



Clasis Law 7th Anniversary Statement

As Clasis Law celebrates its 7th anniversary this month, we take this opportunity to give you a closer look at our firm and its guiding principles.

Founded in 2010 in New Delhi along with five members. Clasis Law was not conceptualized to be just another law firm but a center of excellence built on a strong foundation of knowledge, ethics, rigour, integrity and client care.

Blessed with success and a trail of satisfied clients, the firm steadily gained traction and has since grown from 5 members to its current size of 50 in a span of 7 years.

Clasis Law has a well-earned reputation for its no-nonsense approach, clear concise advice, transparent billing structures and extremely quick turnaround time. Clasis Law remains one of the few Indian law firms which are truly global in their processes, approach, experience and expertise.

The firm attracts the best talents from both Indian and global universities and is proud to say that it promotes diversity as women constitute 50% of its solid workforce.

Our clients remain the nucleus of our existence and as a result the firm continues to enjoy the trust and patronage of its clients through several years.

At Clasis Law we believe that we succeed when our clients succeed and in the course of our commitment towards client care, for us, no request is too small and no service too big.

"Our philosophy to keep our clients at the heart of everything we do drives us to create value at work each day. Clasis Law will continue to grow, evolve and adapt to the emerging challenges in the legal market. We remain focused on delivering results through our cutting edge solutions based on a solid foundation of knowledge and experience. As Clasis Law celebrates its 7th Anniversary, it remains committed to its core values of being a highly professional and merit driven institution with uncompromising work ethics.

I wish to thank everyone who has been a part of this journey and has helped us succeed in what we had set out to do 7 years ago".

Vineet Aneja, Founding Partner



Newsletter

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CLASIS LAW

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Welcome to the September Edition of the Clasis Law Newsletter

This edition brings to our readers a featured article titled “Analysis of Right to Privacy and Data Protection in terms of the recent landmark Judicial Pronouncement and the Data Protection regime in India”.

The balance between data regulation and individual privacy raises complex issues requiring delicate balances to be drawn between the legitimate concerns of the state on one hand and individual interest in the protection of privacy on the other. This has given way to one of the most debated Supreme Court judgments of recent times on ‘right to privacy’. Consequently, a robust regime for data protection is the call of the future.

We continue to highlight certain key judgements passed by the Hon’ble Court as well as changes in Corporate and Commercial laws and updates on Projects, Intellectual Property and Banking.

Your inputs and feedback are always welcome and we look forward to our interactions with you.



Analysis of Right to Privacy and Data Protection in terms of the recent landmark Judicial Pronouncement and the Data Protection regime in India

The balance between data regulation and individual privacy raises complex issues requiring delicate balances to be drawn between the legitimate concerns of the state on one hand and individual interest in the protection of privacy on the other. This has given way to one of the most debated Supreme Court judgments of recent times on 'right to privacy'. Consequently, a robust regime for data protection is the call of the future.

With the increase in usage of technology in our personal lives and businesses, the ease of planning our day and doing business has gone up albeit with consternations about the protection of personal information and data. The concept of data protection and privacy has not been addressed in any exclusive comprehensive legislation in India. However, the Supreme Court of India through a recent landmark judgment has heralded right to privacy as a fundamental right guaranteed to an Indian citizen under Article 21 of the Constitution of India ("**Constitution**"). Such right to privacy impliedly includes the protection of personal and sensitive data of a person such as age, sex, date of birth, sexual orientation (which are all important aspects of dignity).

Right to privacy and data protection in India vis-à-vis the landmark SC judgment

The sphere of privacy stretches at one end to those intimate matters to which a reasonable expectation of privacy may attach. It expresses a right to be left alone. A broader connotation which has emerged in academic literature of a comparatively recent origin is related to the protection of one's identity. Data protection relates closely with the latter sphere.

On August 24, 2017, in a landmark nine (9) bench ruling, the Apex Court in **Justice K.S. Puttaswamy (Retd.) & Anr. Vs. Union of India & Ors.**¹, unanimously declared right to privacy as an intrinsic part of the right to life and personal liberty under Article 21 of the Constitution. The petitioners, in this case, had challenged the Aadhaar scheme which mandates citizens to part with their biometrics, as unconstitutional on the grounds that it violates the right to privacy. Although, the judgment does not comment on whether the Government's demand for Aadhaar to be linked to all financial transactions amounts to an infringement of privacy, it has ordered the Government to ensure a "robust regime for data protection" that would deliver "a careful and sensitive balance between individual interests and legitimate concerns of the state."

Further, right to privacy as part of a fundamental right must come with certain reasonable restrictions as also stated in the judgment. Hon'ble Justice Abhay Manohar Sapre held that 'right to privacy' is a part of fundamental right of a citizen guaranteed under Part III of the Constitution. However, it is not an absolute right but is subject to certain reasonable restrictions which the State is entitled to impose on the basis of social, moral and compelling public interest in accordance with law. Similarly, he held that the "right to privacy" has multiple facets, and therefore, the same has to go through a process of case-to-case development as and when any citizen raises his grievance complaining of infringement of his alleged right in accordance with law.

On the point of data protection, the Apex Court in the same judgment ruled that, since the Government has initiated the process of reviewing the entire regime of data protection, it would be appropriate to leave the matter for expert determination so that a robust regime for the protection of data is put into place.

It is imperative to note here that, past decisions of the Supreme Court in the case of (i) *M.P. Sharma Vs. Satish Chandra*, District Magistrate, Delhi [(1954) SCR 1077] which held that right to privacy is not protected by the Constitution and (ii) in *Kharak Singh Vs. State of U.P* [(1964) 1 SCR 332] to the extent that it held that right to privacy is not protected by the Constitution, both stand over-ruled by the aforementioned judgment.

Data protection under the Act

The Information Technology Act, 2000 ("**Act**") which contains specific provisions intended to protect electronic data (including non-electronic records or information that has been, is currently or is intended to be processed electronically). The Act was amended and a section on compensation for failure to protect data was added to provide for protection of 'sensitive personal data or information' ("**SPDI**") and deal with compensation for negligence in implementing and maintaining reasonable security practices and procedures in relation to SPDI. As a system of checks and balances, the Act imposes punishment for disclosure of information in breach of a lawful contract or without the information provider's consent and provides for protection of personal information.



To elaborate further on the point of compensation for failure to protect data, the Ministry of Communications and Information Technology adopted the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules ("Rules") which took effect in 2011. The Rules require corporate entities collecting, processing and storing personal data, including SPDI to comply with certain procedures. Further, in August, 2011 the Ministry of Communications and Information Technology released a press note which clarified a number of provisions of the Rules. Amongst others, the press note clarified that the Rules relate to SPDI and are applicable to any person located in India or a body corporate.

The Rules, its applicability and other obligations under its purview

What is SPDI?

Before analyzing the Rules, we must take a look at what constitutes SPDI. SPDI includes passwords, financial information, such as bank account or credit card details, physical, physiological and mental health condition, sexual orientation, medical records and history, and biometric information.

Applicability and analysis of the Rules

The Rules relate to SPDI and are applicable to a body corporate or to any person located within India. Outsourcing companies/ intermediaries located within or outside India are exempt from the provisions of collection and disclosure as set out under the Rules, however, a body corporate providing services to an information provider directly under a contractual obligation is not exempt from these provisions of collection and disclosure as set out under the Rules. Information providers, as referred to in these Rules, are those natural persons who provide SPDI to a body corporate.

Further, each body corporate that collects, receives, possesses, stores, deals or handles information of information providers, shall provide a privacy policy for handling of or dealing in personal information including SPDI and ensure that the same are available for view by such information providers who have provided such information under lawful contract.

To sum up, the Rules broadly regulate the: (a) collection, receipt, possession, use, storage, dealing or handling of SPDI; (b) transfer or disclosure of SPDI; (c) security procedures for protecting SPDI; (d) transfer of SPDI outside India; and (e) disclosure of SPDI to the Government.

Obligations of the body corporate controlling SPDI under the Rules

In terms of the Rules, a body corporate shall have the following obligations to ensure data is processed properly:

a) **Privacy policy:** A body corporate that deals with SPDI must have a privacy policy, and publish such policy on its website. The privacy policy must describe the type of information collected, the purpose and use of the information, to whom or how the information can be disclosed and the reasonable security practices and procedures followed to safeguard the information. A body corporate must also appoint a grievance officer, whose name and contact details must be published on its website. The grievance officer must act on any grievance within one (1) month from receiving the grievance.

b) **Consent and notification:** A body corporate cannot collect SPDI unless it obtains the prior consent of the information provider. A business must also, before collecting the information, give the information provider the option not to provide such information. If this is the case, the business has the option to cease providing goods and services for which the information is sought. A business must also ensure that the information provider is aware:

- that the information is being collected;
- of the proposed use of the information; and
- of the name and address of the agency collecting or receiving the information.

c) **Use, retention and withdrawal:** Bodies corporate can only use personal information for the purpose for which it was collected. They cannot retain SPDI for longer than is required for the purposes for which the information can lawfully be used or as otherwise required under any other law. The information provider of the SPDI has the right to review the information provided and to ask for inaccurate or deficient information to be corrected. The information provider also has the right to withdraw his consent to the collection and use of the SPDI

d) **Disclosure:** Disclosure of SPDI to a third party is possible if: (i) it has been agreed in a contract with the information provider; (ii) it is necessary for compliance with a legal obligation; or (iii) prior permission is given by the information provider.

e) **Transfer:** A body corporate can only transfer SPDI to a third party, whether in India or overseas, if the receiving party ensures the same level of protection as that provided under the Rules. Additionally, SPDI can only be transferred if it is necessary for the performance of a lawful contract with the information provider, or if the information provider has consented to the transfer.



Conclusion

Data privacy and data protection laws by their very nature need to be dynamic, constantly expanding and improving to deal with new impediments and hindrances. One such hindrance was the recent WannaCry ransomware cyber-attack that affected many globally. At the same time, domestically, one such encouraging step towards data protection is the Supreme Court case ruling on 'right to privacy'.

There is an unparalleled thrust now to upgrade the data privacy and data protection standards in India as the country is increasingly becoming a prominent part of the global economy with increase in foreign investment in India. Further, the judiciary's pro-active interest in data privacy issues and opinion that trustees of customer's data must be judged on 'tougher standards' and that a 'strong signal must be sent' to hold defaulting entities liable', have made corporates align themselves with the data privacy and data protection laws of the country. It is imperative, therefore, for foreign companies establishing business in India to ensure that their local Indian entity adheres to Indian data privacy and data protection law requirements even if the local entity has been following global best practices in this regard. With new beginnings, it is the need of the hour for the Government to come up with a robust regime for data protection that would deliver a careful and sensitive balance between individual interests and legitimate concerns of the state. It would be interesting to follow the developments in this area in the near future and observe the matter to its end.

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Legal Alerts

The debate regarding 'Dispute' and 'Existence of a Dispute' with respect to proceedings under the Insolvency & Bankruptcy Code, 2016, has been settled down by Supreme Court in the recent following judgement ¹

The Supreme Court in its judgment dated 21st September, 2017, has clarified the meaning of 'existence of dispute' falling under Section 8 (2) (a) and the term 'dispute' as defined under Section 5 (6) of the Insolvency & Bankruptcy Code, 2016 ("Code").

Brief facts of the case:- In the present case, Mobilox Innovations Private Limited ("**Appellant**") had engaged Kirusa Software Private Limited ("**Respondent**") for providing certain toll free telephone numbers across the country through which viewers of a dance show had to cast votes in favor of participants on the dance show. The Appellant and the Respondent had also entered into a non-disclosure agreement in furtherance to the services provided by the Respondent. For providing the said toll free numbers, the Respondent had raised invoices upon the Appellant. However, the said invoices were withheld by the Appellant on the ground of breach of non-disclosure agreement by the Respondent.

In order to recover money under the invoices, the Respondent had issued a notice to the Appellant under Section 8 of the Code. Upon receiving the notice, the Appellant had replied citing existence of disputes between the parties since the Appellant had already informed the Respondent that no amount would be paid to them due to breach of non-disclosure agreement. Thereafter, the Respondent filed an application before the National Company Law Tribunal ("**NCLT**"), Mumbai Bench, for initiating corporate insolvency resolution process under Sections 8 and 9 of the Code. The NCLT rejected the application of the Respondent on the ground that there was a dispute in relation to the debt. The Respondent then moved before the National Company Law Appellate Tribunal ("**NCLAT**") challenging the order passed by the NCLT. By an order dated 24th May, 2017, the NCLAT had whilst discussing the terms 'dispute' and 'existence of dispute', held that the dispute raised by the Appellant herein was vague, got up and motivated to evade liability. The NCLAT had accordingly allowed the Appeal and remitted the matter to NCLT.

Aggrieved by the order of NCLAT, the Appellant challenged the order before the Supreme Court.

Key contentions of the lawyers of the Petitioner and Respondent:- The Appellant submitted that under Section 8 (2) (a) of the Code, "existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed..." must be read as existence of a dispute or record of the pendency of the suit or arbitration proceedings filed. Further,

the definition of 'dispute' under Section 5 (6) of the Code is an inclusive definition.

However, the Respondent submitted that 'dispute' under section 5 (6) of the Code only covers three things i.e., i) existence of amount of debt; ii) quality of goods or services; iii) breach of a representation or warranty. Since, the defense raised by the Respondent was breach of non-disclosure agreement, the same would not fall within the definition of 'dispute' under Section 5(6) of the Code.

Judgement and Conclusion:- The Hon'ble Supreme Court considered the background and the intention of the legislature behind the Code. As per the Insolvency & Bankruptcy Bill, 2015, section 5(4) defined 'dispute' as "dispute" means a bona fide suit or arbitration proceeding regarding a) the existence or the amount of a debt; b) the quality of a good or service; or c) the breach of a representation or warranty". The Supreme Court observed that the original definition of 'dispute' has now become an inclusive definition under the Code and the word 'bona fide' has been deleted. The Court further observed that while examining an application under Section 9 of the Code, the Adjudicating Authority will have to determine the following:

- i. Whether there is an "operational debt" as defined exceeding Rs. 1 lakh?
- ii. Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not been paid? and
- iii. Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the application would have to be rejected by the Adjudicating Authority.

While coming to a conclusion regarding the word "and" appearing in Section 8 (2) (a) of the Code, the Hon'ble Court relied upon various judgments wherein the expression "and" has been read as "or" to avoid an anomalous situation. The Court held that the word "and" occurring in Section 8 (2) (a) must be read as "or" keeping in mind the legislative intent and to avoid an anomalous situation. If the word "and" is read in the section, disputes would rebut the bankruptcy process only in case of pending suit or arbitration proceeding and not otherwise and the same would lead to great hardship.

¹Mobilox Innovations Private Limited v. Kirusa Software Private Limited [Civil Appeal No. 9405 of 2017] decided on 21st September, 2017



The Hon'ble Court further held that a notice of dispute must bring to the notice of the operational creditor the fact of 'existence' of a dispute between the parties or pendency of a suit or arbitration proceeding. Upon receiving such notice of dispute, the Adjudicating Authority has to only ascertain at that stage whether there is a plausible contention which requires further investigation and that the 'dispute' raised is not a patently feeble legal argument. However, while doing so, the Adjudicating Authority need not examine the merits of the dispute. In the event the dispute truly exists and is not hypothetical or illusory, the Adjudicating Authority shall reject the application.

In the facts of the instant case, the Hon'ble court observed that without going into the merits of the dispute, it was clear that the Appellant had raised a plausible contention which was not patently feeble legal argument or an assertion of facts unsupported by evidence. Accordingly, the order passed by NCLAT has been set aside by the Supreme Court.

Note: This judgment puts to rest the debate about interpretation of the expressions 'dispute' and 'existence of dispute' used in the Code. In a way, this judgment brings about the earlier position, to a great extent, about the debtor raising issues in prior communication which could possibly tantamount to an existence of a dispute. Moreover, this judgment also gives teeth to a genuine disputed debt that can be taken up as a defense to insolvency proceedings.

The Supreme Court lays down test to determine medical negligence and formulates plan for speedy disposal by Consumer Foras

The Hon'ble Supreme Court of India in a recent judgment of *Bijoy Sinha Roy (D) by Lr. Vs. Biswanath Das & Ors, Civil Appeal No. 4761 of 2009* dated August 30, 2017 has clarified the test of medical negligence and has also laid down guidelines to be followed by Consumer forums for speedy and timely disposal.

The present appeal arises out of an order of the National Consumer Disputes Redressal Commission (NCDRC) that reversed the order of the State Commission whereby compensation was awarded to the Appellant in the present appeal for medical negligence, resulting in death of his wife Bijoy Sinha Roy (the deceased).

The State Commission held that medical negligence had taken place by the Opposite parties and passed an order for compensation to the tune of INR 5 lakhs. This order had been reversed by the NCDRC on the grounds that there was no medical negligence in the decision of the surgeon to perform surgery.

Basis the contradictory findings of both the State Commission and the NCDRC and the submissions of the parties, the Hon'ble Supreme Court clarified various grounds for determining medical negligence. While the Court in several of its earlier decisions has clarified the position with respect to medical negligence, the Court in the present appeal has safeguarded its earlier opinion. The Court has specified that negligence in the context of medical professional calls for a treatment with a difference. Error of judgment or an accident is not proof of negligence. So long as doctor follows a practice acceptable to the medical profession of the day, he cannot be held liable for negligence merely because a medical alternative is available.

In view of this legal position, the Court held that the NCDRC was justified in holding that decision to perform surgery on the deceased was not medical negligence. Further, the Court also found it necessary to refer to another important aspect relating to administration of justice by the Consumer Fora as the present case had been pending for the last 23 years.

In light of this, the Court held that keeping in mind the scheme and the object of the Consumer Protection Act, 1986 ('The Act'), the Consumer forums need to monitor speedy resolution of disputes and need to avail the Alternate Disputes Resolution (ADR) mechanism which is now regarded as part of access to justice.

To achieve the object of providing speedy remedy to a consumer, steps can be taken under Section 24B (Administrative Control) of the Act. The NCDRC has administrative control over all the State Commissions. Thus, the NCDRC is competent to introduce monitoring mechanism for speedy disposal.

Additionally, the Court has also laid emphasis on the applicability of Section 89 (Settlement of disputes outside Court) of the Code of Civil Procedure, 1908. The Court has clarified that even though strictly speaking, the said provision is applicable only to civil courts; there is no reason to exclude its applicability to Consumer Fora having regard to the object of the Act.

Lastly, the Court has requested the NCDRC to issue appropriate directions in relation to both the aforesaid issues.



Corporate and Commercial

Revised Secretarial Standards on Meetings of the Board of Directors (SS 1) and General Meetings (SS 2)

Secretarial Standards on Meetings of the Board of Directors (SS 1) and General Meetings (SS 2) which, inter alia, prescribes a set of principles for convening and conducting meetings of the board of directors and shareholders by a company registered in India were approved by the government on April 10, 2015 and were made effective from July 1, 2015. The government by a notification dated August 16, 2017 has now provided that the SS 1 and SS 2 shall stand withdrawn with effect from September 30, 2017 without affecting the enforceability of SS 1 and SS 2 during the period before such withdrawal. Further, the Institute of Company Secretaries of India which drafts and publishes the secretarial standards has got approval of the government for the revised SS 1 and SS 2 on June 14, 2017. The revised SS1 and SS 2 shall be applicable to all the companies, except some exempted class of companies, with effect from October 1, 2017 and accordingly all board meetings, including meetings of committees of board, and general meetings in respect of which notices are issued on or after October 1, 2017 shall be convened and conducted in accordance with the revised SS 1 and SS 2.

The National Company Law Tribunal (Amendment) Rules, 2017

The Ministry of Corporate Affairs ("MCA") on July 5, 2017 has notified the National Company Law Tribunal (Amendment) Rules, 2017 thereby inserting a new 87A which, inter alia, provides for manner of filing an appeal with the National Company Law Tribunal under section 252 of Companies Act, 2013 against an order of the Registrar of Companies with respect to dissolution of a company by removing the name of company from its registers.

The Companies (Appointment and Qualification of Directors) Amendment Rules, 2017

The MCA on July 5, 2017 has notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 thereby exempting certain class of public companies from the requirement of mandatory appointment of independent directors on their board. The exempted class of public companies are (i) a joint venture company; (ii) a wholly owned subsidiary; and (iii) a dormant company as defined under Companies Act, 2013.

The Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017

The MCA on July 13, 2017 has notified the Companies

(Meetings of Board and its Powers) Second Amendment Rules, 2017. The amendment relates to provisions regarding conducting of a meeting of the board through video conferencing and other audio video means and the manner of finalisation of minutes of such meeting. Further, by this notification Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 has also been amended to provide exemption to certain class of public companies from provisions of constitution of 'Audit Committee' and 'Nomination and Remuneration Committee of the Board'.

The Companies (Incorporation) Second Amendment Rules, 2017

The MCA on July 27, 2017 has notified the Companies (Incorporation) Second Amendment Rules, 2017 thereby substituting Rule 28 and Rule 30 in the Companies (Incorporation) Rules, 2014. These amendments relates to the provisions regarding shifting of registered office by a company within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies and shifting of registered office from one State or Union Territory to another State.

The Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017

The MCA on August 24, 2017 has notified the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017. By this Rule, the Serious Fraud Investigation Office (SFIO) now has been granted powers to arrest people for violations of provisions of companies law. Where the Director, Additional Director or Assistant Director of SFIO investigating into the affairs of a company other than a government company or foreign company has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person. The shot in the arm for the probe agency comes at a time when the government is cracking the whip on suspected shell companies being used for illegal activities, including money laundering and tax evasion.

Notification of sub-section (8), (9) and (10) of section 212 of the Companies Act, 2013

The MCA vide a notification dated August 24, 2017 has made effective sub-section (8), (9) and (10) of section 212 of the Companies Act, 2013 which grants power to SFIO to arrest a person guilty of an offence punishable under section 212 of the Companies Act, 2013.



FDI Policy 2017 – Impact on retail sector

Unlike its predecessor, the FDI Policy 2017 clears the ambiguity regarding decision making for “state of art” and “cutting edge” technology.

The Department of Industrial Policy and Promotion (“DIPP”) on August 28, 2017 has issued the Foreign Direct Investment Policy, 2017 (“**FDI Policy**”) effective from the date of issue. The extant FDI Policy shall replace the policy issued in 2016 with certain amendments to the various sectors it covers. The policy liberalization is carried out from time to time, in the form of press notes and is consolidated on an annual basis under the consolidated FDI policy.

In relation to the single brand retail trading sector, the extant FDI Policy provides setting up of a committee under the chairmanship of Secretary, DIPP, with representatives from NITI Aayog, the concerned administrative ministry (i.e. the DIPP) and independent technical expert(s), to examine the claim of foreign single brand retail trade companies planning to set up branded stores in India and claiming to have products with “state-of-the-art” and “cutting-edge” technology, for waiver of the 30% local sourcing norm.

Further, in terms of e-commerce activities, the erstwhile Policy prohibited an e-commerce entity from permitting more than 25% of the sales effected through its market place from one vendor or its group companies. The extant FDI Policy clarifies that the 25% of sales value must be computed per financial year.



Projects, Energy and Natural Resources

Cabinet Approves New Metro Rail Policy

The Union Cabinet chaired by Prime Minister Shri Narendra Modi approved the New Metro Rail Policy.

The policy opens a big window for private investments across a range of metro operations making PPP component mandatory for availing central assistance for new metro projects. Private investment and other innovative forms of financing of metro projects have been made compulsory to meet the huge resource demand for capital intensive high capacity metro projects.

Seeking to ensure that least cost mass transit mode is selected for public transport, the new policy mandates Alternate Analysis, requiring evaluation of other modes of mass transit like BRTS (Bus Rapid Transit System), Light Rail Transit, Tramways, Metro Rail and Regional Rail in terms of demand, capacity, cost and ease of implementation. Setting up of Urban Metropolitan Transport Authority (UMTA) has been made mandatory which is to prepare Comprehensive Mobility Plans for cities for ensuring complete multi-modal integration for optimal utilization of capacities.

The new Metro Rail Policy provides for rigorous assessment of new metro proposals and proposes an independent third party assessment by agencies to be identified by the Government like the Institute of Urban Transport and other such Centres of Excellence whose capacities would be augmented, as required in this regard.

Taking note of substantial social, economic and environmental gains of metro projects, the Policy stipulated a shift from the present 'Financial Internal Rate of Return of 8%' to 'Economic Internal Rate of Return of 14%' for approving metro projects, in line with global practices.

Metro Rail Policy puts States in the Drivers' Seat

The New Metro Rail Policy empowers states, but also puts an obligation on them to expand project viability, by promoting transit-oriented development (TOD) and aligning it with real estate development, strengthening last-mile connectivity; and attracting private investments through the Public Private Partnership (PPP) model.

The policy provides for rigorous evaluation of new metro proposals, including alternate transit mode analysis to ensure

that the least-cost and most-efficient mass transit mode is selected for public transport. Further, it also proposes an independent third-party assessment of proposals by government identified agencies.

The new policy further plans to authorize states to regulate and set up a Fare-Fixation Authority as well as encouraging other non-fare revenues such as advertisements, lease of space etc.

Also there are provisions to raise resources using innovative mechanisms like 'Betterment Levy' on nearby assets, issuance of corporate bonds etc. and improving last-mile connectivity for a catchment area of nearly 5 km, to promote metro ridership. The new policy has made it mandatory to have a PPP component either in whole or part of the project to be eligible for availing central financial assistance for new metro projects.

Central PSUs investing in Odisha's Solar Park Programme

Odisha's solar power plans have received a shot in the arm with several central public sector undertakings (PSUs) expressing their interest in participating in the state's solar park programme.

Till now, NTPC, NLC (formerly Neyveli Lignite Ltd), North Eastern Electric Power Corporation Ltd (NEEPCO) and the Mini-Ratna PSU SJVN Ltd, have demonstrated their interest in being a part of the programme.

The govt. on its part has provided an in-principle clearance for another 250-MW solar power project proposed by NLC at a cost of Rs 4.5 crore per megawatt.

Further, it recently approved a plan by NEEPCO to invest Rs 944.85 crore in Odisha to set up a 200-MW solar power plant. The proposed unit is scheduled to start operations in December 2019.



IP Updates

Issuance of certified copies by the Trade Marks Registry

Delhi High Court has recently issued directions to the Registrars of the Indian Trade Marks Registry qua issuance of certified copies of records of the Trade Marks Registry. The directions include appointment of Nodal Officers at each branch of the Registry, to receive and process applications for certified copies, setting up mechanism for disclosure of status of such applications as well as timely issuance of the certified copies within one month of receipt of the duly completed application, *inter alia*.

Section 24(5) of the Protection of Plant Varieties and Farmers' Rights Act, 2001

In an appeal filed against an order of Division bench of the Delhi High Court in the matter of *Prabhat Agri Biotech Ltd. And Anr. v. Registrar Of Plant Varieties And Farmer's Rights Act*, striking down Section 24(5) of the Protection of Plant Varieties and Farmers' Rights Act ("PPVFRA"), the Supreme Court recently granted a stay on the impugned order.

Section 24(5) of the PPVFRA, empowers the Registrar to pass an interim order "*to protect the interests of a breeder against any abusive act committed by any third party*" during the period between the filing of an application for registration of a variety and the Authority making its decision on such an application.

The appeal is now scheduled for hearing in November 2017.

Kelwyn Door Cares (India) and Anr. v. Janson Enterprises and Anr. [CS(OS) 2377/2015]

The Delhi High Court, in *Kelwyn Door Cares (India) & Anr. v Janson Enterprises & Anr.* vacated the earlier *ex-parte ad interim* injunction granted against the defendants, observing that the plaintiffs had not approached the court with clean hands and suppressed material facts.

In the present case, Plaintiff No. 1 and 2, registered proprietors of trademarks CLOSMa and KELWYN respectively, initiated infringement proceedings alleging that defendants were using deceptively similar marks, namely KLAZMA, KLAZMAX and KLAZVYN. Plaintiffs further claimed that not only was defendants' mark phonetically similar to that of the Plaintiffs' but the defendants had also copied plaintiffs' slogan and product code and were therefore liable for trademark infringement as well as passing off.

Defendants pointed out to the court that, plaintiffs had

actively concealed the fact that impugned trademark KLAZMA was registered in name of a third person against which plaintiffs had already filed rectification application. Furthermore, defendants while defending their other impugned marks, KLAZMAX ARCHITECTURAL HARDWARE and KLAZVYN, stated that they had been using the mark since five years, without any objection from the plaintiffs.

Delhi High Court, relying on the principle laid down in *S.P. Chengalvaraya Naidu v. Jagannath*, observed that where there is unexplained delay in approaching the Court, the conduct of the parties is a relevant factor while exercising its discretion of granting *ad interim* injunction and if a person's case is based on falsehood, he has no right to approach the court. Accordingly, the court held that the plaintiffs were not entitled to equitable relief as they are guilty of concealing material facts and misleading the Court.

Apollo Tyres Ltd. vs. Pioneer Trading Corporation and Ors. [CS(OS) 2802/2015]

Observing that a unique tread pattern on a tyre has trademark significance, the Delhi High Court in *Apollo Tyres Ltd. v. Pioneer Trading Corporation and Anr.*, granted interim injunction against the defendants restraining them from using a tread pattern identical to and/or similar with that of the plaintiffs' unique tread pattern of one of its truck tyres, claimed to be its proprietary.

Rejecting the defendants' submissions that the tread pattern on tyre were merely functional /utilitarian in nature, provided to give better grip on the road, and stability to the vehicle during movement and therefore, the same would not even be entitled to protection as design under the Design Act, 2000 or against passing off, the Delhi High Court observed that if the same function can be achieved through numerous different forms of tread patterns, then the defense of functionality must fail.

The Court further noted that tread pattern was so prominently advertised and displayed that it served as the "face" of the tyre, aiding in identification of tyres manufactured by a particular manufacturer, essentially serving as a source identifier in the relevant market. In doing so, the court placed reliance on the Madras High Court decision in *MRF Limited v. Metro Tyres Limited*, [1990 (10) PTC 101 (Mad)] stating that tread patterns have trade mark significance, and similarity of tread pattern may raise a presumption of common origin or close business association between the two manufacturers.



Banking and Project Finance

Reserve Bank Directions – Commercial Paper

The Reserve Bank of India (“RBI”), has issued notification dated August 10, 2017, pursuant to which it has issued Reserve Bank Commercial Paper Directions 2007. The said directions came into force on August 10, 2017.

Reserve Bank Directions – Tri-Party Repo

The RBI has issued notification dated August 10, 2017, pursuant to which it has issued Tri-Party Repo (Reserve Bank) Directions, 2017.

DBS Bank wins RBI approval

Singapore's biggest lender DBS Group Holdings has won the RBI's approval to provide banking services in India through a wholly-owned subsidiary. The bank expects to move to a subsidiary structure from the current branch structure in the country in the next 6 (six) to 9 (nine) months.

NBFCs - Appointment of Nominated Counsel in the Hon'ble High Court of Delhi

In Writ Petition (C) No. 1088 of 2017 (M/s J.K Jewellers vs. Capri Global Capital Ltd), the Hon'ble High Court of Delhi at New Delhi has passed an order pursuant to which it has directed RBI to issue a circular within 2 (two) weeks, asking all NBFCs empowered to invoke Section 14 of the SARFAESI Act, 2002 to appoint nominated counsels in the High Court of Delhi and convey their names to the Registry within 4 (four) weeks from the date of receipt of the circular. The purpose of appointing nominated counsels was to ensure that when a party files a petition in the High Court of Delhi for seeking interim orders/ directions against the NBFC, the High Court of Delhi has adequate assistance from the other side and accordingly advance copies of petitions can be served directly on the said counsel(s) and they are ready with instructions at the stage of admission itself.

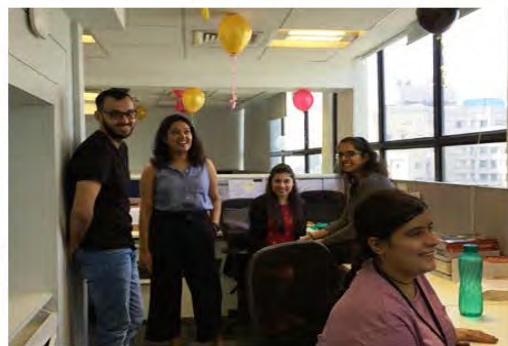
Accordingly, the RBI has issued a notification to all NBFCs notified as “Financial Institutions” under sub clause (iv) of clause (m) of sub section (1) of section 2 read with section 31A of the SARFAESI Act, 2002 to take necessary action in relation to above mentioned order of High Court of Delhi.



Recent Events

Clasis Law – 7 Years of Excellence

Clasis Law celebrated its 7th anniversary on 15th September 2017. Both Delhi and Mumbai offices celebrated this milestone with cakes and a resolve to work towards bigger milestones.



COLORS Pinkathon Delhi 2017 17 September 2017

Members of Clasis Law participated in the annual all women run- The Pinkathon on 17th September, 2017, held at Jawaharlal Nehru Stadium, New Delhi.





**Knowledge Session on Dawn Raids hosted by Clasis Law
31 August, 2017**

Clasis Law hosted a roundtable on the emerging concept of 'Dawn Raids in India', in association with the Indo-French Chamber Of Commerce and Industry (IFCCI) at the IFCCI office on 31st August 2017. The knowledge session was presented by Mr Vineet Aneja, Senior Partner and Ms Kaveri Kumar, Senior Associate. This was followed by an engaging discussion on this very interesting topic and an interactive Q&A session.



**Conference on Women at Workplace "Role of Leadership"
6th September, 2017, New Delhi**

Kaveri Kumar, Senior Associate attended the Conference on Women at Workplace "Role of Leadership". The conference was attended by various women luminaries with accomplishments in the corporate, political and social domain. Effective discussion on policy, law and strategy related to women at workplace were deliberated. Different eminent corporates shared their practices and mechanisms for providing a conducive work environment to their women employees. Many women welfare legislations were pondered on and the highlights also comprised the gaps in the legislation which need to be covered.

Offbeat

Adding some greens to the office environment is a wonderful way to make it lively, fresh and vibrant. Apart from adding a touch of class, indoor plants do wonders to the air quality which remains a concern in most offices. Set out below are a few plants variety that are known to thrive indoors.

English Ivy (Hedera Helix)

It is an ideal office plant and the most effective at filtering out formaldehyde and benzene, and will grow long, pretty tendrils of leaves that you can 'train' in various directions. An evergreen climbing plant, English Ivy is adaptable and thus easy to grow.



Spider Plant (Chlorophytum comosum)



Spider Plant is easy to grow and maintain. One of the best air-purifying plants, it gets to work quickly, removing upto 90% of toxins in two days' time.

Chinese Evergreen (Aglaonema)

Chinese evergreens are among the best plants because it requires very little maintenance can thrive in lowlight and remove toxins, such as formaldehyde, from tainted indoor air. An Aglaonema's leaves are variegated, which means they have different textures, patterns, and colors (making for an eye-catching desk plant).



Rubber Tree Plant (Ficus elastica)



Rubber tree plants are popular indoor plant because of their attractive, thick, glossy leaves and low maintenance care. Excellent at eliminating formaldehyde, these also absorb carbon monoxide and trichloroethylene from surrounding air.

Bamboo Palm (Chamaedorea sefrizii)

An attractive, sturdy looking indoor plant, Bamboo Palm is easy to care for. It tops the list of plants best for filtering out both benzene and trichloroethylene. It also helps maintain moisture level during dry winter months.



Snake Plant (Sansevieria trifasciata)



The Snake Plant is one of the most recommended plants for improving air quality. They can be neglected for weeks on end and still maintain an elegant shape with their tall, stiff leaves.

Golden Pothos (Scindapsus aures)

This speedily growing foliage is another great air-purifier. Another powerful plant for tackling formaldehyde, Golden Pothos looks beautiful with its neon tinge. It is also known as Devil's Ivy due to its ability to remain green even when kept in dark.



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This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to herein. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions.

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