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NEWSLETTER

ANA/NL/August 2016

Access to justice is an invaluable human right

Appellant: Anita Kushwaha Versus Respondent: Pushap Sudan. and Another	Court: Supreme Court of India Date of Judgment: July 19, 2016
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The Supreme Court in this case has held that there is no hesitation in holding that access to justice is indeed a facet of right to life guaranteed under Article 21 and Article 14 of the Constitution. *Inter alia* answering to other questions, the Supreme Court, on question whether access to justice is indeed a fundamental right?, held that access to justice is and has been recognized as a part and parcel of right to life in India and in all civilized societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. In addition, absence of any adjudicatory mechanism or the inadequacy of such mechanism is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well.

Disputes arising out of Trust not capable of being decided through Arbitration

Appellant: Vimal Kishor Shah and others Versus Respondent: Jayesh Dinesh and others	Court: Supreme Court of India Date of Judgment: August 17, 2016
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The Supreme Court held that the disputes relating to Trust, trustees and beneficiaries arising out of the Trust Deed and the Trust Act are not capable of being decided by the arbitrator despite existence of arbitration agreement between the parties. The Apex Court further held that when the Trust Act exhaustively deals with the Trust, trustees and beneficiaries and provides them a right to approach the Civil Court of principal original jurisdiction for redressal of their disputes in relation to their rights, duties, obligations, removal, etc., the remedy provided under the Arbitration Act for deciding such disputes is barred by implication.

Challenge against revocation of arms license under Arms Act, 1959

Petitioner: Ajay Jayawant Bhosale Versus Respondent: The Commissioner of Police, the State of Maharashtra and others...	Court: High Court of Bombay Date of Judgment: July 15, 2016
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In this particular case, the question before the Hon'ble Bombay High Court was whether the petitioner has violated the requirements of Section 17 of the Arms Act, 1959? The Court was of the view that in order to revoke the Arms License one must prove that the said license endangers public peace or public safety which is the essential requirement of Section 17 of the Arms Act, 1959. Therefore, the Court directed that the respondent should consider whether any ground enumerated

under Section 17 (b) of the Arms Act, 1959 for cancelling the Arms License granted to the petitioner still exists and if no such circumstances exist, the Court will direct that the petitioner's arms license shall be renewed.

**Debarment depends upon the nature of offence committed
by suppliers/contractors**

Appellant: B.C. Biyani Projects Pvt. Ltd. Versus Respondent: State of Madhya Pradesh and others.	Court: Supreme Court of India Date of Judgment: July 22, 2016
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In this case, Appellant was blacklisted for the award of contracts by the respondents since there was unreasonable delay in the completion of six contracts awarded to the appellant. The question before the Court discussed whether a company can be blacklisted on a permanent basis? The Apex Court held that debarment cannot be permanent and the period of debarment will invariably depend upon the nature of the offence committed by the erring contractor. Further, the Court observed that since the appellant was blacklisted and more than three years have expired and also taking into consideration that three out of six contracts have been completed, therefore the Court opined that the period of blacklisting already undergone by the appellant is sufficient to meet the ends of justice.

The Court therefore set aside the order for permanently blacklisting the company and was of the view that blacklisting a company cannot be a permanent one which in itself is impermissible in law. In addition, in the event any further contracts are awarded to the contractor, they must ensure that there will not be any unreasonable delay in completing the work.

Agents cannot be personal held liable to enforce contracts for its principal under Consumer Act

Appellant: Virender Khullar Versus Respondent: American Consolidation Services Ltd. & Others	Court: Supreme Court of India Date of Judgment: August 16, 2016
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The Apex Court, has held that in view of Section 230 of the Indian Contract Act, 1872, the agents cannot be personally held liable to enforce the contract between its principal and the appellants. The Court also relied on its earlier decision in *Marine Container Services South Pvt. Ltd. v. Go Go Garments* wherein it was held that defense under Section 230 of Indian Contract Act, 1872 is available in the cases under Consumer Protection Act, 1986 by the agents of the principal with whom the Complainant had the agreement.

Legal Updates

- Earlier, the banks were advised to introduce a condition for operation of accounts with cheque facility that in the event of dishonour of a cheque valuing rupees one crore and above drawn on a particular account of the drawer on four occasions during the financial year for want of sufficient funds in the account, no fresh cheque book would be issued. Also, the bank may consider closing current account at its discretion. Now, the Reserve Bank of India has given discretion to the banks to determine their response to dishonour of cheques of such account holders. Banks should put in place an appropriate policy approved by the Board or its Committee taking into consideration the need to prevent misuse of the cheque drawing facility and avoid penalising customers for unintended dishonour of cheques. (RBI Circular RBI/2016-17/33 DBR.No.Leg.BC.3/09.07.005/2016-17 dated 04-August-2016. Click [here](#) to read the said Circular of RBI.
- The Ministry of Corporate Affairs ('MCA') has clarified that unless otherwise provided in the circulars/directions/regulations issued by the Reserve Bank of India, provisions of Chapter III (i.e. Prospectus and Allotment of Securities) and Rule 18 of the

Companies (Share Capital and Debentures) Rules, 2014 would not apply to issue of rupee denominated bonds made exclusively to persons resident outside India in accordance with applicable sectoral regulatory provisions of Reserve Bank of India ECB policy framework. General Circular 09/2016 dated 03-August-2016 issued by MCA. Click [here](#) to read said Circular of MCA.

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