

“Man, when perfected, is the best of animals, but when separated from law and justice, he is the worst of all” - Aristotle

“Infringement and Passing Off of Intellectual Property Rights - An insight”- Conference at Goa in collaboration with Goa Chamber of Commerce and MSME

To create awareness on Intellectual Property Rights (IPR) and its utility for the trade and industry, D H Law Associates had organized an exclusive conference on “Infringement and Passing Off of Intellectual Property Rights -An insight” in tandem with Goa Chamber of Commerce and Industry and the ‘Micro, Small & Medium Industries Development Institute’, Goa on 18th February 2011.

The Conference offered an insight about recent developments in different areas pertaining to intellectual property, highlighting the important cases, statutory developments, and recent legal trends. The Conference was followed by an extensive interactive session between the participants and speakers.

The Conference was well attended by the participants from several sectors including Government, industry and students.

News 10 @ a glance

FDI IN INDIA SEES FIRST SLUMP SINCE MAR '03:

INDIA'S foreign direct investment is headed for the first drop since the year ending March 2003, hindering a bid to match China's surging economy, even as overseas money poured into Indian stock and bonds at a record pace.

Data show FDI fell 24% to \$19 billion between April and November compared with the same period a year earlier. Inflows into equities and bonds jumped 48% to \$32.8 billion during the same period, according to the latest data from the Reserve Bank of India.

RBI said the fall in direct investment was caused by companies facing hurdles in obtaining land, gaining environmental clearance and poor infrastructure. Construction, mining and business services recorded the biggest drops in investment, the data show.

VODAFONE FINDS ITS CALLING HERE, Q3 REVENUE CLIMBS 17%:

VODAFONE Group's third quarter revenue from its Indian operations grew 16.7%, including contribution from tower company Indus Towers, the company said on Thursday.

The world's largest mobile phone by sales, which owns majority stake in Vodafone Essar — its joint venture(JV) here — said revenue from India during the October-December period was £963 million (approximately 7,126 crore) while the group's total revenues for this period were £11.9 billion, up 3.5%.

Most of its immediate competitors like Bharti Airtel and Idea Cellular also plan to launch similar services around the same time. India's "growth was driven by an 8.7-million increase in net customer additions during the quarter and strong mobile voice usage, partially offset by a fall in mobile voice pricing due to strong competition in



the market," the company said in a statement.

LIC HOUSING FINANCE MAY GET EPFO INVESTMENT:

NEW DELHI: Retirement fund manager EPFO's trustees are likely to approve a proposal to recommence investment in LIC Housing Finance at their meeting scheduled on February 15. EPFO's apex decision-making body — the Central Board of Trustees, headed by the Labour Minister — had decided to suspend further investment in LIC Housing Finance till the CBI completed its investigation into the alleged involvement of the home loan company's top official in the bribes-for-loans scam. The CBI is yet to complete its probe into the LIC Housing Finance scam. The Employees' Provident Fund Organisation (EPFO) had invested . 454 crore in the bonds of LIC Housing Finance Company. The fund manager's prevailing investment norms allow for investment of up to . 846 crore in the company.

TAX LIABLE ON SALE & PURCHASE OF PROPERTIES ON LONG LEASE:

THE Income Tax (I-T) Department claims that tax has to be paid on sale and purchase of properties, including land, on long lease if the transactions are in the nature of long lease of 50 years or more. In such cases, the I-T department holds that the buyer is required to deduct tax at the rate of 10% while paying to the seller.

The I-T Department has started verifying the records of transactions carried out by CIDCO and MHADA, the two state-owned agencies, which buy and sell property. The Department is verifying the transactions that have taken place from 2007.

To support this view, the I-T official cited section 194 (J) of the Income-Tax Act, which stipulates 10% tax deduction for a payment made for a number of items, including land and building. The I-T source said TDS dues recoverable on account of transactions in the form of long lease could be several thousands of crores of rupees.

"We are still in the process of estimating the dues. The law clearly states 'lease payment' is 'rent,'" the official said. The I-T officials are also conducting verification exercise on Bombay Port Trust, where TDS is deductible on harbouring and storage charges, wharfing charges, operation and maintenance charges, and charges for berthing.

LOSING SHEEN:

THE fund-raising plans of non-banking finance companies may be impacted, say analysts after the Reserve Bank of India said bank loans to non-banking finance companies, or NBFCs, which on-lent the money to farmers against gold jewellery, would not be treated as priority sector loans.





While NBFCs expect the impact of the recent RBI directive to be marginal, analysts said companies whose loan books were largely made up of auto and gold loans would be affected adversely.

According to an analyst at Motilal Oswal Financial Services, "Fund-raising plans may be hit as there will be some pressure on profitability. It will impact the gold loan of NBFCs, depending upon the percentage of AUM they had securitised and the percentage of their portfolio classified as priority sector loan in bank books. While Manappuram may be adversely affected, Shriram City Union may not see much of an impact. Companies planning to raise funds through secondary or primary markets may have to temper down their valuations to attract investors."

There has been a rush among gold loan companies to raise funds on the back of soaring gold prices and strong demand for credit among the lower middle class and small businessmen. These companies charge interest rates from 12% compared with 18-24% charged by banks on personal loans and even higher by unorganised money-lenders.

RCOM, BHARTI SEEK EARLY EXIT FROM RURAL TELEPHONY SCHEME:

TWO leading operators, Reliance Communications (RCOM) and Bharti Airtel, have approached the government seeking to prematurely exit from the rural telephony scheme under the USO subsidy without fulfilling the commitments they had made by winning bids in 2007 to provide telecom services in villages.

The government has an over 14,000-crore corpus under the Universal Service Obligation (USO) Fund. All service providers contribute to this fund and it is used to provide subsidy to operators and infrastructure providers to set up operations and offer telecom services in rural areas.

The Telecom Ministry is contemplating to ban the non-performing service providers from participating in the next round of bidding, that will be launched soon. The administrator handling the fund is also planning to change the criteria in a way that operators and infrastructure providers were not allowed to exit without fulfilling their commitments and are offered subsidy accordingly.

HDFC MUTUAL TAKES CHARITY TO INVESTORS' DOOR WITH CANCER FUND:

MUTUAL funds by definition are to enhance the wealth of investors. But HDFC Mutual Fund is attempting to widen the definition to include charity. The fund house plans to launch a debt scheme that will have an option for investors to donate a part, or full dividend to the half-a-



SC ON LIMITATION UNDER SECTION 34

Recently, the Hon'ble Supreme Court in the matter of "The State of Maharashtra Vs. Ark Builders Pvt. Ltd." has addressed a short yet interesting issue that whether the period of Limitation for making an application under section 34 of the Arbitration and Conciliation Act 1996 (The Act) for setting aside the award is to be reckoned from the date a copy of the award is received by the objector by any means and from any source, or it would start running from the date a signed copy of the award is delivered to him by the arbitrator.

For considering the issue, the relevant provisions are sections 31 and 34 of the Act. Section 31(1) provides that an arbitral award shall be made in writing and shall be signed by the members of the arbitral Tribunal and sub section (5) thereof contemplates that after the arbitral award is made,

century old Indian Cancer Society, a not-for-profit organisation.

The new fund is a three-year close-ended capital protection debt scheme that will have tax benefits. The asset management company would not charge any management fee, the offer document shows.

"It is a very noble initiative," said the fixed income head at a rival fund. "HDFC will be able to turn in a lot of money to the cause if it manages to get investors into the fund. It simply has to buy three-year 'triple A' rated papers. At current yields, the portfolio will generate about 9.5-9.75% every year. When the fund matures after three years, investors will have 30% of their principal as dividend accruals."

SHREE ASHTAVINAYAK TO FORM JV FOR INDIA'S LARGEST FILM CITY:

ENTERTAINMENT firm Shree Ashtavinayak Cine Vision is joining hands with a little known business group LFS Global for a multi-billion dollar project to build India's largest film city near Mumbai, modelled on the lines of Hollywood's Universal Studios. LFS Global will own a majority stake in the venture and Shree Ashtavinayak will have a small equity exposure in the project that will absorb investments of 15,000 crore spread over 7-10 years, said a person familiar with the development.

Shree Ashtavinayak spokesman was not available for comments while an email sent to LFS Global went unanswered. Shree Ashtavinayak share price closed at 7.05, down 4.99% on BSE on Friday in a weak Mumbai market.

Little is known about parentage of LFS Global. According to its website, the company has offices in Mumbai and Noida and it provides services in investment and asset & wealth management by providing funds as an equity partner or as loan. The group is led by its president Monika Sahay, who comes from a family of bureaucrats and legislators.

UNLISTED LOSS-MAKING COMPANIES WON'T NEED GOVT CLEARANCE TO FIX PAY:

UNLISTED loss-making companies can structure their managerial remuneration at will, with the Ministry of Corporate Affairs deciding to do away with the need for a mandatory government approval conditional to shareholders approval and zero default in payment of creditors dues.

"The shares of unlisted companies are not held by the general public," Corporate Affairs Minister Murlu Deora said. Presently, managerial remuneration has to be approved by a resolution passed by a remuneration committee within a

a signed copy shall be delivered to each party.

The Apex Court observed that section 31(1) obligates the arbitral tribunal to sign the award and the later provision makes it mandatory that a signed copy of the award to be delivered to the parties.

The Court then analyzed the other relevant provision, section 34, of the Act and discussed sub section (3) thereof, which provides:

“An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral Tribunal”

The Supreme Court observed that the expression, “... party making that application had received the arbitral award...” cannot be read in isolation and it must be understood in the light of what is said above in the section 31(5) which requires a signed copy of the award to be delivered to each party.

Looking at the above unambiguous provisions, the Supreme Court made it clear that section 34 (3) would only commence from the date a signed copy of the award is delivered to the party making the application for setting it aside and not from the date when such person received a copy of the award from the other party. Thus, the Apex Court draws a distinction between “a signed copy of the award by the arbitrator” and “a copy of the award received from the other party”.

To conclude, it would be appropriate to quote the Supreme Courts’ views in the matter of Union of India Vs. Tecco Trichy Engineers & Contractors reported in (2005) 4 SCC 239, which were upheld by the Apex Court in the instant matter:

“The delivery of an arbitral award under Sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be “received” by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under

company and shareholders are informed subsequently. Also, companies require a prior approval of the government if the total remuneration is more than 11% of its net profit.

Mr. Deora said that the primary purpose of regulations over managerial remuneration is to protect stakeholders, particularly shareholders and creditors.

SBI SETS FINANCIAL INCLUSION TARGET:

MUMBAI: SBI plans to cover 12,421 unbanked villages by March 2012 under its financial inclusion plan (FIP), according to chairman OP Bhatt, who was speaking at a branch opening event in Kandi, West Bengal. SBI has adopted a three-pronged strategy — of opening as many new branches in rural and semi-urban areas as possible, setting up of customer service points by appointing business correspondents/facilitators throughout the country and putting in place appropriate technology for providing access to varied range of banking facilities in far-flung rural areas. The bank also aims to cover 5,357 unbanked villages up to March 2011. In order to reach remote villages, the bank has already appointed 310 business correspondents and opened 28,610 customer service points (CSPs). Besides this, 7,709 business facilitators have also been appointed to provide basic banking to the unbanked villages.

COURT ROOM NEWS

• The Hon'ble Kerala High Court in the case of BIJU XAVIER V. CHRISTY FERNANDEZ, reported in 2010 (4) KLT 904, has held that in cases of appointment of Arbitrators under section 11 (8) of the Arbitration and Conciliation Act 1996, the arbitrator need not always be an expert on technical matters, which are involved in the dispute. Technical matters may emerge in the resolution of a dispute and for that reason the arbitrator to be appointed need not necessarily be an expert in that field. If a legal expert, who is not an expert in the technical field, is capable of resolving the dispute effectively after getting the assistance of an expert, nothing prevents the appointment of such a legal expert as arbitrator. An expert in the technical field may be appointed as arbitrator, if the facts and circumstances so warrant or if the parties so agree. But Section 11(8) is not a bar for the appointment of an appropriate person, other than an expert in the technical field, as arbitrator, even in a case where expert opinion is required for resolving the dispute.

• The Bombay High Court in the case of Oil and Natural Gas Corporation Ltd. V/s. Dolphin

Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

SINGAPORE HIGH COURT ON SETTLEMENT AGREEMENT BEFORE THE ARBITRATION PROCEEDINGS

In the matter of Doshion Ltd Vs Sembawang Engineers and Construction Pte Ltd. reported in (2011) SGHC 46, Singapore High Court pronounced a welcome decision wherein the Plaintiff, an Indian Company, the defendant's sub contractor, applied for injunction of the arbitral proceeding on the basis of an alleged settlement agreement arrived between the parties before the scheduled hearing of the arbitration and further prayed for a declaration that the Arbitration stands terminated pursuant to the Settlement Agreement.

The High Court dismissed the application by adopting the commercially sensible approach that a dispute over the existence of the settlement agreement would fall under the ambit of the arbitration agreement in the Sub Contract and the arbitrator was not functus since the arbitral tribunal had not even begun to hear the dispute.

Offshore Enterprises (I) Ltd., reported in 2011(1) MhLj 377, has held that in cases under Section 31 (7) of Arbitration Act, where there is an express bar in the agreement for awarding interest at the time of passing of Award, the Hon'ble Court has clarified that the power of arbitrator to grant interest is regulated by the agreement between the parties. This is in no way to control or regulate the power of the Court to award interest once the award is made final in accordance with law. This obstante clause and the agreed clause nowhere control the power of the Court to award future interest or modify the interest rate or period or stage. In view of the Scheme of the Act and specially of Section 28(1) and Section (31)(7), the Court needs to consider the agreed clause between the parties while making the award final and binding.

- The Bombay High Court in the case of B K Gopakumar V/s. National Film Development Corporation Ltd., in Arbitration Petition No. 458 of 2007, has held in cases of Arbitration agreements where there is a specific clause to pass the award within a stipulated time which can be extended with the consent of the parties, the arbitrator cannot extend the time without the consent of the parties.

- The Madras High Court in the case of Sri Anjaneya Cotton Mills Ltd V/s. Sheela Rani Textiles Ltd. and Anr, reported in [2010] 160 CompCas 211 (Mad), has held that in cases in the winding up proceedings under the Company law section 433 (1) (e) being the recognition of law of insolvency, the main issue to be decided is as to the financial status of the company taking into consideration that the general interests of the creditors and contributors are to be protected. Even though the statutory notice is a condition precedent for maintaining a company petition for winding up, it has been held that when it is proved that the respondent company received such notice and acted upon the same, the non-sending of letter to the registered office need not stand in the way of proceeding further with the winding up petition.

- The Division Bench of Hon'ble High Court of Bombay in the case of Board of Management of the Bombay Properties of the Indian Institute of Science V/s. Central Information Commission, New Delhi and Ors. reported in 2011(1) MhLj 63, has held in cases falling under section 6 of Right to Information Act, 2005, while entertaining the application for information, the authorities should not question the intention and locus standi of the applicant and they are required to furnish all the information sought by the applicant except what has been exempted under section 8 of the Act.

- The Division Bench of Karnataka High Court in the case of The General Secretary Mysore Division Industrial Workers General Union V. The Deputy Commissioner, The Asst. General Manager Karnataka State Financial Corporation and Karnataka Industrial Area Development Board by its General Manager reported in ILR2010KAR458, has held that in cases falling under section 529 A of Companies Act read with section 29 of SFC Act, workmen's dues which rank pari passu with the dues of the secured creditors will have to be paid from the proceeds of sale of the Company's assets including security given to the secured creditors. The State Financial Corporation cannot decide any dispute as to the apportionment between the workmen's dues and its own dues and therefore the right of the Corporation which is a secured creditor to sell the security by itself and outside winding up proceeding is subject only to the pari passu claim of the unpaid workmen.