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Analysing developments impacting business

IPAB CEASES TO EXIST IN INDIA

7 April 2021

The President of India has promulgated an Ordinance (defined hereinafter) abolishing the Intellectual Property Appellate Board (IPAB) which was entrusted with certain matters falling under various Intellectual Property Rights laws (IPR laws).

IPAB was established in 2003 as an appellate body to decide appeals against certain decisions passed under Trade Marks Act 1999 (Trade Marks Act) and Geographical Indications of Goods (Registration and Protection) Act 1999 (GI Act). Subsequently, IPAB was also entrusted with certain matters under the Patents Act 1970 (Patents Act), Copyright Act 1957 (Copyright Act) and Protection of Plant Varieties and Farmers' Rights Act (Plant Varieties Act).

The Ordinance

Earlier this year, the Government introduced The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021 (Bill). This Bill had created a lot of buzz in the field of intellectual property as the Government intended to abolish many tribunals (which includes IPAB as well). This was with the stated aim to give impetus to speedy delivery of justice and to attempt to reduce the burden on the Government's exchequer. The Bill mentioned that tribunals merely add an "additional layer" to litigation, thereby leading to delay in final disposal of matters.

Since the Bill could not be taken up for consideration, the President of India, exercising his powers under Article 123 of the Constitution of India, has promulgated The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance 2021 (Ordinance) which has come into immediate effect from 4 April 2021. Pursuant to the Ordinance, certain provisions of aforementioned IPR laws have been amended/deleted/substituted which has effectively abolished IPAB. The Ordinance has also abolished certain other tribunals formed under other laws.

Key changes under the IPR laws:

- (i) Trade Marks Act:

- Removal of a trade mark from the register can be filed before Registrar of Trade Marks or High Court;
- Appeal against order of Registrar of Trade Marks shall lie before High Court.

(ii) Patents Act:

- Petition for revocation of a patent and rectification of register, and appeal against order of Controller General of Patents would lie before High Court.

(iii) GI Act:

- Petition for cancellation or varying a registration can be filed before Registrar or High Court;
- Appeal against order of Registrar shall lie before High Court.

(iv) Copyright Act:

- Commercial Court (established under the Commercial Courts, Commercial Appellate Courts, Commercial Divisions and Commercial Appellate Divisions Act 2015.) will determine questions relating to (a) whether a work has been published; (b) date of publication of a work; (c) term of copyright of a work; (d) disputes relating to assignment of copyright; (e) term and ownership of copyright in anonymous and pseudonymous work; (f) compulsory licensing; (g) statutory licensing for cover versions of sound recordings, broadcasting of literary and musical works and sound recordings; (h) license to produce and publish translations; (i) tariff scheme by copyright societies; and (j) resale share right of the first owner of copyright in original copyrightable work.
- Rectification of register of copyright can be sought before High Court;
- Appeal against order of Registrar of Copyrights shall lie before High Court.

(v) Plant Varieties Act:

- Appeal against order of Registrar or Authority shall lie before High Court.

Comment:

Being an ordinance, although it has the force of law, it remains to be seen if the Ordinance will stand the litmus test in the Parliament and if it will be enacted into a legislation. For the time being, IPAB has become *functus officio*.

While initially it would be an administrative challenge to transfer the pending matters to concerned High Court/ Commercial Court, in the longer run, it could be helpful in expeditious disposal of IP matters. It is apposite to mention that due to the limited number of judges in the High Court / Commercial Court, there has been long pendency of cases. Thus, there is a need to expedite appointment of new judges and also sensitization of judges to the technical aspects of IP matters, so that the true fruits of the Ordinance can be accomplished.

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