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Welcome to the First Edition of 2018 of the Clasis Law Newsletter

This edition brings to our readers a featured article titled “Code on Wages”.

The Code on Wages, which has been approved by the Union Cabinet and introduced in the Lok Sabha, stands to modify and subsume the framework outlined by the Payment of Wages Act, 1936 (“**PW Act**”), the Payment of Bonus Act, 1965 (“**PB Act**”), Minimum Wages Act, 1948 (“**MW Act**”) and the Equal Remuneration Act, 1976 (“**ER Act**”). In the article, we analyse the legislative attempt to simplify, amalgamate, rationalize and consolidate the labour laws in India.

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”

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Code on Wages

“Assessing whether the code is a legislative attempt of packaging the old wine in a new bottle”

In order to simplify, amalgamate, rationalize and consolidate the labour laws in India, the Ministry of Labour and Employment has proposed to categorize the Central labour laws into four different codes.

The codes proposed by the Ministry of Labour and Employment are as follows:

1. Labour Code on Wages;
2. Labour Code on Industrial Relations;
3. Labour Code on Social Security and Welfare; and
4. Labour Code on Occupational Safety, Health and Working Conditions.

The Labour Code on Wages, 2017 (“**Code on Wages**” or “**Code**”) modifies and subsumes the framework outlined by the Payment of Wages Act, 1936 (“**PW Act**”), the Payment of Bonus Act, 1965 (“**PB Act**”), Minimum Wages Act, 1948 (“**MW Act**”) and the Equal Remuneration Act, 1976 (“**ER Act**”).

The Code on Wages has been approved by the Union Cabinet and has been introduced in the Lok Sabha on August 10, 2017. Once it, receives the approval of both the houses of Parliament and is approved by the President of India, it shall come into force as the new law from the prescribed date.

This Code on Wages sets out a similar framework, as provided in the existing legislations, for prescribing minimum wages, mechanism for payment of wages or making deductions from wages, payment of bonus to eligible employees, prohibiting gender based discrimination and outlining procedure for making claims by employees.

In its present form, barring a few changes, the Code on Wages in effect consolidates the various provisions outlined in the different existing legislations, into various chapters, of the Code.

UNIVERSAL COVERAGE

One of the significant changes adopted by the Code would be increasing the coverage of the employees, who would fall within its ambit and not restricting coverage based on salary thresholds of employees.

Under the present framework of labour laws, the coverage of PW Act was extended to workers whose wages does not exceed INR 18,000/- per month. Recently this threshold has been increased to INR 24,000/- per month. Considering the Code has universal coverage, the provisions relating to timely payment of wages and authorised deductions from wages, which are presently applicable only in respect of

employees drawing wages up to INR 24,000/- per month, shall be made applicable to all employees irrespective of the wage ceiling. However, upon the enforcement of Code on Wages, there could be an overlap of the applicability of the provisions on authorised deductions from wages, as provided under the Code and the State specific local shops and establishments legislations.

Similarly, even though the PB Act is applicable on employees earning wages up to INR 21,000/- per month, the Code extends the provisions of mandatory payment of bonus irrespective of the wage threshold of the employees. However, the Code does retain certain exclusions provided under the PB Act which excludes employees working in certain organisations such as non-profit making institutions and educational institutions etc. from the ambit of the act.

NATIONAL MINIMUM WAGE

The scheme of the MW Act provides for fixation of minimum wages in various employments across different industries, processes, branches of work, as specified in the list of scheduled employment under the MW Act. The list of scheduled employment is not exhaustive and the appropriate Government (which includes the Central and State Government) is empowered to add more employments to the existing list under the MW Act and thus, fix the rates of minimum wages in respect of the persons employed therein.

The Code on Wages sets out various factors such as skills required, the arduousness of the work assigned, geographical location of the workplace etc. while affixing the minimum wages for different category of employees.

It further provides that the Central Government shall prescribe a national minimum wage and the state governments will not be able to prescribe wages lower than the national minimum wage rate.

Under the present framework even when higher rates of minimum wages are prescribed by the Central government, the State governments are free to either adopt those rates or continue with their own prescribed rates which may be higher or lower than these rates.

COMMON DEFINITION OF WAGE FOR CALCULATION OF STATUTORY PAYMENTS

The definition of wages varies under different labour legislations, covering certain payments heads and excluding certain others. For instance: The definition of wage under PB Act excludes the payments made for overtime work while the PW Act and MW Act include this component within its definition of wage.



Thus while calculating the various statutory payments, employers were faced with the confusion and dilemma of deciding the compensation components which were to be included for purpose of calculating a particular statutory payment. The Code on Wages provides a uniform definition of wage and thus various statutory payments such as bonus or wages to be paid can be henceforth easily calculated using this uniform definition.

PROHIBITION ON GENDER BASED DISCRIMINATION

Under the present framework, in terms of the ER Act, it is expressly provided that there shall be no gender based discrimination with respect to wages paid to employees or while recruiting employees. The Code however limits this prohibition only with respect to the wages being paid to the employees.

PENALTIES

The Code on Wages introduces uniformity in certain aspects such as common penalties which would be applicable in cases of defaults whether they relate to claim pertaining to bonus, minimum wages, or unauthorized deductions, which are presently outlined in different legislations in India. The penalties have been enhanced and graded depending upon the nature of the contravention.

Further, the Code introduces the concept of maintaining a list of defaulters, which shall include the name of the employers who have contravened any of the provisions of the Code on Wages.

CLAIMS

The Code provides that in cases of certain claims filed on account of non - payment of remuneration or bonus, the burden of proving that such dues were made would rest on the employer.

Further, the period of limitation for filing of claims by a worker has been enhanced to 3 years as against the existing time period under the present legislations, which varies from 6 months to 2 years, thus providing the workers more time to settle their claims.

In this context, however, it is to be noted that there is no prescribed limitation period for reference of an industrial dispute (with respect to certain matters) under the Industrial Disputes Act, 1947 for the 'workman' category of employees.

AUTHORITIES

The scheme of the PB Act, the MW Act and the PW Act provided for appointment of 'inspectors', the concerned local authority vested with powers of inspection to ensure compliance with the provisions of these legislations.

The Code on Wages provides for the appointment of "Facilitators" instead who would have the power to inspect organisations, similar to the powers of inspectors. However, as a pro employer measure, the Facilitators under the Code would also have the power to advise and assist the employer with ensuring compliance with the provisions of the Code before proceeding with any disciplinary mechanism under the Code. It remains to be seen how this provision of rendering advise would be exercised by the Facilitators and how it would benefit the employers in being complaint.

The legislative intent of formulating this enabling authority in the form of "Facilitators" is also reflected in one of the recent enactments i.e. Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017, wherein appointment of Facilitators as the concerned authority for similar purpose has been provided. This act has not yet come into force and once notified shall repeal the local shops and establishments act applicable in Maharashtra.

RECORD KEEPING AND OTHER COMPLIANCES

An employer is required to maintain registers individually under the PW Act, the MW Act and the PB Act which relate to same subject matter such as register on worker details, wages, overtime and authorised fines and deductions. This leads to multiplicity in record keeping even though the registers required to be maintained separately under these legislations contain similar details.

With the introduction of the Code, the employers would be required to maintain one register each relating to worker details, wages and authorised deduction, instead of multiple registers, which would be a relief for employers.

CONCLUSION

The Code on Wages is an attempt to rationalise the present framework infested with multiple reference points and overlapping legal provisions.

It is a progressive attempt especially the setting of national minimum wage and the dispensing of obsolete salary thresholds as a basis for offering statutory protection to employees.

The formulation of an authority which would facilitate the employers in maintaining compliances is a right step in ensuring effective implementation of this legal framework.

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Legal Alerts

Delhi High Court Holds That Moratorium Will Not Apply To Proceedings For The Benefit Of The Corporate Debtor

In its recent judgment of *Power Grid Corporation of India Ltd. vs. Jyoti Structures Ltd. O.M.P. (COMM) No. 397/2016* dated December 11, 2017 passed by the Hon'ble Delhi High Court ("the High Court"), it has been held that Section 14(1)(a) of Insolvency and Bankruptcy Code, 2016 ("the Code") would not apply to proceedings which are for the benefit of the Corporate Debtor.

In the brief background of the case, Power Grid Corporation of India Ltd. ("Appellant") had filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 ("The Arbitration Act") before the High Court for setting aside of the arbitral award. During the pendency of Section 34 proceedings, an application was filed by the Financial Creditor against the Jyoti Structures Ltd. ("Respondent") before the National Company Law Tribunal, Mumbai ("NCLT") seeking initiation of corporate insolvency resolution against the Respondent. The NCLT admitted the application and declared a moratorium in terms of Section 14 of the Code.

The issue before the High Court was if the word '*proceedings*' used in Section 14(1)(a) of the Code be read to mean '*all legal proceedings*' or be read restrictively to mean a particular type of legal proceedings viz. '*debt recovery action*' that may have an effect of diminishing the debtor's assets during insolvency resolution period.

The High Court held that the object of the Code is to provide relief to the Corporate Debtor through '*standstill*' period. During this period its assets are protected from dissipation or diminishment. As a corollary, during such period it can strengthen its financial position and extending the unexecutability of the award would rather prevent the Corporate Debtor from recovering money due to it. Such a consequence would be directly contrary to the object of the Code.

The High Court held that Section 14 would not apply to the proceedings which are in the benefit of the Corporate Debtor, like Section 34 proceedings as these proceedings are not a '*debt recovery action*'. Its conclusion would not endanger, diminish, dissipate or impact the assets of the Corporate Debtor in any manner. Hence it shall be in sync with the purpose of the moratorium which includes keeping the Corporate Debtor's assets together during the insolvency resolution process and facilitating orderly completion of the process, therefore, ensuring the company may continue as a going concern.

It was further held by High Court that one needs to see the nature of the proceedings; if such proceedings are against the Corporate Debtor or in its favour. Stay of proceedings in favour of the Corporate Debtor would rather be stalking the debtor's effort to recover its money and hence would not fall in the embargo of Section 14(1)(a) of the Code.

Consequently, the High Court held that the proceedings under Section 34 of the Arbitration Act would not be hit by the embargo of Section 14(1)(a) viz. (a) '*proceedings*' do not mean '*all proceedings*'; (b) moratorium under Section 14(1)(a) of the Code is intended to prohibit debt recovery actions against the assets of Corporate Debtor; (c) continuation of proceedings under Section 34 of the Arbitration Act which do not result in endangering, diminishing, dissipating or adversely impacting the assets of Corporate Debtor are not prohibited under Section 14(1)(a) of the Code; (d) term '*including*' is clarificatory of the scope and ambit of the term proceedings; (e) the term '*proceeding*' would be restricted to the nature of the action that follows it i.e. debt recovery action against assets of the corporate debtor; (f) the use of narrower term "against the corporate debtor" in Section 14(1)(a) as opposed to the wider phrase "by or against the corporate debtor" used in Section 33 (5) of the Code further makes it evident that Section 14(1)(a) is intended to have restrictive meaning and applicability; (g) the Arbitration Act draws a distinction between proceedings under Section 34 (i.e. objections to the award) and under Section 36 (i.e. the enforceability and execution of the award). The proceedings under Section 34 are a step prior to the execution of an award. Only after determination of objections are settled under Section 34, the party may move a step forward to execute such award and in case the objections are settled against the Corporate Debtor, its enforceability against the Corporate Debtor then certainly shall be covered by moratorium of Section 14(1)(a).



Corporate and Commercial

SEBI (Issue and Listing of Debt Securities) (Second Amendment) Regulations, 2017

On December 15, 2017, SEBI issued the SEBI (Issue and Listing of Debt Securities) (Second Amendment) Regulations, 2017. Pursuant to these amendments, the existing definition of the term “debt securities” has been substituted with a new definition. The new definition is as follows:

“debt securities means non-convertible debt securities which create or acknowledge indebtedness and includes debentures, bonds and such other securities of a body corporate or a Trust registered with the Board as a Real Estate Investment Trust or an Infrastructure Investment Trust, or any statutory body constituted by virtue of a legislation, whether constituting a charge on the assets of the body corporate or not, but excludes bonds issued by Government or such other bodies as may be specified by the Board, security receipts and securitized debt instruments”

SEBI issues certain other regulations on Real Estate Investment Trusts (“REIT”) and Infrastructure Investment Trusts (“IIT”)

On December 15, 2017, SEBI issued (i) the SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2017 and (ii) the SEBI (Infrastructure Investment Trusts) (Amendment) Regulations, 2017.

Amongst others, certain highlights of these regulations are as hereunder:

Under the SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2017, the definition of “strategic investor” has been added. Strategic investor has been defined as follows:

- a) an infrastructure finance company registered with the Reserve Bank of India as a Non-Banking Financial Company;
- b) Scheduled Commercial Bank;
- c) multilateral and bilateral development financial institution;
- d) systemically important Non-Banking Financial Company registered with the Reserve Bank of India;
- e) foreign portfolio investor,

who invest, either jointly or severally, not less than 5% of the total offer size of the REIT or such amount as may be

specified by the Board from time to time, subject to the compliance with the applicable provisions, if any, of the Foreign Exchange Management Act, 1999 and the rules or regulations or guidelines made thereunder.

Further, under the SEBI (Infrastructure Investment Trusts) (Amendment) Regulations, 2017, the definition of “valuer” has been substituted to mean any person who is a ‘registered valuer’ under section 247 of the Companies Act, 2013 or as specified by the Board from time to time. Moreover, under these Regulations, an InvIT (Infrastructure Investment Trust), whose units are listed on a recognized stock exchange, has the right to issue debt securities in the manner specified by the Board provided that such debt securities shall be listed on recognized stock exchange(s).

Insurance Regulatory and Development Authority of India (“IRDAI”) issues guidelines regarding PE Fund’s investment in insurance companies

On December 5, 2017 the IRDAI issued guidelines regarding private equity (PE) fund’s investment in insurance companies. With these guidelines, IRDAI has now allowed private equity firms to promote insurance companies. However, there will be a lock-in of five years and the investment by a PE fund can only be done through a special purpose vehicle (SPV). Further, the relevant insurance company would need to comply with the IRDAI guidelines on Indian ownership and control. Further, PE funds should commit that whatever additional capital needs are there, will be fulfilled. As per current regulatory norms, firms holding 10 percent or more in an insurance company are classified as promoters while those holding less than that are called investors.

Insolvency and Bankruptcy Board of India (“IBBI”) has notified the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017

On December 7, 2017 the IBBI notified the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017. These regulations, enable a stakeholder (namely, debtor, creditor, claimant, service provider, resolution applicant or any other person) having an interest in an insolvency resolution, liquidation, voluntary liquidation or bankruptcy transaction to file a grievance or a complaint against a service provider (namely, insolvency professional agency, insolvency professional, insolvency professional entity or information utility). These regulations provide for a transparent procedure for disposal of grievances and complaints by IBBI.



Properties of struck off companies from Register of Companies (“RoC”) can’t be used, operated, transferred or alienated in any manner

On December 22, 2017, the Ministry of Corporate Affairs released an update drawing the attention of all the concerned States and Union Territories (UTs) towards the fact that the assets, properties (movable and/or immovable) etc. of the struck off companies (which ceased to operate as legal entities) cannot be used, operated, transferred or alienated in any manner by the companies including by their ex-directors/ authorised signatories, till they are restored by following the process under Section 252 of the Companies Act, 2013.

Condonation of Delay Scheme 2018

On December 29, 2017, the Ministry of Corporate Affairs issued a circular to introduce a scheme namely “Condonation of Delay Scheme 2018” with a view to give an opportunity to the non-compliant defaulting companies to rectify the defaults. The Scheme has come into force with effect from January 1, 2018 and shall remain in force up to March 31, 2018. This scheme is applicable to all defaulting companies (other than the companies which have been struck off/ whose names have been removed from the register of companies under section 248(5) of the Companies Act, 2013.

Insolvency and Bankruptcy Code (Amendment) Bill, 2017

On January 2, 2018, the Parliament passed the Insolvency and Bankruptcy Code (Amendment) Bill, 2017 (“Bill”) that aims to keep defaulting promoters out of the resolution process of insolvent companies. The Bill was passed by Rajya Sabha amid concerns that the changes could bar genuine domestic investors from the insolvency resolution process, adversely affect micro, small and medium enterprises (MSMEs) and lead to large scale litigation. The Bill, which replaces an ordinance, was earlier passed by the Lok Sabha. The amendments will be notified once the President gives his assent.

Maharashtra enacts a new legislation to govern shops and establishments

The Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 (“Act”) has been brought into force with effect from December 19, 2017. It regulates the employers –employee relationship, the service conditions including the hours of work, payment of wages, overtime, leave, holidays etc.

With the enforcement of the new Act, the erstwhile, Maharashtra Shops and Establishments Act, 1948 stands repealed. The new Act seems to be in consonance with the Model Shops and Establishment (Regulation of Employment and Conditions of Service) Bill, 2016 approved by the Central Government.

The majority of the provisions of the Act apply to establishments employing 10 or more workers. The establishments employing less than 10 workers will only be required to self-certify certain details in terms of the Act. The Act provides liberty to establishments to operate 365 days in a year provided workers are given a weekly off and certain other provisions are complied with. The Act also prescribes different opening and closing hours vide a notification for different categories of establishments, thereby recognising the requirement of flexibility in operational hours depending on the industry needs.

Employer will have to take steps to modify their existing employee handbook, policies and the employment contracts to align them with the provisions of the Act. The employers should also take note that the Act provides for enhanced penalties and stringent punishments for its contravention.

The Government of Maharashtra has taken a remarkable step in the arena of labour law reforms, which is likely to have a positive impact on both the employer and employees across industries.



Projects, Energy and Natural Resources

IRSDC Appointed As Nodal Agency for Station Redevelopment Programme

Indian Railways has decided to appoint its joint venture company Indian Railway Station Development Corp. Ltd (IRSDC) as the nodal agency for its station redevelopment programme, in order to expedite the refurbishing of 400 A1 and A category railway stations. Under the Rs.1 trillion station redevelopment plan, the Indian Railways plan to revamp 400 railway stations by monetizing 2,700 acres of spare railway land. The Railway Board reportedly, decided to appoint IRSDC, a joint-venture firm of Irocon International Ltd and Rail Land Development Authority (RLDA), based on the recommendations of a three-member expert committee. This appointment was made with the objective of smooth and faster implementation of station redevelopment as IRSDC's model projects like Habibganj, Gandhinagar and Surat have shown remarkable results. The committee said in future, the mode of implementation of new railway station projects should be at the discretion of IRSDC, while existing projects should also be brought within its ambit for monitoring purposes. It said the company had vast experience of station redevelopment planning, execution and monitoring, which is not available with other departments and officers of the railway ministry.

Indian Railway Finance Corporation (IRFC) lists its first green bond on the London Stock Exchange

Indian Railway Finance Corporation (IRFC) listed its first green bond on the London Stock Exchange with an aim to finance infrastructure for dedicated freight corridors and passenger transport in India.

Indian Railway Finance Corporation (IRFC) was set up in 1986 as the dedicated financing arm of the Indian Railways for mobilising funds from domestic and overseas Capital Markets.

The 10-year dated green bond raised USD 500 million with an annual yield of 3.835 per cent as it listed on the London Stock Exchange (LSE)'s new International Securities Market (ISM).

The bond, the proceeds of which are aimed at financing or refinancing infrastructure for dedicated freight railway lines and public passenger transport in India, was more than three times oversubscribed as it received strong international investor support.

Solar Power Projects Planned on Dams

The Maharashtra State Power Generation Company Limited (MahaGenCo) is planning to develop solar power projects on dams in its first such attempt in the state. These floating solar panels will do away with the need for the state-owned utility to acquire land to add capacity to its renewable energy portfolio and also reduce the evaporation of water from these reservoirs.

The MahaGenCo plans to develop solar power worth 250 MW capacity through this route. The projects are likely to be set up in the public private partnership (PPP) route through tariff-based competitive bidding. The MahaGenCo is also considering some dams owned by the water resources department, including those in Vidarbha and the Ujani dam at Solapur, for adding solar power capacity. The new renewable energy policy approved by the state government aims at creating 14,400 MW of fresh grid-connected installed capacity in the sector by 2020.

Reliance Infrastructure sells its Mumbai Power Business to Adani Transmission

Reliance Infrastructure has completed selling off its Mumbai power business to Adani Transmission for a total consideration of Rs 18,800 crore.

Reliance Infrastructure (RInfra) recently announced the signing of a Definitive Binding Agreement with Adani Transmission (ATL) for 100 per cent stake sale of its Mumbai power business, which includes integrated business of generation, transmission and distribution of power.

According to the company statement, the deal value is at Rs 13,251 crore. This comprises business valued at Rs 12,101 crore and regulatory assets approved so far of Rs 1,150 crore. Regulatory assets under approval estimated at Rs 5,000 crore and net working capital on closing pegged at Rs 550 crore will flow directly to RInfra.

The company said the total consideration is estimated at Rs 18,800 crore. RInfra will utilise the proceeds of this transformative transaction entirely to reduce its debt, becoming debt free and garnering up to Rs 3,000 crore as cash surplus.



IP Updates

Injunction refused to Bookmyshow

The judgment deals with a suit filed in the Delhi High Court ("Court") by Bigtree Entertainment Private Limited (the "Plaintiff") for a permanent injunction against Brain Seed Sportainment Private Limited (the "Defendant"), to restrain the Defendant from using the mark "BOOKMYSPO RTS" and/or any prefix "BOOKMY". The Plaintiff is the registered proprietor of several trademarks for "BOOKMYSHOW" and "BOOKMY" word mark and logos under Classes 41 and 42. The Plaintiff contended that the prefix "BOOKMY" in itself has developed distinctiveness due to its performance in the ticketing industry, wide publicity being associated with the Plaintiff. The high standards of performance in the Plaintiff's business and professionalism have attributed a secondary meaning to the prefix, associating it exclusively with their business.

This suit was filed by the Plaintiff against the Defendant when the Defendant launched an online ticketing business, on the platform www.bookmysports.com, which the Plaintiff claimed to have infringed its aforesaid trademark. The Plaintiff claimed that the Defendant's trademark was deceptively similar to the Plaintiff's trademark which would mislead prospective clients of the Plaintiff and thereby infringing and passing off of the Plaintiff's trademarks. The Plaintiff further accepted that the trademark on the prefix "BOOKMY" has not been registered, and it is not the words "BOOK", "MY" and "SHOW" in isolation, but the interplay of these words which gives its trademark distinctiveness.

The Defendant has inter alia objected to various averments of the Plaintiff in the plaint including concealing a contrary stand taken in other proceedings; falsely pleading to be the exclusive user and adopter of the mark BOOKMY/BOOKMYSHOW; concealing third party prior use and registrations; concealing and misrepresenting the cause of action and concealing oppositions filed against the Plaintiff's trademark. Further, the Defendant stated that the Plaintiff had admitted to the Registrar of Trademarks in a letter that the Defendant's trademark i.e. "BOOKMYSPO RTS" is dissimilar and distinct from the Plaintiff's trademark. The Defendant has also stated that their domain of activity differs from that of the Plaintiff except that both facilitate online bookings. The Defendant also submitted that the trademark is visually, structurally and conceptually different from the Plaintiff's trademark and therefore it would not cause deception or confusion with the Plaintiff's mark.

The Defendant referred to Section 17(1) of the Trade marks Act, 1999 ("TM Act") which specifies that when a trademark contains 'several matters', the exclusivity attaches to the

mark 'taken as a whole'. The Plaintiff further placed reliance on Section 17(2) of the TM Act states that the registration of a trademark shall not confer any exclusive rights in the matter forming only a part of the whole of trademark so registered unless the part is the subject matter of a separate application for registration or is separately registered or is distinctive. The Plaintiff has stated that a separate application for registration of the word mark "BOOKMY" has been filed. For determining whether the prefix "BOOKMY" amounts to infringement and/or passing off of the Plaintiff's mark, the Court assessed whether the prefix is a descriptive phrase or an inventive phrase. To determine this, the court analysed a few judgments.

In J.R Kapoor vs. Micronix India, it was held that a word which is descriptive of the industry/market in which the parties operate cannot be deemed to be invented. In F. Hoffmann-La Roche and Co. Ltd. vs. Geoffrey Manners and Co. Private Ltd., the Supreme Court applied the principle of characteristics of the market as a test to determine the above question and held that words which are descriptive of a particular industry cannot be deemed to be invented. In P.P. Jewellers Pvt. Ltd vs. P.P. Buildwell Pvt. Ltd., the courts held that the existence of other companies bearing the prefix in question may itself suggest that the word is descriptive rather than distinctive.

Applying the above precedents to the present case, the Court held that since there is evidence of prefixes of "BOOKMY" existing in the market even before the Plaintiff's website's existence, it indicates that the prefix is a descriptive one. Further, on the Plaintiff's contention that the flourishing business of the Plaintiff has accorded the prefix "BOOKMY" with a secondary meaning, the Court referred to the judgement passed in P.P. Jewellers Pvt. Ltd vs. P.P. Buildwell Pvt. Ltd. which considered the question of whether goodwill attached to a complete trademark carries over to a part of the trademark. The court in the aforementioned matter held that merely because a company has attained goodwill attached to its business, it cannot restrain others from using a part of the trademark.

The Court held that the Plaintiff has not provided any evidence suggesting that the prefix "BOOKMY" is only associated in the minds of the public with the Plaintiff's business and therefore the prefix has acquired a secondary meaning and distinctiveness. The Court further held that as the words "BOOKMY" are descriptive in nature, the Plaintiff's trademark "BOOKMYSHOW" has not acquired a distinctive meaning. In view of the foregoing the Court dismissed the application of the Plaintiff for grant of injunction against the Defendant.



Banking and Project Finance

Refinancing of External Commercial Borrowings (“ECB”)

The Reserve Bank of India (“RBI”) has issued a notification dated January 04, 2018, pursuant to which it has permitted the overseas branches/subsidiaries of Indian banks to refinance ECBs of highly rated (AAA) corporates as well as Navratna and Maharatna PSUs, provided the outstanding maturity of the original borrowing is not reduced and all-in-cost of fresh ECB is lower than the existing ECB. Further, the RBI has also permitted partial refinancing of existing ECBs subject to same conditions.

Submission of Financial Information to Information Utilities

The RBI has issued notification dated December 19, 2017 regarding submission of financial information by financial creditors under section 215 of Insolvency and Bankruptcy Code, 2016 (“IBC”). Section 215 of IBC states that a financial creditor is required to submit financial information and information relating to assets in relation to which any security interest has been created to an Information Utility (IU).

The Insolvency and Bankruptcy Board of India has registered National E-Governance Services Limited (“NeSL”) as the first IU on September 25, 2017. All financial creditors regulated by RBI are advised vide this notification to adhere to the relevant provisions of IBC and regulations thereunder regarding submission of financial information to the IU and immediately put in place appropriate systems and procedures to ensure compliance to the provisions of IBC.

Settlement of Agency Transactions

As per the existing arrangements in certain states, in certain cases, some agency banks are routing their agency transactions of state governments through another agency bank, that acts as an aggregator, that in turn settles these agency transactions with concerned Regional Office of RBI for both receipts and payments. In such scenario, both agency bank acting as aggregator and other agency bank share the eligible agency commission on such transactions.

The RBI has issued a notification dated December 07, 2017, pursuant to which it has decided that all agency banks should settle their agency transactions for both funds and agency commission directly with the concerned Regional Office of RBI instead of routing them through any other agency bank that acts as aggregator in certain cases. It effectively makes all agency banks to report government receipts directly to RBI instead of reporting them through any other agency bank.

Rationalization of Merchant Discount Rate (“MDR”) for Debit Card Transactions

The Reserve Bank of India (“RBI”) has issued notification dated December 06, 2017, pursuant to which it has issued maximum MDR for debit card transactions.

The maximum MDR for debit card transactions is as under:

S. No	Merchant Category	MDR for debit card transactions (as a % of transaction value)	
		Physical POS infrastructure including online card transactions	QR code-based card acceptance infrastructure
1.	Small merchant (with turnover upto INR 20 lakh during the previous financial year)	Not exceeding 0.40% (MDR cap of INR 200 per transaction)	Not exceeding 0.30% (MDR cap of INR 200 per transaction)
2.	Other merchant (with turnover above INR 20 lakh during the previous financial year)	Not exceeding 0.90% (MDR cap of INR 1000 per transaction)	Not exceeding 0.80% (MDR cap of INR 1000 per transaction)

Offbeat

Why so serious!



Q: Why are lawyers like nuclear weapons?

A: If one side has one, the other side has to get one



A man called his lawyer and asked him, "How much would you charge for answering three simple questions?" Lawyer said, "Five thousand dollars."

He said, "Five thousand dollars! That's very expensive isn't it?"

Lawyer said, "Yes, it is. Now, what's your third question?"

A paralegal, an associate, and a partner of a prestigious law firm are walking through a city park and they find an antique oil lamp. They rub it and a Genie comes out in a puff of smoke. The Genie says, "I usually only grant three wishes, so I'll give each of you one." "Me first!" says the paralegal. "I want to be in the Bahamas, driving a speedboat with Tom Cruise." Poof! She's gone. "Me next!" says the associate. "I want to be in Hawaii, relaxing on the beach." Poof! He's gone too. "You're next," the Genie says to the partner. The partner says: "I want those two back in the office after lunch."

A defendant isn't happy with how things are going in court, so he gives the judge a hard time.

Judge: "Where do you work?"

Defendant: "Here and there."

Judge: "What do you do for a living?"

Defendant: "This and that."

Judge: "Take him away."

Defendant: "Wait; when will I get out?"

Judge: "Sooner or later."

A lawyer opened the door of his BMW, when suddenly a car came along and hit the door, ripping it off completely. When the police arrived at the scene, the lawyer was complaining bitterly about the damage to his precious BMW.

"Officer, look what they've done to my Beeeemer!!!!", he whined.

"You lawyers are so materialistic, you make me sick!!!" retorted the officer, "You're so worried about your stupid BMW, that you didn't even notice that your left arm was ripped off!!!"

"Oh my god!! replied the lawyer, finally noticing the bloody left shoulder where his arm once was, "Where's my Rolex???!!!!!"

A lawyer dies and goes to Heaven. "There must be some mistake," the lawyer argues. "I'm too young to die. I'm only 55."

"Fifty-five?" says Saint Peter. "No, according to our calculations, you're 82."

"How'd you get that?" the lawyer asks.

Answers St. Peter, "We added up your time sheets."



One day in Contract Law class, the professor asked one of his better students, "Now if you were to give someone an orange, how would you go about it?"

The student replied, "Here's an orange."

The professor was livid. "No! No! Think like a lawyer!"

The student then recited, "Okay, I'd tell him, 'I hereby give and convey to you all and singular, my estate and interests, rights, claim, title, claim and advantages of and in, said orange, together with all its rind, juice, pulp, and seeds, and all rights and advantages with full power to bite, cut, freeze and otherwise eat, the same, or give the same away with and without the pulp, juice, rind and seeds, anything herein before or hereinafter or in any deed, or deeds, instruments of whatever nature or kind whatsoever to the contrary in anywise notwithstanding...'"



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