



From the President

Namaskar,

Dear Members & Readers,

Lot of turbulence is going on in Supreme Court, however there is something good to hear at the Bombay High Court. Hon'ble Justice S. J. Kathawalla has been burning the midnight oil since the last week before High Court vacation to reduce pendency and finish hearing matters before the month-long summer break kicks in from May 5. On Friday, 4th May, breaking all the records, the room was packed till 3.30 am with litigants and advocates. He heard more than 135 matters since morning, 70 of which were urgent matters. The rush of matters for interim relief is usually high before the break. His commitment for work has been lauded by many, his justice-oriented mind and that serving the people has been his priority. Justice Kathawalla, 59, was sworn in as an Additional Judge at the HC in 2009 and became permanent judge in July 2011.

I can say that Judge inspires confidence and that justice can be delivered swiftly.

The Supreme Court is mooting formation of a three-member committee to consider issues concerning Tribunals across the country. The order was passed by a Bench of Hon'ble Justices Shri A. K. Goel and Hon'ble Justice Smt. Indu Malhotra after considering the response filed by the Central Government and the suggestions made by *amicus curiae* Shri Arvind Datar in the case of *Rojer Mathew vs. South Indian Bank Limited (SLP (Civil) No. 15804 of 2017; dt. 7-5-2018)*.

When the Court was initially seized of the matter, it was only considering whether the appointment process and functioning of Debt Recovery Tribunals (DRTs) as provided under the Recovery of Debts and Bankruptcy Act, 1993 are taking place as per its previous decisions. It had then appointed Datar as *amicus curiae* to assist the Court. Pursuant to the same, Datar submitted a concept note to the Court as per which he suggested that there was a need for an independent oversight body for Tribunals.

The Court after noting the suggestions made by the *amicus* set out the following issues for consideration:

- Creation of regular cadres laying down eligibility for recruitment for Tribunals
- Setting up of an autonomous oversight body for recruitment and overseeing the performance and discipline of the members so recruited and other issues relating thereto
- Amending the scheme of direct appeals to this Court so that the orders of Tribunals are subject to jurisdiction of the High Courts

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- Making Benches of Tribunals accessible to common man at convenient locations instead of having only one location at Delhi or elsewhere. In the alternative, conferring jurisdiction on existing courts as Special Courts or Tribunals.

The Court then held that the above issues may require setting up of a committee preferably of three members. One of the committee members should be a retired judge of the Supreme Court who may have served in a Tribunal.

It is said that it is not easy to escape the long arm of the law, Judge Andrew Henshaw of the UK High Court has upheld a worldwide freeze order against Vijay Mallya and ruled in favour of 13 Indian State-owned banks to recover funds amounting to nearly 1.145 billion pounds in a judgment. It was held that Vijay Mallya, wanted in India to face charges of fraud and money laundering amounting to around ₹ 9,000 crore, can be regarded as a "fugitive from justice". The ruling by the UK Court has been described as "significant" by TLT LLP, the UK law firm which represented the Indian Banks in the case. This is a positive and big step forward. The judgment enables the Indian Banks to proceed with enforcement of the Indian Debt Recovery Tribunal (DRT) ruling, which has now been registered and is immediately enforceable.

The CTC's International Study Tour to Mauritius, organised ably by the Chairman Shri Rajesh Shah of International Tax Committee was a perfect blend of engrossing technical sessions and enjoyable recreational activities. The tour experience was akin to a well-crafted music concert starting with a great beginning and finishing on a high.

The participant met Mr. Denis Seksum, Chairman and Mr. Patrick Tze, Executive Director of the First Island Trust Company Ltd., who gave the members an overview of the tax system in Mauritius and an insight into the thought process of the Government which was in the process of overhauling the same in the short-to-medium term. The members of the CTC also met Mr. Arun Kutowaroo and Mr. Romesh Ramchurn the Office Bearers of the Mauritius Branch of the International Fiscal Association where topics of mutual interest and areas of mutual co-operation were discussed.

The CTC team also met the officials at the Financial Services Commission (FSC) at their office where Ms. Leena Doman-Brette, Head Licencing and Mr. Deerajen Ramaswamy, Head Financial Stability & Statistics, led two interesting technical discussions on the way forward for the company licencing process and the proposed overhaul thereof and the impact of recent fiscal developments on the Foreign Direct Investment (FDI) into Mauritius and the way forward for Mauritius as an investing jurisdiction.

Another very interesting and informative discussion with the officials of the Indian High Commission in Mauritius where the members engaged in a very interesting technical discussion with Mr. Abhay Thakur, the Indian High Commissioner, Mr. K. D. Dewal, the Deputy High Commissioner and the Indian High Commission's team on the cultural connect between India and Mauritius and the investments by India into Mauritius.

The Special Story for the month is on "Penalty & Prosecution – Part- II". I thank all the authors for sparing their valuable time and their contribution to the Chamber's Journal for this month.

AJAY R. SINGH

President