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MONTHLY NEWSLETTER NOVEMBER 2023

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 <u>www.lexport.in</u>.

OUR LEGAL TEAM

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BANKING LAWS & FEMA

S. No.	Particulars	Link
1.	Sovereign Gold Bond (SGB) Scheme 2023-24	<u>CLICK HERE</u>
	The Government of India, in consultation with the Reserve Bank of India, has decided to issue Sovereign Gold Bonds (SGBs) in two tranches for 2023-24. The SGB 2023-24 Series III will be open for subscription from December 18-22, 2023. The date of issuance for this SGB tranche is December 28. The second tranche of the Sovereign Gold Bonds scheme will be open for subscription from February 12-16, 2024, and will be issued on February 21, 2024.	
	The Government of India introduced the Sovereign Gold Bond (SGB) Scheme in November 2015 to offer an alternative investment to physical gold.	
2.	The Government of Rajasthan has notified formation of 19 new districts in the state of Rajasthan. The RBI accordingly decided to designate Lead Banks for the new districts.	<u>CLICK HERE</u>
	Lead banks are crucial in promoting financial inclusion by extending banking services to unbanked and underserved areas. They monitor the flow of credit and evaluate the progress of various credit-linked government schemes and programs.	
3.	Regulatory measures towards consumer credit and bank credit to NBFCs	CLICK HERE
	RBI has issued Regulatory measures towards consumer credit and bank credit to NBFCs. it has been decided to affect the following measures as under:	
	a. It has been decided to increase the risk weights in respect of consumer credit exposure of commercial banks (outstanding as well as new), including personal loans by 25 percentage points to 125 per cent.	
	b. The risk weights on credit card exposures have been increased by 25 percentage points to 150 per cent and 125 per cent for banks and NBFCs, respectively.	
	c. The new regulations, however, will not be applicable to housing loans, education loans, vehicle loans, and gold loans.	



S. No.	Particulars	Link
4.	RBI permitted banks to open additional current accounts for export proceeds in	
	addition to special rupee vostro accounts with a view to providing greater operational	
	flexibility to exporters.	

CORPORATE LAWS, SECURITIES LAWS AND CAPITAL MARKETS

S. No.	Particulars	Link
1.	Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023	CLICK HERE
	The Ministry of Corporate Affairs notified the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 mandating every Limited Liability Partnership ('LLP') to find out if any of the individuals is a significant beneficial owner in relation to reporting LLP and on identification, such individual has to make a declaration.	
	key points:	
	(a) The definition of Significant Beneficial Owner ('SBO') has been laid down.	
	(b) Duties of reporting LLP:	
	To find out if there is any individual who is an SBO, in relation to that reporting limited liability partnership, and if so, identify him and cause such individual to make a declaration in Form No. LLP BEN-1.	
	(c) Declaration of SBO:	
	Declaration to be made in Form No. LLP BEN-1 to reporting LLP within 90 days from commencement on these rules.	
	(d) Return of SBO in contribution:	
	After receiving the declaration, the reporting LLP will have to file a return in Form No. LLP BEN-2 with the Registrar within 30 days from the receipt of such declaration.	
	(e) Notice seeking information about SBO to be made in the Form No. LLP BEN-4.	
2.	The Securities and Exchange Board of India ('SEBI') has introduced a standard "Most Important Terms and Conditions" ('MITC') which will be given by the brokers to the clients to bring into focus critical aspects of broker-client relationship and for ease of understanding of the clients.	<u>CLICK HERE</u>
	Key Points:	
	(a) Brokers' Industry Standard Forum ('ISF') will have to publish the form, nature of communication, documentation, and detailed standards for implementation of MITC on or before 1-1-2024.	
	(b) The date of implementation and compliance for the new onboarding clients will be 1-4-2024.	



S. No.	Particulars	Link
3.	SEBI has issued a circular for simplification and streamlining of Offer Documents of Mutual Fund Schemes. The revised format of SID placed in Annexure 'A'.	CLICK HERE
	The revised format for SID, KIM and SAI shall be adopted as per following timelines:	
	(a) Updated format for SID/KIM/SAI to be implemented w.e.f. April 01, 2024.	
	(b) Draft SIDs to be filed with SEBI on or before March 31, 2024 or SIDs already filed with SEBI (final observations yet to be issued) or SIDs for which the final observations have already been received from SEBI (if launched on or before March 31, 2024), can use the old format of SID, provided that the SIDs are updated as per timeline mentioned at (c) below.	
	(c) For Existing SIDs – by April 30, 2024, with data as on March 31, 2024.	
4.	The IBBI has issued a Discussion paper on amendments to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Process) Regulations, 2016 on 1st November 2023. This discussion paper solicits comments on following issues, namely: –	
	a. Approval of committee of creditors (CoC) for insolvency resolution process cost;	
	b. Monthly CoC meetings;	
	c. Discussion of valuation methodology and report with CoC;	
	d. Disclosure of valuation reports;	
	e. Continuation of process activities pending disposal of extension application by the Adjudicating Authority (AA);	
	f. Clarity in minimum entitlement to dissenting financial creditors;	
	g. Mandatory contents of resolution plan.	
	Comments may be submitted electronically by 22nd November 2023.	
5.	SEBI has issued Simplified norms for processing investor's service requests by RTAs and norms for furnishing PAN, KYC details and Nomination.	CLICK HERE
	Key Points:	
	a. Reference to the term 'freezing/ frozen' has been deleted.	
	b. Referral of folios by the RTA/listed company to the administering authority under the Benami Transactions (Prohibitions) Act, 1988 and/or Prevention of Money Laundering Act, 2002, has been done away with.	
	c. Stock Exchanges, Depositories, RTAs and listed companies are advised to:	
	• Comply with the conditions laid down in this circular;	
	• Make necessary amendments to the relevant bye-laws, rules and regulations, operational instructions, as the case may be, for the implementation of the above circular; and	
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. No.	Particulars	Link
	• Bring the provisions of this circular to the notice of their constituents and also disseminate the same on the website.	
	Communicate and create awareness amongst stakeholders.	
6.	SEBI bans 'Baap of Chart' owner from securities market; orders to deposit Rs. 17.2 Cr	CLICK HERE
	Facts:	
	Mohammad Nasiruddin Ansari ('Nasir') used to provide recommendations to buy and sell securities in the securities market. He was the sole proprietor of the firm "Baap of Chart" ('BoC'). Nasir promoted himself as a stock market expert on various social media platforms which lured investors/ clients to enroll for various 'educational courses' offered by him and induced them to invest in securities market by promising them the prospect of making profits with near certainty if the recommendation/ advice was followed.	
	Observations:	
	It was observed that Nasir has uploaded his 'educational courses' on website/ apps through the application services provided by Bunch Microtechnologies Private Limited wherein he was collecting money for enrolment in the said courses and providing access to his 'classes' to investors/ clients.	
	Nasir was also found to be providing buy/ sell recommendations in private groups of his investors/ clients.	
	Further, it was observed that the amount collected for 'educational courses' was credited into the bank accounts of Nasir, BoC, Golden Syndicate Ventures Pvt. Ltd. (company in which Nasir is a significant shareholder) and P. Rahul Rao (another significant shareholder of Golden Syndicate Ventures Pvt. Ltd.). Razorpay being his payment aggregator.	
	The Board observed that through the videos/ pictures posted on his YouTube Channel/ Twitter, Nasir was luring people to enrol for his 'educational courses' offered through a website/ application.	
	Order:	
	Mohammad Nasiruddin Ansari, Rahul Rao Padamati and Golden Syndicate Ventures Pvt. Ltd. were directed to:	
	a. Temporarily cease and abstain from securities market.	
	b. To deposit an amount of Rs. 17.2 crores in an escrow account within 15 days.	
7.	Principal Commissioner of Customs V Rajendra Prasad Tak & Ors., CIVIL APPEAL NOS. 6432-6433 OF 2023	CLICK HERE
	The Supreme Court has clarified that the dues of the Central Board of Indirect Taxes & Customs, Department of Revenue, will be paid as per the waterfall mechanism given under Section 53 of the Insolvency and Bankruptcy Code, 2016.	
8.	Dilip B Jiwrajka v. Union of India and others, Surendra B. Jiwrajika and Anr. vs. Omkara Assets Reconstruction Private Limited SLP(C) No. 016464/2021.	CLICK HERE



S. No.	Particulars	Link
	The Supreme Court upheld the constitutionality of the provisions of the Insolvency and Bankruptcy Code relating to Personal Guarantors' Insolvency Resolution, which were introduced through the amendments made in 2019. The Court held that Sections 95 to 100 IBC cannot be held as unconstitutional for not	
	affording an opportunity of hearing to the personal guarantors before the insolvency petition filed by creditors is admitted against them and the moratorium is automatically applied against them as soon as the insolvency petition is filed.	
9.	Ramkrishna Forgings Limited v Ravindra Loonkar & Anr., Civil Appeal No.1527 OF 2022	<u>CLICK HERE</u>
	The Supreme Court has held that when the National Company Law Tribunal exercises its power under Section 31(2) of the Insolvency and Bankruptcy Code, 2016 to not approve a resolution plan, then a reasoned order must be passed. It was emphasized that recording of cogent reasons while passing an order is the duty of Courts and Tribunals. The Supreme Court has set aside an order whereby the NCLT kept the approval of a resolution plan in abeyance while directing the Official Liquidator to conduct re-valuation of the Corporate Debtor's assets.	
10.	Sanjay Pandurang Kalate vs. Vistra ITCL (India) Ltd., Company Appeal (AT)(Insolvency) No. 742 of 2023	CLICK HERE
	The National Company Law Appellate Tribunal, Principal Bench, New Delhi held that the scope and jurisdiction of National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 being summary in nature is distinctly not as extensive as that of a civil court to enquire into disputes arising out of MoUs and related specific performance.	

INDIRECT TAX

S. No.	Particulars	Link
1.	The Central Board of Indirect Taxes and Customs has clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises it forms a part of the composite supply and shall be taxed accordingly.	<u>CLICK HERE</u>
2.	The Central Board of Indirect Taxes and Customs has clarified that District Mineral Foundations Trusts (DMFTs) set up by the State Governments are eligible for GST exemptions.	<u>CLICK HERE</u>
3.	The Central Board of Indirect Taxes and Customs has clarified that 5% GST is applicable on job work for processing of "barley" into "malted barley".	<u>CLICK HERE</u>
4.	The Central Board of Indirect Taxes and Customs has laid down the conditions for filing an appeal against the order in FORM GST APL-01. An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.	<u>CLICK HERE</u>



S. No.	Particulars	Link
5. INO. 5.	M/S Galaxy Enterprises v. State Of U.P. And 2 Others [WRIT TAX No 1412 of 2022]	<u>CLICK HERE</u>
	The Allahabad High Court has held that once rectified/ corrected tax invoices and e- way bills are produced before the authorities before passing of the detention/ seizure order, the proceedings under the Goods and Service Tax Act, 2017 ought not to be initiated.	
6.	BT (India) Private Limited Vs. UOI, W.P.(C) 13968/2021	CLICK HERE
	The Delhi High Court has held that a CENVAT credit refund cannot be denied in the absence of the self-assessed return having been questioned, reviewed or re-assessed. The Court has observed that a self-assessed return also amounts to an "assessment" and unless it is varied or modified in accordance with the procedure prescribed under the relevant statute, it cannot possibly be questioned in refund proceedings.	
7.	Care College of Nursing and others. vs Kaloji Narayana Rao University of Health Sciences, WP.34617 of 2022 & Batch.	CLICK HERE
	The Telangana High Court has held that GST exemption as granted under Notification No.12 of 2017 of the GST Act, 2017 to the institutions providing education services does not cover Affiliation fee and Inspection fee paid by the College to the University. The bench clarified that the notification of 2017 allows exemption only for 3 categories, namely: students, faculty and staff. The Bench put forward that exemption cannot be inferred and claimed only when specifically granted.	
8.	M/s. Lenovo (India) Pvt. Ltd. Vs. JCIT, W.P. Nos.23604, 23605 and 23607 of 2022	CLICK HERE
	The Madras High Court has held that the 2-year limitation to file a GST refund application is a directory and not mandatory. The bench observed that the terms used in Section 54(1) of the CGST Act "may make application before two years from the relevant date in such form and manner as may be prescribed", means that the assessee may make application within two years, and it is not mandatory that the application has to be made within two years, and in appropriate cases, refund applications can be made even beyond two years. The time limit fixed under Section 54(1) is directory in nature and is not mandatory. Therefore, even if the application is filed beyond the period of two years, the legitimate claim of refund by the assessee cannot be denied in appropriate cases.	
9.	M/s. SNQS International Socks Private Limited Vs. Commissioner of G.S.T. and Central Excise, Service Tax Appeal No. 41459 of 2019	CLICK HERE
	The Chennai Bench of Customs, Excise, and Service Tax Appellate Tribunal has held that the services of procuring export orders from foreign buyers for manufacturers who supplied garments are not 'intermediary' services. The bench has observed that since all these services are rendered by the appellant to its foreign client as per the direction of the foreign client—not only procurement of goods but selection of vendors, monitoring quality of the goods produced, designing of samples, live testing of the samples produced, and carrying out various other quality checks on the garments till their final dispatch to the foreign client—the appellant has thus undertaken a bouquet of services that is not mere selling or purchasing of goods.	
10.	Andhra Pradesh Technology Services Ltd Versus Commissioner of Central Tax Hyderabad - II, Service Tax Appeal No. 361 of 2008	<u>CLICK HERE</u>
	Customs, Excise, and Service Tax Appellate Tribunal, Hyderabad bench has held that the income from digital software and certificates, xeroxing and printing, and the sale	



S. No.	Particulars	Link
	of tender forms is not included in the category of business auxiliary services. The appellant only helps government departments and organizations obtain different IT-related hardware and services; in exchange, they charge certain administrative fees. Consequently, the appellant's services do not fall under the definition of "commission agent" and are therefore not considered "business auxiliary services".	
11.	M/s Modi Naturals Ltd v The Commissioner of Commercial Tax UP, 2023 INSC 974	<u>CLICK HERE</u>
	The Appellant, M/s Modi Naturals Ltd. is a manufacturer of Rice Bran Oil ("RBO") and Physical Refined RBO is a registered dealer under the UP-VAT Act. The RBO so manufactured by the appellant falls under "taxable goods" under the UP-VAT Act. The RBO is manufactured by a "Solvent Extraction Process", which also produces De-Oiled Rice Bran ("DORB") as a by-product, which is categorized as VAT exempted goods under S. No. 4 of Schedule – I of the UP-VAT Act.	
	The issue before the Court was whether the Appellant was entitled to claim the full amount of tax paid towards the purchase of raw Rice Bran as ITC on the basis of Section 13(1)(a) read with S. No. 2(ii) of the Table appended thereto and Section 13(3)(b) read with Explanation (iii) of Section 13 of the UP-VAT Act.	
	The Hon'ble Apex Court observed that Section 13(1)(a) of UP VAT Act clarifies that in cases where the purchased goods (such as Rice Bran) are used in the manufacture of taxable goods (such as RBO and physically refined RBO) except the non-VAT goods, and where such manufactured goods are sold within the State or in the course of inter-state trade and commerce, the registered dealers (such as the Appellant herein) are entitled to claim Input Tax Credit (ITC) of the full amount. Therefore, it was held the Appellant is entitled to claim the full amount of tax paid on the purchases as ITC, as per the UP-VAT Act.	

CUSTOMS, SEZ AND FOREIGN TRADE

S. No.	Particulars	Link
1.	M/s. Odisha Mining Corporation Limited Vs. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I, Customs Appeal No.75889 of 2017	<u>CLICK HERE</u>
	The appellant/assessee had a contract with an overseas buyer named M/s S.K. Resources Ltd. This contract involved the sale of 63,200 metric tons of iron ore fines. In order to proceed with the export of these goods, they submitted a shipping bill for customs clearance, and the bill was provisionally assessed on December 6, 2008. However, on December 7, 2008, Notification No. 129/2008-Cus, issued on December 7, 2007, came into effect. This notification granted an exemption from export duty for iron ore fines. The actual shipment of the cargo took place on December 18, 2008, which was after the implementation of the exemption notification. Given that the shipment occurred after December 7, 2008, the appellant reasonably believed that no export duty was applicable to the iron ore. As a result, they filed a refund claim on December 30, 2008, seeking a refund of Rs. 97,15,062. In the above facts Hon'ble Kolkata Bench of CESTAT has held that iron ore fines were exempted from payment of duty vide Notification No. 129/2008-Cus dated December 7, 2007.	



2.	Holyland Marketing Pvt Ltd Versus Commissioner of Customs (Import) ICD, Tughlakabad, New Delhi, Customs Appeal No. 54708 Of 2023	CLICK HERE
	The CESTAT, Delhi Bench, has held that canned pineapple slices are classifiable under Customs Tariff Heading No. 0804. The tribunal held that the classification of the canned pineapple slices would have to be decided as per the HSN explanatory notes and would therefore be appropriately classifiable under CTH 0804 only.	

INTELLECTUAL PROPERTY RIGHTS

S. No.	Particulars	Link
1.	Muneer Ahmad vs Registrar of Trademarks C.A.(COMM.IPD-TM) 20/2023	CLICK HERE
	The Delhi High Court overturned the decision by the registrar of trademarks that denied the appellant's registration application for the "Bharat" device mark. The initial rejection by the respondent was based on the belief that the mark lacked distinctive character and was ineligible for registration under Section 9(1)(a) or 9(1)(b) of the Trademarks Act. The court concluded that the respondent's evaluation did not consider the mark as a whole but only focused on individual components, leading to the decision of the registrar being set aside.	
2.	Aero Club v. M/S Sahara Belts CS(COMM) 189/2019	CLICK HERE
	Aero Club (Woodland) filed a suit seeking an injunction against the Defendant for selling counterfeit 'Woodland' products. The Defendant was proceeded against ex parte, and a Local Commissioner revealed over 11,000 seized counterfeit products. The Delhi High court found the Defendant selling infringing products with identical 'Woodland' marks and logos. The court decreed the suit, restraining the Defendant from selling such products. Damages of Rs. 100,000 were awarded due to known and deliberate infringement.	
3.	Zee Entertainment Enterprises Ltd. vs Mohalla Tech Private Limited CS(COMM) 745/2023	CLICK HERE
	In this copyright infringement case, the plaintiff prayed for an injunction against the defendant, claiming that the defendant continued to offer its copyrighted recordings on ShareChat and MojApp even after the license had expired. However, the plaintiff clarified that they had no objection to the defendant utilizing remixes or cover versions of its copyrighted content or user-generated content. The Hon'ble Delhi High Court issued a provisional injunction, prohibiting the defendant from making the specified works accessible on its platforms. Simultaneously, the Hon'ble court allowed the use of cover versions and user-generated content.	
4.	Shrinath Travel Agency & Anr v. Infinity Infoway Pvt Ltd & Ors., CS(COMM) 738/2023	
	The Hon'ble Delhi High court's judgment pertains to an application under Order XXXIX Rule 1 and 2, where Plaintiff Shrinath Travel Agency sought to restrain Defendants from using marks like "SHREENATH TRAVELLERS," "SHRINATH TOURIST AGENCY," "SHRINATH NANDU TRAVELS," and "HUMSAFAR TRAVEL & TRANSPORT AGENCY," along with specific domain names. The Plaintiffs, engaged in the tour and travel services business, claimed infringement, citing deceptively similar logos and motifs used by the Defendants. The court found in favor of the Plaintiffs, ordering the removal of infringing marks from all platforms and	



	disclosure of earnings. However, the injunction was denied for the mark "HUMSAFAR TRAVEL & TRANSPORT AGENCY" due to the dissimilarity with the Plaintiff's mark "SHRINATH." The application was thus disposed of accordingly.	
5.	Pernod Ricard India Private Limited v. Karanveer Singh Chhabara, Misc. Appeal No. 232 of 2021	CLICK HERE
	The Madhya Pradesh High Court recently observed that consumers of scotch whiskey are educated persons belonging to affluent class of society and can easily distinguish between bottles of two different brands. The Court made the observation while rejecting Pernod Ricard's appeal to restrain an Indore-based company, JK Enterprises (defendant) from manufacturing beverages under 'London Pride' mark. Pernod Ricard sought temporary injunction against JK Enterprises alleging infringement of its 'Blenders Pride' trademark and trade dress of 'Imperial Blue' bottle.	
6.	NILKAMAL CRATES AND CONTANERS & ANR. v. MS. REENA RAJPAL & ANR., CS(COMM) 707/2023	<u>CLICK HERE</u>
	The Delhi High Court has restrained two plastic chair manufacturers from using "Nilkranti" device mark or any other device mark which is confusingly or deceptively similar to the device marks of Nilkamal. The Court however rejected Nilkamal's prayer in its trademark infringement suit to restrain the manufacturers from using "Nilkranti" as a word mark, either for chairs or for any other item manufactured by them. The Court observed that the mark NILKRANTI, seen as a word mark, cannot be regarded as confusingly similar to NILKAMAL mark, adding that the common prefix "NIL" is merely the first of three syllables which constitute the word.	
7.	Delhi Public School Society v. Aviral Education Welfare and Cultural Society and Anr CS(COMM) 580/2020	CLICK HERE
	Delhi Public School (DPS) Society filed a suit against Aviral Education Welfare and Cultural Society (AEWCS) to prevent the misuse of the DPS name and marks of Delhi Public School, Sahibabad. A joint venture agreement had permitted AEWCS to use the DPS trademarks, but after its termination, AEWCS continued to operate the school. The court ruled that AEWCS could use DPS marks for current students until March 31, 2024, but for new admissions for the academic year 2024-2025 they must use a different name. AEWCS must pay Rs. 20,00,000 plus GST to DPS by December 31, 2023, and their name change application should be expedited. The suit was decreed accordingly.	
8.	TTK Prestige Ltd v. Arjun Ram & Anr CS(COMM) 915/2022	CLICK HERE
	The Delhi High Court, issued an injunction against defendants, preventing the sale, manufacture, and advertisement of pressure cookers infringing on TTK Prestige Ltd Swachh Deluxe Alpha cookers. Defendants "Impex Dripless" cookers sold under the "PARISTONE" mark were deemed as design piracy and passing off the trade dress used by Prestige. The court restricted the use of the "PARISTONE" mark and similar trade dress that mimicked the Plaintiff's "PRESTIGE" mark's appearance. However, it allowed the use of "PARISTONE" with a distinct trade dress not resembling the Plaintiff's, as long as they didn't infringe upon the Svachh cookers' registered design.	

[End of Newsletter]
