RBI/FEMA

1) KCC FACILITY EXTENDED TO ANIMAL HUSBANDRY FARMERS AND FISHERIES

Referring to the Master Circular - Kisan Credit Card (KCC) Scheme, the RBI has extended the KCC facility to Animal Husbandry farmers and Fisheries for their working capital requirements. The guidelines are given in the Annexure to the present Circular. – ***[FIDD.CO.FSD.BC.12/05.05.010/2018-19, dated 4th February, 2019]***

2) LIMIT FOR COLLATERAL FREE AGRICULTURAL LOANS RAISED

Keeping in view the overall inflation and rise in agriculture input cost over the years since 2010, RBI has decided to raise the limit for collateral free agricultural loans from the existing level of Rs. 1 lakh to Rs. 1.6 lakh. – ***[FIDD.CO.FSD.BC.No.13/05.05.010/2018-19, dated 7th February, 2019]***

3) RELAXATION OF ECB FRAMEWORK FOR RESOLUTION APPLICANTS UNDER CORPORATE INSOLVENCY RESOLUTION PROCESS

The RBI has amended the External Commercial Borrowing (ECB) Policy, to permit resolution applicants to raise ECBs, under the approval route, from recognised lenders, to be utilised for repayment of term loans availed by a corporate debtor. The RBI has, however, clarified that such ECBs cannot be availed by resolution applicants from branches/overseas subsidiaries of Indian banks. Resolution applicants which are eligible to borrow ECBs under the ECB Policy, can forward their proposals to raise ECBs, through their authorised dealer banks, to the Foreign Exchange Department of the RBI for approval. – ***[A.P. (DIR Series) Circular No. 18, dated 7th February, 2019]***

4) RBI LIFTS CAP ON FPI INVESTMENTS IN CORPORATE BONDS

As per the extant guidelines, there was a 20% concentration limit for FPIs to invest in the Indian debt market. In order to encourage a wider spectrum of investors to access the Indian corporate debt market, RBI has decided to withdraw this provision with immediate effect. – ***[A.P. (DIR Series) Circular No. 19, dated 15th February, 2019]***

5) SALIENT FEATURES OF INTEREST SUBVENTION SCHEME FOR MSMES

The Government of India, on November 2, 2018, has announced the Interest Subvention Scheme for MSMEs 2018. The RBI *vide* present Circular has notified salient features and operational guidelines for implementation of the said scheme.

Small Industries Development Bank of India (SIDBI) is the single national level nodal implementation agency for the scheme. – ***[FIDD.CO.MSME.BC.No.14/06.02.031/2018-19, dated 21st February, 2019]***

6) RBI EASES RISK WEIGHTS NORMS FOR EXPOSURES TO NBFCS

Under extant guidelines on Basel III Capital Regulations, exposures/claims of banks on rated as well as unrated Non-deposit Taking Systemically Important Non-Banking Financial Companies (NBFC-ND-SIs), other than Asset Finance Companies (AFCs), Non-Banking Financial Companies - Infrastructure Finance Companies (NBFCs-IFC) and Non-Banking Financial Companies - Infrastructure Development Fund (NBFCs-IDF), have to be uniformly risk-weighted at 100%. With a view to facilitating flow of credit to well-rated NBFCs, RBI has decided that rated exposures of banks to all NBFCs, excluding Core Investment Companies (CICs), would be risk-weighted as per the ratings assigned by the accredited rating agencies, in a manner similar to that for corporates. Exposures to CICs will continue to be risk-weighted at 100%. – ***[DBR.BP.BC.No.25/21.06.001/2018-19, dated 22nd February, 2019]***

7) REVIEW OF INSTRUCTIONS ON BULK DEPOSIT

In terms of extant instructions, banks have been given discretion to offer differential rate of interest on the bulk deposits as per their requirements and Asset-Liability Management (ALM) projections. In this connection, as announced in the 'Statement on Developmental and Regulatory Policies' of the Sixth Bi-monthly Monetary Policy Statement dated February 07, 2019, it has been decided to revise the definition of 'bulk deposits' and provide operational freedom to banks in raising these deposits. Accordingly, instructions contained in Master Directions on Interest Rate on Deposits issued *vide* DBR.Dir.No.84/13.03.00/2015-16 dated March 03, 2016 stand amended as under:

The existing paragraph No. 3(a)(i)(i) on bulk deposit of the aforesaid Master Direction stands replaced as under:

(i) Single Rupee term deposits of Rupees two crore and above for Scheduled commercial Banks (excluding Regional Rural banks) and Small Finance Banks. – ***[DBR.DIR.BC.No.27/13.03.00/2018-19, dated 22nd February, 2019]***

8) HARMONISATION OF DIFFERENT CATEGORIES OF NBFCS

Over a period of time, evolution of the NBFC sector has resulted in several categories of NBFCs intended to focus on specific sector/ asset classes. Different sets of regulatory prescriptions were accordingly put in place. On a review, RBI has decided that in order to provide NBFCs with greater operational flexibility, harmonisation of different categories of NBFCs into fewer ones shall be carried out based on the principle of regulation by activity rather than regulation by entity. Accordingly, it has been decided to merge the three categories of NBFCs *viz.* Asset Finance Companies (AFC), Loan Companies (LCs) and Investment Companies (ICs) into a new category called NBFC - Investment and Credit Company (NBFC-ICC). Differential regulations relating to bank's exposure to the three categories of NBFCs viz., AFCs, LCs and ICs stand harmonised *vide* Bank's Circular DBR.BP.BC.No.25/21.06.001/2018-19 dated, February 22, 2019. Further, a deposit taking NBFC-ICC shall invest in unquoted shares of another company which is not a subsidiary company or a company in the same group of the NBFC, an amount not exceeding twenty per cent of its owned fund. – ***[DNBR (PD) CC.No.097/03.10.001/2018-19, dated 22nd February, 2019]***

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FOREIGN TRADE

1) UPLOADING OF ADJUDICATION & APPELLATE ORDERS ON THE DGFT WEBSITE

It has been decided that all the adjudicating/appellate authorities in DGFT RAs & SEZs would upload such orders on the DGFT website immediately on issue of such Orders. In this regard, a new link has been created on the DGFT website. – ***[File No. 18/82/2018-19/ECA-1, 8th February, 2019 (DGFT)]***

2) ONLINE MODULE FOR FILING & TRACKING QUALITY COMPLAINTS OR TRADE DISPUTES RELATING TO INTERNATIONAL TRADE

In an endeavour to resolve complaints or trade disputes relating to international trade and to create confidence in the business environment of India, a mechanism to address such issues has been provided in Chapter 8 of the Foreign Trade Policy/Handbook of Procedures, 2015-2020. These largely relate to- (a) Complaints received from foreign buyers in respect of poor quality of the products supplied by exporters from India; (b) complaints of importers against foreign suppliers in respect of quality of the products supplied; and (c) complaints of unethical commercial dealings categorized mainly as non-supply/ partial supply of goods after confirmation of order; supplying goods other than the ones as agreed upon; non-payment; nonadherence to delivery schedules, etc.

Up to now such complaints/Trade Disputes are being filed, received and processed manually. Now an Online module has been created to facilitate filing and tracking of these Quality Complaints/Trade Disputes. **–*[Trade Notice No. 47/2015-2020, 11th February, 2019 (DGFT)]***

3) CLARIFICATION ON ELIGIBILITY OF EXPORTS MADE FROM SEZ/EOU UNITS ON BEHALF OF THE DTA UNITS, BUT NOT THROUGH DTA UNITS

It is clarified that the exports which are made/have been made directly from a EOU/ SEZ unit to foreign consumer in which export documents are prepared and filed at the customs office of concerned SEZ/EOU Unit, mentioning the name of the EOU/SEZ unit along with the name of the DTA unit on whose behalf the exports is made, would be eligible for MEIS benefits subject to condition that only one of the said units either EOU/SEZ unit or the DTA unit can claim the benefits under MEIS. It is further clarified that the eligibility as above, is applicable to only those cases where goods are produced by the EOU/SEZ unit and are exported directly to the foreign consumer, with the name of the DTA. **–*[Policy Circular No. 20/2015-2020, 22nd February, 2020, (DGFT)]***

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CORPORATE

1) MCA AMENDS COMPANIES (SIGNIFICANT BENEFICIAL OWNERS) RULES, 2018

MCA has amended the Companies (Significant Beneficial Owners) Rules, 2018 as follows:

(1) It has substituted clauses (b) to (e) of Rule 2(1) which are definitions of "control", "form", "majority stake", "partnership entity", "reporting company", "section", "significant beneficial owner" and "significant influence". Amongst others the important new definitions are:

(a)"majority stake" means holding more than one-half of the equity share capital or voting rights in the body corporate or having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate.

(b)"significant beneficial owner" in relation to a reporting company means an individual referred to Section 90(1) who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlement in such reporting company:

(i)holds indirectly, or together with any direct holdings, not less than 10% of the shares;

(ii)holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;

(iii)has right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;

(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone:

An individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following:

(i)the shares in the reporting company representing such right or entitlement are held in the name of the individual;

(ii)the individual holds or acquires a beneficial interest in the share of the reporting company under Section 89(2) and has made a declaration in this regard to the reporting company.

The amended definition also covers individuals holding a right or entitlement indirectly through HUF, body corporates, partnership entities, trusts, pooled investment vehicles which are members in the reporting company. Also, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares'.

"significant influence" has been defined as the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies

(2) The new Rule 2A states that every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner as defined in the Rules, and directs such individuals to file declaration. Also, the company shall serve notice to all members (other than individuals) of a company who are holding not less than 10% of shares or voting rights or right to receive or participate in dividend or any distribution payable in a financial year,

seeking information in accordance with Section 90(5).

(3) Rules 3 and 4 have been substituted to provide that every significant beneficial owner of a company has to file declaration to that effect within 90 days of commencement of the amendment rules. Every individual, who subsequently becomes a significant beneficial owner/ or where his significant beneficial ownership undergoes any change shall file a declaration within thirty days of acquiring such significant beneficial ownership or any change therein. Further, upon receipt of declaration under rule 3, the reporting company shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within thirty days from the date of receipt of such declaration by it.

(4) Rule 7 has been substituted to provide that in case the significant beneficial owner fails to give satisfactory information in accordance with Section 90(7), the company can apply to the National Company Law Tribunal for 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 or any other distribution 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.

(5) Rule 8 has been substituted providing that the Rules shall not apply to the extent the share of the reporting company is held by-

(a) the authority constituted under Section 125 (5) of the Companies Act, 2013;
(b) its holding reporting company;
(c) However, the details of such holding reporting company shall be reported in Form No. BEN-2;
(d) the Central Government, State Government or any local Authority;
(e) a reporting company, or a body corporate, or an entity, controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;
(f) SEBI registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InvITs);
(g) Investment Vehicles regulated by RBI or IRDAI or PFRDA

(6) Forms BEN-1, Form No. BEN-2, Form No. BEN-3 and BEN4 have also been substituted. ***– [Ministry of Corporate Affairs, 8th February, 2019 (MCA)]***

2) MCA DIRECTS ICAI TO WITHDRAW CLARIFICATION REGARDING ROTATION PRINCIPLES U/S 139

MCA has directed Institute of Chartered Accountants of India (ICAI) to withdraw its clarification regarding clarification on applicability of rotation principles on a Company, u/s 139 of the Companies Act, 2013 (Act) where the company ceases to fall under the ambit of Rotation principles in subsequent years. The issuance of any clarification on different provisions of the Act falls in MCA's domain and ICAI is neither empowered nor competent to issue such clarification. Thus, MCA has directed ICAI to intimate MCA the reasons for issuing such announcement without any authority and specific approval of the Ministry. ***–[Ministry of***

Corporate Affairs, dated 15th February, 2019 (MCA)]

3) GOVT SIMPLIFIES, WIDENS DEFINITION OF STARTUP TO PROVIDE RELIEF FROM ANGEL TAX

The Department for Promotion of Industry and Internal Trade (DPIIT) has issued Notification expanding the definition of Start-ups and aiming to ease burden of angel tax on start-ups. The highlights of the Notification are as follows:

(1) An entity shall be considered as a Start-up:

(a) Up to a period of **10 years** from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under Section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.

(b) Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded **Rs. 100 crores.**

(c) Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

An entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Start-up' and the entity shall cease to be a Start-up on completion of 10 years from the date of its incorporation/registration or if its turnover for any previous year exceeds Rs.100 crores.

(2) DPIIT has relaxed the norms for Start-ups seeking exemption under Section 56 (2) (viib) of Income Tax Act which treats angel investments into a company as "income from other sources" and taxes Start-ups at 30% of the amount. Accordingly, start-ups will be exempted under Section 56(2) (viib) if it is a private limited company recognized by DPIIT and is not investing in any of the following assets:

(a)building or land appurtenant thereto, being a residential house, other than that used by the Start-ups for the purposes of renting or held by it as stock-in-trade, in the ordinary course of business;
(b) land or building, or both, not being a residential house, other than that occupied by the Start-ups for its business or used by it for purposes of renting or held by it as stock-in trade, in the ordinary course of business;
(c) loans and advances, other than loans or advances extended in the ordinary course of business by the Start-ups where the lending of money is substantial part of its business;
(d) capital contribution made to any other entity;
(e) shares and securities;
(f) a motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds ten lakh rupees, other than that held by the Start-ups for the purpose of plying, hiring, leasing or as stock-in-trade, in the ordinary course of business;
(g) jewellery other than that held by the Start-ups as stock-in-trade in the ordinary course of business;
(h) any other asset, whether in the nature of capital asset or otherwise, of the nature specified in sub-clauses (iv) to (ix) of clause (d) of Explanation to Section 56 (2) (vii) of the Act.

Start-ups shall not invest in any of the assets specified above for a period of 7 years from the end of the latest financial year in which shares are issued at premium.

(3) The aggregate limit of Rs. 25 crore will exclude consideration received by eligible Start-ups for the following classes of persons: (a) Non-Residents; (b) Alternative Investment Funds-Category-I registered with SEBI; (c) Listed company having a net worth of Rs.100 Crores or turnover of at least Rs. 250 crore provided that its shares are frequently traded as per SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

(4) Start-ups will file a duly signed declaration with DPIIT for availing exemption. The declaration will be transmitted by DPIIT to CBDT. ***–[Ministry of Commerce and Industry, 19th February, 2019]***

4) THE COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) SECOND AMENDMENT RULES, 2019

MCA has amended Form PAS-3 in the Companies (Prospectus and Allotment of Securities) Rules, 2014. Accordingly, in Form PAS-3, in serial number 6, item (b), the words *"not allotted securities with an application size of less than twenty thousand per person"* against the second check box shall be omitted. ***–[Ministry of Corporate Affairs, 19th February, 2019 (MCA)]***

5) MCA AMENDS THE COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014

MCA has substituted Rule 3 of the Companies (Adjudication of Penalties) Rules, 2014 providing:

(1) The Central Government may appoint any of its officers not below the rank of Registrar as adjudicating officers for adjudging penalty under the provisions of the Companies Act, 2013.

(2) An adjudicating officer shall issue a written notice to the Company, the officer in default or 'any other person' as the case may be - (i) clearly indicating the nature of non-compliance/default, (ii) drawing attention to the relevant penal provisions of the Act, and (iii) maximum penalty which can be imposed thereunder. The reply to such notice shall be filed in electronic mode within the period specified in the notice.

(3) After giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer shall pass an order: (a)within 30 days of issuing notice under sub-rule (2) or the extended period where physical appearance was not required under sub-rule (5); (b)within 90 days of the date of issue of notice under sub-rule (2) where any person appeared before the adjudicating officer under sub-rule (5)

(4) The Rule also lays down the powers of the adjudicating officer such as summoning and enforcing the attendance of any person acquainted with the facts of the case; ordering for evidence or producing any document relevant to the subject matter; etc.

(5)It outlines the criteria required to be considered by the adjudicating officer while adjudging the quantum of penalty such as size and nature of business of the Company, injury to public interest, nature of default amongst others

(6)The Rule also states that in no case will the penalty imposed be less than the minimum penalty prescribed under the relevant section of the Companies Act, 2013. ***–[Ministry of Corporate Affairs, 20th February, 2019 (MCA)]***

6) MCA HAS INTRODUCED NEW E-FORM INC 22A

MCA has introduced new e-form INC 22A – also known as e-Form ACTIVE (Active Company Tagging Identities and Verification) by introducing Rule 25A to the Companies (Incorporation) Rules, 2014.

The e-form INC 22A is applicable to every Company Incorporated on or before December 31, 2017. However, any company which has not filed its due financial statements under section 137 or due annual returns under Section 92 or both with the Registrar shall be restricted from filing e-Form-ACTIVE, unless such company is under management dispute and the Registrar has recorded the same on the register.

Companies which have been struck off or are under process of striking off or under liquidation or amalgamated or dissolved, as recorded in the register, are not required to file e-Form ACTIVE

In case a company does not intimate the said particulars, the Company shall be marked as "ACTIVE-non-compliant" on or after 26th April, 2019. Such defaulting Companies will not be allowed to file following e- forms: (a) SH-7 (Change in Authorized Capital); (b) PAS-3 (Change in Paid-up Capital); (c) DIR-12 (Changes in Director except cessation); (d) INC-22 (Change in Registered Office); and (e) INC-28 (for amalgamation /demerger)

If a company files "e-Form ACTIVE", on or after 26th April, 2019, the company shall be marked as "ACTIVE Compliant", on payment of fee of ten thousand rupees.

Pursuant to the introduction of new e-form INC 22A (ACTIVE), MCA has also amended the companies (Registration offices and Fees) Rules, 2014. In the Annexure, after item VII, relating to fees for filing e-form DIR-3 KYC, the fee for filing e-form INC 22A (ACTIVE) has been inserted. Fees will be Rs. Nil for filing till April 25, 2019 and Rs. 10,000/- for filing after April 25, 2019. ***–[Ministry of Corporate Affairs, 25th February, 2019 (MCA)]***

7) PRESIDENT GIVES ASSENT TO STAMP ACT AMENDMENTS

The President has given his assent to the Amendments to the Indian Stamp Act, 1899 that were introduced as part of the Finance Act 2019. The Government had announced in the Union Budget 2018-19 (to take reform measures with respect to Stamp Duty regime on financial securities transactions in consultation with the States and make necessary amendments to the Indian Stamp Act, 1899. The salient features of the Amendments are as follows:

The amendments propose to create the legal and institutional mechanism to enable states to collect stamp duty on securities market instruments at one place by one agency (through the Stock Exchanges or Clearing Corporations authorised by the stock exchange or by the Depositories) on one Instrument. A mechanism for appropriately sharing the stamp duty with relevant State Governments based on state of domicile of the buying client is also proposed.

Each security is charged with a duty as specified in Schedule I of the Act. Securities are defined to include - all those instruments specified in Section 2(h) of the Securities Contracts (Regulation) Act, 1956; a 'derivative' as defined in Section 45U(a) of the RBI Act, 1934; a Certificate of Deposit, Commercial Usance Bill, commercial paper and such other debt instrument of original or initial maturity up to 1 year as the RBI may specify from time to time; repo on Corporate Bonds; and any other instrument declared by the Central Government, by Notification in the Official Gazette, to be securities for the purposes of this Act.

All rates are applicable only on one side (either by the buyer or by the seller but not by both). Currently, the States charge stamp duty on both sides.

While fixing the rates, the rates charged by Maharashtra are taken as the benchmark it accounts for around 70% of the total stamp duty collection in the country. However, the rates are chosen in a manner to provide a revenue neutral position to the state governments while reducing overall tax burden for investors.

While duty is applicable normally on the transaction value, in case of swaps the first leg of the cash flow; in case of options its premium; and in case of repo on corporate bonds the interest paid by the borrower are considered for levy of duty.

For all exchange based secondary market transactions in securities, stock exchanges (SEs) shall collect the duty; and for off-market transactions (which are made for a consideration as disclosed by trading parties) and initial issue of securities happening in demat form, depositories shall collect the duty. In the future event of inter-operability of clearing corporations (CCPs), irrespective of the stock exchange on which the trade is executed, stock exchanges can authorize CCPs to collect stamp duty on behalf of state governments.

State of domicile of the buying client or that of the broking house/depository Participant of the buying client (in case the buyer is outside India, as in the case of Foreign Portfolio Investors (FPIs) would be taken as the basis for remitting duty to the respective States.

Issue of securities has also been proposed to be brought into the same tax framework as that of trading of securities, that is, authorising depositories to collect duty from companies and redistributing to States based on the domicile State of subscribers /buyers of security.

The depositories /repositories and trading platforms under the jurisdiction of RBI are also brought into this framework. However, Government Securities (G-secs) and instruments based on G-secs have been excluded from the purview of stamp duty. Platforms, which facilitate liquidity adjustments like call money market have also been excluded.

It is proposed that no stamp duty shall be collected by the State on any secondary record of transaction associated with a transaction on which the depository/stock exchange has been authorised by the State Government to collect the stamp duty to avoid multiple incidence of taxation.

Subsequent to the enactment of the Act, it is proposed to create a Coordination Council under Article 263 of the Indian Constitution by a separate order/notification of the President of India. This Council comprising of representatives from Union and States may be tasked with the responsibility of making recommendations regarding review / revision of stamp duty rates. The Government will also notify the required rules. ***–[Ministry of Finance, 21st February, 2019 (MoF)]***

8) K. SASHIDHAR V. INDIAN OVERSEAS BANK & ORS

These appeals have arisen from the common judgment and order of the NCLAT rendered in appeals filed in relation to the insolvency resolution process under the provisions of the Insolvency and Bankruptcy Code, 2016 (I&B Code/IBC/Code) concerning Kamineni Steel & Power India Pvt. Ltd. (KS&PIPL) and Innoventive Industries Ltd. (IIL). The NCLAT affirmed the Order passed by the NCLT-Mumbai recording rejection of the Resolution Plan concerning IIL and directing initiation of liquidation process under Chapter III of Part II of the I&B Code. As regards KS&PIPL, the NCLAT reversed the decision of the NCLT Hyderabad which had approved its Resolution Plan and instead remanded the proceedings to NCLT Hyderabad for initiation of liquidation process in terms of Section 33 and 34 of the I&B Code. In both the cases, the NCLAT held that the resolution plan did not garner support of not less than 75% of voting share of the financial creditors constituting the Committee of Creditors (CoC) the same stood rejected and thereby warranted initiation of liquidation process of the concerned corporate debtor, namely, KS&PIPL and IIL.

The appeal was filed on the ground that while the I&B Code mandated a minimum of 75% of the voting share, the same has been reduced to 66% by the amendment of 2018 during the pendency of the appeal and further, the percentage of votes for approval (55.73%) of the resolution proposal and the voting share rejecting the proposal was only 15.15%. Taking these votes only, the proportionate percentage of the voting share for approval will obviously be more than 75% (i.e., approximately 78.63%).

The issue framed before the apex court was whether the requirement of approval of resolution plan by vote of not less than 75% (as it was before the amendment of 2018) of voting share of financial creditors is mandatory and the said minimum number was not met in this case.

The Supreme Court of India held that in the case of the corporate debtor KS&PIPL, the resolution plan, when it was put to vote in the meeting of CoC held on 27th October, 2017, could garner approval of only 55.73% of voting share of the financial creditors and even if the subsequent approval accorded by e-mail (by 10.94%) is taken into account, it did not fulfill the requisite vote of not less than 75% of voting share of the financial creditors. On the other hand, the resolution plan was expressly rejected by 15.15% in the CoC meeting and later additionally by 11.82% by e-mail. Thus, the resolution plan was expressly rejected by not less than 25% of voting share of the financial creditors. In such a case, the resolution professional was under no obligation to submit the resolution plan under Section 30(6) of the I&B Code to the adjudicating authority. Instead, it was a case to be proceeded by the adjudicating authority under Section 33(1) of the I&B Code. Similarly, in the case of corporate debtor IIL, the resolution plan received approval of only 66.57% of voting share of the financial creditors and 33.43% voted against the resolution plan. This being the indisputable position, NCLAT opined that the Resolution Plan was deemed to be rejected by the CoC and the concomitant is to initiate liquidation process concerning the two corporate debtors.

With respect to the contention that the stipulation in Section 30(4) of the I&B Code as applicable at the relevant time in October 2017 is only directory and not mandatory, SC observed that this argument is founded on the expression "may" occurring in Section 30(4) of the I&B Code. In that, the word "may" is ascribable to the discretion of the CoC to approve the resolution plan or not to approve the same. What is significant is the second part of the said provision, which stipulates the requisite threshold of "not less than seventy five percent of voting share of the financial creditors" to treat the resolution plan as duly approved by the CoC. That stipulation is the quintessence and made mandatory for approval of the resolution plan. Any other interpretation would result in rewriting of the provision and doing violence to the legislative intent.

The Supreme Court further observed that Regulations 25 and 39 must be read in light of Section 30(4) of the I&B Code, concerning the process of approval of a resolution plan. For that, the "percent of voting share of the financial creditors" approving vis-à-vis dissenting is required to be reckoned. It is not on the basis of members present and voting as such. At any rate, the approving votes must fulfill the threshold percent of voting share of the financial creditors. Keeping this clear distinction in mind, it must follow that the resolution plan concerning the respective corporate debtors, namely, KS&PIPL and IIL, is deemed to have been rejected as it had failed to muster the approval of requisite threshold votes, of not less than 75% of voting share of the financial creditors. Thus, no fault can be found with the NCLAT for having recorded the fact that the proposed resolution plan in respect of both the corporate debtors was approved by vote of "less than 75%" of voting share of the financial creditors or deemed to have been rejected. In that event, the inevitable corollary is to initiate liquidation process relating to the concerned corporate debtor, as per Section 33 of the I&B Code.

Further, the Supreme Court observed that on receipt of a CoC approved resolution plan, the NCLT is only required to satisfy itself that such plan meets the requirements specified in Section 30(2). This is explicitly spelt out in Section 31 of the Code. NCLT cannot turn down a CoC approved plan for any reason beyond non-compliance of Section 30(2). It also clarified the scope of the Appellate jurisdiction of the NCLAT. A NCLT approved plan can be challenged only on the grounds mentioned in 61(3). Thus, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors. The fact that substantial or majority percent of financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75% (after amendment of 2018 w.e.f. 06.06.2018, 66%) of voting share of the financial creditors.

As regards the amendment in Section 30(4) made effective from November 23, 2017 requiring financial creditors to consider "feasibility and viability" of the revival plan, the SC clarified that the intent of the amendment is merely to list out the factors that financial creditors are expected to bear in mind while taking their decisions on resolution plans. The intent of this amendment is not to allow adjudicating authorities to call to question the decisions. Also, it is to be noted that, this amendment, being in the nature of clarification, is prospective in implementation.

Placing reliance on the July 2018 amendment which substituted the threshold requirement of 75% to 66%, it was contended that, since the same was brought into force when appeals were pending, the NCLAT was obliged to consider its effect on the present cases. Rejecting the said contention, SC held that the amendment under consideration pertaining to Section 30(4), is to modify the voting share threshold for decisions of the CoC and cannot be treated as clarificatory in nature. It changes the qualifying standards for reckoning the decision of the CoC concerning the process of approval of a resolution plan. The rights/obligations crystallized between the parties and, in particular, the dissenting financial creditors in October 2017, in terms of the governing provisions can be divested or undone only by a law made in that behalf by the legislature. There is no indication either in the report of the Committee or in the Amendment Act of 2018 that the legislature intended to undo the decisions of the CoC already taken prior to 6th day of June, 2018. It is not possible to fathom how the provisions of the amendment Act 2018, reducing the threshold percent of voting share can be perceived as declaratory or clarificatory in nature. In such a situation, the NCLAT could not have examined the case on the basis of the amended provision. For the same reason, the NCLT could not have adopted a different approach in these matters. Hence, no fault can be found with the impugned decision of the NCLAT.

Dismissing the appeals, the Supreme Court held that the NCLAT had justly concluded in the impugned decision that the Resolution Plan of the concerned corporate debtor(s) has not been approved by requisite percent of voting share of the financial creditors; and in absence of any alternative resolution plan presented within the statutory period of 270 days, the inevitable sequel is to initiate liquidation process under Section 33 of the Code. ***-[K. Sashidhar v. Indian Overseas Bank & Ors, Civil Appeal No.10673 of 2018, 5th February, 2019 (Supreme Court of India)]***

9) **TATA STEEL LIMITED V. LIBERTY HOUSE GROUP PTE. LTD. & ORS.**

Tata Steel Limited (TSL) was one of the Resolution Applicants (TSL, Liberty House and JSW Steel Limited) for Bhushan Power & Steel Limited (Corporate Debtor) and has challenged the order dated 23rd April, 2018 passed by the Adjudicating Authority (NCLT, New Delhi), wherein the Committee of Creditors (CoC) of the Corporate Debtor was directed to consider the Resolution Plan submitted by the Respondent No.1- Liberty House Group Pte. Limited. TSL and JSW Steel both had submitted their Resolution Plans. JSW Steel had already submitted its Resolution Plan on 8th February, 2018 and after the 23rd April, 2018 Order passed by the Adjudicating Authority submitted an improved financial offer on 26th July, 2018. TSL objected the improved financial offer before the Resolution Professional (RP) and the CoC on 26th July, 2018. The CoC gave equal opportunity to all three Resolution Applicants and allowed them to submit improved financial offers by 31st July, 2018. TSL instead of filing an improved financial offer, filed an I.A. No. 1096 of 2018 before this Appellate Tribunal for restraining the

RP and CoC from considering the improved financial offers.

The issue framed before the National Company Law Appellate Tribunal (NCLAT)- Whether a suitor that submitted a belated bid for Corporate Debtor should be disqualified from the bidding process because it did not adhere to the guidelines laid out in the process document?

The NCLAT held that TSL was adamant not to submit any revised financial offer but on subsequent oral request, TSL was allowed to submit revised financial offer and they filed five revised financial offers, including the offer given in the original Resolution Plan. Therefore, TSL could not take plea that after submission of the original Resolution Plan that no revised financial offer could be submitted. JSW Steel submitted that the CoC has the right to consider improved financial offers. TSL as a Resolution Applicant had no vested right or fundamental right to have its 'Resolution Plan' considered or approved. Moreover, the Resolution Applicant could not challenge a decision of the CoC at any stage, till the plan was approved by the Adjudicating Authority under Section 31. Admittedly, the Adjudicating Authority had not taken any decision on any of the plans and therefore, the Appellate Adjudicating Authority held that there was no cause of action for the TSL to prefer the appeal. By impugned order dated 23rd April, 2018, the Adjudicating Authority has only allowed the CoC to consider the Plan submitted by Liberty House, but that did not mean that their plan was approved. The Court also stated that CoC would have to ensure a time bound process, to better preserve the economic value of the asset and it was also their duty to ensure that the Resolution Plan was viable, feasible and maximized the assets of the Corporate Debtor. Considering the decision in *Binani Industries Limited Vs. Bank of Baroda & Anr. Company Appeal (AT) (Insolvency) No. 82 of 2018*, the Court stated that prior to the CoC voting upon the Plan, it could call for and consider the improved financial offer(s) in accordance with the statutory mandate to ensure value maximization. The 'Process Document' for the 'Corporate Insolvency Resolution Process' of the Corporate Debtor does not curtail CoC's powers to maximize value. As per Clause 1.3.6 of the process document, the CoC had the right to negotiate better terms with the 'Compliant Resolution Applicant(s). As per Clause 1.14.13, the RP in consultation with CoC could extend the timelines at its sole discretion if expedient for obtaining the best 'Resolution Plan' for the Company. Therefore, granting more opportunity to all the eligible Resolution Applicants to revise their financial offers, even by giving more opportunity, was permissible in the Law. Therefore, it was held that this appeal was premature, uncalled for, and in absence of any final decision taken by the Adjudicating Authority under Section 31, this appeal was also not maintainable. –*[**Tata Steel Limited** v. **Liberty House Group Pte. Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 198 of 2018, 4th February, 2019 (NCLAT)]***

10) STERLING INTERNATIONAL ENTERPRISES LTD. VS. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT

The Resolution Professional (Applicant) of Sterling SEZ and Infrastructure Ltd. ("Corporate Debtor") has filed an application requesting the Tribunal to direct the Enforcement Directorate (ED) to release the provisional (or final, if confirmed) attachment on all the assets and properties of the company and hand over the charge to the Resolution Professional. A Section 7 petition was admitted against the Corporate Debtor on 16.07.2018 and the Applicant was appointed as the Interim Resolution Professional (IRP) and subsequently confirmed as Resolution Professional (RP). The office of the Enforcement Directorate had provisionally attached the assets belonging to the Corporate Debtor *vide* order/notice dated 29.05.2018 and corrigendum dated 14.06.2018 as part of certain proceedings initiated by the office of the Enforcement Directorate against the Corporate Debtor. Thereafter, the Applicant intimated the Directorate of Enforcement about the initiation of CIRP and imposition of moratorium and also requested the Directorate of Enforcement to withdraw the attachment on the properties and assets of the company as the IRP is required to take charge and custody of the same under the provisions of the Code.

Citing Sections 7, 14 and 238 of the Code, Applicant submitted that during CIRP, the Resolution Professional should decide how the properties and assets of the Corporate Debtor can be appropriated. The Applicant submitted that unless the attachment is withdrawn and properties are set free, he cannot proceed with the CIRP process. The Applicant also cited *Solidaire India Ltd v. Fairgrowth Financial Services Pvt. Ltd., (2001) 3 SCC 71* wherein it was held that where there are two special statues which contain non-obstante clauses, the later statute must prevail.

The issue before the Mumbai bench of National Company Law Tribunal (NCLT) was whether IBC prevails over The Prevention of Money Laundering Act, 2002 (PMLA)?

Considering the submissions made by the applicant, respondent and amicus curiae, the Tribunal observed that the purpose and object of IBC is for resolution of the Corporate Debtor by maximizing the value that can be received by the Creditors and stake holders. PMLA's object is also to recover the property from wrong doers and compensate the affected parties by confiscation and sale of the assets of the wrong doer apart from imposing punishment. The Tribunal held that the overriding provisions of Section 238 of IBC which is the later legislation, when compared to the earlier legislation of PMLA, the provisions of IBC will prevail and hence considering the economic interest of the beneficiaries, the IBC will provide solution at the earliest to the Corporate Debtor as well as to the Creditors.

The Tribunal noted that u/s 14(1)(a) of IBC, moratorium on any kind of proceedings is imposed by the Adjudicating Authority and particularly this attachment is a legal proceeding which squarely falls under the ambit of the said Sections of IBC. Since, the attachment order passed by the PMLA court is hit by the provisions of Section 14 of the Code and considering the overriding effect of IBC under Section 238 of the Code, the Tribunal was of the view that the attachment order under PMLA Act is a nullity and non-est in law and hence it will not have any binding force.

The Tribunal also referred to Section 63 of the IBC and the ruling by the Appellate Authority under PMLA in *Bank of India v. The Deputy Directorate of Enforcement of Mumbai MANU/ML/0040/2018* which held that the proceedings before Adjudicating Authority under PMLA in respect of attached properties is a civil proceedings, the Adjudicating Authority under PMLA does not have jurisdiction to attach the properties of the Corporate Debtor undergoing CIRP. The tribunal noted that considering the economic factors associated with the case and the object of both legislations, it is advisable to take a route where assets can be utilized in a speedy manner rather waiting and lose the value of assets over a period of time.

Thus, the Tribunal held that the attachment order dated 29.05.2018 and the Corrigendum dated 14.06.2018 issued by Respondent and as confirmed Adjudicating Authority under PMLA Court is a nullity and non-est in law in view of Sections 14(1)(a), 63 and 238 of IBC and the Resolution Professional can proceed to take charge of the properties and deal with them under IBC as if there is no attachment order. **– *[Sterling International Enterprises Ltd.* v. *Deputy Director, Directorate of Enforcement, M.A 1280/2018 in C.P. 405/ 2018, 12th February, 2019 (NCLT)]***

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SECURITIES

1) SEBI RELEASES FRAMEWORK FOR PERFORMANCE REVIEW OF PUBLIC INTEREST DIRECTORS (PIDS)

SEBI Board in its meeting dated June 21, 2018 decided that the tenure of Public Interest Directors (PIDs) (appointed in the governing board of Stock Exchanges, Clearing Corporations and Depositories (i.e., Market Infrastructure Institutions or MIIs), may be extended by another 3 years, subject to performance review in the manner specified by the Board. Accordingly, the clauses relating to tenure of PID i.e., Regulation 24(3) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 and Regulation 25(3) of SEBI (Depositories and Participants) Regulations, 2018 were amended. To ensure compliance with these Regulations, SEBI has released a strict framework for the PIDs serving at the MIIs, which is as follows:

(1)**Policy for Performance review of PIDs**: The Nomination and Remuneration Committee (NRC) of the MIIs shall be responsible for framing the performance review policy for PIDs, at least once in 3 years which shall be approved by the governing board of MII. Such policy shall include criteria for performance evaluation, methodology adopted for such evaluation and analysing the results, amongst others. The policy shall include scope for both internal evaluation as well as external evaluation. The guiding criteria of performance review has been provided at Annexure A to this Circular.

(2)**Evaluation mechanism**: The internal and external evaluation shall carry equal weightage. For Internal evaluation: All the governing board members shall evaluate the performance of each PID, on an annual basis at the end of every financial year. For External evaluation: During their last year of the term in a MII, the PIDs shall be subject to external evaluation by a management or a human resources consulting firm who shall evaluate the PID's performance for the entire tenure served in a given MII, at least up to 4 months before expiry of his/ her term. In order to avoid any bias or conflict of interest, external consultant should not be a related party or associated with the MII, the concerned PID or any other governing board members.

(3)**Disclosure**: Performance evaluation criteria for PIDs shall be disclosed in their annual report as well as on the website of the concerned MII.

(4)**Recommendation to SEBI**: After taking into account the performance of a PID in the concerned MII, on the basis of internal and external evaluation, the NRC shall consider and recommend extension of his / her tenure to the Governing Board of the MII who in-turn shall consider and recommend to SEBI if the tenure of the PID is desired to be extended by another term of 3 years.

(5)Additionally, the NRCs of MIIs shall also ensure that the concerned PID hasn't remained absent for 3 consecutive meetings of the governing board and has attended 75% of the total meetings of the governing board in each calendar year, failing which the PID shall be liable to vacate office. Moreover, the PIDs shall be selected from diverse fields of work, in terms of their qualification and experience.

(6)In terms of SECC Regulations, 2018 and SEBI (D&P) Regulations, 2018, it is clarified that a minimum of 2 names shall be submitted by MIIs at the time of making request for appointment of PID and extension of the term of existing PID, including appointment of PID for the purpose of broad basing the governing board, against each such vacancy.

(7)The NRCs of MIIs can adopt additional and more stringent norms while framing a policy for performance review of PIDs. Additionally, the term of existing PIDs serving in a MII for more than three years, can be extended, subject to his / her performance review to a maximum tenure of 6 years as PID in that particular MII. However, PIDs that have already served for 6 years or more in a single MII, shall not be eligible for further extension in that MII. – ***[SEBI/HO/MRD/DOP2DSA2/CIR/P/2019/26, 5th February,2019 (SEBI)]***

2) SEBI ISSUES ELIGIBILITY CRITERIA FOR PHYSICAL SETTLEMENT OF STOCK DERIVATIVES

In furtherance of SEBI Circular dated April 11, 2018 and Circular dated December 31, 2018 and in consultation with Secondary Market Advisory Committee (SMAC), SEBI has issued new conditions with respect to physical settlement of stock derivatives:

In addition to the existing schedule of stock derivatives, the derivatives on stock meeting the eligibility criteria specified will also be physically settled from the new expiry cycle.

The stocks that qualify for physical settlement are the ones that witness an intra-day movement of 10% or above on ten or more occasions in the last six months or three or more occasions in the last one month. Other eligibility criteria for the stock includes an intra-day movement of 25% or above on one or more occasions in the past one month. Also, if the maximum daily volatility of the stock exceeds 10% either in equity or equity derivatives segment in the past one month, the stocks shall be physically settled.

Exchanges shall review the above conditions on a monthly basis. Existing contracts on the stock, however, shall continue to follow the settlement mode as applicable at the time of contract introduction. – ***[SEBI/HO/MRD/DOP1/CIR/P/2019/28, 8th February, 2019 (SEBI)]***

3) SEBI ISSUES FORMAT FOR ANNUAL SECRETARIAL AUDIT REPORT AND ANNUAL SECRETARIAL COMPLIANCE REPORT FOR LISTED ENTITIES AND THEIR MATERIAL SUBSIDIARIES

Pursuant to the recommendations of the Kotak Committee on Corporate Governance and the insertion of new Reg. 24A by the SEBI (Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018, SEBI has issued format for annual secretarial audit report and annual secretarial compliance report for listed entities and their material subsidiaries. Accordingly:

Annual secretarial audit report: Currently, Section 204 of the Companies Act, 2013 read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 requires Secretarial Audit by Practicing Company Secretaries (PCS) for listed companies and certain unlisted companies above a certain threshold in From No. MR-3. In order to avoid duplication, the listed entity and its unlisted material subsidiaries shall continue to use the same Form No. MR-3 as required under Companies Act, 2013 and the rules made thereunder for the purpose of compliance with Regulation 24A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 as well

Annual secretarial compliance report: While the annual secretarial audit shall cover a broad check on compliance with all laws applicable to the entity, listed entities shall additionally, on an annual basis, require a check by the PCS on compliance of all applicable SEBI Regulations and circulars/ guidelines issued thereunder, consequent to which, the PCS shall submit a report to the listed entity in the manner specified in this Circular. The annual secretarial compliance format shall be submitted in the prescribed format by the listed entity to the stock exchanges within 60 days of the end of the financial year. The listed entities and their material subsidiaries would have to provide relevant documents and information to the practising company secretary in order to obtain the certification.

Listed entities and its material unlisted subsidiaries shall submit the annual secretarial audit report, in the annual reports from the financial year ended **March 31, 2019 onwards** and the annual secretarial compliance report with effect from the financial year ended **March 31, 2019 onwards**. –*[**CIR/CFD/CMD1/27/2019, 8th February, 2019 (SEBI)**]*

4) SEBI RELAXES NORMS FOR NON-RESIDENTS TO TRANSFER SHARES TO RELATIVES

Under Schedule VII of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR"), transferee as well as transferor is required to furnish a copy of their PAN (Permanent Account Number) card to the listed entity for registration of transfer of the securities. Many of the non-residents like Overseas Citizens of India (OCIs), Non-Resident Indians (NRIs), Persons of Indian Origin (PIOs) and foreign nationals were facing difficulties in transferring the shares, as many of them do not possess the required PAN card. To address such difficulties, SEBI has decided to grant relaxation to the non-residents from furnishing PAN card details and allowing them to transfer equity shares held by them in the listed entities to their immediate relatives subject to the following conditions:

The relaxation will only be available for transfers executed after January 1, 2016 and, only for non-commercial transactions i.e. transfer by way of gift among immediate relatives.

Besides, the non-resident will be required to provide copy of an alternate valid document to ascertain identity as well as the non-resident status. –*[**SEBI/HO/MIRSD/DOS3/CIR/P/2019/30, 11th February, 2019 (SEBI)**]*

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COMPETITION

1) CCI HAS APPROVED ACQUISITION OF STAKE IN DELHIVERY BY SOFTBANK

The Competition Commission of India (CCI) has approved the acquisition of 22.44 percent stake in logistics firm Delhivery by SoftBank Vision Fund. The deal is worth over Rs 3,200 crore (approx.). According to a filing to the CCI, the deal involves subscription of 22.44 percent of the total share capital of Delhivery and consequently potential subsequent acquisition of shares at a price and on such terms to be agreed. The Japanese company will invest in the logistics firm through its holding company SVF Doorbell. **– *[Competition Commission of India, 27th February, 2019 (CCI)]***

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INDIRECT TAXES

a. CUSTOMS & CENTRAL EXCISE

1) TEMPORARY IMPORTATION OF AIRCRAFTS ALLOWED WITHOUT FURNISHING A BANK GUARANTEE OR CASH DEPOSIT

Notification No. 08/2016- Customs dated the 5th February 2016 amended so as to allow temporary importation of aircrafts, for the purposes of participation in Aero Show organised by the Central Government, without furnishing a bank guarantee or cash deposit. – ***[Notification No. 4 /2019- Customs, dated 7th February, 2019]***

2) BCD OF 200% IMPOSED ON ALL GOODS ORIGINATING IN OR EXPORTED FROM PAKISTAN

Tariff item 9806 00 00 inserted in Chapter 98 of the First Schedule to Customs Tariff act, 1975 to impose basic customs duty of 200% on all goods originating in or exported from Pakistan. – ***[Notification No.05/2019-Customs, dated 16th February, 2019]***

3) POSTPONEMENT OF IMPLEMENTATION OF INCREASED CUSTOMS DUTY ON SPECIFIED IMPORTS ORIGINATING IN USA

Notification No. 50/2017-Customs dated 30th June 2017 further amended to postpone the implementation of increased Customs duty on specified imports originating in USA from 2nd March, 2019 to 1st April, 2019. – ***[Notification No. 06/2019-Customs, dated 26th February, 2019]***

4) FORMATS FOR COURIER BILL OF ENTRY & COURIER SHIPPING BILL SUBSTITUTED

The CBIC has amended the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 *vide* the present Courier Imports and Exports (Electronic Declaration and Processing), Amendment, Regulations, 2019 so as to substitute Form-C (Courier Bill of Entry – XII (CBE-XII) for Samples and Gifts), Form-H (Courier Shipping Bill– IV (CSB - IV) for Goods) and Form-HA (Courier Shipping Bill –V(CSB-V)). – ***[Notification No. 15 / 2019-Customs (N.T.), dated 27th February, 2019]***

Also, the CBIC has amended the Courier Imports and Exports (Clearance) Regulations, 1998 *vide* the Courier Imports and Exports (Clearance), Amendment, Regulations, 2019 so as to substitute Form Courier Shipping Bill-V. – ***[Notification No. 16 / 2019-Customs (N.T.), dated 27th February, 2019]***

5) **SEA CARGO AND MANIFEST AND TRANSHIPMENT REGULATIONS, 2018 POSTPONED**

The CBIC *vide* present Circular has postponed the date of coming into force of Sea cargo and Manifest and Transhipment Regulations, 2018 from 1st March 2019 to 1st August 2019. – ***[Notification No. 17 / 2019-Customs (N.T.), dated 27th February, 2019]***

6) **ADD ON "NON-PLASTICIZED INDUSTRIAL GRADE NITROCELLULOSE DAMPED IN ISOPROPYL ALCOHOL HAVING NITROGEN CONTENT IN THE RANGE OF 10.7% TO 12.2%**

Definitive anti-dumping duty imposed on imports of "Non-Plasticized Industrial Grade Nitrocellulose Damped in Isopropyl Alcohol having Nitrogen content in the range of 10.7% to 12.2%" originating in or exported from Brazil, Indonesia and Thailand. – ***[Notification No. 7/2019-Customs (ADD), dated 7th February, 2019]***

7) **CBIC RESCINDS BOARD CIRCULAR NO. 46/2017-CUSTOMS**

The CBIC has clarified that the Circular No. 46/2017-Customs dated 24th November, 2017 (clarifying the applicability of IGST/GST on goods transferred/sold while being deposited in a warehouse), stands rescinded on the date of supersession by Circular No. 03/01/2018-IGST dated 25th May, 2018 i.e. w.e.f. 01st April, 2018. – ***[Circular No. 04/2019 – Customs, dated 01st February, 2019]***

8) **DISCONTINUATION OF PRINTING OF ADVANCE AUTHORISATIONS/ EPCG AUTHORISATIONS ISSUED FROM 01ST MARCH, 2019 ONWARDS, FOR EDI PORTS**

In order to enhance the ease of doing business for exporters, DGFT has decided to discontinue the issuance of Advance/EPCG Authorisations on security paper as was the practice so far. DGFT has issued Policy Circular 19/2015-2020 dated 14.02.2019 notifying this change. This shall come into effect for authorisations issued from 01.03.2019 onwards for cases where the port of registration is an EDI port. – ***[Circular No.07/2019 - Customs, dated 21st February, 2019]***

b. GST

1) **GST EXEMPTION WITHDRAWN FOR SUPPLY OF SERVICES IN NEPAL OR BHUTAN, AGAINST PAYMENT IN INDIAN RUPEES**

Sl. No. 10D of Notification No. 09/2017-Integrated Tax (Rate) dated 28.06.2017 rescinded in relation to exemption of IGST on supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees. – ***[Notification No. 2/2019 - Integrated Tax (Rate), dated 4th February, 2019]***

2) CHANGES IN CIRCULARS ISSUED EARLIER UNDER THE CGST ACT, 2017

The CGST (Amendment) Act, 2018, SGST Amendment Acts of the respective States, IGST (Amendment) Act, 2018, UTGST (Amendment) Act, 2018 and the GST (Compensation to States) (Amendment) Act, 2018 (hereafter referred to as the GST Amendment Acts) have been brought in force with effect from 01.02.2019. Consequent to the GST Amendment Acts, the below referred circulars were amended to make the necessary changes in accordance with the amendments in the act. – ***[Circular No. 88/07/2019-GST, dated 01st February, 2019]***

i. Circular No. 8/8/2017 dated 04.10.2017 (Master circular relevant for the export procedures and refunds) – It was amended in view of the amendment allowing realization of export proceeds in INR, wherever allowed by the RBI. [Section 2(6) of IGST Act].

ii. Circular No. 38/12/2018 dated 26.03.2018 (Clarification on issues related to Job Work) – It was amended to in view of the amendment carried empowering the Commissioner to extend the period for return of inputs and capital goods from the job worker and also the RCM on services received from un-registered job workers. [Section 9(4) and 143 of CGST Act.]

iii. Circular No. 41/15/2018 dated 13.04.2018 (Procedure for interception of conveyances for inspection of goods in movement, etc.) – It was amended to in view of the amendment carried out extending the time limit from 7 days to 14 days for owner/transporter to pay tax/penalty for seized goods. [Section 129 of the CGST Act].

iv. Circular No. 58/32/2018 dated 04.09.2018 (Recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit) – It was amended to streamline the modes of recovery. Earlier, it was suggested to make the reversals in table 4B of the GSTR-3B but now the previous suggestion was ruled out and specified that all such payments shall be made through FORM DRC-03.

v. Circular No. 69/43/2018 dated 26.10.2018 (Processing of Applications for Cancellation of Registration submitted in FORM GST REG-16) – it was amended in view of notifying the "CGST (Amendment) Act, 2018". Earlier it was mentioned that the amendment is yet to be notified, the same has been removed. [Section 29 of CGST Act.]

3) CLARIFICATIONS REGARDING MENTIONING DETAILS OF INTER-STATE SUPPLIES MADE TO UNREGISTERED PERSONS IN TABLE 3.2 OF FORM GSTR-3B AND TABLE 7B OF FORM GSTR-1

The CBIC observed that the majority of tax payers are not reporting details in Table 3.2 of GSTR-3B. Therefore it has been clarified that the tax payers have to fill the details of supplies to unregistered dealers mandatorily in table 3.2 of GSTR-3B and also in table 7B of GSTR-1. It is mentioned that such disclosure is essential for distributing the funds to respective states. It is also clarified that the non-compliance would lead to levy of penalties under Section 125 of the CGST Act. – ***[Circular No. 89/08/2019-GST, dated 18th February, 2019]***

4) **CLARIFICATIONS REGARDING COMPLIANCE OF RULE 46(N) OF THE CGST RULES, 2017 WHILE ISSUING INVOICES IN CASE OF INTER- STATE SUPPLY**

The CBIC observed that few of the tax payers (majority of banking, insurance and telecom sectors) are not specifying the Place of supply (POS) for the IGST invoices in accordance with Rule 46(n). Therefore it has been clarified that the POS and name of the state has to be mandatorily mentioned. It is also clarified that the non-compliance would lead to levy of penalties under Section 125 of the CGST Act. – ***[Circular No. 90/09/2019-GST, dated 18th February, 2019]***

5) **CLARIFICATION REGARDING TAX PAYMENT MADE FOR SUPPLY OF WAREHOUSED GOODS WHILE BEING DEPOSITED IN A CUSTOMS BONDED WAREHOUSE FOR THE PERIOD JULY, 2017 TO MARCH, 2018**

The CBIC *vide* present Circular has clarified the Circular No. 3/1/2018-IGST dated 25.05.2018 whereby applicability of integrated tax on goods transferred/sold while being deposited in a warehouse was clarified. In the said Circular, it was said that from 1st of April, 2018 the supply of warehoused goods before their clearance from the warehouse would not be subject to the levy of integrated tax.

It has been noticed that during the period from 1st of July, 2017 to 31st of March, 2018, the common portal did not have the facility to enable the taxpayer to report payment of integrated tax, in the details required to be submitted in FORM GSTR-1, for such supplies especially where the supplier and the recipient were located in the same State or Union territory.

Hence taxpayers making such supplies have reported such supplies as intra-State supplies and discharged central tax and state tax instead of integrated tax accordingly.

CBIC clarifies, in view of revenue neutral position of such tax payment and that facility to correctly report the nature of transaction in FORM GSTR-1 furnished on the common portal was not available during the period July, 2017 to March, 2018, it has been decided that, as a one-time exception, suppliers who have paid central tax and state tax on such supplies, during the said period, would be deemed to have complied with the provisions of law as far as payment of tax on such supplies is concerned as long as the amount of tax paid as central tax and state tax is equal to the due amount of integrated tax on such supplies. – ***[Circular No. 91/10/2019-GST, dated 18th February, 2019]***

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INTELLECTUAL PROPERTY RIGHTS

1) **DELHI HC AWARDED PUNITIVE DAMAGES TO THE TUNE OF RS 1.85 CRORE IN A TRADEMARK INFRINGEMENT CASE**

The Delhi HC while holding that the Defendants have been habitual offenders, repeatedly using the Plaintiff's trademark and trade- dress, identical color scheme for the filter paper sold by them, awarded a sum of Rs 1.85 crores as punitive damages to the Plaintiff. The court also awarded permanent injunction restraining the Defendants from infringing and passing off the Plaintiff's mark "WHATMAN" and its unique color combination in the packaging of filter papers. The court further awarded costs on actual basis in favour of the Plainitff and against the Defendants. – ***[Whatman International Limited* v. *P Mehta & Ors., dated 1st February, 2019 (Delhi HC)]***

2) **DELHI HC FOUND MAKEMYHAPPYJOURNEY TO BE DECEPTIVELY SIMILAR TO MAKEMYTRIP**

It was the Plaintiff's case that the Defendant's mark 'MakeMyHappyJourney' is phonetically, visually, structurally and conceptually similar to the Plaintiff's registered mark 'MakeMyTrip'. It was stated that the infringing word mark, which constitutes a predominant feature of the infringing logo marks and the infringing domain name is phonetically, visually, structurally and otherwise deceptively and confusingly similar to the Plaintiff's MakeMyTrip Word Mark and MakeMyTrip logo marks. It was further stated that the adoption of the colour scheme of the Defendant's infringing logo marks is identical to that of the Plaintiff's 'MakeMyTrip' logo marks.
The Court was of the opinion that the Defendant has no real prospect of defending the claim, as despite service, it has neither entered appearance nor filed its written statement. The court therefore held that the Defendants infringing marks constitute infringement under Section 29 of the Trade Marks Act, 1999 apart from constituting a violation of the statutory and common law rights of the Plaintiff. – ***[Make My Trip (India) Private Limited V/s. M/s Make My Happy Journey, dated 8th February, 2019 (Delhi HC)]***

3) **CALCUTTA HC PRIMA-FACIE FOUND MARKS "LIKEBUOY" AND "LOVEBOY" DECEPTIVELY SIMILAR TO "LIFEBUOY"**

The Calcutta HC after being prima facie satisfied that the products sold by the defendants under the marks "LIKEBUOY" and "LOVEBOY" are in infringement of the petitioner's trade mark and copyright subsisting in the labels in which the petitioner's product "LIFEBUOY" is sold and are also in infringement of the petitioner's registered wordmark "LIFEBUOY", granted an interim injunction in favour of the Plaintiff. – ***[Hindustan Unilever Limited* v. *Utkarsh Somani & Anr., dated 1st February, 2019 (Calcutta HC)]***

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CONSUMER

1) **A CASE OF WRONG DIAGNOSIS CANNOT BE EQUATED TO MEDICAL NEGLIGENCE**

The Supreme Court of India upheld the decision of the National Consumer Disputes Redressal Commission and exonerated the doctor from the allegation.

The case concerns a patient with oesophageal cancer, hypertension and type 2 diabetes who was admitted in Santokba Durlabhji Memorial Hospital with complaint of chills and fever. The patient was discharged after few days but the health kept deteriorating and she died within next few weeks. A case of medical negligence was filed before the Rajasthan state consumer dispute commission.

The complainant alleged (a) inappropriate and ineffective medication; (b) premature discharge of the deceased despite her condition warranting treatment in ICU.

The doctor in defence contended that when the patient was discharged her vitals were normal with no infection in her chest or her urinary tract. The Supreme Court dismissed the compliant of the complainant. ***–[Vinod Jain* v. *Santokba Durlabhji Memorial Hospital, Civil Appeal No.2024 of 2019 (Supreme Court of India)]***

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ENVIRONMENT

1) SC QUASHES NGT ORDER ON REOPENING OF STERLITE PLANT

The Supreme Court has quashed the NGT Order which had directed reopening of Vedanta's Sterlite plant in Tamil Nadu's Tuticorin and asked the company to approach the HC for relief. A SC bench set aside the order of NGT saying it had no jurisdiction to pass order and the matter should have been decided by the HC. Noting that the plant has been shut down since April last year, the apex court said the company may file an application before the HC for expeditious hearing on its plea. – ***[The Times of India, dated 19th February, 2019]***

2) NGT SLAPS RS 100 CR FINE ON TN FOR FAILING TO PROTECT ENVIRONMENT AND WATER BODIES

The principal bench of the NGT slapped a fine of Rs. 100 crore against the Tamil Nadu government for failing to protect the environment in the past. The compensation would be utilised to restore the water bodies, particularly Cooum, Buckingham canal and Adyar River. – ***[The Times of India, dated 16th February, 2019]***

3) BUILDER TOLD TO PAY RS 1 CRORE FOR GREEN RULES VIOLATION

The NGT has directed a developer to deposit Rs. 1 crore as "interim cost of damage to the environment" for violating rules during construction of a luxury residential project in MIG Colony in Bandra (E). The project is Rustomjee Oriana, being developed by Resilience Realty Pvt Ltd. The Tribunal held that environmental clearances given for two additional floors, comprising 16 flats-each sold for Rs. 6 crore, were not given according to procedures. – ***[The Times of India, dated 14th February, 2019]***

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