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THE NEWSLETTER

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Triple Talaq Declared as Unconstitutional and Invalid

In the landmark judgment of the Hon'ble Supreme Court of India ("**Court**"), delivered on 22.08.2017, the Court declared the practice of *talaq-e-biddat* or triple talaq, a unilateral divorce under Muslim Law ("**Practice**") as unconstitutional by 3:2 majority decision. In a batch of petitions filed before the Court, the affected Muslim women had challenged the validity of the Practice on the grounds that such Practice violated their fundamental right to equality under Article 14 of the Constitution of India ("**Constitution**"). Hon'ble Justices Kurian Joseph, UU Lalit and RF Nariman delivered the majority judgment while Hon'ble Chief Justice J. Khehar and Hon'ble Justice Abdul Nazeer dissented and delivered the minority judgment. The majority was of the view that: (i) the Practice does not fall within the sanction of Quran and even, if it is assumed that the Practice forms part of the Quran, Hadis or Ijmaa, the same is not '*commanded*'; (ii) the talaq itself is not a recommended action and therefore, the Practice does not fall within the category of sanction ordained by Quran; and (iii) the Practice being manifestly arbitrary, unreasonable and contrary to the rule of law, is in violation of Article 14 of the Constitution. On the contrary, minority was of the view that: (i) the Practice is an established aspect of Sunni personal law and cannot be done away easily; and (ii) the Practice has to be considered integral to the religious denomination as it is part of their personal law and cannot be tinkered with by the Court. After taking into consideration the views of both majority and minority, the Court held that the Practice is in violation of fundamental right contained under Article 14 of the Constitution as the Practice being instant and irrevocable in the sense that the marital tie is broken capriciously and whimsically by a Muslim man and that any attempt of reconciliation between the husband and wife by two arbiters from their families, which is essential to save the marital tie, can never take place. Further, the Court declared Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, as void to the extent that the said section recognizes and enforces the Practice.

In Absence of Provision Under The Customs Act, Refund of Warehousing Charges is not Allowed

In the case of **Principal Commissioner of Customs (Preventive) *v.* Suren International Ltd. [[2017] 84 taxmann.com 192 (Delhi) dated 02.08.2017],** the Hon'ble High Court of Delhi ("**Court**") held that in the absence of any provision in the Customs Act, 1962 ("**Act**") relating to refund of warehousing charges ("**Charges**"), such Charges cannot be refunded. In the present case, the Principal Commissioner of Customs (Preventive) ("**Authority**") seized the goods of the assessee and kept them in the warehouse. Thereafter, the Authority required the assessee

to deposit the Charges for keeping the goods in the warehouse. The assessee paid the Charges under protest. Later on, the assessee made an application before the Authority seeking refund of the Charges, which was rejected by the Authority. Against the order of the Authority, the assessee filed an appeal before the Commissioner of Customs (Appeals) which was also dismissed. Thereafter, the assessee, against the order of the Commissioner of Customs (Appeals), filed an appeal before the Custom Excise and Service Tax Appellate Tribunal ("**CESTAT**"). The CESTAT set aside the order passed by the Commissioner of Customs (Appeals) and held that as (i) the Authority has not passed any order for payment of the Charges by the assessee for the period of seizure of goods; and (ii) the assessee had paid the Charges under protest, therefore, the assessee is entitled for the refund of the Charges as the assessee has no liability to pay the Charges under the Act. The Authority appealed before the Court against the order of CESTAT. The Court while considering the issue in hand, observed that the order of CESTAT does not mention any provision of law which entitles the assessee to seek refund of the Charges. The Court further observed that where refund of a sum paid as warehousing charges is sought by an importer, the authority to whom the application is made will first and foremost, have to examine under what provision of the law such a request is made and whether such a request can in fact be entertained. Thus, the Court held that the assessee shall not be entitled to receive the refund of the Charges because there appears to be no specific provision in the Act or the rules thereunder which contemplates refund of the Charges.

No Disallowance u/s 14A of Income Tax Act Where No Exempt Income is Earned

Section 14A of the Income Tax Act, 1961 ("**Act**") provides that no deduction of expenditure shall be allowed if it is incurred in relation to exempt income. In this regard, the mechanism for determining the amount of expenditure incurred in relation to exempt income is given in Rule 8D of the Income Tax Rules, 1962 ("**Rules**"). In the matter of **PCIT *v.* IL & FS Energy Development Company Ltd. [[2017] 84 taxmann.com 186 (Delhi) dated 16.08.2017]**, the Hon'ble Delhi High Court ("**Court**") analyzed that whether such disallowance of expenditure will be made when investments have not resulted in any exempt income during the assessment year in question, however potential to earn exempt income exists in later assessment years. The Court while deciding the matter has taken into consideration a clarification provided *vide* Circular no. 05/2014 dated 11.02.2014 ("**Circular**") stating that expenditure will be disallowed under Section 14A of the Act even where the investments don't give rise to exempt income. Considering the same, the Court stated that Section 14A of the Act does not particularly clarify the situation under consideration. However, Rule 8D of the Rules is helpful in resolving the issue to some context. The words '*in relation to income which does not form part of the total income under this Act for such previous year*' in Rule 8D(1) of the Rules indicates a correlation between the exempt income earned in the assessment year and the expenditure incurred to earn it. In other words, the expenditure claimed by the assessee has to be in relation to the income earned in 'such previous year'. This implies that if there is no exempt income, question of disallowance of expenditure would not arise. Further, the Circular does not refer to Rule 8D(1) of the Rules. Also, it does not take into account the concept of 'real income' and that Section 5 of the Act does not consider the taxation of 'notional income'. Finally, the Court held that the Circular can't override the expressed provisions of the Act and Rules. Hence, no expenditure will be disallowed, if no exempt income is earned from the investment made during the year in question.

Star India Wins The Battle for Broadcasting of Cricket Matches

In the case of **Union of India *v.* Board of Control for Cricket in India & Ors. [Civil Appeal No(s) 10732-10733 OF 2017]** dated 22.08.2017, the Hon'ble Supreme Court of India ("**Court**") analyzed the scope and application of (i) Section 3 of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2017 ('**Sports Act**') providing for mandatory sharing of certain sports broadcasting signals with Prasar Bharti; and (ii) Section 8 of the Cable Television Networks (Regulation) Act, 1995 ("**Cable Act**") providing for compulsory transmission of certain channels by cable operators. In the instant case, the Board of Control for Cricket in India ("**BCCI**") has granted exclusive rights to telecast cricket matches taking place in the India during the period starting from April, 2012 and ending on March, 2018 to Star India Private Limited ("**Right Holder 1**") under a media rights agreement ("**Agreement**"). The Right Holder 1 in turn engaged ESPN Software Private Limited ("**Right Holder 2**") for further distribution of telecasting rights of cricket matches covered by the Agreement to various other channels. Pursuant to Section 3 of the Sports Act, the Right Holder 1 and the Right Holder 2 have an obligation to share the live feed of cricket matches with Prasar Bharti for re-transmission of the same through both its terrestrial and DTH networks on its various channels including DD1. Further, in accordance to Section 8 of the Cable Act, it is mandatory for cable operators to carry several notified Doordarshan channels including DD1 or other channels operated by and on behalf of the Parliament in their cable service. Accordingly, the cable operators were able get the live feed of cricket matches free of cost without subscribing to any specific sports channel of the Right Holder 1 and Right Holder 2, as the cricket matches were being telecasted by Prasar Bharti on DD1. Due to such arrangement, the Right Holder 1 and the Right Holder 2 were losing revenue, which they would have earned *via* charging subscribers' fee to such cable operators for providing live feed of the cricket matches. Aggrieved by the same, the Right Holder 1 and the Right Holder 2 approached the Court, wherein the Court held that Section 3 of the Sports Act must be interpreted strictly and the live feed received by Prasar Bharati from content rights owners or holders is only for the purpose of re-transmission of the said signals on its own terrestrial & DTH networks and not to other cable operators. The Court further held that for getting live feed of cricket matches, cable operators are required to subscribe to the channels of the Right Holder 1 or the Right Holder 2.

Right to Privacy is a Fundamental Right under the Indian Constitution

In a remarkable judgment of **K S Puttaswamy (Retd.) *v.* Union of India [Writ Petition (Civil) No. 494/2012]** dated 24.08.2017, the constitutional bench of the Hon'ble Supreme Court of India ("**Court**") has held that right to privacy is a fundamental right and forms an integral part of the 'right to life and personal liberty' guaranteed under Article 21 of the Constitution of India ("**Constitution**") and as a part of freedoms guaranteed under Part III of the Constitution. In the instant case, the constitutional validity of the Unique Identification Authority of India ("**UIDAI**") and the Unique Identification Scheme ("**Aadhaar Scheme**") was challenged before the Court on the basis that it violates the right to privacy protected under Article 21 of the Constitution. While analyzing the issue in instant case, the Court ruled that citizens of India enjoy a fundamental and inalienable right to privacy, as it is intrinsic to life and liberty of every individual which encompasses within its purview the right to live with dignity. The Court further opined that the right to live with dignity is meaningless without a right to privacy that is guaranteed, at the minimum security of the body,

security of personal information and security of intimate choices. Therefore, right to privacy falls under the ambit of Article 21 and other fundamental rights guaranteed by Part III of the Constitution. However, the Court was of the view that the right to privacy is not an absolute right and is subject to public interest, national security and other reasonable restrictions imposed by the state. In furtherance, the Court clarified that the right to privacy has multiple facets, and thus, it has to go through a process of case-to-case development, as and when any citizen raises his grievance complaining of infringement of his alleged right. In addition, the Court in the instant case has overruled the previous decisions in **M.P. Sharma and Others *v.* Satish Chandra** and **Kharak Singh v. The State of U.P.** to the extent that they have that there was no fundamental right to privacy. The Court has also called into question the judicial reasoning in the Naz Foundation case that implied that the 'minuscule minority', i.e., lesbian, gay, bisexual, transgender and queer community was not entitled to the right to privacy.

The Designation As A Senior Advocate Cannot Be Claimed As A Matter of Right

The Hon'ble Kerala High Court ("**Court**") in the case of **Advocate P.B. Sahasranaman v. the Kerala High Court** (WA. No.1500 of 2017 decided on 10.08.2017) examined the issue as to whether the designation of a senior advocate could be claimed as a matter of right. In the present case, the appellant was a practicing Advocate, who had about 33 years of standing at the Bar. On 29.08.2014, he gave his consent to be designated as a Senior Advocate. The Court considered the matter of designation of the appellant along with nine other proposals in a full court meeting held on 19.08.2015 and rejected the proposal of the appellant as he failed to get requisite votes ("**Decision**") as required under Rule 6 of the Kerala High Court Rules ("**Rules**") framed by the Court under Section 16(2) of the Advocates Act, 1961 ("**Act**"). The appellant, then approached the Court to review the Decision but the request for reconsideration was rejected by the Court. Then the appellant challenged the Decision by filling a writ petition before the Hon'ble Supreme Court ("**SC**") which was dismissed by SC and the appellant was directed to approach the Court for appropriate relief. Thus, the appellant filed a writ petition before the Court challenging the Decision. In the said writ petition, the appellant contented that: (i) the Rules framed by the Court being "Rules Regarding Designation as Senior Advocates, 2000" were *ultra vires* the powers of the High Court in as much as the Act did not authorize the High Court for framing such Rules; and (ii) Rule 6 of the Rules that the said Rule should be read as two-third of the Judges "present and voting" instead of "present" as contained in the Rules. The Court observed that: (i) if the Rules are to be ultra vires then the appellant would not be able to contest the Decision; (ii) Section 16 states that an advocate will be designated as senior advocate ("**Designation**") if the Supreme Court or High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law, he is deserving of such distinction and thus, the Designation is granted due to the distinction conferred and not something that comes about automatically upon achieving known or predetermined standards. It is a privilege based upon the opinion of the Court considering ability, standing at the Bar or special knowledge or experience in law and therefore, granting the Designation is a subjective decision though based on objective considerations; and (iii) Rule 6 clearly shows that the Court while framing such Rules made conscious departure and even though there were practices of using the expression "present and voting", it was departed from and the expression used was only "present". Therefore, the Court held that the designation as a senior advocate cannot be claimed as a matter of right.

Claiming Monopoly Over a Common Word Which is a God's Name is Not Permitted

The Hon'ble Bombay High Court ("**Court**") in the case of **Freudenberg Gala Household Product Pvt. Ltd. *v.* GEBI Products [Commercial Appeal No. 72 of 2017 dated 01.08.2017]** held that claiming and protecting a label mark is different from claiming monopoly over a common word. The Plaintiff was in the business of manufacturing and marketing of household and industrial cleaning tools such as mops, brooms etc. The Plaintiff adopted and registered the trademark "LAXMI", which was being used as a label for it's brooms. In 2015, the Plaintiff noticed that the Defendant, who was engaged in similar business, was using the trademark "MAHALAXMI" for its own brooms. On account of this, the Plaintiff had approached the Court alleging trademark infringement on the part of the Defendant on the ground that the trademark was deceptively similar in respect of the same goods. The Court held that there could not be any exclusivity or monopoly over the name of a God which is also a very common name and moreover, it reiterated the established principle that common words and phrases cannot be monopolized unless they acquire distinctiveness such that they set apart the goods for which they are used.

SC Directions on Audio Video Recording of Court Proceedings

The Hon'ble Supreme Court of India ("**Court**") while considering the petition in the case of **Pradyuman Bisht *v.* Union of India [Writ Petition(s)(Criminal) No(s). 99/2015]** dated 28.03.2017, gave directions for installation of CCTV cameras inside the courts, and at important locations within the court complexes in at least two districts in every State/Union Territory. In pursuance of the said order, twelve high courts have sent the report to the Court. In furtherance to the said reports, the Learned Additional Solicitor General Mr. Maninder Singh ("**Ld. ASG**") has compiled the relevant information and submitted the same before the Court. The Court after hearing the submissions made by Ld. ASG and after perusing the studies placed on record ordered that the installation of CCTV cameras will be in the interest of justice, and hence *vide* its order dated 14.08.2017 directed that instead of installing the same in two subordinate courts only as per the aforesaid order dated 28.03.2017, CCTV cameras shall be installed in all the subordinate courts along with tribunals, as the tribunals stand on the same footing as far as object of CCTV cameras are concerned. Further, the Court has directed the Union of India, Ministry of Information and Technology in consultation with e-committee of the Court, to lay down technical specifications and other modalities, including price range and source of supply for installation of CCTV cameras in courts. Additionally, the Court has directed that audio recording of the court proceedings may also be done along with the video recording. The retention period of the audio and video recordings may be normally for three (3) months, unless otherwise directed by any high court. Further, the Court directed that as a safeguard of recording, the footage of recording shall not be provided to any one for any purpose other than the purpose for which the high court considers it appropriate and the provisions of the Right to Information Act, 2005 will not be applicable to CCTV camera recordings.

QUICK TAKEAWAYS

- The Central Government notified rules regarding e-way bills *vide* Notification No. 27/2017-Central Tax dated 30.08.2017, which requires online pre-registration of goods before transportation under the new GST regime. Under the e-way mechanism, all goods worth over Rs.50,000/- will have to be pre-registered online before they are moved for sale beyond 10 km.
- The CBDT *vide* Notification No. 77/2017 dated 03.08.2017 has provided that an investment fund set up by a Category-I or Category-II foreign portfolio investor (FPI) registered with the SEBI need not satisfy certain conditions specified in Section 9A of the Income Tax Act, 1944 to qualify as an Eligible Investment Fund.
- A Family Court in Rajasthan's Bhilawara District in the case of reportedly granted a woman's plea for divorce, ruling that absence of a toilet at home amounts to cruelty.
- The Delhi High Court in the case of **Udal & ors *v.* Delhi Urban Shelter Improvement Board and ors** reiterated that right to housing is an essential part of right to life thereby held that the right to life includes entitlement to alternate accommodation.
- CBEC extended time limit for furnishing the return for the month of July, 2017, by a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to under Section 14 of the Integrated Goods and Services Tax Act, 2017 and Rule 64 of the Central Goods and Services Tax Rules, 2017, till 15.09.2017.
- CBEC extended the time limit for furnishing the return by an Input Service Distributor under sub-section (4) of Section 39 of the Central Goods and Services Tax Act, 2017 read with rule 65 of the Central Goods and Services Tax Rules, 2017, for the month of July, 2017 and September, 2017 to 08.09.2017 and 23.09.2017 respectively.
- The Department of Industrial Policy and Promotion (DIPP), the nodal agency for FDI Policy released the consolidated FDI policy, 2017 on 28.08.2017. The norms in the policy state that start-ups can raise up to 100% of funds from Foreign Venture Capital Investors (FVCI) and can issue equity or equity-linked instruments or debt instruments to FVCI against receipt of such foreign remittance.
- In the case of **Sahara India Financial Corporation Ltd. *v.* Commissioner of Income-tax, Delhi [[2017] 84 taxmann.com 225 (Delhi) dated 23.08.2017]**, the High Court of Delhi relying on the judgment of Supreme Court in the case of **S.S. Bola *v.* B.D. Sardana** [**AIR 1997 SC 3127]** held that in fiscal matters, the Legislature has the ability to amend the law retrospectively.
- The central Government has included LLP's also within the ambit of RCM by considering the LLP's as partnership firm or firm by amending the Notification 13/2017- Central Tax (Rate) dated 28.06.2017 issued under Section 9(3) of the CGST Act, 2017, and the corresponding amendment has also been done in the Notification 10/2017-Integrated Tax (Rate), dated the 28.06.2017 issued under Section 5(3) of the IGST Act, 2017.
- The High Court of Karnataka in CRL.R.P. NO.539/2017: **Kasturi *v.* Subhas** and CRL.R.P. NO.195/2017: **Subhas *v.* Kasturi** dated 03.08.2017, held that the omission of the husband in neglecting to maintain the wife and living with another woman amounts 'economic' and 'emotional' abuse and wife is entitled for the protection under the Domestic Violence Act, 2005.
- The High Court of Bombay in the case of **Commissioner of Income Tax (Pune) *v.* Bajaj Allianze Life Insurance Co. Ltd.** in **Appeal No. 170 & 175 of 2015 dated 01.08.2017** has held that, there is no requirement for deduction of tax at source on payment for providing SMS services under Section 194J of the Income Tax Act, 1961, as there is no technical or professional services involved.
- The CCI in the case of **Mohan Meakin Ltd *v.* GAIL (India) Ltd. [[2017] 84 taxmann.com 28 (CCI) dated 11.08.2017]** has held that the Gas Supply Agreement between informant (Mohan Meakin Ltd) and GAIL providing for "take or pay liability" appeared to create entry barriers for alternative suppliers to enter market of supply of natural gas or build up a viable customer base and, therefore, was in contravention of Section 4 of the Competition Act, 2002.

KNOWLEDGE CENTRE

MCQs on FEMA

Q1. Which act has been repealed by the Foreign Exchange Management Act, 1999 ("FEMA")?

a. Foreign Exchange Regulation Act, 1973
b. Reserve Bank of India Act, 1934
c. Foreign Trade (Development and Regulation) Act,1992
d. Foreign Contribution (Regulation) Act, 2010

Q2. What does the Foreign Exchange Management Act, 1999 regulate?

a. Receipt of contribution in India from outside India
b. Facilitate import and export for India
c. Facilitation of foreign trade & payments and to develop & maintain foreign exchange market in India
d. Provide the method of conversion of Indian rupees into foreign currency

Q3. Which kind of transaction is a Capital Account Transaction in FEMA?

a. Purchase of immovable property outside India by a foreign resident
b. Purchase of immovable property in India by a foreign resident
c. Sending of money by Indian resident to parents residing outside India
d. Payment of educational fees outside India

Q4. Which kind of transaction is a Current Account Transaction in FEMA?

a. Purchase of immovable property outside India by a foreign resident
b. Purchase of immovable property in India by a foreign resident
c. Sending of money by Indian resident to parents residing outside India
d. Payment of educational fees outside India

Q5. Who is the regulatory body to govern the for the foreign exchange in India?

a. Ministry of Home Affairs
b. Foreign Investment Promotion Board
c. Reserve Bank of India
d. Central Board of Excise and Customs

Q6. Who will be considered as a person resident outside India?

a. Office of Indian company outside India
b. Office of foreign company in India
c. Indian resident goes outside India for long term employment
d. A company incorporated in India

Q7. Who is not a Person of Indian Origin ("PIO") ?

a. Person having Indian passport
b. Person who's grandparents were Indian citizen as per the Citizenship Act, 1955
c. Person who's parents were Indian citizen as per the Citizenship Act, 1955
d. Spouse of a non-resident of India

Q8. Which bank account can a Non-resident Indian and PIO open in India?

a. Non Resident Ordinary Rupee account
b. Resident Foreign Currency account
c. Resident Foreign Currency (Domestic) account
d. Exchange Earners' Foreign Currency account

Q9. Which bank account can an Indian resident open in India in foreign currency?

a. Non Resident Ordinary Rupee account
b. Foreign Currency Non Resident account
c. Resident Foreign Currency account
d. Non Resident External account

Q10. How much Indian currency an Indian

a. Rs. 15000
b. Rs. 5000
c. Rs. 50000
d. Rs. 25000

Answers: 1-a, 2-c, 3-b, 4-c, 5-c, 6-c, 7-d, 8-a, 9-c, 10-d

EDITORIAL

NON COMPETE: VALIDITY UNDER EMPLOYMENT AGREEMENTS

- By *Adv. Sarvesh Maloo, Associate*

It is by virtue of the non-compete clause that an employee undertakes and gives his acceptance to the condition that during the course of his employment or even after the employee leaves the services/job of the employer, he will not engage himself in any form and nature of employment which is in competition to the employment of the employer. The non-compete clause in an employment agreement is basically of two kinds: (i) pre-termination restraint clause (ii) post-termination restraint clause. Whenever a restriction has been imposed on the employee that during the employment with the employer, he cannot start or merge or in any other way compete with the employer business than that is a pre-termination restraint clause. Whereas, when a covenant puts a restriction upon the employee that even after the termination of employment with the employer, the employee cannot compete with the employer in any manner, that is termed to be a post termination restraint clause.

The non-compete clause finds place under the agreements and contracts throughout the globe. However, irony that exists with the Indian legal system is that this covenant stands in contradiction with Section 27 of the Indian Contract Act, 1872 ("**Act**"), which states that an agreement which imposes any kind of restriction on carrying a lawful profession or trade should be declared void. Section 27 of the Act has been reproduced below for ready reference:

> "***27. Agreement in restraint of trade, void-****Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.*
> ***Exception:*** *One who sells goodwill of a business with a buyer to refrain from carrying on a similar business within specified local limits so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein provided that such limits appear to the court reasonable, regard being had to the nature of business.*"

It is evident from a bare perusal of the aforesaid section that an agreement, which restrains anyone from carrying on a lawful profession, trade or business, is void to that extent. The reasoning behind this section is that agreements of restraint are unfair, as they impose an undue restriction on the personal freedom of a contracting party. However, as an exception, if a party sells his goodwill to another he can agree with the buyer that he will not carry on a similar business within the specified local limits, than such restriction is reasonable in law. Further, in the matter of **Superintendence Co. of India Pvt. Ltd. *v.* Krishan Murgai** [AIR 1980 SC 1717], the Hon'ble Supreme Court of India concluded that the negative covenant restraining the employee during the term of the employment was not in restraint of trade, and that the doctrine of restraint of trade could never apply during the continuance of the employment. The aforesaid judgment in clear terms validates the pre-termination restraint clause. With regards to the post termination restraint clause, the Hon'ble Bombay High Court in **Taprogge Gesellschaft MBH *v.* IAEC India Ltd**. [AIR 1988 Bom 157] has held that a restraint operating after termination of the employment to secure freedom from competition from the employee, who no longer worked in the employment, was void. Further, with regards to the reasonability of restraint on trade under these clauses, the Hon'ble Delhi High Court in a recent judgment of **M/s Stellar Information *v.* Mr Rakesh Kumar & Ors** [234 (2016) DLT 114] while referring to the ***Superintendence case*** (*Supra*) has held that the question whether an agreement is void under Section 27 of the Act must be decided upon the wording of the section. There is nothing mentioned in Section 27 of the Act to suggest that the principle stated therein does not apply when the restraint is for a limited period only or is confined to a particular area.

Such matters of partial restriction have effect only when the facts fall within the exception to the Section 27 of the Act. Therefore, the question whether a restriction is reasonable or not, is relevant only if the case falls within the exception to Section 27 of the Act and a contract, which has for its object a restraint of trade, is *prima facie*, void.

As can be seen from the foregoing analysis, the Indian law is rigid and invalidates all restraints, whether general or partial. In order to conclude the issue in hand it is relevant to refer here the Hon'ble Delhi High Court's judgment in the matter of ***Wipro Limited v. Beckman Coulter International S.A***. [131 (2006) DLT 681] wherein after referring to plethora of judgments the Hon'ble Delhi High Court held that the following points become clear:

1. Negative covenants tied up with positive covenants during the subsistence of a contract of employment would not normally be regarded as being in restraint of trade, business or profession, unless the same are unconscionable or wholly one-sided;
2. Negative covenants between employer and employee contracts pertaining to the period post termination and restricting an employee's right to seek employment and/or to do business in the same field as the employer would be in restraint of trade and, therefore, a stipulation to this effect in the contract would be void. In other words, no employee can be confronted with the situation where he has to either work for the present employer or be forced to idleness;
3. While construing a restrictive or negative covenant and for determining whether such covenant is in restraint of trade, business or profession or not, the courts take a stricter view in employer-employee contracts than in other contracts, such as partnership contracts, collaboration contracts, franchise contracts, agency/distributorship contracts, commercial contracts. The reason being that in the latter kind of contracts, the parties are expected to have dealt with each other on more or less an equal footing, whereas in employer-employee contracts, the norm is that the employer has an advantage over the employee and it is quite often the case that employees have to sign standard form contracts or not be employed at all;
4. The question of reasonableness as also the question of whether the restraint is partial or complete is not required to be considered at all whenever an issue arises as to whether a particular term of a contract is or is not in restraint of trade, business or profession.

Therefore, in light of above discussion it is apparently clear that there is no straight-jacket formula to determine the validity of non-compete clause in an employment agreement. While determining the validity of such non-compete clause, the relevant facts of the matter and justifications given in above paragraph 1 to 4 the have to be taken in consideration.

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