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Lexport
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RBI/FEMA

1) LEVY OF FORECLOSURE CHARGES /PRE-PAYMENT PENALTY ON FLOATING RATE TERM LOANS

RBI referring to its earlier circulars in terms of which banks are not permitted to charge foreclosure charges / pre-payment penalties on home loans / all floating rate term loans sanctioned to individual borrowers, hereby clarified that banks shall not charge foreclosure charges/ pre-payment penalties on any floating rate term loan sanctioned, for purposes other than business, to individual borrowers with or without co-obligant(s). – ***[DBR.Dir.BC.No.08/13.03.00/2019-20, dated 02nd August, 2019]***

2) LEVY OF FORECLOSURE CHARGES/PRE-PAYMENT PENALTY ON FLOATING RATE LOANS BY NBFCS

RBI referring to its earlier circulars on waiver of foreclosure charges/ prepayment penalty on all floating rate term loans sanctioned to individual borrowers, hereby clarified that NBFCs shall not charge foreclosure charges/ pre-payment penalties on any floating rate term loan sanctioned for purposes other than business to individual borrowers, with or without co-obligant(s). – ***[DNBR (PD) CC.No.101/03.10.001/2019-20, dated 02nd August, 2019]***

3) FREE OF CHARGE SERVICES FOR BASIC SAVINGS BANK DEPOSIT (BSBD) ACCOUNT

The BSBD Account was designed as a savings account which would 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:

i. Deposit of cash at bank branch as well as ATMs/CDMs;
ii. Receipt/ credit of money through any electronic channel or by means of deposit /collection of cheques drawn by Central/State Government agencies and departments;
iii. No limit on number and value of deposits that can be made in a month;
iv. Minimum of four withdrawals in a month, including ATM withdrawal;
v. ATM Card or ATM-cum-Debit Card

The BSBD Account is a normal banking service available to all. – ***[DCBR.BPD (PCB/RCB).Cir.No.02/13.01.000/2019-20, dated 02nd August, 2019]***

4) AMENDMENT TO MASTER DIRECTION ON KYC TO NOTE AMENDMENT TO THE PREVENTION OF MONEY-LAUNDERING (MAINTENANCE OF RECORDS) RULES, 2005

Prevention of Money-laundering (Maintenance of Records) Rules, 2005 have been amended recently. The change carried out in the Master Direction in accordance with the aforementioned amendment to the PML Rules is as under:

A proviso has been added to condition (b) of Section 23 of the Master Direction to the effect that, where the individual is a prisoner in a jail, the signature or thumb print shall be affixed in presence of the officer in-charge of the jail and the said officer shall certify the same under his signature and the account shall remain operational on annual submission of certificate of proof of address issued by the officer in-charge of the jail.

Therefore the Master Direction on KYC has also been updated to reflect the above said change. – ***[DBR.AML.BC.No.11/14.01.001/2019-20, dated 09th August, 2019]***

5) RBI EXPANDS SCOPE FOR BANKS' PRIORITY SECTOR LENDING TO NBFCS

In order to boost credit to the needy segment of borrowers, RBI has decided that bank credit to registered NBFCs (other than MFIs) for on-lending will be eligible for classification as priority sector under respective categories subject to the following conditions:

i. Agriculture: On-lending by NBFCs for 'Term lending' component under Agriculture will be allowed up to Rs.10 lakh per borrower.

ii. Micro & Small enterprises: On-lending by NBFC will be allowed up to Rs.20 lakh per borrower.

iii. Housing: Enhancement of the existing limits for on-lending by HFCs *vide* para 10.5 of our Master Direction on Priority Sector lending, from Rs. 10 lakh per borrower to Rs.20 lakh per borrower.

It has been clarified that under the above on-lending model, banks can classify only the fresh loans sanctioned by NBFCs out of bank borrowings, on or after the date of issue of this Circular. However, loans given by HFCs under the existing on-lending guidelines will continue to be classified under priority sector by banks.

Bank credit to NBFCs for On-Lending will be allowed upto a limit of five percent of individual bank's total priority sector lending on an ongoing basis. Further, the above instructions will be valid for the current financial year upto March 31, 2020 and will be reviewed thereafter. However, loans disbursed under the on-lending model will continue to be classified under Priority Sector till the date of repayment/maturity. – ***[FIDD.CO.Plan.BC.7/04.09.01/2019-20, dated 13th August, 2019]***

6) DIRECT BENEFIT TRANSFER (DBT) SCHEME – SEEDING OF AADHAAR IN BANK ACCOUNTS

On the subject of the use of Aadhaar to facilitate delivery of social welfare benefits by direct credit to the bank accounts, the RBI *vide* its Circular RBI/2015-16/289/FIDD.CO.LBS.BC. No.17/02.01.001/2015-16 dated January 14, 2016 had clarified that the use of Aadhaar Card and seeding of bank accounts with Aadhaar numbers is purely voluntary and it is not mandatory. The above notification was in view of the Hon'ble Supreme Court of India's interim Orders dated August 11, 2015 and October 15, 2015 (W.P. (C) No. 494 of 2012) on usages of Aadhaar.

In supersession of above Circular, RBI *vide* its present Circular notified that banks need to ensure that opening of bank accounts and seeding of Aadhaar numbers with existing or new accounts of eligible beneficiaries opened for the purpose of Direct Benefit Transfer (DBT) under social welfare schemes, should be in conformity with the provisions listed under Section 16 of the Master Direction – Know Your Customer (KYC) direction, 2016 (updated as on May 29, 2019) and extant provisions of the Prevention of Money Laundering (PML) Rules. – ***[FIDD.CO.LBS.BC.No.09/02.01.001/2019-20, dated 13th August, 2019]***

7) NO CHARGES ON FAILED ATM TRANSACTIONS AND NON-CASH WITHDRAWAL TRANSACTIONS

RBI has clarified that transactions which fail on account of technical reasons like hardware, software, communication issues; non-availability of currency notes in the ATM; and other declines ascribable directly / wholly to the bank / service provider; invalid PIN / validations; etc., shall not be counted as valid ATM transactions for the customer. Consequently, no charges therefore shall be levied.

Also, Non-cash withdrawal transactions (such as balance enquiry, cheque book request, payment of taxes, funds transfer, etc.), which constitute 'on-us' transactions (i.e., when a card is used at an ATM of the bank which has issued the card) shall also not be part of the number of free ATM transactions. – ***[DPSS.CO.PD No. 377/02.10.002/2019-20, dated 14th August, 2019]***

8) REVIEW OF REGULATIONS IN TERMS OF WHICH A COMPANY MAY ACCEPT DEPOSITS THROUGH ISSUE OF COMMERCIAL PAPER (CP)

Advising that that Sub-regulation (3) of Regulation 6 of the Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time, in terms of which a Company may accept deposits through issue of Commercial Paper (CP), has been reviewed vis-à-vis other Statutes/Regulations – notably Section 45 U(b) of RBI Act, 1934 describing CP as one of the Money Market Instruments and Section 2(c) of Companies (Acceptance of Deposits), Rules, 2014 which excludes any amount received against issue of, *inter alia*, CPs from definition of deposits. It has also been considered that Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 – FEMA 20(R), already allow investments in CPs issued by the Indian Companies.

Therefore, with a view to bring in consistency in statutory provisions/regulations relating to Commercial Papers (CPs), the sub-regulation (3) of Regulation 6 of FEMA 5(R)/2016-RB has been deleted *vide* GOI Notification No. FEMA 5(R)(2)/2019-RB dated July 16, 2019. – ***[A.P. (DIR Series) Circular No. 06, dated 16th August, 2019]***

9) EXTENSION OF OPERATING HOURS OF RTGS

At present, the RTGS system is available for customer transactions from 8:00 am to 6:00 pm and for inter-bank transactions from 8:00 am to 7:45 pm. In order to increase the availability of the RTGS system, RBI has decided to extend the operating hours of RTGS and commence operations for customers and banks from 7:00 am.

The RTGS time window with effect from August 26, 2019 will, therefore, be as under:

1. Open for Business: 07:00 hours
2. Customer transactions (Initial Cut-off): 18:00 hours
3. Inter-bank transactions (Final Cut-off): 19:45 hours
4. IDL Reversal: 19:45 hours - 20:00 hours
5. End of Day: 20:00 hours – ***[DPSS (CO) RTGS No.364/04.04.016/2019-20, dated 21st August, 2019]***

10) RBI ALLOWS E-MANDATE PROCESSING ON CARDS FOR RECURRING TRANSACTIONS

The RBI has permitted processing of e-mandate on credit and debit cards for recurring transactions (merchant payments) with AFA during e-mandate registration, modification and revocation, as also for the first transaction, and simple / automatic subsequent successive transactions, with a cap of Rs. 2,000. This has been done keeping in view the changing payment needs and the requirement to balance the safety and security of card transactions with customer convenience. The RBI added that no charges should be levied or recovered from the cardholder for availing the e-mandate facility on cards for recurring transactions. The direction is applicable for transactions performed using all types of cards debit, credit and Prepaid Payment Instruments (PPIs), including wallets. – ***[DPSS.CO.PD.No.447/02.14.003/2019-20, dated 21st August, 2019]***

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FOREIGN TRADE

1) INSERTION OF A NEW POLICY CONDITION UNDER CHAPTER 87 OF ITC (HS), 2017-SCHEDULE-1 (IMPORT POLICY)

Registration of vehicles imported by the vehicle manufactures or through their authorised representatives in India or by the organisation / citizen for personal use, demonstration, testing, research or scientific use etc. shall comply with the Central Motor Vehicles (Eleventh Amendment) Rules, 2018. ***– [Notification No. 14/2015-2020, 28th August, 2019 (DGFT)]***

2) CABINET APPROVES CHANGES IN FDI POLICY FOR COAL MINING, CONTRACT MANUFACTURING, SBRT & DIGITAL MEDIA

The Union Cabinet has approved various amendments to the FDI policy pertaining to the coal mining, contract manufacturing, single brand retail trading (SBRT) and digital media sectors so as to attract and retain FDI in India. The following changes have been specifically approved:

Coal Mining : 100% FDI has now been permitted under automatic route for sale of coal, for coal mining activities including associated processing infrastructure subject to provisions of Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulation) Act, 1957 and related legislations. "Associated Processing Infrastructure" includes coal washery, crushing, coal handling, and separation (magnetic and non-magnetic).

Under the extant policy, 100% FDI under automatic route is allowed for coal & lignite mining for captive consumption by power projects, iron and steel and cement units and other eligible activities. The same is also permitted for setting up coal processing plants like washeries subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.

Contract Manufacturing: In addition to permitting 100% FDI in the manufacturing sector under the automatic route, 100% FDI under automatic route in contract manufacturing is now allowed. The extant policy had no specific provision for FDI in contract manufacturing although manufacturing activities were allowed to be conducted either by the investee entity or through contract manufacturing in India under a legally tenable contract on Principal to Principal or Principal to Agent basis. The present amendment provides clarity in this regard.

Single Brand Retail Trading (SBRT):

(i) All procurements made from India by the SBRT entity for that single brand shall be counted towards local sourcing, irrespective of whether the goods procured are sold in India or exported. Further, the current cap of considering exports for 5 years only is proposed to be removed, to give an impetus to exports. The extant Policy provides that 30% of value of goods has to be procured from India if SBRT entity has FDI more than 51%. The local sourcing requirement can be met as an average during the first 5 years, and thereafter annually towards its India operations.

(ii) Sourcing of goods from India for global operations can be done directly by the entity undertaking SBRT or its group companies (Resident or non-resident) or indirectly by them through third party under a legally tenable agreement. [The extant Policy provides that incremental sourcing for global operations by non-resident entities undertaking SBRT, either directly or through their group companies, will also be counted towards local sourcing requirement for the first 5 years]. The present change was required since prevalent business models involve sourcing not only from by the entity or its group company, but also through an unrelated third party, at their behest.

(iii) The entire sourcing from India for global operations shall now be considered towards local sourcing requirement and not just the incremental value. [Under the extant policy, only that part of the global sourcing is counted towards local sourcing requirement which is over and above the previous year's value]. The amendment was made in view of the fact that the requirement of year-on-year incremental increase in exports induced aberrations in the system as companies with lower exports in a base year or any of the subsequent years could meet the current requirements, while a company with consistently high exports got unduly discriminated against.

(iv) Retail trading through online trade can also be undertaken prior to opening of brick and mortar stores, subject to the condition that the entity opens brick and mortar stores within 2 years from date of start of online retail. This is expected to lead to creation of jobs in logistics, digital payments, customer care, training and product skilling. The extant policy requires SBRT entities

to operate through brick and mortar stores first before starting online sales of that brand.

Digital Media: 26% FDI under government route is now permitted for uploading / streaming of News and Current Affairs through Digital Media on the lines of print media. The extant policy allows 49% FDI under approval route in Up-linking of 'News & Current Affairs' TV Channels only. ***– [Press Information Bureau, 28th August, 2019]***

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CORPORATE

1) CBDT CLARIFIES ASSESSMENT PROCEDURE FOR STARTUPS U/S 56(2)(VIIB) INCOME TAX ACT, 1961

CBDT has issued a clarification dated 9 August 2019 with respect to assessment of startup companies under Section 56(2)(viib) of the IT Act. The clarification is in pursuance of the DPIIT Notification of 19 February 2019 and CBDT Notification of 5 March 2019, which provided that consideration received by a company for issue of shares that exceeded the face value of such shares, from a person being a resident, will be exempted from the applicability of Section 56(2)(viib) if the company fulfils the conditions specified in the DPIIT Notification.

Notices were issued by the Assessing Officers to startup companies prior to the 19 February 2019 notification and thereafter, even though the companies had filed Form 2 and been recognised by the DPIIT as having complied with the conditions therein. In view of this, the CBDT has clarified the procedure to be followed by AOs with regard to assessment of startup companies involving Section 56(2)(viib), as under:

(i) Where the startup company has been recognised by the DPIIT, but the case is selected under "limited scrutiny" on the single issue of applicability of Section 56(2)(viib), no verification on such issues will be done by the AOs duing the proceedings u/s 143(3)/147 of the IT Act and the contention of such recognized startup companies on the issue will be summarily accepted.

(ii) Where the startup company has been recognised by the DPIIT, but the case is selected under "limited scrutiny" with multiple issues or under "complete scrutiny" including the issue u/s 56(2)viib), the issue of applicability of Section 56(2)(viib) will not be pursued during the assessment proceedings and inquiry or verification with regard to other issues in such cases shall be carried out by the AO, only after obtaining approval of his/her supervisory officer. Due procedure as per IT Act shall be followed with regard to issues for which the case has been selected.

(iii) Where the startup company has not got DPIIT approval and the case is selected for scrutiny, *inter alia,* on the grounds of applicability of Section 56(2)(viib) or any other issue(s), then also inquiry or verification in such cases shall be carried out by the AO, as per due procedure, only after obtaining approval of his/her supervisory officer.

Separately, the CBDT has issued a clarification dated 9 August 2019 on the valuation of shares of startup companies involving application of section 56(2)(viib) of the IT Act, 1961.

Para 6 of the DPIIT notification of 19 February 2019 provides that the notification is applicable only to recognised startup companies, where no addition under section 56(2)(viib) has been made in an assessment order before the date of the notification. This para has been relaxed and it is clarified that the notification will also apply to those startup companies where addition u/s 56(2)(viib) has been made in assessment orders prior to the 19 February 2019, provided the assesse has filed Form 2 declaring that it has fulfilled the conditions of the notification. ***- [Ministry of Finance, Central Board of Direct Taxes (CBDT)]***

2) COMPANIES (SHARE CAPITAL AND DEBENTURES) AMENDMENT RULES 2019 NOTIFIED

In Rule 4, sub-rule (1) (c), the voting power in respect of shares with differential rights shall not exceed seventy four per cent. of total voting power including voting power in respect of equity shares with differential rights issued at any point of time. This amendment replaces the earlier requirement that shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time. The change has been made with a view to enable Indian promoters to retain control of the company while raising capital from global investors, especially for technology /startup companies.

The time period for issuing ESOPs by startups to promoters and directors holding more than 10% of the equity shares has been increased to ten years (in place of five years), under the proviso to Explanation to Rule12(1).

Requirements with regard to Debenture Redemption Reserve, under sub-rule (7) of Rule 18, have been substituted. ***–[Ministry of Corporate Affairs, 16th August, 2019]***

3) MCA CLARIFICATION RE: 'APPOINTED DATE' U/S 232(6) OF CA 2013

In view of differing judgements on whether the 'appointed date' in schemes filed under Section 232 of the Companies Act 2013 (Section 394 of Companies Act 1956) should be a specified date preceding the sanctioning of the scheme or filing of certified copy with the RoC or thereafter, the MCA has issued a clarification on the interpretation of 'appointed date' under Section 232(6) of the Companies Act, 2013. Clarification is also given on whether the 'acquisition date' for the purpose of Ind-AS 103 (Business Combinations) would be the 'appointed date' referred to in Section 232(6), as follows:

The provision of Section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.

The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to accounting standards (including Ind-AS 103 Business Combinations).

where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.

The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself, upon occurrence of which the scheme would become effective. However, in case of such event-based date being a date subsequent to the date of filing the order with the Registrar under Section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force. ***– [General Circular No.9/2019, 21st August, 2019, Ministry of Corporate Affairs]***

4) ROLL BACK OF LAWS & OTHER MEASURES TO BOOST SECURITIES MARKET AND ECONOMY

Finance Minister has announced various measures on 23rd August, 2019 to boost the economy, including the following key changes that are noteworthy:

CSR violations to have civil liability: CSR violations, under Section 135 of the Companies Act 2013, will not be treated as criminal offence and will instead be a civil liability.

Withdrawal of enhanced surcharge on long/short term capital gains: the enhanced surcharge levied by the Finance (No.2) Act 2019 on long/short term capital gains arising from the transfer of equity shares in a company or units of equity oriented funds and business trusts will be withdrawn for both domestic and foreign investors/FPIs.

Withdrawal of angel tax provisions for start-ups and their investors: It has been decided that Section 56(2)(viib) of the Income Tax Act, 1961 shall not apply to a start-up registered with DPIIT. A dedicated cell will be set up for addressing the problems of startups.

GST refund to MSME within 30 days: All pending GST refunds due to MSMEs shall be paid within 30 days and in future shall be paid within 60 days from date of application.

Use of Aadhar-based KYC permitted: NBFCs will be permitted to use Aadhar authenticated bank KYC and for domestic retail investors Aadhar based KYC will be permitted for opening Demat accounts and making investment in mutual funds. Amendment to the PMLA Rules to be issued**.**

Announcements were also made on deepening the bond market, access of Indian companies to global markets, simplified KYC for foreign investors and FPIs, measures related to banking, NBFCs and MSMEs and labour laws. ***–[Presentation made by Ministry of Finance on 'Measures to Achieve Higher Economic Growth]***

5) CERTAIN SECTIONS OF ARBITRATION & CONCILIATION (AMENDMENT) ACT 2019 NOTIFIED

The Ministry of Law and Justice has notified Sections 1, 4 - 9, 11-13 and 15 of the Arbitration & Conciliation (Amendment) Act 2019 with effect from 30 August 2019. Details of the notified sections are as under:

Section 1 (Short Title and Commencement)
Section 4 amends Section 17 of the principal Act related to 'Interim measures ordered by the Tribunal', 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 5 inserts a new sub-section (4) to Section 25 of the principal Act to prescribe that the statement of claim and defence shall be completed within six months from the date on which the arbitrator(s) receive notice of their appointment.

Section 6 amends Section 29A of the principal Act related to 'Time limit for arbitral award', to provide that the arbitral award shall be made within 12 months from the completion of the pleadings of the parties for arbitrations other than International commercial arbitrations. Where an application for extension of period for making an award is pending under sub-section (5), 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 7 amends Section 34(2)(a) of the principal Act 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 **"***establishes on the basis of the record of the arbitral tribunal***"** that the provisions of sub-section (2) apply to it.

Sections 8 and 12, amend Sections 37 and 50, respectively, of the principal Act related to 'Appealable orders', to restrict the right to appeal only in terms of these provisions, thereby removing the ambiguity arising from Section 13(1) of the Commercial Courts Act, 2015 which provides for a wider right to appeal.

Section 9 inserts sections 42A and 42B in the principal Act. Section 42A provides for maintenance of confidentiality of all arbitration proceedings except the award, if its disclosure is necessary for the purpose of implementation and enforcement. Section 42B provides that 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.

Section 11 amends Section 45 of the principal Act [Power of judicial authority to refer parties to arbitration], to provide that the judicial authority shall refer parties to arbitration if it *prima facie* finds that the agreement is null and void, inoperative or incapable of being performed.

Section 13 inserts Section 87 in the principal Act, to clarify that the Amendment Act of 2015 will apply only to arbitral proceedings commenced on or after 23 October 2015 and to court proceedings arising out of or in relation to such arbitral proceedings only. ***– [Ministry of Law and Justice, 30th August, 2019]***

6) DELHI HIGH COURT GIVES PURPOSIVE INTERPRETATION TO SECTION 20A SPECIFIC RELIEF ACT 1963.

The Delhi High Court has given a purposive interpretation to Section 20A of the Specific Relief Act, 1963 as amended, so as not to dilute its efficacy vis-a-vis completion of infrastructure projects. Section 20A provides that an injunction cannot be granted in a suit involving a contract relating to an infrastructure project, where such injunction would cause impediment or delay in completion of the project. Along with sections 20B (Special Courts) and 20C (disposal of suit within 12 months), the intention is to ensure that infrastructure projects are not delayed on account of pendency of Court proceedings or orders in such Court proceedings.

In the instant case, the Court was called upon to opine on whether Section 20A would apply to a suit which did not involve a contract between the parties, but was a suit for declaration and permanent injunction to restrain DDA and the Delhi police from disturbing the peaceful possession of the plaintiffs of their land, which were claimed to be part of the unacquired land. The suit lands were required by the DDA for extension of a hospital, which is an infrastructure project under the Schedule to the said Act.

The Court held that although the suit did not involve a contract for an infrastructure project, Section 20A did not require the relationship between the plaintiffs and the defendants to be contractual. The words *"involving a contract relating to an infrastructure project"* are of wide magnitude and would also cover a suit under the Specific Relief Act to stall an infrastructure project, by a plaintiff who has no contractual relationship with the defendants. "*Judicial notice can be taken of, invariably all infrastructure projects being executed by entering into contracts, either on a turnkey basis or of other nature. Any stalling of an infrastructure project at the behest of anyone would certainly affect the contract under which the said infrastructure project is being executed and would thus involve a contract. Had the legislature intended otherwise, Section 20A would have provided for, "suits by a party to a contract to execute an infrastructure project" which the legislature chose not to do so*".

The Court further held that when acquisition of their lands were admitted by the plaintiffs, they should have a *prima facie* case to show that the acquired land which is available for the infrastructure project is distinct from the land with respect to which interim relief is claimed, which they had failed to do. The infrastructure project could not be stalled in such a casual manner.

The suit was thus ordered to be treated and as an infrastructure suit and no stay or restraint was granted under Order 39 R.1 &2 CPC on any action planned or intended by the DDA. – [***Hari Ram Nagar & Ors.* v. *Delhi Development Authority & Ors., 22nd August, 2019 (Delhi High Court)]***

7) SUPREME COURT OF INDIA UPHOLDS CONSTITUTIONAL VALIDITY OF AMENDMENTS DEEMING HOMEBUYERS AS FINANCIAL CREDITORS

The Supreme Court has upheld the constitutional validity of amendments made to the Insolvency and Bankruptcy Code, 2016 (the "Code") which deemed allottees of real estate projects to be "financial creditors" so that they may trigger the Code under Section 7 against the real estate

developer and be entitled to be represented in the CoC by authorized representatives. The amendments that were challenged were (i) the Explanation to Section 5(8)(f) which deemed any amount raised from an allottee under a real estate project to have the commercial effect of a borrowing; (ii) Section 21(6A)(b) which provides for an authorised representative for a class of creditors; and (iii) Section 25A which provides for rights and duties of such authorised representatives.

Upholding the validity of these amendments, the Apex Court reiterated the Legislature's right to experiment in economic matters. It extensively examined, amongst others, the recommendations of the Insolvency Law Committee, the *raison d'etre* for the Insolvency and Bankruptcy (Second Amendment) Act 2018 and the interplay of the Code vis-à-vis the Real Estate Regulation Act (RERA) and came to the conclusion that:

The Insolvency and Bankruptcy (Second Amendment) Act 2018, does not infringe Articles 14, 19(1)(g) r/w 19(6), or 300-A of the Constitution of India.

The RERA Act is to be read harmoniously with the Code. It is only in the event of conflict that the Code will prevail over RERA. Remedies that are given to allottees of flats/apartments are concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA, as well as to trigger the Code.

Section 5(8)(f) as it originally appeared in the Code, being a residuary provision, always subsumed within it allottees of flats/apartments. The explanation together with the deeming fiction added by the Amendment Act is only clarificatory of this position in law. – [***Pioneer Urban Land and Infrastructure limited & Anr.* v. *Union of India & Ors., 9th August, 2019 (Supreme Court of India)]***

8) NCLT MUMBAI BENCH ORDERS CONSOLIDATION OF PROCEEDINGS FOR GROUP INSOLVENCY

In a first, the Mumbai Bench of the NCLT has passed an order for consolidation of 13 out of 15 applications filed under Section 7 of the IB Code, even though neither the Code nor the Rules envisage consolidation of proceedings or group insolvency. The NCLT relied on principles laid down in findings of UK/US Bankruptcy Courts under their equity jurisdiction. These principles are (i) if the consolidation leads to unfairness, only then it should not be approved; (ii) economic benefit accrues to the creditors (iii) yields benefits offsetting the harm it inflicts on objecting parties; (iv) balances conflicting interests with the aim of achieving rehabilitation of the debtor.

The NCLT, while considering the circumstances for a consolidation, held that an order of consolidation can be demanded or *suo moto* passed by a court/tribunal when promoters/directors of a company diversify business by creating independent entities or subsidiaries, having cross shareholding and common directors, and at some point of time the Group is financially stressed due to default in payment of debt.

In the present case, it ordered consolidation of 13 applications filed against various group companies of Videocon Industries after examining certain elementary governing factors, such as, common control, common directors, common assets, common liabilities, inter-dependence, interlacing

of finance, pooling of resources, co-existence for survival, intricate link of subsidiaries, inter-twined accounts, inter-looping of debts, singleness of economics of units and cross shareholding. – [***State Bank of India* v. *Videocon Industries Ltd. & Ors, 8th August, 2019, (National Company Law Tribunal, Mumbai)]***

9) DELHI HIGH COURT: CONTEMPT PETITION BARRED UNDER SECTION 14 IB CODE

The Delhi High Court has held that when a moratorium has been issued under Section 14 of the IB Code, no direction can be given to give preferential treatment to a party who has filed contempt proceedings against the corporate debtor for disobedience of a settlement under Order 23 Rule 3 CPC/compromise decree. A contempt petition is barred under Section 14 just as any execution petition, even though it seeks to punish the contemner and not to recover claimed amounts. The petitioner in the contempt proceedings was entitled to satisfaction of the decree only through the IBC proceeding.

In the present case, the IRP had been appointed, liquidation proceedings were pending against the corporate debtor in the NCLT and the power and management of its Board vested in the IRP. The Court held that at this stage the petitioner in the contempt petition could not break the queue and be allowed preferential treatment over other financial and operational creditors so as to discharge its liability under the compromise decree. – ***[Ved Prakash Abbot* v. *Kishore K. Avarsekar & Ors., 17th May, 2019, (Delhi High Court)]***

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SECURITIES

1) SEBI MANDATES DISCLOSURE OF REASONS FOR ENCUMBRANCE BY PROMOTER OF LISTED COMPANIES UNDER TAKEOVER REGULATIONS 2011

SEBI has prescribed additional disclosure requirements under Regulation 31(1) of the Takeover Regulations 2011, with respect to shares encumbered by a promoter of a listed company along with persons acting in concert with him. The promoter is, with effect from 1 October 2019, obliged to disclose detailed reasons for encumbrance if the combined encumbrance by the promoter along with PACs with him equals or exceeds: (a) 50% of their shareholding in the company; or (b) 20% of the total share capital of the company.

The disclosure is required to be made in the prescribed format (Annexure –II) to every stock exchange where the shares of the company are listed and to the listed company itself, within two working days from the creation of such encumbrance and on every occasion when the extent of encumbrance (having already breached the above threshold limits) increases further from the prevailing levels. Such disclosure is in addition to disclosure in Annexure –I provided in Circular No. CIR/CFD/POLICYCELL/3/2015 dated 5 August 2015.

If the existing combined encumbrance by the promoter along with PACs with him is either 50% or more of their shareholding in the company or 20% or more of the total share capital of the company as on 30 September 2019, the promoter is required to make a first disclosure on the

detailed reasons for encumbrance in the prescribed format by 4 October 2019.

The stock exchanges are required to disseminate a list of such companies with details of encumbrances and reasons on their websites. The listed company must disclose such information on its website within two working days of receipt of disclosure. – ***[SEBI/HO/CFD/DCR1/CIR/P/2019/90, 7th August, 2019 (SEBI)]***

2) HARMONIZATION OF INVESTMENTS BY AIFS INCORPORATED IN IFSCS WITH DOMESTIC AIFS

SEBI has harmonized the provisions governing investments by Alternate Investment Funds (AIFs) incorporated in International Financial Services Centres (IFSCs) with provisions governing investments applicable to domestic AIFs. Accordingly, AIFs incorporated in IFSCs are permitted to make investments in accordance with the provisions of the SEBI (Alternate Investment Fund) Regulations, 2012 and the guidelines and circulars issued thereunder, including the operating guidelines for AIFs in IFSCs.

Earlier, SEBI had amended clauses 9(4) and 22(3) of the SEBI (IFSC) Guidelines 2015, to permit Portfolio Managers, AIFs and Mutual Funds operating in IFSC to invest in securities issued by companies incorporated in India. – [***SEBI/HO/IFSC/CIR/P/2019/91, 9th August, 2019 (SEBI)]***

3) HARMONIZATION OF INVESTMENTS BY AIFS INCORPORATED IN IFSCS WITH DOMESTIC AIFS.

SEBI has harmonized the provisions governing investments by Alternate Investment Funds (AIFs) incorporated in International Financial Services Centres (IFSCs) with provisions governing investments applicable to domestic AIFs. Accordingly, AIFs incorporated in IFSCs are permitted to make investments in accordance with the provisions of the SEBI (Alternate Investment Fund) Regulations, 2012 and the guidelines and circulars issued thereunder, including the operating guidelines for AIFs in IFSCs.

Earlier, SEBI had amended clauses 9(4) and 22(3) of the SEBI (IFSC) Guidelines 2015, to permit Portfolio Managers, AIFs and Mutual Funds operating in IFSC to invest in securities issued by companies incorporated in India.- ***[SEBI/HO/IFSC/CIR/P/2019/91, 9th August, 2019 (SEBI)]***

4) SEBI APPROVES AMENDMENTS TO FPI, BUYBACK, PIT, CRA AND MF REGULATIONS

Review of FPI Regulations: Several existing circulars and FAQs have been merged into new regulations and a single circular. Based on the report of a working group, SEBI has approved amendments to the FPI Regulations. These include, removing the broad based eligibility criteria for FIIs, re-categorization of FPIs into two categories instead of three, central banks that are not members of the Bank for International Settlement are eligible for FPI registration, entities established in IFSC will be deemed to have met

the jurisdiction criteria for FPIs, KYC documentation simplified and off market transfer of unlisted, suspender or illiquid securities to domestic or foreign investors permitted for FPIs. Offshore funds floated by Mutual Funds can also invest in India post registration as FPI and issuance and subscription of Offshore Derivative Instruments has been rationalised.

Amendments to Buyback Regulations: Buyback will continue to be allowed if the post buyback debt to equity ratio is not more than 2:1 (except for companies for which higher debt to equity has been notified under the Companies Act, 2013) based on both standalone and consolidated basis. Where post buy-back debt to equity ratio is not more than 2:1 on standalone basis and exceeds 2:1 on a consolidated basis, buy-back would be permitted if: (i) Post buyback debt to equity ratio is not more than 2:1 on consolidated basis after excluding the subsidiaries that are NBFCs and HFCs; and (ii) All such excluded subsidiaries have debt to equity ratio of not more than 6:1 on standalone basis.

While calculating the maximum permissible buy-back size and any other size related requirements, financial statements shall continue to be considered on both consolidated and standalone basis.

Amendments to PIT Regulations: SEBI had earlier floated a Discussion Paper proposing an Informant Mechanism and the need for an Informant Reward policy to be incorporated in the PIT Regulations to overcome several challenges in dealing with violations of insider trading. Accordingly, a formal mechanism that specifies a reporting procedure, a mechanism for processing the information received, providing of incentives and protection for the informants has been approved.

Amendment to the Credit Rating Agencies (CRA) Regulations: An enabling provision in the rating agreement between CRA and the issuer/client has been prescribed granting explicit consent to the CRA to obtain details of existing/future borrowing of the issuer, its repayment and any delay or default in servicing of such borrowing, either from the lender or any other statutory/ non-statutory organisation maintaining any such information.

Amendments to Issue and Listing of Debt Securities by Municipalities Regulations : The definition of issuer has been expanded to include entities/bodies such as urban development authorities, city planning agencies, Pooled finance development funds etc. that perform functions, such as planning and execution of urban development projects/schemes, which are akin to those being performed by a municipality.

Amendments to Mutual Funds Regulations: Mutual Funds have been given flexibility to invest in unlisted NCDs up to a maximum of 10% of the debt portfolio of the scheme, subject to such investments in unlisted NCDs having simple structures as may be notified from time to time, being rated, secured and with monthly coupons. This shall be implemented in a phased manner by June 2020.

Norms for permitting companies listed on the Innovators Growth Platform to trade under regular category. ***–[PR No.20/2019, SEBI Board Meeting, 21st August, 2019]***

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COMPETITION

1) COMPETITION COMMISSION OF INDIA FINDS THE CONDUCT AND PRACTICE OF JAIPRAKASH ASSOCIATES LIMITED TO BE IN CONTRAVENTION OF COMPETITION LAW

The Competition Commission of India (CCI) has found Jaiprakash Associates Limited (JAL) to be in contravention of the provisions of Section 4 of the Competition Act, 2002 (Act) for abuse of dominant position in the market of independent residential units such as villas, estate homes in their integrated township, by imposing unfair/ discriminatory conditions on the allottees in Wish Town, Jaypee Greens project, in Noida and Greater Noida.

The final order was passed on an information filed by a buyer who alleged that conditions imposed by JAL were arbitrary and heavily tilted in favour of it. Based on the investigation, the Commission found that the standard terms and conditions imposed by JAL were one-sided and couched in a manner so as to unilaterally favour itself and be unfavourable to the consumers. Moreover, terms were vague and did not confer any substantive rights on the buyers. The conduct of JAL, such as collecting money/charges from the buyers without delivering the residential/dwelling unit on time, adding additional construction and amending /altering the layout plans, imposition of various charges, right to raise finance from any bank/financial institution/body corporate without consulting buyers was held to be abusive.

Therefore, the Commission concluded such conduct of JAL to be in violation of Section 4(2)(a)(i) of the Act. Resultantly, the Commission imposed a penalty of Rs. 13.82 crore (Rupees Thirteen Crore Eighty Two Lakh) on JAL. The penalty was calculated @ 5% of the average revenue of JAL from sale of independent residential units in the relevant market. Besides, a cease and desist order has also been issued to JAL. ***-[PRESS RELEASE No. 6/2019-20, 13th August, 2019 (CCI)]***

2) PRICE-FIXING CARTEL AMONGST SUPPLIERS OF EPS SYSTEMS TO AUTOMOBILE OEMS

The Competition Commission of India ('CCI') passed a final order with respect to cartelisation amongst NSK Limited, Japan ('NSK') and JTEKT Corporation, Japan ('JTEKT') and their Indian subsidiaries namely Rane NSK Steering Systems Ltd. ('RNSS') and JTEKT Sona Automotive India Limited ('JSAI') respectively, in relation to the supply of Electric Power Steering ('EPS') Systems to three automotive Original Equipment Manufacturers ('OEMs'), by means of directly or indirectly determining price, allocating markets, co-ordinating bid response and manipulating the bidding process in Request for Information/ Request for Quotations ('RFIs/ RFQs') issued by these three automobile OEMs. The duration of the cartel was found to be from 2005 to 25.07.2011.

The case was initiated on the basis of an application received by the CCI under Section 46 of the Competition Act, 2002 (the 'Act') read with Competition Commission of India (Lesser Penalty) Regulations, 2009 ('LPR'), from NSK/ RNSS. Thereafter, during the pendency of

investigation, JTEKT/ JSAI also approached the CCI by filing an application under the Section 46 of the Act read with the LPR.

The evidence collected in the case included instances of meetings and telephonic exchanges in which commercially sensitive information about prices etc. was discussed. Such conduct of the parties was found to have caused appreciable adverse effect on competition in India. Accordingly, the CCI concluded that NSK and JTEKT, and their Indian subsidiaries RNSS and JSAI respectively, indulged into anti-competitive conduct in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act.

Considering all the relevant factors, penalty, in terms of the proviso to Section 27 (b) of the Act, was computed for each party, from the date of enforcement of the provisions of Section 3 of the Act i.e., 20.05.2009 till 25.07.2011. In terms thereof, the penalty to be imposed upon NSK/ RNSS was computed at the rate of 4% of the relevant turnover of RNSS and upon JTEKT/ JSAI, at the rate of 1 time of the relevant profit of JSAI. Also, considering the totality of facts and circumstances of the case, penalty, in terms of Section 27 (b) of the Act, to be imposed on the individuals of NSK and JTEKT, held liable under Section 48 of the Act, was computed at the rate of 10 percent of the average of their income for the preceding three years.

In view of the fact that NSK/ RNSS was the first to approach the Commission as a Lesser Penalty applicant and had provided complete, true and full disclosures, 100 percent reduction in penalty was granted to NSK/ RNSS and its individuals and the penalty to be paid by them is nil. Further, in view of the fact that JTEKT/ JSAI was the second to approach the Commission as a Lesser Penalty applicant and had provided significant value addition in the matter, 50 percent reduction in penalty was granted to JTEKT/ JSAI and its individuals. Therefore, the total penalty to be paid by JTEKT/ JSAI is INR 17,07,31,443/. – ***[Competition Commission of India Press Release, 13th August, 2019]***

3) COMPETITION COMMISSION OF INDIA- GREEN CHANNEL APPROVAL

The Competition Commission of India (CCI) has amended certain key aspects of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Combination Regulations), by its Notification dated 13 August 2019 (Amendment). In one of the most significant amendments to the merger control regime in India, the CCI has finally introduced the concept of a 'Green Channel' approval route (Green Channel), which will allow parties to receive an on-spot approval from the CCI, instead of waiting for the 30 working day period. It is pertinent to note that the Green Channel is one of the recommendations of the Competition Law Review Committee, which was set up to review the competition law framework in India.

The Form I (i.e., the simple form) has also been revised to present a more comprehensive picture of possible effects of the proposed combination and to simplify the filing for Green Channel notifications.

The Green Channel will apply to only those transactions where the acquirer (and the acquirer group) has no existing interests in companies (i) that may be seen as competitors of the target group's business; or (ii) that operate in markets

with vertical linkages to the target group's business; or (iii) with complementary linkages to the target group's business. Eligible parties may also choose the ordinary route to approach the CCI and wait for the CCI's approval. If they opt for the Green Channel, they would receive a deemed approval immediately upon notifying the CCI and upon receipt of the acknowledgement.

However, if the CCI finds that the transaction did not qualify for the Green Channel and/or the declaration filed was incorrect, the notification and the approval would become void ab initio and it is likely that the CCI will pursue proceedings for 'gun jumping' under Section 43A and possibly Section 44 (for material non-disclosure) of the Competition Act, 2002 (as amended). The CCI will allow the parties an opportunity to be heard before it arrives at a finding in this regard. Parties opting for the Green Channel will also benefit from simpler disclosure and data requirements under the Form I. For instance, there is no requirement of providing responses to the 'Top 5 Questions' (customers, competitors and suppliers) or market related information such as market size and market shares. ***–[Competition Commission of India, Notification dated 13th August, 2019 (CCI)]***

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INDIRECT TAXES

a. CUSTOMS

1) NOTIFICATION OF SEA CARGO MANIFEST AND TRANSHIPMENT (AMENDMENT) REGULATIONS, 2019

The Sea Cargo Manifest and Transhipment Regulations, 2018 have been amended. The new Regulations essentially replace previous regulations dealing with the timing and procedures for the delivery and filing of arrival and departure manifests and seek to streamline these processes for vessels carrying imported goods into India, vessels carrying export goods out of India as well as for vessels engaged in coastal carriage. The Regulations also introduce some new forms which the carrier is obliged to complete. – ***[Notification No. 54/2019-Customs (N.T.), dated 1st August, 2019]***

2) ADD ON "HOMOPOLYMER OF VINYL CHLORIDE MONOMER (SUSPENSION GRADE)"

Anti-dumping duty imposed on imports of "Homopolymer of vinyl chloride monomer (suspension grade)" originating in or exported from China PR and USA for 30 months with effect from 13th August, 2019, in pursuance of SSR investigation by DGTR. – ***[Notification No. 32/2019-Customs (ADD), dated 10th August, 2019]***

3) ADD ON CHLORINATED POLYVINYL CHLORIDE RESIN (CPVC)

Provisional anti-dumping duty imposed on imports of "Chlorinated Polyvinyl Chloride Resin (CPVC)-whether or not further processed into compound" originating in or exported from China PR and Korea RP for 06 months, in pursuance of anti-dumping investigation by DGTR. – ***[Notification No. 33/2019-Customs (ADD), dated 26th August, 2019]***

4) CVD ON SACCHARIN IN ALL ITS FORMS

Countervailing duty imposed on imports of 'Saccharin in all its forms' originating in or exported from People's Republic of China for a period of five years in pursuance of countervailing duty/anti-subsidy investigation issued by DGTR. – ***[Notification No. 2/2019-Customs (CVD), dated 30th August, 2019]***

5) CLARIFICATIONS REGARDING REFUNDS OF IGST PAID ON IMPORT IN CASE OF SPECIALIZED AGENCIES

Due to receipt of various representations wherein specialized agencies have raised the matter of refund of IGST paid on imported goods, the CBIC has decided to operationalise a refund mechanism of IGST paid on imports by the specialized agencies as under:

i. Section 55 of the CGST Act provides refund of taxes paid on the notified supplies of goods or services or both received by them. In pursuance of this provision, Notification No.16/2017-Central Tax (Rate) dated 28.6.2017 has been issued which inter-alia provides that United Nations or a specified international organisation shall be entitled to claim refund of central tax paid on the supplies of goods or services or both received by them subject to a certificate from United Nations or that specified international organisation that the goods and services have been used or are intended to be used for official use of the United Nations or the specified international organisation. A similar refund mechanism has been provided in respect of integrated tax *vide* Notification No.13/2017-Central Tax (Rate) and Union Territory tax *vide* Notification No.16/2017-Union Territory Tax (Rate) respectively.

ii. Section 3 (7) of Customs Tariff Act, 1975 (CTA), provides for a parity between the integrated tax rate attracted on imported goods and the integrated tax applicable on the domestic supplies of goods. In the case of UN and specialised agencies, the above referred to Notifications envisage payment and then refund of taxes paid. Therefore, on this principle of parity, specialised agencies ought to get the refund of the IGST paid on imported goods.

In view of the above, the CBIC has decided that respective customs field formations shall provide refund of IGST paid on import of goods by the specialized agencies notified by Central Government under Section 55 of CGST, Act, 2017. – ***[Circular No. 23/2019-Customs, dated 1st August, 2019]***

6) CLARIFICATION REGARDING APPLICABILITY OF ALL INDUSTRY RATES OF DUTY DRAWBACK WHILE FIXING BRAND RATE OF DUTY DRAWBACK IN POST GST ERA

Due to receipt of representations from trade and field formations seeking clarification on applicability of Circular Nos. 83/2003 dated 18.09.2003 and 97/2003 dated 14.11.2003 to cases of Brand Rate fixation in the post GST era, the CBIC has clarified as follows:

i. Circular Nos. 83/2003- Customs dated 18.09.2003 and 97/2003- Customs dated 14.11.2003 were issued by the Board allowing the applicability of All Industry Rates (AIRs) of Duty Drawback in respect of certain specific items, namely, finished/lining leather, bicycles and their parts/accessories and bus bodies when used in the export product, while determining Brand Rate of

Duty Drawback under Rules 6 and 7 of the then Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (now Customs and Central Excise Duties Drawback Rules, 2017). These clarifications in the pre-GST era were issued based on the premise that the aforesaid items were exempt from levy of Central Excise duty and the duties on their inputs remained unrelieved.

ii. Post GST, since Central Excise duty on inputs and Service Tax on input services used in the manufacture of export goods have been subsumed in GST for which input tax credit/refund is available thereunder, the basic premise for applicability of AIRs for calculation of Brand Rate of duty drawback no longer exists for exports made in GST regime. Accordingly, it is clarified that contents of para 3(a) and 3(b) of Circular No. 83/2003 dated 18.09.2003 and Circular No. 97/2003 dated 14.11.2003 are not applicable for exports made in post GST era.

iii. As regard the duties to be rebated under Duty drawback scheme in post GST era, which are not refunded or neutralized in any other manner, the same can be claimed by the exporter on actual basis in terms of Rules 6 and 7 of aforesaid Rules, 2017. – ***[Circular No. 24/2019-Customs, dated 8th August, 2019]***

7) RECOVERY OF EXPORT BENEFITS GIVEN UNDER INCENTIVE AND REWARD SCHEMES

The CBIC has sent out a directive to tax officials following observations by Comptroller and Auditor General (CAG) that there was no provision in earlier customs notifications to recover the duty benefit claimed on exports on re-import of the merchandise.

As for new cases of re-imports, exporters have to a provide a 'no incentive certificate' from the regional authority (RA) of the Directorate General of Foreign Trade at the time of re-import. This certificate will be provided only when the duty benefits claimed have been surrendered. – ***[Instruction No. 03/2019-Customs, dated 13th August, 2019]***

b. CENTRAL EXCISE

1) BASIC EXCISE DUTY ON ATF DRAWN FROM RCS-UDAN AIRPORT OR HELIPORT OR WATERDROME

The CBIC has extended the validity of 2% Basic Excise Duty on ATF drawn from RCS-UDAN airport or heliport or waterdrome. – ***[Notification No. 07/2019-Central Excise, dated 22nd August, 2019]***

2) SABKA VISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME (SVLDRS), 2019

The CBIC has notified 01st September, 2019 as the date from which the Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS), 2019 shall come into force. Also, the Rules under SVLDRS, 2019 have been notified. – ***[Notification No. 04/2019 Central Excise-NT, dated 21st August, 2019 & Notification No. 05/2019 Central Excise-NT, dated 21st August, 2019]***

c. GST

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

The CBIC has extended the date from which the facility of blocking and unblocking of e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017 shall be brought into force to 21.11.2019. – ***[Notification No. 36/2019 – Central Tax, dated 20th August, 2019]***

2) EXTENSION OF DUE DATE FOR FURNISHING FORM GSTR-3B

The CBIC has extended the due date for furnishing FORM GSTR-3B for the month of July, 2019 for registered persons whose principal place of business is in the district mentioned in the table provided in the present circular and also the state of J & K, on or before the 20th September, 2019. – ***[Notification No. 37/2019 – Central Tax, dated 21st August, 2019]***

3) WAIVER OF FILING OF FORM ITC-04

The CBIC has waived of the requirement of filing of FORM ITC-04 for F.Y. 2017-18 & 2018-19. – ***[Notification No. 38/2019 – Central Tax, dated 31st August, 2019]***

4) SECTION 103 OF THE FINANCE (NO. 2) ACT, 2019 APPLICABLE FROM 01ST SEPTEMBER

The CBIC has notified 01st September, 2019 as the date from which the Section 103 of the Finance (No. 2) Act, 2019 shall come into force. The extract of Section 103 of the said Act shall be as follows:

103. In Section 54 of the CGST Act, after sub section (8), the following sub section shall be inserted, namely:- "(8A) The Government may disburse the refund of the State Tax in such manner as may be prescribed." – ***[Notification No. 39/2019 – Central Tax, dated 31st August, 2019]***

5) EXTENSION OF DUE DATE FOR FURNISHING FORM GSTR-7 IN CERTAIN CASES

The CBIC has extended the due date for furnishing FORM GSTR-7 for the month of July, 2019 for registered persons whose principal place of business is in the district mentioned in the table provided in the present circular and also the state of J & K, on or before the 20th September, 2019. – ***[Notification No. 40/2019 – Central Tax, dated 31st August, 2019]***

6) WAIVER OF LATE FEE IN CERTAIN CASES FOR THE MONTH OF JULY, 2019 FOR FORM GSTR-1 AND GSTR-6

The CBIC has decided to waive the late fees in certain cases for the month of July, 2019 for FORM GSTR-1 and GSTR-6 provided the said returns are furnished by 20.09.2019. – ***[Notification No. 41/2019 – Central Tax, dated 31st August, 2019]***

7) EXTENSION OF DUE DATE FOR FILING OF ANNUAL RETURN / RECONCILIATION STATEMENT FOR THE FINANCIAL YEAR 2017-18 IN FORMS GSTR-9, GSTR-9A AND GSTR-9C

The CBIC *vide* present Circular seeks to remove difficulties regarding filing of Annual returns by extending the due date for filing of Annual return / Reconciliation Statement for the Financial year 2017-18 in FORMs GSTR-9, GSTR-9A and GSTR-9C to 30th November, 2019. – ***[Order No. 7/2019-Central Tax, dated 26th August, 2019]***

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INTELLECTUAL PROPERTY RIGHTS

1) BOMBAY HC REFUSED TO GRANT AD-INTERIM INJUNCTION TO THE PLAINTIFF EVEN WHEN THE NAMES OF THE INFRINGING MARKS WERE IDENTICAL AS THE MARKS WERE BEING USED ALONG WITH HOUSE MARK

MESO Private Limited, the Appellant-Plaintiff, manufactures and sells of various cosmetic products, including two perfumes with trademarks 'Legend' and 'Flirt'. The Liberty Group, the Respondents-Defendants, launched two perfumes with names Legend and Flirt. This led to MESO filing a Trade Mark suit in this Court and moving for an injunction to restrain Liberty from selling these perfumes. The learned Single Judge initially granted an ex parte ad-interim order of injunction, which was subsequently vacated. Being aggrieved, MESO approached with this appeal seeking a grant of an injunction against Liberty Group regarding these two products.

The issue before the Bombay HC was whether using the words Legend and Flirt along with house mark Liberty is likely to cause confusion regarding the perfumes Legend and Flirt with house mark Devon used by MESO.

The Court held that the defence of Liberty that use of Legend and Flirt along with its house name will not cause confusion regarding the marks of MESO has to be accepted at this stage to sustain the order of refusal of an injunction. – ***[Meso Private Limited v. Liberty Shoed Ltd. and anr., dated 8 August, 2019 (Bombay HC)]***

2) THE DEFENDANT SHREE BAIDYARAJ AYURVED BHAWAN PVT. LTD. RESTRAINED FROM USING THE WORD 'PANCHARISHTA' AS A TRADEMARK FOR MEDICINAL PREPARATIONS

The Plaintiff - Emami Ltd. had filed the present suit seeking protection of the mark 'ZANDU PANCHARISHTA' and 'PANCHARISHTA' when it came across the Defendant's product under the name 'PANCHARISHTA' used along with the house-mark 'BAIDYARAJ'. The Court observed that considering that the products are medicinal preparations, the effect of the Plaintiff's product on a consumer could be considerably different than the effect of the Defendant's product. The consumers may purchase the Defendant's products simply presuming that because of the use of the word 'PANCHARISHTA' in both products, Plaintiff and the Defendant's products are one and the same or have the same therapeutic effect. Under these circumstances, the Court held that the Plaintiff is entitled to an injunction restraining the Defendant from using the word

'PANCHARISHTA' as a trademark for medicinal preparations. – ***[Emami Limited* v. *Shree Baidyaraj Ayurved Bhawan, dated 26th August, 2019 (Delhi HC)]***

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CONSUMER

1) PROPOSED E-COMMERCE GUIDELINES FOR CONSUMER PROTECTION

The Ministry of Consumer Affairs has proposed guidelines on e-commerce for preventing fraud, unfair trade practices and protecting consumer interests. The guidelines are applicable to Business-to-Consumer (B2C) e-commerce, of goods, services and digital content products. The guidelines define an e-commerce entity as a company incorporated under the Companies Act 2013 or a foreign company u/s 2(42) thereof, or an office, branch or agency in India that is owned or controlled by a person resident outside India and includes an electronic service provider or partnership or proprietary firm, whether inventory or market place model or both, conducting the e-commerce business. The guidelines provide for the following:

General conditions : Within 90 days of the notification of the guidelines, e-commerce entities must comply with certain conditions, including, registration as a legal entity under Indian law, submission of a self-declaration to the Department of Consumer Affairs stating that it is in compliance with these guidelines, the promoter or KMP should not have been convicted of any criminal offence in the last five years, compliance with IT (Intermediaries guidelines) Rules 2011, payments for sale must be facilitated in conformity with RBI guidelines, display of details of sellers on its website.

Specific conditions:

E-commerce entities shall not (i) Directly or indirectly influence the price of goods; (ii) Adopt any unfair trade practice that influence decisions of consumers; (iii) Misrepresent or exaggerate quality or features of the goods and services.

E-commerce entities shall (i) display terms of contract between the e-commerce entity and the seller, relating to return, refund, exchange, warranty / guarantee, delivery / shipment, mode of payments, grievance redressal mechanism etc. to enable consumers to make informed decisions; (ii) mention safety and health care information of the goods and service advertised for sale; (iii) ensure that personally identifiable information of customers are protected and that such data collection, storage and use complies with provisions of the Information Technology (Amendment) Act, 2008; (iv) ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services; (v) accept return of goods if delivered late from the stated delivery schedule or delivery of defective, wrong or spurious products and not of the characteristics/features as advertised; (vi) provide information on available payment methods; (vii) effect all payments towards accepted refund requests of the customers within a period of maximum of 14 days; (viii) notify the seller, if it is informed by the consumer or comes to know by itself or through another source, about any counterfeit product being sold on its platform. If the seller is unable to provide any evidence that the product is genuine, it shall take down the listing and notify the consumers of the same; (ix) be held guilty of contributory or secondary liability

if it makes an assurance vouching for the authenticity of the goods sold on its market place – or if it guarantees that goods are authentic.

Liabilities of sellers: Sellers transacting or advertising their products on an e-commerce platform are, *inter alia,* required to have a prior written contract with the said platform in order to undertake or solicit sale or offer. Additionally, they should: (i) provide all information required to be provided either by law or by any other mandatory regime for disclosing contractual information and compliance with that regime will be treated as sufficient; (ii) display single-figure total and break up price for the goods or service, that includes all compulsory charges such as delivery, postage, taxes and handling and conveyance charges; (iii) comply with mandatory display requirements as per Legal Metrology (amendment) Rules, 2017 for pre-packaged commodities; (iv) provide mandatory safety and health care warnings and shelf life that a consumer would get at any physical point of sale; (v) provide fair and reasonable, delivery terms, or directly reference the shipping policy; (vi) be responsible for any warranty/guarantee obligation of goods and services sold; (vii) be upfront about how exchange, returns and refund process works and who bears the costs of return shipping.

Consumer grievance redress procedure: E-commerce entities must provide transparent and effective consumer protection at par with that provided by other forms of commerce. They must publish the name and details of the Grievance Officer on its website to whom complaints may be notified. This officer should redress complaints regarding products availed through the entity's website within one month of receipt of complaint. Consumers should also be provided the facility to lodge/register complaints over phone, e-mail or website, for which they be given a tracking number. A mechanism/system to converge this process with the National Consumer Helpline must also be provided. ***–[Ministry of Consumer Affairs, Food and Public Distribution]***

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ENVIRONMENT

1) SC ADMITS APPEAL AGAINST BAN ON OLD DIESEL VEHICLES

The Supreme Court has admitted an appeal from the Central Government seeking the court vacate the National Green Tribunal order which had refused to lift the ban on diesel vehicles on Delhi-NCR roads which were more than 10 years old. The Centre has pleaded that diesel fuelled defence vehicles, school buses, tractors and private vehicles should be exempted from the blanket ban. ***– [The Times of India, dated 30th August, 2019]***

2) AAP GOVT'S FREE WATER SCHEME BEING MISUSED BY SEVERAL HOUSING SOCIETIES: NGT PANEL

The AAP Government's scheme of providing 20,000 litres of water each month free of cost to every household in the national capital is being misused by several housing societies, a monitoring committee has told the National Green Tribunal. The committee, led by a former high court judge, told a bench headed by NGT chairperson that after availing 20,000 litres free of cost, these societies start extracting groundwater. – ***[The Times of India, dated 28th August, 2019]***

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