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In the News...

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3. CESTAT – Rule 5 of Central Credit Rules cannot be invoked in cash refund of unutilized cenvat credit See CESTAT, Nee Delhi Order
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6. Supreme Court : broad basing of entries under Central Excise Tariff Act, 1985, by itself cannot justify re-classification of a product. See SC Order
7. Supreme Court : Section 327 (7) of the Companies Act (preferential payment to creditors) is not violative of Article 21 See SC Order
8. Supreme Court its appoints former Judge L.Nageswar Rao to finalize AIFC Constitution.



S.K. SINGHI

Founder & Managing Partner

Message from Managing Partner

My dear esteemed readers,

The May Issue of our Newsletter is in your hands, the release of which has got delayed due to the wedding of my son this month. Moving forward, we will make every effort to release the Newsletter in the first week of every month.

I am happy to announce the establishment of our Law Firm's International Law Practice Desk at our New Delhi, Kolkata and Mumbai Offices. In this issue of our Newsletter, you will find details of our Zone-Wise Teams, who will cultivate and serve our International Clients.

In our last issue of our Newsletter, I had written about the entry of foreign lawyers in India. The Bar Council of India Chairman has clarified that the grant of permission to the foreign lawyers and foreign law firms will not harm the law firms in India. I am personally of the view that today the world has become flat, to use the title of the book by Thomas Friedman, and therefore, our legal profession must be ready to work with lawyers across the globe and serve our clients anywhere in the world, through the technology, which has enabled us to connect to anyone, anywhere and at anytime.

I am also concerned with the discouraging data published by IBBI regarding the low volume of resolution of insolvency cases and very high hair cut which the lenders are compelled to take. Perhaps, the introduction of "pre-packaged insolvency resolution process", or PIRP, in the IBC Code, 2016, will expedite the insolvency resolution process.

I hope you will enjoy reading this issue of our Newsletter.



"The Law always limits every power it gives."

Announcement of International Law Practice Desk

S.K. Singhi & Partners LLP is pleased to announce establishment of international desks at its offices at Mumbai, Kolkata and New Delhi to facilitate quick ONE POINT contact to support and enable international & overseas clients, Corporates, Industries and Businessmen, NRI's, PIO's and Foreign Investors to understand investment opportunities in India like Foreign Direct Investment (FDI), Foreign Portfolio Investment (FPI), Foreign Institutional Investment (FII). As being the largest growing economy, being a destination for multiple investments from worldwide, India presents challenges in terms of implementation of investment regulations and compliances.

S.K. Singhi & Partners LLP renders legal expertise to mitigate these challenges and is focusing on expansion to cater to this demand. The firm is focusing on expanding its international practice across various continents and in this endeavour has chalked out a dedicated plan to service the international community involving its partners and associates at various level,

Our partners and team will coordinate specific continent / Country practise through Global group across Asia, Europe, Middle East, USA, Canada etc Sharing know-how including market intelligence and resources for clients undertaking transactions involving their country and India as well through our Collaborations with the top /leading law firms in the respective continent and country.

For ease of convenience and rendering exceptional and personalised services to each client, each of the seven continents are headed by a partner who are assisted by team leaders who are assigned to each partner under the Said practise continent.

The contact details of the partner and team leaders for each continent are as follows -

Mr. S.K. SINGHI - Founder & Managing Partner - Overall in charge of international practise with specific charge of -North America Desk, South America Desk and Africa Desk.

Mr. S.K. Singhi is assisted by Ms Riti Basu, Principal Associate and Ms. Piyali Pan, Associate at Kolkata Office.

Mr. ANKUR SINGHI-Joint Managing Partner - In charge of Asia-Pacific Desk

Mr. Ankur Singhi is assisted by Ms. Akshaya Puthran, Senior Associate and Ms. Yamini Saboo, Associate at Mumbai Office.

Mr. AKSHAY SINGHI- Senior Partner - In charge of Europe Desk

Mr. Akshay Singhi is assisted by Ms. Anika Bajpai, Senior Associate and Ms. Sangini Singhal, Associate at New Delhi Office.



S.K SINGHI & PARTNERS

A FULL SERVICE INDIAN LAW FIRM

International Law Practice Desk Team

Asia-Pacific Zone



**Partner in Charge
Mr. Ankur Singhi**

Joint Managing Partner

Mobile/WhatsApp No: +919836209981

Email: ankur.singhi@skspartners.law

North America, South America & Africa Zone



**Partner in Charge
Mr. S.K. Singhi**

Founder and Managing Partner

Mobile/WhatsApp No: +919748035250

Email: sksinghi@skspartners.law

Europe Zone



**Partner in Charge
Mr. Akshay Singhi**

Senior Partner

Mobile/WhatsApp No: +919051260126

Email: akshay.singhi@skspartners.law



**Team Leader
Akshaya Puthran**

Senior Associate

Landline: +91 22 2048652

Email: akshaya.puthran@skspartners.law



**Team Leader
Riti Basu**

Principal Associate

Landline: +91 33 22623321

Email: riti.basu@skspartners.law



**Team Leader
Anika Bajpai**

Senior Associate

Landline: +91 11 46049114

Email: anika.bajpai@skspartners.law



**Team Leader
Yamini Saboo**

Associate

Landline: +91 22 2048652

Email: yamini.saboo@skspartners.law



**Team Leader
Piyali Pan**

Associate

Landline: +91 33 22623321

Email: piyali.pan@skspartners.law



**Team Leader
Sangini Singhal**

Associate

Landline: +91 11 46049114

Email: sangini.singhal@skspartners.law



WHY IBC IS ALSO FAILING

By Mr. Ankur Singhi, Senior Partner

IBC 2016 was meant to overcome the failures of SICA & SARFAESI.

With a debt recovery of just 20% and liquidation of a meagre 29.7% cases, during the infancy period (2016-2022), is the Insolvency & Bankruptcy Code also heading for failure ?

On the surface, the regime laid out for the Code looks impressive. But, if you scratch the surface, what hits you is breach of all statutory timelines and lenders ending up taking a whopping 90% haircuts !!

The enactment of the Insolvency and Bankruptcy Code (IBC) of 2016 by India was described internationally as historic, coming as did after a series of past failures of such mechanisms like SICA and SARFAESI. It was a critical structural reform that was intended to boost the confidence of the lenders in timely recovery of their debts. The 180 days mandate to the adjudicating authorities to wrap up the insolvency proceedings against the debtors was a regulatory coup.

But, five years down the line, this legislative experiment has ended up with a loss of 80% admitted debt claims and has led to liquidation in 29.7% of cases, as per Insolvency and Bankruptcy Board of India (IBBI).

According to the IBBI data from 2016 to 2021, a total of 4,541 cases of Corporate Insolvency Resolution Process (CIRP) were admitted in which ("admitted") corporate debts amounted to ₹13.94 lakh crore. IBBI reports that until June 2021, only ₹1.82 lakh crore of it, or just 20% of the admitted debt claims, is realisable or realised — a net loss or haircut of 80% debt. Ironically the debt resolution process under the SICA had a recovery rate of 25% – a far better performance in comparison.

If this data is disheartening, a very large number of CIRP cases are ending with liquidation, where settlement leads to outright closure of businesses, causing job losses and debtors getting a raw deal. Of the 4,541 CIRP cases, 29.7% have already gone into liquidation. Job losses apart, debtors have taken a haircut of a whopping 95% of their loans.

Loss of credit and loss of business and jobs will seriously hurt the economy, something which needs to be immediately prevented by the regulatory authorities.

Such huge haircuts come with many adverse economic consequences.

While the resolution of 384 CIRP cases (the Company remains a going concern and is taken over by another Company) have led to 64% haircut (average for all resolutions), the Videocon case saw debtors booking a loss of 95.3%. In its resolution in June 2021, debtors got just ₹2,898 crore out of the admitted debt claims of ₹61,770 crore.

The Ruchi Soya Industry's case of 2019 is curious, since it saw banks agreeing to book a loss of 65% (settled for ₹4,350 crore against the debt of ₹12,146 crore) and then promptly sanctioning ₹3,200 crore to run the very same sick company (Ruchi Soya) by Baba Ramdev's Patanjali group which bought it.

The Code's ambitious timeline of 180 has been grievously breached. Instead of settling the cases in 180 days, as its mandate, the IBBI data shows 80% of cases have crossed the limit. Most of the cases have already jumped the 180 days deadline.

...see more



GOOGLE FINED! IS IT FINE?

By Sindhuja Rastogi, Senior Associate

Google in this day and age needs no introduction. Google today has become synonymous with the Internet. The most common phrase today to look up anything on the internet is “just Google it”.

In this article, I propose to take you through the legal quagmire that Google went through in India with respect to its Google Mobile Services (GMS) suite. In 2018, Android users approached Competition Commission of India (CCI/Commission) under Section 19(1)(a) of the Competition Act, 2002 (‘the Act’) against Google LLC and Google India Private Limited (the Indian Counterpart) collectively, ‘Google’, alleging inter alia abuse of dominant position by Google in the Android system related markets in violation of the provisions of Section 4 of the Act.

The users alleged that Google indulged in unfair trade practices by asking Original Equipment Manufacturers (OEMs) to pre-install the entire GMS suite under its Mobile Application Distribution Agreement (MADA). GMS is a collection of Google applications and Application Programme Interface (APIs) that supports functionality across devices. GMS includes the apps such as Google Maps, Gmail, and YouTube that are available only through GMS and cannot be downloaded directly by device manufacturers. End-users cannot avail such services directly the manufacturers have to enter into prior agreements with Google.

Google raised various arguments in its favour and defence. Google submitted that it is inherent in Section 4 of the Act that an effect analysis should be conducted before coming to the conclusion that dominant position has been abused by an enterprise or group. Competition Commission of India has been following the practice of effect analysis, which is apparent from various decisions of CCI and the practice of the Commission is in accordance with the statutory scheme. Hence, conducting effect analysis is thus the requirement of law.

MADA, according to Google, is a voluntary agreement with the device manufacturers, who wish to provide Android as the operating system in their phones. If MADA is signed, the OEMs will have to pre-install the entire G-suite and cannot pick and choose apps from the suite.

CCI in October 2022 held that Google was abusing its dominant position in multiple markets in the Android mobile device ecosystem and ordered the company to pay a penalty of Rs 1,337.76 crore. CCI also issued a cease-and-desist order against Google for indulging in anti-competitive practices that are in contravention of Section 4(2)(a)(i), 4(2)(b)(ii), 4(2)(c), 4(2)(d) and 4(2)(e) of the Competition Act, 2002 (Act).

The Commission after hearing the parties and perusing the materials on record came to the conclusion that Google has contravened various provisions of Section 4(2) of the Act. Elaborate conclusions of the Commission has been recorded in Para 614, which are to the following effect:

“614. The Commission concludes that, 614.1. mandatory pre-installation of entire GMS suite under MADA (with no option to uninstall the same) and their prominent placement amounts to imposition of unfair condition on the device manufacturers and thereby in contravention of the provisions of Section 4(2)(a)(i) of the Act. These obligations are also found to be in the nature of supplementary obligations imposed by Google on OEMs and thus, in contravention of Section 4(2)(d) of the Act.

614.2. Google has perpetuated its dominant position in the online search market resulting in denial of market access for competing search apps in contravention of Section 4(2)(c) of the Act.

614.3. Google has leveraged its dominant position in the app store market for Android OS to protect its position in online general search in contravention of Section 4(2)(e) of the Act.

614.4. Google has leveraged its dominant position in the app store market for Android OS to enter as well as protect its position in non OS specific web browser market through Google Chrome App and thereby contravened the provisions of Section 4(2)(e) of the Act.

614.5. Google has leveraged its dominant position in the app store market for Android OS to enter as well as protect its position in OVHPs market through YouTube and thereby contravened provisions of Section 4(2)(e) of the Act.

...see more

Do you know that the full name of the Founders of Google is Lawrence Edward Page and Sergey Mikhailovich Brin?

Wedding of Akshay Singhi

May 5, 2023 - Jaipur



*The Highest Happiness on Earth is Marriage
- William Lyon Phelps*

The firm is headquartered in Kolkata, with offices in New Delhi and Mumbai and practices in a number of other Indian cities and abroad. It enjoys an international presence through global alliances with leading law firms. The firm was setup as a sole proprietorship concern under the leadership of Managing Partner, Mr. S.K. Singhi and was subsequently converted into a Limited Liability Partnership (LLP) as it exists today.

CONTACT DETAILS

KOLKATA OFFICE:

Raja Chambers, 1st Floor, 4, Kiran Shankar Roy Road,
Kolkata - 700 001
P: +91 33 22318652 | E: kolkata@skspartners.law

DELHI OFFICE:

D-75, Lower Ground Floor, East of Kailash,
New Delhi - 110065
P: +91 11 26425568 | E: delhi@skspartners.law

MUMBAI OFFICE:

134A, Level 13, Mittal Court A Wing, Nariman Point,
Mumbai-400021
P: +91 22 4971 8652 | E: mumbai@skspartners.law

www.skspartners.law

Coming Soon...

Watch this space for the announcement of a path-breaking disruptive initiative of transforming the Indian Legal System...

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