Singh & Associates
ADVOCATES AND SOLICITORS

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INDIAN LEGAL IMPETUS

FOREWORD

Manoj K. Singh
Founding Partner

As the holiday season looms around the corner, Singh and Associates would like to wish its readers Merry Christmas and a prosperous New Year. I hope that the holiday season brings cheers to the readers and their families.

It gives me immense pleasure to bring forth the monthly newsletter "Indian Legal Impetus" for the month of December, 2013. I, on behalf of my team, also thank all our readers for such an encouraging response to our efforts till date.

The present edition brings to you the recent liberal approach adopted by the Indian Courts which has resulted in a complete overhauling of the perception of the International Commercial Arbitrations being a time-consuming process with the possibilities of judicial interference at various stages; often considered by foreign parties as a dilatory mechanism resorted to, by the Indian parties. Given, this trend a hope ensues that with the present judicial scenario on the subject, the confidence of the International community in Commercial Arbitration would strengthen.

Further, the impact of serious allegations of fraud and whether such matters are arbitrable after allegations have been leveled by the parties have also been discussed.

This edition of the newsletter also highlights the recent pronouncement of the Court in which it has held that it is mandatory upon the Registrar of Trademarks to give notice to the party for renewal of Trademark. Further, the articles under this section have made an endeavor to state concisely the Patent opposition system in India; the growing relevance of domain names for the Company and the rights of the celebrities vis-à-vis their Right to Privacy guaranteed under the Fundamental rights.

Moving further, this edition briefly touches upon the establishment of Dispute Resolution Panel as an Alternative Dispute Mechanism under the Income Tax Act, 1961, to minimize the tax disputes relating to Transfer Pricing in International Transactions. Further, the present edition touches upon the judgment of the Supreme Court of India rendered in **Bank of Maharashtra v Pandurang Keshav Gorwardkar & Ors** wherein it has been held that where a winding up petition against a debtor company is pending and a bank or financial institution has been repaid its loans following an order of sale by a Debt Recovery Tribunal, the disbursements made by the Debt Recovery Tribunal cannot be reopened when the debtor company subsequently goes into liquidation. However, if the debtor company goes into liquidation before the Debt Recovery Tribunal has fully disbursed the sale proceeds, the Debt Recovery Tribunal can disburse the undisbursed proceeds only after giving notice to, and hearing, the liquidator. Moreover, an attempt has been made to explain to the readers what ought to be the venue of extra ordinary general meeting of the Company.

Last but not the least, latest development in various fields of law have been summarized in the Newsbyte Section of this issue.

We hope that our esteemed readers find the information furnished through this newsletter useful and also such an effort will enable to understand and interpret the legal developments, thus enabling the readers to avail the new gateways. I welcome all suggestions, opinions, queries or comments from our readers. You can also send your valuable inputs, insights and thoughts at **newsletter@singhassociates.in**

"Indian Legal Impetus"

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Singh & Associates
Advocates & Solicitors

NEW DELHI (HEAD OFFICE)
N - 30, Malviya Nagar, New Delhi - 110017
Email: newdelhi@singhassociates.in

BANGALORE
N - 304, North Block, Manipal Centre
47,Dickenson Road, Bangalore - 560042, INDIA
Email: bangalore@singhassociates.in

MUMBAI
415, Wing C, 4th Floor '215 Atrium'
Chakala, Andheri-Kurla Road
Andheri (East), Mumbai - 400059, INDIA
Email: mumbai@singhassociates.in

HYDERABAD
404, 4th Floor, Mogul's Court
Building, Deccan Towers Complex
Basheerbagh, Hyderabad - 500001, INDIA
Email: hyderabad@singhassociates.in

NEW YORK
260 Madison Avenue, 8th Floor, New York NY
10016 USA

BEIJING
Unit 601, 6/F, Office Tower C1 Oriental Plaza,
No.1, East Chang An Avenue, Beijing 100738,
P.R.C. Direct Ext. 2017/18
Email: china@singhassociates.in

Ph : +91-11-46665000, 26680331
Fax : +91-11-46665001, 26682883
U.S.A. Toll Free No. 18666 034 835

www.singhassociates.in

Singh & Associates
ADVOCATES AND SOLICITORS

Managing Editor
Manoj K. Singh

Editor
Ms. Shipra M. Devgun
Ms. Arpan Behl

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Advocates and Solicitors

COMMERCIAL ARBITRATION IN INDIA - AN UPDATE

Bijoylashmi Das & Harsimran Singh

Arbitration is a medium which provides an effective and expeditious dispute resolution framework unlike the Court proceedings which takes number of years in resolving disputes between the parties. Parties submit themselves to Arbitration, as it enables a faster resolution and disposal of the disputes between the parties and leaves very little scope for prolongation of disputes. For this reason it inspires the confidence of Foreign Investors to invest in India and reassure international investors in the reliability of the Indian legal system to provide an expeditious, cheaper and flexible dispute resolution mechanism.

There have been amendments in the Arbitration and Conciliation Act. Till 1996, there were three statutes on arbitration in India i.e., the Arbitration (Protocol and Convention) Act, 1937, the Indian Arbitration Act, 1940 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The Arbitration Act, 1940 dealt only with arbitration that took place in India. There arose a need for reforming the Arbitration Act, 1940 and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto[1] and thus the Arbitration and Conciliation Act of 1996 came into place. The Arbitration and Conciliation Act, 1996 is a long leap in the direction of alternate dispute resolution systems. It is based on UNCITRAL (United Nations Commission on International Trade Law) Model.[2]

The Arbitration and Conciliation Act of 1996 has divided itself into two parts. The First part deals with Arbitration that is conducted in India and its enforcement. The Second part provides for arbitration conducted in a Foreign Country and enforcement of such foreign awards.

The resolution of disputes through Arbitration is the most expeditious, cheap and flexible means of dispute resolution. Parties prefer this Statute for the resolution of their disputes for the reason that they can decide as to whether to refer their dispute to a specific arbitrator or a panel of arbitrators with a developed expertise in the subject matter in dispute; control on the timetable as opposed to leaving this to the court administrators; confidentiality; etc.

To this extent arbitration is the only expandable resource available to the traditional court system. It can and does have a streamlining effect on the flow of litigation generally. During last few months, the Indian judiciary has made considerable and much required action in establishing India as an (international) arbitration-friendly judicial system.

This article scrutinizes the issues left unaddressed following the Hon'ble Supreme Court's decision in Bharat Aluminium Co Vs Kaiser Aluminium Technical Services Inc[3] (herein after BALCO) and suggests precautions that may be taken in relation thereto. Few of the important principles laid down by the Supreme Court of India in BALCO judgment are as follows:

(a) The Arbitration Act, 1996 has accepted the territoriality principle of the UNCITRAL Model Law due to which Section 2(2) makes a declaration that Part I of the Arbitration Act, 1996 (the "Act") shall apply to all arbitrations which take place within India. In a international commercial arbitration with a seat outside India, no application for interim relief would be maintainable in India;

(b) The Indian Courts do not have the power to grant interim measures when the seat of arbitration is outside India. Pendency of the arbitration proceedings outside India would not provide a cause of action for a suit where the main prayer is for injunction;

(c) Part I of the Act would have no application to International Commercial Arbitration held outside India. Therefore, such awards would only be subject to the jurisdiction of the Indian

1. Preamble, The Arbitration and Conciliation Act, 1996

2. Ibid.

3. (2012) 9 SCC 552

courts when the same are sought to be enforced in India in accordance with the provisions contained in Part II of the Act. Part I only applies when the seat of arbitration is in India, irrespective of the kind of arbitration;

(d) It was observed that the object of section 2(7) of the Act is to distinguish the domestic award (Part I of the Act) from the 'foreign award' (Part II of the Act); and not to distinguish the 'domestic award' from an 'international award' rendered in India. The term 'domestic award' means an award made in India whether in a purely domestic context, (i.e., domestically rendered award in a domestic arbitration or in the international arbitration which awards are liable to be challenged u/s 34 and are enforceable u/s 36 of the Act).Therefore, Indian courts being the supervisory courts, will exercise control and regulate the arbitration proceedings, which will produce a "domestically rendered international commercial award". Meaning thereby, it would be a "foreign award" for the purposes of enforcement in a country other than India;

(e) Seat/place of the arbitration vs. the governing law:- It would be a matter of construction of the individual agreement to decide whether: (i) The designated foreign "seat" would be read as in fact only providing for a "venue" / "place" where the hearings would be held, in view of the choice of the Act as being the curial law OR (ii) Whether the specific designation of a foreign seat, necessarily carrying with it the choice of that country's arbitration / curial law, would prevail over and include the conflicting selection choice by the parties of the Act. The Hon'ble Apex Court held that ONLY if the agreement of the parties is construed to provide for the "seat" / "place" of Arbitration being in India Part I of the Act be applicable and if the agreement is held to provide for a "seat"/ "place" outside India, Part I would be inapplicable to the extent inconsistent with the arbitration law of the seat, even if the agreement purports to provide that the Act shall govern the arbitration proceedings;

Briefly noting the much discussed judgment which has been broadly viewed as an encouraging step for India-related arbitration, overruled the principle that the provisions of Part I of the Indian Arbitration and Conciliation Act 1996 (the Act) would apply to international arbitrations held outside of India, unless excluded explicitly and/or impliedly by the parties to those arbitrations. This principle was first laid out in an earlier Supreme Court of India decision in Bhatia International Vs Bulk Trading SA[4].

Part I of the Act, which is drafted to apply "where the place of arbitration is in India", provides the Indian courts with substantial procedural and determinative powers in respect of arbitration proceedings, including the power to grant interim measures (section 9), the authority to make arbitral appointments in the absence of agreement by the parties (section 11) and the power to set aside arbitral awards (section 34).

The Hon'ble Supreme Court remarkably held in ONGC Vs Saw Pipes[5] that an award that conflicted with Indian law would be contrary to public policy and therefore unenforceable. This view on public policy ground had since been applied as a standard for challenging enforcement of foreign-seated awards in India, like in Phulchand Exports Ltd Vs OOO Patriot[6].

The Bhatia principle, that Part I could in certain circumstances be exercised in "offshore" arbitration, gave the Indian courts effective supervisory jurisdiction over certain arbitrations seated outside India – a practice considered to have had an adverse impact on the efficiency, certainty and finality of India related arbitrations.

On the basis of the Bhatia decision, the Indian courts went on to set aside a foreign arbitration award (Venture Global Engineering Vs Satyam Computer Services Limited[7]) and appointed an arbitrator in proceedings seated outside of India (Indtel Technical Services Pvt Ltd Vs WS Atkins Plc[8]).

Under BALCO decision following words of the Hon'ble Supreme Court are worth mentioning:

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4. 2002 AIR (SC) 1432
5. (2003) 5 SCC 705
6. (2011) 10 SCC 300
7. (2008) 4 SCC 190
8. AIR 2009 SC 1132

"…the choice of another country as the seat of arbitration inevitably imports an acceptance that the law of that country relating to the conduct and supervision of arbitrations will apply to the proceedings."

Therefore:

"Only if the agreement of the parties is construed to provide for the "seat"/"place" of Arbitration being in India would Part I of the Arbitration Act, 1996 be applicable".

The court further clarified that, due to the territoriality principle adopted by the Act, Part I and Part II of the Act are mutually exclusive.

Albeit BALCO judgment restricted the scope for the Indian courts to interfere in the conduct of arbitrations which are seated outside of India, it still however detoured from other contentious decisions of the Apex Court as to the public policy grounds for challenge to an award including the scope of such challenge.

The obvious concern for parties was that the *Saw Pipes and Phulchand Exports* cases opened the door at the enforcement stage to the substantive review of the merits of any award rendered outside of India. Parties to offshore arbitration proceedings, having evaded the interference of the Indian courts at the procedural stage, may have nonetheless had to encounter it at enforcement.

However, in Shri Lal Mahal Ltd Vs Progetto Grano Spa[9], the Hon'ble Supreme Court addressed this concern. The Supreme Court held that the expression the phrase *"public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/ judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in Renusagar case* [Renusagar Power Plant Co Ltd v General Electric Co[10]] *it is required to be held that the award could be set aside if it is patently illegal. The result would be - award could be set aside if it is contrary to: (a) fundamental policy of Indian law; or (b) the interests of India; or (c) justice or morality, or (d) in addition, if it is patently illegal. Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.* Therefore, the scope for challenging a foreign award with respect to a domestic award has been restricted.

In Lal Mahal the Hon'ble Supreme Court analyzed the earlier law and held that the enforcement of a foreign award would be refused on the ground that it is contrary to public policy of India *only if it is covered by one of the three categories enumerated in Renusagar.* Although the expression 'public policy of India' is used in the context of challenging both a domestic award [Section 34(2)(b)(ii)] and a foreign award [Section 48(2)(b)], and the concept of the term is the same in nature in both sections, its application would differ in degree. The term's application for the purposes of Section 48(2)(b) is more limited than its application in respect of Section 34(2)(b)(ii). The Hon'ble Apex Court further affirmed that Section 48 of the act does not give the court an opportunity to have a second look at a foreign award at the enforcement stage; neither does the scope of inquiry under Section 48 permit review of foreign award on its merits. Procedural defects like taking into consideration inadmissible evidence, or ignoring or rejecting evidence that may be of binding nature in the course of foreign arbitration would not necessarily lead the court to refuse enforcement of an arbitral award on the ground of public policy.

Therefore, the Supreme Court affirmed that while considering the enforceability of foreign awards, the court did not exercise appellate jurisdiction over the foreign arbitral award; nor could it enquire as to whether, while rendering the foreign award, an error was committed.

Going forward, there remain at least two aspects of the post-BALCO arbitral regime which may have a negative impact on the certainty of the arbitral process.

9. 2013(3)ARBLR1(SC)

10. AIR 1994 SC 860

(i) Parties to older arbitration agreements still subject to the pre-BALCO regime;

a) Since BALCO judgment applies prospectively, therefore all arbitration agreements executed before September 6, 2012, therefore, remain subject to the Bhatia regime. The Indian courts have indicated a clear will to apply and develop the restrictive approach to judicial intervention in offshore arbitrations.

b) In fact, the Supreme Court led the way in Vale Australia Pty Ltd Vs Steel Authority of India Limited[11], by refusing to reassess the merits of the dispute when dealing with a petition to set aside a foreign seated arbitral award.

c) Further, the Hon'ble Delhi High Court, in NNR Global Logistics Vs Aargus Global Logistics[12], rejected an application for a foreign award to be set aside on public policy grounds under Part I of the Act, although the agreement pre-dated the BALCO decision. The court reasoned that the applicable curial law was the law of the seat by holding that "… *24. Likewise in Bharat Aluminium Co. it has been held that "the legal position that emerges from a conspectus of all the decisions, seems to be that the choice of another country as the seat of arbitration inevitably imports an acceptance that the law of that country relating to the conduct and supervision of arbitrations will apply to the proceedings. … The use of the word "may" in Section 48(2)(b) of the Act is reflective of the legislative intent that the power to refuse enforcement is discretionary and should be exercised only where the enforcement is contrary to the public policy of India. … 29. There is nothing in the present case to suggest that the enforcement of the impugned Award, which is essentially a money decree, would compel Aargus to do something which is prohibited or contrary to law as prevailing in India. In other words, the enforcement of the impugned Award which is in the form of a money decree cannot be held to be opposed to the public policy of India."*

d) The Hon'ble Bombay High Court in Konkola Copper Mines (PLC) Vs Stewarts and Lloyds of India Ltd[13] while discussing the prospective application of the rationale in BALCO observed that the Supreme Court had made observations on various aspects of arbitration law in India. Accordingly, it would not be proper to hold that the reasons contained in the Supreme Court judgment would only operate prospectively. The Bombay High Court further observed that the Supreme Court judgment was declaratory with regard to various established propositions of law. Even if there were judgments before BALCO that had held that the place of arbitration would not be relevant for determining the jurisdiction of a court, the same did not lay down the correct position of law and hence could not be relied on. The Bombay High Court judgment is significant, since it makes it clear that the reasoning adopted by the Supreme Court in BALCO would not apply only prospectively, but would also apply to disputes arising from arbitration agreements entered into before September 6 2012.

(ii) Interim measures which now are not available in support of foreign arbitral proceedings:

a) The Hon'ble Supreme Court held that there is "complete segregation" between Part I and Part II of the Act, meaning that "…any of the provisions contained in Part I cannot be made applicable to Foreign Awards…"; regrettably, Part I contains not only provisions which can be used to upset foreign arbitration proceedings but also those which can assist the same, for

11. OMP Nos.414 and 415 of 2011
12. 2012VIIIAD(Delhi)125
13. 2013(3)ARBLR329(Bom)

e.g. section 9 of Part I of the Act to seek interim measures.

b) Although the Hon'ble Supreme Court recognized that the segregation doctrine would prohibit Indian courts to grant interim reliefs in support of foreign arbitrations, it was also deliberated that this issue could not be resolved by the Supreme Court but instead was "a matter to be redressed by the legislature".

c) Hence, until such reforms are implemented, parties to arbitration proceedings seated outside of India will be unable to apply to the Indian courts to preserve assets or evidence, compel attendance of a witness or obtain an order for security for costs in India. In other words, even though parties may attempt to agree in their arbitration clauses that the Indian courts be empowered to issue such interim measures, such a provision is unlikely to be effective given the pronouncements of the Hon'ble Supreme Court.

Recently, overruling its earlier judgment by a single judge, a two judges bench in Konkola Copper Mines (PLC) Vs Stewarts and Lloyds of India Ltd.[14] relying on Somaiya Organics (India) Ltd. vs. State of U.P. (2001) 5 SCC 519 [*that the doctrine of prospective overruling is a recognition of the principle that the Court moulds the reliefs claimed to meet the justice of the case and this power has been expressly conferred by Article 142 of the Constitution on the Supreme Court. Prospective overruling is a method evolved by the Court to adjust competing rights of parties so as to save transactions, statutory or otherwise, that were effected by the earlier law*] held as under:

"16. In our view, it would not be appropriate, while applying the ratio of the judgment in BALCO to hold that the reasons which are contained in the judgment would operate with prospective effect. What the Supreme Court has essentially ordered, while moulding the reliefs is that the declaration of law to the effect that Part-I shall apply only to those arbitrations where the place of arbitration in India shall take prospective effect after the date of the judgment. But equally, it would be impermissible to hold that the interpretation which has been placed by the Supreme Court on the provisions of Section 2(1)(e) would apply only prospectively. The judgment of the Supreme Court is declaratory of the position of law that the Court having jurisdiction over the place of arbitration can entertain a proceeding in the exercise of its supervisory jurisdiction as indeed the Court where the cause of action arises. The Supreme Court has also noted that the regulation of arbitration consists of four steps: (i) the commencement of arbitration; (ii) the conduct of arbitration; (iii) the challenge to the award; and (iv) the recognition or enforcement of the award. In the judgment of the Supreme Court, Section 9 has been held to be an ancillary provision that supports the arbitral process or one that is structurally ancillary. Once the provisions of Section 9 are regarded to be ancillary in nature, or in other words, a facilitative statutory instrument to support the arbitral process, it would be apparent that those provisions would apply where Part-I of the Act of 1996 is attracted. Consequently, where as in the present case, the place of an international commercial arbitration is in India, Part-I would apply and of which Section 9 is a necessary, if ancillary ingredient. Counsel appearing on behalf of the Respondent submitted that prior to the judgment of the Supreme Court, several High Courts had taken the view that the place of arbitration is irrelevant to the exercise of the jurisdiction under Section 2(1)(e). This, in our view, cannot make any difference to the outcome because once the Supreme Court has concluded what should be the correct interpretation of Section 2(1)(e), the binding principles laid down therein must necessarily apply.

17. … that once the place or seat of arbitration was agreed upon between the parties to be in India, Part-I would necessarily stand attracted. The judgment in Bhatia International was overruled in BALCO on the issue as to whether Part-I would be attracted to foreign seated commercial arbitrations. In the present case, on the facts as they are admitted, it is evident that the commercial arbitration was not a foreign seated arbitration. That the place of arbitration was to be in India is evident and to it Part-I, therefore, was attracted. ..."

There is no doubt that the judgments discussed here have been well received in international commercial arbitration domain. This has made to revisit the long

14. 2013 (4) ARBLR 19 (Bom)

standing notion of getting foreign awards enforced in India as a time-consuming process with possibilities of judicial interference at various stages.

The latest decisions by the Indian courts wherein the grounds to challenge a foreign award have been restricted will result in faster resolution of disputes through arbitral processes. A hope ensues that with the present judicial scenario on the subject the confidence of the international community in commercial arbitration strengthens as being a plausible ADR mechanism in India.

On the basis of Judicial Pronouncements as on 12.12.2013

NOTICE FOR RENEWAL BEFORE EXPIRY: A DUTY ON REGISTRAR

By Himanshu Sharma and Rangoli Nigam[1]

A trademark is an important asset of an organization and protection of the same is the utmost priority in order to enhance the value of the trademark. A trademark once registered is valid for ten years from the date of application of the trademark. The rights in a trademark are not limited for a specific period of time like other Intellectual Property Rights such as Patent, Design or Copyright. Once registered, a trademark can be renewed after every ten years, till perpetuity. If an application for renewal of trade marks is not filed in the prescribed form, within, the prescribed time period then the trademark may be removed from the register, hence timely renewal of trademark is necessary to use the rights provided by the registration of the trademark under the law.

PROCEDURE FOR RENEWAL OF TRADEMARK

Section 25 of the Trade Marks Act, 1999 elicits that a trademark is due for renewal not prior to the six months before the date of expiry of the trademark and an application for renewal can be filed, within, this period without paying any surcharges. Once the date of renewal of trademark has expired, the owner of trademark can still file the application for the renewal in next six months after paying surcharge in addition to the fee for renewal of trademark. The owner of trademark has an obligation to renew his trademark before expiration else his trademark will be removed from the Register due to non-renewal. The Act has also put an obligation under the Act on the Registrar regarding the renewal under section 25 (3) read with Rule 64 of the Trademark Act, 1999 and Trademark Rules, 2002 and the same are reproduced below:

Further Section 25 (3) of the Act provides that

At the prescribed time before the expiration of the last registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the condition as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register:

As per Rule 64 of the Trademark Rules, 2002

"At a date not less than one month and not more than three months before the expiration of the last registration of a trade mark, if no application in Form TM-12 for renewal of the registration together with the prescribed fee has been received, the Registrar shall notify the registered proprietor or in the case of a jointly registered trade mark each of the joint registered proprietors and each registered user, if any, in writing in Form O-3 of the approaching expiration at the address of their respective principal places of business in India as entered in the register or where such registered proprietor or registered user has no principal place of business in India at his address for service in India entered in the Register."

The above mentioned provisions put an obligation on the Registrar to give a notice to the registered proprietor regarding the approaching date of expiry of his trademark. Whether there is an obligation on the Registrar to give a physical notice to the proprietor regarding the approaching expiry date or the online notice of the same on the official website of the Indian Trademark Office would serve the purpose was the issue in the recent case of **Cipla limited Vs Registrar of Trademarks & Anr**[2] before the High Court of Bombay. The issue was whether the removal of a trademark without any prior notices from the registrar is ultra-vires the law.

FACTS

1. The petitioner sought a writ of certiorari to quash and set aside the order of the respondent, removing from the register the petitioner's trademark CIPLA and a writ of mandamus directing him to restore to the register the petitioner's trade mark.

1. *Student of Symbiosis Law School Pune IV year.*
2. *Writ Petition No. 1669 of 2012*

2. The mark was registered with effect from 6.11.1945 and thereafter, the registration was renewed from time to time and was last renewed on 6.11.1995 for a period of 7 years till 6.11.2002. Thereafter, the registration was not renewed due to inadvertence.
3. In the first quarter of 2012, the petitioner came to know that the trademark was removed from the Register due to non renewal.
4. The petitioner had not received any notice from the Registrar of Trademark notifying the date of expiration and the conditions of payment of fees for the renewal of registration.

ISSUES

1. Whether a trademark registration can be removed from the Register without giving notice to the Proprietor?

CONTENTIONS

1. Contentions by the Appellants

   i. That the impugned order is contrary to Section 25 of the Act, in particular sub-section (3) thereof and Rule 64 of the Trade Marks Rules, 2002.

2. Contentions by the Respondents

   i. That the Controller- General of Patents, Designs and Trademarks who is the Registrar of Trademarks had issued a public notice calling upon the parties who had not paid the renewal fees and who had not received the Form O-3 notice to pay and have the trademark renewed.

JUDGMENT

The Hon'ble Court decided in favor of the appellants and directed the appellants to grant restoration and renewal of the trade mark, within, two weeks of the petitioner paying the requisite charges and complying with the requisite formalities.

ANALYSIS

The Hon'ble Court in the instant case was to determine if the service of notice to the registered user of a trademark was a precondition to its removal. The Hon'ble court, whilst interpreting Section 25 of the Trademarks Act and Rule 64 of the Trade and Merchandise Marks Rules 2002 opined that *"It is pertinent to note that Section 25(3) states that "the Registrar shall send notice".* The use of the word **shall** establish that the Registrar is mandatorily required to send a notice prior to the removal of the registered trademark from the register." Further the Court also observed the judgment of Delhi High Court in case of Malhotra **Book Depot v. Union of India & Ors**[3] where the court has interpreted the section as one creating an obligation on the Registrar to give notice within one month to the registered proprietor in writing in Form O-3. The appeal in the aforementioned case affirmed the judgment of the Hon'ble High Court.Further the Hon'ble Court was of the opinion that since the removal of the Trademark from the register has civil repercussions, hence, such removal cannot take place without a notice of the same being delivered to the Registered Proprietor.

Moreover the Hon'ble Court observed that Section 25 of the Act should be read with Rule 64 of the Trade Marks Rules 2002 for a better understanding of the implications of the section. The court held that upon reading Rule 64 alongside Section 25 of the Act, it is pertinent that the legislative intention was to provide the registered proprietor with a notice for expiration of the registered trade mark by the Registrar mandatorily. The Section 25 (3) requires the Registrar to send the notice to the "registered proprietor" himself and notice to the general public cannot be deemed to be notice to the registered proprietor himself. Also, since the records pertaining to the year 2002 were not available it could not be established if the notice was affirmatively sent to the registered proprietor.

CONCLUSION

The Registrar of Trademark has right under the Act to remove a trademark in case the same is not renewed by the Registered Proprietor within prescribed time. At the same time the Act has also put an obligation on the Registrar to remind the owner of the trademark regarding the approaching date of expiry of the trademark by giving a notice in writing. The removal of trademark from the Register without the notice being served to the registered proprietor is in contravention of section 25 of the Trade Marks Act, 1999 read with rule 64 of the Trade and Merchandise Marks Rules, 1959 and such removal is contrary to Act and is therefore, bad in law.

3. 2012 (49) PTC 354(Del.)

PATENT OPPOSITION SYSTEM IN INDIA: AN OVERVIEW

Priyanka Rastogi

A patent is an exclusive right granted to the original inventor for a novel product or a novel process that provides, a unique way of doing something, or which discloses a new technical solution to a problem. It provides monopoly right to the inventor to make, sell his invention or product. Hence it is very essential that patent is only awarded to those innovations which justify the exclusive right and comply with the patentability criteria. Opposition proceedings are structured to restrain wrongful obtaining of patents and claiming of the frivolous or petty inventions.

Laws providing under Indian patent act for pre grant and post grant of patent are essential to obstruct the unlawful grant of patent. Under Indian Patent act, there are two provisions when opposition may be filed either via pre-grant opposition or post-grant opposition provision depending upon the stage of the patent.

The recent heave in patent filings in India may be attributed to the revolution in the Indian Patent System on 1st January, 2005, when India signed the Trade Related Aspects Intellectual Property Rights (TRIPS) agreement, wherein Section 25 of the Act was amended in light of the TRIPS agreement to introduce an "integrated" system of both pre-grant and post-grant opposition in India.[1]

PRE GRANT OPPOSITION:

Section 25(1) of the Patent (Amendment) Act 2005 provides provisions for pre grant opposition of Patent. Under this provision any person or any third party or Government may challenge the application of grant of patent and inform to the controller of Patents for opposition, in writing against the grant of a patent after the application for a patent has been published but before the grant of a patent a patent. Pre-grant opposition acts as a defensive shield to confirm the validity of the patent applications before patents are granted to them. Furthermore pre grant opposition proceeds as a business approach, where opponents take it as a golden opportunity for opposing the unlawful protective rights.

Pre-grant opposition can be made on the grounds listed under section 25(1)(a) to (k) of the Patent Amendment Act, 2005:

- Wrongfully obtaining the invention
- anticipation by prior publication
- anticipation by prior date ,Prior claiming in India
- Prior public knowledge or public use in India
- Obviousness and lack of inventive step
- non patentable subject matter
- insufficiency of description of the invention
- non-disclosure of information as per the requirement or providing materially false information by an applicant
- Patent application not filed within 12 months of filing the first application in a convention country
- nondisclosure/ wrong mention of source of biological material
- Invention anticipated with regard to traditional knowledge of any community, anywhere in the world.

POST GRANT OPPOSITION:

Post grant opposition may be filed at any time after the grant of patent but before the expiry of a period of one year from the date of publication of grant of the patent. Under this provision any person interested may give notice of opposition to the Controller in the prescribed manner on any of the grounds mentioned in section 25 of the Patent (Amendment) Act 2005. Section 2(1)(t) of Indian patent act defines "person interested" as including a person engaged in, or in promoting, research in the same filed as that to which the invention relates. In addition, interested person may also include any organization that has a manufacturing or trading/ financial interest in the goods related to the patented product.

Similar to the pre-grant opposition, a post-grant opposition may be filed on a number of grounds as specified under section 25(2) of the Act. It is notable that many of the grounds are similar to the grounds required for filing pre-grant opposition.

1. *http://techcorplegal.com/Blog_Technology_Law_Business_Research/2013/07/07/lawasia-patent_opposition_india/*

PROCEDURAL DIFFERENCES BETWEEN PRE GRANT AND POST GRANT PATENT OPPOSITION IN INDIA:

Pre and post –grant opposition both contain the almost identical grounds for proceeding the opposition and there is nothing which excludes a pre-grant opponent from subsequently filing a post grant opposition. However despite the similarities there are also several procedural differences between the two types of the opposition which are illustrated below:

- The most important difference between pre grant and post-grant opposition is that pre grant proceedings may be initiated by "any person", while only a "person interested" can introduce a post grant opposition.
- Next remarkable difference is with infringement proceedings. Infringement proceedings can not be started during pre grant opposition prosecution as the patent is still in the application stage, where as infringement proceedings may be introduced in post grant opposition.
- Section 25(1) of the Act does not openly allow the patent applicant an opportunity to be heard in a pre-grant opposition.
- Moreover, the Indian Patents Act does not explicitly allow the opponent to be heard in a pre-grant opposition. The opponent has to make a request for hearing and the rules do not detail how a hearing is to be conducted. The opponent's right to be heard solely depends upon the discretion of the Controller, who decides the same based upon the merit of the opposition. Additionally, the rules are also not clear whether the opponent will be heard in the presence of the applicant. In contrast, the opponent in a post-grant opposition can proceed with the case irrespective of the merit of the notice of opposition.[2]
- Further more, as per the stand taken by IPAB on numerous occasions; there is no remedy against an order of the controller in a pre-grant opposition except to file a writ petition under Indian constitution.
- The main drawback of the post-grant opposition process is that this remedy is available only through the courts, making redressal a lengthy process and, in the case of bad patents, allowing the patent holder to enjoy a wrongful monopoly. This is of particular concern in India, given the protracted nature of the judicial process.[3]
- Pre grant opposition on the other hand is more cost effective and result in faster disposal of cases on merits thereby reducing the costs incurred in contesting the post grant proceedings.
- It mechanism is faster as compared to post grant opposition where trials and extension of hearings occurs in a conventional manner which it happens in the Courts. Unlike post-grant opposition, there is no fee stipulated for filing a pre-grant opposition.[4]

LANDMARK CASES OF OPPOSITION IN INDIA

Novartis AG vs. Natco Pharma Ltd[5]

An application for patent was filed in India on 17th July, 1998 by Novartis AG, Switzerland, claiming Switzerland priority date of 18th July, 1997. Upon publication, the grant of patent was opposed by Natco Pharma Ltd., India on 26th May, 2005. The grounds for opposition were:

- Anticipation by prior publication
- Lack of inventive step
- Non-patentability under section 3(d)
- Wrongfully claiming the priority

The title compound was already known in a US patent (filed in 1993).The US patent claimed a pharmaceutically acceptable salt of the base compound. Another Document, "Nature Medicine" (5th May, 1996) also described the title compound. Also, the claimed salt inherently existed in the most stable form of the salt. Hence, the claims of the application for the product and process in respect of the title compound stood anticipated by prior publications. Additionally, based

2. *http://techcorplegal.com/Indian_Law_Firm/patent_opposition_in_india_pregrant_patent_opposition_post_ grant_opposition/ retrieved on 11/11/2013*
3. *http://www.lawteacher.net/administrative-law/essays/a-patent-opposition-comparison-between-countries-administrative-law-essay.php#ftn18*
4. *Shikha, Neeti, Comparative Study of Pre Grant and Post Grant Patent Opposition in India (January 10, 2009). Available at SSRN: http://ssrn.com/abstract=1503188 retrieved on 11/11/2013*
5. *Novartis Ag vs Natco Pharma Ltd. on 25 January, 2006 ,http://www.indiankanoon.org/doc/1352538/ retrieved on 11/11/2013*

on section 3(d) the product claim amounted to a mere discovery of the new form of the known substance. Further, the application had claimed Swiss priority, but Switzerland was not a convention country on the date of filing in Switzerland. Hence, no priority of Swiss application could be claimed in respect of the Indian application.

In view of the above findings and arguments the Controller ruled that the above patent application cannot proceed for grant of patent.

2. Hindustan Lever Ltd. Vs. Godrej Soaps[6]

In another landmark case a patent filed by Hindustan Lever Ltd. on 14th Oct., 1992 in India was opposed by Godrej Soaps Ltd. The patent had two priorities of UK dated 14th Oct, 1991 and 14th July, 1992 and was granted on 18th May, 1996 in India. The grounds of opposition were:

- Prior publication
- Prior public use and prior public knowledge
- Obviousness and lack of inventive step
- Non-patentability
- Insufficiency and clarity of description

The applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge After the hearing it was concluded that the teachings of the cited exhibits were insufficient to prove the grounds of opposition mentioned above. The applicant amended the claims and specifications to make their point clear and to overcome the opponent's allegations. After considering notice of opposition, statements and evidences from both of the parties and hearing, the opposition was dismissed.

3. Neon Laboratories Pvt.Ltd. vs 4) Assistant Controller Of ... on 26 November, 2010[7]

In a recent decision in a writ petition, the Bombay High Court interpreted Section 25(1) of the Patents Act to categorically hold that when a pre-grant opponent requests for a hearing, it is mandatory on the part of the Controller to grant the pre-grant opponent such a hearing. The decision was delivered in a writ petition filed by Neon Labs against the order of the Patent Controller granting a patent to Troika Pharma pursuant to Rule 55(6) of the Patent Rules, 2003 in a pre-grant opposition.

CONCLUSION

Patent opposition process has principally affected the pharma industry because the patent applicants are now exposed to multiple pre-grant oppositions filed by the competitors, or even by a single competitor. Moreover there is nothing to stop a party which has filed a pre grant opposition from subsequently filing an opposition once the patent has been granted. Opposition proceedings are also putting the surfeit of patent prosecution at Indian patent office.
Two-stage patent opposition process has stimulated fears among innovator companies, particularly in the pharmaceutical industry. It would be a challenge for India which is an emerging global economy to meet the commercial as well as legal challenges faced by the patent system of the country and become an attractive commercial destination for the foreign companies without violating any of its international obligations under the TRIPS Agreement.

6. Hindusthan Lever Limited vs Godrej Soaps Limited And Others on 11 April, 1996 , AIR 1996 Cal 367 retrieved on 13/11/2013

7. Neon Laboratories Pvt.Ltd. vs 4) Assistant Controller Of ... on 26 November, 2010 http://indiankanoon.org/doc/651514/

PREFERENTIAL PAYMENTS ON WINDING UP OF THE COMPANY

Karan Gandhi

Section 530 under the Chapter V of Part VII of the Companies Act, 1956 provides for the sequence of the payments which shall be made in the course of winding up of a company. However, Section 529A is an exception to Section 530 which starts with a notwithstanding clause providing for the overriding preferential payments. Section 529A was introduced in the Companies Act, 1956 by the Companies (Amendment) Act, 1985 in order to provide a protection to the workmen and the secured lenders of the Companies. Sub Section 2 of Section 529A further provides that 'the debts payable to the workmen and secured creditors of the Company shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate the equal proportions'.

Similar to the provisions above, where a claimant has proceeded with filing its claim with the Debt recovery tribunal under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 Section 19 (19) of this Act provides that where a certificate of recovery is issued against a company registered under the Companies Act, 1956, the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.

However, comparing the above two stated provisions of the Companies Act, 1956 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, ambiguity lied on the fact that in case the Company is under the course of winding up, who shall be the appropriate authority to decide on the distribution to settle the claims and in case, the Company is not in the course of winding up but after paying its debts to the secured creditors who applied under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 to the tribunal for the recovery and the settlement was made, who shall be settled on priority.

Hon'ble Supreme Court of India recently in the case of **Bank of Maharashtra v Pandurang Keshav Gorwardkar & Ors** reported in 2013(4)ABR390, decided this issue. In this case, the counsel appearing for the bank argued that unless an order of winding up was made and the liquidator or the provisional liquidator has been appointed and all the steps as provided in Sections 443 to 450 and 456 (dealing with the winding up) are taken, it cannot be said that Company is in winding up and until the Company is in winding up, the workmen of the Company have no claims on the assets of the Company nor do they have any locus to approach the DRT to participate in a proceeding filed by a bank or financial institution; they are not creditors secured or otherwise. The only remedy that the workmen have is to approach the appropriate Court e.g., Industrial Tribunal etc., for determination and realization of their dues. Section 19(19) of the 1993 Act and Section 529A of the Companies Act do not help the workmen as they are not secured creditors. However, where the order of winding up has been made and liquidation proceedings started against a Company, in such a case the liquidator would be control of all the assets of company. But in view of exclusive jurisdiction conferred on DRT, no leave of the Company Court needs to be taken by DRT for adjudication under Section 17 and execution of the recovery certificate issued under the 1993 Act. However, while allowing the appeal the Hon'ble Supreme Court in the present case held as follows:

(i) If the debtor company is not in liquidation nor any provisional liquidator has been appointed and merely winding up proceedings are pending, there is no question of distribution of sale proceeds among secured creditors in the manner prescribed in Section 19(19) of the 1993 Act.

(ii) Where a company is in liquidation, a statutory charge is created in favour of workmen in respect of their dues over the security of every secured creditor and this charge is pari passu with that of the secured creditor. Such statutory charge is to the extent of workmen's portion in relation to the security held by the secured creditor of the debtor company.

(iii) The above position is equally applicable where the assets of the debtor company have been sold in execution of the recovery certificate obtained by the bank or financial institution against the debtor company when it was not in liquidation but before the proceeds realized from such sale could be fully and finally disbursed, the company had gone into liquidation. In other words, pending final disbursement of the proceeds realized from the sale of security in execution of the recovery certificate issued by the debt recovery tribunal, if debtor company becomes company in winding up, Section 529A read with Section 529(1)(c) proviso come into operation and statutory charge is created in favour of workmen in respect of their dues over such proceeds.

(iv) The relevant date for arriving at the ratio at which the sale proceeds are to be distributed amongst workmen and secured creditors of the debtor company is the date of the winding up order and not the date of sale.

(v) The conclusions (ii) to (iv) shall be mutatis mutandis applicable where provisional liquidator has been appointed in respect of the debtor company.

(vi) Where the winding up petition against the debtor company is pending but no order of winding up has been passed nor any provisional liquidator has been appointed in respect of such company at the time of order of sale by DRT and the properties of the debtor company have been sold in execution of the recovery certificate and proceeds of sale realized and full disbursement of the sale proceeds has been made to the concerned bank or financial institution, the subsequent event of the debtor company going into liquidation is no ground for reopening disbursement by the DRT.

(vii) However, before full and final disbursement of sale proceeds, if the debtor company has gone into liquidation and a liquidator is appointed, disbursement of undisbursed proceeds by DRT can only be done after notice to the liquidator and after hearing him. In that situation if there is claim of workmen's dues, the DRT has two options available with it. One, the bank or financial institution which made an application before DRT for recovery of debt from the debtor company may be paid the undisbursed amount against due debt as per the recovery certificate after securing an indemnity bond of restitution of the amount to the extent of workmen's dues as may be finally determined by the liquidator of the debtor company and payable to workmen in the proportion set out in the illustration appended to Section 529(3)(c) of the Companies Act. The other, DRT may set apart tentatively portion of the undisbursed amount towards workmen's dues in the ratio as per the illustration following Section 529(3)(c) and disburse the balance amount to the applicant bank or financial institution subject to an undertaking by such bank or financial institution to restitute the amount to the extent workmen's dues as may be finally determined by the liquidator, falls short of the amount which may be distributable to the workmen as per the above illustration. The amount so set apart may be disbursed to the liquidator towards workmen's dues on ad hoc basis subject to adjustment on final determination of the workmen's dues by the liquidator.

(viii) The first option must be exercised by DRT only in a situation where no application for distribution towards workmen's dues against the debtor company has been made by the liquidator or the workmen before the DRT.

(ix) Where the sale of security has been effected in execution of recovery certificate issued by the DRT under the 1993 Act, the distribution of sale proceeds has to be made by the DRT alone in accordance with Section 529A of the Companies Act and by no other forum or authority.

(x) The workmen of the company in winding up acquire the standing of the secured creditors on and from the date of winding up order (or where provisional liquidator has been appointed, from the date of such appointment) and they become entitled to the distribution of sale proceeds in the ratio as explained in the illustration appended to Section 529(3)(c) of the Companies Act.

(xi) Section 19(19) of the 1993 Act does not clothe DRT with jurisdiction to determine the workmen's claim against the debtor company. The adjudication of workmen's dues against the debtor company in liquidation has to be made by the liquidator. In other words, once the company is in winding up the only competent authority to determine the workmen's dues is the liquidator who obviously has to act under the supervision of the company court and by no other authority.

(xii) Section 19(19) is attracted only where a debtor company is in winding up or a provisional liquidator has been appointed in respect of such company. If the debtor company is not in liquidation or if in respect of such company no order of appointment of provisional liquidator has been made and merely winding up proceedings are pending, the question of distribution of sale proceeds among secured creditors in the manner prescribed in Section 19(19) of the 1993 Act does not arise.

CONCLUSION:

Therefore, it is the settled position of Law that where a winding up petition against a debtor company is pending and a bank or financial institution has been repaid its loans following an order of sale by a Debt Recovery Tribunal, the disbursements made by the Debt Recovery Tribunal cannot be reopened when the debtor company subsequently goes into liquidation. However, if the debtor company goes into liquidation before the Debt Recovery Tribunal has fully disbursed the sale proceeds, the Debt Recovery Tribunal can disburse the undisbursed proceeds only after giving notice to, and hearing, the liquidator.

DISPUTE RESOLUTION PANEL UNDER THE INCOME TAX ACT, 1961

Pradhumana Didwania

The Dispute Resolution Panel (DRP) under the Income Tax Act, 1961[hereinafter referred to as "ITA"] is an Alternative Dispute Resolution (ADR) mechanism for resolving the disputes relating to Transfer Pricing in International Transactions. Section 144C [Reference to Dispute Resolution Panel] of the ITA governs the provisions relating to DRP and defines DRP as a collegium comprising of three Commissioners of Income-tax constituted by the Board [Central Board of Direct Taxes] for this purpose. Section 144C comes into picture when the Assessing Officer (AO) under the ITA proposes to make, any variation in the income or loss stated in the return filed by the assessee and such variation is prejudicial to the interest of the assessee and the AO forwards a draft of the proposed Assessment order to the assessee in order to invite his acceptance or objections to the same. Assessee under section 144C refers to a Foreign Company and any person in whose case AO proposes to make any variation in the income or loss stated in the return filed by such person, as a consequence of the order passed by the Transfer Pricing Officer under Sub Section (3) of Section 92CA of the ITA.

Section 144C was inserted in the ITA by the Finance Act, 2009 and came into effect from 1st October, 2009. In the Notes on Clauses to the Finance Bill, 2009 [Budget 2009-2010] the reason for insertion of Section 144C was given as under

"The subjects of transfer pricing audit and the taxation of foreign company are at nascent stage in India. Often the Assessing Officers and Transfer Pricing Officers tend to take a conservative view. The correction of such view take very long time with the existing appellate structure.

With a view to provide speedy disposal, it is proposed to amend the Income-tax Act so as to create an alternative dispute resolution mechanism within the income-tax department and accordingly, section 144C has been proposed to be inserted so as to provide inter alia the Dispute Resolution Panel as an alternative dispute resolution mechanism."

Prior to the formation of DRP the assessee had to approach the Commissioner of Income Tax Appeal CIT (A) against the Assessment Order if the assessee wanted to raise objections against the Assessment Order. However, after the formation of DRP the assessee has an additional option to approach DRP on the basis Draft Order issued by AO. The Draft Order can be acceptable or unacceptable to the Assessee. In case the variations made in the draft order are acceptable to the assessee he can file his acceptance to the Draft Order with the AO within thirty days of the receipt of the Draft Order. If no acceptance is filed within thirty Days the AO completes the assessment on the basis of the Draft Order and passes the assessment order, within one month from the end of the month, in which, the acceptance is received or the period of filing of objections expires.

In case the assessee wants to file the Objections against the variations made by the AO the assesse may file its objections with the DRP and AO.

THE PROCEDURE AT DRP IS AS FOLLOWS:

❖ After receiving Objections the DRP goes through the Draft Order; objections filed by the assessee; evidence furnished by the assessee; report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority; records relating to the draft order; evidence collected by, or caused to be collected by, it; and result of any enquiry made by, or caused to be made by, it and issue such directions, as it thinks fit, for the guidance of the AO to enable him to complete the assessment.

❖ The DRP may confirm, reduce or enhance the variations proposed in the draft order , however, it shall not set aside any proposed variation or issue any direction for the guidance of the AO for further enquiry and passing of the assessment order.

- If the members of the DRP differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

- The Directions for the guidance of AO will be given only after the assessee and the AO have been given an opportunity to present their case.

- After receiving the Directions in the nature of guidance from DRP the AO shall, in conformity with the directions, complete the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.

- The Directions given by DRP are binding on the AO, the Directions can be challenged by the assessee before the Income Tax Appellate Tribunal (ITAT).

- The DRP has to complete the hearing and give its final Directions within a period of 9 months from the end of the month in which the draft order was forwarded to the assessee.

- Presently there are 10 DRP in India having Jurisdiction over different States and Territories.

Recently, a Division Bench of Hon'ble Bombay High Court, while deciding the Writ Petition filed by Vodafone India Services Pvt. Ltd. vs Union of India and Others[1] directed Vodafone India Services Pvt. Ltd (wholly owned subsidiary of Mauritian Entity Vodafone TeleServices (India) Holdings Ltd) to approach the Dispute Resolution Panel (DRP) to submit objections to the Income Tax Department's demand of INR 1,300 crore and made the following observation with regards to DRP.

> *"The proceeding before the DRP is not an appeal proceeding but a correcting mechanism in the nature of a second look at the proposed assessment order by high functionaries of the revenue keeping in mind the interest of the assesee. It is a continuation of the Assessment proceedings till such time a final order of assessment which is appealable is passed by the Assessing Officer. This also finds support from Section 144C(6) which enables the DRP to collect evidence or cause any enquiry to be made before giving directions to the Assessing Officer under Section 144C(5) . The DRP procedure can only be initiated by an assessee objecting to the draft assessment order. This would enable correction in the proposed order (draft assessment order) before a final assessment order is passed. Therefore, we are of the view that in the present facts this issue could be agitated before and rectified by the DRP."*

CONCLUSION

The DRP is an Alternative Dispute Mechanism, set up with a view to minimize the tax disputes relating to Transfer Pricing in International Transactions. The process of inviting objections to the Draft Assessment Order gives an opportunity to the assessee to raise objections, if any, at an early date and helps in giving finality to the Assessment Order. The fixed time frame of 9 months to decide the Matter assures the assesse that the Matter will be decided in a fixed time and the binding nature of the Order of the DRP on the Aseesssing Officer provides a clear picture to the Assessee with regards to its Tax Liability. The recent ruling of the Hon'ble Bombay High Court also shows that the Court would wants the assessees to approach the DRP first to resolve their disputes with regards to the Tax Liability.

1. *Writ Petition No.1877 OF 2013*

VENUE OF THE EXTRA ORDINARY GENERAL MEETING OF A COMPANY

Submitted By:- Karan Gandhi

A general meeting of the Company is the meeting of the shareholders held to discuss and accord the prior or subsequent approval of the shareholders/members of the Company. As per Indian Companies Act, 1956, a general meeting of the Company can be of two forms i.e. Annual General Meeting and Extra Ordinary General Meeting. Sections165-197 as contained under the Part VI of the Companies Act, 1956 ***(the 'Act')*** provides the provisions for the meetings and proceedings.

Section 169 of the Companies deals with the provisions of *'Calling the extraordinary general meeting on requisition'* which gives the right to the members of the Company to call the extra ordinary general meeting of the Company. Section 169 reads as under:

169. Calling of extraordinary general meeting on requisition.

(1) The Board of directors of a company shall, on the requisition of such number of members of the company as is specified in sub- section (4), forthwith proceed duly to call an extraordinary general meeting of the company.

(2) The requisition shall set out the matters for the consideration of which the meeting is to be called, shall be signed by the requisitionists, and shall be deposited at the registered office of the company.

(3) The requisition may consist of several documents in like form, each signed by one or more requisitionists.

(4) The number of members entitled to requisition a meeting in regard to any matter shall be-

(a) in the case of a company having a share capital, such number of them as hold at the date of the deposit of the requisition, not less than one- tenth of such of the paid- up capital of the company as at that date carries the right of voting in regard to that matter;

(b) in the case of a company not having a share capital, such number of them as have at the date of deposit of the requisition not less than one- tenth of the total voting power of all the members having at the said date a right to vote in regard to that matter.

(5) Where two or more distinct matters are specified in the requisition, the provisions of sub- section (4) shall apply separately in regard to each such matter; and the requisition shall accordingly be valid only in respect of those matters in regard to which the condition specified in that sub- section is fulfilled.

(6) If the Board does not, within twenty- one days from the date of the deposit of a valid requisition in regard to any matters, proceed duly to call a meeting for the consideration of those matters on a day not later than forty- five days from the date of the deposit of the requisition, the meeting may be called-

(a) by the requisitionists themselves,
(b) in the case of a company having a share capital, by such of the requisionists as represent either a majority in value of the paid- up share capital held by all of them or

not less than one- tenth of such of the paid- up share capital of the company as is referred to in clause (a) of sub- section (4), whichever is less; or

(c) in the case of a company not having a share capital, by such of the requisitionists as represent not less than one- tenth of the total voting power of all the members of the company referred to in clause (b) of sub- section (4). Explanation.- For the purposes of this sub- section, the Board shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by sub- section (2) of section 189.

(7) *A meeting called under sub- section (6) by the requisitionists or any of them-*

  (a) *shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by the Board; but*

  (b) *shall not be held after the expiration of three months from the date of the deposit of the requisition. Explanation.- Nothing in clause (b) shall be deemed to prevent a meeting duly commenced before the expiry of the period of three months, aforesaid, from adjourning to some day after the expiry of that period.*

(8) *Where two or more persons hold any shares or interest in a company jointly, a requisition, or a notice calling a meeting, signed by one or some only of them shall, for the purposes of this section, have the same force and effect as if it had been signed by all of them.*

(9) *Any reasonable expenses incurred by the requisitionists by reason of the failure of the Board duly to call a meeting shall be repaid to the requisitionists by the company; and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default.*

According to the provisions of the above stated section, the members so empowered under sub-section (4) of the Section 169 shall request the board of the company to call the extraordinary general meeting of the company and in case the company fails to do so, empowers such members to hold the extraordinary general meeting of the company.

Further according to section 166 of the Act dealing with the provisions as to the Annual General meeting, every annual general meeting of the Company shall be called for a time during the business hours, on the day that is not a public holiday, and shall be held at the registered office of the Company or at some other place within the same city, town or village in which the registered office of the Company is situated.

There is no restriction as regards other general meetings which may be held at such place and at a time of any day as may be considered convenient to the company. But such meeting should not be held at a place which will be more expensive or inconvenient to the shareholders than if they were held at the registered office of the company. It has been held by the courts that in fixing the time and place the board of directors should act in bonafide manner and not with a view to deter shareholders from attending. However, the same is not in the case of extraordinary general meeting of the company. The act dos not require that a general meeting other than annual general meeting must be held only at the registered office or in the city, town or village where the registered office of the company is situated.

In the views of various judicial pronouncements, the purpose of Section 169 is to empower the shareholders who wish to call a meeting of members to resolve a specific issue. In a case before the Hon'ble Company Law Board it was held that where the place at the registered office of the Company is not available to the requisitionists, such extraordinary general meeting of the company can be held elsewhere. Also, in yet another case it was observed that a company may have a registered office at a particular place at the time of incorporation but with passage of time and expansion, the shareholders may grow into large number and reside outside the place of the registered office of the company. In such a case, the bonafide of the matter is looked into as whether there were the circumstances that the need was felt to hold the meeting at some other place as that of the registered office of the company and such an action if taken by any person was bona fide.

CONCLUSION

Referring to the strict mandate of the provisions of the Act, it is seen that the general meeting of the company cannot be held at the place except as provided under the provisions of section 166 i.e. the city, town or village where the registered office of the company is situated. However, if it is possible then the approval of all the shareholders of the Company is accorded for holding such extra ordinary general meeting at the place other than the city town or village where the registered office of the company is situated, such extraordinary general meeting may be valid. Moreover, one has to look into the bona fide of the person who are calling the general meeting other annual general meeting at a place which is not reachable by the other shareholders.

DOMAIN NAMES: THE NEW VIRTUAL ADDRESS

By Himanshu Sharma & Rangoli Nigam[1]

"Domains have and will continue to go up in value faster than any other commodity ever known to man" — Bill Gates.

The use of internet at present times has increased manifold and has thus acquired a place in our everyday lives. Consequently, 'Domain Names' which were initially mere addresses for communication over the internet are now increasingly being considered as the property and the new virtual address of the owner. A domain name is a word that identifies one or more Internet Protocol addresses (an identifier for a computer or device on a network). Domain names are used in URL (Uniform Resource Locator, the global address of documents and other resource on the World Wide Web).[2] Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.[3]

A trade mark is defined as a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colors.[4] Domain names, therefore, come within the purview of Trade Marks as they are capable of uniquely identifying or distinguishing the goods or services of one entity from another. Increasingly domain names are being used as tools for marketing consequently consumers are more likely to associate them to particular quality of goods or to the goods or services of a particular entity. Hence, a need for the protection of the domain names is imminent.

The domain name disputes related to the issue of trademark are sometimes termed as cyber squatting or reverse domain name hijacking. Both concepts are related to the misuse of the domain name, but there is a difference between them.

CYBER SQUATTING AND REVERSE DOMAIN NAME HIJACKING: DIFFERENCE

The concept of Reverse domain name hijacking at the first instance somewhat appears to be similar to that of cyber squatting, but when looked in entirety they have conceptual difference.

Reverse domain name hijacking (also sometimes called reverse cyber squatting) is when a trademark owner who wants to obtain a particular domain name, files a lawsuit against the domain name owner who has acquired the domain name legitimately (either before the trademark owner's mark became famous or distinctive or because of some other legitimate interest in the domain name) in order exert pressure against such owner to turn over the domain name to the trademark owner.

The district court of US in the case of ***Sporty's Farm L.L.C v. Sportsman's Market Inc***.[5] noted;

"cyber squatting" *occurs when a person other than the trademark holder registers the domain name similar to a well known trademark and then attempts to profit from this by either ransoming the domain name back to the trademark holder or by using the domain name to divert business from the trademark holder to the domain name holder.*

As long as cyber squatter owns the domain name, the trademark owner cannot register its own trademark as a domain name. In this sense the cyber squatter breaches the fundamental right of the trademark owner to use its trademark provided under the Trade Marks Act, 1999.

The basic line of difference between the two is that reverse domain name hijacking is a situation where a properly registered domain is stolen by another person. It is not necessary that this name is a trade mark as compared to cyber squatting.

1. *Student of Symbiosis Law School and Intern at Singh and Associates.*
2. *Ananth Padmanabhan, INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND REMEDIES 233 (1st ed. 2012) [Hereinafter as INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND REMEDIES].*
3. *Available at http://www.wipo.int/about-ip/en/index.html retrieved on 11/12/2013 at 1:54 IST*
4. *Section 2 (zb) of the Trade Marks Act, 1999*
5. *202 F.3d 489 493 (2d Cir.2000).*

DOMAIN NAME PROTECTION: AN INTERNATIONAL INSIGHT

The Internet Corporation for Assigned Names and Numbers (ICANN) is a not for profit international regulatory authority of domain names and provides for the registration of domain names. It adopted the Uniform Domain Name Disputes Resolution policy (UDRP) which guides the dispute resolutions arising due to registration of domain names.

The ICANN establishes two kinds of disputes with reference to domain names which are:

(i) Disputes between the trade mark owners and domain name owners;
(ii) Disputes between two or more domain name owners.

The prominent rules entailed by the UDRP are as follows:

(a) Rule 2 entails that prior to the registration of a domain name; the applicant must prove that such registration would not be in violation of other entities' trade mark rights.
(b) Rule 4 (a) provides that :
  - (i) the domain name is confusingly similar to that of the complainant; and
  - (ii) the registrant does not possess any legitimate interest in the domain name; and
  - (iii) registration and usage of the domain name was done in bad faith;

are sufficient grounds for transfer of the disputed domain name to the complainant.
(c) Rule 4 (b) provides for cyber-squatting as an act done in bad faith. Act such as selling the disputed domain name to the competitor of the owner of the trade mark, registration of domain name primarily for commercial gain from the trade mark etc come under the purview of cyber-squatting.
(d) Rule 4 (k) provides that the owner of the domain name or the complainant can file a suit in a court of competent jurisdiction either prior to proceeding under the ICANN policy or subsequent to the conclusion of proceedings under the policy.

DEFENCES IN THE PROCEEDING BY THE RESPONDENT

The UDRP provides that certain actions shall not be held as infringement of domain names under Rule 4 (k). Such actions can be taken as defences against contentions of the complainant. They are as follows:

(i) Prior to the notice to the registrant of the domain name, the disputed domain name was in use in relation to the bonafide offering of goods or services;
(ii) The domain name owner has been generally known by the disputed domain name despite no trademark rights or service mark rights in connection with the disputed domain name;
(iii) The domain name is in use by the owner for legitimate and non-commercial purposes only.

In the case of ***Cardservice International Inc. v. McGee***[6] it was held that domain names cannot be regarded as mere address on the internet but serves the same function as trademarks. Hence, domain names should be granted the same protection as provided to trademarks under the law.

British Telecommunications Pic v. One in a Million Ltd.[7] is a leading case where it was held that the law in relation to passing off was also relevant in case of infringement of domain names. The defendants in the instant case registered the names which were the well known trade names of the plaintiff, it was ruled that such registration was motivated by the goodwill of the trademark names. Hence the court of appeal upheld the order of injunction against the defendant.

DOMAIN NAME PROTECTION: INDIAN ASPECT

At present, no specific legislation deals with domain name disputes. However, the country code for top level domain name '.in' is governed by the '.IN' Domain Name Dispute Resolution Policy (INDRP) which is formulated on the principles of the UDNDR policy. A person can also move to the court against the misuse of his trademarks by filing a suit for infringement/ passing-off, if his trademark is registered by a third person in his name as domain name.

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6. 2 42 USPQ 2d 1850
7. (1999) FSR 1 (CA)

The Policies of INDRP are similar to the ICANN's UDRP policies further in the absence of specific legislations; Indian courts have relied on judicial precedents and foreign judgments in deciding various disputes regarding Domain Names in India.

Whether Trade Mark laws are applicable in domain names was answered in the affirmative in ***Satyam Infoway Ltd v Sifynet Solutions Pvt Ltd***.[8] It was observed be the Hon'ble Court that since a domain name should necessarily be peculiar and unique it becomes necessary to maintain its exclusive identity. Hence, the Hon'ble Supreme Court held that Trade Mark Law is applicable to domain names, as a domain name falls within the meaning of the term 'services' as defined under Section 2(z) of the Trade Marks Act, 1999. Also, since a domain name could possess all the properties of a Trade Mark, remedies for an action of passing off are also available in respect of domain names.

The courts in various decisions have established that in order to establish passing off of a well known trademark, the conditions in Rule 4(a) in the UDNDR Policy should be fulfilled. In **Hindustan petroleum Corporation Ltd V. Mr Ram Swamy**, arbitration proceedings were initiated under the INDR Policy against the impugned domain name 'hindustanpetroleum.co.in'. The second level domain name was similar to that of the respondents with the only difference being the top level domain name. It was held that such registration of domain names would leave well known marks unprotected hence mere difference in top level domain name cannot be used to the benefit of the owner of the impugned domain name. The impugned domain name was held to be confusingly similar to the domain name ' hindustanpetroleum.com' of the complainants and was held to be registered in bad faith.

In **Acqua Minerals Ltd v. Promod Borsey and Anr**[9] the Hon'ble court opined that unless a person is able to establish bonafide intentions for registering a particular name, which has been in use previously for a long duration such that it has gained goodwill, as its domain name, it shall be presumed that the registration of such a name was with the intention to gain from the goodwill of the trade name. The plaintiff in the instant case was successful in obtaining an injunction against the defendant for using the mark BISLERI or BISLERI.COM as the plaintiff was its registered owner.

Also, common English words can be protected under Trade Mark laws if the trademark has acquired a secondary meaning and people only recognize goods and services of the owner from the trademark itself. Thus in **General media Communications Inc v. Deepak Daftari**[10] a complaint to INDRP is filed by the complainant and the impugned domain name 'www.penthouse.in' was held to be confusingly similar to the domain name 'www.penthouse.com'. The contention by the respondent that the word penthouse was generic / common word was set aside by the arbitrator.

More recently in ***Tata Sons Ltd & Anr v Arno Palmen & Anr***[11] the Hon'ble High court of Delhi observed that it was a case of cyber squatting as the defendant registered the domain name in bad faith with the objective of selling the impugned domain name to the plaintiff. The Court hence granted an injunction in favour of the plaintiff against using the domain name 'WWW.TATAINFOTECH.IN' as it was held to be deceptively similar to the plaintiff's trademark 'TATA'. Also, the defendant no 2, Key- Systems GmBH was directed to cancel the registration of the impugned domain name in favor of the defendant.

CONCLUSION

Domain names are such an important tool in the modern business world that it has become the virtual address of an organization. They are secondary to none when its contribution is valued in the balance sheet of an organization in comparison to other assets, and hence, requires all protection in order to take the maximum benefits out of it. Even though there is no specific law which deals with the dispute related to the domain names, but the mechanism provided under INDRP for the settlement of disputes related to the domain names can help in protection of domain name in addition to protection under the common law and law of trademarks.

8. 2002) 6 SCC 145
9. AIR 2001 Del 463
10. INDRP/466 dated 09/05/2013
11. 2013(54) PTC 424 (Del)

BEING FAMOUS: A BOON OR A BANE?

By-Vaibhavi Pandey

"I give the fight up: let there be an end, a privacy, an obscure nook for me. I want to be forgotten even by God"- Robert Browning, a famous poet and dramatist.

The word "CELEBRITY" in itself brings the picture of a person with name, fame and popularity, always gathered by crowd, in our minds. The word "celebrity" owes its origin to the Latin term "celebritatem" which means "the condition of being famous". The official definition of the term celebrity may be stated as "a person, who has a prominent profile and commands some degree of public fascination and influence in day-to-day media".[1] Even the slightest details of these celebrities are treated as news by all. Being continuously in the limelight, under the vision of camera, however, fascinating it may sound but it has its own consequences. With the expansion and development of technology related to mass-media, there has been a considerable increase in the instances where the privacy rights of celebrities have been abused and infringed by the general public. Every celebrity has the right of protecting and enjoying the rights like right of publicity or right to earn commercial benefits arising out of their identity without getting interfered or intruded upon in their privacy.

TYPES OF CELEBRITY RIGHTS

The rights which can be exercised by a celebrity include multi-dimensional rights. A broad classification of these rights may be as follows-

- **PRIVACY RIGHTS**- The mere fact that the celebrities are famous personalities and public is keen to know about even the slightest details of their lives, does not disentitle them from the enjoyment of their right to privacy like any normal citizen of the country. The Indian Courts on various occasions have upheld the view that Right to Privacy is available to the Citizens of India as an ingredient in Right to Life provided in Article 21 of the Constitution of India.[2] The courts have expressly stated that "the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right "to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters".[3] In western countries the intrusion by press in the private life of celebrities (paparazzi)[4] is often criticized on grounds of being invasive and intrusive merely for commercial purposes. While discussing the privacy rights of celebrities and famous personalities, the US Courts have stated that "In publishing details of private matters, the media may report accurately and yet –at least on some occasions- may be found liable for damages. Lawsuits for defamation will not stand where the media have accurately reported the truth, but the media nevertheless could lose an action for invasion of privacy based on similar facts situations. In such instances the truth sometimes hurt."[5]

- **PUBLICITY RIGHTS**- The basic idea behind this right is that a person, who has put in capital and labor in building a repute and stature associated with his name, has the exclusive right of commercially exploiting it. It gives celebrities, the right of exclusive enjoyment and exploitation of anything that is associated with them and their personae. Apart from this, it also acts as a negative right of eliminating any kind of unauthorized use of their name and fame. Earlier, the performers and artists have the rights like right of voice; right to likeness (the right of limiting the public use of one's personality or anything associated with it) etc. but now with the development of technology, the visual and sound recording equipments are also causing great harm to the individuals. Such techniques have given birth to problems like "bootlegging". Bootlegging may be defined as an unauthorized recording of live performances. Further, lately there have also been various instances where the images, voices etc. of

1. *http://en.wikipedia.org/wiki/Celebrity*
2. *Kharak Singh Vs State of UP & Ors. [1964] 1 S.C.R. 332--A.I.R. 1963 S.C. 1295*
3. *R.R. Gopal Vs. State of Tamil Nadu. JT 1994 (6) SC 514*
4. *"Paparazzi are independent photographers who take pictures of athletes, entertainers, politicians, and other celebrities, usually while they are going about normal life routines. They are unaffiliated with any main stream media."- http://en.wikipedia.org/wiki/Paparazzi*
5. *Barber v. Time, Inc., 159 S.W.2d 291 (Mo. 1942).*

celebrities are copied and manipulated on various sites. With the advent of latest technology, it is now very easy to create a digital look alike of any person and manipulate it accordingly. This has been causing huge losses through defamation and confusion to the celebrities.

Publicity rights can be best illustrated through the case of Midler v Ford Motor Co & Others[6]. In this case the advertising company wanted to use a song which was in the voice of Bette Midler for the advertisement of the company, but Ms. Midler refused to give her version of song for the advertisement. The company then hired another singer to sing the song in a manner which was as much as possible similar to the Midler version. Ms Midler sued the company when the advertisement was aired. The court granted relief to the plaintiff saying that "publicity rights of people are their own property and is also one of the attributes of one's identity".

- **PERSONALITY RIGHTS**- Belonging to the species of copyrights personality rights are also an outcome of the efforts and labor of an individual. Personality of a person is a unique and characteristic feature with the help of which an image of that person is created. The personality of a famous person also results in an obvious expectation in the minds of people towards that celebrity. It is often said that "An individual's property is the extension of his personality, similarly, an individual's contributions to the society are also an extension of his personality"[7] Talking about the Indian scenario, there have been various cases where the celebrities have raised their voice against the unauthorized exploitation of their personality rights. One of the best examples of this may be the issuance of legal notices by the famous South Indian actor Rajnikanth before the release of his film "BABA" in all the leading newspapers. These notices prohibited any kind of use or imitation of his persona, dialogues, or of the character "BABA" for commercial gains by any means. The legendary actor Amitabh Bacchan also lodged a complaint against a Gutkha company who mimicked his voice for promoting and selling their products.

6. *Midler v. Ford Motor Co. 1988, U.S. Court of Appeals, 9th Circuit, 849.F.2d 460*
7. *Datta A, Celebrity Rights: A legal overview, http://www.goforthelaw.com/articles/formlawstu/article31.htm*

NEED FOR PROTECTING CELEBRITY RIGHTS

There may be many reasons for protecting celebrity rights like any other right. The few of them may be summed up as follows-

- The celebrity rights are assignable and licensable for commercial exploitation. These rights operate as an incentive and reward for the celebrities in return of their hard work, money and labor. Therefore, they should be given an exclusive right of enjoyment of such rights.
- To prevent Bootlegging, so that the benefits are enjoyed by the rightful owners.
- Celebrity rights are also inheritable i.e. the family members of celebrities can enjoy the profits associated with their names and popularity.
- There are chances that there can be a situation of technological unemployment if the singers and performers are replaced by recorded music and visuals.
- It also strengthens the small and trivial performers who cannot handle the situation on their own.

PROTECTING LEGISLATIONS

- **TRADEMARK**- Trademark law gives protection to the movie names, character names etc. this has two folded advantage. First, it enables the intention of the celebrity towards merchandising of his IP through assignment, licensing etc. Secondly, it also enables him to take an action against any other person who is trying to misuse the name or popularity owned by the celebrity.
- **COPYRIGHT**- Although the Indian Copyright Law does not grants any protection to the name or image of a celebrity in India, the celebrities may protect their sketches, drawings etc. within the ambits of "artistic work" under the Copyrights Act. Movie names, characters, their names etc can also be protected.
- **PASSING OFF**- Passing off actions are involved in cases where there is an unauthorized exploitation

of a celebrity's fame and goodwill. Any person who is illegitimately using the reputation and name of another person is liable to be tried under the passing off remedy.

- **COMMON LAW**- Apart from all these, a celebrity may also initiate actions under the Law of Torts for defamation and inappropriate use of his fame.

CONCLUSION

It can be safely concluded that when it comes to celebrity rights there is always a conflict between two fundamental rights i.e. Right to Privacy implied in Right to Life under Article 21 and Freedom of Speech and Expression under Article 19 of the Constitution of India. It is often argued that the general public is the source which makes these celebrities "celebrities" and therefore the press has been provided under Article 19 with the right of publishing information regarding them to the public. The Californian Celebrities Rights Act, 1985, the provisions under the Article 9 of the French Civil Code are some examples of fruitful legislations initiated by the nations for protection of these rights. India does not have any specific law in this regard. Hence, the onus lies on the law makers to bring efficient legislations which maintain a balance between the two Fundamental Rights and serve the dual purpose of protecting the rights of celebrities and also protecting the right of freedom of speech of the media.

INTANGIBLE CULTURAL HERITAGE

Suchi Rai

INTRODUCTION:

The **Reinheitsgebot**, also known as the "German Beer Purity Law" or the "Bavarian Purity Law" in English, was a regulation concerning the production of beer in Germany[1].

The law originated on November 30th, 1487, when Duke Albrecht IV promulgated it, specifying three ingredients - water, malt and hops - for the brewing of beer. Later, in the city of Ingolstadt in the duchy of Bavaria on 23 April 1516, two other dukes endorsed the law as one to be followed in their duchies, adding standards for the sale of the beer[2]. Later with the discovery of role of microorganism in the process of fermentation, yeast was also considered as one of the ingredients in Pure beer as per Reinheitsgebot (Purity Law).

UNESCO STATUS FOR GERMAN BEER:

German Brewers Federation recently applied to have the nearly 500-year old beer purity law Reinheitsgebot, to be included on UNESCO's "Intangible Cultural Heritage" list. The German Brewers Association is expecting a UNESCO decision by the end of 2015. The purity law gives beers a distinctive taste and obtaining UNESCO status would give the tradition a "good boost." UNESCO, the United Nations Educational, Scientific and Cultural Organization through its Convention for the Safeguarding of the Intangible Cultural Heritage (*adopted by the UNESCO General Conference on 17 October 2003*), provides a List of Intangible Cultural Heritage in Need of Urgent Safeguarding composed of intangible heritage elements that concerned communities and States Parties consider require urgent measures to keep them alive[3].

The Intergovernmental Committee for the Safeguarding of Intangible Cultural Heritage meets annually to evaluate nominations proposed by States Parties to the 2003 Convention and decide whether or not to inscribe those cultural practices and expressions of intangible heritage on the Convention's Lists. Inscriptions on this List help to mobilize international cooperation and assistance for stakeholders to undertake appropriate safeguarding measures[4].

The term 'cultural heritage' is not confined to monuments and accessible goods in a particular region, it also includes traditional practices and living expressions of a particular region which is followed or adapted by one generation to another. Traditional practices, including rituals, festive events, oral traditions, performing arts, social practices, traditional knowledge and practices concerning nature and the universe or craftsmanship for producing particular region specific goods.

Maintaining cultural diversity in the face of growing globalization requires a lot of attention and intangible cultural heritage is an important factor for the same. Intangible cultural heritage of different communities provides connection and understanding of different ways of life, encouraging mutual respect for different communities and intercultural interactions.

PROTECTING HERITAGE AND FOSTERING CREATIVITY[5]:

UNESCO has adopted a three-pronged approach: it spearheads worldwide advocacy for culture and development, while engaging with the international community to set clear policies and legal frameworks and working on the ground to support governments and local stakeholders to safeguard heritage, strengthen creative industries and encourage cultural pluralism.

UNESCO renowned cultural conventions provide a unique global platform for international cooperation and establish a holistic cultural governance system based on human rights and shared values. These international treaties endeavour to protect and

1. *http://en.wikipedia.org/wiki/Reinheitsgebot*
2. *http://en.wikipedia.org/wiki/Reinheitsgebot*
3. *http://en.unesco.org/themes/intangible-cultural-heritage*
4. *http://en.unesco.org/themes/intangible-cultural-heritage*
5. *http://en.unesco.org/themes/intangible-cultural-heritage*

safeguard the world's cultural and natural heritage including ancient archaeological sites, intangible and underwater heritage, museum collections, oral traditions and other forms of heritage, and to support creativity, innovation and the emergence of dynamic cultural sectors.

- The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)
- The Convention for the Safeguarding of the Intangible Cultural Heritage (2003)
- The Universal Declaration on Cultural Diversity (2001)
- The Convention for the Protection of the Underwater Cultural Heritage (2001)
- The Convention for the Protection of the World Cultural and Natural Heritage (1972)
- The Convention on the Protection of Copyright and Neighbouring Rights (1952, 1971)
- The Convention on the Means of Prohibiting and Preventing the Illicit Traffic of Cultural Property (1970)
- The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)

INTANGIBLE CULTURAL HERITAGE:

Intangible cultural heritage, which can also be referred as living expressions of regions, belongs to the traditional practices, expressions, knowledge and skills transmitted by communities from one generation to the next.

Such heritage provides these communities with a sense of identity and continued culture, promoting creativity and social well-being, contributing towards management of social environment or generation of income. Such traditional or indigenous knowledge can be used into health care, education and management of the natural resources systems.

The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage aims to safeguard this fragile heritage, secure its viability and make sure full advantage is taken of its potential for sustainable development. UNESCO's action in this field supports Member States worldwide by promoting international cooperation for safeguarding, and by creating institutional and professional environments favorable to the sustainable safeguarding of this living heritage[6].

INDIAN SCENARIO:

In India 'Traditional Knowledge' and 'Regional Craftsmanship' are given considerable importance by proper legislations for the same.

As per Section 3 (p) of Indian Patents Act, 2013, an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components, is considered a non-patentable invention. Accordingly no one can claim proprietary rights over a traditional knowledge belonging to any particular region, thereby protecting rights of people for traditional knowledge of any region.

Further for 'Regional Craftsmanship', India being a member of the World Trade Organization (WTO) enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999 which came into force with effect from 15th September 2003.

Geographical Indications of Goods are defined as that aspect of industrial property which refers to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product. Typically, such a name conveys an assurance of quality and distinctiveness which is essentially attributable to the fact of its origin in that defined geographical locality, region or country. Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations[7].

CONCLUSION:

Germans celebrate Oktoberfest in Munich since years with this traditional German Beer and has the largest consumption of German Beer during this time. From just four ingredients, they can make so many different tasting brews that truly credit craftsmanship. Reinheitsgebot is mentioned on every beer bottle to

6. *http://en.unesco.org/themes/intangible-cultural-heritage*

7. *http://ipindia.nic.in/girindia/*

signify the purity. People simply call it pure beer. This traditional beer regulation is to be followed from one generation to another.

Every state has cultural tradition or practices which are world renown. Each such reputation was built up carefully and continuously maintained by respective regions, combining knowledge and skills, traditionally followed from one generation to the next for centuries. Eventually a specific link develops between the goods and places of production.

Intangible Cultural Heritage helps in transmission of wealth of Knowledge and skills from one generation to the next. The social and economic value of this transmission of knowledge is important for both developing states and developed ones.

In India 'German Pure Beer' or Beer produced under Reinheitsgebot,can go for registration as a Geographical Indication, under The Geographical Indications of Goods (Registration & Protection) Act, 1999.

NEWSBYTE

"LOK ADALAT" COMMENCES IN COMPANY LAW BOARD

To mitigate the hardship of small investors and to expedite disposal of cases pending before the Company Law Board the first ever "Lok Adalat" was successfully held at the Company Law Board, Mumbai Bench at Mumbai on 07-12-2013.

The initiative to hold Lok Adalat in Company Law Board taken by Justice Shri D.R. Deshmukh, Chairman, Company Law Board was successfully implemented by the Member Shri A.K. Tripathi as their joint efforts saw the culmination of 203 matters under section 58A[9] of the Companies Act, 1956 in which various companies and investors gave their consent to the schedule proposed by the Bench for repayment of small deposits within time suggested by the Bench. In addition to above out of 81 applications listed, 61 applications for compounding of offences in respect of violations under the various provisions of the Companies Act, 1956 were decided on a consent given by the companies to deposit the composition fee proposed by the Bench. On such consent of the representatives of the Companies who had appeared before the Bench a sum of Rs.70,49,500/- was imposed as compounding fee which is expected to be deposited by the companies in compliance of the consent order passed by the Bench in the "Lok Adalat".

In three matters under sections 397 and 398 of the Companies Act, 1956 efforts were made by the Bench to assist the parties to iron out their differences and to reach a settlement and much headway was made. Lok Adalat was attended by Members of the Bar, Company Secretaries and Chartered Accountants. The next Lok Adalat at Mumbai is proposed to be held in February 2014.

ENTRY OF FOREIGN UNIVERSITIES TO SET UP THEIR CAMPUSES IN INDIA

The Government has recently drafted the University Grants Commission (UGC) (Establishment and Operation of Campuses of Foreign Educational Institutions) Rules, 2013. Under the proposed Rules, Foreign Educational Institutions (FEIs) can set up campuses in India once the FEIs have been notified as Foreign Education Provider (FEPs) by the UGC, subject to fulfillment of certain eligibility conditions. The Rules would ensure that only high quality foreign educational institutions are permitted to set up campuses and offer education services in the country, since only the top 400 institutions as per global rankings would be eligible to open campuses in the country.

Existence of high quality FEIs would contribute to enhancing existing capacity of higher education system; arresting the brain drain and drain of resources from the country; availability of education and research facilities of international standards; quality gains in Indian higher educational institutions through collaborations and partnerships etc. This would also facilitate higher investments in the higher education system including Foreign Direct Investment (FDI) in the higher education system. Indian students would be benefitted with the entry and operation of FEP through access to globally renowned and quality academic institutions in Indian higher education sector at relatively lower costs.

These FEPs would also add to the existing capacity in higher education in India.

The Ministry had sought comments and observations of the Department of Industrial Policy and Promotion (DIPP) and the Department of Economic Affairs (DEA) on the Rules which regulate the foreign investment in India and norms related to entries available to various person.

Both DIPP and DEA have supported the proposal. The HRD Minister, Dr. M.M. Pallam Raju gave this information in a written reply in Lok Sabha.

SETTING UP OF A REGULATORY AUTHORITY TO MONITORENTRY OF FDIS

Government has put in place an investor-friendly policy on FDI, under which FDI, up to 100%, is permitted, under the automatic route, in most sectors/activities. Foreign Direct Investment (FDI) policy is reviewed on an ongoing basis, with a view to making it more investor friendly. Significant changes have been made in the FDI policy regime in the recent times, to ensure that India remains increasingly attractive and investor-friendly. Government plays an active role in investment promotion, through dissemination of information on the investment climate and opportunities in India and by advising prospective investors about investment policies and procedures and opportunities. International Cooperation for industrial partnerships is solicited both through bilateral and multilateral arrangements. It also coordinates with apex industry associations, such as FICCI, CII and ASSOCHAM, in their activities relating to promotion of industrial cooperation, both through bilateral and multilateral initiatives intended to stimulate inflow of foreign direct investment into India.

The Government has also set up 'Invest India', a joint venture company between the Department of Industrial Policy & Promotion and FICCI, as a not-for-profit, single window facilitator, for prospective overseas investors and to act as a structured mechanism to attract investment focused on MSME Sector. A high level group has been constituted by the Government under the Minister of Consumer Affairs to examine various issues concerning internal trade and to make recommendation for internal trade reforms. The major safeguard for MSMEs in the extant FDI policy on multi brand retail trading is that at least 30% of the value of procurement of manufactured/ processed products purchased by the multi brand retailer is to be sourced from Indian small industries. In a recent review, the government has included medium enterprises and farmers /agri cooperatives under the sourcing requirement. This safeguard is expected to strengthen the MSMEs and facilitate their integration in the value chain.

SUSPENSION OF MANUFACTURE FOR SALE, SALE AND DISTRIBUTION OF CERTAIN DRUGS

In a press release dated 13.12.2013 issued by Ministry of Health & Welfare the Government has suspended the manufacture for sale, sale and distribution of following drugs in 2013 as the use of these drugs was likely to involve risk to the human health:

1. Dextropropoxyphene and formulations containing Dextropropoxyphene for human use.

2. Analgin and all formulations containing analgin for human use.

3. Fixed Dose Combination of Flupenthixol+Melitracen for human use.

4. Pioglitazone and all formulations containing Pioglitazone for human use.

Apart from the above drugs suspended during the current year, the following drugs were prohibited / suspended during the last three years:

1. Rosiglitazone.

2. Nimesulide formulations in children below 12 years of age.

3. Cisapride and its formulations for human use.

4. Phenylpropanolamine and its formulations for human use.

5. Human Placental Extract and its formulations for human use except its
   (i) Topical application for wound healing, and
   (ii) Injection for pelvic inflammatory disease.

6. Sibutramine and its formulations for human use.

7. R-Sibutramine and its formulations for human use.

8. Gatifloxacin formulation for systemic use in human by any route including oral and injectable

9. Tegaserod and its formulations

10. Letrozole for induction of ovulation in anovulatory infertility.

11. Serodiagnostic test kits for diagnosis of tuberculosis.

The suspension of Pioglitazone and all formulations containing Pioglitazone for human use was revoked on the recommendation of Drugs Technical Advisory Board (DTAB). Accordinglya revised notification permitting the manufacturefor sale, sale and distribution of Pioglitazone and all formulations containing Pioglitazone for human use subject to the conditions as recommended by DTAB was published vide notification G.S.R. 520 (E) dated 31-07-2013.

The Government is already running the Pharmacovigilance Programme of India for keeping a continuous vigilance on the drugs causing health risks through monitoring, recording and reporting Adverse Drug Reactions (ADRs) in the country.

ANTI-CHILD ABUSE GUIDELINES[1]

As per data maintained by the National Crime Records Bureau, the number of cases of crime against children which includes violence, sexual violence and abuse has increased over the years. The Government of India has recently enacted a special law "Protection of Children against sexual Offences (POCSO) Act, 2012" which has come into effect from 14th November, 2012. Section 39 of the Act requires the State Governments to prepare guidelines for use of NGOs, professional and experts or persons to be associated with the pre-trial and trial stage to assist the child. On request from several State Governments, Model Guidelines were developed by the Ministry of Women and Child Development and sent to all the State Governments/UT Administrations in September, 2013, which can be adopted or adapted by them for better implementation of the said Act. Further, as per Report of National Commission for Protection of Child Rights (NCPCR), five States/Union Territories (Tamil Nadu, Meghalaya, Maharashtra, Uttar Pradesh and Chandigarh) have confirmed formulation of guidelines for various stakeholders.

INDIA AND THE GOVERNMENT OF REPUBLIC OF MACEDONIA SIGNED AN AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Republic of India and Republic of Macedonia signed the new Agreement for the avoidance of Double Taxation and the prevention of fiscal evasion (DTAA) with respect to taxes on income. Once the DTAA enters into force, it will provide relief to taxpayers from double taxation and thereby, stimulate the flow of capital, technology and personnel between both the countries and will further strengthen the economic relationship between the two countries.

The Salient features of this agreement are as under:

- The agreement provides relief from double taxation to residents of India earning income in Macedonia and residents of Macedonia earning income in India.
- The agreement provides that taxation of dividend, interest and royalty in the source country will not exceed 10 %.
- The agreement provides for taxation of business income in the source country if the taxpayer has a permanent establishment there.
- The agreement provides for taxation of capital gains from securities in the source country.
- The agreement has a 'limitation' of benefit article which provides that the benefit of this agreement will not be available to entity which has formed mainly to obtain benefits under this agreement.
- The agreement is based on international standard of transparency and exchange of information and provides for exchange of information (including banking information)concerning taxes.
- The agreement has a specific provision that the requested Party shall use its information-gathering measures to obtain the requested information even though that Party may not need such information for its own tax purposes.
- The agreement provides for the representatives of the competent authority of the requesting Party to enter the territory of the requested Party to interview individuals and examine records.
- The Agreement provides for mutual assistance in collection of taxes due in other country.
- This agreement is expected to boost economic relationship between India and Macedonia.

1. *Press release of Ministry of Women and Child Development dated 16-December, 2013*

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Singh & Associates
Advocates and Solicitors

NEW DELHI [HEAD OFFICE]
N-30, Malviya Nagar, Delhi - 110017
Phone : +91-11-46665000, 26680927
Fax : +91-11-26682883, 46665001
newdelhi@singhassociates.in

MUMBAI
415, Wing C, 4th Floor, '215 Atrium'
Chakala, Andheri-Kurla Road
Andheri (East), Mumbai - 400059
mumbai@singhassociates.in

NEW YORK
260 Madison Avenue
8th Floor, New York NY, 10016 USA
Ph : 18666 034 835 (Toll Free)
newyork@singhassociates.in

BANGLORE
N-304, North Block, Manipal Centre
47, Dickenson Road, Bangalore - 560042
Ph : +91-80-42765000
bangalore@singhassociates.in

HYDERABAD
#404, 4th Floor, Mogul's Court
Building, Deccan Towers Complex
Basheerbagh, Hyderabad - 500001
hyderabad@singhassociates.in

BEIJING
Unit 601, 6/F, Office Tower C1
Oriental Plaza, No.1, East Chang
An Avenue, Beijing 100738, P.R.C
Ph.: 086-10-85870068, Direct Ext. 2017/18
Email: china@singhassociates.in

Ph : +91-11-46665000, 26680331 - Fax : +91-11-46665001, 26682883 - U.S.A. Toll Free No. 18666 034 835

www.singhassociates.in