BULLETIN

NIC LEGAL WORLD LLP

NATIONAL | INTERNATIONAL | COUNSELLING

Advocates, Solicitors and Consultants

June, 2024

CHALLENGES FACED BY HOMEBUYERS AND REVOCATION OF OWNERSHIP RIGHTS

N K Gupta
Founding Partner

Introduction

Buying a home is one of the most crucial decision a person can take in his life. However, the journey to homeownership can be filled with unexpected challenges, especially when builders and land authorities revoke ownership rights even after granting all necessary approvals. This article explores the difficulties homebuyers face in these distressing situations, highlighting the legal, financial, and emotional repercussions.

Imagine the shock and dismay when, after jumping through all these hoops, homebuyers are informed that their ownership rights have been revoked. This revocation can stem from various reasons, such as:

1. Regulatory Failures: Builders or authorities failing to adhere to local zoning laws or construction regulations.
2. Legal Disputes: Pre-existing legal disputes over land ownership that resurface.
3. Fraudulent Practices: Builders engaging in deceptive practices, selling the same property to multiple buyers, or misrepresenting property details.

The Nature of Fraud by Authorities

1. Forgery and Misrepresentation
2. Collusion with Builders
3. Retrospective Cancellations

Challenges Faced by Buyers

Buyers often invest substantial amounts of money into purchasing and developing properties, and registration cancellations can lead to significant financial losses, including the initial investment and any additional funds spent on development. Affected buyers must engage in protracted legal battles to seek redress, which can be time-consuming and expensive, often involving complex litigation against both the authority and other involved parties.

The stress and uncertainty of potentially losing one's property can take a heavy emotional toll on buyers and their families. Moreover, such instances erode trust in public institutions and the real estate market, making potential buyers wary of future investments.

Legal Remedies and Protections

Buyers facing the cancellation of their property registrations have several legal avenues to explore:
1. Approaching Consumer Courts: Buyers can file complaints in consumer courts alleging deficiency in service and unfair trade practices. Consumer courts have been proactive in providing relief to aggrieved buyers in many cases.
2. Civil Suits for Fraud and Damages: Buyers can file civil suits against the authorities and other involved parties for fraud and seek compensation for financial losses and damages.
3. Writ Petitions: Affected buyers can file writ petitions in High Courts under Article 226 of the Indian Constitution, challenging the arbitrary cancellation of their property registration and seeking restoration of their ownership rights.
4. Criminal Complaints: In cases involving clear evidence of forgery and fraud, buyers can file criminal complaints under relevant sections of the Indian Penal Code (IPC) to hold the perpetrators accountable.

What Preventive Measures Homebuyers Can Take

To minimise the risk of falling victim to such fraud, potential buyers should:
1. Conduct Due Diligence
2. Seek Legal Counsel
3. Stay Informed
4. Go for Registered Builders

The Builder-Buyer Agreement: Shift Towards Fairness

Agreements between builders and buyers were often heavily skewed in favor of the builders. These one-sided contracts left homebuyers vulnerable, particularly regarding delayed payments, forfeiture of earnest money, and project delays. However, landmark legal decisions and the enactment of RERA have significantly improved the landscape, providing much-needed protection and fairness to homebuyers.

Landmark Cases

The Supreme Court of India has played a crucial role in addressing these imbalances:

LEGAL NEWS BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

In the **Central Inland Water Transport Corporation case,** the court held that contracts with unfair and unreasonable clauses could be cancelled if one party had no meaningful choice but to accept them. This principle was reinforced in the **Pioneer Urban Land case**, where the court emphasized that terms appearing one-sided and unfair would not be considered binding if the buyer had no option but to sign the contract.

RERA has introduced several provisions to protect homebuyers. It ensures that the interest rate for delays by either party must be the same, ensuring fairness. Section 18 requires compensation for delays in possession, giving buyers the option to seek a refund or continue with the project while claiming compensation. Additionally, RERA offers a more efficient resolution process than the lengthy litigation that has been seen in consumer courts.

Steps taken by Governments

The Haryana government has amended its registration manual to protect property owners' rights, ensuring that those with valid titles no longer need to engage in lengthy legal battles to cancel fraudulent sale deeds. Registration officers are now authorised to accept and register the cancellation of deeds fraudulently registered by unauthorised individuals, preserving genuine owners' rights. The amendment, introduced as paragraph 159-A, empowers officers to act under Section 23-A of the Registration Act, 1908, allowing them to re-register documents and cancel fraudulent deeds. Affected individuals can present invalid documents within four months of discovery, and special provisions apply for community land transfers. The amendment also recognises cancellation deeds as legal documents with a stamp fee of Rs 500.

Conclusion

Revoking ownership rights after all approvals have been granted is a nightmare scenario for homebuyers. The legal, financial, and emotional challenges are immense, often leaving buyers distressed and disillusioned. However, with proper preventive measures and legal recourse, homebuyers can navigate these challenges more effectively and safeguard their investments. As the real estate market continues to evolve, it is imperative for regulatory bodies and builders to uphold transparency and integrity, ensuring that such injustices become a thing of the past.

Legal remedy is available, but preventing fraud through due diligence and informed decision-making is the best defense. Authorities must also strive to improve transparency and accountability to restore trust in the urban development projects.

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

SUPREME COURT CLARIFIES LIMITATION PERIOD FOR ARBITRATION APPLICATIONS

Vijay Sharma
Sr. Partner

In a significant ruling, the Supreme Court addressed the issue of the limitation period applicable to arbitration petitions filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("the Act"). The case, involving a Kabul-based company seeking the appointment of an arbitrator for a dispute with another party, has brought clarity to the interplay between the Arbitration Act and the Limitation Act, 1963.

Background

The petition was filed by a Kabul-based company engaged in providing educational services, seeking arbitration for disputes arising from a contract dated March 21, 2013, with the respondent. The Supreme Court's three-judge bench, comprising Chief Justice Dr. DY Chandrachud, Justices J.B. Pardiwala, and Manoj Misra, examined whether the petition was time-barred under the Limitation Act.

Issues

The primary issues before the Court were:

1. Applicability of the Limitation Act, 1963, to applications under Section 11(6) of the Arbitration Act.
2. Whether the present petition was barred by limitation

Court's Analysis and Findings

The Court reaffirmed that the Limitation Act applies to arbitration proceedings, as stipulated by Section 43 of the Arbitration Act. Despite the Arbitration Act lacking a specific time frame for filing applications under Section 11(6), the Court determined that Article 137 of the Limitation Act, a residual provision, applies, allowing a three-year period from the accrual of the right to apply.

The Court elaborated that the limitation period for filing an application under Section 11(6) starts after a valid notice invoking arbitration is issued and the other party fails to respond or comply. The right to apply, according to Hohfeld's analysis of jural relations, accrues only when there is a corresponding duty on the other party, ensuring the application is not premature.

The Court referenced **SBP & Co. v. Patel Engineering Ltd.** and **Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd.** to emphasize that limitation issues should be addressed at the pre-reference stage to avoid protracted and costly arbitration proceedings.
The Supreme Court concluded that the three-year limitation period under Article 137 of the Limitation Act applies to petitions under Section 11(6) of the Arbitration Act. The petition in question, filed within three years from the respondent's failure to comply with the arbitration notice, was deemed timely.

Legislative Recommendation:
The Court noted the need for legislative intervention to prescribe a specific limitation period for Section 11(6) applications, aligning with the Act's objective of expeditious dispute resolution. The current three-year period was deemed excessively long and contrary to the intended swift resolution of commercial disputes.

Conclusion
This ruling underscores the necessity for clarity and efficiency in arbitration proceedings. It serves as a reminder to policymakers of the importance of a robust legal framework that promotes timely and equitable dispute resolution. The Supreme Court's call for legislative amendments is a step towards enhancing the arbitration process in India, ensuring it remains a viable and effective mechanism for resolving commercial disputes.,

UNDERSTANDING INDIA'S LABOUR LAW REVOLUTION: STRATEGIES FOR BUSINESSES

RK Gupta
Sr. Partner

India's economy is changing rapidly due to technology, globalization, and shifting geopolitical situations. To address these changes, our Government has introduced new labour codes to overhaul how companies handle compensation, regulation, and workforce management. In this fast-paced setting, businesses need to actively adjust to the new regulations while staying flexible and competitive.

The Labour Codes: A New Era in Labour Legislation

In line with its commitment to ease of doing business and harmonise numerous labour laws, the government has consolidated 29 central labour laws into four comprehensive codes:

1. **Code on Wages, 2019**
2. **Code on Social Security, 2020**
3. **Industrial Relations Code, 2020**
4. **Occupational Safety, Health, and Working Conditions Code, 2020**

These codes have received approval from both Parliament and the President's assent. However, final notification and implementation are pending, requiring state government approval since labour is a concurrent subject. Many states and Union Territories have published draft rules, indicating readiness for this regulatory shift.

Preparing for the Labour Codes: Key Strategies

1. **Analysing Codes and Assessing Financial Impact**

The first step in preparation is understanding the changes introduced by the new labour codes and their financial implications. A uniform definition of 'wages' and new social security schemes for 'fixed-term employees,' 'gig workers,' and 'platform workers' necessitate a detailed assessment of impacts on compensation structures, social security contributions, and retirement benefits.
Companies should assess the financial impact of these changes on future business plans, particularly in areas like gratuity, provident funds, leave encashments, maternity benefits, and overtime.

2. Revisiting and Drafting New HR Policies

Companies must amend HR policies and procedures to comply with the new labour codes. Key areas for revision include working hours, overtime, leave entitlements, health benefits, grievance redressal mechanisms, appointment letters, and employment of contractual workers. Changes will vary depending on the region and industry.

Businesses employing non-traditional workforces, such as platform and gig workers, must also develop social security policies and benefits for these employees.

Decoding Compliance Requirements and Training Employees

Businesses need effective processes and systems to ensure adherence to new labour laws. To ensure a smooth transition, companies should proactively identify and address compliance requirements, invest in technology upgrades, and train employees.

3. Aligning Internal Systems with Updated Reporting Requirements

New labour codes will necessitate changes in managing employee data and tracking compliance. This requires modifications to existing IT systems, including:

- **Payroll Systems**: Updating payroll calculations and reporting functions to comply with new regulations regarding minimum wages, overtime pay, leave entitlements, and gratuity payouts.
- **HR Management Software (HRMS):** Adjusting functionalities to meet new record-keeping requirements, additional benefits, and employee facility administration.

Proactively addressing potential IT system issues will ensure smooth compliance with the new labour codes.

Conclusion

Adapting to the new labor codes requires a proactive and comprehensive approach. Companies can ensure a smooth transition by evaluating the impact of the changes, updating existing policies, meeting compliance requirements, forming a cross-functional team, and preparing internal systems. By implementing these strategies, businesses can effectively navigate India's changing labor law landscape and stay competitive.

Staying ahead of regulatory changes allows companies to transform compliance into a strategic advantage, fostering a more resilient and adaptable workforce.

CROSS-BORDER INSOLVENCY: AN EXAMINATION OF INDIA'S LEGAL FRAMEWORK AND THE JET AIRWAYS CASE

Jatin Sehgal
Sr Mentor

In our interconnected world, businesses often operate across borders, engaging in international trade and transactions. When a multinational corporation (MNC) faces insolvency, it encounters challenges due to the diverse legal systems of different countries. Let's delve into the legal aspects of cross-border insolvency in India, focusing on **Jet Airways (India) Limited vs State Bank of India & Anr, on 26 September 2019, Company Appeal (AT) (Insolvency) No. 707 of 2019 ("hereinafter be referred as "Jet Airways Case")**

What Is Cross-Border Insolvency?
Cross-border insolvency arises when an insolvent debtor has assets and creditors in multiple countries or when insolvency proceedings occur in various jurisdictions. For instance, imagine an MNC with subsidiaries and creditors across different nations. When this MNC faces financial distress, resolving its insolvency becomes complex due to conflicting legal frameworks. This complexity was notably observed in the Jet Airways case, formally known as Jet Airways (India) Ltd. v. State Bank of India.

Legal Regime in India
In 2016, India introduced the Insolvency and Bankruptcy Code (IBC) to address corporate insolvency. However, the IBC primarily focuses on domestic cases and lacks a comprehensive framework for cross-border insolvency. When dealing with multinational players, relying solely on national laws may prove ineffective.

The Jet Airways Case
The Jet Airways case exemplifies these challenges. Jet Airways (India) Ltd. faced insolvency, and the State Bank of India initiated proceedings. However, Jet Airways had parent and associate companies outside India, complicating matters. The existing provisions in Sections 234 and 235 of the IBC were insufficient to handle such intricate multinational insolvency cases.

Section 234 of the Insolvency and Bankruptcy Code, 2016, grants the Central Government the authority to establish agreements with foreign nations to handle cross-border insolvency. This provision allows the Central Government to enforce the IBC in foreign jurisdictions, but only when reciprocal arrangements are in place. Section 235 enables Indian insolvency professionals to seek assistance from foreign courts or authorities through a letter of request when managing the assets of an Indian corporate debtor located overseas.

The Need for a Uniform Approach

Recognizing the importance of cross-border insolvencies, the United Nations Commission on International Trade Law proposed the UNCITRAL Model Law on Cross-Border Insolvency in 1997. Unlike binding conventions, the Model Law offers guidance to states, aiming to harmonize and streamline cross-border insolvency proceedings. It emphasizes jurisdiction, recognition of foreign proceedings, cooperation with foreign courts, and choice of law.

When a company faces insolvency, especially if it operates across different countries, things get complicated. Let's break down the legal aspects of cross-border insolvency in India, focusing on the Jet Airways case.

- **What Is Cross-Border Insolvency?**
  - Imagine a multinational corporation (MNC) with assets and creditors in various countries. When this MNC goes bankrupt, it's called cross-border insolvency.
  - The problem? Different countries have different rules for handling insolvency. So, resolving it becomes like untangling a spaghetti bowl of laws.

- **India's Insolvency Framework: The Basics**
  - In 2016, India introduced the Insolvency and Bankruptcy Code (IBC) to deal with corporate insolvency.
  - But here's the catch: The IBC mainly focuses on domestic cases. When MNCs are involved, it's like fitting a square peg into a round hole.

Several challenges and limitations of the current legal regime for cross-border insolvency in India must be considered:

1. **Dependence on Bilateral Agreements:** The primary challenge is the reliance on bilateral agreements, leading to a time-consuming and cumbersome process due to lengthy negotiations.
2. **Uncertainties Galore:** Each country has its own rules. Imagine playing chess with different rulebooks for each opponent. Yikes!
3. **COVID-19 Fallout**: The pandemic led to more insolvency cases, especially among MNCs with assets abroad. It's like a global game of financial Jenga.
4. **Indian Creditors vs. Foreign Creditors:** Without a solid cross-border insolvency law, Indian creditors struggle to get fair deals. Meanwhile, foreign creditors can't just swoop in and grab assets.

The Solution? Recognizing the need for a uniform approach, the United Nations proposed the UNCITRAL Model Law on Cross-Border Insolvency.

Jet Airways: A Precedent for Cross-Border Insolvency in India

In the legal realm, Jet Airways stands as a significant case study. Let's dissect it:

1. **Historical Context:**

- Founded in 1992 under the Companies Act, Jet Airways took off as an Air Taxi Operator on May 5, 1993. Mr. Naresh Goyal provided the initial funding.
- Ownership changes were like a turbulent flight: public, private, public again. Gulf Air and Kuwait Airways held substantial stakes at different points.
- Despite being a major domestic carrier, Jet Airways faced turbulence—reporting a staggering INR 1300 crores loss in 2018. The airline had to sell most of its aircraft and grapple with a mountain of debt.

2. **The Crisis Unfolds:**

- By late 2018, Jet Airways' financial instability was glaring. It needed a lifeline to avoid a crash.

- March 2019: The company's financial crisis became public knowledge. On April 17, 2019, Jet Airways grounded its final flight from Amritsar to Mumbai.
- Enter bankruptcy proceedings: The National Company Law Tribunal (NCLT) in Mumbai received an insolvency application in June 2019.

3. **High-Stakes Drama:**

- Mr. Naresh Goyal's wings were clipped—he couldn't leave India.
- The Enforcement Directorate swooped in, investigating allegations of money laundering and bank fraud. Legal turbulence at its finest!

In the intricate landscape of insolvency proceedings, Jet Airways' case emerged as a litmus test for cross-border cooperation. Appointed by the Noord-Holland District Court, the bankruptcy trustee navigated the uncertainties posed by parallel proceedings. Initially, the National Company Law Tribunal (NCLT) in Mumbai adhered to a territorial approach, seemingly disregarding the Dutch proceedings. However, the tide shifted when the National Company Law Appellate Tribunal (NCLAT) intervened. **In a groundbreaking move, Jet Airways' insolvency became the first cross-border case managed under Indian law, facilitated by mutually agreed protocol from Dutch Bankruptcy Administrators. The cornerstone of this collaboration lay in an agreed protocol, embodying the principle of "pure universalism." On September 26, 2019, the NCLAT sanctioned this cross-border insolvency protocol, setting a precedent for future cases and affirming the harmonization of legal systems across jurisdictions.**

Conclusion

- The Jet Airways case underscores the necessity for an effective legal framework to address cross-border insolvency. The cooperation between Indian and Dutch authorities in this instance exemplifies the potential for harmonized proceedings, despite the absence of comprehensive legislation. The lessons from this case are pivotal as India continues to refine its insolvency laws to better handle the complexities of global commerce.

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

EXPLORING THE FORMS AND KEY COMPONENTS OF SMART LEGAL CONTRACTS

A smart legal contract is a legally binding agreement that is encoded and executed on a blockchain. These contracts use computer code to automatically enforce the terms and conditions once predefined criteria are met, enhancing efficiency, reducing the likelihood of disputes, and minimizing the need for intermediaries. By integrating traditional legal frameworks with modern technology, smart legal contracts aim to revolutionize how agreements are formed, executed, and enforced.

- **Natural Language Contract with Automated Performance**

A natural language contract with automated performance merges the familiarity of traditional contract language with the automation capabilities of smart contracts. In this form, the contract is written in standard legal language but includes specific clauses that trigger automated actions. For instance, a rental agreement could stipulate that rent payments are automatically deducted from the tenant's account on a specified date each month. This hybrid approach ensures clarity and legal enforceability while leveraging automation for efficiency.

- **Hybrid Smart Legal Contract**

Hybrid smart legal contracts combine traditional written agreements with automated smart contract elements. They maintain the conventional legal text but embed code for automating specific tasks. This format is particularly useful in jurisdictions with stringent legal requirements, where fully automated contracts might not be feasible. For example, a supply chain contract might include automated payment releases upon confirmation of delivery, while the main contract remains in natural language. This dual approach ensures compliance with legal standards while benefiting from the efficiency of automation.

- **Solely Code Legal Contract**

Solely code legal contracts are entirely written and executed in computer code, with no accompanying natural language text.

These contracts rely fully on blockchain technology to execute and enforce the terms. .This approach maximizes automation and efficiency but poses challenges regarding legal interpretation and enforceability, especially in jurisdictions that mandate traditional written contracts for certain agreements. While offering significant advantages in terms of speed and cost, solely code contracts require careful consideration to ensure they meet legal standards.

- **Distributed Ledger Technology (DLT)**

Underpins smart legal contracts by providing a decentralized and immutable record of transactions. Blockchain, a type of DLT, is the most widely used platform for smart contracts. DLT ensures transparency, security, and trust, as all parties can verify the contract's terms and performance. This technology eliminates the need for a central authority, reducing the risk of fraud and enhancing the reliability of contract execution.

Enforceability Under UK Law

In the UK, the enforceability of SLCs is evaluated based on traditional contract law principles: agreement, consideration, intention to create legal relations, and certainty of terms. The UK recognizes the validity of digital signatures and electronic contracts, supporting the use of smart legal contracts. However, legal professionals are still exploring the nuances of these contracts to ensure they align with existing legal frameworks and provide the necessary protections for all parties involved.

Enforceability Under Indian Law

SLCs in India is rooted in the Indian Contract Act, 1872, and the Information Technology Act, 2000. These laws validate SLCs if they satisfy traditional contract requirements like offer and acceptance, lawful consideration, and the intent to create legal relations. The IT Act further legitimizes digital signatures and electronic records, which are vital for SLC execution. Nonetheless, several challenges persist, including regulatory ambiguities concerning digital assets, technical complexities, jurisdictional issues, data privacy concerns, and the need for specialized dispute resolution mechanisms. Overcoming these hurdles is essential for the widespread adoption and effective enforcement of SLCs in India, promising enhanced efficiency, transparency, and security in contractual dealings.

LEGAL NEWS
BULLETIN

NIC LEGAL WORLD LLP
NATIONAL | INTERNATIONAL | COUNSELLING
Advocates, Solicitors and Consultants

The Formation of Smart Legal Contracts

The formation of smart legal contracts involves essential elements similar to traditional contracts:

- 1. **Agreement (Comprising an Offer and Acceptance)**

For a smart legal contract to be valid, there must be a clear offer by one party and acceptance by another. In the digital realm, this could involve actions such as clicking an "I Agree" button or using digital signatures. The blockchain records these actions, providing a verifiable and immutable record of the agreement.

- 2. **Consideration**

Consideration refers to the value exchanged between the parties. In smart legal contracts, this can include monetary payments (e.g., cryptocurrency) or services provided. The blockchain can automate the transfer of consideration once the agreed conditions are met, ensuring prompt and transparent exchanges.

Conclusion

Smart legal contracts represent a transformative approach to creating, executing, and enforcing agreements. By combining the robustness of traditional legal principles with the efficiency of blockchain technology, these contracts offer a streamlined, automated solution to contractual obligations. Whether through natural language contracts with automated performance, hybrid models, or solely code agreements, smart legal contracts are poised to significantly impact various sectors. As legal frameworks continue to adapt, the enforceability and practicality of these innovative contracts will become more established, paving the way for broader adoption and more efficient legal processes.

Contributed By
Nancy Girdhar
Associate

CONVERTING ECB TO EQUITY SHARES IN INDIA: LEGAL FRAMEWORK AND PROCEDURES

Legal Issue: Conversion of External Commercial Borrowings (ECB) into Equity Shares by an Indian Entity
Question: Can an Indian entity convert its External Commercial Borrowings (ECB) from a foreign entity into equity shares, despite the absence of a conversion clause in the ECB Agreement?

Legal Framework:

1. **Section 62(3) of the Indian Companies Act, 2013:**

This section specifies that an increase in the subscribed capital of a company, resulting from the exercise of an option to convert debentures or loans into shares, must meet two conditions:

- **i.** An option for conversion must be attached to the issuance of debentures or the raising of loans.
- **ii.** This conversion option must be approved by a Special Resolution (SR) passed in the General Meeting before the issuance of the debentures or the raising of the loan.

This provision effectively bars the conversion of loans into equity unless these conditions are fulfilled at the time of the initial agreement.

2. **Master Direction on External Commercial Borrowings (ECB), Trade Credits, and structured Obligations (Section 7.4: Conversion of ECB into Equity)**:

This directive does not bar such conversion per se, even in the absence of a conversion clause in the ECB Agreement. Therefore, we can say that this directive permits the conversion of ECB into equity shares under specific conditions, with no explicit requirement for a prior agreement permitting such conversion.

Analysis:

Given the distinction between the general law (Indian Companies Act) and the special law (Master Direction on ECB), the special law prevails. Therefore, compliance with the specific conditions outlined in the Master Direction allows for the conversion of ECB into equity shares, even in the absence of a pre-existing conversion clause in the ECB Agreement.

Steps to Convert Loan into Equity Capital:

1. **Initial Analysis of Loan Agreement Terms:**

The first step involves examining the existing Loan Agreement to determine the presence of any conversion provisions and verifying whether the client has obtained prior member approval. In this case, the original agreement lacked a conversion clause.

2. Addendum Agreement and Member Approval:

Due to the absence of a conversion clause, the client was advised to enter into an addendum agreement with the lender, incorporating terms for conversion into equity. This addendum required approval through a Special Resolution passed by the members, ensuring compliance with corporate governance standards and protecting stakeholder interests.

3. Preparation and Execution of Documentation:

Coordinating with the client, the necessary documentation was prepared, including the addendum agreement and documents for Board and general meetings. Following member approval via Special Resolution, Form MGT-14 was filed with the Registrar of Companies (RoC) within the statutory 30-day period.

4.Board Meeting and Allotment of Equity Shares:

After filing Form MGT-14, a Board meeting was convened to formalize the allotment of equity shares pursuant to the loan conversion. Subsequently, Form PAS-3 (Return of Allotment) was filed with the RoC within the specified 30-day timeframe, ensuring regulatory compliance.

5. Update of Company Records and Issuance of Share Certificates:

The final step involved updating the company's register of members and issuing share certificates to the allottees within 60 days, thereby reflecting the changes in the company's capital structure.

Conclusion:

The conversion of ECB into equity capital involves a series of legally mandated steps. By adhering to the specific conditions outlined in the Master Direction on ECB and ensuring compliance with relevant corporate governance procedures, an Indian entity can effectively convert its ECB into equity shares, even in the absence of an initial conversion clause in the ECB Agreement.

Contributed By
Aarushi Gairola
Associate

OVERVIEW OF TRADE DRESS AND DESIGN PROTECTION

Famous brands don't just rely on catchy names and attractive logos for instant recognition. They also establish brand recognition through unique product designs and trade dress, which include distinct colour combinations, product shapes, and themes for product lines. When it comes to protecting innovative three-dimensional designs, there are typically two options to consider: design and trade dress.

Design protection and trade dress serve different purposes within Intellectual Property (IP) law. Design protection encourages innovation by safeguarding a product's ornamental design. In contrast, trade dress, a subset of Trademark Law, serves two slightly different purposes: to protect a mark's property rights and to prevent consumer confusion.

Designs

The purpose of designs is to protect the unique visual aspects of a manufactured article, rather than its functional characteristics. These aspects include the product's shape, surface decoration, or a combination of both. Design protection only applies to the appearance of the product and not its functionality. If the design is essential for the product to operate, it is considered functional and cannot be protected. The article can be functional, but the design portion to be protected must not be purely functional.

Trade Dress

Like all forms of trademark, trade dress is used to identify the source of a good or service, as well as the associated goodwill. Trade dress refers to the overall appearance and image of a product, which may include the product's design or packaging. Trade dress rights prevent other products from being confusingly similar to consumers when a product design is closely associated with a company or source. Trade dress examples encompass the packaging of a product, the overall appearance of a restaurant or retail store and the design of a product.

Here are some examples of trade dress:

- Converse's Timeless Chucks
- Heinz Ketchup Bottle
- The shape of Coca-Cola bottles
- The red sole of a Christian Louboutin shoe
- The red tab on Levi's jeans
- The shape and colours of IHOP restaurants
- The shape of a Hershey Kiss chocolate

Trade Dress Vs. Design Patent

There is an overlap where products may be eligible for both a design patent and trade dress registration. However, not every product design is suitable for each type of protection. When selecting the best option, several issues should be considered. For a trade dress to be protected, it is required that the elements must be non-functional. If the shape of a product or its packaging serves a function, such as to preserve its contents, allow easy pouring or emptying, or provide a more secure grip on the product, it will not be eligible for trade dress protection. Design patents protect only the non-functional characteristics of a design.

However, the overall product can still serve a functional purpose. Since trade dress has the potential to last indefinitely, the non-functional requirement is more strictly applied to trade dress than design patents. Protection for the functional elements of a product is provided under patent law. Trade dress is protected for 10 years, which can be renewed indefinitely. Design is protected for 10 years and can be renewed once for 5 more years. Recognizing the distinctions between design protection and trade dress helps brands protect their unique identity and products effectively.

Contributed By
Ismat Chughtai
Associate

DISCLAIMER

This newsletter contains general information only, and NIC LEGAL WORLD LLP is not using this document, rendering accounting, business, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking action that may affect your business, you should consult a qualified professional advisor.

About NIC Legal World LLP

A law firm of experienced advocates in respective fields with a vision to provide the best legal support on National and International bedrock for personalised legal services for its clients without losing time, money and efforts. Having a presence in all the States of the Country and a few countries.

- 20+ YEARS OF EXPERIENCE OF ALL THE PARTNERS
- 860+YEARS OF EXPERIENCE AS PARTNERS/DIRECTORS
- 21 OFFICES

Registered & Head Office:

C-582, Defence Colony, New Delhi-110024