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NEWSLETTER

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Service of notice u/s 138 of Negotiable Instrument Act

Forum- Supreme Court of India	**Case No.** CRIMINAL APPEAL NO 455 OF 2006 **Date of Judgment**- 01/03/2017

The Apex Court in this case has held that as per provisions of Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act, 1972, once notice is sent by registered post by correctly addressing to the drawer of the cheque, the service of notice is deemed to have been effected. Then requirements under proviso (b) of Section 138 stands complied, if notice is sent in the prescribed manner. However, the drawer is at liberty to rebut this presumption. The Apex Court further stated that when a notice is sent by registered post and is returned with postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed.

Seat of arbitration outside India excludes Part I of Arbitration Act, 1996

Forum- Supreme Court of India	**Case No.** CIVIL APPEAL No. 3885 OF 2017 **Date of Judgment**- 10/03/2017

Apex court in the case held that the relationship between the seat of arbitration and the law governing arbitration is an integral one. The seat of arbitration is defined as the juridical seat of arbitration designated by the parties, or by the arbitral institution or by the arbitrators themselves as the case may be. The place of arbitration determines the law that will apply to the arbitration and related matters like challenges to the award etc. If in pursuance of the arbitration agreement, the arbitration took place outside India, there is a clear exclusion of Part-I of the Arbitration Act. In the present case, the parties expressly agreed that the arbitration will be conducted according to the ICC Rules of Arbitration and left the place of arbitration to be chosen by the ICC. The ICC in fact, chose London as the seat of arbitration after consulting the parties. The arbitration was held in London without demur from any of the parties.

Employee and Trade union can file winding up petition against the company for unpaid wages

Forum- Bombay High Court	**Case No**. CP 263/2015 **Date of Judgment**- 15/03/2017

Division Bench of Bombay High Court in this case has held that employee can maintain a Petition for winding up of a Company under section 439 r/w sections 433(e) and 434 of the Companies Act, 1956 as a creditor based on the claim of the recovery of his unpaid salary and wages and also that a winding up Petition at the instance of a Trade Union and for the dues that are payable to its members is maintainable as it clearly falls within section 439 of the Companies Act, 1956.

Existence of Valid Arbitration Agreement, Notice and Disclosure by Arbitrator are In-Escapable Provisions to Conduct a Valid Arbitration

Forum- High Court of Delhi	**Case No.** O.M.P. 3/2015 **Date of Judgment**- 28/02/2017

In this case the Hon'ble High Court of Delhi *inter alia* has held that:

- Mere endorsement that the quantity is 'ok' cannot lead to an inference that the Petitioner agreed to the arbitration clause printed on the invoice of the Respondent and if there is no arbitration agreement between the parties which could be validly invoked by the Respondent, consequently, the Arbitrator lacked jurisdiction to enter upon reference and proceed with the arbitration.
- In the absence of an agreement to the contrary, the notice under Section 21 of the Act by the claimant invoking the arbitration clause, preceding the reference of disputes to arbitration, is mandatory. Without such notice, the arbitration proceedings that are commenced would be unsustainable in law.
- If the Arbitrator is adjudicating at least one of the claims of the Respondents in other arbitration proceedings and admittedly, he did not disclose this fact at any time at the commencement of or during the arbitration proceedings, then the impugned Award is liable to be set aside as it is opposed to the fundamental policy of Indian law.

Guidelines for Dealing with a case of Medical Negligence

Forum- High Court of Madhya Pradesh	**Case No**. MCRC-965-2008 **Date of Judgment**- 28/02/2017

The present petition has been filed under Section 482 of Cr.P.C. for quashing of the proceedings in Criminal Complaint pending in the Court of learned J.M.F.C. The petition raises an important question of law relating to the prosecution of a doctor who is in the service of the State Government, for an offence u/s. 304-A IPC alleged to have been committed while discharging his duty as a Government Doctor. Looking at the rising trend of roping in doctors working in the Government Hospitals by the next of kin of persons dying during the course of treatment at Government Hospitals, this Court has laid down following guidelines for the police and the courts below while dealing with cases implicating doctors working in Government Hospitals and Health Centers:

A. That, all allegations relating to negligent conduct on the part of a Government Doctor for which a prosecution u/s. 304-A IPC and/or its cognate provisions, or under such other law involving penal consequences is sought, the same shall be enquired into by a Medical Board consisting of at least three doctors, constituted by the Dean of any Government Medical College in the State of Madhya Pradesh, upon the request of the Police, Administration or the directions of a Court/Tribunal/Commission, within seven days of such requisition.
B. The doctor so selected by the Dean of the Medical College concerned to sit on the Medical Board, shall not be inferior in seniority and experience to that of an Associate Professor.
C. The doctor against whom such negligence is alleged, shall be given an opportunity by the Medical Board to give his reply/explanation in writing and if the doctor so desires to be heard personally, he shall be given such an opportunity by the Medical Board. However, if the Medical Board is of the opinion

that the request for personal hearing is with the intent of procrastinating the proceedings before the Board, it may, for reasons to be recorded, waive the opportunity of a personal hearing and proceed to decide the case on the basis of the documents/treatment record and give its finding.

D. The Medical Board shall endeavor to complete the exercise within sixty days from the date on which it is constituted and upon completion of the enquiry, submit the report to the Police, Administration or the Court/Tribunal/Commission, as the case may be.

E. The police shall not register an FIR against such a doctor in the absence of the report of the Medical Board referred hereinabove and also, only when the report by the Medical Board has held the doctor prima facie guilty of "Gross Negligence" and not otherwise.

F. If a complaint case has been preferred U/s. 200 Cr.P.C, there shall be no order u/s. 156(3) Cr.P.C. unless the complaint is accompanied by the report of the Medical Board adverted to in guideline with prima facie finding of "Gross Negligence" on the part of the Doctor. However, if the complaint is not accompanied with a report of the Medical Board, the Court may ask the Police to enquire into the case u/s. 202 Cr.P.C. The police, if so directed by the Court, shall approach the Dean of the Medical College for the constitution of the Medical Board and thereafter place the report of the Medical Board before the Court concerned.

G. If the opinion of the Medical Board is one of "Gross Negligence" on the part of the doctor, the Court concerned shall direct the police to seek sanction u/s. 197 Cr.P.C. from the State Government. The State Government shall, within thirty days from the date of such request for sanction, either grant or refuse the same, which the police shall convey to the Court concerned.

Amendment in Trademark rules

The Trademark Rules, 2017 came into force from 6th March, 2017. These new Rules have replaced the Trademark Rules, 2002. The amended Rules aim at simplifying the registration procedure, with fewer forms and improved online filing process. Important highlights of new rules are as under:

1. The new Rules have considerably augmented the trademark registration costs in India. The revised costs for certain specific actions have been given below:
    a. For filing a new application on behalf of a Company or trust or partnership: Rs 10,000/-
    b. For filing renewal application: Rs 10,000/-
    c. For recording an assignment: Rs 10,000/-
    d. For adding a person as a registered user: Rs 5,000/-
    e. For extension of time, certified copy of registration certificate or duplicate registration certificate: Rs 1,000/-
    f. For expedited processing of an application: Rs 40,000/-
    g. Handling fees for Madrid Applications: Rs 5,000/-

    A comparison of Trademark Rules*, 2002 and 2017* reveals that the fee for each type of application has increased significantly, sometimes, even by 400%.

2. Where an application for the registration of a trademark consists of a sound as a trademark, the reproduction of the same will have to be submitted in the MP3 format not exceeding thirty seconds length accompanied with a graphical representation of its notations.
3. 3D Marks are made registrable; It includes shape and packaging of goods. The reproduction of the trademark shall consist of a two dimensional graphic or photographic reproduction of three different views of the trademark.
4. Applicants can, now, make a request for express registration. On payment of additional fees, the application will be taken out of turn for

examination, hearing and registration. So far, it was only available up to examination stage.

Legal Update:

- 100% FDI through automatic route is allowed in e-commerce entities who are into 'Market place model of e-commerce' which means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller. (RBI Notification - FEMA.387/2017-RB dated March 09, 2017. Click here to read and download the Notification.
- The Ministry of Corporate Affairs has amended certain provisions of Indian Accounting Standard 102 – Share based Payment. Click here to read and download the Notification.
- Reserve Bank of India vide notification No. FEM 385/2017 – RB dated March 03, 2013 has amended provisions of allowing FDI in LLPs by amending Schedule 9 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2017. As per revised Schedule 9, FDI in LLPs is permitted *inter alia* subject to:
    i. FDI is permitted under the automatic route in LLPs operating in sectors / activities where 100% FDI is allowed through the automatic route and there are no FDI linked performance conditions. For ascertaining such sectors, reference shall be made to Annex B to Schedule 1 of these Regulations
    ii. An Indian company or an LLP, having foreign investment, will be permitted to make downstream investment in another company or LLP engaged in sectors in which 100% FDI is allowed under the automatic route and there are no FDI linked performance conditions. Onus shall be on the Indian company / LLP accepting downstream investment to ensure compliance with the above conditions.
    iii. FDI in LLP is subject to the compliance of the conditions of Limited Liability Partnership Act, 2008.

iv. A company having foreign investment can be converted into an LLP under the automatic route only if it is engaged in a sector where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions.

Click here to read and download the Notification.

Prepared By:

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