

"It is the spirit and not the form of law that keeps justice alive"
- Earl Warren

Analysis of the judgment in the matter of Iridium India Telecom Ltd. V/s. Motorola Incorporated and Ors.

The Hon'ble Supreme court of India in the above case study has held that companies and corporate houses can be prosecuted for offences of cheating and criminal conspiracy, thus taking a departure from the earlier view held by various High Courts.

BRIEF FACTS OF THE CASE:-

Iridium System was represented as being the world's first commercial system designed to provide global digital hand held telephone data, facsimile, paging, geo-location services similar to today's cellular phone. It was further averred that Iridium System was conceived by respondent No. 1 in the year 1987 and it was intended to be a wireless communication system through a constellation of 66 satellites in low orbit to provide digital service to mobile phones and other subscriber equipment globally. The Respondents allegedly represented that the Iridium system was a proven and tested technology with a past record of successful operation and that the Iridium System would provide a subscriber link on a global basis, which would be accessible virtually anywhere on the earth surface, save and except cases where severe or unusual conditions prevented the reception of signals. In normal operating day-to-day real life environment, the Iridium System would, therefore offer a high quality link. In particular Iridium phones would work in automobiles and buildings which were the most common place where the professional traveler who would represent the bulk of Iridium customers, would use the same. Global coverage and accessibility was therefore assured.

Based upon the representations, the Appellant as well as the banks and

News 10 @ a glance

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

The Income Tax 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. An I-T official said that in most cases, persons involved in property and land transactions think long lease is tantamount to ownership and, therefore, no TDS is required to be paid for lease. However, according to the department's latest interpretation of rules governing TDS, any sale of land or buildings, if it is long lease, attracts TDS on the least rent payable.

MFIN SETS UP COMMITTEE, 3 MICROFINANCE COS UNDER LENS:

The deficit in governance and transparency in a shareholding vehicle typical to microfinance institutions, the Microfinance Institutions Network (MFIN) has set up a committee to look into those charges.

The governance of the shareholding vehicle, called mutual benefit trusts (MBTs), in these three companies. "The inquiry will address concerns raised by the media and other stakeholders vis-à-vis the appropriateness of processes followed during the course of these transformations and the evolution of the shareholding pattern of these entities."

institutions invested a sum of US \$70 million for purchasing equity of Iridium Inc as well as spent a sum of about Rs. 150 crores in setting up a gateway at Deghi in Pune.

The complaint averred that the representations made by Respondent No. 1 proved to be false, dishonest, fraudulent and deceitful. It was discovered that Iridium System was a complete failure and all the material representations made, as aforesaid, were totally false, dishonest, fraudulent and deceitful, to the knowledge of respondent and in particular respondent No.1.

The Complaint cited several instances of failure of the Iridium System and specifically that Respondent No. 1 had full knowledge about the unviability of the Iridium system. The Complaint also specifically stated that the entire exercise of the respondent No. 1 besides generating money for itself, was to experiment with others' money and at other's risk (including the appellant).

On the basis of the aforesaid allegations, the appellants have filed a complaint before the Judicial Magistrate, 1st Class, Khadki Court, Pune charging that respondent No. 1 are guilty of the offence of criminal conspiracy for cheating the appellant and for the offence of cheating committed pursuant to the criminal conspiracy.

Based upon the averments, the Judicial magistrate 1st Class took cognizance and issued process against the Respondents.

The Respondents filed proceedings under Article 227 and Section 482 of the Code of Criminal Procedure Code, 1973 seeking quashing of the Complaint.

The Bombay High Court by order dated 8th August, 2003 allowed the petition and quashed the order issuing process passed by the JMFC, Pune primarily on the basis that the respondent being a corporation was incapable of committing the offence of cheating.

JUDGMENTS CONSIDERED BY THE HON'BLE SUPREME COURT

(1)The United States Judgment in the case of New York Central & Hudson River knowledge and intent of its agents to whom it has entrusted authority to act in the subject-matter of making and fixing rates of transportation, and whose knowledge and purposes may well be attributed to the corporation for which the agents act. While the law should have regard to the rights of

The committee is also expected to draft guidelines for good governance of MBTs. The committee will have 30 days to submit its report.
Source: Economic Times and Mint

IMPERATIVE TO LIFT CORPORATE VEIL: SEBI ON SAHARA FUND-RAISING:

Market regulator SEBI has castigated the Sahara Group for raising thousands of crores in violation of regulatory framework and said that there is a clear "imperative to lift the corporate veil."

SEBI barred them from approaching the public for raising money till further orders.

SEBI also forwarded its interim order to the Ministry of Corporate Affairs for appropriate action for any violation of the Companies Act by the two unlisted companies.

Citing legal opinion from former Chief Justice of India Justice A M Ahmadi and C Achuthan, presiding officers of Securities Appellate Tribunal and other legal luminaries, he said in a statement, "All these opinions clearly stated that this matter is not under the jurisdiction of SEBI...The order is very unreasonable and arbitrary."

Pending the investigations, SEBI called for immediate action to protect investors and barred the two companies and its promoters from directly or indirectly from raising money from public. It, however, gave them 30 days time to avail of an opportunity of personal hearing or inspect the relevant document.

VODAFONE SAYS ESSAR WITHHELD MATERIAL INFO ON MERGER:

The war of words between Vodafone Group and its Indian partner Essar Group continued as Vodafone replied on Sunday to Essar's allegation that the UK-based firm was trying to suppress the value of Vodafone Essar.

Vodafone wrote to the Securities and Exchange Board of India (SEBI), and the Bombay Stock Exchange (BSE), objecting to the reverse listing of an Essar subsidiary, Essar Telecom Holdings, that holds 11% in Vodafone Essar, the Indian arm of Vodafone. Essar Telecom Holdings is being merged into India Securities, or ISL, a listed company.

Essar said it had no further comment. In its response to Vodafone's original letter, the metals-to-BPO conglomerate said Vodafone had no legal right to complain as it was neither a shareholder nor a creditor of ISL.

Source: Economic Times and Mint

all, and to those of corporations no less than to those of individuals, it cannot shut its eyes to the fact that the great majority of business transactions in modern times are conducted through these bodies, and particularly that inter-State commerce is almost entirely in their hands, and to give them immunity from all punishment because of the old and exploded doctrine that a corporation cannot commit a crime would virtually take away the only means of effectually controlling the subject-matter and correcting the abuses aimed at."

(2)The English Judgment in the case of Director of Public Prosecutions v. Kent . day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate."

(3)The decision of House of Lords in the case of Tesco Supermarkets Ltd. v. N corporation has none of these; it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability."

(4)The decision of the Hon'ble Supreme Court in the case of Standard Chartered accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents."

INFRASTRUCTURE DEBT FUNDS TO ROLL OUT SOON: REGULATORS AGREE ON CHANGES IN LAW, PAVING WAY FOR FUNDS TO RAISE MONEY OVERSEAS FOR CORE PUSH AT HOME:

Infrastructure debt funds are set to debut soon as financial regulators have agreed on the changes required in the law.

These funds are expected to be two layered, domestic and offshore, just like venture capital funds. The offshore entity will raise funds from overseas investors, including pension and insurance funds, and then direct them to the entity in India for downstream investment, the official said requesting anonymity.

This structure would require changes in the rules governing external commercial borrowings ("ECBs") as the current regime does not allow such borrowings by funds.

Foreign funds can register as venture funds and provide equity to the infrastructure sector, but there is no such mechanism for intermediating debt funds.

The Securities and Exchange Board of India will have to create a framework for registering these funds on the lines of venture capital funds, the Reserve Bank of India will have to spell out a capital adequacy framework for them.

Insurance and pension fund regulators will also need to tweak their rules to ensure flow of funds from such domestic entities to these debt funds.

RBI WILL HAVE TO RAISE RATES BY 1% THIS YEAR: GOLDMAN:

The Reserve Bank of India will have to raise interest rates by 1 percentage point this year to fight inflation and the currency would depreciate against the US dollar as the country imports more than it exports, forecasts Goldman Sachs.

Recognition of some of the deteriorating macro-economic factors would help the nation sustain its strong growth, which at this point calls for tightening of the monetary policy.

Indian stocks have tumbled and yields on government securities have risen in the past few weeks as inflation, induced by soaring food prices, is making investors believe that the central bank will be forced to raise policy rates. There could be some fiscal discipline too.

The UK telecom major also said on Sunday it has not blocked Essar from coming out with an initial public offer of its interest in Vodafone Essar. "We have no objection if Essar wishes to IPO its stake," Vodafone said. On Sunday, the global telecom

CONCLUSION:

The Hon'ble Supreme Court based upon the above decision concluded that "it becomes evident that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. Mens rea is attributed to corporations on the principle of 'alter ego' of the company."

The Court allowed the prosecution and held that companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences.

The above case will have a lot of ramifications as there are several criminal litigations filed against companies and body corporate on flimsy ground.

SUPREME COURT ON SCOPE OF SECTION 11

Recently, the Hon'ble Supreme Court while determining the existence of an arbitration agreement between the parties in a petition under section 11(5) and 11(9) of the Arbitration and Conciliation Act (Act) in the matter of Alva Aluminium Ltd Bangkok versus Gabriel India Limited considered and highlighted the nature, scope, enquiry and jurisdiction of the Court under section 11 and the power of Arbitral Tribunal under section 16 of the Act in terms of and for the purposes of determining the issue, whether there is any existing and binding arbitration agreement in place between the contesting parties.

For examining the jurisdiction of the Court under section 11, The Supreme Court referred to its earlier judgment in National Insurance Co. Ltd. versus Boghara Polyfab (P) Ltd. wherein the issues to be determined by the Court under section 11 were categorized as:

"22.1 The issues (first category) which the Chief Justice/ his designate will have
(a) Whether the party making the application has approached the appropriate
(b) Whether there is an arbitration agreement and whether the party who has

major said Essar had not elaborated what it deemed incorrect in its reply. Bankers had earlier said the Essar group had explored the possibility of an IPO but that was ruled out as Vodafone Essar's valuation was lower than the Indian partner had hoped for.

DEPRECIATION CAN BE CHARGED ON INTANGIBLES LIKE GOODWILL: DELHI HC:

The Delhi High Court recently upheld a tax tribunal's view that depreciation can be charged even on an intangible asset like goodwill, as it is a form of commercial right and is used to carry out business effectively. The decision was made on January 14, in the case of Hindustan Coca-Cola Beverage — an Indian company producing non-alcoholic beverages.

The assessing officer had agreed with the taxpayer's contention that goodwill is a form of commercial right similar to patents, trademarks, licenses and franchises.

The relevant section discussed in the court is Section 32 of the Income-Tax Act that deals with depreciation on tangible and intangible assets. Section 32 (ii) of the Act gives details of intangible assets for which depreciation can be claimed. The assets included are knowhow, patents, copyrights, trademarks, licences and franchises.

The assessing officer had also allowed the claim of the company, but the commissioner of income-tax revised the assessment saying that 'goodwill' is not an intangible asset as defined under section 32(1) of the Income-Tax Act. Hence the assessing officer was directed to withdraw the depreciation. The commissioner also held that the assessing officer's view was prejudicial to the interest of the revenue. In its ruling, the High Court held that loss of revenue cannot be construed as "prejudicial to the interests of revenue".

D.O.T. PROPOSES 2-CR PENALTY ON UNLAWFUL PHONE TAPPING:

AMID debates over phone-tapping and making conversations public without authorisation, the telecom ministry has proposed a penalty of up to 2 crore on unlawful phone tapping, against the current 500.

In a communiqué to the Prime Minister's Office (PMO), the department of telecom (DoT) has proposed the imposition of a penalty between 1 lakh and 2 crore for breaches under different Sections of the Indian Telegraph Act, 1885. For breach of Section 26 of the Act, which prohibits telegraph officers or other officials from making away with or altering, unlawfully intercepting or disclosing messages, or divulging the purport of signals, the maximum penalty has been

22.2 The issues (second category) which the Chief Justice/ his designate may decide are:

- (a) Whether the claim is a dead (long-barred) claim or a live claim.
- (b) Whether the parties have concluded the contract/transaction by recording their consent.

22.3 The issues (third category) which the Chief Justice/his designate should leave to the arbitration tribunal are:

- (i) whether a claim made falls within the arbitration Clause (as for example, a matter which is barred by limitation)
- (ii) Merits or any claim involved in the arbitration.

In the light of above categorization, the issue whether there is an arbitration agreement in existence falls in category (1) and is therefore was held to be decided by the Court, in the present petition.

For arriving at the conclusion, the Apex Court referred to its judgments in A.P. Tourism Development Corporation Ltd versus Pampa Hotels Ltd and SBP & Co. versus Patel Engg. Ltd. wherein the Court along with its above power under section 11 also considered the power of arbitral tribunal under section 16 for determining the issue.

Relying on the prospective overruling direction in SBP, the Supreme Court has observed that once the existence of the arbitration agreement, being a jurisdictional fact, itself is questioned by either party under section 11, the same has to be decided by the Court. The Supreme Court further observed that the position may be different where arbitration proceedings are initiated before the arbitral tribunal but a party chooses to dispute the existence of the arbitration agreement. In such a scenario, the arbitral tribunal in view of powers conferred upon it under section 16 can itself decide the issue.

Therefore, in the light of observations of the Supreme Court and provisions of section 11 and section 16 of the Act, it appears to be a settled position of law that wherever the existence of the arbitration agreement is disputed first, be it before the Court or before the arbitral tribunal, the issue/dispute shall be decided by that Court or tribunal, as the case may be.

NEW ARBITRATION LAWS FOR FRANCE

France has come up with new arbitration laws which would concern both domestic and international arbitration and appears to be made effective from 1st May 2011. The new legal provisions will be codified in articles 1442 to 1527 of the French Code of Civil Procedure.

The new law contains various notable features, for instance, provisions

proposed.

As per the existing Act, any breach of this Section attracts imprisonment, which may extend up to three years, along with a fine of 500. The proposed amendment to the Indian Telegraph Act is likely to be tabled in Parliament soon. Amendments to the Indian Telegraph Rules for electronic provision and collection of Call Data Records (CDRs) have also been proposed.

SEBI'S CONSENT ORDER IN THE RELIANCE ADAG CASE:

On January 14, 2011, SEBI passed a consent order in the matter relating to shares of Reliance Communications Limited (RCL). SEBI had earlier initiated investigations into transactions entered into by two companies within the ADA group of companies, being Reliance Infrastructure Limited (RIL) and Reliance Natural Resources Limited (RNRL), and some of their officers on the ground that loans taken by them through external commercial borrowings (ECB) were used to invest in the shares of RCL. The investigations were initiated to examine possible violations of the SEBI Act and relevant Regulations (including those pertaining to fraudulent and unfair trade practices in securities).

The latest consent order has been passed on the basis of an offer made by the companies and their officers to whom notices had been issued by SEBI. The noticees have paid a settlement amount of Rs. 50 crores (approx. USD 11 million), which is billed as the largest settlement amount in actions of violation of securities laws in India. In addition, the companies and officers are barred from investing in the stock markets for certain periods of time, and the companies are required to implement a policy of rotation of statutory auditors (an aspect that is not generally mandatory for listed companies in India).

SERVICE PROVIDERS NOT LIABLE TO TDS ON ROAMING CHARGES:

Roaming charges paid by one service provider to another are not liable to tax deduction at source (TDS), according to a recent ruling by the Income Tax Appellate Tribunal (ITAT), Mumbai. National roaming charge is a specific charge paid by a subscriber of a cellular network to gain access to services of any other network operator in their licensed area of operation.

The ITAT in an order on December 22 on an appeal filed by Vodafone Essar held that the service provider's role is limited to collecting roaming charges from its subscribers and passing it on to the other service provider whose facility is used by the subscriber. Therefore, the service

dealing with the waiver of right of the parties to challenge the award, in respect of annulment proceedings and further there is a specific provision stating that the challenge of the award would not automatically result in suspension of enforcement proceedings.

The new reform has aimed to be a friendly arbitration law for the international commercial disputes and is termed as innovative and trend-setting by the experts globally and hopefully would make Paris as one of the most popular seat of arbitration in the world.

DOMAIN NAMES

In our previous article we have discussed about the user friendly addresses referred as 'domain names' and the basic information related to the domain names in context with the Indian jurisdiction. In this article we will take a quick review about the disputes in other jurisdictions.

Instant and speedy communication, interaction has been facilitated by the internet and World Wide Web (WWW) to many individuals, non-commercial organisations, and commercial organisations across the globe. It has proved a helpful tool to create goodwill of a brand and generate business across the borders. With that it has also become a reason for several legal disputes and issues related to Intellectual property across the borders. With the increasing use of internet technology and developments thereby has increased legal issues related to domain names and the intellectual property, specifically the trademarks involved in that.

The internet technology is multijurisdictional and the data or information available on the internet can be accessed from any part of world and can be used anywhere as the information travels across the borders without any jurisdictional barriers. The legal issues arising because of this media have forced to discuss them on the international level with context beyond the jurisdictions of specific countries. Thereby World Intellectual Property Organisation (WIPO) has adapted the uniform policy for dispute resolution. As the domain names have commercial value and goodwill attached to it, they have become marketable commodity for its holders. The related legal issues are tackled by various courts in several jurisdictions with conflicting decisions. Usually the conflicts involving domain names are related to the trademarks and registration system of them. The conflict is between the government's registration system and the nongovernmental organisation registering domain names. Domain names are registered with the first come first owned principle granting exclusive existence on the internet and the trademarks are registered after

provider is not required to deduct tax.

The ITAT also dismissed the alternative view offered by the assessing officer that national roaming charges are in fact rent for use of telecom equipment and liable for TDS. According to ITAT, a payment could be construed as rent, only if a space is earmarked exclusively for the use of the taxpayer.

COURT ROOM NEWS

- The Hon'ble Supreme Court of India in the case of Kanwar Natwar Singh Vs. Director of Enforcement and Anr, reported in [2010] 160CompCas 301 (SC), has held that in adjudication proceedings under rule 4 of FEMA (Adjudication of Proceedings and Appeal) Rules, 2000, there is no duty of disclosure of all the documents in possession of the Adjudicating Authority before forming an opinion that an inquiry is required to be held into the alleged contraventions by a notice. Due process of law cannot be misused with the purpose of delaying the proceedings.
- The Division Bench of Delhi High Court in the case of Finite Infratech Ltd. V/s. IFCI, reported in [2010] 10 SCL 396 (Delhi), has held that IFCI Ltd. would have to be treated as a public financial institution under section 4A of Companies Act and as a consequence for the same it would be also treated as financial institution under section 2 (1) (m) of the Securitization Act and it would have the power to act under the said act to enforce its securities.
- The Bombay High Court in the case of Wartsila India V/s. Janak Mathurdas and Others, reported in 2010(112) Bom. L.R. 4796, has held in cases of reduction of share capital where share valuation has been done by adopting different methodologies would not attract the interference from the court as the same would not be justifiable.
- The Delhi High Court in the case of Interglobe Aviation Ltd. and Anr. V/s. Secretary, Competition Commission of India and Others, reported in 173 (2010) DLT 581, has held that all investigations and proceedings which were pending before the DG(I&R), MRTCP Commission as on the date of Competition (Amendment) Act 2009, whether by way of a reference made to it by the MRTCP Commission under Section 11 (1) or taken up by the DG (I&R) suo motu under Section 11 (2) of the MRTCP Act, would stand transferred to the CCI in terms of Section 66 (6) of the Competition Act. Therefore there would be no illegality in the action of the DG, CCI in transferring the investigation pending before the DG(I&R), MRTCP Commission to the CCI.

considering several criteria's within the specific jurisdiction for specified goods or services.

Out of several issues the main concern is that of whether the domain name similar to a registered trademark of any other party that tends to trademark infringement? In certain cases use of trademarks without commercial use for research, news, comparisons does not amount to infringement. There is no easy explanation to the stage when both the domain name and trademark are in conflict and when they can have presence together without infringing the rights of the owner. We will see the circumstances and case laws related thereto to discuss legal issues related.

There are several cases in various jurisdictions discussing issues related domain names and trademarks. In United Kingdom the famous 'One In a Million Case' , where several domain names were registered by using famous names and marks with an attempt to sell them in market at higher rates by advertising them on internet. It was held by the court that it was an act of passing off with intention to mislead people. The plaintiff's goodwill was at stake and was misused because of the premeditated practices carried by the defendant. In the other case involving a famous luxury departmental store in London; where the respondent attempted to get payment from the store by registering domain name 'harrods.com'. The order was passed directing the respondent to stop the malafide practices carried by them and abstain from infringing the illegal trade practices and pretending its services as that of the departmental store.

In the German jurisdiction the German courts in the case of 'epon.de' ; court was inclined to pass the order in favour of the trademark owner without going through the details of the domain name registered. The decision was delivered on the issue that if there is any possibility of unlawful use by the domain name registrar to the business having registered trademark.

In United States there are several legal battles fought related to domain names. In one of the matter involving 'Microsoft Corporation', a company called 'Zero Micro Software' registered its domain name with the name 'micros0ft.com', putting zero instead of the alphabet 'o'. after the Microsoft Corporation filed complaint against the other company the domain name was suspended and was not renewed by the company.

- The High Court of Punjab and Haryana in the case of VXL Technologies Ltd. reported in [2010] 103 SCL 507 (Punj&Har), has held that in cases of Petition under section 391 of Company Act seeking approval of the proposal of revaluation of the assets of the company increasing the it's net worth has to be dismissed since these proposals are neither a compromise nor an arrangement falling under section 391. The revaluation is permissible under Section 211 of the Companies, Act, 1956.

IPR India News

World Health Organisation to create classification of traditional medicines:

According to the press release issued in Tokyo by the world Health Organisation dated 7th December 2010; WHO is intending to develop a classification of traditional medicine with the purpose to create a database by creating classification with terminologies for identification and interventions because of its widespread use around the world. The project will originally focus on China, Japan and Republic of Korea.

Tiffany's Trademark Appeal dismissed in favour of eBay by the U.S. Supreme Court:

In a dispute against eBay for its liability for trademark infringement for sale of counterfeit goods through its website, the US Supreme Court dismissed the Appeal filed by Tiffany & Co. The main issue in the matter that was discussed was whether eBay has contributed and is liable for the trademark infringement with the counterfeiting trader. With the other issue that whether eBay is liable for the trademark dilution of Tiffany's famous mark through its website. The claim of "Dilution by Blurring" was rejected by the court on the ground that the said mark was never used by eBay to sell its own product.

The Supreme Court of India in the matter of Infosys Technologies Ltd. V/s. Jupiter Infosys Ltd. and Anr., reported In MIPR 2010 (3) 0139*, has held that while deciding a matter where the issue involving Section 46 (1) related to a trademark application for a mark proposed to be used by the company is raised; the status of application on the date of filing as well as on the date of grant of application is to be taken into account.

The High Court of Delhi in the matter of Times Internet Ltd. V/s. M/s Belize Domain Whois Service Ltd and Ors., reported In MIPR 2010 (3) 0204*, the dispute related to domain names, where the aggrieved party files a suit for passing off and against its goodwill used by other party, has held that – an action of passing off could be find in a domain name which has all the features and

The deciding factor in matters before the WIPO's Arbitration and Mediation Centre is mainly to check the intention of registering party of the domain name. In the matter of 'Cap Gemini' before WIPO, the bad faith of the other party was taken into consideration. In the matters related to Indian organisations before WIPO several cases were referred and the authorities opined that "the propriety of a domain name registration may be questioned by comparing it to trademark registered in any country". The complainant company was facilitated to challenge the correctness of the domain name registered in US, as the mark CAP GEMINI is registered in several countries including United States. By issuing the order in favour of complainant the dispute forum opined that domain name 'capgemini.com' be transferred to the company as the said domain name is confusingly, phonetically as well as conceptually similar to its registered trademark CAP GEMINI.

In another matter of 'Pfizer Incorporation' the forum opined that misspelling the complainant's name or/ and trademark by omitting or inserting any word does amount to confusing similarity and there by the domain name dispute was decided in favour of the complainant.

Even though the disputes are handled in several jurisdictions as per their legislations these issues are to be handled by the international organisations like WIPO on international level for resolving disputes related to domain names. The issues related to the domain names and relevant registered trademarks are ably handled by the WIPO's Arbitration and Mediation Centre and it will prove valid and excellent and platform for inter jurisdictional disputes.

References:

- 1) WIPO general assembly document- WO/GA/39/10
- 2) Cassandra Ching, Bluming Freiman Franco, P.C., International Domain Name Disputes
- 3) Hee-Eun Kim, WIPO Domain Name Cases Offer Trademark Licensing Lesson.
- 4) Laurence R. Helfer, International Dispute Settlement at the Trademark-Domain Name Interface.
- 5) Marks & Spencer and others v. One In A Million and others, High Court of Justice, Chancery Div. 28 November 1997.
- 6) Harrods Ltd. V. UK Network Service Ltd -1996 H 5453 (1996) (Chancery Division of the High Court)
- 7) <http://www.wipo.int/amc/en/domains/decisions/html/2001/d2001-0274.html>

characters of a trademark.

Important Note:

The trademark Registry has issued a public notice and notification regarding free public search and fee hike for the Trade mark applications.

According to the new notification the trademark forms TM-11, TM-54(request for search), TM-71(Request for expedited search) and TM-75 (Request for search and issuance of certificate) shall be omitted. With that the Trademark application fee will be Rs 3500/- from 29th December 2010.