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RBI/FEMA

1) **RBI ENHANCES HOUSING-LOAN LIMITS UNDER PRIORITY SECTOR LENDING FOR RRBs, SFBs**

In order to bring the RRBs and SFBs at a level playing field with other Scheduled Commercial Banks, RBI has decided to enhance the housing loan limits for eligibility under priority sector lending. Accordingly, in respect of RRBs and SFBs, housing loans to individuals up to Rs.35 lakh in metropolitan centres (with population of ten lakh and above) and Rs.25 lakh in other centres, provided the overall cost of the dwelling unit in the metropolitan centres and at other centres does not exceed Rs.45 lakh and Rs.30 lakh, respectively will be eligible for classification under Priority Sector Lending. Furthermore, the existing family income limit of Rs.2 lakh per annum, eligible 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.18 /04.09.01/2018-19, dated 06th May, 2019]*

2) **RBI WITHDRAWS CIRCULAR ASKING BANKS TO DECLARE IL&FS EXPOSURE**

In view of the National Company Law Appellate Tribunal's (NCLAT) Order dated May 2, 2019 in respect of Company Appeal (AT) No. 346 of 2018 and I.A. No. 1139 of 2019, the RBI withdrew its earlier Circular which mandated banks and financial institutions to disclose their outstanding amount to Infrastructure Leasing and Financial Services (IL&FS) and its group companies including provisioning required as per income recognition and asset classification (IRAC) and actual provisioning made against non-performing assets (NPAs). – *[DBR.BP.BC.No.38/21.04.048/2018-19, dated 08th May, 2019]*

3) **PROCEDURE FOR TIMELY RECONCILIATION OF TRANSACTIONS (I.E., ATM CASH REPLENISHMENT) BETWEEN THE BANK, THE SERVICE PROVIDER AND ITS SUB-CONTRACTOR**

On the recommendations of the Committee on Currency Movement [Chair: Shri D.K. Mohanty, Executive Director, Reserve Bank of India] relating to timely reconciliation of transactions (i.e., ATM cash replenishment) between the bank, the service provider and its sub-contractor, RBI has decided that the bank shall follow the procedure as under:

- a. Cash indents by the Service Provider shall be made at least a day in advance (T-1 where T is the day of cash loading), in consultation with the chest / nodal branch. Multiple points

of cash withdrawal may be avoided and shall be restricted to one in each centre. However, metropolitan centres may have two points of cash withdrawal.

- b. Reconciliation of transactions shall be done between the bank, the service provider and its sub-contractors at least on a T+3 basis.
- c. In the event of a dispute or the reporting of alleged / attempted breach of security / laid down procedures, access to video footage of the ATM may be provided by the bank to the service provider and its sub-contractors on request.

Further, as a part of outsourcing arrangements for cash management, the bank shall encourage their service provider and its sub-contractors to:

- a. put in place an efficient digital records management system for data retrieval and reconciliation.
- b. create and maintain a data base of employees at industry level through any unique mode / code of identification by the Self-Regulatory Organisation to ensure that they possess unblemished records. – *[DCM (Plg) No.2746/10.25.07/2018-19, dated 14th May, 2019]*

4) APPOINTMENT OF CHIEF RISK OFFICER (CRO) FOR NBFCs

With the increasing role of NBFCs in direct credit intermediation, the RBI felt a need for NBFCs to augment risk management practices. While Boards of NBFCs should strive to follow best practices in risk management, RBI has decided that NBFCs with asset size of more than Rs.50 billion shall appoint a CRO with clearly specified role and responsibilities. The CRO is required to function independently so as to ensure highest standards of

risk management. Instructions in this regard which are to be strictly followed are provided in the present Circular. – *[DNBR (PD) CC. No.099/03.10.001/2018-19, dated 16th May, 2019]*

5) REVISION OF DIRECTIONS ON 'VOLUNTARY RETENTION ROUTE' (VRR) FOR FOREIGN PORTFOLIO INVESTORS (FPIs) INVESTMENT IN DEBT

The RBI has revised the directions on VRR for FPIs investment in debt and the revised directions have been annexed to the present Circular which are made applicable with immediate effect. Changes include, inter alia, the following:-

- Introduction of a separate category, viz., VRR-Combined;
- The requirement to invest at least 25% of the Committed Portfolio Size within one month of allotment has been removed;
- FPI are provided with an additional option at the end of the retention period, viz., continue to hold their investment until the date of maturity or the date of sale, whichever is earlier. – *[A.P. (DIR Series) Circular No.34, dated 24th May, 2019]*

6) RBI EXTENDS LAST CUT-OFF TIMING FOR RTGS TILL 6 P.M.

The RBI has extended the last cut-off timing for customer transactions through Real Time Gross Settlement Systems (RTGS) from 4.30pm to 6pm on all working days, effective June 1, 2019. – *[DPSS (CO) RTGS No. 2488/04.04.016/2018-19, dated 28th May, 2019]*

7) EXTENSION OF RELAXATION ON THE GUIDELINES TO NBFCS ON SECURITISATION TRANSACTIONS

RBI has decided to extend the dispensation provided under Circular DNBR (PD) CC.No.95/03.10.001/2018-19 dated November 29, 2018 on “Relaxation on the guidelines to NBFCS on securitisation transactions, till December 31, 2019. – *[DNBR (PD) CC. No. 100/03.10.001/2018-19, dated 29th May, 2019]*

FOREIGN TRADE

1) AMENDMENT IN THE PARA 3.01 (B) OF THE HANDBOOK OF PROCEDURES

The number of entries of shipping bills/ Airway bills which can be filed in a single online ANF 3D application has been increased from 50 to 250 for claiming MEIS benefit. – *[File no. 01/61/180/16/AM17/PC-3, 7th May, 2019 (Director General of Foreign Trade)]*

2) SUPPLY OF ESSENTIAL COMMODITIES TO THE REPUBLIC OF MALDIVES DURING 2019-20

Export of Potatoes, Onions, Rice, Wheat Flour, Sugar, Dal and Eggs has been permitted to the Republic of Maldives under bilateral trade agreement between Government of India and Government of Maldives during the period 2019-20 w.e.f. April, 2019 as per the quantities indicated in the Notification. The export of above items to Republic of Maldives will be exempted from any existing or future restriction / prohibition on

export. – *[Notification No. 4/2015-2020, 7th May, 2019 (DGFT)]*

3) DISCONTINUING SUBMISSION OF PHYSICAL COPY OF RCMCS WITH EFFECT FROM 1.7.2019 WHILE FILING APPLICATION FOR INCENTIVES/ENTITLEMENTS UNDER FTP

A copy of the RCMC is a requirement for filing any application to DGFT offices for obtaining incentives/entitlements under FTP, 2015-20. Till now applicants have been submitting the physical copy of the ECMC with the application. In order to improve ease of doing business and reduce transaction cost it has been decided to discontinue the requirement of submission of physical copy of the RCMC with effect from 1.7.2019. The validity of RCMCs will be checked directly from the DGFT’s data base which has the uploaded data of RCMCs from EPCs.

All exporters are advised to ensure that their valid RCMCs are duly uploaded by their respective EPCS in the DGFT server. All EPCS are requested to ensure that their latest data regarding RCMCs is uploaded in the DGFT server urgently and also on a regular basis so that exporters are not put to any disadvantages in availing incentives/entitlements. – *[TRADE NOTICE NO. 12/2019-20, 13th May, 2019 (DGFT)]*

4) AMENDMENT IN IMPORT POLICY OF BIOFUELS

Policy condition providing for free import of bio-fuels by actual users is deleted. Import policy of bio-fuels is “restricted” for all purposes and its import will require import licence from DGFT. –

[Notification No. 06/2015-2020, 24th May, 2019
(DGFT)]

CORPORATE

1) **INSOLVENCY PROFESSIONALS TO ACT AS INTERIM RESOLUTION PROFESSIONALS AND LIQUIDATORS (RECOMMENDATION) GUIDELINES, 2019**

Section 16(3)(a) of the Insolvency and Bankruptcy Code, 2016 (Code) requires the Adjudicating Authority (AA) to make a reference to the Insolvency and Bankruptcy Board of India (Board) for recommendation of an insolvency professional (IP) who may act as an interim resolution professional (IRP) in case an operational creditor has made an application for corporate insolvency resolution process (CIRP) and has not proposed an IRP.

Further, Section 34(4) of the Code requires the AA to replace the resolution professional, if (a) the resolution plan submitted by the resolution professional under Section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of Section 30; (b) the Board recommends the replacement of a resolution professional to the AA for reasons to be recorded in writing; or (c) the resolution professional fails to submit written consent under Section 34(1).

When a reference or direction is received under Section 16 or 34 of the Code from the AA for recommending / proposing the name of an IP, the Board has no information about the volume, nature and complexity of the CIRP or Liquidation

Process and the resources available at the disposal of an IP. In such a situation, the Board is unlikely to add much value by recommending an IP for a CIRP / Liquidation. Further, it takes some time for a reference or a direction from the AA to reach the Board. The Board may take up to ten days to identify an IP for the purpose. It also takes some time for the recommendation of the Board to reach the AA, after which the AA could appoint the recommended IP. The process of appointment of an IRP or Liquidator may entail 2-3 weeks, which could be saved if the AA has a ready panel of IPs recommended by the Board and it can pick up any name from the Panel while issuing the Order.

Thus, it is felt necessary to have guidelines to prepare a Panel of IPs for the purpose of Section 16(4) and 34(6) from amongst the registered IPs. The Board will prepare a common Panel of IPs for appointment as IRPs and Liquidators and share the same with the AA. The AA may pick up any name from the Panel for appointment of IRP or Liquidator, as the case may be, for a CIRP or Liquidation process, respectively. The Panel will have Bench wise list of IPs based on the registered office of the IP. It will have a validity of six months and a new Panel will replace the earlier Panel every six months.

An IP will be eligible to be in the Panel of IPs if – (a) there is no disciplinary proceeding, whether initiated by the Board or the IPA of which he is a member, pending against him; (b) he has not been convicted at any time in the last three years by a court of competent jurisdiction; (c) he expresses his interest to be included in the Panel for the relevant period; (d) he undertakes to discharge the responsibility as IRP or Liquidator, as he may be appointed by the AA; and (e) he has made the

compliance under Regulation 7(2) (ca) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 for the year 2018-19.

An IP will be included in the Panel against the Bench under whose jurisdiction his registered office (his address as registered with the Board) is located. For example, an IP located in Kolkata will be included in Panel against the Kolkata Bench of the AA. The guidelines further prescribe areas covered in respect of different Benches of the AA.

Expression of Interest: The Board shall invite expression of interest from IPs in Form A to act as an IRP or Liquidator by sending an e-mail to IPs at their e-mail addresses registered with the Board. The expression of interest must be received by the Board in Form A, attached to the guidelines, by the specified date.

It must be explicitly understood that an IP, who is included in the Panel based on his expression of interest, must not: (a) withdraw his interest to act as IRP or Liquidator, as the case may be; (b) decline to act as IRP or Liquidator, as the case may be, if appointed by the AA; or (c) surrender his registration to the Board or membership to his IPA during the validity of the Panel.

Ongoing assignment: The eligible IPs will be included in the Panel in order of the volume of ongoing processes they have in hand. The IP who has the lowest volume of ongoing processes will get a score of 100 and will be at the top of the Panel. The IP who has the highest volume of ongoing processes will get a score of 0. The difference between the highest volume and the lowest volume will be equated to 100 and other IPs will get scores between 0 and 100 depending

on volume of their ongoing assignments. – *[Insolvency and Bankruptcy Board of India, 14th May 2019]*

2) AN APPLICATION FOR AVOIDANCE OF PREFERENTIAL TRANSACTION UNDER SECTION 43 IS LIABLE TO BE REJECTED WHERE TRANSFER OF PROPERTY TO THE CORPORATE DEBTOR HAS BEEN MADE IN ORDINARY COURSE OF BUSINESS. FURTHER, WHERE RESPONDENTS HAVE NOT BEEN TERMED TO BE ‘RELATED PARTY’, THE APPLICATION FOR AVOIDANCE OF UNDERVALUED TRANSACTION UNDER SECTION 45 IS UNCALLED FOR

The resolution professional of Shivkala Developers (P.) Ltd. (the “Corporate Debtor”) filed three applications under Sections 45, 49, 50(5) and 66 read with Section 25(2) of the Insolvency and Bankruptcy Code, 2016 (“Code”) for setting aside the transaction entered into by the corporate debtor on the grounds of preferential transfer carried out with a view to defraud the creditors. The counsel for the resolution professional submitted that the sale considerations reflected in the registered agreement are much below the circle rates of the relevant period and therefore undervalued. It was submitted that the transactions were fraudulent with the intention to defraud the creditors of the corporate debtor. It was further submitted that possession was handed over to the buyers without obtaining NOC or completion certificate and is therefore in violation of terms and conditions of the lease deed executed by Noida Authority.

The National Company Law Appellate Tribunal noted that the corporate debtor was in the

business of development of real estate and was allotted land by Noida Authority to develop a commercial complex. The same was sold to purchasers including the respondents in appeal.

The Appellate Tribunal noted that it is not the case of the resolution professional that the transfer of property or interest thereof to the corporate debtor for the benefit of a creditor has been made or the transfer has been effective on putting such creditor in beneficial position that it would have been in the event of distribution of assets in accordance with Section 53. No such case having pleaded, the Appellate Tribunal held that the resolution professional failed to make out a case under Section 43 and transfer in question having made in the ordinary course of business, the corporate debtor being a developer of real estate on the land allotted by Noida Authority for development of commercial complex, the application under Section 43 had been rightly rejected.

Further, the Appellate Tribunal observed that where the respondents are neither a 'related party' nor the transactions were made with any person during one year preceding the insolvency commencement date and in fact were made about 8-9 years back, the application under Section 45 read with section 46 preferred by the resolution professional was uncalled for. *–[Anup Kumar v. BDR Builder & Developers (P.) Ltd. And others; Anup Kumar v. Chharia Holding (P.) Ltd. and others; and Anup Kumar v. Vipul Motors (P.) Ltd. and others, 2nd May, 2019, National Company Law Appellate Tribunal (NCLAT)]*

3) SET OFF BETWEEN CREDITORS AND CORPORATE DEBTORS IS TO BE LEGALLY PERMITTED UNDER THE INSOLVENCY PROCEEDINGS

Where in miscellaneous applications the issue was that if a corporate debtor was to recover a due from its creditor, whether the said creditor was entitled to first deduct its money in turn recoverable from corporate debtor out of the payment or it was prohibited under the Insolvency and Bankruptcy Code, 2016 (the "Code") of such adjustment due to commencement of moratorium, the National Company Law Tribunal held that applicant was legally entitled to set off the amount due while making a payment of the amount retained out of the total consideration settled.

The miscellaneous applications were filed by the operational creditors of Bharti Airtel Limited and Bharti Hexacom Limited (collectively "Airtel Entities"), which entered into "Spectrum Trading Agreements" with Aircel Limited and Dishnet Wireless Limited (collectively "Aircel Entities"), for the transfer of right to use the spectrum in the 2300 MHz band in favour of Airtel Entities. The application was filed for direction to the resolution professional to honour the legal and equitable right of the Airtel Entities to apply set off on account of mutual dealings for an amount of approximately Rs.112 crores, during the corporate insolvency resolution process.

The Mumbai Bench of National Company Law Tribunal (NCLT) held that if under judicial compliance of a court order an operational creditor is to make a payment to a corporate debtor, which is under insolvency, adjustment of set off its due is to be granted so that only the net

amount can be disbursed. *–[Bharti Airtel Limited and another v. VijayKumar v. Iyer, 1st May, 2019, Mumbai Bench of National Company Law Tribunal (NCLT)]*

SECURITIES

1) PERMITTING FOREIGN PORTFOLIO INVESTORS (FPIS) TO INVEST IN MUNICIPAL BONDS

In accordance with the provisions of SEBI (Foreign Portfolio Investors) Regulations, 2014, FPIs are from the date of the Circular permitted to invest in municipal bonds. *– [IMD/FPIC/CIR/P/2019/62, 8th May, 2019 (SEBI)]*

2) PARTICIPATION OF MUTUAL FUNDS IN COMMODITY DERIVATIVES MARKET IN INDIA

The SEBI has decided to permit the participation of mutual funds in Exchange Traded Commodity Derivatives (ETCDs) and such participation is subject to: -

(a) mutual funds are permitted to participate in ETCDs in India, except in commodity derivatives on 'Sensitive Commodities'; (b) ETCDs having gold as the underlying, shall also be considered as 'gold related instrument' for Gold Exchange Traded Funds (Gold ETFs); (c) No mutual fund schemes shall invest in physical goods except in 'gold' through Gold ETFs. Further, as mutual fund schemes participating in ETCDs may hold the underlying goods in case of physical settlement of contracts, in that case mutual funds shall

dispose of such goods from the books of the scheme, at the earliest, not exceeding 30 (thirty) days from the date of holding of the physical goods; (d) No mutual fund scheme shall have net short positions in ETCDs on any particular good, considering its positions in physical goods as well as ETCDs; and (e) mutual funds are permitted to participate in ETCDs through hybrid schemes and Gold ETFs.

Prior to participation in the ETCDs, the Asset Management Company (AMC) shall adhere to the following: - (a) Appoint a dedicated fund manager with requisite skill and experience in commodities market; (b) Appoint a custodian registered with the Board for custody of the underlying goods, arising due to physical settlement of contracts; (c) have written down investment policy for participation in ETCDs approved by the Board of the AMC and the Board of Trustees; (d) Have written down valuation policies approved by the Board of the AMC and the Board of Trustees for valuation of commodity derivatives and the underlying goods, arising due to physical settlement of contracts.

Investment Limits: Participation of mutual funds in ETCDs shall be subject to the following investment limits: (a) Mutual fund schemes shall participate in ETCDs of a particular goods (single), not exceeding 10% of net asset value of the scheme. However, the limit of 10% is not applicable for investments through Gold ETFs in ETCDs having gold as underlying; (b) In case of multi assets allocation schemes, the exposure to ETCDs shall not be more than 30% of the net asset value of the scheme; (c) In case of other hybrid schemes excluding multi assets allocation scheme, the participation in ETCDs shall not exceed 10% of net asset value of the scheme; (d)

in case of Gold ETFs, the cumulative exposure to gold related instruments i.e., Gold Deposit Scheme (GDS) of banks, Gold Monetization Scheme (GMS) and ETCD having gold as the underlying shall not exceed 50% of net asset value of the scheme. However, within the 50% limit, the investment limit for GDS and GMS as part of gold related instrument shall not exceed 20% of net asset value of the scheme. The unutilized portion of the limit for GDS of banks and GMS can be utilized for ETCD having gold as the underlying; and (e) the cumulative gross exposure through equity, debt and derivative positions (including commodity derivatives) shall not exceed 100% of net asset value of the scheme.

Disclosures: In case of mutual fund schemes investing in ETCDs, the AMC shall adhere to the following: (a) the NAVs of those schemes shall be updated on daily basis by the AMCs on their website and on the website of AMFI by 09:00 a.m. of the following calendar day; (b) the format of monthly and half yearly portfolio may be modified to reflect the investment in ETCDs; (c) the total exposure to ETCDs shall be disclosed as a line item in the Monthly Cumulative Report (MCR) submitted by mutual funds. – *[SEBI/HO/IMD/DF2/CIR/P/2019/65, 21st May, 2019 (SEBI)]*

3) FRAMEWORK FOR THE PROCESS OF ACCREDITATION OF INVESTORS FOR THE PURPOSE OF INNOVATORS GROWTH PLATFORM

Accredited Investors (AIs) for the limited purpose of Innovators Growth Platform (“IGP”), are investors whose holding in the Issuer Company, is eligible for the computation of at least 25% of the pre-issue capital in accordance with Regulation

283(1) of the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018 (“**ICDR Regulations**”).

Eligibility: The following entities shall be eligible to be considered as AIs: (a) any individual with total gross income of Rs. 50,00,000/- annually and who has minimum liquid net worth of Rs. 5,00,00,000/-; and (ii) any body corporate with net worth of Rs.25,00,00,000/-.

Procedure for accreditation: (a) The investor, having a demat account with a Depository, will make an application to the Stock Exchanges/Depositories in the manner prescribed by them for recognition as an AI. The Stock Exchanges /Depositories may use the services of Brokers/Depository participants respectively for such purpose; (b) detailed documentation as enumerated in the annexure to the circular shall be required.

The accreditation granted by the Stock Exchange/Depository shall be valid for a period of three years from the date of issue of such accreditation unless the AI becomes ineligible due to change in his/her/its financial status in which case such AI shall inform the Stock Exchange/Depository of such ineligibility. – *[SEBI/HO/CFD/DIL2/CIR/P/2019/67, 22nd May, 2019 (SEBI)]*

4) ENHANCED DISCLOSURE IN CASE OF LISTED DEBT SECURITIES

Disclosure of compensation arrangement with clients by DTs on their websites: DTs shall disclose the nature of compensation arrangement with its clients on their websites, including the minimum fee to be charged (in absolute terms or

as a percentage of the issue size) and factors determining the same.

Calendar of interest/ redemptions, due and paid, to be displayed on the website of DT(s) for the financial year: (a) DTs shall display on their website the ISIN wise details of interest/ redemption due to the debenture holders in respect of all issues during a financial year within 5 working days of start of financial year. DTs shall also update such details for any new issues handled during the financial year within 5 days of closure of the Issue; (b) DTs shall also update the status of payment ISIN-wise against such issuers not later than 1 day from the due date. In case the payment is made with a delay by the issuer, DTs shall update the calendar specifying the date of such payment, with a remark 'delayed payment'.

Furnishing of updated list of debenture holders to the DTs by Issuers/ Registrars to an Issue and Share Transfer Agent (RTA): RTA / Issuers shall henceforth forward the details of debenture holders to the DT at the time of allotment and thereafter by the seventh working day of every next month in order to enable DTs to keep their records updated and to communicate effectively with the debenture holders, especially in situations where events of default are triggered.

Additional covenants in case of privately placed issues: In privately placed issues, additional Covenants as under, shall be included as part of the Issue Details in the summary term sheet, as per the agreement between the issuer and investor: (a) Default in Payment: In case of default in payment of Interest and/or principal redemption on the due dates, additional interest of atleast @ 2% p.a. over the coupon rate shall be payable by the Company for the defaulting

period; (b) In case of delay in listing of the debt securities beyond 20 days from the deemed date of allotment, the Company shall pay penal interest of atleast @ 1 % p.a. over the coupon rate from the expiry of 30 days from the deemed date of allotment till the listing of such debt securities to the investor.

It is clarified that amendments may be made, to incorporate the aforesaid additional covenants in the summary term sheet issued and/or agreement executed on or after May 7, 2019. *-[SEBI/ HO/ MIRSD/ DOS3/CIR/P/2019/68, 27th May, 2019 (SEBI)]*

COMPETITION

1) THE POWERS AND DUTIES OF AN ENTITY SHALL FALL WITHIN THE DEFINITION OF "ENTERPRISE" IN TERMS OF SECTION 2(H) OF THE COMPETITION COMMISSION ACT, BEFORE ALLEGED CONTRAVENTION OF SECTION 4 OF THE COMPETITION ACT CAN BE ESTABLISHED

The case of the Appellant- 'Informant' is that he is the proprietor of a material testing laboratory namely, 'Venus Testing and Research Laboratory', which provides testing services throughout the State of Madhya Pradesh. His grievance relates to a Scheme of Bureau of Indian Standard i.e., 'Bureau of Indian Standards, Laboratory Recognition Scheme' ("Laboratory Recognition Scheme" for short), particularly with regard to one of the conditions which stipulates that a laboratory seeking recognition under this Scheme should have an accreditation to IS/ISO/IEC-17025 or ISO-IEC17025 in the respective field of testing

such as mechanical, electrical, chemical or microbiological as applicable.

Further, the accreditation body (through which the accreditation is taken by the Appellant-‘Informant’ lab) should be a full member of ‘Asia Pacific Laboratory Accreditation Corporation’ and/ or ‘International Laboratory Accreditation Corporation’.

It was submitted that by imposition of such a condition in the ‘Laboratory Recognition Scheme’, ‘Bureau of Indian Standard’ has contravened the provisions of Section 4 of the Act as the laboratories which are accredited by an accreditation body that is not a member of ‘Asia Pacific Laboratory Accreditation Corporation’/ ‘International Laboratory Accreditation Corporation’ cannot get recognized under the ‘Laboratory Recognition Scheme’.

The counsel for the ‘Commission’s submitted that no case has been made out and also submitted that the provisions as laid down by ‘Bureau of Indian Standards’ in the ‘Laboratory Recognition Scheme’ do not come within the meaning of Section 4.

The National Company Law Appellate Tribunal noted that in the present case, the ‘Bureau of Indian Standards’ has carried out the impugned activity, in question, for which the criteria, required to be prescribed for recognition of laboratories under ‘Laboratory Recognition Scheme’ have been laid down with the purpose to ensure quality in laboratory testing services by outside laboratories, which would provide product certification under its product certification scheme. Thus, the activity, under consideration, is being carried out by the ‘Bureau of Indian

Standards’ under the mandate vested in it under the ‘BIS Act’. Thereby, we hold that the ‘Bureau of Indian Standards’ has acted within the scope of the ‘BIS Act’ under which it has been created.

The ‘Bureau of Indian Standards’ is exercising its power to perform such duties as assigned under the Act for maintaining and recognition of laboratories for the purposes of standardization and quality control and for such other purposes as prescribed under the Act. Thus, the specific power entrusted on the ‘Bureau of Indian Standards’ under the Act, the NCLAT was of the opinion that the activity of the ‘Bureau of Indian Standards’ does not fall within the scope of the definition of ‘enterprise’ in terms of Section 2(h) of the Act nor it can be alleged to be an activity in contravention of Section 4 of the Act and accordingly the appeal was dismissed. –*[Prem Prakash v. Bureau of India Standard & Ors., 2nd May 2019 (National Company Law Appellate Tribunal)]*

INDIRECT TAXES

a. CUSTOMS

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

Notification No. 50/2017-Customs dated 30th June 2017 amended so as to postpone the implementation of increased customs duty on specified imports originating in USA from 16th May, 2019 to 16th June, 2019. – *[Notification No. 15/2019-Customs, dated 14th May, 2019]*

2) ADD ON SACCHARIN

Anti-dumping duty imposed on "Saccharin", originating in or exported from Indonesia, in pursuance with anti-dumping investigation final findings issued by the DGTR. – *[Notification No. 20 /2019-Customs (ADD), dated 3rd May, 2019]*

3) ADD ON DUCTILE IRON PIPES

Notification No. 23/2013-Customs(ADD), dated 10th October, 2013, amended, so as to extend the anti-dumping duty on ductile iron pipes originating in, or exported from China PR till 23rd June, 2019. – *[Notification No. 21/2019-Customs (ADD), dated 9th May, 2019]*

4) GUIDELINES FOR LAUNCHING OF PROSECUTION IN RELATION TO OFFENCES PUNISHABLE UNDER THE CUSTOMS ACT, 1962

Taking note of steep rise in the cases of outright of gold and foreign currency by foreign nationals and that the accused persons have no interest /asset in India and once released on bail, they are not available to face trial, even service of Show Cause Notice to these foreigners becomes difficult. Accordingly, it was suggested that "foreign currency" may be added in the list of items mentioned in para 6 of the Circular dated 23.10.2015 as amended and where the case relates to foreign nationals, it may be allowed to launch prosecution within 60 days.

CBIC has decided to therefore substitute Para 6 of the aforesaid Circular with the following, namely: "6. Stage for launching of prosecution: Normally prosecution may be launched immediately on completion of adjudication proceedings.

However, in respect of cases involving offences relating to items, viz. Gold, Foreign Currency, Fake Indian Currency Notes, Arms, Ammunitions and explosive, antiques, art treasures, wild life items and endangered species of flora and fauna, prosecution may preferably be launched immediately after issuance of Show Cause Notice under the Customs Act, 1962. Further in cases involving Foreign Nationals prosecution may be launched at the earliest even before issuance of Show Cause Notice." – *[Circular No. 12/2019 – Customs, dated 24th May, 2019]*

b. CENTRAL EXCISE & SERVICE TAX

1) REVISED PROCEDURE FOR ELECTRONIC FILING OF CENTRAL EXCISE RETURNS

The CBIC *vide* present Circular has prescribed the revised procedure for electronic filing of Central Excise returns and for electronic payment of Excise duty and Service tax arrears under the new portal www.cbic-gst.gov.in. – *[Circular No. 1069/2/2019/ 2019 – CX, dated 08th May, 2019]*

2) SERVICE TAX NOT APPLICABLE ON PAYMENTS BY NHAI TO TOLL OPERATORS ALLOWING FREE ACCESS TO ROADS DURING DEMONETISATION PERIOD

The CBIC *vide* present Circular has clarified that "Service by way of access to a road or bridge on payment of toll charges" is included in the Negative List. That means that no service tax can

be levied on this service. The service that is provided by toll operators before 8-11-2016, during the period 8-11-2016 to 1-12-2016 and after 1-12-2016 is that of access to a road or bridge. When the service remained the same throughout and it continued to be in the Negative List, there can be no legal reason to treat it differently for the period 8-11-2016 to 1-12-2016”.

Section 66E of the Finance Act, 1994 has to be read along with the other provisions of that Act. A “declared service” cannot, therefore, be assumed to have an overriding or omnibus character over other provisions. Thus, one cannot apply the concept of “declared service” to remove a service from the Negative List and make it a taxable service.

The Circular also clarified that “The service that is provided by toll operators is that of access to a road or bridge, toll charges being merely consideration for that service. On MoRTH/ NHAI’s instructions, for the period 8-11-2016 to 1-12-2016 this service of access to a road/bridge was continued to be provided without the collection of consideration from the actual user of service. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service, does not mean that the service has changed”. – *[Circular 212/2/2019 – Service Tax, dated 21st May, 2019]*

c. GST

1) EXTENSION OF LAST DATE FOR EXERCISING THE OPTION BY PROMOTERS TO PAY TAX AT THE OLD RATES WITH ITC

Notification No. 11/ 2017- Central Tax (Rate) amended so as to extend the last date from 10th to 20th for exercising the option by promoters to pay tax at the old rates of 12%/ 8% with ITC. – *[Notification No. 10/2019-Central Tax (Rate), dated 10th May, 2019]*

Similar notifications have been issued under the Integrated Goods and Services Tax Act & Union Territory Goods and Services Tax Act. - *[Notification No. 9/2019- Integrated Tax (Rate), dated 10th May, 2019 & Notification No. 10/2019- Union Territory Tax (Rate), dated 10th May, 2019]*

INTELLECTUAL PROPERTY RIGHTS

1) POST GRANT OF REGISTRATION OF THE MARK NEITHER THE EXAMINATION REPORT NOR THE REPLY TO THE SAME ARE RELEVANT DOCUMENTS – DELHI HIGH COURT

The Delhi High Court while deciding whether ‘ZEN’ is a generic mark with regard to mobile phones and tablets or not, made an observation that “Once a mark is registered, the certificate of registration has to be seen as it is. Post grant of registration of the mark ZEN, neither the Examination Report dated 01st May, 2010 nor the Plaintiff’s reply are relevant documents.

Another important observation made by the Court in this judgment is with regard to Section 17(2) of the Trademark Act. The Court was of the opinion that Section 17(2) relates to a composite registered trademark and the circumstances under which exclusive rights can be claimed in part of a

registered mark. The Supreme Court in Registrar of Trademarks Vs. Ashok Chandra Rakhit Ltd., AIR 1955 SC 558 and Bhole Baba Milk Food Industries Ltd. vs. Parul Food Specialties Pvt. Ltd. (supra) has held that registration of a label mark does not entitle a proprietor to protection of a specific part of the label. However, the Delhi HC was of the view that a party can overcome the bar under Section 17(2) of the Trade Marks Act, 1999, by filing an action for passing off to claim exclusivity of a part or whole of the registered trademark. Court held that Section 17(2) of the Trade Marks Act, 1999 cannot be used as a license to commit an act of passing off. A subsequent dishonest user cannot take shelter under Section 17(2) and argue that the statute permits it to commit passing off. – **[M/S Teleecare Network India Pvt Ltd v. M/s ASUS Technology Pvt Ltd & Ors., dated 28th May, 2019 (Delhi HC)]**

CONSUMER

1) NCDRC ORDERS ADDITIONAL COMPENSATION TO FARMERS FOR CROP FAILURE

Two farmers from the state of Haryana, have been granted a compensation of almost Rs.5 lakh from Indian Farmers Fertiliser Cooperative Limited (IFFCO), which sold them defective guar seeds that led to 70% crop failure. The farmers won their case at the National Consumer Disputes Redressal Commission (NCDRC).

Vinod Kumar and Vijay Kumar, both farmers from the Shahpur village in the Hisar district of Haryana, had purchased 180 kg of guar seeds manufactured by IFFCO subsidiary Indian Farm Forestry Development Cooperative (IFFDC) in

2012. According to the farmers, IFFDC assured them that the guar seeds would give proper yield of 8 to 10 quintals per acre but despite following proper instructions and procedure, even ploughing their fields thrice for better yield, the crop was not up to the mark.

The farmers approached their district consumer forum, where IFFCO and IFFDC argued that there was no defect in their seeds and won a dismissal. The farmers appealed to the State Commission. In October 2017, Mr. Vinod Kumar was granted crop failure compensation of ₹1.2 lakh, while Mr. Vijay Kumar was granted ₹30,000, apart from additional compensation for mental harassment and the cost of litigation. After one failed appeal, IFFCO and IFFDC paid the compensation to the farmers.

The farmers appealed again to the NCDRC, pointing out that the State Commission did not award even the minimum price of the crop to them while assessing the compensation for the loss. Agreeing with their complaint and request for revision, the NCDRC hiked the compensation amount, awarding Mr. Vinod Kumar ₹3.4 lakh for the loss of his crop and Mr. Vijay Kumar with ₹1.02 lakh, apart from the ₹49,500 previously granted for mental harassment and the cost of litigation. –

[Vijay Kumar v. IFFCO, 17th May, 2019, Revision Petition No.2815 and 2817 of 2018, NCDRC]

ENVIRONMENT

1) NATIONAL GREEN TRIBUNAL ISSUES STRICTER SEWAGE NORMS

The National Green Tribunal has made the norms for the quality of treated sewage more stringent. In an Order, the NGT set a norm of 10 mg per liter biochemical oxygen demand (BOD) as the base for all cities in the country. – *[The Times of India, dated 04th May, 2019]*

2) SC AGREES TO HEAR VOLKSWAGEN PLEA AGAINST NGT'S RS. 500 CRORE FINE

In a relief to German carmaker Volkswagen, the Supreme Court agreed to hear its plea against the NGT Order directing it to pay Rs.500 crore as fine for using a 'cheat device' in its diesel cars and directed that no coercive action be taken against the automobile company, which has so far paid Rs.100 crore. – *[The Times of India, dated 07th May, 2019]*

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