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RBI & FEMA

- *RPCD. MSME & NFS.BC.No.61/06.02.31/2013-14, dated 2nd December, 2013:* In order to increase the flow of credit to individuals for entrepreneurial activity in non-farm sector, the RBI revised the General Credit Cards (GCC) guidelines to allow such credits through GCC scheme under the Financial Inclusion Plans (FIPs). Further, there will be no ceiling on the loan amount as long as the loan is for the purpose of non-farm entrepreneurial activity and is otherwise eligible for classification as priority sector.
- *DBOD.BP.BC.No.75/21.04.103/2013-14, dated 2nd December, 2013:* RBI issued updated guidelines for stress-testing of banks which will be effective from 1st April, 2014 (Annex 1 of the circular).
- *RPCD.CO.RRB/RCB.BC.NO.63/03.05.33/2013-14 & RPCD.CO. RRB.BC.NO.65/03.05.33/2013-14, dated 2nd December, 2013:* RBI has extended the deregulated interest rate scheme for NRE (non-resident-external) deposits and foreign currency non-resident deposits (FCNR-B) till January 31, 2014 from November 30, 2013.
- *A.P. (DIR Series) Circular No. 78, dated 3rd December, 2013:* In order to strengthen the flow of resources to infrastructure sector, RBI has allowed Holding Companies / Core Investment Companies to raise ECB under the automatic route/approval route, as the case may be, for project use in Special Purpose Vehicles (SPVs) subject to certain terms and conditions.
- *FMD.MSRG.No.94/02.05.002/2013-14, dated 4th December, 2013:* RBI has declared that market participants will have to report trades for Over-The-Counter (OTC) foreign exchange and interest rate derivatives to a new platform developed by Clearing Corporation of India Limited (CCIL) from December 30, 2013. These include inter-bank and client transactions in currency swaps, inter-bank and client transactions in Foreign Currency (FCY) and Forward Rate Agreement (FRA)/Interest Rate Swaps (IRS), client transactions in INR FRA/IRS.
- *DPSS (CO) RTGS No.1357/04.04.017/2013-14, dated 20th December, 2013:* RBI has extended the timeline for banks to adopt new messaging standards in RTGS payment platform to 31 March, 2014. A new RTGS system was put in place in October this year that required banks to adopt ISO 20022 standard messaging formats.
- *DBOD.No.BP.BC.78/21.04.048/2013-14, dated 20th December, 2013:* In order to bring in consistency and induce transparency, RBI has advised banks that a credit card account will be treated as non-performing asset if the minimum amount due, as mentioned in the statement, is not paid fully within 90 days from the next statement date. The gap between two statements should not be more than a month. Banks have to follow this uniform method of determining over-due status for credit card accounts.
- *A.P. (DIR Series) Circular No.81, dated 24th December, 2013:* RBI has allowed such resident entities/companies in India, authorised by the government of India, to issue tax-free, secured, redeemable, non-convertible bonds in rupees to persons resident outside India to use such borrowed funds for on lending, re-lending to the infrastructure sector and keeping in fixed deposits with banks in India pending utilisation by them

for permissible end-uses. The move will widen the investor base, help in internationalising the currency and open another window for foreign investors.

FOREIGN TRADE

- *Notification No 52 (RE-2013) / 2009-2014, dated 2nd December, 2013, (DGFT):* Human Embryo has been classified under ITC (HS) Code 0511 99 99. Import of Human Embryo will be 'free' subject to a 'No Objection Certificate' from Indian Council of Medical Research (ICMR).
- *Public Notice No.40/(RE 2013)/2009-14, dated 2nd December, 2013, (DGFT):* Under SION A-2439, quantity of import item Beta Picoline has been reduced from 1.21 Kg to 1.05 Kg for every Kg of export product.
- *Notification No 53 (RE-2013) / 2009-2014, dated 2nd December, 2013, (DGFT):* The minimum price for import of Cashew Kernel (brokens) and Cashew Kernel (wholes) is fixed to Rs. 288/-per Kg. and Rs 400/-per Kg. respectively.
- *Public Notice No.41/(RE 2013)/2009-14, dated 2nd December, 2013, (DGFT):* Under SION A-315, quantity of import item Beta Picoline has been reduced from 1.2 Kg to 0.9 Kg for every Kg of this export product.
- *Public Notice No.42/(RE 2013)/2009-14, dated 3rd December, 2013, (DGFT):* Government of Andhra Pradesh has been permitted to export 1998.5917 MTs of value added products of Red Sanders wood, either by itself or through any entity/entities so authorized by them for the purpose. (ii) Such entity/entities or Government of Andhra Pradesh, as the case may be, shall be granted export authorization by the concerned Regional Authority of DGFT upon production of quantity allocation letter.
- *Notification No 55 (RE-2013) / 2009-2014, dated 3rd December, 2013, (DGFT):* Export of specified narcotics drugs and psychotropic substances has been permitted subject to NOC from Narcotics Commissioner of India, Gwalior.
- *Notification No 56 (RE-2013) / 2009-2014, dated 12th December, 2013, (DGFT):* Export of Dimethylamine Hydrochloride, Sodium Cyanide and Sodium Fluoride has been "Restricted". Export of these items would now be permitted under license.
- *Notification No 57 (RE-2013) / 2009-2014, dated 16th December, 2013, (DGFT):* Export of onion for the item description at Serial Number 51 & 52 of Schedule 2 of ITC(HS) shall be permitted subject to a Minimum Export Price(MEP) of US\$ 800 per Metric Ton.
- *Public Notice No.43/(RE 2013)/2009-14, dated 16th December, 2013, (DGFT):* SION A-84, SION A-197, SION A-2287, SION A-2476, SION A-2583 and SION A-3139 are to be reviewed. Necessary data is required to be provided by 31.01.2014.
- *Trade Notice No. 08 /2013, dated 17th December, 2013, (DGFT):* Inviting Suggestions on import of power generating equipment under EPCG scheme. Suggestions are to be sent not later than 6th January, 2013.

- *Notification No 58 (RE-2013) / 2009-2014, dated 18th December, 2013, (DGFT):* Para 9.28 of FTP has been amended to include Limited Liability Partnerships (LLPs) in the definition of “Group Company”. Neither partnership nor proprietorship firm would come within the ambit of definition of a “Group Company”.
- *Notification No 59 (RE-2013) / 2009-2014, dated 19th December, 2013, (DGFT):* Export of onion for the item description at Serial Number 51 & 52 of Schedule 2 of ITC(HS) Classification shall be permitted subject to a Minimum Export Price(MEP) of US\$ 350 per Metric Ton.
- *Notification No 60 (RE-2013) / 2009-2014, dated 23rd December, 2013, (DGFT):* There will be no prohibition on export of wood charcoal to Bhutan.
- *Notification No 61 (RE-2013) / 2009-2014, dated 26th December, 2013, (DGFT):* Export of onion for the item description at Serial Number 51 & 52 of Schedule 2 of ITC(HS) Classification of Export & Import Items shall be permitted subject to a Minimum Export Price(MEP) of US\$ 150 per Metric Ton.
- *Public Notice No.44/ (RE 2013)/2009-14, dated 30th December, 2013, (DGFT):* The Standard Input Output Norms (SION) for export product under S.No. A-2611 have been reviewed. There is no change in either description of the export product or in the permitted inputs, but the respective quantities of permitted inputs have been revised downwards.

CORPORATE

- *Symphony Services Corp(India) Pvt. Ltd v. M.G FLO2GO Technology Pvt. Ltd., dated 6th December, 2013, (Delhi HC):* Sending of the notices under Section 434(1)(a) of the Act by the petitioner at the registered office of the respondent-company in terms of the official record (i.e. website of the ROC) was held to be legal and valid even if such notice was returned unserved with the postal remark "left without address". The debt is also admitted as is seen from several e-mails written by the respondent-company to the petitioner. Therefore the court was of the view that winding-up proceedings u/s 433 (e) should be admitted.
- *Intesa Sanpaolo S.P.A. v. Videocon Industries Ltd, dated 5th December, 2013, (Bombay High Court):* Any creditor or contributory is entitled to apply for the winding up of the Company. No distinction is made between the creditors resident in India or outside India. Merely because of the creditor is a decree holder it does not change the character of it as a creditor for the purpose of maintaining petition for winding-up. The right to maintain petition for winding up being a right under a statute it cannot be affected by question of permission of the RBI under FERA. Also, Company cannot put forward commercial solvency as a defence to a winding-up petition.
- *The Bank of New York Mellon, London Branch v. Zenith Infotech Ltd., dated 13th December, 2013, (Bombay HC):* In the present case (i) the Company’s liability is admitted, (ii) the Company is unable to pay its debt as and when they fall due and (iii) the Company is admittedly in a state of insolvency, all the criteria required for its winding up are fully satisfied. Therefore the Company ought to be wound up.
- *Inderjeet Arya and Another v. ICICI Bank Ltd., dated 13th December, 2013, (Supreme Court):* Appellants, who are the guarantors, can obtain the protection of Section 22(1) of SICA only if the action filed by the bank comes within the ambit of the term ‘suit’ and not when the action filed by the respondent bank in the nature of

‘proceedings’. Also, the term ‘suit’ would apply only to proceedings in civil court and not actions or recovery proceedings filed by banks and financial institutions before a tribunal such as DRT.

- *Official Liquidator of M/s Star Spin and Twist Machinerics Ltd (In Liqn.) v. M J Mehta & Co., dated 20th December, 2013, (Karnataka HC)* : Held that the question whether on termination of the lease, the sub- lease would subsist on general principle, would have to be answered in the negative. Also the question as to whether the Official Liquidator would be in a position to lay a claim to any leasehold rights which the company in liquidation, might have procured under a sub-lease which is any longer subsisting, is also answered in the negative.

SECURITIES

- *CIR/CFD/DIL/15/2013, dated 3rd December, 2013, (SEBI)*: A revised format for disclosure of Statement of Assets and Liabilities in offer document is placed as Annexure A to the circular.
- *CIR/MIRSD/12/2013, dated 4th December, 2013, (SEBI)*: It has been decided to further simplify and rationalize the demat account opening process. The existing Beneficial Owner-Depository Participant Agreements shall be replaced with a common document “Rights and Obligations of the Beneficial Owner and Depository Participant”. The depositories are directed to (i) Bring the provisions of this circular to the notice of the Depository Participants and also disseminate the same on their websites (ii) Advise the depository participants to intimate their clients the modified provisions of the Rights and Obligations Document, replacing the existing BO-DP agreements (iii) Make necessary amendments to the relevant bye-laws, rules and regulations for the implementation (iv) Communicate to SEBI, the status of the implementation of the provisions of this circular in their Monthly Development Reports.
- *CIR/MRD/DRMNP/37/2013, dated 19th December, 2013, (SEBI)*: The deposit requirements for the members of the debt segment shall be as under- (a) Stock Broker / Proprietary Trading Member: SEBI circular dated December 19, 2012 on Base Minimum Capital shall also be applicable to Stock Broker / Proprietary Trading Member of the debt segment (b) Clearing Member (CM) / Self Clearing Member (SCM): The deposit shall be 10 lacs. No exposure shall be granted against such deposit requirement.
- *CIR/IMD/FIIC/21/ 2013, dated 19th December, 2013, (SEBI)*: For Declaration and Undertaking with regard to the opaque structure such as Protected Cell Companies (PCC), Multi Class Share Vehicles (MCV) or equivalent structure by FIIs, If any applicant is required by its regulator or under any law to ring fence its assets and liabilities from other funds/ sub funds, such applicant shall not be treated as having opaque structure, provided: a) the applicant is regulated in its home jurisdiction; b) each fund/ sub fund in the applicant satisfies broad based criteria, and c) the applicant gives an undertaking to provide information regarding its beneficial owners as and when SEBI seeks this information.
- *CIR/MRD/DP/38 /2013, dated 19th December, 2013, (SEBI)*: SEBI vide circular no CIR/MRD/DP/ 6/2013 dated February 14, 2013 issued guidelines for trading in the illiquid scrips through Periodic Call Auction session. It has now been decided to rationalize the periodic call auction mechanism, and accordingly certain conditions of the aforesaid circular have been modified.

- *CIR/MIRSD/ 13 /2013, dated 26th December, 2013, (SEBI)*: With regard to the Know Your Client Requirements, a standard Account Opening Form (AOF) has been prescribed which is divided in 2 parts - Part I contains the basic KYC details of the investor used by all SEBI registered intermediaries and Part II captures additional information specific to the area of activity of the intermediary. It has now been decided in consultation with various market participants to shift certain information in Section C of Part I to Part II of the AOF (for both individuals and non-individuals). Revised Part I of AOF had been enclosed to the circular. Part II shall be modified by the intermediary accordingly.
- *Deepak Khosla v. SEBI, dated 2nd December, 2013, (SAT)*: A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. Further, if the intervener has a cause of action against plaintiff relating to the subject matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.
- *Ms. Sunita Gupta v. SEBI, dated 2nd December, 2013, (SAT)*: A person who has violated provisions of SEBI Act and the Regulations made thereunder cannot escape penalty merely because that person has not made unlawful gains or that the investors have not suffered or that the violations were committed for the first time.
- *Rose Valley Real Estates And Construction Ltd v. SEBI, dated 12th December, 2013, (SAT)*: The question in the case was relating to defiance by the appellant with respect to production of documents warranting a monetary penalty of 1 crore. The underlying idea behind Sections 11C(2), 11C(3) and 11C(6) is that all relevant information and documents be made available for the purposes of a holistic investigation before any conclusion can be drawn. Appellant has been willing to furnish documents relating to issuance of debenture through private placement from time to time and has in fact fully furnished particulars though belatedly in the adjudication proceedings which were also initiated belatedly, thus it was held just and proper to restrict the penalty to 10 lakhs.
- *Mr. G. Jayaraman v. SEBI, dated 24th December, 2013, (SAT)*: As a “Compliance Officer” of Satyam, appellant was obliged to keep the “Trading Window” closed when in possession of unpublished price sensitive information specified in para 3.2.3 of the model code of conduct for prevention of insider trading for listed companies set out in schedule I, Part A of Prohibition of Insider Trading Regulations till that price sensitive information is published and 24 hours thereafter. Whether any employee/director by taking undue advantage has traded in securities of that company or not, Compliance Officer would be liable for violating PIT Regulations.

COMPETITION

- *M/s Peeveear Medical Agencies, Kerala v. All India Organization of Chemists and Druggists, dated 9th December, 2013, (CCI)*: Commission holds that actions of AIOCD and its affiliate State Associations All Kerala Chemists & Druggists Association requiring mandatory Product Information Service approval for launch of any new drug which ultimately results into delay in reaching the drugs to the consumers and also delaying or withholding PIS approval in any ground, is in violation of the provisions of Section 3 (3) (b) read with Section 3(1) of the Act.

- *M/s Maharashtra State Power Generation Company Ltd. v. M/s Coal India Ltd., dated 9th December, 2013, (CCI):* Coal India Limited through its subsidiaries operates independently of market forces and enjoys undisputed dominance in the relevant market of production and supply of non-coking coal in India. The Commission held the opposite parties to be in contravention of the provisions of section 4(2)(a)(i) of the Act for imposing unfair/ discriminatory conditions and indulging in unfair/ discriminatory conduct in the matter of supply of non-coking coal to power producers. A penalty of 1773.05 crores was imposed on CIL.
- *M/s. Magnus Graphics v. M/s Nilpeter India Pvt. Ltd & Ors., dated 12th December, 2013, (CCI):* The correspondence between informant and OP-1 makes it prima facie clear that OP-1 had an agreement/understanding with OP-4 that in case the informant competes with OP-4 for its existing clients, then OP-1 shall not provide service of maintenance of the machine to informant. Such an agreement directly affects competition in the market of printing labels etc. within India and is in violation of section 3 of the Act. Obviously this agreement is prima facie anti-competitive and on the face of it has adverse effect on the competition in the market. The commission thought fit to refer the matter for further investigations to DG, for violation of provision of Competition Act.

INTELLECTUAL PROPERTY RIGHTS

– PATENTS

- *CG / F / Public Notice / 2013 / 122, dated 11th December, 2013 :* In order to further enhance transparency in the public delivery system and to authenticate the documents delivered by IPO to the stakeholders, the system of QR Code(s) is being introduced and henceforth the same will be printed on the Renewal Certificates of Patents issued by the Patent Office. It is further informed that the intimation regarding the issue of Renewal Certificates shall also be made available to the applicant / agent on record immediately through email (this will be extended to SMS also in due course). Therefore, in order to access this service, the stakeholders/ applicants are advised to register their official mobile number as well as their official e-mail address with the patent office at the time of filing of the documents/ fee payment at the cash counter (at the time of CBR generation).

– TRADEMARKS

- *Boehringer Ingelheim Pharma v. Premchand Godha & Anr, dated 16th December, 2013 (Delhi HC) :* Held that the two competing marks - Plaintiff's 'MUCOSOLVAN' and Defendant's 'MUCOSOLVIN' are composite marks. There is a close degree of resemblance between the two. They are phonetically similar and similar in idea. They are used in relation to cough syrups containing the same API, Ambroxol, meant to treat productive coughs. The class of purchasers of both the goods is same and can be expected to have the same degree of education and intelligence. The degree of care they are likely to exercise would not be different. Hence injunction is granted in favour of plaintiff.
- *CG / Public Notice / 2013 / 130, dated 13th December, 2013 :* CGPDTM requested to all concerned Application / Agent to appear in Special Drive for Post Registration changes in the registered Trademarks. This drive is initiated with object to facilitate the applicants / agents to record their request for subsequent change if supporting document are provided to the concerned officials.
- *CGPDTM, dated 17th December, 2013 :* CGPDTM publishes 'Guidelines for functioning under the Madrid Protocol'.

– **OTHERS**

- *Colgate Palmolive Co. & Anr v. HUL, dated 10th December, 2013 (Delhi HC)* : HUL is directed not to print any Pepsodent advertisement that disparages Colgate Strong Teeth (ST) and also to change its television commercial (TVC). Held that the voiceover at the end of the impugned TVC which states 'naya Pepsodent Germi Check Colgate ke mukable 130 pratishat germ attack power (in comparison to Colgate, the new Pepsodent Germi Check has 130% germ attack power)' is misleading and inaccurate.

CONSUMER

- *Nagpur Improvement Trust v. Anoop Singh, dated 2nd December, 2013, (NCDRC)*: The OP had charged total amount of Rs.9,36,000/- from the Complainant for the flat admeasuring 790sq. ft. and despite sanctioning the allotment to him, the flat was not in fact allotted to him. But, the Complainant in the alternative asked for allotting the flat admeasuring 719.93sq. ft. and the terrace having an additional area. The Complainant had already deposited on 28/04/2005 the amount with the OP for allotment of the said flat and about 2 years thereafter, the letter had been sent again to the Complainant to purchase the flat by way of auction. Such attitude of OP amounts to unfair trade practice to harass the Complainant unnecessarily.
- *Baljeet v. United India Insurance Company Ltd, dated 2nd December, 2013, (NCDRC)*: It is undisputed that the vehicle in question was insured on the date on which it was stolen. It is also undisputed that the vehicle was insured as a private use vehicle but it was being used for commercial purpose i.e. on hire to the Power Grid Corporation. It was held that in the case of violation of condition of policy as to nature of use of the vehicle, the claim ought to be settled on non – standard basis. In case of theft of vehicle, nature of use of the vehicle cannot be looked into and the Insurance Company cannot repudiate the claim on that basis.
- *Tata Motors v. Rajesh Tyagi, dated 3rd December, 2013, (NCDRC)*: Whenever a brand new vehicle is sold to a consumer, there is an implied contract that the vehicle being sold does not suffer from and will not suffer from any kind of fault or imperfection or shortcoming in the quality, quantity, potency and standard which is required to be maintained. From the entire factual matrix of the case, it was very clearly brought out that the vehicle in question was a defective vehicle when judged from the definition of 'defect' as contained in section 2(1)(f) of the Consumer Protection Act, 1986.
- *National Insurance Company Ltd. v. N.K. Financers, dated 5th December, 2013, (NCDRC)*: An insurance company, after having accepted the value of a particular vehicle at the time of issuing the insurance policy, could not disown that very value on one pretext or the other when they are called upon to pay compensation. The loss on account of theft of the vehicle had to be assessed by the surveyor by taking the base value of the vehicle at `6,00,000/-, i.e. the value of the vehicle declared at the time of renewing the policy and not the market value of the vehicle at the time of theft.
- *Shriram General Insurance Co. Ltd v. Jamshed Khan, dated 5th December, 2013, (NCDRC)*: The appellate forum is bound to refer to the pleadings of the case, the submissions of the counsel, necessary points for consideration, discuss the evidence and dispose of the matter by giving valid reasons. State Commission was directed to hear the parties in detail and pronounce a speaking order by carrying out detailed analysis of the facts on record.
- *Ludhiana Improvement Trust v. Ms. Harpreet Kaur, dated 9th December, 2013, (NCDRC)*: While deciding an application filed in such cases for condonation of delay, 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. There was no reasonable explanation for condonation of inordinate delay of 62 days.

- *Kusum Aggarwal v. ICICI Bank Ltd, dated 9th December, 2013, (NCDRC)*: Merely because order of District Forum had been upheld in cross appeal, appeal of the OP could not have been dismissed and it was obligatory on the part of State Commission to decide the appeal on merits. In the cross appeal, complainant prayed for enhancement of compensation and in that appeal, illegality of order of District Forum was neither ascertained nor could have been decided because complainant filed appeal only for enhancement of compensation. As appeal had not been decided on merits, revision petition was allowed and impugned order was set aside and matter was remanded back to State Commission for disposal on merits.
- *Additional Director General APS (PLI Cell) v. Jyoni Dev, dated 16th December, 2013, (NCDRC)*: Since the petitioner had failed to produce the best evidence, the consumer forum was inclined to draw an adverse presumption against the petitioners and conclude that the petitioner had failed to establish that the insured was aware that he had been detected HIV positive. Since the petitioner had failed to prove that on date on obtaining the insurance policy, insured was aware that he had been detected HIV positive, it cannot be said that insured had indulged in fraud, misrepresentation or concealment of material fact while obtaining the insurance policy. Thus, the repudiation of the claim on the part of the petitioner was not justified and it amounts to deficiency in service.

ENVIRONMENT

- *The Times of India, dated 3rd December, 2013* : The principal bench of the tribunal directed the Union environment ministry while hearing a case related to unauthorized constructions on Yamuna and Hindon floodplains in UP-NCR to clarify its status on implementing the River Regulation Zone policy so that rampant encroachment activities over floodplain areas are prohibited.
- *Satish Kumar v. UOI & Ors., dated 12th December, 2013 (NGT)*: NGT has restrained All the plastic waste/scrap dealers and/or recyclers including the member of the PWD Association Respondent from carrying on their business of segregation of plastic waste and its eventual transfer or disposal contrary to the Plastic Waste(Management and Handling) Rules, 2011 and also banned "unregulated open burning" of plastic, rubber or such other articles across the country. It also directed all the municipal authorities to "set up, operationalise and coordinate the waste management systems within their limits, work out and set up systems for use of plastic waste in road construction and/or in co-incineration plans for generation of energy in accordance with law.
- *Samata & FSD v. UOI & Ors., dated 13th December, 2013 (NGT)* : In this case all the procedural formalities as required by the EIA Notification, 2006 have been followed at all stages except at the crucial stage of 'appraisal' by the EAC. Held that instead of scrapping the EC granted by the MoEF in respect of the thermal power plant in question, it would be suffice to keep the EC under suspension for a period of six months with the directions to carry out the re-exercise of 'appraisal' within the said period.

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