



MONTHLY NEWSLETTER

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1

NO PROTECTION OF RENT ACT AGAINST SARFAESI PROCEEDINGS TO 'TENANT-IN-SUFFERANCE': SC

A **tenant in sufferance** is a tenant who continues to enjoy rights over a leased property even after the expiration of term of lease. This term plays a crucial role in governing the rights of the landlord.

Recently, the Division Bench of S. Abdul Nazeer and Krishna Murari, JJ. in the case of **Hemraj Ratnakar Salian vs. HDFC Ltd'** addressed the pertinent issue of whether the rent act would come to the aid of a **"tenant in sufferance"**.

In this case, the appellant claimed that he is a protected tenant under the Maharashtra Rent Control Act 1999, and that he was residing in the borrower's premises from 12.06.2012 on the basis of an oral tenancy. Later, the account of borrower was declared as non-performing asset and the proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, were initiated against the borrower.

The appellant filed an intervention application and the same was dismissed by the Magistrate holding that there was no registered tenancy placed on record by him. The appeals were

brought against the orders of the Chief Metropolitan Magistrate, Mumbai, dismissing the appellant's application for a restraining order against HDFC Bank, the first respondent, from seizing the property in the appellant's possession.

In appeal, the court noted that in case of **Harshad Govardhan Sondagar v. International Asset Reconstruction Co. Ltd.**², it was categorically held that if the tenancy can be made only by a registered instrument for any term exceeding one year.



Further referring to case of **Bajarang Shyamsunder Agarwal v. Central Bank of India & Anr**³, the bench held that after considering almost all decisions of this Court, in relation to the right of a tenant in possession of the secured asset, if a valid tenancy under law is in existence even prior to the creation of the mortgage, such

¹ MANU/SC/0538/2021

² (2014) 6 SCC 1

³ (2019) 9 SCC 94

tenant's possession cannot be disturbed by the secured creditor by taking possession of the property. If a tenancy under law comes into existence after the creation of a mortgage but prior to issuance of a notice under Section 13(2) of the SARFAESI Act, it has to satisfy the conditions of Section 65A of the Transfer of Property Act, 1882. If a tenant claims that he is entitled to possession of a Secured Asset for a term of more than a year, it has to be supported by the execution of a registered instrument. In the said decision of this Court, it was clarified that in the absence of a registered instrument, if the tenant only relies upon an unregistered instrument or an oral agreement accompanied by delivery of possession, the tenant is not entitled to possession of the secured asset for more than the period prescribed under the provisions of the Transfer of Property Act.

It was further held that the Rent Act would not come to the aid of a “tenant in sufferance” vis-à-vis SARFAESI Act due to the operation of Section 13(2) r.w. Section 13(13) of the SARFAESI Act. The court observed that there is a serious doubt as to the bona fide of the tenant, as there is no good or sufficient evidence to establish the tenancy of the appellant.

It is pertinent to note that the appellant has pleaded the tenancy without support of any registered instrument and according to the appellant, he is a “tenant in sufferance”, therefore, he is not entitled to any protection of the Rent

Act.

Further court observed that even if the tenancy has been claimed to be renewed in terms of Section 13(13) of the SARFAESI Act, the borrower would be required to seek consent of the secured creditor for transfer of Secured Asset by way of sale, lease or otherwise, after issuance of the notice under section 13(2) of the SARFAESI Act and, admittedly, no such consent has been sought by the borrower in the present case and accordingly appeal stands dismiss.



2

DOES A LOI FORM A CONTRACT?

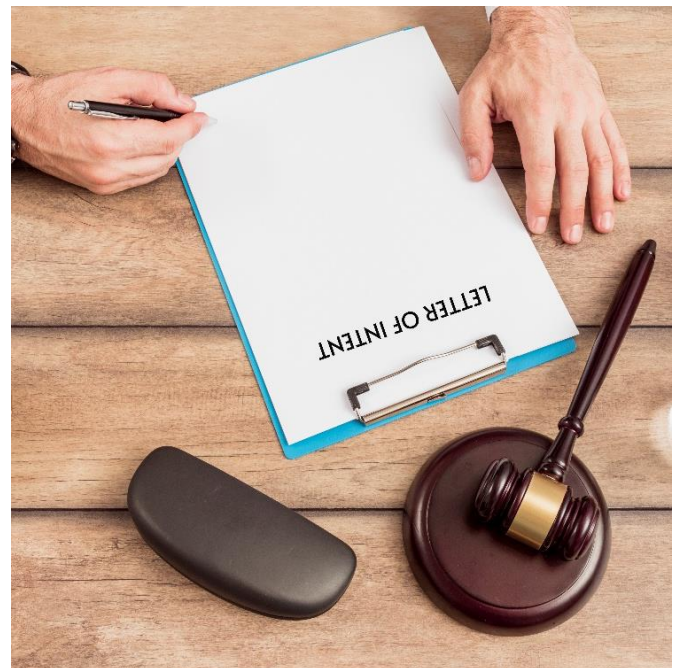
In a recent case, a fairly interesting question arose before the Hon'ble Supreme Court in *South Eastern Coal Fields Ltd. V. M/s S. Kumar Associates AKM*⁴ (hereinafter to be referred as "SEC") that *Whether a Letter of Intent (LOI) is an acceptance of the bid / offer that forms a contract?*

A Letter of Intent (LOI) is a document declaring the preliminary commitment of one party to do business with another. As such, it outlines the primary terms of a prospective deal.

Factual matrix of the case is such that SEC had issued a tender for hiring mining machinery for evacuation works. The winning bidder was S Kumar Associates AKM and was hence awarded the work. A Letter of Intent was issued by SEC to S Kumar Associates which specified certain stipulations to be met by S Kumar Associates following which a work order was to be issued. Albeit, the stipulations of the LOI were not met however, AKM was required to initiate the work immediately; AKM transferred the machinery to the work site, subsequently, hardships were popped at the work site thereby resulted in failure to perform the contractual obligations. Further, SEC issued a letter of termination and awarded the tender to another contractor at a higher price. SEC also issued a recovery notice to

AKM seeking the difference in the original and the increased price.

Thereafter, on being aggrieved by such actions of SEC, AKM preferred a Writ Petition before the Chhattisgarh High Court seeking to rescind the letter of termination and the notice for recovery of the price difference. The Hon'ble Chhattisgarh High Court held that there is no valid contract between the parties as the stipulations of the Letter of Intent were never completed, so, as there is no contract hence there could be no termination or any recovery.



The said order of the Division Bench appealed the said judgement before Hon'ble Supreme Court and contended that the stipulation in the LOI were mere condition subsequent and AKM had

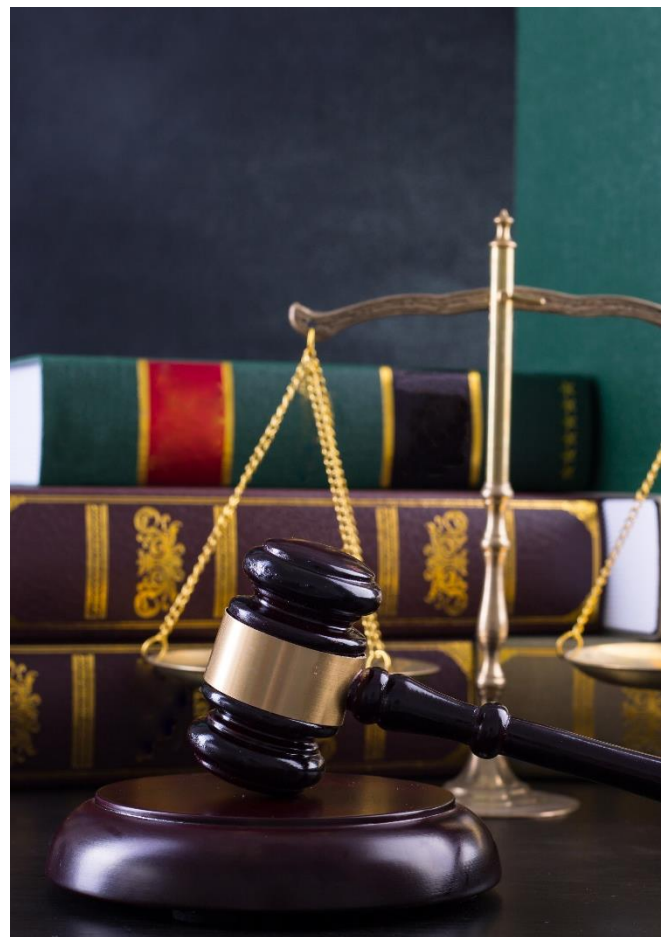
⁴ 2021 SCC OnLine SC 486

accepted the contract as they had commenced the work at the site, so a formally executed contract was immaterial. The Apex Court held that a Letter of Intent has no binding effect on the parties as it merely shows the intention of the parties to enter into a contract. A Letter of Intent binds the parties to the LOI only when an unambiguous agreement is clear from the terms of the Letter of Intent. As such, AKM had not complied with the stipulations of neither the Letter of intent nor the tender document terms; hence there existed no contract between SEC and S. Kumar Associates AKM. For better understanding the relevant part of the findings is reproduced herein below:-

"We would like to state the issue whether a concluded contract had been arrived at inter se the parties is in turn dependent on the terms and conditions of the NIT, the Lol and the conduct of the parties. The judicial views before us leave little doubt over the proposition that an Lol merely indicates a party's intention to enter into a contract with the other party in future. No binding relationship between the parties at this stage emerges and the totality of the circumstances have to be considered in each case. It is no doubt possible to construe a letter of intent as a binding contract if such an intention is evident from its terms. But then the intention to do so must be clear and unambiguous as it

takes a deviation from how normally a letter of intent has to be understood..."⁵

The Apex Court while dismissing the said appeal clarified all legal implications that got peddled around the subject matter and held that stipulations in the Letter of Intent binds the parties to said contract only when an unambiguous agreement can be culled from the terms and conditions of the said Letter of Intent in question.



⁵ 2021 SCC OnLine SC 486

3

QUARREL TO EXECUTE FOREIGN ARBITRATION AWARD IN INDIA

From **“Bhatia International v. Bulk Trading SA⁶”** that got its settlement by the Hon’ble Supreme Court in **“Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)⁷”** applicability of international seated arbitration agreements have always been a topic of debate surrounding the enforcement of foreign arbitration awards in India.

Recently, in the **“Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., 2021 SCC OnLine SC 145⁸”**, questions of similar nature and gravity was raised before the Apex Court. The Apex Court framed two questions in this regard (i) Whether the “award” passed by the Singapore International Arbitration Centre (SIAC) can be considered as an order under section 17(1) of Arbitration and Conciliation Act, 1996; (ii) Whether the order passed by learned single Judge of High court under section 17(2) of the Act, concerning enforcement of “award” passed by Emergency Arbitrator is maintainable or not?

The element of the Dispute

According to the Shareholder Agreements (**“SHA”**) executed by and between Amazon and

Future Group whereby Amazon acquired 49% stakes in the Future Group. The SHA carved a list of restricted groups which envisages that such groups should be restricted from entering into any agreement or arrangement with any entity during the course of the SHA. It is relevant to highlight that despite such restriction, the Future Group entered into a transaction of selling certain assets with Reliance (part of Mukesh Dhirubhai Ambani Group) to avoid bankruptcy. It should be noted that through this acquisition, Reliance's goal is not only to acquire Future Group's retail assets but also to include its total liabilities of approximately 12,801,444 million. In addition, Reliance also agreed to invest 28 billion rupees in the combined entity, which *inter alia* be used to pay the remaining liabilities of Future Group along with the assets of the Group. Therefore, it appeared that transaction between Future Group And Reliance Group would help in preventing the Future Group from falling within the contours of bankruptcy and if such transaction fails, Future Group will undoubtedly enter the liquidation process.

Aggrieved by such action, Amazon contended that Future Group is violating the provisions of SHA by making an arrangement with Reliance as the Reliance group belonged to the restricted group of people listed in the SHA. On the other hand Future Group's contended that Amazon is

⁶ (2002) 4 SCC 105

⁷ (2012) 9 SCC 552

⁸ 2021 SCC OnLine SC 145

violating the Foreign Direct Investment (FDI) rules of the Foreign Exchange Management Act (FEMA). On a comprehensive perusal of consolidating agreements between Amazon and Future Group; Future Group contended that in addition, Amazon, which creates the right of protection, infringes by controlling Future Retail requires prior approval of the government.

Decision

As such, the order of emergency arbitrator did not fall on satisfactory grounds to the Future Group and therefore approached the Delhi High Court, praying inter alia to restrain Amazon from unlawful interference in the transaction. The learned Single Judge bench of Delhi High Court was to decide the maintainability of the suit in a matter of pending arbitration proceedings before the SIAC and from its order dated 21-12-2020, held that the suit filed by Future Group is maintainable in the court of law but no injunction will be granted against the relief of the suit. The decision of the High Court was a partial win for the Amazon and parallel development before National Company Law Tribunal (NCLT), Competition Commission of India (CCI), Security Exchange Board of India (SEBI), were going smoothly. After the decision passed by the Delhi High Court, Amazon filed another suit under sections 17(1) and 17(2) of the Act to consider the award (Emergency Order) passed by SIAC as an "Order" and enforceability of the same. The learned judge of the High Court with its order

dated 2-2-2021, upheld the legitimacy of the award passed by the International Arbitration Center and directed the Status Quo with respect to the disputed transaction.

The Future Group feeling aggrieved by the order of the Single Judge preferred an appeal against the same to the Division Bench of the Delhi High Court which vide its order dated 08.02.2021 directed a stay on the implementation of the Status Quo and gave the reasoning that why statutory bodies like NCLT, CCI, and SEBI are restricted from fulfilling their legal obligations and acting under the law. The court further stated that in our opinion it seems to lack consideration of court procedures because the decision of a single learned judge was appealed even before the detailed order was approved. It can also be concluded with certainty that the court made a mistake when it recognized the fact that the disputed order did not clearly exist.

Amazon being aggrieved by this order invoked its constitutional remedy by filing a Special Leave Petition (SLP) before the Supreme Court. On 22.02.2021, SC directed NCLT to evaluate the merger but state not to come on the final decision and asked both the parties to file rejoinders within two weeks after which matter would be heard. After hearing legal propositions from both the parties the Apex Court, upheld the legitimacy of the Emergency Order passed by the SIAC, and considered it as an order under section 17(1) of the Act.

4

**SIMULTANEOUS CLAIM OF
RESERVATION FROM TWO
SUCCESSOR STATES**

The notion of Reservation has clenched the minds of people in India. Indubitably, the caste system has long prevailed in India inevitably making the weaker sect deprive of their inalienable rights. States provides 'Reservation' to downtrodden classes to secure their status and position in the society. Recently, the Hon'ble Supreme Court in **Pankaj Kumar v. The State of Jharkhand**⁹ has observed that reservation benefits can't be claimed by any person simultaneously in two States. The Apex Court whilst dealing with two appeals, one where appellant was not allowed to take benefit of reservation under SC quota since according to his permanent address proof reflected him to be a resident of Patna, Bihar. Subsequently, he was refused an appointment in the civil service exam of Jharkhand, and the second appeal was preferred by individuals whose designation in Jharkhand as SC constables was terminated on the ground that their caste certificates reflected them as residents of Bihar. Appellants therein contented that they cannot be treated as migrants of Bihar as they belong from the successor State i.e. Jharkhand after bifurcation of the two States. In this regard it is apposite to

highlight a Government order dated 22 February 1985 that was passed by Ministry of Ministry of Home Affairs, stating that people can claim reservation quota benefits only within their home state. Further, pursuant to Article 341(1) and 342(1) of Constitution of India, President can specify "the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes or schedule tribes in relation to that State or Union Territory". The Apex Court opined that cogitation of specifying a SC, ST or backward class primarily depends on the gravity of hardships faced by the members of such classes which shall differ from State to State.



⁹ LL 2021 SC 397

The crux before the Apex Court in the present case revolved around - whether a person can claim reservation benefits simultaneously in two successor State of at one point of time. It is relevant to state that according to the **Bihar Reorganization Act of 2000 ("Act of 2000")**, if an individual's place of origin, on or before 15 November 2000 was in Bihar, which shall now be within the successor State of Jharkhand, shall be implied to be considered as residents of the

State of Jharkhand. Further in consonance with Section 73 of the Act of 2000 protects both service condition and reservation benefits enjoyed by the people of such States. The Apex Court on a comprehensive perusal of the facts in hand opined that a person shall only be allowed to claim reservation benefits in either his successor State only thereby crafted a prohibition on claiming reservation quota simultaneously in two successor States.



5

LEGAL NEWS AND
UPDATES

- Justice BV Nagarathna to be the first woman Chief Justice of India (CJI) in 2027.
- The Hon'ble Supreme Court has released the Standard Operating Procedure (SOP) for physical hearing of proceedings, ahead of September 01. On this date the apex court will resume its offline hearing partially.
- A petition has been filed in the Supreme Court, seeking early hearing of application challenging the constitutional validity of the Presidential order, which amended and rendered the provisions of Article 370 inoperative, stripping off the special status of Jammu and Kashmir.
- A NEET-UG aspirant has moved the Delhi High Court seeking directions to amend the regulations about the qualifying age for appearing in NEET-UG Medical Entrance Examination from 17 years to 15 years, bringing it on par with JEE-2021 for UG Engineering courses.
- The Competition Commission of India in 2017 has taken Suo motto cognizance on Maruti Suzuki's pricing policy and has now imposed a penalty of Rs 200 crore for anti-competitive behaviour over discounts offered by its dealerships.
- The President of India has notified the appointment of nine new judges to the Supreme Court. The list includes four High court chief justices, four High court judges and a senior advocate.
- In a pro-arbitration decision, the apex court held that Arbitral Awards can be enforced against non-signatories.
- A plea has been moved in the Supreme Court by a Class 12 student seeking directions to the Centre, states and union territories to consider and take a time-bound decision regarding the physical reopening of schools in their respective areas and to conduct offline teaching with adequate safeguards considering Covid-19.
- The Supreme Court's landmark interim order directing the government to allow women to take the next entrance exam for the National Defence Academy (NDA).
- Senior Advocate Pamidighantam Sri Narasimha will swear in as the Judge of the Supreme Court on 31st August 2021. He will be the ninth Supreme Court judge to be directly elevated from the Bar and might also become the Chief Justice of India before his retirement comes due in May 2028.



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