MONTHLY
NEWSLETTER

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FEBRUARY 2018

RBI/FEMA

1) REVISED GUIDELINES FOR PARTICIPATION OF A PERSON RESIDENT IN INDIA AND FOREIGN PORTFOLIO INVESTOR (FPI) IN THE EXCHANGE TRADED CURRENCY DERIVATIVES (ETCD) MARKET- RISK MANAGEMENT AND INTER-BANK DEALINGS

Attention of Authorized Dealers Category - I (AD Category - I) banks is invited to the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000, as amended from time to time, relating to participation of a person resident in India in the Exchange traded currency derivatives (ETCD) market, relating to participation of a Foreign Portfolio Investor (FPI) in the ETCD market.

Currently, persons residing in India and FPIs are allowed to take a long (bought) or short (sold) position in USD-INR upto USD 15 million per exchange without having to establish existence of underlying exposure. In addition, residents & FPIs are allowed to take long or short positions in EUR-INR, GBP-INR and JPY-INR pairs, all put together, upto USD 5 million equivalent per exchange without having to establish existence of any underlying exposure.

It has now been decided to permit persons resident in India and FPIs to take positions (long or short), without having to establish existence of underlying exposure, upto a single limit of USD 100 million equivalent across all currency pairs involving INR, put together, and combined across all exchanges.

The onus of complying with the provisions of this circular rests with the participant in the ETCD market and in case of any contravention the participant shall be liable to any action that may be warranted as per the provisions of Foreign Exchange Management Act, 1999 and the regulations, directions, etc. issued thereunder. These limits shall also be monitored by the exchanges, and breaches, if any, may be reported to the Reserve Bank of India.

All other operational guidelines, terms and conditions shall remain unchanged.

This Circular has been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions/approvals, if any, required under any other law.

[RBI/2017-18/134, A. P. (DIR Series) Circular No. 18, dated 26th February, 2018]

2) RELIEF FOR MSME BORROWERS REGISTERED UNDER GOODS AND SERVICES TAX (GST)

Presently in India, a loan account is generally classified as Non-Performing Asset (NPA) based on 90 day and 120 day delinquency norms, respectively. Formalization of business through registration under GST had adversely impacted the cash flows of the smaller entities during the transition phase with consequent difficulties in meeting their repayment obligations to banks and NBFCs. It has been

decided that the exposure of banks and NBFCs to a borrower classified as micro, small and medium enterprise under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, shall continue to be classified as a standard asset in the books of banks and NBFCs subject to the following conditions:

- The borrower is registered under the GST regime as on January 31, 2018.
- The aggregate exposure, including non-fund based facilities, of banks and NBFCs, to the borrower does not exceed Rupees 250 million as on January 31, 2018. The borrower's account was standard as on August 31, 2017.
- The amount from the borrower overdue as on September 1, 2017 and payments from the borrower due between September 1, 2017 and January 31, 2018 are paid not later than 180 days from their respective original due dates.
- A provision of 5% shall be made by the banks/NBFCs against the exposures not classified as NPA in terms of this circular. The provision in respect of the account may be reversed as and when no amount is overdue beyond the 90/120 day norm, as the case may be.
- The additional time is being provided for the purpose of asset classification only and not for income recognition, i.e., if the interest from the borrower is overdue for more than 90/120 days, the same shall not be recognized on accrual basis.

[DBR.No.BP.BC.100/21.04.048/2017-18, dated 7th February 2018]

3) LEVY OF PENAL INTEREST – DELAYED REPORTING

Presently, penal interest is levied for all cases where the bank has enjoyed "ineligible" credit in its current account with the RBI on account of wrong / delayed / non-reporting of transactions i.e. the currency chest had reported a net deposit. However, instances of delayed reporting where the currency chest had "net deposit" i.e., the currency chest did not enjoy RBI funds, are being dealt with differently by Issue offices due to absence of clear instructions on the subject.

On a review, it has been decided that, penal interest at the prevailing rate for delayed reporting of the instances where the currency chest had reported "net deposit" may not be charged. However, in order to ensure proper discipline in reporting currency chest transactions, a flat penalty of Rs.50,000 may be levied on the currency chests for delayed reporting as in the case of wrong reporting of soiled note remittances to RBI / diversions shown as "Withdrawal".

[DCM (CC) No. 2885/03.35.01/2017-18 dated February 9, 2018]

4) OMBUDSMAN SCHEME FOR NON-BANKING FINANCIAL COMPANIES, 2018

In exercise of the powers conferred by Section 45L of the Reserve Bank of India Act, 1934, the Reserve Bank of India (RBI) being satisfied that for the purpose of enabling it to promote conducive credit culture among the Non-Banking Financial Companies (NBFCs) and to regulate the credit system of the country to its advantage, it is necessary to provide for a system of Ombudsman for redressal of complaints against deficiency in services concerning deposits, loans and advances and other specified matters, hereby directs that the NBFCs, as

defined in Section 45-I(f) of the Reserve Bank of India Act, 1934 and registered with the RBI under Section 45-IA of the Reserve Bank of India Act, 1934 which (a) are authorized to accept deposits; or (b) have customer interface, with assets size of one billion rupees or above, as on the date of the audited balance sheet of the previous financial year, or of any such asset size as the RBI may prescribe, will come within the ambit, and should comply with the provisions of the Ombudsman Scheme for Non-Banking Financial Companies, 2018.

The Non-banking Financial Company - Infrastructure Finance Company (NBFC-IFC), Core Investment Company (CIC), Infrastructure Debt Fund - Non-banking Financial Company (IDF-NBFC) and an NBFC under liquidation are excluded from the ambit of the Scheme.

The Scheme will be operationalized for all deposit accepting NBFCs and based on the experience gained, the Scheme would be extended to include the remaining identified categories of NBFCs. It is initially being introduced at the four metro centers viz. Chennai, Kolkata, Mumbai and New Delhi for handling complaints from the respective zones, so as to cover the entire country. The area of jurisdiction of these offices is indicated in Annex 'I' of the Scheme. The Scheme shall come into effect and force from February 23, 2018.

[Ref.CEPD.PRS.No.3590/13.01.004/2017-18 dated 23rd February 2018]

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FOREIGN TRADE

1) INCLUSION OF SEAPORTS LOCATED AT DHAMRA PORT AND DIGHI PORT UNDER PARA 4.37 OF HAND BOOK OF PROCEDURES 2015-20

Seaports located at Dhamra Port and Dighi Port are added at the end of Sea Ports in paragraph 4.37(a) of Handbook of Procedures (2015-20) related to Port of Registration, for availing export promotion benefits under Chapter 4 of Foreign Trade Policy.

[Public Notice No. 61/ 2015-2020 New Delhi, Dated 16th February, 2018]

2) AMENDMENTS IN ANFS 4F & 4G OF HANDBOOK OF PROCEDURES 2015-20

Amendments have been made in Ayat Niryat Forms (ANF) 4F & 4G of Handbook of Procedures 2015-2020 in light of implementation of GST and non-issuance of EP copies of Shipping Bills by Customs Authorities.

[Public Notice No.63/2015-2020 New Delhi, Dated 22nd February, 2018]

3) CLARIFICATION REGARDING EXPORT POLICY OF ONIONS- REMOVAL OF MINIMUM EXPORT PRICE (MEP) AND LETTER OF CREDIT (LC)

This Circular clarifies that export of all varieties of onions are permitted for export without any MEP or LC w.e.f. 02.02.2018 till further orders.

[Policy Circular No. 04 / 2015-20 dated 26th February, 2018]

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CORPORATE

1) NATIONAL COMPANY LAW TRIBUNAL ("NCLT") RESTORES THE COMPANY'S NAME WHICH HAD BEEN STRUCK OFF BY THE REGISTER OF THE COMPANIES ("ROC")

The Sonik Technologies Private Limited ("Company") whose name was struck off by the

RoC for not submitting the annual returns, balance sheet, documents and other such compliances as required under the Companies Act, gets its name restored by the NCLT under Section 252 of the Companies Act, 2013.

The Company was registered under the erstwhile Companies Act, 1956, with the Registrar of Companies, Jaipur, Rajasthan. As per its Memorandum of Association ("MoA"), the Company has been incorporated for the purpose of carrying on internet and telecommunication services and e-commerce facilities and such like businesses.

The RoC on 10.03.2017 issued a notice under Form STK-5 to the Company for striking off the name of the Company which was followed by another notice under Form STK-7 on 23.06.2017 for striking off and dissolution of the Company.

In response to the above notice, the Company filed an application on 23.06.2017 seeking restoration of Company by the Registrar of Companies. It has been represented that the Company was not in receipt of the Notice under Form SKT-7 dated 23.06.2017. Further, the Company also submitted that it is still a going concern, running its business and filing its Income Tax returns on regular basis and the Directors of the Company are ready to file all pending forms and returns with RoC with the applicable fee and additional fees. The Company also stated that the application has been filed within the period of limitation as prescribed under the Section 252 read with Section 433 of the Companies Act, 2013.

NCLT considered the averments made in the appeal as well as in the reply submitted by the concerned respondent namely RoC and also took on record the observation as provided by the Income Tax Officer in its report about the Company been filing its Income Tax Returns from the year 2009 to 2016-17. Further, from the bank statements annexed for the period from 01.04.2017 till 28.09.2017, which includes the date of striking off of the Company by the RoC i.e., 23.06.2017, it can be observed that the Company has consistently been operating its Bank Account. Further, it is also evident from the records furnished by the company vide diary No. 525 dated 18.01.2018 that the company is enjoying registration under GST and the operations relating to purchase as well as sale of products have been conducted by the Company leading to revenue generation.

NCLT took into consideration the Notice challenged by the Company in relation to striking off and observed that it might not be sustainable; however, it is evident that the company has been engaged in continuous operations since its incorporation which is also vouched by Income Tax Department in view of the observation made above. It is also further observed that the Respondent have no serious objections in restoring the name of the Company in the register of companies maintained by it and hence this Tribunal directs restoration of the name of the Company.

[Sonik Technologies Pvt. Ltd.* v. *RoC, Jaipur]

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SECURITIES

1) COMPUTATION OF DAILY CONTRACT SETTLEMENT VALUE – INTEREST RATE FUTURES

SEBI has decided to provide flexibility to the exchanges with regards the computation methodology of daily contract settlement value of IRFs. The daily contract settlement value would be calculated based on the volume weighted average futures price of last half an hour. In the absence of last half an hour trading, theoretical futures price shall be considered for computation of Daily Contract Settlement Value. For computing theoretical futures price, volume weighted average price of underlying bond in last two hours of trading on NDS-OM shall be considered.

[SEBI / HO / MRD / DRMNP / CIR / P / 2018 / 27, 20th February, 2018 (SEBI)]

2) ENHANCING FUND GOVERNANCE FOR MUTUAL FUNDS

SEBI has decided to comply with the provisions of its Circular dated November 30, 2017, wherein it permits existing independent trustees and independent directors, who have held office for 9 years or more, to continue in their respective position for a maximum of 1 additional year. The said provision may now be complied with in a phased manner, within a period of 2 years. Further, auditors who have conducted an audit of the Mutual Fund for 9 years or more, in terms of the aforesaid Circular, may continue till the end of Financial Year 2018-19. All the other provisions of the aforesaid Circular remain unchanged.

[SEBI / HO / IMD / DF2 / CIR / P / 2018 / 19, 7th February, 2018, (SEBI)]

3) MANNER OF ACHIEVING MINIMUM PUBLIC SHAREHOLDING

SEBI in furtherance to its Circular dated November 30, 2015, and in view to further facilitate listed entities to comply with the minimum public shareholding requirements has allowed the following additional methods:

(a) Open market sale: Sale of shares held by the promoters/ promoter group up to 2% of the total paid-up equity share capital of the listed entity in the open market, subject to five times' average monthly trading volume of the shares of the listed entity;

(b) Qualified Institutions Placement: Allotment of eligible securities through Qualified Institutions Placement in terms of Chapter VIII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

Further Conditions for open market sale have also been laid down as under:

(a) In respect of the method mentioned above, the listed entity shall, at least one trading day prior to every such proposed sale, announce the following details to the stock exchange(s) where its shares are listed:

i. The intention of the promoter/promoter group to sell and the purpose of sale;

ii. the details of promoter(s)/promoter group, who propose to divest their shareholding;

iii. total number of shares and percentage of shareholding proposed to be divested; and

iv. the period within which the entire divestment process will be completed.

(b) The listed entity shall also give an undertaking to the recognized stock exchange(s) obtained from the persons belonging to the promoter and promoter group that they shall not buy any shares in the open market on the dates on which the shares are being sold by promoter(s)/promoter group as stated above.

(c) The listed entity, its promoter(s) and promoter group shall ensure compliance with all applicable legal provisions including that of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 and Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

[SEBI / HO / CFD / CMD / CIR / P / 43 / 2018 22nd February, 2018, (SEBI)]

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COMPETITION

1) DEFINITION OF PRODUCT MARKET NEEDS TO BE INTERPRETED IN A WIDE MANNER TO PROJECT ANY ENTITY AS A DOMINANT ENTERPRISE

Shri Prem Prakash ('Informant') has filed the present information under Section 19(1)(a) of the Competition Act, 2002 ('Act') against Airport Authority of India ('AAI') and Power Grid Corporation of India Ltd. ('PGCIL') (AAI and PGCIL together referred to as 'Opposite Parties') alleging contravention of the provisions of Section 4 of the Act.

The Informant is an individual residing at Bina, Madhya Pradesh. He runs an engineering testing laboratory and provides testing services. The laboratory of the Informant is stated to be accredited as per ISO/ISE17025 by the Accreditation Commission for Conformity Assessment Bodies ('ACCAB'). ACCAB is claimed to be an accreditation body similar to National Accreditation Board for Testing and Calibration Laboratories ('NABL'), which provides accreditation services in India.

AAI is engaged in construction, modification and management of passenger terminals, development and management of cargo terminals, air traffic services, passenger facilities, etc. at various airports in India. And PGCIL is engaged in transmission of electricity throughout India.

The primary grievance of the Informant concerns the policy/guidelines of the Opposite Parties that require testing of construction materials to be done only by laboratories which are accredited by a full member MRA [Mutual Recognition Arrangement] of International Laboratory Accreditation Cooperation (ILAC)/ Asia Pacific Laboratory Accreditation Cooperation (APLAC)/ International Accreditation Forum ('IAF'). Such stipulation has been alleged as a contravention of Section 4 of the Act.

The Informant has thus, alleged that by imposing the condition requiring testing through NABL accredited labs or labs having full membership of ILAC/ APLAC/ IAF, the Opposite Parties have put the laboratory of the Informant and other accreditation bodies out of competition. He has further alleged that this restrictive eligibility condition for private testing laboratories has been imposed by the Opposite Parties to facilitate/ protect the monopoly of NABL. The Informant has alleged that AAI and PGCIL have abused their dominant position by insisting that testing in relation to their respective construction projects, would be done only by laboratories which are accredited by a full member MRA of ILAC/ APLAC /IAF.

The Commission after considering matter at hand stated that the Informant had filed a similar information against PGCIL alleging abuse of dominant position, and after the order of the Commission earlier as well as order by COMPAT in appeal, it was clear that PGCIL does not operate in same market as Informant and is rather a consumer of laboratory services and therefore free to stipulate standards for procurement and same cannot be held as anti-competitive. Since this current information is substantially similar to earlier information the Commission did not see any merit in re-examining the same in the absence of any new information.

As regards AAI, the Commission observes that AAI is also a consumer of laboratory services. The Informant has sought to define the relevant product market as laboratory services required for maintaining quality in construction of runways/ airport/ taxiway, etc., and has alleged abuse by AAI in this market. The Commission is, however, of the view that the product market definition of the Informant is very narrow and does not capture the market reality. In fact, this

definition appears to be tailor made to project that AAI is a dominant enterprise.

The Commission stated that a large company cannot be said to hold dominant position unless it satisfies the mandates of Section 19(4) of the Act. Since it regards AAI as a consumer as well of laboratory services, as a buyer they have every right to choose from amongst the variable options to satisfy their needs, Accordingly, it was held that there was no contravention of Section 4 of the Act by AAI.

In view of the foregoing, the Commission is of the view that no case of contravention of the provisions of Section 4 of the Act is made out against the Opposite Parties in the present case. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.

[Prem Prakash* v. *Airport Authority of India & Other, dated 27th February, 2018]

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INDIRECT TAXES

a. CUSTOMS

2) EXEMPTION FROM THE LEVY OF WHOLE OF EDUCATION CESS

The Central Government *vide* the said Notification exempts all the goods specified in the First Schedule to the Customs Tariff Act, 1975, from the levy of whole of Education Cess, when imported into India.

[Notification No. 07 / 2018 - Customs dated 02.02.2018]

3) EXEMPTION FROM THE LEVY OF WHOLE OF SECONDARY AND HIGHER EDUCATION CESS

The Central Government *vide* the said Notification exempts all the goods specified in the First Schedule to the Customs Tariff Act, 1975, from the levy of whole of Secondary and Higher Education Cess, when imported into India.

[Notification No. 08 / 2018 - Customs dated 2nd February, 2018]

4) EXEMPTION FROM THE LEVY OF SOCIAL WELFARE SURCHARGE LEVIABLE ON INTEGRATED TAX AND GOODS AND SERVICE TAX COMPENSATION CESS

The Central Government *vide* the said Notification exempts the goods specified in the First Schedule to the Customs Tariff Act, 1975, from the whole of Social Welfare Surcharge levaiable on Integrated Tax and Goods and Services Tax compensation cess, when imported into India.

[Notification No. 13 / 2018 - Customs dated 2nd February, 2018]

5) INCREASE IN BCD TARIFF RATE ON CHANA (CHICKPEAS) - [TARIFF ITEM 0713 20 0] FROM 30% TO 40%]

The Central Government, hereby directs that the First Schedule to the said Customs Tariff Act, shall be amended whereby in Section II, in Chapter 7, against tariff items 0713 20 00, for the entry in column (4), the entry "40%" shall be substituted.

[Notification No. 25 /2018 – Customs dated 6th February, 2018]

b. CENTRAL EXCISE

1) EXEMPTION OF HIGH SPEED DIESEL OIL BLENDED WITH ALKYLESTERS OF LONG CHAIN FATTY ACIDS OBTAINED FROM VEGETABLESOILS, COMMONLY KNOWN AS BIO-DIESELS:

CBEC exempts high speed diesel oil blended with alkyl esters of long chain fatty acids obtained from vegetable oils, commonly known as bio-diesels, up to 20% by volume, that is, a blend, consisting 80% or more of high speed diesel oil, on which the appropriate duties of excise have been paid and, up to 20% bio-diesel on which the appropriate Central Tax, State tax, Union territory tax or integrated tax, as the case maybe, have been paid, from the whole of the additional duty of excise (Road and Infrastructure Cess) leviable thereon under the aforesaid clause of the Finance Bill, 2018.

[Notification No. 13/2018-Central Excise dated 2nd February, 2018]

2) EXEMPTION OF 10% ETHANOL BLENDED PETROL FROM THE ADDITIONAL DUTY OF EXCISE (ROAD AND INFRASTRUCTURE CESS) LEVIED UNDER CLAUSE 110 OF THE FINANCE BILL 2018

CBEC *vide* the said Notification exempts 10% ethanol blended petrol that is a blend, -

a) consisting, by volume, of 90% motor spirit (commonly known as petrol), on which the appropriate duties of excise have been paid and, of 10% ethanol on which the appropriate central tax, State tax, Union territory tax or integrated tax, as the case may be, have been paid and;

b) conforming to Bureau of Indian Standards specification 2796, from the whole of the additional duty of excise (Road and Infrastructure Cess) leviable thereon under the aforesaid clause of the Finance Bill, 2018.

[Notification No. 12 / 2018- Central Excise dated 2nd February, 2018]

c. GST

1) NON-UTILIZATION OF DISPUTED CREDIT CARRIED FORWARD

CBEC *vide* the said Circular has stated that where a SCN was issued & adjudicated under Rule 14 of Cenvat Credit Rules, 2004 and where in last Order-In-Original (OIO) or Order-In-Appeal (OIA)) as on 01.07.2017, it was held that such Cenvat credit (disputed credit) is not admissible, then such cenvat credit credited to the electronic credit ledger in terms of sub-section (1), (2) , (3), (4), (5), (6) or (8) of Section 140 of the Act, shall not be utilized by registered taxable person to discharge his tax liability under CGST / SGST / IGST Act , 2017 till the matter is under litigation or not settled at Order- In-Original (OIO) or Order-In-Appeal (OIA) stage.
If the said disputed credit is utilized till the matter is under litigation at Order-In-Original (OIO) or Order- In-Appeal (OIA) stage, then the same shall be recovered from the tax payer with interest and penalty as per the provisions of the Act.

[Circular No. 33/07/2018-GST dated 23rd February, 2018]

2) IMPLEMENTATION OF E-WAY BILL SYSTEM DEFERRED

The Central Government *vide* the said Notification has notified that E-way bill system, which was supposed to be implemented mandatorily w.e.f. 01.02.2018, has been deferred till further announcement by CBEC, before it could kick start due to its dedicated website not working properly.

[Notification No. 11 / 2018 - Central Tax dated 2nd February, 2018]

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INTELLECTUAL PROPERTY RIGHTS

1) INTERIM PROTECTION REJECTED FOR CROCS' AS A REGISTERED DESIGNS: DELHI HIGH COURT

The Delhi High Court, in its judgement has rejected applications for interim injunctions against the breach of copyright in their registered design. Justice Valmiki Mehta disallowed the applications for injunction, finding that Crocs' designs for its namesake clog-type sandals were 'liable to be cancelled', and imposed substantial compensatory costs on the plaintiff. Crocs has brought several suits against its competitors, who have been manufacturing and selling sandals with clog-type designs largely which are similar to its own registered design. The suits were filed in different district courts, as were applications for interim injunctions against the defendants. Crocs had secured few interim injunctions against the defendants, which were sought to be vacated. All the suits and applications were eventually transferred to the Delhi High Court, which decided them commonly. Crocs claimed that the designs of the defendants infringed its rights.

The court analysed the matter based on prior disclosure. The Court first considered the argument that the plaintiff's design was already disclosed in the public domain, prior to the registration being granted to the plaintiff. The Court accepted that the Holey Soles designs were prima facie the same as the impugned designs, and therefore held that the impugned designs were disclosed prior to their registration.

The court further analysed the matter on newness and originality. The Court also entered into an elaborate exercise of deciding whether the Croc's design was 'new and original' for the purpose of Section 19(d) of the Designs Act, 2000. The Court held that mere 'trade variations' would not entitle a design to protection unless the new elements are new and original such as to make the design distinguishable from known designs or combinations of designs. The Court held that the various design elements claimed by Crocs were merely trade variants on designs of sandals which have already existed for long, and were neither new nor original enough to claim protection under the Designs Act.

[M/s Crocs Inc.USA v. M/s Liberty Shoes Ltd. & Ors., dated 8th February, 2018(Delhi High Court)]

2) HAVING SIMILAR NAMES DOES NOT CONSTITUTE INFRINGEMENT, IF REGISTERED: BOMBAY HIGH COURT

The suit is filed by the plaintiff seeking a decree of permanent injunction restraining the defendants amongst other things, from dealing with any medicinal preparations under the impugned mark TRI-VOBIT or any other mark which is phonetically or deceptively similar to the plaintiff's trade mark sought. The basis for differentiating the trademark is not a matter of microscopic inspection but general and even casual point of view of a customer walking into a shop. The plaintiff became the proprietor and owner of all the intellectual

property rights of Sun Pharmaceutical Industries Ltd. for the domestic formulation undertaking activities. The plaintiff has recorded itself as the subsequent proprietor of the trade marks with the Trade Marks Registry.

It is pleaded that the plaintiff has one preparation (through its predecessor in business) which is marketed under the trade mark TRIVOLIB which is a coined mark. The medicine is used for treatment of non-insulin diabetic patients. It was pleaded that the mark TRIVOLIB was coined by the plaintiff as a trade mark in August 2011 and enjoys inherent distinctiveness indicating trade origin. The said trade mark is said to have been used extensively and commercially in the course of trade of medicinal preparations since 2011. The trade mark TRIVOLIB is also registered in Class V vide registration dated 12.08.2011. The statement of annual sales and sales promotional expenditure of the drug using the said trade mark has been stated. The plea that the defendant is the prior user of the mark VOBIT and has only added a prefix TRI and hence the plaintiff cannot claim prior user, is entirely misplaced. As noted above, the full words have to be compared and not a part of the word. The defendant is using the mark TRI-VOBIT for its drugs. TRI-VOBIT has to be compared with TRIVOLIB. When we compare the two words, it is manifest that TRI-VOBIT is structurally and phonetically similar to the trade mark, TRIVOLIB, of the plaintiff. Merely because the defendant was using VOBIT earlier cannot be a ground to plead that the words have to be split and then compared as is sought to be done. Defendants have also referred to certain documents filed by the plaintiff, namely, the additional list of products to be manufactured by Akums Drugs and Pharmaceuticals Ltd. to contend that there is confusion about the ownership of the trade mark of the plaintiff. Learned counsel for the plaintiff explains that this document is a license to manufacture and the drugs may have been manufactured from another company. However, it is manifest from a perusal of the certificate of the registration issued by the Trade Marks Registry that the trade mark TRIVOLIB is registered in the name of Sun Pharmaceutical Laboratory Ltd. There is no merit in the said plea of the defendant. The appeal of the defendant was hence dismissed.

[Sun Pharma Laboratories Ltd* v. *Lupin Ltd. and Anr., dated 19th February, 2018]

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CONSUMER

1) ACTIONS OF FLIPKART CONSTITUTES POOR CUSTOMER SERVICE: BENGULURU CONSUMER COURT

Consumer Court in Benguluru criticized Flipkart for its unethical behavior with customers where SoftBank-backed Company was liable to be paid extra amount charged for product purchased in 2015. In the incident the consumer was charged 1878 rupees extra for a toy worth 583 rupees. The amount was promised to be refunded in a week. The Company approached the Consumer Forum in April 2016. The matter lasted for two years. The Court has concluded that the sale transaction took place through the app of Flipkart and the firm is as responsible as the seller in addressing the complainant's grievance. The judge further added that for the actions of the employees, the firm is liable and as the person delivering the product has collected excess money, the same constitutes to deficiency of services and the is an unfair trade practice.

[The Times of India, dated 19th February, 2018]

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ENVIRONMENT

1) NATIONAL GREEN TRIBUNAL ASKED THE HARYANA GOVERNMENT TO FILE A RESPONSE ON BJP'S 1 LAKH BIKER RALLY

BJP President Amit Shah's bike rally with one lakh motorists to be held on February 15 in Harayana's Jind, may face trouble on grounds of pollution, with the National Green Tribunal ("NGT") seeking the state government's response. The NGT asked the Haryana government to file a response by February 13. The order came after an affidavit was filed by petitioner Sameer Sodhi, who pointed out at the health impact that such a rally would cause.

The plea said that instead of motorcycles, the government should ask the participants to go for environment-friendly modes of transport. The petitioner also asked them to constitute a committee to assess the adverse impacts of air and noise pollution if the proposed rally was taken out.

[The Economic Times, dated 9th February, 2018]

2) JAPAN READY TO HELP INDIA IN ADDRESSING AIR POLLUTION

Environment minister Harsh Vardhan met with Japanese ambassador to India Kenji Hiramatsu during which the envoy expressed his country's readiness to help India in addressing the issue of air pollution. During the meeting, Vardhan also shared information about future events including the Regional 3R forum of Asia and Pacific to be held in Indore in April and science and technology in society forum 'India-Japan Workshop' in Delhi on February 28. Vardhan also met Fiji's attorney-general and Minister Aiyaz Sayed-Khaiyum and discussed various issues related to climate change issues while acknowledging that the issue was a global threat and needed urgent action.

[The Times of India, dated 15th February, 2018]

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