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RBI/FEMA

1) AMENDMENTS TO LARGE EXPOSURES FRAMEWORK (LEF)

In order to capture exposures and concentration risk more accurately and to align the instructions on LEF with international norms, the RBI has notified the following amendments to the said instructions:

i. Exclusion of entities connected with the sovereign from definition of group of connected counterparties;
ii. Introduction of economic interdependence criteria in definition of connected counterparties;
iii. Mandatory application of look-through approach (LTA) in determination of relevant counterparties in case of collective investment undertakings, securitisation vehicles and other structures.

Revised guidelines superseding the earlier circulars have been annexed with the present Circular. – ***[DBR.No.BP.BC.43/21.01.003/2018-19, dated 03rd June, 2019]***

2) NOTIFICATION OF PRUDENTIAL FRAMEWORK FOR RESOLUTION OF STRESSED ASSETS

The RBI with a view to providing a framework for early recognition, reporting and time bound resolution of stressed assets has released the prudential framework for the resolution of stressed assets by banks. The fundamental principles of the framework are as below: –

i. Early recognition and reporting of default of large borrowers by banks, Financial Institutions (FIs) and NBFCs;
ii. Complete discretion to lenders with regard to the design and implementation of resolution plans, in supersession of earlier resolution schemes (S4A, SDR, 5/ 25, etc.), subject to the specified timeline and independent credit evaluation;
iii. A system of disincentives in the form of additional provisioning for delay in implementation of resolution plan or initiation of insolvency proceedings;
iv. Withdrawal of asset classification dispensations on restructuring. Future upgrades to be contingent on a meaningful demonstration of satisfactory performance for a reasonable period;
v. For the purpose of restructuring, the definition of "financial difficulty" to be aligned with the guidelines issued by the Basel Committee on Banking Supervision; and,
vi. Signing of Inter-Creditor Agreement (ICA) by all lenders to be mandatory, which will provide for a majority decision making criteria. – ***[DBR.No.BP.BC.45/21.04.048/2018-19, dated 07th June, 2019]***

3) PRUDENTIAL NORMS FOR CLASSIFICATION, VALUATION AND OPERATION OF INVESTMENT PORTFOLIO BY BANKS – SALE OF INVESTMENTS HELD UNDER HELD TO MATURITY (HTM) CATEGORY

RBI *vide* its Circular DBR No. BP.BC.6/21.04.141/2015-16 dated July 1, 2015 advised banks that if the value of sales and transfer of securities to / from HTM category exceeds 5 per cent of the book value of investments held in HTM category at the beginning of the year, banks should disclose the market value of the investments held in the HTM category and indicate the excess of book value over market value for which provision is not made.

Apart from transactions that are already exempted from inclusion in the 5 per cent cap, RBI has decided that repurchase of State Development Loans (SDLs) by the concerned State Government shall also be exempted. – ***[DBR.No.BP.BC.46/21.04.141/2018-19, dated 10th June, 2019]***

4) SALE OF SECURITIES HELD IN HELD TO MATURITY (HTM) CATEGORY - ACCOUNTING TREATMENT

RBI's Master Circular DCBR.BPD.(PCB).MC.No. 4/16.20.000/2015-16 dated July 01, 2015 on Investments by Primary (Urban) Co-operative Banks (UCBs) indicating that securities acquired by banks with the intention to hold them up to maturity will be classified under HTM category. In this connection, RBI reiterated that UCBs are not expected to resort to sale of securities held in HTM category. However, if due to liquidity stress, UCBs are required to sell securities from HTM portfolio, they may do so with the permission of their Board of Directors and rationale for such sale may be clearly recorded. Profit on sale of investments from HTM category shall first be taken to the Profit and Loss account and, thereafter, the amount of such profit shall be appropriated to 'Capital Reserve' from the net profit for the year after statutory appropriations. Loss on sale shall be recognized in the Profit and Loss account in the year of sale. – ***[DCBR.BPD.(PCB) Cir.No.10/16.20.000/2018-19, dated 10th June, 2019]***

5) CHANGES IN THE FACILITIES ASSOCIATED WITH BASIC SAVINGS BANK DEPOSIT ACCOUNT (BSBDA)

The Basic Savings Bank Deposit (BSBD) Account was designed as a savings account which will offer certain minimum facilities, free of charge, to the holders of such accounts. In the interest of better customer service, RBI has decided to make certain changes in the facilities associated with the account. Banks are now advised to offer the following basic minimum facilities in the BSBD Account, free of charge, without any requirement of minimum balance.

- The deposit of cash at bank branch as well as ATMs/CDMs;
- Receipt/ credit of money through any electronic channel or by means of deposit /collection of cheques drawn by Central/State Government agencies and departments;
- No limit on number and value of deposits that can be made in a month;
- Minimum of four withdrawals in a month, including ATM withdrawals;
- ATM Card or ATM-cum-Debit Card – ***[DBR.LEG.BC.No.47/09.07.005/2018-19, dated 10th June, 2019]***

6) WAIVER OF CHARGES ON NEFT AND RTGS

The RBI already has reviewed the various charges levied by it on the member banks for transactions processed in the RTGS and NEFT systems. In order to provide an impetus to digital funds movement, RBI has decided that with effect from July 1, 2019, processing charges and time varying charges levied on banks by RBI for outward transactions undertaken using the RTGS system, as also the processing charges levied by RBI for transactions processed in NEFT system will be waived by the Reserve Bank. The RBI has further advised banks to pass on the benefits to their customers for undertaking transactions using the RTGS and NEFT systems with effect from July 1, 2019. – ***[DPSS (CO) RPPD No.2557/04.03.01/2018-19, dated 11th June, 2019]***

7) RBI WITHDRAWS THE SCHEME FOR REIMBURSEMENT OF MDR

The RBI has decided to withdraw the reimbursement scheme of Merchant Discount Rate (MDR). The RBI has given reference to Circular dated February 16, 2017, where it was decided that RBI will reimburse banks the MDR on debit cards used for payment of tax and non-tax dues to the Government of India with effect from January 01, 2017 and the Circular dated September 07, 2019, where the MDR charges on debit card transactions above rupees one lakh and on any credit card transaction will not be reimbursed by RBI. Hence, it was decided that the above-mentioned Circulars issued by the RBI stand withdrawn from the date of this Circular. The reimbursement of MDR (Merchant Discount Rate) claims will be handled directly by Ministry of Electronics and Information Technology (MeitY) with effect from January 01, 2019. – ***[DGBA.GBD.No.3089/43.33.001/2018-19, dated 13th June, 2019]***

8) NEW SECURITY MEASURES FOR ATMS

In addition to the existing instructions, practices and guidance issued by the RBI and law enforcement agencies, the RBI has announced certain measures aimed at mitigating risks in ATM operations and enhancing security, as listed below:

i. All ATMs shall be operated for cash replenishment only with digital One Time Combination (OTC) locks.
ii. All ATMs shall be grouted to a structure (wall, pillar, floor, etc.) by September 30, 2019, except for ATMs installed in highly secured premises such as airports, etc. which have adequate CCTV coverage and are guarded by state / central security personnel.
iii. Banks may also consider rolling out a comprehensive e-surveillance mechanism at the ATMs to ensure timely alerts and quick response. – ***[DCM (Plg.)No.2968/10.25.007/2018-19, dated 14th June 14, 2019]***

9) DISCONTINUATION OF THE REQUIREMENT OF PAPER TO FOLLOW (P2F) FOR STATE GOVERNMENT CHEQUES

With a view to enhancing efficiency in cheque clearing, the RBI has introduced Cheque Truncation System (CTS) for clearance of cheques, facilitating the presentation and payment of cheques without their physical movement. P2F has been discontinued for CG cheques with effect from February 2016. Taking this initiative forward,

RBI has now decided in consultation with the Office of the Comptroller & Auditor General of India (C&AG), Government of India, to dispense with the current requirement of forwarding the paid State Government cheques in physical form (commonly known as P2F) to the State Government departments/treasuries. Accordingly, the "Memorandum of Instructions on Accounting and Reconciliation – State Government transactions (February 2003)" has been modified to give effect to above change. – ***[DGBA.GBD.No.3136/42.01.035/2018-2019, dated 20th June, 2019]***

10) ROLLOUT OF THE FOREIGN EXCHANGE TRADING PLATFORM 'FX-RETAIL' FOR RETAIL PARTICIPANTS

Referring to the Statement on Developmental and Regulatory Policies dated June 06, 2019, announcing the introduction of an electronic trading platform for buying/selling foreign exchange by retail customers of banks, the RBI has announced that the platform, FX-Retail, is ready for rollout by the Clearing Corporation of India Limited (CCIL) on August 05, 2019.

The FX-Retail platform can be accessed by any customer of a bank (through the website https://www.fxretail.co.in) who has a need to purchase or sell US Dollar against the Rupee for delivery on cash basis (same day), tom basis (next day) or spot basis (two days after date of transaction), subject to the following:

i. There is no cap on the number of transactions per customer during a day. The total amount of transactions of a customer shall be subject to the limit assigned by its bank.
ii. The size of a single transaction is not allowed to exceed $5 million.
iii. As a further facility for retail clients, no transaction charges shall be levied by the CCIL on transactions of customers if such transactions do not exceed USD 50,000 per day.
iv. A transaction charge of 0.0004% shall be charged by the CCIL for transactions in excess of USD 50,000 per day.

It was further notified that the fees charged by the banks, if any, shall be indicated on the FX-Retail platform. Banks may recover from customers transaction and settlement charges levied by the CCIL. – ***[FMRD.FMD.16/02.03.225/2018-19, dated 20th June, 2019]***

11) RATIONALISATION AND REVISION OF AGENCY COMMISSION PAYABLE TO BANKS ON GOVERNMENT TRANSACTIONS

The RBI has rationalized and revised the agency commission rates on eligible government transactions. New rates with effect from July 01, 2019 shall be as under:

i. Receipts – Physical – Rs.40/- per transaction;
ii. Receipts – e-mode – Rs.9/- per transaction;
iii. Pension Payments – Rs.75/- per transaction;
iv. Payments other than Pension – Rs.6.5 paise per Rs.100/- turnover.

[DGBA.GBD.No.3144/31.02.007/2018-19, dated 20th June, 2019]

12) NOTIFICATION OF THE FINANCIAL BENCHMARK ADMINISTRATORS (RESERVE BANK) DIRECTIONS, 2019

The RBI has introduced a regulatory framework 'the Financial Benchmark Administrators (Reserve

Bank) Directions, 2019' for financial benchmarks, to improve the governance of the benchmark processes in markets regulated by it. These directions shall apply to Financial Benchmark Administrators (FBAs) administering 'Significant Benchmarks' in the markets for financial instruments regulated by the Reserve Bank under Section 45 W of the Act. Benchmarks administered outside India do not fall under the scope of these directions. – ***[FMRD.FMSD.17/03.07.035/2018-19, dated 26th June, 2019]***

13) NOTIFICATION OF THE RUPEE INTEREST RATE DERIVATIVES (RESERVE BANK) DIRECTIONS, 2019

The RBI has introduced directions 'Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2019' regarding rationalization of interest rate derivative, with immediate effect. These Directions shall be applicable to Rupee interest rate derivatives transactions undertaken on recognized stock exchanges and Over-the-Counter (OTC) markets, including on electronic trading platforms (ETPs). – ***[FMRD.DIRD.19/14.03.046/2018-19, dated 26th June, 2019]***

14) INTRODUCTION OF FOREIGN LIABILITIES AND ASSETS INFORMATION REPORTING (FLAIR) SYSTEM

As per the RBI extant guidelines, all Indian companies which have received FDI and/or made FDI abroad (i.e., overseas investment) in the previous year(s) including the current year, should file the annual return on Foreign Liabilities and Assets (FLA) in the soft form which can be duly filled-in, validated and sent by an e-mail to the RBI by July 15th of every year.

With the objective to enhance the security-level in data submission and further improve the data quality, the present email-based reporting system for submission of the FLA return will be replaced by the web-based system online reporting portal. It would facilitate data submission by eligible entities {including the alternative investment funds (AIF) registered with the Securities and Exchange Board of India (SEBI) as also the reporting of foreign investment in the form of capital/profit share contribution received/transferred in case of LLPs and investment by persons resident outside India in an investment vehicle and as defined in Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2017, dated November 7, 2017}. The main features of revised Foreign Liabilities and Assets Information Reporting (FLAIR) system have been provided in the Circular – ***[A.P. (DIR Series) Circular No. 37, dated 28th June 28, 2019]***

15) ASSET RECONSTRUCTION COMPANIES (ARCS) PERMITTED TO ACQUIRE FINANCIAL ASSET FROM OTHER ARCS

In view of amendment to the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, RBI has decided to permit ARCs to acquire financial asset from other ARCs on following conditions:

i. The transaction is settled on cash basis;
ii. Price discovery for such transaction shall not be prejudicial to the interest of Security Receipt holders;

iii. The selling ARC will utilize the proceeds so received for the redemption of underlying Security Receipts;
iv. The date of redemption of underlying Security Receipts and total period of realisation shall not extend beyond eight years from the date of acquisition of the financial asset by the first ARC. – ***[DNBR.PD (ARC) CC.No.07/26.03.001/2018-19, dated 28th June, 2019]***

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FOREIGN TRADE

1) EXPORT OF STONE AGGREGATES AND RIVER SAND TO MALDIVES UNDER BI-LATERAL TRADE AGREEMENT BETWEEN GOVERNMENT OF INDIA AND GOVERNMENT OF THE REPUBLIC OF MALDIVES

Export of the quantities of River Sand and Stone Aggregates with the annual ceiling of Rs. 2 lakh and Rs. 8 lakh respectively, has been permitted for export to the Republic of Maldives under Bi-lateral Trade Agreement between Government of India and Government of the Republic of Maldives. – ***[Notification No 07/2015-2020, 6th June, 2019 (DGFT)]***

2) WAIVING OFF THE REQUIREMENT OF DESTRUCTION CERTIFICATE FROM EXCISE/CUSTOM AUTHORITIES FOR THE UNUTILISED DUTY-FREE IMPORTED MATERIAL IN CASE OF IMPORTS FROM UNREGISTERED SOURCES WITH PRE-IMPORT CONDITIONS

This Public Notice waives off the requirement of destruction certificate from excise/custom authorities for the unutilized duty-free unregistered sources with pre-import condition. **–** ***[Public Notice No. 11/2015-2020, 14th June, 2019 (DGFT)]***

3) AMENDMENT IN PARA 2.54 OF THE HANDBOOK OF PROCEDURES, 2015-2020

The period for installation and operationalisation of Radiation Portal Monitors and Container Scanner in the designated ports is extended up to 30.09.2019. ***–[Public Notice No. 13/(2015-2020), 25th June, 2019 (DGFT)]***

4) ISSUANCE OF MULTIPLE DEFICIENCY LETTERS AND IN PIECEMEAL MANNER DURING REDEMPTION OF AA/EPCG

It has come to the notice of this directorate that some Regional Authorities are issuing the deficiency letters multiple times, in piecemeal manner during the processing of redemption request of Advance Authorisation/EPCG cases. This has been viewed very seriously by DGFT.

In the past also, issuing of one consolidated deficiency letter for a particular redemption request has been stressed. Therefore, it is reiterated all the Regional Authorities must convey all deficiencies in one go only, in a time bound manner. Second deficiency letter, under unavoidable circumstances, may be issued only after the approval of head of the RA. ***–[Trade Notice 20/2019-20, 26th June, 2019 (DGFT)]***

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CORPORATE

1) RP CANNOT DEMAND FINANCIAL INFORMATION OF UNRELATED THIRD PARTIES - IN THE MATTER OF EDUCOMP INFRASTRUCTURE & SCHOOL MANAGEMENT LTD. (CORPORATE DEBTOR) AND MR. ASHWINI MEHRA (RESOLUTION PROFESSIONAL) V. MR. VINOD KUMAR DANDONA (SUSPENDED DIRECTOR) & ORS.

In an application filed by the Interim Resolution Professional under Section 19(2) and 19(3) r/w Sections 17, 18 and 25 of the IB Code, seeking cooperation of personnel of the Corporate Debtor (CD), the NCLT Chandigarh Bench, in its Order dated 14 June 2019, has clarified with respect to who is and who is not obliged to give information/cooperate with the RP under these provisions, as highlighted below:

Ex-management and ex-directors: Section 19(2) requires that not only the ex-management, but also ex-directors of the CD are collectively or individually obliged to give information and assistance to the RP in managing the affairs of the CD as a going concern. An ex-director cannot claim exemption on the ground that he had resigned from the directorship just before the commencement of CIRP because decisions taken during his tenure as Director may have resulted in financial irregularity and in turn financial distress, leading to insolvency proceedings.

Suspended directors / Part compliance - A suspended director cannot give an excuse that he was a non-executive director - since he was part of the team and was in a position to persuade other managerial personnel to supply the required documents. Part compliance by the suspended directors, where vital information is withheld, may be treated as non-compliance of the provisions of Section 17 and 18 of the Code and may even attract punishment under Section 70 of the Code.

Contractual counterparties/third parties - Although Regulation 4 of the CIRP Regulations allows the IRP, without prejudice to Section 17(2)(d) of the Code, to access the books of accounts or other relevant document/ information of the CD held with its contractual counterparties, the facts and circumstances of the case did not sufficiently establish that without these documents the Insolvency Process could not be completed. Therefore, demanding financial information from over 40 respondents who were all Lessees of the CD, would amount to exceeding the prescribed jurisdiction of the Resolution Professional.

The Tribunal relied on Regulation 36 of CIRP Regulation which pertains to the Information Memorandum and details to be provided therein, including the assets and liabilities, audited financial statements, list of creditors, particulars of debts, details of guarantees, names and addresses of the members and partners holding at least 1% stake, details of litigation etc. All of this information demonstrated the ownership right of the Corporate Debtor or its direct control as a beneficial owner. Consequently, the Lessees of the CD were justified in objecting to sharing of their statements of accounts with the RP. Submission of such information could not be made compulsory under Regulation 36 or Section 19 of the Insolvency Code.

"There is no judicial authority available to the Resolution Professional to seek financial information of a third party. His enquiry should remain limited to the business transaction executed between the CD and the said party. The terms of the Lease Agreement also depend on party to party and no uniform standard can be fixed since execution of Lease Agreements depends upon the business decisions of the parties. Even the information pertaining to the lessee cannot be made part of the Information Memorandum because the business operation of a Resolution Applicant depends upon his commercial wisdom to be exercised in case his Resolution Plan is approved. At this stage it is unfair to demand such information simply in the guise of maximisation of the value of assets of the Corporate Debtor. This approach being not fair and judicious, thus need not to be approved". – ***[CA No.335/2018 decided on 14 June 2019, coram : M.K. Shrawat and Pradeep R. Sethi (NCLT Chandigarh)]***

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SECURITIES

1) GUIDELINES FOR ENHANCED DISCLOSURES BY CREDIT RATING AGENCIES (CRAS)

Computation of Cumulative Default Rates (CDR): CDR shall be calculated issuer-wise using the Marginal Default Rate (MDR) approach, using monthly static pools. The above may be adjusted for rating withdrawals. For securities, the withdrawn rating shall be included in the computation of default rates till the completion of the cohort or the maturity of the instrument, whichever is earlier. Accordingly, all DTs shall continue to report any delays/ default in payment on debentures to the CRA(s) having rated the said debenture for the lifetime of the instrument, irrespective of the rating on that instrument being withdrawn. Ratings of non-cooperative issuers shall be included in the cohort under the rating category in which the instrument is currently being rated.

Based on the above approach, a CRA shall disclose, on an annual basis, the average one-year, two-year and three-year cumulative default rates (based on weighted average) each for: (a) last 10-financial years period (Long-run average default rates); and (b) 24, 36 and 48 most recent cohorts, respectively (Short-run average default rates). The disclosures are required to be made in the format specified in Annexure A of the Circular, on a consolidated basis for all financial instruments rated by a CRA.

Introducing a probability of default (PD) benchmarks for the CRAs: In order to enable investors to discern the performance of a CRA vis-à-vis a standardised PD benchmark scale, CRAs, in consultation with SEBI, shall prepare and disclose standardized and uniform PD benchmarks for each rating category on their website, for one-year, two-year and three-year cumulative default rates, both for short-run and long-run. Additionally the Circular has also listed out key principles basis which the benchmarks shall be prepared.

The above standardised and uniform PD benchmarks shall be disclosed on the website of each CRA for ratings of long-term and short-term instruments, on a consolidated basis for all financial instruments rated by a CRA, by December 31, 2019. CRAs may review their rating methodologies in order to align the same with the

proposed PD benchmarks. The above PD benchmarks and tolerance levels may be re-indexed from time to time.

Rating symbol for Instruments having explicit Credit Enhancement feature: It is observed that CRAs are also assigning 'SO' suffix to ratings of instruments other than securitized or asset backed transactions. The 'SO' rating to such instruments is based on some form of explicit credit enhancement from a third party/ parent/ group company, in the form of corporate guarantee/ letter of comfort/ pledge of shares, etc. There is a need to differentiate ratings of such instruments from the ratings of securitized debt and asset backed transactions.

It has therefore been decided that CRAs shall now assign the suffix 'CE' (Credit Enhancement) to rating of instruments having explicit credit enhancement. In this regard, the standardised symbols and definitions, have been annexed as Annexure B of the Circular.

Disclosure of rating sensitivities in press release: The disclosure of factors to which the rating is sensitive, is critical for the end-users to understand the factors that would have the potential to impact the credit worthiness of the entity. Accordingly, in order to improve transparency, the CRA shall have a specific section on 'Rating Sensitivities' in the Press Release which shall explain the broad level of operating and/ or financial performance levels that could trigger a rating change, upward and downward. Such factors shall be disclosed in quantitative terms to the extent possible, discernible to the investors, and should not read like a general risk factor.

Disclosure on liquidity indicators: SEBI Circular SEBI/ HO/ MIRSD/ DOS3/CIR/P/2018/140 dated November 13, 2018, inter-alia, mandated inclusion of a specific section on Liquidity in the Press Release, highlighting parameters such as liquid investments, access to unutilised credit lines, liquidity coverage ratio, adequacy of cash flows for servicing maturing debt obligation, etc.

In order to make the disclosures meaningful to the end users, it has been decided to mandate disclosure of liquidity indicators using standardised terminology. Accordingly, CRAs shall, in addition to the disclosures mandated *vide* aforesaid Circular, shall also disclose the liquidity indictors using one of the following indicators and give an explanation thereon: (a) Superior/string; (b) adequate; (c) stretched; and (d) poor. The Circular in form of Annexure C also lists out indicative description for these liquidity indicators.

Tracking deviations in bond spreads: SEBI Circular No. SEBI/ HO/ MIRSD/ DOS3/CIR/P/2018/140 dated November 13, 2018, *inter-alia*, provided that CRAs may treat sharp deviations in bond spreads of debt instruments vis-à-vis relevant benchmark yield as a material event, while reviewing material events. It is reiterated that CRAs shall devise a model to track deviations in bond spreads in line with the said Circular. – ***[SEBI/HO/MIRSD/DOS3/CIR/P/2019/70, 13th June, 2019 (SEBI)]***

2) FACTORS FOR ASSURING CONFIDENTIALITY IN A SETTLEMENT APPLICATION FILED UNDER CHAPTER IX OF THE SEBI

(SETTLEMENT PROCEEDINGS) REGULATIONS, 2018.

A person who may have committed a violation of securities laws, other than those detailed in Tables VII to IX of Schedule II of the SEBI (Settlement Proceedings) Regulations, 2018, may make full disclosure of such violation and also provide substantial assistance in examination/investigation/inspection/inquiry/audit/any other proceedings (hereinafter referred to as "examination proceedings") that is initiated/is ongoing/yet to be initiated by the Securities Exchange Board of India (the "**Board**"), against any person in respect of violation of the securities laws for the purpose of seeking grant of confidentiality and reduced settlement charges.

In order to assure confidentiality to an applicant who provides assistance in examination proceedings, the Board may assess the information/assistance/co-operation rendered during such examination proceedings by inter-alia considering, the following factors:- (a) Assistance Provided: - Nature of co-operation, based on, but not limited to the following,-(i) whether the co-operation was provided before he or she had any knowledge of any pending examination proceedings and related action; (ii) Whether the applicant was the first person to report the misconduct to the Board or to offer co-operation and such co-operation was truthful, complete and reliable; (iii) Whether the co-operation was voluntary or pursuant to the terms of an agreement with any other law enforcement or regulatory organization/agency; (iv) Whether the co-operation resulted in substantial assistance in conclusion of such examination proceedings and resulted in conserving of time and resources; (v) Whether any hardship was experienced by the applicant as a result of such cooperation; (vi) Whether the applicant provided non-privileged information, which was not requested by the Board but otherwise might not have been discovered; (vii) Whether the co-operation was in the form of original information (sufficiently specific and credible) to cause the Board to commence an examination proceedings or to inquire concerning different conduct as part of a current examination proceedings; (viii) Whether the Board brought a successful judicial or civil and administrative action based on the original information; and (ix) Whether the applicant encouraged/authorized others to assist the Board who might not have otherwise participated in the examination proceeding.

Gravity of the Subject Matter:- (i) the nature and type of defaults under the securities law; (ii) the age and repetitive nature of defaults; and (iii) the adverse effect upon investors due to the defaults involved.

Factors which may adversely affect the applicant's claim for confidentiality:- (i) Past history of securities laws violations by the applicant; (ii) the extent of involvement of the applicant in the violation of securities laws assessed in the context of the individual's knowledge and position of responsibility at the relevant time; (iii) The degree to which the applicant tolerated illegal activity. Whether the applicant had taken adequate steps to prevent the violations from occurring or continuing, such as notifying the Board or other appropriate law enforcement agency of the misconduct or, in the case of a violation involving a business organization, notifying members of the management who are not involved in the misconduct; (iv) whether the applicant is/was an auditor/accountant/compliance officer; an

associated person of a regulated entity (such as a broker or dealer); a fiduciary for other persons regarding financial matters; an officer or director of listed companies; or a member of senior management and hence ought to have exercised a higher standard of diligence but failed to do so; (v) the plausibility of the reasons for the applicant to delay reporting of the violations of the securities laws; (vi) the degree to which the applicant knowingly interfered with an entity's established legal, compliance or audit procedures to prevent or delay detection of the reported violation; (vii) the efforts undertaken by the applicant to remediate/mitigate/indemnify the harm caused by the violations; and (viii) the sanctions imposed on the applicant by other Central/State authorities and industry organizations/professional bodies for the defaults which are the subject matter in the examination proceedings.

Applicants desirous of filing a settlement application under Chapter IX of the SEBI (Settlement Proceedings) Regulations, 2018 may take note of the aforesaid at the time of filing the application with the Board. – ***[SEBI/HO/EFD2/CSD/CIR/P/2019/00000 00072, 18th June, 2019, (SEBI)]***

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COMPETITION

1) COMPETITION COMMISSION OF INDIA IMPOSES PENALTY ON CHEMISTS AND DRUGGISTS ASSOCIATION AND PHARMACEUTICAL COMPANIES

The Competition Commission of India ('Commission') *vide* its Order dated 03.06.2019, has found Madhya Pradesh Chemists and Druggists Association ('MPCDA'), Indore Chemists Association ('ICA'), Himalaya Drug Company ('HDC') and Intas Pharmaceuticals Limited ('IPL') along with some of their office bearers/officials to be in contravention of the provisions of the Competition Act, 2002 ('Act').

An information was filed with the Commission by M/s Madhya Pradesh Chemists and Distributors Federation alleging contravention of the provisions of Section 3 of the Act by MPCDA and others including certain pharmaceutical companies. The allegations were that the above named associations, through their practices of mandating 'No Objection Certificate' ('NOC')/ Letter of Consent (LOC') prior to appointment of stockists were stifling competition in the market by limiting access of consumers to various pharmaceutical products and controlling supply of drugs in the market. The Commission after forming a *prima-facie* opinion directed the office of Director General ('DG') to conduct investigation into the matter.

Investigation carried out by the DG established contravention on the part of said associations and certain pharmaceutical companies, who were found to be facilitating such anticompetitive practices. DG also identified certain individuals'/ officer bearers/ officials of the associations and pharmaceutical companies to be liable under Section 48 of the Act.

The Commission after appreciation of the detailed submission of the concerned parties and based on the evidence on record, found the conduct of the aforementioned associations and pharmaceutical companies to be in contravention of the provisions of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act.

Consequently, the Commission imposed a monetary penalty on the associations i.e., Rs. 4,18,404/- on MPCDA and Rs. 39,142/- on ICA, in addition to cease and desist directions, issued under Section 27 of the Act. Further taking into account the role played by certain office bearers of the said associations, penalties were imposed on such office bearers.

The Commission after taking into account the mitigating factors demonstrated by Himalaya Drug Company and Intas Pharmaceutical Limited, imposed on said companies amounting to Rs. 18,59,58,000/- and Rs. 55,59,68,000/- respectively. Penalty was also imposed on certain officials of these companies. The Commission however did not find any evidence of contravention on the part of certain other associations and pharmaceutical companies.

In addition to this, the Commission also directed MPCDA to organize at least five competition awareness and compliance programmes over a period of six months in the State of Madhya Pradesh for its members and directed ICA to organize one competition awareness programme in the district of Indore. The Commission further directed HDC and IPL to bring into place a Competition Compliance Programme and file compliance report with the Commission. ***–[Press Release No. 2/2019-20, 4th June, 2019, Competition Commission of India]***

2) CCI APPROVES ACQUISITION OF THE ELECTRICAL AND AUTOMATION BUSINESS OF LARSEN & TOUBRO LIMITED BY SCHNEIDER ELECTRIC INDIA PRIVATE LIMITED AND MACRITCHIE INVESTMENTS PTE. LTD

The Competition Commission of India ("Commission") has published the Order approving the acquisition of electrical and automation (EA) business of Larsen & Toubro Limited (L&T) by Schneider Electric India Private Limited (Schneider) and MacRitchie Investments Pte. Ltd. (MacRitchie). The approval is subject to modifications that are aimed at eliminating the likely anti-competitive effects of the proposed acquisition.

The above Order was a result of an in-depth inquiry undertaken pursuant to the notice given by Schneider and MacRitchie under sub-section (2) of Section 6 of the Competition Act, 2002 (Act) on 16th July, 2018. The Commission found that Schneider and L&T are the first and second leading players in terms of sales and distribution reach in the low voltage (LV) switchgear industry in India. Their consolidation would *inter-alia* lock a large part of the LV switchgear distributors and other downstream players with the combined entity, thereby making it difficult for new players to enter the market. Thus, the Commission was of the view that the acquisition of EA business of L&T would reduce competition and confer the combined entity, the ability to increase price.

In order to eliminate the competition concerns, the Commission has ordered the Acquirers to reserve a part of L&T's installed capacity to offer white labelling services to third party competitors. This facility would be available in respect of five high market share LV switchgears, which are generally used together in LV panels. Under the white labelling services, the third-party competitors can take L&T products on a reasonable price for selling under their own brand, for a period of five years. Subsequently, these

competitors can get access to the technology of white-labelled products to manufacture them, for the next five years. To open up their distribution network to competitors, Schneider would revise its commercial policies and remove de facto exclusivity in distribution agreements. Further, Schneider would not discontinue L&T products and not increase their average selling price, for a period of five year.

The remedies ordered by the Commission are expected to allow business expansion of competitors in the five white-labelled products thereby leverage their brand position in the overall LV switchgear business. The competitors could avail this opportunity to strengthen their portfolio of products, increase the viability of their own brand in a sustainable manner and become credible competitors. ***–[Combination Registration No. C-2018/07/586, 6th June, 2019, Competition Commission of India]***

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INDIRECT TAXES

a. CUSTOMS

1) BCD INCREASED ON LENTILS, BORIC ACID AND LABORATORY REAGENTS

Tariff rate of customs duty have been increased on lentils, boric acid and laboratory reagents to 50%, 27.5% & 30% respectively, by amending First schedule to the Customs Tariff Act, 1975 under emergency powers under Section 8A of the Customs Tariff Act. – ***[Notification No.16/2019–Customs, dated 15th June, 2019]***

2) RETALIATORY DUTIES IMPOSED ON CERTAIN GOODS ORIGINATING IN OR EXPORTED FROM USA

Notification No. 50/2017-Customs dated 30.06.2017 amended to implement the imposition of retaliatory duties on 28 specified goods originating in or exported from USA and preserving the existing MFN rate for all these goods for all countries other than USA. – ***[Notification No.17/2019-Customs, dated 15th June, 2019]***

3) THE CUSTOMS (SUPPLEMENTARY NOTICE) REGULATIONS, 2019

The CBIC has issued the Customs (Supplementary Notice) Regulations, 2019. As per the Regulations, where a notice has been issued under Section 28 or Section 124 of the Act, a supplementary notice may be issued by the proper officer, within the time limit as prescribed in the relevant sections of the Act, in any of the following circumstances:

a. in case there is a difference in the quantum of duty demanded in such notice including the cases which may necessitate change in adjudicating authority;
b. for invoking penal action under the provisions of the Act against a person/persons in addition to those charged in such notice;
c. for invoking additional section/sections of the Act in such notice;
d. in case there is any additional evidence that may have a significant bearing on the outcome of the case. – ***[Notification No. 42/ 2019-Customs (N.T.), dated 18th June, 2019]***

4) MANUFACTURE AND OTHER OPERATIONS IN WAREHOUSE REGULATIONS, 2019

The CBIC has issued the Manufacture and Other Operations in Warehouse Regulations, 2019. These regulations shall come into force immediately. The following persons shall be eligible to apply for operating under these regulations, -

a. A person who has been granted a licence for a warehouse under Section 58 of the Act, in accordance with the Private Warehouse Licensing Regulations, 2016 which were notified by the Central Government in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-Section (i), *vide* the number G.S.R 518 (E), dated the 14th May, 2016.

b. A person who applies for a licence for a warehouse under Section 58 of the Act, along with permission for undertaking manufacturing or other operations in the warehouse under Section 65 of the Act. – ***[Notification No. 44/2019-Customs (N.T.), dated 19th June, 2019]***

5) EXTENSION OF ADD ON 'PVC (RESIN) SUSPENSION GRADE'

Anti-dumping duty imposed on 'PVC (resin) suspension grade' imported from China, Thailand and USA has been extended till 12th August, 2019. – ***[Notification No. 23/2019-Customs (ADD), dated 11th June, 2019]***

6) ADD ON JUTE SACKING CLOTH

Anti-dumping duty levied on jute sacking cloth under tariff heading 5310 originating in or exported from Bangladesh to prevent the circumvention of levy of anti-dumping duty levied on jute sacking bags *vide* Notification No. 1/2017-Customs(ADD) dated 5th January, 2017. – ***[Notification No. 24/2019-Customs (ADD), dated 18th June, 2019]***

7) EXTENSION OF ADD ON DUCTILE IRON PIPES

Notification No. 23/2013-Customs(ADD), dated the 10th October, 2013 amended so as to extend the anti-dumping duty on ductile iron pipes originating in, or exported from China PR till 9th October, 2019. – ***[Notification No. 25/2019-Customs (ADD), dated 23rd June, 2019]***

8) COUNTERVAILING DUTY ON NEW/UNUSED PNEUMATIC RADIAL TYRES

Definitive countervailing duty imposed on "New/Unused pneumatic radial tyres with or without tubes and/or flap of rubber (including tubeless tyres), having nominal rim dia code above 16" used in buses and lorries/trucks" originating in or exported from, People's Republic of China. – ***[Notification No. 1/2019 – Customs (CVD), dated 24th June, 2019]***

9) SIMPLIFICATION OF REGISTRATION PROCESS ON ICEGATE FOR CERTAIN IMPORTERS AND EXPORTERS

For the effective implementation of PGA-eSANCHIT and other planned enquiries and interactions, CBIC has decided to simplify the registration process on ICEGATE for those importers and exporters that do not intend to do any filing of documents through ICEGATE and

would use the login only as an information and interaction portal. Accordingly, ICEGATE has now introduced simplified auto registration for IEC holders based on the e-mail ids already provided by them for registration under GST. Detailed advisory on the same has been placed on the ICEGATE web portal. – ***[Circular No. 14/2019-Customs, dated 03rd June, 2019]***

10) **MECHANISM TO VERIFY IGST PAYMENTS FOR GOODS EXPORTED OUT OF INDIA**

The CBIC has introduced a mechanism to verify the IGST payments for goods exported out of India and the existing norms in this regard have been amended. The CBIC has empowered the Customs Officers to conduct a thorough enquiry on all the risky or suspicious refund claims of exporters and to reject such claims of exporters who are adopting malpractices. The amended procedure includes guidelines for identification of suspicious cases, inserting Alert in the System, Examination of the export goods, Suspension of IGST refunds, Verification by GST formations and Action to be taken by customs formations on receipt of verification report from GST formations. – ***[Circular No. 16/2019-Customs, dated 17th June, 2019]***

b. CENTRAL EXCISE

1) **REVISION OF PROCEDURE FOR MAKING E-PAYMENT OF CENTRAL EXCISE AND SERVICE TAX ARREARS UNDER THE NEW CBIC-GST INTEGRATED PORTAL**

The CBIC has revised the procedure and annexed with this Circular, for making e-payment of Central Excise and Service Tax arrears under the new CBIC-GST Integrated portal https://cbic-gst.gov.in – ***[Circular No. 1070/3/2019 CX, dated 24th June, 2019]***

c. GST

1) **EXTENSION OF BLOCKING AND UNBLOCKING ON E-WAY BILL FACILITY**

The date from which the facility of blocking and unblocking on e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017 shall be brought into force has been extended to 21.08.2019. – ***[Notification No. 25 /2019 – Central Tax, dated 21st June, 2019]***

2) **EXTENSION/ NOTIFICATION OF DATE OF FILING VARIOUS RETURNS**

i. FORM GSTR-7 - time limit for furnishing the return by a registered person required to deduct tax at source under the provisions of Section 51 of the said Act in FORM GSTR-7 for the months of October, 2018 to July, 2019 has been extended till the 31st August, 2019. – ***[Notification No. 26/2019 – Central Tax, dated 28th June, 2019]***
ii. FORM GSTR-1 - the due date for furnishing FORM GSTR-1 for registered persons having aggregate turnover of up to 1.5 crore rupees for the months of July, 2019 to September,2019 has been prescribed to be 31st October, 2019. ***– [Notification No. 27/2019 – Central Tax, dated 28th June, 2019]***

iii. FORM GSTR-1 - the due date for furnishing FORM GSTR-1 for registered persons having aggregate turnover of more than 1.5 crore rupees for the months of July, 2019 to September,2019 has been extended till the 11th day of the month succeeding such month. **– *[Notification No. 28/2019 – Central Tax, dated 28th June, 2019]***

iv. FORM GSTR-3B - the due date for furnishing FORM GSTR-3B for the months of July, 2019 to September, 2019 has been prescribed to be submitted on or before the 20th day of the month succeeding such month. **– *[Notification No. 29/2019 – Central Tax, dated 28th June, 2019]***

v. FORM GST ITC-04 - in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to June, 2019 till the 31st August, 2019. – ***[Notification No. 32/2019 – Central Tax, dated 28th June, 2019]***

3) EXEMPTION FROM FURNISHING OF ANNUAL RETURN / RECONCILIATION STATEMENT FOR SUPPLIERS OF ONLINE INFORMATION DATABASE ACCESS AND RETRIEVAL SERVICES ("OIDAR SERVICES")

The CBIC has notified that the suppliers of Online Information Database Access and Retrieval Services ("OIDAR services") shall not be required to furnish an annual return in FORM GSTR-9. The said persons shall also not be required to furnish reconciliation statement in FORM GSTR-9C. – ***[Notification No.30/2019 – Central Tax, dated 28th June, 2019]***

4) CENTRAL GOODS AND SERVICES TAX (FOURTH AMENDMENT) RULES, 2019

The CBIC notified the the CGST (4th Amendment) Rules, 2019 making changes in various CGST Rules and Forms, including inter-alia the following:

i. CGST Rule 10A has been inserted which provides that newly registered taxpayers shall submit their bank account details at GST Portal within 45 days from the date of registration or the due date for filing of first GSTR-3B, whichever is earlier;

ii. CGST Rule 21 has been amended to incorporate clause (d) which provides for cancellation of GST registration in the cases where newly registered taxpayers have failed to submit bank details prescribed by newly inserted CGST Rule 10A;

iii. CGST Rule 32A has been amended to provide that w.e.f. 1 August 2019 value of intra-state supply of goods or services or both (B2C) in the State of Kerala shall not include the said cess, i.e., Kerala Flood Cess;

iv. In CGST Rules 46 and 49, a new proviso has been inserted on requirement of mentioning Quick Response (QR) code on tax invoice/ bill of supply applicable from the date as may be notified based on recommendations of the GST Council;

v. CGST Rules 66, 67 and 87 pertaining to procedure for claiming TDS/ TCS in GST returns have been amended;

vi. New CGST Rule 87(13) has been inserted which provides that a registered person can transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the CGST Act to the electronic cash ledger for integrated tax,

central tax, State tax or Union territory tax or cess in FORM GST PMT-09 at GST Portal

vii. New CGST Rule 95A has been inserted which provides for refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters, making tax free supply to an outgoing international tourist, for which new Form GST RFD 10B has also been introduced, applicable w.e.f. 1 July 2019.;

viii. CGST Rule 138 has been amended to provide for extension of the validity of an expired e-way bill (within 8 hours); and

ix. CGST Rule 138E has been amended to provide for not allowing the composition dealers and suppliers under 6% presumptive taxation to generate e-way bill if their GST return has not been filed for 2 consecutive quarters. – ***[Notification No. 31/2019 – Central Tax, dated 28th June, 2019]***

5) **RETAIL OUTLETS ESTABLISHED IN THE DEPARTURE AREA OF AN INTERNATIONAL AIRPORT SPECIFIED MAKING TAX FREE SUPPLY OF GOODS TO AN OUTGOING INTERNATIONAL TOURIST**

The CBIC *vide* present Circular has specified retail outlets established in the departure area of an international airport, beyond the immigration counters, making tax free supply of goods to an outgoing international tourist, as class of persons who shall be entitled to claim refund. – ***[Notification No. 11 /2019 – Central Tax (Rate), dated 29th June, 2019]***

Similar notifications have been issued under the Integrated Tax (Rate) and Union Territory Tax (Rate). – ***[Notification No. 10/2019 – Integrated Tax (Rate), dated 29th June, 2019 & Notification No. 11/2019 – Union Territory Tax (Rate), dated 29th June, 2019]***

6) **CLARIFICATION REGARDING APPLICABILITY OF GST ON ADDITIONAL / PENAL INTEREST**

The CBIC has clarified that the transaction of levy of additional / penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional / penal interest satisfies the definition of "interest" as contained in Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017. It is further clarified that any service fee/charge or any other charges that are levied by M/s ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, and accordingly will not be exempt. – ***[Circular No. 102/21/2019-GST, dated 28th June, 2019]***

7) **CLARIFICATION REGARDING DETERMINATION OF PLACE OF SUPPLY IN CERTAIN CASES**

The CBIC has clarified below two issues in this regard:

Issue 1: Various services are being provided by the port authorities to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc. Doubts have been

raised about determination of place of supply for such services i.e. whether the same would be determined in terms of the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be or the same shall be determined in terms of the provisions contained in sub-section (3) of Section 12 of the IGST Act.

Clarification: It is hereby clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.

Issue 2: Doubts have been raised about the place of supply in case of supply of various services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India?

Clarification: Place of supply in case of performance-based services is to be determined as per the provisions contained in clause (a) of sub-section (3) of Section 13 of the IGST Act and generally the place of services is where the services are actually performed. But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process. In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in sub-section (2) of Section 13 of the IGST Act. – ***[Circular No. 103/22/2019-GST, dated 28th June, 2019]***

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INTELLECTUAL PROPERTY RIGHTS

1) "SECTION 124 EXPRESSLY RECOGNIZES THE RIGHT TO FILE AN ACTION FOR INFRINGEMENT EVEN IF THE DEFENDANTS' MARK IS REGISTERED." – BOMBAY HC

The Bombay HC observed that Section 124 expressly recognizes the right to file an action for infringement even if the defendants' mark is registered. Whether or not the plaintiff has challenged the defendants' registration as yet or not is not relevant. Section 124 establishes that the legislature did not intend prohibiting the filing of a suit for infringement merely because the defendants' mark is also registered. Section 124 in fact expressly recognizes the right to file such an action. This is clear from the fact that Section 124 provides that such an action may be stayed, if it otherwise satisfies the provisions thereof. If it were not so, the Act would have provided for a bar to the filing of such an action.

Therefore, the contention of defendant that the suit for infringement was barred and therefore, the cause of action for passing off, which at the time of filing of the suit was outside Mumbai, cannot be clubbed with the suit for infringement, cannot be accepted. – [***Siyaram Silk Mills Limited*** **v.** ***Stanford Siyaram Fashion Pvt. Ltd. & Ors., dated 11th June, 2019 (Bombay HC)]***

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CONSUMER

1) FOUNDING ICICI PRUDENTIAL DEFICIENT IN ITS SERVICE THE APEX CONSUMER COMMISSION IMPOSES A FINE OF RS.5 LAKHS

The National Consumer Disputes Redressal Commission (NCDRC), while upholding order of District Forum and State Commission, has directed ICICI Prudential Life Insurance Company Limited to pay over Rupees 5 lakh to a Maharashtra resident, whose claim for reimbursement of medical expenses was repudiated by the Company.

NCDRC was hearing a revision petition of the insurance company to set aside order of the State Commission which had upheld the order of the District Forum.

District forum while finding "deficiency in service" had ordered insurance company to pay Rs. 4,15,030 to complainant and a total of Rs. 1,00,000 towards expenses, mental hardship, financial and physical hardship suffered by him. The Insurance company had appealed in State Commission which after appraisal of evidence had maintained the order.

The insurance company had repudiated the claim for reimbursement of medical expenses of the complainant on the ground of withholding information from them. Insurance company alleged that complainant kept information from them about the disease he was suffering from at the time of taking of the insurance policy. In their support the company had produced a certificate from the doctor who claimed complainant to be his regular patient and certified that he was suffering from diabetes and hypertension since past ten years.

The Apex Commission however went with the finding of district and state forum about the said certificate being suspicious and noted pertinently that the said doctor is a paediatrician and is neither a physician, nor an endocrinologist, to certify a person as a diabetic and hypertension patient.

The Commission thus found unfair trade practice on part of the insurance company and dismissed the revision petition. ***–[ICICI Prudential Life Insurance Company Limited* v. *Dattatrey Bhivsan Gujar, 14th June, 2019 (NCDRC)]***

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ENVIRONMENT

1) NOIDA-GHAZIABAD FINED RS. 1 CRORE EACH FOR SEWAGE TREATMENT PLANT VIOLATIONS

Noida Authority and Ghaziabad Nagar Nigam have been slapped with a fine of Rs. 1 crore each for violation of Sewage Treatment Plant rules laid down by the NGT. – ***[The Times of India, dated 27th June, 2019]***

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