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NEWSLETTER

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SIX MONTHS WAITING PERIOD IS NOT COMPULSORY FOR DIVORCE

Court: Supreme Court of India

Decided on: 12.09.2017

Case No: Civil Appeal No. 11158 of 2017 (Arising out of Special Leave Petition (Civil) No. 20184 of 2017)

In the present case, the Apex Court has observed that the 6 month waiting period u/s 13B of the Hindu Marriage Act, which deals with Divorce by Mutual Consent, is not mandatory but directory. It will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation. Where the Court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13B (2), it can do so after considering the following:

- i) The statutory period of six months specified in Section 13B(2), in addition to the statutory period of one year under Section 13B(1) of separation of parties is already over before the first motion itself;
- ii) All efforts for mediation/conciliation including efforts in terms of Order XXXIIA Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;
- iii) The parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;
- iv) The waiting period will only prolong their agony.

As per the Apex Court's direction the waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the concerned Court.

TRADE UNION CANNOT FILE APPLICATION U/S 9 AS OPERATIONAL CREDITOR

Court: National Company Law Appellate Tribunal

Decided on: 12.09.2017

Case No: Company Appeal (AT) (Insolvency) No. 82 of 2017

In this appeal, question before hon'ble appellate tribunal was whether the Trade Union or Association of Workmen/employees can file insolvency application as an 'operational creditor' against operational debtor under Insolvency & Bankruptcy Code ('IB Code'); if operational debtor has not paid debts to workmen. Appellate Tribunal considering facts of the case held that a workman or employee who has rendered services to the corporate debtor individually come within the meaning of 'operational creditor'. The Trade Union or Association of Workmen/employee, do not come within the meaning of 'operational creditor' as no services is rendered by the Workmen's Association/ Trade Union to the 'corporate debtor' to claim any dues which can be termed to be 'debt' as defined in IB Code. Members of a Trade Union/Workmen Association, who are workman or employee of a 'corporate debtor', some amount may be due to such individual workman/ employee from a 'corporate debtor' including salary, gratuity, provident fund etc., in view of services rendered by them but in such cases, in respect of each workman there will be separate cause of action, separate claim and separate date of default of debt. Appellate tribunal further held that it does not mean that an application under Section 9 of IB Code is not maintainable at the instance of an individual employee/workman who has rendered services to the 'corporate debtor' and if there is debt and default such individual workman/ employee can prefer an application under Section 9 giving details of debt and date of default but it should not be less than one lakh rupees in view of Section 4 of the IB Code.

CERTIFICATE BY FINANCIAL INSTITUTION MANDATORY WHEN FILING APPLICATION FOR INITIATION OF CORPORATE INSOLVENCY PROCEEDING

Court: National Company Law Appellate Tribunal

Decided on: 17.07.2017

Case No: Civil Appeal No. Company Appeals (AT) (Insol) No. 96 of 2017

In the present case, a company incorporated under the laws of Singapore, preferred the application under Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I & B Code') seeking to set in motion the Corporate Insolvency Resolution Process against the respondent. Hon'ble Appellate Tribunal after considering facts of the case and provisions of the Insolvency and Bankruptcy Code,

2016, held that the word 'shall' used in sub-section (3) of section 9 of 'I & B Code' is mandatory, including clause 3 therein which provides for a copy of the certificate from the financial institutions maintaining accounts to be furnished along with application for initiation of corporate insolvency proceedings.

EVERY HINDU FAMILY IS JOINT IN FOOD, WORSHIP AND ESTATE, IN THE ABSENCE OF ANY PROOF OF DIVISION

Court: Supreme Court of India

Decided on: 06.09.2017

Case No: Civil Appeal No. 11220 of 2017 (Arising out of SLP (C) No. 5664/2012)

The Apex Court after considering the facts of the case held that it is a settled principle of Hindu law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The burden, therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired property.

DESIGN PROTECTION: BEING A TREND SETTER.

- Jewellery boutiques invest substantial resources in designing and manufacturing contemporary set of jewellery. Designers and Trainees work clandestinely to create newer designs. This obviously involves huge costs as R & D requires investment. But what about the designs already created by Jewellers, how should they be protected. It is unarguably important that such designs are protected from infringement as they are jewellers' assets and help establish exclusivity in market. One cannot expect to grow his business without ensuring sufficient protection of its intellectual property whilst investing in new R&D and IP.
- The jewellers and gem stones merchants have woken up to more straight-jacket formula of ensuring low costs. This can be achieved by ensuring adequate statutory protection of their Designs. This helps in maintaining exclusivity over designs and the older designs double up as an investment.
- This works well, because Designs protection also ensures that in case of unauthorized access, a connection is established with the original creator of the design. This helps protect the trade name as well against the poor quality of goods sold by competitors.

- In the jewel industry there are many who have encountered similar problems in the past. To succeed in a competitive scenario with international players in the field, Indian jewellers need to think proactively and radically in protecting their Intellectual Property (IP).
- IP is legally fragile, meaning that once the owner's right is lost or compromised, it is extremely difficult to, if not impossible; to recover those rights. This purports the needed for an overall awareness and understanding of the effective management of IP amongst the Indian Jeweller Industry. Some of the tools in the management of intellectual property significant to the jewel industry are: Industrial Designs, Trademarks and Copyrights protection.

Industrial Design: The artwork, colors or designs applied to any article including jewels, watches, luxury items that make it look visually appealing can be owned and protected by means of registering it as an Industrial Design. Basically the aesthetic features of products are registered under Designs Act, 2000. This would prevent competitors from stealing valuable design and getting unfair advantage out of somebody's skill and labour.

Trademark: It protects the unique brand name of company, the product names, logo, certification marks used to vouch the quality of the products, domain names, etc. This creates a goodwill and distinct identity for company and its products amongst others in the jewellery industry. These include certification marks which are quite prevalently used amongst jewelers.

Copyright: Any work of art, be it literary or artistic such as drawings, designs, sculpture, painting, promotional material and the manuscripts developed in business are protected under Copyright Law.

Many Jewelers abstain from seeking IP Protection of their designs due to costs involved. Their concern emanates from the fact that the pace with which the industry shells out new designs, seeking protection of the Designs seems to be a cumbersome and financial exhausting process. But, another aspect of the story is that with jewelers entering into franchising business, ensuring standardization of products has become pivotal for business. This ensures the designs apart from attaining exclusivity in market will also act as an investment for jewelers. The jewelers should ideally discuss their IP Strategy with their advisors to ensure that IP costs do not become a hindrance in smooth functioning of the business.

The aforesaid tools secure IP and identify the owner. Identifying the owner of an intellectual property is a crucial issue when it comes to enforcement of IP. Generally the owner of an intellectual property is the person who creates it, but when an

employee creates it under a contract of employment, the employer becomes the owner.

Advantages of protecting intellectual property:

- Registration guarantees monopoly right over intellectual property.
- It creates a legally valid document which connects one with the design
- It enables one as a matter of right to restrain or claim damages from offenders who copy, imitate or dilute their IP in any manner.
- It helps capitalize on innovative designs and acts as a marketing tool.
- It retains trade secrets within the organization.
- Registration recognizes the time, effort and money spent in creating the intellectual property.
- Registration not only helps harness the human creativity, thought and inventiveness which is found in abundance in the Jeweller industry, but also aids in making strategic decisions for enhancement of economic benefits.
- It helps sustain the innovative spirit in business.

Disadvantages of not protecting intellectual property:

- Pirates will imitate others designs and other works.
- Competitors may adopt business name and tarnish image of the one's company.
- Damages or other remedies cannot be obtained easily as enforcement becomes very complex and cumbersome.
- Competitors might acquire one's trade secrets and unfairly gain out of it.

Conclusion:

Many international and national companies have benefited monetarily by unleashing their creativity and converting their "intellectual property" to "intellectual capital". Jewellers can surely achieve similar or even greater economic and brand supremacy by effectively harnessing their intellectual property for competitive advantage. India has seen lots of cases where Designers have been engulfed in unnecessary litigation due to absence of any legally valid connecting link between designer and his design. This shifts focus from the primary objective of conducting business. Hence, it is always advisable that being offensive in IP Protection will lead to best defense with minimal risks.

Legal Update:

- The Ministry of Corporate Affairs has issued Companies (Restriction on number of layers) Rules, 2017. As per said Rules no company, other than a company belonging to a class specified in sub-rule(2), shall have more than two layers of subsidiaries. The provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country. For computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.
http://www.mca.gov.in/Ministry/pdf/CompaniesRestrictionOnNumberofLayersRule_22092017.pdf
- The Ministry of Corporate Affairs vide notification number G.S.R. 839(E) dated 5th July, 2017 issued the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 inter-alia amending rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014. The said amended Rule 4 *inter-alia* provides that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors. MCA has clarified that it is hereby clarified that a "joint venture, would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.
http://www.mca.gov.in/Ministry/pdf/GeneralCircular_05092017.pdf
- MCA has announced Companies (Acceptance of Deposits) Second Amendment Rules, 2017. Maximum ceiling on acceptance of deposit from members shall not be applicable to certain classes of private limited company mentioned in the Amendment Rules. <http://egazette.nic.in/WriteReadData/2017/179095.pdf>

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