

**LEX NEWSLETTER ZONE**

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The Hon'ble Supreme Court of India in the case of M/s Shriram EPC Ltd. Vs Rioglass Solar SA, held that the payment of stamp duty under the Indian Stamp Act, 1899 is not necessary for the enforcement of foreign arbitration awards in India. The main issue in the aforesaid Appeal was whether the expression "award" would include a foreign award or not. The issue arose out of a Madras High Court judgment wherein it overruled the objections to International Chamber of Commerce ("ICC") award delivered in London and allowed the petition to enforce a foreign award.

The reasoning behind High Court's verdict was that a foreign award is not covered by the term "award" mentioned in Item 12 of Schedule I of the Indian Stamp Act, 1889 and hence, not liable for stamp duty. Supreme Court observed that though the existing law doesn't make foreign award subject to stamp duty, there is no impediment in making it so. The second issue was whether an award which has not been stamped, can be enforced under Section 47 and 48 of the Act<sup>2</sup> or not. The Court rejected the argument that even though Section 47 of the Act only requires three things for enforcement and stamp duty not being one of them, the same cannot be levied. The Court has interpreted that in no manner does Section 47 of the Act interdict the payment of

**Hon'ble Supreme Court of India:-**

**Payment of Stamp Duty Not Necessary for Enforcement of Foreign Arbitration Awards in India <sup>1</sup>**

- Vaishali Sinha, Associate

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[https://www.sci.gov.in/supremecourt/2018/16428/16428\\_2018\\_Judgement\\_13-Sep-2018.pdf](https://www.sci.gov.in/supremecourt/2018/16428/16428_2018_Judgement_13-Sep-2018.pdf)

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<sup>2</sup> Arbitration & Conciliation Act, 1996

stamp duty even if it is otherwise payable in law. The Court also rejected the argument that under Section 48(2) (b) of the Arbitration Act, even if stamp duty was payable on foreign award, would not be contrary to public policy of India.

**✚ Developers should mandatorily display sanction plan/layout plans at the site <sup>3</sup>**

- Abhishek Bagga, Associate

The Hon'ble Supreme Court, in *Ferani Hotels Pvt. Ltd. Vs. State Information Commissioner*, held that the developers should mandatorily display sanction plan/layout plans at the site.

A Development Agreement was executed between Respondent and Appellant for carrying out the development on the three plots. This Agreement was coupled with an irrevocable Power of Attorney executed by Respondent in favour of the Appellant. A Development Agreement was executed inter se Respondent and Appellant for carrying out the development on the said three plots.

An application was filed under Section 6(1) of the Right To Information Act, 2005, before the Public Information Officer to get the copies of plans, layouts, development plans and certified copies of the reports. The Appellant objected the disclosure of the information on the ground, as per section 11(1) of the Act stating that it did not serve any Social or Public Interest and if disclosed it will be violation of Intellectual Property Rights and in particular Copyright. The appeals were allowed holding that the development of the property has connection with public interest, as flats erected thereon would be purchased by the citizens at

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[https://www.sci.gov.in/supremecourt/2015/38196/38196\\_2015\\_Judgement\\_27-Sep-2018.pdf](https://www.sci.gov.in/supremecourt/2015/38196/38196_2015_Judgement_27-Sep-2018.pdf)

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large. Further it cannot be said that it has no relation to public activity or interest, or that it is unwarranted, or there is an invasion of privacy. These are the documents filed before Public Authorities, required to be put in public domain, by the provisions of the Maharashtra Act and the RERA, and involves a public element of making builders accountable to one and all.

Hon'ble Court concluded by stating that keeping in mind the provisions of RERA and their objective, the developer should mandatorily display sanction plan at the site. The provision of sub-section (3) of Section 11 of the RERA require the sanction plan/layout plans along with specifications, approved by the competent authority, to be displayed at the site or such other places, as may be specified by the Regulations made by the Authority. Hon'ble Court further stated that keeping in mind the ground reality of rampant violations and the consequences thereof, it is advisable to issue directions for display of such sanction plan/layout plans at the site, apart from any other manner provided by the Regulations made by the Authority. This aspect should be given appropriate publicity as part of enforcement of RERA.

**✚ Reinstatement by Court cannot be considered as Automatic entitlement to back wages <sup>4</sup>**

- Ritika Khatua, Associate

Hon'ble Supreme Court in *Rajasthan State Road Transport Corporation vs. Late Shri Phool Chand* held that Reinstatement by Court cannot be considered as Automatic entitlement to back wages.

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[https://www.sci.gov.in/supremecourt/2008/18738/18738\\_2008\\_Judgement\\_20-Sep-2018.pdf](https://www.sci.gov.in/supremecourt/2008/18738/18738_2008_Judgement_20-Sep-2018.pdf)

The Respondent was employed as a driver of the Appellant. Appellant dismissed Respondent from the services after holding departmental inquiry on the ground of dereliction of duties on various occasions while he was in the employment. Aggrieved by the decision, Respondent filed the Civil Suit. The Labour dispute reached the High Court where an order was passed for reinstatement of the deceased workman in service with an award of full back wages for the period of 13 years.

The question before the Apex Court was that whether the Labour Court and the High Court were justified in awarding full back wages to the deceased workman after setting aside his dismissal order holding it to be a bad law and further directing his reinstatement in service of the Appellant.

The Judgement of the Lower Courts were set aside by The Hon'ble Supreme Court and concluded that mere setting aside of dismissal order in favor of the employee by the Court does not confer the right to claim back wages from his employer. Employees in such cases need to prove unemployment on dismissal of service and employers even are entitled to prove otherwise against employees. However, in the present case, Respondent was awarded 50% of the total back wages based on Art. 142 of the Constitution of India.

#### Hon'ble High Court of Bombay:-

✚ **Third party to an Arbitration Proceeding can file an Appeal if they are affected by the Arbitral Award<sup>5</sup>**

- Rajeev Rambhatla, Associate

The Bombay High Court in the case of *Prabhat Steel Traders Pvt. Ltd. vs Excel Metal Processors Pvt. Ltd.* and others recently held that a third party to an arbitration proceeding has the right to maintain an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, if they

<sup>5</sup> Arbitration Petition No. 619 of 2017

are affected by an order passed by an arbitrator under Section 17 of the said Act.

The High Court heard a batch of 13 petitions filed under section 37 of the Arbitration & Conciliation Act, wherein the petitioners prayed for leave to appeal against the order passed by a sole arbitrator dated December 27, 2016, and an order by the high court dated November 17, 2017, in an arbitration proceeding between Excel Metal Processors Pvt Ltd (Respondent No.1) and Shakti International Pvt Ltd (Respondent No. 2). The Court observed

*"In my prima-facie view, since the transaction between the respondent no.2 and the respondent no.1 was money lending transaction which was camouflaged as sale transaction, the respondent no.2 could not claim any right, title or interest of any nature whatsoever in respect of such coils which belongs to the petitioners to the extent claimed by the petitioners".*

Thus, the court held that the petitioner's interests were being prejudiced and they were entitled to an appeal, thereby, holding that appeal under Section 37 was maintainable.

#### National Company Law Tribunal :-

✚ **Forum Shopping and Multiplicity of Litigation not a cause for Non Payment of dues by Corporate Debtor<sup>6</sup>**

- Arijit Basu, Associate

King Stubb and Kasiva added another feather in its cap, by winning a complicated and hard-fought battle in National Company Law Tribunal, Hyderabad Bench.<sup>7</sup>

<sup>6</sup> CP (IB) NO. 18/09/HDB/2018

<sup>7</sup>

[http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/31st%20Aug%202018%20in%20the%20matter%20of%20Aishwarya%20Technologies%20and%20Telecom%20Limited%20CP%20\(IB\)%20No.%2018-9-HDB-2018\\_2018-08-29%2011:39:43.pdf](http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/31st%20Aug%202018%20in%20the%20matter%20of%20Aishwarya%20Technologies%20and%20Telecom%20Limited%20CP%20(IB)%20No.%2018-9-HDB-2018_2018-08-29%2011:39:43.pdf)

Aishwarya Technologies (hereinafter referred as Corporate Debtor) was liable to pay SEI Trading India Pvt. Ltd. (hereinafter referred as Operational Creditor) an amount of Rs. 1,72,77,857/- as on 12.09.2017.

Moratorium Order was passed under Section 13(1) (a) and continuation of the order was ensured under sub section (4) of Section 14, upon commencement of Corporate Insolvency Resolution Process with admission of the Petition and appointment of Insolvency Resolution professional prohibiting:

- (a) Institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002;
- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Two very important aspects, that the Hon'ble Tribunal was pleased to decide were;

- i. Notice under Form-3, maintainable if signed by the Operational Creditor and dispatched by Office of Advocate.
- ii. NCLT, Hyderabad Bench settled the debate of jurisdiction, by invoking Section 60(1) of the Insolvency and Bankruptcy Code, 2016, which states that NCLT shall have territorial jurisdiction over the place where the registered office of the corporate person is located.

### Income Tax Appellate Tribunal, Mumbai (ITAT):-

#### ✚ Clarity on taxability of capital receipt and revenue receipt<sup>8</sup>

- Revathi Shivkumar, Associate

The Income Tax Appellate Tribunal, Mumbai (ITAT) in a latest judgement of Assistant Commissioner of Income Tax Vs Jackie Shroff has laid down a clear explanation with respect to taxability of capital receipt. The decision of the Tribunal marks as a landmark judgment and clarifies the stand on the taxability of amount received as a settlement for the purpose of withdrawing a complaint or a suit.

As per the Income Tax Act, Income Tax is levied only on income of the assessee and not every receipt of capital. The ITAT in the above case has clearly differentiated between capital receipt and revenue receipt and has laid down that capital receipt doesn't attract income tax. In the case at hand Mr. Jackie Shroff, the Respondent in the appeal, received an amount as a settlement/compensation for withdrawing the criminal complaint filed by him before the Economic Offences Wing.

After considering the elaborate submissions and the material on record, the Tribunal was of the similar view of the Commissioner of Income Tax (Appeal) that the compensation received by the assessee was not for his professional activities but for settlement of dispute between him and some other party resulting in filing of a criminal complaint. That being the case, the amount received towards compensation/damages cannot fit into the definition of income as per Section 2(24) read with Section 4 of the Act.

In pursuance of the same the Tribunal held that such a compensation/settlement is in the

<sup>8</sup>

<https://www.itat.gov.in/files/uploads/category/image/1527076251-2792-Jackie-sjd.pdf>

nature of capital receipt and hence not taxable as per the Act.

## Case Analysis

### ✚ Skechers USA Inc. & Ors. Vs. Pure Play<sup>9</sup>

- Deepak Panwar, Associate

#### Brief Facts of the Case:

Plaintiff i.e. Skechers Elite Flex Shoes is a American lifestyle and performance footwear company, filed a case of passing off against the Defendant alleging that Defendant Company was manufacturing shoes which resembled to the shoes of the Plaintiff by way of copying the unique and distinct elements and features of the footwear, that were sold under the brand GoWalk 3 series, which was not only creating a confusion but was also leading to deception to general public and members of trade in regard to source of their origin. Further, it was also reflecting a stance of false association with the Plaintiff Company, leading to passing off.

#### Issue:

Whether the act of Defendant leading to passing off against the business of Plaintiff.

#### Decision:

Hon'ble Delhi High Court imposed a cost of INR 87 Lakhs with injunction orders against the operations of the Defendant.

#### Reasoning:

It was being decided that visual appearance of the shoes was creating confusion as several aspects of trade dress were strikingly similar. The wordmark being printed in the inner sole, does not catches the attention of the customers looking to buy the stylish shoes. The two logos of the Plaintiff and Defendant, as affixed on the

sides of the sole upper are not pertinent as they do not form part of striking features in overall trade dress. Hence, Hon'ble Court was inclined to injunct the Defendants activity as it was to cause prejudice to the Plaintiff' business on day to day basis.

#### Distinction Note:

The present order is hard hitting and is crystal clear. This case stands to be a landmark Judgment as Hon'ble Delhi High Court passed the Summary Judgment under Order 13A of CPC, without filing of any application for summary judgment by either of the parties. This decision overruled the orders being passed in the matter of *Bright Enterprises Private Limited & Anr. Vs. MJBizcraft LLP & Anr*<sup>10</sup> passed on January 4, 2017, wherein it was observed as:

*"From the provisions laid out in Order XIII A, it is evident that the proceedings before Court are adversarial in nature and not inquisitorial. It follows, therefore, that summary judgment under Order XIII A cannot be rendered in the absence of an adversary and merely upon the inquisition by the Court. The Court is never an adversary in a dispute between parties".*

Hence, it made a stress on how the proceedings for initiation of summary judgment cannot happen without filing of the application in same regard, as have been provided under Order 13A of CPC. Therefore, the adjudicating authorities need to take a non-contradictory stand as then the need to file application under Order 13A gets unclear towards summary judgment procedures.

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<sup>9</sup> MANU/DE/3287/2018 & MANU/DE/1297/2016

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<sup>10</sup> [RFA (OS)(COMM) 8/2016]

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