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YOUR LEGAL THOUGHT

July 2023



03 EMPLOYMENT & LABOUR

- COMMITTEES FOR DRAFTING SCHEMES UNDER THE SOCIAL SECURITY CODE 2020
- COMPANIES REGISTERED UNDER THE ESIC THROUGH THE MCA PORTAL WILL HAVE TO DECLARE THEIR STATUS WITHIN SIX MONTHS OF THE REGISTRATION
- DELHI HIGH COURT RESTRAINS EPFO FROM TAKING COERCIVE STEPS ON THE BASIS OF THE RECOVERY NOTICES FOR HIGHER PENSION
- EPFO ON HIGHER PENSION
- ESIC CLARIFICATION REGARDING IMPLEMENTATION OF AADHAAR SEEDING OF INSURED PERSONS
- NEW NOTIFICATION ISSUED BY HARYANA LABOUR WELFARE BOARD
- J&K HIGH COURT DIRECTS GOVT TO RECONSIDER EMPLOYEE'S CLAIM FOR REIMBURSEMENT OF MEDICAL EXPENSES INCURRED OUTSIDE STATE
- JUDICIAL REVIEW CAN'T BE EXERCISED TO RE-APPRECIATE EVIDENCE IN DEPARTMENTAL ENQUIRY PROCEEDINGS

05 CORPORATE & COMMERCIAL

- SEBI LOOKING TO MANDATE FPIS TO USE THE RFQ PLATFORM
- RELAXATION IN PAYING ADDITIONAL FEES IN FILING DPT3 FOR FINANCIAL YEAR ENDED
- SEBI AMENDS GUIDELINES FOR INSTITUTIONAL PLACEMENT OF UNITS BY INVITS, REITS (JULY 05, 2023)

06 REAL ESTATE

- GUJARAT HIGH COURT CLARIFIES APPLICABILITY OF GST IN REAL ESTATE TRANSACTIONS
- INTERVENTION APPLICATION BY HOMEBUYERS PRIOR TO THE ADMISSION OF PETITION UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE
- MADHYA PRADESH HIGH COURT SETS ASIDE RERA ORDER FOR IMPROPERLY STAMPED REAL ESTATE PROJECT REGISTRATION APPLICATION
- THE TAMIL NADU HOUSING UPDATE: REVISED HOUSE BUILDING ADVANCE AND IMPLICATIONS FOR HOMEBUYERS

07 BANKING & FINANCE

- DENOMINATION OF ₹2000 BANKNOTES – WITHDRAWAL FROM CIRCULATION; CONTINUED AS LEGAL TENDER
- FORMALISATION OF INFORMAL MICRO ENTERPRISES ON UDYAM ASSIST PLATFORM
- SUPREME COURT CLARIFIES THE INELIGIBILITY OF RESOLUTION APPLICANTS UNDER THE INSOLVENCY AND BANKRUPTCY CODE

08 INTELLECTUAL PROPERTY

- DELHI HIGH COURT: GLENMARK PHARMACEUTICALS RESTRICTED FROM USING "INDAMET" MARK
- JAYSON INDUSTRIES VS. CROWN CRAFT
- UNRAVELLING THE INTRICATE TRADEMARK DISPUTE OVER 'ELEKTRON'

09 DISPUTE RESOLUTION

- ALLAHABAD HIGH COURT RULES ON REJECTION OF EXECUTION APPLICATION ON GROUNDS OF LACK OF TERRITORIAL JURISDICTION
- AMIT AHIRRAO VS. ANAGHA ANASINGHARAJU
- THE BREAKING POINT TO DETERMINE LIMITATION FOR AN APPOINTMENT OF AN ARBITRATOR - AN ANALYSIS

EMPLOYMENT & LABOUR

COMMITTEES FOR DRAFTING SCHEMES UNDER THE SOCIAL SECURITY CODE 2020

The Employees' Provident Fund Organization (EPFO) in its order dated 02.06.2023 has formed committees to develop draft schemes under the Social Security Code 2020. These committees will focus on creating the Employees' Provident Fund Scheme (EPFS), Employees' Pension Scheme (EPS), and Employees' Deposit Linked Insurance Scheme (EDLIS).

[CLICK HERE FOR MORE INFO](#)

COMPANIES REGISTERED UNDER THE ESIC THROUGH THE MCA PORTAL WILL HAVE TO DECLARE THEIR STATUS WITHIN SIX MONTHS OF THE REGISTRATION

Employees' State Insurance Scheme's circular dated 02.06.2023 introduced the dormant option in the employer's portal. The companies registered under ESIC through the MCA portal will have to declare their status within 6 months of the registration to avoid defaulter action. Before the end of the "inactive mode," the companies registered under ESIC can further extend the "inactive mode" period for six months and can continue to extend in a similar manner as per the status of the company. The option of declaring "inactive mode" will not be available to the employer after the expiry of six months.

COMPANIES REGISTERED UNDER THE ESIC WILL HAVE TO DECLARE THEIR STATUS WITHIN SIX MONTHS OF THE REGISTRATION

DELHI HIGH COURT RESTRAINS EPFO FROM TAKING COERCIVE STEPS ON THE BASIS OF THE RECOVERY NOTICES FOR HIGHER PENSION [1]

The petitioners, who are retired employees receiving higher pensions beyond the ceiling limit based on options given by the respondent in 2018/19, have approached the court to challenge a communication issued by the respondent on 20.02.2023.

The communication instructed Regional Provident Fund Commissioners to stop the higher pension of those who retired before 01.09.2014 without giving them an option for higher pension prior to their retirement.

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EPFO ON HIGHER PENSION

- EPFO Issues Instructions for Joint Requests Under Employee Provident Fund Scheme, 1952
- Computation of Pension Method – Filing of Applications for Validation of Option/Joint Option
- EPFO asks officials to stick to the timeline on joint option applications
- EPFO notified regarding the Applications for Validation of Option/ Joint Options – Proof of joint option duly verified by the employer and the list of admissible documents

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[1] Delhi High Court in W.P.(C) 6957/2023; W.P.(C) 7094/2023; W.P.(C) 7138/2023; W.P.(C) 7139/2023

EMPLOYMENT & LABOUR

ESIC CLARIFICATION REGARDING IMPLEMENTATION OF AADHAAR SEEDING OF INSURED PERSONS

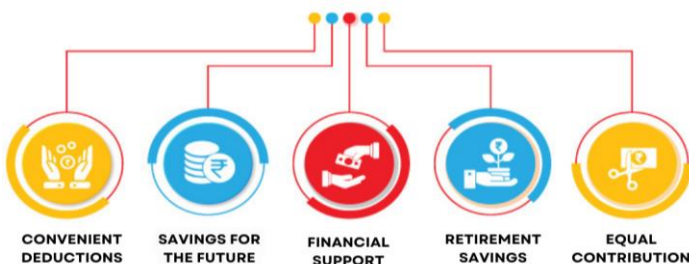
On May 25, 2023, the Employees' State Insurance Corporation (ESIC) issued a clarification regarding the implementation of Aadhaar seeding for insured persons. The process can be carried out either through the IP portal or the employer portal. An online provision has been developed for the seeding and authentication of Aadhaar numbers, allowing existing employees to voluntarily link their Aadhaar numbers for themselves and their family members. The verification is done through an OTP received on their mobile from UIDAI.

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NEW NOTIFICATION ISSUED BY HARYANA LABOUR WELFARE BOARD

According to the notification issued by Haryana Labour Welfare Board on 27th June 2023, every employee has to contribute to the EPF every month an amount equal to 0.2% of his salary or wages or any remuneration, the maximum threshold for which has been increased to INR 31. The Notification further states that the employer must contribute twice the amount contributed by the employee.

BENEFITS OF EPF



sk KING STUBB & KASIVA
ADVOCATES AND ATTORNEYS



J&K HIGH COURT DIRECTS GOVT TO RECONSIDER EMPLOYEE'S CLAIM FOR REIMBURSEMENT OF MEDICAL EXPENSES INCURRED OUTSIDE STATE [2]

The Jammu & Kashmir High Court has delivered a judgment in favor of a contractual government employee, stating that the medical expenses she incurred for her husband's treatment outside the State should be reimbursed. The court emphasized the importance of the government's power to relax rules, highlighting that it should be exercised sincerely.

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JUDICIAL REVIEW CAN'T BE EXERCISED TO RE-APPRECIATE EVIDENCE IN DEPARTMENTAL ENQUIRY PROCEEDINGS [3]

The Supreme Court while placing reliance on Deputy General Manager (Appellate Authority) vs. Ajai Kumar Srivastava said that the Division Bench of the High Court went outside the scope of judicial review by dealing with the matter in a manner as if it was the first stage of the case, namely, the inquiry was being conducted and inquiry report was being prepared. The Supreme Court clarified that during judicial review of departmental enquiry proceedings, the scope does not include reevaluating the entire evidence as one would in reviewing a conviction in a criminal trial.

[CLICK HERE FOR MORE INFO](#)

[2] High Court of Jammu and Kashmir in SWP No. 1062/2016
[3] Supreme Court in Civil Appeal No. 3663 of 2023

CORPORATE & COMMERCIAL

SEBI LOOKING TO MANDATE FPIS TO USE THE RFQ PLATFORM FOR 10% OF SECONDARY TRANSACTIONS (JULY 05, 2023) [4]

Foreign Portfolio Investors (FPIs) would be required to conduct at least 10% of the value of their secondary market corporate bond trades through the RFQ (Request for Quote) platform of the stock exchanges, according to a proposal by the Securities and Exchange Board of India (SEBI). The plan aims to improve the disclosures around investments in corporate bonds as well as the liquidity on the RFQ platform, which will in turn stimulate FPI investment in the corporate bond market.

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RELAXATION IN PAYING ADDITIONAL FEES IN FILING DPT3 FOR FINANCIAL YEAR ENDED ON 31ST MARCH 2023 TO 31ST JULY 2023

The Ministry of Corporate Affairs (“MCA”) has granted an extension for filing Form DPT-3, which pertains to the return of deposits, by one month. The original due date of June 30, 2023, has been extended to July 31, 2023. This decision comes in light of the transition of the MCA-21 Portal from Version-2 to Version-3. The Ministry issued the announcement through General Circular no. 06/2023.[5]

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SEBI AMENDS GUIDELINES FOR INSTITUTIONAL PLACEMENT OF UNITS BY INVITS, REITS (JULY 05, 2023)[6]

The Securities and Exchange Board of India (SEBI) has published a circular outlining changes to the rules for listed Real Estate Investment Trusts (REITs) preferential offering and institutional placement of units. SEBI has discussed the pricing for institutional placement of units in two different, but identically worded circulars published for InvITs and REITs.

Clause 2 of Annexure II of the earlier SEBI guideline was modified to the effect that the price of the institutional placement should not be less than the average weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks before the relevant date.

[CLICK HERE FOR MORE INFO](#)



[4] https://www.sebi.gov.in/reports-and-statistics/reports/jul-2023/consultation-paper-on-mandating-fpis-to-route-a-specific-percentage-of-certain-transactions-in-secondary-market-trades-through-request-for-quote-rfq-platform-of-stock-exchanges_73525.html

[5] <https://www.mca.gov.in/bin/dms/getdocument?mds=GZbzY8G5s24kITjoGKWLQ%253D%253D&type=open> General Circular no. 06/2023, 21st June 2023

[6] Circular No.: SEBI/HO/DDHS-PoD-2/P/CIR/2023/113 (https://www.sebi.gov.in/legal/circulars/jul-2023/amendments-to-guidelines-for-preferential-issue-and-institutional-placement-of-units-by-a-listed-reit_73494.html) and Circular No.: SEBI/HO/DDHS-PoD-2/P/CIR/2023/114. (https://www.sebi.gov.in/legal/circulars/jul-2023/amendments-to-guidelines-for-preferential-issue-and-institutional-placement-of-units-by-a-listed-reit_73494.html)

REAL ESTATE

GUJARAT HIGH COURT CLARIFIES APPLICABILITY OF GST IN REAL ESTATE TRANSACTIONS

The Gujarat High Court in the case of Munjaal Manish bhai Bhatt v. Union of India has granted substantial relief to buyers by clarifying that the Goods and Services Tax (GST) is payable only on the cost of construction and not on the cost of land. The court's decision addresses the issue of whether the value of land or an undivided share of land used for constructing a property is subject to GST. The judgment, delivered by a bench comprising Justice J.B. Pardiwala and Justice Nisha M. Thakore, highlights the distinction between the sale of land and the construction costs involved in real estate transactions.

[CLICK HERE FOR MORE INFO](#)

INTERVENTION APPLICATION BY HOMEBUYERS PRIOR TO THE ADMISSION OF PETITION UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE

The National Company Law Appellate Tribunal (“NCLAT”) recently pronounced an important judgment in the case of Vikash Kumar Mishra & Ors. v. Orbis Trusteeship Service Pvt. Ltd. & Anr. on the issue of whether home buyers have the right to file an intervention application in support of their builder, the Corporate Debtor, on a petition under Section 7 Insolvency and Bankruptcy Code (“IBC”).

The matter was an appeal against a judgment by the National Company Law Tribunal (“NLCT”) wherein it had rejected the intervention application filed by the homebuyers on the grounds that it would not be maintainable until the Section 7 application was admitted.

[CLICK HERE FOR MORE INFO](#)

MADHYA PRADESH HIGH COURT SETS ASIDE RERA ORDER FOR IMPROPERLY STAMPED REAL ESTATE PROJECT REGISTRATION APPLICATION

In a recent judgment, the Madhya Pradesh High Court at Indore overturned an order issued by the Real Estate Regulatory Authority (RERA). The RERA had dismissed a real estate company's application for project registration under the Real Estate (Regulation and Development) Act, 2016, citing improper stamping of the development agreement. The court held that instead of dismissing the application, RERA should have referred the document to the Registrar of Stamps for impounding.

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THE TAMIL NADU HOUSING UPDATE: REVISED HOUSE BUILDING ADVANCE AND IMPLICATIONS FOR HOMEBUYERS

The Hon'ble Minister (Finance & HRM) made a declaration during his Budget speech to the Legislative Assembly stating that in response to the rising construction costs, the maximum limit for House Building Advance will be raised to Rs. 50.00 lakh per employee, an increase from the previous limit of Rs. 40.00 lakh, in the upcoming financial year.

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BANKING & FINANCE

EXPANSION OF THE SCOPE OF TREDIS BY RBI

On February 8th, 2023, while delivering the Monetary Policy Committee report, the Reserve Bank of India (RBI) announced the expansion of the scope of Trade Receivables Discounting System (TReDS) and the objective is to introduce an insurance facility for invoice financing. This entails allowing all entities and institutions engaged in factoring business to participate as financiers in TReDS. Additionally, the plan involves permitting the rediscounting of invoices.

[CLICK HERE FOR MORE INFO](#)

RATIONALIZATION OF BRANCH AUTHORIZATION POLICY FOR URBAN CO-OPERATIVE BANKS (UCBS)

Recently, the RBI announced changes to its Urban Co-operative Banks (UCBs) branch authorization policy. The new policy places a focus on universal branch growth power, an expedited approval procedure, and reporting requirements. Under the new regulatory framework for UCBs, financially sound UCBs are given general authorization for branch growth in their authorized operating territory. Making the branch opening process more efficient, this is meant to aid UCBs in expanding.

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RBI'S APPROACH TOWARDS COMPROMISE SETTLEMENTS AND TECHNICAL WRITE-OFFS

The RBI recently vide notification dated 08.06.2023 unveiled a comprehensive framework for compromise settlements and technical write-offs for Regulated Entities (REs). This framework aims to provide guidelines for reaching agreements with borrowers and eliminating non-performing assets while promoting transparency and accountability. In accordance with this framework, REs must create policies that have received board approval and specify the steps to take for compromise settlements and technical write-offs. These regulations should include a graded framework for evaluating staff accountability as well as requirements precedent as minimum ageing and decline in collateral value.

[CLICK HERE FOR MORE INFO](#)



INTELLECTUAL PROPERTY



DELHI HIGH COURT: GLENMARK PHARMACEUTICALS RESTRICTED FROM USING "INDAMET" MARK

The Delhi High Court issued an injunction restraining Glenmark Pharmaceuticals from using the mark "INDAMET" and granted injunction in favour of Sun Pharma for its mark "ISTAMET." The Court found that the two marks were deceptively similar, posing a risk of confusion and potential health risks for consumers. The overall impression of the marks was considered and how they pose a potential risk for misuse in the administration of drugs. The Court also examined the description of goods and packaging, emphasizing the importance of considering the perspective of end consumers.[7]

[CLICK HERE FOR MORE INFO](#)

JAYSON INDUSTRIES VS. CROWN CRAFT

In the case of Jayson Industries vs. Crown Craft, a legal battle has unfolded over the alleged infringement of registered designs. The dispute centres around everyday household items - a bucket, mug, and tub. Jayson Industries, Plaintiff No. 1, holds the registrations for these designs, while Plaintiff No. 2 manufactures and markets the products with their permission.

The Plaintiffs argued that the Defendant's designs are obvious and fraudulent imitations of the Plaintiffs' registered designs, constituting piracy under the Designs Act. The Defendant claims that their designs possess unique features, such as elongated vertical ribs and distinctive handles, aimed at capturing consumers' attention. These products, known as the Rib Bath Bucket, Mug, and Tub, are not only visually appealing but also technically efficient.

[CLICK HERE FOR MORE INFO](#)

UNRAVELLING THE INTRICATE TRADEMARK DISPUTE OVER 'ELEKTRON'

The Delhi High Court's recent decision in *Paragon Cable India & Anr. v. Essee Networks Private Ltd. & Ors.*[8] examines a complicated trademark dispute concerning the term 'ELEKTRON.' Initially coexisting peacefully, the litigating parties registered their trademarks independently for distinct product classifications. However, a dispute arose when both parties began to refer to 'ELEKTRON' for their electric conductors and cables. The Plaintiffs contest the prior registration of the Defendants in this category, citing their own prior use. The Plaintiffs seek an injunction, alleging infringement and passing off. The court's decision will untangle the complexities of this case and have repercussions for trademark disputes in similar industries, examining the balance between prior use, trademark registrations, and intellectual property protection in a market that is constantly evolving.

[CLICK HERE FOR MORE INFO](#)



[7] Reckitt Benckiser (India) Pvt. Ltd. v Wipro Enterprises (P) Ltd., 2023 SCC OnLine Del 2958, decided on 18-05-2023

[8] Paragon Cable India & Anr. v. Essee Networks Private Ltd. & Ors., CS(COMM) 112/2023.

DISPUTE RESOLUTION

ALLAHABAD HIGH COURT RULES COMMERCIAL COURT CAN'T REJECT EXECUTION APPLICATION FILED WHERE JUDGMENT DEBTOR RESIDES ON GROUNDS OF LACK OF TERRITORIAL JURISDICTION

The Allahabad High Court recently delivered a significant ruling concerning the execution of arbitral awards in Commercial Courts. The court unequivocally declared that a Commercial Court cannot dismiss an execution application solely based on the lack of territorial jurisdiction when the judgment debtor resides within that jurisdiction. This landmark decision was reached in the case of M/S Imagine Fashion Apparels Pvt. Ltd. v Presiding Officer Commercial Court and Anr.[9]

The judgment, delivered by a bench led by Justice Rohit Ranjan Agarwal, highlights the well-established legal principles governing the execution of arbitral awards and emphasizes that Section 36 of the Arbitration and Conciliation Act, 1996 explicitly stipulates the applicability of the provisions of the Code of Civil Procedure, 1908 ("CPC"), for enforcing the award, treating it as a decree. Thus, the execution application filed by the petitioner in the jurisdiction where respondent No. 2 resides falls well within the territorial jurisdiction as provided under the Act.

[CLICK HERE FOR MORE INFO](#)

AMIT AHIRRAO VS. ANAGHA ANASINGHARAJU [10]

This appeal was against a liquidation order that was decided and allowed by the NCLT Mumbai. An order was made by the Adjudicating Authority for the initiation of CIRP process against M/s Virtue Infra and Entertainment Private Limited. Although no resolution plan could be submitted in the entire process. The Committee of Creditors passed a resolution, and the Form G was issued by the Resolution Professional.

[CLICK HERE FOR MORE INFO](#)

THE BREAKING POINT TO DETERMINE LIMITATION FOR AN APPOINTMENT OF AN ARBITRATOR - AN ANALYSIS

In May 2023, the Supreme Court of India made a significant ruling regarding the appointment of an arbitrator. According to the court's decision, the cause of action for the arbitration would start from the "Breaking Point," which is defined as the moment when any reasonable party would abandon efforts to reach a settlement and consider referring the dispute for arbitration. The court clarified that the "Breaking Point" should be considered as the date on which the cause of action arose for the purpose of limitation. This ruling provides important guidance for arbitration proceedings in India.[11]

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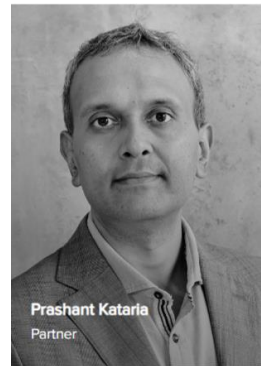
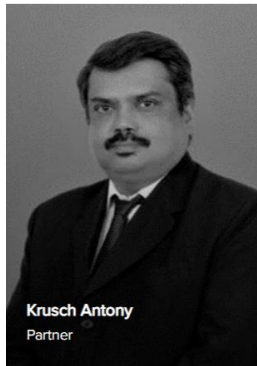
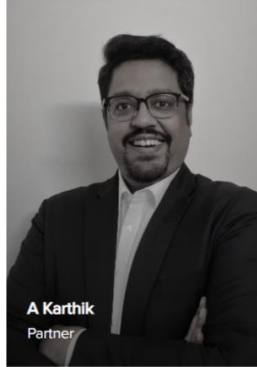
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[9] Neutral Citation No. - 2023: AHC:109515

[10] (National Company Law Appellate Tribunal) Company Appeal (AT) (Insolvency) No. 842 of 2022 decided on 16th May 2023

[11] B & T AG v. Ministry of Defence, Arbitration Petition (C) No. 13 of 2023.

KEY TEAM MEMBERS



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New Delhi

Unit-14, Ground Floor,
DLF Tower-A,
Jasola, New Delhi – 110025

T : +91 11 41318190 / 1,
41032969
F : +91 11 41329569
info@ksandk.com

Bangalore

1A, Lavelle Mansion,
1/2, Lavelle Road,
Bengaluru-560001

T : +91 80 41179 111 / 222 / 333
F : +91 80 88920280
bangalore@ksandk.com

Chennai

211, Alpha Wing, Second Floor,
Raheja Towers, #177, Anna Salai,
Chennai – 600 002.

T : +91 44 28605955
28606955
chennai@ksandk.com

Mumbai

Office No. 61, 6th Floor,
Atlanta Building, Jamnalal Bajaj
Road,
Nariman Point, Mumbai – 400
021

T : +91 22 2202 0080
F : +91 22 61554899
mumbai@ksandk.com

Hyderabad

404, Shangrila Plaza, Road no.2,
Banjara Hills, Opposite KBR Park,
Hyderabad, Telangana-500034.

T: +91 40 48516011
+91 40 48506011
hyderabad@ksandk.com

Kochi

1st Floor, Manavalan Building,
Amulya Street, Banerji Road,
Ernakulam, Kochi – 682018

T: +91 484-3592950
kochi@ksandk.com

Kolkata

Unit 116, Siddha Weston, 1st
Floor, 9, Weston Street, Bow
Bazar, Kolkata, West Bengal –
700012

T: 033 48045821
kolkata@ksandk.com

Pune

Bootstart Cowork,
First Floor, Arcadian Building
Plot No.12,
Lane 5A, North Main Rd
Near Pinnacle Building,
Koregaon Park,
Pune, Maharashtra - 411001

T : +91 9952966619
pune@ksandk.com

Mangalore

Office No. 406, 4th Floor, Ajanta
Business Center, Kapikad, Bejai,
Mangalore- 575004

T: +91 9844093300
mangalore@ksandk.com



Ksandk.com