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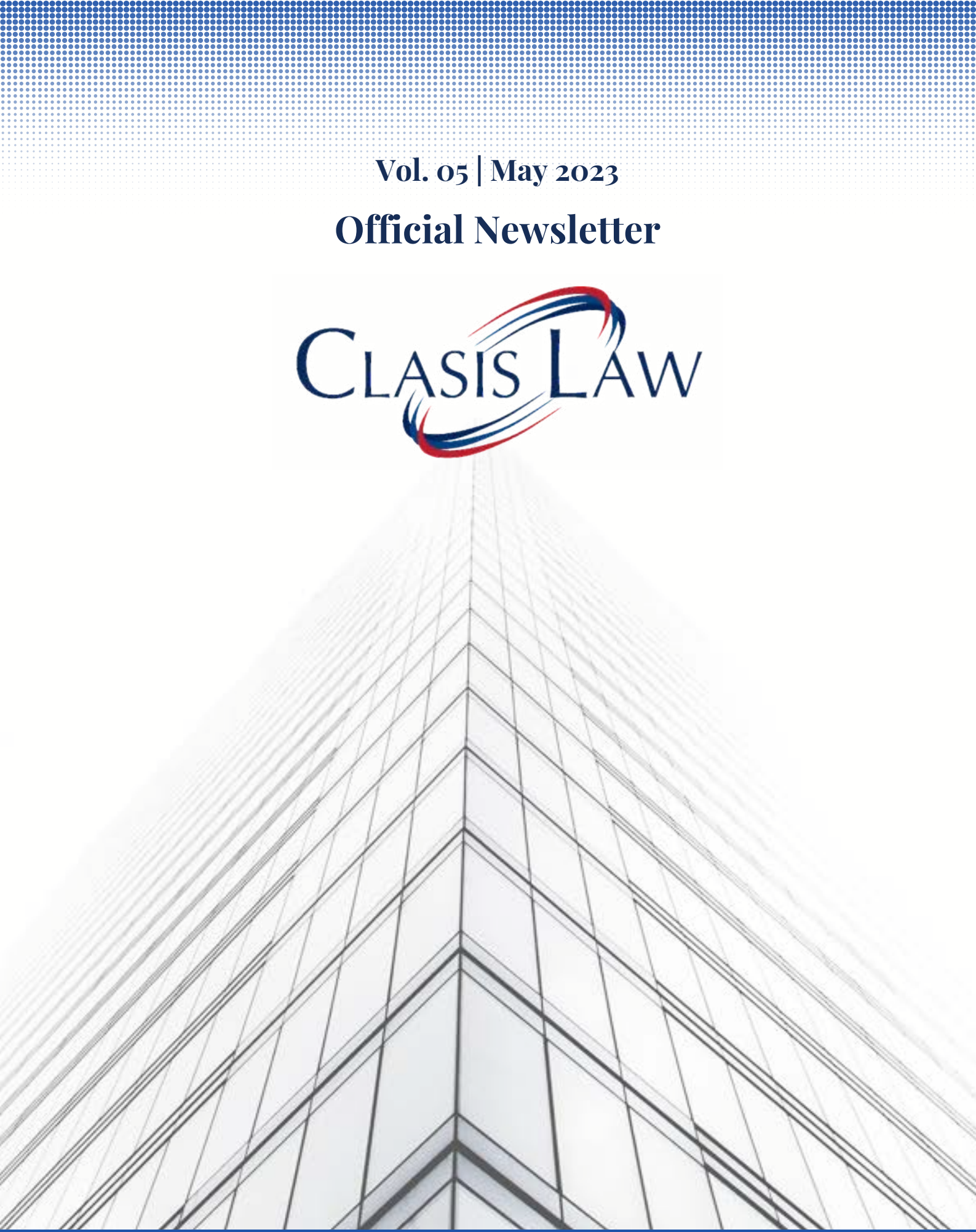
Official Newsletter

CLASIS LAW



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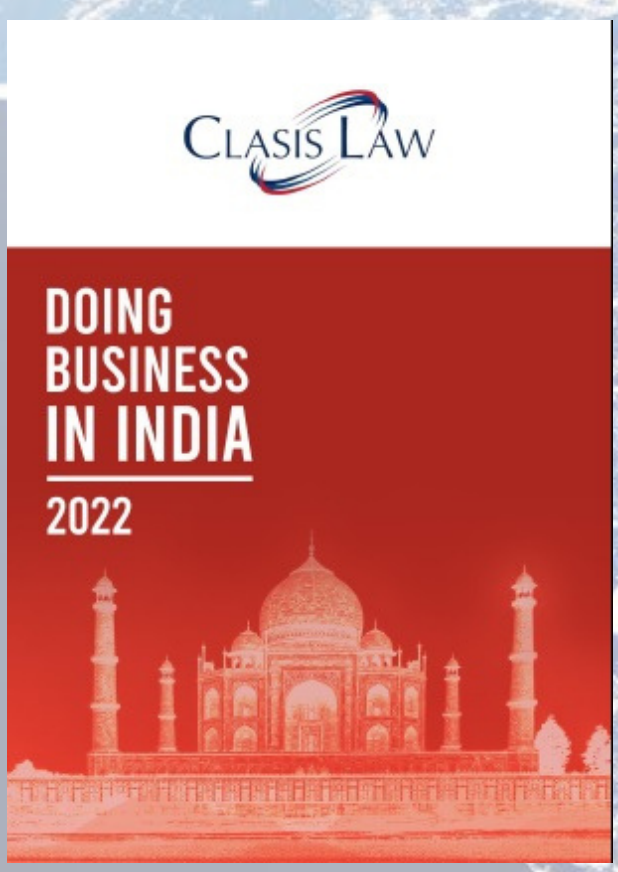
CLASIS LAW

DOING BUSINESS IN INDIA

We are pleased to share the
Fourth Edition of our guide titled
"Doing Business in India".
The guide intends to give the reader an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.



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GUEST ARTICLE

EXPEDITION OF ARBITRATION IN INDIA

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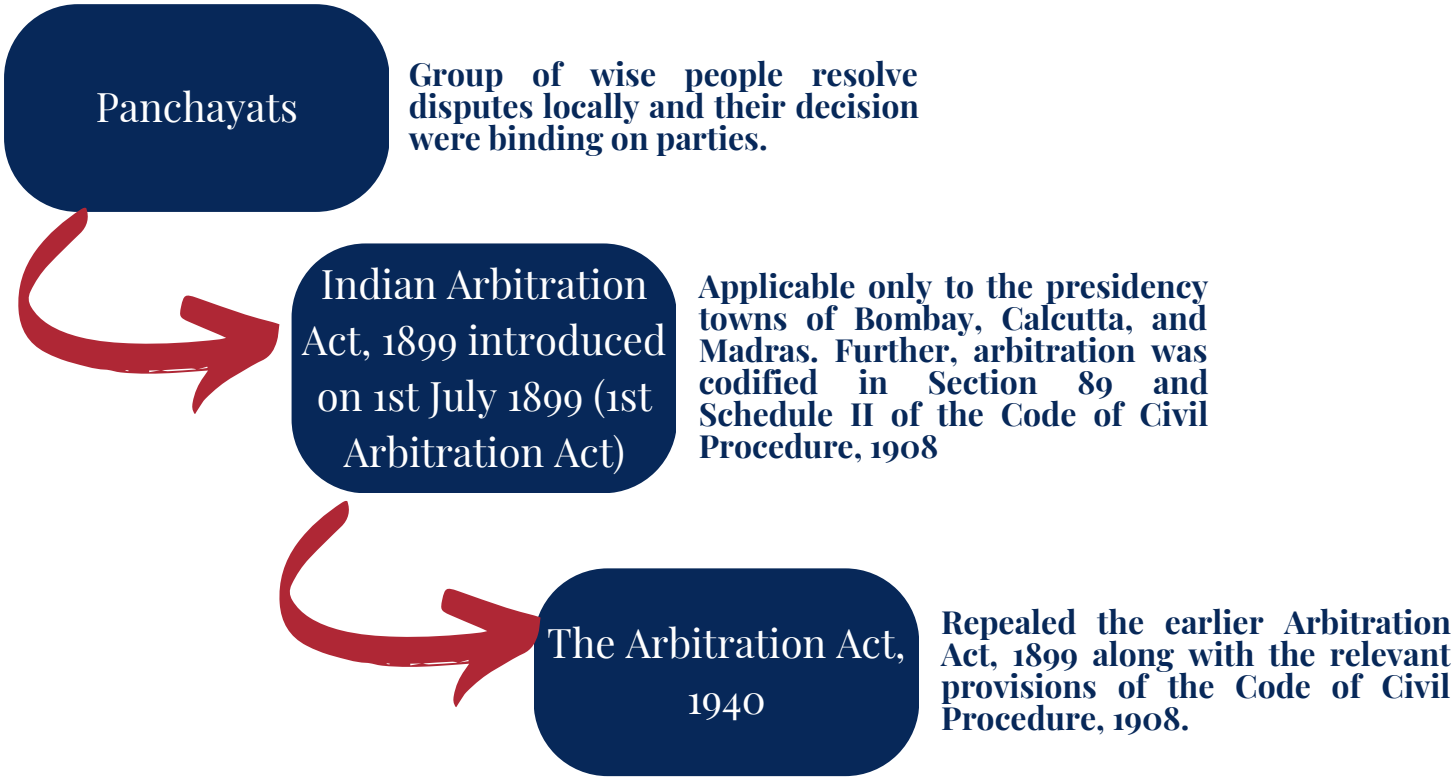
Introduction

Oxford Dictionary defines Arbitration as settlement of disputes. Arbitration is a process of resolution of disputes between the parties by one or more arbitrators who make a binding decision on the dispute (called as "award"). Arbitration and Conciliation Act, 1996 defines Arbitration as any arbitration whether or not administered by permanent arbitral institution.

Evolution of the Arbitration Laws in India

Below diagram states how the Arbitration Laws were grown and updated in India:



GUEST ARTICLE

Arbitration and Concilliation Act, 1996

Based on UNCITRAL Model Law on International Commercial Arbitration, 1985, and covered both domestic and international arbitration

The Arbitration and Conciliation (Amendment) Act, 2015

Correct the defects of the earlier law and also to make the law in line with the other foreign arbitration laws

The Arbitration and Conciliation (Amendment) Act, 2019

Implementation of an effective arbitration structure, promote institutional arbitration, and to resolve some uncertainties resulting from the 2015 amendment

The Arbitration and Conciliation (Amendment) Ordinance, 2020

Provided additional grounds for an unconditional stay on enforcement only if the seat of arbitration is within India. Replaced Schedule 8 with regulations governing Arbitration

The Arbitration and Conciliation (Amendment) Act, 2019

Adding provision for domestic and international arbitration and the laws for conciliation proceedings

Types of disputes under the scope of Arbitration

Following are the types of disputes that can be settled by way of Arbitration:

- Commercial disputes involving business disputes, consumer transactions, boundary disputes and tortious claims.
- Disputes regarding IPR matters, with respect to copyright and trademark infringement which involves passing off claims.
- Civil/quasi-civil disputes.

GUEST ARTICLE

In the case of *Bharat Heavy Electricals Pvt. Ltd. v. Assam State Electricity*, the Court has given the following guidelines in respect of tortious arbitrable claims:

- Claims which are dependable on scope and subject related to the arbitration clause.
- A claim, which lies in tort, shall be arbitrable if it arises out of, or is related to, the contract or is consequential upon any breach thereof.
- If within a contract the claims are connected.
- The nature of claims depends on the arbitrability of claims.
- Claims arising out of the contract are still subject to an arbitration agreement if there is a close connection between claim and transaction.
- The language of the arbitration clause is interpreted in every case to determine whether the claims are direct and interactable.

The Supreme Court of India has listed certain disputes non-arbitrable namely:

- Disputes relating to rights and liabilities which arise out of or give rise to criminal offences.
- Matters of guardianship.
- Matrimonial disputes such as divorce, judicial separation, restitution of conjugal rights and child custody.
- Winding up and insolvency.
- Matters of testamentary like grant of probate, letters of administration and succession of certificates.
- Disputes regarding trust deeds involving trust, trustees and beneficiaries.
- Matters of tenancy and eviction which are dealt with within the special provisions of a particular statute and have exclusive jurisdiction.

Pros and cons of Arbitration

Pros:

- As the parties mutually appoint arbitrator, the proceedings lead to fair outcome
- Arbitration proceedings have a quicker turnround than normal court proceedings
- The cost of arbitration is much cheaper as the parties split the cost of arbitrator appointment.

GUEST ARTICLE

Pros and cons of Arbitration

Pros:

- As the arbitration proceedings happen privately between parties unlike trial, the confidentiality of proceedings remains.
- The procedure is simpler than that of trial.
- Arbitration often results in an agreeable outcome, as parties are encouraged to come up with a solution together.
- Apart from otherwise as stated in Section 37 of the Arbitration and Conciliation Act, 1996 (as amended), the arbitration decision is final.

Cons:

- The proceedings generally involve documents and not witnesses disabling the right to cross-examine.
- There are no set standards for arbitration, making it difficult to find consistency.
- It is possible that an arbitrator can be biased.
- The procedure is not viable in disputes involving multiple parties.
- Because arbitration is not evidence-based, it might lead to wrong legal decision.

Arbitration basic characteristics

- Arbitration should be mutually agreed by parties either by the way of a separate agreement or inserting an arbitration clause in agreement. The venue, place, language, nationality of arbitrator and law applicability are important elements to arbitration which also need to mutually agreed by the parties.
- The proceedings should be neutral whether it is domestic or international arbitration.
- The parties have a right to mutually appoint an arbitrator of their choice and determine the number of arbitrators.
- Arbitration proceedings should be confidential
- Arbitral award is the final decision taken by the arbitrator(s) on a dispute.

Types of Arbitration

- Domestic arbitration – It means that the proceedings of arbitration will take place as per Indian laws and be subject to Indian jurisdiction.

Types of Arbitration

- International and commercial arbitration – This is done in cases involving disputes out of a legal relationship where one of the parties is a foreign national, body corporate in some other country, a company or group which is under the control of some other country and government of a foreign country.
- Institutional arbitration – It is administered by arbitration institutions like the Indian Council of Arbitration, the International Centre for Alternative Dispute Resolution (ICADR) etc.
- Statutory arbitration – some acts provide for the resolution of disputes by arbitration. In case there is any inconsistency between any Act and Part I of the Arbitration and Conciliation Act, 1996 (as amended) then the provisions given in that Act will prevail.
- Ad hoc arbitration – It means an arbitration where parties agree without any assistance from the Arbitral tribunal.
- Fast track arbitration – It is also called documentary arbitration. The arbitration proceedings are very fast and time-saving. It is solely based on the claim statement by one party and its written reply by another.
- Look–sniff arbitration – It is a combination of an arbitral process and the opinion of an expert. There are no formal submissions and hearings under this.
- Flip–flop arbitration – It is also called pendulum arbitration. The parties in this type of arbitration create the cases before and then invite the arbitrator to decide any one of the two options.

Types of arbitral awards

- Interim award – As the name says it is a temporary award and is subject to the final award.
- Additional award – According to Section 33 of the Arbitration and Conciliation Act, 1996 (as amended), if the parties find that certain claims have been missed out by the arbitral tribunal and they were present in the proceedings then it can after notifying other parties, make a request to the arbitral tribunal to make an additional award and cover the claims which have been left.
- Settlement awards – As per Section 30 of the Arbitration and Conciliation Act, 1996 (as amended), the arbitral tribunal may use any method of dispute resolution like mediation, conciliation or negotiation to bring a settlement between the parties.
- Final award – It is conclusive and binding award unless set aside by courts.

GUEST ARTICLE

Arbitration Agreement

Having an arbitration agreement/arbitration clause in the contract is mandatory for going ahead with arbitration proceedings.

In case of *Vidya Drolia v. Durga Trading Corporation (2019)*, Supreme Court held that allegations of fraud alone are not adequate grounds for courts to deny the parties to the arbitration. It further added that allegations of fraud can be grounds to refuse reference to arbitration, only where the arbitration clause/agreement itself doesn't exist and if the allegations are made against the state/state institutions, thereby requiring public inquiry.

In case of *MM Aqua Technologies Ltd v. Wig Brothers Builders Ltd (2001)*, it was upheld that the since there was no arbitration agreement between the parties, jurisdiction of the judge arises from an existing arbitration agreement, the clauses of the contract between them will not in any way be binding on the Petitioner. It was also held that if the Petitioner is unable to raise any dispute regarding the obligations which the Respondents have entered into amongst themselves, then there is a lack of a dispute being referred to the arbitrator. Therefore, the question of appointing the arbitrator does not arise as there is no arbitration agreement between the Petitioner and the second Respondent.

The essential elements for an arbitration agreement were underlined in the case *Jayant N.Seth Vs Gyaneshwar Apartment Cooperative Housing Society Ltd., (1998)*.

The Petitioner filed an application under sub-section (4) of Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator to settle the disputes between the Petitioner and the Respondent housing society. In this case, the Bombay High Court said that Section 2(1)(b) read with Section 7 of the Arbitration and Conciliation Act, 1996 has provisions for the essential ingredients of an arbitration agreement and it is as follows:

- The parties should have entered into a valid and binding agreement.
- Such an agreement can be entered as a clause in a contract or in a separate agreement.
- Such an agreement should be in writing if it is mentioned in a document and signed by the parties.

- The agreement could be in the form of letters that were exchanged between the parties, telexes, telegrams or any other means of telecommunication that provides a record/proof of the agreement. If the contract to a document contains an arbitration clause, then it also becomes an arbitration agreement, but the contract should be in writing and should make reference that the arbitration clause is part of the contract.
- Parties should show their intention to refer present or future disputes to arbitration.
- The dispute to be referred to an arbitrator should be regarding a defined legal relationship, whether contractual or not.

Further, the arbitration agreement should be properly stamped. In a matter of *NN Global Mercantile Pvt Ltd v Indo Unique Flame Pvt Ltd*, a Constitution Bench of the Supreme Court of India on 25 April 2023 held by a 3:2 majority, that unstamped arbitration agreements are not valid in law. This means that contracts who have arbitration clause and if they are not stamped/insufficiently stamp will not be considered valid and enforceable.

Appeal/setting aside of Award

Section 34(2) of the Arbitration and Conciliation Act, 1996 (as amended) defines grounds on which the Award can be set aside by the Court which are hereunder:

- the party was under some incapacity; or;
- the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or;
- the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or;
- the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matter beyond the scope of the submission to arbitration; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or failing any such agreement, was not in accordance with Part I of the Act.

An arbitral award may also be set aside if the court finds that (i) the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force or (ii) the arbitral award is in conflict with the public policy of India.

In addition to the above, an arbitral award arising out of arbitrations other than international commercial arbitrations may be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award
Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence. Appeal shall also lie to a court from an order of the arbitral tribunal on following grounds:

(a) accepting the plea referred to in sub-section (2) [arbitral tribunal does not have jurisdiction] or sub-section (3) [arbitral tribunal is exceeding the scope of its authority] of section 16 Arbitration and Conciliation Act, 1996 (as amended); or
(b) granting or refusing to grant an interim measure under section 17 Arbitration and Conciliation Act, 1996 (as amended).

An appeal may lie under section 37 of the Arbitration and Conciliation Act, 1996 (as amended) from an order setting aside or refusing to set aside an arbitral award under section 34. Significantly, no second appeal lies from an order passed in appeal under section 37; however, nothing prevents a party from approaching the Supreme Court by way of a Special Leave Petition under article 136 of the Constitution of India.

Powers of Arbitrators

The Arbitration and Conciliation Act, 1996 (as amended), gives the arbitrators a set of wide-ranging powers to conduct the arbitration proceedings. These include:

- The power to rule on the jurisdiction
- Rule on the validity of the arbitration agreement
- Pass interim measures (Section 17)
- Decide on the admissibility and influence of the evidence presented
- Power to proceed ex-parte (Section 25)
- Settle the dispute based on merits keeping in mind the governing law, determine the rules of procedure, and terms of the contract (Section 19)
- Power to appoint experts (Section 26)
- Support settlement even through other methods such as conciliation
- Determine and apportion the costs of the arbitration between the parties
- Deliver a reasoned and just award and a duty to interpret or correct the award (Section 33)

International Arbitration

Foreign awards are granted in foreign countries for any dispute referred to arbitration in international cases and are enforceable in India under the Act. It is divided into two chapters under the Arbitration and Conciliation Act, 1996 (as amended):

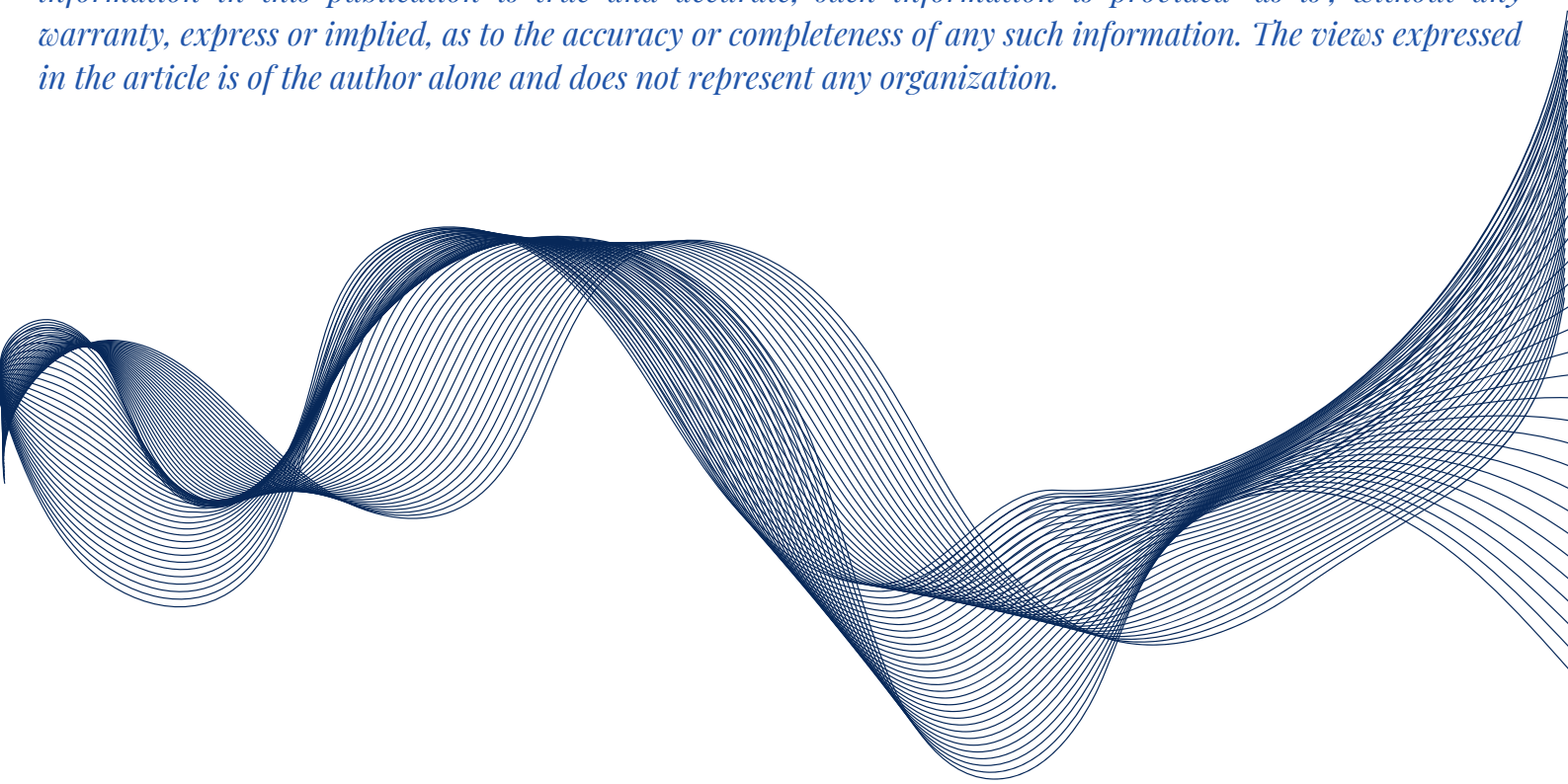
- The New York Convention
- The Geneva Convention

Conclusion

Arbitration is effective method of alternate dispute resolution. It is flexible and growing trend in the business and industry to resolve disputes amicably and should be first recourse for dispute resolution.

Disclaimer

This article 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. This publication has been prepared for information purposes only and should not be construed as a legal advice. Although reasonable care has been taken to ensure that the information in this publication is true and accurate, such information is provided 'as is', without any warranty, express or implied, as to the accuracy or completeness of any such information. The views expressed in the article is of the author alone and does not represent any organization.



LEGAL UPDATE

Arbitrator cannot go beyond the contract and award interest

Introduction

In a recent judgment***(1)***, the Hon'ble Delhi High Court **("High Court")** has held that when an agreement specifies **'no interest rate to be granted'**, the arbitrator does not have the power to go beyond the contract and award interest.

Facts

In November, 1981, the Petitioner *(Tehri Hydro Development Corporation India Limited)* entered into an agreement with the Respondent *(M/s C.E.C. Limited)* for construction of four circular head race tunnels leading to bottoms of four underground surge tanks for the underground powerhouse of Tehri Dam Project. A Notice of commencement of work was issued by the Petitioner to the Respondent on November 28, 1981. The Respondent, vide letter dated September 19, 1987 raised a claim for INR 568.4 Lakhs which was rejected by engineer-in-chief. Therefore, the Respondent/Claimant invoked arbitration. Initially, a panel of three (3) arbitrators was appointed. However, the constitution of the arbitrators was changed on several occasions due to the death of arbitrators. Eventually, a sole arbitrator was appointed and an award dated August 4, 2020 **("impugned award")** came to be passed against Petitioner herein. Feeling aggrieved, the Petitioner challenged the impugned award under section 34 of the Arbitration and Conciliation Act, 1996 **("Arbitration Act")** before the High Court.

Analysis & Findings

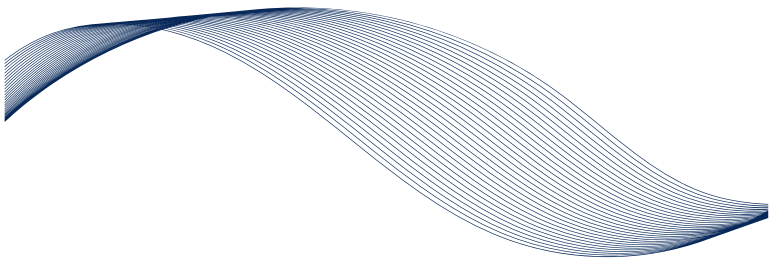
Before the High Court, the Petitioner essentially argued that the award was patently illegal and went against the fundamental policy of Indian Law on several grounds. Amongst the other grounds, the Petitioner had also argued that the Sole Arbitrator had wrongly interpreted Section 31(7)(a) of the Arbitration Act in awarding interest of 14% to the Respondent even though the agreement stipulated that no interest was payable. The Petitioner argued that the terms of agreement with regard to the recovery of the principal amount and the interest accrued thereon had been completely ignored by the Sole Arbitrator. While deciding on this issue, the High Court observed that Section 31(7)(a) of the Arbitration Act was applicable only where there was no previous agreement as to the rate of interest to be awarded. Section 31(7)(a) of the Arbitration Act is treated as a provision of a right to claim interest without reference to any other statute or contractual provision or custom or usage. While deciding this issue, the High Court relied on several judgments passed by the Hon'ble Supreme Court of India **("Supreme Court")**. The High Court relied on the judgment of the Supreme Court in ***Rajasthan state Mines and Minerals Limited v. Eastern Engineering Enterprises(2)***, wherein it had explained the primacy of agreement over the powers of Arbitral Tribunal regarding rate of interest of an Arbitral Award. It was held that an Arbitral Tribunal cannot award an amount which is ruled out or prohibited by the terms of the Agreement.

The High also considered the judgment in ***Associate Engineering Company v. Govt. of Andhra Pradesh and others(3)***, wherein the Supreme Court had held that the Arbitrator could not act arbitrarily, irrationally, capriciously or independently of the Contract. An Arbitrator who acts in manifest disregard of the Contract acts without jurisdiction. Additionally, the High Court also relied upon ***Indian Oil Corp. Ltd. v. Shree Ganesh Petroleum(4)***, wherein the Supreme Court reiterated that an award is said to be patently illegal where the Arbitral tribunal has failed to act within the terms of the contract or ignored the specific terms of the contract. Further, the High Court considered the judgment in ***PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust(5)***, wherein it had been held that the role of the Arbitrator was to arbitrate within the terms of the Contract. He had no power apart from what the parties had given him under the Contract. If he has travelled beyond the Contract, he would be acting without jurisdiction. In ***Executive Engineer v. Gokul Chandra Kanungo(6)***, the Supreme Court held "When a discretion is vested to an Arbitral Tribunal to Award interest at a rate which it deems reasonable, then a duty would be cast upon the Arbitral Tribunal to give reasons as to how it deems the rate of interest to be reasonable.". In ***Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.(7)***, wherein the Supreme Court had held on the similar lines that the discretion of the Arbitrator to award interest must be exercised reasonably. The High Court also took note of ***ONGC Ltd. v. Saw Pipes Ltd.(8)*** wherein the Supreme Court had held that Arbitration Award contrary to substantive provisions of law, or provisions of the 1996 Act or against the terms of the Contract, or public policy, would be patently Illegal. While considering the ambit of court to modify the award, in the case of ***NHAI v. M. Hakeem(9)***, the Supreme Court held that the power of the court under Section 34 of the Arbitration Act to "set aside" the Arbitral Award does not include the power to modify such an award. Thus, the High Court observed that the courts have no Power to modify the rate of interest.

Based upon the facts of the case and the aforementioned judgments, the High Court concluded that arbitrator had erred in decreeing the award with reference to the rate of interest by granting an interest at the rate of 14%, when it was expressly stipulated and agreed upon by the parties in the Agreement that no interest shall be granted. The High Court noted that this takes away the power of the arbitrator to deviate and grant his own rate of interest.

Conclusion

After examining pleadings and the relevant judicial precedents, while the High Court did not accept the other arguments raised by the Petitioner, it held that there appeared to be a patent illegality in the impugned award in relation to the grant of interest. Therefore, the impugned award was set aside to the limited extent of rate of interest and the petition was accordingly disposed of.



Footnotes

1. Tehri Hydro Development Corporation India Limited vs. C.E.C Limited 2023 SCC OnLine Del 2354
2. (1999) 9 SCC 283
3. (1991) 4 SCC 93
4. (2022) 4 SCC 463
5. (2021) 18 SCC 716
6. 2022 SCC OnLine SC 1336,
7. (2019) 11 SCC 465
8. [(2003) 5 SCC 705,
9. (2021) 9 SCC 1

Radio channels cannot broadcast music without payment of Equal Royalty to Authors

Introduction

In a latest development, the Hon'ble High Court of Bombay **("Court")** prohibited two radio stations from broadcasting music composed/authored by members of the Indian Performing Rights Society (**"IPRS")** without paying commensurate royalties to the respective original authors.***(1)***

Facts

The Plaintiff i.e., IPRS is a company that protects and enforces the rights, interests and privileges of its members who are authors, composers and publishers, particularly in literary and musical works. The Defendant in the first suit(2), i.e., Rajasthan Patrika Private Limited **("RPPL")**, is engaged in the business of operating FM Radio Broadcast Channels, including the channel 'Radio Tadka'. The Defendant in the second suit(3), i.e., Music Broadcast Private Limited **("MBPL")** is engaged in a similar business operates 'Radio City FM' and entered into a licence agreement with IPRS on 11.06.2001 for utilization of literary and musical works of IPRS for broadcast. RPPL had also entered into a similar agreement on 17.07.2006 with IPRS. On August 25, 2010, the erstwhile Copyright Board of India set a compulsory licence fee to be paid by the radio broadcasters in a proceeding under Section 31(b) of the Copyright Act **("the Act")**, to which the Defendants were parties. The same expired on 30.09.2020. In the meantime, the Copyright (Amendment) Bill, 2010 was placed before the Parliament which proposed amendments to Sections 17, 18, 19 and 33 of the Act. Eventually, amendments were brought into effect from 21.06.2012 **("2012 amendments")**. Sometime in 2011, the Court decreed a Suit between MBPL and IPRS***(5)***, holding that the authors of the underlying literary and musical works embodied in sound recordings had no right to interfere with the rights of owners of such sound recordings to communicate the same to the public, including by broadcast through their radio stations. The Court had relied on the judgment in *Indian Performing Rights Society (IPRS) vs Eastern Indian Motion Pictures Association and Others****(6)*** wherein the Hon'ble Supreme Court taking into consideration the Act prior to amendment, asserted that the original authors who have assigned their work to a producer of a cinematograph film, could no longer claim any right from the said producer. On 06.09.2021, the Defendants herein sought revision of their statutory licence rates and an order of status quo from the Intellectual Property Division of the Delhi High Court **("IPD Delhi")**. On 27.09.2021, IPD Delhi passed an interim order of status quo, but clarified that IPRS would be within its rights to avail remedies available in law if the Defendants were non-compliant. Under these circumstances, IPRS hired services of 'AirCheck', a company, to procure data of the songs of IPRS members/authors played by the radio stations of the Defendants. This revealed a large number of music playouts by the Defendants. IPRS also recorded the said broadcasted songs. Thereafter, on 06.10.2021, IPD Delhi directed issuance of two public notices for underlying literary and musical works and for sound recordings. It is in this backdrop that suits came to be filed in March and December 2022 before the Court.

In the present suits, IPRS had also filed an application for interim relief against the Defendants inter-alia seeking grant of interim injunction restraining the Defendants from using and/or engaging themselves or by authorization, of the Plaintiff's repertoire of literary and musical work in any form or manner without making payment of royalty as per the tariff of the Plaintiff.

Contentions of the Parties

IPRS sought interim reliefs on the ground that the amendments have completely changed the legal framework concerning the rights of authors of original literary, dramatic, musical and artistic works. IPRS contended that being a society registered under the provisions of the Act, it is ushering the cause of such authors of original works, who were earlier deprived of their rightful claims, but now have become entitled to claim royalties on each occasion that their original works are utilized and/or on each occasion when a sound recording is communicated to the public by the Defendants. IPRS also claimed that the amendments have the effect of calling upon the Court to consider granting interim reliefs, without being influenced by a series of judgements and orders of the Supreme Court and various High Courts, concerning identical claims raised prior to the amendment of the Act. The Defendants, on the other hand, submitted that the amendments were merely clarificatory in nature, re-enforcing the well-settled position of law. It was further submitted that Sections 13(7) and 14(8) of the Act have not been amended in the year 2012, thereby indicating that amendments in other provisions would not grant any new substantive right to the authors of the original works, whose cause IPRS claims to support.

Findings of The High Court

The Court, in an endeavour to understand the position of law prior to the amendments, observed that in the case *Eastern Indian Motion Pictures Association (supra)*, the Apex Court asserted that original authors who have assigned their work to a producer of a cinematograph film, could no longer claim any right from the said producer. Several judgments since then have followed based on this position. Hence, interpretation of provisos (b) and (c) of Section 17***(9)*** of the Act was against IPRS. However, the Court noted that the amendments added to Sections 17***(10)***, 18***(11)*** and 19***(12)*** nullified the effect of provisos (b) and (c) of Section 17 of the Act, thereby ushering in a significant change in favour of authors. The Court opined that the *proviso* added to Section 17 by way of the amendments, specifically provides that nothing contained in *provisos* (b) and (c) of Section 17 of the Act shall affect the rights of the authors and their works under Section 13(1)(a) of the said Act***(13)***, thereby legislatively making a departure from the position of law laid down in *Eastern Indian Motion Pictures Association (supra)*. With respect to the third and fourth *provisos* added to Section 18***(14)*** of the Act, the Court found that it was clear that authors, by way of a legislative tool, have been prohibited from assigning or waiving their right to receive royalties for the utilization of their works in any form, under the third *proviso* to Section 18 of the Act, other than for the communication to the public of such works along with the cinematograph film in a cinema. The Court held that the words 'with the cinematograph film in a cinema hall' made it abundantly clear that the moment such works are utilized in any form other than in a cinema hall, the authors are entitled to receive royalties. Insofar as sound recordings not forming part of cinematograph film are concerned, the Court found that such a legislative prohibition is even wider because it provides that authors would have the right to receive royalties *'for any utilization of such works'* qua a sound recording not forming part of a cinematograph film.

Similarly, the Court observed that the third and fourth *provisos* added to Section 18 read with sub-sections (9) and (10) added in Section 19 of the Act also introduce a concept unknown to the Act. The said *provisos* and sub-sections, added by way of amendments, prohibit the authors themselves from assigning or waiving their right to receive royalties for utilization of their works in cinematograph films and sound recordings other than in cinematograph films. The Court noted that the exclusive right of entities like the Defendants, while communicating the sound recordings to the public, becomes subject to the amendments of the Act. Thus, the Court went on to recognise that the *authors of such literary and musical works are entitled to claim royalties, to be shared on an equal basis with an assignee of the copyright, for utilization of such works in any form other than communication of the works to the public along with the cinematograph film in a cinema hall.* Further, the Court found it necessary to interpret the words 'utilization of such work' or 'utilization of the work' while considering the effect of the amendments. The Court found that object of the amendments was to protect and guarantee rights of authors of such literary and musical works when their works are utilized in any form. The Court remarked that communicating sound recording to the public can be said to be utilization of such literary and musical works, for the reason that such works form an intrinsic part of the sound recording being communicated. It was further asserted that even though Section 14(e)(iii)***(15)*** of the Act does indicate that the Defendants have an exclusive right to communicate the sound recordings to the public, it was significant that Section 14***(16)*** considered it as a copyright, including in any sound recording, subject to the provisions of the Act. Thus, the Court held that when Sections 13(1)(a) and 13(4) of the Act are read in conjunction with *proviso* to Section 17, third and fourth provisos to Section 18 and sub-sections (9) and (10) of Section 19 thereof, it becomes clear that the exclusive right of the Defendants under Section 14(e)(iii) of the Act to communicate the sound recording to the public is subjected to the right to collect royalties now available to the authors of such literary and musical works. The Court further found it indisputable that in the Indian context, when radio stations communicate sound recordings, they could be part of cinematograph films or otherwise. But, most of the sound recordings communicated to the public through such radio stations are the part of film music, and therefore, both, the third and fourth *provisos* to Section 18 read with sub-sections (9) and (10) of Section 19 of the Act come into force. As regards sound recordings that do not form part of cinematograph film, the Court held that as per the fourth *proviso* to Section 18 and subsection (10) of Section 19 of the Act, the authors of literary and musical works have the right to collect royalties for utilization of such works *in any form*. The Court also went on to observe that a detailed scheme is provided under the Copyright Rules, 2013 as to the manner in which royalties would be distributed which, the Court opined, was an indication of the endeavour, post the amendments, to provide adequate representation to such authors, so that their interests, as sought to be protected under the amended provisions, are protected.

Conclusion

On an exhaustive and holistic analysis, the Court held that prima facie, the original authors of the literary or musical works used in films and sound recordings are entitled to royalties equal to the producer for utilization of their works in any form. Consequentially, the Court allowed IPRS to demand royalties from the Defendant radio stations as per the prevailing rates and granted interim relief to IPRS, effective 6 weeks from the date of the order if the Defendants fail to meet with such demand.

1. Indian Performing Right Society Limited v. Rajasthan Patrika Pvt. Ltd., I.A. (L) No. 9452/2022
2. in Commercial IP Suit No. 193/2022 with Interim Application No. 1213 of 2022 in Commercial Suit No. 84 of 2022, Hon'ble High Court of Judicature at Bombay, passed on April 28, 2023.
3. Commercial IP Suit No. 193 of 2022 (Indian Performing Right Society Limited v. Rajasthan Patrika Pvt. Ltd.)
4. Commercial IP Suit No. 84 of 2022 (Indian Performing Right Society Limited vs Music Broadcast Limited)
5. Section 31(b) - Compulsory licence in works withheld from public.
6. Suit No.2401 of 2006 (Music Broadcast Pvt. Ltd. Vs. IPRS)
7. (1997) 2 SCC 820
8. Section 13 - Works in which copyright subsists.
9. Section 14 - Meaning of Copyright
10. Section 17 - First owner of copyright
11. Ibid.
12. Section 18 - Assignment of copyright
13. Section 19 - Mode of assignment
14. Section 13(1)(a) - original literary, dramatic, musical and artistic works.
15. Id. at fn 9.
16. Section 14(e)(iii) - to communicate the sound recording to the public.
17. Id. at fn 5

JUDGEMENTS

In the matter of Vyavsayi Bachat Evam Sakh Swamlambi Nidhi Limited ("Company") for violation of section 39(4) of the Companies Act, 2013 ("Act")

During an inspection of the Company, it was observed from Form NDH-3 that as on March 31, 2016 the Company had 7291 members whereas no return of allotment in Form PAS-3 was filed with the ROC under section 39(4) of the Act for allotment of shares to 7921 members. Section 39(4) of the Act stipulates that whenever a company having share capital makes any allotment of securities, it is required to file a return of allotment with the Registrar of Companies in Form PAS-3. The Registrar of Companies, Patna **("ROC")** issued a show cause notice to the Company and its directors. Upon non-receipt of any response, ROC imposed a penalty of INR 50,000/- on the Company and each officer in default, individually, for violation of section 39(4) of the Act.

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In the matter of Etsystore Private Limited ("Company") for violation of section 118(10) of the Companies Act, 2013 ("Act") read with para -2 of Secretarial Standards issued by the Institute of Company Secretaries of India ("SS-1") and section 173(1) of the Act

The Company voluntarily filed applications to adjudicate the offenses by it made under section 118(10) of the Act read with para 2 of SS-1 and section 173(1) of the Act. As per the provisions of the Act read with SS-1, a company is required to hold at least 4 Board meetings in each calendar year with a maximum interval of 120 days between any 2 consecutive meetings. The Company had conducted only 3 Board meetings in the calendar year 2020 on March 10, 2020; July 6, 2020; and October 6, 2020. Consequently, the next Board meeting of the Company was required to be held on December 31, 2020 but the same was held on February 1, 2021, with a delay of 31 days. Accordingly, ROC issued show cause notices to the Company and its officers in default for both the offenses. In response, the Company requested for joint adjudication of offenses of the Company and the applicants. ROC concluded the matters by imposing a penalty of INR 25,000/- on the Company and INR 5,000/- on each officer in default for violation of section 118(10) of the Act read with para 2 of the SS-1. It levied a penalty of INR 41,000/- on the Company and each officer in default, individually, for section 173(1) of the Act.

Violation of section 118(10)
Violation of section 173(1)

In the matter of Herballife Healthcare Private Limited ("Company") for violation of Rule 8(3) of the Companies (Registration Offices and Fees) Rules, 2014 ("Rules")

In the instant case, one of the ex-directors of the Company had filed an application before the Registrar of Companies, NCT of Delhi & Haryana ("ROC") for adjudication of defect in filing of e-form DIR-11. It was observed that while the date of filing of resignation with the Company was mentioned as August 6, 2019 in the e-form DIR-11, the resignation letter attached therewith indicated that the resignation was submitted to the Company on September 9, 2020.

JUDGEMENTS

As per provisions of rule 8(3) of the Rules, the authorized signatory and the professional, if any, certifying the e-form shall be responsible for correctness of contents and enclosures attached with the e-form. ROC issued a show cause notice to the Company and its applicant. The signatory of the e-form DIR-11 admitted that the default had occurred due to inadvertent typographical error.

Further, it was noted that e-form DIR-11 had been filed with the incorrect date of resignation. Consequently, ROC levied a penalty of INR 5,000/- on the signatory for defect in e-form DIR-11 pursuant to rule 8(3) of the Rules read with section 450 of the Companies Act, 2013.

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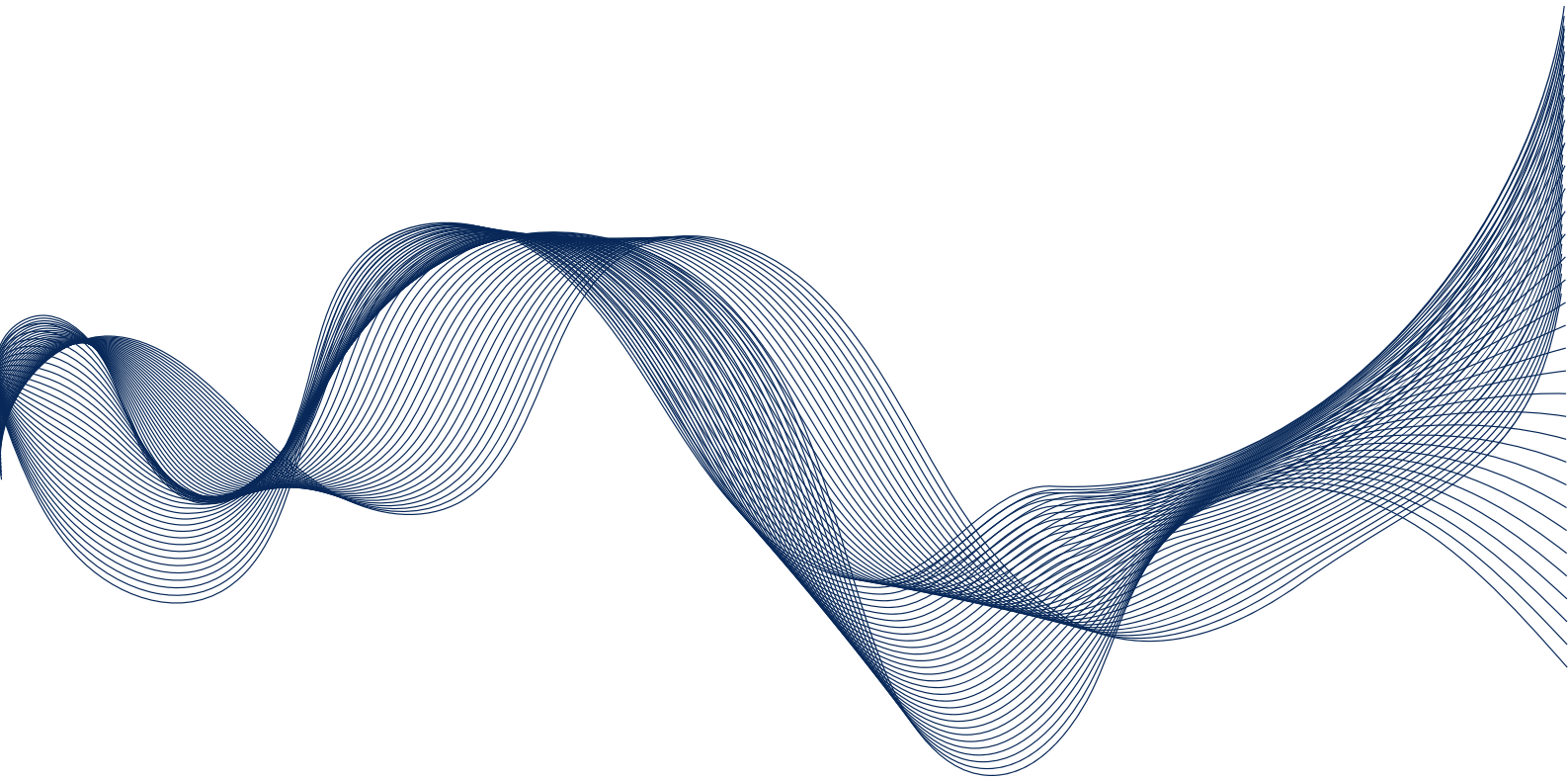


Master Circular - Guarantees and Co-acceptances

On 1 April 2023, the Reserve Bank of India **("RBI")** issued the Master Circular - Guarantees and Co-acceptances consolidating the instructions on this matter issued up to 31 March 2023. An important criterion for judging the soundness of a banking institution is the size and character, not only of its assets portfolio but also, of its contingent liability commitments such as guarantees, letters of credit, etc. As a part of business, banks issue guarantees on behalf of their customers for various purposes. The guarantees executed by banks comprise both performance guarantees and financial guarantees. The guarantees are structured according to the terms of agreement, viz., security, maturity and purpose. Banks should comply with the following guidelines in the conduct of their guarantee business.

The master circular provides the following general guidelines:

(a) As regards the purpose of the guarantee, as a general rule, the banks should confine themselves to the provision of financial guarantees and exercise due caution with regard to performance guarantee business.

(b) As regards maturity, as a rule, banks should guarantee shorter maturities and leave longer maturities to be guaranteed by other institutions.

(c) No bank guarantee should normally have a maturity of more than 10 years. However, where banks extend long term loans for periods longer than 10 years for various projects, it has been decided to allow banks to also issue guarantees for periods beyond 10 years. While issuing such guarantees, banks are advised to take into account the impact of very long duration guarantees on their Asset Liability Management. Further, banks may evolve a policy on issuance of guarantees beyond 10 years as considered appropriate with the approval of their Board of Directors.

(d) Banks should, in general, refrain from issuing non-fund based facilities to/on behalf of constituents who do not enjoy credit facilities with them. However, banks are permitted to grant non-fund based facilities, including partial credit enhancement1, to those customers, who do not avail any fund based facility from any bank in India. Provision of such facilities shall be in terms of a comprehensive Board approved policy for grant of non-fund based facility to such borrowers. The banks shall ensure that the borrower has not availed any fund based facility from any bank operating in India. However, at the time of granting non-fund based facilities, banks shall obtain declaration from the customer about the non-fund based credit facilities already enjoyed by them from other banks. Banks shall undertake the same level of credit appraisal as has been laid down for fund based facilities. The instructions related to KYC/AML/CFT, submission of credit information to Credit Information Companies and other prudential norms applicable to banks, including exposure norms, issued by RBI from time to time, shall be adhered to in respect of all such facility. However, banks are prohibited from negotiating unrestricted LCs of non-constituents. In cases where negotiation of bills drawn under LC is restricted to a particular bank and the beneficiary of the LC is not a constituent of that bank, the bank shall have the option to negotiate such LCs, subject to the condition that the proceeds are remitted to the regular banker of the beneficiary.

(e) Further, BG/LC may be issued by scheduled commercial banks to clients of co-operative banks against counter guarantee of the co-operative bank as permitted hitherto.

In such cases, banks shall be guided by the provisions of paragraph 2.3.8.2 of the Master Circular on Loans and Advances-Statutory and Other Restrictions dated 1 July 2015 as amended from time to time. Further, in such cases banks must satisfy themselves that the concerned co-operative banks have sound credit appraisal and monitoring systems as well as robust Know Your Customer (KYC) regime. Before issuing BG/LCs to specific constituents of co-operative banks, they must satisfy themselves that KYC check has been done properly in these cases.

(f) The guarantee of parent companies may be obtained in the case of subsidiaries whose own financial condition is not considered satisfactory.

(g) Further, the master circular, inter-alia, provides for the (i) Guidelines relating to conduct of guarantee business; (ii) Other stipulations – Issuing bid bonds and performance guarantees for export; (iii) Restrictions on guarantees for placement of funds with NBFCs or other non-bank entities, (iv) Payment of invoked guarantees; (v) Co-acceptance of bills.

Master Direction on Outsourcing of Information Technology Services

On 10 April 2023, the RBI issued the Master Direction on Outsourcing of Information Technology Services. Regulated Entities (REs) have been extensively leveraging Information Technology (IT) and IT enabled Services (ITeS) to support their business models, products and services offered to their customers. REs also outsource substantial portion of their IT activities to third parties, which expose them to various risks. In order to ensure effective management of attendant risks, the Statement on Developmental and Regulatory Policies dated 10 February 2022, proposed the issuance of suitable regulatory guidelines on Outsourcing of IT Services. Accordingly, a draft Master Direction on Outsourcing of IT Services was released for public comments in June 2022. Based on feedback received, the finalised Reserve Bank of India (Outsourcing of Information Technology Services) Directions, 2023 **("Directions")** have been issued. The underlying principle of these Directions is to ensure that outsourcing arrangements neither diminish REs ability to fulfil its obligations to customers nor impede effective supervision by the RBI. With a view to provide REs adequate time to comply with the requirements, the Directions shall come into effect from 1 October 2023.

Applicability-

I. With respect to existing outsourcing arrangements that are already in force as on the date of issuance of this Master Direction, REs shall ensure that:

(a) the agreements that are due for renewal before 1 October 2023 shall comply with the provisions of these Directions as on the renewal date (preferably), but not later than 12 months from the date of issuance of this Master Direction.

(b) the agreements that are due for renewal on or after 1 October 2023 shall comply with the provisions of these Directions as on the renewal date or 36 months from the date of issuance of this Master Direction whichever is earlier.

II. With respect to new outsourcing arrangements, REs shall ensure that:

(a) the agreements that come into force before 1 October 2023, shall comply with the provisions of these Directions as on the agreement date (preferably) but not later than 12 months from the date of issuance of this Master Direction.

(b) the agreements that come into force on or after 1 October 2023, shall comply with the provisions of these Directions from the date of agreement itself

Framework for acceptance of Green Deposits

On 11 April 2023, the RBI issued the Framework for acceptance of Green Deposits. Climate change has been recognised as one of the most critical challenges faced by the global society and economy in the 21st century. The financial sector can play a pivotal role in mobilizing resources and their allocation thereof in green activities/projects. Green finance is also progressively gaining traction in India. Deposits constitute a major source for mobilizing of funds by the Regulated Entities (REs). It is seen that some REs are already offering green deposits for financing green activities and projects. Taking this forward and with a view to fostering and developing green finance ecosystem in the country, RBI decided to put in place the enclosed Framework for acceptance of Green Deposits for the REs. The framework shall come into effect from 1 June 2023. The purpose of this Framework is to encourage regulated entities (REs) to offer green deposits to customers, protect interest of the depositors, aid customers to achieve their sustainability agenda, address greenwashing concerns and help augment the flow of credit to green activities/projects. Applicability-

The provisions of these instructions shall be applicable to the following entities, collectively referred to as regulated entities (REs):

(a) Scheduled Commercial Banks including Small Finance Banks (excluding Regional Rural Banks, Local Area Banks and Payments Banks); and

(b) All Deposit taking Non-Banking Financial Companies (NBFCs) registered with the Reserve Bank of India under clause (5) of Section 45IA of The Reserve Bank of India Act, 1934, including Housing Finance Companies (HFCs) registered under Section 29A of The National Housing Bank Act, 1987.

Guidelines with respect to excusing or excluding an investor from an investment of AIF

On 10 April 2023, the Securities Exchange Board of India ("SEBI") issued the Guidelines with respect to excusing or excluding an investor from an investment of Alternate Investment Funds (AIF). SEBI Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated 5 February 2020, inter-alia, introduced template(s) for Private Placement Memorandum (PPM) for AIFs, providing certain minimum level of information to be disclosed in a simple and comparable format. SEBI observed from the information disclosed in PPMs that, there is inconsistency and lack of adequate disclosure with respect to certain industry practices. In this context, a proposal to review the information disclosed in PPM under the term 'Excuse and Exclusion' for excusing or excluding an investor from an investment of the AIF, was deliberated in Alternative Investment Policy Advisory Committee ('AIPAC'). Taking into account the recommendations of AIPAC, SEBI decided that, an AIF may excuse its investor from participating in a particular investment in the following circumstances:

(a) If the investor, based on the opinion of a legal professional/legal advisor, confirms that its participation in the investment opportunity would be in violation of an applicable law or regulation; or

(b) If the investor, as part of contribution agreement or any other agreement signed with the AIF, had disclosed to the manager that, participation of the investor in such investment opportunity would be in contravention to the

internal policy of the investor. Manager shall ensure that terms of such agreement with the investor include reporting of any change in the disclosed internal policy, to the AIF, within 15 days of such change. Further, an AIF may exclude an investor from participating in a particular investment opportunity, if the manager of the AIF is satisfied that the participation of such investor in the investment opportunity would lead to the scheme of the AIF being in violation of applicable law or regulation or would result in material adverse effect on the scheme of the AIF. The manager shall record the rationale for such exclusion, along with the documents relied upon, if any. If the investor of an AIF is also an AIF or any other investment vehicle, such investor may be partially excused or excluded from participation in an investment opportunity, to the extent of the contribution of the said fund/investment vehicle's underlying investors who are to be excused or excluded from such investment opportunity. The manager of AIF shall record the rationale for such excuse or exclusion along with the supporting documents, if any. The provisions of this circular shall come into force with immediate effect.

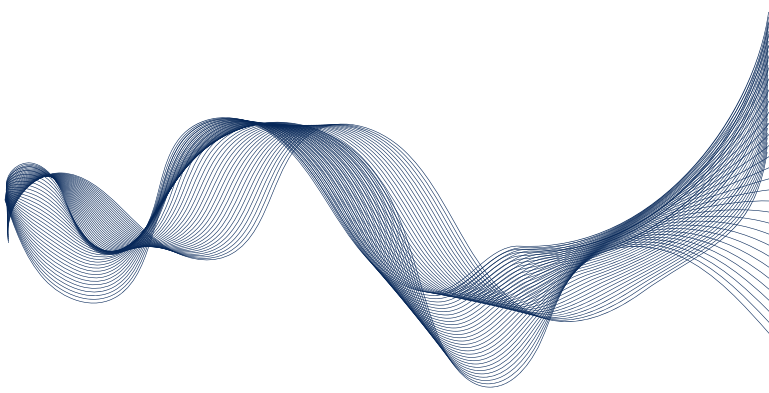
Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)

On 26 April 2023, the RBI, on a review and with an objective to align the LRS for IFSCs set up under the International Financial Services Centres Authority Act, 2019 vis-à-vis other foreign jurisdictions, decided to amend the directions under para 2 (ii) of the A.P. (DIR Series) Circular dated 16 February 2021, as – "Resident Individuals may also open a Foreign Currency Account (FCA) in IFSCs, for making the above permissible investments under LRS."

Thus, the condition of repatriating any funds lying idle in the account for a period up to 15 days from the date of its receipt is withdrawn with immediate effect, which shall now be governed by the provisions of the scheme as contained in the aforesaid Master Direction on LRS. The Master Direction No. 7 is being updated to reflect these changes.

Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023

MCA had notified the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023 **("Amendment")** in order to amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 **("Principal Rule")** vide notification dated April 17, 2023. The Amendment became effective from May 1, 2023. Through this Amendment, MCA introduced a separate office named "Registrar Centre for Processing Accelerated Corporate Exit" **("Registrar C-PACE")** for speedy disposal of dissolution applications made under section 248 of the Companies Act, 2013 **("Act")** in e-form STK-2 (for removing name of the company from register of companies). All the matters under section 248, throughout the Indian territory, will now be submitted to the Registrar C-PACE.



Recent Events

Live Masterclass - Ever-changing employment regulations - Latest APAC updates & Trends

Vineet Aneja, Managing Partner at Clasis Law shared his views in a live masterclass on the topic "Ever-changing employment regulations - Latest APAC updates & Trends", organized by Lexology. In his session, he discussed about the moonlighting, employee investigations, terminations, new labour codes and the key changes in Indian Labour codes. He also moderated the masterclass to discuss the views of the other two lawyers from Singapore and Hong Kong based law firms.

International Workers' Day - Celebrations around the world

International Labour Day or **May Day** is celebrated every year on **1 May.** It is celebrated in more than 80 countries, in different ways. The people in different parts of the world hold marches on this day to promote the rights of working-class people and to protect them from exploitation. Lets read about how this day is observed in some of the countries around the globe.

In India, Labour Day is a public holiday tied to labour movements. The first celebration in India was organized in Madras (now Chennai) by the Labour Kisan Party of Hindustan on 1 May 1923.

In the United States, "Labor Day" celebrated on the first Monday of each September & was given state recognition in the year 1887. It became an official federal holiday in the year 1894.

In South Africa, Workers' Day celebrated as a national public holiday on 1 May every year since 1995. May Day started to get more attention by African workers in the year 1928, which saw thousands of workers in a mass march.

Source - https://www.livemint.com/news/india/international-labour-day-2023-history-significance-and-all-you-need-to-know-11682904286099.html

Notable Recognitions & Accolades

Clasis Law has won two awards in India Business Law Journal's 2023 Indian Law Firm Awards for the areas Aviation and; Labour & Employment.

Mustafa Motiwala
Partner & Head of Litigation, Arbitration & Dispute Resolution Practice

Mustafa Motiwala was recognized as a "Litigation Star" for his contribution in the area "Commercial and transactions" in the 2023 Benchmark Litigation Asia-Pacific Rankings.

Neetika Ahuja
Partner

Vasudha Luniya
SeniorAssociate

Neetika Ahuja, Partner and Vasudha Luniya, Senior Associate have been recognized as Mondaq Thought Leading Authors for Environmental Law, India in the Mondaq Thought Leadership Spring 2023 awards.

CLASIS LAW

Notable Recognitions & Accolades

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