

About Lexport

Lexport is a full-service Indian law firm offering consulting, litigation & representation services to a range of clients.

The core areas of the firm's practice are *inter alia* Trade Laws (Customs, GST & Foreign Trade Policy), Corporate & Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory & Compliance Services. Our brief profile can be seen at our website www.lexport.in.

Lexport Legal Team

Srinivas Kotni
Rajiv Sawhney
Raj Latha Kotni
Sandeep Chatterjee
Urvashi Kalra
Akshay Kumar
Anurag Mehta
Shantam Gorawara
Dimple Saraswat
Jatin Kalwani
Nupur Gupta
Yashasvi Maleyvar
Anirudh Ramanathan
Nihal Shah

IT Team

Srinivas Boyina
Hanuman Berwa

MONTHLY NEWSLETTER

AUGUST 2020

We bring you a concise analysis of important developments, publications, judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.



IN THIS ISSUE:

1. **RBI & FEMA**
2. **Foreign Trade**
3. **Corporate**
4. **Securities**
5. **Competition**
6. **Indirect Taxes**
 - a. **Customs**
 - B. **GST**
7. **Intellectual Property Rights**
8. **Environment**

Perceiving the significance of these updates and the struggle in keeping track of the same, we have prepared this comprehensive newsletter for quick reference of the changes brought in by the proactive Regulatory authorities.

RBI & FEMA

1. NEW DEFINITION OF MSME – CLARIFICATIONS



The reserve Bank of India [“RBI”] has issued clarifications with respect to the following:

- Classification of Enterprises as per new definition
- Validity of Entrepreneurs Memorandum Part II and Udyog Aadhaar Memorandums issued till June 30, 2020
- Value of Plant and Machinery or Equipment
(Source: Notification RBI/2020-21/26 dated August 21, 2020)

2. FRAMEWORK FOR AUTHORISATION OF PAN-INDIA UMBRELLA ENTITY FOR RETAIL PAYMENTS:



With an objective to set-up pan-India umbrella entities focussing on retail payment systems, the RBI has released a framework, under which the umbrella entity may be permitted to participate as per the Reserve Bank’s payment and settlement systems guidelines, including having a current account with Reserve Bank.

As per the framework an authorisation under the Payments and Settlements Systems Act, 2007 is required. An entity eligible to apply as a promotor or a shareholder should ensure that its MoA covers this objective and further it complies with FDI guidelines and ‘fit and proper’ criteria of the RBI and also complies with various requires relating to capital and governance structure, scope of activities and should have proper process plans and also follows the requisite procedures for application. (Source: RBI Notification dated August 18, 2020)

3. REVIEW OF GUIDELINES FOR CORE INVESTMENT COMPANIES



Based on the recommendations of Working Group (WG) Report to Review the Regulatory and Supervisory Framework for Core Investment Companies (CICs) and the stakeholders, RBI has decided to revise the guidelines applicable for Core Investment Companies. The notification defines Adjusted Net Worth (ANW) and also provides for Group Structure, Risk Management, Corporate Governance and Disclosure Requirements, Consolidation of Financial Statement (CFS), Registration etc. *(Source: Notification RBI/2020-21/24 dated August 13, 2020)*

4. FOREIGN EXCHANGE MANAGEMENT (EXPORT AND IMPORT OF CURRENCY) (AMENDMENT) REGULATIONS, 2020

Regulation 3 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2020 has been amended and Regulation 9 pertaining to RBI's power to permit export or import of currency has been added. *(Source: Notification FEMA 6 (R)/(2)/2020-RB dated August 11, 2020)*

5. OFFLINE RETAIL PAYMENT PILOT SCHEME



RBI, in an effort to boost the adoption of digital payment systems in rural areas where internet connectivity is scarce and erratic, has launched a pilot scheme, wherein authorised Payment System Operators (PSOs), both bank and non-bank, will be able to provide offline payment solutions using cards, wallets and mobile devices for remote and proximity payments. This pilot scheme will be undertaken only till March 31, 2021. *(Source: Notification RBI/2020-21/22 dated August 6, 2020)*

6. ONLINE DISPUTE RESOLUTION SYSTEM FOR DIGITAL PAYMENTS



August 2020

RBI has issued Directions for both bank and non-bank Payment System Operators (PSOs), to put in place, systems for Online Dispute Resolution (ODR) for resolving disputes and grievances of customers. *(Source: Notification RBI/2020-21/21 dated August 6, 2020)*

eligible corporate exposures without change in ownership, and personal loans, while classifying such exposures as Standard, subject to specified conditions *(Source: Notification RBI/2020-21/16 dated August 6, 2020)*

7. MSME – RESTRUCTURING OF ADVANCES

Existing loans to MSMEs classified as ‘Standard’ may be restructured without a downgrade in the asset classification subject to certain conditions. *(Source: Notification RBI/2020-21/17 dated August 6, 2020)*

8. RESOLUTION FRAMEWORK FOR COVID-19 RELATED STRESS



- The RBI, with the intent to facilitate revival of real sector activities and mitigate the impact on the ultimate borrowers, has decided to provide a window under the Prudential Framework (dated June 7, 2019) to enable the lenders to implement a resolution plan in respect of

FOREIGN TRADE

1. AMENDMENT IN EXPORT POLICY OF PERSONAL PROTECTION EQUIPMENT [“PPE”]

Amendment has been made to Schedule 2 of ITC (HS) Export Policy 2018 related to export of PPE / masks. The export policy of 2/3 Ply Surgical masks, medical coveralls is amended from “Restricted” to “free” category. *(Source: DGFT Notification No. 29 / 2015-2020 dated August 25, 2020)*

2. AMENDMENT IN EXPORT POLICY OF TEXTILE RAW MATERIAL FOR MASKS AND COVERALLS

Amendment made to Schedule 2 of ITC (HS) Export Policy 2018 to prohibit export of certain textile raw materials (fabrics) for masks and coveralls. *(Source: DGFT Notification No. 28 / 2015-2020 dated August 18, 2020)*

3. AMENDMENT IN IMPORT POLICY

Amendments have been made under Chapters 29, 38 and 39 of ITC(HS), 2017 Schedule – 1 (Import Policy) to modify policy conditions for imports of various chemicals. New policy conditions 4 and 5 added to Chapters 29 and 38 of ITC(HS), 2017. *(Source: DGFT Notification No. 26 / 2015-2020 dated August 11, 2020)*

4. AMENDMENT IN EXPORT POLICY OF VENTILATORS

Amendment made in Schedule – 2 of ITC(HS). Ventilators under the existing Export Policy were prohibited, whereas in the amended policy, they have been made free. *(Source: DGFT Notification No. 23 / 2015-2020)*

CORPORATE

1. CASE LAW: NCLT APPOINTS RESOLUTION PROFESSIONAL AGAINST ANIL AMBANI (PERSONAL GUARANTOR IN LOANS TO RCOM, RITL)



The Project Finance Strategic Business Unit of State Bank of India (**Financial Creditor**) filed application for initiation of Corporate Insolvency Resolution Process (**CIRP**) against Mr. Anil Ambani, Chairman of the Reliance ADA Group, **Personal Guarantor** of Reliance Communications Limited (RCOM) and Reliance Infratel Limited (RITL), **Corporate Debtors**.

In view of the default in payment of the credit facilities, the Applicant on 31.01.2018 invoked the personal guarantee and issued an Invocation Notice of the even date upon the Respondent. Despite detailed correspondence between the Financial Creditor and the Personal Guarantor (Respondent) no repayment was made on behalf of the Respondent.

The submissions made by the Respondents that NCLT could wait till the resolution of the Corporate debtors is completed, cannot be accepted because section 95 of the Code directs that NCLT shall within seven days of filing of the Application direct the Board to nominate a resolution professional for the insolvency resolution process. Accordingly, NCLT appointed a RP under section 94 of the Code.

Further proceedings in the case: Delhi High Court stayed the proceedings and barred Mr Anil Ambani from disposing of any of his assets. *(Source: IA No. 1009 & 1010 of 2020 in CP (IB) 916 & 917(MB) of 2020 dated 20th August 2020)*

2. CASE LAW: JAGDISH PRASAD SARADA v. ALLAHABAD BANK

Case: Jagdish Prasad Sarada, Suspended Managing Director of the M/s. Sarada Agro Oils Limited (Corporate Debtor) filed an appeal and claimed that the limitation period of 3 years has elapsed and prayed that NCLAT grant stay on the Insolvency Proceedings against the Corporate Debtor. The Corporate Debtor became irregular in repayment and consequently the account was declared an NPA in 2015.

Case of the Parties: The Respondent Bank stated that by operation of Section 19 of the Limitation Act, 1963 read with Article 137 of the Schedule to the said Act, a fresh period of limitation of 3 years commenced from 19.02.2016 when a part of the debt/interest was repaid and it filed Application for initiation of Insolvency Proceedings on 31.12.2018 which is within 3 years from 19.02.2016. The Appellant averred that even after

the alleged payment of 19.02.2016 made by them, the account of the Corporate Debtor remained an NPA.

Judgement: It was held that the provisions of the Limitation Act, 1963 will be applicable to all NPA cases in view of Section 238A of the IBC, 2016 provided they meet the criteria of Article 137 of the Schedule to The Limitation Act, 1963. The extension for the period of Limitation can only be done by way of application of Section 5 of The Limitation Act, 1963, if any case for the condonation of delay is made out. In view of the above, the NCLAT allowed the appeal and directed NCLT to close the Insolvency Proceedings. *(NCLAT Delhi Company Appeal (AT) (Insolvency) No. 183 of 2020 dated August 28, 2020)*

3. EXTENSION OF AGM FOR FY 2019-20



Companies which are yet to hold AGM for FY2019-2020 have to file form GNL-1 seeking extension on or before 20/09/2020 with the Registrar of Companies. *(Source: MCA Notification No.: 2 / 4 / 2020 – CL – V dated August 17, 2020)*

4. CLARIFICATION ON DISPATCH OF NOTICE BY LISTED COMPANIES FOR RIGHTS ISSUE OPENING UPTO 31ST DECEMBER, 2020.

The Ministry of Corporate Affairs ["MCA"] *vide* the said General Circular has stated that in case of listed companies, which comply with relevant circulars issued by SEBI, inability to dispatch the relevant notice to shareholders through registered post or speed post or courier would not be viewed as violation of section 62(2) of the Act for rights issues opening upto December 31, 2020. *(Source: MCA General Circular No.: 27/2020 dated August 3, 2020)*

SECURITIES

1. INFORMAL GUIDANCE ON TRADING IN UNRESTRICTED SECURITIES AND CONFIDENTIALITY OF RESTRICTED LIST

As per Regulation 9 of the SEBI (Prohibition of Insider Trading) Regulations, 2015, every intermediary registered with SEBI is required to formulate a Code of Conduct in accordance with the minimum standards set out in Schedule C for regulation, monitoring, and reporting trading by its Designated Persons (DP) and their relatives.

Case 1: Whether the companies which are not covered in the restricted list (list of DPs who require pre-clearance of compliance officer if

trading value is above certain threshold) be kept out of the purview of compliances of the PIT Regulations.

Clarification:

- Trading in all securities shall be subject to pre-clearance by the compliance officer if its value exceeds certain threshold
- The rejected list shall be used as a basis for approving or rejecting the applications for trading

Case 2: Is the Compliance Officer allowed to share the restricted list with DPs?

Clarification:

- Compliance officer is responsible for maintaining restricted list on confidential basis.
- Sharing the restricted list with the DPs would undermine the requirement of maintaining confidentiality of the restricted list. *(Source: Informal Guidance No. ISD / OW / 2020 / 134921/1 dated August 19, 2020)*

August 2020

2. TEMPORARY RELAXATION IN PROCESSING OF DOCUMENTS PERTAINING TO FPIs DUE TO COVID-19



Securities and Exchange Board of India [“SEBI”] granted a temporary relaxation of processing of documents pertaining to Foreign Portfolio Investment (FPI) in jurisdictions still under COVID-19-lockdown *(Source: Circular SEBI / HO / FPI&C / CIR / P / 2020 / 162 dated August 31, 2020)*

3. INVESTOR GRIEVANCES REDRESSAL MECHANISM – SOPs FOR NON-REDRESSAL OF GRIEVANCES BY LISTED COMPANIES

The circular lays down the standard operating procedures (SOPs) for non-redressal of grievances by listed companies, which came into force on September-1, 2020. *(Source: Circular SEBI / HO / OIAE / IGRD / CIR / P / 2020 / 152 dated August 13, 2020)*

4. RESOURCES FOR TRUSTEES OF MUTUAL FUNDS



With the aim of providing administrative assistance to trustees, they shall appoint a dedicated officer who shall be an employee of the trustees, with a scope of work decided by the trustees and shall also act as an access person with SEBI. It shall be effective from October 1, 2020. *(Source: Circular no. SEBI / HO / IMD / DF4 / CIR / P / 2020 / 0000000151 dated August 10, 2020)*

5. AMENDMENT TO IFSC GUIDELINES

Clause 4(2) of the SEBI (IFSC) Guidelines, 2015 has been amended. Subsections 2A, 2B and 2C have been added titled as, “Eligibility and shareholding limit for clearing corporations desirous of operating in IFSC”. *(Source: Circular No.: SEBI / HO / MRD2 / DCAP / CIR / P / 2020 / 149 dated August 7, 2020)*

August 2020

6. PROCEDURAL GUIDELINES FOR PROXY ADVISORS

Procedural guidelines for proxy advisors have been provided as per Regulations 23(1) and 24(2) of SEBI (Research Analyst) Regulations, 2014. *(Source: Circular No.: SEBI / HO / IMD / DF1 / CIR / P / 2020 / 147 dated August 3, 2020)*

COMPETITION

1. COMPETITION COMMISSION OF INDIA APPROVED THE FOLLOWING ACQUISITIONS:

- The proposed combination pertains to the acquisition of compulsorily convertible preference shares and a few equity shares of Nxtra Data Limited by Comfort Investments II. Further, it is stated that the CCPS shall be converted to equity shares upon completion of the valuation. *(Source: PRESS RELEASE No. 25/2020-21 dated 26th August, 2020)*
- Combination envisages acquisition of acquisition of up to 64.90% of share capital of J B Chemicals & Pharmaceuticals Limited by Tau Investment Holdings Pvt. Ltd. *(Source: PRESS RELEASE No. 24/2020-21 dated 20th August, 2020)*
- Acquisition by Lightstone Fund S.A., for and on behalf of Lightstone Global Fund of

certain equity stakes in 91Streets Media Technologies Pvt. Ltd., Ascent Health and Wellness Solutions Pvt. Ltd., API Holdings Pvt. Ltd., Aahaan Commercials Pvt. Ltd. and Lokprakash Vidhya Pvt. Ltd. under Section 31(1) of the Competition Act, 2002 *(Source: PRESS RELEASE No. 23/2020-21 dated 26th August, 2020)*

- The proposed combination envisages acquisition of 100% of the share capital of C&S Electric Limited (C&S) by Siemens Limited (Siemens India). *(Source: PRESS RELEASE No. 22/2020-21 dated 20th August, 2020)*
- Combination pertaining to Keihin Corporation, Nissin Kogyo Co., Ltd., Showa Corporation and Hitachi Automotive Systems, Ltd. forming a Joint Venture between Honda Motor Co. Limited and Hitachi Limited. *(Source: PRESS RELEASE No. 21/2020-21 dated August 11, 2020)*

INDIRECT TAXES

a. GST

1. GST ASSESSMENT ORDER UPLOADED ON THE WEBSITE- VALID OR NOT?



Case: K.U. Niyas Vs Assistant Commissioner (Kerala High Court)

Facts of the case: The assessment orders were uploaded on the website of the department, however, they were not communicated separately to the assessee. As per Section 169(c) and (d) of the GST Act, the service of any communication to the e-mail address provided by an assessee at the time of registration, as also by making available the communication in the common portal of the department, is to be treated as an effective communication under the statute.

Judgement: The High Court held that inasmuch as the returns filed by the petitioner for the period covered by the assessment orders were belated, as they were filed more than 30 days after the date of

service of the orders on the petitioner via the web portal of the department, he cannot aspire for the benefit of withdrawal of the assessment orders as mandated under Section 62 of the GST Act. The Writ Petition challenging the assessment orders and demand notices therefore fails and is accordingly dismissed. *(Source: WP(C).No.13647 OF 2020(E) dated August 20, 2020)*

2. GSTR-4 FILING DATE EXTENDED



Due date for filing Form GSTR-4 for FY2019-2020 extended to October 31, 2020. *(Source: Notification 64/2020-Central Tax, dated August 31, 2020)*

3. APPLICABILITY OF PROVISIONS OF FINANCE ACT, 2019

CBIC has notified the amendment to Section 50 of the Central Goods and Services Tax Act, 2017 introduced in the Finance Act, 2019, which deals with levy of interest on delayed payment of tax which shall be effective from 01.09.2020. *(Source:*

Notification 63/2020-Central Tax, dated August 25, 2020)

4. CGST (TENTH AMENDMENT) RULES, 2020

The Central Board of Indirect Taxes and Customs (CBIC) has issued the Central Goods and Services Tax (Tenth Amendment) Rules, 2020 to further amend the Central Goods and Services Tax Rules, 2017 with respect to the authentication of a person through Aadhar services and consequences of not opting for authentication of Aadhaar number. *(Source: Notification 62/2020-Central Tax, dated August 20, 2020)*

b. Customs

1. TARIFF NOTIFICATION

Tariff Notification issued in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver. *(Source: CBIC Notification 83/2020-Cus (NT) dated August 31, 2020)*

2. NASHIK AIRPORT AS INTERNATIONAL COURIER TERMINAL

Nashik Airport is the 14th airport to be notified as an International Courier Terminal. *(Source: CBIC Notification 82/2020-Cus (NT) dated August 21, 2020)*

3. RULES REGARDING ADMINISTRATION OF RULES OF ORIGIN UNDER TRADE AGREEMENTS

Interim notification of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. These Rules pertain to Preferential Tariff Claims, Origin information etc. However, the rules are yet to be notified in the Official Gazette. *(Source: Notification No. 81/2020 - Customs (N.T.) dated the August 21, 2020)*

4. IMPOSITION OF ANTI-DUMPING DUTIES



- Anti-dumping duty has been imposed on the imports of Phosphoric Acid of all grades and concentrations (excluding Agriculture or Fertilizer grade), originating in or exported from Korea RP for a period of five years. *(Source: CBIC Notification 26/2020-Cus (ADD) dated August 21, 2020)*

August 2020

- Provisional anti-dumping duty has been imposed on imports of Black Toner in powder form originating in or exported from China PR, Malaysia and Chinese Taipei for a period of six months.

(Source: CBIC Notification 22/2020-Cus (ADD) dated August 10, 2020)

INTELLECTUAL PROPERTY RIGHTS

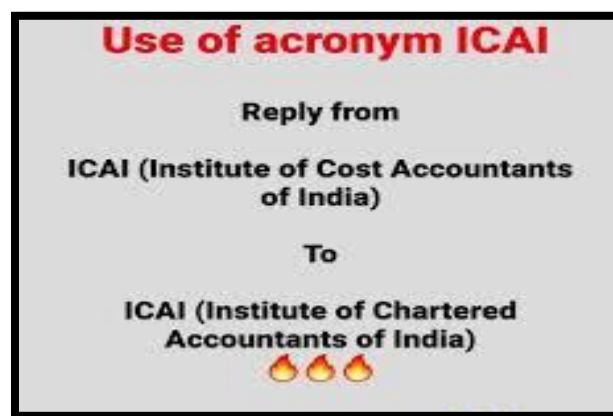
1. DELHI HIGH COURT ISSUES DYNAMIC INJUNCTION IN FAVOUR OF DISNEY



Facts of the case: Disney enterprises filed a suit for protection of its copyrighted content since certain rogue websites are enabling the down-streaming of their creative work which includes films and other entertainment programmes, albeit, without requisite licenses.

Judgement: The Hon'ble High Court of Delhi was of the view that the rogue websites are indulging in digital piracy. Accordingly, the Court granted an injunction restraining the rogue websites and their mirror/redirect/alphanumeric websites from, in any manner, hosting, streamlining, making publicly available and/or facilitating cinematograph work, content, programme and show in which Disney have copyright. *(Source: CS(COMM) 275/2020 & I.A. No.6089/2020 delivered on 27th July, 2020)*

2. DELHI HIGH COURT DISMISSES THE APPEAL FILED TO STOP THE INSTITUTE OF COST ACCOUNTANTS OF INDIA FROM USING THE ACRONYM "ICAI"



Facts of the case: An Appeal was filed by a Chartered Accountant to set aside the dismissal order in a writ petition filed by him seeking order from the Court to stop the Institute of Cost

August 2020

Accountants of India from using the acronym ICAI already in use by the Institute of Chartered Accountants of India. The acronym ICWAI was used by the Cost Accountants Institute from 1959 until 2011. From 2011, it started using the acronym ICAI. The Appellant alleged that the use of the said acronym should not be permitted because it misleads stakeholders both regarding the identity of and the domain expertise of qualified members of the two Institutes.

Judgement: The Hon'ble High Court of Madras held that the rights in a trademark are proprietary rights and that only the owner of the trademark is entitled to initiate proceedings in respect thereof. Therefore, the Appellant does not have locus standi and that the writ petition was not maintainable at his instance. *(Source: W.A.No.696 of 2018 delivered on 22nd July, 2020)*

3. DELHI HIGH COURT ISSUES DYNAMIC INJUNCTION IN FAVOUR OF SNAPDEAL

Facts of the case: Snapdeal Private Limited, an online marketplace which enables the sellers and the buyers to conduct business in the virtual sphere, filed a suit against the rogue websites which are *inter alia* degrading its goodwill and infringing its registered trademark by offering fraudulent prize schemes, lotteries and lucky draws in a manner which tends to portray that they either emanate from it or are connected with it.

Judgement: The Hon'ble High Court of Delhi held that continuation of such like schemes would jeopardise not only the plaintiff's interest but also of the public at large and accordingly, granted injunction restraining the rogue websites from carrying on their activities either under the plaintiff's trademark or any other trademark which is deceptively similar to the plaintiff's trademark. The Court further directed the domain registrars, to suspend/block the domain names of those defendant websites which are registered with them. *(Source: CS(COMM)No.264/2020 & I.A.Nos.5848-52/2020 delivered on 20th July, 2020)*



ENVIRONMENT

1. EXPERT COMMITTEE ON ECO-SENSITIVE ZONE



- 14 proposals for Eco-Sensitive Zone listed in the agenda were taken up ad-seriatim. The representatives of respective State Government presented their ESZ proposal for the consideration of Expert Committee.
- Participant States included Karnataka, Arunachal Pradesh, Uttarakhand, West Bengal, Assam, Odisha, Maharashtra, Andhra Pradesh, Rajasthan, Jharkhand. *(Source: ESZ Expert Committee meeting minutes dated August 18, 2020)*

2. 19 IROs of MoEF&CC ESTABLISHED



- 19 Integrated Regional Offices (IROs) of the Ministry of Environment, Forest and Climate Change (MoEF&CC) have been established to facilitate the mandate of the Ministry in an improved, timely and effective manner, and further enhance its outreach to stakeholders.
- The IRO for Delhi will be seated in Jaipur, UP in Lucknow and Haryana in Chandigarh.
- IROs will start functioning w.e.f. October 1, 2020 *(Source: MoEF&CC Notification dated August 13, 2020)*

Disclaimer:

The information contained in this Newsletter is for general purposes only and Lexport is not, by means of this newsletter, rendering legal, tax, accounting, business, financial investment or any other professional advice or services. This material is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Further, before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Lexport shall not be responsible for any loss sustained by any person who relies on this newsletter.

As used in this document, "Lexport" means Lexport - Advocates and Legal Consultants. Please see www.lexport.in for a detailed description about Lexport and services being offered by it.