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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. TRAI floats consultation paper on Ease of Doing Business in Telecom and Broadcasting Sector: Comments and Suggestions invited from public

TRAI has published a consultation paper on Ease of Doing Business in Telecom and Broadcasting sector. Inter alia, it has been proposed that the TRAI approval procedure should be streamlined by way of making it completely integrated, accessible and trackable in online response mode. Suggestions and public comments have been invited on the said consultation paper <.

2. Government considering appointment of nodal officers for takedown of content

Reportedly, it is being considered that having nodal officers with the authority to issue takedown directions will enable the functioning of standard operating procedures such that the confusion around who issues the relevant directions are clarified and settled for good.

3. YouTube to come up with new rule to brought into effect from January 2022: Details to be submitted to MIB by YouTube channels

Under Rule 5 of the IT Rules 2021, YouTube has sent out an email to Google users stating that if you are publisher of news or current affairs content, you are required to furnish details of your accounts on YouTube to the Ministry of Information and Broadcasting, Government of India.

4. Lomotif in collaboration with Socialkyte joins the short video bandwagon in India

Seizing the opportunity presented by the ban of TikTok in India, LOMOTIF has collaborated with Socialkyte to join the short video format application bandwagon in India. Funded by Singapore based investor Paul Yang, the application aims providing access to a global audience consuming content in reel format.

5. Parliamentary Committee recommends formation of a Media Council in its report titled Ethical Standards in Media Coverage

Led by Member of Parliament, Shashi Tharoor, the Parliamentary Standing Committee on Communications and Information Technology has recommended establishment of a media council to address issues that the media industry faces in the country.





Technology and E-Commerce Updates

1. Pepsi to bring 1,893 Generative NFTs

Pepsi has decided to go with a series of unique non-fungible tokens to mark its birth year, 1893. Titled “Pepsi Mic Drop,” the company’s NFT series will include 1,893 pieces of a microphone visual, inspired by Pepsi flavours like the Classic Blue Pepsi, Silver Diet Pepsi, and Red Pepsi Wild Cherry, among others. Each of these Ethereum-based NFTs will be randomly generated by an algorithm, adding to their uniqueness and quotient. NFTs are digital collectibles built on blockchain and inspired by real world elements.

2. WhatsApp reportedly working on restricting unknown people from knowing last seen, online status updates

WhatsApp is bringing new privacy measures to make it difficult for people to know your last seen status and online presence on the platform. The update may not yet be in place for all users but is said to be available to some people on Android and iOS. It would help the individual to stay private and restrict third-party apps from allowing people to stalk WhatsApp users. In addition to the privacy-focussed update, WhatsApp has brought a new animated sticker pack called Encanto which is available for download through the official WhatsApp Sticker Store within the app.

3. Italy fines Amazon record \$1.3 billion for abuse of market dominance

Italy’s antitrust regulator has fined Amazon.com Inc. €1.13 billion for alleged abuse of market dominance, in one of the biggest penalties imposed on a US tech giant in Europe. Global regulatory scrutiny of tech giants has been increasing after a string of scandals over privacy and misinformation, as well as complaints from some businesses that they abuse their market power. As well as Amazon, Alphabet Inc.’ Google, Meta Platforms Inc.’s Facebook, Apple Inc. and Microsoft Corp have drawn heightened scrutiny in Europe.





Fashion & Sports Law Updates

1. LVMH to pay 10 millions euros to settle spying claims

French luxury behemoth LVMH will pay 10 million euros (\$11.3 million) to settle claims that it hired France's former domestic intelligence chief to spy on private citizens, in particular on a filmmaker who made a widely popular documentary targeting the group's CEO. A Paris court validated the settlement offered by prosecutors, ending an inquiry opened in 2011 against the fashion conglomerate controlled by Bernard Arnault, the world's third-richest person according to Forbes magazine.

2. RBI: India needs to actively pursue FTAs to push apparel exports

RBI specified that India needs to actively pursue free-trade agreements with major export destinations like the EU and the US to push apparel shipments amid increasing competition from Bangladesh and Cambodia that enjoy tariff concessions. India has traditionally enjoyed a comparative advantage in the textile sector, including apparels, and they constitute a major chunk of India's export basket. India's apparel exports to the EU, which is the largest market for apparel export have stagnated in the last decade while other countries like Bangladesh, Vietnam and Cambodia have witnessed robust growth.

3. Leena Nair to lead Chanel as its global CEO

Chanel has roped in Leena Nair as its new global chief executive joining the league of Indian leaders at the helm of global consumer products firms. Leena Nair is Unilever's chief human resource officer and a member of the company's Leadership Executive. She will join the French luxury firm in January and will be based in London. French billionaire Alain Wertheimer, who owns Chanel with his brother Gerard Wertheimer, would move to the role of global executive chairman.





Corporate & Commercial Law Updates

1. SEBI tweaks operational guidelines on listing of commercial papers

Capital markets regulator Sebi tweaked operational guidelines pertaining to the listing of commercial papers in order to bring uniformity in requirements. This was done to ease the compliance burden on listed entities, Sebi had earlier consolidated existing procedures pertaining to issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper. This was done based on feedback from market participants and regulatory changes.

2. RBI's guidelines regarding card security to hit merchants, lenders

The Reserve Bank of India plans to move towards card tokenisation and such move is likely to hit a wide range of companies from major e-commerce firms and food delivery firms to lenders, while increasing the use of cash. RBI had issued guidelines in March 2020 specifying that merchants will not be allowed to save card information on their websites to boost data security. Later, RBI issued fresh guidelines in September 2021 giving companies until the end of the year to comply with the regulations and offering them the option to tokenise. Tokenisation is a process by which card details are replaced by a unique code or token, generated by an algorithm, allowing online purchases to go through without exposing card details, in a bid to improve data security.

3. RBI to Central Board: In favour of complete ban on cryptos

The Reserve Bank of India (RBI) conveyed its concern to the central board that it favours a complete ban on cryptocurrencies. RBI made a detailed presentation to the board highlighting serious concerns relating to macroeconomic and financial stability as well as exchange management. The central bank also highlighted the challenge of regulating intangible assets that originate overseas.

4. Deadline extended by SEBI for comment submission for proposals on market making mechanism

Markets regulator Sebi extended the timeline for submission of comments on proposals related to market-making mechanism in the corporate bond market to January 16, 2022. In a bid to enhance liquidity in the secondary market for corporate bonds, Sebi had proposed a market-making mechanism in the corporate bond market in November 2021. In a consultation paper, the regulator suggested that registered stockbrokers or merchant bankers can act as market makers in the corporate bond market.





Hospitality & Real Estate

1. Konark Festival 2021 and International Sand Art Festival 2021 called off by Odisha Govt. as cyclone is about to hit the coasts

In light of the apprehension of damage likely to be caused by cyclone, the Konark Festival 2021 and International Sand Art Festival 2021 were both called off by the state government of Odisha. This decision was taken in the interest of public safety so as to minimize the extent of damage to life and property that the cyclone would have caused.

2. Hotel Association of India appeals for exclusion of classified hotels from the New Excise Policy

In a bid to avoid hindrances in the revival of hospitality industry from the losses inflicted in recent times due to the COVID 19 pandemic crisis, Hotel Association of India has urged for the exclusion of classified hotels from the new Excise Policy so that stakeholders can avoid further costs being incurred which may hinder their growth in this recovery period.

3. IHCL's ama Stays & Trails collaborates with Tata Motors for setting up of EV charging stations at hotels

With Electric Vehicles becoming a nearer reality, Tata Motors has collaborated with IHCL's hospitality entity ama Stays & Trails to ensure that EV charging facilities are provided to guests at the properties of the said entity. This is likely to be beneficial for both the hotel chain as well as EV industry stakeholders as it provides a solution to those seeking accommodation in which their EVs can be charged.

4. Connectivity between Pune and Guwahati to be strengthened: New Flights from Guwahati launched by IndiGo

As IndiGo seeks to diversify its outreach in Guwahati, new flights between Pune and Guwahati have been launched. These new flights will strengthen the connectivity between these two towns in the North East and South Wester regions of India.

5. TAAFI & TAFI partners with Amadeus India to strengthen position in travel technology solutions' market

Amadeus India has organized webinars titled Get NDC Ready with Amadeus IT to emphasize on the business opportunities and potential growth from implementation of New Distribution Capability (NDC). This can help developing solutions which enable travel agencies to adapt to new industry standards with minimal investment.





Litigation & Dispute Resolution

1. The defaulter cannot be given composite civil imprisonment for more than 1 month: Punjab & Haryana High Court

The Punjab & Haryana High Court in a revision petition held that for default of payment of arrears/maintenance the defaulter cannot be given composite civil imprisonment more than a month under section 125(3) CrPC. In the instant case, the family court had directed the petitioner to undergo 12 months civil imprisonment for default in payment of maintenance for 66 months.

2. Supreme Court Grants Protection From Arrest To Ex-Mumbai Police Chief Param Bir Singh, Asks Him To Join Investigation

The Supreme Court Bench headed by Justice Sk Kaul granted protection from arrest to former Police Commissioner Mr Param Bir Singh in various cases registered against him by the Mumbai Police and directed Mr Singh to join the investigation. The Counsel argued that Mr Param Bir has apprehension of threat to his life from Bombay Police. The Bench while passing the order observed that if the Bombay Police is pursuing such coercive action against the petitioner then what would happen to the common man.

3. Violates Right to Privacy: PIL Before Kerala High Court To Bar Release Of Movie 'Kurup' Inspired By A Proclaimed Offender's Life

The Petitioner has filed PIL praying protection of rights of privacy of the proclaimed offender Sukumara Kurup and blocking the release of the movies based on the life of the proclaimed offender. The Petitioner stated the state is duty-bound to protect the rights of the offender under Art 20 & 21 of the Constitution. The Petitioner asserted that the right of the accused shall be safeguarded till the conviction of the accused further stated the release of the movie shall be detrimental to the accused to seek justice before the court of law.

4. A Person Who Is An MLA, A Party Spokesperson Has to Be More Careful': Bombay HC To Nawab Malik While Reserving Order In Wankhede's Defamation Suit

The Bombay High Court sought clarification from MLA Nawab Malik in the defamation case filed by the father of NCB officer Sameer Wankhede. The Court while reserving the order observed that the highest level of authenticity is required from a State Minister before posting on social media platforms. In the current case, the Petitioner has filed the defamation suit praying for damages of Rs 1.25 Crore for defaming him and his family and directions to restrain Mr Nawab or any person acting on his behalf.

5. Mumbai \$3.5m arbitral award: Apex court relief for Jackie S.

The Supreme Court Bench of Justice Sk Kaul upheld the order of the Division Bench and Single Bench of Bombay High Court which set aside the arbitral award directing the Jackie Shroff/Respondent to pay \$3.5 Million to his erstwhile business partner. The Supreme Court observed that the arbitrators conclusions are not based on the fundamental policy of Indian law and thus can be set aside and further noted that the arbitrator relied on a certain clause in an agreement of which the outcomes are not appropriate.



6. Delhi HC dismisses Rakesh Gangwal's plea seeking to enforcement of Arbitral Award by a London Court

The Delhi High Court dismissed the motion by Gangwal for the execution of arbitral award by the London Court of Arbitration. The arbitral award directed the parties to hold an extraordinary general meeting and asked the promoters i.e. Gangwal and Bhatia reach a consensus for a resolution to remove the Article of Associate restricting the transfer of shares. The High Court observed that the Petitioner plea cannot be entertained at this stage as it would be tantamount to enforcement of the award when the Respondent has still time to contest the award before a higher authority.

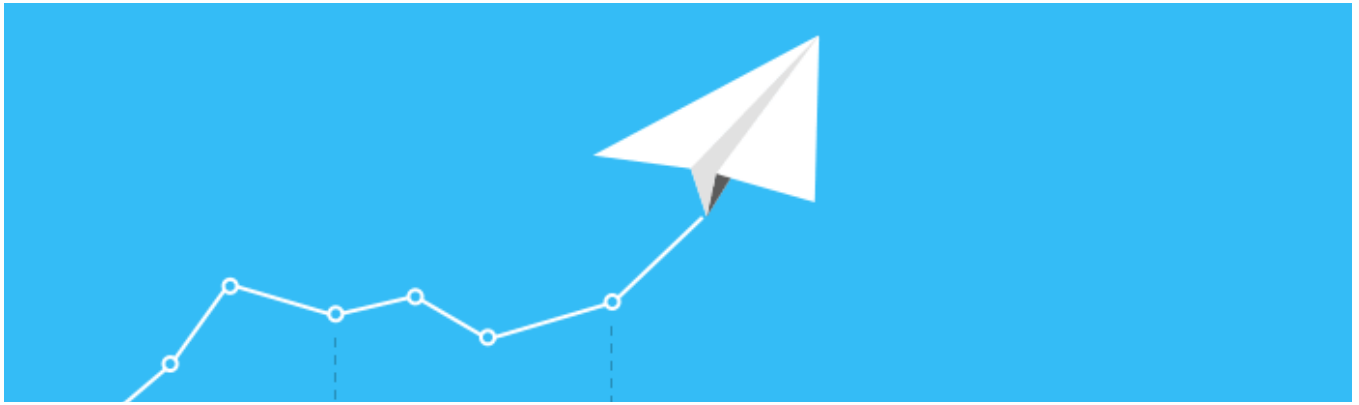
7. Kalpataru Power set to approach New York court against Rwanda to enforce a \$32 million arbitration award

KPTL is set to approach the New Court for enforcement of arbitral award granting damages of \$32 Million against Rwanda Energy Group as both India and Rwanda are signatories to the New York Convention. In the current case, KPTL had entered into a contract with REG for installing a 220 KV power transmission network connecting the Democratic Republic of Congo and Rwanda, whereby a dispute arose between parties when REG refused to pay for price adjustment. The said dispute was referred to arbitration where the arbitrators unanimously held that REG is in breach of contract and observed that the state machinery acted cohesively manner to sign the settlement deed.

8. Sri Lanka – China tussle intensified as Qingdao Fertiliser company to pursue arbitration in Singapore

Sri Lankan Government has turned to import Chinese fertilizer due to a shortage of fertilizers. The Govt Agricultural Ministry selected Qingdao for fertilizer import and sought samples of the fertilizers from the company but the sample was found to be contaminated with harmful pathogens Erwinia which damages cash crops. The Government upon perusal of the sample analysis cancelled the order of fertilizer from Qingdao and directed the State-owned bank, the People's Bank of Sri Lanka not to release payments to Qingdao. As per the official report from both sides, the Chinese have decided to seek arbitration in Singapore and alleged that the Sri Lankan authorities could be trusted.





Start-Up Advisory & Consultancy

1. Spinny confirms \$283M round, turns unicorn

Marketplace for used cars Spinny has raised \$23 Million in a Series E round of funding. The round was co-led by Abu Dhabi based ADQ and existing investors Tiger Global and Avenir Growth. The company started in 2015 with a customer-first approach for building trust in car buying and selling experience and in 2020 acquired customer to customer used car marketplace Truebil in the private market.

2. NFT startup Lysto raises \$3M in a seed round from BEENEXT and others

First, of its kind, the startup has raised \$ 3 Million in its seed fund round from Beenext, Better Capital, Cloud Capital and other investors. The startup is aiming to democratise the adoption of NFT on a global scale. The company in its official statements stated that the fund shall be utilised for product development and expansion of its team to achieve the desired goal of global NFT adoption. The startup started in 2021 has its office in Bangalore and Singapore with a team having rich experience in blockchain and decentralisation technology.

3. Recruitment automation startup Zappyhire raises Rs 3.71 Cr in seed round

Zappyhire has raised Rs 3.71 Crore in its seed fund round from Kerala Angel Network and from Alex K Babu, Founder, and CMD, Hedge Finance Limited. The startup has built an intelligent recruitment platform that helps enterprises screen, engage and hire talent using artificial intelligence. The platform auto pre-screen and ranks the candidate thereby eliminating human effort in the assessment of candidates.

4. Ytrika Life Sciences raises \$1.2M in a seed funding round led by Venture Catalyst

Ytrika Life Sciences raised \$1.2M in a seed funding round led by Venture Catalyst. The startup with a team of scientists with clinical leveraging cutting edge-tech is in the process of developing a remedy for acute liver failure. The company is developing bioengineered artificial aiming to help the clinician to treat patients with liver failure thereby eliminating the need for organ transplant and high costing surgeries.





Maintainability of Corporate Insolvency under Section 95 of the IBC against the Personal Guarantor when no Corporate Insolvency process is pending against the company

Supreme Court in Lalit Kumar Jain v. Union of India

- Adesh Agarkar

In 2019 the government brought into effect the notification allowing the lenders of the Corporate Debtor to initiate insolvency proceeding against the personal guarantor who are usually the promoters, or related party to promoter who has given guarantee for such stressed entities.

The Supreme Court in *Lalit Kumar Jain v. Union of India* upheld the constitutionality of the 2019 amendments Justice Bhatt observed that under the Insolvency Code “the release or discharge of a principal borrower from the debt by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract,”.

In the light of the Supreme Court judgment in *Lalit Kumar Jain*, many complications have arose which were left unanswered in the said judgment. The NCLT, Mumbai Bench and NCLT, Delhi Bench has taken contrary views on the insolvency of personal guarantor under section 95 of the Insolvency Code.

The NCLT, Delhi Bench in *PNB Housing Finance v. Mr. Mohit Arora* observed that various insolvency applications are pending before this bench against the corporate debtor. In view of the various pending applications against the Corporate Debtor i.e. (application is yet to be admitted), section 60(1) of the IBC gets attracted and jurisdiction to entertain such application against the personal guarantor would therefore lie with the NCLT.

The NCLT Bench in *Insta Capital Private Limited v. Ketan Vinod Kumar Shah* clarified that the application under section 95 of the Code can only be entertained only if the borrower/principal debtor is admitted and undergoing CIRP before that NCLT. If the borrower is not admitted the NCLT may refused to initiate personal insolvency against the personal guarantor of the principal borrower.

NCLT Mumbai Bench view in *Insta Capital Private Limited v. Ketan Vinod Kumar Shah*



It is important to mention that to maintain an application under section 95 of the Code what is required is that CIRP or liquidation proceeding of the principal borrower must be pending before the NCLT. The phrase “is pending before such an NCLT” can further understand in reference to the following provisions.

- a) **Section 5 (12)** defines Insolvency Commencement Date as the date on which an Application U/s 7, 9 & 10 is **admitted** by an adjudicating authority.
- b) **Section 5(14)** states that the insolvency resolution process period means the period of 180 days beginning from the date abovementioned.
- c) **Section 7(6)** also states that corporate insolvency resolution process shall commence from the date of admission of the application.

The bare perusal of the abovementioned provisions, it can be inferred that the CIRP can be said to be pending only when the application under section 7, 9 & 10 is been admitted. Therefore taking into consideration the said interpretation no application under section 95 can be said to be maintainable before the commencement of the CIRP of the principal borrower. Further reliance can be placed on section 5 (14) that CIRP begins from the commencement date and ends on 180th day unless extended as per section 12 of the code.

*NCLT Delhi view in **PNB Housing Finance v. Mr. Mohit Arora***

The contrary view taken in the **PNB Housing Finance v. Mr. Mohit Arora** is based upon the definition under *Personal Guarantor to Corporate Debtor Rules 2019*. The bench has based its reasoning on the interpretation of Rule 3(f) read with section 5(22) and 3(8) of the Code which defines Guarantor and Corporate Debtor as –

Section 5(22) “personal guarantor” means an individual who is the surety in a contract of guarantee to a corporate debtor;

Section 3(8) “corporate debtor” means a corporate person who owes a debt to any person;

In light of the aforesaid definitions under section 5(22) and 3(8) of the code and Rule 3(f) of the 2019 Rules the court opined that upon bare perusal of the provision, it nowhere stipulates that principal borrower shall be under CIRP or liquidation process.

Further bench has observed that section 60(1) of the code expressly overrides section 179 (adjudicating authority for individual and partnership firms) of the code thereby jurisdiction to entertain the application under section 95 of the code shall lie with NCLT and not with DRT.

Therefore the Delhi Bench held that Creditors can initiate parallel proceeding against the personal guarantor even if the principal borrower is not under CIRP.

At present various application under section 95 of the code are under consideration before NCLT Mumbai Bench and Delhi as the law on this not settle due to various contrary views taken in Insta Capital and Mohit Arora cases respectively.



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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