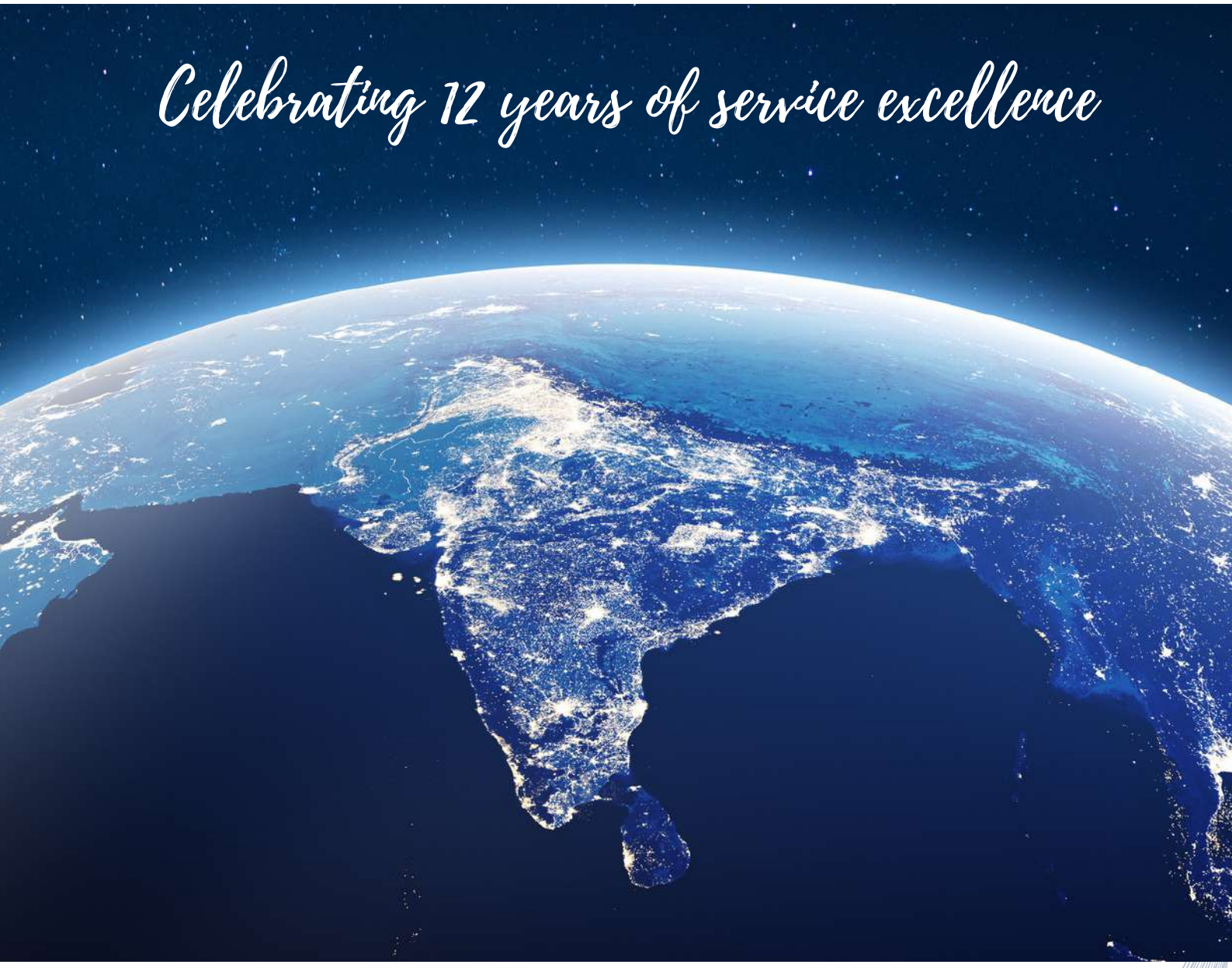
Vol. 9 | September 2022



Official Newsletter

CLASIS LAW

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CLASIS LAW

Celebrating 12 years of service excellence!

Message from Vineet Aneja, Managing Partner at Clasis law

We completed 12 years on *September 15, 2022*. Its been 12 years but I can still recollect September 15, 2010 and the events that led upto the start of the firm. It was, has been and continues to be as exciting as the first day. Every day, month and year is a milestone. I believe that we have grown to where we are currently because of the three primary values – equality in our behavior, transparency in all our practices and consistency in all our decision-making. It is because of our adherence to these principles that we have seen such consistent success in these twelve years. I'm of the thought that an organization is just a concept, and Clasis is no different. If we take care of this concept and play our parts well, it will take care of all of us.

What has changed in Clasis in the last 10 years?

Over the last few years, I have seen us continuously improving on the quality of delivery of our services as a firm. Besides, there has been a significant change in the way of doing business primarily due to COVID-19 and its after effects. In our journey till now, we have achieved several feats together, and this has been possible only because we believe in prioritizing our client's interest before our interest. Whenever a client reaches out to us with their issue, our primary goal is to understand their pain points in their business and provide the most appropriate solution/advice.

I am extremely thankful to all of our clients with whom we have proudly worked side-by-side as we continually endeavour to help them and support their mission. It continues to be an honor and a privilege.

Becoming Clasis Law!

In 2010, we knew we wanted to tear down boundaries, grow and serve, and that is what we strive to achieve with each passing day. We started small and have grown to have

the patronage of many Fortune 500 companies. We have experienced our share of downs, but continue to strive to work for good years and great years.

2022, The Year of Big Achievements

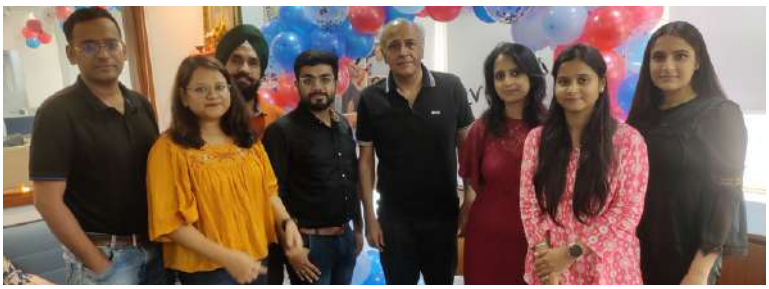
As we celebrate 12 years since our inception in 2022, it is a great time to highlight a few of our most recent achievements.

- Clasis Law ranked in the Asialaw 2022-23 annual rankings under the practice areas Corporate and M&A, Labour and employment, Dispute resolution & Restructuring and insolvency.
- Clasis Law is ranked as a Tier - 3 M&A Law firm in India by Asian Legal Business's latest Asia M&A Rankings 2022.
- Clasis Law was awarded in India Business Law Journal's 2022 edition of Indian Law Firm Awards in the area of "Insurance & Reinsurance".
- I was recognized by Forbes India 2021 as one of the Top Managing Partners and one of the Top Individual Lawyers in India.
- I was once again recognized in The A-List 2021-22 as one of the top 100 Lawyers in India by India Business Law Journal.
- A few of our partners have been recognized as Super 50 Lawyers in India, Top Disputes Lawyer in India and Rising Stars in India 2022 by Asian Legal Business and also as Mondaq Thought Leading Authors India at Spring 2022 awards.

Lastly...

We continue to build on the work we had started in the first place, and it is our Firm's conviction that prioritizing client success is the foundation for long-term profitability. We have set our standards high, strived and continue to strive hard to achieve them, and elevated ourselves to higher places. The learning and effort will never cease for team Clasis. I'd like all of us to remember that as we step into the new decade, we need to focus on listening to the needs of our clients and most importantly understand our clients; there are opportunities for all of us – and if we all pull together, we are going to make it happen – even better than our previous years. Lastly, I want to congratulate you all once again on this occasion. And, look forward to celebrating many more such milestones together.

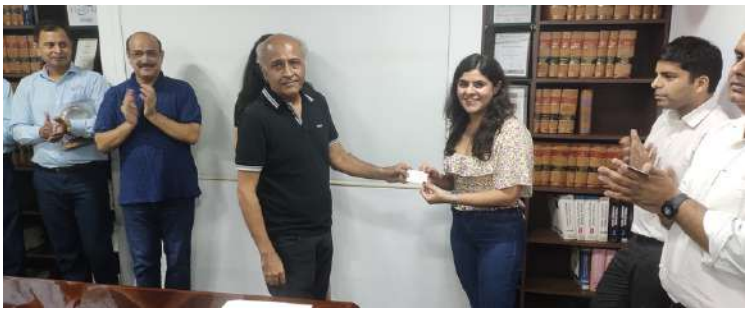
Anniversary Celebrations!

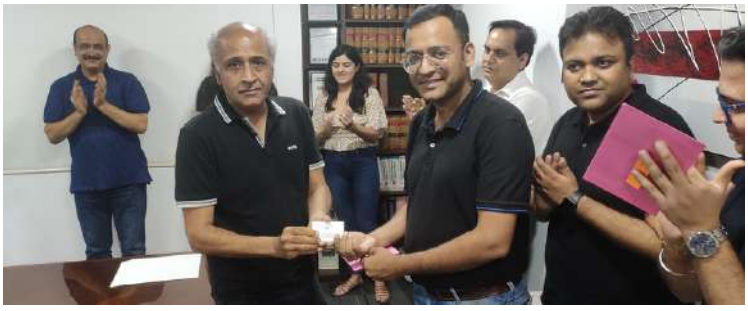













Elevations!

Congratulations to all the newly promoted team members of Clasis Law.

Varun Sharma
Partner

Raveena Verma
Senior Associate

Ashish Baid
Senior Associate

Ramesh Giri
Administrative Partner

Anita Sequeria
Chief Financial Officer

LEGAL UPDATE

Can Arbitrator grant post award interest on any sum awarded under an Award?

Introduction

In a recent judgement, the division bench of the Supreme Court **("SC")** in the case of *Morgan Securities and Credits Private Ltd. vs Videocon Industries Ltd**(1)***., has answered an interesting question on whether an Arbitrator has the discretion to grant post award interest on only the principal sum awarded in an arbitral award under the provision of Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 **("Act")**.

Facts

The Appellant and the Respondent entered into a bill discounting agreement under which the Appellant disbursed an amount of Rs. 5,00,32,656 ("Principal Amount") to the Respondent. As the said amount remained unpaid, the Appellant issued a notice for payment of the amount due along with interest. Since the Respondent failed to pay the said overdue amount, the Appellant issued a notice on January 31, 2008 and invoked the arbitration under the agreement.

The sole arbitrator rendered an arbitral award awarding the Principal Amount in favour of the Appellant along with interest payable as follows: 21% per annum from the date of default to the date of notice, 36% per annum with monthly rests from the date of demand notice to the date of award ("pre award interest") and 18% per annum on the Principal Amount payable from date of award to the date of payment ("post-award interest").

The Appellant confronted the said award under Section 34 of the Act before the Single Judge bench of the Delhi HC on the ground that the post-award interest should be awarded on the total sum of pre award interest and the Principal Amount. The Single Judge bench dismissed the petition holding that the arbitrator has a discretion to restrict the post-award interest to the Principal Amount. The Appellant challenged the order of the single judge. However, the division bench of the Delhi HC confirmed the order of Single Judge. The Appellant thereafter preferred a SLP before the SC which confined itself with the issue regarding the post-award interest.

Submissions by the Parties

The Appellant submitted that in view of the provisions of Section 31(7) of the Act and the judgment of the SC in the case of *Hyder Consulting**(2)***, if pre-award interest is awarded on the Principal Amount (aggregate of Principal Amount and pre-award interest referred as the "sum") the post-award interest must be granted on the sum. It was further submitted that once pre-award interest is awarded on the Principal Amount, the interest becomes part of the Principal Amount and the post-award interest should be awarded on the sum. The Appellant further asserted that even in case of *SL Arora**(3)***, the discretion of the arbitral tribunal under Section 31(7)(b) of the Act was only

with respect to the rate of the post-award interest and not on the 'sum' on which he could grant interest. The Respondent submitted that Section 31(7)(b) is qualified by the phrase "unless the award otherwise directs". Therefore, Section 31(7)(b) would only be applicable where an arbitral award is silent on the component of post-award interest. It was contended that under Section 31(7)(b) of the Act, the arbitrator has the discretion to (a) grant post-award interest; (b) determine the quantum over which the post-award interest should be granted; and (c) determine the rate at which the interest should be calculated.

Analysis by the Court and Conclusion

The Court first revisited the *SL Arora* judgement where it had held that Section 31(7) of the Act does not make any reference to the payment of compound interest or interest on interest. The Court thereafter examined in detail the separate opinions authored by all Hon'ble Judges of the bench who had presided over in the *Hyder Consulting* and observed that the majority opinion in the *Hyder Consulting* was that the view taken in *SL Arora* is erroneous. The Justice SA Bobde further observed that the word 'sum' used by Section 31(7) and observed that *"the parliament had intentionally not qualified the term 'sum' with the word 'principal' and thus would take the meaning of particular amount of money, the 'sum' would include both principal and interest, and when interest is directed to be paid on the principal under Section 31(7)(a), the aggregate amount after merging pre-award interest and the principal would be the 'sum', where the two components of principal and interest would have lost their identities."*

On further analysis of Section 31(7) of the Act, the Court observed that subsection (b) was qualified with the terms "unless the award otherwise directs". which occurred after the words 'a sum directed to be paid by an arbitral award shall' and before the words 'carry interest at the rate of eighteen per cent". Thus, those words qualified only the rate of post-award interest and not the discretion over what sum the arbitrator could choose. The Court observed that subsection (b) only contemplates a situation in which the discretion is not exercised by the arbitrator. Therefore, the observations in *Hyder Consulting* on the meaning of 'sum' would not restrict the discretion of the arbitrator to grant post-award interest. It further opined that *"The discretion of the arbitrator can only be restricted by an express provision to that effect. Clause (a) subjects the exercise of discretion by the arbitrator on the grant of pre-award interest to the arbitral award. However, there is no provision in the Act which restricts the exercise of discretion to grant post-award interest by the arbitrator."*

After detailed deliberation, Court finally held that Section 31(7)(b) does not fetter or restrict the discretion that the arbitrator holds in granting post-award interest. The arbitrator has the discretion to award post-award interest on a part of the sum and the award of arbitrator granting post award interest on the principal amount is not erroneous. Thus, the Appeal was dismissed.

(1) Civil Appeal No. 5437 of 2022
(2) Hyder Consulting (UK) Ltd vs Governor, State of Orissa (2015) 2 SCC 189
(3) State of Haryana vs SL Arora (2010) 3 SCC 690

No pre-litigation mediation required if urgent reliefs are sought in a suit for trademark infringement

The Delhi High Court in the case of *Bolt Technology OU vs Ujoy Technology Private Limited and Anr**(1)*** has held that if urgent interim reliefs are sought in a suit for trademark infringement, then such a suit is not liable to be dismissed under Order 7 Rule 11 of the Code of Civil Procedure, 1908 **("CPC")**. In terms, whereof Order 7 Rule 11 provides grounds for rejection of plaint by the court.

Facts

Bolt Technology OU **("Plaintiff")** filed an application seeking an exemption from pre-litigation mediation in the captioned suit whilst seeking a permanent injunction restraining Ujoy Technology Private Limited and another, **("Defendant")** for passing off of and trademark/copyright infringement, amongst other reliefs. The Plaintiff case is that it is the registered proprietor of the mark "BOLT" and is engaged in the business of providing ride-hailing, food and grocery delivery, rental of cars, e-bikes and scooters, Electric Vehicle (EV) and charging stations/docks. The Plaintiff further stated that it has obtained various registrations for the mark 'BOLT' in several jurisdictions. It is the case of the Plaintiff that the Defendants have been using the identical mark "BOLT", along with its logo in an identical business of providing charging points for EVs. The competing logos used by the Plaintiff and the Defendants are as under:

Plaintiff's Marks	Defendants' Marks
BOLT	BOLT
Bolt	BOLT

The Plaintiff further submitted that it is present and operates in more than 400 cities in around 45 countries around the world and has provided services to more than 100 million customers. The Plaintiff further claimed that the term "BOLT" also forms a part of its corporate identity and has used various mediums to extensively advertise and promote its brand. The Plaintiff further claimed that a general search of the term 'Bolt' in the Google Play or Apple App Store would return results with the Plaintiff and Defendant's apps.

Submissions

It is the Plaintiff's case that the Defendants are using the identical mark "BOLT" with an identical colour scheme for the business of providing electric vehicle charging points, which is similar to one of the services provided by the Plaintiff. The Plaintiff further submitted that the use of the mark "BOLT" by the Defendants violates the global reputation and goodwill acquired by the Plaintiff and hence constitutes passing off. The Plaintiff further submitted that is has registered its mark in more than 50 countries vide approximately 100 separate registrations and thus, there exists an urgent need for injunctions being granted against the Defendants. Whilst countering the submissions of the Plaintiff, the Defendants preliminary objection was on the ground that the preconditions stipulated under Section 12A of the Commercial Courts Act, 2015 **("CCA")** were not satisfied and thus, the plaint is liable to be rejected. The Defendant relied on the judgement of the Hon'ble Supreme Court in the matter of *Patil Automation Private Limited vs. Rakheja Engineers Private Limited(2)* to argue that pre-litigation mediation under Section 12A of the CCA is mandatory. The Defendants further relied on *ECL Finance Ltd. v. Tashee Nirman Pvt. Ltd. and Ors(3)* in which the court relying on the judgement of the Bombay High Court in the case of *Ganga Taro Vazirani v. Deepak Raheja(4)*, and submitted

that, with effect from August 20, 2022, the Supreme Court has held that pre-litigation mediation under Section 12A is mandatory and that no suit can be entertained without having first resorted to pre-litigation mediation as contemplated under Section 12A of the CCA.

In response thereto, the Plaintiff submitted that the Supreme court in the case of *Patil Automation(5)* had carved out an exception, whereby, if an urgent interim relief is being sought, then a commercial suit can be filed without resorting to pre-litigation mediation. Pertinently, the Plaintiff made a factual submission that the Plaintiff had served a legal notice dated May 24, 2022 on the Defendants wherein the Plaintiff had expressly sought for an amicable settlement of the dispute, which was unceremoniously rejected by the Defendants whilst also demanding compensation of Rs. 5,00,75,000/-. The Hon'ble Court settled the Defendant's contentions vis-à-vis non-compliance of Section 12A of the CCA and was pleased to record that:

"A perusal of the correspondence, extracted hereinabove, leaves no doubt in the mind of the Court that the Defendants were in no way interested in an amicable resolution of the dispute. Instead, the hand of mediation which was lent by the Plaintiff was met with a tight slap."

The Plaintiff finally submitted that as the Defendant's mobile application was available for download on the Google Play and Apple App Store, the same was available for download to the general public every minute of the day, and as the Defendant's app contained the Plaintiff's trademark, an urgent interim relief was necessary and imperative.

Observations by the Court and Conclusion

The court revisited the provisions of Section 12A of the CCA whilst bearing reference to the judgement of the Hon'ble Bombay High Court in *Deepak Raheja vs Ganga Taro Vazirani(6)* wherein the Bombay High Court while examining the legislative intent of Section 12A had observed that:

Section 12A does not come into play if the suit contemplates an urgent relief. If a commercial suit (of specified value) contemplates urgent relief, it can be instituted in the court straightaway. Therefore, two classes of commercial disputes are contemplated under Section 12A. One in which an urgent interim relief is not contemplated and second where urgent interim relief is contemplated. Section 12A provides different schemes for these two classes of disputes. Where there is no urgent interim relief to first exhaust the remedy of pre institution mediation. Where there is an urgent interim relief contemplated to approach the court directly. The emphasis is that for a particular type of dispute particular kind of remedy is more appropriate. Section 12A segregates commercial disputes depending on their urgency. Making segregation at the inception of a commercial dispute is a considered legislative instrument to speed up the disposal of commercial disputes.

The court observed that the Hon'ble Supreme Court in the *Patil Automation(7)* case had also remarked that in the said case as no urgent interim reliefs were sought, the provisions pre-litigation mediation under Section 12A of the CCA were mandatory. The Court opined that this interpretation of the Supreme Court had kept open a necessary question which was very relevant to the present case, i.e., whether the Plaintiff was entitled to urgent interim reliefs and as such, whether exemption ought to be granted from going into pre-litigation mediation.

In order to answer this question, the Court referred to the judgement of the Supreme Court in the case of *Laxmikant v. Patel v. Chetanbhai Shah & Anr.(8)* which clearly outlines why there exists a need for interim reliefs in cases of intellectual property infringement. The Supreme Court therein had held that;

"A refusal to grant an injunction in spite of the

availability of facts, which are prima facie established by overwhelming evidence and material available on record justifying the grant thereof, occasion a failure of justice and such injury to the plaintiff as would not be capable of being undone at a later stage. The discretion exercised by the Trial court and the High court against the plaintiff, is neither reasonable nor judicious. The grant of interlocutory injunction to the plaintiff could not have been refused, therefore, it becomes obligatory on the part of this court to interfere."

The court thereafter made a keen observation that urgent interim reliefs in IP cases are extremely important as *"Such matters do not merely involve the interest of the Plaintiff and the Defendants, which are the contesting parties before the court, but also involve the interest of the customers/consumers of the products and services in question."*

The Court observed that the Plaintiff and the Defendant's mobile applications were available for download on respective mobile platforms and thus a case for urgent interim injunction could be made out in a separate application for injunction.

The Court also observed that while Plaintiff had made an attempt to amicably reconcile its dispute with the Defendant, the language used by the Defendant's in its reply whereby the Defendants termed the Plaintiff's notice as "frivolous" and sought compensation upwards of Rs. 5 Crores from the Plaintiff. Accordingly, the Court held that, the Defendant's conduct was clearly not in the spirit of any amicable resolution, let alone mediation.

Based on the aforesaid observations, it was concluded that as the Plaintiff's application satisfied all the conditions under Section 12A of the CCA, i.e.,

(1) Firstly, the Plaintiff had attempted an amicable resolution which was clearly refuted, rejected and condemned by the Defendants; and

(2) Secondly, the Plaintiff has also sought urgent interim relief before this Court and is entitled to maintain the present suit.

Accordingly, the Plaintiff was allowed to register the Plaint and its application seeking an exemption from pre-litigation mediation was allowed.

Footnotes

1. *CS (COMM) 582/2022 & I.As.13530/2022*
2. *Civil Appeal Nos.5333-34/2022 decided on 17th August, 2022*
3. *I.A.11348/2021 in CS(COMM) 415/2021 decided on 8th September, 2021*
4. *2021 SCC OnLine Bom 195*
5. *IBID*
6. *2021 SCC OnLine Bom 3124*
7. *IBID*
8. *(2002) 3 Supreme Court Cases 65*

JUDGEMENTS

In the matter of M/s Sawas Nidhi Limited ("Company") for violation of Section 12 of the Companies Act, 2013 ("Act")

In the present case, the Registrar of Companies, Puducherry **("ROC")** had issued a show cause notice to the Company and its directors under Section 406 of the Act read with Nidhi Rules, 2014. The show cause notice returned undelivered with postal remarks "No such Addressee". The ROC further issued show cause notices and adjudication notices to the Company and its directors under Section 12 of the Act on several instances. All the notices returned undelivered with the postal remarks "No Such Addressee". The ROC gave an opportunity of being heard to the Company and its directors, however, none of the company or its representative attended the hearing. The ROC concluded the matter by imposing a penalty of INR 50,000/- each on the Company and its every director for violation of Section 12 of the Act; i.e. non-maintenance of registered office.

Read More

In the matter of M/s Simplex Trading and Agencies Limited ("Company") for violation of Section 12 of Companies Act, 2013 ("Act")

The Comp In the present case, the Registrar of Companies, Ahmedabad **("ROC")** had issued a letter to the Company and its Key Managerial Personnel **("KMP")** regarding differences noted in the authorised capital mentioned in the annual return i.e., e form MGT-7 and Ministry of Corporate Affairs database **("MCA Portal")**. However, the letter was returned undelivered with postal remarks "Not Known" which inferred that the Company was not maintaining its registered office. It was observed from the MCA portal that the Company is a listed company but did not have whole-time director or KMP for its day-to-day functioning. Therefore, the ROC initiated adjudication proceedings against the non-executive directors. It was further observed that the Company changed its registered office and filed a belated e form INC-22.
The ROC, after giving an opportunity of being heard, concluded the matter by imposing a penalty of INR 42,000/- each on the Company and its officers in default for violation of Section 12 of the Act.

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In the matter of M/s Truder Packaging Private Limited ("Company") for violation of Section 12 of Companies Act, 2013 ("Act")

The Regional Director, North West Region **("Regional Director")** informed the Registrar of Companies, Ahmedabad **("ROC")** that the letters sent to the Company seeking information/documents regarding composite scheme of Arrangement for Demerger, were returned undelivered with the remark "LEFT". Hence, the RD directed the ROC to take necessary action in this respect. In response to the above, the ROC issued adjudication notice to the Company which was returned undelivered with the remark "LEFT".

JUDGEMENTS

Later, the Company furnished a reply to the aforesaid notice of ROC along with supporting documents. The ROC gave an opportunity of being heard to the Company where the authorised representative submitted that the aforesaid notices were returned as no person was available at the registered office to receive the letters when they arrived. However, he failed to prove that the Company is maintaining its registered office at the place mentioned in the database of Ministry of Corporate Affairs. In view of the above, the ROC concluded the matter by imposing a penalty of INR 50,000/- each on the Company and its officers in default for violation of Section 12 of the Act.

Read More

External Commercial Borrowings (ECB) Policy – Liberalisation Measures

On 1 August 2022, the Reserve Bank of India ("RBI") issued a Notification on "External Commercial Borrowings (ECB) Policy–Liberalisation Measures". Attention is invited to paragraph 2.2 of FED Master Direction No.5 on External Commercial Borrowings, Trade Credits and Structured Obligations, dated 26 March, 2019, in terms of which eligible ECB borrowers are allowed to raise ECB up to USD 750 million or equivalent per financial year under the automatic route, and paragraph 2.1.vi. ibid, wherein the all-in-cost ceiling for ECBs has been specified. As announced in paragraph five of the press release on "Liberalisation of Forex Flows" dated 6 July 2022, it has been decided, in consultation with the Central Government, to:

i) increase the automatic route limit from USD 750 million or equivalent to USD 1.5 billion or equivalent.
ii) increase the all-in-cost ceiling for ECBs, by 100 bps. The enhanced all-in-cost ceiling shall be available only to eligible borrowers of investment grade rating from Indian Credit Rating Agencies (CRAs). Other eligible borrowers may raise ECB within the existing all-in-cost ceiling, as hitherto.

The above relaxations would be available for ECBs to be raised till 31 December 2022.

Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2022

On 1 August 2022, the Securities and Exchange Board of India ("SEBI") issued a Notification on "Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2022". This Amendment Regulation has been brought forth in order to amend the SEBI (Intermediaries) (Amendment) Regulations, 2008 in the following manner:

(i) for the words "designated member", wherever occurring, the words "competent authority" shall be substituted;

(ii) in regulation 22, clause (c) shall be substituted by the following, namely, -

"(c) "competent authority" means a Whole Time Member or an officer of the Board, not below the rank of a Chief General Manager, as may be designated for the purpose by the Board;";

(iii) in regulation 24, sub-regulation (1) shall be substituted by the following, namely, -

"(1) The Board may approve the initiation of proceedings for any default of the nature specified in regulation 23 against any person who has been granted a certificate of registration under the Act and regulations made thereunder."

SEBI enhances guidelines for debenture trustees and listed issuer companies on security creation and initial due diligence

On 4 August 2022, SEBI issued a circular on "Enhanced guidelines for debenture trustees and listed issuer companies on security creation and initial due diligence". SEBI Board, in its meeting on 28 September 2020, approved changes to the regulatory framework relating to debenture trustees (DTs), enhancing their role. The resultant amendments were made in the SEBI (Debenture Trustees) Regulations, 1993, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and erstwhile SEBI (Issue and Listing of Debt Securities) Regulations, 2008. Pursuant to which, SEBI issued a circular dated 3 November 2020, on the creation of security and due diligence by debenture trustees. Since the issue of this circular, SEBI has received feedback

from market participants on the aspects of due diligence and security creation. On the basis of such feedback, it has been decided that certain aspects of the said circular be tweaked. Accordingly, the present circular laying down revised requirements relating to encumbrance, creation of security and related due diligence by DTs is being issued. This Circular comprises of:

(a) manner of change in security/creation of additional security/conversion of unsecured to secured in case of already listed non-convertible debt securities;
(b) encumbrance on securities for issuance of listed debt securities;
(c) due diligence certificate in case of shelf prospectus/memorandum;
(d) empanelment of external agencies by debenture trustee(s); and
(e) compliance with SEBI Circulars on 'Security & Covenant Monitoring System'.

Recommendations of the Working group on Digital Lending - Implementation

On 10 August 2022, RBI issued a press release on "Recommendations of the Working group on Digital Lending- Implementation". RBI is statutorily mandated to operate the credit system of the country to its advantage. In this endeavour, the RBI has encouraged innovation in the financial system, products and credit delivery methods while ensuring their orderly growth, preserving financing stability and ensuring protection of depositors' and customers' interest. Recently, innovative methods of designing and delivery of credit products and their servicing through Digital Lending route have acquired prominence. However, certain concerns have also emerged which, if not mitigated, may erode the confidence of members of public in the digital lending ecosystem. The concerns primarily relate to unbridled engagement of third parties, mis-selling, breach of data privacy, unfair business conduct, charging of exorbitant interest rates, and unethical recovery practices. Against this background, RBI had constituted a Working Group on 'digital lending including lending through online platforms and mobile apps' (WGDL) on 13 January 2021. The Working Group had submitted its report which was later put on the RBI website for comments. Based on the inputs that were received from various stakeholders, the RBI has decided to strengthen the regulatory framework so as to provide growth of credit delivery through digital lending methods while trying to reduce the regulatory concerns. The Regulatory framework is based on the principle that lending businesses can be carried out only by entities that are either regulated by the RBI or entities that are permitted to do so under any other law.

The universe of digital lenders is classified into three groups –

(a) Entities regulated by the RBI and permitted to carry out lending business;
(b) Entities authorized to carry out lending as per other statutory/regulatory provisions but not regulated by RBI;
(c) Entities lending outside the purview of any statutory/regulatory provisions.

In the above backdrop, RBI has examined the recommendations made by the WGDL. Recommendations accepted for immediate implementation and the consequent regulatory stance are enclosed as Annex-I to this circular.

Amendments in Companies (Incorporation) Rules, 2014

The MCA notified the Companies (Incorporation) Third Amendment Rules, 2022 ("Amendment") to

further amend the Companies (Incorporation) Rules, 2014 vide notification dated August 18, 2022. As per section 12 (9) of the Companies Act, 2013, if the Registrar of Companies ("RoC") has reasonable cause to believe that a company is not carrying on its business or operations, he may cause a physical verification of the registered office of such company. Through this amendment, a new rule, rule 25B has been inserted, which provides that RoC can carry out physical verification of registered office of companies in the following manner:-

i. The RoC shall visit at the address of the registered office of such company;
ii. The RoC may cause the physical verification of the registered office on the basis of information or documents available on MCA21 portal in the presence of two independent witness of the locality;
iii. The RoC shall carry the documents filed with the MCA21 portal in order to check the authenticity of the same by cross verification with the documents collected at the time of physical verification;
iv. The RoC shall take a photograph of the registered office of the company; and
v. The RoC shall prepare a report of the physical verification in format specified under aforesaid rule.

Pursuant to physical verification, if it is found that the registered office is not capable of receiving and acknowledging all communications and notices, the RoC shall send a notice to the company and its directors for removing the name of the company from register of companies and requesting them to submit representations within a period of 30 days from such notice.

Amendments in Companies (Removal of Names Companies from the Registrar of Companies) Rules, 2016

The MCA notified the Companies (Removal of Names Companies from the Registrar of Companies Second Amendment Rules, 2022 ("Amendment") to further amend the Companies (Removal of Names Companies from the Registrar of Companies) Rules, 2016 vide notification dated August 24, 2022. Through this amendment, MCA inserted certain clauses in forms STK-1, STK-5 and STK-5A to bring them into compliance with the provisions of Section 12(9) of the Companies Act, 2013 and the recently inserted Rule 25B of Companies (Incorporation) Rules, 2014.

Foreign Exchange Management (Overseas Investment) Directions, 2022

On 22 August 2022, the RBI issued a Notification on the Foreign Exchange Management (Overseas Investment) Directions, 2022. Overseas investments by persons resident in India enhance the scale and scope of business operations of Indian entrepreneurs by providing global opportunities for growth. Such ventures through easier access to technology, research and development, a wider global market and reduced cost of capital along with other benefits increase the competitiveness of Indian entities and boost their brand value. These overseas investments are also important drivers of foreign trade and technology transfer thus boosting domestic employment, investment and growth through such interlinkages.

In keeping with the spirit of liberalisation and to promote ease of doing business, the Central Government and the RBI have been progressively simplifying the procedures and rationalising the rules and regulations under the Foreign Exchange Management Act, 1999. In this direction, a significant step has been taken with operationalisation of a new Overseas Investment regime. Foreign Exchange Management (Overseas Investment) Rules, 2022 have been notified by the Central Government vide Notification No. G.S.R. 646(E) dated 22 August 2022 and Foreign Exchange

Management (Overseas Investment) Regulations, 2022 have been notified by the Reserve Bank vide Notification No. FEMA 400/2022-RB dated 22 August 2022 in supersession of the Notification No. FEMA 120/2004-RB dated 7 July 2004 [Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004] and Notification No. FEMA 7 (R)/2015-RB dated 21 January 2016 [Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015]. The new regime simplifies the existing framework for overseas investment by persons resident in India to cover wider economic activity and significantly reduces the need for seeking specific approvals. This will reduce the compliance burden and associated compliance costs.

Some of the significant changes brought about through the new rules and regulations are summarised below:

(i) enhanced clarity with respect to various definitions;

(ii) introduction of the concept of "strategic sector" which shall include energy and natural resources sectors such as Oil, Gas, Coal, Mineral Ores, submarine cable system and start-ups and any other sector or sub-sector as deemed fit by the Central Government;

(iii) dispensing with the requirement of approval for:

- deferred payment of consideration;
- investment/disinvestment by persons resident in India under investigation by any investigative agency/regulatory body;
- issuance of corporate guarantees to or on behalf of second or subsequent level step down subsidiary (SDS);
- write-off on account of disinvestment;

(iv) introduction of "Late Submission Fee (LSF)" for reporting delays.

The detailed operational instructions in this regard are given in Annex-I to this circular. The instructions contained in these directions shall supersede the instructions contained in the circulars listed in Annex-II of this circular.
The revised reporting forms and instructions for filling up the forms under the new regime are being provided on Reserve Bank's website in Part VIII of the Master Direction no. 18 on 'Reporting under Foreign Exchange Management Act, 1999' dated 1 January 2016.

Consequently, on 22 August 2022, RBI issued the Foreign Exchange Management (Overseas Investment) Regulations, 2022 and the Foreign Exchange Management (Overseas Investment) Rules, 2022. Some of the significant changes brought about through the new rules and regulations are as mentioned above.

SEBI amends the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020

On 22 August 2022, SEBI issued a Notification on "Securities and Exchange Board of India (Portfolio Managers) (Amendment) Regulations, 2022". These Amendment Regulations are coming forth in order to amend the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020. The amendments include:

(i) inserting the definition of related party in relation to portfolio manager which means:

- a director, partner or his relative;
- a key managerial personnel or his relative;
- a firm, in which a director, partner, manager or his relative is a partner;
- a private company in which a director, partner or manager or his relative is a member or director;

- a public company in which a director, partner or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
- any body corporate whose board of directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director, partner or manager;
- any person on whose advice, directions or instructions a director, partner or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- any body corporate which is— (A) a holding, subsidiary or an associate company of the portfolio manager; or (B) a subsidiary of a holding company to which the portfolio manager is also a subsidiary; (C) an investing company or the venturer of the portfolio manager; Explanation.—For the purpose of this clause, —investing company or the venturer of a portfolio manager‖ means a body corporate whose investment in the portfolio manager would result in the portfolio manager becoming an associate of the body corporate.
- a related party as defined under the applicable accounting standards;
- such other person as may be specified by the Board: Provided that, (a) any person or entity forming a part of the promoter or promoter group of the listed entity; or (b) any person or any entity, holding equity shares: (i) of twenty per cent or more; or (ii) of ten per cent or more, with effect from 1 April 2023; in the listed entity either directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year;

shall be deemed to be a related party;

(ii) In Regulation 22

(a) after sub-regulation (1), the following sub-regulation shall be inserted, namely-

"(1A) The portfolio manager may make investments in the securities of its related parties or its associates only after obtaining the prior consent of the client in such manner as may be specified by the Board from time to time: Provided that the requirement for obtaining consent shall not apply to such portfolio managers as may be specified by the Board".

(b) in sub-regulation (4), after clause (d), the following clauses shall be inserted, namely-

"(da) the details of investment of client's funds by the portfolio manager in the securities of its related parties or associates;

(db) the details of diversification policy of the portfolio manager:

Provided that the requirements specified above at clauses (da) and (db) above shall not apply to such portfolio managers as may be specified by the Board: Provided further that the Board may specify disclosure requirements other than the requirements specified at clauses (da) and (db) above;"

(iii) In Regulation 24, after sub- regulation (3), the following sub-regulations shall be inserted:

"(3A) The portfolio manager shall ensure compliance with the prudential limits on investments as may be specified by the Board.

(3B) The prudential limits, as specified under sub-regulation (3A), shall be applicable at the client level at the time of making investments by the portfolio managers.

(3C) The portfolio manager shall not be allowed to invest clients' funds in unrated securities of their related parties or their associates.,

Explanation. — For the purposes of sub-regulation (3C), the term "associate" shall mean–

- a body corporate in which a director or partner of the portfolio manager holds, either individually or collectively, more than twenty percent of its paid-up equity share capital or partnership interest, as the case may be; or
- a body corporate which holds, either individually or collectively, more than twenty percent of the paid-up equity share capital or partnership interest, as the case may be of the portfolio manager.

(3D) The portfolio manager shall put in place an alert based system to monitor compliance with the prudential limits on investments.

(3E) The portfolio manager shall ensure investment of its clients' funds on the basis of the credit rating of securities as may be specified by the Board:

Provided that the requirements under sub-regulations (3A), (3B), (3C) and (3E) shall not apply to investments made prior to the coming into force of the Securities and Exchange Board of India (Portfolio Managers) (Amendment) Regulations, 2022:

Provided further that the requirements under sub-regulations (3A), (3B), (3C), (3D) and (3E) shall not apply to such portfolio managers as may be specified by the Board.

(iv) In Schedule V, after Clause (14), the following clause shall be inserted:

"15) Details of investments in the securities of related parties of the portfolio manager

The details of investment of client's funds by the portfolio manager in the securities of its related parties or associates.

16) Details of the diversification policy of the portfolio manager

The details of the diversification policy of the portfolio manager for the portfolio of the clients."

Legal Metrology (Packaged Commodities) (Third Amendment) Rules, 2022

On 22 August 2022, the Ministry of Ministry of Consumer Affairs, Food and Public Distribution has issued a Notification on "Legal Metrology (Packaged Commodities) (Third Amendment) Rules, 2022". These Rules have been brought forth to amend the Legal Metrology (Packaged Commodities) Rules, 2011. This Amendment shall come into effect on 1 January 2023.

In Rule 26, a new clause (f) shall be inserted after clause (e) to read as follows:

"(f) such commodities being a garment or hosiery is sold in loose or open at the point of sale in such manner that the consumer can inspect the products before buying:

Provided that such product shall bear the following details, namely:

- *name and address of the manufacturer or marketer or brand owner or importer with country of origin or manufacture in case of imported products;*
- *consumer care email id and phone number;*
- *sizes with internationally recognizable size indicators such as S, M, L, XL, XXL and XXXL along with details in metric notation in terms of cm or m, as the case may be;*

- *maximum retail price of the package inclusive of all taxes in Indian currency:*

Provided further that the exemption under this clause shall apply to sale of finished products alone:
Provided also that the above information shall be displayed on e-commerce website if such product is sold through e-commerce:

Provided also that any manufacturer or packer or importer may, notwithstanding the date of commencement of this clause, declare the above information with immediate effect."

Amendments in Companies (Appointment and Qualification of Director) Rules, 2014

The MCA notified the Companies (Appointment and Qualification of Director) Third Amendment Rules, 2022 **("Amendment")** to further amend the Companies (Appointment and Qualification of Director) Rules, 2014 vide notification dated August 29, 2022. Through this Amendment, MCA has substituted DIR-3 KYC form and DIR-3-KYC web form with new forms in order to align them with the MCA V3 version. Additionally, directors are now required to provide information about the jurisdictional police station of their permanent and present residential address in form DIR-3-KYC.

Amendments in Companies (Acceptance of Deposits) Rules, 2014

The MCA notified the Companies (Acceptance of Deposits) Amendment Rules, 2022 ("Amendment") to further amend the Companies (Acceptance of Deposits) Rules, 2014 vide notification dated August 29, 2022. Through this Amendment, MCA has revised e forms DPT-3 and DPT-4 in order to align with MCA V3 version. Accordingly, companies are now required to provide additional details in form DPT-3, which inter alia includes, loan taken by a company along with opening balance, additions during the year, repayments, ageing of loan. Further, a declaration from the Statutory Auditor regarding the particular of deposits of a Company would be required to be submitted along with form DPT-3.

Amendments in Companies (Registration of Charges) Rules, 2014

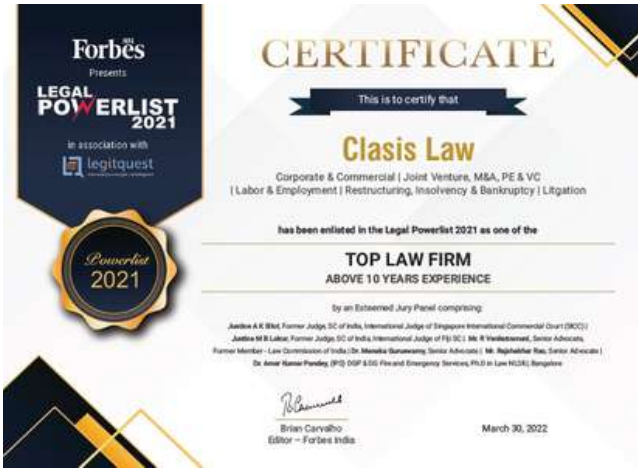
The MCA notified the Companies (Registration of Charges) Second Amendment Rules, 2022 **("Amendment")** to further amend the Companies (Registration of Charges) Rules, 2014 ("Rules") vide notification dated August 29, 2022. Through this amendment, MCA has inserted rule 13 to the Rules which stipulates that the charge related e-forms, CHG-1, CHG-4, CHG-8 and CHG-9 are required to be signed by an Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation. Further, e form CHG-1, CHG-4, CHG-6, CHG-8 and CHG-9 have been revised in order to align with the MCA V3 version.

Hindi Day (हिन्दी दिवस) 2022 history and facts

Hindi Diwas (हिन्दी दिवस) is celebrated to commemorate the adoption of Hindi in the Devanagari script as one of the official languages of India. Hindi was adopted by the National Constitution on *September 14, 1949* and it became the official language of the country. India's first prime minister, *Jawaharlal Nehru*, decided to celebrate September 14 as *"Hindi Diwas"*. Lets read a few interesting facts about Hindi language.

1. Hindi language is written in *Devnagiri* script and is a descendant of *Sanskrit*.
2. Over 50 crore people in India speak Hindi.
3. Hindi is the *3rd* most spoken language of the world in 2019 with *615 million* speaker.
4. Commonly used Hindi words like *'Surya Namaskar'* and *'Jugaad'* are part of the Oxford Dictionary.
5. First journal in Hindi language was published on the Internet in 2000.

Notable Recognitions & Accolades



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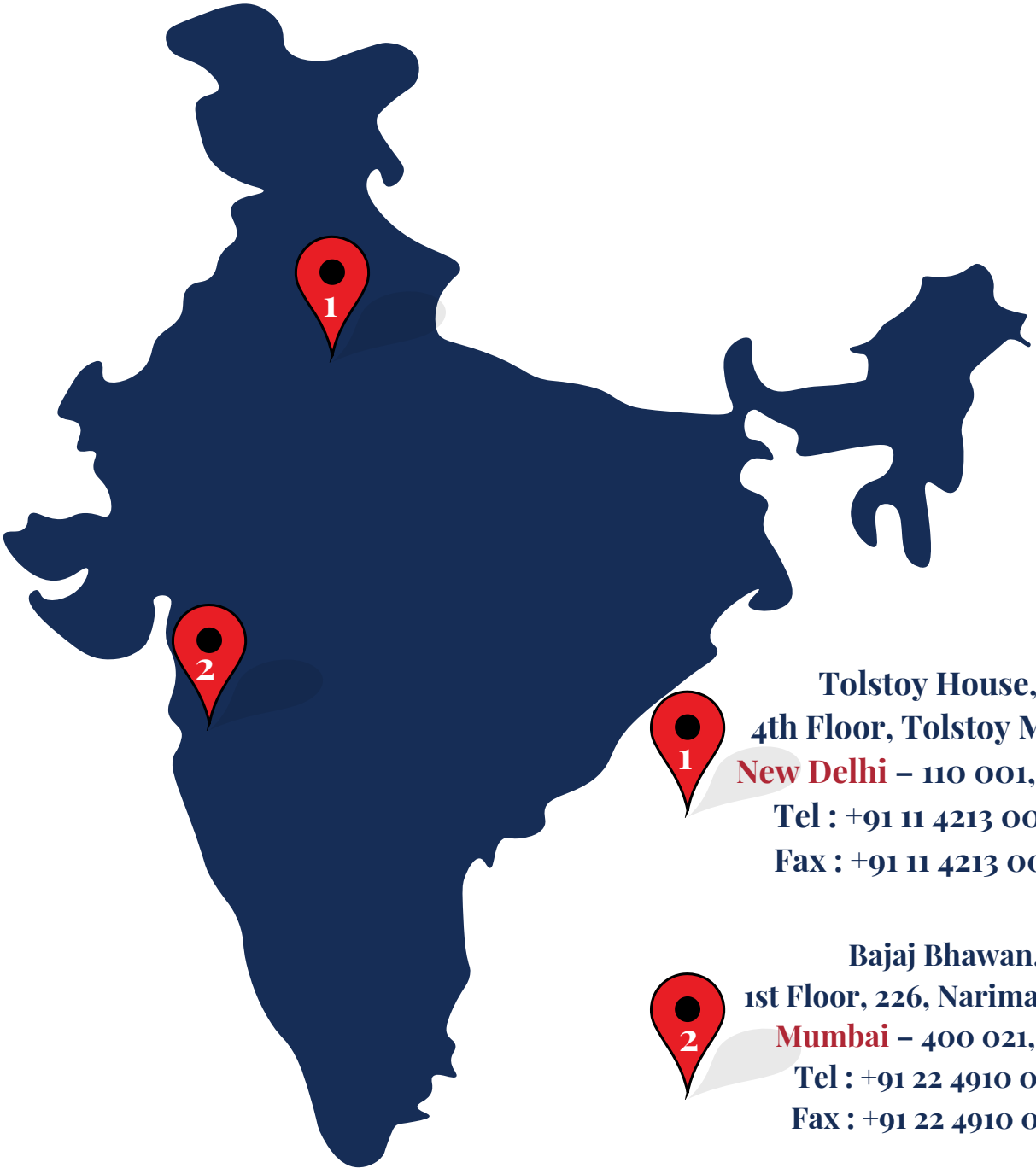

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