RBI/FEMA

1) MASTER CIRCULAR ON DISBURSEMENT OF GOVERNMENT PENSION BY AGENCY BANKS

The RBI has revised and updated the Master Circular RBI/2018-19/1 dated July 2, 2018 which consolidates important instructions on the subject till June 30, 2019. A copy of the revised Master Circular is annexed with the present Circular. – ***[DGBA.GBD.No.521/31.02.007/2019-20, dated 09th September, 2019]***

2) REDUCTION OF RISK WEIGHT FOR CONSUMER CREDIT

As per the extant instructions on 'Reduction in risk weight for consumer credit except credit card receivables', consumer credit, including personal loans and credit card receivables but excluding educational loans, attracts a higher risk weight of 125 per cent or higher, if warranted by the external rating of the counterparty. On a review, RBI has decided to reduce the risk weight for consumer credit, including personal loans, but excluding credit card receivables, to 100%. Other stipulations remain the same. – ***[DBR.No.BP.BC.17/21.06.001/2019-20, dated 12th September, 2019]***

3) AMENDMENTS TO LARGE EXPOSURES FRAMEWORK FOR BANKS

The RBI has made certain amendments to the large exposures framework for all scheduled commercial banks in India. It has been decided that a bank's exposure to a single non-banking financial institution, or NBFC (excluding gold loan companies), will be restricted to 20% of that bank's eligible capital base, instead of the earlier restriction of 15%. The large exposures framework has been effective since April 01, 2019. However, non-centrally cleared derivatives exposures will be outside the purview of exposure limits till April 01, 2020. – ***[DBR.No.BP.BC.18/21.01.003/2019-20, dated 12th September, 2019]***

4) BHARAT BILL PAYMENT SYSTEM - EXPANSION OF BILLER CATEGORIES

As per the extant guidelines on Bharat Bill Payment System (BBPS), platform currently covers bills of five segments viz. Direct to Home (DTH), Electricity, Gas, Telecom and Water. It has been decided to expand the scope and coverage of BBPS to include all categories of billers who raise recurring bills (except prepaid recharges) as eligible participants, on a voluntary basis. –

[DPSS.CO.PD.No.605/02.27.020/2019-20, dated 16th September, 2019]

5) REVISION OF NORMS FOR CONCURRENT AUDIT IN BANKS

The RBI has revised norms for concurrent audit in banks and mandated lenders should ensure that risk-sensitive areas identified by them are covered under the audit. Concurrent audit aims at shortening the interval between a transaction and its independent examination. With regard to appointment of auditors, it has been left to banks whether concurrent audit should be done by bank's own staff or external auditors.

The tenure of external concurrent auditors with a bank should not be more than five years on continuous basis. The age limit for retired staff engaged as concurrent auditors has been capped at 70 years. – ***[DBS.CO.ARS.No.BC.01/08.91.021/2019-20, dated 18th September, 2019]***

6) HARMONISATION OF TURN AROUND TIME (TAT) AND CUSTOMER COMPENSATION FOR FAILED TRANSACTIONS USING AUTHORISED PAYMENT SYSTEMS

RBI observed that a large number of customer complaints emanate on account of unsuccessful or 'failed' transactions. Failure could be on account of various factors not directly attributable to the customer such as disruption of communication links, non-availability of cash in ATMs, time-out of sessions, non-credit to beneficiary's account due to various causes, etc. Rectification / Compensation paid to the customer for these 'failed' transactions is not uniform. After consultation with various stakeholders, the framework for TAT for failed transactions and compensation thereof has been finalised which will result in customer confidence and bring in uniformity in processing of the failed transactions. The same is Annexed with the present Circular. – ***[DPSS.CO.PD No.629/02.01.014/2019-20, dated 20th September, 2019]***

7) REVISION OF CERTIFICATE (ANNEX B) DULY CERTIFIED BY CHARTERED ACCOUNTANTS OR BY COST ACCOUNTANTS FOR CLAIMING OF AGENCY COMMISSION

For claiming of agency commission, agency banks are required to submit two certificates to RBI along with the agency commission claims. In this regard, RBI has revised the format of one certificate (Annex B) duly certified by Chartered Accountants or by Cost Accountants. Revised Annex B is enclosed with the present Circular. There is no change in Annex A and other 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.648/31.12.007/2019-20, dated 25th September, 2019]***

8) SOVEREIGN GOLD BOND SCHEME (SGB) 2019-20 SERIES V/VI/VII/VIII/IX/X

Government of India has *vide* its Notification F.No.4(7)-B W&M/2019 dated September 30, 2019 announced the Sovereign Gold Bond Scheme 2019-20 Series V/VI/VII/VIII/IX/X. Under the scheme there will be a distinct series

(starting from Series V) for every tranche which will be indicated on the Bond issued to the investor. The Government of India (GoI) may, with prior notice, close the Scheme before the specified period. The terms and conditions of the issuance of the Bonds are indicated in the GoI notification and also in the present Circular. The RBI has also issued operating guidelines in this regard *vide* a separate Circular. - ***[IDMD.CDD.No.890/14.04.050/2019-20, dated 30th September, 2019 & IDMD.CDD.No.891/14.04.050/2019-20, dated 30th September, 2019]***

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FOREIGN TRADE

1) FOREIGN CONTRIBUTION (REGULATION) (SECOND AMENDMENT) RULES 2019.

The Ministry of Home Affairs has amended the Foreign Contribution (Regulation) Rules 2011 to provide for the following amendments:

(a)An article gifted to a person for his personal use will not amount to foreign contribution if its market value in India on the date of such gift does not exceed Rupees One Lakh (in place of Rupees Twenty Five Thousand). (Rule 6A amended)

(b)The timeline for intimation to the Central Government of acceptance of foreign hospitality in case of emergent medical aid needed on a visit abroad has been decreased to one month, in place of 60 days. (Rule 7(4) amended).

(c)Every office member, key functionary and member of an organisation has to execute an affidavit in Proforma AA while making an application for obtaining registration or prior permission to receive foreign contributions under Rule 9 and while applying for renewal of registration certificate under Rule 12. The affidavit is an undertaking to report to the Secretary of the Ministry of Home Affairs any violation of the provisions of sub-section (4) of Section 12 of the Foreign Contribution (Regulation) Act 2010, pertaining to the eligibility criteria for grant of certificate of registration, by the applicant organisation or any of its members or office bearers or key functionaries that comes to the knowledge of the deponent. Accordingly, Forms FC-3A, FC-3B and FC-3C for registration for acceptance of foreign contribution, prior permission for acceptance of foreign contribution and renewal of registration certificate, respectively, have been amended to include a declaration that the aforementioned affidavit has been duly executed and the office bearers and key functionaries and members fulfil all the eligibility criteria laid out in sub-section (4) of Section 12. – ***[Ministry of Home Affairs, dated 16th September, 2019]***

2) DPIIT ISSUES PRESS NOTE 4 OF 2019 TO AMEND FDI POLICY

The DPIIT has released Press Note 4 of 2019 which provides for amendments to the Consolidated FDI Policy Circular of 2017 approved by the Cabinet on 28 August 2019, in respect of coal mining, contract manufacturing, single brand retail trading (SBRT) and digital media sectors. The amendments will become effective from the date of FEMA notification and the specific amendments are referred below:-

(a)**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.

(b)**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.

(c)**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.

(d)**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 Note Number 4 (2019 Series), dated 18th September, 2019 (Ministry of Commerce and Industry)]***

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CORPORATE

1) CIRP CAN BE INITIATED AGAINST A DISSOLVED COMPANY

The NCLAT has held that a corporate insolvency resolution process (CIRP) can be initiated against a company whose name has been struck off from the register of companies under Section 248(5) of the Companies Act 2013 (CA 2013). The Appellate Tribunal reached this conclusion based on Section 252(3) read with Section 248(7) of the Act.

Section 252(3) of CA 2013 states that if a company or any member or creditor or workman feels aggrieved by the striking off of the name of the company, the Tribunal, on an application made by any of them, before the expiry of twenty years from the publication in the official gazette of the notice of striking off the name, may order or give directions for placing the name of the company and all persons in the same position, as nearly as may be, as if the name of the Company had not been struck off. Section 248(7) provides that the liability, if any, of any director, manager or other officer and every member of such a dissolved company shall continue and may be enforced as if the company had not been dissolved.

The Tribunal under CA 2013 is also the Adjudicating Authority (AA) under Section 60(1) of the IB Code, therefore, if such application is filed before the expiry of twenty years it is open to the AA to give such directions as may be deemed just to restore the name of the company and persons in the same position as if the company had not been struck off. In the present case, the application under Section 7 having been admitted by the AA, the Corporate Debtor, its Directors, Officers, etc. were deemed to have been restored in terms of Section 252(3) of the Companies Act. ***–[Elektrans Shipping Pte Ltd v. Pierre D'Silva & Anr, dated 6th September 2019 (National Company Law Appellate Tribunal)]***

2) IBBI LIST OF PROVISIONS UNDER COMPANIES ACT, 2013 AND INSOLVENCY & BANKRUPTCY CODE REQUIRING VALUATION BY REGISTERED VALUERS

The IBBI has released a list of provisions of the Companies Act, 2013 r/w the Companies (Registered Valuers and Valuation) Rules 2017 and the Insolvency and Bankruptcy Code and its regulations under which valuations are required to be conducted by a registered valuer, for ready

reference. ***–[No. IBBI/RVO/026/2019, dated 16th September, 2019, (Insolvency and Bankruptcy Board of India)]***

3) LAST DATE FOR FILING FORM BEN-2 EXTENDED TO 31 DECEMBER 2019

MCA has further extended the time limit for filing Form BEN-2 under the Companies (Significant Beneficial Owners) Rules, 2018 upto 31 December 2019, without payment of additional fee. Forms filed after 31 December 2019 will be subject to additional fee. Consequently, the last date for filing Form BEN-1 is also extended up to this date. This decision has been taken in view of representations received from stakeholders seeking extension for filing beyond 30 September 2019 on account of certain aspects requiring further examination and clarification. A revised Form BEN-2 has been made available on the MCA website from today (25 September 2019). ***–[General Circular Number.10/2019, 24th September, 2019 (Ministry of Corporate Affairs)]***

4) NCLAT UPHOLDS NON-DISCRIMINATION OF DISSENTING FINANCIAL CREDITOR, PARITY WITH SIMILARLY SITUATED FINANCIAL CREDITORS

The NCLAT has reiterated that a resolution plan cannot discriminate between similarly situated creditors merely because one of the creditors had dissented with the resolution plan. In the present case, the appellant, Hero Fincorp Ltd, which was categorized as a secured NBFC along with two other secured NBFCs, had dissented. Consequently, it was to be given only 32.34% of the admitted claim while the other two secured NBFCs were to be given 75.63% and 51.37% of their admitted claims under the approved Resolution Plan. Further, three other secured financial creditors, categorized as 'Secured Public Sector Banks' were to be paid 45% of their respective admitted claims. The NCLAT held the resolution plan to be violative of Section 30(2) and ordered its modification to bring it in conformity with the amended Regulation 38 of the IBBI (Corporate Insolvency Resolution Process) Regulations 2016 (Mandatory contents of the resolution plan). It rejected the contention that Section 30(2)(b)(ii) allows differential treatment of those financial creditors who do not vote in favour of the Resolution Plan. Accordingly, it directed that the appellant be treated at par with other similarly situated secured financial creditors.

The NCLAT observed that the approved Resolution Plan was prepared in accordance with the un-amended Regulation 38 as it stood prior to 5 October 2018, which was held to be discriminating between the same set of creditors. Regulation 38 was subsequently amended to omit the sub-clause providing for payment of liquidation value to dissenting Financial Creditors. This was approved by the Supreme Court in *Swiss Ribbons Pvt. Ltd. vs Union of India* which stated that it strengthens the rights of creditors by statutorily incorporating the principle of fair and equitable dealing of operational creditors' rights, together with priority in payment over financial creditors. The NCLAT accordingly directed that the appellant be provided 45% of its admitted claim to equate it with similarly situated secured financial creditors such as the three public sector banks. It did not, however, disturb the higher percentage provided to Tata Capital Financial Services Ltd., another secured NBFC. ***–[Hero Fincorp Ltd.* v. *Rave Scan Pvt. Ltd. & Ors.,***

dated 17th September, 2019 (National Company Law Appellate Tribunal)]

5) NCLAT ALLOWS DUTCH ADMINISTRATOR OF JET AIRWAYS (OFFSHORE REGIONAL HUB) TO PARTICIPATE IN COC MEETINGS

The NCLAT has set aside the Order of the NCLT, Mumbai Bench in so far as it related to observations that the Dutch Court had no jurisdiction in the matter of corporate insolvency resolution process (CIRP) of Jet Airways (India) Ltd (Offshore Regional Hub) and the consequential directions given to the Resolution Professional (RP) in respect of the Offshore Proceedings. The NCLAT allowed the Administrator of Jet Airways Offshore Regional Hub (the "Dutch Trustee"), appointed in pursuance of bankruptcy proceedings initiated against the offshore regional hub of Jet Airways (India) Ltd. in Holland, to participate in the meeting of the Committee of Creditors (CoC) as an observer, without the right to vote. It held that the Dutch Trustee is the equivalent to the RP in India, therefore, he had a right to attend the meetings of the CoC. It clarified that the Dutch Trustee would work in cooperation with the RP in India and his suggestions, if any, may be given to the RP. The NCLAT did not interfere with the admission of application u/s 7 of the Insolvency and Bankruptcy Code, 2016 and ordered that the joint insolvency resolution process, with the proceedings initiated in Holland, will continue in accordance with the Code.

In the appeal proceedings the NCLAT examined the possibility of a joint agreement or understanding between the RP and the Dutch Trustee under which the proceedings in India could continue so as to achieve maximization of the assets of the Corporate Debtor and to balance the claims of all the stakeholders, including Indian/Offshore Creditors/Lenders. Since the Dutch Trustee agreed to cooperate with the Indian proceedings and gave an undertaking to not sell, alienate, transfer, lease or create any third party interest on the offshore moveable and immoveable assets of the Corporate Debtor, the NCLAT stayed the Order of the NCLT to the extent that it declared the offshore proceedings as not maintainable. Subsequently, it directed the RP to submit a draft of a joint agreement giving the terms and conditions as may be agreed by the Dutch Trustee. A 'Cross Border Insolvency Protocol' was thus filed and approved by the NCLAT which provides amongst others, for covenants of co-operation and communication with respect to each other's proceedings and undertakings by the Dutch Trustee with respect to the assets under its jurisdiction.

Earlier, the NCLT, while admitting the application under Section 7 of the Code against Jet Airways (India) Ltd., observed that Sections 234 and 235 of the Code, which pertain to reciprocal agreements with foreign countries/ letter of request where the assets of the corporate debtor exist outside India, were yet to be notified. As there was no provision or mechanism in the Code to recognize the judgment of an insolvency court of any Foreign Nation, the NCLT could not pass any order to withhold the insolvency proceedings pending before it, based on the order of a foreign court, where the registered office of the Corporate Debtor is in India. It held that the jurisdiction solely lay with the Indian court and the order passed by Noord Holland District Court, Netherland, is a nullity, *ab initio*. ***–[Jet Airways (India) Ltd. (Offshore Regional Hub/Offices***

through its Administrator Mr. Rocco Mulder) **v.** ***State Bank of India & Anr., dated 26th September, 2019, (National Company Law Appellate Tribunal)]***

6) NCLAT: SANCTION TO A SCHEME OF ARRANGEMENT CANNOT BE MADE SUBJECT TO PRE-CONDITION OF PAYMENT OF TAX LIABILITIES BY TRANSFEROR.

In an appeal against an order sanctioning a scheme of arrangement, the NCLAT modified the scheme to the extent that it stipulated a condition that the scheme could be given effect to only if the Transferor Company pays the entire tax liability to the Income Tax and Service Tax Authorities. It held that once a scheme of arrangement has been sanctioned by a Tribunal nothing precludes the tax authorities from recovering legitimate outstanding dues from the Transferor or Transferee company. However, if the Transferee Company undertakes to make payment of all outstanding tax dues as may be determined after due scrutiny and assessment, the scheme cannot be refused and has to be allowed.

In the present case, the scheme of amalgamation was sanctioned in terms of Section 230 and 232 of the Companies Act, 2013 subject to several conditions, one of them being payment of tax liabilities. However, the demand raised by the income tax authorities was yet to be crystallized as the transferor company had challenged the demand before the competent Appellate Tribunal and the same was pending adjudication. The transferor company had also sent a notice to the Income Tax Department as required u/s 230(5) of the Act in response to which the Tax Authority had issued a No Objection Certificate (NOC) with respect to the sanctioning of the scheme, subject to any future demands that may be raised. The transferee company gave an express undertaking to fulfill all tax liabilities as and when they were crystallized. Further, a clause in the sanctioned scheme provided that post amalgamation all tax assessment and proceedings and appeals shall be continued with the transferee company and all or any dues payable shall be paid by the transferee company.

In view of the aforesaid, the NCLAT recast the pre-condition to provide that the Transferee company shall pay the outstanding dues of the Transferor company and any additional amount found due upon scrutiny and further that compliance with respect to the tax liability would not be treated as a condition precedent for implementation of the approved Scheme and would be subject to determination of the liability by the ITAT. ***–[Ad2Pro Global Creative Solutions Pvt. Ltd.*** **v.** ***Regional Director, Ministry of Corporate Affairs & Ors., dated 25th September, 2019, (National Company Law Appellate Tribunal)]***

7) INTER-CORPORATE DEPOSIT IS NOT A 'DEPOSIT' UNDER THE MPID ACT

The Bombay High Court has held that an intercorporate deposit/loan would not amount to a "deposit" within the meaning and for the purpose of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ('the MPID Act'). Consequently, the MPID Act cannot be said to have been enacted to protect the interests of corporate depositors.

The MPID Act protects the interests of thousands of small depositors from middle class and poor

strata of society who deposit their monies with financial establishments that promise higher rates of interest and default in returning the deposits, running into crores of rupees, by diverting the funds for purposes other than indicated by the front company. These financial establishments do not come under the purview of the RBI or the Banking Regulation Act and therefore escape public scrutiny.

In the present case the petitioners/financial establishments had been slapped with attachment orders issued by the State under the MPID Act. Pursuant to orders of the Court, a forensic audit in relation to the amounts accepted by the company was conducted and the audit report showed outstanding dues on inter-corporate deposits to the tune of 89.86 crores. The petitioners submitted that inter-corporate deposits do not fall within the scope of the MPID Act and that they are essentially loans procured by one corporate entity from another corporate entity registered under the Companies Act in the nature of short-term finance. The state government argued that a distinction cannot be made between a corporate depositor or otherwise, as the object of the MPID Act is to protect all investors who are duped by financial establishments.

The Court disagreed with the state government and appreciated the submissions of the petitioner/financial establishments that the provisions of both the Companies Act 1956 and 2013 and the Rules on acceptance of deposits provide that the amounts received by one company from any other company were excluded from the term 'deposit'. Therefore, inclusion thereof under the MPID Act would not be sustainable. The Court also noted that the challenge to the validity of the MPID Act and similar Acts in other states, such as Tamil Nadu, Pondicherry, Andhra Pradesh, was rejected by the Supreme Court as the object of these Acts is different from provisions related to acceptance of deposits under the Companies Act.

Significantly, the Court observed that the nature and structure of a company registered under the Companies Act was such that it cannot be "*attributed with the same amount of credulity, innocence and unsuspecting animus which an ordinary person may exhibit in the face of an irresistible offer of financial benefit. ……With key personnel like directors and professional managers, a company is not expected to be easily lured by a mere promise of a higher percentage of return on investments, unlike an unsuspecting small time depositor…… Nor is a company afflicted by the same degree of lack of information which an individual depositor may have to suffer. In view of this it does not appear that the object the MPID Act was to protect the interest of corporate depositors with the same zeal as that of common citizens, unsuspecting depositors and small depositors.*"

The Court also noted that the Supreme Court, in the matter of *New Horizon Sugar Mills Ltd vs Government of Pondicherry through Additional Secretary & Anr*, observed that the power to enact the Pondicherry Act, Tamil Nadu Act and the Maharashtra Act is relatable to Entries 1, 30 and 32 of the State List, which involves the business of unincorporated trading and money lending. Therefore, the intention of the State Legislature was not to regulate the business transactions between two companies, even when the transaction had the flavour of a deposit.

Another view taken by the Court in support of the exclusion of inter-corporate deposits from the MPID Act was that, if a corporate depositor has made a huge, bulk deposit with a financial

establishment, which commits a fraudulent default in repayment of the deposit along with the deposits of other small depositors, and the properties of such financial establishment is attached and ultimately disposed of for realisation of these deposits, in that event, if the corporate depositor competes with the small depositors and claims *pari passu* distribution, then the small depositors would be deprived of realisation of their money to the maximum.

The Court further held that obliterating the distinction between the corporate depositor and ordinary depositor would render the provisions of the Companies Act redundant, such as remedies for the enforcement of the rights of the corporate depositors ranging from a petition for winding up to a suit for recovery of the amount and the corporate depositor may not be required to exhaust the remedies provided therein. The summary remedy provided in the MPID Act did not seem to have been conceived by the State legislature as the remedy for enforcement of the rights of one corporate entity against another. A corporate entity could not claim to suffer from the vagaries which a small-time depositor would encounter in realising the amount, in an ordinary manner, and for whom the summary remedy is provided.

In view of the above, the Court concluded that the intercorporate deposit/loan would not amount to a "deposit" within the meaning and for the purpose of the MPID Act. ***–[Mr. Ashish Mahendrakar* v. *State of Maharashtra & Ors, 13th September, 2019, (High Court of Bombay)]***

8) SC EXAMINES MEANING OF 'PUBLIC AUTHORITY' AND INCLUSION OF 'SUBSTANTIALLY FINANCED' NGOS UNDER RTI ACT

In the context of whether NGOs substantially financed by the appropriate government fall within the ambit of 'public authority", the Supreme Court has analysed the definition of "public authority" under Section 2(h) of the Right to Information Act, 2005 (the "Act") and also interpreted "substantially financed". This serves as a useful guidance for purposes of invoking the right to information against such bodies and organization.

The Appellants were colleges or associations running colleges and schools. They contended that NGOs were not covered under the Act because the objective of the Act and the definition of "public authority" is to cover only government bodies and institutions and instrumentalities accountable to it, and that such a body or organization must be constituted under the Constitution or by any law of Parliament or State Legislature or by a notification issued or made by the appropriate government. Since the appellants did not fall under any of these categories, they could not be termed as public authority.

The RTI Act mandates a public authority to maintain records and every citizen has the right to get information from such authority. Section 2 (h) of the Act defines "public authority", as follows: *"(h) "public authority" means any authority or body or institution of self-government established or constituted - (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any – (i) body owned, controlled or substantially financed; (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;"*

The Court explained that while there was no ambiguity with respect to (a) to (c) above, as far as (d) was concerned, it could not be said that unless a notification is issued notifying that an authority, body or institution of self -government is brought within the ambit of the Act, the Act would not apply. Any authority or body or institution of self-government, if established or constituted by a notification of the Central or State Government, would be a public authority. Section 2(h) thus deals with six different categories including the two additional categories mentioned in sub-clauses (i) and (ii). Any other interpretation would make clauses (i) and (ii) redundant because then an NGO would never be covered. By specifically bringing NGOs in the section it is obvious that Parliament intended to include the two categories mentioned in sub clauses (i) and (ii) in addition to the four categories mentioned in clauses (a) to (d). Therefore, an NGO substantially financed, directly or indirectly, by funds provided by the appropriate government would be a public authority amenable to the provisions of the Act.

Meaning of "substantially financed"

The Court observed that no hard and fast rule could be made with respect to what is 'substantial' and such determination would depend on the facts of each case. Nevertheless, it provided the following criteria or factors that may be applied:

Where a large portion, not necessarily more than 50%, is directly or indirectly financed. For example, land given free of cost or at a heavy discount to hospitals, educational institutions or any such largesse could be substantial financing. Merely because financial contribution of the State comes down during the actual funding, will not by itself mean that the indirect finance given is not to be taken into consideration. The value of the land will have to be evaluated not only on the date of allotment but even on the date when the question arises as to whether the said body or NGO is substantially financed.

Where the finance is more than 50% this may not be called substantially financed. For example, if a small NGO which has a total capital of Rs.10,000/- gets a grant of Rs.5,000/- from the Government, though this grant may be 50%, it cannot be termed substantial contribution. On the other hand, if a body or an NGO gets hundreds of crores of rupees as grant but that amount is less than 50%, the same can still be said to be substantially financed.

Whether the body, authority or NGO can carry on its activities effectively without getting finance from the Government. If its functioning is dependent on the finances of the Government then there can be no doubt that it has to be termed as substantially financed.

The Court concluded that in deciding what is substantially finance one has to keep in mind that the Act was enacted with the purpose of bringing transparency in public dealings and probity in public life. "*If NGOs or other bodies get substantial finance from the Government, there is no reason why any citizen cannot ask for information to find out whether his/her money which has been given to an NGO or any other body is being used for the requisite purpose or not.*"

Applying the above parameters to the facts of this case, the Court held that the payments to the colleges/school amount to almost half their expenditure and more than 95% of the expenditure is for teaching and other staff. Accordingly, the colleges/school were substantially financed and were public authority

within the meaning of Section 2(h) of the Act. ***–[D.A.V. College Trust and Management Society & Ors.*** **v.** ***Director of Public Instructions & Ors, CIVIL APPEAL NO. 9828 OF 2013, dated 17th September, 2019, (Supreme Court of India)]***

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SECURITIES

1) SEBI MANDATES 'UNPAID DUES REPORT' FOR LISTED ENTITIES UNDERTAKING SCHEMES OF ARRANGEMENT

SEBI has amended its Circular dated 10 March 2017 which revised the regulatory framework for listed entities undertaking a scheme of arrangement. The present amendment is in relation to payment of outstanding dues of SEBI, Stock exchanges and the Depositories.

All listed entities are required to ensure that all dues to, and/or fines/penalties imposed by SEBI, Stock Exchanges and the Depositories have been paid/settled before filing the draft scheme with the designated stock exchange. In case of unpaid dues / fines / penalties, the listed entity shall submit to stock exchanges a 'Report on the Unpaid Dues' which shall contain the details of such unpaid dues in the format given in Annexure B to its Circular dated 12 September, prior to obtaining Observation Letter from stock exchanges on the draft scheme.

The report on unpaid dues shall be submitted by listed entity to the stock exchanges along with the draft scheme. Any misstatement or furnishing of false information with regard to the said information shall make the listed entity liable for punitive action as per the provisions of applicable laws and regulations.

The 'Unpaid Dues Report' shall be forwarded by the Stock Exchanges to SEBI before SEBI communicates its comments on the Draft Scheme to the Stock Exchanges. Such report shall be submitted as per the format specified at Annexure B. ***–[SEBI/HO/CFD/DIL1/CIR/P/2019/192, 12th September, 2019, (SEBI)]***

2) SEBI NOTIFIES INFORMANT MECHANISM/INFORMANT REWARD POLICY UNDER PIT REGULATIONS

SEBI has notified the Informant Mechanism and Informant Reward provisions in the SEBI (Prohibition of Insider Trading Regulations) 2015, under a new Chapter IIIA thereof. The mechanism specifies the procedure for reporting and processing of the information received from an informant and the incentives and protection for informants, as follows:

(a)An "informant" means any individual who voluntarily submits a Voluntary Information Disclosure Form (VIDF) providing credible, complete and original information relating to an act of insider trading that has occurred, is occurring or is reasonably believed to occur.

(b)It is mandatory to provide the source of the original information along with an undertaking

that such information has not been obtained from a SEBI employee or any related regulator.

(c)An independent office called the Office of Informant Protection (OIP) may be established which will set up the process of receiving, verifying, authenticating and analysing the VIDF. The OIP will also decide on the grant of reward to the informant post completion of enforcement action and recovery of disgorged amounts.

(d)The identity of the informant is required to be disclosed on the submission of the VIDF. In case the informant wishes to submit anonymously, VIDF may be filed through a legal representative. Personal appearance before the OIP may be required for ascertaining identity and verification of information in the VIDF. OIP is obligated to maintain confidentiality regarding the identity of the informant unless his evidence is required during SEBI proceedings. The legal representative will obtain a non-waivable consent to disclose the identity of the informant if required in connection with any court proceeding or when required by SEBI.

(e)The OIP will process the information given by the informant and may transfer it to the dealing departments for further action, after redacting information that may reveal the identity of the informant. The OIP will submit a report to SEBI on an annual basis, which will also be released to the public. It will also maintain a hotline to provide guidance to persons to file information.

(f)The final reward will be issued after recovery of the disgorged amount which should equal at least twice the final reward. Provided that the amount of reward shall be 10% of the amount collected but shall not exceed Rs. 1 crore or such higher amount as may be specified. An interim reward not exceeding Rs. 10 lakhs may be given at the stage of issue of the final order by SEBI against the person directed to disgorge. The reward shall be paid out of the Investor Protection and Education Fund (IPEF).

(g)The amount of the reward, if payable, will be determined by the Board. An Informant Incentive Committee, assisted by the OIP, shall give its recommendations to the Board on the eligibility of the informant, amount of reward and rejection of claim for reward.

(h)Original information may be shared with any other appropriate regulatory and law enforcement authority within or outside India, subject to SEBI's discretion. The confidentiality of the identity of the informant will however be maintained, unless circumstances require otherwise.
(i)Information provided will be exempted from disclosure u/s 8(1)(g) and 8(1)(h) of the RTI Act.

(j)Listed companies and intermediaries dealing with UPSI shall incorporate in their Code of Conduct suitable provisions to ensure that no employee who files a VIDF or assists the OIP is discharged, terminated, demoted, suspended, threatened or discriminated, directly or indirectly, for breach of the company's confidentiality agreement. In case of violation of the Code of Conduct, penalties, prosecution proceedings, debarment etc. may be levied/initiated by SEBI.

(k)If an action/proceeding is initiated against an Informant, SEBI will consider the co-operation extended by him and declare him eligible for a reward after he has paid monetary penalties levied against him or complied with directions. An informant who is culpable, but voluntarily co-operates, may be eligible for a reward or settlement, with confidentiality in the proceedings.

The amendments have been made effective from the 100th day of their notification, i.e. 26 December 2019, so as to enable market participants to become conversant with the requirements and create necessary systems for implementation***.-[SEBI/LAD-NRO/GN/2019/32, dated 17th September, 2019, (SEBI)]***

3) SEBI (CREDIT RATING AGENCIES) REGULATIONS, 1999 AMENDED TO PROVIDE FOR DISCLOSURE ON LOAN DEFAULTS

SEBI has notified amendments to the SEBI (Credit Rating Agencies) Regulations, 1999 that ensure full disclosure of loan defaults by the client or its lenders to the credit rating agencies to enable them to assess the impact of such information on the rating given by it to the entity or its securities.

A new sub-clause (h) in Regulation 14 (Agreement with Client) mandates that "The client shall provide explicit consent to the credit rating agency to obtain the details related to their existing and/or future borrowing of any nature, its repayment and delay or default, if any, of any nature, in servicing of the borrowing, either from the lender or any other statutory/non-statutory organization maintaining any such information to enable the credit rating agency to have timely information on the same and to consider the impact of such information on the rating assigned by the credit rating agency." ***–[SEBI/LAD-NRO/GN/2019/34, 23rd September, 2019, (SEBI)]***

4) SEBI (FOREIGN PORTFOLIO REGULATIONS) 2019 NOTIFIED

Following approval to the recommendations made by the working group on revamp of the FPI Regulations in its Board meeting of 21 August 2019, SEBI has notified the SEBI (Foreign Portfolio Investors) Regulations 2019 with effect from 23 September 2019. Consequently, the SEBI (FPI) Regulations 2014 stand repealed from this date. The new FPI Regulations, amongst others, provide for:

(a)removal of broad based eligibility criteria for FIIs and re-categorization of FPIs into two categories instead of three; (b) simplified registration process; (c) central banks that are not members of the Bank for International Settlement are eligible for FPI registration; (d) entities established in IFSC will be deemed to have met the jurisdiction criteria for FPIs; (e) KYC documentation simplified; (f) off market transfer of unlisted, suspended or illiquid securities to domestic or foreign investors permitted for FPIs; (g) offshore funds floated by Mutual Funds can invest in India post registration as FPI; and (h) issuance and subscription of Offshore Derivative Instruments rationalised. ***–[SEBI/LAD-***

NRO/GN/2019/36, 23rd September, 2019, (SEBI)]

5) SEBI (MUTUAL FUND) REGULATIONS 1996 AMENDED

SEBI has notified amendments to the SEBI (Mutual Funds) Regulations 1996, to, *inter alia*, incorporate the revised categorisation of FPIs under the new FPI Regulations 2019, in Regulation 24 pertaining to restriction on business activities of Asset Management Companies.

Amendments to the Seventh Schedule, which provides for the restrictions on investments by mutual fund schemes, are that:

(a)A mutual fund scheme cannot invest in unlisted debt instruments including commercial papers, except Government securities and other money market instruments. However, it may invest in unlisted non-convertible debentures upto 10% of the debt portfolio of the scheme (clause 1A substituted);

(b)Mutual funds schemes can invest only in listed or to be listed equity shares and equity related instruments. The extant provision allowing a maximum of 5% investment in unlisted securities has been done away with. (clause 11 substituted).
–[SEBI/LAD-NRO/GN/2019/37, 23rd September, 2019, (SEBI)]

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COMPETITION

1) CCI APPROVES FOLLOWING COMBINATIONS UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002

(a) Acquisition of Dixcy Textiles Pvt. Ltd. (DTPL) by Varenna Holdings Limited (Varenna) The proposed transaction entails acquisition of equity shares in DTPL by Varenna. Varenna already holds 60% of the shares in DTPL. Varenna is an indirect subsidiary of funds managed by Advent International Corporation. DTPL is primarily engaged in manufacturing of hosiery products including men's inner wear (including boy's inner wear), women's inner wear (including girl's inner wear) and casual wear (including T-shirts, Tracks, sweatshirts, shorts, leggings, athleisure, thermal wear, capris and skirts).
(b) Acquisition of approximately 25% shareholding of Federal-Mogul Goetze (India) Limited (FMGI) by Icahn Enterprises L.P. (IEP LP); American Entertainment Properties Corp. (AEP); and IEH FMGI Holdings L.L.C. (IEH) The proposed transaction contemplates an acquisition of approximately up to 25.02% shareholding of FMGI by the Acquirers from the public shareholders of FMGI. Under the SEBI (Substantial Acquisitions of Shares and Takeover) Regulations, 2011, IEP LP and AEP, together with its subsidiary, IEH are the persons acting in concert with Tenneco Inc. FMGI (the target) manufactures and sells pistons, piston rings, valve seats, valve guides and structured parts for a wide range of applications including two/three wheelers, cars, sport utility vehicles, tractors, light commercial vehicles, heavy commercial vehicles, stationary engines and high output locomotive diesel engines.
(c) Restructuring of pharmacy business of Apollo Hospitals Enterprise Limited (AHEL) and its subsequent acquisition by Enam Securities Private

Limited, Jhelum Investment Funds I and Hemendra Kothari. In terms of the proposed combination, the front-end standalone pharmacy business of AHEL shall be transferred by AHEL to Apollo Pharmacies Limited (APL) by way of slump sale pursuant to approval of the National Company Law Tribunal, Chennai Bench. AHEL is a part of the Apollo Group and provides integrated healthcare services in India and internationally. AHEL healthcare facilities comprise primary, secondary, and tertiary care facilities. APL is engaged in the business of buying, selling, importing, exporting, distribution or dealing in or manufacturing, Medical and Pharmaceuticals products like intravenous sets, intravenous solutions, all kinds of drugs, disinfectants, tinctures, colloidal products, injectable and all pharmaceuticals and medical preparations and other related products. – ***[PRESS RELEASE No. 9/2019-20, dated 23rd September, 2019 (Competition Commission of India)]***

2) CCI APPROVES THE ACQUISITION OF 70% SHAREHOLDING IN SAUDI BASIC INDUSTRIES CORPORATION (SABIC) BY SAUDI ARABIAN OIL COMPANY (SAUDI ARAMCO), UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002, TODAY

The proposed transaction entails acquisition of 70% shareholding in SABIC, currently held by the Public Investment Fund of Saudi Arabia by Saudi Aramco. Through this acquisition of shares, Saudi Aramco will acquire sole control over SABIC. Saudi Aramco is primarily engaged in the exploration, production and marketing of crude oil and natural gas. It is also active, to a lesser extent, in the production and marketing of refined products and petrochemicals. In India, Saudi Aramco is mainly active in the supply of crude oil, liquefied petroleum gas, base oil and petrochemical products. SABIC is primarily active in the production and sale of commodity chemicals (including petrochemicals), intermediates, polymers, fertilizers and to some extent metals. In India, SABIC is mainly active in the supply of agri-nutrient and petrochemical products. ***–[PRESS RELEASE No. 10/2019-20, dated 27th September, 2019 (Competition Commission of India)]***

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INDIRECT TAXES

a. CUSTOMS

1) IMPLEMENTATION OF RECOMMENDATION UNDER INDIA-MALAYSIA COMPREHENSIVE ECONOMIC COOPERATION AGREEMENT (BILATERAL SAFEGUARD MEASURES) RULES, 2017

Notification No. 53/2011 dated 01.07.2011 amended so as to increase the rate of duty of customs by 5 percent, for a period of 180 days, on imports of RBD Palmolein/Palm Oil originating in Malaysia and imported under India-Malaysia Comprehensive Economic Cooperation Agreement, on recommendation of preliminary findings of Directorate General of Trade Remedies under India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017. – ***[Notification No. 29/2019-Customs, dated 4th September, 2019]***

2) REDUCTION IN BCD ON OPEN CELL, ETC.

Notification No. 50/2017-Customs dated 30.06.2017 amended so as to reduce basic customs duty on Open cell (15.6" and above) for use in the manufacture of Liquid Crystal Display (LCD) and Light Emitting Diode (LED) TV panels and certain goods for use in the manufacture of Open cell of Liquid Crystal Display (LCD) and Light Emitting Diode (LED) TV panels. – ***[Notification No. 30/2019-Customs, dated 17th September, 2019]***

3) EXEMPTION OF PETROLEUM OPERATIONS OR COAL BED METHANE OPERATIONS UNDERTAKEN UNDER HELP AND OALP

Notification No. 50/2017-Customs dated 30.06.2017 amended, in order to exempt petroleum operations or coal bed methane operations undertaken under HELP and OALP. – ***[Notification No. 31/2019 –Customs, dated 24th September, 2019]***

4) EXEMPTION OF IMPORTS BY FAO FOR SPECIFIED PROJECTS

The CBIC *vide* present Circular exempted imports by Food and Agricultural Organisation of the United Nations (FAO) for specified projects. – ***[Notification No. 32/2019-Customs, dated 30th September, 2019]***

5) EXTENSION OF EXEMPTION PROVIDED TO THE LIGHT COMBAT AIRCRAFT PROGRAMME OF THE MINISTRY OF DEFENCE TILL 03.12.2021

Notification No. 39/96-Customs dated 23.07.1996 amended so as to extend the exemption provided to the Light Combat Aircraft Programme of the Ministry of Defence till 03.12.2021. – ***[Notification No. 33 /2019-Customs, dated 30th September, 2019]***

6) IMPLEMENTATION OF RECOMMENDATIONS OF 37TH GST COUNCIL MEETING

- Notification No. 50/2017-Customs dated 30th June, 2017 amended so as to give effect to the recommendations of the GST Council in its 37th meeting dated 20.09.2019. – ***[Notification No. 34/2019-Customs, dated 30th September, 2019]***
- Notification No. 19/2019- Customs, dated the 6th July, 2019 amended so as to exempt from IGST specified defence goods, to give effect to the recommendations of the GST Council in its 37th meeting dated 20.09.2019. – ***[Notification No. 35/2019-Customs, dated 30th September, 2019]***

7) VILLAGE BARHI NOTIFIED FOR UNLOADING OF IMPORTED GOODS AND LOADING OF EXPORT GOODS

Notification No. 12/97-CUSTOMS (N.T.), dated the 2nd April, 1997 amended so as to include Barhi, Distt Sonepat, Haryana for unloading of imported goods and loading of export goods. – ***[Notification No. 65/ 2019-Customs (N.T.), dated 13th September 2019]***

8) NOTIFICATION OF TRANSHIPMENT OF CARGO TO NEPAL UNDER ELECTRONIC CARGO TRACKING SYSTEM REGULATIONS, 2019

The CBIC has notified the Transshipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019. These Regulations shall apply to the Transhipment of cargo from the following ports –

- Ports of Kolkata, Haldia and Visakhapatnam in India to Birgunj in Nepal by rail
- Ports of Kolkata, Haldia and Visakhapatnam to Batnaha in India by rail
- From Batnaha to Biratnagar in Nepal by road. – ***[Notification No. 68/2019-Customs (N.T.), dated 30th September, 2019]***

9) ADD ON ELECTRICAL INSULATORS

Definitive anti-dumping duty imposed on the imports of "Electrical Insulators" originating in, or/and exported from China PR for a period of five years. – ***[Notification No. 37/2019-Customs (ADD), dated 14th September, 2019]***

10) ADD ON HIGH -SPEED STEEL OF NON-COBALT GRADE

Anti-dumping duty imposed on imports of 'High -Speed Steel of Non-Cobalt Grade' originating in, or exported from Brazil, China and Germany. – ***[Notification No. 38/2019-Customs (ADD), dated 25th September, 2019]***

11) COUNTERVAILING DUTY ON 'ATRAZINE TECHNICAL'

Countervailing duty levied on 'Atrazine Technical' originating in or exported from China PR, in pursuance of final findings issued by DGTR. – ***[Notification No. 3 /2019-Customs (CVD), dated 17th September, 2019]***

12) COUNTERVAILING DUTY ON 'WELDED STAINLESS STEEL PIPES AND TUBES'

Countervailing duty levied on 'Welded Stainless Steel Pipes and Tubes' originating in or exported from China PR and Vietnam, in pursuance of final findings issued by DGTR. – ***[Notification No. 4 /2019-Customs (CVD), dated 17th September, 2019]***

13) ROLL OUT OF PROJECT IMPORT MODULE IN ICES

The CBIC has announced rollout of Project Import Module in Indian Customs EDI System (ICES). The Project Import Module in ICES has been introduced to overcome the difficulties faced due to manual processing and manual Project imports registration. – ***[Circular No. 27/2019-Customs, dated 03rd September, 2019]***

14) ELIGIBILITY CRITERIA FOR AVAILING OF DPD SCHEME BY IMPORTERS

CBIC has taken various steps which have had the impact of reducing the dwell time as well as bringing down the logistics cost of EXIM clearances. One of the flagship initiatives in this regard has been the Direct Port Delivery (DPD) of containers to the importers thus obviating the need of routing the clearance through the Container Freight Stations (CFSs). Although this initiative is in operation at all the ports, however, the CBIC felt the need for providing general guidelines / eligibility criteria so that reach of DPD could be made maximized. The following categories of importers may opt for facility of DPD:

a. importers who have already been accorded either AEO Tier I, II or III status;
b. importers with a clear track record of compliance and an import volume of 25 Full Container Load (FCL) TEUs through a particular port or otherwise in the preceding financial year. – ***[Circular No. 29 / 2019 – Customs, dated 05th September, 2019]***

15) CLARIFICATION REGARDING DUTY DRAWBACK ALLOWED IN CASES OF SHORT REALISATION OF EXPORT PROCEEDS DUE TO BANK CHARGES DEDUCTED BY FOREIGN BANKS

On receipt of representations from Export Promotion Councils, Trade Bodies, and individual exporters regarding show cause notices issued by some Customs field formations for recovery of duty drawback on account of short realisation of export sale proceeds due to bank charges deducted from export invoice by the banks, the CBIC has clarified that duty drawback may be permitted on FoB value without deducting foreign bank charges. It is further clarified that since agency commission up to the limit of 12.5% of the FoB value has been allowed, such deduction on account of foreign bank charges is allowed within this overall limit of 12.5% of the FoB value. From the average rates of agency commission and foreign bank charges in respect of export shipments, it is seen that these deductions fall within the aforesaid overall limit of 12.5% of FoB value allowed by the Board. Agency commission and foreign bank charges, separately or jointly, exceeding this limit should be deducted from the FoB value for granting duty drawback. – ***[Circular No. 33/2019-Customs, dated 19th September, 2019]***

b. GST

1) RULES 10, 11, 12 AND 26 OF THE CGST (FOURTH AMENDMENT) RULES, 2019 CAME INTO FORCE

CBIC *vide* present Notification bring into force the provisions of rules 10, 11, 12 and 26 of the Central Goods and Services Tax (Fourth Amendment) Rules, 2019 w.e.f. 24th September, 2019. These rules are related to single disbursement of GST refund claims. – ***[Notification No. 42/2019 – Central Tax, dated 24th September, 2019]***

2) MANUFACTURERS OF AERATED WATERS EXCLUDED FROM THE PURVIEW OF COMPOSITION SCHEME

Notification No. 14/2019- Central Tax dated 7.3.2019 amended so as to exclude manufacturers of aerated waters from the purview of composition scheme. – ***[Notification No.43/2019-Central Tax, dated 30th September, 2019]***

3) RECOMMENDATIONS OF THE 37TH GST COUNCIL MEETING

- Notification No. 1/2017- Central Tax (Rate) dated 28.6.2017 amended so as to specify effective CGST rates for specified goods, to give effect to the recommendations of the GST Council in its 37th meeting dated 20.09.2019. – ***[Notification No. 14/2019-Central Tax (Rate), dated 30th September, 2019]***

- Notification No. 11/2017- Central Tax (Rate) amended so as to notify CGST rates of various services as recommended by GST Council in its 37th meeting held on 20.09.2019. – ***[Notification No. 20/2019- Central Tax (Rate), dated 30th September, 2019]***

- Notification No. 12/2017- Central Tax (Rate) amended so as to exempt services as recommended by GST Council in its 37th meeting held on 20.09.2019. – ***[Notification No. 21 /2019- Central Tax (Rate), dated 30th September, 2019]***

- Notification No. 13/2017- Central Tax (Rate) amended so as to notify services under reverse charge mechanism (RCM) as recommended by GST Council in its 37th meeting held on 20.09.2019. – ***[Notification No. 22 /2019- Central Tax (Rate), dated 30th September, 2019]***

- Notification of the place of supply of R&D services related to pharmaceutical sector as per Section 13(13) of IGST Act, as recommended by GST Council in its 37th meeting held on 20.09.2019. – ***[Notification No. 04/2019- Integrated Tax, dated 30th September, 2019]***

Similar notifications have been issued under the Integrated Tax (Rate) and Union Territory Tax (Rate).

4) EXEMPTION TO DRIED TAMARIND AND CUPS, PLATES MADE OF LEAVES, BARK AND FLOWERS OF PLANTS

Notification No. 2/2017- Central Tax (Rate) dated 28.6.2017 amended so as to grant exemption to dried tamarind and cups, plates made of leaves, bark and flowers of plants. – ***[Notification No. 15/2019-Central Tax (Rate), dated 30th September, 2019]***

5) CONCESSIONAL CGST RATES EXTENDED TO SPECIFIED PROJECTS UNDER HELP/OALP

Notification No. 3/2017- Central Tax (Rate) dated 28.6.2017 amended so as to extend concessional CGST rates to specified projects under HELP/OALP, and other changes. – ***[Notification No. 16/2019-Central Tax (Rate), dated 30th September, 2019]***

6) EXEMPTION OF CGST ON SUPPLIES OF SILVER AND PLATINUM BY NOMINATED AGENCIES TO REGISTERED PERSONS

Notification No. 26/2018- Central Tax (Rate) dated 31.12.2018 amended so as to exempt CGST on supplies of silver and platinum by nominated agencies to registered persons. – ***[Notification No. 17/2019-Central Tax (Rate), dated 30th September, 2019]***

7) GRANT OF ALCOHOLIC LIQUOR LICENCE NEITHER A SUPPLY OF GOODS NOR A SUPPLY OF SERVICE

The CBIC has notified that the grant of alcoholic liquor licence neither a supply of goods nor a supply of service as per Section 7(2) of CGST Act, 2017. – ***[Notification No. 25/2019-Central Tax (Rate), dated 30th September, 2019]***

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INTELLECTUAL PROPERTY RIGHTS

1) GI AMENDMENT RULES 2019

The Ministry of Commerce and Industry has notified the draft Geographical Indications of Goods (Registration and Protection) (Amendment) Rules, 2019. – ***[The Ministry of Commerce and Industry (Department for Promotion of Industry and Internal Trade), Notification dated 12th September, 2019]***

2) PATENT (AMENDMENT) RULES, 2019

The Ministry of Commerce and Industry has published The Patent (Amendment) Rules, 2019. – ***[The Ministry of Commerce and Industry (Department for Promotion of Industry and Internal Trade), Notification dated 17th September, 2019]***

3) DELHI HC GRANTS INJUNCTION IN FAVOUR OF BENNETT COLEMAN GROUP AGAINST USE OF 'MISS INDIA' & 'MR INDIA'

Delhi High Court has passed an Order restraining any organisation from holding beauty pageant competitions with the title 'Miss India' or 'Mr India', or with any other title deceptively similar to them. The Court held that using such titles would amount to infringement of trademark enjoyed by the Bennett Coleman group. In the suit for infringement, the Bennett Coleman group sought a permanent injunction against Rising India Entertainment Production from using the titles 'Miss India' and 'Mr. India' for beauty pageants organised by them. – ***[Bennett, Coleman And Company Ltd. & Ors.*** **v.** ***Rising India Entertainment Production & Ors., dated 04th September, 2019 (Delhi HC)]***

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CONSUMER

1) THE COMMISSION HOLDS SAHARA PRIME CITY GUILTY OF DEFICIENCY IN SERVICES AND DIRECTS TO PAY COMPENSATION

The National Consumer Dispute Redressal Commission (NCDRC) directed Sahara Prime City Limited, to refund the principal amount paid by the complainant as consideration for purchasing a flat from them, along with compensation, because of deficiency of services.

According to her complaint, she approached the developers time and again for possession but though she was assured that the construction would start there was no progress. She was allotted a flat in August, 2009, however, she fell ill during the time and after recovery from her illness she was told by the developer that her allotment was cancelled. Palawat expressed her willingness to pay the due amount and accept possession, which was refused by the developer, the complaint said. In 2013, the Rajasthan Consumer Disputes Redressal Commission had directed the developer to refund Rs 4.06 lakh to the complainant, along with interest of 12 per cent and Rs.1,00,000/- towards compensation and costs.

The Commission noted that the developer had promised possession of the flat within 38 months from the date of allotment but till date the developer is not in a position to offer legal possession of the subject apartment with the completion certificate. The Commission further noted that the cancellation by the developer is unilateral and their action in forfeiting the deposited amount amounts to unfair trade practice

Accordingly, the Commission dismissed the appeal filed by the developer and the complainant was held entitled to enhanced compensation of Rs. 2,00,000/- for mental agony and financial loss as more than 10 years had lapsed and till date the possession could not be given and additional interest at the rate of 12% was allowed. ***–[Sahara Prime City Limited &Anr., v. Tapasya Palawat, 13th September, 2019 (NCDRC)]***

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ENVIRONMENT

1) NGT DIRECTS STATES, UNION TERRITORIES TO PREPARE ACTION PLANS TO IMPROVE AIR QUALITY

The NGT has directed all states and Union Territories to prepare appropriate action plans within two months to ensure air quality standards within prescribed norms within six months from the date of finalization of the actions. – ***[The Times of India, dated 29th September, 2019]***

2) FORMULATE NORMS FOR BANQUET HALLS IN DELHI: NGT

The NGT has asked the Delhi government to formulate guidelines for the regulation of banquet halls in the capital. The bench said the violation of environment norms is having adverse impact on environment and public health cannot be ignored. – ***[The Times of India, dated 26th September, 2019]***

3) TAKE STEPS TO DISPOSE OF PLASTIC: NGT

Noting that there is no proper mechanism for plastic waste management in the country, the NGT has asked Central Pollution Control Board (CPCB) to take necessary action in the matter. The Bench said that mere issuance of directions by CPCB was not adequate, but the compliance had to be overseen. – ***[The Times of India, dated 10th September, 2019]***

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