

VOLUME 8 | JULY 2021

# GNOSIS

*Victoriam Legalis - Advocates & Solicitors | Newsletter*



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We here, at Victoriam Legalis, believe in continuous learning and growth, and agree that one way to do the same is to keep up with the developments and changes taking place around us.

We live in an Information Age, and while there is no dearth of knowledge and information, we, through this newsletter, hope to give you a consolidated account of relevant updates and developments.

In light of the same, we present to you the first issue of our newsletter, which we hope, you find beneficial!

Happy Reading!



# Media and Entertainment

## 1. Delhi High Court creates Intellectual Property Division to deal with IP Cases.

Pursuant to the promulgation of the Tribunal Reforms (Rationalization and Conditions of Service) Ordinance, 2021, the power to deal with pending matters before various Boards/Tribunals have now been vested in the High Courts. Based on the recommendations of the committee comprising of Hon'ble Ms. Justice Prathiba M. Singh and Hon'ble Mr. Justice Sanjeev Narula, the Intellectual Property Division ("IPD") of the Hon'ble Delhi High Court will be created to deal with all matters related to Intellectual Property Rights. Further, as per the press release that has been issued the Delhi High Court is also in the process of framing comprehensive Rules for the IPD.

## 2. Dolby, Sony and Fraunhofer Gesellschaft form patent pool for development of three dimension sound experience related technology

With giants like Dolby Laboratories, Sony Group Corp and the research institute Fraunhofer Gesellschaft collaborating to create a patent pool aimed at promoting the next generation of sound including patents needed to implement the new MPEG-H 3D Audio standard, it is speculated that a three-dimensional sound experience on mobile devices, televisions and automobiles will soon be available in an advanced and developed form for consumers across the globe.

## 3. Recorded Music Performance Limited (RMPL) registered as a copyright society.

Recorded Music Performance Limited (RMPL) has been granted certificate of registration under Section 33(3) of the Copyright Act, 1957. The said copyright society has been permitted to commence and carry on the collective administration of copyright related business with respect to sound recordings.

## 4. Cable TV Network Rules, 1994 amended by Central Government

Vide Notification dated 17th June 2021, the Cable TV Network Rules 1994 have been amended. Pertinently, as per the amended rules, a three tier Complaint Redressal Structure has now been introduced to ensure observance and adherence to the Programme Code and Advertising Code by the broadcaster and to address any grievances that may arise.

## 5. Indo Pak standoff for Basmati GI recognition: Settlement Speculated

India and Pakistan are now being expected to share ownership over Geographical Indication rights for Basmati rice in the European Union. With a standoff between the two countries going on since September 2020, reportedly, now it is more likely that the countries reach an agreement and settle for joint ownership for the said GI.





# Technology and E-Commerce Updates

## 1. Amazon: Supreme Court Stalls Future's \$3.4 billion retail Deal with Reliance

India's top court handed Amazon a major victory in a dispute where it sought to block its partner Future Group from selling \$3.4 billion (roughly Rs. 25,200 crores) in assets to rival Reliance Industries. The outcome of the tussle is seen reshaping India's pandemic-hit shopping sector and deciding if Amazon can blunt Reliance's dominance of the country's nearly trillion-dollar retail market. Amazon and Future have been locked in legal battles over the Future Group deal, with the US firm accusing the Indian group of violating pre-existing contracts when it sold its assets to Reliance. Future has denied any wrongdoing.

## 2. Google, Amazon, and Microsoft Join US Cyber Team to Fight Ransomware

US cybersecurity officials stated Amazon, Google, and Microsoft have enlisted to help them fight ransomware and defend cloud computing systems from hackers. The tech giants are among firms signed on to be part of a Joint Cyber Defense Collaborative intended to combine government and private skills and resources to fight hackers, according to the Cybersecurity and Infrastructure Security Agency (CISA).

## 3. Amazon hit with \$886 million EU data privacy fine

Amazon.com Inc has been hit with an \$886.6 million (746 million euro) European Union fine for processing personal data in violation of the EU's General Data Protection Regulation (GDPR), the e-commerce giant. The Luxembourg National Commission for Data Protection (CNPD) imposed the fine on Amazon Europe Core, the company disclosed in a regulatory filing.

## 4. Karnataka HC dismisses Flipkart, Amazon plea to stop CCI probe

The Karnataka High Court has dismissed an appeal filed by e-commerce firms Flipkart and Amazon India to halt the antitrust regulator's investigations into their operations. The order comes after Walmart-owned Flipkart and Amazon India had appealed to a division bench of the Karnataka High Court against its previous order that paved the way for the Competition Commission of India (CCI) to probe both the companies. The court said that the appeals by Flipkart and Amazon India are "devoid of any merits and substance" and deserved to be dismissed, adding that the e-commerce firms should not feel shy of the probe if they haven't violated any antitrust laws.





## Fashion & Sports Law Updates

### 1. Sourav Ganguly moves High Court for enforcement of 2018 arbitration award

Board of Control for Cricket in India (BCCI) president Sourav Ganguly approached the Bombay High Court seeking that the 2018 order of an arbitration tribunal that awarded him a compensation payable by his former management companies, Percept Talent Management Ltd and Percept D Mark (India) Ltd, be enforced. The total money to be paid by the two companies, according to the retired cricketer, is more than Rs 36 crore, which includes around Rs 14.50 crore original compensation plus interest accumulated on it for non-payment. As an interim relief, Sourav Ganguly also sought that the companies be restrained from carrying out any transactions on their properties.

### 2. Tiffany amicably settles 8-year-old lawsuit with Costco over counterfeit diamond rings

Tiffany & Co. has settled its more than eight-year-old lawsuit accusing Costco Wholesale Corp. of trademark infringement and counterfeiting for selling generic diamond engagement rings bearing the "Tiffany" name. In 2013, Tiffany & Co. filed a suit against Costco in a New York federal court, accusing the retail chain of trademark infringement, counterfeiting, and unfair business practices, among other causes of action, and seeking millions of dollars in damages. The appeals court stated Costco did not use the term Tiffany as a trademark as Costco provided evidence that suggested that Tiffany – both alone and in conjunction with words like ring, setting, style, or mounting is widely understood to refer to a particular type of pronged diamond setting.

### 3. LVMH Buys a Controlling Stake in Virgil Abloh's Streetwear Brand Off-White

LVMH Mötet Hennessy Louis Vuitton is taking a 60% stake in Off-White, deepening the French conglomerate's ties to a leading brand advocating hip hop and streetwear in luxury fashion. Off-White is the first streetwear brand to live under the LVMH umbrella. LVMH has always been one of the biggest names in the industry and has completed 167 years. As part of the deal, which is expected to be completed in the next 60 days, subject to regulatory approval, Virgil Abloh will retain a 40 percent stake in Off-White and remain its creative director, according to a press release. He will also continue as Men's Artistic Director at Louis Vuitton, a role he has held since the spring of 2018.

### 4. Rajasthan Royals owners acquire Barbados Tridents franchise in CPL 2021

Royals Sports Group (EM Sporting Holdings Ltd), the owners of the Rajasthan Royals IPL franchise, have acquired a majority stake in the Barbados Tridents - a Caribbean Premier League franchise. The two-time CPL champion will be rebranded as the Barbados Royals, a partner franchise of the Rajasthan Royals, as the Royals Sports Group seeks to expand its global presence.







# Corporate & Commercial Law Updates

## **1. SEBI comes out with framework on processing of scheme related applications by AMCs**

Market regulator Securities and Exchange Board of India (SEBI) came out with a framework to promote ease of doing business and bring uniformity in the timelines for processing scheme-related applications filed by asset management companies (AMCs). The new framework will be applicable for all the applications received on or after September 1. Under the framework, the application filed by AMCs for certain matters may be deemed to be taken on record in case no modifications are suggested or no queries are raised by SEBI within 21 working days, the regulator said in a circular.

## **2. New RBI Rules: Salary, pension and EMI payment rules to change from August 1**

RBI has changed the rules of the National Automated Clearing House (NACH). These changes will come into effect from August 1, 2021. According to the changes made to NACH, bank customers will not have to wait for a working day for their salary or pensions to be credited into their account. From August 1 onwards, customers will be able to perform these transactions any day of the week, including weekends. NACH is a bulk payment system that is managed by the National Payments Corporation of India (NPCI). The system is used for several types of credit transfers such as interest, dividend, pension and salary. Through NACH, users can also facilitate the payment of various bills, loan EMI, mutual investment and even insurance premium.

## **3. SEBI eases margin requirements for sellers in the cash segment**

SEBI has eased margin related processes for those selling shares in the stock market. Stock brokers do not need to collect upfront margin from sellers in the cash segment. They can ask the depository player holding a client's demat account to block the shares intended to be sold and release them at the end of the day if the sale does not happen. The shares do not have to be transferred to the broker's account for the sale, per SEBI's new block mechanism. The instruction to block the client's shares can be given via electronic delivery instruction slip (eDIS).

## **4. SEBI allows instant access facility in overnight schemes of mutual funds**

The Securities and Exchange Board of India (SEBI) stated that instant access facility would now be permitted in overnight schemes along with liquid schemes of mutual funds. The change has been brought into effect by the market regulator by partially modifying its circular related to instant access facility issued in May, 2017. SEBI specified that, from December 1, 2021, unclaimed redemption and dividend amounts would be permitted for investment in a separate plan of only overnight scheme.





# Hospitality & Real Estate

## **1. Ministry of Tourism and YATRA.COM sign MoU to strengthen hospitality and tourism industry in India**

In a bid to promote and encourage cooperation in the tourism and hospitality industry from a technical as well as strategic perspective, Ministry of Tourism and YATRA.COM have entered into a Memorandum of Understanding at an event organized under the arrangement between Ministry of Tourism and Quality Council of India (QCI) for implementing measures for strengthening the Indian Hospitality & Tourism Industry.

## **2. Himalayan dry gin from Nao Spirits awarded at the most prestigious global wine and spirits award**

Produced and distilled in Goa and currently available in Maharashtra, Karnataka and Goa in India and in a few other countries, Hapusa, the Himalayan dry gin from Nao Spirits recently bagged a gold medal at the most prestigious global wine and spirits awards, namely The International Wines & Spirits Competition 2021.

## **3. Madras High Court directed the Tamil Nadu Government to make sure that no new buildings in the state are constructed or sanctioned without ensuring access for persons with disabilities**

The Madras High Court has ruled that the Tamil Nadu Government shall ensure that no new public buildings may be constructed or sanctioned or planned without providing access for persons with disabilities and ensuring toilets and other facilities for such persons.

## **4. FHRAI seeks extension on timeline for mentioning FSSAI license no. on bills**

Federation of Hotel & Restaurant Associations of India (FHRAI) has requested FSSAI to extend the timeline to implement mentioning of FSSAI License Number on bills in the backdrop of the pandemic's impact to hospitality enterprises

## **5. IATA Travel Pass – Etihad Airways’ Solution for management of COVID 19 related documents**

Etihad Airways in its effort to implement digital solutions to simplify travel experience in the pandemic times, has made IATA Travel Pass available for flights between Abu Dhabi, Bangkok, Barcelona, Geneva, Madrid, Milan, New York and Singapore allowing one-stop platform for management of all COVID 19 related documentation.

## **6. AHAR approaches Government for help: Positive Announcements Expected in near future**

The Indian Hotel and Restaurant Association (AHAR) approaches government for support in light of issues being faced by restaurants and bars due to the pandemic induced lockdown and expects some positive developments to help stakeholders recover from the aftermath of the lockdown.





# Litigation & Dispute Resolution

## **1. Directorate of Industrial Safety guidelines must be followed by all car factories working amid lockdown: Madras High Court in Renault-Nissan case**

Justice Sanjib Banerjee and Justice Senthilkumar in the case of Renault-Nissan Workmen v. State of Tamil Nadu directed Renault-Nissan to ensure the safety of the workmen amid COVID-19 by following the guidelines issued by the State Directorate of Industrial Safety. The Court gave the time till 3 July 2021 to comply with all the preventive guidelines issued. Further, the Bench observed that the regulatory guidelines are not only for the Renault-Nissan automobile manufacturing unit but for all the other automobile manufacturers.

## **2. [TRP Scam] Mumbai Police files supplementary charge sheet; Arnab Goswami added as accused**

Mumbai Police in the TRP (Television Rating Points) Scam has filed the supplementary charge sheet of about 1600 pages before the Metropolitan Magistrate at Esplanade. This charge sheet has added accused including Editor-in-Chief of Republic TV Arnab Goswami invoking charges of cheating, forgery, criminal conspiracy. The Mumbai police launched the probe after the Hansa group reported that the TRP ratings were manipulated in favour of certain news channels.

## **3. MoU inked for Int'l Maritime Arbitration Centre at GIFT City**

Ahmedabad: Gujarat Maritime Board (GMB) has decided to open up a Gujarat International Maritime Arbitration Centre (GIMAC) at Gujarat International Finance Tec-City (GIFT City) in Gandhinagar. A Memorandum of understanding for the same was signed between (GMB) and International Financial Services Centres Authority (IFSCA). GIMAC shall exclusively focus on the regional maritime dispute thereby facilitating faster dispute resolution resulting in economic benefits and ease of enforcing contracts for the regional maritime fraternity, which currently depends on international centres for their dispute resolution needs.

## **4. Snapdeal partners with Sama for online dispute resolution sees success**

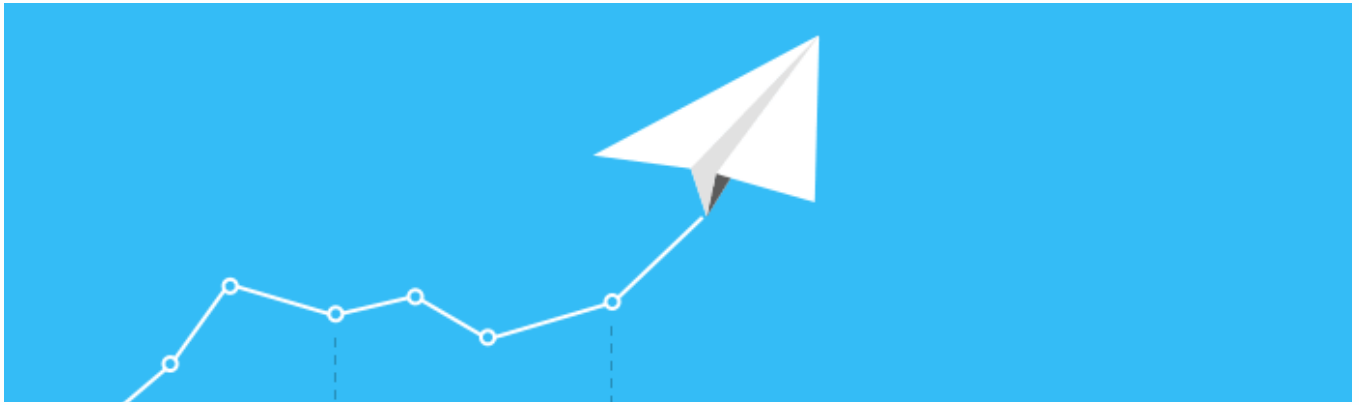
The E-commerce platform Snapdeal has partnered with Sama for the Online Dispute Resolution Platforms for the customers with a 50 % success rate in its pilot implementation. Snapdeal is implementing the ODR process for better customer relationships. The pilot programme, called "Sama Suljhao Manch," managed to close some disputes which ordinarily take anywhere between 2-3 years, within 15 days.

## **5. Stockholm Chamber of Commerce Launches New Express Dispute Resolution Mechanism**

The Arbitration Institution at Stockholm Chamber of Commerce has inaugurated its new alternative dispute resolution mechanism called SCC Rules for Express Dispute Resolution (SCC Express Rules). This new mechanism has been established for its cost and time-efficient alternative dispute resolution process aiming to solve the dispute without initiating full-length arbitration. Express Dispute Resolution shall be conducted by a neutral legal expert appointed by SCC for adjudication of the dispute between the parties.

## **6. Milan Court Torpedoes International Arbitration and Substitutes Own Decision on Merits**

The Italian judiciary which is regarded as the slowest of all in the European continent has once again made a headline by demonstrating the parties to the dispute faced that the judges will simply substitute their view of the merits over those of the arbitrators chosen by the parties. The Milan Court of Appeal in recent judgment no. Judgment no. 1790/2021 of 8 June 2021 shows hostility towards the alternative dispute resolution process whereby demotivating the foreign parties for opting for Italy as the seat of arbitration.



# Start-Up Advisory & Consultancy

## **1. APEDA to collaborate with Agriculture University, Jodhpur aimed bringing in startups and boosting exports**

In a programme aimed at supporting farmers, students and other stakeholders Agricultural and Processed Food Products Export Development Authority (APEDA) in association with Agriculture University, Jodhpur, Rajasthan conducted an orientation programme for start-ups to create awareness about agri-exports and its benefit. The focus was to urge Rajasthan government to adopt agricultural export as a business opportunity for farmers.

## **2. Koo, an Indian social media intermediary, publishes compliance report for July as per IT Rules**

Koo, an Indian social media platform, in furtherance of compliance with the new IT Rules, submitted its compliance report. Reportedly, 2385 posts were removed based on proactive moderation and user reports.

## **3. BYJU's acquisition of Aakash is approved by the Competition Commission of India**

The Competition Commission of India has approved the proposed 100% acquisition of Akash Education Institutional Services Ltd by BYJU. The deal is estimated to worth 1 Billion USD which shall help the ed-tech startup to expand its test preparation segment in India.

## **4. Paytm gets board approval for IPO**

Digital payment service firm Paytm is planning to go public by raising Rs 22000 crore by initial public offering which is reported as one of India's biggest IPOs surpassing Coal India IPO. The board of the company has given it in principal approval for the Rs 22,000 crore IPO. Led by the founder and Chief Executive Officer Vijay Shekar Sharma, Paytm is diversifying its portfolio in different financial sectors.

## **5. Vedanta plans to invest Rs. 100 crore in startup initiative Vedanta Spark**

Vedanta Ltd is planning to invest about Rs 100 Crore for implementing Vedanta Spark, an initiative to build technological capabilities in partnership with startups. The initiative organized as an innovation grand challenge and corporate accelerator program has received over 1,350 registrations from across 19 countries with more than 250 overseas startups. The winner shall be of the initiative shall be offered various opportunities including partnerships and collaborations, funding and investments, capacity and resources.

## **6. EV startup Cell Propulsion raises \$2 million to fuel its expansion plans**

Bengaluru based EV startup Cell Propulsion has raised 2 million USD in the fresh round with existing investors for meeting growing demands for EV solutions, operations and acceleration of adoption of electric commercial vehicles. The startup has raised around 4 million USD in 3 years of its existence. The startup founded by ex ISRO engineer has integrated critical attributes of electric mobility to provide economically viable solutions for the commercial vehicle fleet.







## Sovereign Immunity Not a Defence Against Enforcement of Arbitral Awards : High Court of Delhi

- Adesh Agarkar

In *KLA Const. Technologies Pvt. Ltd. and Ors. v. The Embassy of Islamic Republic of Afghanistan and Matrix Global Pvt Ltd Vs Ministry Of Education, Federal Democratic Republic Of Ethiopia*.<sup>1</sup> The Delhi High Court decided that under section 86(1) Code of Civil Procedure the prior consent of the Central Government is not required for enforcement of the arbitral award against the Foreign State under section 36(1) of the Arbitration and Conciliation Act 1996. The present article is a summary of the captioned judgment of the Delhi High Court.

### **Brief Facts**

The present petition is about the enforcement of 2 awards in different arbitral proceedings against the respondent foreign states. In OMP (ENF) (COMM) 82/2019, the petitioner seeks to enforce the award dt 26/11/2017 against the Embassy of the Islamic Republic of Afghanistan and in OMP (EFA) (COMM) 11/2016, the petitioner seeks to enforce award dated 25 October 2015 against the Ministry of Education, Federal Democratic Republic of Ethiopia.

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<sup>1</sup>*KLA Const. Technologies Pvt. Ltd. and Ors. v. The Embassy of Islamic Republic of Afghanistan and Ors.*, OMP (ENF) (COMM) 82/2019, I.A. No. 7023/2019, O.M.P. (EFA) (COMM) 11/2016 and E.A. 666/2019.



In both the case the respondents failed to appear in course of arbitral proceeding, leading passing of ex parte arbitral award in favour of petitioners. In both cases, 2 important issues were considered which are as follows -

1. Whether the prior consent of the Central Government is necessary under Section 86(3) of the Code of Civil Procedure to enforce an arbitral award against a foreign State?
2. Whether a foreign State can claim sovereign immunity against the enforcement of an arbitral award arising out of a commercial transaction?

### **Submissions of the Petitioners**

The Petitioners contended/submitted/advanced arguments that consent under section 86 (1) is not a prerequisite for the implementation of an arbitral award against foreign states. The award passed in international commercial arbitration held in India is deemed as a domestic award under part 1 of the Arbitration and Conciliation Act 1996 and would be enforceable under section 36 of the Act.

The Petitioner submits that the legal fiction created under section 36 of the act deeming the award passed in an arbitration proceeding is the decree of the courts for the limited purpose of enforcement of the arbitral award. Reliance is placed on *Paramjeet Singh Patheja v. ICDS Ltd*<sup>2</sup>

The Petitioner argued that the objections raised by the Respondents are held to be misplaced are untenable in law as the Respondents have voluntarily entered into a commercial contract containing the arbitration agreement. Reliance was placed on *Ethiopian Airlines v. Ganesh NarainSaboo*<sup>3</sup>, *Rahimtoola v. Nizam of Hyderabad*<sup>4</sup> & *Trendtex Trading Corporation v. Central Bank of Nigeria*<sup>5</sup>.

The Petitioner further submitted that the applicability of the provisions of Section 86(3) of the Code of Civil Procedure in relation to an arbitral award would violate the three basic principles of the Arbitration and Conciliation Act postulated in *Union of India v. U.P. State Bridge Corporation Ltd*<sup>6</sup>, namely speedy, inexpensive and fair trial by an impartial tribunal; party autonomy; and minimum Court intervention.

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<sup>2</sup> (2006) 13 SCC 322.

<sup>3</sup> (2011) 8 SCC 539

<sup>4</sup> (1957) 3 WLR 884

<sup>5</sup> 1977)2 WLR 356

<sup>6</sup> (2015) 2 SCC 52



## Findings of the Delhi High Court

The High Court referred to relevant judgments concerning the subject matter. In **Bharat Aluminium Company v. Kaiser Aluminium Technical Services Ltd**<sup>7</sup>. The Supreme Court observed that part 1 of the arbitration act also applies to international commercial arbitration covered under section 2(1) (f) held in India. The Supreme Court observed that the domestic and international awards made in India are liable to be challenged under Section 34 for setting aside the award and are enforceable under Section 36 of the Arbitration Act, 1996.

In **Paramjeet Singh Patheja v. ICDS Ltd**<sup>8</sup>. The Supreme Court observed that the fiction under section 36 of the Act, was not intended to make an arbitral award a decree for all purposes under all statutes and cannot be extended beyond its legitimate field.

In **Uttam Singh Duggal & Co. Pvt. Ltd. v. the United States of America, Agency of International Development**<sup>9</sup>. The Respondent raised the issue of maintainability of a petition filed under Section 20 of the arbitration Act, 1940 citing that the Respondent being a Foreign State, was exempted from the jurisdiction of the Indian Courts. This Court rejected the contentions raised by the Respondent by holding that no sovereign or public act was involved in a transaction in the present dispute and held that section 86 of Code of Civil Procedure only to suits and that section 20 of the arbitration act 1940 is not a suit within the meaning of the expression “suit” as used under section 86 of the Civil Procedure Code.

The High Court then placed the reliance on **Union of India v. U.P. State Bridge Corporation Ltd**<sup>10</sup> reiterating the tenets of the Arbitration Act namely i.e. (i) speedy, inexpensive and fair trial by an impartial tribunal, (ii) party autonomy, and (iii) minimum court intervention.

### The High Court has summarised its findings as follows:

- That under section 86 of the Civil Procedure Code prior consent from the Central Government is not necessary for the enforcement of the award against the foreign states. A foreign state cannot take the defence of sovereign immunity against the enforcement

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<sup>7</sup> (2012) 9 SCC 552,

<sup>8</sup> (2006) 13 SCC 322

<sup>9</sup> ILR (1982) 2 Del. 273

<sup>10</sup>2015 2 SCC 52.



of foreign awards as a decree of the Court arising out of the private commercial transaction.

- The fiction in section 36 of the arbitration and conciliation Act 1996 is only limited to minimum court intervention in the arbitration.
- A Foreign State entering into an arbitration agreement constitutes a waiver of Sovereign Immunity. The agreement by the respondent in the present case to arbitrate the disputes would operate as a waiver.
- If the Foreign States are permitted to hinder the enforcement of arbitral awards, on the grounds that they are entitled to sovereign immunity on account of being the Foreign States, then the very edifice of International Commercial Arbitration would collapse.

### **Order**

The Delhi High Court held that petitions are maintainable and the respondents are directed to deposit the respective award amounts with the Registrar General of this Court within four weeks. If the amounts are not deposited by the respondents within four weeks, the petitioners shall be at liberty to seek attachment of the assets of the respondents.

### **Comments**

This is a progressive ruling by the Delhi High Court having a pro-enforcement approach. It is common for entities that might otherwise be accorded with sovereign privileges to act as a party in private commercial contracts. The High Court clarified that in the domain of private international contract the sovereign immunity is waived either by nature of transaction or agreement to arbitrate. The Delhi High Court judgment emphasised that the foreign state cannot undermine the international arbitration mechanism and interest of the parties to the proceeding by taking the defence of sovereign immunity.





## Get in Touch

We hope you enjoyed reading the newsletter, and we would love to hear your thoughts on what you want to be covered in our next edition!

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