

NEWSLETTER**ANA/NL/March 2016****PARTNERSHIP AS AN ENTITY NEEDS TO BE ACCUSED ALONG WITH PARTNERS**

Petitioner: Philip J Respondent: Ashapura Minechem Limited and Another	Court: High Court of Bombay Date Of Judgment: 29 JANUARY 2016 Case No: CRIMINAL WRIT PETITION NO. 2914 OF 2013 WITH CRIMINAL WRIT PETITION NO. 2915 OF 2013
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In the instant case, a partner of a partnership firm was sued for dishonour of cheques issued. It was contended by the partner inter alia that his firm have not been made a party to the Complaint and he alone has been sued. Accordingly, complaint filed is not at all maintainable as company/firm is essential party to proceedings initiated under Section 138 read with section 141 of the Negotiable Instrument Act. The Hon'ble Court after interpreting provisions of Section 141 of the NI Act held that explanation (a) to section 141 of the NI Act abundantly makes it clear that the word "company" used in the said section is not confined in its application only to the company registered under the Companies Act, but also to the body corporate and specifically includes a firm or other association of individuals. Explanation (b) further clarifies the position that the director in relation to a firm means a partner in the firm. The Court therefore held that unless the partnership firm is prosecuted and convicted, the partner thereof cannot be convicted with the aid of section 141 of the NI Act.

CASUAL WORKERS TOO COVERED BY EMPLOYEES STATE INSURANCE

Appellant: Royal Western India Turf Club Ltd. Vs. Respondents: E.S.I. Corporation & Ors.	Court: Supreme Court of India Date Of Judgment: 29 February 2016 Case No: Civil Appeal Nos. 49/2006
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The Supreme Court giving a wide interpretation to the term 'employee' has held that welfare schemes for social security and health insurance assured under the Employees State Insurance Act are available even to casual workers. The Hon'ble court disagreed with the stand of Appellant that "Casual labour engaged on race track is not to be covered under the ESI Act as their work is sporadic and only on race days". The apex court has observed that the 1948 Act was a welfare legislation with a "very wide" and inclusive definition for the term "employee." The Supreme Court held that A person who is employed for wages in the factory or establishment on any work of, or incidental or preliminary to or connected with the work is covered. The definition brings various types of employees within its ken. The Act is welfare legislation and is required to be interpreted so as to ensure extension of benefits to the employees and not to deprive them of the same which are available under the Act.

IF RECORDING OF EVIDENCE IS NOT DONE COUNTER CLAIM CAN BE FILED AFTER FRAMING OF ISSUES

<p>Appellant: VIJAY PRAKASH JARATH Vs. Respondents: TEJ PRAKASH JARATH</p>	<p>Court: Supreme Court of India Date Of Judgment: 01 March 2016 Case No: Civil Appeal Nos. 2308 and 2309 of 2016, arising out of SLP(C) No. 8536 and 8537 of 2008</p>
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The Supreme Court has observed that if the recording of evidence is not concluded then Counter claim can be filed even after framing of issues. Upon challenge by the Plaintiffs, the High Court, relying on Rohit Singh & Ors. vs. State of Bihar(2006) 12 SCC 734, concluded, that the counter-claim filed by the defendants before the trial court, was not legally acceptable. Being aggrieved, the Defendants approached the Apex Court. The Apex Court observed that "In Rohit Singh's case, evidence from both sides was concluded, and even arguments had been heard, but whereas, in the present case,

even though evidence on behalf of the respondent-plaintiff has commenced, it has not yet concluded. The evidence on behalf of the defendants is yet to commence." The court also observed that no prejudice would be caused to the plaintiff before the trial court, if the counter-claim was to be adjudicated upon, along with the main suit.

“PERSON AGGRIEVED” DEFINED BY DELHI HC IN CASE OF IDENTICAL TRADEMARKS

<p>Petitioner: ADIDAS AG Vs. Respondents: UNION OF INDIA & ANR</p>	<p>Court: High Court of Delhi Date Of Judgment: 10 February, 2016 Case No: W.P.(C) 3125/2013</p>
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In the present case, a writ petition had been filed by Adidas before the Delhi High Court, challenging the ex-parte order of the Intellectual Property Appellate Board's (IPAB). The IPAB dismissed the rectification application filed by Adidas under Section 47 the Trademark Act for the removal of the 'RESPONSE' mark registered by the Respondent No.2 as the IPAB had held that Adidas has not been able to prove use and hence is not an 'aggrieved party'. The Applicant filed a rectification application on the ground that the mark 'RESPONSE' had been registered by the person on the record "without any good cause or bonafide intention to use the mark", rendering it liable to be expelled from the register under Section 47 of the Act. The mark RESPONSE which is a famous and well known trade mark in relation to footwear is already registered in U.S.A. and Germany in class 25 by Adidas AG group.

The Hon'ble court that IPAB had erred in its decision that Adidas AG is not a 'person aggrieved', and said that "an applicant for registration whose trademark has been objected or refused by reason of prior registration by a third party of the same or similar or identical mark for the same goods or description of the goods or whose application for registration is opposed on the basis of prior registration of the same or similar mark by the registry is a "person aggrieved". Accordingly, the matter was remanded back to

the IPAB for re-considering the matter in accordance with the law and is scheduled to taken up next month by the IPAB.

ARBITRATOR CANNOT AWARD PENDENTE LITE INTEREST, IF CONTRACT BARS THE SAME

<p>Petitioner: Union of India ... Vs. Respondent: M/s. Ambica Construction</p>	<p>Court: SUPREME COURT OF INDIA Date Of Judgment: March 16, 2016 Case No: SPECIAL LEAVE PETITION [C] No.11114/2009</p>
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The Supreme Court has recently held that if contract expressly bars award of interest *pendente lite* (pending litigation), the same cannot be awarded by the Arbitrator.

The Apex Court, in this case observed that Section 31(7)(a) of the Arbitration and Conciliation Act, 1996 ("Act") confers power on Arbitrator to award interest *pendente lite*, "unless otherwise agreed by parties". The Court therefore opined as follows, "Thus, it is clear from the provisions contained in section 31(7)(a) of the Act that the contract between the parties has been given importance and is binding on the Arbitrator. Arbitration clause is also required to be looked into while deciding the power of the Arbitrator and in case there is any bar contained in the contract on award of interest, it operates on which items and in the arbitration clause what are the powers conferred on Arbitrator and whether bar on award of interest has been confined to certain period or it relates to pendency of proceedings before Arbitrator...it would depend upon the nature of the ouster clause in each case. In case there is express stipulation which debars *pendente lite* interest, obviously, it cannot be granted by Arbitrator. The award of *pendente lite* interest *inter alia* must depend upon the overall intention of the agreement and what is expressly excluded.

The Bench while discussing the ruling in Board of Trustees for the Port of Calcutta v. Engineers-De-Space-Age wherein it was held that the bar under the contract to award pendente lite interest will not be applicable to Arbitrator, observed that that said that the above position requires to be diluted to the extent that express stipulation under contract may debar the Arbitrator from awarding interest pendente lite. The Court added that “Grant of pendente lite interest may depend upon several factors such as phraseology used in the agreement, clauses conferring power relating to arbitration, nature of claim and dispute referred to Arbitrator and on what items power to award interest has been taken away and for which period.”

Legal Updates

- An enterprise, whose control, shares, voting rights or assets are being acquired has either assets of the value of not more than rupees three hundred and fifty crores in India or turnover of not more than rupees one thousand crores in India exempts from the provisions of section 5 of the Competition Act, 2002 for a period of five years. ‘Group’ exercising less than fifty per cent. of voting rights in other enterprise is exempt from the provisions of section 5 of the said Act for a period of five years. Central Government enhances, on the basis of the wholesale price index, the value of assets and the value of turnover, by hundred per cent for the purposes of section 5. Notification 582 dated March 04, 2016)
- The Companies (Amendment) Bill, 2016 introduced in Lok Sabha on March 16, 2016.

Prepared By:

The Team of Lawyers at **Abhay Nevagi & Associates**

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