

MONTHLY LITIGATION NEWSLETTER

JULY 2024

Dear Readers,

We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

Our newsletter will cover updates on latest verdicts from the Supreme Court of India and various High Courts.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at mail@lexport.in.

Regards,
Team Lexport



ABOUT US

Lexport is a full-service Indian law firm offering Consultation, litigation, and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website www.lexport.in.

OUR LITIGATION TEAM

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PART A: COURT RULINGS

ISSUE 1: Whether Doctrine of Merger is universal in Application?

Ruling: The Hon'ble Supreme Court, in its recent decision favouring the Delhi government and its entities in a batch of land acquisition cases, the Supreme Court recently observed that the doctrine of merger is not of universal application and powers under Article 142 of the Constitution shall be deemed as an exception thereto as well as to the rule of stare decisis.

According to Justices Surya Kant, Dipankar Datta, and Ujjal Bhuyan, the Court in the Kunhayammed case recognized that the doctrine of merger is not of universal or unlimited application. The higher court must consider the type of jurisdiction it is exercising, and the issues being challenged.

Government of NCT of Delhi & Anr. Vs. M/s BSK Realtors LLP & Anr., C.A. No. ../2024@ SLP (C) No../2024@ SLP (C) Dy.No. 32072/2022

Lexport Comment: *In this ruling the Hon'ble Supreme Court favouring the Delhi Government and its entities in a series of land acquisition cases, noted that the Doctrine of Merger does not universally apply.*

ISSUE 2: Whether Patent and Trademark Agents can be put scrutiny for misleading advertisement?

Ruling: The Hon'ble High Court of Delhi issued the following directions:

1. The Controller General of Patents, Designs & Trademarks (CGPDTM) is to prepare a draft Code of Conduct for regulating Patent and Trademark Agents and publish it on its website for stakeholder

consultation within two months. The final Code of Conduct must be notified within six months from now, no later than 31st December 2024.

2. Within the same six-month period, a framework must be established for handling complaints against Trademark and Patent Agents. Until this framework is in place, any complaints filed against these agents with the CGPDTM office shall be considered and decided by an ad-hoc Committee. This Committee should consist of at least two officials from the trademark/patent office and one senior IP practitioner with at least 15 years of practice and registration as a Patent/Trademark Agent. The ad-hoc Committee must be notified within two months.

Saurav Chaudhary Vs. Union of India & Anr., W.P.(C)-IPD 9/2023

Lexport Comment: The Directions issued by the Hon'ble High Court of Delhi aim to enhance regulation and accountability within the patent and trademark agent sector through the establishment of a structured Code of Conduct and a temporary complaint handling mechanism, ensuring timely implementation and stakeholder involvement.

ISSUE 3: Whether official liquidator obligated to fairness and ethical principles to discharge his duties under Insolvency and Bankruptcy Code in the absence of rules?

Ruling: The Hon'ble High Court of Delhi observed that the official liquidator plays a crucial role in insolvency proceedings. The liquidation process centres around the official liquidator, who must perform their duties with the company's best interest in mind. The official liquidator must follow high ethical standards, act diligently, and remain impartial to maintain the process's integrity.

Sundaresh Bhat Vs. Insolvency and Bankruptcy Board of India, W.P.(C) 14389 of 2022; 2024: DHC:4546

Lexport Comment: The judgment affirms the pivotal role of the official liquidator in insolvency proceedings, ensuring that the process operates smoothly and equitably. The liquidator is required to act with the highest ethical standards and diligence to safeguard the interests of the company undergoing liquidation.

ISSUE 4: Whether assets of corporate debtor held by third parties can be released to resolution professional for rival and resolution of corporate debtor?

Ruling: The NCLT Mumbai approved the application and decided that the Corporate Debtor's assets held by third parties must be given to the Resolution Professional (RP) for the company's resolution and revival. It also stated that any charge holders can file their claims if they believe they have a right over these assets. The Tribunal pointed out that Jet Lite is responsible for paying the charges to retrieve the engines. Even if the Corporate Debtor acted as a guarantor for Jet Lite's obligations, making it liable for these charges, the creditor must submit their claim in the Corporate Debtor's resolution process. The repair costs should have been claimed from Jet Lite and, as a guarantor, from the Corporate Debtor.

Mr. Ashish Chhawchharia Resolution Professional of Jet Airways (India) Limited Vs. TWC Aviation Capital Limited and Ors., IA No. 342/MB/C-I/2021 in C.P (IB) No. 2205/MB/C-I/2019 (NCLT Mumbai).

Lexport Comment: *The NCLT Mumbai ruled that the Corporate Debtor's assets held by third parties must be given to the RP for resolution. It clarified that Jet Lite is responsible for the engine retrieval charges, and creditors must claim these costs through the resolution process.*

ISSUE 5: Whether the party can seek arbitration proceedings and resolution through designated authorities simultaneously?

Ruling: The Hon'ble Telangana High Court held that the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) take precedence over the Arbitration and Conciliation Act, 1996. The bench decided that even if the parties have an arbitration agreement, if the seller qualifies under the MSMED Act, they have the right to seek resolution through the designated authority for their claims.

M/s Lignite Power Pvt. Ltd. Vs. M/s Totale Global Private Ltd, Arbitration Application No. 205 of 2023.

Lexport Comment: *The bench ruled that the MSMED Act, 2006, overrides the Arbitration Act. Sellers covered by the MSMED Act can seek resolution through the designated authority, even if there's an arbitration agreement.*

ISSUE 6: Does the statute of limitation for arbitration claims run from the date the cause of action arose, the same as it does for court claims?

Ruling: The Hon'ble Orissa High Court ruled that arbitration claims must be filed within the same timeframe as court claims, starting from when the issue first arose. The statute of limitations for arbitration begins on the date the claimant first had the right to take action or seek arbitration. Therefore, the limitation period for starting arbitration is the same as it would be for a court case if there were no arbitration clause.

Principal Secretary to the Govt. of Odisha & Others Vs. M/s Jagannath Choudhary, ARBA No. 28 of 2019.

Lexport Comment: *The court decided that arbitration claims must be filed within the same time limits as court claims. This means the timeframe for starting arbitration begins when the claimant first had the right to act.*

PART B: Article

1. Modernizing Telecommunications in India: An Overview of the Telecommunication Act, 2023

In this article, our **Associate, Mr. Shyam Kishor Maurya**, and **Trainee, Divyansh Dubey** (Student of Final Year, Jindal Global Law School), elucidate recent amendments to the Telecommunication Act, 2023. They analyze the Act's provisions on imposing enhanced penalties for unauthorized operations and expanding its jurisdiction to encompass offenses concerning telecommunication services, networks, or equipment situated in India. The article also discusses the powers conferred upon the Department of Telecommunications (DoT), safeguards for users, and the introduction of the Digital Bharat Nidhi and Regulatory Sandbox.

Click on the below link to read the article:

<https://shorturl.at/jwb9a>

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