



MONTHLY NEWSLETTER

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1

ITC VS. NESTLE: “THE FAMOUS CASE OF MAGIC MASALA”

Recently, The Apex Court dismissed a Special Leave Petition filed by ITC Ltd. in **ITC Ltd. vs. Nestle**¹ (Famously known as Magic Masala Case.). ITC had filed a Special Leave Petition challenging the order of Divisional Bench of Madras High Court.

Earlier, ITC had filed a suit against Nestle before Single Judge of Madras High Court, *inter alia* seeking for injunction against Nestle for using similar expression “MAGIC MASALA” for advertisement and promotion of its products. ITC had introduced Magic Masala in 2010 wherein Nestle started using the phrase “Maggi Xtra Delicious Magical Masala” in 2013. ITC contented that “MAGIC MASALA” constituted integral part of their trademark. They further raised the objection that the expression ‘Maggi Xtra Delicious Magical Masala’ used by Nestle was similar to their composite trademark Sunfeast Yippie! Noodles Magic Masala, which shows the dishonest intention of the defendant, in order to deceive the public. ITC further, contented that the phrase used by Nestle was phonetically similar to the mark of ITC, consequently infused conundrum in public at large, resultantly, amounting to Passing Off.

ITC was of the view that public associated their product with the phrase “MAGIC MASALA”.



The Single Judge whilst dismissing the suit filed by ITC, opined that anyone can have monopoly

¹ SLP No. 5651/2021

over the phrase “Magic Masala” and further refused to restrain Nestle from using the impression ‘Magic Masala’. The matter was then heard by Divisional Bench of Madras High Court, who further refused to intervene the order passed by learned Single Judge.

The Petitioner whilst arguing the case produced evidence showing trade practices and what names are considered by the customers whilst buying/selling products. They further submitted that products in market are not sold by their respective brand names rather they are sold/brought by name of their ingredients. Similarly, the petitioner’s product was sold as Magic Masala Noodles. The Court dissatisfied with the observations and submissions made by the petitioners, opined that ITC does not have trademark over the phrase “Magic Masala” and cannot restrain Nestle from using the expression “Magic Masala”. The Apex Court whilst dismissing the Special Leave Petition opined that customers are loyal to the brand and Masala and Non Masala are mere subdivisions.



2

SUPREME COURT DECIDES/ LIMITS JURISDICTION OF NCLT ON ADJUDICATION OF CONTRACTUAL DISPUTES IN MATTERS OF TERMINATION OF CONTRACTS

In **TATA Consultancy Services Ltd. vs Vishal Ghisulal Jain**,² the Hon'ble Supreme Court has held that the NCLT's residuary jurisdiction cannot be used to resolve contractual disputes if the contract is terminated for reasons unrelated to the Corporate Debtor's insolvency. The Court further stated that a party can only be barred from terminating a contract if it is critical to the CIRP's success regardless development of the contractual disagreement as a result of insolvency. The matter involves a miscellaneous application filed by Corporate Debtor with the NCLT for quashing of a contract termination notice under Section 60(5)(c) of the IBC. While granting an ad-interim stay, the NCLT observed that the contract was terminated without the required thirty-day notice. The appeal against this order was also rejected by the NCLAT.³ The following issues were raised in the appeal before the SC, (i) whether the NCLT can exercise its residuary jurisdiction under Section 60(5)(c) of the IBC to adjudicate on the contractual dispute between the parties; and (ii) whether the NCLT

can impose an ad-interim stay on the termination of the contract in the exercise of such residuary jurisdiction. The NCLT has residuary jurisdiction to adjudicate any point of law or fact arising out of or in relation to the insolvency resolution of the Corporate Debt, according to the bench comprising Justices DY Chandrachud and AS Bopanna.

The court noted that in **Gujarat Urja Vikas v. Amit Gupta & Ors.**,⁴ it had injuncted a third party from terminating its contract with the corporate debtor because there were concurrent findings of the NCLT and NCLAT holding that the contract in question was the corporate debtor's sole contract, and the termination by the third party was based solely on the initiation of CIRP.



² TATA Consultancy Services Limited vs Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited, 2021 SCC OnLine SC 1113.

³ Tata Consultancy Services Limited v. Vishal Ghisulal Jain, 2020 SCC OnLine NCLAT 484.

⁴ Gujarat Urja Vikas v. Amit Gupta & Ors., (2021) 7 SCC 209.

According to the Court, the NCLT has jurisdiction over issues arising primarily from or relating to a corporate debtor's insolvency. There must be a link with the insolvency of the corporate debtor." As a result, the NCLT lacks residuary jurisdiction to hear the current contractual dispute, which has arisen outside of the Corporate Debtor's insolvency. Further, the NCLT could not have issued an ad-interim stay on the termination notice because it lacked jurisdiction over the case. Finally, the Hon'ble Court opined that the NCLAT erred in upholding the NCLT's interim ruling.

The Court allowed the appeal and cautioned that, a party can be barred by NCLT and NCLAT, from terminating the contract, only if it is critical to the CIRP's success, even though the contractual conflict develops as a result of insolvency. Furthermore, the contract's termination should result in the Corporate Debtor's corporate death. Even when assessing petitions for interim relief, the NCLT and NCLAT must keep in mind the narrow exemption crafted by this Court in the case of *Gujarat Urja*.

In this regard, the Court held that there was no evidence on record that reflects that people in India had accessed the webpage. The Court also noted that accessing of the webpage of the defendant in the suit cannot constitute a ground for the Court to exercise jurisdiction over the defendants. Hence, the Court refrained from

issuing directions to the defendants for the reason of being outside its territorial reach.



3

**PRE-DEPOSIT FOR APPEAL
UNDER RERA ACT
CONSTITUTIONAL:
SUPREME COURT****Introduction**

The Special Full Judge Bench of the Hon'ble Supreme Court vide its judgment dated 11.11.2021 in ***M/s. Newtech Promoters and Developers Pvt. Ltd. vs State of UP and Others. etc.***⁵ has uphold the constitutional validity of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (*Hereinafter referred as "RERA"*).

Brief Facts

The brief facts of the case are that after the Promoter namely M/s. Newtech Promoters and Developers Pvt. Ltd. failed to hand over the possession of the property on time, the allottees homebuyers filed an application under Section 31 of the RERA wherein the Promoter was directed to repay the advances taken along with the interest and the penalty. The promoters instead of approaching the appellate authority under the RERA filed a writ petition challenging the said order. The Hon'ble High Court dismissed the writ. Aggrieved by the same, the

promoters filed an Appeal before the Hon'ble Supreme Court.



⁵ *M/s. Newtech Promoters and Developers Pvt. Ltd. vs State of UP and Others. Etc. (CIVIL APPEAL NO(S).6745 6749 /2021)*

Decision

The Hon'ble Supreme Court after comprehensively going through Scheme of RERA, relevant provisions, objective and purpose of bringing the Act, held the following-

1. Condition mandating the promoters to pre-deposit for filing appeal u/s 43(5) of RERA in matters where the appeal is against the order directing repayment to allottees by the promoter is valid and constitutional.

The Hon'ble Court observed that Allotees and the Promoters are distinct separate class under the provisions of RERA for the reason that there is intelligible differentia between the two.



As such, RERA specifically provides and deals with the right and duties of each of the said class separately. The Hon'ble Court further observed that precondition of pre-deposit before filing appeal is to ensure bonafides of the promoters

and to avoid any uncalled and unscrupulous litigation by the promoters.

Therefore, Section 43(5) of RERA is neither onerous nor violative of Article 14 and 19 of the Constitution.

2. RERA is retroactive in nature and therefore, any ongoing real estate project in which the certificate of completion is not granted on or as on the date of commencement of the Act, the said project will come under the scope of RERA Act.
3. RERA Authority has power u/s 81 of the RERA to delegate its power to take cognizance of complaints filed under Section 31 to any single officer.
4. The homebuyers are entitled to recover advances, interest, penalty and compensation from the defaulting promoters as arrears land revenue under Section 40 of the RERA.
5. RERA Authority has the exclusive jurisdiction to examine and determine amount of refund, interest, penalty and interest on penalty whereas determine of compensation is entrusted to Adjudicatory Authority appointed by RERA Authority u/s 71 of RERA.

Critical Appraisal

The Judgment passed by the Special Bench will definitely prove beneficial to the homebuyers as it will restrict the promoters to file frivolous appeals in order to delay the proceedings. The said decisions will ensure that helpless homebuyers are not harassed that have invested their life time savings with a hope of owning a home.

However, if the power of examination and determination of refund, interest, penalty, interest on penalty and the compensation is bestowed on the same authority i.e. either the RERA Authority or the Adjudicatory Authority, it would result in administrative convenience and better implementation of RERA.



4 SARFAESI ACT - ALLEGATIONS WITHOUT PARTICULARS, NO GROUND TO INVOKE CIVIL SUIT: SUPREME COURT

The Hon'ble Supreme Court in ***Electrosteel Castings Limited vs. UV Asset Reconstruction Company***⁶ has held that mere allegation of fraud without providing the particulars & evidence with regards to commission of fraud through specific pleadings would bar filing of civil suit under section 34 of the Securitization and Asset Reconstruction of Financial Assets and Enforcement of Securities Interests Act, 2002 ("**SARFAESI ACT**").

In the instant case, the Appellant approached the Hon'ble Apex Court assailing the decision of Division Bench of Madras High Court whereby it upheld the Single Bench decision on the ground that Section 34 of the SARFAESI Act bars the jurisdiction of the Civil Court on subject matters that Debt Recovery Tribunal ("**DRT**") and Debt Recovery Appellate Tribunal ("**DRAT**") are specially empowered to adjudicate.

The brief facts of the case are that Financial Creditor SREI Infra Finance Ltd. initiated Corporate Insolvency Resolution Process against Corporate Debtor Electrosteel Steels Ltd. under Insolvency and Bankruptcy Code,

2016 ("**IBC**") that culminated into successful resolution. Thereafter, the Financial Creditor assigned its rights, title and interests in financial assistance granted by it to an Asset Reconstruction Company ("**ARC**") namely UV Asset Reconstruction Co. Ltd. After the assignment, the ARC initiated SARFAESI proceedings under Section 13 for recovery of the dues remaining thereof. Opposing the same, the Appellants contended that a resolution under IBC extinguishes the claims on the debt and hence no amount is due and payable.



For reference, it is relevant to mention Section 34 of the SARFAESI Act which bars the jurisdiction of Civil Court to adjudicate any suit or proceedings in the matters on which the DRT

⁶ Electrosteel Castings Limited vs. UV Asset Reconstruction Company Civil Appeal No. 6696/2020

and DRAT have the exclusive jurisdiction under the SARFAESI Act.

The Hon'ble Court observed that the Appellants has cleverly drafted the Appeal in order to bring their case out of bar created by Section 34 of the SARFAESI Act by averring allegations of fraud without providing any facts and evidence on the same. It held that the same cannot be permitted and hence the Appeal is not maintainable.

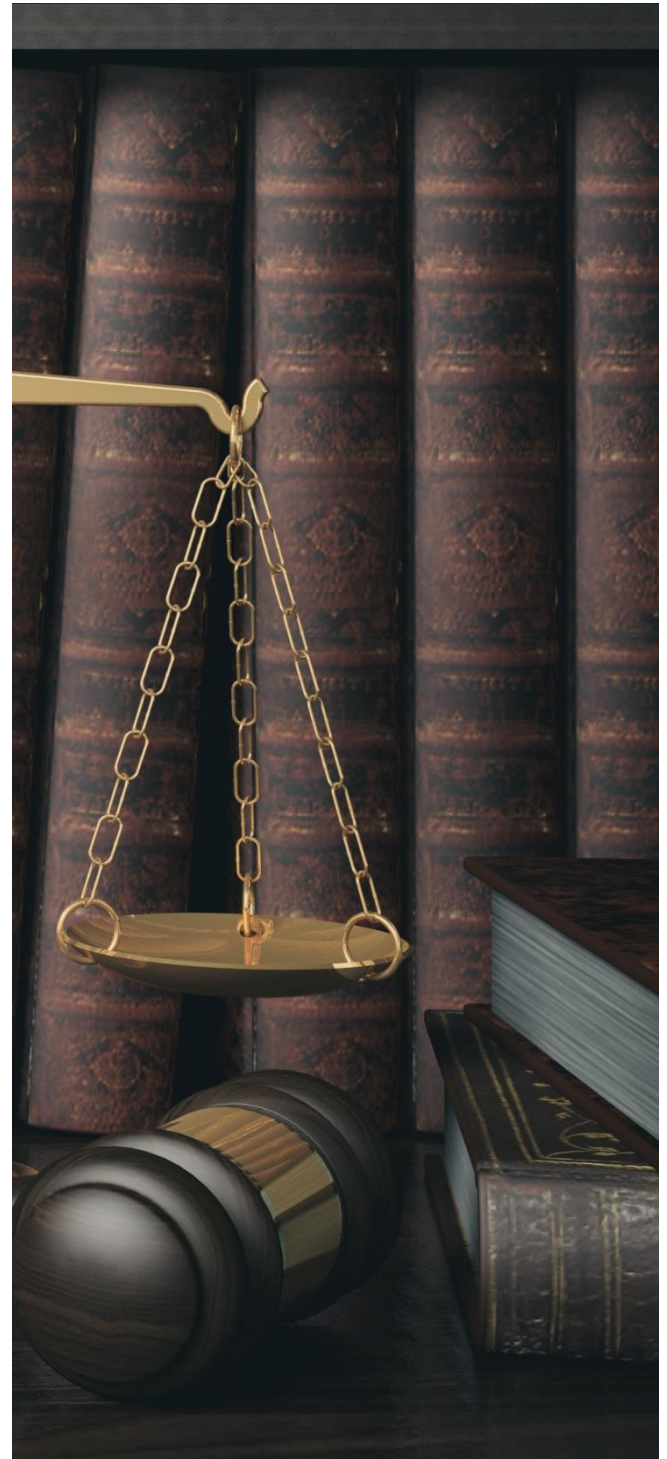
Decision

The Court upheld the decision of the Division Bench of the Hon'ble High Court of Madras; however, Appellants were granted leave to file application under Section 17 of the SARFAESI Act.

Critical Analysis

The Hon'ble Apex Court could have settled the dispute itself rather than allowing the Appellants to approach DRT under SARFAESI Act, especially when it is a settled position that after the resolution under the IBC, the creditors or the assignees for that matter has the right to approach the appropriate forum for recovering the dues that remains unpaid after the approval of resolution plan under the IBC. In other words, as discharge through operation of law under the provisions of IBC does not absolves the corporate debtor i.e., Electrosteel Steels Ltd. from liability under Section 133 of Indian

Contract Act, 1872, the Hon'ble Supreme Court ought to have finally concluded the matter.



5

LEGAL NEWS AND
UPDATES

- To strengthen consumer rights, the Consumer Affairs Ministry omitted Rule 5 of the Legal Metrology (Packaged Commodities) Rules 2011. The rule establishes Schedule II, which determines the pack sizes of certain commodities. To make it easier to compare prices of commodities at the time of purchase, the Ministry added a new option for marking the unit sale price on pre-packed goods. The new rules will take effect on April 1, 2022.
- The Supreme Court has asked the Delhi government and the Centre to respond to a petition contesting the Aam Aadmi Party's policy to only issue new permits for e-auto rickshaws. Automobile makers have argued that the refusal of a permit discriminates against vehicles that run on CNG or BSVI Petrol.
- In accordance with the Rights of Persons with Disabilities Act 2016, a PIL has been filed in the Supreme Court seeking directions to the Centre and states to provide in-frame sign language interpreters in all official press briefings conducted by the Prime Minister, other Ministers of the Union Government, Chief Ministers of all states, and other Ministers of the state government.
- The Supreme Court has ruled that an anomaly in the order of cognizance does not invalidate the criminal proceedings (In the case of: **Pradeep S Wo Wodeyar vs the State of Karnataka**).
- The Allahabad High Court on Monday ordered I.I.T. (B.H.U.) Varanasi to admit a Dalit Girl Student who was denied admission [in the course of Bachelor and Master of Technology (Dual Degree)] after she failed to pay Rs. 15K as a seat acceptance fee due to financial difficulty.
- The Supreme Court has cautioned against the public authorities changing the undertakings in government contracts merely due to the change of person in power. The Court said that if previous undertakings are violated by the successor authority without any proper grounds of public interests, businessmen will be hesitant to enter into government contracts.
- The Ministry of Civil Aviation announced the Drone Rules for 2021, which are based on "trust, self-certification, and non-intrusive surveillance." The new laws are intended to control drone-related activities in such a way that they do not endanger persons or property. The new rules will take the place of the Unmanned

Aircraft System Rules (UAS Rules) 2021, which were published in March of that year.

- The Calcutta High Court issued notice on a Public Interest Litigation (PIL) plea seeking directives for safeguarding women's safety in all women's compartments on local trains. Advocate Mousomee Shome filed a petition seeking the deployment of railway police personnel, namely lady constables, in all local trains in West Bengal, as well as the installation and frequent operation of CCTV cameras at the entry and departure points of ladies' compartments in all local trains.
- The Allahabad High Court has said that disagreements over a Bar Association's office-bearer cannot be resolved in a writ petitioner since Bar Associations are fundamental private organizations.
- The Karnataka High Court recently quashed criminal proceedings brought against three members of the Indian National Congress party, ruling that section 171H of the Indian Penal Code, which prohibits illegal payments in connection with elections, cannot be applied when the persons were found to have only displayed the party's flags and symbols on their vehicles.





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