MONTHLY NEWSLETTER

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APRIL 2017

RBI/FEMA

1. INTEREST RATES ON SMALL SAVINGS SCHEMES REDUCED BY 10 BASIS POINTS

The GoI & RBI has lowered the interest rates on small savings schemes, including Public Provident Fund (PPF), National Savings Certificate (NSC) and Kisan Vikas Patra (KVP), by 10 basis points to align them with market rates. A basis point is one-hundredth of a percentage point. Interest rates are reviewed quarterly. The new rates will be effective for the quarter beginning 1 April. – ***[DGBA.GAD.2618/15.02.005/2016-17, dated 6th April, 2017]***

2. INTERNAL/CONCURRENT AUDIT AT BANK BRANCHES TO VERIFY CONDUCT OF GOVERNMENT BANKING

In addition to the existing instructions, RBI has instructed agency banks to ensure that internal/concurrent audit at bank branches verifies whether government business is being conducted as per rules and regulations prescribed by government/RBI. Accordingly, the internal/concurrent audit at bank branches are to examine, among other things, various aspects of government banking such as agency commission claims and pension payments. A checklist has also been notified by the RBI and annexed with the circular. – ***[DGBA.GAD.No.2646/31.02.007/2016-17, dated 7th April, 2017]***

3. SECURITY SUBSTITUTION FACILITY FOR TERM REPOS CONDUCTED BY RESERVE BANK OF INDIA UNDER THE LIQUIDITY ADJUSTMENT FACILITY

As announced in the First Bi-monthly Monetary Policy Statement for 2017-18, RBI has allowed substitution of collateral (security) by the market participants during the tenor of the term repos conducted by RBI under the Liquidity Adjustment Facility, from April 17, 2017. The securities offered for substitution by the market participants shall be of similar market value based on the latest prices published by the Fixed Income Money Market and Derivatives Association of India (FIMMDA). An illustration regarding security substitution has also been annexed with the circular. – ***[FMOD.MAOG.No.120/01.01.001/2016-17, dated 12th April, 2017]***

4. RBI TO OBSERVE THE WEEK JUNE 5-9, 2017 AS FINANCIAL LITERACY WEEK

In order to emphasize the importance of financial literacy, RBI has decided to observe the week June 5-9, 2017 as Financial Literacy Week across the country. The literacy week will focus on four broad themes, viz. KYC, Exercising Credit Discipline, Grievance Redressal and Going Digital. Following activities have been planned for the week:

i. Banks to advise their Financial Literacy Centres to conduct special camps on each of the five days in backward/unbanked areas. FLC Counsellors may utilize the charts of A2 size for training purposes. FLCs may distribute the promotional material of A5 sizes to the participants.
ii. All bank branches in the country may display A3 size posters on the five messages in the local

language in a prominent place inside the branch premises. These posters will be displayed for at least six months at the branch premises even after the Financial Literacy week gets over.

iii. Banks may display one message each day on the home page of their websites in English and Hindi and also display one message each day on the ATM screens across the country in English and the local languages (Annexure)

iv. All Rural branches may conduct one camp on any of the five days of the week after branch hours.

v. An online quiz will be hosted for the general public on the four broad themes to generate interest/awareness about financial literacy. Details of the quiz will be intimated shortly through the website www.rbi.org.in. – ***[FIDD.FLC.BC.No.27/12.01.018/2016-17, dated 13th April, 2017]***

5. RBI ALLOWS BANKS TO PARTICIPATE IN REAL ESTATE INVESTMENT TRUSTS (REITs) AND INFRASTRUCTURE INVESTMENT TRUSTS (INVITs), SUBJECT TO CONDITIONS

RBI has allowed banks to participate in REITs and InvITs within the overall ceiling of 20 per cent of their net worth permitted for direct investments in shares, convertible bonds/ debentures, units of equity-oriented mutual funds and exposures to Venture Capital Funds (VCFs) [both registered and unregistered], subject to the following conditions:

i. Banks should put in place a Board approved policy on exposures to REITs/ InvITs which lays down an internal limit on such investments within the overall exposure limits in respect of the real estate sector and infrastructure sector.

ii. Banks shall not invest more than 10 per cent of the unit capital of a REIT/ InvIT.

iii. Banks should ensure adherence to the prudential guidelines issued by RBI from time to time on Equity investments by Banks, Classification and Valuation of Investment Portfolio, Basel III Capital requirements for Commercial Real Estate Exposures and Large Exposure Framework, as applicable. – ***[DBR.No.FSD.BC.62/24.01.040/2016-17, dated 18th April, 2017]***

6. RBI ISSUES CLARIFICATION ON GUIDELINES ON COMPLIANCE WITH ACCOUNTING STANDARD (AS) 11 BY BANKS

RBI has clarified that the repatriation of accumulated profits shall not be considered as disposal or partial disposal of interest in non-integral foreign operations as per AS 11: The Effects of Changes in Foreign Exchange Rates. Accordingly, banks shall not recognize in the profit and loss account the proportionate exchange gains or losses held in the foreign currency translation reserve on repatriation of profits from overseas operations. – ***[DBR.BP.BC.No.61/21.04.018/2016-17, dated 18th April, 2017]***

7. DISCLOSURE IN THE "NOTES TO ACCOUNTS" TO THE FINANCIAL STATEMENTS: DIVERGENCE IN ASSET CLASSIFICATION AND PROVISIONING

RBI, in order to ensure greater transparency and promote better discipline with respect to compliance with Income Recognition, Asset Classification and Provisioning (IRACP) norms, has decided that banks shall make suitable disclosures, wherever either-

a) The additional provisioning requirements assessed by RBI exceed 15% of the published net profits after tax for the reference period or

b) The additional Gross NPAs identified by RBI exceed 15% of the published incremental Gross NPA's for the reference period, or both.

The disclosures shall be made in the Notes to Accounts in the ensuing Annual Financial Statements published immediately following communication of such divergence by RBI to the bank. The disclosures

in the Notes to Accounts to the Annual Financial Statements may be included under the sub-head Asset Quality (Non-Performing Assets). The first such disclosure with respect to the divergences observed by RBI for the financial year 2015-16 shall be made in the Notes to Accounts of Financial Statements for the year ended March 31, 2017. – ***[DBR.BP.BC.No.63/21.04.018/2016-17, dated 18th April, 2017]***

8. RBI ISSUES ADDITIONAL PROVISIONS FOR STANDARD ADVANCES

RBI has issued additional provisions for standard advances at higher than the prescribed rates. To ensure that banks have adequate provisions for loans and advances at all times, it is advised as under-

i. Banks shall put in place a Board–approved policy for making provisions for standard assets at rates higher than the regulatory minimum, based on evaluation of risk and stress in various sectors.

ii. The policy shall require a review, at least on a quarterly basis, of the performance of various sectors of the economy to which the bank has an exposure to evaluate the present andemerging risks and stress therein. The review may include quantitative and qualitative aspects like debt-equity ratio, interest coverage ratio, profit margins, ratings upgrade to downgrade ratio, sectoral non-performing assets/stressed assets, industry performance and outlook, legal/ regulatory issues faced by the sector, etc. The reviews may also include sector specific parameters.

iii. More immediately, as the telecom sector is reporting stressed financial conditions, and presently interest coverage ratio for the sector is less than one, Board of Directors of the banks may review the telecom sector latest by June 30, 2017, and consider making provisions for standard assets in this sector at higher rates so that necessary resilience is built in the balance sheets should the stress reflect on the quality of exposure to the sector at a future date. Besides, banks should also subject the exposure to the sector to closer monitoring. – ***[DBR.No.BP.BC.64/21.04.048/2016-17, dated 18th April, 2017]***

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FOREIGN TRADE

1. AMENDMENT IN IMPORT POLICY OF RAW SUGAR

Import of 5 Lakh MT of raw sugar (Exim Code 170114) is allowed to be imported by millers/ refiners duty free. However such import shall be done through designated ports and in restricted quantities (details in the notification). Tariff Rate Quota (TRF) benefit shall be for duty free import shall be applicable till 30th June, 2017. The notification also clarified that Actual user condition (Notification No 32/2016- Customs (N.T) dated 1st March, 2016) will be applicable on imports under this TRQ scheme and importer shall convert raw sugar into white/ refined sugar within a period, not exceeding two months from the date of bill of entry or the date of entry inwards, whichever is later. ***–[Notification No. 02/2015-2020, 13th April, 2017, (DGFT)]***

2. EXEMPTION FROM APPLICATION OF QUANTITATIVE CEILINGS AND EXPORT BANS

Export of organic agricultural and organic processed products i.e. wheat, non-Basmati rice, edible oils, sugar have been exempted from existing quantitative ceilings and any existing or future restriction / prohibition on export of their basic product (non-organic). Annual quantitative ceiling on export of

organic pulses & lentils has been enhanced from existing 10,000 MTs to 50,000 MTs per annum. ***–[Notification No. 03/2015-2020, 19th April, 2017, (DGFT)]***

3. EXTENSION OF ELIGIBLE PERIOD FOR SERVICE EXPORT FROM INDIA SCHEME

The earlier notified period of services export rendered between 1-4-2015 to 31-03-2016, as per the list comprising rates and conditions of rewards under the Service Exports from India Scheme (SEIS) notified vide public notice no. 3/2015-20 dated 1st April, 2015 as amended vide public notice no.42/2015-20 dated 26.10.2015, has been extended upto 31.03.2017. ***-[Public Notice No. 3/2015-20, 21st April, 2017, (DGFT)]***

4. REGULATING EXPORT OF NON-EXPORT ITEMS

The provision for regulating export of non-SCOMET [Special Chemicals, Organisms, Materials, Equipment and Technologies] items having potential risk of use in or diversion to WMD/missile/military end use has been prescribed. Provision for maintenance of records has been prescribed. Amendments have been in para 2.74 and para 2.81 for adherence to various Multilateral Export Control Regimes and to clarify the licensing jurisdictions of various SCOMET categories. The time period to furnish written comments by members of IMWG to DGFT has been reduced to 30 days. Revised formats for End use cum End user certificate have been prescribed. ***-[Public Notice No. 4/2015-20, 24th April, 2017, (DGFT)]***

5. CHANGE IN ADDRESS OF REGIONAL HEAD OFFICE OF DGFT

Address of regional office of DGFT at Puducherry and Head Office at the Regional Office of DGFT at Ludhiana, Ahmedabad, Bangalore and Hyderabad in Appendix-1A of Foreign Trade Policy of 2015-20 have been changed. ***-[Public Notice No. 5/2015-20, 27th April, 2017, (DGFT)]***

6. INCLUSION OF SEAPORT LOCATED AT HAZIRA (SURAT) PORT IS INCLUDED FOR AVAILING EXPORT PROMOTION BENEFITS

Seaport located at Hazira (Surat) Port is included under in paragraph 4.37(a) of Hand Book of Procedures (2015-2020) for availing export promotion benefits under Chapter 4 of Foreign Trade Policy. ***-[Public Notice No. 6/2015-20, 27th April, 2017, (DGFT)]***

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CORPORATE

1. IF THE ROC IS ARGUING THAT DUE PROCESS WAS FOLLOWED AND NOTICE WAS SERVED BEFORE STRIKING OFF THE NAME OF THE COMPANY THEN THE ONUS IS ON ROC TO PROVE ITS STANCE.

The petitioner company filed an application under Section 560(6) of the Companies Act, 1956, for restoration of name of the company. It argued that name of the company was struck off as it had failed to file certain documents (annual returns and balance sheets of previous years) with Registrar of Company (RoC), but the Registrar failed to follow due process, prescribed under Section 560(3) of the Companies Act, 1956, as it failed to give the petitioner Company three month notice before taking the ultimate step of striking off the name.

The Respondent however, denied the argument and argued instead that process was followed under Section 560 (5) of the Companies Act, 1956. Notice was served and published and only then name of the company was struck off, however, ROC failed to furnish the evidence

Tribunal held that onus of establishing that notice has been duly served is on the RoC. The Tribunal then satisfied itself from the record furnished by the Company that it was a running company. The Tribunal accordingly, ordered restoration of name of the company conditional to filing of necessary document which the company had failed to provide earlier. ***–[RAP Garments Private Limited v. Registrar of Companies, 24th April, 2017, (NCLT, Principal Bench)]***

2. ON SATISFACTION OF SECTION 9(3) OF THE CODE INSOLVENCY RESOLUTION PROCESS CAN BE TRIGGERED

The Petitioner Company filed an application to trigger insolvency resolution process against the Respondent, claiming that Petitioner is an Operational Creditor [within the meaning of Section 5(20) of the Code] and the Respondent has defaulted in making payment of operational debt.

The Respondent gave seven work contracts to the Petitioner for construction of road. The Petitioner has alleged that the awarded project has been completed, and the Corporate Debtor-Respondent, to discharge his liability towards his end has issued seven post-dated cheques, as full and final settlement. The Petitioner further alleged that except one, all cheques issued by the Respondent got dishonoured. After repeated emails, the Petitioner finally served a legal notice to the Respondent under Section 271 of the Companies Act, 2013. The Petitioner counsel also argued that the claim was not barred by limitation as the issuance of post-dated cheques and its non-payment gave fresh lease of limitation period.

According to the Tribunal, the vital question in the case was whether the Petitioner fulfils the requirement of Operational Creditor as defined in Section 9(3) of the Code. Thus, the Operational Creditor is required to furnish following documents along with his petition:- (a) demand notice delivered by Operational Creditor to the Operational Debtor, (b) affidavit to the effect that there is no notice given by Corporate Debtor relating to a dispute of the unpaid Operational Debt, (c) copy of a certificate from financial institution maintaining accounts of Operational Creditor, confirming that there is no payment of the unpaid Operational Debt by the Corporate Debtor, (d) and such other information as my be specified.

In the present application, the Tribunal found the requirements of Section 9 were fulfilled and further issuance of cheque amounted to acknowledging the liability to pay. Accordingly, the case was considered fit to trigger insolvency resolution process and an insolvency resolution professional was appointed as per Section 14 of the Code. ***–[Prideco Commercial Projects Private Limited v. M/s Era Infra Engineering Limited, (NCLT, Principal Bench)]***

3. PROCEDURE FOR REORGANIZATION OF SHARE CAPITAL

The Company petitioned for reorganization of its share capital, by reduction of its paid-up equity share capital which was prayed in the application to be in excess and thus effecting the return on equity and earnings per share of the Company. The Board of Directors had approved the reduction of paid up equity share capital of the Petitioner Company, and so had the shareholders in Extra Ordinary General Meeting, through a special resolution.

The Tribunal noted that Articles of Association of the Company empowered the Company to undertake reduction of share capital (by way of special resolution). The Company also produced consent

letters of the two secured creditors of the Company. Consent letters from the seventeen unsecured creditors was also obtained. The reduction in share capital, had to be in compliance with FEMA/RBI regulations as 99.99% of shareholding in the Petitioner Company was held by a foreign company. The Tribunal also pointed that since the Petitioner Company is a Wholly Owned Subsidiary (WoS) of the foreign company and on reduction of shares capital, and money would be going back to the foreign shareholders, there is requirement of an undertaking from the Petitioner Company that it has fulfilled and is in compliance with RBI and FEMA regulations. The Tribunal also noted that publication requirement was also fulfilled and the Parent company had also hosted information to this effect on its website. As there was no objection from any quarter, scheme of reduction of share capital under Section 66 of Companies Act, 2013 was sanctioned. – ***[Jaipur-Mahuva Tollway Private Limited, 24th April, 2017, (NCLT, Principal Bench)]***

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SECURITIES

1. INVESTMENT BY FOREIGN PORTFOLIO INVESTORS (FPI) IN GOVERNMENT SECURITIES

RBI has revised the limits for investments by FPIs in Government Securities during the First quarter of Financial Year 2017. The limit for FPIs in Central Government securities has been enhanced to Rs. 184,901 Crore. The Limits for long term FPIs in government securities, through investment in Sovereign Wealth Funds (SWFs) has been revised to Rs. 46,099 Crore. Limits for investment in State Development Loans (SDL) has also been enhanced to Rs. 27,000 Crore. – ***[IMD/FPIC/CIR/P/2017/30, 3rd April, 2017, (SEBI)]***

2. INCLUSION OF DERIVATIVE ON EQUITY SHARES- IFSC

Pursuant to SEBI (International Financial Services Centre) Guidelines, 2015, SEBI had permitted specific type of securities to be dealt with by stock exchanges operating in IFSC. SEBI has now decided to specify "Derivative on equity shares of a company incorporated in India" as permissible security, and accordingly recognized stock changes operating in IFSC may permit dealing in 'derivatives on equity shares' subject to prior approval of SEBI. The Market Wide Position Limit (MWPL) for 'derivatives on equity shares' shall be equal to ten percent of the number of shares held by non-promoters in the relevant underlying security (i.e. free-float holding). Further, the MWPL for 'derivatives on equity shares' in recognized stock exchanges in IFSC shall be reckoned separately from that in recognized stock exchanges in domestic market and the MWPL (in value terms),in no circumstances, shall exceed the fifty percent of the MWPL (in value terms) in recognized stock exchanges in domestic market. –***[SEBI/HO/MRD/DRMNP/CIR/P/2017/31, 13th April, 2017, (SEBI)]***

3. CAPACITY PLANNING FRAMEWORK FOR THE DEPOSITORIES

SEBI has decided to put in place following requirements for Depositories while planning capacities for their operations:

(i)The installed capacity shall be at least 1.5 times of the projected peak load. (ii) the projected peak load shall be calculated for the next 60 days based on the per hour peak load trend of the past 180 days; (iii) The utilization of resources by the Depositories shall be in such a manner, that they achieve work completion in 70% of the allocated time. (iv)All

systems of Depository operations shall be considered in this process including all technical components such as network, hardware, software, etc., and shall be adequately sized to meet the capacity requirements. (v) In case the actual capacity utilisation exceeds 75% of the installed capacity for a period of 15 days on a rolling basis, immediate action shall be taken to enhance the capacity. The actual capacity utilisation shall be monitored especially during the period of the day in which pay in and pay out of securities takes place for meeting settlement obligations. ***–[SEBI/HO/MRD/DP/CIR/P/2017/29, 3rd April, 2017, (SEBI)]***

4. REVIEW OF FRAMEWORK OF POSITION LIMITS FOR INTEREST RATE FUTURES CONTRACTS

SEBI has clarified that the position limit linked to open interest shall be applicable at the time of opening a position. Such positions shall not be required to be unwound immediately by the market participants in the event of a drop of total open interest in Interest Rate Futures contracts within the respective maturity bucket.

However, in the abovementioned scenario, the market participant shall not be allowed to increase their existing positions or create new positions in the Interest Rate Futures contracts of the respective maturity bucket till they comply with the applicable position limits.

In view of risk management and surveillance concerns, stock exchanges may direct them to bring down their position limits to comply with the applicable position limits within the time period prescribed by the stock exchanges. ***–[SEBI/HO/MRD/DRMNP/CIR/P/2017/32, 18th April, 2017, (SEBI)]***

5. ACCEPTANCE OF CENTRAL GOVERNMENT SECURITIES BY CLEARING CORPORATIONS TOWARDS CORE SETTLEMENT GUARANTEE FUND (SGF) CONTRIBUTION BY CLEARING MEMBERS.

SEBI has decided to permit clearing members to bring their contribution towards Core Settlement Guarantee Fund, in the form of Central Government Securities, in addition to cash and bank fixed deposits. ***-[CIR/MRD/DRMNP/33 /2017, 26th April, 2017, (SEBI)]***

6. MUTUAL FUNDS

SEBI has modified the issue of disclosure of executive remuneration in its previous circular (dated 18th March, 2016) on mutual fund. The executives of MFs/AMCs are now required to make following disclosures, on their respective websites under a separate head – 'remuneration':-

Name, designation and remuneration of Chief Executive Officer (CEO), Chief Investment Officer (CIO) and Chief Operations Officer (COO) or their corresponding equivalent by whatever name called.

Name, designation and remuneration received by top ten employees in terms of remuneration drawn for that financial year.

Name, designation and remuneration of every employee of MF/AMC whose:

Annual remuneration was equal to or above one crore and two lakh rupees for that financial year.

Monthly remuneration in the aggregate was not less than eight lakh and fifty thousand rupees per month, if the employee is employed for a part of that financial year.

The ratio of CEO's remuneration to median remuneration of MF/AMC employees.

MF's total AAUM, debt AAUM and equity AAUM and rate of growth over last three years.

For this purpose, remuneration shall mean remuneration as defined in clause (78) of Section 2 of the Companies Act, 2013. The AMCs/MFs shall disclose this information within one month from the end of the respective financial year (effective from FY 2016-17). ***–[SEBI/HO/IMD/DF2/CIR/P/2017/35, 28th April, 2017, (SEBI)]***

7. ON THE DATE OF LISTING PROMOTER HOLDING HAS TO BE FILED. EXEMPTION EXISTS ONLY WHEN SHAREHOLDING PATTERN HAS BEEN FILED BY THE TARGET COMPANY AS PER THE LISTING AGREEMENT FOR NOT LESS THAN THREE YEARS PRIOR TO PROPOSED ACQUISITION

The Promoters of India Bulls Real Estate Limited (IBREL) and promoters of target company (M/s. Rattan India Infrastructure Ltd) are the same. The Promoters of IBREL, made a public announcement to acquire more than 5% of the voting share capital of the target company

The question of law being raised in the appeal, was whether the inter-se promoter transfers made prior to completion of 3 years of listing the target company are eligible for general exemption from open offer under Regulation 10(1)(a)(ii) of SAST Regulations.

In filings of both, the details of the parent company and target company (prior to its listing) shareholding were shared. The Appellants argued that since this information on the shareholding of promoters and cross-shareholding (shareholding of promoters of parent company in the target company) was available in public domain, inter-se promoter transfer shall not violate the SAST/Takeover Regulations, 2011.

The Tribunal clarified that the law, according to SAST/Takeover Regulations, 2011 is that acquisition pursuant to inter-se transfer of shares amongst promoters of target company and parent company shall be exempt from making an open offer under Regulation 3 and 4 of the Regulation, only when the shareholding pattern has been filed by the target company pursuant to listing regulations for not less than three years prior to proposed acquisitions. Further the Tribunal explained that Regulation 10(1)(a)(ii) clearly states that in order to be eligible for exemption from making an open offer inter-se transfers of shares amongst persons named as promoters in the shareholding pattern by the target company in terms of its listing agreement has to be for not less than 3 years prior to the proposed acquisition. The argument that the promoters have to be named in the listing agreement for a period of minimum 3 years overall, not necessarily 3 years subsequent to the signing of the listing agreement, cannot be accepted by a plain reading of Regulation 10(1)(a)(ii). The Tribunal held that if such an interpretation was accepted, a company listed today with an unchanged promoter holding for more than 3 years prior to listing becomes eligible for exemption from making an open offer for inter-se promoter transfers even tomorrow. It is irrelevant whether the same promoters were holding the same shares for over a long period either in the target company or in the parent company or both, prior to listing the target company. The only relevant factor is date of listing the target company and the promoter holding filed by the target company as part of the listing agreement. ***–[Arbutus Consultancy LLP & Others v. SEBI, 5th April, 2017, (SEBI)]***

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COMETITION

1. COAL INDIA LIMITED HELD VIOLATING COMPETITION ACT BY HAVING ONEROUS AND ONE SIDED TERMS IN CONTRACT BETWEEN SUPPLIER AND

USER AND DISCRIMINATING BETWEEN LARGE AND SMALL USERS

On information filed by GHCL Limited against Coal India Limited (CIL) and Western Coalfields Limited, Commission vide its Order dated February 16, 2015 found CIL and its subsidiaries to operate independently of market forces and enjoying undisputed dominance in the market of production and supply of non-coking coal to thermal power producers including captive power plants in India (relevant market). The said order was appealed against, and the Competition Appellate Tribunal set aside the Order of the Commission, and remitted back the case to the Commission.

The Commission noted that the central issue is with regard to unfair and discriminatory treatment meted out by the Opposite Parties (OPs) to small consumers like the Informant (who require coal for captive power plants). It was alleged that small consumers were forced to sign Memorandum of Understandings (MoUs) which dilute the obligations assumed by the OPs.

The Commission noted that CIL and its subsidiaries were in dominant position. The clauses of Fuel Supply Agreement (FSA) were drafted unilaterally by CIL and due to its dominance and lack of competitive pressure, there was absence of a bilateral process, where inputs from the consumers/users would be considered. Thus, the allegation of the Informant that OPs had finalized the agreement relating to supply of coal unilaterally was found to be correct. The Commission noted that all onerous obligations were imposed on the consumers/users, for example the requirement of Bank Guarantee, milestones to be fulfilled within 24 months, but no consequent obligations were placed on the OPs. The Informant also noted that there was dilution of contractual commitments, promised through Annual Contracted Quantity (ACQ). However, the trigger of level for compensation in case of failure to supply coal was set at 25%.

The Commission held that the brazen conduct of OPs of unilaterally reducing ACQ of coal agreed to be supplied by forcing the consumer/users to execute the MoU along with FSA was unfair and discriminatory. The commission also found the condition in FSA requiring the user/consumer to give a bank guarantee which could have been evoked inspite of the user/consumer fulfilling all the conditions to be discriminatory. The Commission also noted that for small users/consumers like the present consumer there was no provision relating to compensation for supply of poor quality or oversized coal, when such provision was there for large consumers, which was discriminating between different categories of buyers on the issue of quality of coal.

Accordingly, the Commission found 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, as detailed in the order, and ordered the OPs to cease and desist from indulging in the conduct. ***–[GHCL Limited v. Coal India Limited and Western Coalfields Limited, 21st April, 2017, (CCI)]***

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INDIRCT TAXES

a. CUSTOMS

1. BCD ON IMPORT OF RAW SUGAR EXEMPTED ON CERTAIN CONDITIONS

Notification No.12/2012-Customs, dated the 17th March, 2012 amended, so as to allow duty

free import of raw sugar upto a quantity of 5 lakh MT under Tariff Rate Quota (TRQ) upto and inclusive of 30th June 2017. That means that the exemption is available to importers who hold a Tariff Rate Quota allocation certificate or a licence from the DGFT. A condition has also been prescribed that the importer must convert the raw sugar to processed sugar within two months. – ***[Notification No.12/2017-Customs, dated 5th April, 2017 & Notification No.13/2017-Customs, dated 13th April, 2017]***

2. EXEMPTION FOR CONSUMABLES FOR GEMS & JEWELLERY AMENDED

Notification No.41/1999-Cus amended, in order to align the said notification with para 4.36 of FTP 2015-20 by omitting the word 'for export' in the proviso to the notification. This means that the requirement that the consumables imported under the notification must be used for making jewellery 'for export' is no longer required. – ***[Notification No.14/2017-Customs, dated 18th April, 2017]***

3. EXEMPTION TO JUTE PRODUCTS EXTENDED TO IMPORTS FROM NEPAL

Notification No. 8/2011-Customs, dated 14.2.2011 amended, so as to extend the exemption of additional duty of Customs to specified jute products imported from Nepal. – ***[Notification No 15/2017-Customs, dated 20th April, 2017]***

4. CH 30 GOODS FOR PATIENT ASSISTANCE PROGRAM EXEMPTED FROM THE WHOLE OF THE DUTY OF CUSTOMS

Goods falling under Chapter 30 of First Schedule of Customs Tariff Act 1975, when imported into India for supply under Patient Assistance Programme run by specified pharmaceutical companies, have been exempted from the whole of the duty of customs leviable thereon, subject to specified conditions. – ***[Notification No 16/2017-Customs, dated 20th April, 2017]***

5. RE-IMPORT OF GOODS BY MILITARY FORCES EXEMPTED

Goods falling under the First Schedule to the Customs Tariff Act, 1975, when imported into India by or along with a unit of the Army, the Navy, the Air Force or the Central Paramilitary Forces on the occasion of its return to India after a tour of service abroad, have been exempted from the BCD, CVD and SAD subject to the specified conditions. – ***[Notification No. 17/2017-Customs, dated 21st April, 2017]***

6. POWERS OF CUSTOMS OFFICERS AMENDED

The CBEC has made amendments in the powers of customs officers as earlier issued under Notification 40/2012-Customs. Now the Deputy / Assistant Commissioner of Customs is authorized to accept amendments to bill of entry or shipping bill after order for clearance of the goods has been made, while the Superintendent is authorized to accept such amendments before order for clearance of the goods is made. The Superintendent is notified as the proper officer for accepting the import manifest or import report. – ***[Notification No.35 /2017-Customs (N.T.), dated 11th April, 2017]***

7. FEES HIKED FOR AMENDMENT OF DOCUMENTS

Levy of Fees (Customs Documents) Regulations 1970 has been amended so as to increase the fees for amendment /cancellation of documents to Rs 1000 from Rs.10. The fee for supply of certified copies has also been raised from Rs 50 to Rs 100.

– ***[Notification No. 36/2017-Customs (N.T.), dated 11th April, 2017]***

8. CUSTOMS (SETTLEMENT OF CASES) RULES AMENDED TO REPLACE 'FORM SC (C)-1' WITH 'FORM SC (C)-2'

The CBEC has amended the Customs (Settlement of Cases) Rules, 2007 and has notified Amendment Rules, 2017 wherein "Form SC (C)-2" has been prescribed for Application for Settlement of Customs Cases before the Customs and Central Excise Settlement Commission. – ***[Notification No. 37/2017-Customs (N.T.), dated 12th April, 2017]***

9. ADD ON LINEAR ALKYL BENZENE

Anti-dumping duty levied on the imports of 'Linear Alkyl Benzene' originating in or exported from Iran, Qatar and People's Republic of China for a period of five years (unless revoked, superseded or amended earlier). – ***[Notification No. 12/2017-Customs (ADD), dated 11th April, 2017]***

10. ADD ON FLEXIBLE SLABSTOCK POLYOL

Definitive anti-dumping duty levied on import of 'Flexible Slabstock Polyol' originating in or exported from Thailand for a period of five years (unless revoked, superseded or amended earlier). – ***[Notification No. 13/2017-Customs (ADD), dated 11th April, 2017]***

b. CENTRAL EXCISE

1. CENTRAL EXCISE (SETTLEMENT OF CASES) RULES AMENDED TO REPLACE 'FORM SC (E)-1' WITH 'FORM SC (E)-2'

The CBEC has amended the Central Excise (Settlement of Cases) Rules, 2007 and has notified Amendment Rules, 2017 wherein "Form SC (E)-2" has been prescribed for Application for Settlement of Central Excise Cases before the Customs and Central Excise Settlement Commission. – ***[Notification No. 09/2017-CE (N.T.), dated 12th April, 2017]***

2. CENVAT CREDIT RULES, 2004 AMENDED

CENVAT Credit Rules, 2004 amended so as to allow the importer of the goods to take CENVAT credit on basis of the challan of payment of service tax by the said importer on the services provided by a foreign shipping line to a foreign charterer w.r.t. goods destined for India. – ***[Notification No. 10/2017-CE (N.T.), dated 13th April, 2017]***

c. SERVICE TAX

1. SERVICE TAX (SETTLEMENT OF CASES) RULES AMENDED TO REPLACE 'FORM SC (ST)-1' WITH 'FORM SC (ST)-2'

The CBEC has amended the Service Tax (Settlement of Cases) Rules, 2012 and has notified Amendment Rules, 2017 wherein "Form SC (ST)-2" has been prescribed for Application for Settlement of Service Tax Cases before the Customs and Central Excise Settlement Commission. – ***[Notification No. 13/2017-ST, dated 12th April, 2017]***

2. POINT OF TAXATION RULES, 2011 AMENDED

Point of Taxation Rules, 2011 amended with effect from 22nd January, 2017 so as to provide

the point of taxation of services provided by a foreign shipping line to foreign charterer w.r.t. goods destined for India as the date of bill of lading of goods in the vessel at the port of export. – ***[Notification No. 14/2017-ST, dated 13th April, 2017]***

3. IMPORTER IS A PERSON LIABLE TO PAY SERVICE TAX IF THE SERVICE OF TRANSPORT OF THE GOODS IS PROVIDED BY A PERSON TO ANOTHER PERSON WHO ARE BOTH LOCATED OUTSIDE THE TAXABLE TERRITORY

Notification No. 30/2012-ST dated 20.06.2012 (reverse charge notification) amended so as to specify the importer as defined under clause (26) of Section 2 of the Customs Act, 1962 (52 of 1962) of goods as the person liable for paying service tax in case of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of such goods by a vessel from a place outside India up to the customs station of clearance in India. – ***[Notification No. 15/2017-ST, dated 13th April, 2017]***

4. SERVICE TAX RULES, 1994 AMENDED

Service Tax Rules, 1994 amended so as to:

i. Specify the importer as defined under clause (26) of Section 2 of the Customs Act, 1962 (52 of 1962) of goods as the person liable for paying service tax in case of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of such goods by a vessel from a place outside India up to the customs station of clearance in India.

ii. Provide an alternate mechanism for calculating and paying service tax, Swachh Bharat Cess and Krishi Kalyan Cess. – ***[Notification No. 16/2017-ST, dated 13th April, 2017]***

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INTELLECTUAL PROPERTY RIGHTS

1. A PERSON WHO FOR THE FIRST TIME STARTS USING AS A TRADE NAME / TRADE MARK, A WORD WHICH IN THE PAST HAS ALWAYS BEEN USED AS DESCRIPTIVE OF THE SERVICES, CANNOT BE DENIED THE PROTECTION AS AVAILABLE TO OTHER PROPRIETORS OF TRADEMARK, ON THE GROUND OF THE WORD BEING DESCRIPTIVE OF THE TRADE: DELHI HC

The plaintiffs claiming to be registered proprietor of the label mark "THE DARZI" in respect of textile cloth filed the present suit against the defendant 'M/s Darzi on Call' (a partnership firm) for injunction restraining the defendant from using the word 'DARZI' or any other word, mark, label identical with or deceptively similar to the word / mark 'DARZI' amounting to infringement of plaintiffs' trademark and passing off. The main contention of the Defendant was that the plaintiffs themselves have never claimed protection for the words "THE DARZI" or "DARZI" per se given that they are conscious that these words are common to the trade and / or generic and descriptive of textile and tailoring.

The High Court observed that a distinction has to be carved out between use of a word as descriptive of services provided under a trade name / trade mark and use of that word as trade name / trade mark in itself. A person who for the first time starts using as a

trade name / trade mark, a word which in the past has always been used as descriptive of the services, cannot be denied the protection as available to other proprietors of trademark, on the ground of the word being descriptive of the trade. The Court further observed that the plaintiffs here also have adopted an Urdu / Hindi word with English script and which word prior to the plaintiffs, was not generally used by those providing tailoring services as descriptive or designating their service.

Court found that the plaintiffs have made out a prima facie case and the balance of convenience also is in their favour and hence allowed the interim application of injunction of the plaintiffs. – ***[Sunil Mittal & Anr. V/S. Darzi On Call, dated 19th April, 2017 (Delhi HC)]***

2. USE OF THE MARK 'TLINDWARE' AMOUNTS TO INFRINGEMENT OF MARK HINDWARE

The defendants were engaged in the similar line of business as that of plaintiff's and sold products under the trade mark 'TLINDWARE'. It was observed that the defendants were not only using a mark deceptively similar to the plaintiff's registered trademark HINDWARE but were also copying the font and writing style. It was further observed that the manner in which the alphabets T and L were written by the Defendants, present a visual impression that the two alphabets combined form the alphabet H (for HINDWARE) so as to cause confusion in the minds of the customers. Held that the adoption of the trademark of the plaintiff is fraudulent and is done with a malafide intention. – ***[HSIL Limited Vs. Kripton Ceramic Pvt. Ltd. & Ors., dated 21st April, 2017 (Delhi HC)]***

3. THE PROVISIONS OF SECTION 62 OF THE COPYRIGHT ACT AND SECTION 134 OF THE TRADE MARKS ACT HAVE TO BE INTERPRETED IN THE PURPOSIVE MANNER: CALCUTTA HC

While deciding an issue of jurisdiction, the Calcutta HC observed that the provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act have to be interpreted in the purposive manner. There is no doubt about the fact that a suit can be filed by the plaintiff at a place where he is residing or carrying on business or personally works for gain. He need not travel to file a suit to a place where defendant is residing or where cause of action wholly or in part arises. However, if the plaintiff is residing or carrying on business etc. at a place where cause of action, wholly or in part, has also arisen, he has to file a suit at that place.

The Court further observed that the changes made in the Copyright Act and the Trademark law has to be considered by taking into consideration the revolution that had taken place in information and technology where a passive use of the said website may not confer jurisdiction upon the Court merely because such website is accessible at that place but interactive use of the website can confer a jurisdiction at a place where such website is accessible and where such interactive activities have taken place. – ***[Saregama India Limited vs Whackedout Media Pvt. Ltd. & Anr., dated 20th April, 2017 (Calcutta HC)]***

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CONSUMER

1. COMPLAINT WAS NOT MAINTAINBLE AS THE COMPLAINANTS WERE NOT HELD TO BE CONSUMER

The Complainants were businessmen who had imported goods relating to their respective businesses. The cargo was shipped by overseas suppliers and to cover the risk the Complainants had taken Marine Insurance Policy from the Respondent Company. On arrival, the goods were held in the custody of Appellant (acting as custodian of custom authorities under Section 45 of the Customs Act) in

its warehouse pending completion of formalities by the custom authorities. While the goods were in custody of Appellant, a fire broke out in the warehouse, damaging the goods entirely.

The Complainants filed insurance claims under the Marine Insurance Policy against the Respondent Insurance Company. The Complainants also filed monetary claims against the Appellant container Company which had the goods in its custody when the fire broke out. The State Commission passed an Order in favour of the Complainants and directed the Appellant container Company to pay to the Respondent insurance Company, the amount they had paid to respective complainants in settlement of their insurance claims.

The Appellant argued that since the services of Respondent insurance company were taken by the companies for commercial purpose by the Complainants, the case is not fit to be argued before the Consumer Commission as the Complainants are not consumer under the Consumer Protection Act.

The Commission noted that the Complainants are companies engaged in commercial activities and the cargoes imported were in relation to the commercial activities. Commission noted that the Complainants availed of services of the Appellant for storing the goods imported by them for their units which obviously was for commercial purpose, and thus the Compliant was not maintainable as the initial threshold of compliant being filed by a 'consumer' is not fulfilled. ***–[Punjab Conware, Container Freight Stateion v. Rajpal Enterprises and Another and Bajaj Allianz General Insurance Co. Limited, 28th April, 2017, (NCDRC)]***

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ENVIRONMENT

1. NGT 'VIOLATED' LAW, ONLY CENTRE CAN FIX AGE LIMIT OF VEHICLES: GOVERNMENT

Noting that diesel is the prime source of air pollution in Delhi, the NGT held on November 26, 2014 that all diesel vehicles which are more than 10 years old, will not be permitted to ply in Delhi-NCR. On January 13, the Centre had moved the Supreme Court seeking lifting of the ban on 10-year-old diesel vehicles in Delhi and NCR, saying it was affecting the economically weaker sections. In written submissions, the Centre said "powers to fix the age of the vehicle is with the Central Government only, which has to be notified through a Gazette. Hence, the Order of the NGT would be in violation of the Motor Vehicles Act. "The MV Act mentions that the registering authority should satisfy that the vehicle will constitute a danger to the public and it is beyond reasonable repair." It said that "arbitrary" removal of vehicles based on age would cause economic hardship to their owners whose very livelihood may depend on them and this could lead to social unrest. ***– [The Times of India, dated 30th April, 2017]***

2. NGT FINES DELHI'S 5-STAR HOTELS, MALLS, HOSPITALS ON FAILURE TO MANAGE AND TREAT SEWAGE

The NGT issued notices to major waste generators in the city including 5-star hotels, malls, hospitals, educational institutions with hostels and housing societies which have not complied with Solid Waste Management Rules 2016. The NGT's Order came after perusing an interim report submitted by a committee formed by it which has recommended action against defaulting bodies for improper management and treatment of sewage and lack of mechanism for recycling of waste. – ***[The NDTV news, dated 10th April, 2017]***

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