



AU COURANT
RGNUL FINANCIAL AND MERCANTILE LAW REVIEW



AUGUST 2024

PREFACE

It gives us immense joy to share the August edition of our monthly newsletter, "Au Courant," with our readers. In this edition, the current on-goings in various fields of law have been analysed succinctly in the 'Highlights' section to provide readers with some food for thought.

This includes a brief on the Jan Vishwas Amendment Act, the newly notified Amendments to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and the Bharatiya Vayuyan Vidheyak Bill 2024.

Major happenings in various fields of law such as Insolvency law, Arbitration, Telecom Law, Securities, and Competition Law have been recorded in the 'News Updates' segment to keep the readers abreast of the latest legal developments.

We hope that this Edition of the Au Courant finds you well and is once again an enjoyable and illuminating read for you!



HIGHLIGHTS OF THE MONTH

HIGHLIGHTS

Intellectual Property laws decriminalized & amended vide Jan Vishwas (Amendment of Provisions) Act, 2023 w.e.f. 01-08-2024

Jan Vishwas (Amendment of Provisions) Act, 2023 passed in Rajya Sabha Introduces Changes in Intellectual Property legislations

The Jan Vishwas (Amendment of Provisions) Bill, 2023 was passed in the Lok Sabha on June 27, 2023, and in the Rajya Sabha on August 2, 2023. The Bill aims to reform and rationalize criminal provisions to ensure that citizens, businesses, and government departments can operate without the fear of imprisonment for minor, technical, or procedural violations. It balances the severity of the offence with the corresponding punishment, maintaining the law's rigor while ensuring compliance.

The JV Act has proposed amendments to several intellectual property laws, including the Copyright Act, 1957; Trade Marks Act, 1999; Patents Act, 1970; and the Geographical Indications of Goods (Registration and Protection) Act, 1999. These changes align with the broader objectives of the JV Act, particularly to benefit India's small and mid-sized businesses, start-ups, and MSMEs.

One significant change is the omission of Section 68 from the Copyright Act, which previously imposed penalties for making false statements or representations to deceive authorities under the Act. The removal seems to reflect the view that this section had little impact on copyright holders' rights.

In the Trade Marks Act, several notable sections have been removed. These include Section 106, which penalized the removal of piece goods and thread; Section 108, which punished misrepresentation of a business as connected to the Indian Trade Marks Office; and Section 109, which addressed the falsification of entries in the Trade Marks Register. All these sections previously carried penalties, including fines and imprisonment, but have now been omitted under the JV Act.

This legislation marks a significant step towards rationalizing laws, eliminating unnecessary barriers, and fostering business growth.

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HIGHLIGHTS



Ministry of Finance notifies key amendments to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019

On August 16, 2024, the Ministry of Finance issued the Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2019 (Notification). This Notification was introduced to modify the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (NDI Rules) in response to the Union Budget 2024-25. Some of the key changes are mentioned below:

1. A new rule i.e. Rule 9A has been introduced in the NDI Rules which deals with a swap involving the transfer of equity instruments of an Indian company between a resident and non-resident. The Notification states that such transfer may be effected by way of any of the following 2 (two) swaps: (i) a swap of equity instruments of another Indian company, and (ii) a swap of equity capital of a foreign company in compliance with the Overseas Investments Rules ("OI Rules")
2. The definition of 'startup company' in sub-rule (an) of Rule 2 of the NDI Rules has been revised to refer to a private company incorporated under the Companies Act, 2013.
3. The Notification amended the NDI Rules to include a new entry F11 in Schedule I that relates to Foreign Direct Investment in White Label ATM Operations sector. The new entry allows FDI up to 100% under the automatic route in such sectors, subject to the conditions provided under the Notification.

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HIGHLIGHTS

Bharatiya Vayuyan Vidheyak Bill 2024 passed by the Lok Sabha

The Bhartiya Vayuyan Vidheyak Bill 2024 seeks to remove redundancies and replace the Aircraft Act, 1934, which has been amended 21 times. The bill, introduced by Civil Aviation Minister K Rammohan Naidu, includes provisions to regulate the design and manufacturing of aircraft.

One of the key elements is that once the Act is implemented, then the issuance of Radio Telephone Operator (Restricted) Certificate and Licence will be issued by the aviation regulator DGCA which is under the civil aviation ministry, according to an official.

The Act regulates the civil aviation sector. It sets up three statutory authorities: (i) Directorate General of Civil Aviation (DGCA) for performing regulatory functions and overseeing safety, (ii) Bureau of Civil Aviation Security (BCAS) for overseeing security, and (iii) Aircraft Accidents Investigation Bureau for investigation of aircraft accidents.

The Act empowers the central government to make Rules on several matters. These include: (i) regulation of specified activities related to aircrafts and matters related to licencing, certification, and inspection, (ii) regulation of air transport services, and (iii) implementation of Convention relating to International Civil Aviation of 1944. The Bill retains these provisions and adds that the central government may make Rules on radio telephone operator certificate and licences under the International Telecommunication Convention.

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NEWS BITS

NEWS BITS



Bombay HC grants ad interim injunction: AI tools infringe individual's right to control and protect their own likeness/voice

In the case of the plaintiff, Arijit Singh, a well-known singer, it was determined by the Bombay High Court that the unauthorized use of his AI-generated name, voice, photograph, image, likeness, or persona, particularly for commercial purposes, could negatively impact his career and livelihood. The Court referenced the case of Anil Kapoor v. Simply Life India, affirming that elements such as the plaintiff's name, voice, image, and other attributes of his personality are protected under his personality rights and right to publicity. The Court recognized that Arijit Singh, as a prominent Indian singer, had garnered significant goodwill, reputation, and celebrity status. Based on these findings, the Court ruled in favor of the plaintiff, and the interim order will remain in effect until September 3, 2024.

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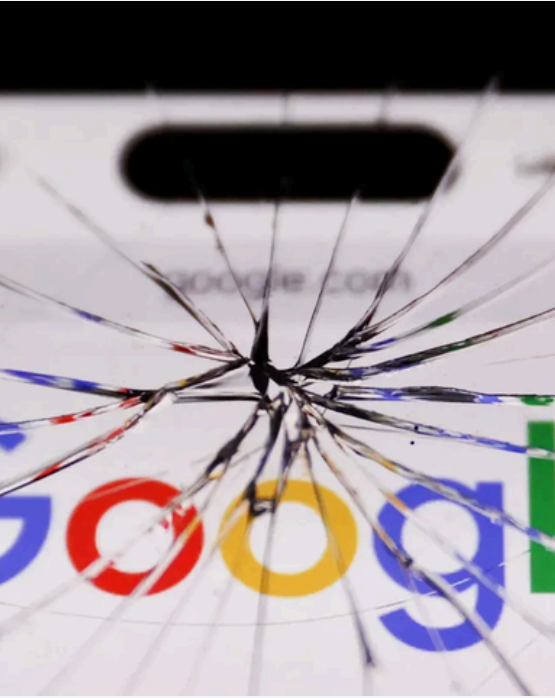
Byju's Insolvency Process leads to Indian Tax Authorities Demanding \$101 Million

Indian tax authorities are pursuing a claim of \$101 million in unpaid dues from Byju's, the once-prominent education technology company that is now in the midst of an insolvency process, according to documents reviewed by Reuters on Friday. The claim, described as "statutory dues," did not provide further details.

Byju's insolvency stands to be one of the most significant disruptions in India's highly regarded startup ecosystem, sparking concerns among thousands of employees who now face a difficult battle to recover dues and safeguard their careers.

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NEWS BITS



Federal Judge rules: Google Broke Antitrust Law with an exclusive monopoly over Search Results

The District court of Columbia ruled in favour of the Department of Justice (DOJ) finding that Google violated the Sherman Act, by maintaining a monopoly in two product markets in the United States (US); general search services, and general text advertising through its exclusive distribution agreements.

While Google has been found guilty of violating antitrust law, it has not yet determined the penalty to be sought by Google.

There are speculations that the DOJ may consider breaking up Google following the decision, although far-fetched considering that Google would appeal to the decision in all probability. The DOJ might also consider having Google share more data with rivals, or force punitive fines on Google.

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Air India and Vistara Merger: Completion Date Announced

The Air India and Vistara Merger which had been ongoing for the past 20 months is now in its final phase, as the airline announced the tentative completion date of November 12th, 2024. The past 20 months observed the consolidation of the two entities, with the laying off of personnel and the clubbing of liabilities of the two enterprises.

Vistara would stop accepting booking for flights beyond November 11th, and all customers of Vistara would be transitioned into the Air India Overhead. The major contention which still has not been addressed is about the merger of the loyalty programmes of the two enterprises. In all probability, Vistara's identity will be compromised in this merger, given Air India's legacy.

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NEWS BITS



Byju's Insolvency: Settlement Order Stayed, SC directs the formation of a new COC

In the backdrop of a Corporate Insolvency Resolution Process (CIRP) initiated on June 16th, 2024 in the Bengaluru Bench of the National Company Law Tribunal (NCLT) due to Byju's default on a 158.9/- Crore payment to the BCCI which consequently led to a settlement agreement between the two parties.

While the approval of this settlement by the NCLT raised concerns by US-based lenders on the legitimacy of the funds being used, on appeal; the NCLAT nevertheless gave the go-ahead for the settlement.

Subsequently, the US-based lenders, Glas Trust Company LLC appealed the NCLAT order to the Supreme Court; wherein a bench led by CJI D.Y. Chandrachud stayed the order of the NCLAT, directed the BCCI to deposit the funds in a separate escrow amount, leading to a committee of creditors (COC) to be constituted with Glas Trust as a creditor.

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Limited Liability Partnership (Amendment) Rules, 2024

The Ministry of Corporate Affairs ("MCA") amended the Limited Liability Partnership Rules, 2009 through the Limited Liability Partnership (Amendment) Rules, 2024. The amendments include establishing of Centre for Processing Accelerated Corporate Exit, effective from 27 August 2024. This Centre is now referenced alongside the Registrar in various sub-rules, particularly in clauses and provisions related to the accelerated exit process of the Limited Liability Partnership ("LLPs"). An explanation added to sub-rule (1) clarifies the definition and establishment of this Centre.

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