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NEWSLETTER

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Bank to avoid Undue Haste when Auctioning Property and wait till Conclusions of Pending Proceedings

Appellant: Oasis Dealcom Pvt. Ltd. VS Respondent: Khazana Dealcomm Pvt. Ltd. and Ors	Court: Supreme Court of India Date of Judgment: 8 th November 2016 Case No.: Civil Appeal Nos. 10676-10677
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Bank (Respondent No. 4) granted financial assistance to the Respondents Nos. 1 to 3 but they defaulted in repayment after which for recovery of the amount bank issued notice under section 13(2) of SARFASI Act, 2002 and on Respondent's failure to comply with the demands in the said notice the Bank took symbolic possession of the property against which Respondents filed the appeal on the ground that the notice was not published in the newspaper. The Presiding Officer directed respondents to pay partial amount, against which they filed appeal in Hon'ble High Court of Calcutta and the Hon'ble High Court further reduced the amount which respondents were required to pay to the Bank. But respondent failed to pay the amount stipulated by the Hon'ble High Court too, so ultimately issued a notice dated 4th January, 2010 for auctioning the flat by referring to an earlier auction notice dated 10th November, 2009, which had been

published in newspapers "The Statesman" (English) and "Aajkal" (Bengali). The Appellant submitted his bid and was granted sale certificate. The Respondents Nos. 1 to 3 filed an appeal against the notice of auction conducted in Hon'ble High Court of Calcutta which placed the order before DRT. DRT granted status quo in the said matter against which an appeal was filed before High Court which dismissed the same.

The Hon'ble Supreme Court confirmed the decision passed by the High Court and Tribunal and stated that the bank has made undue haste in holding auction, at least should wait for conclusion of the proceeding before Tribunal and High Court and then should confirm the sale. Bank was directed to pay the amount with simple interest to the purchaser and for cancellation of sale.

Living Together and Having Children is an Indication of staying together as Spouses, making Section 125 of CrPC Applicable

Appellant: Anonymous VS Respondent: Anonymous	Court: High Court of Punjab and Haryana Date of Judgment: 23 rd November 2016 Case No.: Criminal Revision No. (F) 166
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Respondent was legally wedded wife of a man but she started living with the petitioner. After some time she gave divorce to her husband. Petitioner and Respondent continued to live together and they had twins after 3 years. But Petitioner was still married and did not obtain divorce decree so their marriage could not be solemnized. The Respondent made allegations that the Petitioner had misappropriated the amount of alimony received by the Respondent from her husband and she asked for maintenance from petitioner under section 125 of Cr.P.C.

The High Court held that the application of section 125 of Cr.P.C. can be extended to the partners living together. The Court said since they are living together and had children there is clear indication of permanence of staying together as husband and wife, so court allowed the respondent to get maintenance from petitioner.

**HUF is not an Association of Persons as defined under Section 138
of Negotiable Instruments Act**

Petitioner: Shah Rajendrabhai Jayantilal VS Respondent: D. Pranjivandas and Sons Prop. Dhirajlal Pranjivandas Popat	Case No.: Special Criminal Application No. 1970 of 2015 Court: High Court of Gujarat Date of Judgment: 31 st January 2017
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Petitioner (Karta) issued a cheque on behalf of HUF but that cheque was dishonored due to insufficiency of funds. Petitioner was prosecuted for the same under Section 138 of Negotiable Instrument Act. But he has filed a Writ Petition stating that since HUF is a legal entity, it shall constitute an "association of person" as defined under section 141 of NI Act hence he alone should not be punished. The Court rejected the contention and held that HUF will not constitute Association of Persons within meaning of section 141 of NI Act and HUF is not a legal entity distinct and separate from that of the members who constitute it.

**Overtime Wages, Leave Travel Allowance and Cycle Allowance
constitute Wages under the ESI Act**

Appellant: OCL India Limited, Rajgangpur VS Respondent: Regional Director, Employees' State Insurance Corporation, Bhubaneswar and Anr.	Case No.: 267/95 of 2001/ 1996 Court: High Court of Orissa
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Appeal filed against the order of District Judge. The appellant filed an application under the Section 75 of ESI Act for setting aside the order passed by Deputy Director, ESI Corporation for payment of contribution

towards overtime wages paid to the employees, the leave travel allowance, the cycle allowance and also the interest. The Court held that the overtime wages fall within the definition of wages provided in section 2(22) of ESI Act. The leave travel allowance and cycle allowance are also considered as wages because these were paid within the intervals not exceeding two months. But nonpayment of contribution on the remuneration for overtime work does not warrant any interest in accordance with the provisions of section 39(5) of ESI Act r/w regulation 31 and 31A of the Regulation.

Certificate from Financial Institution is mandatory along with Insolvency Petition

Operational Creditor: Smart Timing Steel Ltd.	Court: National Company Law Tribunal, Mumbai Bench
VS	Case No: C.P. No.
Operational Debtor: National Steel and Agro Industries Limited	06/I&BP/NCLT/MAH/2017 Date of Order: 30.01.2017

As per provisions of Section 9 (2)(c) of the Insolvency and Bankruptcy Code, 2016 certificate from Financial Institution maintaining Accounts of Operational Creditor confirming that there is no payment of unpaid debt by the Corporate Debtor. In this case, considering operational creditor is situated outside India, requested the Hon'ble Tribunal to exempt from compliance under said section i.e. furnishing certificate from financial institution. The Tribunal after considering provisions of Section 9 (2)(c) of the Insolvency and Bankruptcy Code, 2016 held that it is mandatory to file copy of certificate form financial institutions reflecting non-payment of operational debt.

Legal Update:

- Amendment in Foreign Exchange (Compounding Proceedings) Rules, 2000 – Power of compounding of offences have been deleted to regional offices

for delay in filing the Annual Return on Foreign Liabilities and Assets (FLA return), by all Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year [RBI/2016-17/220 A.P. (DIR Series) Circular No. 29 issued by Reserve Bank of India on February 02, 2017] Click [here](#) to read said circular.

- Clarification on closure of place of business by Foreign Company - As per provisions of Section 391 of the Companies Act, 2013 provisions of Chapter XX shall apply mutatis mutandis for closure of place of business of foreign company in India as if foreign company was incorporated in India. Ministry of Corporate Affairs has clarified that provisions of Section 391(2) of the Companies Act 2013 would apply only in case of a foreign company which has issued prospectus or IDRs pursuant to provisions of Chapter XXII of the Companies Act, 2013 [General Circular No. 1/2017 issued by MCA on February 22, 2017] Click [here](#) to read said circular.

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