

VOLUME 14 | MARCH 2022

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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. ASCI frames guidelines for advertising and promotion of virtual digital assets and services

The Advertising Standards Council of India (“ASCI”) issued guidelines for advertisement of virtual digital assets on 23rd February 2022. These guidelines shall be applicable for advertisements release on and after 1st April 2022. The guidelines will be applicable to all advertisements released or published on or after the 1st April 2022. Advertisers and media owners must also ensure that all earlier advertisements must not appear in the public domain unless they comply with the guidelines, post the 15th April 2022.

2. Bombay HC clears Gangubai Kathiyawadi for release without cuts

The Bombay HC cleared the way for the movie Gangubai Kathiyawadi’s release by dismissing petitions seeking stay on the release. The residents of Kamathipura had approached the court to stay the film as it claimed to portray the entire area as a “red-light hub”.

3. Delhi High Court directs Hero Electric & Hero MotoCorp to settle trademark dispute via arbitration

Vijay Munjal and Naveen Munjal owners of Hero electric moved to the Delhi High Court against Pawan Munjal, chairman of Hero MotoCorp, seeking injunction on Hero MotoCorp using brand name for its upcoming electric two-wheeler products. The Delhi High Court asked the Parties to settle the dispute through arbitration. Reportedly, the arbitration panel shall include three retired judges.

4. Madras HC stays order permitting Echo Recording to exploit Ilayaraaja’s composition

A Division Bench of the Madras High Court on Friday stayed a single judge’s order permitting music company Echo Recording to commercially exploit songs composed by acclaimed musician Ilayaraaja on the basis of rights obtained from various film producers. Ilaiyaraaja filed a lawsuit in 2014 against music labels and others for allegedly infringing his licensing over the songs he composed. He claimed that the companies were not only infringing on his copyrights but also profiting from his music after the contract was terminated.

5. Cartier sues Tiffany for trade secret thefts

Jewellery company Cartier said on Tuesday it had filed a complaint in a New York court against US rival Tiffany & Co for unfair competition. According to the complaint an employee accessed drives, files and documents for which she has no business need as an employee of the company.

6. Delhi High Court revives PPL’s application for registration as a copyright society

Phonographic Performance Limited filed writ petitions in for setting aside the order passed by the government rejecting re-registration as a copyright society. Delhi High Court vide order sated 09.03.2022 set aside the impugned order and directed government to reconsider the application on merits.





Technology and E-Commerce Updates

1. Cocoblu Retail to take over fashion, apparel business of Amazon's largest seller Cloudtail

Cocoblu Retail is going to take over the fashion, apparel and accessories business of Amazon's largest seller Cloudtail. Cocoblu Retail is a newly-floated ecommerce seller incorporated last October, a wholly-owned subsidiary of Delhi-based RattanIndia Enterprises.

2. Meesho served notice on non-compliance with metrology rules on country of origin, other details

Ecommerce firm Meesho had not been in compliance with rules that require ecommerce entities to ensure the display of mandatory declarations on products, including the country of origin, on their platforms, according to a notice to the company from the legal metrology department. The Department had sent a "final reminder" as on 21st January, 2022 to seek response to a notice for alleged non-compliance. The rule on country of origin had become a bone of contention during the India-China border tension in 2020.

3. CERT-In detects over 14L cyber security incidents in 2021

The Indian Computer Emergency Response Team (CERT-In) reported that it had observed over 14 lakh cyber security incidents during 2021. CERT-In had reported cyber security incidents across various sectors such as E-commerce, energy, finance, government, healthcare, information technology, manufacturing, telecom, transportation.





Fashion & Sports Law Updates

1. Blaser Mills Law wins landmark sports case

Dutch football coach, René Hiddink and Football Association of Maldives [FAM] had agreed the terms of an employment contract whereby Mr Hiddink was appointed as assistant coach of the Maldives' Men's National Football Team for a three-year term. However, barely three months into his tenure, FAM informed Mr Hiddink that football in the Maldives would be halted indefinitely due to the Covid-19 pandemic. FAM sent Mr Hiddink a termination notice, stating that his contract of employment was being terminated due to the Covid-19 pandemic, referencing the 'force majeure' clause in Mr Hiddink's contract. Mr Hiddink filed his claim at the FIFA Tribunal in September 2021, seeking damages equivalent to the remaining value of his employment contract.

2. Garment exporters worried about fall in global orders

After Russia invaded Ukraine, the garment makes in Tirupur and Noida witnessed 25% reduction in order from global brands like Mango, Zara, H&M. Spanish fashion retailer Inditex - which owns Zara has halted trading in Russia closing its 502 shops and stopping online sales a fortnight ago. The Russia-Ukraine war and the uncertainty around it have come at a time when the garment exporters were gradually recovering from the business impact of Covid-19. Tirupur is the biggest garment manufacturing hub in the country and its share in India's knitwear exports is more than 55%.

3. Reliance Brands buys Sunglass Hut's India franchisee rights, stores

Reliance Brands has acquired the India franchisee rights and the existing network of stores of Sunglass Hut from DLF Brands. Sunglass Hut is owned by Italy's Luxottica Group and it retails multi-brand premium eyewear products from Ray-Ban, Prada, Burberry, Dolce & Gabbana and Oakley. Sunglass Hut is the second foreign brand Reliance has acquired from DLF after its buyout of UK's Mothercare brand in 2018.

4. Readymade garment makers record 50% jump in orders

Readymade garment manufacturers of Indore, a hub for small and medium sized garment manufacturers, have seen a jump of over 50 per cent in bookings for the upcoming wedding season. As the cases of covid-19 has come down and ease of pandemic restrictions have allowed people to hold extended wedding ceremonies and invite an unrestricted number of guests pushing demand for garments. Indore, is a major trade center for clothes and readymade supplies across the country with Tamil Nadu, Kerala and Andhra Pradesh as major markets sharing over 60 per cent of market share.





Corporate & Commercial Law Updates

1. AIFs; Sebi streamlines approval process for sponsor changes requiring NCLT nod

Markets regulator Sebi has streamlined the process for approval with respect to change in control of sponsor and manager of Alternative Investment Funds (AIFs) involving a scheme of arrangement under the companies act. The watchdog said that such applications seeking approval for the proposed change in control of the Sponsor and/or Manager of the AIF can be filed with Sebi prior to filing the applications with the National Company Law Tribunal (NCLT).

2. UpGrad's Study Abroad set to become the largest player in the Going-Abroad space in South Asia; sets revenue target of \$130Mn for 2023

UpGrad Abroad, the 'Study Abroad' vertical of Asia's leading higher EdTech company UpGrad, launched a high decibel campaign with Amitabh Bachchan, announcing the future for undergraduates and postgraduates studying abroad with the right blend of online learning for the first year, followed by the on-campus. India as a market for students going abroad to study is in the top 2 countries in the world and that number has increased from 2016 to 2019 and is set to further increase in 2024.

3. Notice Served to The Address Shown in ROC Records Is Valid; NCLT, Delhi

The Bench of the National Company Law Tribunal, New Delhi declared M/s. Celebration City Projects Pvt. Ltd. as insolvent and appointed IRP. The petition was filed by M/s. Jones Lang Lasalle Building Operations Pvt. Ltd./Operational Creditor under Section 9 of the IBC, 2016.

4. SC Stays Order of NCLAT Which Allowed IRP Against the Personal Guarantor In Absence Of CIRP Of Corporate Debtor

The Supreme Court stayed the order of the NCLAT in the matter of State Bank of India v. Mahendra Kumar Jajodia, wherein the Appellate Tribunal had settled the widely contended position on whether Insolvency Resolution Process (IRP) can be initiated against the Personal Guarantor in the absence of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and held that cases not covered under Section 60(2) will fall under Section 60(1) of the Code.





Hospitality & Real Estate

1. RERA council to discuss structural safety of high-rise buildings on April 12

The Central Advisory Council (CAC), constituted under the RERA Act, 2016, will meet for a discussion pertaining to the structural safety in high-rise buildings and prevent loss of life as well as property. The council would be considering physical inspection of projects during construction and structural audit at regular intervals.

2. NCLT orders insolvency proceedings against Santasha Real Estate

An order from NCLT for initiating insolvency proceedings against realty firm Santasha Real Estate was done on a plea filed by Vani Advertising, an operational creditor. The NCLT Bench of Delhi also appointed an interim resolution professional after suspending the board of the real estate firm. According to the operational creditor, they had completed the work within the stipulated time frame as per the contract but the Real Estate firm did not pay in time and now has INR 40.77 Lakhs due. The application was admitted in terms of section 9 of IBC 2016.

3. Bombay high court rejects plea against hike in liquor license fee, slams INR 1 lakh fine on hotel associations

The Bombay HC dismissed petitions filed by the Indian Hotel and Restaurant Association for hiking the liquor licence fee. The association had cited pandemic as well as the various restrictions an excuse but was rejected by the bench stating that pandemic affected everyone and every business had suffered.

4. Chaayos, Blue Tokai sign up for Zomato's 10-minute delivery

Chaayos, Blue Tokai, Dana Choga Caterspoint along with Zomato have now signed for 10-minute food delivery service which is scheduled to take off from 1st April, 2022. Zomato will first launch its service in Gurgaon with four finishing stations having bestseller items such as poha, coffee and many more items.





Litigation & Dispute Resolution

1. "Follow Natural Justice Principles Contemplated U/S 75(4) CGST/ UPGST Act": Allahabad HC Directs UP Assessing Authorities

The Allahabad High Court in a plea quashed the adverse assessment order of the Assessing Authority for not providing an opportunity of hearing to Petitioner before passing any order of assessment, charge, penalty or interest. Justice Surya Prakash Kesarwani and Justice Jayant Banerji observed that the Assessing Authority has failed to follow natural justice as contemplated under section 75(4) of the GST Act. The Court further observed that such a person is not required to seek permission rather it is mandatory on the part of the Authority concerned to afford an opportunity for a personal hearing before passing an order adverse to such person.

2. Court May Refuse Relief for Breach Of Principles Of Natural Justice Where No 'Real Prejudice' Is Caused To Affected Party: Allahabad HC Reiterates

The Allahabad High Court observed that a breach of natural justice in the exercise of its discretion cannot invalidate the order passed by the concerned authority on the ground that no real prejudice has been caused to the affected part. The appellant was aggrieved by the order of the Single Judge setting aside the order of the Deputy Registrar thereby revoking the membership of Appellant in Shri Saraswati Vidyalaya Samiti and remanding back to the Deputy Registrar for fresh consideration. While passing the order, the Appellant was afforded the opportunity of hearing and moreover, they were not impleaded as a party in the writ petition. The Court observed that the issue of membership is open before the Deputy Registrar and the appellants being 'the party concerned' have a right to appear and raise all their contentions before the said authority.

3. Patna High Court Seeks Centre's Response Over A Delay Of 14 Years In Setting Up Of Bihar's First Steel Plant

The Patna High Court has issued a notice on a plea seeking a response from the Central and State Government of Bihar in respect of the delay of 14 years in setting up 1st steel plant in the State of Bihar. The Petitioner stated that despite acquiring 50 acres of land in the Vaishali District, the Government has failed to set up a plant. The Petitioner further stated that the foundation stone was laid down in the year 2008 and after that, not a single brick stands laid down on site. The Court also observed that the Central Government shall take steps towards the commencement of the steel plant and create suitable employment to avoid excessive migration of labours.

4. NCLAT: Joint Development Agreement Between Lessee and Corporate Debtor Valid; NOIDA's Appeal Dismissed, Right to Submit Claim Closed To Protect CIRP Timelines

The NCLAT dismissed the appeal preferred by NOIDA against the NCLT Delhi directing the Appellant to lodge a claim with RP of the Corporate Debtor and participate in all future CoC meetings. In the present case, the Appellant leased out the land to one Logix City Developer Ltd for the development of the Housing project and further the Logix City Developer ltd signed a joint development agreement with the Corporate Debtor for the completion of the project. The NCLAT after hearing both the parties observed that all the records are in the public domain therefore the stand taken by the Appellant is not sustainable.



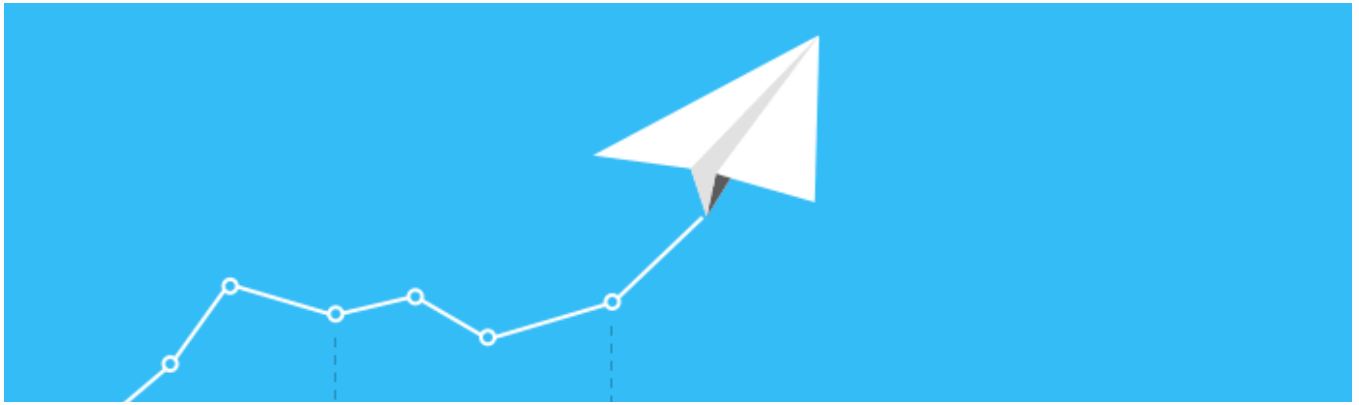
5. Dubai International Arbitration Centre launches new 2022 arbitration rules

The Dubai International Arbitration Centre has finalised a new set of rules governing the tribunal for ease of conducting arbitration proceedings which reflects international developments in dispute resolution and evolving needs of the business community. The new set of rules was drafted by a dedicated task force of international arbitration practitioners, and DIAC's Secretariat. The official spokesperson stated that the new rules align with the vision of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President, Prime Minister and Ruler of Dubai, to position the DIAC as one of the world's top five arbitration centres in the next three years. The drafting committee improved the efficiency of the arbitration procedure and additional add on for the user to benefit from.

6. Arbitration | Every Violation of Statute Not Against Fundamental Public Policy of India, Exception Has to Be Construed Narrowly: Bombay High Court

The Bombay High Court observed that violation of statutes does not necessarily involve violation of the fundamental policy of Indian law. The Petitioner submitted that the Respondent has not challenged the award passed in January 2017 by the Court of Arbitration of Singapore International Arbitration Centre thus the High Court of Singapore declared the award final and binding on the parties. The Petitioner then sought an injunction under section 9 of the Arbitration Act 1996 and the same was allowed since the Petitioner has fulfilled the requirement of section 47 of the Act. The Court while passing the award observed that the patent illegality on the face of the award is outside the purview of interference by this Court in the international commercial arbitration award.





Start-Up Advisory & Consultancy

1. Agritech startup TraceX raises USD 1 million from investors

Agritech startup founded in 2019 by Srivatsa Sreenivasarao and Anil Nadig has raised USD 1 Million in its pre-series A round from NABARD backed NABVENTURES. The startup platform is in the business of supply chain traceability and transparency. The company's official statement stated that the newly raised fund shall be used for scaling operations across India and its international market, enhancing the technology involved in building the platform, foraying into a different segment of the market and building a high-performance team.

2. Agritech startup Agrizy raises \$4 mn from investors including Ankur Capital

Agritech startup founded in 2021 by Vicky Dodani and Saket Chirania has raised 4 million, which is equivalent to INR 30 crore in its seed round from Ankur Capital through its India Pitch First Programme. The startup platform is in the business of building a first-tech platform to close the gap in the processed Agri supply chain across categories of both food and non-food products. The company's official statement stated that the newly raised fund shall be used for building strong teams of business, engineering & developing a suite of the processed Agri marketplace.

3. Sustainable footwear startup Neeman's in talks to raise Rs 100-120 cr

Sustainable footwear startup Neeman's is in talks to raise funds around Rs 100 – 120 Crore from the institutional investors from the Series B round. The Hyderabad-headquartered startup is currently being valued at around 100 crores in its last round. The company's official statement stated that the newly raised fund shall be used towards R&D, marketing, expanding the sustainable footwear product portfolio and meeting the working capital requirements. The company has recently shifted its manufacturing unit from China to India and evaluating its options to set up its unit in Telangana.

4. Gaming Startup Improbable Creates Blockchain Project. VCs Say It's Worth \$1 Billion

The most valued gaming platform startup founded in 2012 in Europe has announced its new venture that could bridge the gap between the blockchain and metaverse. The blockchain-based system named M2 or M squared allows different virtual worlds to connect to each other. The new investment led by Andreessen Horowitz and SoftBank Group Corp has currently valued the startup at USD 1 Billion. The company in its official statement stated that M2 shall be governed by users based on the fundamental principles of the public blockchain.





Adultery & Maintenance U/s 125(4) of CrPC

- Adesh Agarkar

The Delhi High Court passed the decree by granting alimony to the wife alleged to have committed adultery while being married to the Petitioner. This judgment has raised lots of eyes in the general masses because of the dramatic headline “*Wife’s Right to Maintenance Forfeited u/s 125(4) CrPC Only When Acts of Adultery Are Committed Repeatedly: Delhi High Court*” which is being interpreted word for a word without divulging into the reasons on which the Judge based his judgment. It is very important these days to read the whole article before forming an opinion on the subject matter. The current article is an effort to decode step by step the judgement¹ for a better understanding of the underlying jurisprudence.

The judgment is based on the various High Court judgments over the years crystallising the point of law. Thus, the bare reading of an extract of Section 125 (4) CrPC

“125(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery.....

Makes it clear that the intention of legislature behind Section 125 Subsection 4 has to be a continuous course of adulterous conduct and stray instances of departure from virtue would not be sufficient to deny maintenance to the wife.

The Delhi High Court in a recent Judgment has made an observation taking into consideration the facts of the case, the language of section 125 (4) CrPC and the law emanating from the High Courts -

18.....in cases where divorce is granted on the ground of cruelty, Courts have awarded permanent alimony to the wife and there is no bar of cruelty in the right of the wife to claim maintenance.

19.The law mandates that in order to extract the provision under Section 125(4) of the Cr.P.C. the husband has to establish with definite evidence that the wife has been living in adultery, and one or occasion acts of adultery committed in isolation would not amount to „living in adultery”.

In the present case, the Petitioner husband had made some serious allegations of adultery against the wife challenging the order of the family court granting maintenance under section 125 CrPC. The Court noted that Petitioner has relied upon the evidence affidavit of the son of the parties claiming the respondent/wife is

¹ Sh Pradeep Kumar Sharma v Smt Deepika Sharma



living with one Mr Arya as husband & wife. The Petitioner has failed to cross-examine the Respondent on the evidence affidavit of the son to prove the adultery aspect. It was further noted that the Petitioner had filed for divorce on the ground of cruelty, therefore, the learned Additional Principal Judge has rightly observed that since the Petitioner had sought divorce on the ground of cruelty, he could not have simultaneously urged that he was aggrieved by the alleged desertion of the respondent.

The Delhi High Court relied upon judgments of various High Courts which have defined the term living in adultery.

The Bombay High Court in **Pandurang Bakru Nathe vs. Leela Pandurang Nathe & Anr**²,

13. ...Sporadic instances of sexual relationship between a wife and a person other than her husband, would not fall within the ambit of the expression „living in adultery“.

In **Sandha v. Narayanan**³, the Kerala High Court observed as under:

“Emphasis must be laid upon the words „living in adultery“. The words used are not „committed adultery“, and there is clearly a great distinction between „committing adultery“ and „living in adultery“ denotes a continuous course of conduct and not isolated acts of immorality.

In **Ashok v. Anita**⁴, the High Court of Madhya Pradesh interpreted the said provision and observed it as reproduced: -

“8. ...The expression “living in adultery” connotes a course of adulterous conduct more or less continuous and not occasional.

The law of maintenance in our country is a welfare legislature that ensures that the wife, parents & children of a capable man are not left destitute when they are not capable of maintaining themselves. The present case is a fit case for granting maintenance to the wife as the Petitioner has miserably failed to the adduced evidence beyond a reasonable doubt to prove the adultery aspect.

The present case deals with two different aspects clubbed together with no correlation with each other. Those are, want of substantial evidence to prove the adultery aspect and the occasional act of adultery committed in isolation. Now the question here remains is a single act of adultery though proved shall be a ground for rejection of maintenance under section 125 of CrPC? I shall leave this question to the readers.

² 1997 SCC OnLine Bom 264

³ 1999 SCC OnLine Ker 64

⁴ 2011 SCC OnLine MP 2249



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!

You can get in touch here:

Corporate Office:
1085, Hotel Sahara Star,
Opposite Domestic Airport,
Vile Parle East,
Mumbai - 400099,
Maharashtra, India

Litigation Office:
DBS Heritage House,
Prescott Road,
Opposite Cathedral School,
Fort, Mumbai - 400001,
Maharashtra, India

Phone: 022 - 40779254
Email: info@victoriamlegalis.com