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Official Newsletter

CLASIS LAW

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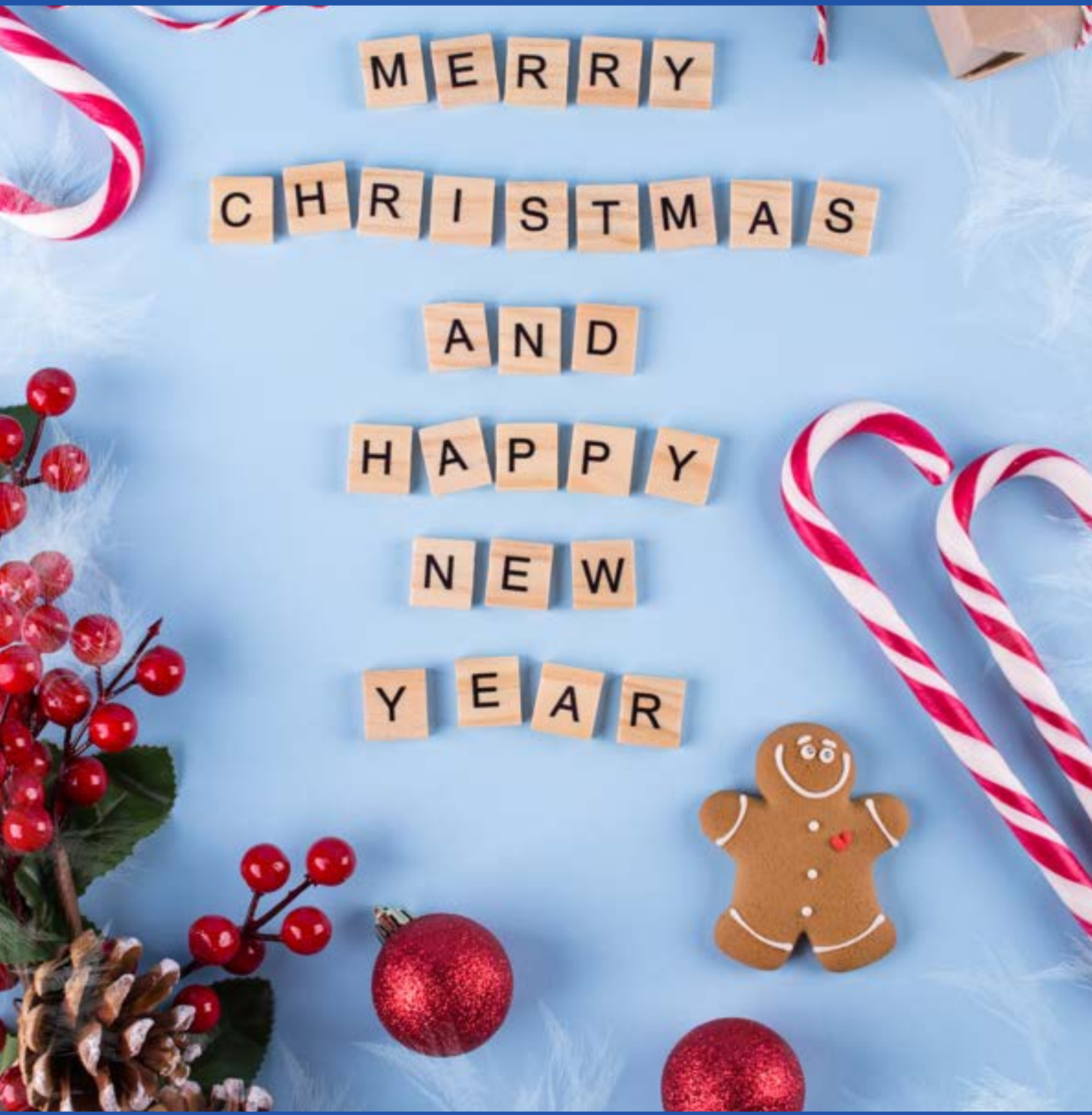
SEASON'S GREETINGS

As the year draws to a close, Clasis Law extends best wishes and hope your holiday season is filled with joy, peace, and a brighter future.

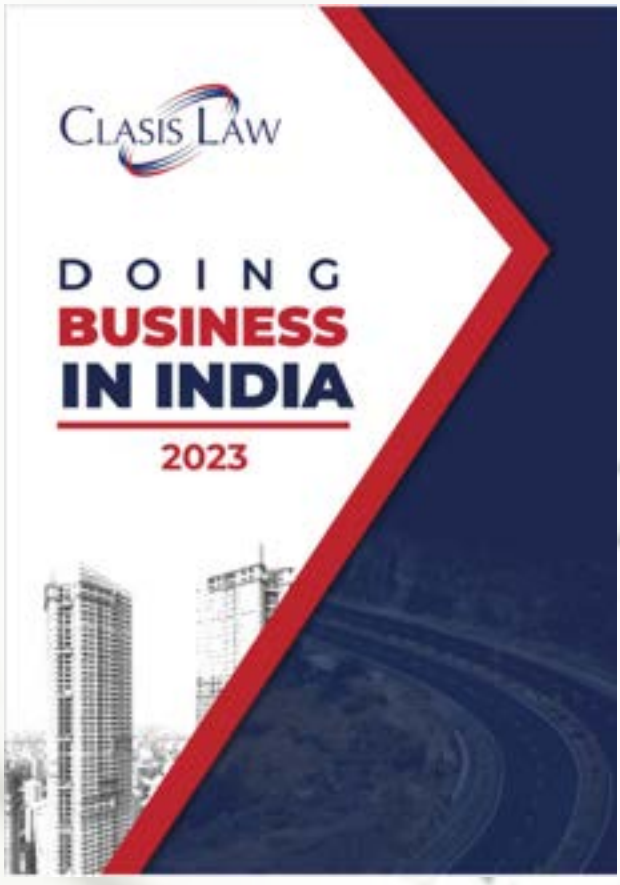


DOING BUSINESS IN INDIA

We are pleased to share the **Fifth Edition** of our e-book titled

"Doing Business in India".

The book 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.



Please scan the QR code above or Click Here to download the e-book. Alternatively, you may write to us at info@clasislaw.com for the copy.

FEATURED ARTICLE

Impact of Dematerialisation of Securities on Foreign Subsidiaries

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In accordance with the recent amendment issued by the Ministry of Corporate Affairs **("MCA")** on October 27, 2023, a new rule i.e., Rule 9B **("Rule")** has been inserted under Companies (Prospectus and Allotment of Securities) Rules, 2014 **("PAS Rules")**.

According to the Rule, every private company that is not a small company **("Non-Small Private Company")** is required to:

(i) facilitate the dematerialisation of their exiting securities to its security holders *(including shareholders)*;
(ii) issue all securities in dematerialised form.

A private company on the last day of its financial year is required to assess if it is a small company or not. The timeline to comply with the aforesaid requirement is 18 (eighteen) months from the end of the financial year in which the private company ceases to be a small company **("Relevant date")**. The requirement is applicable with effect from March 31, 2023.

A Non-Small Private Company can issue further securities including bonus shares or rights offer or buy back its securities after the Relevant Date, only if the securities of its directors, promoters, and key managerial personnel have been materialized.

Any security holder of a Non-Small Private Company intending to transfer its securities after the Relevant Date would be required to open the demat account and convert the physical securities into demat. The transfer of securities would be permitted to the security holders only if the securities are in demat form. Moreover, the security holders would be eligible to subscribe to new securities only if the existing securities of such security holders are in demat form.

Small company

According to the Companies Act, 2013 ("CA, 2013"), a small company means a private limited company having:

(i) paid up share capital of up to INR 40 million; and
(ii) turnover of up to INR 400 million.

as per the latest audited financial statement.

It is pertinent to note that the holding subsidiary companies are out of the purview of the definition of a small company.

Holding subsidiary company

Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Whereas, subsidiary company means a company in which the holding company:

(i) controls the composition of the Board of directors; or
(ii) exercises or controls more than half of the total voting power either at its own or together with one or more of its subsidiary companies.

Foreign subsidiaries and their security holders are obligated to comply with this requirement

Most of the foreign entities invest in India by establishing their own subsidiaries as private companies in conformity with Indian regulatory requirements.

The definition of the small company specifically excludes the companies having holding subsidiary relationships. Therefore, irrespective of the foreign subsidiary breaching the threshold limit of paid-up share capital or turnover, as applicable to small company, such foreign subsidiary would always be considered a Non-Small Private Company. This implies that the requirement of foreign subsidiaries to have the securities in demat form would be applicable from the date of their incorporation irrespective of their size. It could be cumbersome for foreign entities to comply with one more procedural requirement in order to hold the Indian securities in their subsidiaries who only intend to invest in India for the purpose of expanding their business and have no intention of transferring their ownership or increasing the capital base.

Obligations on foreign subsidiaries to facilitate the dematerialisation of their securities

Foreign subsidiaries incorporated as private companies in India are required to obtain an International Securities Identification Number **("ISIN")** to facilitate the dematerialisation of their securities. ISIN is an alpha-numeric code used to electronically identify the securities of a company. This code streamlines the process of issuance and transfer of securities and facilitates the convenient maintenance of the records of those securities.

To procure ISIN, foreign subsidiaries, shall have to enter into a tripartite agreement with a registrar and transfer agent **("RTA")** and a depository, such as either National Securities Depositories Limited or Central Depository Services (India) Limited. The foreign subsidiaries would be required to ensure timely payment of fees (both admission and annual) to the depository and RTA, as per the executed agreement. Additionally, a security deposit, equivalent to not less than two years' annual maintenance fees would be required to be maintained with the depository and RTA.

Furthermore, foreign subsidiaries would also be required to file form PAS-6 with the Ministry of Corporate Affairs within 60 days from the conclusion of each half-year, starting from September 30, 2024. This filing would include the details of securities held physically or in demat mode.

Obligations on security holders of foreign subsidiaries

The onus to comply with the aforesaid amendment is not only on the foreign subsidiaries but on those foreign nationals and entities as well who are the security holders of such foreign subsidiaries. To comply with this requirement, security holders would be required to open their demat account in India with a depository participant **("DP")** who is registered with the same depository from which the foreign subsidiary procured its ISIN.

To open a demat account, foreign entities and nationals would be required to obtain a permanent account number **("PAN")** from the Indian Tax Authorities and furnish information and documents required by the DP and the depositories to complete their KYC (Know Your Customer) process.

Impact of this amendment on foreign subsidiaries and their security holders

Certainly, securities dematerialization provides various benefits including the elimination of risks associated with physical certificates such as loss, theft, etc., ease in the transfer of securities and making it easier to hold and maintain securities.

It is also understandable that the intention of the government to bring the amendment is to improve the corporate governance regime by increasing transparency and preventing malpractices. The dematerialization of securities is not only mandated for private companies but also for unlisted public companies. However, PAS Rules provide an exemption from the dematerialization requirement to those unlisted public companies that are wholly owned subsidiaries. The MCA should consider similar relaxations and make certain modifications to the Rule thereby exempting foreign subsidiaries which does not breach the threshold limit of a small company as this amendment might change the mood of new businesses who intend to expand their business boundaries in India.

*For further information on this topic please contact **Ms. Neetika Ahuja, Partner** (neetika.ahuja@clasislaw.com) & **Ms, Poonam Upreti, Associate** (poonam.upreti@clasislaw.com) at Clasis Law.*

LEGAL UPDATE

Rights of Tenants to repair a dilapidated building is not superior to that of the Owner in case of Redevelopment

Introduction

In a recent judgement*(1)*, a Division Bench of the Bombay High Court has held that tenants cannot misuse their limited right to reconstruct or repair a dilapidated building to obstruct the property owner/landlord from redeveloping the property.

Facts, Contentions and Submissions

The Petitioner owned the land premises on which a building presently occupied by Tenants, stands. As the Building was in a dilapidated condition, the Tenants, who are some of the Respondents sought permission from the Petitioner to repair the said Building. The Respondent Tenants state that although the repairs are highly expensive since the Building is classified in the C-2A category by the Municipal Corporation of Greater Mumbai **('MCGM')**, indicating that the repairs to the Building could be carried out without anyone vacating it, the said Building should be repaired. In a previous petition filed by some of the Tenants before the Bombay High Court, the Tenants were permitted to apply to the MCGM to get requisite permissions to carry out repairs to the Building, while the Petitioner was instructed to co-operate. However, the order in the Tenants' petition noted the existence of the present petition and the order was made subject to the outcome of the present petition. In light of the order in the Tenant's petition, the MCGM granted a NOC to the Tenants to repair the Building subject to the report of the Technical Advisory Committee classifying the building in C-2A category. The Petitioner challenged the NOC granted by the MCGM on the grounds that the Petitioner has through the present petition proposed for the redevelopment of the Building and handover of premises to the Tenants therein on ownership basis. The Petitioner submitted that the Building was incorrectly classified to be in C-2A category and that it should have been classified to be in C-1 category, i.e., the building should be vacated immediately and demolished. It was submitted on behalf of the Petitioner that even if the building is categorized in C-2A category, if it wasn't repaired, it would automatically be categorized in C-1 category.

The Tenants in reply submitted that as the MCGM has already given them the NOC to initiate repairs and that the building is in a dilapidated condition, the Tenants be allowed to initiate the repairs. It was further submitted on behalf of the Tenants that till the building is categorized in C-2A category, the Tenants could repair it and the structure cannot said to be inhabitable unless it is 'declared' to be in C-1 category. It was finally submitted that in light of the aforesaid, the Tenants are absolutely entitled to repair the building and that the Tenant's rights to repair the building is superior to the Petitioner's right to redevelop the building.

Analysis of the Court and Conclusion

The Court opined that in the Writ Jurisdiction, they would not direct or command redevelopment of

the Building in a particular form. The Court specified that the principal question on which they would decide the petition was *"Whether, merely on the basis of a structural assessment, a tenant of a building can wholly eclipse the valuable rights of development associated with ownership of a property by a property owner"*.

The Court stated that it was an established position of law that *"ownership of a(n) (im)movable property carries with it several rights including the right to enjoy the fruits of development of that property to the fullest possible extent"*. The Court also noted that if any curtailment of rights to enjoy fruits of development was to be sought, it could be done only in accordance with law. The Court observed the fact that pursuant to the provisions of the Maharashtra Rent Control Act, 1999 or the Mumbai Municipal Corporation Act, 1888, if a landlord does not repair a tenanted building of his own accord, the tenants in such building are not remediless. The Court thereafter referred to a recent pronouncement in the case of *Chandralok People Welfare Association vs State of Maharashtra and Ors*[2]. The Court therein had held that if the landlord/owner of a tenanted dilapidated structure does not show any intent for redevelopment, the Rent Control Act in Section 17 and the MMC Act in Sections 354 and 499 protect the rights of the tenants by putting obligations on the owner of the building to either repair it or permit the same to be repaired or reconstructed. The Court further observed that there are various precedents by the Hon'ble Supreme Court which has recognised the right of the tenants to repair or reconstruct a dilapidated structure.

The Court observed that the present case was completely opposite to the one in *Chandralok*. The Court noted that in the present case, the Petitioner was not only willing to redevelop the dilapidated tenanted Building, but also had a firm plan on how to proceed further with the redevelopment. The Court opined that the argument put forth by the Tenants that the rights of the Petitioner to redevelop is inferior to the rights of the Tenants to repair is untenable. The Courts held that there is no proposition in law so extreme to the extent that the rights of a landlord to redevelop – a right to enjoy full fruit of development, which comes as a part of the right to ownership of the land can be curtailed.

The Court noted that the remedy of the tenants to repair and/or reconstruct a dilapidated building is prescribed in statues and has been discussed in detail in the *Chandralok* judgement. The Court further held that the right of the tenants is limited only to have the building repaired or have it reconstructed back to its original state and the same cannot eclipse the right of the owner willing to redevelop. The Court further held that in any case, even if the building is in a sound condition, the right of the owner to redevelop cannot be curtailed by the obstructing tenants who believe that the building can be repaired.

In light of the aforesaid, the Court granted the petition and permitted the Petitioner owner to expeditiously undertake redevelopment of the dilapidated building.

Footnotes

1. Anandrao G Pawar vs. The Municipal Corporation of Greater Mumbai & Ors, 2023:BHC-OS:12799-DB
2. 2023 SCC OnLine Bom 2300

E-Commerce websites to ensure Seller's complete details displayed on website

Introduction

The Delhi High Court has in its recent judgment*(1)* clarified that there is an obligation on the E-commerce platform to ensure that the complete details of the sellers are available on the platform so that the consumer is made aware about the seller from whom they are purchasing the products.

Facts

Tibra Collection **("Plaintiff")** is a retailer in clothing items for men and women and specializes in ethnic wear which are designed by its own in-house designers. The Plaintiff offers for sale and advertises its goods on various E-commerce platforms such as Amazon, Flipkart and Meesho. The Plaintiff claimed to have sufficient presence even on social media platforms and its gross turnover for the year 2022-23 is over INR 10 Crores. The Plaintiff filed a suit against Fashnear Technologies Private Limited (Defendant No.1) which runs the E-commerce website i.e. www.meesho.com **("Meesho")** for copyright infringement, passing off, delivery up and other reliefs including damages before the Delhi High Court. While few known operators who were illegally using the Plaintiff's copyrighted pictures and photographs for selling their own counterfeit goods were also made parties to the suit, the Plaintiff also made Ashok Kumar (John Doe) a party who are unknown identities that may be one or various unlawful parties using Plaintiff's product images to sell their products.

The Plaintiff's case was that the Defendants were advertising, publishing and offering for sale the garments which are a complete copy of the Plaintiff's garments and are also misusing photographs and images in which the Plaintiff owns the rights. Along with the suit, the Plaintiff also filed an application for interim injunction*(2)* **("interim application")**.

Arguments

At the time of the hearing of the interim application, the Plaintiff submitted that the Defendants are going to the extent of imitating the products, copying the identical photographs, as well as underpricing the goods so as to cause monetary damage to the Plaintiff. The products of the Defendants were claimed to be of a lower quality though a complete imitation in appearance to the Plaintiff's product. It was also highlighted to the Court that the Defendants did not even disclose their complete address on the invoice. It was difficult to trace the Defendants because the addresses on the website, GST Platform and other E-commerce websites such as Amazon, Flipkart and Meesho were all different. The Plaintiff also argued that the sales of the Plaintiff had taken a complete nose dive when such similar looking products with identical photographs started surfacing on Meesho Platform. In its defense, Meesho argued that as an intermediary its obligation is to ensure that whenever any URLs are communicated to them of look-alike images and products, the same may be taken down upon the order being passed by the Court. He countered the Plaintiff's argument by submitting that the details of the Defendants are available whenever the products

are delivered and also can be verified from the GST Platform.

Analysis and Conclusion

After hearing the parties, the Court observed that the sellers do not have a right to copy the photographs, images, product design of the Plaintiff in this manner and cause damage to the Plaintiff. While the E-commerce websites provide new platforms for small designers and businesses, the same ought not to be misused for the purposes of imitating and producing look alike products thereby violating the intellectual property rights of the Plaintiff.

The Court observed that there is an obligation on the E-commerce platform to ensure the complete details of the Sellers are available on the Platform so that the consumer is aware of the sellers from whom the product has been purchased and the entity which is listing the product. There has to be consistency in the name of the seller.

The Court also took note of the Consumer Protection (E-Commerce) Rules, 2020, notified on July 23, 2020 relied upon by the Plaintiff. The said Rules impose an obligation on the E-commerce platform to give the full geographic address, customer care number, rating and other feedback about the seller enabling consumers to make informed decision at the purchase stage.

In light of the aforementioned observations, the Court was pleased to grant an ex-parte interim injunction with the several directions which also included a specific direction to Meesho to reveal all the available details of the Defendant sellers including the address, mobile numbers, email addresses, total sales made by the sellers, GST details, payments made to the sellers since the time listings have been put up. The Court also directed Meesho to ensure that the geographic address of all the sellers is clearly generated with the invoice which is published on the platform.

Footnotes

1. Tibra Collection vs Fashnear Technologies Private Limited & Ors. C.S. (COMM) No. 678 of 2023
2. I.A. No. 18958 of 2023

JUDGEMENTS

In the matter of Valor Advisory (India) Private Limited ("Company") for the violation of Section 89 of the Companies Act, 2013 ("Act") read with Rule 9 of Companies (Management and Administration) Rule, 2014 ("Rules")

It was observed by the Registrar of Companies, NCT of Delhi & Haryana **("ROC")** that the annual return (in form MGT-7) filed by the Company for the financial year 2022-23 stated that Valor Management SDN. BHD held 100% shares in the Company. However, it was also observed that the Company had 2 shareholders and accordingly it was deduced that the beneficial holder and the registered holder should have declared the status of their interest in the shares in terms of Section 89(1) and Section 89(2) of the Act. Further, it was noticed that the Company had not filed Form MGT-6 with the ROC as per Rule 9(3) of the Rules.

The Company in response to the show cause notice submitted that declarations in Form MGT-4, MGT-5 and Form MGT-6 are required when there is a distinction between the registered owner and beneficial owner of shares and the fact was not known by it. In the instance case, the share is held as nominee of holding company and not as registered owner of the share. In order to avoid any legal dispute, the Company had filed Form No. MGT-6 on receipt of the show cause notice. ROC countered that upon submission of Form MGT-6 it became evident that the individual was registered owner and did not have beneficial interest in the share. Furthermore, the fact had been verified by the holding company. As the declarations in Form MGT-4 and MGT-5 were submitted with delay, ROC imposed a penalty of INR 1,56,800/- on the registered owner and beneficial owner, individually.

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In the matter of Shri Narayani (Kumbakonam) Nidhi Limited ("Company") for the violation of Section 158 of the Companies Act, 2013 ("Act")

Upon due diligence, the management noted that the Company had inadvertently failed to mention the Director Identification Number (DIN) of the directors who had signed the financial statement of the Company for the financial year 2017-18 and 2018-19 thereby violating provisions of Section 158 of the Act.

Consequently, the Company suo-moto applied for the adjudication to the Registrar of Companies, Tamil Nadu, Andaman & Nicobar Islands, Chennai **("ROC")** admitting the violations. ROC accordingly imposed a penalty of INR 50,000/- on the Company and its Managing Director, individually, for each contravention of Section 158.

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In the matter of Wurknet Private Limited ("Company") for the violation of Section 62(3) of the Companies Act, 2013 ("Act")

During internal due diligence, it was noted that the Company had got the proposal for issue of convertible notes approved from the Board of directors and shareholders of the Company in terms of Section 62(1)(c) of the Act.

JUDGEMENTS

To make good the default, the Company suo-moto filed compounding application with the Registrar of Companies, Maharashtra **("ROC")** stating that as no specific provision was provided under the Act for issuance of convertible notes, hence, it was interpreted that the issuance would fall within the ambit of Section 62(1)(c) and accordingly all compliances were carried out as per the provisions of Section 62(1)(c) instead of Section 62(3).

The presenting officer explained that Section 62(3) excludes increase in subscribed capital of a company pursuant to an option attached to the debentures issued or loans raised by the company for conversion of such debentures or loans into shares of the company subject to the terms of issued first being approved by the shareholders by means of special resolution. Further, he also clarified that explanation to Rule 2(1)(c)(vii) of the Companies (Acceptance of Deposits) Rules, 2014 defines convertible note as an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-up company upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument. Hence, the convertible notes should have been issued in terms of Section 62(3). After considering the facts of the case, the ROC imposed a penalty of INR 1,00,000/- on the Company and INR 25,000/- on each of its directors for violating the provisions of Section 62(3) of the Act.

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In the matter of Hendrik Technology Private Limited ("Company") for the violation of Section 134(3)(f) of the Companies Act, 2013 ("Act")

During an inquiry conducted under the provisions of the Act, it was observed that the auditor of the Company had stated emphasis in his report regarding forfeited advance and litigation pending against the Company under the provisions of Income Tax Act, 1961 against which the Company was unable to provide the sufficient documents and had failed to comment on the same. The Registrar of Companies, Uttar Pradesh, Kanpur **("ROC")** issued a show cause notice and summon to the Company as it had failed to provide the clarification/explanation regarding emphasis in the Director's report. Hence, it had violated Section 134(3)(f) of the Act. As the reply submitted by the Company was not found satisfactory by the ROC, a penalty of INR 3,00,000/- was imposed on the Company and INR 50,000/- on each of the defaulting directors.

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In the matter of Hendrik Technology Private Limited ("Company") for the violation of Section 153 of the Companies Act, 2013 ("Act") read with Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014 ("Rules")

During the inquiry conducted under the provisions of the Act, it was observed that the KYC status of one of the directors of the Company was deactivated due to non-filing of Form DIR-3 KYC.

JUDGEMENTS

The Registrar of Companies, Uttar Pradesh, Kanpur **("ROC")** issued a show cause notice in this regard. As the reply submitted by the Company and the director was not found satisfactory by the ROC, it imposed a penalty of INR 50,000/- on the defaulting director for failure to comply with Section 153 of the Act read with Rule 12A of the Rules.

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In the matter of SACS Infotech Private Limited ("Company") for the violation of Section 134(3)(m) of the Companies Act, 2013 ("Act") read with Rule 8(3)(B)(i) to (ii) of the Companies (Accounts) Rules, 2014 ("Rules")

During the inquiry conducted by an officer authorized by Central Government, it was observed that in the Directors' report for the financial year 2013-14 & 2014-15, under the head of "Technology Absorption", the Company had not furnished the details as prescribed in Rule 8(3)(B)(i) to (ii) of the Rules read with Section 134(3)(m) of the Act. The Company admitted the default for both the financial years at the hearing. Accordingly, the Registrar of Companies, Tamil Nadu, Andaman & Nicobar Islands, Chennai imposed a penalty of INR 3,00,000/- per default on the Company and INR 50,000/- per default on each officer in default.

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In the matter of SACS Infotech Private Limited ("Company") for the violation of Section 143 of the Companies Act, 2013 ("Act")

During the inquiry conducted by an officer authorized by the Central Government, it was observed that the auditor's report for the financial year 2013-14 and 2014-15 was qualified by the auditor that the Company did not have any accumulated losses at the end of the aforesaid financial years. However, as per the relevant financial statements there were accumulated losses. As the observation of auditor did not appear to be correct and was asked for clarification. The Company submitted that there was a typographical error in omitting the word "not" due to oversight and that the auditor had not hidden the losses as it could be seen in the financial statements. The Regional Director, Southern Region **("RD")**, stated that the non-compliance is on the part of the auditor. The auditor had misreported the fact that the Company had no losses as at the end of the financial year 2014 and 2015. Hence, it was not only negligence on the part of the auditor, the misreporting was also material. Further, the RD issued directions to the Registrar of Companies, Tamil Nadu, Andaman & Nicobar Islands, Chennai **("ROC")** to initiate action against the auditor. Consequently, after issuing adjudication hearing notice and considering the reply given by the auditor, ROC imposed a penalty of INR 10,000/- on the auditor of the Company for each violation.

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In the matter of Straye India Private Limited ("Company") for the violation of Section 56(4)(a) of the Companies Act, 2013 ("Act")

The Company suo-moto applied for adjudication for the violation of Section 56(4)(a) of the Act. The Company was required to

receive the subscription money and thereafter issue and deliver shares certificates to its subscribers to the memorandum of association within a period of 2 months from the date of incorporation.

However, as the Company had received the subscription amount after the expiry of 2 months from the date of incorporation, it had subsequently issued and delivered the share certificates to the subscribers to the memorandum of association with a delay of 20 days, thereby violating Section 56(4)(a) of the Act. The Company and its directors admitted the default at the hearing. Consequently, the Registrar of Companies, Tamil Nadu, Andaman & Nicobar Islands, Chennai imposed a penalty of INR 50,000/- on the Company and INR 50,000/- on each officer in default.

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CORPORATE REGULATORY UPDATES

Financial Action Task Force (FATF) High risk and other monitored jurisdictions

On 1 November 2023, the International Financial Services Centres Authority (IFSCA) issued a circular regarding Financial Action Task Force (FATF) High Risk and other monitored jurisdictions. The FATF, vide public statement 'High-Risk Jurisdictions subject to a Call for Action' dated 27 October 2023, has called on its members and other jurisdictions to refer to the statement on these jurisdictions adopted in February 2020 and October 2022. Further, FATF had earlier identified the following jurisdictions as having strategic deficiencies which have developed an action plan with the FATF to deal with them. These "Jurisdictions under Increased Monitoring" are: Barbados, Burkina Faso, Cameroon, Democratic Republic of Congo, Croatia, Gibraltar, Haiti, Jamaica, Mali, Mozambique, Nigeria, Philippines, Senegal, South Africa, South Sudan, Syria, Tanzania, Turkiye, Uganda, United Arab Emirates, Vietnam and Yemen. As per the public statement, **Bulgaria has now been added to the list of Jurisdictions** under Increased Monitoring while **Albania, Cayman Islands, Jordan and Panama have been removed from this list** based on the decision made at the 27 October 2023, FATF Plenary. Such advice does not preclude the regulated entities licensed/ recognized/ registered or authorized by IFSCA from legitimate trade and business transactions with the countries and jurisdictions mentioned.

The FATF plenary releases documents titled "High-Risk jurisdictions subject to a Call for Action" and "Jurisdictions under Increased Monitoring" with respect to jurisdictions that have strategic AML/CFT deficiencies as part of the ongoing efforts to identify and work with jurisdictions with strategic Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) deficiencies.

Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices

On 7 November 2023, the Reserve Bank of India **("RBI")** issued the Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices. These Directions incorporate, consolidate and update the guidelines, instructions and circulars on IT Governance, Risk, Controls, Assurance Practices and Business Continuity/ Disaster Recovery Management. These Directions shall come into effect from 1 April 2024.

These Directions shall be applicable to all Banking Companies, Non-Banking Financial Companies, Credit Information Companies, EXIM Bank, National Bank for Agriculture and Rural Development ('NABARD'), National Bank for Financing Infrastructure and Development ('NaBFID'), National Housing Bank ('NHB') and Small Industries Development Bank of India ('SIDBI') as established by the Export-Import Bank of India Act, 1981; the National Bank for Agriculture and Rural Development Act, 1981; the National Bank for Financing Infrastructure and Development Act, 2021; National Housing Bank Act, 1987 and the Small Industries Development Bank of India Act, 1989 respectively (hereinafter referred to as 'All India Financial Institutions' or 'AIFIs'). These Directions shall not be applicable to:

(i) Local Area Banks, and

(ii) NBFC- Core Investment Companies.

Fully Accessible Route' for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds

On 8 November 2023, the RBI issued a circular

regarding Fully Accessible Route for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds. Press Release on 'Issuance Calendar for Marketable Dated Securities for October 2023 - March 2024' dated 26 September 2023, issued by RBI, notified, inter alia, the issuance calendar for Sovereign Green Bonds for the fiscal year 2023-24. Further, the Fully Accessible Route (FAR) introduced by RBI, vide A.P. (DIR Series) Circular No. 25 dated 30 March 2020, specified certain categories of Central Government securities which were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well. The Government Securities that are eligible for investment under the FAR ('specified securities') were notified by the Bank, vide circular no. FMRD.FMSD.No.25/14.01.006/2019-20 dated 30 March 2020, circular no. FMRD.FMID.No.04/14.01.006/2022-23 dated 7 July 2022 and circular no. FMRD.FMID.No.07/14.01.006/2022-23 dated 23 January 2023. RBI has now decided to also designate all Sovereign Green Bonds issued by the Government in the fiscal year 2023-24 as 'specified securities' under the FAR. These Directions shall be applicable with immediate effect.

Procedural framework for dealing with unclaimed amounts lying with Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) and the manner of claiming such amounts by unitholders

On 8 November 2023, the Securities and Exchange Board of India **("SEBI")** issued a circular related to the procedural framework for dealing with unclaimed amounts lying with Real Estate Investment Trusts (REITs) and the manner of claiming such amounts by unitholders. Regulation 18(16)(b) of the SEBI (Real Estate Investment Trusts) Regulations, 2014 ('REIT Regulations'), mandate that not less than ninety percent of Net Distributable Cash Flows (NDCFs) of the REIT shall be distributed to the unitholders. Regulation 18(16)(c) of the REIT Regulations, inter-alia, provides that such distributions to be made by the REIT, shall be declared and made not less than once every six months in every financial year and shall be made not later than fifteen days from the date of such declaration. However, in certain cases it has been observed that the distribution amounts remained unclaimed or unpaid because of various reasons, including failure to update account details by the unitholders. In order to deal with any amount remaining unclaimed or unpaid out of distributions***(1)***, Regulation 18(6)(f) of the REIT Regulations, was inserted, as under:

"any amount remaining unclaimed or unpaid out of the distributions declared by a REIT in terms of sub-clause (c), shall be transferred to the 'Investor Protection and Education Fund' constituted by the Board in terms of section 11 of the Act, in such manner as may be specified by the Board."

Further, Regulation 18(6)(g) of the REIT Regulations, provides that, 'the unclaimed or unpaid amount of a person that has been transferred to the Investor Protection and Education Fund in terms of sub-clause (f), may be claimed in such manner as may be specified by the Board'. In order to define the manner of handling the unclaimed amounts lying with the REITs, transfer of such amounts to the IPEF and claim thereof by the unitholders, necessary amendments were made to Regulations 4(1)and 5(3)of the SEBI (Investor Protection and Education Fund) Regulations, 2009(IPEF Regulations). Regulation 5(3)(ii) of the IPEF Regulations, inter-alia, provides that the unclaimed amounts credited to the IPEF shall be utilised for refund to the entities which transferred the said amounts, pursuant to their making payment to eligible and

identifiable investors and making a claim to the Fund. Hence, an application for claim of entitled amounts needs to be made by a unitholder to the REIT which shall process the claim and then seek refund from the Board for the said amount. A framework defining the procedure to be followed by an REIT for transfer of unclaimed amounts, initially to an Escrow Account and subsequently, to the IPEF and claim thereof by a unitholder, has been provided as Annex-A to this Circular. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act 1992 and Regulation 33 of the REIT Regulations. This circular is issued with the approval of competent authority. The provisions of this Circular shall come into effect from 1 March 2024. Further, for REITs having unclaimed amounts for less than 7 years, as on 29 February 2024, shall start computing interest, as per provisions of Part I of Annex -A, from 1 March 2024. For REITs which shall be holding unclaimed amounts for more than 7 years, as on 29 February 2024, shall transfer the unclaimed amounts of the unitholders to IPEF, in compliance with the provisions of Part II of Annex - A, on or before 31 March 2024. Similar circular has also been issued on 8 November 2023, for laying out the procedural framework for dealing with unclaimed amounts lying with Infrastructure Investment Trusts (InvITs) and manner of claiming such amounts by unitholders.

Procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors

On 8 November 2023, SEBI issued a circular regarding the procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors. Regulation 61A(2) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 **('LODR Regulations')**, provides that, 'where the interest/ dividend/ redemption amount has not been claimed within thirty days from the due date of interest/ dividend/ redemption payment, a listed entity shall within seven days from the date of expiry of the said period of thirty days, transfer the amount to an Escrow Account.....'.

While the said provision mandated transfer of the unclaimed amounts, there was a need to standardise the process to be followed by a listed entity for transfer of such amounts to Escrow Account and by the investors for making claims thereof. Hence, a framework has been created for defining the manner of transfer of such unclaimed amounts (referred above) by a listed entity to an Escrow Account and claim thereof by an investor. The same is enclosed as Annex–A to this Circular. Further, Regulation 61A(3) of the LODR Regulations, inter-alia, provides that any amount transferred to the Escrow Account in terms of Regulation 61A(2), remaining unclaimed for a period of seven years shall be transferred to:

(a) the 'Investor Education and Protection Fund' (IEPF) constituted in terms of section 125 of the Companies Act, 2013 – in case of listed entities which are companies; and

(b) the 'Investor Protection and Education Fund' (IPEF) created by the Board in terms of section 11 of the Act –in case of listed entities which are not companies.

In order to define the manner of handling the unclaimed amounts lying, in particular, in the Escrow Accounts of the listed entities which are not companies, transfer of such amounts to the IPEF and claim thereof by the investors, necessary amendments were made to Regulations 4(1) and 5(3)of the SEBI (Investor Protection and Education Fund) Regulations, 2009 **("IPEF Regulations").**

Regulation 5(3)(ii) of the IPEF Regulations, inter-alia, provides that the unclaimed amounts credited to the IPEF shall be utilised for refund to the listed entities which transferred the said amounts, pursuant to their making payment to eligible and identifiable investors and making a claim to the Fund. Hence, an application for claim of entitled amounts needs to be made by an investor to the listed entity which shall process the claim and then seek refund from the Board for the said amount. A framework defining the procedure to be followed by the listed entities (which are not companies) for transfer of such unclaimed amounts from the Escrow Account to the IPEF and claim thereof by an investor, has been provided as Annex–B to this Circular. The provisions of this Circular shall come into effect from 1 March 2024.

Declaration of significant beneficial ownership in limited liability partnership ("LLP")

The Ministry of Corporate Affairs ("MCA") vide its notification dated November 9, 2023 notified the LLP (Significant Beneficial Owners) Rules, 2023 **("Rules")**. The Rules were introduced to identify the Significant Beneficial Owner **("SBO")** in relation to an LLP and reporting regarding the same to the LLP and the Registrar.

In terms of the Rules, SBOs of the LLP are required to make a declaration in form no. LLP BEN-1 within 90 days of commencement of the Rules (i.e., February 2024) and within 30 days in case of any changes in significant beneficial ownership. Pursuant to receipt of form no. LLP BEN-1, the reporting LLP is required to file a return in form no. LLP BEN-2 to the Registrar within 30 days of receiving the declaration from the SBO. Simultaneously, the reporting LLP is required to make the requisite entries in in the register of SBO (to be maintained in form no. LLP BEN-3).

The reporting LLP is required to obtain information about SBOs, through form no. LLP BEN-4, from its partners (other than individuals) who, directly or indirectly, hold 10% or more contribution or voting rights or the right to receive or participate in distributable profits or any other distribution payable in a financial year or exercise significant control or influence on the LLP. The SBO, inter-alia, includes an individual holding 50% or more stake in the body corporate or ultimate holding company where the partner of the reporting LLP is a body corporate.

Guidelines on import of silver by Qualified Jewellers as notified by – The International Financial Services Centres Authority (IFSCA)

On 10 November 2023, RBI issued a circular on Guidelines regarding import of silver by Qualified Jewellers as notified by – The International Financial Services Centres Authority (IFSCA). In terms of A.P. (DIR Series) Circular No. 04 dated 25 May 2022, in terms of which AD Category-I banks have been permitted to remit advance payments on behalf of Qualified Jewellers as notified by International Financial Services Centres Authority (IFSCA) for eleven days for import of gold through India International Bullion Exchange IFSC Ltd (IIBX). Further, in terms of Notification No.35/2023 dated 11 October 2023 issued by DGFT, in terms of which, in addition to nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies), Qualified Jewellers as notified by International Financial Services Centres Authority (IFSCA) have been permitted to import silver under specific ITC(HS) Codes through IIBX. Accordingly, RBI has decided that AD Category-I banks may allow Qualified Jewellers to remit advance payment for eleven days for import of silver through IIBX subject to the conditions as mentioned in A.P. (DIR Series) Circular No. 04 dated 25 May 2022.

Simplified norms for processing investor's service requests by RTAs and norms for furnishing PAN, KYC details and Nomination

On 17 November 2023, SEBI issued a circular on simplified norms for processing investor's service requests by RTAs and norms for furnishing PAN, KYC details and Nomination. SEBI, vide circular dated 16 March 2023 (now rescinded due to issuance of Master Circular for Registrars to an Issue and Share Transfer Agents dated 17 May 2023) had simplified norms for processing investor's service request by RTAs and for furnishing PAN, KYC details and Nomination. Based on representations received from the Registrars' Association of India, feedback from investors, and to mitigate unintended challenges on account of freezing of folios and referring frozen folios to the administering authority under the Benami Transactions (Prohibitions) Act, 1988 and/or Prevention of Money Laundering Act, 2002, SEBI has decided to do away with the above provisions. Accordingly, para 19.2 of the Master Circular for Registrars to an Issue and Share Transfer Agents dated 17 May 2023 has been amended as follows:

(a) Reference to the term 'freezing/ frozen' has been deleted.

(b) Referral of folios by the RTA/listed company to the administering authority under the Benami Transactions (Prohibitions) Act, 1988 and/or Prevention of Money Laundering Act, 2002, has been done away with.

This circular shall come into force with immediate effect.

Allocation of Indian Financial System Code (IFSC code) to IBUs

On 28 November 2023, the International Financial Services Centres Authority issued a circular on allocation of IFSC code to IFSC Banking Units (IBUs). In terms thereof, it has been decided, to allocate IFSC codes to IBUs. IBUs are required to follow the following procedure for obtaining IFSC code:

(i) IBUs shall make an application for issuance/ deletion/ modification of IFSC code to IFSCA. The details required to submitted along with each application is given in Annex 1 to this circular.

(ii) IFSCA shall communicate to the IBU whether their application for issuance/ deletion/ modification has been successful or not along with the applicable conditions.

(iii) The IFSC code issued to the IBUs shall be used only for the remitters to undertake cross-border remittances to IBUs for mentioning in the relevant field of cross-border payment systems message where IFSC code is a mandatory requirement.

(iv) The IFSC code issued to the IBUs shall not be used in domestic payment systems. In order to prevent any confusion, IBUs shall inform their parent banks to ensure that these codes are not advertised to the public.

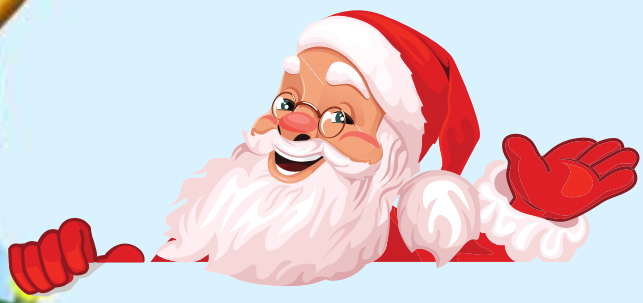
(v) In case of closure of an IBU, the concerned IBU shall file an application for deletion of IFSC code to IFSCA prior to closure of the IBU.

The application may be submitted by email to banking-queries@ifsca.gov.in (with the data in Annex 1 included in an excel sheet) followed by physical copy of the same. The application should be accompanied by a covering letter making the request signed by the IBU Head.

Foot note

1. *Hereinafter such amounts shall be referred to as, 'unclaimed amounts';*

Off Beat Section



Christmas Around the World!

Christmas is celebrated differently in various cultures across the world. *Christmas Eve* and *Boxing Day*, along with the day of Christmas is recognized as a holiday by many nations. Let's read about the celebrations of this holy day in a few countries.

In Australia, Christmas comes in the beginning of the summer holidays. Children have their summer holidays from mid of December to early February. Some Australians also decorate their houses with bunches of '*Christmas Bush*', a native Australian tree with small green leaves and cream colored flowers.

In Germany, a big part of Christmas celebrations is *Advent* (it is the period of four Sundays and weeks before Christmas (or sometimes from the 1st of December to Christmas Eve). Christmas Trees are a big part of celebrations and were first used during the late Middle Ages. The trees are secretly decorated by the mothers of the family and brought into the house on the *Christmas Eve*.

In India, midnight mass is a very important service for Christians, especially Catholics. The whole family walks to the mass followed by a massive feast of different delicacies (mostly curries) and exchange of presents. The churches are decorated with poinsettia flowers and candles for the Christmas Eve midnight mass service.

Source - https://www.whychristmas.com/cultures/

Year of Recognitions & Accolades

*The **2023** was the year of recognitions, the firm & several partners were recognized as leading experts in different areas of practice. A few of the notable recognitions of the firm and partners are mentioned below.*

- Clasis Law ranked in the ***Asia M&A Rankings*** published by Asian Legal Business.
- Clasis Law ranked in the Asialaw, Benchmark Litigation, Legal 500, Chambers & Partners and IFLR 1000 rankings.

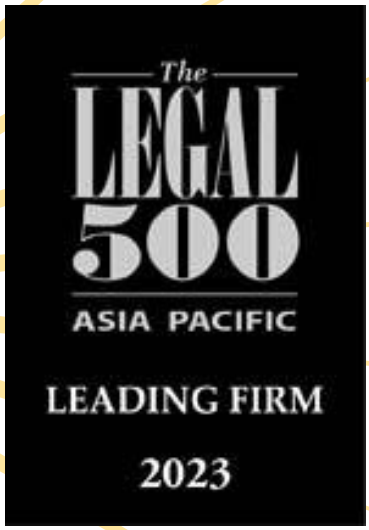
- Vineet Aneja was recognized as one of the ***Super 50 Lawyers*** in India by Asian Legal Business.
- Vineet Aneja was enlisted in the "***A List***" as one of the top 100 Lawyers in India by IBLJ.

- Mustafa Motiwala was recognized as a "***Litigation Star***" in the Benchmark Litigation Rankings.
- Mustafa Motiwala enlisted as one of the "***Top 100 Individual Lawyers***" by Forbes India.

Vikram Bhargava was ranked as a *"Recommended Lawyer"* in The Legal 500 rankings.

- Neetika Ahuja was ranked as a "***Recommended Lawyer***" in The Legal 500 rankings.
- Neetika Ahuja was recognized as a ***Mondaq Thought Leading Author*** – India.

Notable Recognitions & Accolades



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