MONTHLY
NEWSLETTER

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RBI/FEMA

1) MODIFICATIONS OF REPO AND REVERSE REPO RATES UNDER THE LIQUIDITY ADJUSTMENT FACILITY (LAF) AND MARGINAL STANDING FACILITY (MSF)

Monetary Policy Committee (MPC) has increased the policy Repo rate under the Liquidity Adjustment Facility (LAF) by 25 basis points from 6.0 per cent to 6.25 per cent with immediate effect. Consequent to the change in the Repo rate, the Reverse Repo rate under the LAF also stands adjusted to 6.00 per cent with immediate effect.– ***[FMOD.MAOG. No.123 /01.01.001/2017-18, dated 6th June, 2018 & FMOD.MAOG.No.124/01.18.001/2017-18, dated 6th June, 2018]***

2) RBI EASES BAD LOAN CLASSIFICATION NORMS FOR MSMES

Having regard to the input credit linkages and ancillary affiliations, RBI has decided to temporarily allow banks and NBFCs to classify their exposure, as per the 180 days past due criterion, to all MSMEs, including those not registered under GST, as a 'standard' asset, subject to the following conditions:

i. The aggregate exposure, including non-fund based facilities, of banks and NBFCs to the borrower does not exceed Rs. 250 million as on May 31, 2018.
ii. The borrower's account was standard as on August 31, 2017.
iii. The payments due from the borrower as on September 1, 2017 and falling due thereafter up to December 31, 2018 were/are paid not later than 180 days from their original due date.
iv. In respect of dues payable by GST-registered MSMEs from January 1, 2019 onwards, the 180 days past due criterion shall be aligned to the extant IRAC norms in a phased manner, as given in the Annexure. However, for MSMEs those are not registered under GST as on December 31, 2018, the asset classification in respect of dues payable from January 1, 2019 onwards shall immediately revert to the extant IRAC norms.
v. The other terms and conditions of the Circular dated February 07, 2018 remain unchanged. – ***[DBR.No.BP.BC.108/21.04.048/2017-18, dated 6th June, 2018]***

3) RBI CONTINUED THE INTEREST SUBVENTION SCHEME FOR SHORT-TERM CROP LOANS ON INTERIM BASIS DURING THE YEAR 2018-19

RBI in its Circular FIDD.CO.FSD.BC.No.14/05.02.001/2017-18 dated August 16, 2017, on Interest Subvention Scheme for Short-term Crop Loans 2017-18, advised the continuation and implementation of the Interest Subvention Scheme for the year

2017-18. As regards the Scheme for the year 2018-19, Ministry of Agriculture & Farmers Welfare, Government of India (GoI) has advised, as an interim measure, to continue Scheme on the terms and conditions approved for the Scheme for 2017-18, as contained in the above cited Circular. Further, as advised by GoI, from 2018-19 the ISS is being put on DBT mode on 'In kind/services' basis and not on 'In cash' basis and all loans processed in 2018-19 are required to be brought on ISS portal/DBT platform, once it is launched. – ***[FIDD.CO.FSD.BC.No.21/05.04.001/2017-18, dated 7th June, 2018]***

4) RBI REDUCES INTEREST RATE ON UNCLAIMED DEPOSITS

The RBI has reduced the rate of interest payable by banks to the depositors/claimants on the unclaimed interest bearing deposit amount transferred to the Fund from 4% to 3.5% simple interest per annum with effect from July 01, 2018. – ***[DBR.DEA Fund Cell.BCNo.110/30.01.002/2017-18, dated 7th June, 2018]***

5) RBI INTRODUCES INTEREST RATE SWAPTIONS

As announced in the first bi-monthly Monetary Policy Statement 2018-19 dated April 05, 2018, RBI has permitted Interest Rate Swaptions in Rupees so as to enable better timing flexibility for the market participants seeking to hedge their interest rate risk.

Swaptions are basically options that give the holder the right but not the obligation to enter into an underlying swap. A swap is nothing but a derivative contract through which two parties can exchange financial instruments. The RBI has accordingly issued a Notification No.FMRD.DIRD.8/2018 dated June 14, 2018 enabling the introduction of swaptions. – ***[FMRD.DIRD.9 /14.01.020/2017-18, dated 14th June, 2018]***

6) RBI EASED THE PROVISIONING NORMS FOR BOND LOSSES INCURRED BY THE BANKS

In view of the continuing rise in the yields on Government Securities, as also the inadequacy of time to build investment fluctuation reserve (IFR) for many banks, RBI has decided to grant banks the option to spread provisioning for their mark to market (MTM) losses on all investments held in AFS and HFT for the quarter ending June 30, 2018 as well. The provisioning required may be spread equally over up to four quarters, commencing from the quarter ending June 30, 2018. – ***[DBR.No.BP.BC.113/21.04.048/2017-18, dated 15th June, 2018]***

7) RBI ENHANCES HOUSING LOAN LIMITS UNDER PRIORITY SECTOR LENDING

With a view to bringing convergence of the Priority Sector Lending guidelines for housing loans with the Affordable Housing Scheme, and to give a filip to low-cost housing for the Economically Weaker Sections and Low Income Groups, the RBI has revised the housing loan limits for eligibility under priority sector lending to Rs.35 lakh in metropolitan centres (with population of ten lakh and above) and Rs.25 lakh in other centres, provided that the overall cost of the dwelling unit in the metropolitan centre and at other centres does not exceed Rs.45 lakh and Rs.30 lakh, respectively.

Furthermore, the existing family income limit of Rs.2 lakh per annum for loans to housing projects exclusively for the purpose of construction of houses for Economically Weaker Sections (EWS) and Low Income Groups (LIG), is revised to Rs.3 lakh per annum for EWS and Rs.6 lakh per annum for LIG, in alignment with the income criteria specified under the Pradhan Mantri Awas Yojana. – ***[FIDD.CO.Plan.BC.22/04.09.01/2017-18, dated 19th June, 2018]***

8) PAN CARD MANDATORY FOR MAKING ALL REMITTANCES UNDER LIBERALISED REMITTANCE SCHEME (LRS)

As indicated in the paragraph 18 of the Statement on Developmental and Regulatory Policies of the Second Bi-monthly Monetary Policy Statement for 2018-19 released on June 6, 2018, RBI has decided that furnishing of Permanent Account Number (PAN), which hitherto was not to be insisted upon while putting through permissible current account transactions of up to USD 25,000, shall now be mandatory for making all remittances under Liberalised Remittance Scheme (LRS). Further, in the context of remittances allowed under LRS for maintenance of close relatives, it has been decided, to align the definition of 'relative' with the definition given in Companies Act, 2013 instead of Companies Act, 1956. – ***[A.P. (DIR Series) Circular No. 32, dated 19th June, 2018]***

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FOREIGN TRADE

1) DOING AWAY WITH THE REQUIREMENT OF DSC FOR ONLINE / DIGITAL PAYMENT THROUGH E-MPS

A facility for online / digital payment for miscellaneous applications (eMPS) was launched *vide* Trade Notice No. 25/2018 dt. 14.03.2018. DGFT RAs can access e-MPS through login id/ password but exporters were required to have a DSC (IEC embedded) to make payment. The date for mandatory digital payment through e-MPS was extended upto 01.06.2018.

Keeping in view the difficulties faced by the exporters / importers in obtaining digital signatures for making miscellaneous payment digitally / online, the requirement of DSC for exporters/importers to make digital / online payment through e-MPS has been done away with. Now, a person desiring to make online / digital payment can login in e-MPS using his PAN details. There is no need for having digital signatures for making digital / online payment. – ***[TRADE NOTICE NO. 15/2018-19, 4th June, 2018, (DGFT)]***

2) SUBMISSION OF APPLICATION SEEKING AUTHORIZATION FOR IMPORT / EXPORT OF RESTRICTED ITEMS THROUGH E-MAIL

It has come to the notice that importers/ exporters having submitted their online application for import/ export of restricted items, after having paid the applicable fees with the concerned jurisdictional RA's office, submit physical copies of their application to DGFT (Hqrs.), which takes considerable time.

It has accordingly been decided that henceforth w.e.f. 21.06.2018, applicants seeking import / export license from DGFT for "restricted" items, having paid the applicable fees, will submit online application to the concerned jurisdictional authority and subsequently send their application through e-mail to either import-dgft(a)nic.in (for import licenses) or exportdgft@nic.in (for export licenses) as the case may be, along with proof of the application fee paid; besides attaching the necessary documents for processing the case.

Applications are required to be submitted in prescribed pro-forma ANF-2M (for import license) and ANF- 2N (for export license) along with ANF-l (Applicant's Importer Exporter Profile), copy of IEC and other supporting documents, as applicable. Aayat Niryat forms are available on the DGFT's website www.dgft.gov.in. In case the applicant firm has received the NOC from the concerned administrative Ministry, the same should invariably be attached with the application. Applicants are requested to send their attachments only in PDF format. – ***[TRADE NOTICE NO. 18/2018-19, 20th June, 2018, (DGFT)]***

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CORPORATE

1) THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE, 2018

The President has given his assent to promulgate the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 on June 6, 2018. The Ordinance:

- Recognises home buyers as financial creditors giving them due representation in the Committee of Creditors and making them an integral part of the decision making process. It enables home buyers to invoke Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016 against errant developers;
- Empowers the Government to provide MSMEs with a special dispensation under the Code. The immediate benefit it provides is that, it does not disqualify the promoter to bid for his enterprise undergoing Corporate Insolvency Resolution Process (CIRP) provided he is not a wilful defaulter and does not attract other disqualifications not related to default. It also empowers the Central Government to allow further exemptions or modifications with respect to the MSME Sector, if required, in public interest;
- Lays down a strict procedure if an applicant wants to withdraw a case after its admission under IBC 2016. Henceforth, such withdrawal would be permissible only with the approval of the Committee of Creditors with 90 percent of the voting share. Furthermore, such withdrawal will only be permissible before publication of notice inviting Expressions of Interest (EoI).

Separately, the Regulations will bring in further clarity by laying down mandatory timelines, processes and procedures for corporate insolvency resolution process. Some of the specific issues that would be addressed include non-entertainment of late bids, no negotiation with the late bidders and a well laid down procedure for maximizing the value of assets.

The Ordinance further:

- Encourages resolution as opposed to liquidation, the voting threshold has been brought down to 66% from 75% for all major decisions such as approval of resolution plan, extension of CIRP period, etc. In order to facilitate the corporate debtor to continue as a going concern during the CIRP, the voting threshold for routine decisions has been reduced to 51%.
- Lays down a mechanism to allow participation of security holders, deposit holders and all other classes of financial creditors that exceed a certain number, in meetings of the Committee of Creditors, through the authorized representation.
- Amends the existing Section 29(A) of the IBC, 2016 to exempt pure play financial entities from being disqualified on account of NPA.
- Provides a resolution application holding an NPA by virtue of acquiring it in the past under the IBC, 2016 with a three-year cooling-off period, from the date of such acquisition.

Taking into account the wide range of disqualifications contained in Section 29(A) of the Code, the Ordinance provides that the Resolution Applicant shall submit an affidavit certifying its eligibility to bid.

The Ordinance also provides one-year grace period for the successful resolution applicant to fulfil various statutory obligations required under different laws. This would go a long way in enabling the new management to successfully implement the resolution plan.

The other changes brought about by the Ordinance include:

a. non-applicability of moratorium period to enforcement of guarantee;
b. introducing the requirement of special resolution for corporate debtors to themselves trigger insolvency resolution under the IBC 2016;
c. liberalizing terms and conditions of interim finance to facilitate financing of corporate debtor during CIRP period;
d. giving the IBBI a specific development role along with powers to levy fee in respect of services rendered.

- ***[Ministry of Law and Justice, 6th June, 2018]***

2) MCA AMENDS THE LLP RULES AND SUBSTITUTES RELATED FORMS DIR-3 AND DIR - 6 IN THE COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) RULES

MCA has amended the Limited Liability Partnership Rules, 2009 (LLP Rules) as follows:

Rule 10(1) has been amended to provide that every individual, who intends to be appointed as a designated partner of an existing LLP, shall make an application electronically in Form DIR-3 under the Companies (Appointment and Qualifications of Directors) Rules, 2014 for obtaining DPIN under the Limited Liability Partnership Act, 2008 (LLP Act) and such DIN shall be sufficient for being appointed as designated partner under the LLP Act.

Rule 10(4)(i) has been amended to provide that in the event of any change in particulars, every individual who has been allotted a DPIN / DIN, shall make an application in Form DIR-6 under Companies (Appointment and Qualifications of Directors) Rules, 2014 to intimate such change(s) to the Central Government within 30 days of such changes.

To refer to the Limited Liability Partnership (Amendment) Rules, 2018 dated June 12, 2018 (effective from the date of its publication in the Gazette).

Simultaneously, MCA has substituted forms DIR–3 and DIR-6 by the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018 dated June 12, 2018 (effective from the date of its publication in the Gazette). Form DIR-3 pertains to Application for allotment of DIN before appointment in a company / LLP while Form DIR-6 is regarding Intimation of change in particulars of Director / Designated Partner. – ***[Ministry of Corporate Affairs, 12th June, 2018]***

3) MCA ISSUES THE COMPANIES (SIGNIFICANT BENEFICIAL OWNERS) RULES, 2018

Pursuant to the commencement of the amendments to Section 90 of the Companies Act, 2013 and the draft rules released in Feb, 2018, MCA has issued the Companies (Significant Beneficial Owners) Rules, 2018 providing as follows:

It provides the definition of "significant beneficial owner". "Significant beneficial owner" means an individual referred to in sub-section (1) of Section 90 (holding ultimate beneficial interest of not less than ten per cent.) read with sub-section (10) of Section 89, but whose name is not entered in the register of members of a company as the holder of such shares, and the term 'significant beneficial ownership' shall be construed accordingly. Further, the explanation to this definition provides the manner in which the significant beneficial ownership will be determined in case of persons other than individuals or natural persons. Further, explanation II clarifies that instruments in the form of global depository receipts (GDR), compulsorily convertible preference shares (CCPS) or compulsorily convertible debentures (CCD) shall be treated as shares for the purpose of this definition.

Every significant beneficial owner shall file a declaration in Form No. BEN-I to the company in which he holds the significant beneficial ownership on the date of commencement of these rules within 90 days from such commencement and within 30 days in case of any change in his significant beneficial ownership.

Upon receipt of such declaration, Company shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within 30 days from the date of receipt of declaration by it, along with the prescribed fee.

The company shall maintain a register of significant beneficial owners in Form No. BEN-3 which shall be open for inspection during business hours for at least two hours on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not Rs. 50 for each inspection.

It provides that the company may apply to the Tribunal in accordance with Section 90(7) of the Companies Act, 2013 (failure to provide company required information or unsatisfactory information), for order directing that the shares in question be subject to restrictions, including –

(a) restrictions on the transfer of interest attached to the shares in question;

(b) suspension of the right to receive dividend in relation to the shares in question;

(c) suspension of voting rights in relation to the shares in question;

(d) any other restriction on all or any of the rights attached with the shares in question.

These rules are not applicable to the holding of shares of companies/body corporates, in case of pooled investment vehicles / investment funds such as Mutual Funds, Alternative Investment Funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) regulated under SEBI Act.

These Rules shall come into force on the date of their publication in the Official Gazette. – ***[Ministry of Corporate Affairs, 13th June, 2018]***

4) NEGOTIATIONS BETWEEN PARTIES CAN CONTINUE EVEN AFTER INSOLVENCY RESOLUTION IS KICK-STARTED

NCLAT denied directing the Mumbai bench of the National Company Law Tribunal (NCLT) to defer its pronouncement on State Bank of India's (SBI's) appeal seeking initiation of insolvency plea while party was at an "advanced stage of negotiation" with a "foreign bank" to reach a settlement outside the insolvency and bankruptcy code. NCLAT, however, gave liberty to the promoters of both companies to negotiate with a third party investor to settle dues, even if insolvency resolution is kick-started by NCLT. – ***[M/s Uttam Galva Mettalics Ltd. v. State of India]***

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SECURITIES

1) SEBI AMENDS LISTING REGULATIONS TO EASE COMPLIANCES FOR LISTED ENTITIES UNDERGOING INSOLVENCY

SEBI has amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) as follows to ease corporate insolvency resolution process and ensure time-bound resolution:

Regulation 15 regarding applicability of Listing Regulations has been amended to exempt listed entities undergoing insolvency, from complying with Regulations 17 to 21 which pertain to Board of Directors and Committees viz. nomination and remuneration, stakeholders relationship and risk management. Provided that the role and responsibilities of the board of directors and the respective committees as specified under the respective regulations shall be fulfilled by the interim resolution professional or resolution professional.

It exempts such listed companies from compliance with Regulation 23(4), which requires a listed entity to obtain shareholders' approval for carrying out all material related party transactions, subject to the event being disclosed to the recognized stock exchanges within 1 day of the resolution plan being approved u/s 31 of the Insolvency and Bankruptcy Code, 2016 ('the Code').

Further, Regulation 24(5) has been amended to provide that a listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting (except in cases where such divestment is made under a scheme of arrangement duly approved by a Court / Tribunal or under a resolution plan duly approved under Section 31 of the Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved).

Regulation 24(6) has been amended to provide that selling, disposing and leasing of assets amounting to more than 20% of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale / disposal / lease is made under a scheme of arrangement duly approved by a Court / Tribunal or under a resolution plan duly approved under Section 31 of the Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved.

Exempted from Regulation 31A(5), (6) and (7)(b), if re-classification of existing promoter / promoter group of the listed entity is as per the resolution plan approved under Section 31 of the Code, provided that the existing promoter/ promoter group seeking re-classification do not remain in control of the listed entity; and such re-classification along with the underlying rationale is disclosed to the stock exchanges within one day of the resolution plan being approved.

The requirements specified under Regulation 37 and Regulation 94, regarding filing of draft scheme of Arrangement or the Scheme of Arrangement shall not apply to a restructuring proposal, approved as part of a resolution plan by the NCLT, u/s 31 of the Code, subject to the details being disclosed to the recognized stock exchanges within one day of the resolution plan being approved.

The Schedule III part A, Clause A has also been amended to enlist events in relation to the Insolvency Resolution Process, which shall be disclosed by a listed Corporate Debtor to the Stock Exchange(s). -***[No. SEBI/LAD-NRO/GN/2018/21, 1st June, 2018, (SEBI)].***

2) SEBI EASES CORPORATE INSOLVENCY RESOLUTION PROCESS BY AMENDING ICDR, DELISTING AND TAKEOVER REGULATIONS

SEBI has amended the Takeover Code, Delisting Regulations and ICDR to ease corporate insolvency resolution process and ensure time-bound resolution:-

SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018 (effective June 1, 2018): Reg. 3(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Code) provides that no acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but lessthan the maximum permissible nonpublic shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company. The first proviso to the Reg. 3(2) provides that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

A new proviso has now been added to the Reg. 3(2) which states that acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 (Code) shall be exempt from the obligation under the above proviso to Reg. 3(2).

SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2018 (effective June 1, 2018): SEBI has amended the Delisting Regulations exempting listed companies undergoing insolvency from the applicability of Delisting Regulations as follows:

i. Reg. 3(2) has been amended to provide that listed companies are exempt from complying with the Delisting Regulations if such delisting is part of a resolution plan approved under section 31 of the Code and following conditions are met:
   a. The resolution plan provides a specific procedure to complete the delisting of such shares; or
   b. The resolution plan provides an exit option to the existing public shareholders at a price specified in the resolution plan.

However, exit to the shareholders should be at a price which shall not be less than the liquidation value as determined under regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 after paying off dues in the order of priority defined u/s 53 of the Code. Further, if the existing promoters or any other shareholders are proposed to be provided an opportunity to exit under the resolution plan at a price higher than the price determined, the existing public shareholders shall also be provided an exit opportunity at a price which shall not be less than the price, by whatever name called, at which such promoters or other shareholders, directly or indirectly, are provided exit.

The intention to delist an insolvent company, along with the justification for exit price, will need to be disclosed to the stock exchanges within one day of the resolution plan being approved.

ii. Reg. 30(2A) has been added providing that that an application for listing of delisted equity shares, may be made in respect of a Company which has undergone Corporate Insolvency Resolution Process ('CIRP') under the Code.

SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2018 (effective June 1, 2018): Sub-regulation (c) and the proviso to Reg. 70(1) have been omitted. New sub-regulation (1A) has been added to Reg. 70 stating that the provisions of Chapter VII regarding preferential issue, except the lock-in provisions, shall not apply where the preferential issue of specified securities is made in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or the resolution plan approved under section 31 of the Code, whichever applicable. – ***[No. SEBI/LAD-NRO/GN/2018/23. 1st June, 2018, (SEBI)]***

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COMPETITION

1) CCI APPROVES THE ACQUISITION OF MONSANTO BY BAYER AG UNDER SECTION 31(7) OF THE COMPETITION ACT, 2002

On 7th August, 2017, the Competition Commission of India (Commission) received a Notice from Bayer Aktiengesellschaft (Bayer) in relation to its proposed acquisition of Monsanto Company (Monsanto).

Bayer, the acquirer, is a German stock Corporation and is a life sciences company with

competencies in the areas of health care and agriculture. The activities of Bayer are carried out in three main divisions viz. pharmaceuticals, consumer health and crop sciences. Monsanto is a global supplier of agricultural products like seeds, biotechnology traits, and herbicides.

Based on its investigation, the Commission was of the opinion that the proposed combination is likely to have an appreciable adverse effect on competition in some markets in India but the same could be addressed by way of modifications in the proposed combination. Accordingly, the Commission approved the proposed combination under Section 31(7) of the Competition Act, 2002, subject to the following remedies to be implemented by the parties:

A. Divestment of the following businesses of Bayer to an independent entity, which meets the parameters prescribed in the order of the Commission: (a) Glufosinate ammonium (a non-selective herbicide); (b) Crop traits of cotton and corn; and (c) Hybrid seeds of vegetables;

B. Divestment of the shareholding of Monsanto in Maharashtra Hybrid Seed Company Limited (26%), to an independent entity, which meets the parameters prescribed in the order of the Commission;

C. In addition to the above divestiture, Bayer is also bound by the following commitments for a period of 7 (seven) years from the closing of the Bayer / Monsanto transaction:

   i. The resultant entity of the combination (Combined Entity) would follow a policy of broad based, non-exclusive licensing of Genetically Modified (GM) as well as non-GM traits currently commercialized in India or to be introduced in India in the future, on a fair, reasonable and non-discriminatory terms (FRAND Terms);

   ii. The Combined Entity would follow a policy of non-exclusive licensing of non-selective herbicides and / or their active ingredient(s) in case of launch of new GM / non-GM traits in India that restrict agricultural producers including farmers to use specific non-selective herbicide(s) being supplied only by the parties, on a fair, reasonable and non-discriminatory basis;

   iii. Combined entity would allow Indian users / potential licensees to access the following on FRAND Terms: (a) existing Indian agro-climatic data owned and used by the Combined Entity for its digital applications commercialized in India; (b) commercialized digital farming platform(s) of the Combined Entity for supplying / selling agricultural inputs to agricultural producers in India; and (c) digital farming applications of the Combined Entity, commercialized in India, on subscription basis. This remedy shall operate for a period of 7 years from the commencement of commercialization of digital farming product(s) or digital farming platform(s), subject to a total period of 10 years from the closing of the combination.

   iv. Combined Entity would also grant access to Indian agro-climatic data, free of charge to Government of India and its institution(s), to be used exclusively for creating a public good in India.

   v. Combined Entity is barred from offering its clients, farmers, distribution channels and / or its commercial

partners, two or more products as bundle which may potentially have the effect of exclusion of any competitor.

vi. Combined Entity is further barred from imposing, directly or indirectly, commercial dealings capable of causing exclusivity in the sales channel for supply of agricultural products.

The Commission further ensured in its Order, that in case the Combined Entity offers better commercial terms to a new licensee for any of the above licenses, then it would be bound to offer, within 60 days, such similar terms to all existing licensees. Bayer is also directed to disclose, on its Indian websites, all contact details to facilitate the implementation of remedies ordered by the Commission.

The remedies ordered by the Commission will strengthen the agricultural input suppliers in India, by enabling innovation and launch of new products for the benefit of the farmers. - ***[Competition Commission of India, 20th June, 2018]***

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INDIRECT TAXES

a. CUSTOMS

1) BCD INCREASED ON CRUDE EDIBLE VEGETABLE OILS AND REFINED EDIBLE VEGETABLE OILS

Notification No. 50/2017- Customs dated 30.06.2017 amended so as to increase Basic Customs Duty (BCD) to 35% on crude edible vegetable oils and to 45% on refined edible vegetable oils. – ***[Notification No. 47 /2018-Customs, dated 14th June, 2018]***

2) THE EXPORTS BY POST REGULATIONS, 2018

The CBIC has notified the Exports by Post Regulations, 2018 which shall apply to export of goods by any person, holding a valid Import Export Code issued by the DGFT, in furtherance of business from any foreign post office notified under sub-section (e) of Section 7 of the Customs Act, 1962. – ***[Notification No. 48/2018-Customs (N.T), dated 4th June, 2018]***

3) SURAT AIRPORT NOTIFIED AS CUSTOMS AIRPORT

The CBIC has issued a Notification under Section 7 of the Customs Act, 1962, notifying Surat airport as Customs airport for unloading and loading of baggage. – ***[Notification No. 51 /2018-Customs (N.T.), dated 8th June, 2018]***

4) KARANJA TERMINAL NOTIFIED FOR UNLOADING OF IMPORTED GOODS AND LOADING OF EXPORT GOODS OR ANY CLASS OF GOODS

Notification No. 62/94-Customs (N.T.) dated 21.11.1994 amended so as to notify Karanja Terminal u/s 7(a) of Customs Act, 1962 for unloading of imported goods and loading of export goods or any class of goods. – ***[Notification No. 52 /2018- Customs (N.T.), dated 13th June, 2018]***

5) ADD RESCINDED ON DIGITAL OFFSET PRINTING PLATES

The CBEC has rescinded Anti-Dumping Duty on imports of the 'Digital Offset Printing Plates' originating in or exported from China PR imposed *vide* Notification No. 51/2012- Customs (ADD), dated the 3rd December, 2012. – ***[Notification No. 32/2018 - Customs (ADD), dated 1st June, 2018]***

6) REFUND OF IGST ON EXPORT OF GOODS (SB005 & SB003 ERRORS CASES)

CBIC has issued Circular No.'s 05/2018-Customs dated 23.02.2018 and 08/2018-Customs dated 23.03.2018 wherein an alternative mechanism with officer interface to resolve invoice mismatches was provided for the shipping bills filed till 28.02.2018. Although the cases having SB005 error have now ebbed due to continuous outreach done by the Board and increased awareness amongst the trade, however, some exporters nevertheless, continue to make errors in filing invoice details in the shipping bill and the GST returns. Therefore, keeping in view the difficulties faced by the exporters in respect of SB005 errors, Board has decided to extend the facility of officer interface to Shipping bills filed up to 30.04.2018. However, the exporters are advised to align their export invoices submitted to Customs and GST authorities for smooth processing of refund claims.

Apart from SB005 errors, IGST refunds are also stuck on account of SB003 error on the customs side. This error occurs when there is a mismatch between GSTIN entity mentioned in the Shipping bill and the one filing GSTR-1/GSTR-3B. Board has examined the issue and it has been decided to provide a correction facility in cases where although GSTIN of both the entities are different but PAN is same. This happens mostly in cases where an entity filing Shipping bill is a registered office and the entity which has paid the IGST is manufacturing unit/other office or vice versa. However, in all such cases, entity claiming refund (one which has filed the Shipping bill) will give an undertaking to the effect that its other office (one which has paid IGST) shall not claim any refund or any benefit of the amount of IGST so paid. The undertaking shall be signed by authorized persons of both the entities. This undertaking has to be submitted to the Customs officer at the port of export. – ***[Circular No.15/2018-Customs, dated 6th June, 2018]***

b. CENTRAL EXCISE

1) CLARIFICATIONS ON DETERMINATION OF PLACE OF REMOVAL UNDER CENTRAL EXCISE AND AVAILABILITY OF CREDIT OF SERVICE TAX PAID ON TRANSPORT OF GOODS

The CBIC has issued present Circular clarifying determination of place of removal under the Central Excise Act, 1944 and the CENVAT Credit Rules and consequent availability of credit of service tax paid on transport of goods.

General Principle: As regards determination of 'place of removal', in general the principle laid by Hon'ble Supreme Court in the case of CCE vs Ispat Industries Ltd 2015(324) ELT670 (SC) may be applied. Apex Court, in this case has upheld the principle laid down in M/s Escorts JCB (Supra) to the extent that 'place of removal' is required to be determined with reference to 'point of sale' with the condition that place of

removal (premises) is to be referred with reference to the premises of the manufacturer.

Exceptions: i.) The above principle would apply to all situations except where the contract for sale is FOR contract in the circumstances identical to the judgment in the case of CCE, Mumbai-III vs Emco Ltd 2015(322) ELT 394(SC) and CCE vs M/s Roofit Industries Ltd 2015(319) ELT 221(SC) i.e., where the ownership, risk in transit remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal. **ii.)** Clearance for export of goods by a manufacturer shall continue to be dealt in terms of Circular No. 999/6/2015-CX dated 28.02.2015 as the judgments cited above did not deal with issue of export of goods. In these cases otherwise also the buyer is located outside India.

Eligibility of CENVAT credit of service tax paid on outward freight: The Circular clarifies that in terms of the SC judgment in case of CCE & ST v. Ultra Tech Cement Limited (Civil Appeal No. 11261 of 2016) dated 01 February, 2018 the CENVAT Credit on Goods Transport Agency service availed for transport of goods from the place of removal to buyer's premises was not admissible after amendment in CENVAT Credit Rules in 2008.

The Circular has rescinded Circular No. 988/12/2014-CX dated 20 October, 2014 and clause (c) of para 8.1 and para 8.2 of Circular No. 97/8/2007- CX dated 23 August, 2007 from 08 June, 2018. The omitted portion of the circulars dealt with CENVAT credit of service tax paid on outward freight on the basis of place of removal. – ***[Circular No.1065/4/2018-CX, dated 8th June, 2018]***

c. GST

1) AMENDMENTS TO THE CENTRAL GOODS AND SERVICES TAX RULES, 2017

The Central Government has amended the Central Goods and Services Tax Rules, 2017 through various Notifications:

i. Fifth Amendment, 2018- mainly to bring changes to Rules 37, 83, 89, 95, 97, 133, 138 and revising Forms GSTR-4, GST PCT-01, GST RFD-01, GST RFD-01A. – ***[Notification No. 26/2018 – Central Tax, dated 13th June, 2018]***

ii. Sixth Amendment, 2018- mainly to bring changes to Rules 138C / 142 and to insert Rule 58(1A) / new Form GST ENR-2 relating to Application for obtaining unique common enrolment number (only for transporters registered in more than one State or Union Territory having the same PAN) – ***[Notification No. 28/2018 – Central Tax, dated 19th June, 2018]***

2) CERTAIN GOODS ALLOWED TO BE DISPOSED OFF BY THE PROPER OFFICER AFTER ITS SEIZURE

The Central Government has notified the goods or the class of goods which shall, as soon as may be after its seizure, be disposed of by the proper officer, having regard to the perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations of the said goods. Some of these goods/ class of goods are Salt and hygroscopic substances; Newspapers and periodicals; Cells, batteries and rechargeable batteries; Petroleum Products; Dangerous drugs

and psychotropic substances; Fireworks; Sandalwood, etc. – ***[Notification No.27/2018 – Central Tax, dated 13th June, 2018]***

3) REVERSE CHARGE MECHANISM FURTHER POSTPONED TILL 30TH SEPTEMBER, 2018

The Central Government has further postponed the application of reverse charge mechanism under the Goods and Services Tax (GST) regime till 30th September, 2018. This means there will not be the reverse charge on the supply of goods or services by unregistered person till September 30, 2018.

Notifications in this regard has been issued under Sections 9 (4), 5 (4) and 7 (4) of the CGST Act, IGST Act and UTGST Act respectively. – ***[Notification No. 12/2018 – Central Tax (Rate), dated 29th June, 2018 & Notification No.13/2018 – Integrated Tax (Rate), dated 29th June, 2018 & Notification No.12/2018 – Union Territory Tax (Rate), dated 29th June, 2018]***

4) CLARIFICATIONS ON APPLICABLE GST RATE ON PRIORITY SECTOR LENDING CERTIFICATES (PSLCS), RENEWABLE ENERGY CERTIFICATES (RECS) AND OTHER SIMILAR SCRIPS

The Central Government has clarified that Renewable Energy Certificates (RECs) and Priority Sector Lending Certificates (PSLCs) and other similar documents are classifiable under heading 4907 and attract 12% GST. The duty credit scrips, however, attract Nil GST under S.No. 122A of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017. – ***[Circular No. 46/20/2018-GST, dated 6th June, 2018]***

5) CLARIFICATIONS OF CERTAIN ISSUES UNDER GST

The Central Government has examined and provided clarifications regarding certain below mentioned issues under the GST laws through the present Circular:

i. Whether would moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer be leviable to tax and whether OEMs would be required to reverse input tax credit in this case;

ii. How would the servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, be treated under GST;

iii. In case of auction of tea, coffee, rubber etc., whether the books of accounts are required to be maintained at every place of business by the principal and the auctioneer, and whether they are eligible to avail input tax credit;

iv. In case of transportation of goods by railways, whether goods can be delivered even if the e-way bill is not produced at the time of delivery;

v. Whether e-way bill is required in the cases: a.) Where goods transit through another State while moving from one area in a State to another area in the same State; b.) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State. – ***[Circular No. 47/21/2018-GST, dated 8th June, 2018]***

6) CLARIFICATIONS ON ISSUES RELATED TO SEZ AND REFUND OF UNUTILIZED ITC FOR JOB WORKERS

The Central Government has examined and provided clarifications regarding certain below mentioned issues under the GST laws through the present Circular:

i. Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an interstate supply (under Section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under Section 12(3)(c) of the IGST Act, 2017);

ii. Whether the benefit of zero-rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc;

iii. Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under Section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017. – ***[Circular No. 48/22/2018-GST, dated 14th June, 2018]***

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INTELLECTUAL PROPERTY RIGHTS

1) CALCUTTA HIGH COURT FOUND THE MARKS 'TOOFAN' AND 'SNJ' DECEPTIVELY SIMILAR TO THE PLAINTIFF'S MARKS 'tooFAN' and 'SNB'

The Calcutta High Court after comparing both the registered marks of the plaintiff, namely 'tooFAN' and 'SNB' with the impugned marks used by the defendant, namely 'TOOFAN' and 'SNJ', concluded that the defendant's marks are deceptively similar to the registered marks by the plaintiff. It was also observed that the nature of business and the products, i.e., sale of electrical fans and coolers is similar. The Court observed that the conduct of the defendant clearly shows the dishonest intention to free ride on the reputation of the petitioners, and establishes a prima facie case of passing off and infringement. Hence, the Court granted an ex-parte interim order in favour of the plaintiffs. – ***[Shambhu Nath & Bros & Ors vs Imran Khan, dated 13th June, 2018 (Calcutta HC)]***

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CONSUMER

1) SUPREME COURT STAYS NCDRC'S ORDER PERMITTING ISSUE OF PUBLIC NOTICE IN A CLASS ACTION COMPLAINT

The National Consumer Disputes Redressal Commission (NCDRC) had allowed a public notice to be issued in a class action complaint instituted by a medical imaging company against Tata Communications Limited, having lost their data. The complainant had entered into a contract with Tata to preserve clinical records of their customers in 2012 but lost access to the data in 2016. However, the Supreme Court has

stayed the Order of the NCDRC, holding it to be non-compliant with Section 12 (1) (c) of the Consumer Act. – [***Supreme Court of India, July, 2018]***

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ENVIRONMENT

1) EXPERT PANEL WILL TO BE SET UP TO USE ADVANCED TECHNOLOGY TO DEAL WITH AIR POLLUTION

As per the directions of the Environment Ministry, a committee of experts would be formed to look into the technological advances, including application of satellite-based measurement, to improve air quality and reduce pollution.

Therefore, in a meeting conducted to discuss the advanced technologies to deal with the rising air pollution and improving the overall air quality management framework; it was decided that an expert group will be constituted which will provide its recommendation in a month's time on early warning system, including dissemination protocol and application of satellite-based measurement for improving air quality information and management. Further, the department of Science and Technology would take lead on technology interventions.

The institutions that were part of the meeting with ministry officials included Satellite Application Centre of ISRO, Department of Science and Technology, Council of Scientific and Industrial Research-National Physical Laboratory, IIT Delhi, IIT Mumbai, National Environmental Engineering Research Institute, India Meteorological Department, Indian Institute of Tropical Meteorology and Bureau of Indian Standards.

The issues that were taken up during the discussion included use of satellite-based Aerosol Optical Depth data for estimating ground-based PM 2.5 levels, establishing early-warning system and dissemination protocol to inform public and enforcing agencies about episodic high-pollution events in advance. The assessment of air pollution mitigation technologies along with setting up of a system for certification of air quality emission monitoring instruments were also the topics of discussion during the meeting. ***–[The Times of India, dated 25th June, 2018]***

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