



## **APAC NEWSLETTER**

### **Legal, Compliance and ESG**

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**21 June 2022**

Dear Readers

We bring to your reading and attention following topics:

- A. *New Directions Issued by Indian Computer Emergency Response Team (CERT)* ----- 2**
- B. *GARNISHEE AND GARNISHEE ORDER EXPLAINED* ----- 3**
- C. *CASE LAW ON GIFT OF ANCESTRAL PROPERTY*----- 5**

## **A. New Directions Issued by Indian Computer Emergency Response Team (CERT)**

The Indian Computer Emergency Response Team (“CERT-In”) issued directions related to cyber security on April 28, 2022. These directions are applicable to all body corporates and government organisations (Entities). These directions become effective on June 27, 2022.

Below are key compliances which need to be followed by the Entities:

1. All Entities have to report cyber incidents prescribed in Annexure I (attached to the directions) to CERT-In within six hours of noticing such incidents or being brought to notice about such incidents.
2. All Entities have to appoint a point of contact person to interface with CERT-In.
3. Entities that have systems related to information and communication technology (ICT) should maintain logs securely for a rolling period of 180 days; and
4. All Entities should synchronize their ICT system clocks with the Network Time Protocol (“NTP”) server of the National Informatics Centre (“NIC”) or National Physical Laboratory (“NPL”). Entities can use other time sources as well provided such time source is accurate and conforms to the time provided by NTP servers of NIC or NPL.

## **B. GARNISHEE AND GARNISHEE ORDER EXPLAINED**

~ Vivek Ugale, Senior Officer- Legal

What do you mean by Garnishee, Judgment Debtor, Judgment Creditor & Garnishee Order?

**GARNISHEE-** According to CPC (The Code of Civil Procedure) the term Garnishee refers to the debtor of the judgment debtor. A Garnishee is the person who is liable to pay some money to the Judgment Debtor. Garnishee is a third person in whose hands debt of the judgment debtor is kept.

**JUDGMENT DEBTOR-** Judgment debtor is a party against which a court decision is awarded. He is the person who is liable to pay a debt or damages to the judgment creditor in accordance with a judgment entered by a court against him.

**JUDGMENT CREDITOR-** A party to which a debt is owed that has proved the debt in a legal proceeding and that is entitled to use judicial process to collect the debt; Judgment creditor is the party in whose favour a court has given the decision.

**GARNISHEE ORDER-** It is an order passed by a court by ordering a Garnishee not to pay money to judgment debtor. It is an order of the court to attach money or goods belonging to the judgment debtor in the hands of the third person. The third party is known as Garnishee and the court's order is known as "Garnishee Order."

How Garnishee order works?

### ➤ **RECOVERY OF DEBT FROM BANK ACCOUNTS THROUGH GARNISHEE ORDERS**

The court can issue Garnishee order to recover debt from your bank account. This type of a Garnishee order directs the Garnishee i.e., your bank or Financial Institution to repay the outstanding debt in a single sum.

### ➤ **RECOVERY OF DEBT FROM PEOPLE WHO OWE MONEY TO THE DEBTOR**

The court can issue Garnishee order for debt against any third parties who owe money to the debtor. These third parties may be Tenants, Contractors or any other third party that owes the debtor money.

### ➤ **RECOVERY OF DEBT FROM WAGES AND SALARY**

A garnishee order can allow the judgement creditor to recover debt from the debtor's wages and salary. This is the most common type of garnishee order. Once the court makes its judgement, the creditor serves the order to the debtor's employer. The employer then takes a sum of money from the creditor's wage to pay to the creditor. This wage withdrawal may continue until the entire debt has been repaid, or until the court otherwise stops the order.

#### ❖ **IMPORTANT FEATURES OF GARNISHEE ORDER:**

- Garnishee Order applies only to those accounts of Judgement Debtor which have credit balance.
- Garnishee Order issued in a single name does not apply to accounts in the joint names of judgement debtor with another person(s). But if Garnishee Order is issued in joint names, it will apply to individual accounts also of the same debtors. When Garnishee Order is in the name of a partner it will not apply to partnership account but when Garnishee Order is in the name of firm, accounts of individual partners are covered.
- If amount is not specified in the order, then it will be applicable on the entire balance in the account. However, if it is for specific amount, the cheques can be paid from the balance available after setting aside the amount as mentioned in the Garnishee Order.
- Garnishee orders does not apply on fixed deposits taken as security for some loan. If the loan given against the fixed deposits, then it is applicable on the amount after adjusting the loan.

#### ❖ **CASE LAWS RELATING TO GARNISHEE ORDERS**

- In **Kuchimanchi Nagamani Vs. Mantri Prasada Agnihotrudu and Ors.**, the Petitioner filed a suit for recovery. During the pendency of suit the Order of garnishee attachment of amount lying with Government department was passed but no objections were raised by the government authorities at that time and therefore, the Order became final. Later, when the petitioner applied for withdrawal of amount, the Government Authorities objected. The Hon'ble Court while setting aside the objections held that the authorities did not raise the objections at relevant time and therefore, the objections are not to be entertained.

## **C. CASE LAW ON GIFT OF ANCESTRAL PROPERTY**

### **Gift of Ancestral Property**

The Hon'ble Supreme Court in the case of KC Laxmana vs Chandrappa Gowda & ors. in CIVIL APPEAL NO. 2582 OF 2010 has recently held that gift of ancestral property is only for 'pious purpose' and it cannot be 'out of love and affection'.

#### **Facts of the Case:**

K.C. Chandrappa Gowda filed a suit against his father K.S. Chinne Gowda & K.C Laxmana for partition and separate possession of his one third share in the suit schedule property and for a declaration that the Gift/settlement deed executed by his father K.S. Chinne Gowda in favour of K.C. Laxmana as null and void.

K.C. Chandrappa Gowda contended that the schedule property belongs to a joint family consisting of himself, K.S. Chinne Gowda and his brother K.C. Subbaraya Gowda. K.S. Chinne Gowda stated that K.C. Laxmana was brought up by him and out of love and affection he settled the suit property in favour of K.C. Laxmana.

#### **Supreme court's analysis**

The Hon'ble Supreme court after considering the facts the case, inter alia, held the following:

A Karta/Manager of a joint family property may alienate joint family property only in the following three situations:

- a) Legal necessity
- b) For the benefit of the property/estate
- c) With the consent of the all co-parceners

The court further held that it is settled law wherein alienation is not made with the consent of all the co-parceners, it is voidable at the instance of the co-parceners whose consent has not been obtained. Therefore, the alienation of the joint family property in favour of the K.S. Chinni was voidable at the instance of the Chandrappa Gowda whose consent had not been obtained as a co-parcener before the said alienation.

Regarding the contention that the gift deed was executed by K.S. Chinne Gowda in favour of K.C. Laxmana 'out of love and affection', the court observed that it is well settled that a Hindu father or any other managing member of a HUF (Hindu Undivided Family) has power to make a gift of ancestral property only for a 'pious purpose' and what is understood by the term 'pious purpose' is a gift for charitable and/or religious purpose. Therefore, a deed of gift in regard to the ancestral property executed 'out of love and affection' does not come within the scope of the term 'pious purpose'. It is irrelevant if such gift or settlement was made by a donor, i.e. the K.S. Chinne Gowda, in favour of K.C. Laxmana who was raised by the K.S. Chinne Gowda without any relationship.

Holding that the gift deed in the instant case is not for any charitable or religious purpose, the Hon'ble supreme court dismissed the appeal.