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RBI & FEMA

- The units located in SEZs shall realize and repatriate, full value of goods/software/services, to India within a period of **twelve months** from the date of export. Any extension of time beyond the above stipulated period may be granted by Reserve Bank of India, on case to case basis. This limit will be valid for one year.
– Circular No. RBI/2012-13/527, dated June 11, 2013
- Whenever a SEBI registered Foreign Venture Capital Investor (FVCI) acquires shares of an Indian Company under FDI scheme in terms of Schedule-1 of the FDI Regulations, such investments have to be reported in Forms FC-GPR or FC-TRS only. However, where the investment is under Schedule 6 of the FDI Regulations, no FC-GPR/FC-TRS reporting is required. Such transaction would be reported by the custodian bank in the monthly reporting format as prescribed by RBI from time to time. - RBI A.P. (DIR Series) Circular No.110, dated June 12, 2013.
- The existing scheme of Buyback / Prepayment of Foreign Currency Convertible Bonds (FCCBs) under the approval route which expired on March 31, 2013 will continue till December 31, 2013 and shall stand discontinued thereafter.
- RBI A.P. (DIR Series) Circular No. 115, dated June 25, 2013.
- The following definition of ‘group company’ is incorporated in the Consolidated FDI Policy with immediate effect:
“Group Company” means two or more enterprises which, directly or indirectly in a position to:-
 - (i) Exercise 26%, or more of voting rights in other enterprise; or
 - (ii) Appoint more than 50%, of members of board of directors in the other enterprise.
DIPP Press Note No 2(2013 Series), June 3, 2013.
- The scheme of availing of External Commercial Borrowings (ECB) for working capital for civil aviation sector will continue till December 31, 2013. - RBI A.P. (DIR Series) Circular No. 116, dated June 25, 2013.
- The interest subvention scheme is widen to include the following sectors for the period April 1, 2013 to March 31, 2014:
 - a. Export of ITC (HS) and textiles goods to 6 tariff lines as per the list given in Annex – I of the Circular.
 - b. Additional 101 tariff lines in engineering goods sector in addition to the existing 134 lines, as per the list given in Annex- II of the Circular. –Circular No. RBI/2012-13/519, dated June 4, 2013.
- The restriction on the import of gold on consignment basis is extended to nominated agencies / premier / star trading houses. It has further been decided that all Letters of Credit (LC) to be opened by such Agencies for import of gold under all categories will be only on 100% cash margin basis. Further, all imports of gold will necessarily have to be

on Documents against Payment (DP) basis. These restrictions will however not apply to import of gold to meet the genuine needs of exporters of gold jewellery. – *RBI A.P. (DIR Series) Circular No.107, dated June 4, 2013.*

- The time for completing the process of allotting Unique Customer Identification Code (UCIC) by banks to their existing customers is extended up to March 31, 2014. – *Circular No. RBI/2012-13/521, dated June 04, 2013.*
- Till the full repayment of credit of Rs. 5 crore and above, the Banks are required:
 - a) To have the periodic legal audit of the title deeds and other documents in respect of such credit exposures
 - b) To carry out re-verification of title deeds with relevant authorities as part of regular audit exercise*Circular No. RBI /2012-13/524, dated, June 07, 2013.*
- The Scheduled Urban Co-operative Banks, fulfilling the following conditions would be permitted to undertake ready forward contracts in corporate debt securities:
 - a) CRAR of 10% or more and gross NPA of less than 5% and continuous record of profits during the previous three years.
 - b) Sound risk management practices and mandatory concurrent audit of the Investment portfolio.*Circular No. RBI/2012-2013/525, dated June 10, 2013.*
- The limit for foreign investment in Government dated securities is enhanced with USD 5 billion to USD 30 billion with immediate effect. - *RBI A.P. (DIR Series) Circular No.111, dated June 12, 2013.*
- The policy regarding External Commercial Borrowings (ECB) for the low cost affordable housing projects has been modified as under:
 - a) Developers/builders should have a minimum of three years' experience in undertaking residential projects as against five years prescribed earlier and should have good track record in terms of quality and delivery.
 - b) The condition of minimum paid-up capital of not less than INR 50 crore, as per the latest audited balance sheet, for Housing Finance Companies stands withdrawn. However, the condition of the minimum Net Owned Funds of Rs. 300 crore for the past three financial years remains unchanged.
 - c) The aggregate limit for ECB under the low cost affordable housing scheme is extended for the financial years 2013-14 and 2014-15 with a ceiling of USD 1 billion in each of the two years, subject to review thereafter.
 - d) The ECB availed of by developers and builders shall be swapped into Rupees for the entire maturity on fully hedged basis. - *RBI A.P. (DIR Series) Circular No. 113, dated June 24, 2013.*
- External Commercial Borrowings (ECBs) window for financing 3G spectrum rupee loans, that are still outstanding in telecom operator's books of accounts, will be open upto March 31, 2014. - *RBI A.P. (DIR Series) Circular No. 114, dated June 25, 2013.*
- Considering that cyber attacks could threaten the confidentiality, integrity and availability of data and the systems, it is imperative for the banks to conduct Vulnerability Assessment and Penetration Tests (VAPT) periodically to prevent any such attacks and need to prepare documents detailing these activities and update the same regularly. - *RBI DIT.CO (Policy) No. 2636/09.63.025/2012-13, dated June 26, 2013.*

- Primary Dealers are permitted to undertake transactions in securities among themselves or with non-banks clients through members of the MCX Stock Exchange in addition to National Stock Exchange, OTC Exchange of India and Bombay Stock Exchange. - *RBI IDMD.PCD.13/14.03.07/2012-13, dated June 26, 2013.*
- RBI has decided to discontinue submission of SFR VIII Return by banks with effect from the fortnight beginning July 12, 2013. - *RBI MPD.PMD .BC.365/07.01.279/2012-13, dated June 27, 2013.*
- RBI has decided that bank credit to MFIs for onlending will now be eligible for categorization as priority sector advance if aggregate amount of loan, extended for income generating activity, is not less than 70% (changed from 75%) of the total loans given by MFIs. - *RBI RPCD. CO. Plan. BC 80/04.09.01/2012-13, dated June 27, 2013.*
- A set of guidelines (Annexed to this circular) has been put in place for compliance by all NBFCs raising money by issuing capital/debt securities including debentures by way of private placement. - *RBI DNBD(PD) CC No. 330/03.10.001/2012-13, dated June 27, 2013.*

FOREIGN TRADE

- SNG Inspection Services has been notified as a Pre Shipment Inspection Agency. *Public Notice No. 15/ (RE 2013)/ 2009-2014, dated June 3, 2013.*
- Export of sugar under Advance Authorization would not require Release Order from Directorate of Sugar. There is no change in other conditions relating to export of sugar. -*Notification No 15 (RE-2013)/2009-2014, dated June 5, 2013*
- An enabling provision has been incorporated in Foreign Trade Policy to allow export of goods imported against payment in freely convertible currency where export proceeds will be realized in rupees. This dispensation will be applicable to such countries as would be notified by DGFT from time to time. They also have to achieve 15% value addition. -*Notification No 16 (RE-2013)/2009-2014, dated June 6, 2013.*
- Iran is being notified as the country to which export of imported goods would be permitted against payment in INR subject to at least 15% value addition. -*Notification No 17 (RE-2013)/2009-2014, dated June 10, 2013.*
- Requirements of Sanitary Import Permit issued by Department of Animal Husbandry, Dairying & Fisheries, GoI have been incorporated under relevant Chapters of ITC (HS), 2012. -*Notification No 18 (RE-2013) / 2009-2014, dated June 11, 2013.*
- To the existing authorised laboratories, two additional laboratories are added for the purpose of certification/grading of diamonds of 0.25 carats & above. -*Notification No 19 (RE-2013) / 2009-2014, dated June 12, 2013.*

- Export of coconut oil is being permitted through all Land Custom Stations (LCS) on Indo-Nepal, Indo-Bangladesh, Indo-Bhutan and Indo-Pakistan borders in addition to export through all EDI ports. -*Notification No 22 (RE-2013) / 2009-2014, dated June 18, 2013.*
- Prohibition on import of milk and milk products (including chocolates and chocolate products and candies/ confectionary/ food preparations with milk or milk solids as an ingredient) from China is extended for one more year i.e. till June 23, 2014 or until further orders, whichever is earlier. -*Notification No 23 (RE-2013) / 2009-2014, dated June 18, 2013.*
- Defective parts/spares imported exclusively for undertaking root cause analysis, testing and evaluation purpose by the Companies/firms and Original Equipment Manufacturers may not be re-exported. -*Notification No 24 (RE-2013) / 2009-2014, dated June 19, 2013.*

CORPORATE

- Modification in Para 9 (iii) of General Circular No. 45 dated July 8, 2011 relating to Name Availability Guidelines, 2011 so as to provide that the words indicative of a separate type of business constitution or legal person or any connotation thereof, shall not be allowed. Further, the name including phrase 'Electoral Trust' may be allowed for registration u/s 25 of the Companies Act under the Electoral Trusts Scheme, 2013. -*General Circular No 12/2013, MCA, dated June 28, 2013.*

SECURITIES

- In view of the circular dated August 13, 2012 providing for 'Manner of Dealing with Audit Reports filed by Listed Companies', it is clarified that the restatement of books of accounts indicated in Paragraph 5 of the said circular shall mean that the company is required to disclose the effect of revised financial accounts by way of revised pro-forma financial results immediately to the shareholders through Stock Exchange(s) and the financial effects of the revision may be carried out in the annual accounts of the subsequent financial year as a prior period item. - *CIR/CFD/DIL/9/2013, dated June 5, 2013.*
- The GOI has enhanced the Government Debt Limit by USD 5 billion, which shall be available for investments only to those FIIs which are registered with SEBI under the categories of Sovereign Wealth Fund (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks. *CIR/IMD/FIIC/8/2013, dated June 12, 2013*
- Merely because the Board issued a circular would not take away the right of the aggrieved party to challenge the same in appeal. The argument that all administrative orders and policy decisions of the Board are beyond the pale of jurisdiction of this Tribunal, would not only be doing violence to the language of section 15T but also deprive the aggrieved party of any forum to challenge the said decision or order. *M/s Akshya Infrastructure Pvt. Ltd. v. SEBI, SAT, dated June 19, 2013.*

- The allegation of fraud can be levelled against a person/entity only for good reasons and on the basis of clear and unambiguous evidence. The task of proving such allegation lies on the person levelling such accusation on the basis of preponderance of probability. No evidence has been adduced to demonstrate any sort of collusion between the Appellant and the client while dealing in the scrip of Adani Export Ltd., with the intention to manipulate the price of the scrip. The penalty imposed for alleged violation of FUTP Regulation was reduced. *M/s Ess Ess Intermediaries v. SEBI, SAT, dated June 19, 2013.*
- Regulation 3(3) of the new Takeover Code is a specific and unambiguous provision making an individual liable to make a public offer in case the individual shareholding increases and exceeds the threshold limit prescribed by Regulation 10, during the course of the acquisition even while acting in concert with other persons, and is conspicuously missing in the Takeover code. Regulation 11(1) of the Takeover Code, deals with concept of creeping acquisition that an acquirer together with persons acting in concert with him is entitled to acquire shares in the range of 15% to 55% of the shares/voting rights in a Company. Regulation 11 (1) lays down a clear bar against acquisition of more than 5% in one year beginning on April 1 and ending on March 31. *Sunil Krishna Khaitan v. SEBI, SAT, dated June 19, 2013.*
- The matter is concerning the order dated June 4, 2013, wherein more than 100 companies have been asked to submit their replies as regard compliance with the mandatory requirement of 25 % public shareholding pursuant to Rule 19A of SCRR which was brought into force with effect from 4th June, 2010. There are about 25 legal formalities/steps to be complied with in this regard and more than 15 such conditionalities have since been complied with. The appeal was disposed at admission stage and appellant was asked to approach SEBI by filing a reply/representation detailing therein the facts and circumstances regarding delisting. *Fresenius Kabi Oncology Ltd. v. SEBI, SAT, dated June 24, 2013.*
- Vital documents like e-mail received from NSE and other connected documents which have been thoroughly relied upon by the adjudicating officer to come to the conclusion against the appellant in the impugned order and to hold him guilty of violation of Insider Trading Regulations were not supplied to the appellant either with show cause notice or during the course of adjudication proceedings. This is evidently violation of principles of natural justice as the opportunity to confront these documents and to make proper defense was not given. Matter remanded back to the respondent. *Mahendra Pandey v. SEBI, SAT, dated June 26, 2013.*
- The present appeal was filed by a group of 13 promoters against the order of SEBI, directing the appellants to disinvest 41,96,760 shares within two months from the date of impugned order, for violation of Regulation 11(2) of the Takeover Code. The matter was remanded back to SEBI for a considerate view, as such massive divestment of equity shares would not be in anyone's interest. Such action would send the company back into sickness. *S.R.B. Ramesh Chandra v. SEBI, SAT, dated June 28, 2013.*

COMPETITION

- It was alleged that the TECPRO Systems Ltd. (OP) abused its dominance in collaboration with Chinese Company NTK by quoting predatory prices with an intention to eliminate the Informant from the market. The dominance of OP in other markets cannot be a ground to consider OP as dominant in the concerned area where it entered only recently. The Act does not envisage the protection of any competitor from losing due to stiff

competition in the market. The Commission cannot consider the quotations given by another bidder predatory simply because the bidder continuously got contracts for five projects. -*M/s Transparent Energy Systems Pvt. Ltd. v. TECPRO Systems Ltd., CCI, dated June 11, 2013.*

INDIRECT TAXES

– CUSTOMS

- CBEC has notified that certain categories of exports (given under the notification) shall not be counted for calculation of export performance or for computation of entitlements under paragraph 3.14.4 or paragraph 3.14.5 of the Foreign Trade Policy. - *Notification No. 32 / 2013-Customs, New Delhi, June 13, 2013.*
- Seeks to amend the notification No. 96/2008-Customs, dated 13th August, 2008 so as to include "Republic of Haiti" in the list of Least Developed Countries. - *Notification No. 33 / 2013-Customs, New Delhi, June 19, 2013.*
- Customs Brokers Licensing Regulations, 2013 notified. - *Notification No. 65 / 2013-Customs (N.T.), New Delhi, June 21, 2013.*
- The Board has now decided to introduce Risk Management System (RMS) in exports in Customs locations where the Indian Customs EDI Systems (ICES) is operational. The RMS in exports will enable low risk consignments to be cleared based on self-assessment of the declarations by exporters. This will enable the Department to enhance the level of facilitation and speed up the process of cargo clearance. By expediting the clearance of compliant export cargo, the RMS for exports will contribute to reduction in dwell time, thereby achieving the desired objective of reducing the transaction cost in order to make the business internationally competitive. The RMS in Exports is scheduled for implementation from July 15, 2013 onwards. - *Circular No. 23/2013 – Customs, New Delhi, dated 24th June, 2013.*
- Seeks to extend the levy of anti-dumping duty imposed vide notification No. 75/2008-Customs, dated the 10th June, 2008 on imports of 'Acetone', originating in, or exported from, Korea RP for a further period of one year i.e. upto and inclusive of 9th June, 2014. - *Notification No. 12 / 2013-Customs (ADD), New Delhi, dated June 25, 2013.*
- Seeks to extend the levy of anti-dumping duty imposed vide Notification No. 74/2011-Customs, dated the 12th August 2011 on imports of 'Pentaerythritol', originating in, or exported from, Chinese Taipei for a further period of one year i.e. upto and inclusive of 27th April, 2014. - *Notification No. 13 / 2013-Customs (ADD), New Delhi, June 25, 2013.*

– CENTRAL EXCISE

- The Central Government has amended the Notification No. 12/2012-Central Excise, dated the 17th March, 2012. In the said notification, in the Table,-
 - (i) in S. No. 189, against item (i), for the entry in column (4), the entry "7%" shall be substituted;
 - (ii) in S. No. 191, against item (i), for the entry in column (4), the entry "7%" shall be substituted. - *Notification No. 20 / 2013-CE, New Delhi, June 05, 2013.*

- The Central Government has amended Notification No. 30/2012-Central Excise dated the 9th July, 2012. - *Notification No. 21 / 2013-CE, New Delhi, June 13, 2013.*

– **SERVICE TAX**

- The Central Government has brought amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.6/2013-Service Tax, dated the 18th April, 2013. -*Notification No. 11 / 2013-ST, New Delhi, June 13, 2013.*

INTELLECTUAL PROPERTY RIGHTS

– **PATENTS**

- Applicant sought revocation of patent for invention title 'Method of monitoring a Sensor'. Issue was whether applicant had *locus standi* and was person aggrieved and whether as respondents licensee would applicant not be estopped from challenging patent were raised. Held that - Applicant had *locus standi* to file revocation application and applicant should not be estopped based on Doctrine of Licensee Estoppel from challenging patent. Respondent failed on all counts. Petition allowed. - *Enercon (India) Limited, Daman vs Aloys Wobben, Germany, Intellectual Property Appellate Board, dated June 12, 2013.*

– **TRADEMARKS**

- The applicant and the respondent are brothers. Both are aware of each others trade and business. The applicants have not disputed the respondent's use of the trade mark since 1986. The applicants though claim user since 1995 in the application for rectification. Except for one or two bills from the painter, there is nothing produced by the applicant to prove their use as they claim it to be a family business property. The applicant cannot be said to be aggrieved by the mark on the register and therefore the applicant has no *locus standi* to file this application. In an application for rectification, the burden is always on the applicant to satisfy as to how and why the marks deserve to be rectified. - *E. S. M. Erulappan Partner of Firm, E. S. M. Textiles Kamarajar Nagar v. Registrar Trade Marks Trade Marks, Chennai, Intellectual Property Appellate Board, dated June 3, 2013.*
- Appellant was adopter of the mark 'ANIL APPALAM' from the year 1993 and had been using it continuously and such use was prior to respondents mark. Respondents filed opposition that applicant had retired from partnership and goodwill and business were sold to respondents' predecessor in interest and applicant had no right in trade mark. Held that - Respondents had wrongfully obtained registration of mark applied in name of applicant and amendment was done without understanding fully meaning of documents and understanding between parties. Petition allowed. - *K. S. Raja S/o SonaiMuthuvs (1) Registrar of Trade Marks Trade Marks Registry, Chennai; (2) Muthu Kani Thiravidakani Trading as Anil Appalam and Chips, Madurai; (3) Thiru Rakkappan Muthu Kani, Madurai, Intellectual Property Appellate Board, dated June 3, 2013*
- Plaintiffs had filed the instant suit for infringement of trade mark, passing off, commercial disparagement and tarnishment of goodwill and damages. Plaintiff was a well known laboratory in the field of ayurvedic preparations and was carrying on business for more than 100 years. It was the grievance of the plaintiffs that the

defendants had recently released the movie with the X which had hit the cinema halls and the said movie contains some dialogues which somehow showed the well known product in the manner which was detrimental to the interests of the plaintiffs as a proprietor. Held that - Reading of s. 29 (9) of Act would make it clear that it was an infringement of the trade mark by way of the spoken use of the words which were contained in the trade mark and their visual representation thereof. Therefore, the *prima facie* case was made out by the plaintiffs for infringement of trade mark and also of passing off which may injure the reputation of the plaintiffs before the public. However, balance of convenience and irreparable loss was not in favour of the plaintiffs as the movie was already put to release and thus the same would be beyond the control of the defendants to put any kind of disclaimer in the already released movie. However, certainly, the defendants could be prevented to release the home video version of the movie or any version of the movie on television which should not contain the objectionable dialogues of the plaint which could be done by the defendants by editing the film. - *Hamdard National Foundation and another vs Hussain Dalal and others, Delhi High Court, dated June 7, 2013.*

- Appellant was market leader with business of manufacturing, marketing and selling of electrical goods including heaters and heating elements under registered label mark 'Real Kwalitiy'. Respondent applied for registration of trademark 'Kwalitiy'. Appellant filed for cancellation of respondents registration. Registrar of Trade Marks directed that appellant's registered trademark was to be deleted from Register in matter of notice issued u/s. 57(4) of the Act. Held that – Since registrar did not provide appellant with copy of complaint and proceeded to hear and decide matter without affording opportunity for appellant to explain the case, it was not clear as to how and why Registrar found that trademark registered was in contravention of provisions of the Act after 2 years since mark was actually registered. Registrar should have given details of complaint in show-cause notice issued to appellant. Show-cause notice was not clear. Appeal allowed. – *Prem Prakash Electricals, Madhya Pradesh v. (1) Thakur Spare Parts, Madhya Pradesh; (2) U. L. Barve, Intellectual Property Appellate Board., dated June 28, 2013.*

CONSUMER

- The consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. It is the duty of the consumer forum to take notice of Section 24A and give effect to it. Also, under Section 21 (b) of the Act, the scope of revisional jurisdiction is very limited. *M/s Raika Bandukwalla v. Dr. Anuradha & Ors. NCDRC, dated June 6, 2013.*
- The expression sufficient cause should normally be construed liberally so as to advance substantial justice but that would be in a case where no negligence or inaction or want of *bona fide* is imputable to the applicant. The Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the consumer foras. *DLF Home Developers Ltd. v. Pradeep Kumar, NCDRC, dated June 7, 2013.*

ENVIRONMENT

- The National Green Tribunal (NGT) has directed pollution control boards across the country to close down all units, including hotels, running without the consent to operate under the air and water acts (Wassan Singh v. Punjab, dated May 8). A letter containing the order sent by Union ministry of environment and forests (MoEF) dated June 3 was received by the Goa state pollution control board, and could shut down over 50% of industries and hotels in Goa, operating without the consent under the Acts. *Times of India, Dated June 5, 2013.*
- The environment ministry has proposed to partially outsource monitoring of clearances to private entities. It has also pushed for self-reporting by the industries of their compliance, or lack of it, with the norms stipulated while handing over forest land to projects. The ministry has proposed that project developers shall put out annual self-monitoring reports. *Times of India, Dated June 15, 2013.*
- It was urged by brick kiln manufacturers and project proponents developing roads that while digging of 'brick earth' for brick making and 'ordinary earth' for road making do not have serious environmental implications, the provisioning for EC for such operations is impeding these development activities because of practical problems in obtaining EC. Union ministry of environment and forests (MoEF) vide Office Memorandum ("OM") No.F.No.J-11013/12/2013-IA-II (I) dated 30.01.13 has constituted an Expert Committee, to categorize Category "B" projects / activities into Category "B1" and "B2" under EIA Notification, 2006. The activities of borrowing / excavation of 'brick earth' and 'ordinary earth', upto an area less than 5 ha, may be categorized under 'B2' Category subject to certain guidelines listed out in the OM. *OM No. L-11011/47/2011-IA.II(M), dated June 24, 2013.*
- Cautious after the devastation in Uttarakhand, Odisha government on asked all district collectors to ensure that no brick kiln operated on river beds. The flood situation in Uttarakhand had worsened due to large constructions on the river banks, flouting environmental laws. *Times of India, dated June 26, 2013.*
- Renewable energy company Welspun Energy Ltd has completed the financial closure for its proposed 7 MW solar power plant in Chitradurga district in Karnataka. *Times of India, dated June 26, 2013.*

OTHERS

- In a complaint u/s. 138 of the Negotiable Instruments Act, triable as a summary case, complainants led their evidence, accused was examined u/s 313 CrPC and also led defence evidence. Application requiring accused to produce documents was moved at the fag end of complaint proceedings. Such application, in view of the rulings was not maintainable u/s. 91 of CrPC. Such application, if allowed would not only be contrary to law, but also would protract and delay complaint proceeding, which according to law ought to be disposed of expeditiously and as early as possible by Magistrate. Accused person could not be compelled to disclose incriminatory documents before Court u/s. 91 of CrPC. Impugned order was unsustainable. -*Mahendra Kumar Kanhyalal Jain v. Shri Mahavir Urban Co-operative Credit Society Limited, Dated June 19, 2013.*