MONTHLY NEWSLETTER

Lexport
Interpreting India for commerce

OCTOBER 2019

RBI/FEMA

1) STEPS FOR EXPANDING AND DEEPENING OF DIGITAL PAYMENTS ECOSYSTEM

With a view to expanding and deepening the digital payments ecosystem, RBI has decided that all State / UT Level Bankers Committees (SLBCs/ UTLBCs) shall identify one district in their respective States/ UTs on a pilot basis in consultation with banks and stakeholders. The identified district shall be allotted to a bank having significant footprint which will endeavour to make the district 100% digitally enabled within one year, in order to enable every individual in the district to make/ receive payments digitally in a safe, secure, quick, affordable and convenient manner. This would, inter alia, include providing the necessary infrastructure and literacy to handle such transactions. –

[FIDD.CO.LBS.BC.No.13/02.01.001/2019-20, dated 07th October, 2019]

2) BANKS PERMITTED TO LEND TO INVITS SUBJECT TO CERTAIN CONDITIONS

The RBI has permitted banks to lend to InvITs subject to the following conditions:

i. Banks shall put in place a Board approved policy on exposures to InvITs which shall inter alia cover the appraisal mechanism, sanctioning conditions, internal limits, monitoring mechanism, etc.
ii. Without prejudice to generality, banks shall undertake assessment of all critical parameters including sufficiency of cash flows at InvIT level to ensure timely debt servicing. The overall leverage of the InvITs and the underlying SPVs put together shall be within the permissible leverage as per the Board approved policy of the banks. Banks shall also monitor performance of the underlying SPVs on an ongoing basis as ability of the InvITs to meet their debt obligation will largely depend on the performance of these SPVs. As InvITs are trusts, banks should keep in mind the legal provisions in respect of these entities especially those regarding enforcement of security.
iii. Banks shall lend to only those InvITs where none of the underlying SPVs, which have existing bank loans, is facing 'financial difficulty' as defined in para 2 of Annex-I to the Circular DBR.No.BP.BC.45/21.04.048/2018-19 dated June 07, 2019.
iv. Bank finance to InvITs for acquiring equity of other entities shall be subject to the conditions given in para 2.3.7.4 (iv) of the Master Circular on Loans & Advances – Statutory & Other Restrictions dated July 1, 2015.
v. The Audit Committee of the Board of banks shall review the compliance to the above

conditions on a half yearly basis. – ***[DBR.No.BP.BC.20/08.12.014/2019-20, dated 14th October, 2019]***

3) ADVANCES AGAINST SECURITY OF SOVEREIGN GOLD BONDS (SGB)

The RBI has *vide* Circular clarified to banks and non-bank entities that the Certificate of Holding (COH) held by a Sovereign Gold bondholder is a valid proof of its title and explained the procedure for marking a lien on the said bond. The Loan to Value ratio as applicable to any ordinary gold loan mandated by the Reserve Bank of India shall also apply to the bonds. – ***[IDMD.CDD.No.1145/14.04.050/2019-20, dated 30th October, 2019]***

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FOREIGN TRADE

1) AMENDMENT IN IMPORT POLICY CONDITION OF UREA

Import Policy for Urea for industrial or non-agricultural use, besides Technical Grade Urea (TGU) and Industrial Urea shall be "free" with immediate effect and M/s Rashtriya Chemicals & Fertilizers (RCF) is designated as STE for import of Urea on Government account. ***-[Notification No. 23/2015-2020, 11th October, 2019 (DGFT)]***

2) INCORPORATION OF NEW PROVISION IN THE HANDBOOK OF PROCEDURE 2015-20 ABOUT CASES REFERRED TO NATIONAL COMPANY LAW TRIBUNAL

A new para has been added in Chapter 2 of Foreign Trade Policy 2015-20 for operational modalities to be followed for the cases referred to National Company Law Tribunal.

Any firm / company coming under the NCLT proceedings shall make a summary of statement of outstanding export obligations/liabilities under the FTP schemes, indicating duty saved amounts and applicable interest till the date of start of proceedings before the National Company Law Tribunal (NCLT), any penalty imposed under FTD&R Act, any other dues such as fee etc., and submit the same to the RA concerned and to NCLT, before the start of NCLT proceedings as part of the statutory filings. The statement of consumption of inputs/procurement of capital goods, attested by chartered engineer/chartered accountant, shall also be submitted along with other documentary details of any partial fulfillment of Export Obligation claimed towards offsetting the duty saved amount***. –[Public Notice No. 39/2015-2020, 18th October, 2019 (DGFT)]***

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CORPORATE

1) SC UPHOLDS STRICT INTERPRETATION OF "COMMERCIAL DISPUTE" ARISING OUT OF IMMOVEABLE PROPERTY "USED EXCLUSIVELY IN TRADE AND COMMERCE"

A division Bench of the Supreme Court, in concurring judgements, has opined on the meaning of "*commercial dispute*" under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 arising out of "*agreements relating to immoveable property used exclusively in trade and commerce*". Both

judges agreed and held that in a dispute relating to immovable property, the property should be "actually used" exclusively in trade or commerce and not be "ready for use", "likely to be used" or "to be used" for the suit to be instituted in a Commercial Court. Giving a wide definition would defeat the purpose of the said Act and the fast track procedure prescribed therein. The Apex Court agreed with the Gujarat High Court division bench decision in *Vasu Healthcare Private Limited vs. Gujarat Akruti TCG Biotech Ltd.* which held the same. (*Vasu Healthcare* has been assailed before the SC by way of Special Leave Petition).

The Court held that in commercial disputes, as defined under the CC Act, a special procedure is provided for a class of litigation and a strict enforcement must be followed to entertain only that class of litigation in that jurisdiction. It observed that suits which are not actually relating to commercial disputes but filed merely because of the high value and with the intention of seeking early disposal will only clog the system and block the way for genuine commercial disputes.

In the present case, the parties entered into an agreement to sell a piece of land and executed a Deed of Conveyance. The seller had ceased to function, the Company was defunct and the said land was not being used for trade and commerce. The buyer had sought change of use of land to develop the same and use it thereafter. Until then, the right of the appellant/seller with respect to the land was to be protected. Accordingly, a MoU was entered into, pursuant to which a Mortgage Deed was required to be executed by the purchaser (respondent) in favour of the seller (appellant/original petitioner) but the same had not been registered. Consequently, the Appellant filed a Commercial Civil Suit to enforce the execution of the Deed of Conveyance and inter alia sought permanent injunction. The respondents challenged the jurisdiction of the Commercial Court by submitting an application under Order VII Rule 10 CPC for return of plaint. The Commercial Court rejected the application by relying on the MoA and AoA of the appellant company to conclude that it was undertaking the business of a real estate agent and therefore this was a commercial dispute. In appeal, the High Court, unlike the Commercial Court, did not rest its consideration solely on the MoA and AoA and instead examined the matter in detail to conclude that the immoveable property was not being used for trade or commerce. Accordingly it directed the return of the plaint, to be presented in an appropriate Court.

The Supreme Court held that in the instant case, neither the agreement between the parties referred to the nature of the immovable property being exclusively used for trade or commerce on the date of the agreement nor was there any averment to that effect in the plaint. The relief sought in the suit was for execution of the Mortgage Deed which was in the nature of specific performance of the terms of the MoU, without reference to nature of the use of the immovable property in trade or commerce. Therefore, the decision of the High Court was upheld and the appeal was dismissed.

The strict interpretation by the Supreme Court will help in reducing the number of matters filed before the Commercial Court and pave the way for only genuine commercial disputes to be taken up and disposed of under the specific procedure laid down under the CC Act. As noted by the Court, a strict interpretation will not render the excluded matters non-suited without any remedy, as they will, in any event, be entertained in the ordinary

Civil Courts where the remedy has always existed. –*[**Ambalal Sarabhai Enterprises Ltd.** v. **K.S. Infraspace LLP & Anr., (Civil Appeal 7843 of 2019) dated 4th October, 2019, (Supreme Court of India)]***

2) THE ISSUE OF LIMITATION CAN BE DECIDED AS A PRELIMINARY ISSUE UNDER SECTION 9A OF THE CODE OF CIVIL PROCEDURE (AS APPLICABLE TO THE STATE OF MAHARASHTRA)

A three-judge bench of the Supreme Court, in reference, has settled the divergence of views on whether the issue of limitation can be decided as a preliminary issue under Section 9A of the Code of Civil Procedure (as applicable to the state of Maharashtra). Section 9A provides that if at the hearing of any application for interim relief in a suit, an objection to the jurisdiction of the Court to entertain the suit is taken, such issue shall be decided by the Court as a preliminary issue before granting interim relief.

The Supreme Court, after extensively examining the meaning of 'jurisdiction', 'entertain the suit', existence and exercise of jurisdiction and 'jurisdiction' under Section 9A, concluded that while seeking interim relief in a suit by way of stay, injunction, appointment of a receiver or otherwise, limitation cannot be raised as a preliminary issue. Its conclusion as such was based on the following parameters:

(a)The jurisdiction to entertain has a different connotation from the jurisdictional error committed in exercise thereof;

(b)There is a difference between the existence of jurisdiction and the exercise of jurisdiction;

(c)The existence of jurisdiction is reflected by the fact of amenability of the judgement to attack in collateral proceedings. If the court has an inherent lack of jurisdiction, its decision is open to attack as a nullity;

(d)While deciding issues of bar created by the law of limitation, *res judicata*, the Court must have jurisdiction to decide these issues;

(e)Under the provisions of section 9A and Order XIV Rule 2, it is open to decide preliminary issues only if it is purely a question of law, not a mixed question of law and fact by recording evidence.

The decision in *Foreshore Cooperative Housing Society Ltd. v. Pravin D. Desai (Dead) through Legal Representatives & Ors.,* that 'jurisdiction' is wide enough to include the issue of limitation, is bad law. The decision of the Full Bench of the Bombay High Court in *Meher Singh v. Deepak Sawhney,* that under Section 9A the issue of jurisdiction can be decided by recording of evidence and proper adjudication, is overruled. The decision in *Kamalakar Eknath Salunkhe v. Baburav Vishnu Javalkar and Ors.,* which held that the objection to 'jurisdiction' under Section 9A would not include the issue of limitation and that the word 'jurisdiction' is to be used in a narrow sense as to maintainability only on the question of inherent jurisdiction, has been correctly decided and cannot be said to be *per incuriam*.

Section 9A was introduced in the state of Maharashtra in 1970 and re-enacted in 1977 with a few modifications. It was subsequently deleted and a preliminary issue under this Section was

treated as an issue under Order XIV of the CPC along with other issues. Thereafter, Section 2 of Maharashtra Second Amendment Act, 2018 provided that where consideration of preliminary issue framed under Section 9A is pending on the date of its commencement , the said issue shall be decided and disposed of by the court under Section 9A as if the provision under Section 9A had not been deleted. Accordingly, if the court has ordered to decide an issue as a preliminary issue before the date of deletion of Section 9A it shall be decided by the court as a preliminary issue. For this reason it was necessary for the Supreme Court to decide whether the issue of limitation could be a preliminary issue. Having given its decision as above, it has directed that the cases saved as a consequence of Section 2 of the Maharashtra Second Amendment Act, 2018, where the consideration of preliminary issue under Section 9A is pending, should be decided only if it comes within the abovementioned parameters as found by it on the interpretation of section 9A. –*[**Nusli Neville Wadia** v. **Ivory Properties & Ors., (SLP (Civil) Nos.31982-31983 of 2013) dated 4th October, 2019 (Supreme Court of India)]*

3) LENDING BY BANKS TO INVITS

The RBI has permitted banks to lend to InvITs subject to the following conditions:-

Banks shall put in place a Board approved policy on exposures to InvITs which shall inter alia cover the appraisal mechanism, sanctioning conditions, internal limits, monitoring mechanism, etc.

Banks shall undertake assessment of all critical parameters including sufficiency of cash flows at InvIT level to ensure timely debt servicing. The overall leverage of the InvITs and the underlying SPVs put together shall be within the permissible leverage as per the Board approved policy of the banks. Banks shall also monitor performance of the underlying SPVs on an ongoing basis as ability of the InvITs to meet their debt obligation will largely depend on the performance of these SPVs. As InvITs are trusts, banks should keep in mind the legal provisions in respect of these entities especially those regarding enforcement of security.

Banks shall lend to only those InvITs where none of the underlying SPVs, which have existing bank loans, is facing 'financial difficulty' as defined in para 2 of Annex-I to the circular DBR.No.BP.BC.45/21.04.048/2018-19 dated June 07, 2019.

Bank finance to InvITs for acquiring equity of other entities shall be subject to the conditions given in para 2.3.7.4 (iv) of the Master Circular on Loans & Advances – Statutory & Other Restrictions dated July 1, 2015.

The Audit Committee of the Board of banks shall review the compliance to the above conditions on a half yearly basis.

Earlier in April 2018 banks were allowed to invest in units of InvITs in its Circular DBR.No.FSD.BC.62/24.01.040/2016-17 dated April 18, 2017 subject to the specified conditions. ***–[RBI/2019-20/83 DBR.No.BP.BC.20/08.12.014/2019-20, dated 14th October, 2019 (RBI)]***

4) COMPANIES (INCORPORATION) RULES 2014 AMENDED

MCA has amended the Companies (Incorporation) Rules, 2014 to provide for

amendments to Rule 25A (ACTIVE) and Rule 28 (Shifting of registered office within the same state) as under:

Under the fourth proviso to Rule 25A, the Registrar shall not accept any request for recording certain event based information or changes from companies marked as "ACTIVE-non-compliant", unless " e-Form ACTIVE" is filed. One such event based information is DIR - 12 (changes in director, except in case of cessation of any director). The following additional exceptions have been made to accepting of information by the Registrar related to changes in director(s) in such companies:

(i)appointment of director(s) where the total number of directors are less than the minimum number required u/s 149(1)(a) of the CA, 2013 due to disqualification of all or any of the directors u/s 164 of the said Act; (ii) appointment of directors where DINs of any directors have been deactivated; (iii) appointment of director(s) for implementation of orders of the Court/Tribunal/Appellate Tribunal under CA, 2013 or I&B Code 2016.

Rule 28 has been amended to add sub-sections (2) and (3) to provide that applications for shifting of registered office from the jurisdiction of one Registrar to another within the same State will be examined by the Regional Director and put up for orders, without hearing. The Regional Director shall pass an order, either accepting or rejecting the application, within 15 days of receipt of completed application. A certified copy of the order approving the alteration of memorandum for transfer of registered office of the company within the same State shall be filed in Form INC-28 along with the fee with the Registrar of the State, within thirty days from the date of receipt of certified copy of the order. ***–[Ministry of Corporate Affairs notification dated 16th October, 2019]***

5) CENTRAL GOVERNMENT WIDENS DEFINITION OF 'DERIVATIVE' UNDER SCRA

The Central Government, in exercise of its powers u/s 2 (ac)(D) of the Securities Contracts (Regulation) Act, 1956 (SCRA) has declared a contract for the purchase or sale of a right to buy or sell or a right to buy and sell in future such underlying goods as notified vide number S.O. 3068(E) dated 27 September 2016 as a derivative, for the purposes of the SCRA, effective from 18 October 2019. ***–[Ministry of Finance, 18th October, 2019]***

6) COMPANIES (CREATION AND MAINTENANCE OF DATABANK OF INDEPENDENT DIRECTORS) RULES, 2019

The MCA has notified the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, in pursuance of Section 150 of the Companies Act 2013, which provides that, subject to Section 149(6), an independent director may be selected from a databank, containing names, addresses and qualifications of persons eligible and willing to act as independent directors, maintained by a body, institute or association as may be notified by the Central Government. The said Rules provide for the 'Indian Institute of Corporate Affairs' (at Manesar) (the "Institute") which shall create and maintain such a databank that will be online and available on the website of the Institute.

The databank will contain the prescribed details of each person included in the databank who is eligible and willing to be appointed as independent directors. The expression '*persons eligible and willing to act as independent directors*' shall include individuals already serving as independent directors on Boards of companies. The Institute will charge a reasonable fee from the individuals for inclusion of their names in the databank and also from companies for providing information available on the databank.

The Institute shall conduct an online proficiency self-assessment test covering company law, securities law, basic accountancy and other relevant subjects for functioning as an independent director, prepare basic and advanced study material, online lessons etc, free of cost. A panel of up to ten members nominated by the Central Government will approve the outline of these courses and study material. The Institute shall, on a daily basis, share with the Central Government a cumulative list of all individuals whose names have been included in the data bank, along with their PAN/Passport Number (in case of foreign director), whose applications have been rejected along with reasons for the same and whose names have been removed from the databank, along with the grounds for removal.

The Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, come into force with effect from 1 December 2019, except Rule 2 (notification of the 'Indian Institute of Corporate Affairs') and Rule 5 (constitution of panel of ten members). To refer to the notification of the said Rules, dated 22 October 2018. ***–[Ministry of Corporate Affairs notification dated 22nd October, 2019]***

7) COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) RULES 2014 AMENDED

In view of the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, the MCA has amended the Companies (Appointment and Qualification of Directors) Rules 2014 to substitute Rule 6 thereof, with effect from 1 December 2019. The substituted Rule 6 provides for compliances required by a person eligible and willing to be appointed as independent director, which are as follows:

(i)Every individual who is appointed as an independent director as on 1 December 2019, shall, within a period of three months from this date, apply online to the Institute for inclusion of his/her name in the databank for a period of one year or five years or for his/her lifetime;

(ii)Individuals who intend to get appointed as independent director after 1 December 2019, shall, before such appointment, apply online to the Institute for inclusion of his/her name for one year, five years or for a lifetime.
Any individual, including an individual not having a DIN, may voluntarily apply for inclusion in the databank;

(i)All individuals referred to in (i) and (ii) above shall, from time to time, apply for renewal of their names on the databank for further periods of one or five years or lifetime, within thirty days from the date of expiry of the initial period applied for, failing which, their name will stand removed from the databank of the Institute. Individuals who have paid lifetime fees need not apply for renewal;

(ii)Every independent director shall submit a declaration of compliance of the abovementioned rules, each time he/she submits a declaration under sub-section (7) of Section 149 of the CA 2013;

(iii)Every individual whose name is included in the databank is required to pass the online proficiency self-assessment test conducted by the Institute within a period of one year from the date of inclusion of his/her name in the databank, failing which, his name shall stand removed from the databank.

An individual with a score of not less than 60% in the aggregate in the online proficiency test shall be deemed to have passed such test. There will be no limit on the number of attempts an individual may take for passing this test.

However, a person who has served as a director or as a key managerial personnel (KMP) for at least ten years, as on the date of inclusion of his/her name in the databank, in a listed public company or in an unlisted public company having a paid-up capital of rupees ten crore or more, will not be required to pass the online proficiency test. For the purpose of calculating the said period of ten years, any period during which an individual was acting as director or as KMP in two or more companies at the same time shall be counted only once. ***–[Ministry of Corporate Affairs notification dated 22nd October, 2019]***

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SECURITIES

1) SEBI INFORMAL GUIDANCE ON OBLIGATION OF INACTIVE PROMOTER UNDER PIT REGULATIONS

In an Informal guidance dated 1 October 2019, SEBI has clarified that a person who merely continues to be named as a promoter under Regulation 31A of SEBI LODR Regulations, but does not exercises any control nor has any role in the management nor has any access to the business operations of the company, will, nevertheless, be a 'designated person' for the purpose of Regulation 9(4) of the SEBI Prohibition of Insider Trading Regulations (PIT Regulations). Consequently, such promoter, by virtue of holding greater than 10% of the total voting rights in the company along with other promoters, will have to comply with the company's code of conduct and any trade by such promoter during the trading window closure will tantamount to violation of clause 4 of Schedule B of the PIT Regulations.

In the instant case, the promoter of the querist company, although a non-participant in its promotion or management continued to be named as a promoter by virtue of Regulation 31(A) of the LODR Regulations. The querist company sought clarification on whether such a person could be identified as a 'non-designated person' and consequently execute trades during trading window closure without violating clause 4 of Schedule B of the PIT Regulations. ***–[SEBI Informal Guidance dated 1st October, 2019]***

2) SEBI INFORMAL GUIDANCE ON OBLIGATION OF INACTIVE PROMOTER UNDER PIT REGULATIONS

In an Informal guidance dated 1 October 2019, SEBI has clarified that a person who merely continues to be named as a promoter under Regulation 31A of SEBI LODR Regulations, but does not exercise any control nor has any role in the management nor has any access to the business operations of the company, will, nevertheless, be a 'designated person' for the purpose of Regulation 9(4) of the SEBI Prohibition of Insider Trading Regulations (PIT Regulations). Consequently, such promoter, by virtue of holding greater than 10% of the total voting rights in the company along with other promoters, will have to comply with the company's code of conduct and any trade by such promoter during the trading window closure will tantamount to violation of clause 4 of Schedule B of the PIT Regulations.

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3) SEBI FRAMEWORK FOR ISSUE OF DEPOSITORY RECEIPTS

SEBI has notified a Framework for issue of Depository Receipts (DRs) pursuant to Section 41 of the Companies Act 2013, Companies (GDR) Rules 2014 and the Depository Receipts Scheme 2014. In light of recent RBI and Central Government notifications amending the definition of permissible jurisdiction and amendments to the PMLA (Maintenance of Records) Rules 2005, it is clarified that only a company incorporated in India and listed on a recognised stock exchange in India (Listed Company) may issue permissible securities and their holders may transfer such securities for purpose of issue of depository receipts (DRs). Listed Companies proposing to issue such securities shall comply with the specified conditions related to eligibility, permissible jurisdictions and international exchanges, compliances with extant laws, permissible holder, voting rights, pricing and obligations of the Indian Depository, Foreign Depository and the Domestic Custodian. ***–[SEBI/HO/MRD/DOP1/CIR/P/2019/106, dated 10th October, 2019, (SEBI)]***

4) SEBI ISSUES FRAMEWORK FOR LISTING OF COMMERCIAL PAPERS

SEBI has released a Framework for listing of Commercial Papers in view of the interest shown by issuers of commercial papers (CPs) to list CPs for trading on the Stock Exchanges. The framework is based on the recommendations of the Corporate Bonds and Securitisation Advisory

Committee (CoBoSAC). It provides for specific disclosures to be made at the time of listing and post-listing on a continuous basis during the tenure of the CPs to the concerned stock exchange, which in turn will make them available on its website. Non-compliance of the conditions of listing may attract fine/action under SEBI Act, 1992. –

[SEBI/HO/DDHS/DDHS/CIR/P/2019/115, 22nd October, 2019 (SEBI)]

5) SEBI MASTER CIRCULARS FOR DEPOSITORIES, STOCK EXCHANGES AND CLEARING HOUSES

SEBI has issued Master Circulars for Depositories and Stock Exchanges and Clearing Houses which compile all the circulars/directions issued by SEBI up to 31 March 2019. They supersede the previous Master Circulars dated 15 and 16 December 2016, respectively. –

[SEBI/HO/MRD/DP/CIR/P/118, dated 25th October, 2019; and SEBI/HO/MRD/DP/CIR/P/117, dated 25th October, 2019]

6) SEBI PRESCRIBES CONDITIONS FOR RESIGNATION OF STATUTORY AUDITORS

Following its consultative paper on resignation of statutory auditors from listed entities and its material subsidiaries, SEBI has finalised the conditions to be complied with by listed entities and its subsidiaries upon resignation of statutory auditors, in pursuance of disclosures required to be made under Regulations 30(2) and 36(5) of the SEBI (LODR) Regulations 2015. These conditions are as under:

Issuance of limited review/ audit report by resigning auditor:

(i)If the auditor resigns within 45 days from the end of the quarter, the auditor shall issue the limited review/audit report for such quarter. (ii) If the auditor resigns after 45 days from the end of the quarter, the auditor shall issue the limited review/audit report for such quarter as well as the next quarter. (iii) If the auditor proposing to resign has signed the audit report for all the quarters (limited review/ audit) of a financial year, except the last quarter, then the auditor shall finalize the audit report for the said financial year before such resignation.

Reporting of concerns to the Audit Committee: The auditor shall approach the Chairman of the Audit Committee directly and immediately in case of any concerns with the management, such as non-availability of information / non-cooperation by the management. The auditor shall not specifically wait for the quarterly meetings to take place in order to raise such concerns.

Where the auditor proposes to resign, he shall bring to the Audit Committee's notice all the concerns it has with respect to such resignation, along with relevant documents. Where the resignation is due to non-receipt of information or explanation from the company, the auditor shall provide the Audit Committee the details of information or explanation sought and not provided by the management. The Audit Committee shall deliberate on the matter and

communicate its views to the management and the auditor.

The aforesaid conditions of issue of audit report/limited review as well as reporting of concerns shall be mentioned in the terms of appointment of the auditor. The terms for exiting auditors may be suitably modified to give effect to these conditions. Compliance with these conditions also needs to be reported in the annual secretarial compliance.

Disclaimer on non-receipt of information: In case of non-receipt of required information from the listed entity/material subsidiary, the auditor shall provide an appropriate disclaimer in the audit report in accordance with ICAI/NFRA accounting standards.

Obligations of listed entities/material subsidiaries and Audit Committee: Upon resignation of an auditor, the listed entity/material subsidiary is required to obtain detailed reasons for his resignation in a prescribed format and a declaration that there are no other material reasons for the resignation (Annex A). In case there are material reasons for resignation, such as, (i) information sought was not made available; (ii) whether this was due to a management imposed limitation; (iii) whether lack of information would have a significant impact on financial results; and (iv) whether lack of information existed in the previous reported financial statements, these reasons shall be disclosed in the said form. The resignation letter of the auditor, along with detailed reasons as given by him, shall be disclosed by the listed entities to the stock exchanges as soon as possible but not later than twenty four hours of receipt of such reasons from the auditor.

The Audit Committee will deliberate upon the concerns raised by the auditor at the earliest and not later than the date of the next Audit Committee meeting and communicate its views to the management. These views are to be disclosed to the stock exchanges as soon as possible but not later than twenty four hours after the date of such Audit Committee meeting. – ***[CIR/CFD/CMD1/114/2019, dated 18th October, 2019, (SEBI)]***

7) SEBI CIRCULAR ON DISCLOSURE OF DIVERGENCE IN THE ASSET CLASSIFICATION AND PROVISIONING BY BANKS

SEBI, in consultation with RBI, has mandated listed banks to make disclosures of divergences in asset classification and provisioning beyond the threshold specified by RBI in its notifications of 18 April 2018 and 1 April 2019, as soon as reasonably possible and not later than 24 hours upon receipt of RBI's Final Risk Assessment Report ('RAR'), rather than wait to publish them as part of their annual financial statements. These disclosures are required to be made in the prescribed format (Annexure A) in either or both of the following cases:
(i)the additional provisioning for NPAs assessed by RBI exceeds 10 per cent of the reported profit before provisions and contingencies for the reference period; and (ii) the additional gross NPAs identified by RBI exceed 15 per cent of the

published incremental Gross NPAs for the reference period.

These disclosures are in the nature of material events/information and are also price sensitive and therefore need to be disclosed immediately.

SEBI's previous Circulars dated 18 July 2017 and 17 July 2019 mandating such disclosure in the annual financial statements have accordingly been withdrawn. ***–[CIR/CFD/CMD1/120/2019, dated 31st October, 2019 (SEBI)]***

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COMPETITION

1) CCI APPROVES THE ACQUISITION OF SHAREHOLDING IN GMR AIRPORTS LIMITED ("GAL")

CCI approves the acquisition of shareholding in GMR Airports Limited ("GAL") by TRIL Urban Transport Private Limited ("TUTPL"), Valkyrie Investment Pte. Ltd. ("Valkyrie") and Solis Capital (Singapore) Pte. Limited ("Solis") under Section 31(1) of the Competition Act, 2002, today.

The proposed combination relates to the acquisition of upto 55.2% equity stake in GAL collectively by TUTPL, Valkyrie and Solis. TUTPL is a wholly-owned subsidiary of Tata Realty and Infrastructure Limited ("TRIL"), which in-turn is a wholly-owned subsidiary of Tata Sons Private Limited ("Tata Sons").

TUTPL is engaged in the development of urban transport and infrastructure facilities such as ropeways, metro rail transit system etc. Valkyrie is a foreign venture capital investor ("FVCI") registered with the Securities and Exchange Board of India ("SEBI") under the SEBI (Foreign Venture Capital Investors) Regulations, 2000 ("SEBI FVCI Regulations").

Valkyrie is a special purpose vehicle organized as a private limited company in Singapore and is an affiliate of GIC Private Limited. Solis is registered as a FVCI with SEBI under the SEBI FVCI Regulations. Solis is an investment vehicle of the SSG group and is advised by SSG Capital Management (Singapore) Pte. Ltd., which is regulated by Monetary Authority of Singapore to undertake fund management activities.

GAL is registered with the RBI as a CIC-ND-SI and is an investment holding company. GAL, through its subsidiaries, is engaged in developing, managing and operating airports in India and around the world, while also being engaged in associated business activities. The Commission approved the Proposed Combination subject to carryout of certain modifications proposed by TUTPL under Regulation 19 (2) of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. ***–[PRESS RELEASE No. 11/2019-20, dated 1st October, 2019 (CCI)]***

2) CCI RECEIVED THE FIRST GREEN CHANNEL COMBINATION

CCI received the first green channel combination filed under sub-section (2) of Section 6 of the Competition Act, 2002 (Act) read with Regulations 5 and 5A of the Competition

Commission of India (Procedure in regard to the transactions of business relating to combinations) Regulations, 2011 (Combination Regulations), 3rd October, 2019.

The Notification relates to the acquisition of the Essel Mutual Fund (Essel MF), a mutual fund registered under the SEBI (Mutual Funds) Regulations, 1996 (MF Regulations) by an entity forming a part of the Sachin Bansal Group.

Essel Finance AMC Limited acts as an investment manager to Essel MF. Essel MF Trustee Limited is the trustee of Essel MF. It ensures that the transactions entered into by Essel AMC are in accordance with the MF Regulations and also reviews the activities carried on by Essel AMC.

Essel Finance Wealth Zone Private Limited is the sponsor entity for Essel MF and the parent entity of both Essel AMC and Essel Trustee. The Proposed Combination filed in terms of Regulation 5A of the Combination Regulations (i.e., notice for approval of Combinations under Green Channel) shall be deemed to have been approved upon filing and acknowledgement thereof. ***–[PRESS RELEASE No. 12/2019-20, dated 7th October, 2019 (CCI)]***

3) CCI HAS APPROVED KORA MASTER FUND LP INVESTMENT OF UP TO 10% (USD 75 MILLION) IN EDELWEISS SECURITIES LIMITED

The Notification by Competition Commission of India (CCI) relates to a proposed investment by Kora in Edelweiss Securities Limited (ESL) and Edelweiss Global Investment Advisory Business (EGIA) Subsidiaries of up to INR equivalent to USD 75 million, as set out in the Share Subscription Agreement. The Acquirer is a foreign portfolio investor (FPI) registered with the Securities Exchange Board of India (SEBI). Its principal activity is that of investment holding and related activities. The Target Entities belong to the Edelweiss Group, with Edelweiss Financial Services Limited (EFSL) as the ultimate holding company, are broadly engaged in the Edelweiss Global Investment Advisory Business. ***–[PRESS RELEASE No. 13/2019-20, dated 16th October, 2019 (CCI)]***

4) COMPETITION COMMISSION OF INDIA APPROVES ACQUISITION OF 4.15% OF THE SHAREHOLDING IN ADITYA BIRLA CAPITAL LIMITED

The Commission approves acquisition of 4.15% of the shareholding in Aditya Birla Capital Limited (ABCL) by Jomei Investments Limited (JIL). JIL, a special purpose vehicle, is wholly owned by Advent International GPE IX Limited Partnership, a fund managed by Advent International Corporation. ABCL is the holding company for the financial services businesses of the Aditya Birla group. Through its subsidiaries and joint ventures, ABCL has presence across diverse businesses including, non-banking financial sector, asset management, life insurance, housing finance, health insurance, general insurance broking, wealth management, equity, currency and commodity broking, pension fund management and asset reconstruction businesses. ***–[PRESS RELEASE No. 14/2019-20, dated 24th October, 2019 (CCI)]***

5) CCI RECEIVES COMBINATION NOTICE UNDER GREEN CHANNEL SCHEME

CCI receives combination notice under green channel scheme relating to acquisition of equity stake in Hero Future Energies Global Ltd. and non-voting compulsorily convertible preference shareholding in Hero Future Energies Private Ltd. by Abu Dhabi Future Energy Company P.J.S.C. - Masdar, on 28th October 2019.

The Notification relates to the acquisition of certain stake through equity in Hero Future Energies Global Ltd ("HFE UK") and non-voting compulsorily convertible preference shares in Hero Future Energies Private Ltd. ("HFE India") by Abu Dhabi Future Energy Company P.J.S.C.- Masdar ("Acquirer").

The Acquirer, an entity incorporated in Abu Dhabi, is an international renewable energy and sustainability company that provides solutions in energy, water, urban development and clean technologies. HFE India, a company incorporated in India, is a wholly owned subsidiary of Hero Future Energies Asia Pte. Ltd, which is 100% held by HFE UK. HFE India is primarily engaged in the implementation of power projects and generation of power through renewable sources of energy, and also provides professional consultancy services in relation thereto.

The Proposed Combination in terms of Regulation 5A of the Combination Regulations (i.e., notice for approval of Combinations under Green Channel) is deemed to be approved upon filing and acknowledgement thereof. ***–[PRESS RELEASE No. 15/2019-20, dated 30th October, 2019 (CCI)]***

6) CCI APPROVES THE ACQUISITION OF SHAREHOLDING IN ANI TECHNOLOGIES PRIVATE LIMITED AND OLA ELECTRIC MOBILITY PRIVATE LIMITED

CCI approves the acquisition of shareholding in ANI Technologies Private Limited (ANI) and Ola Electric Mobility Private Limited (OEM) by Hyundai Motor Company (HMC) and Kia Motors Corporation (KMC), under Section 31(1) of the Competition Act, 2002.

HMC and KMC are a part of the Hyundai Motor Group (HMG), engaged in the business of manufacturing and distribution of automobiles, automobile parts and accessories, after-sales service, research and development of automotive engineering across several countries in the world. In India, HMC primarily operates through its subsidiary Hyundai Motors India Limited. KMC operates through its subsidiary Kia Motors India Private Limited, in India.

ANI is a ride-sharing company that integrates city transportation for customers and driver partners onto an online platform ensuring convenient, transparent and quick service fulfilment. OEM is at a nascent stage of operations and envisages operating primarily in the electric vehicles value chain, with focus on the market for charging infrastructure.

The Commission approved the Proposed Combination subject to the carrying out of modifications proposed by HMC and KMC, under Regulation 19 (2) of the CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. ***–[PRESS***

RELEASE No. 16/2019-20, dated 30th October, 2019 (CCI)]

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INDIRECT TAXES

a. CUSTOMS

1) MANUFACTURE AND OTHER OPERATIONS IN WAREHOUSE (NO. 2) REGULATIONS, 2019

In supersession of the Manufacture and Other Operations in Warehouse Regulations, 2019, except as respects things done or omitted to be done before such supersession, the CBIC has notified the Manufacture and Other Operations in Warehouse (no. 2) Regulations, 2019. These regulations apply to such units that operate under Section 65 of the Act or to the units applying for permission to operate under Section 65 of the Act. – ***[Notification 69/2019-Customs (N.T.), dated 01st October, 2019]***

2) WAREHOUSE (CUSTODY AND HANDLING OF GOODS) AMENDMENT REGULATIONS, 2019

The CBIC *vide* present Circular has amended the Warehouse (Custody and Handling of Goods) Regulations, 2016 so that these regulations are not applicable to the warehouse operating under Section 65 of the Act. – ***[Notification 70/2019-Customs (N.T.), dated 01st October, 2019]***

3) WAREHOUSED GOODS (REMOVAL) AMENDMENT REGULATIONS, 2019

The CBIC *vide* present Circular has amended the Warehoused Goods (Removal) Regulations, 2016 so that these regulations are not applicable to the warehouse operating under Section 65 of the Act. – ***[Notification 71/2019-Customs (N.T.), dated 01st October, 2019]***

4) EXTENSION IN DATE OF SEA CARGO MANIFEST AND TRANSHIPMENT REGULATIONS, 2018

The CBIC has extended the date for implementation of Sea Cargo Manifest and Transhipment Regulations, 2018 from 01st November, 2019 to 16th February, 2020. – ***[Notification No. 78/2019-Customs (N.T.), dated 31st October, 2019]***

5) ADD ON FLAT ROLLED PRODUCT OF STEEL, PLATED OR COATED WITH ALLOY OF ALUMINIUM AND ZINC

Anti-dumping duty imposed on imports of Flat rolled product of steel, plated or coated with alloy of Aluminium and Zinc originating in, or exported from China PR, Vietnam and Korea RP for a period of six months. – ***[Notification No. 40/2019 - Customs (ADD), dated 15th October, 2019]***

6) PROCEDURE TO BE FOLLOWED IN CASES OF MANUFACTURING OR OTHER OPERATIONS UNDERTAKEN IN BONDED WAREHOUSES

The CBIC *vide* present Circular has clarified the procedures and documentation for units operating under Section 65 of the Customs Act i.e., undertaking manufacturing and other operations in relation to goods in a warehouse. – ***[Circular No. 34/2019-Customs, dated 01st October, 2019]***

7) AMENDMENT IN IMPORT AND EXPORT POLICY OF ELECTRONIC CIGARETTES

Considering the adverse health impact of e-Cigarettes / ENDS and in order to prevent the initiation of nicotine through e-Cigarettes by non-smokers and youth, with special attention to vulnerable groups, the DGFT has issued notifications to ensure that Import and Export of e-Cigarettes or any parts or components thereof such as refill pods, atomisers, cartridges etc. including all forms of Electronic Nicotine Delivery Systems (ENDS), Heat not burn products, e-hookah and the like devices, by whatever name and shape, size or form it may have, but does not include any product licensed under the Drugs and Cosmetics Act, 1940 under ITC HS Code: 8543 is prohibited in accordance with the Prohibition of Electronic Cigarettes (Prohibition, Manufacture, Import, Export, Transport, Sale Distribution, Storage and Advertisement) Ordinance, 2019. The CBIC *vide* present Notification directed the officers to ensure strict compliance. – ***[Circular No. 35/2019-Customs, dated 01st October, 2019]***

b. CENTRAL EXCISE

1) CLARIFICATIONS REGARDING SABKA VISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME, 2019

The CBIC has *vide* present Circular issued clarifications in relation to certain issues raised by trade bodies and field formations on the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. – ***[Circular No. 1073/06/2019-CX, dated 29th October, 2019]***

c. GST

1) DUE DATE FOR FURNISHING VARIOUS RETURNS

- Return in FORM GSTR-3B for the months of October, 2019 to March, 2020 to be furnished electronically through the common portal, on or before the twentieth day of the month succeeding such month. – ***[Notification No. 44/2019 – Central Tax, dated 9th October, 2019]***
- Return in FORM GSTR-1 for registered persons having aggregate turnover of up to 1.5 crore rupees for the quarter from October, 2019 to December, 2019 to be furnished by 31st January, 2020 and for the quarter from January, 2020 to March, 2020 to be furnished by 30th April, 2020. – ***[Notification No. 45/2019 – Central Tax, dated 9th October, 2019]***
- Return in FORM GSTR-1 for registered persons having aggregate turnover more than 1.5 crore rupees for the months of October, 2019 to March, 2020 to be furnished by eleventh day of the month succeeding such month. – ***[Notification No. 46/2019 – Central Tax, dated 9th October, 2019]***

2) FILING OF RETURN MADE OPTIONAL FOR SMALL TAXPAYERS

The CBIC *vide* present Notification has made filing of annual return under Section 44 (1) of CGST Act for F.Y. 2017-18 and 2018-19 optional for small taxpayers whose aggregate turnover is less than Rs. 2 crores and who have not filed the said return before the due date. – ***[Notification No. 47/2019 – Central Tax, dated 9th October, 2019]***

3) CGST 6TH AMENDMENT RULES, 2019

The CBIC has notified the Central Goods and Services Tax (Sixth Amendment) Rules, 2019. As per the amended Rules, input tax credit (ITC) to be availed by a registered person, the details of which have not been uploaded by the suppliers, shall not exceed 20 per cent of the eligible credit available in respect of invoices or debit notes uploaded by the suppliers. The move aims to curb fake invoices. However, experts are of the view that it would block cash flow of businesses and increase their compliance burden. Another important amendments is made in Rule 61(5) of the CGST Rules by making GSTR-3B as the return specified under Section 39, wherever the time limit for filing GSTR-1 or GSTR-2 has been extended. The said Rule has been amended retrospectively with effect from 1 July 2017. – ***[Notification No. 49/2019 – Central Tax, dated 9th October, 2019]***

4) ELIGIBILITY TO FILE A REFUND APPLICATION IN FORM GST RFD-01 FOR A PERIOD AND CATEGORY UNDER WHICH A NIL REFUND APPLICATION HAS ALREADY BEEN FILED

It was observed that several registered persons have inadvertently filed a NIL refund claim for a certain period under a particular category on the common portal in FORM GST RFD-01A/RFD-01 in spite of the fact that they had a genuine claim for refund for that period under the said category. The CBIC has therefore clarified that that a registered person who has filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a given period under a particular category, may again apply for refund for the said period under the same category only if he satisfies the following two conditions:

a. The registered person must have filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a certain period under a particular category; and

b. No refund claims in FORM GST RFD-01A/RFD-01 must have been filed by the registered person under the same category for any subsequent period.

It may be noted that condition (b) shall apply only for refund claims falling under the following categories:

i. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;

ii. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;

iii. Refund of unutilized ITC on account of accumulation due to inverted tax structure;

In all other cases, registered persons shall be allowed to re-apply even if the condition (b) is not satisfied. – ***[Circular No. 110/29/2019 – GST, dated 03rd October, 2019]***

5) PROCEDURE TO CLAIM REFUND IN FORM GST RFD-01 SUBSEQUENT TO FAVOURABLE ORDER IN APPEAL OR ANY OTHER FORUM

Doubts have been raised on the procedure to be followed by a registered person to claim refund subsequent to a favourable order in appeal or any other forum against rejection of a refund claim in FORM GST RFD-06. The CBIC has clarified that in case a favourable order is received by a registered person in appeal or in any other forum in respect of a refund claim rejected through

issuance of an order in FORM GST RFD-06, the registered person would file a fresh refund application under the category "Refund on account of assessment/provisional assessment/appeal/any other order" claiming refund of the amount allowed in appeal or any other forum. Since the amount debited, if any, at the time of filing of the refund application was not re-credited, the registered person shall not be required to debit the said amount again from his electronic credit ledger at the time of filing of the fresh refund application under the category "Refund on account of assessment/provisional assessment/appeal/any other order". The registered person shall be required to give details of the type of the Order (appeal/any other order), Order No., Order date and the Order Issuing Authority. The registered person would also be required to upload a copy of the order of the Appellate or other authority, copy of the refund rejection order in FORM GST RFD 06 issued by the proper officer or such other order against which appeal has been preferred and other related documents. – ***[Circular No. 111/30/2019 – GST, dated 03rd October, 2019]***

6) WITHDRAWAL OF CIRCULAR NO. 105/24/2019-GST DATED 28.06.2019

Due to apprehensions on the implications of the Circular No. 105/24/2019-GST dated 28.06.2019 wherein certain clarifications were given in relation to various doubts related to treatment of secondary or post-sales discounts under GST, the CBIC *vide* Circular has withdrawn the said Circular. ***– [Circular No. 112/31/2019 – GST, dated 03rd October, 2019]***

7) CLARIFICATION REGARDING GST RATES & CLASSIFICATION (GOODS)

The CBIC *vide* present Circular has provided clarification in respect of applicable GST rates on following items:

i. Classification of leguminous vegetables such as grams when subjected to mild heat treatment;
ii. Almond Milk;
iii. Applicable GST rate on Mechanical Sprayer;
iv. Taxability of imported stores by the Indian Navy;
v. Taxability of goods imported under lease;
vi. Applicable GST rate on parts for the manufacture solar water heater and system;
vii. Applicable GST on parts and accessories suitable for use solely or principally with a medical device. – ***[Circular No. 113/32/2019-GST, dated 11th October, 2019]***

8) CLARIFICATION ON SCOPE OF SUPPORT SERVICES TO EXPLORATION, MINING OR DRILLING OF PETROLEUM CRUDE OR NATURAL GAS OR BOTH

The CBIC received representations from trade seeking clarification on the scope of the entry "services of exploration, mining or drilling of petroleum crude or natural gas or both" at Sr. No. 24 (ii) of heading 9986 in Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017. It has been clarified that the scope of the entry at Sr. 24 (ii) under heading 9986 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 shall be governed by the explanatory notes to service codes 998621 and 998622 of the Scheme of Classification of Services. It is further clarified

that the scope of the entry at Sr. No. 21 (ia) under heading 9983 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 inserted with effect from 1st October 2019 *vide* Notification No. 20/2019- CT(R) dated 30.09.2019 shall be governed by the explanatory notes to service codes 998341 and 998343 of the Scheme of Classification of Services. – ***[Circular No. 114/33/2019-GST, dated 11th October, 2019]***

9) CLARIFICATION ON ISSUE OF GST ON AIRPORT LEVIES

The Board received various representations seeking clarification on issues relating to GST on airport levies and to clarify that airport levies do not form part of the value of services provided by the airlines and consequently no GST should be charged by airlines on airport levies. The CBIC *vide* present Circular has clarified the said issue. – ***[Circular No. 115/34/2019-GST, dated 11th October, 2019]***

10) LEVY OF GST ON THE SERVICE OF DISPLAY OF NAME OR PLACING OF NAME PLATES OF THE DONOR IN THE PREMISES OF CHARITABLE ORGANISATIONS RECEIVING DONATION OR GIFTS FROM INDIVIDUAL DONORS

The Board received representations seeking clarification whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor. The CBIC has clarified that when the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration. Thus where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement, GST is not leviable. – ***[Circular No. 116/35/2019-GST, dated 11th October, 2019]***

11) CLARIFICATION ON APPLICABILITY OF GST EXEMPTION TO THE DG SHIPPING APPROVED MARITIME COURSES CONDUCTED BY MARITIME TRAINING INSTITUTES OF INDIA

The CBIC has clarified that the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST. The exemption is subject to meeting the conditions specified at Sl. No. 66 of the Notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017. Also, this clarification applies, *mutatis mutandis*, to corresponding entries of respective IGST, UTGST, SGST exemption notifications. – ***[Circular No. 117/36/2019-GST, dated 11th October, 2019]***

12) CLARIFICATION REGARDING DETERMINATION OF PLACE OF SUPPLY IN CASE OF SOFTWARE/DESIGN SERVICES RELATED TO ELECTRONICS SEMI-CONDUCTOR AND DESIGN MANUFACTURING (ESDM) INDUSTRY

On receipt of various representations from trade and industry seeking clarification on determination of place of supply in case of supply of software/design services by a supplier located in taxable territory to a service recipient located in non-taxable territory by using the sample hardware kits provided by the service recipient, the CBIC has clarified as below:

In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.

Therefore, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases. – ***[Circular No. 118/37/2019-GST, dated 11th October, 2019]***

13) CLARIFICATION REGARDING TAXABILITY OF SUPPLY OF SECURITIES UNDER SECURITIES LENDING SCHEME, 1997

Trade has requested clarification on whether the supply of securities under Securities Lending Scheme, 1997 ("Scheme") by the lender is taxable under GST. The CBIC has clarified this issue and with effect from 1st October, 2019, the borrower of securities shall be liable to discharge GST as per Sl. No. 16 of Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019 under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM. – ***[Circular No. 119/38/2019-GST, dated 11th October, 2019]***

14) CLARIFICATION ON THE EFFECTIVE DATE OF EXPLANATION INSERTED IN NOTIFICATION NO.11/2017- CTR DATED 28.06.2017, SR. NO. 3(VI)

On receipt of representations to amend the effective date of Notification No. 17/2018-CTR dated 26.07.2018 whereby explanation was inserted in Notification No. 11/2017-CTR dated 28.06.2017, Sr. No. 3(vi) to the effect that for the purpose of the said entry, the activities or transactions under taken by Government and Local Authority are excluded from the term 'business', the CBIC has clarified that the explanation having been inserted under Section 11(3) of the CGST Act, is effective from the

inception of the entry at Sl. No. 3(vi) of the Notification No. 11/2017- CTR dated 28.06.2017, that is 21.09. 2017. The line in Notification No. 17/2018-CTR dated 26.07.2018 which states that the Notification shall come into effect from 27.07.2017 does not alter the operation of the Notification in terms of Section 11(3). – ***[Circular No. 120/39/2019- GST, dated 11th October, 2019]***

15) GST ON LICENSE FEE CHARGED BY THE STATES FOR GRANT OF LIQUOR LICENCES TO VENDORS

The CBIC *vide* present Circular has clarified the issue of applicability of GST on license fee charged by the States for grant of liquor licenses to vendors. It is clarified that service by State Government by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called as neither a supply of goods nor a supply of service which has also been notified *vide* Notification No. 25/2019-Central Tax (Rate) dated 30th September, 2019. Further it has also been clarified that this would apply only to supply of service by way of grant of liquor licenses by the State Governments and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable. – ***[Circular No. 121/40/2019-GST, dated 11th October, 2019]***

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INTELLECTUAL PROPERTY RIGHTS

1) NEED TO PASS DIRECTIONS FOR STREAMLINING OF THE PROCESSING OF TRADE MARK APPLICATIONS – DELHI HIGH COURT

The Delhi High Court observed that there have been several lapses in the functioning of the Trade Marks Registry in respect of the trademark application in the present case. In order to obviate the recurrence of such situations in the future, which have clearly become endemic in the Trade Mark Registry, the Court observed that a proper procedure is required to be established for the processing of trade mark applications and registrations. Accordingly, the Registrar of Trade Marks was directed to place on record an affidavit of Mr. Hoshiar Singh, the Head of the Trade Marks Registry Office, Delhi, detailing certain aspects so that the Court may consider passing appropriate directions for streamlining of the processing of trade mark applications on the next date of hearing. – ***[Asianet Star Communications Pvt Ltd.*** **v.** ***The Registrar of Trademarks & Anr., dated 31st October, 2019 (Delhi HC)]***

2) MARK 'FENTEL' BY THE DEFENDANTS AMOUNTS TO INFRINGEMENT OF PLAINTIFF'S TRADEMARK 'ZENTEL' – DELHI HIGH COURT

The present suit concerns Plaintiffs' statutory and common law proprietary rights over the trademark ZENTEL and violation thereof by the Defendants on account of use of a deceptively similar mark FENTEL for identical pharmaceutical preparation. The Court held that use of the mark FENTEL by the Defendants amounts to infringement of Plaintiff's trademark ZENTEL. – ***[Glaxo Smithkline Pharmaceuticals Ltd &***

Anr.* v. *Naval Kishore Goyal & Ors., dated 01st October, 2019 (Delhi HC)]

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CONSUMER

1) NCDRC IMPOSES FINE ON SCHOOL FOR NOT ISSUING TRANSFER CERTIFICATE

National Consumer Disputes Redressal Commission ("NCDRC") has reprimanded Doon Valley International Public School, Himachal Pradesh, for not issuing transfer certificate on time to a class IX student who lost an academic year due to the delay, and directed it to pay Rs.50, 000/- to her. The NCDRC Bench, headed by Presiding member S M Kantikar, upheld the decision of the State Consumer Disputes Redressal Commission (SCDRC) to impose Rs. 50,000/- costs on the school.

Ravleen Kaur, the complainant, a class IX student, had approached the school in 2005 for a transfer certificate which was not granted to her on time and the school said that she was poor at studies. The panel noted that the school's contention on Kaur's academic performance had no relation with issuing a factually correct school leaving certificate and that it was nobody's case to show her as a good student in the transfer certificate. ***–[The Doon Valley International Public School* v. *Ravleen Kaur, 9th October, 2019 (NCDRC)]***

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ENVIRONMENT

1) NGT SLAPS PENALTY OF RS 22.5 CRORE ON 6 BUILDERS IN HARYANA'S SONIPAT FOR VIOLATION OF GREEN LAWS

The NGT has slapped an interim penalty of Rs. 22.5 crore on six builders in Haryana's Sonipat area for violation of environmental norms, saying the transgressions are of serious nature and the compensation "must have deterrent aspect". A bench headed by NGT Chairperson Justice Adarsh Kumar Goel also constituted a joint committee comprising representatives of Central Pollution Control Board, Ministry of Environment and Forests and IIT-Delhi to suggest realistic compensation to be recovered from them. – ***[The Times of India, dated 30th October, 2019]***

2) NGT SAYS NO TO FILLING OF MINING PITS WITH TRASH

The NGT has rejected the report submitted by the directorate of mines and geology (DGM) which said the mining pits would be filled up with solid waste in consultation with a Norwegian company. "Apart from giving details of peripheral actions taken, a preposterous suggestion has been made for filling up the mined-out pits with solid waste in consultation with a Norwegian company. In our opinion, to state the least, this is most disappointing," said the NGT. – ***[The Times of India, dated 19th October, 2019]***

3) WATER FOR DRINKING TOP PRIORITY: NGT

Availability of water for drinking is the top priority and it is for industries and authorities concerned to find out alternatives for their sustenance instead of permitting indiscriminate withdrawal of groundwater, National Green Tribunal has said. – ***[The Times of India, dated 19th October, 2019]***

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