

# MONTHLY NEWSLETTER

## MARCH 2022

Dear Readers,

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

Our newsletter will cover updates from RBI, FEMA, Foreign Trade, Corporate Laws, Securities Laws and Capital Markets, Competition Laws, Trade & Indirect Taxes and Customs, Intellectual Property Laws, Environmental Laws etc.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at [mail@lexport.in](mailto:mail@lexport.in).

Regards,  
Team Lexport



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

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

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website [www.lexport.in](http://www.lexport.in).

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## RBI & FEMA

### **(1) RBI REVISES MASTER DIRECTION ON CLASSIFICATION, VALUATION AND OPERATION OF INVESTMENT PORTFOLIO OF COMMERCIAL BANKS (DIRECTIONS), 2021**



The RBI vide its circular has amended the Master Direction on Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2021. It is provided that the investment in Category I and Category II Alternate Investment Funds, which includes Venture Capital Funds, shall receive the same prudential treatment as applicable for investment in Venture Capital Funds.

This circular is applicable to all Commercial Banks (excluding Regional Rural Banks).

*(Source: RBI Circular No. DOR.MRG.REC.96/21.04.141/2021-22 dated March 23, 2021)*

### **(2) RBI ISSUES CLARIFICATION ON THE MODE OF RECEIPT OF COMPLAINTS UNDER RESERVE BANK – INTEGRATED OMBUDSMAN SCHEME 2021**

The RBI vide its notification has clarified that it has not authorized any third party to assist in the redressal of grievances of the central bank's regulated firms, as alleged in messages distributed through some areas of social media.

RBI has laid down a cost-free grievance redress mechanism under RB-IOIS which does not involve payment of fees or charges in any form or manner. Customers having grievances against REs (Regulating entities) for deficiency in services, which is not redressed satisfactorily or in a timely manner by the REs can directly lodge their complaint on the Complaint Management System (CMS) portal (<https://cms.rbi.org.in>) or by e-mail at [crpc@rbi.org.in](mailto:crpc@rbi.org.in) or in physical mode at the 'Centralised Receipt and Processing Centre' (CRPC) set up at RBI, 4th Floor, Sector 17, Chandigarh – 160017.

*(Source: RBI Press Release No. RBI/2021-2022/1836 dated March 09, 2022)*

### **(3) RBI LAUNCHES UPI FOR FEATURE PHONES USERS**

The RBI on 8<sup>th</sup> March 2022 has launched UPI123Pay – Option to make Unified Payments Interface (UPI) payments for feature phone users, and DigiSaathi – a 24×7 Helpline to address the queries of digital payment users across products.

UPI123Pay includes four options

1. App-based Functionality, where an app would be installed on the feature phone.

2. Missed Call, which will allow feature phone users to access their bank account and perform routine transactions such as receiving, transferring funds, regular purchases, bill payments, etc., by giving a missed call on the number displayed at the merchant outlet. The customer will receive an incoming call to authenticate the transaction by entering UPI PIN.

3. Interactive Voice Response (IVR)—UPI payment through pre-defined IVR numbers would require users to initiate a secured call from their feature phones.

4. Proximity Sound-based Payments, which would use sound waves to enable contactless, offline, and proximity data communication on any device.

*(Source: RBI Press Release No. RBI/2021-2022/1830 dated March 08, 2022)*

**(4) RBI EXTENDS THE INTEREST EQUALIZATION SCHEME ON PRE AND POST SHIPMENT RUPEE EXPORT CREDIT**

The RBI vide its notification has extended the Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit ('Scheme') up to March 31, 2024 or till further review, whichever is earlier. The extension takes effect from October 1, 2021 and ends on March 31, 2024.

The scheme will not apply to telecom instruments and entities availing benefits under the Production Linked Incentive (PLI) scheme of the government.

The Revised interest equalisation rates under the Scheme will now be 3 per cent for MSME manufacturer exporters exporting under any HS lines, and 2 per cent for manufacturer exporters and merchant exporters exporting under 410 HS lines.

Banks, while issuing approval to the exporter, will necessarily furnish i) the prevailing interest rate, ii) the interest subvention being provided, and iii) the net rate being charged to each exporter, so as to ensure transparency and greater accountability in the operation of the Scheme.

*(Source: RBI Circular No. RBI/DOR.STR.REC.93/04.02.001/2021-22 dated March 08, 2022)*

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**FOREIGN TRADE**

**(1) MINISTRY OF COMMERCE EXTENDS THE LAST DATE FOR SUBMISSION OF APPLICATIONS UNDER CERTAIN SCIP BASED SCHEMES**

Ministry of Commerce and Industry vide its notification has extended the last date for submission of applications under MEIS (for exports made in the period – 01.04.2020 to 31.12.2020), ROSCTL, ROSL and 2% additional ad hoc incentive (under para 3.25 of FTP, only for exports made in the period 01.01.2020 to 31.03.2020)

The total reward which may be granted to an IEC holder under the Merchandise Exports from India Scheme (MEIS) shall not exceed Rs. 2 Crore per IEC (Importer-exporter code) on exports made in the period 01.09.2020 to 31.12.2020 [period based on Let Export Order (LEO) date of shipping bill(s)]. Any IEC holder who has not made any export with LEO date during the period 01.09.2019 to 31.08.2020 or any new IEC obtained on or after 01.09.2020 would not be eligible for submitting any claim for benefits under MEIS for exports made with effect from 01.09.2020.

The Last date for submission of application for MEIS (for exports made in the period 01.04.2020 to 31.12.2020) shall be 30<sup>th</sup> April 2022 and for 2 % additional ad hoc incentive (under para 3.25 of the FTP – for exports made in the period 01.01.2020 to 31.03.2020 only) shall also be 30<sup>th</sup> April 2022.

*(Source: Notification No. 58/2015-2020 dated March 07, 2022)*

**(2) DGFT OPERATIONALISED NEW ONLINE IT MODULE FOR INTEREST EQUALISATION SCHEME W.E.F. APRIL 01, 2022**

The DGFT vide its notification has decided to operationalise a new online module for filing of electronic registration for Interest Equalisation Scheme w.e.f. 1<sup>st</sup> April 2022.

All exporters seeking benefit under the Interest Equalisation Scheme need to apply online by navigating to the DGFT website (<https://dgft.gov.in>) – Services – Interest Equalisation Scheme. A Unique IES Identification Number (UIN) will get generated automatically which is required to be submitted to the concerned bank when availing Interest Equalisation against their pre and post shipment rupee export credit applications.

The UIN generated shall have a validity of 1 year from the date of registration, during which an application for availing benefit of IES can be submitted to the concerned bank. The auto generated Acknowledgement containing UIN number need to be submitted to the concerned bank along with the prescribed application by the bank, if any, for availing benefit under IES.

*(Source: Trade Notice No. 38/2021-22 dated March 15, 2022)*

### **(3) DGFT AMENDS GUIDELINES ON ANF-4F OF HANDBOOK OF PROCEDURES, 2015-2020**

The DGFT vide its notification has amended the Guidelines of ANF-4F of Handbook of Procedures, 2015-2020 to allow submission of FIRC (Foreign inward remittance certificate) in case of exports made to OFAC (office of foreign assets control) listed countries under Advance Authorization.

As per the amendment, e-BRC / Bank Certificate of Exports and Realization in the form given at Appendix 2U or Foreign Inward Remittance Certificate (FIRC) in the case of direct negotiation of documents or Appendix 2L in case of offsetting of export proceeds. In case of export to OFAC listed countries, exporter may submit FIRC along-with the self-declaration that e-BRC (electronic Bank Realization Certificate) could not be generated by the concerned bank.

*(Source: Notification No. No. 50/2015-2020 dated March 17, 2022)*

### **(4) DGFT REVISES EXPORT POLICY FOR HYDROFLUOROCARBONS FROM FREE TO RESTRICTED**

The DGFT vide Notification has amended the export policy for Hydrofluorocarbons from free to restricted with immediate effect. HFCs can now be exported after obtaining an export authorization.

The export authorization for HFCs can be issued only after obtaining NOC from ozone cell, MoEF & CC.

*(Source: Notification No. 62/2015-2020 dated March 23, 2022)*

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## **CORPORATE LAWS**

### **(1) IFSCA CLARIFICATION ON NEGOTIATED LARGE TRADE FACILITY ON STOCK EXCHANGES**

The International Financial Services Centers Authority (IFSCA) vide Circular has issued clarification Negotiated Large Trade facility on Stock Exchanges. In order to facilitate connects of recognized stock exchanges in IFSC with international exchanges, the price limits on NLT facility may be aligned with the international exchange for such derivatives products that are having connect with any international exchange. In respect of other derivatives products, the price limits mentioned at clause 2(b) of circular dated June 22, 2021, may be decided by the recognized stock exchanges ensuring that such limits are fair and reasonable.

*(Source: Circular No. 286/IFSCA/PM(CMD-DMIIT)/2, dated March 14, 2022)*

### **(2) LIMITED LIABILITY PARTNERSHIP (SECOND AMENDMENT) RULES, 2022**

The MCA vide its Notification has issued the Limited Liability Partnership (Second Amendment) Rules, 2022. The amendment provides revised process for insolvency resolution process of LLPs.

It is clarified that the Statement of Account & Solvency shall be signed on behalf of the Limited Liability Partnership by designated partners. Once the corporate insolvency process is initiated, Statement of Account & Solvency shall be signed on behalf of the LLP by administrator of Limited Liability Partnership, interim resolution professional, resolution professional or liquidator.

*(Source: Circular No. 1/3/2021-CL-V-Part IV dated March 04, 2022)*

**(3) THE INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (PERFORMANCE REVIEW COMMITTEE) REGULATIONS, 2022**

The IFSCA on March 23, 2022, has issued The International Financial Services Centers Authority (Performance Review Committee) Regulations, 2022. The performance review committee constituted under the regulations shall deal with complaints against IFSCA. All complaints received by the Committee shall be registered and assigned a number, as per the procedure determined by the Committee. The Committee may seek requisite information or confirmation, as may be considered necessary, from the complainant for examining the complaint and shall submit report with its findings to the Authority.

The Authority after examining the complaint and the report, if satisfied that no prima-facie case is made out, may dismiss the complaint under intimation to the complainant and the Committee. In case the Authority is of the view that prima-facie the complaint has some merit, it may forward the same to the authority concerned, for appropriate action in accordance with the applicable laws.

*(Source: Notification No. IFSCA/2021-22/GN/REG022 dated March 23, 2022)*

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**SECURITIES LAWS AND CAPITAL MARKETS**

**(1) DISCONTINUATION OF USAGE OF POOL ACCOUNTS FOR TRANSACTIONS IN THE UNITS OF MUTUAL FUNDS**

After the discussions with stakeholders and recommendations of the Mutual Fund Advisory Committee, SEBI has discontinued intermediate pooling of funds and/or units in Mutual Fund transactions by stock brokers / clearing members on Stock Exchange platforms and by other entities including online platforms, respectively. Various other requirements related to the modalities of discontinuation of pooling, measures to prevent third-party payments and to safeguard the interest of unit holder.

*(Source: Circular No. SEBI/HO/IMD/IMDIDOF5/P/CIR/2022/41, dated March 31, 2022)*

**(2) CLARIFICATION ON APPLICABILITY OF REGULATION 23 OF SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 IN RELATION TO RELATED PARTY TRANSACTIONS**

Clarification on applicability of Regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in relation to Related Party Transactions are as follows:

- a) For a Related Party Transaction that has been approved by the audit committee and shareholders prior to April 1, 2022, there shall be no requirement to seek fresh approval from the shareholders.
- b) All existing material related party contracts or arrangements entered into prior to the date of the notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting

subsequent to the notification of these regulations

- c) It is reiterated that a RPT for which the audit committee has granted omnibus approval shall continue to be placed before the shareholders if it is material in terms of Regulation 23(1) of the LODR Regulations.

*(Source: Circular No. SEBI/HO/CFD/CMD1/CIR/P/2022/40 dated March 30, 2022)*

### **(3) CALCULATION OF INVESTMENT CONCENTRATION NORM FOR CATEGORY III AIFS**

Regulation 15(1)(d) of SEBI (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”), has been amended and notified on March 16, 2022, to provide flexibility to Category III AIFs, including large value funds for accredited investors of Category III AIFs, to calculate investment concentration norm based either on investable funds or net asset value (“NAV”) of the scheme while investing in listed equity of an investee company, subject to the conditions specified by the Board from time to time.

*(Source: Circular No. SEBI/HO/IMD/IMD-1/DOF6/P/CIR/2022/000000037 dated March 28, 2022)*

### **(4) CHANGE IN CONTROL OF SPONSOR AND/OR MANAGER OF ALTERNATIVE INVESTMENT FUND INVOLVING SCHEME OF ARRANGEMENT UNDER COMPANIES ACT, 2013**

To streamline the process of providing approval to the proposed change in control of the Sponsor and/or Manager of the AIF involving scheme of arrangement which needs sanction of National Company Law Tribunal (“NCLT”) in terms of the provisions of the Companies Act, 2013, following has been decided.

- i. The application seeking approval for the proposed change in control of the Sponsor and/or Manager of the AIF under Regulation 20(13) of AIF Regulations shall be filed with SEBI prior to filing the application with the NCLT;
- ii. Upon being satisfied with compliance of the applicable regulatory requirements, in-principle approval will be granted by SEBI;
- iii. The validity of such in-principle approval shall be three months from the date of issuance, within which time the relevant application shall be made to NCLT;
- iv. Within 15 days from the date of order of NCLT, applicant shall submit the following documents to SEBI for final approval:
  - a. Application for the final approval;
  - b. Copy of the NCLT Order approving the scheme;
  - c. Copy of the approved scheme;
  - d. Statement explaining modifications, if any, in the approved scheme vis-à-vis the draft scheme and the reasons for the same; and
  - e. Details of compliance with the conditions/ observations mentioned in the in-principle approval provided by SEBI

*(Source: Circular No. SEBI/HO/IMD-1/DF9/CIR/2022/032 dated March 23, 2022)*

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## COMPETITION LAWS

### **(1) COPYRIGHT INFRINGEMENT LITIGATION NOT ANTI – COMPETITIVE**

The CCI rejected a complaint by Cryogas Equipment Private Limited (Cryogas) that Inox India Private Limited (Inox) had abused its dominant position by bringing a civil suit claiming that Cryogas had infringed its copyright over a proprietary engineering drawing in relation to a liquefied natural gas trailer. The CCI noted that, to be termed a sham, litigation had to be initiated by a dominant undertaking to cause anti-competitive harm. Two conditions had to be met. First, it had to be established that the case filed was on an objective view baseless and appeared to be an instrument to harass the other party. Second, it had to be shown that the legal action was conceived with an anti-competitive intent or plan to eliminate/ thwart competition in the market. Though anxious not to consider the litigation on its merits – which was for the court where the matter was pending – the CCI was of the prima facie view that the litigation was not fraught with any lack of good faith. It noted that Inox had, in informing customers and others of the litigation, gone further than was necessary for the purposes of the litigation. Enjoining Inox to be more careful, the CCI felt that, in the specific facts and circumstances of the case, this was not a fit case warranting investigation and it was thus not necessary to define the relevant market and assess the dominance of Inox.

*(Source: Cryogas Equipment Private Limited v Inox India Private Limited, CCI, Case No. 08 of 2021)*

### **(2) CCI CLEARS ACQUISITION OF AIR INDIA**

The CCI published its December 2021 order clearing the acquisition by Talace Private

Limited (Talace), a wholly owned subsidiary of Tata Sons, of 100% of the equity share capital and sole control of Air India Limited (Air India) and Air India Express Limited and 50% of the equity share capital and joint control of Air India SATS Airport Services Private Limited (collectively, the Target). The CCI found horizontal overlaps between Tata Sons Group companies and the Target in the provision of passenger air transport services and air cargo services. In relation to passenger air transport services, the CCI considered overlapping Origin-Destination pairs (O&D pairs) as separate relevant markets for the purposes of the assessment but recognised that some routes might be substitutable with others. Although there were certain O&D pairs in domestic and international markets where market concentration was increasing, there were mitigating factors which, taken as a whole, meant that the potential benefits would outweigh the possible harm resulting from the proposed acquisition. Such factors included market forces, such as supply substitutability, the existence of a strong competitor, availability of indirect flights and likelihood of expansion of capacity in airports, and target-specific factors, including the likelihood of improving operational efficiencies, addressing the sub-optimal asset utilisation of the target, optimising the route network and the possibility of deriving efficiencies from synergies when the Target was operated by a private company. These mitigating factors were considered in the context of concerns about the viability of debt-laden Air India were it not acquired by a private entity. In relation to air cargo services, the CCI had no competition concerns given the parties' low incremental market share, their low market shares and the existence of other players. The CCI also considered vertical relationships and complementary relationships, including the provision of ground handling services in several airports, but saw no foreclosure concerns.

*(Source: Talace Private Limited, CCI, Combination Registration No. C-2021/11/883)*

**(3) CCI AFFIRMS THAT ELECTRICITY ACT DOES NOT OUST CCI'S MERGER CONTROL POWERS**

The CCI found that Tata Power Company Limited (TPCL) had failed to notify three notifiable acquisitions in the electricity distribution sector. TPCL stated that it believed that the Odisha Electricity Regulatory Commission (OERC), which had regulated the acquisition process, had the exclusive jurisdiction to regulate combinations in the electricity sector. Referring to previous practice, the CCI rejected arguments that provisions in the Electricity Act, 2003 overrode provisions in the earlier Competition Act (2002) and held that the mandate of the older legislation was not ousted by the later one. It also found that the OERC had recognised the CCI's jurisdiction and had in fact directed TPCL to comply with the Competition Act. It therefore found that TPCL had failed to notify the transactions prior to consummation. In setting the level of penalty, the CCI considered as mitigating factors the ambiguity arising from overlapping provisions in the two Acts, the notifications to the CCI when told to do so by the OERC and TPCL's full cooperation during the inquiry. A nominal penalty of INR 5 lakhs (approx. USD 6,600) was imposed for each case of non-notification.

*(Source: Proceedings against Tata Power Company Limited under Section 43A of the Competition Act, CCI, Combination Registration Nos. C-2021/03/824, C-2021/02/825 and C-2021/03/826)*

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**INDIRECT TAX AND CUSTOMS LAWS**

**(1) CENTRAL TAX TO IMPLEMENT SPECIAL COMPOSITION SCHEME FOR BRICK KILNS, AS RECOMMENDED BY 45 GSTC**

A registered person shall not be eligible to opt for composition levy under sub-section (1) of Section 10 of the Central Goods and Services Act, 2017 if such person is a manufacturer of the goods - Ice cream and other edible ice, whether or not containing Cocoa, pan masala and all goods, i.e., Tobacco and manufactured tobacco substitutes.

The Central Government on the recommendations of the Council has now brought an amendment adding the following items also to the above list:

- Fly ash, ricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks
- Bricks of fossil meals or similar siliceous earths
- Building bricks
- Earthen or roofing tiles.

*(Source: Notification No. 04/2022-Central Tax, dated March 31, 2022)*

**(2) INTEREST LIABILITY UNDER GST CANNOT BE RAISED WITHOUT INITIATING ADJUDICATION PROCESS IF ASSESSEE RAISES DISPUTE: JHARKHAND HC**

The petitioner/assessee challenged the Circular dated February 10, 2020, issued by the Central Board of Indirect Taxes and Customs (CBIC) which prescribes that interest payable on delayed payment of taxes can be recovered under the provisions of Section 79 read with Section 75 (12) of the JGST Act.

The Department asked the petitioner to pay the amount of interest applicable on the taxes



in full, failing which he would face proceedings under Section 73(1) of the JGST Act.

The issue raised was whether liability of interest under Section 50 of the JGST Act, 2017 can be raised without initiating any adjudication process under Section 73 or 74 of the JGST Act in the event of an assessee raising a dispute towards the liability of interest. An incidental question also arises, whether a recovery proceeding under Section 79 of the Act can be initiated for the recovery of interest under Section 50 of the Act without the conclusion of an adjudication proceeding under the Act.

The court observed that the Department has failed to follow the procedure stipulated under the JGST Act as indicated by them on Form GST DRC-01A, containing the intimation of the tax ascertained against the petitioner. A summary of the order has been issued to the petitioner on GST DRC-07 on his GSTN portal without following the principles of natural justice.

The court held that interest is not payable on the late filing of GSTR-3B since the amount of tax has been deposited in the electronic cash ledger in accordance with Section 49 of the JGST Act, 2017. The Revenue has not denied the tax due and, as such, interest under Section 50(1), which is compensatory in nature, cannot be realized from it. As per Section 50 (1) of the JGST Act, 2017, interest can only be charged on the tax unpaid if the assessee fails to pay the same by the due date, as per Section 50 (1) of the Act. Since there is no delay in payment of the tax, interest is not chargeable for late filing of GSTR-3B for which a late fee has been prescribed under Section 47 of the JGST Act, 2017 which the petitioner has duly paid.

*(Source: Narsingh Ispat Limited v. Union of India)*

### **(3) APPOINTMENT OF COMMON ADJUDICATING AUTHORITY FOR ADJUDICATING SHOW CAUSE NOTICES ISSUED BY DGGI UNDER GST**

The Central Government after amending the territorial jurisdiction of the Principal Commissioners of Central Tax or the Commissioners of Central Tax, has now brought amendments, to vest powers for passing orders or decisions in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence on the Additional Commissioner or Joint Commissioner of Central Tax.

*(Source: Notification No. 02/2022- Central Tax, dated March 11, 2022)*

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## **INTELLECTUAL PROPERTY RIGHTS**

### **(1) THE SUPREME COURT OF INDIA RULED THAT AN OFFENCE UNDER SECTION 63 OF THE COPYRIGHT ACT IS A COGNIZABLE AND NON-BAILABLE OFFENCE**

The Supreme Court of India recently ruled upon a question of law and held that an offence under Section 63 of the Copyright Act is a cognizable and non-bailable offence. The question arose from an order of the Delhi High Court where the Delhi High Court quashed criminal proceedings under the section on the ground that the offence was not a cognizable and non-bailable offence. Both the parties presented pleadings and arguments in support of their contentions, but the Apex Court took note of the fact that under the section of the Copyright Act, the maximum punishment which could be imposed was of three (3) years. The Supreme Court also took into account the fact that the criminal procedure code of the country states that if the offence is punishable with imprisonment for

three (3) years and above but not more than seven (7) years, then such offence is a cognizable offence. In light of the above, the Apex Court ruled that Section 63 of the Copyright Act is a cognizable and a non-bailable offence.

*(Source: M/s Knit Pro International vs The State of NCT of Delhi & Anr, Criminal Appeal no. 807 of 2022)*

**(2) BURGER KING CORPORATION FILED A SUIT FOR REGISTERING MISLEADING DOMAIN NAMES SIMILAR TO BURGER KING MARK.**

Burger King Corporation, (“Plaintiff”), filed a suit before the Delhi High Court against the defendants for registering misleading domain names similar to the Plaintiff’s BURGER KING mark. It was the case of the Plaintiff that it has been continuously and extensively using the mark BURGER KING since 1954 worldwide, and in India since 2014. The Plaintiff averred that it had over 250 restaurants in India and also uses the domain names that incorporate the BURGER KING mark, such as BURGERKING.COM, BURGERKING.IN and BURGERKINGINDIA.IN. The Plaintiff claimed that in March 2021, it came to know about the existence of the website and that the defendant was duping unsuspecting members of the public into believing that he was a representative of the Plaintiff and inviting the general public to apply for the Plaintiff’s franchise opportunities. The court held that the Plaintiff had made out a prima facie case and that the balance of convenience also lay in favour of the Plaintiff and granted an ad-interim injunction against the defendant. The court restrained the defendant from offering any services and using or registering corporate or domain names bearing the mark BURGER KING. The court also ordered freezing of the Defendant’s bank account and blocking of the fraudulent website.

*(Source: Burger King Corporation v Swapnil Patil & Ors., CS (COMM) 303/2022)*

**(3) THE DELHI HIGH COURT GRANTED PEPSICO INC. AN INJUNCTION RESTRAINING JAGPIN BREWERIES AND OTHERS FROM USING THE MIRINDA MARK OR ANY OTHER IDENTICAL/DECEPTIVELY SIMILAR MARK.**

The Pepsico Inc averred that it adopted the MIRINDA mark in 1959 and that it has a registration dating back to 1997 in India while the mark has been in use in India since 1996. The Plaintiff also relied on its revenue figures, advertisement and promotion expenses and campaigns as well as social media following and celebrity endorsements to establish its rights.

The Pepsico Inc stated that it initially came across the Jagpin Breweries and Others (“Defendants”) application for the CONTINENTAL MIRINDA BEER mark. As per the Pepsico Inc, its further investigation revealed that the Defendants are using the Hindi transliteration of the MIRINDA Mark in relation to country-made liquor. The Pepsico Inc alleged that such use was in clear violation of its rights. In light of the above, the court held that the Pepsico Inc had established a prima facie case and that the balance of convenience was in its favour. Accordingly, an order was passed restraining the Defendants from using the MIRINDA mark, the transliteration of the MIRINDA mark or any other identical/deceptively similar mark.

*(Source: Pepsico Inc. & Anr. vs. Jagpin Breweries Limited & Anr. CS(COMM) 288/2022)*

**(4) BLUE HEAVEN COSMETICS PVT LTD V. SHIVANI COSMETICS**

Blue Heaven Cosmetics Pvt. Ltd (“plaintiff”) successfully enforced its rights in the distinctive packaging which is used in relation to eye liners before the Delhi High Court against a defendant which was using a nearly identical packaging. The plaintiff claimed that the defendant’s eye liners are sold in a packaging that is virtually identical to that of the plaintiff and that the defendant has copied various elements including the letter styling, colour scheme, placement of various features, colour combination etc. of the packaging. The court had, in 2021, granted an ex-parte ad interim injunction and restrained the defendant from copying the trade dress of the plaintiff’s eye liners. However, despite repeated summons, the defendant refused to enter appearance before the court or file any response to the suit. Given this, and in the light of the plaintiff’s submissions, the court decreed the suit in favour of the plaintiff and restrained the defendant from copying the trade dress of the plaintiff’s products. The court stated that considering the fact that the goods in question are used by consumers on their eyes, the standard of quality that is expected is quite high, and the adoption of a nearly identical packaging cannot be a case of innocent adoption. Given this, damages and costs to the tune of INR12 lakhs were awarded to the Plaintiff.

*(Source: Blue Heaven Cosmetics Pvt Ltd V. Shivani Cosmetics [CS(COMM) 702/2021])*

**(5) KERZNER INTERNATIONAL LIMITED SUCCESSFULLY ENFORCED ITS RIGHTS IN THE “ATLANTIS” MARK**

Kerzner International Limited (“Plaintiff”) successfully enforced its rights in the ATLANTIS mark in relation to entertainment services, hotels, resorts and other connected

services before the Delhi High Court against defendants who were using the ATLANTIS PARK BALLROOM mark in relation to a banquet hall in Delhi. The Plaintiff claimed that it is one of world’s most renowned service providers in management, development and operation of resorts, hotels, etc. with properties in China, Dubai and Bahamas. It averred that its earliest registration for the ATLANTIS mark worldwide dates back to 1993, while its use commenced in 1994. The Plaintiff also relied on its registrations in India in Classes 35, 36, 39, 41 and 42. The Plaintiff claims that it learnt of an application for the ATLANTIS PARK BALLROOM mark, in Class 43, filed by the defendants. This application was dated October 2020 and claimed use since December 2017. The Plaintiff also claimed to have sent the defendants a legal notice, to which the defendants replied that the services provided by the parties and the trade channels are different. The defendants also stated that the Plaintiff has no reputation in India. The Plaintiff argued that, even though it does not have any resort in India, there is sufficient use and reputation in India owing to the Internet and due to Indians traveling abroad and visiting its properties. The Plaintiff also cited its revenue figures to show the bookings made from India in support of its contentions. In light of the above, the court held that the Plaintiff had made a prima facie case and passed an order restraining the defendants from making any fresh bookings under the ATLANTIS PARK BALLROOM mark. However, the court allowed the defendants to honour the bookings already made.

*(Source: Kerzner International Limited V. Vikas Aggarwal & Ors., CS(COMM) 321/2022)*

**(6) JINDAL INDUSTRIES FILED AN APPEAL AGAINST REFUSAL ORDER OF THE REGISTRAR OF TRADEMARKS FOR THE MARK JINDAL & DESIGN**

Jindal Industries (“Appellant”) filed an appeal against an order of the Registrar of Trademarks (“Registrar”) refusing to register its application for the mark JINDAL & Design (featuring the outline of the map of India) before the IP Division of the Delhi High Court. Before approaching the court, the Appellant had filed a review petition against the refusal order before the Registrar, where the Registrar affirmed its refusal order. In its Statement of Grounds of Refusal, the Registrar reasoned that trademark law prohibits registration of a mark if its use is prohibited under the law relating to Emblems and Names. In the appeal before the court, the Appellant submitted that use of the map of India has been permitted by the Survey of India and placed on record the No Objection letter granted by the Survey of India in favour of the Appellant. It also apprised the court of various other registrations owned by the Appellant for marks featuring the map of India. It also argued that the law relating to use of Emblems and Names does not prohibit use of the outline of the map of India. Accordingly, the court set aside the impugned order noting that the Registrar’s reasoning was unsustainable. It further directed the Registrar to advertise the refused mark within a period 3 months.

*(Source: M/s Jindal Industries Private Limited v. The Registrar of Trade Marks C.A.(COMM. IPD-TM) 99/2021 Order dated April 22, 2022)*

**(7) LIVING MEDIA INDIA LTD. FILED A SUIT BEFORE THE DELHI HIGH COURT AGAINST THE UNAUTHORISED USE OF THEIR MARK “AAJ TAK”**

Living Media India Ltd. (“Plaintiff”) the well-established news publication and television news channel company, filed a suit before the Delhi High Court against the unauthorised use of their mark AAJ TAK. It was the Plaintiff’s case that it has registered the mark AAJ TAK in various classes which is extensively used and is well-known. The Plaintiff also contented that, it has also extended its mark AAJ TAK to various programs such as ‘Agenda Aaj Tak’, ‘Sahitya Aaj Tak’, ‘Budget Aaj Tak’, etc. and various programmes using the TAK as a suffix, such as, ‘Bharat Tak’, ‘Astro Tak’, ‘Fit Tak’, ‘Mobile Tak’, ‘Kids Tak’, ‘News Tak’, ‘Sports Tak’, etc. The Plaintiff claimed that various known and unknown parties have started using the Plaintiff’s mark AAJ TAK and marks deceptively similar to Plaintiff’s mark AAJ TAK on online platforms, including, Facebook, Twitter, Instagram and YouTube. The court held that, considering the plaint and the documents submitted, there is no doubt that the Plaintiff has well-established goodwill and reputation in the mark AAJ TAK. Thus, the court granted an ad-interim injunction against some of the defendants and ordered that all the infringing profiled, accounts, video, channels are liable to be taken down. As regards the unknown defendants, the court issued directions that wherever the mark AAJ TAK is being identically used on an online platform such as Twitter, Facebook, Instagram or in any videos, the same shall be taken down within 36 working hours upon information, including the specific URLs, being given by plaintiffs to the respective platforms.

*(Source: Living Media India Ltd. v AABTAK CHANNEL.COM (John Does), CS (COMM) 193/2022)*

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## ENVIRONMENT LAWS

### **(1) GUIDELINES ISSUED FOR THE EXPANSION / MODERNISATION OF EXISTING PROJECTS HAVING PRIOR EC**

The Environment Impact Assessment Notification, 2006 (“Notification”) requires new projects or existing projects requiring expansion, modernisation or any change in the product mix or raw material mix, as covered under the Schedule to the Notification, to take prior environmental clearance (“EC”) before undertaking any activity related to the project. In relation to existing projects, Para 7(ii)(a) of the Notification provides that the application for prior EC for existing projects requiring: (a) expansion with increase in the production capacity beyond the capacity prescribed in prior EC; (b) expansion with increase in lease area or production capacity in mining projects; or (c) modernisation with increase in the total production capacity beyond the specified threshold limit through change in process, technology or change in the product –mix, shall be considered by the appropriate authority. Such authority would also decide on the requirements for considering such applications including preparation of Environment Impact Assessment (“EIA”) / Environment Management Plan (“EMP”) reports, public consultation, etc. The Ministry of Environment, Forests and Climate Change (“MoEFCC”), to ensure uniformity, has issued an office memorandum on 11 April 2022 prescribing requirements for considering such cases covered under Para 7(ii)(a). It provides that the application for expansion of an existing project up to 50% of its capacity (as mentioned in existing EC) in minimum three phases. As per the MoEFCC, projects covered under this memorandum will hereafter be considered by the authorities as per these guidelines. Such projects have also been exempted from the public hearing requirement

provided it has been undertaken at least once in the past for the projects’ existing capacity. Where the public consultation has been prescribed for one category of projects, it will be done by obtaining response in writing and not by hearing the public at a physical gathering. The intent of these guidelines is to ensure uniformity and consistency in consideration of cases for expansion or modernisation of existing projects within the same project area. Its implementation would however be the key to assess whether the notification helps in making the clearance process less complicated or is used to circumvent scrutiny in any manner.

*(Source: Office memorandum dated 11<sup>th</sup> April, 2022 issued by The Ministry of Environment, Forests and Climate Change (“MoEFCC”))*

### **(2) UNION MINISTRY OF ROAD TRANSPORT AND HIGHWAYS HAS ISSUED THREE DRAFT NOTIFICATIONS PROPOSING AMENDMENTS IN THE REGULATORY FRAMEWORK RELATED TO SCRAPPING OF END-OF-LIFE VEHICLES**

The Union Ministry of Road Transport and Highways has issued three draft notifications proposing amendments in the regulatory framework related to scrapping of end-of-life vehicles. These notifications propose that the details regarding cancellation of registration of vehicles, issue of certificate of deposit and certificate of vehicle scrapping are updated on the Vahan portal and the national motor vehicle database in real time. These notifications are collectively intended to simplify and digitise the vehicle scrapping process for all stakeholders such as vehicle owners, registered vehicle scrapping facility (“RVSF”), dealers, Government authorities, etc. It also prescribes fixed timelines for the ease of doing business.

(Source:  
<https://www.mondaq.com/india/rail-road-cycling/1184584/vehicle-scraping-understanding-the-recent-draft-notifications> )

**(3) SUPREME COURT DIRECTS STATE OF ODISHA TO IMPLEMENT COMPREHENSIVE WILDLIFE MANAGEMENT PLAN IN THE ESZ AROUND KULDIHA WILDLIFE SANCTUARY BEFORE ALLOWING MINING IN THE AREA**

The Supreme Court of India (“Supreme Court”) has directed State of Odisha to implement Comprehensive Wildlife Management Plan in the Eco-Sensitive Zone (“ESZ”) around Kuldiha Wildlife Sanctuary, Odisha. The State was also directed to complete the process of declaration of the traditional elephant corridor as a conservation reserve under Section 36A of the Wildlife (Protection) Act, 1972. In this case, Supreme Court was considering the appeal against an order passed by the National Green Tribunal (“NGT”) to stop mining activities in the vicinity of Hadgarh - Kuldiha - Similipal Elephant Corridor in Odisha. The area in the vicinity of mining activities was declared as an ESZ by MoEFCC, which also covered the corridor used by elephants linking Kuldiha Wildlife Sanctuary of Balasore district and Hadgarh Wildlife Sanctuary of Keonjhar district. The Court noted the submissions of the original applicant before NGT that mining activity cannot be permitted in the vicinity of ESZ unless the Comprehensive Wildlife Management Plan is implemented under the Act, as suggested by the Standing Committee of National Board for Wildlife while recommending these mining activities in the ESZ. Accordingly, Court directed the State Government to ensure these aspects before mining operations can be permitted.

(Source: *Binay Kumar Dalei & Ors. v. State of Odisha & Ors., Civil Appeal Nos. 1627-1628 of 2022*)

**(4) SUPREME COURT DISMISSES APPEAL CHALLENGING GRANT OF EC FOR BEING BARRED BY LIMITATION**

The Supreme Court has dismissed an appeal filed to challenge an Environmental Clearance (“EC”) on the ground of it being barred by limitation. The Court observed that EC was issued on 1 May 2008, prior to the enforcement of the National Green Tribunal Act, 2010 (“NGT Act”) but the appellant took no steps to challenge it. In its judgment dated 02 August, 2013 passed in the appeal challenging this EC, the NGT had dismissed the appeal as barred by limitation. The appellant further submitted that it had also challenged the State Government’s notification before the NGT under which the use of the said land was changed to industrial purpose. NGT stated that it has no jurisdiction under the NGT Act to entertain challenge to such notification altering the land use. Supreme Court noted that the challenge to this notification will be within the NGT’s jurisdiction as the land use change will violate a condition prescribed in the EC. In this respect, the Court remitted the matter back to NGT to determine whether challenge to the notification can be entertained considering the statutory limitation prescribed under the NGT Act.

(Source: *Raza Ahmad v. State of Chhattisgarh & Ors., Civil Appeal No. 2804 of 2014*)

**(5) BOMBAY HIGH COURT ALLOWS  
TATA POWER TO IMPLEMENT  
POWER TRANSMISSION LINE  
PROJECT PASSING THROUGH  
MANGROVE BUFFER ZONE IN  
MUMBAI**

The High Court of Bombay has directed Government authorities to permit petitioners including Tata Power Company Ltd. to implement the project for 220 KV transmission line between Kalwa and Salsette. The Court noted that petitioners have requisite initial permissions including CRZ clearance and Stage-I forest clearance. The Court noted that the project will pass through the mangrove buffer zone in Mumbai. They have undertaken the EIA study regarding the possible impact of the project on mangroves in the existing right of way, and compliance with mitigation measures suggested in the report will be ensured. The Court observed that destruction of forest/ mangroves can only be permitted for a project which is necessary for public good and is a project of bonafide public utility. It noted that electricity supply is an essential service under the Essential Services Maintenance Act, 1968.

*(Source: Tata Power Company Limited & Ors. v. Union of India & Ors., Writ Petition No. 1207 of 2022)*

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