Metro finally launched

Prime Minister Narendra Modi inaugurated the first phase of the 72-km elevated Hyderabad Metro Rail project at the Miyapur station. The Hyderabad Metro Rail project is the first 'transit oriented development' (TOD) project that will exploit the real estate and earn revenue by leasing out commercial and office spaces inside and outside the metro stations across the city.

The rapid transit project has been planned with two components - stations along the elevated metro rail system and TOD branded 'Hyderabad Next'. Depending on the city's appetite, 'Hyderabad Next' will be developed with various assets like office and retail spaces, hospitality, healthcare, and mixed use facilities.

India and Italy sign MoU for Co-operation in the Medical Infrastructure Space

India and Italy have inked an MoU for enhanced cooperation in the health sector by pooling in technical, scientific, financial and human resources to upgrade infrastructural resources, medical education and research of both the countries.

The MoU recognises the potential for exchange in the health sector between the two countries, and the need to tap the capabilities and opportunities in a focused and comprehensive manner.

The objective of the MoU is to establish cooperation between the two countries in the field of health by collaborating on technical, scientific, financial and human resources with the ultimate goal of upgrading the quality and infrastructural resources involved in health care, medical education and training and research in both countries.

NHAI to be vested with more power to implement the Bharatmala Programme

The National Highways Authority of India (NHAI) is set to get the power to approve projects with a construction cost of more than Rs 1,000 crore to ensure faster implementation of the Bharatmala programme. Currently, all highway projects that entail a construction cost of more than Rs 1,000 crore, excluding land, need to be approved by the Cabinet Committee on Economic Affairs (CCEA).

Under a new proposal, only public private partnership (PPP) projects under the build-operate transfer (BOT) model, where viability gap funding (VGF) is to be provided by the government, will need CCEA clearance.

The Bharatmala corridors have been mapped as per traffic density and economic relevance of the cities that will be connected with the help of the Bhaskaracharya Institute for Space Applications and Geo-informatics. The project involves constructing 24,000km of fresh highways. The project is aimed at speeding up cargo movement and the development of multimodal logistics hubs and parks on the periphery of major commercial centres.

Global Firms Line-Up For Constructing India's Largest Convention Centre

Nearly 15 global players including Samsung Construction and China Construction are competing with home-grown companies such as L&T and Reliance Infrastructure for bagging the contract for constructing India's largest convention centre. The government has invited the request for proposal under the engineering, procurement and construction (EPC) mode after the Rs 26,000 crore International Convention and Expo Centre (IICC) project received the Union cabinet's nod in November.

The EPC contract will be finalised by the end of December this year. It would involve development of trunk infrastructure along with exhibition-cum-convention centre and internal road network system, and underground car parking facilities. The first phase will commence in January 2018 and is likely to be completed by December 2019.

Convention and exhibition facilities will be operated and managed by experienced global player. The facilities will be on a par with the best in the industry worldwide in size and quality.



IP Updates

Ex-parte injunctive relief refused to “Barbie” owner

This is pertaining to an application filed in a commercial suit before the Delhi High Court by Mattel, Inc. in conjunction with its Indian subsidiary Mattel Toys (India) Private Limited (together the “**Plaintiffs**”) against Aman Bijal Mehta & Ors. (together the “**Defendants**”), the producers of a Hindi film titled Tera Intezaar. The aforesaid application was filed by the Plaintiffs praying for in camera ex parte injunctive relief against the Defendants. In relation to the in camera proceedings, the counsel for the Plaintiffs had contended that as the suit pertained to a highly confidential matter, the media attention might lead to distortion of facts and the absence of reporting by the media may make the parties more receptive to a settlement. The Plaintiffs stated that they are the owner of the “Barbie” trade mark and that they have been using the trade mark “Barbie” in relation to toy dolls and other merchandise. The mark “Barbie” has been identified as a well-known trade mark in various jurisdictions. The toy doll “Barbie” is very popular amongst the girl children and it has different versions, such as, doctors, surgeons, firefighter etc. and the Plaintiffs have also worked with various renowned celebrities, such as, Princess Kate Middleton, J.K. Rowling, Shakira and Katrina Kaif amongst others, to create Barbie dolls in their likeness. The Plaintiffs stated that the song titled “Barbie Girl” in the movie Tera Intezaar is used without the authorisation of the Plaintiffs and that the Defendants have used “Barbie” as a catchy word in the title and lyrics of the song to generate publicity and for commercial exploitation and gain. The Plaintiffs further contended that the Barbie girl in the song is played by an actress prominent in the adult entertainment industry and that the content of the said song and its video are not suitable for children and are inappropriate which degrades the trade mark “Barbie”.

While listening to the arguments of the Plaintiffs, the Court inquired regarding the song “Lets go party” by Aqua band with the “Barbie” word and indicated that the lyrics of that song were also provocative and inappropriate. The Plaintiffs informed that Court that the Plaintiffs had also filed proceedings against the music companies in US with the contention that the song “Lets go party” is inappropriate for young girls. However, the Plaintiffs did not receive any favourable order in the US courts. The Court noted that the United States Court of Appeals, Ninth Circuit in Mattel, Inc. Vs. Walking Mountain Products 353 F.3d 792 (2003) did not accept the argument of “market harm by impairing the value of Barbie”, reasoning the infringement therein to be perceived as a “parody of Barbie”. The Court noted that the Plaintiffs were trying to seek in India what was denied to it in the Court of its origin.

On the Plaintiffs’ suggestion that the laws of India are different from that applied by the US Courts, the Court referred to Justice Sanjay Kishan Kaul speaking for the Division Bench of

the High Court of Madras in *S. Tamilselvan vs. The Government of Tamil Nadu* that *India has the benefit of one of the most modern and liberal Constitutions, one of the most cherished rights wherein is to speak one’s mind and write what one thinks, no doubt, that is subject to reasonable restrictions, but then the ambit of what one can do is wide.* The Court further stated that *the law has constituted CBFC to adjudge the need if any, for imposing “prior restraints” which otherwise are at serious odds with the fundamental right enshrined in the Constitution of speech and expression. Thus, once a film has been cleared by CBFC for viewing, there is a presumption in its favour including of the same being not defamatory of any one. If after a film has been so cleared by CBFC, the Courts were to act as super Censor Board at the mere asking, it will have the potential of imposing arbitrary and at times irrational prior restraints causing severe damage to the right of freedom and expression.*

The Court vide its order dated 22nd November, 2017 denied any ex parte relief including any relief for in camera proceedings to the Plaintiffs and noted that granting ex parte relief to the Plaintiffs in this matter may send a wrong signal to the public at large when the newspapers and the stories in the electronic media are broadcasting a demand by one section of the society for a ban on another film.

The Delhi High Court ordered that notice/summons be issued to the Defendants and further stated that the Plaintiffs may call upon the Defendants to delete the word “Barbie” from the song and to notify the consequences to the Defendants if they fail to do so.

Rajesh Tailang v Tata Motors Limited [CS No 773 of 2017]

The Karkardoma District Court, New Delhi in the case of *Rajesh Tailang v Tata Motors Ltd.* granted an interim injunction restraining the defendant from infringing the plaintiff’s copyright in his original cinematographic work.

The plaintiff, being a professional artist, actor, writer and director had created a short film titled ‘Right Perspective’ or ‘Saaf Nazaria’ and published the same on his YouTube channel ‘Theatre Talkies’. Subsequently, Tata Motors published an advertisement, essentially copying the Plaintiff’s said original short film and promoted the said advertisement as a ‘Tata Motors Initiative’ on various social media platforms. Aggrieved by the defendant’s infringing activities, the plaintiff, represented by Clasis Law, initiated copyright infringement proceeding against the defendant.

The Hon’ble Court, upon comparing the plaintiff’s original and the defendant’s work, observed the defendant’s work to be based on the idea and script of the plaintiff’s original work and granted an interim injunction restraining the defendant from making its infringing work available in any mode on any social networking media or video sharing platforms.



Banking and Project Finance

Conversion of Debt into Equity – Review

The Reserve Bank of India (“RBI”) has issued notification dated November 23, 2017, pursuant to which Asset Reconstruction Companies (“ARCs”) are now exempted from limiting the shareholding at 26 (twenty six) per cent post converted equity of the borrower company provided ARCs meets the following criteria:

- (i) The ARC complies with Net Owned Fund (NOF) requirement of INR 100 crore on an ongoing basis;
- (ii) At least half of the Board of Directors of the ARC comprises of independent directors;
- (iii) The ARC frames policy on debt to equity conversion with the approval of its Board of Directors and delegates powers to a Committee comprising majority of independent directors for taking decisions on proposals of debt to equity conversion;
- (iv) The equity shares acquired under the scheme should be periodically valued and marked to market. The frequency of valuation should be at least once in a month.

In addition to above, ARCs need to be compliance with the provisions of the SARFAESI Act, 2002, Guidelines/ Instructions issued by RBI from time to time as applicable to ARCs as well as Foreign Exchange Management Act, 1999, Reserve Bank of India Act, 1934, Companies Act, 2013, SEBI Regulations and other relevant statutes. The extent of shareholding post conversion of debt into equity should be in accordance with permissible Foreign Direct Investment (FDI) limit for that specific sector under Foreign Exchange Management Act, 1999 and its related regulations.

Directions – Directions on Managing Risks and Code of Conduct in Outsourcing of Financial Services by NBFCs

The RBI has issued notification dated November 09, 2017, pursuant to which it has issued Directions on Managing Risks and Code of Conduct in Outsourcing of Financial Services by NBFCs.



Recent Events

Knowledge Session on Compliance Risks for Foreign Companies Doing Business in India hosted by Clasis Law December 14 2017, New Delhi

Clasis Law hosted a knowledge session on 'Compliance Risks for Foreign Companies Doing Business in India', in association with the Indo-French Chamber of Commerce and Industry (IFCCI) at the IFCCI office on 14th December 2017. The session was conducted for the benefit of the French companies and was presented by Ms. Priyanka Anand, Associate Partner. Clasis Law was also represented by Ms. Parul Kashyap, Counsel and Head of Business Development, Mr. Gaurav Wahie, Associate Partner and Ms. Neetika Ahuja, Associate Partner who responded to questions from the participants in relation to compliance requirements under FEMA, Companies Act and the overall compliance burden faced by foreign companies in India.

The session covered the compliance risks faced by companies/foreign investors in the current legal and regulatory environment, with focus on key compliance exposures under the foreign exchange laws, the corporate laws, the employment & labour laws. It was an opportunity to discuss the need and importance of having in place a robust and effective compliance risk program by organisations.

The session provided a platform to share experiences, explore practical issues and challenges in terms of growing regulatory obligations, allocating resources efficiently and the pressure on compliance officers to do more with less. The event was well attended and received a very encouraging feedback from the delegates.





Recent Events

Global Entrepreneurship Summit 2017 November 28 - 30, 2017, Hyderabad

Mr Vineet Aneja, Head of Pan India Operations & Corporate Practice and Mr Jaideep Singh, Associate Partner attended the Global Entrepreneurship Summit 2017 which was held at Hyderabad from 28-30th November 2017. The Summit was addressed by the Hon'ble Prime Minister of India, Shri Narendra Modi and Ms. Ivanka Trump, Advisor to President Trump, and many more luminaries from the world of innovation and entrepreneurship. The Summit brought together entrepreneurs, investors, educators, government officials and startup ecosystem supporters to the world's most important event on entrepreneurship and presented a unique opportunity to connect and establish meaningful partnerships amongst entrepreneurs, investors and ecosystem supporters.



Offbeat

Iconic Places to celebrate the New Year's Eve!

New York City, New York



Every year on the New Year's Eve millions of people gather at the Times Square to witness renowned musicians in action with the main attraction being the ball drop. You will find yourself counting down the seconds to midnight while a huge 12-foot glittering ball is slowly dropped down from a flagpole atop the One Times Square building with over a ton of confetti dropped onto the party-goers

Paris, France

For those who are fortuitous enough to be in Paris to welcome the New Year, the city of lights actually has a lot many ways to say Bonne année!. The main show and incredible fireworks display at the most iconic landmark of Paris, the Eiffel Tower. New Year's Eve boat cruises along the Seine are also offered for those who wish for a little privacy for their celebration.



Goa, India



Goa is the most happening place throughout the year but on New Year it's something special. You can see fireworks and celebrations happening around the city. The and the wildest celebrations are centered on the Anjuna while the most intimate parties can be experienced down south at the Palolem. In the New Year, head north to for yoga and reiki and some healthy living.

London, England

On New Year's Eve, London comes alive with celebrations, fireworks and parties. Never one to miss out on a party and events up its sparkly sleeve, onto to the banks of the Thames river and begin the countdown to Big Ben striking the hour of midnight when an elaborate light show and fireworks display takes off. But remember, the fun doesn't stop on December 31 with activities planned for the next day including a three-hour parade complete with marching bands, a procession of the Queen's horses.



Miami, Florida



Given its world class nightlife, Florida's capital city Miami sees no barrier for its New Year's Eve or New Year celebrations. You might like to head over to South Beach to experience the old school all-night dance-a-thon of Miami. A family friendly event is Miami's answer to New York's famous ball drop which is a 35-foot neon "Big Orange" which descends from the Inter-Continental Miami.

Vienna, Austria

On December 31, Vienna's old city center transforms into a giant party zone. A large firework display is held on City Hall Square and in the Prater at midnight. Dignified balls, classical music concerts and some of the world's best symphonies are offered on New Year's Eve as well as a champagne brunch the following day.



*Clasis Law wishes you and your family Merry Christmas and
a very Happy New Year 2018*



Merry Christmas

& HAPPY NEW YEAR

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

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to herein. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions.