MONTHLY
NEWSLETTER

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AUGUST, 2016

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RBI/FEMA

1. INTEREST SUBVENTION SCHEME ON SHORT-TERM CROP LOAN IMPLEMENTED

The Government of India, in pursuance of the Budget announcement in the present fiscal year has approved the implementation of the Interest Subvention Scheme for the year 2016-17 for short term crop loans up to Rs 3 lakh with the stipulations like a subvention of 2% per annum will be made available to Public Sector Banks (PSBs) and in respect of loans given by the rural and semi–urban branches of Private Sector Scheduled Commercial Banks, for short term crop loan up to Rs.3,00,000/- per farmer provided the lending institutions make available short term credit at the ground level at 7% per annum to farmers. Further, an additional interest subvention of 3% per annum will be available to the prompt payee farmers from the date of disbursement of the crop loan up to the actual date of repayment by farmers or up to the due date fixed by the Bank for repayment of crop loan, whichever is earlier, subject to a maximum period of one year from the date of disbursement. This also implies that the farmers paying promptly would get short term crop loans @ 4% per annum during the year 2016-17.This benefit would not accrue to those farmers who repay after one year of availing such loans. – ***[FIDD. CO. FSD. BC. No. 9/05.02.001/2016-17, dated 4th August, 2016]***

2. RBI DIRECTS AIFIS TO IMPLEMENT THE INDIAN ACCOUNTING STANDARDS (IND AS)

The Reserve Bank of India has advised that select All-India Term Lending and Refinancing Institutions (AIFIs) (Exim Bank, NABARD, NHB and SIDBI), shall follow the Indian Accounting Standards as notified under the Companies (Indian Accounting Standards) Rules, 2015, subject to the guideline or direction issued by the Reserve Bank of India in the manner specified in the Notification. ***-[RBI/ 2016-17/ DBR. FID. No. 1/01.02.000/2016-17, dated 4th August, 2016]***

3. RBI EASES PRIORITY SECTOR NORMS TO INCREASE LIQUIDITY SUPPORT FOR MSME SECTOR

In order to increase liquidity support for the MSME (Micro, Small and Medium Enterprises) sector, RBI has decided that factoring transactions on 'with recourse' basis shall be eligible for the priority sector classification by Banks, which are carrying out the business of factoring departmentally. The factoring transactions taking place through TReDS shall also be eligible for classification under the priority sector upon operationalization of the TReDS platform. - ***[FIDD. CO. Plan. BC. 10/04.09.01/2016-17, dated 11th August, 2016]***

4. PARTIAL CREDIT ENHANCEMENT (PCE) LIMIT PROVIDED BY BANKS EXPANDED

In terms of the Guidelines issued previously proposing to allow Banks to offer Partial Credit Enhancement, the aggregate exposure limit of all Banks towards the PCE for a given bond issue has now been capped at 20% of the bond issue size. On a review, RBI has decided to increase the aggregate exposure limit from the banking system to 50% of the bond issue size, with a limit up to 20% of the bond issue size for an individual Bank. As the purpose of PCE by Banks is to enable wide investor participation in the corporate bond market, Banks are expected not to invest in corporate bonds which are credit enhanced by other Banks. ***-[DBR. BP. BC. No. 5/21.04.142/2016-17, dated 25th August, 2016]***

5. RISK WEIGHTS APPLICABLE TO UNRATED EXPOSURES TO CORPORATES, AFCS AND NBFC-IFCS MODIFIED

At present unrated exposures to Corporates, AFCs and NBFC-IFCs attract a risk weight of 100 per cent. On a review, it has now been decided by RBI to make the following modifications to the risk weights applicable to unrated exposures:

i. With effect from June 30, 2017, all unrated claims on Corporates, AFCs, and NBFC-IFCs having aggregate exposure from banking system of more than INR 200 crore will attract a risk weight of 150%.
ii. However, claims on Corporates, AFCs, and NBFC-IFCs having aggregate exposure from banking system of more than INR 100 crore which were rated earlier and subsequently have become unrated will attract a risk weight of 150% with immediate effect.

-[DBR. No. BP. BC. 6/21.06.001/2016-17, dated 25th August, 2016]

6. BANKS CAN TAKE ASSISTANCE OF RETIRED OFFICIALS IN INTERNAL AUDITS

Keeping in view the change in demographic profile of the staff in Banks on account of retirement, leading to shortage of staff to conduct Internal Audit which is an important component of Risk Based Supervision (RBS), RBI has decided to permit Banks to engage the services of its retired officials for assisting in Internal Audit subject to following conditions:

i. Each Bank should formulate with the approval of their Board of Directors, a policy to engage the services of its retired personnel for a maximum tenure not exceeding three years in the areas where it does not have enough expertise. The policy should *inter alia* include the Terms of Engagement, review of performance, termination of services, etc.
ii. Banks need to ensure that the retired personnel so engaged, work under the close supervision of the Management of the Bank and the final sign off of the Audit Reports would be the responsibility of the serving Bank officials.
iii. In order to avoid conflict of interest, the retired personnel so engaged may not be assigned branches/ sections, where they had worked while in active service with the Bank.

-[DBS. CO. PPD. 05/11.01.005/2016-17, dated 25th August, 2016]

7. BROKERS REGISTERED WITH SEBI CAN UNDERTAKE REPO /REVERSE REPO CONTRACTS IN CORPORATE DEBT SECURITIES

RBI has permitted brokers registered with the SEBI and authorised as market makers in Corporate Bond Market to undertake repo / reverse repo contracts in Corporate debt securities subject to the Directions mentioned in the Circular FMRD.DIRD.04/ 14.03.002/2014-15 dated February 3, 2015. ***-[FMRD. DIRD. 5/14.01.009/2016-17, dated 25th August, 2016]***

8. GUIDELINES ISSUED ON ENHANCING CREDIT SUPPLY FOR LARGE BORROWERS

RBI has issued Guidelines for enhancing credit supply to large borrowers through market mechanism. As per the norms, which will come into effect from April 1, 2017, incremental exposure of banking system to a specified borrower beyond Normally Permitted Lending Limit (NPLL) will be deemed to carry higher risk which will be recognised by way of additional provisioning and higher risk weights as under:

i. Additional provisions of 3 percentage points over and above the applicable provision on the incremental exposure of the banking system in excess of NPLL, which shall be distributed in proportion to each Bank's funded exposure to the specified borrower.
ii. Additional Risk weight of 75 percentage points over and above the applicable risk weight for the exposure to the specified borrower. The resultant additional risk weighted exposure, in terms of Risk Weighted Assets (RWA), shall be distributed in proportion to each Bank's funded exposure to the specified borrower.

'Specified Borrower' means a borrower with an aggregate of the fund-based credit limits (ASCL) of more than Rs 25,000 crore at any time during 2017-18, Rs 15,000 crore at any time during 2018-19 and Rs 10,000 crore at any time from April 1, 2019, onwards. ***-[DBR. BP. BC. No. 8/21.01.003/2016-17, dated 25th August, 2016]***

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FOREIGN TRADE

1. EXPORT OF BASMATI RICE PERMITTED ON INDO-BANGLADESH AND INDO-NEPAL BORDERS

The Central Government has in addition to the EDI ports, permitted the export of Basmati Rice through Land Custom Stations (LCS) on Indo-Bangladesh and Indo-Nepal border also, subject to registration of quantity with DGFT. Export of Basmati Rice shall not be permitted on the basis of Documents against Acceptance (D/A) unless such export is covered either by Bank Guarantee or ECGC Guarantee, with effect from 01.10.2016. ***-[Notification No. 18/2015-2020, 1ST August, 2016, (DGFT)]***

2. IMPORT AND EXPORT CONDITIONS OF HUMAN BIOLOGICAL SAMPLES FOR COMMERCIAL PURPOSES NOTIFIED

The import of human biological samples by the Indian diagnostic laboratories/Indian Clinical Research Centres for lab analysis/R & D testing or export of these materials to foreign laboratories is permitted by Customs authorities at the port of entry/exit without prior approvals (import licence/export permit) from any other Government agency, provided the concerned Indian company/

agency submits an undertaking that they are following and will follow all the applicable rules, regulations & procedures for safe transfer and disposal of the biological samples being imported/exported as per the related norms/regulations set by WHO/DGFT. ***-[Notification No. 19/2015-2020, 4th August, 2016, (DGFT)]***

3. CLUBBING FACILITY FOR ADVANCE AUTHORIZATION FOR ANNUAL REQUIREMENT PERMITTED

Facility of clubbing has been allowed by the DGFT for Advance Authorisations for Annual Requirement issued during Foreign Trade Policy period 2009-14 and 2015-20 wherever exports and imports have taken place as per Standard Input Output Norms (SION) notified (available in Handbook of Procedures). ***-[Public Notice No. 24/2015-2020, 4th August, 2016, (DGFT)]***

4. MINIMUM IMPORT PRICE ON HS CODES OF IRON AND STEEL EXTENDED FOR TWO MONTHS

Minimum Import Price (MIP) for 66 Harmonised System (HS) Codes of Iron and Steel under Chapter 72 of ITC (HS), 2012 – Schedule – 1 (Import Policy) is extended till 4th October, 2016. The detailed list of products within the broad category can be found in the Notification. ***-[Notification No. 20/2015-2020, 4th August, 2016, (DGFT)]***

5. SPECIAL ADVANCE AUTHORIZATION SCHEME FOR EXPORT OF APPAREL AND CLOTHING ACCESSORIES INTRODUCED

A new scheme called Special Advance Authorisation Scheme for export of Articles of Apparel and Clothing Accessories of Chapter 61 & 62 of ITC(HS) Classification has been introduced with effect from 1st September 2016 wherein exporters are entitled for an authorisation for fabrics including inter lining on pre-import basis, and All Industry Rate of Duty Drawback for non-fabric inputs on the exports.

DGFT EDI System is designed to calculate the value addition automatically based on FOR value of exports, and CIF value of imports. Value of any other input used on which benefit of All Industry rate of Duty Drawback is claimed or intended to be claimed shall be equal to 22% of the FOB value of export realised and this value is factored in EDI System while calculating value addition. Minimum value addition of 15% is required. The fabric imported under this authorisation shall be subject to actual user condition. The same shall be non-transferable even after completion of export obligation. However, the fabric imported may be transferred for job work as permitted by the Central Excise Department. Only Physical exports shall fulfil the export obligation. ***-[Notification No. 21/2015-2020, 11th August, 2016, (DGFT) and Trade Notice No. 15/2016, 31st August, 2016 (DGFT)]***

6. C.I.F. VALUE FOR IMPORT OF CONSUMER ELECTRONIC ITEMS FOR PERSONAL USE ENHANCED

C.I.F. value of import of consumer electronic items any one time by any person through post or otherwise for personal use is enhanced to Rs. 50,000 from previous threshold of Rs. 2,000 - ***[Notification No. 22/2015-2020, 12th August, 2016, (DGFT)]***

7. MERCHANDISE EXPORT FROM INDIA SCHEME (MEIS) FOR ONIONS NOTIFIED

The DGFT has set the MEIS rate for Onion at 5% as per this Notification. It would be effective for exports made up to 31.12.2016. ***-[Public Notice No. 26/2015-2020, 26th August, 2016, (DGFT)]***

8. EXPORT QUANTITY OF RED SANDERS WOOD BY GOVERNMENT OF ANDHRA PRADESH REVISED

The total quantity of Red Sanders wood in any form, bulk or value added, permitted to the Government of Andhra Pradesh for export has been revised by the Central Government to 8498.095 MT which subsumes the quantity of exports already made by the Govt. of Andhra Pradesh under the Notification No. 47 (RE-2013)/2009-2014 dated 24.10.2013 and under Public Notice No. 42 (RE-2013)/2009-2014 dated 03.12.2013. Time up to 30.04.2017 has been allowed to the Government of Andhra Pradesh & Directorate of Revenue Intelligence (DRI) to finalize the modalities and complete the process of export of respective allocated quantity of Red Sanders wood. ***-[Notification No. 24/2015-2020, 29th August, 2016, (DGFT)]***

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CORPORATE

1. CLARIFICATION REGARDING THE APPLICABILITY OF CHAPTER III OF THE COMPANIES ACT, 2013 ISSUED

The Ministry of Corporate Affairs clarified that provisions of Chapter III of the Companies Act, 2013, dealing with "prospectus and allotment of securities" and Rule 18 of the Companies (Share Capital and Debenture) Rules, 2014 prescribing compliance requirements for issuance of secured debentures, shall not be applicable to issue of rupee denominated bonds to persons outside India, unless notified by Reserve Bank of India (RBI). ***-[General Circular No., 09/2016, 3rd August, 2016, (MCA)]***

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SECURITIES

1. FOREIGN INVESTMENT LIMIT IN RUPEE DENOMINATED BONDS ISSUED OVERSEAS BY INDIAN CORPORATES' SPECIFIED

SEBI through the instant Circular has clarified that Combined Corporate Debt limit for all foreign investments in Rupee denominated Bonds issued both onshore and overseas by the Indian Corporates shall be Rs. 244,323 crore. Foreign investments in Overseas Rupee denominated Bonds shall be reckoned against this Combined Corporate Debt limit. However, according to this Circular, the investment in overseas rupee denominated Bonds shall not be treated as FPI Investment and hence shall be out of the purview of the SEBI (Foreign Portfolio Investor) Regulations, 2014. It has been further decided that the entire Combined Corporate Debt limit of Rs.244,323 crore shall be available on tap for investment by foreign investors. The criteria for foreign investments in Overseas Rupee denominated Bonds shall be as defined by RBI from time to time. ***-[SEBI/ HO/ IMD/ FPIC/ CIR/ P/ 2016/67, 4th August, 2016, (SEBI)]***

2. REVISED GUIDELINES ON MUTUAL FUNDS ISSUED

Certain changes have been introduced in the previously laid down Guidelines on Mutual Funds by SEBI. These include:

A. Prudential limits in sector exposure for Housing Finance Companies (HFCs): Presently the limit for sectoral exposure in debt oriented Mutual Fund Schemes for HFCs is 25% with an additional exposure limit not exceeding 5%. SEBI has now decided to increase additional exposure limits provided for HFCs in financial services sector from 5% to 10%.

B. Disclosure of Votes cast by Mutual Funds: An Asset Management Company (AMC) is required to obtain Auditor's Certification on the voting reports being disclosed by them on a Quarterly basis. SEBI has now decided that such Certification shall be obtained from "scrutinizer" ["who may be Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an advocate, but not in employment of the Company…" ***Rule 20 (3) (ix) of Companies (Management and Administration) Rules, 2014.]***

C. Submission of final copy of SID prior to launch of the Scheme: An AMC is required to submit soft copy of the Scheme Information Document (SIDs) along with printed/ final copy, two working days prior to the launch of the Scheme. SEBI has now decided that such submission is required to be made seven working days prior to the launch of the scheme. ***-[SEBI/ HO/ IMD/ DF2/ CIR/ P/ 2016/68, 10th August, 2016, (SEBI)]***

3. POSITION LIMIT FOR HEDGERS UPDATED BY SEBI

In order to facilitate larger participation by genuine hedgers by providing them with necessary incentives with a view to deepen the Commodity Derivatives Market, the Exchanges have been asked by SEBI to stipulate a Hedge Policy for granting hedge limits to their members and clients. In this regard, to provide any exemptions to members or clients following Guidelines are to be kept in mind:-

(a) Hedge limit granted by Exchanges shall be in addition to normal position limit allowed. These limits are specific to the Hedger and non-transferable;

(b) This Hedge limit granted for a commodity derivative shall not be available for the near month contracts of the said commodity from the date of applicability of near month limit;

(c) Hedge limit for a commodity shall be decided on case by0 case basis taking into account applicant's Hedging requirement in the underlying physical market, based on import/export commitments, stocks held, past track record of production or purchase or sale, processing capacity and other factors as the Exchanges shall deem fit;

(d) Exchanges shall conduct proper due diligence to ensure that the Hedge limit granted is genuine;

(e) The hedge limit may also be made available in respect of the short open position acquired by an entity for the purpose of Hedging against the stocks of commodities owned by it and (i) pledged with the Scheduled Commercial Banks/Co-operative Banks or (ii) lying in any Government Entity's warehouse/ WDRA Approved warehouses or (iii) lying in any other premises either owned by Hedger or taken on lease by him on its name and ascertained and approved by Exchange to have appropriate quality control standard

(f) At any point of time during the Hedge period, Hedging positions taken in derivatives contracts by Hedger, across multiple Exchanges/

Contracts, shall not exceed his/its actual/anticipated exposure in the physical market;

(g) If Hedger is found availing Hedge limits contrary to Guidelines or fails to inform the Exchange in timely manner about reduction of underlying exposure, it shall be liable for expulsion/restriction from trading;

(h) A Hedger availing the benefit of hedge limits shall maintain records for a minimum of three years for inspection by SEBI;

(i) The Hedge limit approved by an Exchange shall be valid for a period as mentioned in the approval letter and such Hedge limit shall stand cancelled automatically upon expiry of such period without any notice.

The Exchanges shall disclose on their website the Hedge position allocated to various Hedgers, indicating the period for which approval is valid, in an anonymous manner. The format for such disclosure has been provided in the present Circular. The Circular will come into effect from September 29, 2016. ***-[SEBI/ HO/ CDMRD/ DMP/ CIR/ P/ 2016/71, 19th August, 2016, (SEBI)]***

4. GUIDELINES ON PROGRAMMES SPONSORED BY EXCHANGES UPDATED

The present Circular has been issued by SEBI to consolidate and update erstwhile norms introduced by FMC on 'Programmes sponsored by the Exchanges'. SEBI through the present Circular has emphasized on the neutrality of Exchanges and said that they shall not sponsor or associate themselves in any manner with Programmes/Seminars/ Workshops activities etc. at various fora including but not limited to TV/Radio/Social Networks/Websites or any other media in which the discussions/suggestions are related to the price behaviour, price outlook, trading strategy, buy/sell recommendations, or similar subjects related to commodity derivatives.

The Exchanges are also required to ensure that the staff members are not associated with above mentioned activities. The Exchanges are required to lay down a suitable Code of Conduct for their Executives and other staff members in this regard. ***-[SEBI/HO/CDMRD/DMP/CIR/P/2016/72, 19th August, 2016, (SEBI)]***

5. CLARIFICATION REGARDING MODIFICATION OF CLIENT CODES POST EXECUTION OF TRADES ISSUED

In connection with a previous Circular No. SEBI/ HO/CDMRD/DMP/CIR/P/2016/43 issued by SEBI on 29th March, 2016 on the captioned subject, the following clarifications have been issued by SEBI under the present Circular:

Classification of Genuine Errors: (a) Error due to communication and/or punching or typing such that the original client code/name and the modified client code/name are similar to each other and (b) Modification within relatives ('Relative' for this purpose would mean as defined under the Companies Act, 2013) are classified as genuine errors for the purpose of client code modification.

Error Accounts: (a) Shifting of trades to the 'Error account' of Broker would not be treated as modification of client code and (b) Broker shall disclose the codes of accounts which are classified as 'Error accounts' to the Exchanges and each Broker should have a well-documented error policy approved by the management of the Broker.

These clarifications combined with original Circular, dated 29th March 2016 on client code modifications are placed in Annexure with the Circular. - ***[SEBI/HO/CDMRD/DMP/CIR/P/2016/73, 19th August, 2016, (SEBI)]***

6. NORMS FOR MAINTENANCE AND PRESERVATION OF RECORDS BY STOCK EXCHANGES SPECIFIED

Pursuant to the merger of Forward Market Commission (FMC) with SEBI, all Commodity Derivative Exchanges and their members are required to comply with the provisions of Securities Contract (Regulation) Rules, 1957 and SEBI (Stock-Brokers and Sub-Brokers) Regulations, 1992. Rules 14 and 15 of SCRR require recognized Stock Exchanges and their members to maintain and preserve the specified books of account and documents for a period ranging from two years to five years. Further, as per Regulation 18 of Broker Regulations, every Stock Broker shall preserve the specified books of account and other records for a minimum period of five years.

Further, these provisions along with SEBI Circular No. MRD/DoP/SE/Cir-21/2009 dated 9th December, 2009, prescribing norms regarding "Preservation of Records", shall be applicable for all the Commodity Derivatives Exchanges and their members. Accordingly, a requirement flowing from abovementioned SEBI Circular, requires Exchanges and their members to maintain records of documents collected by CBI, Police, Crime Branch etc., for investigation purposes, in physical or electronic form till the trial or investigation proceedings have concluded. The provisions of the present Circular shall come into force from 29th September, 2016. ***-[SEBI/ HO/ CDMRD/ DMP/ CIR/ P/ 2016/74, 30th August, 2016, (SEBI)]***

7. PRICE DISSEMINATION THROUGH SMS/ ELECTRONIC COMMUNICATION FACILITY NORMS UPDATED

SEBI through their present Circular has directed the Exchanges to register subscribers of Price Dissemination services and disseminate derivatives prices to them on a daily basis through SMS or any other electronic communication facility, for all commodities, free of cost. The expenditure incurred for such price dissemination may be reimbursed from the interest accrued on the Investor Protection Fund (IPF). The provisions of this Circular shall come into effect from September 29, 2016. - ***[SEBI/HO/CDMRD/DMP/CIR/P/2016/76, 30th August, 2016, (SEBI)]***

8. NORMS ON TRADING HOURS/TRADING HOLIDAYS ON COMMODITY DERIVATIVE EXCHANGES UPDATED

The present Circular has been issued by SEBI to consolidate and update the norms related to Trading Hours/Trading Holidays by the FMC.

Trading Hours: All Commodity Derivatives Exchanges shall permit trading only from Monday to Friday. Trading hours shall be fixed by the Exchange. (a) For Internationally Referenceable Non-Agricultural Commodities, trade start time shall be 10:00 AM and trade end time either 11:30 PM (when there is day light saving in US during Spring season) or 11:55 PM (when there is day light saving in US during Fall season). (b) For Internationally Referenceable Agricultural Commodities, (Presently traded internationally Referenceable Agricultural commodities are Crude Palm Oil, Cotton, Kapas Soya Oil and Sugar), trade start time shall be 10:00 AM and trade end time either 9:00 PM (when there is day light saving in US during Spring season) or

09:30 PM (when there is day light saving in US during Fall season). (c) For all other commodities trade start time shall be 10:00 AM and closing time 05:00 PM.

Trading Holidays: All Exchanges shall jointly decide upon the common holiday list within the broad framework of the Negotiable Instruments Act, 1881 and also taking into consideration the Central/State/Local holidays and notify the same to the market well in advance under prior intimation to SEBI. On such trading holidays, National Exchanges may permit trading of internationally Referenceable commodities in the evening session i.e. post 5:00 PM, in case corresponding international markets are open.

When deciding holiday list frequent changes shall be avoided and views of market participants shall be taken into account. The provision of this Circular shall come into force from 29th September, 2016. - ***[SEBI/HO/CDMRD/DMP/CIR/P/2016/75, 30th August, 2016, (SEBI)]***

9. ALLEGATION REGARDING VIOLATION OF PFUTP REGULATION REQUIRES EVIDENCE OF RELATIONSHIP - SAT

The SEBI through its Order in the instant matter prohibited the promoter/directors of the Appellant Company from raising any capital from the Securities Market and further dealing in the Securities Market in any manner for a period of ten years and asked to recall amount of Rs.32 crore from certain entities and deposit the amount in an escrow account. Charges against the Company mainly related to non-disclosure of material information in the offer documents at the time of IPO (thereby violation of Issue of Capital and Disclosure Requirements Regulations) and diversion of IPO proceeds and other funds to entities which purchased Company's shares (in violation of Prohibition of Fraudulent and Unfair Trade Practices Regulations).

The first allegation related to failure to disclose Inter Corporate Deposits (ICD) taken by Appellant in the nature of bridge loans. Appellant executed ICDs with seven entities and received aggregate amount of Rs. 52 Crore after the filing of Red Herring Prospectus (RHP) but before the filing of Prospectus. Clause 2(VII)(G) of Part A, ICDR Regulation mandates the disclosure of bridge loans or any other financial arrangement which the concerned Company intends to repay out of the proceeds of the issue. Thus, according to SAT, this information was material and had to be disclosed (at least in the Prospectus if not in RHP) to enable the prospective investors to appreciate the company's financial background in a better manner before investing in the forthcoming IPO.

The second charge related to non-disclosure, in the RHP and Prospectus, of Board Resolution approving investment of IPO proceeds in ICDs of other Companies. According to the Tribunal, although the Company disclosed in the Prospectus its intention to invest IPO proceeds in high-quality interest bearing liquid instruments, the expression 'ICD' was absent from the dis0closure. This information though not material had to be clearly disclosed in the RHP and Prospectus. The charge of non-disclosure of purchase orders was not maintained as the Tribunal found RHP and Prospectus do contain the names of the suppliers whose quotations had already been disclosed and the machinery was purchased from the suppliers. The charge of non-disclosure of MOUs entered into for the purchase of land was, however, accepted as the Company had failed to disclose agreements for the purchase of lands amounting to Rs.80 crorez between the filing of the RHP and the Prospectus.

Appellants' argument that there was no requirement to disclose such agreements as they fell under "General Corporate Purpose" which was not accepted and as the total funds allocated towards this head was much less than the purchase deals.

Another charge related to diversion of IPO proceeds through the repayment of ICDs and through investment in ICDs of other Companies, being routed back in the form of purchase of shares of the Company. Thus creating an artificial volume in the price of the scrip leading to unwarranted increase in its price. The Appellant argued that such allegation could not be maintained as SEBI had failed to establish any relation between these entities and the Appellant itself. The Tribunal however noted that documents produced before the forum established that the IPO Proceeds were used to pay entities which either bought the Appellant's shares themselves or transferred the money further along to other entities which then dealt in the Appellant's scrip.

The Tribunal however did not accept the allegation of diversion of IPO proceeds through placement of purchase order to entities who could in turn buy Appellant Company's shares. In this regard the argument made by Appellant that such entities which ultimately purchased its shares were not connected to it was accepted. The Tribunal noted that SEBI's argument that that money was diverted through purchase orders was far-fetched and the Appellant Company was merely engaging in its usual commercial activities. For such a charge to be proved it requires evidence of relationship in the form of commonality of directors, control, address etc. The allegation regarding diversion of funds by fabricating agreements to purchase land was also held unsubstantiated by any cogent evidence.

According to Tribunal the charge relating to violation of PFUTP Regulations is a serious charge and hence a higher degree of proof is required to sustain it. The Appellant advanced amounts to various entities for different purposes-purchasing raw materials, land, machinery, Inter Corporate Deposits etc. but these transactions cannot in itself establish links to the series of transactions which might have led to the purchase of the Appellant's shares in the IPO. Accordingly, the period of debarment was reduced to seven years and Appellant Company was permitted to use the money lying in the escrow account for the objects of the IPO. ***-[P. G. Electroplast Ltd. & others v. SEBI, 30th August, 2016, (SAT)]***

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COMPETITION

1. USE OF TRADE ASSOCIATION PLATFORM OTHER THAN INFORMATION SHARING IS ANTI COMPETITIVE - CCI

The Competition Commission of India vide its Order dated 20th June 2012 had found the cement Companies guilty of acting in concert to fix prices through the channel of Cement Manufacturers Association (CMA). Monetary penalty was imposed and CMA was asked to disengage from collecting wholesale and retail prices through its member cement Companies and from circulating details on production and dispatches of Cement Companies to its members. This Order was appealed to the Competition Appellate Tribunal and the Tribunal had reverted back the matter to CCI to be considered afresh.

The CCI through its present order maintained the charge of cartelization against 10 Cement Companies as they used the platform provided by

CMA and shared details relating to prices, capacity utilisation, production and dispatch and thereby restricted production and supplies in the market, contravening the provisions of the Competition Act.

The Cement Companies were found to have mis-utilised the platform of Trade Association by extending information sharing to discussing prices and production and capacity, thereby, facilitating the enterprises to determine prices and production in a concerted and collusive manner, than in a competitive manner.

The argument made by CMA that the Director General had acted selectively by cherry picking and proceeded against just 8 members out of a Trade Association comprising 42 members was not accepted by the Commission. The Commission noted that the case was not proceeded *suo moto* by the Commission. It was based on compliant filed by Builders Association of India (BAI) against the Opposite Parties and hence the investigation and inquiry was confined to them. The Commission noted that on certain occasions after the High Powered Committee (HPC) meetings of CMA and its members, price of cement would go up. However, since this trend was not noticed after every HPC meeting, the Commission reasoned that in any cartelised behaviour, the parties to the arrangement may not always coordinate their actions and periodically their conduct may also reflect a competitive market structure.

Regarding price parallelism, the Opposite Parties argued that any correlation in price could be attributed to nature of the Industry, as homogenous product was traded and market was characterized by seasonal increase and decrease in demand. Thus, this normal tendency of the market cannot be taken as evidence of cartelization. This argument was however, dispelled, as Commission noted that price parallelism may itself not be sufficient to establish charge of cartelization but here there are other factors as well, such as platform of CMA, low capacity utilisation, production and dispatch parallelism.

Accordingly, the Commission imposed penalty of Rs. 1147.59 Crores on ACC Ltd., Rs. 1163.91 Crores on Ambuja Cements Ltd., Rs.167.32 Crores on Binani Cements Ltd., Rs. 274.02 Crores on Century Textiles and Industries Ltd., Rs.187.48 Crores on India Cements Ltd., Rs. 128.54 Crores on JK Cements, Rs.490.01 Crores on Lafarge India Pvt. Ltd., Rs.258.63 Crores on Madras Cements Ltd., Rs.1175.49 Crores on Ultra Tech Cements Ltd., Rs.1323.60 Crores on Jaiprakash Associates Limited and a penalty of Rs. 0.73 Crore on CMA. ***-[Builders Association of India v. Cement Manufacturers' Association & Others, 31st August, 2016, (CCI)]***

2. PRACTICE OF MANDATORY NO OBJECTION CERTIFICATE (NOC) PRIOR TO APPOINTMENT OF STOCKIST IS ANTI-COMPETITIVE - CCI

The CCI in the instant matter imposed a penalty of Rs. 8,60,321/- on Karnataka Chemists and Druggist Association (KCDA) for restraining Pharmaceutical Companies from appointing new stockists in the State of Karnataka unless a No Objection Certificate ('NOC') was obtained from it. The Commission noted that various Orders had been passed previously on similar subject matter holding the act of mandatory NOC from Drug Association as anti-competitive. The Commission concluded that KCDA had been indulging in the practice of NOC prior to the appointment of stockists by Pharmaceutical Companies, which had the effect of limiting and controlling the supply of drugs in the market, violating the provisions of the Act.

The Commission also noted that Pharmaceuticals Companies were to blame as well. They were cooperating with the NOC requirement of Trade Associations without challenging this anti-competitive practice. Thus, the Commission held Lupin Ltd. which had refused to supply the informant in this case for acting under an anti-competitive arrangement with KCDA and accordingly fined it for Rs.72.96 Crores.***-[M/s Maruti& Co v. Karnataka Chemists and Druggist Association & Other, August Press Release, (CCI)]***

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INDIRECT TAXES

A. CUSTOMS

1. IMPORT OF FABRICS FROM IMPORT DUTY UNDER SPECIAL ADVANCE AUTHORIZATION SCHEME EXEMPTED

The Central Government has exempted fabrics (including interlining) imported into India against a valid Special Advance Authorisation issued by the Regional Authority in terms of paragraph 4.04A of the Foreign Trade Policy from the whole of the Duty of Customs and from the whole of the Additional Duty, Safeguard Duty and Anti-dumping Duty, subject to few conditions as mentioned in the Circular. ***-[Notification No. 45/ 2016 – Customs, dated 13th August, 2016]***

2. GUINEA-BISSAU IN LIST OF LEAST DEVELOPED COUNTRIES ELIGIBLE FOR PREFERENTIAL TARIFF

The Notification No. 96/2008-Customs dated 13.08.2008 has been amended so as to include 'Republic of Guinea-Bissau' in the list of least developed countries eligible for preferential tariff under the said Notification. ***-[Notification No. 46/ 2016 – Customs, dated 23rd August, 2016]***

3. AMENDMENTS TO EXPORT MANIFEST (AIRCRAFT) REGULATIONS, 1976 NOTIFIED

The Export Manifest (Aircraft) Regulations, 1976, has been further amended by the CBEC through the Export Manifest (Aircraft) Regulations, 2016. The amendment specifies that in Regulation 5:

(i) The pre check-in passenger manifest shall be delivered twelve hours before the departure of the flight.

(ii) The final passenger manifest shall be delivered fifteen minutes before leaving or taking off from the port of embarkation in India.

(iii) The manifests shall be transmitted electronically to the Indian Customs in flat file format or in United Nations/ Electronic Data Interchange for Administration, Commerce and Transport Passenger List Advance Passenger Information (UN/EDIFACT PAXLST API) message format. ***-[Notification No. 107/ 2016-Customs (N.T.), dated 11th August, 2016]***

4. AMENDMENTS TO IMPORT MANIFEST (AIRCRAFT) REGULATIONS, 1976 NOTIFIED

The Import Manifest (Aircraft) Regulations, 1976, has been further amended by the CBEC through the Import Manifest (Aircraft) Regulations, 2016. The amendment specifies that that in Regulation 5 :

(i) The passenger manifest shall be delivered within fifteen minutes of the closure and

departure of the flights from the port of embarkation outside India.

(ii) The manifest shall be transmitted electronically to the Indian Customs either in flat file format or in United Nations/ Electronic Data Interchange for Administration, Commerce and Transport Passenger List Advance Passenger Information (UN/EDIFACT PAXLST API) message format.

-[Notification No. 108/ 2016-Customs (N.T.), dated 11th August, 2016]

5. CUSTOMS (PROVISIONAL DUTY ASSESSMENT) REGULATIONS, 2011 RESCINDED

CBEC has rescinded the Customs (Provisional Duty Assessment) Regulations 2011, which had been issued under Notification No. 81/2011-Customs (N.T.) dated the 25th November, 2011. ***-[Notification No. 113/ 2016-Customs (N.T.), dated 22nd August, 2016]***

6. SAFEGUARD DUTY SHALL NOT BE IMPOSED ON SUBJECT GOODS AT OR ABOVE IMPORT PRICE ON CIF BASIS

Notification No. 1/2016-Customs(SG) dated 29.03.2016 has been amended by the Central Government so as to prescribe import prices on CIF basis at or above which safeguard duty on subject goods will not be applicable. ***-[Notification No. 2/2016-Customs (SG), dated 5th August, 2016]***

7. ADD IMPOSED ON POLYTETRAFLUORO-ETHYLENE (PTFE) EXTENDED

Anti-dumping Duty imposed vide Notification No.81/2011-Customs, dated the 24th August, 2011 on imports of Polytetrafluoroethylene (PTFE) originating in, or exported from, People's Republic of China extended for a further period of one year i.e. up to and inclusive of 23rd August, 2017. ***-[Notification No. 36/2016-Customs (ADD), dated 2nd August, 2016]***

8. ADD IMPOSED ON SEWING MACHINE NEEDLES EXTENDED

Notification No. 50/2011-Customs, dated 22.06.2011 has been amended by the Central Government so as to extend ADD on sewing machine needles originating in or exported from China PR till 21st day of June, 2017. ***-[Notification No. 37/2016-Customs (ADD), dated 4th August, 2016]***

9. ADD IMPOSED ON OPAL GLASSWARE EXTENDED

Notification No. 103/2011-Customs, dated 23.11.2011 has been amended so as to extend ADD on Opal Glassware originating in or exported from China PR & UAE till 8th day of August, 2017. ***-[Notification No. 38/2016-Customs (ADD), dated 4th August, 2016]***

10. ADD IMPOSED ON IMPORT OF SODIUM NITRITE EXTENDED

Notification No.46/2014-Customs(ADD), dated 8th December, 2014 has been amended by the Central Government so as to extend the levy of ADD on imports of Sodium Nitrite, originating in, or exported from People's Republic of China for a period of one year i.e. up to and inclusive of the 16th August, 2017. ***-[Notification No. 39/2016-Customs (ADD), dated 8th August, 2016]***

11. ADD IMPOSED ON IMPORT OF RUBBER CHEMICALS

Notification No. 98/2011-Customs, dated 20th October, 2011 has been amended by the Central Government so as to extend the levy of ADD on imports of certain Rubber Chemicals, namely MBTS [Dibenzothiazole disulphide] originating in, or exported from, People's Republic of China for a period of one year i.e. up to and inclusive of the 19th October, 2017. ***-[Notification No. 40/2016-Customs (ADD), dated 8th August, 2016]***

12. ADD IMPOSED ON IMPORTS OF PVC FLEX FILM FROM CHINA

Anti-dumping Duty has now been imposed by the Central Government on the imports of PVC Flex Film originating in or exported from the People's Republic of China for a period of five years. ***-[Notification No. 42/2016-Customs (ADD), dated 8th August, 2016]***

13. ADD IMPOSED ON IMPORT OF VISCOSE STAPLE FIBRE FROM CHINA

Anti-dumping Duty has been imposed by the Central Government on the imports of Viscose Staple Fibre excluding Bamboo Fibre originating in or exported from People's Republic of China and Indonesia for a period of five years. ***-[Notification No. 43/2016-Customs (ADD), dated 8th August, 2016]***

14. ADD LEVIED ON HOT-ROLLED PRODUCTS OF ALLOY/ NON-ALLOY STEEL

Provisional Anti-dumping Duty has been levied by the Central Government on Hot-rolled products of alloy or non-alloy steel imported from China, Japan, Korea RP, Russia, Brazil and Indonesia for a period of six months. ***-[Notification No. 44/2016-Customs (ADD), dated 8th August, 2016]***

15. ADD LEVIED ON COLD-ROLLED FLAT PRODUCTS OF ALLOY OR NON-ALLOY STEEL

Provisional Anti-dumping Duty has been levied by the Central Government on Cold-rolled flat products of alloy or non-alloy steel originating in or exported from China, Japan, Korea RP and Ukraine. ***-[Notification No. 45/2016-Customs (ADD), dated 17th August, 2016]***

16. ADD IMPOSED ON CAUSTIC SODA EXTENDED

Notification No.79/2011-Customs, dated the 23rd August, 2011 has been amended by the Central Government so as to extend the levy of Anti-dumping Duty on imports of Caustic Soda, originating in, or exported from Chinese Taipei for a period of one year i.e. up to and inclusive of the 22nd August, 2017. ***-[Notification No. 46/2016-Customs (ADD), dated 19th August, 2016]***

17. ADD IMPOSED ON 1-PHENYL-3-METHYL-5-PYRAZOLONE EXTENDED

Notification No.80/2011-Customs, dated the 24th August, 2011 has been amended by the Central Government so as to extend the levy of Anti-dumping Duty on imports of 1-Phenyl-3-Methyl-5-Pyrazolone originating in, or exported from, People's Republic of China for a period of one year i.e. up to and inclusive of the 23rd August, 2017. ***-[Notification No. 47/2016-Customs (ADD), dated 19th August, 2016]***

18. GUIDELINES FOR DISPOSAL OF CONFISCATED GOODS REVISED

The CBEC has issued revised Guidelines for clarification on eligibility/uniformity of rebate/rate for disposal of confiscated goods and for equitable/wider participation of Co-operative Societies like Army Canteen/ CSD, NCCF/ KB/ Consumer Cooperative Societies or for Sale through e-auction/ auction-cum-tender. ***-[Circular No. 39/2016 - Customs, dated 26th August, 2016]***

19. GUIDELINES ON SAFETY OF PREMISES FOR IMPORT AND EXPORT GOODS ISSUES

The CBEC has prescribed Guidelines on safety and security of premises where imported or export goods are loaded, unloaded, handled or stored. It has been provided that imported goods or export goods which are hazardous in nature shall be stored at the approved premises of the Customs Cargo Sservice Provider (CCSP) in an isolated place duly separated from other general cargo, depending upon classification of its hazardous nature such as explosives, gases, flammable liquids, flammable solids, poisonous and infectious substances, radioactive material or any hazardous chemicals defined under respective Rules. It is further provided that the space allocated for storage of hazardous cargo within the Notified Premises should be of proper construction including appropriate heat or fire resistant walls, RCC roofing, flooring. Such area shall be situated at a minimum distance of 200 metres away from the main office, administrative, Customs Office Building so that the storage of hazardous cargo is in such a manner that it does not endanger the people working in the premises. The Guidelines have also been revised insofar as prescribing the distance to be maintained between hazardous cargo including explosives and general cargo or administrative building in a Customs area. ***-[Circular No. 40/2016 - Customs, dated 26th August, 2016]***

20. PREVIOUS CIRCULAR PROVIDING FOR LAPSE OF UNUTILIZED BALANCE MODVAT CREDIT ON CONVERSION OF DTA UNIT WITHDRAWN

The Circular No. 77/99-Cus dated. 18.11.99 was issued in view of the erstwhile Rule 100 H of Central Excise Rules, 1944 which specifically prohibited EOU's from availing Modvat Credit of Inputs / Capital Goods under Rule 57A and 57Q. But consequent to supersession of Central Excise Rules, 1944 by Central Excise Rules, 2002 there is no provision similar to Rule 100 H of CER, 1944 which prohibits the EOU from availing Cenvat Credit of Inputs/ Capital Goods. Circular No. 77/99-Cus dt. 18.11.99 hence stands withdrawn. ***-[Circular No. 41/2016-Customs, dated 30th August, 2016]***

B. CENTRAL EXCISE

1. EXCISE DUTY EXEMPTED ON ETHANOL PRODUCED FROM MOLASSES WITHDRAWN

The Notification No.12/2012-Central Excise, dated 17.03.2012 has been amended by the Central Government so as to withdraw the Excise Duty Exemption on ethanol produced from molasses generated in the sugar season 2015-16 (i.e. 1st October, 2015 to 30th September 2016), for supply to the public sector OMCs for blending with petrol. CENVAT Credit Rules, 2004 are also amended in this regard. ***-[Notification No. 30/2016-Central Excise, dated 10th August, 2016 & Notification No. 41/2016- Central Excise (N.T.), dated 10th August, 2016]***

2. BASIC EXCISE DUTY LEVIED ON AVIATION TURBINE FUEL

The Notification No.12/2012-Central Excise dated 17.03.2012 has been amended so as to levy Basic Excise Duty at a concessional rate of 2% on Aviation Turbine Fuel drawn by operators or cargo operators from the Regional Connectivity Scheme (RCS) airports for a period of 3 years. - ***[Notification No. 32/2016-Central Excise, dated 26th August, 2016]***

3. PROVISIONS ENABLING FILING OF REVISED RETURNS IN CENTRAL EXCISE WILL COME INTO EFFECT ON 17th AUGUST 2016

The CBEC has specified 17th August, 2016 as the date on which clause (v) of Rule 5 and Rule 6 of the Central Excise (Amendment) Rules, 2016 notified by Notification No. 8/2016- Central Excise (NT) dated 1st March, 2016, shall come into force i.e. 17th August, 2016 which is the date from which provisions enabling filing of revised Returns in Central Excise will come into effect. ***-[Notification No. 42/2016- Central Excise (N.T.), dated 11th August, 2016]***

C. SERVICE TAX

1. SERVICE TAX LEVIED ON TRANSPORTATION OF PASSENGERS TRAVELLING IN REGIONAL CONNECTIVITY SCHEME (RCS) AIRPORTS

Notification No. 26/2012- Service Tax dated 20.06.2012 has been amended, by inserting the Entry "5A" for transportation of passengers embarking from or terminating in a Regional Connectivity Scheme (RCS) airports, with abatement of 90%, for a period of one year from the date of commencement of operations of the Regional Connectivity Scheme (RCS) airport, with the condition of without taking any CENVAT credit. - ***[Notification No. 38/2016 - Service Tax, dated 30th August, 2016]***

2. FREIGHT FORWARDER ACTING AS A PRINCIPAL, IS NOT LIABLE TO PAY SERVICE TAX ON TRANSPORT OF GOODS OUTSIDE INDIA

Freight forwarders who act as Agents or Intermediaries of Airlines or Ocean-liners for transportation of goods outside India are liable to pay Service Tax. However it has been clarified that a freight forwarder, if acting as a principal, is not liable to pay Service Tax on transport of goods from India to a destination outside India. ***-[Circular No. 197/7/2016 - Service tax, dated 12th August, 2016]***

3. CLARIFICATION ON SERVICE TAX LIABILITY FOR HIRING OF GOODS WITHOUT TRANSFER OF THE RIGHT TO USE GOODS

The CBEC has issued clarification on Service Tax Liability in case of hiring, leasing, licensing of goods without the transfer of right to use them, as provided under Section 66E(f) of the Finance Act, 1994.

It has been stated that in such cases it is essential to determine whether in terms of the contract, there is a transfer of the right to use the goods.

Further, the criteria laid down in the case of ***Bharat Sanchar Nigam Limited vs. Union of India by***

Supreme Court must invariably be followed. The said criteria are as follows-

i. There must be goods available for delivery;
ii. There must be a *consensus ad idem* as to the identity of the goods;
iii. The transferee should have a legal right to use the goods – consequently all legal consequences of such use, including any permissions or licenses required therefor should be available to the transferee;
iv. For the period during which the transferee has such legal right, it has to be to the exclusion to the transferor and this is the necessary concomitant of the plain language of the Statute – viz. a "transfer of the right" to use and not merely a licence to use the goods;
v. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

-[Circular No. 198/08/2016 - Service Tax, dated 17th August, 2016]

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INTELLECTUAL PROPERTY RIGHTS

1. BOMBAY HC: GRANTING PERMISSIVE USE OF INTANGIBLE RIGHTS IS A SERVICE AND NOT SALE

The Division Bench of the Bombay High Court in the instant case held that sub-licensing of Technology is a 'transfer of right to use' which attracts "Service Tax". In another Petition, the Court expressed that Maharashtra Value Added Tax (MVAT) is not applicable in case of "Franchising Agreements" since they provide only a permissive use. The Petitioner, a part of an International Restaurant Chain, operates and franchises Sandwich Shops in India. The Petitioner was granted a non-exclusive sub-license by Subway International B.V. (SIBV), a Dutch Limited Liability Corporation to establish, operate and franchise others to operate 'SUBWAY' branded Restaurants in India.

Typically, the Petitioner enters into Franchise Agreements with third parties, under which it provides Specified Services such as use of Trademark, associated confidential information and goodwill such as policies, forms, recipes, trade secrets, etc. Under the Franchise Agreements, the Petitioner receives consideration in the form of (i) a one-time Franchisee Fee; and (ii) a periodic Royalty Fee. Subway has been paying Service Tax regularly on the aforesaid consideration. In March 2015, the Petitioner received a Notice from VAT Authorities demanding Tax and Penalty on the aforesaid consideration received from the franchisees.

The question before the HC was whether the Petitioner was liable to pay VAT or Service Tax on Franchise Fees and Royalty received under the Franchise Agreements with third parties.

It was observed that the Franchisee was entitled to display the name 'Subway' only for limited period, on expiry of which, all rights of the franchisee would be terminated. Further, the Franchisee could not sub-franchise the mere permission it obtains under the Franchise Agreements.

There was no territorial restriction or competition restriction of any kind placed on Subway; and Subway was entitled to enter into multiple Franchise Agreements simultaneously and it could even operate its own outlet. Hence it was held that the Subway Franchise Agreement was a classic example of permissive use of goods since the franchisee has limited rights to display 'Subway' marks and its trade dress and such rights and permissions ceased to exist

at the end of stipulated time. The franchisees were bound by set terms under the Franchise Agreement and any breach of the same would also result in termination of the Franchise Agreement.

Thus, it was held that a Franchise Agreement which grants permissive use of intangible rights to its franchisees will qualify as service and will not attract VAT. However, the HC specifically stated that every Franchise Agreement need not necessarily fall outside the purview of MVAT Act and facts of each Agreement have to be examined to determine whether it constitutes "transfer of right to use" or merely a "permissive use" of intangible rights. ***-[Subway Systems India Pvt Ltd & Ors. v. State of Maharashtra & Ors. / Mahyco Monsanto Biotech (India) Pvt. Ltd. v. Union of India & Ors., dated 11th August, 2016 (Bombay HC)]***

2. USE OF IDENTICAL NAME BY EX-FRANCHISEES AMOUNTS TO INFRINGEMENT, PASSING OFF – DELHI HC

In the instant case, the Plaintiffs filed the present Suit against Defendants praying for a permanent injunction and damages for infringement of its Trademark, passing off and unfair competition. It was the case of the Plaintiffs that they are the registered proprietors of the well- known Trademarks 'MOTI MAHAL' and MOTI MAHAL Formative marks which are registered in India and in many jurisdictions across the world. It is stated that the Defendants were ex-franchisees of the Plaintiffs and were in the business of providing hospitality services.

The grievance of the Plaintiffs is that the Defendants continued to carry on their operations under the said Trademark MOTI MAHAL Delux Tandoori Trail despite the Franchisee Agreement having being terminated on 25th February 2015. The Delhi High Court held that the mark MOTI MAHAL, MOTI MAHAL Formatives marks and its oval devices are inherently distinctive of the products and business of the Plaintiffs and have been continuously and extensively used by the Plaintiffs for the past several decades in India. Hence, the Plaintiffs are entitled to permanent injunction restraining the Defendants from using the Trademarks. ***-[Monish Gujral & Ors v. M/S Best Food & Anr., dated 9th August, 2016 (Delhi HC)]***

3. DELHI HC: YOUTUBE IS OBLIGED NOT TO HOST ANY CONTENT WHICH VIOLATES THE LAWS CURRENTLY IN FORCE

The cause of action in the instant case pertains to the interim injunction granted by Delhi High Court on 27th August 2015 in IA No. 17808 of 2015 filed by the Plaintiff Tata Sky Ltd. ('Tata Sky') restraining the Defendants (which included YouTube LLC Defendant No. 1) "from using the Trademark 'TATA SKY' in any manner directly or indirectly in any of their websites including posts, messages, discussions, forums, blogs or any other form of electronic media, without written authorization of the Plaintiff, and to remove any material whereby it is sought to prove any methodology or trick to hack into the system of the Plaintiff or to access the Plaintiff's Services.

The Defendants were further directed to remove the video clips "how to watch HD Channels free in TATA SKY Trick" or "Hack Tata Sky for free exclusive" from their websites. Aggrieved by this Order, You Tube contended that it did not violate the Trademark 'TATA SKY' as it was not the publisher of any of the complained videos.

The Court observed neither Tata Sky nor YouTube appear to have been clear, in the first instance, whether the complaint pertained to a Trademark or a Copyright infringement or to some other legal issue. However, there could be complaints regarding some material on YouTube's website which by their very nature require it to act immediately without insisting on the Complainant having to clearly demonstrate that the complaint falls within one or the other category that YouTube has identified for the purposes of acting on such complaints. In terms of Rule 3 (1) (e) of the ITIG, YouTube is obliged not to host the content that violates any Law for the time being in force.

Since YouTube had removed the offending URLs and also submitted that in future it will act immediately when it receives such complaints, the court disposed off Tata Sky's plea. ***-[Tata Sky Ltd. vs YoutubeLlc& Ors., dated 10th August, 2016 (Delhi HC)]***

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CONSUMER

1. AIRLINE ORDERED TO REFUND AMOUNT SPENT BY COMPLAINANT ON TICKETS FROM OTHER AIRLINE ON ACCOUNT OF DEFICIENCY IN SERVICE

In the instant matter, the complainant had booked two return tickets through a travel agent with the Appellant Company, Kuwait Airways, for travelling from New Delhi to Frankfurt and back. The return flight was cancelled by the Airline without any prior intimation. This resulted in the complainant and his wife spending an additional three days in Frankfurt at cost of 1200 Euros and Rs.59,561/- for new tickets. The Complainant alleged unfair trade practice on the part of the Appellant Airline by cancelling the flight without intimation and refusing to refund the amount for cancelled flight. The Appellant argued that cancellation was due to *force majeure* as there was volcanic eruption near Frankfurt Airport. Thus, there was no deficiency on their part and confirmed Tickets were given to the complainant when the Airport became functional.

The National Commission noted that Airline did not make alternative plans for the complainants as the Airport had become operational earlier, compared to the date when confirmed Tickets were offered by the Airline. It concurred with the finding of the District and State Commissions and ordered the Airline to refund the amount spent by the complainant on tickets purchased from another Airline. The plea that Airline was prepared to refund the unutilized portion of Ticket but the complainant did not follow the procedure of making such a request was rejected as the Commission held that duty to contact the complainants and resolve their grievance was on the Airline. ***-[Kuwait Airways Corporation v. Ajay Gupta & Others, 12th August, 2016, (NCDRC)]***

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ENVIRONMENT

1. CPCB OPENS ACCOUNT FOR PAYMENT OF GREEN CESS ON BIG DIESEL VEHICLES IN DELHI-NCR

Acting on the Supreme Court's recent Order of charging green cess from manufacturers/dealers of big diesel SUVs and high-end vehicles with an engine capacity of 2000 cc and above in Delhi-NCR, the Central Pollution Control Board (CPCB) on Thursday spelt out the modalities of collecting the Environment Protection Charge (EPC). Dealers selling such vehicles will have to deposit 1% ex-

Showroom price as EPC in any branch of the Union Bank of India (UBI) in Delhi-National Capital Region (NCR). Registration of the vehicles will be done only after presenting receipt of the payment to the Transport Authorities. CPCB has opened a separate account (A/c name: CPCB-EPC) for this purpose in this public sector Bank, appealing the dealers to deposit the Green Cess in the account No.-532702010008813. ***-[The Times of India, dated 18th August, 2016]***

2. NGT FINES PANAMA-BASED SHIPPING FIRM RS 100 CRORE OVER OIL SPILL IN THE ARABIAN SEA

The National Green Tribunal has directed a Panama-based Shipping Company- Republic of Panama's Delta Shipping Marine Services SA and its two Qatar-based sister Concerns - Delta Navigation WLL and Delta Group International to pay Rs. 100 Crores as damages for causing an oil spill when a cargo vessel sank off Mumbai coast in 2011.

The Bench also ordered the Gujarat-based Adani Enterprises Ltd to pay Rs. 5 crores as Environmental Compensation for dumping in the seabed 60054 MT coal, being carried by the ship M V RAK, and polluting the marine environment. The Order came on a Petition filed by a Mumbai-based Environmentalist, who had sought compensation for damages caused to the marine ecology due to the oil spill. The ship, which was sailing from Indonesia to Dahej in Gujarat, sank 20 nautical miles off the South Mumbai coast in the Arabian Sea on August 4, 2011. ***-[The Hindu, dated 24th August, 2016]***

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