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NEWSLETTER

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DIRECTIONS TO PREVENT MISUSE OF SECTION 498A

Court: Supreme Court

Case No: Criminal Appeal No. 1265 of 2017

Decided on: 06-June-2017

In this case, the question before Apex Court was whether any directions are called for to prevent the misuse of Section 498A, as acknowledged in certain studies and decisions. While deciding the appeal the Apex Court has provided the following directions:

- 1)
 - a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.
 - b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.
 - c) The Committee members will not be called as witnesses.
 - d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

- e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.
 - f) The committee may give its brief report about the factual aspects and its opinion in the matter.
 - g) Till report of the committee is received, no arrest should normally be effected.
 - h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.
 - i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.
 - j) The Members of the committee may be given such honorarium as may be considered viable.
 - k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.
- 2) Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today;
- 3) In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;
- 4) If a bail application is filed with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/ custody and interest of justice must be carefully weighed;

- 5) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;
- 6) It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and
- 7) Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.
- 8) These directions will not apply to the offences involving tangible physical injuries or death.

The Court has also ordered that after seeing the working of the above arrangement for six months but latest by March 31, 2018, National Legal Services Authority may give a report about need for any change in above directions or for any further directions. The matter may be listed for consideration by the Court in April, 2018.

WORDS "REPAY", "RETURN" AND "SUBJECT TO THIS CONDITION" ARE NOT COMMENSURATE WITH A DEED OF ABSOLUTE SALE

Court: Supreme Court

Case No: Civil Appeal No. 7245-7246/2011

Decided on: 09.08.2017

In the present case the appellants' suit for redemption of mortgage, decreed by two courts, and was reversed in second appeal by the High. The only question of law for consideration before the Apex Court was, whether the deed dated 21.04.1953, Exhibit 62, was a 'mortgage by conditional sale', or a 'sale with an option to repurchase'. The Civil Judge and the Additional District Judge in appeal, after consideration of the recitals in the deed, intention of the parties,

and the attendant circumstances, had held that it was a 'mortgage by conditional sale'. The High Court in second appeal, had opined that there did not exist a debtor and creditor relationship between the parties. The agreement was a sale deed, transferring title and possession and held to be a 'sale, with an option to repurchase'.

While deciding the appeal the Apex Court stated that "the significance of the words "repay", "return" and "subject to this condition" cannot be overlooked. They are not commensurate with a deed of absolute sale. The language used, conveys the distinct impression that the plaintiff did not intend to relinquish all rights, title and claims to his lands. The defendant was aware of the limited nature of right conveyed and had agreed to a conditional sale along with an obligation to return the lands if the amount was repaid.

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 the appellant, 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 company. Learned Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh, by impugned order dated 1st June 2017 held that the petition preferred by appellant was not maintainable, after *inter alia* observing that the appellant has not enclosed any certificate from a 'Financial Institution' maintaining the accounts of the 'Operation Creditor' in terms of Clause (c) of sub-section (3) of Section 9 of the 'I & B Code'. In an appeal, Appellate Tribunal 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.

**IF INTERIM ANTICIPATORY BAIL IS GRANTED BY HIGHER COURT, THE
ACCUSED CANNOT APPEAR AND SURRENDER BEFORE THE LEARNED TRIAL
COURT AND SEEK REGULAR BAIL**

Court: Supreme Court of India

Case No: Petitions for Special Leave to Appeal CrI. Nos. 2411/2016

Decided on: 03.08.2017

In this case, the Supreme Court held that "When this Court or a High Court or even a Sessions Judge grants interim anticipatory bail and the matter is pending before that Court, there can be no occasion for the accused to appear and surrender before the learned trial court and seek regular bail. Surrender and a bail application in such circumstances is nothing but an abuse of the process of law by the concerned accused. Once a regular bail is granted by a subordinate Court on the strength of the interim/pre-arrest bail granted by the superior Court, even if the superior Court is to dismiss the plea of anticipatory bail upon fuller consideration of the matter, the regular bail granted by the subordinate Court would continue to hold the field, rendering the ultimate rejection of the pre-arrest bail by the superior Court meaningless. Such a practice must be discontinued and consideration of regular bail applications upon surrender during the pendency of the application for pre-arrest bail before a superior Court must be discouraged."

BLACK-LISTING CANNOT BE DONE FOR AN INDEFINITE PERIOD

Court: Madhya Pradesh High Court

Case No: WP-10337-2016

Decided on: 09.08.2017

In the present case, the Petitioner was given certain contract, however, later on, a show-cause notice was issued to terminate the contract and that an order of termination of the contract was passed. Thereafter a show-cause notice was issued to blacklist the petitioner. Without considering the reply filed by the Petitioner then an order of black-listing of the Petitioner was passed. An appeal against the order of black-listing of the petitioner was dismissed by the Engineer-in-Chief, Public Works Department, Madhya Pradesh.

While deciding the present Petition, the High Court has held that that black-listing cannot be done for an indefinite period, as the fact of black listing is depriving the Contractor of his participation in public contracts.

LIMITATION PERIOD FOR INSOLVENCY APPLICATION

Court: National Company Law Appellate Tribunal

Case No. : Company Appeal (AT) (Insolvency) No. 44 of 2017

Decided on: 11th August 2017

In this case, after considering facts of the case, Appellate Tribunal held that I & B Code is not an Act for recovery of money claims, it relates to initiation of Corporate Insolvent Resolution Process. If there is a debt which includes interest and there is default of debt and having continuous course of action, the argument that claim of money is barred by limitation cannot be accepted.

Legal Updates:

- SS-1 (Board Meetings) and SS-2 (General Meetings) have now been revised by ICSI and the same have been approved by the Ministry of Corporate Affairs (MCA) vide its letter No. 1/3/2014-CL.I dated 14th June, 2017. The revised SS-1 and SS-2 shall be applicable to all the companies (except the exempted class of companies) w.e.f. 1st October, 2017 and accordingly all Board Meetings (including meetings of committees of Board) and General Meetings in respect of which Notices are issued on or after 1st October, 2017 need to comply with the revised SS-1 and SS-2. The existing SS-1 and SS-2 will be applicable to the Board Meetings and General Meetings held on or before 30th September, 2017.

https://www.icsi.edu/webmodules/Announcement_on_Revised_Secretarial_Standards.docx

- Payment of Wages Act, 1936 shall now be applicable to all employees earning wages up to Rs. 24,000/-. Earlier the salary ceiling was Rs. 18,000/-
<http://egazette.nic.in/WriteReadData/2017/178375.pdf>

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