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RBI & FEMA

- *A.P. (DIR Series) Circular No. 84, dated 6th January, 2014* : RBI has allowed Indian companies to issue non-convertible/redeemable preference shares or debentures to non-resident shareholders, including the depositories that act as trustees for the ADR/GDR holders, by way of distribution as bonus from its general reserves. RBI further clarified that issue of preference shares (excluding non-convertible/redeemable preference shares) and convertible debentures (except optionally convertible or partially convertible debentures) would be subject to Foreign Direct Investment Scheme.
- *A.P. (DIR Series) Circular No. 85, dated 6th January, 2014* : For the purpose of ECB, RBI has included 'Maintenance, Repairs and Overhaul (MRO)' operations under the airport infrastructure category. Accordingly, MRO, as distinct from the related services which are other than infrastructure, will be considered as part of the sub-sector of Airport in the Transport Sector of Infrastructure.
- *A.P. (DIR Series) Circular No. 86, dated 9th January, 2014* : RBI has relaxed FDI regulations and decided that optionality clauses may henceforth be allowed in equity shares and compulsorily and mandatorily convertible preference shares/debentures to be issued to a person resident outside India under the FDI Scheme, to facilitate investors to exit subject to the conditions of minimum lock-in period and without any assured return.
- *A.P. (DIR Series) Circular No. 87, dated 9th January, 2014* : RBI has allowed banks to include an NRI's close relative (relatives as defined in Section 6 of the Companies Act, 1956) in existing / new resident bank accounts as joint holder with the resident account holder on "Either or Survivor" basis subject to the certain conditions.
- *A.P. (DIR Series) Circular No. 92, dated 13th January, 2014* : In view of the evolving market conditions and with a view to providing operational flexibility in respect of current and capital account transactions, RBI has decided to allow, in case of contracted exposures, forward contracts in respect of all current account transactions as well as capital account transactions up to one year to be freely cancelled and rebooked.
- *DBOD.No.BP.BC. 85 /21.06.200/2013-14, dated 15th January, 2014* : RBI has notified new rules for setting incremental provisioning and capital requirements for bank exposures to entities with unhedged foreign currency exposures.
- *A.P. (DIR Series) Circular No. 94, dated 16th January, 2014* : RBI has clarified that where the liability sought to be converted by the company is denominated in foreign currency as in case of ECB, import of capital goods, etc., then it apply the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion.
- *A.P. (DIR Series) Circular No. 96, dated 20th January, 2014* : RBI has clarified that a foreign investor is free to remit funds through any bank of its choice for any transactions permitted under FEMA. The funds thus remitted can be transferred to the designated bank through the banking channel. Note should, however, be taken that KYC in respect of the remitter, wherever required, is a joint responsibility of the bank that has received the remittance as well as the bank that ultimately receives the proceeds of the remittance.

- *DNBS(PD).CC. No 368 /03.10.01 /2013-14, dated 24th January, 2014* : RBI has allowed Non-banking institutions (NBIs) to issue prepaid payment instruments (PPIs) and collect money on this behalf from the customers, subject to authorisation under the Payment and Settlement Systems Act (PSS Act), 2007.
- *DCM(Plg) No.G-17/3231/10.27.00/2013-14, dated 23rd January, 2014* : In order to withdraw all old series of banknotes issued prior to 2005 from circulation, RBI has notified that such banknotes would be acceptable for all kinds of monetary transactions only till March 31, 2014. Thereafter, the public will be required to approach bank branches which would provide them exchange facilities on an ongoing basis.

FOREIGN TRADE

- *Notification No 62 (RE-2013) / 2009-2014, dated 1st January, 2014 (DGFT)* : Export of Stone Aggregates to the Republic of Maldives is being permitted subject to the conditions and quantity ceiling indicated in Notification No. 54 dated 07.06.2011.
- *Notification No 63 (RE-2013) / 2009-2014, dated 3rd January, 2014 (NCDRC)* : There shall be no requirement of submitting any document in electronic filing for obtaining Registration Certificates.
- *Public Notice No.45/(RE 2013)/2009-14, dated 6th January, 2014 (DGFT)* : SION A-1730 has been revised to reduce the quantities of inputs against items at Serial Number 1, 2 & 3 and to replace input at Serial number 4, i.e., “caustic soda” by “seedlac”.
- *Notification No 65 (RE-2013) / 2009-2014, dated 8th January, 2014 (DGFT)* : A new Policy Conditions No. 10 is added to Chapter 87 of ITC (HS), 2012 Schedule-1 (Import Policy) for facilitating the import of customized Cars/Motorcycles and parts thereof required for the race events.
- *Public Notice No.47/(RE 2013)/2009-14, dated 8th January, 2014 (DGFT)* : A procedure for processing of claims in respect of realization of export proceeds through insurance agency is being introduced.
- *Public Notice No.48/(RE 2013)/2009-14, dated 10th January, 2014 (DGFT)* : Power for extension in time for installation of Capital Goods is being delegated to regional authorities.
- *Notification No 66 (RE-2013) / 2009-2014, dated 23rd January, 2014 (DGFT)* : Export of Cotton Yarn is made eligible for benefits under Incremental Export Incentivisation Scheme for the entire financial year 2013-14.

CORPORATE

- *Chinatrust Commercial Bank vs LiliputKidswear Limited dated 6th January, 2014 (Delhi High Court)*: Respondent company approached petitioner bank for financial assistance by way of Working Capital Demand facility for Rs. 15 crores. Respondent filed instant petition before HC for recovery of amount and appointment of Official Liquidator as Provisional Liquidator. It was held that respondent had not placed any concrete scheme for repayment of dues by respondent to its creditors. Respondent was not entitled to any further extension of time and there was no reason to defer admission of instant petition. There was no reason to delay appointment of a provisional liquidator.
- *R.P. Khosla & Anr vs Hon'ble Company Law Board & Ors dated 15th January, 2014, (Delhi High Court)*: The order passed by a Court without giving a notice to the caveator cannot be treated as a nullity. As the lodgement of a caveat is merely a right to be informed of the hearing date and it has no effect by way of

curtailing the powers of a Civil Court to pass an appropriate order on the merits of the case. The practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 or under Article 136 of the Constitution of India was deprecated.

- *Official Liquidator of M/s. Vintek R. F. Products Limited (in Liquidation) vs S. Krishnamurthy S/o Late Sri. Ramulu and Ors. dated 16th January, 2014 (Karnataka High Court)*: Official Liquidator filed criminal complaint against respondents/ex-directors of company for non-compliance of provisions of s. 454 of the Act for non-submission of books of accounts and records of company in liquidation. Almost all respondents had ceased to be directors of company, much prior to date of winding up and that company was ultimately wound up, because it had stopped functioning after fire accident in its factory premises, destroying all its assets, including its records and whatever assets and records remained having been taken over by KSFC and Income-tax Department, it was incumbent on Official Liquidator to have substantiated application with better particulars. Application dismissed.
- *Shalender Kaushik vs Securities & Exchange, dated 22nd January, 2014 (Delhi High Court)*: The Company was held to have contravened the provisions of Regulations 73 & 74 of SEBI Collective Investment Scheme (CIS) Regulations, and was convicted under Section 24 of the SEBI Act for contravention of the said Regulations. The question arose regarding the vicarious liability of the Directors of the company. They were held to be in-charge and responsible to the company for conduct of its business. The court held that they were rightly convicted under S.24 and S.27(1) of Act. While the appellant who had subscribed to the MoA and AoA of company and was initially charged along with the directors was acquitted.
- *Air India Employees Union v. Air India Ltd., dated 27th January, 2014 (Bombay High Court)*: These petitions have been filed challenging the implementation of Justice Dharmadhikari Committee report which was made in the wake of merger between Indian Airline and Air India. To integrate the employees of the two merged entities including bringing about pay parity between them. Petitioners' alleged that directions issued in pursuance of the Dharmadhikari Committee report result in change of conditions of service as specified in the Schedule IV to the I. D. Act. Notice under Section 9A of the I.D. Act should be given by Air India Limited to the petitioner unions of the change in conditions of service in the prescribed manner.

SECURITIES

- *CIR/IMD/DF/1/2014, dated 7th January, 2014, (SEBI)*: SEBI vide circular dated January 24, 2013 specified guidelines for providing dedicated Debt Segments on Stock Exchanges. It has now been decided that, all trades in Securitised Debt Instruments (listed or unlisted) shall be reported on the trade reporting platform of either NSE, BSE or MCX-SX within fifteen minutes of the trade. Reporting of trade by the buyer and seller must be done on the same platform. The platform shall provide continuous data pertaining to securitised debt instruments. And all trades shall be cleared and settled through NSCCL, ICCL or MCX-SX CCL.
- *CIR/MRD/DP/01/2014, dated 7th January, 2013, (SEBI)*: It has been decided to strengthen the supervisory and monitoring role of the depositories and their participants with respect to issuance and processing of Delivery Instruction Slips (DIS). In this regard the circular lists out certain measures for the depositories.
- *Mr. Pranav Ansal v. SEBI, dated 7th January, 2014, (SAT)*: Disclosure regarding change in shareholding by a promoter is required to be made both under SAST Regulations, 2011 as also under PIT Regulations, 1992. However, disclosure under SAST Regulations, 2011 is required to be made within 7 days whereas, disclosure under PIT Regulations, 1992 is required to be made within 2 days of change in shareholding. Object of requiring such disclosure to be made within two days under PIT Regulations is with a view to ensure that there is no abuse on account of investors being not aware of such change in shareholding of a promoter director who is an insider under PIT Regulations.

- *Ambaji Papers Pvt. Ltd v. Adjudicating Officer, SEBI, dated 15th January, 2014, (SAT)*: A reading of Regulation 7 of the SAST Regulations, 1997 read with Regulation 35(2) of the SAST Regulations, 2011 clearly points out that not only the company, but an acquirer is also required to inform the stock exchanges at every stage of aggregate of the shareholding or voting rights in the company.
- *M/s. Octant Industries Ltd. v. SEBI, dated 15th January, 2014, (SAT)*: A large number of reverse trades could not have taken place through the mechanism of the system. Any transaction executed with the intention to defeat the market mechanism, whether negotiated or not, would be illegal. It is an undisputed fact that the appellants have not made any public announcement inspite of having acted in concert and acquiring more than 30 percent of the voting rights of Axon Infotect Limited. A mere change of name of a company does not wash away the liabilities despite the change of name or that of its promoters or directors.
- *Krupa Sanjay Soniv. SEBI, dated 24th January, 2014, (SAT)*: A number of shares have been dealt with by executing self-trades, albeit, through several brokers. Self-trades are fictitious in nature as there is no transfer of actual beneficial ownership of share and because the buyer and seller are the same person. Such trades are injurious to a healthy market and result in the creation of artificial volumes in the scrip and attract FUTP charges.

COMPETITION

- *Surinder Saini v. Delhi Metro Rail Corporation Ltd. &Ors., dated 2nd January, 2014 (CCI)*: The Informant is aggrieved by insertion of a clause in the tender document by the Ops whereby the vendors found guilty of contravention of the provisions of Competition Act were debarred from participating in the tenders. The OPs in this case, are buyers /consumers, and a purchaser / buyer has right to prescribe such terms and conditions for purchase of commodities in the market which it considers apt. A restraint prescribed in the tender document which is applicable uniformly can never be construed as discriminatory or unfair.
- *CA SreeramMushty, Chartered Accountant v. Shriram Chits Limited, dated 2nd January, 2014 (CCI)*: The OP (Shriram Chits) may be a large chit fund company in Andhra Pradesh and may be dominant. However, mere dominance per se cannot be acted against by the Commission. To invoke the jurisdiction of the Commission a prima facie abuse or misuse of the dominance is to be shown.
- *In Re: Alleged cartelization by steel producers, dated 9th January, 2014, (CCI)*: The Commission held that there is no illegality in entertaining and examining the present case under the Competition Act, although the investigation was pending before the DG I&R, MRTP Commission before the MRTP Act was repealed in 2009. The Commission has the jurisdiction to look into anti-competitive conduct if it continues even after the enforcement of relevant provisions of the Act. The non-competitive nature of a market, by itself, does not imply an 'agreement'. Interdependent behaviour of enterprises does not necessarily indicate collusive conduct. Commission was of the opinion that sufficient evidence has not been brought on record to establish a finding of contravention against the Ops.
- *Intex Technologies (India) Limited v. Telefonaktiebolaget LM Ericsson (Publ), dated 16th January, 2014 (CCI)*:Prima facie it is apparent that Ericsson was dominant in the relevant market of GSM and CDMA technologies in India as it held a large number of GSM and CDMA patents. Ericsson has 33,000 patents to its credit, with 400 of these patents granted in India, and the largest holder of SEPs for mobile communications like 2G, 3G and 4G patents used for smart phones, tablets etc. practice of Ericsson of imposing discriminatory royalty rates contrary to FRAND terms, was previously considered by the Commission. Commission thereafter clubbed the present case for causing an investigation.
- *Pan India Infra Projects Private Limited v. BCCI, dated 16th January, 2014 (CCI)*: The informant had stated to be a promoter of Indian Cricket League and seeks to provide information to the Commission regarding anti-competitive and abusive practices being carried out by BCCI (OP) in the market for organization of private professional league cricket in India. The commission has considered the role of BCCI as well as the dominance

of BCCI in this field and after giving the findings, issued cease and desist order which is a subject matter of appeal before COMPAT. There was no necessity of fresh investigation to be done into the role of BCCI in respect of its dominance or abuse of dominance when the Commission has already got these aspects investigated.

- *M/s ESYS Information Technologies Pvt. Ltd. v. Intel Corporation (Intel Inc.), dated 16th January, 2014 (CCI):* A plain reading of Section 3(4) reveals that it prohibits anti-competitive agreements that includes tie-in arrangement, exclusive supply agreement, exclusive distribution agreement, refusal to deal, and resale price. After analysing the agreements, targets and incentive structure of Intel (OP) and examination of the Informant and Intel, the DG found no substance in allegations of tie-in arrangements, exclusive supply agreements and resale price maintenance. Intel has not imposed any conditions on the Informant in the Agreement which can be termed as unfair or discriminatory. The allegation regarding charging of unfair and discriminatory prices by Intel in abuse of dominance in violation of Section 4(2) (a)(ii) does not stand established.
- *Wardha Power Company Limited v. Western Coalfields Limited & Coal India Ltd, dated 22nd January, 2014, (CCI):* The Ops were the sole and dominant players in the market of sale of non-coking coal for power generation in India as the entire production and distribution of coal in India is in the hands of OP & its subsidiaries. The consumer had no alternative and was dependent upon the OPs, the conduct of the OPs needs to be investigated for alleged contravention of the provisions of the Act. It was held to be a fit case to be investigated by DG.

INDIRECT TAXES

– CUSTOMS

- *Notification No. 01 / 2014 – Customs, dated 17th January, 2014 :* Materials imported into India against an Advance Authorization for export of items that are otherwise prohibited for export has been exempted from the whole of the duty of customs, additional duty, safeguard duty and anti-dumping duty leviable thereon (subject to certain conditions).
- *Notification No. 03 / 2014 – Customs, dated 27th January, 2014 :* Notification No. 27/2011 – Customs amended so as to impose 5% duty on export of iron ore pellets.
- *Notification No. 05 / 2014 - Customs (N.T.), dated 21st January, 2014 :* Notification No. 98 / 2013 - Customs (NT) amended, by which the all-industry rates of drawback for 2013-14 had been notified. There are substantial changes in various categories.
- *Notification No. 06 / 2014 - Customs (N.T.), dated 23rd January, 2014 :* Golakganj has been notified as a land customs station for goods being exported to or imported from Bangladesh.
- *Notification No. 05 / 2014 - Customs (ADD), dated 16th January, 2014 :* ADD levied on imports of 'Nonyl Phenol', originating in, or exported from, Chinese Taipei has been extended for a further period of five years.
- *Notification No. 06 / 2014 - Customs (ADD), dated 23rd January, 2014 :* ADD levied vide Notification 1/2009 - Customs on acrylonitrile butadiene rubber from Korea RP will remain in force till 1 January 2015.
- *Notification No. 07 / 2014 - Customs (ADD), dated 23rd January, 2014 :* Anti-dumping duty levied under Notification 04/2009 – Customs on float glass from China PR and Indonesia has been extended for a period of one year i.e. upto and inclusive of 5th day of January, 2015.

- *Notification No. 08 / 2014 - Customs (ADD), dated 23rd January, 2014* : ADD levied on imports of 'Hexamine, originating in, or exported from, the Saudi Arabia and Russia has been extended for a further period of five years.
- *Circular No. 01 / 2014 – Customs, dated 9th January, 2014* : There was a doubt as to whether frozen human embryo is classifiable under heading 3001, which covers glands and other organs for organo-therapeutic uses, or 0511, which covers animal products not elsewhere specified. It has been clarified that human embryo is categorized with animal embryos (0511). Accordingly, the import is restricted and requires a NOC from the Indian Council of Medical Research.
- *Circular No. 02 / 2014 – Customs, dated 9th January, 2014* : It has been clarified that "Transmission shafts / Power takeoff (PTO) shafts" used in agricultural machinery cannot be classified as 'parts of general use' and they are correctly classifiable under heading 8483 - Harvesting or threshing machinery.
- *M/s Hind Offshore Pvt Ltd v. CC(I), dated 20th January, 2014 (CESTAT)* : If the Customs authorities do not want the appellant to take vessel out of India, they should pass a written order stating the reasons therefor and cannot pass any oral instructions.
- *Biswanath Bhattacharya v. UOI & Ors., dated 21st January, 2014 (SC)* : Held that Forfeiture under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 is not violative of Article 20. In view of its inclusion in the 9th Schedule, the Act is immune from attack on the ground that it violates any of the rights guaranteed under Part III of the Constitution by virtue of the declaration under Article 31-B. Further there is no express statutory requirement to communicate the reasons which led to the issuance of notice under Section 6 of the Act.

– **CENTRAL EXCISE**

- *Notification No. 01 / 2014 - Central Excise, dated 24th January, 2014* : Notification 42/2008 - CE amended, so as to increase the rate of duty in Compound Levy Scheme applicable to Pan masala and Pan masala containing Tobacco.
- *Notification No. 02 / 2014 - Central Excise, dated 24th January, 2014* : Notification 16/2010 - CE amended, so as to increase the rate of duty in Compound Levy Scheme applicable to chewing tobacco and unmanufactured tobacco.
- *Notification No. 03 / 2014 - Central Excise (N.T.), dated 24th January, 2014* : Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 amended, so as to increase the deemed production of the product per machine.
- *Notification No. 04 / 2014 - Central Excise (N.T.), dated 24th January, 2014* : Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 amended, so as to increase the deemed production of the product per machine.
- *Circular No. 977/01/2014 – Central Excise, dated 3rd January, 2014* : It has been clarified that an existing unit which has availed of excise duty exemption under Notification No.56/2002-CE & 57/2002-CE, by way of substantial expansion can avail of excise duty exemption under Notification No.1/2010-CE, dated 06.02.2010 again by way of second substantial expansion so long as it satisfies the conditions stipulated under notification No.1/2010-CE.
- *Circular No. 978/2/2014 – Central Excise, dated 7th January, 2014* : The doubt has been raised, as to whether the education cess, which are levied as a percentage of excise duties, are leviable on other cesses that are collected as if they were excise duties. It has been clarified that cesses that are levied under other enactments, like tea cess under the Tea Act 1953 and sugar cess under the Sugar Cess Act 1982, are only collected by the

Department of Revenue and do not qualify as duties that are both levied and collected by the Department of Revenue. Therefore the education cess and secondary and higher education cess are not to be collected on these other cesses.

- *Circular No. 979/03/2014 - Central Excise, dated 15th January, 2014* : Clarifications as to implementation of decision of Hon'ble Supreme Court in case of CCE v M/s Fiat India Ltd. The facts in the case of M/s Fiat India Ltd were that the cars were sold at a price substantially lower than the cost of the manufacture and such sales continued for a period of five years. The company admitted that the purpose of such pattern of sale was to achieve market penetration. The Hon'ble Supreme Court held that in such circumstances revenue could reject the transaction value declared under section 4 and invoke the provisions of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 to assess Central Excise duty. Following clarifications are issued in this regard –
 - i. Is transaction value is to be rejected in all cases where it is lower than manufacturing cost? Answer: No; the Hon'ble Supreme Court itself, in the Fiat judgment, has cautioned against this.
 - ii. By what procedure is the department to identify cases in which transaction value is to be rejected? Answer: It is the assessee's responsibility to assess and pay the duty correctly. Verification may be carried out at the time of audit, by looking at factors like percentage of loss, period for which the loss-making price is maintained, reasons for it, whether it is contrary to business practice, and whether it has led to erosion of the company's capital. Manufacturing costs may be verified using CAS-4 standards. The Commissioner will decide whether a special cost audit is required.
 - iii. Can the extended period of limitation be applied for demands based on the judgment, for the period prior to the date of the judgment? Answer: No, not if the judgment is the sole basis for the demand. However, it can be applied for demands for the period after the judgment.
- *Circular No. 980/04/2014 – Central Excise, dated 24th January, 2014* : Pan masala, gutkha and chewing tobacco are assessed to excise duty under the compounded levy scheme. Under the scheme, the duty is payable on deemed production based on the number of packing machines. The doubts has been raised as to whether excise duty can be re-determined based on the speed of the packing machine and the actual production thereof, which may be higher than the deemed production. It has been clarified that the number of packing machines is the only factor relevant for determining production under the law; and that duty is payable on deemed production determined in this manner.
- *M/s ICMC Corp. Ltd v. CESTAT Chennai & Ors., dated 3rd January, 2014 (Madras HC)* : *Suo motu* credit of wrongly debited amount. Held that since, what is availed off by the assessee is only a credit on the duty paid on the services rendered. It is not a case of refund of duty falling under Section 11B of the Central Excise Act, 1944. Plea of the assessee that on a technical adjustment made, the question of unjust enrichment as a concept does not arise at all for the assessee to go by Section 11B of the Central Excise Act, accepted.
- *Bombay Dyeing and Manufacturing Co. Ltd. v. UOI, dated January, 2014 (Delhi HC)* : Bombay Dyeing Manufacturing Company had filed a rebate claim on material used in the manufacture of 'quilt shells' that were exported. At that time, rebate was allowed for material used in manufacture of specified items only, which included 'quilts'. The Delhi High Court held that 'quilts' did not include 'quilt covers' or 'shells'.

– **SERVICE TAX**

- *Notification No. 02 / 2014 - Service Tax, dated 30th January, 2014* : The definition of "governmental authority" provided in the Notification No. 25/2012 - Service Tax has been amended.
- *Circular No.175/01/2014 – Service Tax, dated 10th January, 2014* : Some doubts were raised on the taxability of amounts collected by RWA's from their members. It has been clarified that –
 - i. The full amount paid by any member who pays over Rs 5000 a month to the association is taxable;
 - ii. The threshold exemption of Rs 10 lakhs is available to the association;

- iii. Bills in the name of the individual residents, paid by the association and collected from them, can be deducted as 'pure agent' amounts;
 - iv. The association may use CENVAT credit for the payment of service tax.
- *Circular No. 176/2/2014 – Service Tax, dated 20th January, 2014* : Clarification has been sought as to whether the first instalment of tax dues paid under VCES, 2013 would be available as CENVAT Credit immediately after payment or it can be availed only after payment of tax dues in full and receipt of Acknowledgement of Discharge in form VCES-3. It has been clarified that it would be in the interest of VCES declarants to make payment of the entire service tax dues at the earliest and obtain the discharge certificate within 7 days of furnishing the details of payment.
 - *TTML v. The Ministry Of Finance, dated 29th January, 2014 (Bombay HC)* : Letter for recovery issued without waiting for the statutory period of three months provided to enable the filing of an appeal and stay application to the Tribunal is over. Held that this is contrary to the circular dated 1st January 2013 issued by CBEC. The impugned communications, to say the least, is high handed. Revenue officers should realise that their job is much more than merely collecting the tax. Fairness in approach to the tax payers and acting in accordance with the Rule of Law is a sine-qua-non in discharge of all its functions.
 - *Patel Engineering Ltd v. CST & Ors., dated 9th January, 2014 (AP High Court)* : Demand was for about Rs. 33 Crores and CESTAT ordered pre-deposit of about Rs. 30 Crores and interest. High Court observed that the condition as to pre-deposit of the entire amount involved would certainly put heavy burden on the assessee. Whatever may be the justification in enacting such a provision, the remedy of appeal for a citizen cannot be made so dearer, nor can it be kept beyond the reach of an assessee. Indiscriminate denial of the power of waiver would result in a situation where an aggrieved party would be indirectly told "pay or perish". Pre-deposit reduced to 50 percent of the tax demand.

INTELLECTUAL PROPERTY RIGHTS

- *Voltas Limited, Mumbai v. Debraj Dey & Ors., dated 3rd January, 2014 (IPAB)* : Necessary purpose of the trade marks advertisement was to provide complete information of the trade mark advertised, so that the public at large may receive a clear and full information of the trade mark. If incomplete particulars of trade mark or any incorrect information was given in the advertisement, it is required to be cancelled.
- *Crystal Knitters v. Swarovski Aktiengesellschaft, dated 3rd January, 2014 (IPAB)* : Applicants in the year 1971 adopted the trade mark 'Crystal'. Said trade was registered and the said registrations were renewed and subsisting as on date. Respondent applied for and obtained registration of the trade mark 'Crystal Glamour'. Held, respondents Mark was applied for registration in the year 2002 and the mark was registered in the year 2005. Respondents in their letter stated that the registration has lapsed long ago and they had no interest in renewing the registration. Application was ordered with a direction to the Registrar of Trade Marks to remove/cancel the trade mark 'Crystal Glamour'.
- *Pidilite Industries Ltd v. Jubilant Agri and Consumer Products Ltd., dated 13th January, 2014 (Bombay HC)* : The infringement alleged by the plaintiff (Pidilite) related to three registered trademarks (two word marks "Fevicol Marine" and one label mark showing two elephants pulling an object in opposite directions). It was held that the word 'MARINE' forms a prominent and essential part or feature of all the three registered trademarks set out in the plaintiff's suit and the defendant had adopted an essential feature of plaintiff's registered trademark. This by itself is actionable. Actual confusion need not be proved for infringement, it is required for passing off. The defendant had tried to take advantage of the reputation of the plaintiff not only by the use of the mark 'MARINE'/'MARINE PLUS' but also by the use of the copied impugned label. Even for passing off, there is a clear case of deception and/or confusion. It is the settled position that the use of a mark as a sub-brand also amounts to infringement and an injunction ought to follow.

- *Analco (India) Pvt. Ltd v. Navodya Exim Pvt. Ltd., dated 23rd January, 2014 (Delhi HC)* : The Defendant's mark 'ALOCOMAX' is deceptively similar to the registered trade mark of Plaintiff's 'ALOMAX' and hence the defendant is restrained from manufacturing, selling, offering for sale, advertising directly and indirectly dealing in any goods falling in Class-6 & 19 bearing the trade mark ALOCOMAX or any other trade mark, which is either identical or deceptively similar as that of the plaintiff.
- *Oriental Cuisines Pvt. Ltd. v. Star Restaurants Pvt. Ltd., dated 10th January, 2014 (Delhi HC)* : It was held that since the label mark of the plaintiff "THE NOODLE HOUSE" and the impugned mark used by the defendant "THE NOODLE HOUSE" along with 2 chopsticks with a string of noodle wrapped around and a bye line which reads "enjoy tasty tangles" contains the identical words which makes it clearly discernible that the defendant intends to use to impugned mark in respect of Chinese cuisine which is identical to the cuisine being offered by the plaintiff. The mark as well as goods offered being identical, the same is likely to confuse a consumer with imperfect memory.

CONSUMER

- *M/s Avery India Limited v. M/s Kaybee Sulphates Limited, dated 3rd January, 2014 (NCDRC)*: The Consumer Protection Act provides for "business-to-consumer" disputes and not for "business-to-business" disputes. Respondent is a limited company engaged in Sulphate industry. It entered into a contract with the petitioner for purchase of weighbridge. Respondent is engaged in commercial activities and is not a 'Consumer' within the meaning of Section 2(1) (d) of the Act.
- *Agricultural Insurance Co. of India Ltd v. Govind Singh, dated 6th January, 2014 (NCDRC)*: National Commission expressed deep anguish at the manner in which the State Commission has been disposing the appeals in a mechanical manner without giving any reasons whatsoever, inspite of mandate given by the Hon'ble Apex Court, that while deciding the appeals, the Appellate Forum must give specific reasons. Impugned order set aside and matter remanded back to state commission.
- *Kotak Securities Limited v. Bharatkumar Ranchhoddas Rana, dated 8th January, 2014 (NCDRC)*: Respondents No.1 and 2 have been trading regularly in the share business and the same being a commercial activity. Hence, they would not fall under the definition of 'Consumer' as per the Act. Regular trading in the sale and purchase of the shares is a purely commercial activity and the only motive is to earn profits. Therefore, this activity being purely commercial one, is not covered under the provisions of the Act.
- *LIC of India v. Kamlesh, dated 9th January, 2014 (NCDRC)*: Stand of the petitioner is that permanent disability suffered by the respondent complainant is due to a medical reason and not due to some accident as envisaged by the insurance policy. As such, the petitioner is justified in repudiating the claim. Commission held that the word 'accident' used in the policy particularly under the accident benefit clause, means the accident as understood in common parlance and it does not include the disability caused by medical reasons. The view taken by the foras below is not sustainable because it is based upon the incorrect interpretation of the word 'accident' used in the insurance policy.
- *Ms. Melanie Das v. Royal Sundaram Alliance Insurance Company Ltd., dated 13th January, 2014 (NCDRC)*: Obtaining of the policy, payment of premium for the same from the regional office of the Insurance Company at Gurgaon are material foundational factors, giving rise to "cause of action" partly, if not wholly, at Gurgaon conferring jurisdiction on the Haryana State Commission. No "cause of action" arose at Chandigarh, where the complaint under the Act was filed.
- *Mrs. Shyni Valsan Pombally v. State Bank of India, dated 13th January, 2014 (NCDRC)*: Any fact, which goes to the root of the contract of insurance and has a bearing on the risk involved would be "material" and if the proposer has knowledge of such fact, he is obliged to disclose it, particularly while answering questions in the proposal form. Any inaccurate answer will entitle the insurer to repudiate their liability because there is

clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance.

- *Jasvir Kohli v. Punjab National Bank, dated 13th January, 2014 (NCDRC)*: The appellant has accepted a sum of Rs.15,92,784/- in full and final settlement of his claim. Once the appellant has received the said amount in full and final settlement, he now cannot be permitted to re-agitate the matter and seek enhancement of rate of interest or compensation etc.
- *Ashok Kumar Sharma v. Reliance General Insurance Co. Ltd., dated 20th January, 2014 (NCDRC)*: The appellate forum is bound to refer to the pleadings of the case, the submissions of the counsel, necessary points for consideration, discuss the evidence and dispose of the matter by giving valid reasons. Order passed by state commission set aside and remanded back.
- *Mrs. Rashmi Handa & Ors. v. OTIS Elevator Company & Ors., dated 21st January, 2014 (NCDRC)*: The Commission decreed compensation to the tune of 3,01,48,195/- on death of Petitioners husband in an elevator. Fastening 70 % liability on Otis Elevator Company, 5% liability on RAW which has allotted the tender and 10% liability on Military Engineering Services as it was the maintenance agency.

ENVIRONMENT

- *The Indian Express, dated 9th January, 2014* : NGT ordered closure of 12 eating joints in Delhi's Hauz Khas area for not having applied for consent to operate (CTO) till date since its last year's order directing them to do so. NGT also directed Delhi Pollution Control Committee (DPCC) to decide on merit, within two weeks, the applications for CTO of 12 other eateries that are pending with it and said that if these restaurants do not get consent they shall cease to operate too.
- *The Economic Times, dated 25th January, 2014* : While disposing of the petition NGT directed that South Korean major POSCO not to cut any trees at the project site till the state government gives the final forest clearance as per the Forest (Conservation) Act.
- *The Business Standard, dated 30th January, 2014*: NGT has allowed PWD to go ahead with work on the elevated corridor project on the stretch from Vikaspuri to Meera Bagh after the authority gave an assurance that it will save 70 trees by reducing width of the road by one metre at certain spots. NGT directed PWD to mark the 70 trees and to ensure that they are not cut during progress of the work.
- *The Times of India, dated 30th January, 2014* : NGT has directed UP government to remove encroachments in all water bodies in the state within four weeks and also give a list of the lakes, ponds and places in Ghaziabad district which have been encroached upon. The government has also been directed to stop any construction that is being carried in the water bodies by encroachers.
- *The Times of India, dated 30th January, 2014* : According to a Yale University study that assessed 178 nations, India's air quality ranks among the lowest five countries in the world. The only countries ranked below India on this score are Pakistan, China, Nepal and Bangladesh.

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