

MONTHLY NEWSLETTER

JULY 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.

Regards,
Team Lexport



ABOUT US

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.

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RBI & FEMA

- (1) RBI RELEASES AN UPGRADED MASTER DIRECTION ON LENDING TO THE MSME SECTOR (MICRO, SMALL, AND MEDIUM-SIZED ENTERPRISES).**



The Master Direction on Lending to the Micro, Small and Medium Enterprises Sector has been modified by the Reserve Bank of India as of July 29, 2022. This update adds a new definition to the phrase "priority sector and adjusted net bank credit" (ANBC), and it notifies on the updates under chapter-II of the MSME act 2006.

Businesses are now required to register online on the Udyam Registration portal and get a "Udyam Registration Certificate." For the limited purpose of priority sector loans, retail and wholesale trade are considered MSMEs and are eligible to register on the Udyam Registration Portal.

(Source: RBI RBI/FIDD/2017-2018/56 updates as on 29th July 2022)

- (2) RBI NOTIFIES RESTRICTION ON STORAGE OF ACTUAL CARD DATA.**

On July 28, 2022, the Reserve Bank of India issued a notification stating that effective of October 1, 2022, only the card issuers and/or card networks may maintain CoF (card-on-file) data, and any such data previously held must be erased.

The RBI has advised that there shall be no change in the effective date of implementation of the requirements - all entities, except for card issuers and card networks, shall purge the CoF data before October 1, 2022 - based on a review of the pertinent issues and after thorough discussions with all stakeholders.

(Source: RBI Press Release 2022-2023/95 dated 28th July 2022)

- (3) RBI ANNOUNCES RATE OF INTEREST ON FLOATING RATE SAVINGS BOND, 2020**

The Rate of Interest on Floating Rate Savings Bond, 2020 (Taxable) - FRSB 2020 (I) for the Period of July 1, 2020, till December 31, 2022, has been released by the RBI. In light of this, the coupon rate on the FRSB 2020 (I) continues at 7.15% (6.80% +0.35%) for the period of July 1, 2022 to December 31, 2022, and is due on January 1, 2023.

Beginning on January 1st, 2021, RBI will reset the bond's coupon/interest rate every six months. This new rate will have a (+) 35 bps spread above the current NSC rate.

(Source: RBI circular dated 1st July, 2022)

- (4) RBI REVISES REGULATORY FRAMEWORK FOR URBAN CO-OPERATIVE BANKS (UCBs).**

For urban cooperative banks, the RBI has implemented a four-tiered regulatory structure based on the size of the banks' deposits and the region in which they operate. An expert committee was established by the RBI to investigate the problems facing the urban co-operative banking industry, offer a medium-term road map, identify actions to speed up UCB resolution, and make appropriate regulatory and supervisory adjustments for the sector's improvement.

The Committee, among other things, suggested a four-tiered regulatory structure depending on the size of the banks' deposits and the regions in which they operate. For important factors such as net worth, the Capital to Risk-weighted Assets Ratio (CRAR), branch expansion, and exposure limitations, a differentiated regulatory approach was primarily advised. The suggestions also contained a crucial component that spoke to belonging to an umbrella organisation (UO).

(Source: RBI press release 2022-2023/561 dated 19th July 2022)

FOREIGN TRADE

(1) THE FOREIGN CONTRIBUTION (REGULATION) AMENDMENT RULES, 2022.

The Foreign Contribution (Regulation) Amendment Rules, 2022, which further update the Foreign Contribution (Regulation) Rules, 2011, was issued by the Ministry of Home Affairs on July 1, 2022. The time required for notifying the government about an international transaction has been increased through the amendment from 30 days to three months.

The disclosure of receiving foreign funds from relatives is covered by Rule 6. According to this amendment, "any person receiving foreign contribution from any of his relatives in excess of 10 lakhs or equivalent in a financial year shall report the Central government (details of funds) within three months from the receipt of such contribution."

(Source: Extraordinary No. 472, dated 1st July 2022)

(2) DGFT EXEMPTS IGST AND COMPENSATION CESS FOR IMPORTS UNDER EXPORT INCENTIVE SCHEMES

The IGST and Compensation Cess have been waived by the Directorate General of Foreign Trade (DGFT) for imports made under certain export incentive programmes, such as the Advance Authorization Scheme, Export

Promotion of Capital Goods Scheme, and Export-Oriented Units Scheme.

According to a circular dated 1 April 2022, IGST and Compensation Cess for imports under the programmes were previously exempt until June 30, 2022. This is being offered as yet another easing of restrictions to help MSMEs and other importers cope with the effects of the Covid-19 pandemic aftershock.

(Source: Notification no. 37/2022 dated 30th June 2022)

(3) IMPORT MONITORING SYSTEM (PIMS) TO COME INTO EFFECT FROM 1ST OCTOBER, 2022.

The paper monitoring system (PIMS) will come into effect from October 1st, 2022, as announced by the Directorate General of Foreign Trade (DGFT) on July 12th, 2022. By changing the import policy of major paper products from "Free" to "Free subject to mandatory registration under PIMS," the DGFT developed the Paper Import Monitoring System (PIMS). Beginning, July 15, 2022, there will be an online registration option.

A large variety of paper products encompassing 201 tariff lines will be subject to the PIMS when imported by a Domestic Territory Area unit; these products will not be subject to the requirement to register.

(Source: Notification no. 41/2015-20 dated 5th July 2022)

CORPORATE LAWS

(1) NSE HAS NOTIFIED A NEW MODULE FOR FILING OF INFORMATION REQUIRED UNDER REGULATION 46 AND 62 OF SEBI



On July 11, 2022, the National Stock Exchange of India issued a directive requiring listed companies to submit the information requested by Regulations 46 and 62 of the Listing Regulations by July 18, 2022. The listed entities are expected to maintain a functional website that contains basic information about the Company in accordance with Regulations 46 and 62 of the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulation, 2015.

The Exchange has created a new module in NEAPS (NSE Electronic Application Processing System) that requires all listed firms to give the URLs of the information required under Regulations 46 and 62 of the Listing Regulations in order to ensure effective enforcement of the Listing Regulations.

(Source: NSE circular NSE/CML/2022/35 dated 11th July 2022)

(2) THE INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (BANKING) (AMENDMENT) REGULATIONS, 2022.

In order to further change the International Financial Services Centres Authority (Banking) Regulations, 2020, the International Financial Services Centres Authority (Amendment) Regulations, 2022 were released on June 29, 2022. At order to carry out any one or more of the following activities, a financial institution established by its Parent Bank in an IFSC is referred to as a "Global Administrative Office" or "GAO." A Parent Bank may establish its Representative Office or Global Administrative Office in the IFSC under an acceptable procedure in accordance with regulation 3(9), subject to any conditions the Authority may specify.

(Source: Extraordinary no.332 dated 30th June 2022)

(3) PRECIOUS ENERGY SERVICES V. REGIONAL DIRECTOR

Precious Energy Resources ("Appellant") had filed an application under Section 66 of the Companies Act, 2013 for reduction of share capital which was dismissed by the NCLT. It based its verdict on the fact that such reduction would be against the interests of

the shareholders, given the Appellant's negative net worth and high borrowings.

Thereafter, the Appellant filed an appeal with the NCLAT which set aside the order of the NCLT and allowed the reduction. It observed that the reduction had been approved by the shareholders via a special resolution. It held that the reduction of capital was the domestic concern of a company which could not be interfered with. If the reduction is compliant with the relevant statutory requirements, is not inequitable or unjust, and does not prejudice any creditor, the application must be approved. In the present case, the negative financials of a company did not hold any value since the reduction had been approved by the shareholders.

(Source: Precious Energy Services Ltd. v. Regional Director North-Western Region, Ministry of Corporate Affairs, Company Appeal (AT) No. 17 of 2021, NCLAT)

(4) VIDARBHA INDUSTRIES POWER V. AXIS BANK

In the present case, Axis Bank had filed an application under Section 7 of the IBC for commencement of CIRP of Vidarbha Industries ("Corporate Debtor"). The Corporate Debtor sought a stay on further proceedings which was dismissed by the NCLT and subsequently the NCLAT.

On appeal, the Supreme Court set aside the order of the NCLAT holding that Section 7(5)(a) confers discretionary power on the Adjudicating Authority to initiate a CIRP process. It observed that the provision used the word 'may' instead of 'shall', giving it a discretionary character. It was further held that the CIRP must only be initiated after considering the overall financial health of the corporate debtor.

(Vidarbha Industries Power Ltd. v. Axis Bank Ltd., Civil Appeal No. 4633 of 2021, Supreme Court)

SECURITIES LAWS AND CAPITAL MARKETS

(1) SPECIAL ECONOMIC ZONES (SECOND AMENDMENT) RULES, 2022



The Special Economic Zones (Second Amendment) Rules, 2022 have been released by the central government. Any Unit authorised to store bullion as the underlying asset for the issuance of a bullion spot delivery contract or bullion depository receipt with the underlying bullion that is traded in a bullion exchange shall be deemed to be in an International Financial Services Centre, according to the amendment.

(Source: Extraordinary no. 481 dated 6th July 2022)

(2) LEVY OF GOODS & SERVICES TAX (GST) ON THE FEES PAYABLE TO SEBI.

SEBI (The Securities and Exchange Board of India) has announced that, starting on July 18, 2022, all fees paid by Market Infrastructure Institutions, companies that have listed their securities or intend to list them, other intermediaries, and individuals who deal in the securities market will be subject to GST at the rate of 18%.

(Source: Circular No. SEBI/HO/GSD/TAD /CIR/P/2022/0097 dated 18th July 2022)

(3) THE SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (FIFTH AMENDMENT) REGULATIONS, 2022.

The Securities and Exchange Board Board of India published the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022 on July 25, 2022. Through this amendment, the S&E Board of India added "Zero Coupon Zero Principal Instruments" to the definition of Securities and notified a new chapter IX-A that addresses the obligations of social enterprises. Chapter IX-newly A's added Regulations 91B, 91C, 91D, 91E, and 91F require these social enterprises to make disclosures to the stock exchange (s)

(Source: Extraordinary no. 371 dated 23rd July 2020)

COMPETITION LAWS

(1) CCI APPROVES ACQUISITION BY SHREM INVIT OF EQUITY IN TEN ROAD INFRASTRUCTURE PROJECTS (TARGET SPVs) FROM DILIP BUILDCON LIMITED (DBL) AND ITS ASSOCIATES UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002

The Acquirer would purchase all of the equity in the Target SPVs as part of the Proposed Combination. Additionally, certain Shrem InvIT units must be issued to DBL and its affiliates as payment for the transaction. Shrem InvIT is a trust that has been registered with SEBI and the Indian Trusts Act of 1882 in accordance with the 2014 InvIT Regulations. It was established with the intention of performing the functions of an infrastructure investment trust.

(Source: Press release no. 17/2022-2023 dated 11th July 2022)

(2) CCI APPROVES INCREASE IN PROPORTION OF VOTING RIGHTS HELD BY CPPIB IN RENEW ENERGY GLOBAL

The As a result of the repurchase programme to buyback Class A Ordinary Shares (i.e., shares carrying voting rights) announced by ReNew, the proposed combination anticipates an increase in the

proportion of voting rights held by Canada Pension Plan Investment Board (CPPIB) in ReNew Energy Global plc. (ReNew) (Buyback). The Buyback is anticipated to reduce the total number of voting shares of ReNew, which could result in a proportional rise in the percentage of voting rights owned by CPPIB.

(Source: Press Release No. 20/2022-23, dated 15th July 2022)

(3) CCI ISSUES CEASE AND DESIST ORDER AGAINST TRAILER OWNER ASSOCIATIONS BASED IN CHENNAI FOR INDULGING IN ANTI-COMPETITIVE PRACTICES

Ten Trailer Owner Associations (TOAs) were the subject of a final order from the Competition Commission of India (CCI) today after it was determined that they had violated the anti-competitive agreement-prohibiting provisions of Sections 3(3)(a) and 3(3)(b) read with Section 3(1) of the Competition Act, 2002 (the "Act"). The ten TOAs were deemed by CCI to have violated Section 3(3)(a) and 3(3)(b) of the Act when read with Section 3(1) based on the facts in the record. As a result, the Commission gave the TOAs orders to stop engaging in behaviors that were determined to be in violation of Section 3 of the Act.

(Source: Press release no.22/2022-2023 dated 21st July 2022)

(4) CCI APPROVES ACQUISITION OF STAKE IN TATA POWER RENEWABLE ENERGY LIMITED BY GREENFOREST NEW ENERGIES BIDCO LIMITED

The proposed combination entails Greenforest purchasing up to 11.43% of TPREL's equity share capital and internal reorganization at TPREL. For the purpose of carrying out the Proposed Combination, BlackRock Alternatives Management, LLC (BAM) and Mubadala Investment Company PJSC (MIC) indirectly created Greenforest New Energies Bidco Limited (Greenforest).

(Source: Press Release No. 23/2022-23, dated 26th July 2022)

INDIRECT TAXES AND CUSTOMS

(1) COURIER IMPORTS AND EXPORTS (ELECTRONIC DECLARATION AND PROCESSING) AMENDMENT REGULATIONS, 2022

The Central Board of Indirect Taxes and Customs issued the Courier Imports and Exports (Electronic Declaration and Processing) Amendment Regulations, 2022. It revised Conditions and restrictions shall be complied with for re-import of returned jewelry exported through the courier mode on an e-commerce platform

(Source: Notification no. 57/2022 – customs dated 30th June 2022)

(2) CENTRAL GOODS AND SERVICES TAX (AMENDMENT) RULES, 2022



The Central Board of Indirect Taxes and Customs issued the Central Goods and Services Tax (Amendment) Rules, 2022.

According to this amendment, the proper officer must order in FORM GST PMT-03A that an amount equal to the registered person's deposited erroneous refund be re-credited to the electronic credit ledger. This happens when the registered person deposits the amount of erroneous refund sanctioned to him through FORM GST DRC-03 by debiting the electronic cash ledger on their own or after being alerted. The CBIC has said by notification that the time frame from March 1, 2020, to February 28, 2022, is excluded from the computation of the statute of limitations for the

issuance of an order for the recovery of an incorrect refund.

(Source: Notification no. 14/2022 – central tax dated 5th July 2022)

(3) RAJASTHAN GOODS AND SERVICES TAX (AMENDMENT) RULES, 2022

The Rajasthan Goods and Services Tax (Amendment) Rules, 2022 were released by the Rajasthan Finance Department on July 16, 2022. The amendment adds that "where the supplies made during a tax period are reported by the registered person in the return for the said term and the said return is submitted after the due date, the interest on tax payable in respect of such supplies must be computed on the portion of tax which is paid by debiting the electronic cash ledger, for the time of delay in filing the said return beyond the due date, at such rate as may be notified."

(Source: Notification of tax division dated 16th July 2022)

(4) GOA GOODS AND SERVICES TAX (AMENDMENT) ACT, 2022

The Goa Goods and Services Tax (Amendment) Act, 2022 was passed by the Goa Legislative Assembly on July 21, 2022. According to the amendment, every registered person will have the right to claim the credit of qualifying input tax, as self-assessed, in his return, and such amount will be credited to his computerised credit ledger, subject to any limitations or restrictions that may be prescribed.

(Source: Series I No.16 dated 21st July 2022)

(5) THE CUSTOMS AUTHORITY FOR ADVANCE RULINGS (AMENDMENT) REGULATIONS, 2022.

The Customs Authority for Advance Rulings Regulations, 2022, which further amends the Customs Authority for Advance Rulings Regulations, 2021, were published by the Ministry of Finance on July 20, 2022. The amendment is made in accordance with regulation 6, which is

concerned with the format and method of applications for advance rulings.

(Source: Extraordinary no. 526 dated 25th July 2020)

(6) RAMESH KUMAR PATODIA V. CITI BANK

Citi Bank ("Respondent") had issued a valid credit card to Ramesh Kumar Patodia ("Petitioner"). The Petitioner availed a loan with interest which was above the credit limit of the credit card. The petitioner protested against the levy of IGST on the interest of the EMI.

The Calcutta High Court held that the loan granted on the credit card came within the ambit of 'supply' as defined in Section 7 of the CGST Act and the interest calculated on the same was not exempt from GST.

(Ramesh Kumar Patodia v. Citi Bank NA & Ors., WPO 547 of 2019, Calcutta High Court)

(7) VODAFONE IDEA LTD. V. UNION OF INDIA

Vodafone Idea ("Petitioner") was engaged in providing International Inbound Roaming services to Foreign Telecom Operators ("FTO"). The Bombay High Court held that such services to FTOs would qualify as export of services as the place of supply is outside India. It noted that the Petitioner was contractually obligated only to the FTO and not its subscribers. Thus, Section 13(2) of the IGST Act would be attracted and the place of supply of services shall be the location of receipt of services, i.e., the foreign country. The Petitioner was able to claim refund of IGST on its exported services.

(Vodafone Idea Ltd. v. Union of India & Ors., Writ Petition No. 3221 of 2021, Bombay High Court)

INTELLECTUAL PROPERTY **RIGHTS**

(1) MOCI DIRECTS PATENTEES AND LICENSEES TO COMPLY WITH THE PROVISIONS OF SECTION 146(2) OF THE PATENTS ACT, 1970.

All patentees and licensees are required by the Ministry of Commerce and Industry to abide by Section 146(2) of the Patents Act of 1970 and provide information in Form-27 of the Patents Rules of 2003 within the time frame specified. According to section 146(2), every patentee and every licensee (whether exclusive or otherwise) shall provide statements as to the extent to which the patented invention has been worked on a commercial scale in India in the manner and form and at the intervals (not being less than six months) as may be prescribed.

The statements that must be provided by each licensee and patentee in accordance with section 146, subsection (2), and must be properly confirmed by the licensee or patentee or his authorised representative. Within three months after the end of each calendar year, the statements must be provided in regard to that year.

(Source: public notice dated 30th June 2022)

(2) NOVO NORDISK V. UNION OF INDIA

In the present case, certain post-grant oppositions were filed against Novo Nordisk's ("Petitioner") patent. The opposition proceedings dragged on for over 8 years as both parties filed several expert evidence, replies and rejoinders after the completion of the initial pleadings.

The proceedings became the subject matter of a Writ Proceeding before the Delhi High Court. The Court held that the opposition proceedings must be decided in an expeditious manner in accordance with the timelines stipulated in the Patent Rules, 2003. It further held that additional evidence can only be filed in exceptional circumstances. Ultimately, the Court restrained the parties from filing further evidence and directed the Patent office to decide the case by September 30, 2022.

(Source: Novo Nordisk AS v. Union of India & Ors., W.P.(C)- IPD 19/2022, Delhi High Court)

(3) MONDELEZ INDIA FOODS V. NEERAJ FOOD PRODUCTS

Mondelez Foods ("Plaintiff") filed a suit seeking permanent injunction against Neeraj Food ("Respondent") for trademark and copyright infringement of its mark 'CADBURY GEMS'. The Respondents had launched a chocolate under the name 'JAMES BOND'.

The High Court held that the Respondent's product was deceptively similar to that of the plaintiffs. Upon comparing the overall structure of both marks, the court found several phonetic and visual similarities between the two and concluded that it would lead to a likelihood of confusion among the consumers.

(Mondelez India Foods Pvt. Ltd. v. Neeraj Food Products, CS(Comm) 393/2018, Delhi High Court)

ENVIRONMENT LAWS

(1) THE PLASTIC WASTE MANAGEMENT (SECOND AMENDMENT) RULES, 2022.

The Plastic Waste Management (Second Amendment) Rules, 2022, which further update the Plastic Waste Management (Second Amendment) Rules, 2016, were released by the Ministry of Environment, Forest, and Climate Change on July 6, 2022.

The definitions of the terms "biodegradable plastics," "end of life disposal," "importer," "plastic packaging," "waste to energy," and other terms have been made known through this amendment.

The protocols of the Indian Standards stated in Schedule I must be followed to determine the degree of degradation and degree of disintegration of plastic material. The biodegradable plastics must adhere to the standard announced by the Bureau of Indian Standards and recognised by the Central Pollution Control Board, and the compostable plastic materials must comply with IS / ISO 17088:2021, as revised from time to time.

*(Source:CG-DL-E-07072022-237182
Extraordinary no. 484 dated 7th July 2022)*

(2) PROPOSAL FOR DECRIMINALIZATION OF PUBLIC LIABILITY INSURANCE ACT, 1981



A proposal to alter the Public Liability Insurance Act of 1981 has been made public by the Ministry of Environment, Forestry, and Climate Change in a notice dated June 30, 2022, asking public and stakeholder feedback. The proposed change aims to decriminalise violations in order to do away with incarceration for breaking the law's requirements, lessen the burden of compliance on stakeholders, and promote ease of doing business.

(Source: press release no. 12/96/2020-HSM dated 30th June 2021)

(3) PROPOSAL FOR DECRIMINALIZATION OF AIR (PREVENTION AND CONTROL OF POLLUTION) ACT OF 1981

A proposal to amend the Air (Prevention and Control of Pollution) Act of 1981 was published by the Ministry of Environment, Forest, and Climate Change in a notice dated June 30, 2022, inviting public and stakeholder feedback. The proposed change aims to decriminalise violations in order to do away with incarceration for breaking the law's requirements, lessen the burden of compliance on stakeholders, and promote ease of doing business.

(Source: Public notice CP dated 30th June 2021)

(4) PROPOSAL FOR DECRIMINALIZATION OF WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974

A proposal to alter the Water (Prevention & Control of Pollution) Act, 1974 was issued by the Ministry of Environment, Forest, and Climate Change in a notice dated June 30, 2022, asking public and stakeholder feedback. The proposed change aims to decriminalise violations in order to do away with incarceration for breaking the law's requirements, lessen the burden of compliance on stakeholders, and promote ease of doing business.

(Source: Public Notice CP dated 30th June 2021)

(5) HAZARDOUS AND OTHER WASTES (MANAGEMENT AND TRANSBOUNDARY MOVEMENT) AMENDMENT RULES, 2022

The Hazardous and Other Wastes (Management and Transboundary Movement) Amendment Rules, 2022 were released by the Ministry of Environment, Forest, and Climate Change by notification dated July 21, 2022. The amendment mandates that the Central Pollution Control Board create the site in order to create an online system for recycler reporting of monthly data, extended producer responsibility certificate generation, and quarterly return filing.

*(Source:CG-DL-E-22072022-237454
extraordinary no 520 dated 21st July 2022)*

[End of Newsletter]
