VOLUME 45, MAY 2018

Chiramit Legal LLP
Jaipur Mumbai | Delhi
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THE NEWSLETTER

Update Yourself

NCLAT Stays Penalty on Google, Imposed by CCI

The Hon'ble National Company Law Appellate Tribunal, New Delhi ("**NCLAT**") in an appeal in the matter of **Google LLC v/s Competition Commission of India [COMPETITION APPEAL (AT) NO. 18 OF 2018]** dated 27.04.2018, has stayed the penalty imposed by the Competition Commission of India ("**CCI**") for unfair trade practices under Section 4 of the Competition Act, 2002 ("**Act**"). Google LLC has preferred an appeal before NCLAT under Section 53B(1) of the Act against part of the majority decision passed by CCI in Case Nos. 07 and 30 of 2012. In the instant matter, in total 25 alleged violations of Section 4 of the Act were raised against Google LLC, out of which the majority members of CCI gave clean chit for 22 allegations, however, for remaining 3 allegations the majority members of CCI has observed that Google LLC enjoys dominant position in Online General Web Search and Web Search Advertising Services markets in India & abused its dominant position, and imposed a penalty of Rs. 135.86 Cr. However, the minority dissenting members of CCI has held that as per the language of Section 4(2) of the Act, it is important that the enterprise in the dominant position should abuse its dominant position to: (i) impose discriminatory condition for purchase or sale of goods or services, or (ii) indulges in practice resulting in denial of market access. Further, the minority dissenting members of CCI opined that a dominant player will be guilty of abuse of its dominant position only in the presence of such behaviour which evidences abuse of dominant position and CCI has the responsibility to establish the same, and unfortunately there is no record to establish abuse by Google LLC as per Section 4 of the Act. Before NCLAT, Google LLC contended to stay the order passed by CCI on the ground that CCI has neither establish nor referred to any evidence against Google LLC for unfairly imposing or compelling users to take search services from Google which harms competition in market as per Section 4(2)(a)(i) of the Act. NCLAT while passing the order has relied on the observation made by the minority members of CCI that CCI has failed to establish from the evidence on record that there is an imposition of unfair or discriminatory condition by Google LLC by abusing its dominant position. Finally, NCLAT passed an interim order imposing stay on the order passed by CCI against Google LLC till final hearing subject to deposit of 10% of the penalty amount imposed.

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Pension to legal heir of employee will be allowable as expenditure on ground of commercial expediency

In the matter of **CIT v. India Motor Parts & Accessories Ltd. [2018] 92 taxmann.com 409 (Madras)** dated 04.04.2018, a question has been arisen before Hon'ble Madras High Court ('***Court***') that pension paid to legal heir of former

employee in absence of any pension scheme prevalent in the company, will be allowable as business expenditure under Income Tax Act, 1961. The facts of the case are such that MD of the company died in harness. Assessee company considered the immense contribution of such MD during his life time in developing the business of the company and decided by passing a resolution that pension of Rs. 50,000/- is to be paid per month to wife of MD. While passing resolution, company was aware of the fact that there was no pension scheme framed by the company for its employees. While filling its income tax return, Company has claimed the said expenditure being an expenditure incurred in commercial expediency. During assessment proceedings, AO came to the conclusion that payment given to widow of MD is purely discretionary and not a pension. Accordingly, he rejected the claim of said expenditure. In further appeal, CIT(A) upheld the order of AO. In further appeal, Hon'ble ITAT allowed the claim of expenditure. When the issue came before the Court, it analyzed the previous judicial precedents and came to the conclusion that these payments are principally being made to generate confidence in the mind of employees as he would be taken care of after his retirement and after his demise his legal heirs, would be taken care of. In turn, it would ensure full and active co-operation of the employees in the smooth running of the business and it would promote good relationship between the employer and employees. Even if such payment is not provided for by any scheme or contract of employment or otherwise, a demand for the same could still be raised by way of an industrial dispute by employees governed by labour legislation and such demand may be accepted in the course of an industrial adjudication having regard to the paying capacity of the employer and other relevant circumstances. If a prudent employer, conscious of the new tread or ethos, voluntarily makes such payment in order to avoid such dispute and to buy industrial peace and contentment amongst workers, it could certainly be treated as having been made on the ground of commercial expediency. Accordingly, the Court held that passing resolution for granting monetary benefit to the legal heir of a former employee is sufficient even if the company does not have a pension scheme. Therefore, the Court accepted the claim of pension expenditure as business expenditure and dismissed the appeal filed by the department.

Taxability of Loan Waivers

In case of **Commissioner of Income Tax *v.* Mahindra And Mahindra Ltd. [2018] 93 taxmann.com 32 (SC)** dated 24.04.2018**,** the issue of taxability of Waiver of Loan under the Income Tax Act, 1961 ("**Act**") was under question before the Hon'ble Supreme Court ("**Court**"). In this case, the assessee in order to expand its jeep product line entered into an agreement with Kaiser Jeep Corporation ("**KJC**"") for supplying welding equipments and die models. In order to procure the said equipments, KJC provided loan to the assessee at the rate of 6% p.a. Later on, American Motor Corporation ("**AMC**") took over KJC and waived the principal amount of loan provided to the assessee by KJC. On perusal of the said facts, the AO observed that the waiver of loan represented income in the hands of the assessee and was taxable under the provisions of the Act. On appeal to the CIT(A), appeal of the assessee was dismissed. On further appeals, the Hon'ble ITAT and High Court decided the case in favour of the assessee. On appeal to the Court by the Revenue, the precise issue before the Court was that whether waiver of loan by a creditor is taxable as a perquisite u/s 28 (iv) of the Act or taxable as a remission of liability u/s 41(1) of the Act. The appeal of the Revenue was dismissed by the Court by holding that (i) As Section 28(iv) of the Act applies only in a case when there is any benefit or perquisite arising from business or profession, whether convertible into money or not, the said section does not apply in the present case since the loan proceeds were in the nature of cash or money. ii) Section 41(1) of the Act does not apply since waiver of loan does not amount to cessation of trading liability. Further, it is a *sine qua non* for applicability of Section 41(1) of the Act that there should be an allowance/deduction claimed by

the assessee in any assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. Since, no deduction was claimed earlier by the assessee in respect of the said loan, the amount waived cannot be taxed u/s 41(1) of the Act. Thus, in view of the aforesaid observations, the Court held that waiver of loan for acquiring capital assets cannot be taxed either u/s 28 (iv) or Section 41(1) of the Act.

No seizure of goods and vehicle for not furnishing details in Part-B of E-way bill

The Hon'ble Allahabad High Court (**"Court"**) in the matter of VSL **Alloys (India) Pvt. Ltd. v/s State of U.P. [Writ Tax No. - 637 of 2018]** dated 13.04.2018 held that the vehicle and goods cannot be seized merely for not furnishing details in Part-B of the E-Way Bill required to carried by the transporter under GST law. In the instant case, the petitioner supplied and transported certain goods. The department inspected the vehicle during transportation of goods and observed that in Part-B of the E-way Bill, the details of the transporting vehicle were not entered. Hence, the department contended that the E-way bill was not valid. Accordingly, the goods and vehicle were seized under Section 129 of the UPGST Act by passing order for seizure as there is contravention under the UPGST law. In this regard, the petitioner contended that both the consignor and consignee are registered dealers and IGST @ 18% has been charged by the petitioner with respect to the said goods. This proves that petitioner had no intention to evade the payment of tax. Therefore, seizure of the vehicle and goods due to not furnishing Part-B of E-way bill is nothing but clearly an abuse of process of law. The Court observed that all the documents accompanying the goods reflect the proper details of the goods. Further, the impugned order of seizure not provided reasons for the said seizure. The Court stated that merely not furnishing details in Part-B cannot be a ground for seizure of the goods and vehicle. It was held that the order of seizure is totally illegal and once the petitioner has placed the material and evidence with regard to its claim, it was obligatory on the part of the revenue to consider and pass an appropriate reasoned order. Accordingly, the Court quashed the impugned seizure order and directed the department to release the goods and vehicle.

Tax Department Has No Power To Look Into The Compliance With The Lottery Act

In the case of **Teesta Distributors vs. State of Kerala [[2018] 92 taxmann.com 332 (Kerala) decided on 13.04.2018]**, the Hon'ble High Court of Kerala (**"Court"**) has struck down Rule 56(20A)(iii)(d) of the Kerala GST Rules, 2017 (**"KGST Rules"**) as being ultra vires for lack of legislative competence. The Rule 56(20A)(iii)(d) of the KGST Rules provides that *"Violations of the Lotteries (Regulation) Act, 1998 (**"Lottery Act"**) and the Rules made thereunder, if any, detected by any authority shall be informed to the police for initiating action under section 4 of the Lottery Act."* In the instant case, the petitioner is a distributor of lottery. The Deputy Commissioner of Kerala Goods and Services Tax Department, had issued notice to the petitioner directing the petitioner to prove that the lottery tickets to be held by them is in compliance with the Lottery Act, and with the conditions put forth in the Rule 56(20A) of the KGST Rule. On the same day as the issuance of notice, the police came to the godown of the petitioner and seized several goods including lottery tickets. The petitioner moved the Court and raised the contentions regarding interference in sale of lottery tickets by the Respondent, using police power and also using the authority of officials under the Kerala Goods and Services Tax Act, 2017 (**"KGST Act"**). The petitioner argued that Rule 56 (20A)(iii)(d) of KGST Rules is ultra vires as it is a colorable exercise of delegated legislation to interfere with the rightful conduct of lottery business in the State of Kerala. The Lottery Act is a self-contained act and the Parliament

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LOTTERY

alone is competent to legislate in respect of the offences for violation of the Lottery Act. Opposing the contentions of the petitioner, it was argued by the Respondent that Rule 56 (20A)(iii)(d) is not ultra vires as it has been made for the proper assessment of levy of Goods and Services Tax ("**GST**") and was necessary for fair and complete assessment of GST. After considering the facts and the applicable laws, the Court accepted the contentions of the petitioner and held that the Respondent has no power to constitute one more authority under the KGST Rules to determine the violations of the Lottery Act. Hence, the Court declared that the officials under the KGST Department have no power to enter into satisfaction as to whether the lottery was conducted in compliance with the Lottery Act.

Deduction Allowed In Excess Is A Change Of An Opinion For Section 148 Of The Income Tax Act, 1961

The Hon'ble Supreme Court of India ("**Court**") recently in the case of **Income Tax Officer v. Tech Span India (P.) Ltd. [2018] 92 taxmann.com 361** dated 24.04.2018 held that when the extent of deduction u/s 10A of the Income Tax Act, 1961 ("**IT Act**") was considered in the original assessment proceedings u/s 143(3) of the IT Act, re-opening of the assessment proceedings u/s 147 of the IT Act merely because of the reason that the deduction u/s 10A of the IT Act was allowed in excess, is a mere change of opinion. In the extant case, the assessee was engaged in the business of development and export of computer softwares and was eligible for deduction u/s 10A of the Act. The case of the Assessee was selected for regular assessment and after disallowing certain expenditure, the total income was assessed by the Assessing Officer ("**A.O.**"). Thereafter, notice u/s 148 was issued by the A.O. on the ground that deduction u/s 14A of the Act was allowed in excess to the Assessee. The question that went on before the Hon'ble court was that whether determining extent of deduction allowable u/s 10A of the Act is a mere change of opinion. The Hon'ble Court while dismissing the appeal of the department and deciding the question in the favour of the Assessee also discussed that it is important to first verify that whether the assessment earlier made by the A.O. has either expressly or by necessary implication expressed an opinion on the subject matter or not. The Hon'ble Court held that the word "change of opinion" implies formulation of opinion and then a change thereof. The Hon'ble Court stated that reassessment proceedings u/s 147 of the IT Act cannot be brought down by judicial intervention only by stating there is a change of opinion even in cases where the order of original assessment does not address the aspect which is sought to be examined again in the re-assessment proceedings. However, the Hon'ble Court considering the facts of the extant case and referring to the judgment of **Commissioner of Income Tax, Delhi v. Kelvinator of India Ltd. (2010) 320 ITR 561(SC)** observed and held that the question as to what extent deduction should be allowed u/s 10A of the IT Act was well considered in the original assessment proceedings itself and therefore, initiation of the re-assessment proceedings u/s 147 of the IT Act by issuing a notice u/s 148 of the IT Act was based on nothing but a change of opinion. Accordingly, the appeal of the revenue was dismissed.

Is Major Unmarried Daughter Entitled To Maintenance?

In the case of **Agnes Lily Irudaya vs. Irudaya Kani Arsan (Writ Petition No.2872 of 2017,** dated 06.04.2018), the Hon'ble High Court of Judicature at Bombay ("***HC***") interpreted two important questions of law in respect of Section 125 of Code of Criminal Procedure ("***Cr.P.C.***"). The legal issues involved were (i) whether a major unmarried daughter is entitled for maintenance u/s 125 of Cr.P.C. and (ii) whether a mother is competent to file proceedings claiming maintenance on behalf of her major daughter. On the first point of law, HC observed that although there is no specific provision contained in Section 125 of Cr.P.C. for grant of maintenance to a daughter who is a major;

however in the case of **Noor Saba Khatoon vs. Mohd. Quasim 1997 (5) SCALE 248** the Hon'ble Supreme Court, by making reference to Section 3(1)(b) of Muslim Women (Protection of Rights on Divorce) Act 1986, observed that the obligation of a Muslim father, having sufficient means, to maintain his minor children who are unable to maintain themselves, till they attain majority and **in case of females till they get married,** is absolute. Further, in the case of **Vijaykumar Jagdishrai Chawla vs. Reeta Vijaykumar Chawla reported in III (2011) DMC 687**, the Division Bench of HC, by reference to Section 20 of the Hindu Adoption and Maintenance Act, 1956, held that the father cannot be extricated from his liability to maintain his unmarried daughter who is staying with his wife. He would be bound to maintain his daughter until her marriage. On the second point of law, HC observed that even if the daughter would have filed the proceedings u/s 125 of Cr.P.C., the parameters for deciding her entitlement would have been the same. The daughter is a competent person to file her own application claiming maintenance. However in order to avoid multiplicity of proceeding, no fault can be found in the application preferred by the daughter's mother claiming maintenance with a view to meet expenses of her daughter, if the mother was taking responsibility of the daughter's maintenance and education. Hence, the law in respect maintenance of major daughter in light of Section 125 of Cr.P.C, as held in the given case can be summarized in following points: (i) a major daughter is entitled to claim maintenance from her parents until her marriage (ii) a mother is competent to pursue relief of maintenance for major unmarried daughter staying with her.

Penalty u/s 43A Of The Competition Act: On Account Of Beach Of Civil Obligation

The Hon'ble Supreme Court, in **Competition Commission of India vs. Thomas Cook (India) Ltd**., **[Civil Appeal No.13578 of 2015]** dated 17.04.2018 while adjudicating the matter on non-compliance of Section 6(2) of the Competition Act, 2002 ("**Act**") which mandates serving of advance notice with respect to proposed combinations, observed that the imposition of penalty under Section 43A of the Act neither requires ntentional breach nor the *mens rea* as essentials on account of the fact the proceedings are neither criminal nor quasi-criminal in nature. The Hon'ble Supreme Court further observed that the penalty under the said section is pursuant to breach of civil obligation. In the language of the Hon'ble Court it was observed that "*There was no requirement of mens rea under Section 43A or intentional breach as an essential element for levy of penalty. Section 43A of the Act does not use the expression "the failure has to be willful or mala fide" for the purpose of imposition of penalty. The breach of the provision is punishable and considering the nature of the breach, it is open to impose the penalty.*"In the present case the board of, directors of Thomas Cook India Ltd ("**TCL**") a company engaged in travel and travel related services, Thomas Cook Insurance Services India Limited, ("**TSL**") which is a subsidiary of TCL and is also engaged in travel and travel related services and Sterling Holiday and Resorts India Limited ("**SHRL**")engaged in the business of providing premium hotel services, vacation ownership services etc. on 07.02.2014 approved a scheme of demerger/amalgamation of the aforesaid there companies. On 07.02.2014, a notice under Section 6(2) of the Act was submitted to the CCI, notifying only the 'Demerger' and 'Amalgamation', the transaction as structured between the companies, also involved market purchase of shares and certain other transactions which were disclosed at a later stage. It was held by the Hon'ble Supreme Court that the said transactions are not to be considered as independent and were required to be timely reported as the same are interrelated. In light of the aforesaid, Hon'ble Supreme Court upheld the order passed by the CCI imposing a penalty on Thomas Cook for non-compliance of Section 6 of the Act, which was earlier set aside by the Competition Appellate Tribunal.

Competition Act

Quick Takeaways

- MCA has constituted a Committee on Corporate Social Responsibility ("**Committee**") by an office order dated on 04.04.2018. The Committee will review the functioning of Corporate Social Responsibility enforcement and will recommend a uniform approach for its enforcement.
- Central Board of Indirect Taxes and Customs ("**CBIC**") clarified that a Letter of Undertaking ("**LUT**") shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.
- The Central Board of Direct Taxes ("**CBDT**") *vide* Notification no. G.S.R. 352(E) dated 09.04.2018, has introduced a new column for transgenders in PAN application Form i.e., Form 49A and Form 49AA by amending the Income Tax Rules, 1962
- The Hon'ble Orissa High Court in the case of **Ajay Kumar Sethi v. State of Orissa and** Ors**. CRLMC No. 3031 of 2006 dated 09.04.2018** has observed that merely because the victim did not support the prosecution case during trial in respect of the co-accused persons, the same cannot be a ground to quash the criminal proceeding against the accused.
- In exercise of power conferred by clause (1) of article 123 of the Constitution of India, hon'ble President, promulgated ordinance named the criminal law (Amendment) Ordinance, 2018 to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual offenses Act, 2012 on 22.04.2018.
- The Hon'ble Supreme Court of India in the case of **the sima Begam and others v. the State of Tamil Nadu Criminal Appeal No. 573 of 2018 dated 02.04.2018** observed that High Court can't refuse quashing of proceedings merely on the ground that the trial has already begun and prosecution witness has been examined.
- The Hon'ble Madhya Pradesh High Court in the case of **Kalyan Singh and Others v.** Sanjeev **Singh FA 211/2002 dated 19.04.2018** has observed that a litigant cannot plead that since his lawyer had not given correct legal advice to him, he should not be made to suffer with adverse orders.
- The Rajasthan High Court in the case of **Mahendra Lodha vs. C.S. Rajan and Ors. [D.B. Writ Contempt No. 371 / 2016] dated 27.04.2018** directed the Addl. Police Commissioner-Traffic, Jodhpur to cancel driver's license of those found using their mobile phones while driving.
- The Hon'ble Supreme Court of India in case of **The Commissioner of Income Tax-IV, Ahmedabad vs. M/s. Shree Rama Multi Tech Ltd, C.A. 8336 of 2013 dated 24.04.2018** held that interest accrued on account of deposit of share application money is not a taxable income.
- In the case of **Re: Switching Avo Electro Power Ltd. [2018] 92 taxmann.com 223** it was held that the supply of UPS & Battery if supplied under single contract at combined price is mixed supply.
- SC Refuses To Examine The Constitutional Validity Of Sections 5(ii) And 7 Of Hindu Marriage Act, 1955
- Call To Abstain From Judicial Work Violates Fundamental Right Of An Advocate
- Govt. clarified that no GST is applicable on supply of food directly to students by schools.

Knowledge Centre

FAQs on Real Estate (Regulation and Development) Act, 2016 (“RERA”)

Q. 1. Whether the ‘promoter’ includes public bodies also?
Ans. RERA covers all bodies, either private or public, which develop real estate projects for sale to the general public. Under Section 2(zk) of RERA the term ‘promoter’ includes both private and public real estate promoters. Thus, the public bodies such as, development authorities and the housing boards will also be considered as promoter as per RERA.

Q. 2. Is it permissible to sale parking to allottees under RERA?
Ans. The definition of ‘common areas’ under RERA includes the open parking area, which needs to be conveyed to the association of allottees. Hence, sale or allotment of open parking areas as per RERA is not permissible. Whereas, as per the Rajasthan Real Estate (Regulation and Development) Rules, 2017, covered parking is permitted to sale.

Q. 3. What is the obligation of the promoter towards return of amount and compensation to the allottee?
Ans. Pursuant to Section 18 of RERA, under various situations the allottee would be compensated by the promoter due to delay in completion of the project, etc.

Q. 4. What are the consequences for non-registration of the project under RERA?
Ans. If any promoter fails to register as per RERA, he shall be liable to a penalty which may extend up to 10% of the estimated cost of the real estate project. Further, continuance of such violation, he shall be punishable with imprisonment for a term which may extend up to 3 years or with fine which may extend up to a further 10% of the estimated cost of the real estate project, or with both.

Q. 5. How can one check whether the real estate project is registered or not under RERA?
Ans. One can check the registration status of project on the official website of respective RERA authority. For example, the registration of real estate projects in Rajasthan could be checked on official website of Rajasthan Real Estate Regulatory Authority.

Q. 6. Registration of real estate agents is project specific, location specific or individual specific?
Ans. Real estate agents have to get registered with respective State RERA authority either on ‘individual’ or as ‘other than individual’ basis. Promoters while applying for registration of real estate project will have to indicate the names of registered real estate agents who will be working as agents in the said project.

Q. 7. What is the different between the ‘Occupancy Certificate’ and ‘Completion Certificate’?
Ans. As per RERA, the authority issues Occupancy Certificate in relation to the occupation of the apartment/building, having amenities like water, sanitation, electricity, etc. Whereas, the Completion Certificate issued by the authority to certify that the entire project has been completed as per the sanctioned plan, layout, etc. issued by the authority.

Q. 8. The meaning of undefined terms under RERA should be taken from where?
Ans. Section 2(zr) of RERA provides that where any term is not defined under RERA, and the rules and regulations made there under, it the term should carry the same meaning as given it under the relevant municipal law or under any law for the time being in force.

Q. 9. The real estate projects having area less than 500 sq. mts. but contain more than 8 apartments, area required to be registered?
Ans. It is mandatory to register every real estate project which has land area more than 500 sq.mts. or has more than 8 apartments.

Q. 10. Both categories of projects in urban areas and rural areas covered under RERA?
Ans. As per Section 3(1) of RERA, all projects within ‘planning areas’ will require to be registered with the authority and ‘planning area’ has been defined under Section 2(zh) of RERA. However, Second Proviso to Section 3(1) of RERA gives powers to the authority to order/direct the promoter to register projects beyond the planning area, which has the requisite permission of the local authority.

Editorial

Menace Of Cybersquatting: An Inadequate Legal Framework In India?

-By *Abhinav Mathur , Advocate*

Every computer on the public Internet has a unique numeric address — similar to the uniquenes of a telephone number — which is a string of numbers that is difficult for most people to remember. This string is called the 'IP address', wherein, the term 'IP' stands for 'Internet Protocol'. To make it easier to find a given location on the Internet, the Domain Name System, or DNS, was invented. Domain name facilitates swift mechanism for web user to reach the desired website. It is imperative to note that each individual or organization must have unique domain name or IP number which helps in refining the search process in order to reach the target destination easily without opening undesired websites.

Cybersquatting is a phenomenon only as old as the World Wide Web itself. The system of assigning the domain name is on first-come-first registered basis. It lead to the reserving of many well known trade names, brand names, company names, etc. by individuals/corporations other than the ones with a genuine interest in the domain name, with a view to trafficking/doing business on the said domain name or offering the domain name to the genuine buyer. Obtaining fraudulent registration with intent to sell the domain name to the lawful owner of the name at premium is called 'Cybersquatting'. The Cyber squatters quickly sell the domain names to other non-related entities, thereby enabling passing off and diluting of famous trademark or trade names. In selling the domain names, cyber squatters earn huge some of money as many trademark companies avoids legal battle with their pirated domain users.

In other words, the vista of cybersquatting is not only limited to buying and selling of pirated domain names to other person rather it is much beyond that. The act of cybersquatting may be done with the intention of creating confusion in the minds of web users with the ultimate aim of gaining popularity of their original websites. Some cyber squatters have malicious intentions and may post derogatory messages in the domain names they own defaming the original owners of brand they represent. The concept of cybersquatting can further be understood through an example. Suppose there is a popular brand of beverage "PEPSI" operating its business through its website viz. <www.pepsi.com>. Now, there is one other person with malafide intent registers a domain address naming <www.newpepsi.com.> By creating this website, person try to dilute the goodwill of brand Pepsi and attempt to deceive the consumer base of original Pepsi users. It is immaterial whether the new website deals in the beverage.

At present, the legal framework in India pertaining to cybersquatting is inadequate and insufficient in nature. Since the problem is related to cyberspace, Information Technology Act, 2000, is silent about the aspects of cybersquatting. The cybersquatting is governed by Trademark Act, 1999 on the principles of passing off. Albeit, Trademark Act 1999 somehow controls the

lethal act of cybersquatting, however the concrete remedy is still a distant dream as aforesaid act fails to provide appropriate damages to the aggrieved party. Therefore, there is a need for enactment of specific legislation which exclusively deals in cybersquatting.

Moreover, the judicial approach cannot rest upon old provisions of Trademark Act, 1999, as country like India where Internet users are growing by leaps and bounds, thus making imperative for a separate law to combat the menace of cybersquatting. Many developed countries like United States of America brought the exclusive law namely, Anticybersquatting Consumer Protection Act, to eliminate the jurisdictional glitches in dealing the problem.

In this regard, a specific law dealing with cybersquatting should be introduced in India, which should provide damages to the aggrieved party. Currently, Indian courts are more inclined towards providing injunction or transferring the domain rights to legitimate owner of the website. As litigation takes time, this lead to suffering of party from humiliation and loss of clientale, accordingly, the law should provide damages to legitimate owner.

In India, cybersquatting is a commercial tort. The remedial scheme does not provide any scope for criminal liability. Looking at the harmful effect of cybersquatting like extorting money from legitimate domain owner, alluring customers, lowering the image of original website owners, cybersquatting should be held as criminal offence under the new law.

With the emergence of cybersquatting cases making way through the Indian courts, it is imperative to sought new law which is holistic in nature. Keeping this view into the mind that threat such as anti branding and free riding activities which are comparatively easier in cyberspace, Trademark Act, 1999, without holding any specific provision related to cybersquatting seems unsympathetic to intellectual property rights of legitimate domain name owners.

Chir Amrit Legal LLP
Jaipur | Mumbai | Delhi

WE ARE ON THE WEB

www.chiramritlaw.com

For any queries regarding 'THE NEWSLETTER', please get in touch with us at:
newsletter@chiramritlaw.com

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Jaipur- 6th Floor, 'Unique Destination', Opp. Times of India, Tonk Road, Jaipur - 302 015
Off: +91-141-4044500

Surat– 202, 2nd Floor, SNS Square, Opp. Reliance Market, Vesu Main Road, Vesu, Surat—395007