

## SC of India changes the landscape for future International Commercial Arbitration

The Supreme Court of India overruled Bhatia International and Venture Global by its decision in Bharat Aluminum Co. dated 6th September 2012.

Substantial part of the judgment debates the omission of the word “only” in section 2 (2) of The Arbitration and Conciliation Act, 1996 (“the 1996 Act”). The SC held that the omission of the word “only” was not an instance of “CASSUS OMISSUS”. It emphasized it was not permissible for courts to reconstruct provisions while construing a provision and added that the courts cannot produce a new jacket, whilst ironing out the creases of the old one.

After hearing extensive arguments of both sides and analyzing several judgments the SC opined that the 1996 Act had accepted the territorial principle adopted in the UNCITRAL Model law and held that Part I would have no application to International Commercial Arbitration having the seat of arbitration outside India and further concluded that Part I would be applicable only to the arbitrations which take place within the territory of India.

The SC however declared the application of this judgment would be prospective and apply to arbitration agreements executed after 6th September 2012. This would mean that on application of this judgment parties in disputes relating to international commercial arbitration will no longer have the right to apply under section 9 of Part I of the 1996 Act, for interim reliefs and protection. This is bound to raise difficulties for parties in obtaining interim orders and enforcing them in India. Parties henceforth whilst entering into international arbitration agreements will have to be careful whilst drafting the agreements and in making their choice, on the seat of arbitration, which will have an impact on how they obtain urgent reliefs and expeditious enforcement of such reliefs in India.

Some of the conclusions of this judgment that can be highlighted are,

- Non applicability of Part I to international commercial arbitration;
- Application of this decision to apply prospectively;
- The 1996 Act does not apply to awards from non convention countries;
- Clarifies Part I of the 1996 Act deals with the *commencement, conduct of arbitration, challenge* and *recognition and enforcement* whilst Part II deals with only *commencement* and *regulation and enforcement*.

---

## The Copyright (Amendment) Act, 2012 comes into effect

The Copyright (Amendment) Bill, 2012, received assent from the President of India on 7th June, 2012. The Act has been accordingly published in the Official Gazette of India on 21st June, 2012 and came into force with immediate effect. The amendment introduces a system of statutory licensing to protect the owners of literary or musical works giving them a right to claim royalty for their creations. It also protects performer's right by allowing them to make sound or visual recordings of their performances and reproducing them in any medium.

---

## SC Ruling on Karnataka Mines

An NGO, Samaj Parivartana Samudaya, filed a PIL against the illegal mining and encroachment of forest areas in the state of Karnataka leading the apex court to ban all kinds of mining activities in the state and appointment of Central Empowered Committee (CEC).

The Special Forest Bench granted the CEC two weeks to file a comprehensive report detailing the steps taken for statutory compliance, implementation of R&R measures and the permission needed for the resumption of mining wherein CEC has put the mines in the area into three categories as A, B and C. The mines in which there were least or no irregularities were categorized as 'A' and those with maximum illegalities were put in 'C' category.

The three-judge forest bench headed by Justice Aftab Alam accepted the report of Central Empowered Committee (CEC) which had said that Category 'A' leases which consist of 21 operational and 24 non-operational leases be allowed to carry on their business as they have not violated any rules.

The Supreme Court on 3rd September 2012 lifted the ban on iron ore mining from 18 Category "A" mines in Karnataka though the court made it clear that the resumed mining activities would come to halt if the existing statutory clearances are not renewed before they expire and that resumption of mining activities shall not come in the way of investigation of any other law that has been transgressed.

---

## International Contribution

### Document: A Hot September...

Overall, global economic conditions continue to deteriorate. The many business confidence indicators released recently showed a further drop across emerging economies, with only a few exceptions.

» [download document \[pdf, 350 KB\]](#)

## **Apple's victory in patent case against Samsung**

The long awaited verdict of legal battle between Apple Inc. and Samsung Electronics Company Ltd has now been pronounced by a US jury, holding that Samsung copied critical features of the enormously popular iPhone and iPad and the Jury accordingly awarded Apple Inc., damages of \$1.05 billion. The verdict came after less than three days of jury deliberations and could lead to an outright ban on the sales of key Samsung products and will likely solidify Apple's dominance of the exploding mobile computing market.

## **NPAs and bad Loans – a worry for State Bank of India**

India's biggest bank, State Bank of India, announced quarterly results and reported a 137 percent jump in net profit along with the rising bad loans and and non performing assets, sending its shares to a three-month low. Weak growth, both in India and globally, means the bad loan problem has returned to haunt India's banks.

## **Infosys Vs Jack Palmer: Court Dismisses the case**

Shares of Infosys increased more than 3.7 percent touching a six-week high after a US court in Alabama dismissed harassment charges filed against Infosys by one of its American employees, but

according to the present Alabama laws, the allegations are not actionable, and thus the court concluded that, under current Alabama law, Palmer has no right to recover from Infosys. However, a separate criminal case against the Indian IT major, based on Palmer's allegations of visa and tax fraud, will continue.

### **Copyright violation: Court verdict to provide relief to news channels**

In a verdict, the Delhi High Court pronounced "trivial infractions" where a small audio clipping is played in the background cannot qualify to be a potential copyright violation. A bench of Justice Pradeep Nandrajog and Justice Manmohan Singh held that the courts must not waste precious hours deciding these disputes where compensation is given usually to a private party. Reversing a single judge's order where he barred a private channel from running an audio clip of a famous Hindi song in the background to advertise for a consumer awareness program. The division bench emphasized creativity is in society's interest and that the courts shouldn't stifle it under the garb of the Copyright Act.

### **FDI up to 49% approved in Insurance, Pension Sector**

The Union Finance Ministry on 22nd August 2012 increased foreign

direct investment in insurance and pension sector from earlier existing 26% cap to 49%. With the approval of Union Finance Ministry, the bill will now be discussed in the cabinet and will require to be approved by the parliament.

### **Securities Exchange Board of India - seven Alternative Investment Funds (AIFs) to start Operation in India**

Securities Exchange Board of India on August 2012 permitted seven Alternative Investment Funds to start operations in India under a newly formulated route that enables pooling of funds for investments in areas such as real estate, private equity and hedge funds.

### **Government eases overseas borrowing norms**

India has eased overseas borrowing rules allowing easier access to cheap dollar funds to housing finance companies such as HDFC, small industry financier SIDBI and permitted non-resident entities to provide rating enhancement facility to Indian borrower.

### **High Courts shall not hear writs by consumers**

The Supreme Court issued “direction of caution” to the high courts that they should not accept writ petitions against orders of the “National Consumer Commission”. According to the Consumer

Protection Act, 1986 appeals against the order of the Commission lie to the Supreme Court only. However, in the matter of “Cicily Kallarackal vs Vehicle”, the Kerala High Court admitted a writ petition challenging the order of the Commission and passed certain orders. The Supreme Court, in the abovementioned case asserted that the Act did not prescribe this procedure.

### **Compulsory notification of acquisition: Supreme Court**

Supreme Court recently held that if the Government does not issue a public notification regarding acquisition of land, the acquisition will be legally invalid and mere publication of Notification in the Official Gazette of India shall not suffice. On this reasoning, the Supreme Court quashed a land acquisition by the Maharashtra Government since the Notification was merely published in the Official Gazette of India but no public notification was issued to that effect.

### **Delay fatal to preventive detention**

Unreasonable delay in executing a preventive detention order will make it illegal, as per the Supreme Court’s recent pronouncement in the matter of “Saeed Malik v. State of Maharashtra”. Under Article 22 of the Constitution, the Supreme Court also pointed out the rights of a detenu, which is a detained person.