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NEWSLETTER

February, 2019

Supreme Court of India on Law of Arbitration

Supreme Court of India on Arbitrators power to grant interest

Distinguishing the position under the Arbitration and Conciliation Act, 1996 and the Arbitration and Conciliation Act, 1940, a three-Judge Bench of the Court, held that when the agreement expressly prohibits the grant of interest, the arbitrator cannot award interest to a party. The appeal before the Apex Court was based on two conflicting three-Judge bench decisions of the Hon'ble Supreme Court and the very interpretation of the clauses in the Agreement.

Limited scope of assessment under Appeal

A court, when adjudicating upon an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 can only determine whether the Court, which exercised the power granted under Section 34, has exceeded its scope under Section 34 and must not impede into the merits of the matter.

International Arbitration

No Anti-arbitration injunction; Arbitral Tribunal has power to decide jurisdiction

The High Court of Delhi rejected an application by the Union of India to grant an anti-arbitration injunction in a proceedings arising out of a Bilateral Investment Treaty with Mauritius by invoking the doctrine of *kompetenz-kompetenz*. It further held that court interference is warranted only in compelling circumstances.

A word of caution from Lord Goldsmith QC

Renowned jurist Lord Peter Goldsmith, QC has cautioned the Indian Legislature to reconsider the recent reforms, proposed in the Indian Arbitration and Conciliation Act, 1996, in order to be portrayed as an arbitration friendly jurisdiction and seat. The Arbitration and Conciliation (Amendment) Bill, 2018 has been passed by the Lok Sabha and is pending before the Rajya Sabha for consideration.

South Korea- India settle arbitration after attachment orders

SIAC administered arbitration proceedings between India's GMR Group and Korea's Doosan Heavy Industries were settled after a New York Court issued attachment orders in March 2018, allowing Doosan to freeze assets of GMR Group, amounting to about US\$102.8 million. The terms of settlement are currently undisclosed.

Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015

The Hon'ble Supreme Court has expressly laid down that in light of the amendments to the Code of Civil Procedure inserted by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 the time limit of 120 days to file a written statement is mandatory and cannot be extended even under Section 151 of the Code of Civil Procedure. It was held that failure to do so would attract the consequence of forfeiting a right to file the written statement altogether.



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NEWSLETTER

February, 2019

Supreme Court of India on Insolvency and Bankruptcy Code **No power to look into the reasons for rejection of resolution plans**

The Hon'ble Court has held that the National Company Law Tribunal has no jurisdiction or authority to look into the justness or fairness of the decision of the Committee of Creditors to accept or reject a resolution plan. It was held that the Tribunal cannot render an opinion on a 'commercial decision' of the Committee of Creditors and must only ensure 75% votes in favour of approval of a resolution plan.

Public Health and Welfare

National Policy for Treatment of Rare Diseases

The Hon'ble Supreme Court has sought the response of the Center and almost all States and Union Territories regarding the setting up of a technical cum administrative committee within the Ministry of Health and Family Welfare, both at the Central and the State levels. The Court acted in response to a Public Interest Litigation filed by a NGO- Organization for Rare Diseases in India.

Delhi High Court sets aside ban on Fixed Dose Combination Drug

The Hon'ble High Court of Delhi has set aside the operation of the Central Government's notification banning drugs that are used for the treatment of Type-2 diabetes mellitus when diet, exercise and the usage of dual therapy do not result in adequate glycemic control. Relying on the report of the expert sub-committee the Court observed that the drug in question had sufficient therapeutic justification.

Intellectual Property and Media Law

Pre-publication injunction

The High Court of Bombay passed an order restraining the publication and sale of a book titled "The Incomplete Man" pursuant to a petition filed by Raymond Ltd. on the ground that the title similar to its own tagline and that the contents of the book are defamatory and reveal confidential information and trade secrets.

Geographical Indication can be filed only for Goods, not services

The High Court of Calcutta has dismissed an infringement suit against ITC on the ground that the rights of a Geographical Indication can be enforced only for goods. The High Court negative the plaintiff's claim that the lounge in a hotel run by ITC cannot be named 'Darjeeling' as the same is to be used only with respect to tea since the lounge is a service and not goods.

No interference with content on online streaming platforms

The High Court of Delhi dismissed a petition seeking regulation of content on online platforms like Netflix, Amazon Prime, etc. by the Ministry of Information and Broadcasting since these platforms do not require a licence from the Ministry to operate.



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NEWSLETTER

February, 2019

Consumer Forums have Jurisdiction to Dismiss Complaints in limine

The Hon'ble Supreme Court observed that consumer forums have the jurisdiction to dismiss the complaint *in limine* and decline its admission without notice to the opposite party. The Bench took note of the amendment brought to Section 13 of the Consumer Protection Act and observed that such jurisdiction to dismiss the complaint *in limine* must be exercised having regard to facts and circumstances of each case, i.e. in appropriate case.

Undivided Share In Joint Family Can Be Disposed By Will

The Hon'ble Supreme Court has held that the undivided interest of a Hindu in a joint family property can be disposed of by Will under Section 30 of the Hindu Succession Act, 1956. The Apex Court observed that rule against disposition of undivided coparcenary interest was relaxed by Section 30 and that the provision is an exemption to the general rule that the interest of a Male Hindu in joint family property will devolve by survivorship upon the surviving members of the coparcenary after his death.

Introduction of Unit Area Method (UAM) System through NDMC Bye-laws Invalid

The Hon'ble Supreme Court, while observing that UAM may be a better method for assessment, upheld the Delhi High Court judgment that quashed the NDMC (Determination of Annual Rent) Bye-laws, 2009 on the ground that it is *ultra vires* the provisions of New Delhi Municipal Council Act. The said bye-laws had introduced the system of Unit Area Method (UAM) for arriving at annual rent and assessing property tax.

Decree Passed on Plaintiff's Evidence Without Defendant's Appearance at Trial is Ex-Parte Decree

The Hon'ble Supreme Court held that a decree passed after taking plaintiff's evidence, without the appearance of defendant at the trial stage, is an ex-parte decree, which could be set aside under Order IX Rule 13 of the Code of Civil Procedure. The Bench further observed that the question of sufficient ground for setting aside of the ex parte decree is a question of fact and cannot call for interference by the Apex Court.

Casual Act Of Possession Over Property Does Not Confer 'Possessory Title'

The Hon'ble Supreme Court held that merely on the basis of 'casual possession' does not have the effect of interrupting the possession of the rightful owner. It was held that a person who asserts possessory title over a particular property has to show settled or established possession, i.e. possession that is (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser.

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SPECIAL SECTION

February, 2019

NEWS BULLETIN THE ENERGY LAW PRACTICE GROUP

Supreme Court issues notice in SLP No. 4890/2019 on the issue of Constitutionality of APERC (Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation) Regulation, 2017

The Hon'ble Supreme Court on 25.02.2019 had issued notice in the Special Leave Petition filed by Greenko Energies Pvt. Limited against the Andhra Pradesh Electricity Regulatory Commission Regulations on Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation Regulation, 2017.

The instant SLP is filed against the order of the AP High Court in a writ petition challenging the Constitutionality of the instant regulations as abusive of the powers vested upon State Commission under Section 181 read with Section 86 of the Electricity Act, 2003 wherein the State Commission through the instant notification as exceeding its delegated legislative powers.

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Suri & Co. representing the wind power producer submitted that the QCA is woven in a biased and patriarchal set-up overviewed by SLDC and RERC with no resolution given to generators to express their concerns on misdeeds and inappropriate/unwarranted claims and actions on part of implementing agencies.

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