MONTHLY NEWSLETTER

Lexport
Interpreting India for commerce

JULY 2019

RBI/FEMA

1) MASTER CIRCULARS

Updated Master Circulars has been issued by RBI which can be accessed from their website. - ***[RBI, 1st & 2nd July, 2019]***

2) LIQUIDITY COVERAGE RATIO (LCR), FALLCR AGAINST CREDIT DISBURSED TO NBFCS AND HFCS

RBI has decided to front-load the Facility to Avail Liquidity for Liquidity Coverage Ratio (FALLCR) scheduled to increase by 0.5% each in August and December 2019 and to permit banks to reckon, with immediate effect, the increase in FALLCR of 1.0% of the bank's Net Demand and Time Liabilities (NDTL) as Level 1 HQLA for computing LCR, to the extent of incremental outstanding credit to NBFCs and Housing Finance Companies (HFCs) over and above the amount of credit to NBFCs/HFCs outstanding on their books as on date. RBI also announced that an Internal Working Group is reviewing the liquidity management framework and the recommendations of the Group are expected towards the middle of July 2019. – ***[DBR.BP.BC.No.2/21.04.098/2019-20, dated 05th July, 2019]***

3) RBI EASES END-USE ECB NORMS FOR CORPORATES AND NBFCS

Referring to the paragraphs 2.1.(v) and 2.1.(viii) of Master Direction No.5 dated March 26, 2019 on the above subject in terms of which, inter alia, ECB proceeds cannot be utilised for working capital purposes, general corporate purposes and repayment of Rupee loans except when the ECB is availed from foreign equity holder for a minimum average maturity period of 5 years. Further, on-lending for these activities out of ECB proceeds is also prohibited. The RBI, with a view to further liberalise the ECB framework, has decided, in consultation with the Government of India, to relax the end-use restrictions. Accordingly, eligible borrowers will now be permitted to raise ECBs for the following purposes from recognised lenders, except foreign branches/ overseas subsidiaries of Indian banks, subject to paragraph 2.2 of the direction ibid:

i. ECBs with a minimum average maturity period of 10 years for working capital purposes and general corporate purposes. Borrowing by NBFCs for the above maturity for lending for the above purposes is also permitted.
ii. ECBs with a minimum average maturity period of 7 years can be availed by eligible borrowers for repayment of Rupee loans availed domestically for capital expenditure as also by NBFCs for on-lending for the same purpose. For repayment of Rupee loans availed domestically for purposes other than capital expenditure and for on-lending by NBFCs for the same, the minimum average maturity period of the ECB is required to be 10 years.

iii. It has been decided to permit eligible corporate borrowers to avail ECB for repayment of Rupee loans availed domestically for capital expenditure in manufacturing and infrastructure sector if classified as SMA-2 or NPA, under any one time settlement with lenders. Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, except foreign branches/ overseas subsidiaries of Indian banks, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework. – ***[A.P. (DIR Series) Circular No. 04, dated 30th July, 2019]***

4) REVISION OF CERTIFICATES TO BE SUBMITTED FOR CLAIMING OF AGENCY COMMISSION

RBI has decided that agency banks while claiming agency commission from RBI Central Accounts Section, Nagpur and at Regional offices of RBI (including Mumbai Regional Office for GST collections) are required to submit certificates by the bank official and by chartered accountant in this regard in the revised format as given in Annex A and Annex B. Certificates in the new format are to be submitted along with the agency commission claims submitted by agency banks from July 1, 2019 onwards. It has been further clarified that these certificates would be in addition to the usual Certificate from ED / CGM (in charge of government business) to the effect that there are no pension arrears to be credited / delays in crediting regular pension / arrears thereof. – ***[DGBA.GBD.No.5/31.02.007/2019-20, dated 31st July, 2019]***

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FOREIGN TRADE

1) AMENDMENTS IN APPENDIX 4J OF HAND BOOK OF PROCEDURES 2015-20

The Import of walnuts in any form is placed under Appendix 4J with pre import condition and reduced export obligation period of 6 (six) months under advance authorization with immediate effect. ***–[PUBLIC NOTICE NO. 15/2015-2020, 3rd July, 2019, (DGFT)]***

2) ACTION FOR RECOVERY OF PENALTY, PENDING APPEALS/REVIEWS

While processing Appeal and Review Petitions filed by various aggrieved parties u/s 15 & 16 of FT(D&R) Act, 1992 against Adjudication/Appellate orders passed by various RAs/SEZs, it is observed that in majority of such cases, no concrete action is taken up by the Adjudicating Authorities to recover the penalty amount. In some cases, the parties have filed appeals long back but have not bothered to attend the appeal/review procedures. This modus operandi is adopted by the unscrupulous parties as the RAs/SEZs do not take stricter action for recovery. The Adjudicating Authorities may please note that filing of an Appeal/Review does not tantamount to stay on recovery unless & until a specific order is made by the appropriate authority to stay recovery of such penalty.

Therefore, all the Adjudicating Authorities in RAs and SEZs are advised to review such cases where adjudication orders were passed by them and penalty has been imposed. Recovery of penalties should be immediately initiated by the Adjudicating Authorities where no stay has been granted by the Appellate Authority/Reviewing Authority or any court of law.

A report giving details of all such cases along with action taken for recovery in each such case should be furnished to this Directorate within a period of 30 days from issue of this instruction. – ***[ECA Circular No. 26/2015-20, 12th July, 2019, (DGFT)]***

3) POWER TO CONDONE DELAY IN PAYMENT OF FEE FOR EXCESS UTILISATION OF DUTY SAVED AMOUNT HAS BEEN GRANTED TO THE RA.

In excess of duty saved amount indicated on the authorization by not more than 10%, the authorization shall be deemed to have been enhanced by that proportion. Customs shall automatically allow clearance of such goods without endorsement by RA concerned. The authorization holder shall furnish additional fee to cover excess imports effected, in terms of duty saved amount, to RA concerned, within one month of excess imports taking place. Export obligation shall automatically stand enhanced proportionately. RA concerned may also accept the additional fee to cover the excess imports effected, in terms of duty saved amount, if the same is furnished beyond one month but within two years of the excess import taking place, subject to payment of composition fee of Rs. 5000/- per authorisation. ***–[Public Notice No.22/2015-20, 31st July, 2019, (DGFT)]***

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CORPORATE

1) RBI DISALLOWS ISSUE OF COMMERCIAL PAPERS BY INDIAN COMPANIES

The RBI has amended the Foreign Exchange Management (Deposit) Regulations, 2016 to omit sub-regulation 3 of regulation 6 thereof which permitted Indian companies to accept deposits by issue of Commercial Paper to a non-resident Indian or a person of Indian origin or a foreign portfolio investor registered with SEBI, subject to the prescribed conditions. Consequently, with effect from 16 July 2019, Indian companies can no longer accept deposits through issue of Commercial Paper. ***- [Foreign Exchange Management (Deposit)(Amendment) Regulations 2019, 16th July 2019]***

2) CABINET APPROVES AMENDMENTS TO INSOLVENCY AND BANKRUPTCY CODE 2016

The Cabinet has approved amendments to the Insolvency and Bankruptcy Code 2016 to fill critical gaps in the Corporate Insolvency Resolution Process (CIRP), specifically addressing issues arising from the NCLAT judgement in the Essar Steel matter and the Jaypee home buyers matter. An Amendment Bill of 2019 incorporating the following amendments is likely to be introduced in Parliament shortly:

Overall time limit for completion of CIRP of 330 days, which period will include time for litigation and judicial proceedings;

Corporate restructuring schemes of mergers, demergers and amalgamations will be part of the resolution plan;

The Committee of Creditors (CoC) may include commercial consideration in the manner of distribution of proceeds;

The votes of all financial creditors covered under Section 21(6A) (which include homebuyers), shall be cast in accordance with the decision approved by the highest voting share (more than 50%) of financial creditors on a present and voting basis;
The CoC may decide to liquidate the corporate debtor any time after constitution of the CoC and before preparation of the information memorandum.

Financial creditors who have not voted in favor of the resolution plan and operational creditors shall receive at least the amount that would have been received by them if the amount to be distributed under the resolution plan had been distributed in accordance with Section 53 of the Code (as applicable to a liquidation process) or the amount that would have been received if the liquidation value of the corporate debtor had been distributed in accordance with Section 53 of the Code, whichever is higher. This provision will have retrospective effect where the resolution plan has not attained finality or has been appealed against.

A bankruptcy resolution or liquidation arrived at under IBC is binding on central, state and local governments, to whom the bankrupt firm may owe dues.

Greater emphasis on the need for time bound disposal at application stage. ***–[Ministry of Corporate Affairs, 17th July, 2019]***

3) ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2019 TABLED BEFORE THE LOK SABHA AFTER HAVING PASSED BY RAJYA SABHA

The Arbitration and Conciliation (Amendment) Bill, 2019 has been passed by the Rajya Sabha on 18th July 2019 and has been tabled afresh before the Lok Sabha. It was earlier already passed by the Lok Sabha on 10th August 2018, but lapsed following the dissolution of both houses of Parliament.

The Bill provides for the establishment of an Arbitration Council of India (ACI), which, amongst others, is tasked with the responsibility of grading arbitral institutions whom parties would approach for appointment of arbitrator(s), thereby reducing the burden on Courts. Arbitrators would be accredited by professional institutes based on their qualifications and experience. The Bill also provides for certain best practices, such as a fixed time period for filing of the statement of claim and defence, confidentiality of arbitration proceedings and protection of arbitrators from actions taken in good faith. Significantly, the Bill corrects the ambiguity with respect to the applicability of the Amendment Act of 2015 – it clarifies that the Amendment Act of 2015 will apply only to arbitral proceedings commenced on or after 23rd October 2015 and to court proceedings arising out of or in relation to such arbitral proceedings only.

The details of the key amendments under the Bill are as follows:

The Supreme Court and High Courts to designate arbitral institutions graded by the ACI: In case of an international commercial arbitration, the arbitral institutions designated by

the SC will, on an application made by a Party, appoint arbitrator(s). In case of other arbitrations, the arbitrator(s) will be appointed by arbitral institutions designated by the High Court. Where there are no arbitral institutions in the jurisdiction of the High Court, the Chief Justice of that High Court may maintain a panel of arbitrators for discharging the functions of an arbitral institution. **[Insertion of sub-section 3A to Section 11]**

Establishment of Arbitration Council of India (ACI) as an independent body to take measures to promote and encourage arbitration, conciliation, mediation and other ADR mechanisms and maintain uniform professional standards for all such matters. The ACI will, amongst other functions, grade arbitral institutions based on criteria such as infrastructure, quality and experience of arbitrators, completion of arbitral proceedings within time limits etc., recognise professional institutes for accreditation of arbitrators, maintain an electronic repository of all arbitral awards. **[Insertion of Part IA].** The qualifications, experience and norms for accreditation of arbitrators have been specified in a **new Eighth Schedule**

Time limit for statement of claim and defence: The statement of claim and defence shall be completed within six months from the date on which the arbitrator(s) receives notice of their appointment. **[Insertion of sub-section 4 to Section 23]**

Confidentiality of proceedings: The arbitrator, arbitral institutions and parties to the arbitration are required to maintain confidentiality of all arbitral proceedings except the award, if its disclosure is necessary for the purpose of implementation and enforcement. **[Insertion of Section 42A]**

Immunity for Arbitrator: No suit or other legal proceedings shall lie against arbitrator(s) for act done or intended to be done in good faith under the Act. **[Insertion of Section 42B]**

Applicability of Amendment Act, 2015: Unless parties agree otherwise, the Amendment Act 2015 shall not apply to Arbitral proceedings which have commenced before the commencement of the Amendment Act of 2015 and to Court proceedings arising out of or in relation to such arbitral proceedings, irrespective of whether such court proceedings are commenced prior to or after the commencement of the Amendment Act of 2015. It shall apply only to Arbitral proceedings commenced on or after the commencement of the Amendment Act of 2015 and to court proceedings arising out of or in relation to such Arbitral proceedings. **[Insertion of Section 87 and omission of Section 26 of the Amendment Act, 2015]**

Section 29A [Time limit for arbitral award] amended: The arbitral award shall be made within 12 months from the completion of the pleadings of the parties (and not from the date the arbitral tribunal enters upon the reference) for arbitrations other than International commercial arbitrations. Where an application for extension of period for making an award is pending under sub-section (5) of Section 29A, the mandate of the arbitrator shall continue till the disposal of the said application. In case the Court orders reduction of fees of the arbitrator on finding that the delay in making the award was due to reasons attributable to the arbitrator, the arbitrator shall

be given an opportunity of being heard before the fee is reduced.

Section 17 [Interim measures ordered by the Tribunal] amended to restrict its operation only to applications made by a party during the arbitral proceedings and not at any time after making of the award but before its enforcement.

Section 34(2)(a) amended to limit the scope of inquiry for setting aside an award by providing that an arbitral award may be set aside by the Court only if the party making the application furnishes proof that **"establishes on the basis of the record of the arbitral tribunal that"**

Sections 37 and 50 [Appealable orders] amended to provide for a non-obstante clause so as to restrict the right to appeal only in terms of these sections, thereby removing the ambiguity arising from Section 13(1) of the Commercial Courts Act, 2015, which provides for a wider right to appeal.

Section 45 [Power of judicial authority to refer parties to arbitration] amended so as to be consistent with Section 8, to provide that the judicial authority shall refer parties to arbitration it ***prima facie*** finds that the agreement is null and void, inoperative or incapable of being performed. ***–[Arbitration and Conciliation (Amendment) Bill, 2019]***

4) COMPANIES (AMENDMENT) BILL 2019 INTRODUCED IN THE LOK SABHA

The Companies (Amendment) Bill, 2019 has been introduced in the Lok Sabha. The Bill seeks to replace the Companies (Amendment) Second Ordinance, 2019 (promulgated to give continued effect to the Companies (Amendment) Ordinance 2018). It provides, amongst others for the following key amendments:

Empowers the Central Government to allow certain companies (a holding, subsidiary or associate company of a company incorporated outside India) to have a different financial year than one ending on 31st day of March every year [amendment to clause (41) of Section 2];

Inserts a new Section 10A which provides that a company incorporated after the commencement of the 2019 Amendment Act shall not commence business or exercise borrowing powers unless (i) a declaration is filed by a director within 180 days of incorporation, with the Registrar, that every subscriber to the MoA has paid the value of shares agreed to be taken by him; and (ii) the company has filed a verification of its registered office as provided in Section 12(2).

Empowers the Registrar to initiate action for the removal of name of the company from the register of companies if the company is not carrying on any business or operation from a registered office [amendment to Section 12].

Obliges every company to take steps to identify an individual who is a significant beneficial owner in relation to the company to comply with the provisions of Section 90 [new sub-section 4A inserted in Section 90].

Amends Corporate Social Responsibility provisions, under Section 135, to clarify that in case of an ongoing project, the unspent amount be transferred to a special account to be spent within three financial years and thereafter be transferred to the Fund specified in Schedule VII. In all other cases, any unspent amount should be

transferred to the Fund specified under Schedule VII.

Amends provisions related to Prevention of Oppression and Mismanagement, specifically Sections 241, 242 and 243, to empower the Central Government to approach the Tribunal to issue an order against the persons who are connected with the conduct and management of the company, including directors, declaring them as not fit and proper persons, on account of acts committed by them amounting to fraud, misfeasance, negligence, with an intent to defraud creditors or members or in any manner prejudicial to public interest.

A person who is not a fit and proper person is barred from holding the office of a director, or any other office connected with the management of any company, for a period of five years from the date of the decision of the Tribunal. Further, such person shall not be entitled to be paid any compensation for the loss or termination of office, notwithstanding any other law, contract, memorandum or articles.

Enhances the jurisdiction of the Regional Director for compounding of offences from Rs. 5 lakh up to Rs.25 lakh [amendment to section 441].

Amends 16 sections of the Act to modify the punishment as provided in the said sections from fine to monetary penalties to lessen the burden upon the Special Courts ;

Enables the National Financial Reporting Authority to perform its functions through divisions and through an Executive Body [amendment to Section 132]. ***–[Companies Amendment Bill, 2019]***

5) IBBI CIRP & LIQUIDATION PROCESS REGULATIONS AMENDED

The IBBI has amended the Insolvency Resolution Process for Corporate Persons Regulations 2016 (CIRP Regulations) and Liquidation Process Regulations 2016, with effect from 25 July, 2019. Provisions related to liquidation cost, contributions to liquidation costs, liquidator's fees and sale of a corporate debtor (CD) or its business as a going concern and model timelines have been amended or inserted in both regulations, amongst other amendments, as follows:

Liquidation Cost: While approving a resolution plan, the CoC is required to make a best estimate of the amount needed to meet liquidation cost, in consultation with the RP, and the value of the liquid assets available to meet such costs in the event a liquidation order is passed. If the value of liquid assets falls short of meeting the liquidation cost, the CoC will approve a plan for contributions from the creditors for meeting this difference. [New Regulation 39B in the CIRP Regulations]

Where the CoC has not approved such a contribution plan, the liquidator may call upon the financial creditors to make up for the shortfall in proportion to the financial debts owed to them by the CD. Such contributions will be deposited in a designated escrow account within seven days of the liquidation order and will be repayable, along with interest, as part of liquidation cost. [Regulation 2A inserted in the Liquidation Process Regulations]

Assessment of sale as a going concern: While approving a resolution plan (under Section 30) or deciding to liquidate the CD (under Section 33), the CoC may recommend that the liquidator first explore the possibility of sale of the corporate debtor or its business as a going concern. If such a recommendation is made, the CoC will identify and group the assets and liabilities, in accordance with commercial considerations, to be sold as a going concern. The RP will submit the recommendation to the Adjudicating Authority while filing the approval/decision of the CoC. [New Regulation 39C in the CIRP Regulations]

If the liquidator is unable to sell the CD as a going concern within 90 days from the date of order of liquidation, he will proceed to sell the assets of the CD under clauses (a) to (d) of Regulation 32. This period of 90 days is in addition to the period of one year from the liquidation commencement date for completion of liquidation proceedings. [Regulation 32A inserted and Regulation 44(1) substituted in Liquidation Process Regulations]

Liquidator's Fees: The CoC, in consultation with the RP, may fix the fee payable to the liquidator while approving a resolution plan or while deciding to liquidate the CD. Such fees should account for the period, if any, used for compromise or arrangement under Section 230 of the Companies Act, 2013 and the period, if any, used for sale under clauses (e) and (f) of Regulation 32 of the Liquidation Process Regulations; and the balance period of liquidation. [New Regulation 39D in the CIRP Regulations]

In all other cases, the liquidator shall be entitled to fees: (a) at the same rate as the resolution professional was entitled to during the CIRP process, for the period of compromise or arrangement under Section 230 of CA 13; and (b) as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation. In the latter case, the liquidator shall be entitled to receive half of the fee payable on realisation only after such realised amount is distributed. [Regulation 4 substituted in the Liquidation Process Regulations]

Other amendments made in the CIRP Regulations:

Manner of withdrawal of application under Section 12A of the Code: Regulation 30A has been substituted to provide the withdrawal of application by an applicant, through the interim resolution professional (IRP), either before or after the constitution of the CoC. In the latter case, if the withdrawal is after issue of the Expression of Interest (EoI), the applicant must give reasons justifying withdrawal. 'Form FA' has been substituted. It must be accompanied by a bank guarantee for the estimated expenses till the date of filing of the application;

The CoC is required to record its deliberations on the feasibility and viability of the resolutions plans.

Other amendments made in the Liquidation Process Regulations:

Compromise or arrangement: In case of a compromise or arrangement under Section 230 of the Companies Act 2013, the process must be completed within 90 days of the order of liquidation, which period is over and above the time period of one year for liquidation. Where a

compromise or arrangement is made pursuant to a sanction by the Tribunal, the cost incurred for this process is to be borne by the CD. Otherwise, this cost must be borne by the parties who have proposed the compromise or arrangement. [Regulation 2B inserted]

Stakeholders Consultation Committee (SCC): An SCC consisting of representatives of the classes of stakeholders shall be constituted within sixty days from the liquidation commencement date to advise on matters relating to sale of the CD. Advise to the liquidator will be given by the SCC by a vote of minimum 66% of the representatives present and voting, which is not binding on the liquidator, provided it records its reasons in writing for not following such advise. [Regulation 31A inserted]

Public announcement and submission of claims: The public announcement by the liquidator under Regulation 12 must ask stakeholders to submit or update their claims submitted during the CIRP as on the liquidation commencement date, within 35 days from the liquidation commencement date. [Regulation 12(2) substituted]. A person claiming to be a stakeholder must submit or update its claim during the CIRP, before the last date mentioned in the public announcement. He should also prove his claim for debt or dues payable to him as on the liquidation commencement date. [Regulation 16 substituted]

Presumption of Security Interest: Secured creditors must intimate their decision as to whether they wish to relinquish their security interest to the liquidation estate or realise it by the 30th day from the liquidation commencement date. Non-communication of such decision will imply that they have relinquished their security and the assets covered under the security interest shall be considered part of the liquidation estate. If a secured creditor proceeds to realise his security outside the liquidation process, he shall be liable to pay his share of the expenses incurred by the Liquidator for the preservation of the security before its realisation. He may retain the sale proceeds of his secured assets after depositing the workmen's and employees' dues with the liquidator, in accordance with Section 53 of the Code. [Regulation 21A inserted].

Valuation: The liquidator may consider the valuation conducted during CIRP, even if it is more than six months old. He may consider the average of the estimates of the values arrived at during CIRP. Where he does not consider such valuation to be appropriate, he may appoint registered valuers in the liquidation process, in the manner specified in Regulation 35(2). [Regulation 35(1) substituted]

Compliance Certificate: In case of dissolution of the CD, the liquidator is required to file a compliance certificate in Form H along with the application for dissolution and the final report before the Adjudicating Authority under Section 54 of the IB Code. [Regulation 45(3) substituted] ***–[Notification No: No. IBBI/2019-20/GN/REG048, 25th July, 2019 (Insolvency and Bankruptcy Board of India)]***

6) LAST DATE FOR FILING FORM BEN-2 EXTENDED TO 30TH SEPTEMBER 2019

MCA has extended the time limit for filing Form BEN-2 under the Companies (Significant Beneficial Owners) Rules, 2018 upto 30th September 2019, without payment of additional

fee. Forms filed after 30th September 2019 will be subject to additional fee. Form BEN-2 was substituted earlier on 1st July 2019 under the Companies (Significant Beneficial Owners) Second Amendment Rules, 2019 (refer update below). ***–[General Circular No.08/2019, Ministry of Corporate Affairs]***

7) COUNTER CLAIM IN A SUIT FILED BY THE CORPORATE DEBTOR IS NOT COVERED UNDER MORATORIUM

The Delhi High Court has dealt with an interesting issue of whether a counter claim filed by an operational creditor in a suit filed by the Corporate Debtor (CD) will be covered under the moratorium and be stayed, while the CD continues to pursue its claim.

The Court observed that, strictly speaking, a counter claim is in the nature of a suit against the Plaintiff and would therefore be covered under the moratorium. However, in the instant case, the Plaintiff was the CD and the plaint and counterclaim were interlinked with each other being related to the same transaction, therefore, both claims ought to be adjudicated comprehensively by the same forum. It held that the NCLT or the Resolution Professional could not be burdened with the task of entertaining the counterclaim which was uncertain, undetermined and unknown. If the NCLT were to make such a determination prior to the adjudication of the plaintiff's claim for recovery, this would result in the possibility of conflicting views in respect of the same transaction.

The Court noted that there was no threat to the assets of the CD at this point and continuation of the counter claim would not adversely impact these assets. Section 14 could be triggered once the counter claim is adjudicated and the amount to be paid/recovered is determined or it is in execution proceedings. The counter claim therefore did not deserve to be stayed under Section 14 of the Code. The Court opined that "in such situations the Court has to see whether the purpose and intent behind the imposition of moratorium is being satisfied or defeated. A blinkered approach cannot be followed and the Court cannot blindly stay the counter claim and refer the defendant to the NCLT/RP for filing its claims". ***–[SSMP Industries Ltd.* v. *Perkan Food Processors Private Limited, CS(COMM) 470/2016 & CC(COMM) 73/2017, 18th July, 2019 (High Court of Delhi)]***

8) ADJUDICATING AUTHORITY CAN PASS AD-INTERIM ORDER BEFORE ADMITTING APPLICATION U/S 7 OR 9

NCLAT has held that once an application under Sections 7 or 9 of the IB Code is filed, it is not necessary for the Adjudicating Authority (AA) to wait to hear the parties – it may pass an appropriate ad-interim order before admitting the application, to ensure that one or other party may not abuse the process of the Tribunal or for meeting the ends of justice. Rule 11 of the NCLT Rules 2016 gives the Tribunal inherent powers to make such orders. Once the application is admitted pursuant to hearing of parties, the order of moratorium under Section 14 would follow. If the application is rejected, the interim order would automatically stand vacated.

In the instant case, the operational creditor apprehended that the Corporate Debtor (CD) and its Directors might dispose of its assets. As the CD did not refute or reply to the

apprehension nor give an undertaking, it was held that the AA could invoke its inherent jurisdiction under Rule 11 of the NCLT Rules, 2016 and restrain the CD and its directors from alienating, encumbering or creating any interest on the assets of the company till further orders. ***–[NUI Pulp and Paper Industries Private Limited* v. *M/s Roxcel Trading GMBH, Company Appeal No.664 of 2019, 17th July, 2019 (National Company Law Appellant Tribunal)]***

9) NBFCS ARE OUTSIDE THE PURVIEW OF IB CODE

The NCLAT has upheld an order of the Adjudicating Authority rejecting an application under Section 7 of the IB Code against an NBFC on the basis that the NBFC was a financial service provider even though it did not provide, any of the nine 'financial services' given under Section 3(16). Part II of the IB Code relates to insolvency and liquidation for corporate persons, where the definition of 'corporate person' excludes a financial service provider engaged in the business of providing 'financial services'.

The Appellate Tribunal held that the definition of 'financial services' read with the definition of 'financial service provider' makes it clear that it is inclusive and there may be other services which come within its meaning. The mere fact that the NBFC did not accept deposits or carry on any of the other eight activities would not make it a 'Corporate person/Corporate Debtor" under the IB Code.

In the instant case, the Respondent NBFC was in the business of investment in shares, bonds, debentures, debts or loans in group companies, money market instruments etc., which fall under the definition of 'financial institution' under Section 45-I(c) of the Reserve Bank of India Act 1934. Section 45-I (b) of the RBI Act provides that the business of a non-banking financial institution means carrying on the business of a 'financial institution' referred to in clause (c) and includes the business of a non-banking financial company referred to in clause (f). Clause(f) defines a non-banking financial company to include a financial institution which is a company. Therefore, in view of the aforesaid definitions of financial institution and non-banking financial institution, it was clear that the Respondent NBFC was carrying on the business of a financial institution and was therefore a financial service provider. Consequently, it did not fall within the meaning of Corporate Person/Corporate Debtor and could not be proceeded against under the IB Code. ***–[Housing Development Finance Corporation Limited* v. *RHC Holdings Private Limited, Company Appeal No.26 of 2019, 10th July, 2019 (National Company Law Appellant Tribunal)]***

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SECURITIES

1) CIRCULAR ON MODIFICATION OF CIRCULAR DATED SEPTEMBER 24, 2015 ON 'FORMAT FOR COMPLIANCE REPORT ON CORPORATE GOVERNANCE TO BE SUBMITTED TO STOCK EXCHANGE (S) BY LISTED ENTITIES

Regulation 27(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**Listing Regulations**"), specifies that a listed

entity shall submit a quarterly compliance report on corporate governance in the format specified by the Board from time to time to recognised Stock Exchange(s) within fifteen days from close of each quarter.

Vide Circular No. CIR/CFD/CMD/5/2015 dated September 24, 2015, SEBI had specified the format for compliance report on Corporate Governance by listed entities.

Now, in light of the recommendations made in the report by the Committee on Corporate Governance under the chairmanship of Mr. Uday Kotak, the Circular No. CIR/CFD/CMD/ 5 /2015 dated September 24, 2015 has been modified only to the extent to the format for compliance report on Corporate Governance. The format specified in the Annexure to the Circular shall replace the format specified in the Annexure to the Circular dated September 24, 2015 and shall come into force with effect from the quarter ended September 30, 2019. – ***[SEBI/HO/CFD/CMD1/CIR/P/2019/78, 16th July, 2019, (SEBI)]***

2) MODIFICATION OF CIRCULAR DATED JULY 18, 2017 ON 'DISCLOSURE OF DIVERGENCE IN THE ASSET CLASSIFICATION AND PROVISIONING BY BANKS.

Vide Circular No. SEBI/CIR/CFD/CMD/80/2017 dated July 18, 2017, it was specified that banks which have listed specified securities shall disclose to the stock exchanges, divergences in the asset classification and provisioning wherever the additional provisioning requirements assessed by RBI/ the additional Gross NPAs identified by RBI exceeded a certain threshold.

RBI has now modified the disclosure requirements varying the aforesaid thresholds, *vide* its Notification No. RBI/2018-19/157; DBR.BP.BC.No.32/21.04.018/2018-19 dated April 1, 2019.

In line with the revised RBI requirements, all banks which have listed specified securities shall disclose to the stock exchanges divergences in the asset classification and provisioning, if either or both of the following conditions are satisfied:
(a)the additional provisioning for NPAs assessed by RBI exceeds 10 (ten) per cent of the reported profit before provisions and contingencies for the reference period, and
(b)the additional Gross NPAs identified by RBI exceed 15 per cent of the published incremental Gross NPAs for the reference period.

The Circular comes into force with immediate effect. ***–[CIR/CFD/CMD1/79/2019, 17th July, 2019 (SEBI)]***

3) STAGGERED DELIVERY FRAMEWORK FOR COMMODITY FUTURES CONTRACTS

SEBI *vide* Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/90 dated September 21, 2016 had *inter-alia* specified the staggered delivery framework for commodity futures contracts. The applicable staggered delivery periods for various commodity futures contracts as on the date of the above Circular were also continued. It is observed that currently there is no uniformity in the length of staggered

delivery period for commodity futures contracts across exchanges even for the same commodities.

Based on the representations received from exchanges and deliberations thereon, following revised norms for staggered delivery have been prescribed by SEBI:-

Definition: Staggered delivery period is the period, beginning few working days prior to expiry of any contract and ending with expiry, during which sellers/buyers having open position may submit an intention to give/take delivery.

All compulsory delivery commodity futures contracts (agriculture commodities as well as non-agriculture commodities) shall have a staggered delivery period.

The minimum duration of staggered delivery period shall be at least five working days.

Exchanges shall have the flexibility to set higher duration of staggered delivery period for any commodity futures contract, as deemed fit, taking into account various factors such as historical open interest, volume near expiry etc. In this regard, for the benefit of the market participants, all the exchanges shall jointly prepare and publish a detailed framework outlining various circumstances and factors which would generally require longer duration of staggered delivery period in any commodity.

In the interest of trade and public, SEBI or exchange may exercise its due discretion in modifying the aforesaid staggered delivery period at any time.

Framework: (i) Seller/buyer having open position shall have an option, of submitting an intention of giving/taking delivery, on any day during the staggered delivery period. (ii) On each day (except for the expiry day), Exchange shall allocate intentions received to give delivery during the day, to buyers having open long position as per random allocation methodology to ensure that all buyers have an equal opportunity of being selected to receive delivery irrespective of the size or value of the position. However, preference may be given to buyers who have marked an intention of taking delivery, which may be based on aspects such as location, quality etc. (iii) Pay-in and pay-out for the allocated deliveries shall happen within 2 working days after allocation. (iv) All open positions after expiry of the contract shall result in compulsory delivery and be settled at Final Settlement Price (FSP) of the respective contract and pay-in and pay-out shall happen latest by the 2nd working day after expiry. ***–[SEBI/HO/CDMRD/DNPMP/CIR/P/2019/8, 26th July, 2019 (SEBI)]***

4) SEBI LODR REGULATIONS AMENDED TO INCLUDE SUPERIOR VOTING RIGHT SHARES

Following SEBI's approval of issuance of shares having Differential Voting Rights, specifically, equity shares having Superior Voting Right shares (SR shares), SEBI has amended the SEBI (LODR) Regulations, 2015 and the (Buy-Back of Securities) Regulations, 2018, w.e.f. 29 July 2019, to provide for such rights, as follows:

Amendments to SEBI (LODR) Regulations 2015:

Board of Directors: Where the listed company has outstanding SR shares, at least half of the Board must comprise of independent directors [sub-clause(d) to clause (1) of Regulation 17 inserted]

Composition of Committees: Where the listed entity has outstanding SR shares, the Audit Committee must comprise only of independent directors and the Nomination and Remuneration Committee, the Stakeholders Relationship Committee and the Risk Management Committee shall have at least two thirds independent directors [Regulations 18, 19, 20 and 21 amended]

Bar on issuance of shares in certain cases: A listed entity is prohibited from issuing shares that may confer superior rights or inferior voting rights as to dividend vis-à-vis the rights on equity shares that are already listed. However, a listed entity having SR shares issued to its promoters or founders may issue SR shares to its SR shareholders only through a bonus, split or rights issue in accordance with the ICDR Regulations, 2018 and the Companies Act, 2013. [sub-regulation 3 of Regulation 41 substituted]

Treatment of SR shares and rights of SR shareholders: A new Regulation 41 (A) has been inserted to provide that:

(i)SR equity shares shall to be treated at par with ordinary equity shares in all respects, except in case of voting on resolution; (ii) The total voting rights of SR shareholders (including ordinary shares) in the issuer, upon listing pursuant to an IPO, must not exceed 74% at any point of time; (iii) SR equity shares shall be treated like ordinary equity shares in terms of voting rights, that is, each SR share shall have only one vote for the following circumstances - appointment/removal of independent directors/ auditor; where a promoter is willingly transferring control to another entity; related party transactions involving an SR shareholder; voluntary winding up of the listed entity; changes to its AoA or MoA except any change affecting the SR share; initiation of a voluntary resolution process under the IBC, utilization of funds for purposes other than business; substantial value transaction based on materiality threshold; and passing of special resolution in respect of delisting or buyback of shares.

(iv)SR shares shall be converted to equity shares having voting rights at par with ordinary shares on the fifth anniversary of the listing of ordinary shares of the listed entity. Conversion prior to this period is also permitted at the option of the SR shareholder. SR shares may be valid for an additional period 5 years if a resolution to that effect is passed, where SR shareholders have not been permitted to vote.

SR shares will be compulsory converted to equity shares having voting rights at par with ordinary shares in the event of the demise of the promoter/founder holding such shares, the resignation of the SR shareholder from an executive position in the listed entity; merger/acquisition of the listed entity having SR shareholder(s) where the control ceases to vest in the SR shareholder(s) and sale of SR shares by an SR shareholder who continues to hold such shares after the lock-in period but prior to the lapse of validity of such SR shares. ***–[No. SEBI/LAD-NRO/GN/2019/28, 29th July, 2019 (SEBI)]***

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COMPETITION

1) COMPETITION COMMISSION OF INDIA IMPOSES PENALTY ON SAAR IT RESOURCES PRIVATE LIMITED AND OTHERS

Competition Commission of India ('Commission') after detailed inquiry has found SAAR IT Resources Private Limited, CADD Systems and Services Private Limited and Pentacle Consultants (I) Private Limited to be in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Competition Act, 2002 ('Act'), for entering into an arrangement to rig the bids of a tender floated by Pune Municipal Corporation in the year 2015 for 'Selection of agency for carrying out geo-enabled tree census using GIS & GPS Technology'. Investigation against these companies was initiated *vide* Commission's Order dated 03.10.2017, under Section 26(1) of the Act, by the Director General on the basis of an information filed under Section 19(1)(a) of the Act by Nagrik Chetna Manch, a public charitable trust. On the basis of the investigation, submissions of the parties and subsequent hearing, the Commission found that there was cogent evidence of bid rigging/ collusive bidding by the aforementioned companies, in the tender process for selection of an agency to undertake geo-enabled tree census using GIS & GPS technology in contravention of Section 3(3)(d) read with Section 3(1) of the Act. Further, the Commission also found meeting of mind and coordination between various individuals which included the directors of the above mentioned companies to rig the tender, by way of submitting proxy/ cover bids. Considering contravention of provisions of the Act, the Commission *vide* Order dated 02.08.2019, directed the said companies to cease and desist from indulging in such anticompetitive conducts which have been found to be in contravention of the provisions of the Act. Further, the Commission imposed penalty of Rs. 1.26 Crore, Rs. 0.11 Crore, and Rs. 1.33 Crore on SAAR IT Resources Private Limited, CADD Systems and Services Private Limited, and Pentacle Consultants (I) Private Limited, respectively under Section 27(b) of the Act, calculated at the rate of 10 % of the average turnover for last three financial years. The Commission also imposed penalty on certain directors of the said companies under Section 27 (b) of the Act for their involvement in the anti-competitive conduct as aforementioned. - ***[Nagrik Chetna Manch* v. *SAAR IT Resources Private Limited, (Competition Commission of India)]***

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INDIRECT TAXES

a. CUSTOMS

1) EFFECTIVE RATE OF ROAD AND INFRASTRUCTURE CESS INCREASED ON PETROL AND DIESEL

Effective rate of Road and Infrastructure cess increased to Rs 9 per litre, as additional duty of customs, on petrol and diesel. – ***[Notification No. 18/2019-Customs, dated 6th July, 2019]***

2) EXEMPTION OF SPECIFIED DEFENSE EQUIPMENT AND THEIR PARTS FROM BCD

The CBIC *vide* present Circular exempted specified defense equipment and their parts from

Basic Customs Duty for a period of 5 years. ***[Notification No. 19/ 2019-Customs, dated 6th July, 2019]***

3) EFFECTIVE RATE OF BCD INCREASED ON PETROLEUM CRUDE

Notification No. 52/2017-Customs dated 30th June 2017 amended so as to increase the effective rate of Basic Customs Duty on petroleum crude by Rs. 1 per tonne. – ***[Notification No. 20/2019–Customs, dated 6th July, 2019]***

4) NOTIFICATION AMENDED TO UPDATE THE CLASSIFICATION OF THE GOODS

Notification No. 25/98-Customs dated 2nd June 1998 amended so as to update the classification of the goods in the notification. – ***[Notification No. 21/2019 – Customs, dated 6th July, 2019]***

5) EXEMPTION FROM BCD OF SPECIFIED CAPITAL GOODS USED FOR MANUFACTURE OF SPECIFIED ELECTRONIC ITEMS

Notification No. 25/2002-Customs dated 1st March, 2002 amended so as to exempt specified capital goods use for manufacture of specified electronic items. – ***[Notification No. 22/2019 – Customs, dated 6th July, 2019]***

6) BCD EXEMPTION ON THE SPECIFIED PARTS OF LINE TELEPHONE HANDSET

Notification No. 25/2005-Customs dated 1st March, 2005 amended so as to explicitly provide BCD exemption on the specified parts of line telephone handset. – ***[Notification No. 23/2019 – Customs, dated 6th July, 2019]***

7) EFFECTIVE RATE OF BCD PRESCRIBED

Notification No. 50/2017-Customs dated 30th June, 2017 amended so as to prescribe effective rate of Basic Customs Duty (BCD). – ***[Notification No. 25/2019 –Customs, dated 6th July, 2019]***

8) ADDITIONAL ROUTE FOR RAXAUL LCS NOTIFIED

Notification No. 63/1994-Customs (N.T) dated 21st November, 1994 amended , by notifying the pipeline of M/s Indian Oil Corporation Limited connecting Barauni, Patna, Motihari, Nonea in India to Amlekhgunj in Nepal as additional route for Raxaul LCS. – ***[Notification No. 50/2019-Customs (N.T.), dated 12th July,2019]***

9) ADD ON PARACETAMOL

Levy of anti-dumping duty extended till 27.10.2019, on imports of "Paracetamol" originating in or exported from china PR, extended *vide* Notification No. 39/2018 Customs (ADD), dated the 20th August, 2018, in pursuance of Order of Hon'ble High Court of Gujarat in the matter of SCA 5278/2019. – ***[Notification No. 27/2019-Customs (ADD), dated 12th July, 2019]***

10) ADD ON PURIFIED TEREPHTHALIC ACID

Definitive anti-dumping duty imposed on imports of "Purified Terephthalic Acid" originating in or exported from Korea RP and

Thailand, in pursuance of sunset review final findings issued by DGTR. – ***[Notification No. 28/2019-Customs (ADD), dated 24th July, 2019]***

11) CBIC ALLOWED PARTIAL DISCHARGE OF BONDS EXECUTED BY NOMINATED AGENCIES/ BANKS

The CBIC has allowed partial discharge of bonds / bank guarantees submitted for import of gold in proportion to export made by nominated agencies/ banks. – ***[Circular No. 18/2019-Customs, dated 05th July, 2019]***

12) IMPLEMENTATION OF PGA ESANCHIT- PAPERLESS PORCESSING UNDER SWIFT- UPLOADING OF LICENSES/ PERMITS/ CERITIFICATES/ OTHER AUTHORIZATIONS (LPCOS) BY PGAS

eSANCHIT application is in operation since 01.04.2018. With the objective of further reducing physical interface between Customs/regulatory agencies and the trade and to increase the speed of clearance in both imports & exports, a facility to upload digitally signed Licenses/Permits/Certificates/Other Authorizations (LPCOs) by Participating Government Agencies (PGAs) on eSANCHIT at all ICES locations across India was introduced from 16.11.2018 *vide* Circular No. 44/2018-Cus. dated 13.11.2018. In this regard, kindly refer to Board's Circular No. 13/2019-Cus. dated 03.06.2019 also. Since the facility to upload the LPCOs is now being fully made available to these PGAs, therefore, the beneficiaries i.e., importer/exporters/customs brokers would not be allowed to upload the previously issued LPCOs on eSANCHIT w.e.f 01.08.2019. Further, to facilitate the members of the trade (beneficiaries), the PGAs are required to upload the LPCOs issued by them during the last 15 days from above cut-off date. Any LPCOs issued on a prior date may also be uploaded by the PGAs on eSANCHIT, in order to enable the beneficiary to utilize the same. – ***[Circular No. 19/2019-Customs, dated 16th July, 2019]***

13) CLARIFICATION REGARDING APPLICABILITY OF NOTIFICATION NO. 45/2017-CUSTOMS DATED 30.06.2017 ON GOODS WHICH WERE EXPORTED EARLIER FOR EXHIBITION PURPOSE/CONSIGNMENT BASIS

CBIC had issued Circular No. 108/27/2019-GST dated 18th July, 2019 clarifying the activity of sending the goods out of the India for Exhibition or on consignment basis for export promotion, except when such activity satisfies the test laid down in "Schedule I" of the CGST Act, do not constitute supply as the said activity does not fall within the scope of Section 7 of the CGST Act as there is no consideration at that point in time. It is further clarified that since the activity is not a supply, the same cannot be considered as Zero-rated supply as per the provisions of Section 16 of the IGST Act.

Now, Board has issued the present Circular clarifying about applicability of Notification No. 45/2017-Customs dt. 30th June, 2017 on goods which were exported earlier for exhibition purpose/consignment basis.

As per Sl. No. 1(d) of Notification No. 45/2017-Customs dated 30th June, 2017 requires payment of integrated tax at the time of re-import that was not paid initially at the time of export, for availing exemption.

- For re-import of specified goods, no integrated tax was required to be paid for

specified goods at the time of taking these out of India, the activity being not a supply; hence the said condition requiring payment of integrated tax at the time of re-import of specified goods in such cases is not applicable.

- Even though those specified goods were exported under LUT, re-import cases of such goods will fall under residuary entry at Sl. No. 5 of Notification No. 45/2017-Customs

If exports have been made to related / distinct persons / principals / agents, for participation in exhibition or on consignment basis, but such goods exported are returned after participation in exhibition or the goods are returned by such consignees without approval or acceptance,

- Re–import of such goods after return from such exhibition or from such consignees will be covered by entry at Serial No. 5 of Notification No. 45/2017 dated 30.06.2017, provided re – import happens before six months from the date of delivery challan.

The above clarification shall apply to all pending matters involving similarly placed exporters and importers, as the case may be. – ***[Circular No. 21/2019-Customs, dated 24th July, 2019]***

14) CLARIFICATIONS REGARDING REFUNDS OF IGST PAID ON IMPORT IN CASE OF RISKY EXPORTERS

Board has received representations wherein various exporters and organisations have raised the issue of repeated opening of export containers for 100% examination related to risky exporters, under the new procedure laid down in Circular 16/2019-Customs dated 17.06.2019. Exporters have taken the plea that their cargo is getting delayed and they have to incur additional costs for carrying out re-packing.

CBIC has now clarified the issue:

- Circular No.16/2019-Customs dated 17/6/2019 was issued as a preventive measure against fraudulent refund of IGST on the basis of ineligible or fraudulently availed input tax credit (ITC).
- Only a miniscule percentage of export consignments are being selected for examination on account of risk associated with fraudulent availment of IGST refunds.
- Requirement of 100% physical examination of each export consignment shall be gradually relaxed provided no irregularity was noticed in earlier examinations of export consignments of export entities in terms of Circular No.16/2019-Customs dated 17.06.2019.
- Risk Management Centre for Customs (RMCC) shall take into consideration the feedback received from field formations with regard to the 100% examination conducted on exports of risk based identified entities.
- Wherever the examination has validated the declaration made in the shipping bill, RMCC may review the risk assessment and gradually taper down the percentage of physical examination.
- Suitable alerts based on re–evaluated risk may accordingly be inserted in the system by RMCC in such cases. – ***[Circular No. 22/2019-Customs, dated 24th July, 2019]***

b. CENTRAL EXCISE

1) INCREASE OF BASIC EXCISE DUTY ON SPECIFIED GOODS

The CBIC *vide* present Circular increased the basic excise duty on specified goods in Chapter 24 under Section 5A of the Central Excise Act 1944. – ***[Notification No. 03/2019-Central Excise, dated 6th July, 2019]***

2) EFFECTIVE RATE OF ROAD AND INFRASTRUCTURE CESS INCREASED ON PETROL AND DIESEL

Effective rate of Road and Infrastructure Cess increased to Rs 9 per litre, as additional duty of excise, on petrol and diesel. – ***[Notification No. 04/2019-Central Excise, dated 6th July, 2019]***

3) INCREASE OF EFFECTIVE RATE OF SPECIAL ADDITIONAL EXCISE DUTY ON PETROL AND DIESEL

Effective rate of Special Additional Excise Duty increased on Petrol and Diesel. – ***[Notification No. 05/2019-Central Excise, dated 6th July, 2019]***

4) CRUDE PETROLEUM OIL PRODUCED IN SPECIFIED OIL FIELDS EXEMPTED

The CBIC *vide* present Circular exempted the crude petroleum oil produced in specified oil fields under production sharing contracts or in the exploration blocks offered under the New Exploration Licensing Policy (NELP) through international competitive bidding. – ***[Notification No. 6/2019-Central Excise, dated 6th July, 2019]***

5) EFFECTIVE RATE OF ROAD AND INFRASTRUCTURE CESS INCREASED ON PETROL AND DIESEL

Effective rate of Road and Infrastructure Cess increased to Rs 9 per litre, as additional duty of customs, on petrol and diesel. – ***[Notification No. 18/2019-Customs, dated 6th July, 2019]***

c. SERVICE TAX

1) CLARIFICATIONS REGARDING PROVISIONS IN THE CENVAT CREDIT RULES, 2004 REGARDING REVERSAL OF CREDIT

2.0 Issue: Is reversal under Rule 6(3) of the Cenvat Credit Rules, 2004 additionally required for all the services specified in Notification 26/2012-Service Tax dated 20-6-2012?

Answer: On a plain and strict interpretation of the provisions, all services mentioned in Notification 26/2012-Service Tax dated 20-6-2012 do not, *ipso facto*, become "exempted services". They will become so only if they satisfy the twin conditions specified in Section 2(e) of the Cenvat Credit Rules, 2004 i.e., there is a restriction on both inputs and input services.

3.0 Issue: Is reversal under Rule 6(3) of the Cenvat Credit Rules, 2004 additionally required, when providing the "service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity". (i.e., Section 66E (i) of the Finance Act, 1994)?

Answer: On a plain and strict interpretation of the wording of the relevant provisions, other than the restrictions in Rule 2C of the Service Tax (Determination of Value) Rules 2006, there is no need for any further reversal of credit under Rule 6(3) of the Cenvat Credit Rules, 2004. – ***[Circular No. 213/3/2019- Service Tax, dated 5th July, 2019]***

d. GST

1) CENTRAL GOODS AND SERVICES TAX (FIFTH AMENDMENT) RULES, 2019

CBIC has notified the Central Goods and Services Tax (CGST) (Fifth Amendment) Rules, 2019, amending various CGST Rules/ GST Forms. New CGST Rule 83B has been inserted for 'Surrender of enrolment of goods and services tax practitioner along with Form GST PCT 06 to submit application for cancellation of GSTP Enrolment/ Registration. – ***[Notification No. 33/2019 – Central Tax, dated 18th July, 2019]***

2) EXTENSION OF DATES OF FURNISHING FORM GST CMP-08

Last date for furnishing FORM GST CMP-08 for the quarter April -June 2019 has been extended till 31.08.2019. – ***[Notification No. 35/2019 – Central Tax, dated 29th July, 2019]***

3) REDUCTION OF GST RATE ON ELECTRIC VEHICLES, ETC.

The CBIC *vide* present Circular has reduced the GST rate on Electric Vehicles, and charger or charging stations for Electric vehicles which are applicable w.e.f. 01st August, 2019. – ***[Notification No. 12/2019-Central Tax (Rate), dated 31st July, 2019]***

Similar notifications have been issued under the Integrated Tax (Rate) and Union Territory Tax (Rate). – ***[Notification No. 12/2019 – Integrated Tax (Rate), dated 31st July, 2019 & Notification No. 12/2019 – Union Territory Tax (Rate), dated 31st July, 2019]***

4) HIRING OF ELECTRIC BUSES BY LOCAL AUTHORITIES EXEMPTED FROM GST

The CBIC *vide* present Circular exempted the hiring of Electric buses by local authorities from GST. – ***[Notification No.13/2019- Central Tax (Rate), dated 31st July 2019]***

Similar notifications have been issued under the Integrated Tax (Rate) and Union Territory Tax (Rate). – ***[Notification No. 13/2019 – Integrated Tax (Rate), dated 31st July, 2019 & Notification No. 13/2019 – Union Territory Tax (Rate), dated 31st July, 2019]***

5) CLARIFICATION ON DOUBTS RELATED TO SUPPLY OF INFORMATION TECHNOLOGY ENABLED SERVICES (ITES SERVICES)

Various representations have been received seeking clarification on issues related to supply of ITeS services such as call center, business process outsourcing services, etc. and "Intermediaries" to overseas entities under GST law and whether they qualify to be "export of services" or otherwise.

However, CBIC examined the matter and clarified the issues to ensure uniformity in the implementation of the provisions of the law across field formations, they are:

- The definition of intermediary *inter alia* provides specific exclusion of a person i.e., that of a person who supplies such goods or services or both or securities on his own account. Therefore, the supplier of services would not be treated as "intermediary" even where the supplier of services qualifies to be "an agent/ broker or

any other person" if he is involved in the supply of services on his own account.

- ITeS services have been defined under Rule 10 TA(e) of the Income-tax Rules, 1962 which pertains to Safe Harbour Rules for international transactions.
- There may be various possible scenarios when a supplier of ITeS services located in India supplies services for and on behalf of a client located abroad. These scenarios are:

i. Scenario -I: The supplier of ITeS services supplies back end services.
ii. Scenario –II: The supplier of backend services located in India arranges or facilitates the supply of goods or services or both by the client located abroad to the customers of client.
iii. Scenario –III: The supplier of ITeS services supplies back end services, on his own account along with arranging or facilitating the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located abroad.

- It is also clarified that supplier of ITeS services, who is not an intermediary in terms of Section 2 (13) of the Integrated Goods and Service Tax Act, 2017, which defines "Intermediary", can avail benefits of export of services if he satisfies the criteria mentioned in Section 2 (6) of the Integrated Goods and Service Tax Act, 2017, which defines "export of services". – ***[Circular No. 107/26/2019-GST, dated 18th July, 2019]***

6) CLARIFICATION IN RESPECT OF GOODS SENT/TAKEN OUT OF INDIA FOR EXHIBITION OR ON CONSIGNMENT BASIS FOR EXPORT PROMOTION

Various representations have been received from the trade and industry regarding procedure to be followed in respect of goods sent / taken out of India for exhibition or on consignment basis for export promotion. Such goods sent / taken out of India crystallise into exports, wholly or partly, only after a gap of certain period from the date they were physically sent / taken out of India.

The CBIC *vide* present Circular has clarified following issues in this regard:

i. Whether any records are required to be maintained by registered person for sending / taking specified goods out of India?
ii. What is the documentation required for sending / taking the specified goods out of India?
iii. When is the supply of specified goods sent / taken out of India said to take place?
iv. Whether invoice is required to be issued when the specified goods sent / taken out of India are not brought back, either fully or partially, within the stipulated period?
v. Whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back? – ***[Circular No. 108/27/2019-GST, dated 18th July, 2019]***

7) CLARIFICATIONS ON ISSUES RELATED TO GST ON MONTHLY SUBSCRIPTION/CONTRIBUTION CHARGED BY A RESIDENTIAL WELFARE ASSOCIATION FROM ITS MEMBERS

A number of issues have been raised regarding the GST payable on the amount charged by a Residential Welfare Association for providing services and goods for the common use of its

members in a housing society or a residential complex.

The CBIC *vide* present Circular has clarified following issues in this regard:

i. Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?
ii. A RWA has aggregate turnover of Rs.20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs.7500/- per month per member?
iii. Is the RWA entitled to take input tax credit of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs.7,500/- per month per member?
iv. Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of Rs. 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?
v. How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member? Is the GST payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges? – ***[Circular No.109/28/2019- GST, dated 22nd July, 2019]***

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INTELLECTUAL PROPERTY RIGHTS

1) IF THE POST OF THE TECHNICAL MEMBER IS LYING VACANT, IPAB CAN PROCEED TO HEAR THE URGENT MATTERS AND THE ORDERS PASSED WOULD NOT SUFFER INVALIDITY ON THE GROUND OF LACK OF CORAM : DELHI HC

This Delhi HC noted in this case that in IPAB, no Technical Member (Copyright) has been appointed till date. The post of Technical Member (Patents) is lying vacant since 04th May, 2016 whereas the post of Technical Member (Trade Marks) is lying vacant since 05th December, 2018. IPAB has only one Technical Member relating to Plant Varieties Protection.

Applying the doctrine of necessity and following the principles laid down in various earlier judgments, the Delhi HC held that the Chairman, IPAB and the Technical Member (Plant Varieties Protection) are competent to hear the urgent matters relating to the Patents, Trade Marks and Copyright till the vacancies of other Technical Members are filled up and the orders passed would not suffer invalidity on the ground of lack of Coram. Further, if the Technical Member (Plant Varieties Protection) is not available for any reason or recuses, Chairman, IPAB can proceed to hear the urgent matters. – ***[Mylan Laboratories Limited* v. *Union of India & Ors., dated 08th July, 2019]***

2) DELHI HC REITERATED THE WELL SETTLED LAW AND THREE ELEMENTS THAT ARE NECESSARY FOR GRANT OF INTERIM INJUNCTION EVEN WHEN IT INVOLVES A CASE OF ALLEGED INFRINGEMENT OF A PATENT, AND IN PARTICULAR, A PHARMACEUTICAL PATENT

A division bench of Delhi HC while hearing an appeal against an order to Ld. Single bench held that each case of alleged infringement of patent, particularly a pharmaceutical patent, would turn on its own facts. It is not possible to conceive an 'across-the-board' blanket approach that would apply to all such cases, where as a matter of routine at the first hearing there would be a grant of injunction in favour of the Plaintiff. The decision in the application of interim injunction has to necessarily indicate the view of the Court on the three elements i.e., i.) Prima facie case, ii.) irreparable or serious injury, and iii.) balance of convenience; and the additional features when it involves a case of alleged infringement of a patent, and in particular, a pharmaceutical patent. It is not the length of the order or its precise wording that matters. It is necessary, however, that the factors mentioned hereinbefore must be discernible from the order which comes to a conclusion one way or the other regarding the grant of an interim injunction. – ***[Natco Pharma Ltd* v. *Bristol Myers Squibb Holdings Ireland Unlimited Company & Ors., dated 16th July, 2019]***

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CONSUMER

1) CONSUMER PROTECTION BILL 2019 PASSED BY PARLIAMENT

The Consumer Protection Bill, 2019 has been passed by Lok Sabha on 30 July 2019 (and subsequently by the Rajya Sabha on 6 August 2019). Upon its enactment and coming into force, it will replace the Consumer Protection Act, 1986 which will stand repealed.

The Consumer Protection Act, 2019 (the "new Act") addresses the emerging delivery systems of goods and services such as e-commerce, direct selling, tele-shopping, multi-level marketing, global supply chains. It also addresses new forms of unfair trade and unethical business practices, including misleading advertising and unfair contracts. Significantly, the new Act provides for a regulator with extensive powers to regulate and penalise violations of the Act and product liability action for defective products/deficient services. For the first time, terms such as product liability, unfair contracts, spurious goods, consumer rights, express warranty, injury, harm, misleading advertisement, endorsement, establishment have been specifically defined. The new Act also provides for e-filing of complaints. Consumer rights have thus been overhauled in keeping with changing economic development and commercial practices so as to empower consumers with effective remedial actions and reliefs.

The key changes brought in by the new Act are as follows:

I. **Establishment of a Regulator**: A Central Consumer Protection Authority (CCPA) will be established with powers to, either suo moto or on complaints/directions received from the Central Government, regulate and inquire into matters relating to violation of consumer rights, unfair

trade practices, false or misleading advertisements and to enforce class actions. This may be done in the following manner:

(i)file complaints before the District, State or National Commissions or intervene in proceedings before these agencies; (ii) issue guidelines to prevent unfair trade practices or misleading advertisements; (iii) pass orders for recalling goods or withdrawal of services which are dangerous, hazardous or unsafe; or for reimbursement of prices of such goods or services; and for discontinuation of practices which are unfair and prejudicial to consumers' interest.
An investigation wing within the Authority headed by a Director General will be tasked with conducting inquiries and investigations. Appeals from orders of the CCPA shall lie to the National Consumer Disputes Redressal Commission (National Commission) within thirty days from the date of receipt of such order.

Separately, Central, State and District advisory councils will be set up at each level to render advice on the promotion and protection of consumer rights.

II. Strict consequences for false or misleading advertisements for manufacturer, endorser, publisher: The CCPA may, following investigation, impose a penalty on the manufacturer or endorser of a false or misleading advertisement of up to Rs. 10 lakhs and with imprisonment up to 2 years. For every subsequent contravention a penalty up to Rs. 50 lakhs with imprisonment which may extend to 5 years.

The endorser of such an advertisement may be prohibited from making endorsement of any product or service for a period of up to one year and for subsequent contravention for a period of up to three years. However, if the endorser has exercised due diligence to verify the veracity of the claims made in the advertisement, he/she shall not be penalised. The publisher or a person who is party to such publication may also be penalised for amount of up to Rs. Ten lakhs

III. Product Liability & Product Liability Action: Product liability has been defined to mean the responsibility of the product manufacturer or product seller of any product or service to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto. A product liability action is a complaint filed for claiming compensation for any 'harm' caused to due to deficiency, inadequacy in the product service or manufacturing or design defects, deviation from specifications, not conforming to warranty or lacking adequate instructions regarding correct usage. A product seller who is not a product manufacturer is also liable if he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or has altered or modified the product such that it caused harm. Exceptions have also been provided to such actions, e.g. misuse, alteration or modification of the product at the time of harm being caused or failure on part of the manufacturer to warn or instruct about a danger which is obvious or commonly known or ought to be known on account of the characteristics of the product, etc.

"Harm" in relation to product liability includes damage to property other than the product itself, personal injury, illness or death and mental agony or emotional distress resulting from such harm

IV. Unfair contracts and enlarged scope of unfair trade practices: "Unfair contract" has been defined to mean a contract between a manufacturer or trader or service provider on the one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer. Any complaint against unfair contracts can be filed with the State Commission or the National Commission. Six types of unfair contracts have been identified, namely,
(i)contracts requiring manifestly excessive security deposits; (ii) contracts imposing disproportionate penalty on the consumer for breach of contract; (iii) contracts refusing to accept early repayment of debts on payment of applicable penalty; (iv) contracts entitling a party to the contract to terminate such contract unilaterally without reasonable cause; (v) contracts permitting or having the effect of permitting one party to assign the contract to the detriment of the other party, who is a consumer, without his consent; (vi) contracts imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage.

The scope of unfair trade practices has been expanded to include the following practices:
(i)Not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed; (ii) Refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt, or, in the absence of such stipulation within a period of thirty days; (iii) Disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

V. Revised Pecuniary and Territorial Jurisdiction: The pecuniary jurisdiction of the District, State and National Commissions has been revised as below. The territorial jurisdiction will now also include the place of residence or business of the complainant in addition to that of the opposite party and the place of occurrence of the cause of action.
(i) District Commission – upto ₹1 crore (currently up to Rs. 20 lakhs); (ii) State Commission – between ₹1 crore to ₹10 crore (currently up to Rs. 1 crore); and (iii) National Commission – above ₹10 crore (currently above Rs. 1 crore).

VI. Mediation: Mediation has been provided as an Alternative Dispute Redressal Mechanism. A Consumer Mediation Cell will be set up for this purpose. If there is any possibility of a settlement between the parties, the District, State or the National Commission may direct the parties to give a written consent to have their dispute settled by mediation.

VII. New penalties/punishments: The manufacturing, storing, selling, distributing or importing of products containing adulterants and spurious goods is punishable with both fine and imprisonment depending on the degree of harm, injury or grievous hurt caused ranging from imprisonment for 6 months with a fine of one lakh rupees to imprisonment for 7 years with a

fine of five lakhs. Life imprisonment along with a fine of ten lakh rupees may also be awarded in cases where such act has resulted in the death of any consumer, the minimum term of imprisonment in such cases being 7 years.

On the other hand, vexatious searches and seizures by the DG or any other officer are also punishable with imprisonment up to one year or with fine which may extend to ten thousand rupees or with both. ***–[The Consumer Protection Bill, 2019, Bill No.144-C of 2019, passed by Lok Sabha on 30th July, 2019]***

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ENVIRONMENT

1) NGT DIRECTS CENTRE TO SUBMIT REPORT ON PLEA TO MAKE WATER WASTAGE A PENAL OFFENCE

NGT has sought an action taken report from the Centre about saving water on a plea for making its wastage a penal offence, and noted that 33 percent people in India do that just by keeping the taps running even when not in use, especially during activities such as brushing and bathing.
A bench headed by NGT Chairperson Justice Adarsh Kumar Goel directed the Ministry of Jal Shakti and the Delhi Jal Board to submit report in the matter within a month. – ***[The Times of India, dated 29th July, 2019]***

2) DELHI GOVERNMENT TOLD TO PAY RS. 25 CRORE OVER POLLUTION

Expressing displeasure over the inaction against unauthorised industrial units and their activities in Delhi, NGT has directed the Delhi government to deposit Rs. 25 crore with Central Pollution Control Board (CPCB) for failing to curb pollution in the capital and complying with its earlier order. – ***[The Times of India, dated 22nd July, 2019]***

3) NGT SETS 3-MONTH DEADLINE TO SHUT POLLUTING INDUSTRIES ACROSS INDIA

Contending that economic development cannot take place at the cost of public health, the NGT has directed the Central Pollution Control Board to shut down polluting industries in "critically polluted" and "severely polluted" areas within three months. – ***[The Times of India, dated 16th July, 2019]***

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