SINGH & ASSOCIATES
Founder - Manoj K. Singh
ADVOCATES & SOLICITORS

AUGUST 2017. Vol. X, Issue VIII

INDIAN LEGAL IMPETUS®

Singh & Associates
Founder - Manoj K. Singh
Advocates & Solicitors

EDITORIAL

Manoj K. Singh
Founding Partner

It is our pleasure to bring this August issue of Indian Legal Impetus to you all. We have many interesting articles in this issue and sincerely hope that you enjoy reading this one!

First up is an article on the effects of settlement between the parties on the application filed and admitted under Insolvency and Bankruptcy Code, 2016. In this article we analyze the fate of proceedings initiated under I&B Code where the parties to the application pending before the adjudicating authority have wriggled out a settlement amongst themselves. But what if the application has already been admitted by the adjudicating authority! In another article concerning I&B Code we discuss avoidance of specified transactions aim at setting aside transactions which are preferential in nature. Also, another article highlights crucial aspect of I&B Code i.e. various timelines provided in the Code for proceedings initiated under section 7.

For IPR related content, a write-up discusses what and how much should be the fair remuneration for compulsory licensing based on diverse methodology adopted by different countries. Another article throws light on taxing provisions related to IP rights in India in view of applicable provisions of the Income Tax Act and various precedents on this issue. Also, a note on Form 30 vis-à-vis amended Rule 8(2) of the Patent Rules, 2003 has been included in this issue elaborating the procedural aspects of this newly introduced provision enabling an applicant to use Form 30 for submission of the details and or documents, with or without fee at the patent office where no form is so specified for any purpose. Then, an article based on Indian Hotels Company's triumph in securing a trademark registration for the exterior design of the Taj Mahal Palace Hotel, Mumbai, is also incorporated in this issue (*this article discusses primary reason behind securing trademarks for buildings is to protect copycat architecture and protect the unique design of the building and preserve its uniqueness and heritage*). Lastly, for IPR section, there is a brief note on government's initiative for fostering innovation, creativity and intellectual property protection in India, through set up that an Intellectual Property Exchange under the NRDC in order to enable the individuals and/or corporate entities to buy and sell IP rights across various sectors.

Further, the legal position in India relating to Bitcoins and the various aspects attached to the use of crypto-currency has been comprehensively discussed in an article.

Recently, the much talked about decision of the Hon'ble Supreme Court in the matter christened as "right to privacy" saw a son dissenting from his father in relating to their respective judgments as judges of the apex court. This interesting aspect has been analyzed in a write-up under this issue.

Trust you enjoy reading this issue as well. Please feel free to send your valuable inputs / comments at newsletter@singhassociates.in

Thank you.

INDIAN LEGAL IMPETUS®

Volume X, Issue VIII

SINGH & ASSOCIATES
ADVOCATES & SOLICITORS

NEW DELHI (HEAD OFFICE)
E-337, East of Kailash, New Delhi - 110065
Email: newdelhi@singhassociates.in

GURUGRAM
Unit no. 701-704, 7th Floor, ABW Tower
IFFCO Chowk, Gurugram,
Haryana-122001

MUMBAI
48 & 49, 4th Floor, Bajaj Bhavan,
Barrister Rajni Patel Marg, Nariman Point,
Mumbai, Maharashtra - 400021, INDIA
Email: mumbai@singhassociates.in

BANGALORE
N-304, North Block, Manipal Centre47,
Dickenson Road, Bangalore - 560042, INDIA
Email: bangalore@singhassociates.in

Ph : +91-11-46667000
Fax : +91-11-46667001

www.singhassociates.in

SINGH & ASSOCIATES
Founder - Manoj K. Singh
ADVOCATES & SOLICITORS

Managing Editor
Manoj K. Singh

Published by
Singh & Associates
Advocates and Solicitors

Contents

EFFECT OF SETTLEMENT BETWEEN THE PARTIES ON THE APPLICATION FILED AND ADMITTED UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

Daizy Chawla & Harsimran Singh

While two parties litigate out their dispute before a court of law, there is always a possibility that a mutual settlement may be arrived at during the course of proceedings. There may also be a case that the parties were already negotiating for settlement of dispute; however either of the parties moves the court / tribunal as a matter of abundant caution. This could include reasons such as negotiations not appearing to be productive, running out on limitation period, strategy, business call etc.

Here, we analyze the fate of proceedings initiated under Insolvency & Bankruptcy Code 2016 ("I&B Code") where the parties to the application pending before the adjudicating authority have wriggled out a settlement amongst themselves. However, there is a catch 22 situation! What if the application has been admitted by the adjudicating authority!

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (the 'Adjudicating Authority Rules') has an answer to that. Rule 8 (*Withdrawal of application*) of the Adjudicating Authority Rules provides as under:

> *"The Adjudicating Authority may permit withdrawal of the application made under rules 4[1], 6[2] or 7[3], as the case may be, on a request made by the applicant before its admission."*

In the matter titled "*Mother Pride Dairy India Pvt. Ltd. Versus Portrait Advertising & Marketing Pvt. Ltd.*"[4], the Hon'ble National Company Law Tribunal (NCLAT) while noting that the dispute amongst the parties to the proceedings had been settled after admission of the application of the operational creditor, observed as under:

> *"However, it is not in dispute that the settlement has been made after admission of the application under Section 9 of the I&B Code, 2016. In view of Rule 8 of Insolvency & Bankruptcy (Adjudicating Authority) Rules, 2016, it was open to the Operational Creditor to withdraw the application under Section 9 before its admission but once it was admitted, it cannot be withdrawn even by the Operational Creditor, as other creditors are entitled to raise claim pursuant to public announcement under Section 15 read with Section 18 of the I&B Code, 2016."*

In the *Mother Pride* (supra) case, the Hon'ble NCLAT while rejecting the appeal also made a direction that the impugned order passed by the adjudicating authority i.e. National Company Law Tribunal (NCLT) or order passed by the NCLAT will not come in the way of the appellant to satisfy and settle the claim of other creditors. If the appellant satisfies the claim of other creditors, whoever has made claim, in that case Insolvency Resolution Professional (IRP) will bring the matter to the notice of NCLT for closure of the resolution process. Further, NCLT in such case will consider the case in accordance with law, even before completion of Resolution process and may close the matter.

Similarly in *West Bengal Essential Commodities Supply Corporation Ltd. Versus Bank of Maharashtra*[5], the Hon'ble NCLAT rejected the submission regarding ongoing settlement discussions between the appellant and the financial creditors; and accordingly dismissed the appeal on the ground that the learned Adjudicating Authority having noticed that the application preferred by the respondent financial creditor is complete and in absence of any defect, admitted the application under section 9 of the I&B Code.

1 *Application by financial creditor*
2 *Application by operational creditor*
3 *Application by corporate applicant*
4 *Company Appeal (AT) (Insolvency) No. 94 of 2017 – Order dated 13.07.17*
5 *Company Appeal (AT) (Insolvency) No. 90 of 2017 – Order dated 13.07.17*

There is another aspect in a few cases that has been entertained by the Hon'ble NCLAT for deciding whether the stage of admission of the application has been crossed to such an extent that the same cannot be permitted to be withdrawn. In below two cases, the Hon'ble NCLAT had to scrutinize the case on the ground whether the notice was served upon the corporate debtor before admitting the application or not in order to grant liberty to withdraw the application.

The Hon'ble NCLAT in *Agroh Infrastructure Developers Pvt. Ltd. Vs. Narmada Construction (Indore) Pvt. Ltd.*[6] held that since the adjudicating authority did not serve notice upon corporate debtor before admitting the application (which was against the principles of natural justice) and also that the parties had settled the dispute, therefore the operational creditor could withdraw the application even after admission of the application by the Adjudicating Authority.

In Company Appeal (AT) (Insolvency) No. 103 & 108 of 2017 titled *Inox Wind Ltd. Vs. Jeena & Co.*[7], the Hon'ble NCLAT decided upon two appeals against two orders, one for admission of the application of operational creditor under section 9 of the I&B Code and the second one for appointment of IRP. In this case the appellant/ corporate debtor submitted that the impugned order has been passed by the Adjudicating Authority in violation of principle of natural justice i.e. without giving any notice to the corporate debtor prior to admission of the application while placing reliance was placed on the decision of the NCLAT in "*Innoventive Industries Ltd Vs ICICI Bank and Another*"[8]. The appellant also apprised the NCLAT that the appellant is a solvent company and is in a position to pay the dues; moreover, the dues of the respondent/Financial Creditor stood paid as on date along with those of other financial creditor. The Hon'ble NCLAT, while noting the submissions of the appellant (also confirmed by the respondent) held that the order passed by the adjudicating authority for admission of the application was passed in violation of rules of natural justice and against the decision of the NCLAT in *Innoventive* case and therefore set aside both the impugned orders under challenge. In the result, the appointment of IRP, order declaring moratorium, freezing of account and all other order passed by NCLT pursuant to impugned orders and action taken by the IRP including the advertisement published in the newspaper calling for applications were declared illegal. Further, the NCLT was directed to close the proceedings and the appellant was released from the rigour of law. Accordingly, the appellant company was allowed to function independently through its Board of Directors with immediate effect.

In another case, Hon'ble NCLT, Division Bench Chennai in the matter titled "*M/s. Phoneix Global DMCC vs. M/s. A&A Trading International Pvt. Ltd.*"[9] while exercising its inherent powers under Rule 11 of the National Company Law Tribunal Rules, 2016 (the 'NCLT Rules') recalled its order for commencement of corporate insolvency resolution process and declaration of moratorium. In this case pursuant to admission of section 9 application, the corporate debtor duly paid the outstanding amount and settled its dispute with the operational creditor. The Hon'ble NCLT observed that since IRP was not appointed as the operational creditor had not proposed any IRP and a reference to this effect was lying pending with the Insolvency & Bankruptcy Board of India resulting in no public announcement being made in the matter. The Hon'ble Tribunal further observed and noted that since the corporate debtor has confirmed (by way of affidavit) that there are no other dues towards any other creditors and that the corporate debtor has paid dues to the operational creditor, therefore the dispute stood settled between parties to the application. Accordingly, the Hon'ble NCLT was pleased to dismiss the application as withdrawn on three counts (i) non appointment of IRP, (ii) non issuance of public announcement and (iii) settlement of dispute between parties to the application.

6 *Company Appeal (AT)(Ins) No. 57 of 2017 – Order dated 02.06.17*

7 *Company Appeal (A T)(Insolvency) No.1 and 2 of 2017 – Order dated 28.07.17*

8 *In Innoventive case (supra) NCLAT took into consideration the decision of Hon'ble Supreme Court and provisions of I&B Code and rules framed thereunder held "As amended Section 424 of the Companies Act, 2013 is applicable to the proceeding under the MB Code, 2016, it is mandatory for the adjudicating authority to follow the Principles of rules of natural justice while passing an order under I&B Code, 2016. Further, as Section 424 mandates the Tribunal and Appellate Tribunal, to dispose of cases or/appeal before it subject to other provisions of the Companies Act, 2013 or MB Code 2016 such as, Section 420 of the Companies Act, 2013 was applicable and to be followed by the Adjudicating Authority."*

9 *CP/500/(IB)/CB/2017 – Order dated 18.07.17*

Going further, the Hon'ble NCLAT in the matter titled "*Lokhandwala Kataria Construction Private Limited Versus Nisus Finance and Investment Managers LLP*"[10] dismissed the appeal preferred by the appellant / corporate debtor against admission of application under section 7 of the I&B Code; and held that "… *before admission of an application under Section 7, it is open to the Financial Creditor to withdraw the application but once it is admitted, it cannot be withdrawn and is required to follow the procedures laid down under Sections 13, 14, 15, 16 and 17 of I&B Code, 2016. Even the Financial Creditor cannot be allowed to withdraw the application once admitted, and matter cannot be closed till claim of all the creditors are satisfied by the corporate debtor*". The Hon'ble NCLAT also rejected the submission of the appellant for invocation of inherent powers under Rule 11[11] of the National Company Law Appellate Tribunal Rules, 2016 (the 'NCLAT Rules') as the said Rule 11 of the NCLAT Rules has not been adopted for the purpose of I&B Code and only Rules 20 to 26 have been adopted[12] in absence of any specific inherent power and where there is no merit, the question of exercising inherent power did not arise.

Against the above order, the corporate debtor preferred an appeal before the Hon'ble Supreme Court for decision on the question as to whether in view of Rule 8 of the Adjudicating Authority Rules, the NCLAT could utilize the inherent power recognized by Rule 11 of the NCLAT Rules to allow a compromise before it by the parties after admission of the matter. The Hon'ble Apex Court while concurring prima facie with NCLAT's view that the inherent power could not be so utilized; applied its powers under Article 142 of the Constitution of India put a quietus to the matter. The Hon'ble Apex Court disposed of the appeal by holding that since the parties undertook to abide by the consent terms in toto and that the appellant also undertook to pay the sums due on or before the dates mentioned in the consent terms therefore, it was fit case for withdrawal of application before the adjudicating authority.

In conclusion, on case to case basis there may be a very little scope that the application, after admission, may be permitted to be withdrawn. However, in entirety the mandate of Rule 8 of the Adjudicating Authority Rules is to be applied in letter and spirit.

***

10 *Company Appeal (AT) (Insolvency) No. 95 of 2017 – Order dated 13.07.17*

11 *Noting in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal*

12 *Rule 10 of the Adjudicating Authority Rules*

FAIR REMUNERATION FOR COMPULSORY LICENSING

Monika Shailesh

Research and development especially in the pharmaceutical sector is a time consuming, expensive and a resource intensive process. To top it all, said R&D also involves a considerably high risk of failure. On the other hand, innovation in the pharmaceutical is imperative for tackling the ever-growing growing health problems around the world. The under developed and developing nations are often deprived from the expensive lifesaving drugs unless there is a statutory legislation for their protection or the innovators are altruistic. The monopoly enjoyed by the Pharma Companies because of the patent protection laws enable the said Companies to dictate the market price of the certain life saving drug. The framework allows pharmaceutical companies to justify their supra competitive prices based on the need to recuperate innovation expenses. The genius of the patent system is that it harnesses the market system to determine the reward for patent holders. However, this means that access is determined by the ability to pay, and some people may be deprived of access. The 2001 Doha declarations on the Trade Related Intellectual Property rights (TRIPS) agreement and public health declared that WTO members should implement intellectual property laws in a manner that promotes access to medicines for all. The TRIPS Agreement allows WTO Members to use a number of different restrictions and exemptions to patent rights, including cases where governments can authorize persons to use patents, even when the patent owner does not give permission. Although TRIPS agreement enable countries with wide-ranging preference and freedom over what grounds the compulsory license is granted, it also takes care of the interest of the innovator by requiring the member nations to negotiate with the innovator on "Reasonable commercial terms and condition" Many refer this as fair remuneration. The terms "reasonable commercial terms" and "adequate remuneration" are not defined in the TRIPS Agreement. WTO Members are free to determine the appropriate method of implementing the TRIPS Agreement, within their own legal system and practice, and this extends to the standards they apply for "reasonable" royalties, or "adequate" remuneration.

PRACTICE OF THE STATE

Looking at the legislations of different nations and upon study of related judgments by respective Courts, it is evident that there is no single universal practice towards the "fair remuneration" approach for compulsory licensing; these practices change from nation to nation and sometimes within a nation too. Different industries observe different practices over the reasonable commercial terms approach toward Compulsory Licensing. Recently a number of countries have issued mandatory licensing for HIV/AIDS drugs. For example Malaysia set a royalty rate of 4%; Mozambique establishes a 2% royalty; Zambia set a 2.5% royalty; and Indonesia arrived at 0.5% royalty.[13] There have been a number of royalty systems being proposed across the world and have established a useful framework for consideration. The evidence of compensation for private, market – based license arrangements provide an important context for making determinations of royalty and remuneration arrangements in case of compulsory license. It has been observed that there are quite a number of conflicts for cross-industry licensing averages. The pharmaceutical industry has however shown a much of a uniform agreements for royalty ranging from 4% to 5%, it is one of the higher licensing rates among all industries. While it is the duty of the State to make available the lifesaving drugs to all, the State should also ensure that a fair remuneration is given to the inventor or owner of the new drug. Approaches addressing the practical concerns regarding the administration of a system, as well as policy objectives shall be undertaken by the State. It should ensure that the remuneration system established for compulsory licensing shall keep into consideration the two paramount issues, first the remuneration system so established should not be too complex and second being that the royalty system should not present barrier for access to medicines. For countries able and willing to make somewhat more complex determinations of royalties, a range of appropriate factors should be assessed, though not all are required, and not all will apply in any given circumstance. These include but are not limited to:

13 *http://www.who.int/hiv/amds/WHOTCM2005.1_OMS.pdf*

- Therapeutic value of the medicine, including the extent to which it represents an advance over other available products;
- The ability of the public to pay for the medicine;
- Actual, documented expenditures on development of the medicine;
- The extent to which the invention benefited from publicly funded research;
- The need to respond to public health exigencies;
- The importance of the patented invention to the final product;
- Cumulative global revenues and profitability of the invention;
- The need to address anti-competitive practices.

RECOMMENDED APPROACH TO ADEQUATE REMUNERATION[14]

Different nations may prefer dissimilar methodologies to compensation based upon administrative capability, resource constraints, global norms concerning support for R&D, and policy objectives concerning access on one hand and innovation on another. The following approaches are considered reasonable and appropriate methods of setting remuneration.

UNDP GUIDELINES 2001

This method calls for a simple system where the base royalty rate is fixed at 4% of the generic product price. This can also be increased or decreased up to an extent of 2% based on the special factors like a product being particularly innovative or if the government has been paying the R&D expenditures. This remuneration system is simple and easily predictable. The administration of this system is not complex while on the same time it is also flexible to take care of the special conditions.

JAPANESE PATENT OFFICE (JPO) GUIDELINES 1998

Japanese Patent Office in the year 1998 published the guidelines for royalties for the non-voluntary licensing system for government owned patents. JPO guidelines allowed the use the patents for normal royalty of 2% to 4% of the price of the generic product. This can be altered by 2% i.e. increased or decreased by as much 2% giving an absolute range of 0% to 6%. The 1998 JPO guidelines include a "utilization ratio", which is used to allocate royalty payments among patent owners, when the product consists of combination of multiple inventions. This is particularly useful when setting remuneration for fixed-dose combinations or other medicines that combine many different patented inventions. (The utilization ratio can be used independently with any of the other methods of setting royalties.) JPO guidelines are considered more complicated in terms of administration while they are also termed as an elaborate version of 2001 UNDP guidelines.

CANADIAN EXPORT GUIDELINES 2005

The Canadian Government established the system and guidelines for commercial compensation to inventors in case of compulsory licensing. The Canadian government did this in order to export to countries that lack the capacity to manufacture medicines. These guidelines are a sliding scale of 0.02 to 4% of the price of the generic product, based upon the country rank in the UNDP Human Development Index (UNHDI). For most developing countries, the rates are less than 3%, and for most countries in Africa the rate is less than 1%. The Canadian methodology can be understood as advantageous norm for those countries facing severe resource constraints in providing access to medicines for all. The rate is easy to calculate, and the rates are relatively low, thus avoiding large deviations from the marginal costs of medicines. The Canadian method is less useful for middle or high-income countries that have both the capacity to pay more and the need for a remuneration system that will appeal for global norms concerning the sharing of R&D costs.

TIERED ROYALTY METHOD (TRM)

This methodology of royalty for compulsory licensing adopts a whole new approach, here the royalty calculation is not based upon the price of the generic product, but it is dependent on the price of the patented product in the high income country. The base royalty is 4% of the high-income country price, which is then adjusted to account for relative income per capita or, for countries facing a particularly high burden of disease, relative income per person with the disease. In this method the value of the royalty is based on the therapeutic value (the high income price) and capacity to pay. It is a more rational framework that caters to

14 *http://www.who.int/hiv/amds/WHOTCM2005.1_OMS.pdf*

sharing the actual R&D cost that has incurred in developing the new patented idea. It can be viewed as a more sustainable idea for some middle or high income countries that are concerned with sharing the R&D cost. The TRM provides for much higher royalties in middle- and high-income countries with low burdens of disease, and the lowest royalties for countries that have the lowest incomes and the highest of disease burden.

MEDICAL INNOVATION PRIZE FUND (MIPF)

The MIPF technique involves making all drugs available to consumers at generic prices. With the MIPF methodology, compensation is not awarded to pharmaceutical innovators by a royalty or per-unit profit. Rather, they receive a portion of a national budget for rewarding medical innovation among owners of competing products. These payments are allocated according to each product's contribution to improved health outcomes. The MIPF can also be implemented to provide for remuneration for products that more closely address health care priorities, including products that are developed to address global neglected diseases, or medicines that are developed in anticipation of future needs, such as treatments for a disease like Severe Acute Respiratory Syndrome (SARS) that is currently contained, but which presents an important health care risk. The MIPF approach provides the greatest rewards for products that are actually used and that provide incremental health care benefits. The MIPF approach can be implemented in countries of different levels of development, income and health care priorities. It is recommended that the overall level of funding for a MIPF approach increase with national income and the level of development.

FEDERATION OF INDIAN CHAMBERS OF COMMERCE & INDUSTRY (FICCI)'S POSITION ON COMPULSORY LICENSING[15]

GENERAL COMMENTS

- Compulsory Licensing provisions in Indian patent law appear to be liberal and make use of the flexibilities provided in the TRIPS Agreement almost fully.
- The effectiveness of these provisions in the post TRIPS era has not yet been tested properly. There have been no applications for Compulsory Licensing except two requests under Sec 92 A. But those two requested suffered from initial infirmity in that they did not have minimum essential documentation such as notifications by the least developed country concerned.
- There has been no instance of any application on account of either national emergency or non-availability of an essential drug or on account of the price of an essential drug.
- There has been no empirical study to find out the reasons for non-resorting to Compulsory Licensing by Indian pharmaceutical sector. Only a thorough investigation into the whole matter can bring out the shortcomings of the existing provisions on Compulsory Licensing including the procedural aspects. This study should look into the legal, economic and public health aspects of the issue. This study should particularly examine whether public health in India suffered for want of use of CL and whether it would have been better had the Compulsory Licensing provisions been used. It should also bring out the reasons for Indian pharma companies not exploring the Compulsory Licensing route.
- Compulsory Licensing procedure should be simple and easy to follow.
- It is not necessary to have Compulsory Licensing for all diseases. For common sicknesses without any significant health impact and for which multiple medicines are available, it is not necessary to go for Compulsory Licensing.
- It is also ordinarily not necessary to go for Compulsory Licensing for generic medicines, unless there is an acute shortage of such medicines or they are priced very high.
- Compulsory Licensing should be reserved for health emergencies such as epidemics and non-availability of essential drug at a reasonable price.
- Use of Compulsory Licensing should not serve as a disincentive to investment in drug discovery.
- Individual cases will have to be examined on their own merits.
- Guidelines should not make things more constrictive. The objective should be facilitation of

15 *http://ficci.in/SEdocument/20143/Compulsary-Licensing.pdf*

entry of newer and better drugs in the market and their easy availability at reasonable price. Therefore, Compulsory Licensing should not be used routinely, but only in exceptional circumstances.

- In the absence of an application procedure, selection of a company to manufacture a Compulsory Licensing product will lead to many complications. For one a company should be capable and willing to manufacture the product and for another there should not be any discrimination among companies.

FICCI has suggested supplementing the Manual of Patent Practice and Procedures (MPPP) with exhaustive reference and learning material. The learning material can be in the form of booklet that could contain the cases of grant of Compulsory License abroad by countries like USA, Canada, Japan etc. and explain the conditions under which those Compulsory License were granted.

CONCLUSION

It is evident that that the respective government policies and practices plays a vital role for formulating a rational and practical approach towards determining a reasonable structure for adequate royalties and remuneration for the manufacture or sale of a product under compulsory licensing.

- The method of determining the royalties or remuneration for the patent holders whose patent is used under compulsory license arrangement shall be simple and practical. It should not be difficult or unclear to govern. Well-structured royalty guidelines will not only reduce the intricacy but will also provide assistance for adjudicators. It will also serve to increase transparency and predictability.

- The Government guidelines or the laid down rules and regulation for deciding the royalties and remuneration for the patent holder, shall formulate the entire process in such a way that it shall cater to divide the remuneration in a rational and transparent way among patent holders in case a product uses multiple patents. So that in case if a product uses multiple patents the interest of all the stake holders are assured. The scheme for setting fee for compulsory licensing, should forestall and take care of the need to divide fee payments among various patent holders when the product is subject to multiple patents. This could either be based on the value added to the product by each individual patent or in the simplest way equal distribution of fee to all the patent holders.

- The most important aspect of setting up of a system of deciding the fee or the remuneration for the patent holders in case of compulsory licensing is to keep the interest of the users of the product intact. Since the main focus of compulsory licensing is to make available the costly product to the general masses which otherwise do not have access to the critical life support systems like medicines and medical equipment's. The system shall concentrate on striking a balance where the product remains in reach of the poor masses while upholding the patent holder's interest.

***

TAXING PROVISION RELATED TO IP RIGHT IN INDIA: A BRIEF LOOK

Himanshu Sharma

INTRODUCTION

Tax on income is a way to finance the public expenditure. With the passage of time the ways of earning has been changed so the type of tax levied. In the modern business structure the transaction related to intellectual property are taking the center stage and have tendency to be the biggest money spinner in business transactions. Income Tax Act 1961 has added certain provision related to the taxation of the income accrued through Intellectual property rights transaction. The basis of tax is different as per the provision of the Act. The nature of the expenditure is of utmost importance. Once the nature is determined it is easy to identify whether the amount paid is taxable or would be allowed as deduction.

PROVISION IN INCOME TAX ACT 1961

The various provisions for taxation of income related to Intellectual property rights are:

Section 9(1) (VI) of the Income Tax Act 1961 provides for taxation of income by way of royalties. If the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India it is not taxable. Income by way of royalty as a lump sum consideration for the transfer outside India, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property, if such income is payable in pursuance of an agreement made before the 1st day of April, 1976, and the agreement is approved by the Central Government, is not taxable.

Section 32(1) (ii) of the Income Tax Act 1961 explained Depreciation of assets. Depreciations are allowed in the case of know-how, patents, copyrights, trade marks, licenses, franchises or any other business or commercial rights of a similar nature, being intangible assets acquired on or after the 1st day of April 1998. Deductions are available for expenditure (other than capital expenditure) on scientific research.

Section 35A of the Income Tax Act 1961 explained the expenditure on acquisition of patents and copyrights rights. If they are purchased for a lump sum consideration with an enduring benefit, the purchaser is entitled to claim depreciation over a period of time. If it is paid as periodical payments, then it can be claimed as expenditure fully incurred for the purpose of business. Upon any expenditure which was incurred after 28th day of February 1966 but before 1st April 1998, on the acquisition of patent rights or copyrights for the purpose of business, deductions will be allowed for each of the previous years on an amount equal to the appropriate fraction of the amount spread over 14 years. In the case of amalgamations, the amalgamating company sells or otherwise transfers the rights to the amalgamated company (being Indian company) the deductions are not applicable to the amalgamating company.

Section 35AB of the Income Tax Act 1961 explains the deductions on expenditure on know-how. Where the assessee has paid in any previous year, any lump sum consideration for acquiring any know-how for the use of his business, one-sixth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance amount shall be deducted in equal installments for each of the five immediately succeeding previous years. It means that the expenditure will be deductible in six equal installments for six years.

In case of **Scientific Engineering House (P) Ltd. v. CIT**[16] the Hon'ble Supreme Court held that *"The underlined portion, namely, "likely to assist in the manufacture or processing of goods" clearly suggests that know-how covered by this section is which would assist in manufacture or processing of goods. It does not*

16 MANU/SC/0158/1985

include, in our opinion, the know-how acquired by the assessee for setting up the plant and machinery. Therefore, the assessee was justified in capitalizing the same to the plant and machinery and claiming depreciation thereon."

In case of **IFFCO v. Commissioner of Central Excise**[17] the central excise tribunal held that *"know-how" is a parcel of closely-held information relating to industrial technology, sometimes also referred to as trade secret which enables its user to derive commercial benefit from it. "Know-how" as an intellectual property, would mean a proprietary series of practical, non-patented knowledge, derived from the owner's experience and tests, which is secret, substantial, and identified.... "Know-how" must be described in a sufficiently comprehensive manner in order to verify whether it meets the secrecy and substantiality criteria."* In other words, according to the Tribunal, know-how which was out in the public domain and which did not need special knowledge or training for it to be put to use was not intellectual property.

If, where the know-how referred to in sub-section (1) is developed in a laboratory, university or institution referred to in Sub-Section (2B) of Section 32A, one-third of the said lump sum consideration paid in the previous year by the assessee shall be deducted in computing the profits and gains of the business for that year, and the balance amount shall be deducted in equal installments for each of the two immediately succeeding years.

There are certain other deductions for scientific research which are provided under Section 80 GGA under the head **"deduction in respect of certain donation for scientific research or rural development"**

- Any sum paid to for scientific research or to a university, college or institution to be used for scientific research.

Section 80QQA provides deduction for income from copyrights. "In the case of an individual resident in India, being an author, the gross total income of the previous year relevant to the assessment year commencing on 1 April, 1980, or to any one of the nine assessment years next following that assessment year or 1 April, 1992 or to any one of the four assessment years next following that assessment year, any income derived by him in the exercise of his profession on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of any book, or of royalties or copyright fees (whether receivable in lump sum or otherwise) in respect of such book, a deduction to the amount of 25 per cent will be allowed on such amount."

No deduction will be allowed if the book is either in the nature of a dictionary, thesaurus or encyclopedia or is one that has been prescribed or recommended as a text book, or included in the curriculum, by any university, for a degree or post-graduate course of that university. And also no deduction is allowed if the book is written in any language specified in the Eighth Schedule to the Constitution or in any such other language as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the need for promotion of publication of books of the nature referred to in clause (a) in that language and other relevant factors.

Section 80-O provides for income from patents
Where an Indian Company receives any income from foreign state or foreign enterprise in consideration for using any patent, registered Trademark, invention, design etc and the income is received by way of convertible foreign exchange in India or having been received convertible foreign exchange outside India or having been converted into convertible foreign exchange outside India is brought into India, a deduction of 40% of an assessment year beginning on the 1st day of April,2001, a deduction of 30% of an assessment year beginning on the 1st day of April, 2002, a deduction of 20% for an assessment year beginning on the 1st day of April,2003 and 10% for an assessment year beginning on the 1st day of April 2004 should be allowed. But no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and for subsequent years.

Section 80 OQA provides for income from Copyrights. Any income derived by the author in exercise of his profession on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of any of his books or of royalty or copyright fees. A deduction of 25% from that income shall be allowed. No deduction shall be permitted when the book is in the nature of dictionary, thesaurus or encyclopedia or any book that has been added as textbook in the curriculum by any university for a degree of graduate or post graduate course of the

17 (2007)7VST 6 CESTAT)

university. Also no deduction will be allowed for a book which is written in any language specified in the 8th schedule of the constitution or in any other language as the central government by notification in the official gazette specify for the promotional need of the language.

Section 80QQB – Deductions in respect of royalty income, etc., of authors of certain books other than text-books; "*any income derived by [the author] in the exercise of his profession on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of any book, or of royalties or copyright fees (whether receivable in lump sum or otherwise) in respect of such book, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such income of an amount equal to twenty-five per cent thereof.*"

Deduction in respect of Royalty on Patents is provided under Section **80RRB.** "Where in the case of an assessee, being an individual, who is resident in India, a patentee, in receipt of any income by way of royalty in respect of a patent registered on or after the 1st day of April, 2003 under the Patents Act, 1970, and his gross total income of the previous year includes royalty, be allowed a deduction, of an amount equal to the whole of such income or three lakh rupees, whichever is less." In the case of compulsory license is granted in respect of any patent under the Patents Act, 1970, the income by way of royalty for the purpose of allowing deduction under this section shall not exceed the amount of royalty under the terms and conditions of a license settled by the Controller under that Act.

GREAT DEBATE OF REVENUE VS CAPITAL EXPENDITURE OF THE INCOME TAX ACT 1961

The treatment of capital expenditure and revenue expenditure is always a contentious issue. Capital expenditure refers to expenditure on the procurement or enhancement of non-current assets (assets that the business intends to keep for 12 months or longer). Revenue expenditure refers to expenditure that the business incurs either for the purpose of trade or for maintenance of the earning capacity of non-current assets. This question is also of importance while we talk about the expenditure on Intellectual Property Rights. The difference between Revenue and Capital expenditure is critical while establishing tax liability as well. A revenue expense is deductable from a business' chargeable income, while capital expenditure is not. The idea is that it is unfair to tax a business on revenue, when there were expenses incurred in generating that revenue. As a result, taxes are levied against net profits as opposed to gross profits.

The Hon'ble Supreme Court in case of **Alembic Chemicals Ltd. v. Commissioner of Income Tax**[18] held that *'There is also no single definitive criterion which, by itself, is determinative as to whether a particular outlay is capital or revenue. The "once for all" payment test is also inconclusive. What is relevant is the purpose, of the outlay and its intended object and effect, considered in a common sense way having regard to the business realities. In a given case, the test of "enduring benefit" might break down.'* Consequently the decisions of the High Court not to allow tax deduction to the appellants were reversed. The Court concluded that even though the procurement of technical know-how with lump sum payment was considered as capital expenditure, it cannot be treated as an asset of enduring benefit and it can be treated as revenue expenditure.

The Hon'ble Supreme Court in case of **Assam Bengal Cement Companies Ltd. v. CIT**[19] observed that *"If the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business it is properly attributable to capital and is of the nature of capital expenditure. If, on the other hand, it is made not for the purpose of bringing into existence any such asset or advantage but for running the business or working it with a view to produce the profits, it is a revenue expenditure. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or revenue expenditure."*

It is clear from these decisions that the purpose and object of transaction will determine the nature of expenditure.

CONCLUSION

Taxation of income is really necessary in a developing country like India as it is the main source of financing the public expenditure. Intellectual Property rights are of great value and the holder of these rights has to invest a great amount of labour and money in creating

18 (1989) 177 ITR 377 (SC).
19 [1955] 27, ITR 34 SC.

these rights. How to charge the money invested and the value of these rights for taxation purpose is a question, whose answer depends upon the nature of the transaction. Once the nature is determined then it is easy to charge them according to the various provision of the Income tax Act. For charging tax it is necessary to determine whether the transaction is revenue or capital in nature. All the cases will depend upon the facts and circumstances of each case.

***

AVOIDANCE OF SPECIFIED TRANSACTIONS UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

Vaishali Goyal

Whenever a person is declared as insolvent, certain transactions undertaken during the process of insolvency or even before that are avoided to overturn their effects on the finances of the corporate debtor. The provisions are generally called as 'avoidance provisions' and are present in insolvency laws of almost all jurisdictions. They ensure that the value of assets of the company is maximized and all the creditors get their dues in an equitable manner. These provisions aim at setting aside transactions which are preferential in nature. Section 536 and 537 of Companies Act, 1956 provides for avoidance of transfers, certain attachments, executions, etc. after commencement of winding up. Similarly, Sections 328-331 of Companies Act, 2013 provide for avoidance of certain transaction undertaken before or after the commencement of winding up proceedings.

The recent I&B Code, 2016 (*hereinafter*, 'the Code') also includes detailed provisions with respect to avoidance of certain transactions. Clause (j) of Section 25(2) casts a duty on the Resolution Professional to file application for avoidance of transactions, if there is any. The application is to be filed in accordance with Chapter III of Part II of the Code. The application for avoidance may be filed during both Corporate Insolvency Resolution Process and Liquidation Process. Sections 43-51 of the Code deal with avoidance of certain transactions. The transactions are divided into three categories: preferential transactions, undervalued transactions and extortionate credit transaction. For avoiding or setting aside the transactions there is a "relevant period" which is prescribed under various provisions of the code. Transactions undertaken during this "relevant period" only can be avoided.

PREFERENTIAL TRANSACTION

Certain transactions may be avoided under sections 43 of the Code if it appears that they have been preferred over others. The liquidator or the resolution professional has to make an application to the Adjudicating Authority for avoidance of such transactions where he is of the opinion that they have been preferred. In addition to this, sub-section 2 of section 43 of the Code lists down certain transactions which shall be deemed to have been given a preference. It covers transaction where there is a transfer of property or an interest in respect of an existing debt or liability, and such transfer has the effect of putting such creditor in a beneficial position than it would have been in the event of a distribution of assets u/s 53 of the Code. But any transfer which is made in the ordinary course of business or which creates a security interest in the property acquired by the corporate debtor shall not be a preferential transaction.[20]

The relevant time for preferential transaction is two years preceding the insolvency commencement date, if it made to a related party and one year if it is made to a person other than a related party.[21] Related party is someone who is related to the entity, in this case corporate debtor, in one way or the other. Section 5(24) of the Code provides a list of people who are taken as related party for the purposes of this code.

On receiving an application for avoidance of preferential transaction, the Adjudicating Authority may pass following orders:[22]

(a) vesting, in the corporate debtor, of transferred property or the property which represents the application of proceeds of transferred property;

(b) release or discharge of any security interest created by the corporate debtor;

(c) require a person to pay such amount in respect of benefit received by him;

(d) direct any guarantor to be under new or revived debts, whose earlier debts were released preferentially;

(e) direct for subjecting any property under

20 Section 43 of I&B Code, 2016.
21 Section 43(4) of I&B Code, 2016.
22 Section 44 of I&B Code, 2016.

charge for discharge of any financial or operational debt;

(f) direct for providing the extent to which a person, whose property is so transferred or on whom debts have been imposed, can prove his debt in the insolvency process or the liquidation process.

UNDERVALUED TRANSACTION

According to Section 45(2) of the Code an undervalued transaction is one where corporate debtor makes a gift or transfers one or more assets for insignificant consideration, provided that such transaction has not taken place in the ordinary course of business of the corporate debtor. Also, the resolution professional or the liquidator can make an application to the Adjudicating Authority with respect to preferential transactions u/s 43(2) of the Code, if they find them to be undervalued and made during the relevant period. The relevant period for avoiding a transaction at undervalue is given under section 46 of the Code. For transaction made with a related party the relevant period is two years preceding the insolvency commencement date, and for transactions made with any other person this period is one year preceding the insolvency commencement date.

Furthermore, in case of undervalued transactions, right is also given to a creditor, member or partner of a corporate debtor to make an application to Adjudicating Authority, if the liquidator or the resolution professional has not reported the same. After examination of the application if the Adjudicating Authority is satisfied that the liquidator or the resolution professional, despite having sufficient information did not report such transaction, they can pass an order requiring the Board to initiate disciplinary proceedings against them.

The effect of the application is that the transactions are declared void and the effects are reversed. The Adjudicating Authority may pass the orders under section 48 of the Code of following nature:

(a) require any property transferred as part of the transaction, to be vested in the corporate debtor;

(b) release or discharge (in whole or in part) any security interest granted by the corporate debtor;

(c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, or

(d) require the payment of such consideration for the transaction as may be determined by an independent expert.

EXTORTIONATE CREDIT TRANSACTIONS

Extortionate credit transactions are the credit transactions which involve the receipt of financial or operational debt to the corporate debtor. They are termed as extortionate because the terms are either unconscionable, or require the corporate debtor to make exorbitant payments in respect of the credit provided.[23] However, a debt which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.[24]

Whenever, an application for avoidance of credit transactions are made to the Adjudicating Authority, it has to satisfy itself that the terms require exorbitant payments to be made by the corporate debtor. Where it is so satisfied, the Adjudicating Authority can make the following orders with respect to the transactions:

(a) restore the position as it existed prior to such transaction;

(b) set aside the whole or part of the debt created on account of the extortionate credit transaction;

(c) modify the terms of the transaction;

(d) require any person who is, or was, a party to the transaction to repay any amount received by such person; or

(e) require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.

23 Regulation 5 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

24 Explanation to section 50(1) of the Code, 2016.

Thus, the provisions for avoidance of transactions make sure that the transactions, which have no commercial purpose otherwise, and have been undertaken only to benefit some creditors or to hamper the process of insolvency or liquidation, are set aside. The provisions help to correct the situation when a certain transfer of property is made merely to keep the property away from the pool of assets to be divided among the creditors. However, the principles of avoidance are to be exercised cautiously so that valid transactions undertaken in the normal course of business are not reversed.

***

BITCOINS: CAN WE REALLY USE A CRYPTO-CURRENCY?

Martand Nemana

INTRODUCTION

Crypto currency was first introduced in 2007, a sort of an experimental digital platform to transfer money using the digital medium in a format of its own. A decade later, given the multitude of developments which have been brought about by technology in recent times, the significance of crypto currency has grown.

The major reason for the growth in significance of the digital form of currency lies in its nature since it can be used with ease and without any geographical or political boundaries. While the changing times have witnessed a mammoth rise in the manner of use of the crypto-currency, we still need to ascertain the feasibility this currency and what kind of stability it can offer? Various leading national banks of several countries including the Reserve Bank of India (RBI) have raised their concern over similar factors like stability and regulation of the currency. While, no clear guidelines are available on the use of Bitcoins or any other digital or Crypto Currency it is also difficult to ascertain legal implications and accountability of the same.

WHAT IS BITCOIN?

Technically, Bitcoin is a set of computer codes based on an algorithm which was designed by a mysterious person Satoshi Nakamoto (no clear information or whereabouts have been able to ascertain the correctness of this information). The creation, transfer and trade of Bitcoins are based on an open source cryptographic protocol managed in a decentralized manner.

The network of bitcoin shares a public account book called the "block chain" which contains information about the transactions which are carried out thereby allowing other users to verify the authenticity of the same. Every transaction is trailed using a digital cryptic signature which contains all the crucial information about the person initiating the sequence of trade. The level of security is essential to people and the process is completed using a specifically designed computer hardware, the process known as "mining".

INTERNATIONAL USE OF BITCOIN

Bitcoins are traded in several countries even where their exchange is banned. However, some countries where bitcoin usage is allowed are:

1. China
2. Japan
3. United States
4. Poland

In India, although notices have been issued by the RBI regarding the trade of Bitcoins, it is noteworthy to see that people in India are using the currency. Though India doesn't have a bitcoin exchange of its own but people have around 25000 wallets which they use for trading Bitcoins online.

LEGAL POSITION IN INDIA

At present, there are no regulations governing virtual currencies like Bitcoins in India. RBI, on December 24 2013, issued a press release on virtual currencies like Bitcoins, litecoins, bbqcoins, dogecoins - stating that creation, trade and usage of virtual currencies as a medium for payment is not authorized by any central bank or monetary authority.

Further, the RBI has started to monitor the use and trade of virtual currency traders and users as they pose various security risks such as hacking, malware attack etc.

In India, Bitcoins are neither legalized nor are they authorized to be used via official channels.

THREATS

As per the information available, the use of such currencies poses the following threats and risks:

1. Unregulated currencies in any format shall be taken down for irrationally affecting the trade sector.

2. Crypto-currencies are viable threats from insurgence which could directly/indirectly inflate or deflate the value of currency leading to severe impact over the economy of any nation.
3. The lack of geographical boundaries make the crypto currency a safe haven for money launders as no trails of the transaction can be found after it has been completed.

SPAN OF USE

As the Bitcoins are not authorized for use, as a source of currency, there are certain provisions regarding the legalization of their use. Under the Foreign Exchange Management Act, 1999, currency is defined as "*all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or* such other similar instruments, *as may be notified by the Reserve Bank*." According to the definition, RBI has the power to include Bitcoins within the definition of currency.

Currency other than "Indian currency" is termed as "foreign currency", and regulated by foreign exchange laws. Most likely Bitcoins can be governed by foreign exchange laws. Further, Bitcoins can also be included within the definition of "security" which states that "such other instruments as may be declared by the Central Government to be securities".

Further, the Indian Copyright Act, 1957, defines the term "computer programme" as "*a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result*".

Having gone through the various definitions, it can be concluded that there is enough scope for legalizing Bitcoins. We need to watch out for the approach the Indian government takes.

CONCLUSION

As Bitcoins continue to gain importance and recognition; certain issues need to be answered:

1. Is bitcoin an investment?
2. Can it become a viable currency?
3. Can other "crypto currencies" compete with or supplant bitcoin?

As the Bitcoins involve a high level of ambiguity, the usage cannot be deemed to be fool proof.

Although the Bitcoins are available for use in the digital sector, the peer to peer payment mechanism seems way too volatile to incorporate the essence needed for the existence of the currency.

India will need to upgrade the technical infrastructure in order to commence the use of such currencies in the country.

***

INSOLVENCY AND BANKRUPTCY CODE, 2016: A TIME-PERIOD PUZZLE

Himanshu Chawla

The Insolvency and Bankruptcy Code, 2016 aims to consolidate and amend the laws relating to insolvency resolution of companies and limited liability entities, partnerships and individuals, which are contained in various enactments, into a single legislation. The focus of this legislation is to provide e resurrection and resolution for maximization of value of debtor's assets. The Code has put forth an overarching framework to aid sick companies to either wind up their business or engineer a revival plan, and for investors to exit. Notably, the Code has also empowered the operational creditors (workmen, suppliers etc.) to initiate the insolvency resolution process if default occurs.

Another important feature of this Code is the time bound resolution process, which tries to make sure that the process of resolution and liquidation does not suffer the trauma of never ending litigations. However, the time-line provided does not always give a coherent mechanism and therefore, calls for following considerations.

Initiation of Corporate Insolvency Resolution Process:
Section 7 of the Code enshrines the initiation of the Corporate Insolvency Resolution Process. Therefore, for greater understanding, it is imperative to produce the relevant part of the provision here.

"7. *Inter alia,*

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is sat isfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor,

within seven days of admission or rejection of such application, as the case may be."

Under section 7(4), the Adjudicatory Authority shall ascertain the existence of a default within 14 days of the receipt of the application. Proviso of section 7(5) provides that if the submitted application has any defect, such defect can be rectified within 7 days of receipt of such notice of rectification from the Adjudicating Authority. The difficulty lies in ascertaining whether the 14-days period will be inclusive of the 7-days period of rectification or not?

Moreover, in *Bank of India v. Tirupati Infraprojects Pvt. Ltd*[25], the NCLT Principal Bench Delhi has stated that the interim order[26] giving stipulated period of 7 days to rectify the defect cannot be regarded as notice within the meaning of proviso to Section 7(5) of the Code. In consequence, extending the total period by 7 days, that excludes 14 days period of admission or rejection of the application and 7-days notice period for rectification of defects.

Further in *J.K Jute Mills Company Limited v. Surendra Trading Company Case*[27], the NCLAT has ruled,
"50. Inter alia,

The time is the essence of the Code and all the stakeholders, including the Adjudicating Authority are required to perform its job within the time prescribed under the Code except in exceptional circumstances if the Adjudicating Authority for one or other good reason fails to do so. In the case in hand we find that the Adjudicating Authority has unnecessarily adjourned the case from time to time which is against the essence of the Code.

51. Further, we find that the application was defective, and for the said reason the application was not admitted within the specified time. Even if it is presumed that 7 additional days' time was to be granted to the operational creditor, the defects having pointed out on 16th February 2017 and having not taken care within time, we hold that the petition under section 9 filed by respondent/operational creditor being incomplete was fit to be rejected."

The above paragraphs of the case clearly lay down that the object behind the time period prescribed under the Code is to prevent the delay in hearing the disposal of the cases and 7 days' period for rectification of any defect is mandatory and on failure, such applications are fit to be rejected. Whether the same reasoning of the above-mentioned case can be considered under section 7(4) and can it be said that if the Adjudicatory Authority does not ascertain the existence of a default within 14 days, then such application is fit to be rejected. Further, if in case the Adjudicatory Authority decides to accept the application, then what will be the date of admission of application, the original date or the date on which the rectified application is filed? By reason, the date of admission should be the date on which the rectified application is filed as the Adjudicatory Authority will pass the order of initiating the resolution process only when application under section 7 is rectified.

PUBLIC ANNOUNCEMENT:

Under section 12 of the Code, the time-limit for the completion of the Corporate Insolvency Resolution Process (CIRP) is given to be 180 days with the extension of 90 days, if instructed through a resolution passed at a meeting of the committee of creditors by a vote of 75% of the voting shares. Under section 13, the Adjudicatory Authority, through order, cause a public announcement of the initiation of CIRP immediately[28] after appointment of Interim Resolution Professional. Section 15 of the Code, gives the details of the public announcement including the closing date of CIRP, i.e. 180 days from the admission of the application.

Now, the question arises that if the Resolution Professional (RP) takes an extension period of 90 days after the public announcement then the closing date of the CIRP will also be shifted beyond 180 days. In such scenario, the question arises whether the RP has to make another public announcement of such extension or the process continues without the announcement.

APPEAL:

Under Section 61 of the Code, any person aggrieved by the order of the Adjudicatory Authority can file an appeal to NCLAT. Sub-section (2) says, *"Every appeal shall be filed within thirty days before the NCLAT"*. However, the section does not mention about the initiation of 30 days. Whether the period of 30-days starts from passing of order by the Adjudicatory Authority or starts from the day of communication of the order to the concerned parties, which has to be done under section 7(7) by the Adjudicatory Authority. If the day of communication of the order is considered as date of initiation of 30 days appeal period, then the appeal period gets extended by 7 days.

25 Order dated 30.05.2017 in C.P No. (IB)-104(PB)/2017.
26 Order dated 03.07.2017 in C.P No. (IB)-104(PB)/2017.
27 Company Appeals (AT) (Ins) No. 9 of 2017
28 Immediately meaning not later than 3 days from the date of appointment of Interim Resolution Professional. (Regulation 6 of the IRPCP, 2016)

CONCLUSION:

The Insolvency and Bankruptcy Code, 2016 clearly highlights the intention of the legislature for speedy disposal for the cases. But looking at the above discussion, the intention is not clearly outlined in the Act. As the Code is still at a nascent stage, it does need the help of Adjudicatory Authority to unfold the answers to above referred questions on time-line.

***

CHANDRACHUD VERSUS CHANDRACHUD

Tanuka De

"If India ever finds its way back to the freedom and democracy that were proud hallmarks of its first eighteen years as an independent nation, someone will surely erect a monument to Justice H.R. Khanna of the Supreme Court"

- **Justice D.Y.Chandrachud**

LIKE FATHER LIKE SON – NOT SO MUCH

Being the son of a stalwart of the legal fraternity, it was expected that following the footstep of his father he would do great and achieve grandeur in the field. But who could fathom that Justice Dr. Dhananjaya Y. Chandrachud son of the 16th Chief Justice of India, late Justice Yeshwant Vishnu Chandrachud would come forth with discordant views against the infamous judgment of his father which marks the darkest hours of Indian Judiciary in ***ADM Jabalpur v Shivakant Shukla***[29] (1976), the **Habeas Corpus Case**. To quote Justice Dr. D.Y. Chandrachud,

> *"The judgments rendered by all the four judges constituting the majority in ADM Jabalpur are seriously flawed. Life and personal liberty are inalienable to human existence. They constitute rights under natural law"*

Justice D.Y.Chandrachud while penning the judgment behalf of the nine-judge bench of the Supreme Court in *Justice K S Puttaswamy (Retd.), And Anr. V Union Of India And Ors.* held that privacy is an inviolable natural right being an inherent attribute of life, personal liberty, freedom and dignity.

WHAT DOES THE JUDGMENT SAY?

The judgment discusses the right to privacy vis-à-vis the fundamental right to life under Article 21 of the Constitution of India (hereinafter referred to as the "**Constitution**"). Right to life enshrined under Part III of the Constitution means life with dignity, and personal liberty is an intrinsic part of dignified living. The judgment also puts to rest the question whether privacy is a right guaranteed under the Constitution or it can be traced back to times before the enactment of the Constitution

> *"Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian constitution…*
>
> *Life and personal liberty are not creations of the constitution. These rights are recognised by the constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within."*

It further went on to discuss various literatures on the much debated topic of privacy only to conclude that

> *"Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being."*

OLD IS NOT ALWAYS GOLD

This landmark judgment has overruled the judgment of two Supreme Court decisions which held that right to privacy is not expressly protected or preserved by the Constitution, viz;

a. *M.P. Sharma v Satish Chandra, District Magistrate, Delhi*[30] (1954), rendered by a bench of eight judges and,

29 MANU/SC/0062/1976

30 MANU/SC/0018/1954

b. *Kharak Singh v State of Uttar Pradesh*[31] (1962), rendered by a bench of six judges.

Further if we read the well constructed judgment of Justice Chandrachud (Jr), it opens with a division to facilitate the analysis of the judgment, where in not only has he overruled the aforementioned judgment, he went a step further to express his "Discordant Notes" for two other judgment

a. *Jabalpur v Shivakant Shukla*[32] (1976), rendered by a constitutional bench of five judges and,

b. *Suresh Kumar Koushal v. Naz Foundation*[33] (2014), rendered by a bench of two judges

FEW HIGHLIGHTS OF THE JUDGMENT

A. Privacy - "Not an elitist construct"

> *"The refrain that the poor need no civil and political rights and are concerned only with economic well-being has been utilised though history to wreak the most egregious violations of human rights. Above all, it must be realised that it is the right to question, the right to scrutinise and the right to dissent which enables an informed citizenry to scrutinise the actions of government. Those who are governed are entitled to question those who govern, about the discharge of their constitutional duties including in the provision of socio-economic welfare benefits. The theory that civil and political rights are subservient to socio-economic rights has been urged in the past and has been categorically rejected in the course of constitutional adjudication by this court."*

B. Privacy - "Not privilege for the few"

> "[I]t is privacy which is a powerful guarantee if the state were to introduce compulsory drug trials of non-consenting men or women. The sanctity of marriage, the liberty of procreation, the choice of a family life and the dignity of being are matters which concern every individual irrespective of social strata or economic well being. The pursuit of happiness is founded upon autonomy and dignity. Both are essential attributes of privacy which makes no distinction between the birth marks of individuals."

C. "The Idea of Justice"

The concept enshrined in the work of Nobel laureate Prof. Amartya Sen viz, *The Idea of Justice* has been discussed in the judgment and privacy has been trialed agiant other tenets like political liberties and democratic rights. In Justice Chandrachud's words,

> *"In the Indian context, Sen points out that the Bengal famine of 1943 "was made viable not only by the lack of democracy in colonial India but also by severe restrictions on reporting and criticism imposed on the Indian press, and the voluntary practice of 'silence' on the famine that the British-owned media chose to follow". Political liberties and democratic rights are hence regarded as 'constituent components' of development."*

D. Slam Dunk for Section 377

This judgment has a wider implication than can be perceived at a single glance. The Supreme Court in appeal against the order dated 2.7.2009 by which the Division Bench of the Delhi High Court allowed the writ petition filed by NAZ Foundation had overturned the decision, thereby recriminalizing Section 377 of the Indian Penal Code (hereinafter referred to as "**IPC**") in *Suresh Kumar Koushal v. Naz Foundation*[34]. The discordant view taken by Justice Chandrachud (Jr) against the said judgment could have a large implication on the crusade against the criminalization of homosexuality. The judgment out rightly declares sexual orientation as an aspect of dignity. It is pertinent to mention herein that Right to Life under Article 21 of the Constitution is not exclusive of dignity as it is read as "Right to life with Personal Dignity". So the logical interpretation would indicate that freedom to choose ones sexual orientation would be within the ambit of right to life itself. Reference has been made to the paragraph of the judgment by Justice Chandrachud (Jr) which deals with this aspect.

> *"The test of popular acceptance does not furnish a valid basis to disregard rights which are conferred with the sanctity of constitutional protec-*

31 MANU/SC/0085/1962
32 Supra 1
33 MANU/SC/1278/2013
34 Supra 5

tion. Discrete and insular minorities face grave dangers of discrimination for the simple reason that their views, beliefs or way of life does not accord with the 'mainstream'. Yet in a democratic constitution founded on the rule of law, their rights are as sacred as those conferred on other citizens to protect their freedoms and liberties. Sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the constitution… [LGBT] rights are not so-called but are real rights founded on sound constitutional doctrine. They inhere in the right to life. They dwell in privacy and dignity. They constitute the essence of liberty and freedom. Sexual orientation is an essential component of identity. Equal protection demands protection of the identity of every individual without discrimination."

E. The Unsung Hero

In this very historic judgment, the son dissents with the view of his father supporting the majority opinion of the bench in *ADM Jabalpur v Shivakant Shukla*[35] by virtue of which personal liberty could be suspended without any remedy during the declaration of emergency. In the case of *ADM Jabalpur v Shivakant Shukla,* only justice H.R. Khanna gave a dissenting view to the majority judgment recognizing personal liberty as a part of right to life. *[Also, right after the case despite his seniority Justice H.R Khanna was superseded by Justice P.N. Bhagwati to become the Chief Justice of India, who happened to have given a concurring view in the case along with the then Chief Justice A. N. Ray.]*

Nine years after the demise of the unsung hero, Justice H.R.Khanna, Justice D.Y.Chandrachud upheld his dissenting view in the Habeas Corpus case and held that the voice of the majority view including his father's was erred in nature.

"Justice Khanna was clearly right in holding that the recognition of the right to life and personal liberty under the constitution does not denude the existence of that right, apart from it nor can there be a fatuous assumption that in adopting the constitution, the people of India surrendered the most precious aspect of the human persona, namely, life, liberty and freedom to the state on whose mercy these rights would depend…

The view taken by Justice Khanna must be accepted, and accepted in reverence for the strength of its thoughts and the courage of its convictions."

***

35 *Supra 1 and 4*

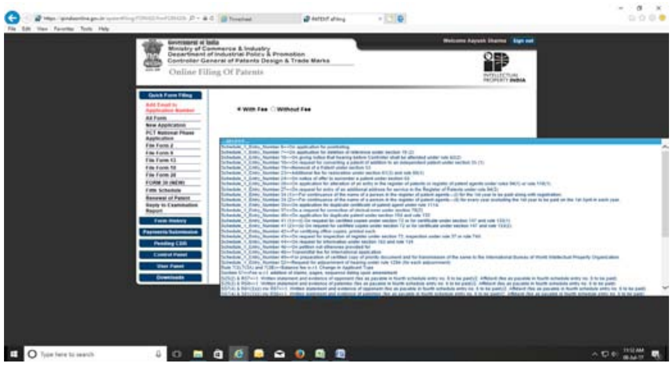
INTRODUCTION TO FORM 30

Aayush Sharma

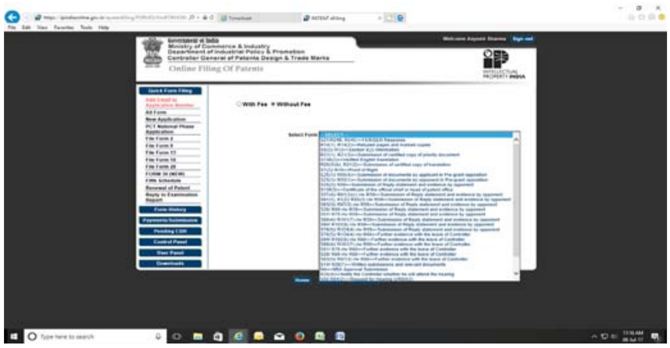
Amended Rule 8(2) of the Patent Rules, 2003 indicate Form 30 as specified in the second schedule where no form is so specified for any purpose, the Applicant may use Form 30 for submission of the details and or documents, with or without fee at the patent office. Earlier no such provisions were mentioned in the Patents Act, 1970, where an applicant has the facility to transmit the details or the documents in a specified form. Where no provisions are mentioned in the Act, the Applicant needs to furnish the documents/ details following with the letter at the Patent office. These letters are sometimes disregarded by the Patent office, misplaced and or in appropriate in mentioning the purpose. Instances have been noticed whereby Form 30 was used to make requests that were otherwise prohibited under the law. Form 30 is also being used for purposes for which forms/entries are already available in the comprehensive e-filing. Such actions may be held to be in contravention of law. It also causes mismanagement of documents within the Patent Office as the documents do not reach the corresponding division/section. In view thereof, the format of Form 30 has been re-structured to accommodate fee bearing and non-fee bearing documents as per the respective sections/rules/entry number of fee schedules under The Patents Rules, 2003. Due to the unavailability of the prescribed form, the Applicant needs to do so. Now, in the current scenario, the Form 30 has been introduced for submission of extra page fee at the patent office. Like this there are numerous actions which can be completed on Form 30. It is also pertinent to mention that there will be no official fee for submission of Form 30 at the patent office.

In the e-filing module, the actions as specified to be filed under Form 30 are highlighted below:

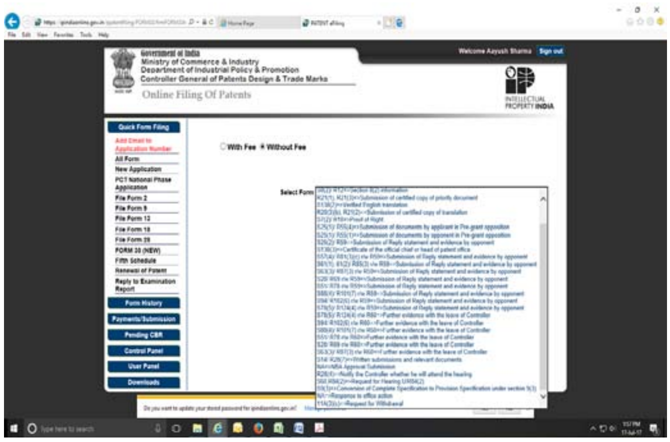
PIC 1: WITH FEE



PIC 2A: WITHOUT FEE



PIC 2B: WITHOUT FEE

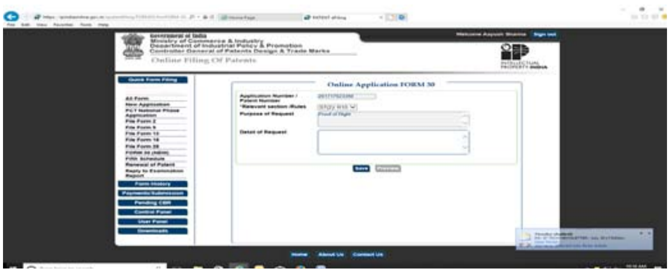


There are put confirm fig. 58 provisions (approx) which are listed under Form 30 for submission at the Patent office. In this article we will discuss regarding the provisions which are common and frequently been used by the applicant.

- FER/ SER response: Earlier there was no provision to submit the response in a proper format or with any form. Due to such practice, sometime the Patent office unable to retrieve or identify that response has been submitted or not by the Applicant, resulting in abandonment of application, due to non submission of the response within prescribed timeline. Now, it will be easy for an applicant to submit the response along with Form 30.
- Submission of certified copy of priority documents;
- Verified english translation along with certified translation verification certificate;
- Proof of right;
- Written submission and relevant document: Upon conclusion of hearing at the patent office, now written submission could be submitted in Form 30;
- Section 8(2) information-Now the Applicant can furnish the search or examination reports, allowed claims, notification of allowance for all the corresponding Application as required under section 8(2) of the Act at the Patent Office.
- Balance fee with respect to change in Application type either from individual to company or vice versa.
- Submission of petition under rule 137 and rule 138;
- Submission of extra page or claim fee;

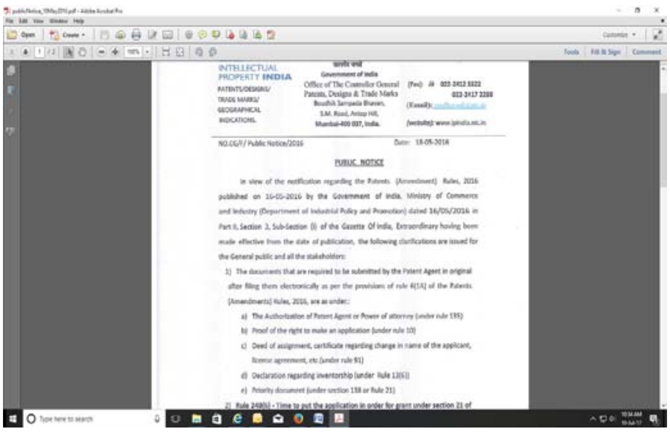
All above highlighted 58 provisions could be submitted via f30 at the patent office. The process for submission of f30 follows with the entry of 12 digit applications number in which documents will be uploaded. After the entry of application number, the page as shown in pic 3 wills pop-up.

PIC 3:



PIC 4:

While submitting the Form 30, the applicant shall fill the '*detail of request*' and save the document. Further, the necessary documents for example scan copy of the original proof of right shall be uploaded and finally submit the Form 30. Subsequent to this, the original of the executed proof of right enclosed with the Form 30 official filing receipt will be submitted at the patent office within 15 day as laid in sub rule 1(A) of rule 6 of Patents (Amendments) Rules, 2016. The copy of notice and listed documents whose originals are required to be submit at the patent office are mentioned in below figure:



The demand of a provision like Form 30 was long back and various efforts has been laid by the stake holders during meetings with patent office. Now, it will be convenient for the applicant as well as to the patent office to access and record the document submitted along with Form 30. In the view of the foregoing, it can be concluded that the submission of the document (*where no provisions has been mentioned in the act*) is eased out. Now it will be much easier and takes lesser time as compared with the prior system.

***

TRADEMARK PROTECTION FOR BUILDINGS: TAJ MAHAL PALACE, NOW A REGISTERED TRADEMARK

Shrabani Rout

INTRODUCTION

On May 19, 2017, the Indian Hotels Company (IHCL) created history by securing a trademark registration for the exterior design of the Taj Mahal Palace Hotel. While securing trademarks for buildings are a common phenomenon around the world, the iconic landmark of Mumbai is the first of its kind in India to get a registered trademark under its hood. Other famous landmarks that are registered as trademarks are the Empire State Building in New York, the Eiffel Tower in Paris, Sydney Opera House in Australia to name a few.

The primary reason behind securing trademarks for buildings is to protect copycat architecture and protect the unique design of the building and preserve its uniqueness and heritage. Buildings satisfy the dual test of graphical representation, along with the capability of functioning as an indication of source and are hence eligible for trademark protection. By registering buildings as trademarks, the proprietors also attempt to control and limit the depictions of those landmarks in artistic works, pictorial representations, unfair commercial use etc.

Another reason for securing a trademark for the iconic structure can be that the IHCL wanted to protect the structure from being used in productions that could tarnish and dilute the image. For example, if an alcohol manufacturer would put the design of the Taj Mahal Palace Hotel on its whisky bottles, it could tarnish the reputation of the building and dilute its trademark status.

Now that the building is successfully registered as a trademark, the IHCL has the following powers in relation to the building:

1. Nobody can use the trademarked image for commercial purposes without a license from the company. Selling any object with the trademarked image on it will be considered as an infringement action.

2. Any sort of commercial use will be with the permission and may include the payment of a licensing fee to the company.

The IHCL had sought registration for the iconic building under Class 43 for the following services namely, “services providing food and drink; temporary accommodation”.

A pertinent question that can be raised here is why the IHCL chose to secure a trademark registration rather than a design or copyright registration. Copyright registration only protects the aesthetic value of the building; design registration only helps in increase of commercial revenue generation. A trademark registration on the other hand however, not only increases the commercial revenue generation through licensing, it also signifies that a particular landmark denotes the source or acts as a source indicator while also protecting the distinctiveness of the landmark. Also, the term of protection of a trademark is much longer than that of a copyright or design protection.

REQUISITES TO BE FULFILLED BY A LANDMARK BUILDING TO BE ELIGIBLE FOR REGISTRATION

1. It must be used on or in connection with the promotion and sale of goods and services, or displayed on materials used in offering the goods or services for sale, rather than merely as a landmark per se.

2. The public must recognize such building or landmark as indicating and designating the source of particular goods or services.

Thus, trademark protection “cannot be enforced in the absence of evidence that the public recognizes it and associates it with the owner’s services.”

LEGAL PRECEDENTS:

1. In the case of *Rock and Roll Hall of Fame and Museum v. Gentile Production,*[36] the Museum’s building design was registered with the State of Ohio and the United States Patent and Trademark Office as a trademark. Photogra-

36 134 F.3d 749 (6th Cir. Ohio 1998)

pher Charles Gentile took a picture of the Museum against a colorful sunset and began selling the photograph as a poster. The Museum filed a lawsuit against Gentile over the depiction of the Museum in the poster. The court in this case said that "in order to be protected as a valid trademark the building must create "a separate and distinct commercial impression which performs the trademark function of identifying the source of the merchandise to the customers."

However the Museum could not produce evidence to demonstrate that the public actually identified the building as a trademark. If the public does not rely upon the landmark to identify the source then the landmark cannot be held to be a trademark and thus it cannot be registered.

2. Another interesting case is that of *ESRT Empire State Building, L.L.C. v. Michael Liang*[37], the Empire State Building LLC, owns federal registrations for the word mark EMPIRE STATE BUILDING for observation deck, sightseeing and real estate services, as well as design mark registrations for the same services for this two dimensional depiction of the building exterior. The respondent's company used the picture on their beer bottles without the official permission or any form of licensing agreement form the ESRT. The beer logo in this case belonged to trademark applicant Michael Liang who applied for the trademark on January 8, 2011 with the intent to use the mark in commerce for alcoholic and non-alcoholic styles of beer. The Trademark Trial and Appellate Board found that ESRT's mark is "famous for purposes of dilution", that its mark is inherently distinctive or acquired its distinctiveness through its exclusive use of its mark and have a "strong degree of recognition. After considering all the evidence found, the Trademark Trial and Appellate ruled that applicant's mark is likely to cause dilution by blurring ESRT's mark, hence ruled in the ESRT's favor.

THE ROAD AHEAD:

Now that the Taj Palace Hotel is a registered trademark, no one can use the image of the building for any commercial purpose. If any individual or entity wants to use the image on any of their products, they will have to get a license from IHCL.

Few articles online have criticized this move of IHCL and stated that by getting trademark registrations for landmark buildings , the IHCL is curtailing the right of the public to cultural heritage by not allowing even pictures of the Taj Palace to be depicted on t-shirts and photographs. It is to be kept in mind here that getting a registered trademark for the image does not take away the right of citizens from clicking pictures before the iconic building; they can just not use the pictures for commercial purposes without a license from IHCL. The adverse impact of this move will be felt by photographers who will now have to pay a licensing fee to the IHCL even if they take a picture of the building and sell it to a magazine.

The reasons as to why the building was registered as a trademark have been stated earlier and are not repeated here for the sake of brevity. However to prove that dilution has occurred, the claimant must show that when the general public encounters the mark in almost any context, it associates the mark at least initially with the mark's owner. The IHCL can therefore justify the move of securing a trademark registration for the Taj Mahal Palace Hotel on the grounds that they did it not only to protect the building's architecture and distinctiveness but also to protect the image of the iconic building from dilution by blurring or tarnishment.

CONCLUSION

Being the first Indian building to get a trademark, the Taj Mahal Palace Hotel has certainly ushered in a new era for the development of Intellectual Property in this field of securing trademark protection landmarks and there can be an exciting road ahead for companies and entities who wish to trademark their famous structures to protect its distinctivity.

Therefore, it is safe to conclude that the move of IHCL in securing trademark registration for easily the most famous building in Mumbai was a smart one.

***

37 *http://ttabvue.uspto.gov/ttabvue/ttabvue-91204122-OPP-95.pdf*

COMING SOON: INTELLECTUAL PROPERTY EXCHANGE IN INDIA

Shrimant Singh

In yet another remarkable development in fostering innovation, creativity and intellectual property protection in India, the Government has announced that an ***Intellectual Property Exchange*** will be developed under the Ministry of Science and Technology through the National Research Development Corporation (NRDC). The Exchange will enable the individuals and/or corporate entities to buy and sell IP rights across various sectors.

The said move by the Government of India is welcomed by the inventors and the industrial houses alike, the same would facilitate monetization of IP, benefiting the inventors and resulting in manufacturing and availability of better technologies to the public at large. The said exchange would not only be limited to inventions or patents but may also include facilitating monetization or commercialization of copyrights, designs, trademarks, geographical indication, etc.

As per news reports, the idea of setting up a patent exchange similar to those in Hong Kong and the UK was floated in the Government Ministry around two months ago. The project has already got in-principle approval from the Ministry of Science and Technology. "We have been mandated with the task of creation of the proposed IP exchange and the process will take around 8-9 months for collecting data and setting up the exchange. We are already undertaking exercise of collecting necessary data and information on patents filed worldwide on multiple technologies, predominantly on agriculture and allied sectors," said the NRDC Chairman and Managing Director- H. Purushotham[38].

The Annual Report by Controller General of Patents, Designs and Trademarks (CGPDTM) of 2015-16, India stated that there is about 30% increase in filing of intellectual property applications compared to previous years. In the years 2015-16, about 3,41,086 applications were filed for IP rights as against 2,35,306 in the years 2011-12. Accordingly, while there has been a continuous increase in filing of intellectual property, a need is felt for a viable platform supported by the Government for commercialization of registered intellectual property. This requirement of commercializing the IP would be catered by the Intellectual Property Exchange of India. The effectiveness of the said move to setup the Exchange would certainly depend upon execution of the proposals on paper to be effected by the Government functionaries.

The challenge would be to keep the process and working of the Exchange transparent with accountability on the Executives of the Exchange. The processes and/or protocols to be adopted for the same would be crucial in the functioning and success of the said Exchange. One of the salient objectives and benefit for such a centralized IP Exchange would be to monitor and reduce the arbitrary negotiations amongst the parties and to facilitate constructive talks so as to result in reasonable benefits to both the parties. The IP Exchange would also act as a centralized library or market wherein the patent or right holders would showcase their IP and the interested parties can approach the said IP right holders for licenses or purchase of the same.

According to India Brand Equity Foundation's Innovation and Patents Report[39] of June 2017: India's research and development spend is estimated to reach \$71.5 billion by 2016 from \$66.49 billion in 2015; In 2015, India became the world's sixth largest annual research and development spending country, accounting for 3.53% of global R&D expenditure; The R&D spending in India is anticipated to grow from 0.9% to 2.4% of the country's GDP from 2014 to 2034 respectively; The number of multinational corporations with R&D Centres in India has grown at a CAGR of 4.57% from 721 in 2010 to 943 in 2016; During 2010-16, the workforce in MNC R&D Centres increased at a CAGR of

38 http://www.livemint.com/Technology/q5KSoAyOpBqLZQX8AH9VPN/India-may-get-Intellectual-Property-Exchange-soon.html

39 https://www.ibef.org/industry/indian-innovation-and-patent-industry-analysis-presentation

10.08% and reached 363,000, which is estimated to further increase to 387,000 by 2017 in India.

In view of the promising numbers in terms of growth of innovation and patents in India, the Exchange would certainly propel the country's agenda of providing equitable and transparent platform for reaping benefits out of the intellectual property creations/registrations in India.

***

NOTES

SINGH & ASSOCIATES

Founder - Manoj K. Singh

ADVOCATES & SOLICITORS

NEW DELHI [HEAD OFFICE]
E-337, East of Kailash, New Delhi-110065
Phone : +91-11-46667000
Fax : +91-11-46667001
newdelhi@singhassociates.in

MUMBAI
48 & 49, 4th Floor, Bajaj Bhavan,
Barrister Rajni Patel Marg, Nariman Point,
Mumbai, Maharashtra-400021
mumbai@singhassociates.in

BANGALORE
N-304, North Block, Manipal Centre
47, Dickenson Road, Bangalore - 560042
Ph : +91-80-42765000
bangalore@singhassociates.in

GURUGRAM
Unit no. 701-704, 7th Floor, ABW Tower
IFFCO Chowk, Gurugram,
Haryana-122001

www.singhassociates.in