



**SURI & COMPANY**  
Law Firm  
Since 1984

A premier full-service law firm with offices at New Delhi, Bhubaneswar and Chandigarh.

### Practice Areas:

- ✦ Dispute Resolution
- ✦ Corporate Commercial Advisory
- ✦ Mergers and Acquisitions / Transactional Advisory
- ✦ Intellectual Property Rights
- ✦ Infrastructure Laws
- ✦ Real Estate
- ✦ Support to Start-ups
- ✦ Environment Laws
- ✦ Energy Law Practice
- ✦ International Practice Group

# NEWSLETTER

October, 2018

## **Supreme Court of India on Law of Arbitration**

### **Arbitrator cannot award penal interest, including in International Commercial Arbitrations seated in India**

The Hon'ble Court, observed that in an international commercial arbitration, in the absence of an agreement between the parties on rate of interest, the rate of interest awarded would be governed by the law of the seat of arbitration. Therefore, with reference to Indian law, the Hon'ble Court laid down factors that must be taken into consideration while awarding interest and further held that while rate of interest must be compensatory, it must not be punitive, unconscionable or usurious in nature.

### **'Association' in the context of International Commercial Arbitration**

The Hon'ble Court held that an un-incorporated consortium consisting of multiple body corporates, at least one of whom is a body corporate incorporated outside India, would fall within the meaning of 'association' for determining whether the matter is an international commercial arbitration. In the given case, however, the management and control of the association, which consisted of a body corporate incorporated outside India, was in India and therefore it was held that no international commercial arbitration exists.

### **No power to remand matter under Section 34**

The Hon'ble Court reiterated that, in a challenge to an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, the Court does not have the power to remand the matter to the Arbitrator for a fresh decision.

## **Supreme Court of India on Insolvency and Bankruptcy Code**

### **Existence of an undisputed debt is sine qua non to invoke IBC**

The Hon'ble Court has reiterated that the IBC cannot be used as an alternate to a recovery proceeding and for initiating a corporate insolvency resolution process, there must necessarily exist an undisputed debt.

### **Enactment of IBC does not revive time barred claims**

The Hon'ble Court has held that the Limitation Act, 1963 is wholly applicable to proceedings and applications filed under the IBC, even from its commencement on 01.12.2016 till 06.06.2018, when an amendment made this position clear. It was held that the right to sue accrues when a default occurs and if such default has occurred over three years prior to the date of filing of the application under IBC, the same would be time-barred.

### **Eligibility to submit Resolution Plan after insertion of Section 29A**

The Hon'ble Court has interpreted Section 29A of the IBC, in light of its objects, and observed that a person is ineligible to submit a resolution plan, and if such person or any person acting jointly or any person in concert with such person, happens to either manage, control, or be promoter of a corporate debtor who has been declared as a non-performing asset one year before the given corporate insolvency resolution process begins. Further, the ineligibility can only be removed if the person submitting a resolution plan pays off the entire corporate debt. Further, the Hon'ble Court explained the entire resolution process, along with timelines, as prescribed by the IBC.



**SURI & COMPANY**  
Law Firm  
Since 1984

A premier full-service law firm with offices at New Delhi, Bhubaneswar and Chandigarh.

### Practice Areas:

- ❖ Dispute Resolution
- ❖ Corporate Commercial Advisory
- ❖ Mergers and Acquisitions / Transactional Advisory
- ❖ Intellectual Property Rights
- ❖ Infrastructure Laws
- ❖ Real Estate
- ❖ Support to Start-ups
- ❖ Environment Laws
- ❖ Energy Law Practice
- ❖ International Practice Group

# NEWSLETTER

October, 2018

## Intellectual Property Rights

### Trademark Infringement in a connected or affiliated business

The Hon'ble High Court of Delhi observed that the use of a business name or trade style in a connected or affiliated business, even if it is registered in a different class, will amount to Trademark Infringement.

### Intellectual Property Appellate Board to function without Expert Member (Copyright)

The Hon'ble High Court of Delhi held that the absence of a Technical Member (Copyright) does not impede the IPAB from hearing appeals under the Copyright Act, 1957. As a consequence, the IPAB now will start hearing all matters pertaining to Patents, Trademarks as well as Copyright.

### Regulation of OTT Platforms and Online Content

Public Interest Litigations have been filed before the Hon'ble High Court of Bombay at Nagpur, as well as the Hon'ble High Court of Delhi seeking regulation of content exclusively available online stating that the platforms release content that is vulgar, religiously forbidden and morally unethical. While the matter before the Hon'ble High Court of Delhi is yet to be listed, the Hon'ble High Court of Bombay has issued notice and called the Ministry of Information and Broadcasting to give a response.

### Vodafone Idea Limited directed to deposit INR 2.5 crore

The Hon'ble High Court of Calcutta has directed Vodafone Idea Ltd to deposit INR 2.5 crore in a case filed by the Indian Performing Rights Society (IPRS). IPRS is seeking a mandatory injunction against Vodafone Idea Ltd for removal, from its Value Added Services, of all cinematograph films, sound recordings and other content in which the copyright is owned by the former. The Hon'ble High Court has directed that Vodafone Idea Ltd. can continue to provide such value added services only if it deposits the amount.

## Supreme Court of India on tariff for the broadcasting sector

The Hon'ble Court, vide order dated October 29, 2018, has dismissed the challenge to Telecom Regulatory Authority of India's (TRAI) tariff order and interconnect regulations for pricing and packaging of channels. Keeping the benefit of subscribers paramount, broadcasters are now no longer permitted to mix free-to-air and paid channels in the same bouquet and have a cap placed on the discounts and maximum retail price for each channel.

## Supreme Court of India upholds the constitutional validity of Goods and Service Tax (GST) Law

The Hon'ble Court upheld the constitutional validity of Goods and Service Tax (Compensation to States), Act 2017 by calling it not beyond the legislative competence of the Parliament. It was categorically held that the said law is not a "colorable legislation" and the levy of Compensation to States Cess is an increment to GST which is permissible in law.

## CONTACT US

### **Delhi Office:**

Address:  
Flat Nos. 10 & 12,  
Golf Apartments,  
Sujan Singh Park,  
Maharishi Raman  
Marg, New Delhi - 110  
003

E-mail:  
[deloffice@surico.in](mailto:deloffice@surico.in)

### **Bhubaneswar Office:**

Address:  
4th Floor, IDCO  
Towers, Janpath,  
Bhubaneswar

E-mail:  
[bhboffice@surico.in](mailto:bhboffice@surico.in)

### **Chandigarh Office:**

Address:  
#16-17, 2nd Floor,  
SCO No.487/488,  
Sector 35C,  
Chandigarh-160022

E-mail:  
[chdooffice@surico.in](mailto:chdooffice@surico.in)

# NEWSLETTER

October, 2018

## **Mergers and Acquisitions**

### **Amendment of CCI Combination Rules**

In order to allow expedited disposal of merger and acquisition cases, the CCI amended the regulations in regard to the transaction of business relating to combinations. Parties are now allowed, on request, to withdraw and re-file a combination notice. The amendment now allows parties to offer modification to the combinations even while responding to the show cause notice.

### **CCI approves Ola's request for additional stake**

The founders of online transportation network company have been granted approval by the CCI to acquire an additional 6.75% stake in its parent company, ANI Technologies Pvt. Ltd. This is after the founders decided to strengthen their rights after amending their Articles of Association.

### **CCI approves 100% acquisition of HSCC by NBCC**

The Construction, Real Estate and Consultancy firm, NBCC (formerly known as National Buildings Construction Corporation Ltd.) India Ltd. has been permitted to acquire 100% equity share holding stake in HSCC (Hospital Services Consultancy Corporation) India Ltd. which is a consultancy services organization specializing in the healthcare sector and established under the Ministry of Health and Family Welfare. NBCC emerged as the highest bidder, with a bid amount of approximately Rs. 285 crore, in a public bid.

### **Green Flag by CCI to Safecorp Holdings for Star Health Acquisition**

Chennai-based company, Star Health Insurance, that dealt with personal accident, mediclaim and overseas travel insurance, has been acquired by SafeCorp Holdings Pvt. Ltd., a consortium comprising WestBridge AIF, Rakesh Jhunjhunwala and Madison Capital, upon the approval of CCI.

### **IHH Healthcare Berhad successfully approved to acquire controlling stake in Fortis**

The Malaysian giant healthcare group IHH Healthcare Berhad was given the approval of CCI to acquire a controlling stake in Fortis Healthcare, which is one of the largest chain of hospitals in India.



*For information and reference only. The contents of this document are not to be construed as legal advisory or opinion.*