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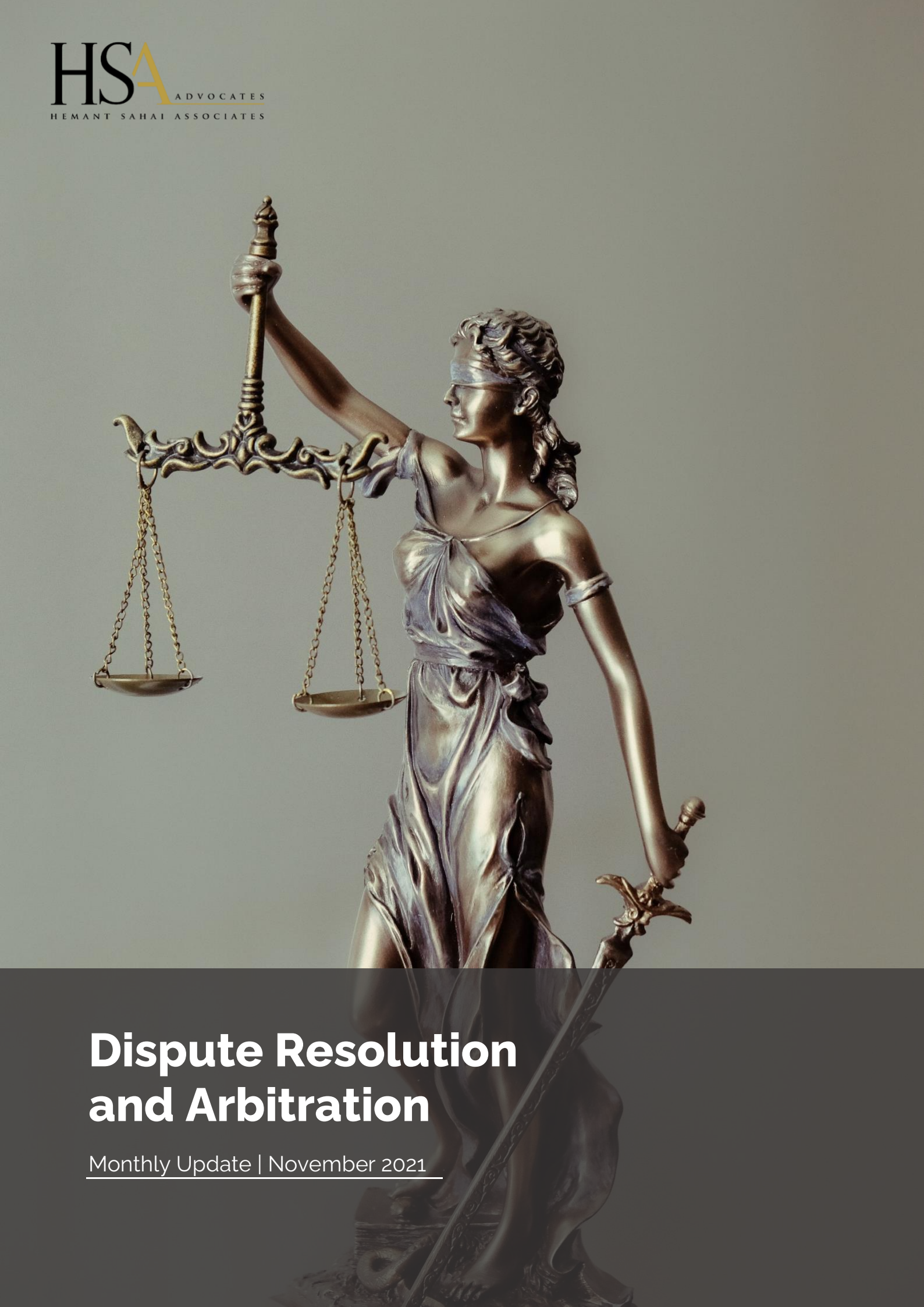
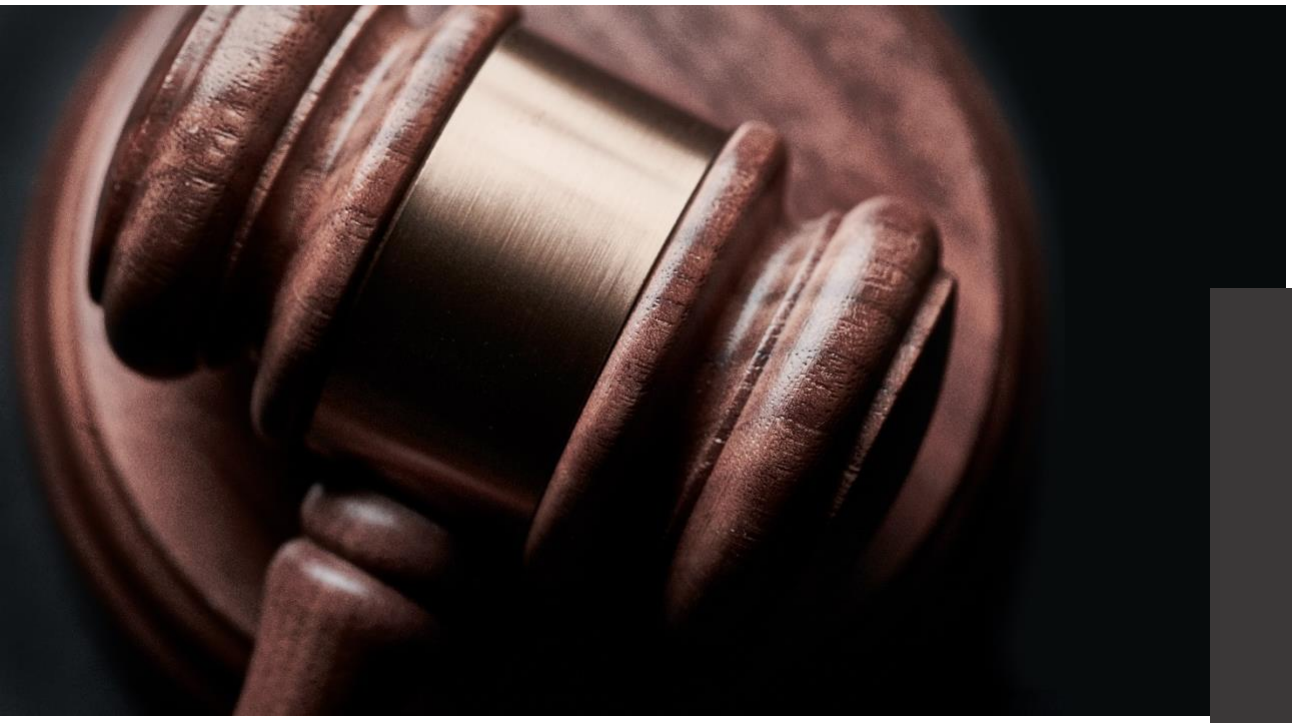


Dispute Resolution and Arbitration

Monthly Update | November 2021

DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Manohar Lal Sharma v. Union of India & Ors

Writ Petition (Civil) No. 826 of 2021 along with other writ petitions

Background facts

- In the instant case, the software named 'Pegasus' developed by NSO Group, an Israeli technology firm, stirred up the hornet's nest. The NSO Group allegedly sold this software only to certain undisclosed governments and as per its own website, the end user of its products were solely government intelligence and law enforcement agencies.
- Subsequently, the Citizen Lab, a reputed laboratory based out of the University of Toronto, released an in-depth report which contained astonishing disclosures about the Pegasus that it had the capacity to easily access the entire stored data and could gain complete control over an individual's mobile device. After a detailed investigation in the subject-matter by the journalistic organizations, traces of the Pegasus software being used on 50,000 numbers was confirmed, out of which approximately 300 belonged to Indians, many of whom were senior journalists, doctors, political persons, and even some Court staff.
- Thereafter, Union of India (**Respondent**), through the Hon'ble Minister of Railways, Communications and Electronics and Information Technology, addressed the elephant in the room by taking a stand in Parliament that the reports published had no factual basis. Also, the Respondent assured that the Indian statutory and legal regime relating to surveillance and interception of communication was extremely rigorous, and no illegal surveillance could take place.
- On account of the of the casual approach of the Respondent in treating the significant concerns, Petitions were filed by victims directly hit by the Pegasus storm and other Public Interest Litigants (**Petitioners**), in the Hon'ble Supreme Court of India with an aim to ensure that the fundamental rights of the citizens are not violated.

Issue at hand?

- Whether an Independent Committee for investigation should be appointed under the supervision of the Hon'ble Supreme Court of India, or the Respondent should be allowed to constitute the Committee exclusively?

Decision of the Court

- At the outset, the Hon'ble Supreme Court of India (**SC**) juxtaposed the genesis of the right to privacy in foreign countries and and in India whereby the Apex Court highlighted that in India, the right to privacy falls within the 'right to life' enshrined under Article 21 of the Constitution. The SC referred to the three prerequisites framed by it in *K.S. Puttaswamy v. Union of India*[1] to emphasize that the restraints on privacy of the citizens will be valid only if they are in sync with the prerequisites. Additionally, the SC underscored that, there must be a balance between the means adopted by the State to interfere with the right to privacy and the objective of such intervention. To discuss the constant push and pull between the right to privacy of an individual and the security interests of the State, the Hon'ble Supreme Court of India reproduced the words of *Daniel Solove*[2] that 'safeguarding privacy need not be fatal to security measures; it merely demands oversight and regulation.'
- The Court then switched its focus to the link between the right to privacy and freedom of press and cited *Anuradha Bhasin v. Union of India*[3] wherein it was held that there was no justification for restricting the press indefinitely. The Court commented that the knowledge of being spied on by an individual would ultimately result in misapprehensions and would have a horrifying effect on the freedom of speech, which is an assault on the vital public watchdog role of the press and may impair the ability of the press to provide accurate and reliable information.
- The Court noted the conduct of the Respondent in submitting only an omnibus & vague denial in the 'limited affidavit' and took in consideration that despite multiple opportunities being granted, there was still no-clarity as to the facts of the matter at hand. In this vein, the Hon'ble Supreme Court of India leaned on its judgement in *Ram Jethmalani v. Union of India*[4] to enunciate that 'unless constitutional grounds exist, the State must not act in a manner that hinders the Court from rendering complete justice'.
- To answer the main thrust of the Respondent's submission i.e., security concerns, the Court expressed that the State cannot pull-out the national security card and get a free pass every time. Furthermore, the Court without mincing words mentioned that the mere citation of national security by the State does not render the Court an onlooker.
- In light of the above, the Court constituted a Technical Committee comprising of three members, including those who are experts in cyber security, digital forensics, networks and hardware, whose functioning will be overseen by Justice R.V. Raveendran, former Judge, Hon'ble Supreme Court of India, to conduct a detailed investigation and enquiry in the matter. The Court directed the matter to be listed after 8 weeks.

HSA
Viewpoint

By bravely addressing the issue that touched upon the core of the human rights jurisprudence, the Hon'ble Supreme Court of India has emerged as the sole custodian of the fundamental and basic human rights of citizens of India.

The Court has outplayed the Government by disallowing the State from covering itself with the blanket of the national security regularly. The decision can be deemed to be regarded as a judgement which would have a significant impact as and when the question of unreasonable violation of the fundamental rights/privacy of the citizens by the State arises.

Adisri Commercial Pvt Ltd & Anr v. RBI & Ors

Writ Petition (L) No. 22872 of 2021

Background facts

- On October 01, 2021 the Reserve Bank of India (**RBI**) while exercising its power under Section 45IE of the Reserve Bank of India Act, 1934 (**RBI Act**) passed an Order superseding the board of directors of Srei Infrastructure Finance Limited (**SIFL**) and Srei Equipment Finance Limited (**SEFL**) and appointed Mr. Rajneesh Sharma as the Administrator (**Impugned Order**).
- The RBI also issued a press release dated October 04, 2021, wherein it was stated that RBI intends to shortly initiate the process of resolution of SIFL and SEFL under the IBC and would make an application to the NCLT for appointment of the Administrator as the IRP.
- Aggrieved by the Impugned Order and the press release, Adisri Commercial Private Limited along with Mr. Hemant Kanoria, the former director of SIFL and SEFL (**Petitioners**) filed a Writ Petition under Article 226 of the Constitution of India against RBI and others before the Hon'ble High Court of Bombay seeking to quash the Impugned Order and the press release issued by the RBI.

[1] (2017) 10 SCC 1
[2] Daniel J. Solove, Nothing to hide: The False Trade-Off Between Privacy and Security (2011)
[3] (2020) 3 SCC 637
[4] (2011) 8 SCC 1

- The Petitioners contended that since the Impugned Order was issued abruptly and in extreme haste, it is arbitrary in nature and would have a chilling effect on the investment proposals and the future of the two NBFCs. Hence, it was contended that there is no proximate cause for issuance of the Impugned Order.
- On the contrary, the Respondents argued that the Impugned Order and the press release was issued only after the stay by the NCLT was vacated by the NCLAT. It was also contended that SIFL and SEFL have not complied with RBI directions for a long time and have defaulted in their payment obligations to the creditors, leading to a complete financial mismanagement and thus requiring the RBI to step-in in discharge of its statutory obligations.

Issue at hand?

- Whether the Impugned Order and the press release dated October 04, 2021 issued by the RBI are arbitrary and liable to be quashed?

Decision of the Court

- Upon perusal of the Impugned Order and the arguments advanced by the parties, the HC noted the primary reasons for supersession of the board of directors, inter alia, defaults in payment of borrowings with 12 lenders aggregating to INR 3,566 crore, giving effect to slump sale despite non-receipt of no objection certificate from majority of the lending institutions, failure to maintain minimum regulatory CRAR and NOF and non-compliance with RBI regulations and supervisory instructions despite opportunities been given to improve the financial condition.
- The HC further observed that the statutory inspection conducted by the RBI as per Section 43N of the RBI Act revealed serious deterioration in the financial condition of SIFL and SEFL. Accordingly, RBI exercised its power under Section 43IE of the RBI Act to supersede the board of directors and appoint the Administrator.
- After examining the press release dated October 04, 2021 the HC noted that the RBI had informed about the supersession of board of directors, appointment of Administrator as well as about its intention to shortly commence the insolvency proceedings against SIFL and SEFL.
- In view of the above, the HC dismissed the Writ Petition and referred to the decision of the SC in *Peerless General Finance and Investment Company Ltd v. Reserve Bank of India*[5], wherein it was held that the courts should be very circumspect in interfering in matters which are handled by expert bodies like RBI. Accordingly, the HC held that the RBI has not acted without jurisdiction or in violation of the principles of natural justice.

HSA
Viewpoint

The HC's decision to not to delve into the areas which are dealt by the expert bodies like RBI is a welcome move. The decision of the HC captures the true essence of independent exercise of powers by the expert bodies by way of excluding them from the jurisdiction of Courts and it sets a precedent for the Courts to not unnecessarily interfere into the domain of expert bodies. Considering the governance issues faced by SIFL and SEFL, the RBI may now move the NCLT for initiating insolvency proceedings against the two NBFCs, whose boards it has superseded. It is noteworthy to mention that this will the second instance of insolvency proceedings against a financial services provider post DHFL insolvency proceeding.

Star India Pvt Ltd & Anr v. Filmyclub.wapkiz.com & Ors

Hon'ble Delhi High Court Judgement (IA 13527/ 2021 IN CS(COMM) 518/2021)

Background facts

- In the instant case, Star India Pvt Ltd (**Plaintiffs**) owned exclusive global media rights vide a 'Media Rights Agreement' for various ICC events, inter alia the ICC Men's T20 World Cup from the International Cricket Council for a duration of eight years i.e., from 2015-2023 for a substantial consideration.
- On the grounds of violation of the Plaintiffs' broadcasting reproduction rights granted vide the said Agreement, the Plaintiffs filed a suit in the Hon'ble Delhi High Court (**HC**) against the set of rogue websites, the Internet Service Providers and the Department of Telecommunications (**DoT**) (**Defendants**).
- By way of this suit, the Plaintiffs sought permanent injunction restraining the Defendants from infringing the Plaintiffs' exclusive rights and broadcasting reproduction rights, rendition of accounts, damages, etc.

Issue at hand?

- Whether an interim injunction can be granted against the Defendants for infringing the exclusive broadcasting rights of the Plaintiffs or not?

Decision of the Court

- At the outset, the HC took note of the previous infringements of the Plaintiffs' exclusive rights in the sporting events, inter-alia 'Vivo IPL 2021' by the Defendants and acknowledged the genuineness of the Plaintiffs' apprehension that the Defendants will continue to infringe the

[5] (1992) 2 SCC 343.

Plaintiffs' exclusive rights by analyzing the screenshots of the 'rogue websites' which mentioned various sporting events to be held/ streamed on their website, including the upcoming ICC Men's CWC. The HC accepted the submissions of the Plaintiffs pitched upon the difficulty in tracking the information of the Defendants' websites due to the anonymity of the owners or incorrect addresses of the websites.

- The HC perused the Orders[6] passed by other co-ordinate benches, wherein injunctions were granted against 'rogue websites', not only those known to the Plaintiffs but also other websites of a similar nature which the Plaintiffs fathomed would surface at the time of the telecasting/broadcasting of the events and would continue to infringe the Plaintiffs' rights. In those Orders, after appreciating the apprehensions of the Plaintiffs, the Court widened the scope of the injunctions by permitting the Plaintiffs to approach the DoT in the event similar websites emerged later. Moreover, the HC took in account the Plaintiffs' last limb of submission that the extended injunctions in the above Orders did not serve the purpose of protecting their rights considering the brief period of the T20 World Cup matches and the substantial time taken in accomplishing the removal of the website.
- In view of the above, the HC arrived at the conclusion that the Plaintiffs had established a prima facie case and hence, granted an interim injunction against the Defendants in terms of the websites known and the ones discovered at the later stage so as to not infringe the Plaintiff's broadcasting reproduction rights.

HSA
Viewpoint

The HC's decision to grant injunction against the rogue websites from broadcasting the ICC Men's T20 World Cup safeguards the rights of the authentic broadcasting entity. The essence of obtaining such rights to broadcast such events is nestled in exclusivity, and the HC's decision in granting an interim injunction not only against the known websites but also against those entities which may be discovered at a later stage, will save significant time and effort of the Plaintiff from approaching the Court every time a third-party entity attempts to infringe on their rights.

SC Dena Bank v. C Shivakumar Reddy & Anr

Civil Appeal No. 1650 of 2020

Background facts

- In the present case, Dena Bank (**Petitioner**) had filed an application for the recovery of debt from the Corporate Debtor and its director Mr. C Shivakumar Reddy (**Respondents**) under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (**the Act**) before the Debt Recovery Tribunal (**DRT**), Bangalore. The DRT passed a judgement against the Respondents and issued a Recovery Certificate in favour of the Petitioner bank.
- Subsequently, in 2018, the Petitioner filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) before the Adjudicating Authority (**NCLT**). In 2019, the Petitioner filed application under Rule 4 and 11 of the NCLT Rules, 2016 for permission to place on record the DRT judgement and the Recovery Certificate. An application was filed again by the Petitioner in 2019 to put certain documents on record, including the Annual Report, Annual Financial Statements and a letter proposing a One-Time Settlement. The Respondents filed their preliminary objection to the Section 7 petition before the NCLT on the ground of limitation. The objection was rejected, and the Section 7 petition was allowed.
- The Respondents appealed against the order of the NCLT and filed an appeal under Section 61 of the IBC before the NCLAT. The NCLAT allowed the appeal and set aside the NCLT decision holding that the Section 7 petition was barred by limitation.
- The Petitioner Bank filed an appeal under Section 62 before the Supreme Court (**SC**) against the decision of NCLAT. The ground relied upon by the Petitioner was that the Respondents in their Annual Reports acknowledged their liability regarding the debt owed by them and hence, in pursuance of Section 18 of the Limitation Act, 1963, the Section 7 petition was not barred by limitation.

Issues at hand?

- Whether a Section 7 petition would be barred by limitation on the ground that it was filed beyond 3 years from the date of declaration of the loan account of the Corporate Debtor as NPA, even though the Corporate Debtor subsequently acknowledged its liability regarding the debt, within the period of 3 years?
- Whether a final judgement, decree or a Recovery Certificate passed by the DRT in favor of the Petitioner would give rise to a fresh cause of action allowing the Petitioner to initiate proceedings under Section 7 of IBC?
- Whether the amendments of the pleadings to include additional relevant documents under Section 7 petition are barred under law?

[6] 1 CS (COMM) 394/2020 dated 23rd March 2020 and CS (COMM) 181/2021 dated 16th April 2021

Decision of the Court

- At the outset, the Court observed that it is a well-settled position of law that Section 18 of the Limitation Act, 1963 is applicable to Section 7 petitions under IBC. Section 18 of the Limitation Act provides that if the debt is acknowledged by the debtor within the subsisting limitation period, it has the effect of commencing a fresh period of limitation from the date of acknowledgement. It is important that such an acknowledgement is made before the limitation period expires. The acknowledgement need not be expressed or accompanied by an explicit promise to pay. It is also well-settled that the entries made in the Balance Sheets of the Corporate Debtor would amount to an acknowledgement under Section 18. The Court placed reliance on *Bishal Jaiswal and Anr*[7] and *Bengal Silk Mills Co*[8] to support its findings.
- The Court rejected the Respondents' contention that the additional documents were not originally filed with the petition and the subsequent amendments of the petition to include such documents would be barred under law. It noted that the application under Section 7 before the Adjudicating Authority cannot be compared with an ordinary plaint in a suit. The Court noted the need for purposive interpretation and held that in the absence of any provision to the contrary, the existing provisions would not bar the amendment of pleadings. Reading Sections 7(2) to 7(5) in conjunction, the Court held that there is no bar in law to amend pleadings to include additional documents at any time until a final order allowing or rejecting the application is made. However, in cases of extreme delay, the NCLT reserves the discretion to decline such an application.
- The Court further held that the One-Time Settlement Letter would constitute acknowledgement of debt within the meaning of Section 18 of the Limitation Act. Since the Financial Statements, Annual Report and the One-Time Settlement Letter was placed on record before the Section 7 petition was admitted by NCLT, the period of limitation accordingly stood extended. Thus, the Court rejected the NCLAT's ruling that there was no acknowledgement of the debt within 3 years.
- In relation to the issue of Recovery Certificate, the Court held that the Recovery Certificate gives rise to a fresh cause of action. Thus, the Petitioner possessing the Recovery Certificate passed in its favour was well within its right to initiate proceedings under Section 7 of IBC. The Court relied on the decision of the Patna High Court in *Ferro Alloys Corporation Ltd v. Rajhans Steel Ltd*[9] to support its conclusion. The Court further elaborated on this aspect and held that after passing the final judgement and issuance of the Recovery Certificate, a fresh cause of action accrues to the judgement holder, allowing him to recover the amount specified in the certificate and initiate proceedings for the same, if need be. Lastly, the Court held that on a conjoint reading of the provisions of IBC, it is established that a final judgement, decree, or an arbitral award for payment of money would satisfy the definition of 'financial debt' thus enabling the creditor to initiate proceedings under Section 7 before NCLT.

HSA
Viewpoint

The SC's decision settled the contentious issue on which the NCLAT clearly took a diverging view. With this decision, the holders of recovery certificates and decrees will be able to initiate insolvency proceedings under the IBC based on the adjudicated debts. This will result in entities previously involved in debt recovery litigation before the Debt Recovery Tribunals to take the alternative recourse under IBC. Further, by holding that there is no bar in law to amend the pleadings under section 7 or 9 of IBC before the date of admission, the Judgment casts a duty upon the Tribunals to consider the additional documents and then accordingly pass a reasoned order.

Tarun Wadhwa v. Saregama India Ltd & Ors

Interim Application (L) No. 4371 of 2021 in Commercial IP Suit (L) No. 4366 of 2021

Background facts

- In April 2018, the Plaintiff, an amateur film maker, started working on a comedy about zombies. Subsequently, in May 21, 2018, he finalized a synopsis under the title 'Haila! Zombie' and registered the same with the Screen Writer's Association (**SWA**). This synopsis was also shared with Defendant No. 1 through one of its own divisions namely, Yoodle Films on even date.
- Thereafter, on June 17, 2018, Defendant No. 1 replied to the Plaintiff with some feedback and asked him to submit a fully developed screenplay. As per Defendant No. 1's aforesaid communication, the Plaintiff prepared the first draft of his screenplay and also registered the same with the SWA. This first draft was also shared with Defendant No. 1 on August 28, 2018.
- A few months later i.e., on October 18, 2018, Defendant No. 1 gave suggestions for some revisions in the first draft and on December 14, 2018, the Plaintiff registered the second draft of the screenplay with SWA sand shared the same with Defendant No. 1 on even date.
- In January 2019, the Plaintiff sent a reminder to Defendant No. 1, who said that it would revert soon. However, on January 31, 2019, Defendant No. 1 wrote to the Plaintiff whereby it was

[7] 2021 SCC Online SC 321
[8] AIR 1974 Cal 170
[9] (1999) SCC Online Pat 1196

stated that it had no intention in continuing the proposal further and wanted to disengage from further collaboration.

- On August 2, 2020, the Plaintiff came to know that on July 30, 2020 Defendant No. 1 announced its new project 'Zombivli' to be realized in 2021. Correspondence then followed for the rest of 2020, which ultimately led to the present Suit filed by the Plaintiff in February 2021 along with an Interim Application for interim and ad-interim reliefs.

Issue at hand?

- Whether in the facts and circumstances of the case, can a breach of confidentiality said to have taken place in view of which an injunction can be granted against the Defendants?

Decision of the Court

- At the outset, the HC set out a comparative analysis between the screenplays of both the Plaintiff and Defendant No. 2. The similarities and differences between both screenplays were also examined by the HC. Thereafter, the HC remarked that breach of confidentiality and copyright infringement are closely tied. The former is frequently claimed for matters that cannot be the subject of copyright infringement. *An idea, in particular, cannot be the subject of a copyright infringement action*[10], but it may be the subject of breach of confidentiality. Either may yield a broadly similar injunction.
- The HC observed that there is no copyright in India except as provided by the Copyright Act, 1957. But this is not in derogation of a claim of breach of trust or confidence. In the present instance, the Plaintiffs case on breach of confidence is separate from his case on copyright infringement for his claim that the idea (in which no copyright can exist) was communicated in circumstances of confidence to Defendant No. 1, and that idea could not have been used by Defendant No. 1 without the Plaintiffs permission or license. The distinction between copyright and confidence assumes importance where, say, a manuscript has been submitted for publication. An obligation not to use the submitted manuscript may be implied and enforced under confidence law and may extend to a plot or a developed idea that may not otherwise be protected by copyright.
- The HC further relied upon the decision in the matter of *Zee Telefilms Ltd v. Sundial Communications Pvt Ltd & Ors*[11] and held that in a breach of confidence action, the plaintiff must (i) identify the information relied on, (ii) show that it was handed over in circumstances of confidence, (iii) show that it was information that had to be treated as confidential, and (iv) show that it was used or threatened to be used without consent.
- Further, the HC held that the 'confidential information' i.e., which is not in public domain, must be accurately and specifically identified, and protection must be sought only in respect of that. A generalized statement is never enough. In support thereof, the HC relied upon the decision of *Beyond Dreams Entertainment Pvt Ltd v. Zee Entertainment Enterprises Ltd & Ors*[12].
- The HC also remarked that for a cause of action in breach of confidence to succeed, there must be precision, originality, and completeness of disclosure. All the required elements of confidentiality must be shown. It is not enough to show only some of them. Similarly, for a cause of action in breach of confidence, a plaintiff must satisfy all four tests set out in *Sundial Communications (supra).* The Plaintiff in this case fails the prima facie test by failing to present a clear and unambiguous identification of the proprietary, original material other than that which was copyright protected and said to be confidential.
- In terms thereof, the Interim Application was dismissed with no order as to costs.

HSA
Viewpoint

The concept of zombies in recent/new age cinema is not uncommon and there are certain tropes which are very common to the zombie genre. Such scene as a fire or stock sequence moments cannot be monopolized by anyone. The Plaintiff in this case failed to point out any form of similarity between his screenplay and the one written by Defendant No. 2 as well as any patterns/commonality arrangement which could have given rise to a copyright being infringed.

This judgment reinforces the law laid down by the SC in *RG Anand (supra)* which sets out the well-known proposition that there can be no copyright of an idea. There must be crystal clear evidence to show that the latter is an unmistakable copy of the original for copyright infringement to be claimed.

Union of India & Ors. v. Puna Hinda

Civil Appeal No. 4981 of 2021 (Arising out of SLP (Civil) No. 11882 of 2018)

Background facts

- The challenge in the present Appeal is to an order dated November 17, 2017 passed by the Division Bench of the Guwahati High Court dismissing an intra-court appeal and affirming the order passed by the learned Single Bench on August 4, 2016.

[10] Dashrath B Rathod & Ors v. Fox Star Studios India Pvt Ltd & Ors, 2017 (70) PTC 104 (Bom); Zee Entertainment Enterprises Ltd v. Sony Pictures Pvt Ltd & Ors, AIR 2017 Bom 221
[11] 2003 SCC OnLine Bom 344
[12] 2015 (62) PTC 241 (Bom)

- The learned Single Judge held that payment in terms of Final Joint Survey/Measurement Report dated October 24, 2013 be taken into consideration for making revised Detailed Project Report (**DPR**) and passed orders for payment of the amount due to the Writ Petitioner within four months of the receipt of copy of the order. In an Appeal filed by the Appellants, the Division Bench of the High Court held that resurvey for measurement and DPR would not be just and fair at this stage since five monsoons had passed. Therefore, the only option left to the Appellants was to approve the DPR and pay the pending bills on the basis of Final Joint Survey/Measurement Report dated October 24, 2013.
- Notice Inviting Tender (**NIT**) was issued on October 22, 2008 for construction and improvement of road from 26.800 km to 47.850 km between Lumla and Tashigong with Petitioner's bid accepted at INR 31.8 crore and revised to INR 35.3 crore on amended work order leading to enhanced work cost. The work was divided into three parts, such as, Formation work, Permanent work, and Surface work.
- The joint survey of the works was carried out by the Board of Officers on January 23, 2013 and the Writ Petitioner was directed not to cut extra road formation width without obtaining proper written permission from the Competent Authority on January 28, 2013, with no payment to be made after the report of the Board of Officers.
- Approval of the Headquarters was sought on October 24, 2013 after the joint survey of formation cutting was done by the Joint Survey Team and while the Joint Survey Report was rejected by the Competent Authority at the Headquarter.
- The Writ Petitioner was informed vide letter dated March 24, 2014 to provide a breakup of the contract agreement amount of INR 31.87 crore and also point out that initial joint survey was carried out by a team comprising of then OC Contract, Engineer-In-charge, JE In-charge of contract and Contractor to assess the actual quantities of earth work before commencement of the work on ground. It was also pointed out that the formation work was completed way back on September 20, 2012 while the Writ Petitioner was communicated that the unpaid amount on account of original formation work was INR 74.3 lakh and INR 4 crore (approx.) for extra widening of road beyond 7.45 meters.
- Vide communication dated July 12, 2013, the Writ Petitioner conveyed that it would be bound to stop/abandon the project work, the responsibility whereof shall be that of the department itself for projecting an indifferent attitude, while also asserting that the department may take over the remaining work and complete it themselves.
- The Writ Petitioner submitted a final bill on June 17, 2014 and claimed a sum of INR 23.6 crore asserting that payment has not been cleared in respect of 19th and 20th running bill. The final bill submitted by the Writ Petitioner was returned unactioned on August 10, 2014 while the Writ Petitioner was informed that payment up to 18 running bills had already exceeded the permissible approved amount including escalation payment.
- The Writ Petitioner's claim of INR 23.6 crore was refuted by the appellants vide communication dated August 27, 2015 directing him to process the bills through laid down channels before DC Contract and Commander Contract.
- The Writ Petitioner filed a Writ Petition before the High Court on or about November 23, 2015 for quashing of the letter dated August 27, 2015 and also challenged the letter dated October 21, 2015 being a reply to the notice under Section 80 of the Code of Civil Procedure, 1908. A Writ of Mandamus was prayed for to pay a sum of INR 31.5 crore with 18% interest.
- The Respondents to the Writ Petition not only controverted the assertions of the petitioner but also objected on the ground that an arbitration clause for resolving disputes arising between the parties was in place and Writ jurisdiction could be resorted for adjudication of disputes.
- **Submissions on behalf of the Appellants:**
  - After completion of the formation work, the Writ Petitioner had communicated expenses of INR 16.9 crore as against provision of INR 16.2 crore. It was asserted that the Writ Petitioner has been paid a sum of INR 42.27 crore as against original cost of INR 31.01 crore whereas the contractor has claimed a total sum of INR.71.86 crore. The letter dated October 29, 2013 has been issued by the Headquarters, Border Road Task Force stating that the minimum distance was to be measured from center line of carriage way and not from the edge of the roadway. Thus, the entire claim was based upon imaginary and arbitrary grounds which was enhanced from time to time.
  - There were serious disputes about the facts in respect of authenticity of the Joint Final Report and the work done which could not be adjudicated by the Writ Court as disputed question of facts relating to recovery of money.

- Reliance has been placed upon the judgment of this Court reported as *Kerala State Electricity Board & Anr v. Kurien E. Kalathil & Ors*[13] and *Joshi Technologies International Inc v. Union of India & Ors*[14].
- In view of the arbitration clause available to resolve disputes, the order of the High Court was unwarranted and untenable. It was also argued that the High Court in the impugned order has factually opined that resurvey was not possible as five monsoons have passed, therefore, the Appellants were directed to approve the DPR and pay the pending bills on the basis of Final Joint Report.
- The Chief Engineer, Project Vartak, vide his letter dated August 27, 2015 denied the allegations levelled by the Writ Petitioner and informed him that the Board of Officers was being cancelled at his request. It was also pointed out that the Board of Officers was constituted at the request of the Writ Petitioner to resolve the matter. The letter dated October 21, 2015 was in fact reply to the notice served by the Petitioner under Section 80 of Code of Civil Procedure, 1908.

- **Submissions on behalf of the Respondent/Writ Petitioner:**
  - The Writ Petitioner inter alia argued that the officer who had written the letter dated August 27, 2015 was not the Competent Authority to write the same. Such argument was based upon an averment in the Memorandum of Appeal, which was signed by the panel counsel and was not supported by any affidavit of an officer of the Appellant.

Issue at hand?

- Whether a Writ Court could adjudicate factual disputes arising out of purely contractual matters with no statutory flavor?

Decision of the Court

- While taking note of the facts, the Apex Court inter alia held that disputed questions of facts could not be raised by way of a Writ Petition. Though, the jurisdiction of the High Court is wide but pure contractual matters in the field of private law, having no statutory flavor, are better adjudicated upon by the forum agreed to by the parties.
- The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the Appellants to infer that the amount stands crystallized, and in such admission, the dispute could not be raised by way of a Writ Petition on the disputed questions of fact. Therefore, in the absence of any acceptance of Joint Survey Report by the Competent Authority, no right would accrue to the Writ Petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the Writ Petitioner, but such process could be undertaken only by the agreed forum i.e., arbitration and not by the Writ Court as it does not have the expertise in respect of measurements or construction of roads.
- Appeal was allowed, dismissing the petition.

HSA
Viewpoint

This judgment re-affirms the settled legal position that a Writ Court cannot adjudicate disputed questions of facts arising out of pure contractual matters in the field of private law, having no statutory flavour.

[13] Civil Appeal No. 4092 of 2000 (Arising out of SLP(C) No. 9989 of 1998)
[14] 2015-LL-0514

HSA
AT A GLANCE

FULL-SERVICE CAPABILITIES

- BANKING & FINANCE
- COMPETITION & ANTITRUST
- CORPORATE & COMMERCIAL
- DEFENCE & AEROSPACE
- DISPUTE RESOLUTION
- ENVIRONMENT, HEALTH & SAFETY
- INVESTIGATIONS
- LABOR & EMPLOYMENT
- PROJECTS, ENERGY & INFRASTRUCTURE
- PROJECT FINANCE
- REAL ESTATE
- REGULATORY & POLICY
- RESTRUCTURING & INSOLVENCY
- TAXATION
- TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

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The A List India Business Law Journal

IFLR 1000 Top Tier Firm 2020

Recognised in Who's Who Legal

BW Legal World Global Legal Summit and Legal Leaders Awards 2020

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