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## RBI & FEMA

- In this Writ Petition, the petitioner has prayed for quashing the Press Note Nos. 4,5,6,7 and 8 of (2012 Series) dated 20<sup>th</sup> September, 2012 being unconstitutional and without any authority of law. By these Press Notes, the policy of Foreign Direct Investment (FDI) in Single-Brand Product Retail Trading, Multi-Brand Retail Trading, Air Transport Services, Broadcasting Carriage Services and Power Exchanges has been reviewed. The Hon'ble Supreme Court observed that the Constitution has accorded primary responsibility to the executive for the formulation of governmental policy and it is not open for the Court to go into merits and demerits of such policy. On matters affecting policy, this Court does not interfere unless the policy is unconstitutional or contrary to the statutory provisions or arbitrary or irrational or in abuse of power. It was observed that the impugned policy does not appear to suffer from any of these vices. *Manohar Lal Sharma v. Union of India and Another, 2013 STPL (Web) 399 (SC) dated May 1, 2013.*
- W.e.f. May 03, 2013, the Repo rate and Reverse Repo rate under the Liquidity Adjustment Facility (LAF) revised to 7.25% and 6.25% respectively and the Reverse Repo rate under the Marginal Standing Facility (MSF) stand automatically adjusted to 8.25% - *Circular No.*

*RBI/2012-13/486 dated May 3, 2013.*

- The following limits under priority sector stand revised upward with effect from April 1, 2013 –
  - (I) The limit of loans to farmers against pledge/hypothecation of agricultural produce (including warehouse receipts) for a period not exceeding 12 months stands increased from 25 lakh to 50 lakh both under direct and indirect agriculture.
  - (II) The limit of loans to dealers/sellers of fertilizers, pesticides, seeds, cattle feed, poultry feed, agricultural implements and other inputs has been raised to 5 crore per borrower from 1 crore.
  - (III) The limit of bank loans to Micro and Small Service Enterprises (MSEs) engaged in providing or rendering of services has been increased from 2 crore to 5 crore per borrower/unit, provided they satisfy the investment criteria for equipment as defined under MSMED Act, 2006. - *Circular No. RBI/2012-13/487, Dated May 03, 2013.*
- To ease the monitoring of Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT) in the Indian financial market RBI has advised Non-Deposit taking NBFCs with assets of Rs 25 crore and above and All Deposit taking NBFCs, to initiate steps for allotting Unique Customer Identification Code (UCIC) to all their customers while entering into any new relationships. Similarly, existing individual customers may also be allotted UCIC by the end of June 2013. - *Circular No. RBI/2012-13/489, Dated May 03, 2013.*

- All Scheduled Commercial Banks including RRBs /Local Area Banks Urban Co-operative Banks / State Co-operative Banks / District Central Co-operative Banks are advised to adhere to the following instructions with immediate effect –
  - (I) Cheque return charges shall be levied only in cases where the customer is at fault and is responsible for such returns.
  - (II) Cheques that need to be re-presented without any recourse to the payee, shall be made in the immediate next presentation clearing not later than 24 hours(excluding holidays) with due notification to the customers of such re-presentation through SMS alert, email etc. - *Circular No. RBI/2012-13/ 493, Dated May 07, 2013.*
- In view of the concerns emerging from the deceleration in credit growth to the micro and small enterprises (MSEs), RBI proposes a structured monitoring mechanism to be put in place in banks at every supervisory level (branch, region, zone, head office level, etc.) for holistic monitoring of all credit related matters pertaining to the MSE sector and for follow-up of action points on a continuous basis. - *Circular No. RBI/2012-13/ 495, Dated May 09, 2013.*
- Exporters, with a view to facilitating Direct Benefit Transfer (DBT) for the delivery of social welfare benefits by direct credit to the bank accounts of beneficiaries, banks are advised to:
  - (I) Open accounts for all eligible individuals in camp mode with the support of local government authorities,
  - (II) Seed the existing accounts or the new accounts opened with Aadhaar numbers and
  - (III)Put in place an effective mechanism to monitor and review the progress in the implementation of DBT. - *Circular No. RBI/2012-13/ 498, Dated May 10, 2013.*
- All Urban Co-operative Banks (UCBs) are advised to implement Core Banking Solutions (CBS), in all their branches before December 31, 2013. Non-compliance could result in denial of various facilities (expansion of branches or area of operation etc.) to UCBs. - *Circular No. RBI/2012-13/437, Dated Mar 13, 2013.*
- To moderate the demand for gold for domestic use, RBI has advised Banks to restrict the import of gold on consignment basis by banks, only to meet the genuine need of the exporters of gold jewellery. - *RBI A.P. (DIR Series) Circular No. 103, Dated May 13, 2013.*
- RBI has amended one of the condition (of issuance of equity share by foreign investors against the pre-incorporation expenses incurred by the foreign investors while incorporating a company) in respect to the payment made by the foreign investor for pre-incorporation expenses as follows:

“Payments should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under the FEMA Regulations.”

Due to the amendment, all payment in respect to the pre-incorporation expenses will be ensured through foreign investor only and therefore, RBI will required to do KYC of the foreign Investor only and not the third party. - *RBI A.P. (DIR Series) Circular No. 104, Dated May 17, 2013*
- RBI brought down the realization period of export proceed pertaining to full value of goods or software exported from twelve months to nine months from the date of export, with immediate effect and will remain valid till September 30, 2013. - *RBI A.P. (DIR Series) Circular No. 105, Dated May 20, 2013.*

- RBI has further clarified that no advances should be granted by NBFCs for purchase of gold in any form, including primary gold, gold bullion, gold jewellery, gold coins, units of gold ETF and units of gold Mutual Funds. - *Circular No. RBI/2012-13/ 510, Dated May 27, 2013.*
- Prudential guidelines on restructuring of advances by banks / financial institutions' have been revised and the revised instructions are given in the annexure provided in the circular itself. - *Circular No. RBI/2012-13/ 509, Dated May 30, 2013*
- RBI has advised banks to give a receipt of acknowledgement to customers when they submit Form 15G/15H while making a fixed deposit (FD). This move has been introduced as despite submission of Form 15G/15H by customers, banks have been deducting tax at source (TDS) at times causing inconvenience to customers resulting in a number of complaints. - *Circular No. RBI/2012-13/ 516, Dated May 31, 2013.*

## FOREIGN TRADE

- Standard Input Output Norms (SION) for the export product 'Verdyl Acetate', 'Verdyl Propionate' & 'Amyl Salicylate' in the Chemical and Allied Products Group notified. - *Public Notice No.07/(RE 2013)/2009-14; No. 08/(RE2013)/2009-2014;No. 09/(RE2013)/2009-2014.*
- The Sodium Dithionate (Hy-drose) stands deleted as a permissible input under SION G-7 and G-46 with immediate effect. There would be no change in either the description or the quantity permitted in respect of the rest of the inputs under SION G-7 and G-46. - *Public Notice No.10/(RE 2013)/2009-14, Dated May 7, 2013.*
- Five Visvesvaraya Trade Promotion Centre (VTPC) Bangalore and its two branches at Dharwad and Mysore are enlisted for issuing Certificate of Origin (Non Preferential). - *Public Notice No.11/(RE 2013)/2009-14, Dated May 7, 2013.*
- The minimum price for import of Areca Nuts is enhanced from existing Rs. 75/- to Rs. 110/- per Kilogram. - *Notification No 12 (RE-2013)/2009-2014, Dated May 13, 2013.*
- In case of request by the foreign buyer or any other agency on showing due diligence in procurement of wood from legal sources for manufacture of handicraft articles, Export Promotion Council for Handicrafts (EPCH) will be authorized agency to issue such certificate. - *Notification No 13 (RE-2013)/2009-2014, Dated May 14, 2013.*
- In pursuance of the announcement made by Commerce and Industry Minister on 18.4.2013, the Second Task Force on Transaction Cost has been constituted under the Chairmanship of Director General of Foreign Trade under terms and reference (mentioned in Notice). - *Trade Notice No. 02/2013, dated May 20, 2013.*
- The process of obtaining registration Certificates for export of various commodities with effect from 1st July, 2013 would be online and mandatory. The procedure to obtain the RCs online would be available on [www.dgft.gov.in](http://www.dgft.gov.in). - *Trade Notice No. 03 /2013, Dated May 28, 2013.*

## CORPORATE

- Laying down 12 rules in the judgment, the Supreme Court held that where a company is in liquidation, a statutory charge is created in favour of workmen in respect of their dues over the security of every secured creditor and this charge is *pari passu* with that of the secured creditor. Such statutory charge is to the extent of workmen's portion in relation to the security held by the secured creditor of the debtor company. Earlier, there were differences among judges on the priority for payment of a debtor company. Therefore, a larger bench in this case clarified the law for debt tribunals and liquidation proceedings. *Bank of Maharashtra v. Pandurang Keshav Gorwardkar & Ors. 2013 STPL (Web) 402 (SC), Dated May, 07, 2013.*
- Under Regulation 17(6) of the Company Regulation, 1956, ad-hoc work items may be created to extend the validity of the work item beyond the time limits prescribed under the Regulation by the ROC. Specific reason shall be recorded in this regard which along with details of ad-hoc work items shall be intimated to concerned ROC every fortnight in prescribed format. - *Circular No. 10/2013 No. MCA21/37/2013, Dated May 10, 2013.*
- The power under sub-section (1) and sub-section (7) of Section 621A are parallel powers to be exercised by the Company Law Board or the authorities mentioned therein and prior permission of Court is not necessary for compounding the offence, when power of compounding is exercised by the Company Law Board. *V.L.S. Finance Ltd v. UOI & Ors., (S.C.), Dated May 10, 2013.*
- ROC may obtain declaration/affidavits from subscribers/first directors at the time of incorporation and from directors, subsequently whenever company changes its objects, to the effect that company/directors shall not accept deposits unless compliance with the applicable provisions of Companies Act, 1956, RBI Act, 1934 and SEBI Act, 1992 and rules/directions/regulations made there under are duly complied and filed with the concerned authorities. - *Circular No: 11/2013, Dated May 29, 2013.*

## SECURITIES

- Member regulators of the Asia-Pacific Regional Committee (APRC) of International Organization of Securities Commission (IOSCO) met in New Delhi, India during April 29 – May 01, 2013. The meeting was held under the Chairmanship of Mr. U. K. Sinha, Chairman of the Securities and Exchange Board of India. The three day APRC meeting aimed at further enhancing mutual cooperation, exchange of information and highlighting common issues of concern amongst the securities market regulators of the Asia-Pacific region, one of the fastest growing regions of the world. *PR No.46/2013, Dated May 01, 2013.*
- Section 11 of the SEBI Act says that one of the most important objects of SEBI is to protect the interest of investors, which includes timely redressal of grievances of investors. In the present case the company was admittedly a sick industrial company. It had financial constraints. Its inability to appoint a full time company secretary is also evident and even fees to the share transfer agent, NSDL and CDSL could not be arranged. These are important factors which should have motivated the Adjudicating Officer to impose a lesser penalty in the matter. - *Kanel Industries v. SEBI, Dated May 10, 2013.*
- SEBI through the present circular has issued clarification regarding Employees Stock Option Schemes and Employees Stock Purchases Schemes (ESOS and ESPS). - *CIR/CFD/DIL/7/2013, Dated May 13, 2013.*

- All conditions for sale of shares through Offer For Sale (OFS) framework by promoters shall be as per SEBI Circular CIR/MRD/DP/18/2012 dated July 18, 2012 and circular CIR/MRD/DP/04/2012 dated January 25, 2013, except for 5 (b) which is amended by present circular. - *CIR/MRD/DP/ 17 /2013, Dated May 30, 2013.*
- The extent of Securities Lending and Borrowing (SLB) Framework has been modified with the present circular, which shall be effective from July 1. Scrips eligible for SLB have been broadened. Stock exchanges shall review the scrips eligible for SLB on a half-yearly basis. - *CIR/MRD/DP/ 18 /2013, Dated May 30, 2013.*

## COMPETITION

- In this case, the buyer has been alleged to be dominant and affecting the competition on selling side of the market. In the case of buyer power it is the procurement markets, not the supply markets, which have to be defined. The demand-side oriented market concept is applied inversely in this context. What was considered in this case was whether; the OP was adversely affecting the competition in the supply side of the market. - *Adcept Technologies Pvt. Ltd. v. BCCL, CCI, Dated May 8, 2013.*
- Section 4 of the Act requires that first the relevant market be deciphered; subsequent to that the dominant position and finally the abuse of dominant position. Section 2(r) read with section 19(5) of the Act requires determination of relevant market with due regard to the relevant geographic market and relevant product market. Section 2(t) read with section 19(7) of the Act, the relevant product market has to be market comprising all products regarded as substitutable by the consumers. - *Quadrant EEP Surlon India Ltd. v. INA Bearings India & Ors CCI, Dated May 27, 2013.*
- IRDA is a statutory sector regulator and cannot be treated as an enterprise within the meaning of section 2(h) of the Act keeping in view the nature of its activities. - *Shantaram Walvalkar v. M/s New India Life Insurance Co. Ltd, CCI, Dated May 31, 2013.*

## INDIRECT TAXES

### – CUSTOMS

- Exemption from basic customs duty (BCD) has been extended to Liquefied Natural Gas (LNG) and Natural Gas (NG) imported by 2 PSUs, namely, GAIL NTPC JV and Petronet LNG Ltd. for supply to a generating company as defined in section 2(28) of the Electricity Act, 2003 subject to fulfilment of certain conditions. - *Notification No. 25/2013 - Customs, New Delhi, Dated May 08, 2013.*
- The exemption from special additional duty (Special CVD) on brass scrap has been withdrawn. - *Notification No. 26/2013 - Customs, New Delhi, Dated May 08, 2013.*
- Notification No. 12/2012-Customs, dated Mar 17, 2012 amended, so as to allow transfer of goods imported for oil exploration from one eligible project to another without exporting the same (subject to submission of certain documents by the transferor contractor / sub-contractor as provided in the notification). - *Notification No. 28/2013 - Customs, New Delhi, Dated May 16, 2013.*

- Notification No. 114/2008, dated Oct 31, 2008 superseded, so as to withdraw levy of anti-dumping duty on imports of Phenol, originating in or exported from Singapore and European Union and to continue levy of anti-dumping duty on imports of Phenol, originating in or exported from South Africa up to the 30th October, 2013. - *Notification No. 10/2013 - Customs (ADD), New Delhi, Dated May 03, 2013.*
  - Anti-dumping duty levied on imports of Peroxosulphate, originating in or exported from People's Republic of China and Japan for a further period of 5 years pursuant to final findings of SSR (Sunset Review). - *Notification No. 11/2013 - Customs (ADD), New Delhi, Dated May 16, 2013.*
  - The Central Board of Excise and Customs (CBEC) clarifies that filters referred to as “Disposable Sterilized Dialyzer” and “Microbarrier” are classifiable under Tariff Heading 8421 of the Customs Tariff Act, 1975 - *Circular No. 19/2013-Cus. Dated May 09, 2013.*
  - CBEC clarifies that products commercially referred to as Tablet Computers are classifiable under Tariff Heading 8471 of the Customs Tariff Act, 1975. - *Circular No. 20/2013-Cus. Dated May 14, 2013.*
  - Notification No. 12/2012 amended by inserting serial number 104B to exempt the following products from customs duties till 30 Sept 2014:  
“De-oiled soya extract; groundnut oil cake/ oil cake meal; sunflower oil cake / oil cake meal; canola oil cake / oil cake meal; mustard oil cake/ oil cake meal”. - *Notification No. 30/2013 - Customs, New Delhi, Dated May 21, 2013.*
  - Tribunal held that the quotation cannot be the basis for rejection of transaction value unless any other positive evidence of contemporaneous import. The price declared by the importer cannot be disbelieved on the ground that the manufacturers invoice had not been produced particularly when the goods were purchased from a trader on high sea sales. - *M/s. Nava Durga Enterprises v. CC (Sea, Import), Chennai, CESTAT Chennai.*
  - The expression “attempt” u/s 114 of the Customs Act, 1962 (penalty) within the meaning of these penal provisions is wide enough to take in its fold any one or series of acts committed, beyond the stage of preparation in moving the contraband goods deliberately to the place of embarkation, such act or acts being reasonably proximate to the completion of the unlawful export. - *A. Jabrarullah v. Commissioner of Customs, CESTAT Chennai*
- **CENTRAL EXCISE**
- Excise duty on Jaggery powder and flattened bamboo boards and bamboo flooring tiles has been reduced from 12 % to 2 % (without CENVAT) and 6 % (with CENVAT). - *Notification No. 16/2013 - Central Excise, New Delhi, Dated May 08, 2013.*
  - Particle/Fibre Board manufactured from agricultural crop residues and Clay bricks and roofing tiles have been exempted from excise duty. - *Notification No. 16/2013 - Central Excise, New Delhi, Dated May 08, 2013.*
  - The Central Government has allowed duty-free clearance of excisable goods to duty free shops at international airports. For this purpose it has issued a series of notifications which are as follows:

- *Notification 19/2013-CE (NT) Dated May 23, 2013*, exempts supplies of goods from excise duty if they are supplied to duty-free shops in international airports in India. Passengers and crew will be allowed to purchase these goods against foreign exchange and bring them duty-free into India subject to the duty-free baggage allowance under the customs Baggage Rules.
- *Notification 7/2013-CE (NT) Dated May 23, 2013*, extends the facility of duty-free removal of goods from a factory to a 'warehouse' under Rule 20(1) of the Central Excise Rules 2002 to excisable goods removed to a duty free shop in the arrival Hall / departure Hall of an international airport, which has been appointed as a 'warehouse' under section 57 or 58 of the Customs Act 1962.
- Under *Notification 8/2013-CE (NT) Dated May 23, 2013*, the officers of customs in charge of duty free shops at international airports have been designated as central excise officers.
- *Notification 9/2013-CE (NT) Dated May 23, 2013*, a godown or retail outlet of a duty free shop at an international airport, appointed as a customs warehouse under section 57 or 58 of the Customs Act 1962, has been deemed to be registered as a warehouse under rule 9 of the Central Excise Rules 2002.
- The process of printing and varnish/plastic coating of plain cartons received by the appellant does not amount to manufacture and as such no duty is chargeable on the same. - *HBD Packaging (P) Ltd. v. Commissioner of Central Excise, Noida, CESTAT, New Delhi*.
- The High Court of Mumbai held that rebate under Rule 18 of the Central Excise Rules, 2002 cannot be rejected on grounds of non submission of original and duplicate ARE-1 forms, which is only a procedural requirement under notification issued under Rule 18 thereof. - *Um Cables Ltd. v. Union of India and Others*.
- The High Court of Allahabad held that materials like paint, etc., used for making manufacturing area dust free would qualify as 'input' in terms of Rule 2(k) of the CENVAT Credit Rules, 2004 and CENVAT credit would be admissible. - *CCE v. Samtel Color Ltd.*
- **SERVICE TAX**
- CBEC has announced that it has accepted as valid returns those Service Tax returns for the period July-September, 2012 that were rejected by system on the sole ground that these returns were filed for the period prior to the dates of registration of the assesseees. These returns have been reprocessed in ACES and the status of these returns is being shown in the systems as 'filed', the announcement says. These assesseees need not file the returns again for the same period and they can view the status of their returns in ACES under 'View XML Status' option. However, if the returns were rejected for any other reason, the assesseees are required to take corrective action as per the reasons of rejection.
- Service Notification No. 26/2012-ST, dated June 20, 2012 amended, to specify 70% as rate of abatement for payment of service tax on the activity of construction of complex, building, civil structure or part thereof other than residential units with carpet area of less than 2,000 sq. ft. and for which amount charged is less than rupees one crore. - *Notification No. 9/2013-ST, Dated May 08, 2013*.
- The Central Government notified the Service Tax Voluntary Compliance Encouragement Rules, 2013 providing for form and manner of declaration, payment of tax dues and issuing acknowledgment of discharge of tax dues

under the Service Tax Voluntary Compliance Encouragement Scheme, 2013. - *Notification No. 10/2013-ST, Dated May 13, 2013.*

- CBEC clarified that a person desirous of making declaration under the Voluntary Service Tax Payment Scheme is required to obtain service tax registration. The Circular also clarified that under the Voluntary Service Tax Payment Scheme, beside interest and penalty, immunity would also be available from any other proceedings under Chapter V of the Finance Act, 1994 and rules thereof. Further, it has also been clarified that service tax dues in respect of which any show cause notice or order of determination has been issued or which pertains to the same issue for subsequent period are excluded from the ambit of the Voluntary Service Tax Payment Scheme. - *Circular No. 169/4/2013-ST, Dated May 13, 2013.*
- After classifying the facility provided by BSNL as Telecom services and collecting the service tax under such head, Revenue cannot turn around and argue that that this is not a service and only a facility. Even otherwise, the service provided by BSNL to the appellant is a Telecom service as defined in section 65 (109a) of Finance Act, 1994. Since this service is required by the appellant for providing output services to appellants customers, it is an input service as per definition at Rule 2 (1) of CENVAT Credit Rules, 2004. Therefore the appellant is entitled to take CENVAT credit on such services. - *Aircel Cellular Ltd. and Aircel Ltd. v. CST, Chennai/CCE (ST), Coimbatore, CESTAT Chennai.*
- Tribunal held that the amount of 2% to 3% margin retained by the appellant cannot be treated as service charges received from the sub-contractors and separately taxed under 'Business Auxiliary Service' in the light of the submissions that the entire amount received from Andhra Pradesh Government has suffered service tax at their hands under the head "site formation and clearance". - *Sushee Infra Pvt. Ltd. v. CC, C. Ex. & S. T., CESTAT Bangalore.*
- Institutes that offer training leading to pilot's licence or aircraft maintenance engineer licence have been battling heavy service tax demands under the category "commercial training or coaching institute", on the ground that they do not issue qualifications recognized by law, and that it is the Ministry of Civil Aviation that issues the recognized qualifications. The department issued a circular in May 2011 to confirm this interpretation by the field formations. Now the Delhi High Court has struck down the said circular of May 2011, quashed the show cause notices issued to the petitioner in that case, and observed that the qualifications issued by the institute (in that case, for aircraft maintenance engineers) are recognized by law. Significantly, the court has made a distinction between the qualification issued by the institute and the certificate / licence issued by the Ministry of Civil Aviation on the basis of that qualification. - *Indian Institute of Aircraft Engineering v. Union of India.*
- Tribunal held that assessee is not required to reverse any Cenvat credit on inputs/ input services availed in rendering output services to unit in Special Economic Zone in terms of Notification No.3/2011-CE (NT) dated March 1, 2011. - *Tata Consulting Engineers Ltd. v. Commissioner of Service Tax, CESTAT Mumbai.*

## INTELLECTUAL PROPERTY RIGHTS

### – PATENTS

- The Union Health Ministry has disclosed that it had recommended three cancer drugs, namely, Trastuzumab, Lxabepilone and Dasatinib to the Department of Industrial Policy & Promotion to put them under Compulsory



Licensing (CL) under the provisions of the Indian Patents Act, 1970. - *The Economic Times, Dated May 03, 2013.*

– **TRADEMARKS**

- Permanent injunction against the use of 'GULVARI' by defendants and/or any other trademark deceptively or phonetically similar to the trademark of the Plaintiff "GULABARI" was passed. Adoption of the trade mark GULVARI by the defendant amounts to infringement of the plaintiff's trade mark GULABARI as the mark is deceptively similar to that of Plaintiff and is bound to cause confusion in the minds of consumers. - *M/s Dabur India Ltd v. Mr. S.S. Gill, Proprietor, High Court of Delhi, Dated May 2, 2013.*
- It was held that the defendant's act of adopting and registering of domain name "www.cokestudio.in" infringes the plaintiff's registered trademarks COKE and COKE STUDIO. The use of the same or similar domain name may lead to a diversion of users which could result from such users mistakenly accessing one domain name instead of another. - *Coca Cola Co and Anr v. Rajesh, High Court of Delhi, Dated May 8, 2013.*
- Whenever an action has criminal propensity also the punitive damages are clearly called for. Not only the plaintiff has suffered on account of the infringement of its trade mark and Magazine design but a large number of readers of the defendants' Magazine 'TIME ASIA SANSKARAN' also have suffered by purchasing the defendants' Magazines under an impression that the same are from the reputed publishing house of the plaintiff company. Time has come when the Courts dealing actions for infringement of trademarks, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers. - *Super Cassettes industries v. M/s Rachana Television Pvt. Ltd, High Court of Delhi, Dated May 13, 2013.*
- The suit is for commercial disparagement. The plaintiff has sought an interim injunction restraining the defendant from publishing advertisements which calls its product as "harsh antiseptic" which disparages the goodwill and reputation of the plaintiff's product sold under the trade mark DETTOL HEALTHY KITCHEN. An attempt has been made to misrepresent to the consumers that the plaintiff's DETTOL ANTISEPTIC LIQUID and DETTOL HEALTHY KITCHEN have the same ingredients. Prima facie the impugned advertisement subtly yet certainly targets the plaintiff's brand DETTOL and its product DETTOL HEALTHY KITCHEN. - *Reckitt Benkiser (India) Ltd. v. Hindustan Uniliver, High Court of Delhi, Dated May 14, 2013.*
- Possible for two registrants to seek to establish that their respective designs are new or original. A design can be used as a trade mark and if by virtue of its use, goodwill is generated in the course of trade or business, it can be protected by an action in the nature of passing off. The cause of action in the infringement suit under the Designs Act could be different from that which obtained in a passing off action. Different causes of action cannot be combined in one suit. - *Mohan lal Proprietor v. Sona Paint & Hardwares, High Court of Delhi, Dated May 15, 2013.*
- The Plaintiff has a registration only in respect of the mark ANTI THYROX and not the word / mark THYROX. The Defendants' products are sold under the mark LETHYROX. When compared as a whole, the trademark LETHYROX of the Defendants is distinct and different visually, phonetically and structurally from the Plaintiff's registered trademark ANTI THYROX or the Plaintiff's mark THYROX. Defendants appear to be honest, independent and bona fide. *Macleods Pharmaceuticals v. IG, Bombay High Court, Dated May 29, 2013.*

**– COPYRIGHTS**

- The defendant is using the plaintiff's trade mark 'Timken' as trade name and trade mark in similar style, format and colour as that of the plaintiff as well as use of domain name www.timkenservice.com.. The defendant's contention that he was not aware of the plaintiff's trade mark and copyright in 1989 when it adopted the same is false on the face of it because he adopted the same art work, font and colour as that of the plaintiff. Once the Court comes to the conclusion that it is a fit case of infringement of trade mark by the defendant then the question of some delay is immaterial on account of statutory rights granted under Section 28 of the Trade Marks Act in favour of the plaintiff. - *Timken Company v. Timken Services Private Ltd*, High Court of Delhi, May 30, 2013.

**– OTHERS**

- Settling difference of views among various benches of the Delhi high court, a full bench ruled that in a dispute under the Designs Act, an aggrieved party cannot file a composite suit for infringement of a registered design and a “passing off” action. The court, however, has the discretion to try the suits together, if the issues are common. In its judgment, it further said that a holder of registered design could institute a suit against another who is also in possession of a registered design. *Mourya Industries v. Sona Paint and Hardware*.

**CONSUMER**

- The additional documents which have been obtained after the decision of both the fora below cannot be taken note of at the stage of revision application, under the circumstances. Petitioner accepted the refund amount and enjoyed the money. Once the petitioner accepted the refund amount and got the cheque encashed, he ceases to be a consumer as per the Act. - *Indu Bala Satija v. Haryana Urban Development Authority, NCDRC, Dated May 1, 2013*.
- “Sufficient cause” for condoning the delay in each case is a question of fact. Under the Act a special period of limitation has been provided to ensure expeditious disposal of cases. Complaint has to be disposed of within 90 days from the date of filing where no expert evidence is required to be taken and within 150 days where expert evidence is required to be taken. When mandatory provision is not complied and the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic ground only. - *Consumer Protection Council TN v. Maruti Udyog, NCDRC, Dated May 1, 2013*.
- If Under Section 21 (b) of the Act, the scope of revisional jurisdiction is very limited. Under Section 21 of the Act, Commission can interfere with the order of the State Commission where such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. - *Tata Motors v. Ravikant Garg, NCDRC, Dated May 6, 2013*.
- The report of the Surveyor is an important document and its finding has to be relied on unless it is controverted or contradicted by evidence challenging the same. - *United India Insurance Co v. Oriental Rubber Works, NCDRC, Dated May 7, 2013*.

- Petitioner being a retired Government employee, who has contributed towards CGHS Scheme, falls within purview of consumer under the Consumer Protection Act, and both the forum below had committed an error in holding otherwise. - *Jagdish Singh Chauhan v. Addl. Director (North Zone) CGHS, NCDRC, Dated May 9, 2013.*
- Consumer Fora constituted under the C.P. Act are not bound to refer the dispute raised in the complaint on an application filed u/s 8 of the Arbitration Act of 1996 seeking reference of the dispute to an Arbitral Tribunal in terms of valid arbitration clause in the agreement entered into between the parties. - *DLF Ltd. v. Mridul Estate (Pvt.) Ltd, NCDRC, Dated May 13, 2013.*
- Discharge voucher though signed as 'full and final' may not be treated as final if the consumer can satisfy the Court that it was obtained through undue influence fraud or misrepresentation. - *New India Assurance Company Ltd v. M/s R.B. Traders, Maranda, NCDRC, Dated May 14, 2013.*
- Insurance Though the Court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of the party to be added, would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. It is not a substantive right but one of procedure and the court has discretion in its proper exercise. - *Mahindra Lifespace Developers Ltd. v. Sunil Jasuja, Dated May 15, 2013.*
- The filing of second complaint on the same facts and circumstances has not been provided anywhere as per the established legal provisions. The Commission observed that if there was defect in the first complaint, amendment application should have been moved or permission could have been sought or request could have been made to have liberty to file fresh complaint. - *Ansal Housing & Construction Ltd. v. Indian Machinery Company, NCDRC, Dated May 24, 2013.*
- District Fora, State Commission and National Commission are competent to entertain application for amendment and impalement of the parties, as there is also no bar in entertaining such applications, though, there is no specific provision. - *M/s Tejas Associates v. Keshav Nidhi Co-operative Housing Society & Ors., NCDRC, Dated May 29, 2013.*
- If the appellate authority modifies or reverses the decision of the tribunal, it is the appellate decision that is effective and can be enforced. Position would be just the same even if the appellate decision merely confirms the decision of the tribunal. Original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement". - *M/s Skoda Auto India Pvt. Ltd. v. Raghavendra H.S. & Anr, NCDRC, Dated May 30, 2013.*
- The Supreme Court has held that people who had deposited installments of the price for the flats being constructed by a cooperative housing society are 'consumers' according to the definition in the Consumer Protection Act. *Virender Jain v. Alaknanda Cooperative Housing Society Ltd.*

## ENVIRONMENT

- Every The National Green Tribunal (NGT) halted cutting of trees to acquire land for Posco's Steel plant in Odisha, India's biggest foreign direct investment (FDI). The Odisha government has been acquiring land for the project despite the tribunal suspending the environment clearance and asking the environment ministry to reconsider the approval given. - *The Hindustan Times, Dated May 29, 2013.*
- The National Green Tribunal (NGT) refused to grant any interim relief to UK-based Vedanta Group Company, Sterlite Industries Ltd, to commence operation of its copper smelting plant in Tamil Nadu's Tuticorin district. Tribunal said even though the expert committee report said the emission and ambient air quality were within prescribed limits, there is no "justification" for allowing the plant to start operating as there were claims of gas leakage from the industrial unit. - *The Indian Express, Dated May 08, 2013.*
- Most private and government hospitals in Delhi are posing a "very serious threat" to human health and environment because they have failed to ensure proper disposal of highly infectious biomedical waste. The NGT has issued notices, asking all these hospitals to set things right in four weeks or face action.
- A review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. The word "sufficient reason" is wide enough to include a misconception of fact or law by a Court or even by an advocate. An application for review may be necessitated by way of invoking the doctrine of "*Actus Curiae Neminem Gravabit*" which otherwise means that an Act of the Court shall prejudice no one. - *Nisarga Nature Club v. Sh Satyawani B Prabhudessai Ors, National Green Tribunal.*

## OTHERS

- Taxpayers In an arbitration dispute, the Supreme Court will not normally decide whether the claims are long dead and barred by the law of limitation. It will be determined by the arbitration tribunal, the court stated in the judgment. - *Schlumberger Asia Services Ltd v. ONGC.*
- The Supreme Court has ruled that the dues of workers of an industrial unit which close down shall have preference over that of a state finance corporation. In this case, Mysore Panel & Board Ltd closed down its operations in 2002 leaving its workers jobless. The trade union claimed their dues under the Industrial Disputes Act and the Payment of Gratuity Act. Supreme Court reiterated that the workers' dues shall have precedence over other claims. The State Financial Corporations Act is an additional law and not in derogation of other laws. Therefore the labour laws and the Companies Act which grant primacy for workers' dues shall prevail. - *Karnataka State Finance Corporation v. Industrial Workers' General Union.*

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