



CONTENTS

1. **RBI & FEMA**
2. **Foreign Trade**
3. **Corporate**
4. **Securities**
5. **Competition**
6. **Indirect Taxes**
 - Customs
 - Central Excise
 - Service Tax
7. **Intellectual Property Rights**
8. **Consumer**
9. **Environment**

RBI & FEMA

1.1. RBI LIBERALISES ROUGH DIAMOND IMPORT NORMS

Banks are now permitted to decide on the foreign mining companies to which an importer can make advance payments, without any limit or bank guarantee or standby letter of credit. Till now, the small and medium diamantiars had to depend on the secondary market in Mumbai and Surat to purchase rough diamonds on premium rates ranging from 10-20 per cent. *[A.P. (DIR Series) Circular No.116, dated 1st April, 2014]*

1.2. RBI ISSUES NORMS FOR BANKS GIVING GOLD METAL LOANS (GMLs)

RBI issued a number of instructions to banks offering gold metal loans (GML). The banks are required to strengthen their credit appraisal process which has been necessitated by various frauds committed by unscrupulous jewellers. According to RBI, banks that issue stand-by LC/BG must carry out rigorous credit appraisal exercise and treat stand-by LC/BG limit, which are considered non-fund-based limit, at par with the fund based limit. – *(DBOD.No.IBD.BC.104/23.67.001/ 2013-14, dated 2nd April, 2014).*

1.3. RBI CLARIFICATION ON CALCULATION OF NOF FOR NBFCs

RBI observing that in certain cases NBFCs while arriving at the net owned funds (NOF) figure did not reckon its investment in group companies on the ground that investments in the group companies were made by the Venture Capital Fund (VCF) sponsored by the NBFCs. RBI has, therefore, clarified that NBFCs must deduct investments made in group entities before arriving at NOF. – *[DNBS (PD) CC.No.373/03.10.001/2013-14, dated 7th April, 2014]*

1.4. REPORTING OF CROSS BORDER WIRE TRANSFER REPORT ON FINNET GATEWAY

Every reporting entity is required to maintain a record of all transactions including the record of all Cross Border Wire Transfers of more than Rs. 5 lakh or its equivalent in foreign currency, where the place of either origin or destination of the fund is in India. In this regard, RBI has advised all UCBs that the 'Transaction Based Reporting Format' (TRF) already developed by FIU-IND may be used for reporting the Cross Border Wire Transfers by 15th of the succeeding month. – *[UBD.BPD (PCB) Cir.No. 54/14.01.062/2013-14, dated 7th April, 2014]*

1.5. RBI REVISES BOOKING OF FORWARD CONTRACTS NORMS

In order to further liberalise the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 norms, RBI has decided to allow all resident individuals, firms and

companies, who have actual or anticipated foreign exchange exposures to book foreign exchange forward contracts up to \$250,000 on the basis of a simple declaration without any requirement of further documentation. – *[A.P. (DIR Series) Circular No.119, dated 7th April, 2014]*

1.6. REGISTRATION OF NON-OPERATIVE FINANCIAL HOLDING COMPANIES (NOFHCS)

RBI has decided to create a separate category of NBFCs, viz., Non-Operative Financial Holding Company (NOFHC). NOFHC means a non-deposit taking NBFC referred to in the “Guidelines for Licensing of New Banks in the Private Sector” issued by RBI, which holds the shares of a banking company and the shares of all other financial services companies in its group, whether regulated by RBI or by any other financial regulator, to the extent permissible under the applicable regulatory prescriptions. – *[DNBS (PD).CC.No. 374/03.10.001/2013-14, dated 7th April, 2014]*

1.7. BANKS TO FOLLOW NORMS ON SALE / PURCHASE OF REALTY ABROAD

RBI has advised that while undertaking transactions in the nature of sale and purchase of property and acquiring/letting out property on lease/rental basis at overseas centres. Banks should also ensure that they comply with all the applicable laws of the host country / city or locality. Further they must also ensure that all future transactions of such nature are undertaken in accordance with the board-approved policy. – *(DBOD.IBD.No.105/23.01.001/2013-14, dated 9th April, 2014)*

1.8. RBI INTRODUCES RUPEE DRAWING ARRANGEMENT ‘DIRECT TO ACCOUNT’ FACILITY

In order to facilitate receipt of foreign inward remittances directly into bank accounts of the beneficiaries. RBI has decided to allow foreign inward remittances received under Rupee Drawing Arrangement (RDA) to be transferred to the KYC compliant beneficiary bank accounts through electronic mode, such as, NEFT, IMPS, etc. Procedure to be followed is also prescribed, accordingly. – *[A.P. (DIR Series) Circular No.120, dated 10th April, 2014]*

1.9. RBI ALLOWS FDI IN LLPs

RBI has decided that Limited Liability Partnership (LLP) formed and registered under the Limited Liability Partnership Act, 2008 shall now be eligible to accept Foreign Direct Investment (FDI), subject to the specified conditions. – *[A.P. (DIR Series) Circular No. 123, dated 16th April, 2014]*

1.10. NO NON-COMPETE CLAUSE FOR FDI IN PHARMA

At present, FDI up to 100% is permitted under automatic route for greenfield investments and FDI up to 100% is permitted under Government approval route for brownfield investments (i.e.

investments in existing companies) in pharmaceuticals sector. On review, RBI has decided with immediate effect that the existing policy would continue with the condition that 'non-compete' clause would not be allowed except in special circumstances with the approval of the FIPB. – *(A.P. (DIR Series) Circular No.124, dated 21st April, 2014)*

1.11. RBI RESTRICTS BANKS FROM EXTENDING ECBs FOR REPAYING RUPEE LOANS

RBI has disallowed overseas branches of domestic banks from extending ECBs to manufacturing and infrastructure companies for repaying rupee loans. Accordingly, it is advised that, banks, including overseas branches/subsidiaries of Indian banks, shall not issue standby letters of credit/guarantees/letter of comforts etc. on behalf of overseas JV/WOS/WoSDS of Indian companies for the purpose of raising loans/advances of any kind from other entities except in connection with the ordinary course of overseas business. – *(DBOD.No.BP.BC.107/ 21.04.048 /2013-14, dated 22nd April, 2014)*

1.12. BANKS MUST REVIEW OPERATIONS OF BCS EVERY 6 MONTHS

RBI has directed bank boards to review the operations of business correspondents (BCs) at least once every six months with a view to ensuring that requirement of prefunding of corporate BCs and BC agents should progressively taper down with the passage of time. RBI also told banks to review the position of payment of remuneration of BCs and asked them to lay down a system of monitoring by the top management of the bank. – *(RPCD.FID.BC.No. 96/12.01.011/ 20013-14, dated 22nd April, 2014)*

FOREIGN TRADE

2.1. SELF-CERTIFICATION ON COMPLIANCE OF BAR-CODING REQUIREMENTS ON SECONDARY AND TERTIARY LEVEL PACKAGING QUA EXPORT CONSIGNMENT OF PHARMACEUTICALS AND DRUGS

A self-certification process on compliance of bar-coding requirement on secondary and tertiary level packaging of pharmaceuticals and drugs has been introduced. This had to come into effect from 1st April, 2014 [Public Notice No.56/(RE 2013)/2009-14, dated 1st April, 2014 (DGFT)]. But now the effective date of Public Notice No. 56(RE-2013)/2009-14 dated 01.04.2014 has been amended to 15.05.2014. – *[Public Notice No.58/(RE 2013)/2009-14, dated 15th April, 2014 (DGFT)]*

2.2. PROCEDURE FOR EXPORT OF PULSES TO REPUBLIC OF MALDIVES

Export of pulses to Republic of Maldives in terms of Notification No. 77 of 27.03.2014 would be permitted through M/s. PEC Ltd. – *[Public Notice No.57/(RE 2013)/2009-14, dated 9th April, 2014 (DGFT)]*

2.3. AMENDMENT IN NOTIFICATION RELATING TO EXPORT OF EDIBLE OILS

MEP on export of edible oils in branded consumer packs of upto 5 Kgs has been reduced to USD 1100 per MT. Earlier it was USD 1400 per MT. – *[Notification No 80 (RE-2013) / 2009-2014, dated 30th April, 2014 (DGFT)]*

2.4. ABRUPT CURTAILMENT OF LOP IMPERMISSIBLE FOR EXPORT ORIENTED UNITS: GUJARAT HC

The Petitioners were granted LoP for manufacturing yarn as an EOU, till 23rd October 2015 despite the fact that from 2004, a conscious decision was taken not to permit such activities in EOU. When another unit engaged in the same activity applied for fresh extension in the year 2012 the competent authority decided to terminate all such licenses of similar industries, even without granting them opportunity of hearing. Hon'ble Gujarat HC has held that such abrupt curtailment without there being any change in policy or any public interest involved in doing so, would be hit by the principle of promissory estoppel. The plea that though the policy had already changed in the year 2004, but was not implemented with any rigour was rejected in the light of the fact that two such extensions had already been granted to the Petitioner, even after the change in the policy. Therefore Hon'ble Court held that the LoP in case of the present petitioners shall continue to be valid till 23rd October 2015. – *[Geetanjali Woollens Pvt Ltd v. UOI, dated 3rd April, 2014 (Gujarat HC)]*.

CORPORATE**3.1. POWER OF THE COMPANY COURT TO GRANT INTERIM RELIEFS COMMENCES UPON THE PRESENTATION OF THE PETITION ITSELF : BOMBAY HC**

Hon'ble Bombay High Court on a contention by an appellant that a petition for the winding up of a company, including on the ground of "just and equitable" to do so, should be considered in greater depth even at the stage of admission as compared to other petitions or proceedings at the admission stage in view of the drastic consequences of even admitting a winding up petition. In response it held that, there was no absolute rule as to the manner of exercise of powers of the company court during the period prior to a petition for winding up being finally heard. Interim orders in many cases were not merely necessary, but imperative in the interest of the company. – *[Majestic Infracon Private Limited v. Etisalat Mauritius Ltd., dated 8th April, 2014 (Bombay High Court)]*

3.2. SECTION 13(9) OF THE SARFAESI ACT AND THE 3RD PROVISO TO SECTION 15(1) OF THE SICA OPERATE IN DISTINCT FIELDS WITHOUT OVERLAP: DELHI HC

Hon'ble Delhi HC has held that it is incongruous to hold that a secured creditor or group of secured creditors who represent 3/4ths in value of the financial assistance in respect of "a financial asset", and thus are entitled to recover the debt from the borrower without recourse to any tribunal or court and by taking any of the measures to recover the debt contemplated by section 13(4) of the SARFAESI Act. The Court further held, that it may also scuttle the revival of a sick industrial company by asking for abatement of the reference pending before the BIFR without satisfying the more stringent requirement of the 3rd proviso to section 15(1) of SICA. – *[M/s. Global Infrastructure Technologies Ltd. Vs. Kotak Mahindra Bank Ltd. & Ors., dated 16th April, 2014 (Delhi HC)]*

3.3. A SHAM AND A MOONSHINE DEFENCE WILL NOT BE PERMITTED TO NEGATE THE RIGHT OF A CREDITOR TO MAINTAIN A PETITION UNDER SECTION 433(E) OF THE COMPANIES ACT, 1956 : DELHI HC

While admitting a winding up petition, Hon'ble Delhi HC has held, that an illusory and a speculative defence raised only for the purpose of avoiding payments to a creditor cannot be construed as a substantial or a bonafide defence to a petition under Section 433(e) of the Companies Act, 1956.. *[M/s Olam Agro India Ltd Vs. M/s Mother v Impex Pvt Ltd, dated 24th April, 2014 (Delhi HC)]*

SECURITIES

4.1 MASTER CIRCULAR FOR DEPOSITORIES

SEBI has issued master circular for Depositories. It is a compilation of the communications/ circulars issued by SEBI up to 31st March, 2014. – *[CIR/MRD/DP/11 /2014, dated 7th April. 2014 (SEBI)]*

4.2 AMENDMENTS TO CLAUSES 35B AND 49 OF THE EQUITY LISTING AGREEMENT

Pursuant to the notification of the Corporate Governance on 27th March, 2014, which will be applicable to every company or a class of companies whether listed or unlisted. To harmonise the listing norms with new rules on corporate governance, SEBI has now amended the provisions

of the Listing Agreement which will come into effect 01.10.2014. – [*CIR/CFD/POLICY CELL/2/2014, dated 17th April, 2014 (SEBI)*]

4.3 SAT CLARIFIES MANDATE OF LAW UNDER SECTION 15B OF SEBI ACT, 1992

SAT has confirmed penalisation of a company for grossly violating the mandated disclosure under Regulation 8(3) of Substantial Acquisition of Shares and Takeovers, Regulations, 1997. The disclosure has been made with a delay of 165 days. SAT has held that the mandate of section 15B of the SEBI Act, 1992 is to impose penalty for each day of delay to comply with the provision and it is not dependent on whether such failure has occurred for the first time or there is no consequent loss to investor or gain to the firm. – [*Gaylord Commercial Company Limited v. SEBI, dated 10th April, 2014 (SAT)*]

4.4 NO DISCRIMINATORY OR ARBITRARY TREATMENT HAS BEEN METED OUT TO THE APPELLANTS IN PASSING THE IMPUGNED ORDER : SAT

Appellants, who were held guilty under Regulation 11(1), of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation 2003, and were restrained from buying, selling or otherwise dealing in securities in their proprietary accounts for a period of five years vide order of a Whole Time Member (WTM). On being challenged in a Review on the ground that restraint order should be discontinued as order against other brokers and appellant's own clients have been revoked, SAT dismissed the as per earlier ratio in similar cases that unwarranted sympathy shown to some other entities cannot be a ground to grant similar relief to the appellant who has specifically been found guilty of the charges. The argument of proportionality was also rejected as it was neither canvassed in appeal nor it was pleaded in the review application. – [*Grishma Securities Private Limited & Ors., v. SEBI, dated 23rd April, 2014 (SAT)*]

4.5 FRONT RUNNING IS FRAUDULENT AND MANIPULATIVE AND AKIN TO THE OFFENCE OF INSIDER TRADING : SAT

SAT has held the imposition of the penalty of Rs 1 crore valid against an Appellant who was alleged to have indulged in front-running with prior knowledge of buy orders and consequent penalty of Rs. 1 crore was imposed. It's Contention, that investment was made on account of fundamentals of the companies was not accepted as investment was made by purchasing and selling the shares on the same day. On basis of prior information received the appellant would set sell order at a price nearer to the price at which buy orders were placed. Section 15-HA of the SEBI Act, 1992, prescribes penalty not exceeding Rs 25 lac or 3 times of the profit made by fraud. Herein the penalty of Rs 1 crore was held valid in view of profit of Rs 49 lac from fraudulent practice. – [*Ms. Pooja Menghani v. SEBI, dated 23rd April, 2014 (SAT)*]

4.6 MD TRAVELLING ABROAD NO GROUND FOR FAILURE TO MAKE DISCLOSURE : SAT

In a Case dealing with violation of Regulation 13(6) of PIT (Prohibition of Insider Trading) Regulations, 1992 which relate to the disclosures to be made by a listed company to the Stock Exchanges with which the company is listed. The plea that Managing Director of the company was travelling abroad at the relevant time has been rejected by SAT. It held that it cannot be a ground to escape penalty for not making disclosures within the time stipulated under Regulation 13(6) of PIT Regulations. Although penalty reduced to Rs. 3 Lac. [*CG-Vak Software and Exports Limited v. SEBI, dated 23rd April, 2014 (SAT)*]

4.7 VOLUNTARY OFFER BECOMING UNECONOMICAL IS NO GROUND FOR REVOKING IT : SC

To a question, whether an open offer voluntarily made through a Public Announcement for purchase of shares of target company, could be permitted to be withdrawn at time when voluntary open offer had become uneconomical to be performed. SAT held that an open offer once made could only be withdrawn in circumstances stipulated under Regulation, 27(1)(b)(c) and (d) of SAST Regulation 2002. Impossibility, envisioned under aforesaid Regulation would not include contingency where voluntary open offer once made could be permitted to be withdrawn on ground that it had now become economically unviable. – [*SEBI v. Akshya Infrastructure Private Ltd., dated 25th April, 2014 (Supreme Court of India)*]

COMPETITION

5.1. PENALTY FOR VIOLATION OF SECTION 4 OF THE COMPETITION ACT : CCI

On a Complaint filed by Indian Exhibition Industry Association against Ministry of Commerce and Indian Trade Promotion Organization for contravention of Section 4 of the Act. A penalty at 2% of average turnover of last three year has been imposed which amounts to Rs. 6,75,03,540 by CCI. Informant was aggrieved by the time gap restriction imposed by OP2 between two exhibitions/fairs. A gap of 15 days between two events having similar product profiles/ coverage was maintained whereas in case of ITPO and third party fairs having similar product profiles, a gap of 90 days before and after the fair was imposed. By stipulating favourable time gap restrictions for its own events as compared to third party organized events, OP 2 imposed unfair and discriminatory conditions on the third party event organizers at Pragati Maidan.– [*Indian Exhibition Industry Association v. Ministry of Commerce & Industry & ors., dated 3rd April, 2014 (CCI)*]

INDIRECT TAXES**– CUSTOMS****6.1. MANUAL FILING AND PROCESSING OF IMPORT/EXPORT DOCUMENTS ALLOWED ONLY IN EXCEPTIONAL CASES**

Customs Authorities are instructed that the facility of manual filing and processing of import/export documents should be allowed only in exceptional and genuine cases where the electronic filing and processing of import/export documents is not feasible. This exceptional process can be followed with the permission of the Commissioner of Customs. - *[Instruction No. 401/81/2011- Custom, dated 7th April, 2014]*

6.2. DEPARTMENT IMPOSES PROVISIONAL ANTI-DUMPING DUTY ON CAST ALUMINIUM ALLOY WHEELS FOR 6 MONTHS

Provisional anti-dumping duty levied on imports of cast aluminium alloy wheels or alloy road wheels used in motor vehicles when imported into India from People's Republic of China, Korea RP and Thailand for a period of 6 months – *[Notification No. 15/2014 - Customs (ADD), dated 11th April, 2014]*

6.3. FAILURE TO OBTAIN RECOMMENDATION LETTER FROM SPONSORING AUTHORITY, WHEN THERE WAS NO SUCH REQUIREMENT AT THE RELEVANT TIME, CANNOT RESULT IN DENIAL OF CONCESSIONAL RATE OF DUTY UNDER PROJECT IMPORT REGULATIONS: CESTAT

When on ground of failure to obtain recommendation letter from the sponsoring authority a demand along with orders of confiscation & imposition of penalties was made denying benefit of concessional rate of duty under Project Import Regulations ("Regulations"). CESTAT found that at the material time of import, both in terms of the Regulations, as also in terms of the Foreign Trade Policy, there was no requirement of obtaining any such recommendation letter. Therefore it has been held that any requirement with respect to registration has to be in terms of the Project Import Regulations or the Foreign Trade Policy as it stood at the relevant point of time. Therefore, demand set aside along with orders of confiscation & imposition of penalties. – *[Jawaharlal Nehru Port Trust v. CC, Mumbai, dated 28th March, 2014 (CESTAT)]*

– CENTRAL EXCISE

6.4. NO NEED FOR THE CAPITAL GOODS AT THE TIME OF RECEIPT TO BE OWNED BY MANUFACTURER: CESTAT

In a controversy, CESTAT, while rejecting both the grounds on which the department sought to deny the CENVAT Credit on Capital Goods, held that there is absolutely no requirement that the capital goods at the time of receipt must be owned by manufacturer or that the same would cease to be capital goods, if they are installed in the factory and become fixed to earth. – *[M/s Indian Oil Corporation Ltd v. CCE & CST, Rohtak, dated 2nd April, 2014 (CESTAT)]*

6.5. CENVAT CREDIT ON THE OUTDOOR CATERING SERVICES IS ADMISSIBLE EVEN IF NUMBER OF WORKERS IN THE FACTORY IS LESS THAN STATUTORY LIMIT: CESTAT

The dispute in the present appeal relates to the availability of credit of service tax paid on the outdoor catering service availed by the appellant in their factory canteen for the purpose of providing food to their employees. The CENVAT credit was denied on the ground that the larger bench ("**LB**") in an earlier decision while granting the benefit had noted that the Canteen services is mandatorily required to be provided when number of workers is more than 250 whereas in the case of the appellant the number is less. Hon'ble Tribunal held that it is the ratio of the law declared by the LB which is applicable and not the reasoning, therefore, CENVAT credit on the Outdoor Catering services is admissible even if number of workers in the factory is less than 250. *[M/s Paramount Communication Ltd v. CCE, Jaipur, dated 3rd April, 2014 (CESTAT)]*

6.6. REJECTION OR ACCEPTANCE OF REMISSION APPLICATION IS INEFFECTIVE, IF SEMI-FINISHED GOODS DESTROYED IN FIRE ACCIDENT: CESTAT

In a case where Semi-finished goods destroyed in fire accident, it has been decided that since the appellant is not liable to pay any duty on semi-finished goods, resultantly it is not required to file remission application. Therefore, rejection or acceptance of remission application is ineffective. – *[M/s Park Nonwoven Pvt Ltd v. CCE, Rohtak, dated 4th April, 2014 (CESTAT)]*

6.7. WHEN CENVAT CREDIT ON EXCISE DUTY MAY NOT BE DECLINED: GUJARAT HC

Assessee had purchased the inputs and utilised the same for manufacture of a final product. Such goods were duty paid. Rule 3 and 4 of the CENVAT Credit Rules, 2004, thus would enable him to avail the CENVAT credit. Supplier of the goods to the respondent paid excise duty on such

product under mistaken belief. Held that no duty is payable on such product in view of SC decision in TISCO. Strictly speaking therefore, such amount deposited by the original manufacturer would not partake the character of excise duty. However, when the department did not dispute the classification of such manufacturer, accepted the declarations and duties, CENVAT credit on such duty cannot be declined. – *[CCE, Ahmedabad v. Nahar Granities Ltd, dated 24th April, 2014 (Gujarat HC)]*

– SERVICE TAX

6.8. WHEN SHOW CAUSE NOTICE STANDS TIME BARRED : ALLAHABAD HC

The fact that the assessee was not paying service tax on the fixed monthly charges was known to the Department on 27 September 2002 and, therefore the SCN issued on 21.07.2006 covering the period 2001-02 and 2004-05 was held to be clearly time barred. Also, once the CESTAT had held the demand to be time barred, entering into the merits of the case and passing an order would amount to an illegality. – *[CC, CCE & CST v. M/s Monsanto Manufacturer Pvt Ltd, dated 27th March, 2014 (Allahabad HC)]*

6.9. SC'S JUDGMENT IN MAFATLAL INDUSTRIES CANNOT BE APPLIED TO SUCH AN EXTENT SO AS TO TOTALLY OVERRIDE AND BRUSH ASIDE A PROVISION LIKE SECTION 11B: BOMBAY HC

The amount was paid by the Appellant as service tax. That tax was not imposable or leviable on export of services was a clarification made by the Department in 2009 and relying on that clarification, the refund of duty or service tax was claimed. Hon'ble Bombay HC held that, when the application for refund was made invoking Section 11B of the CEA, 1944 the same applies with full force including the rule of limitation prescribed therein. Judgment of apex Court in Mafatlal Industries cannot be applied to such an extent so as to totally override and brush aside a provision like Section 11B with the rule of limitation carved out therein. Appeal dismissed, refund claim being time barred. – *[M/s Andrew Telecom (I) Pvt Ltd v. CC & CCE, Goa, dated 3rd April, 2014 (Bombay HC)]*

6.10. NO FILING FEE PAYABLE IN APPEALS BEFORE CESTAT RELATING TO REBATE OR REFUND OF SERVICE TAX, CENTRAL EXCISE & CUSTOMS: ALLAHABAD HC

Hon'ble Allahabad HC while interpreting provisions of Section 86 (6) of the Finance Act, 1994, has held that, no fee is payable in respect of filing appeals before CESTAT relating to rebate or refund of ST, CX & Customs. – *[CCE v. M/s Glyph International Ltd, dated 16th April, 2014 (Allahabad HC)]*

6.11. WHEN CONSIDERATION FOR IMPORT-WORTHINESS CERTIFICATE SERVICES PAID IN FOREX, NOT LIABLE TO SERVICE TAX : BOMBAY HC

In a case involving controversy on service tax where Foreign parties requisitioning services of appellant to provide import-worthiness certificates of sample goods in India, was at issue. Hon'ble Bombay HC held that consideration for such services paid in forex is not liable to Service Tax. – *[CST, Mumbai v. M/s SGS India Pvt. Ltd., dated 23rd April, 2014 (Bombay HC)]*

INTELLECTUAL PROPERTY RIGHTS**7.1. DELHI HC DECIDES ON A DECEPTIVELY SIMILAR TRADEMARK**

The Defendant in this case was restrained by an interim injunction from using the impugned trademark 'AMAFORTEN' or any other trademark deceptively similar to the trademark of the Plaintiff 'ANAFORTAN'. Hon'ble Court observed that the Plaintiff is a much prior user in point of time in the said trademark and the trademark of the Defendant is also phonetically, visually and structurally similar to that of the Plaintiff. The Defendant has slavishly copied the mark and design of the product of the plaintiff for a drug which has the same therapeutic use. – *[Abbott Healthcare Pvt. Ltd. v. Raj Kumar Prasad & Ors., dated 25th April, 2014 (Delhi HC)]*

7.2. DELAY IN USING A TRADEMARK DOES NOT DISENTITLE A PARTY FROM USING ITS TRADEMARK: DELHI HC

Issue in this case was whether the plaintiff is, by virtue of its mark having being registered prior to the impugned mark being used by the defendant, entitled to an injunction against infringement although it used its mark after the defendants started using the impugned mark. Held that there is nothing which disentitles the Plaintiff to maintain an action for infringement. The Defendants having used the impugned mark after the Plaintiff's mark was registered, cannot succeed in this action for infringement. – *[Wockhardt Ltd. v. Remed Healthcare Pvt Ltd. & Anr., dated 25th April, 2014 (Delhi HC)]*

CONSUMER**8.1. NOT A CONSUMER UNDER THE ACT IF LOAN TAKEN FOR COMMERCIAL PURPOSE: NCDRC**

In a case where the Respondent had availed "over draft facility" from the petitioner for Rs.20 lakhs by mortgage of shares with the Petitioner Bank. Loan was used for the business of hardware. Nowhere in his complaint had he pleaded that the loan was taken for any purpose other than commercial. Under such circumstances, the respondent would not be a consumer as

per Section 2 (1) (d) (ii) of the Act. – [*HDFC Bank Ltd v. Subodh Ghanshyam Prabhu, dated 1st April, 2014 (NCDRC)*]

8.2. ENTERTAINING BELATED PETITIONS WITHOUT SUFFICIENT CAUSE WOULD DEFEAT THE PURPOSE OF THE CONSUMER ACT: NCDRC

In a case Hon'ble NCDRC has held that while deciding an application filed in cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if Court was to entertain highly belated petitions filed against the orders of the consumer fora. – [*Union of India & Ors., v. Anjani Kumar Agarwal, dated 1st April, 2014 (NCDRC)*]

8.3. WHEN MEDICAL NEGLIGENCE NOT MADE OUT: NCDRC

While deciding a case on medical negligence, Hon'ble NCDRC held that as there was failure to take ante natal care, in the case, and also a failure to use McRoberts manoeuvre in handling shoulder dystocia, OPs were held guilty of medical negligence. However, the Ops were not held guilty of medical negligence for using forcep delivery and medical care and treatment of Complainant No 1. In all the compensation awarded by State Commission of Rs. 17 lakh sustained. – [*Master Nishant Verma (Minor) v. M/s Singhal Maternity and Medical Centre, dated 24th April (NCDRC)*]

8.4. ACCIDENTAL BENEFIT DUE ONLY WHEN INSURED DIES ACCIDENTAL DEATH: NCDRC

While deciding on issues in an insurance case, Hon'ble NCDRC, opining on the merits of the case held that it is clear that in case of death of life assured, the additional accident benefit equal to the sum assured is payable only if the life assured dies because of any bodily injury resulting solely and directly from an accident by outward, violent and visible means. In the instant case, as per the record, the life assured died due to heart attack. There is no evidence on record to indicate that the life assured died because of some injury suffered in an accident. The fora below have committed a material illegality in awarding the accident benefit to the respondents against the terms and conditions of the insurance contract. – [*LIC of India v. Mamta Rani, dated 25th April, 2014 (NCDRC)*]

8.5. CASES UNDER ELECTRICITY ACT NOT TO BE BROUGHT AS CONSUMER COMPLAINT: NCDRC

The case covered under Section 126 to Section 135 of Electricity Act, 2003 and as per judgment of the Apex Court in U.P. Power Corporation Ltd. & Ors. v. Anis Ahmad, the complaint was

not maintainable before Consumer Fora.— [*Raghubir Singh v. UHBVN, dated 29th April, (NCDRC)*]

8.6. IN CASE OF CONTINUING CAUSE OF ACTION SECTION 24A OF THE ACT NOT APPLICABLE: NCDRC

In this case the Complainant had made full payment for the plot in question, but the petitioners had failed to execute the registered sale deed. Regarding the cancellation of plot, the respondent stated that he had not received any intimation about cancellation or the forfeiture of his money. OP had no document to support their version. In the circumstances Hon'ble NCDRC held that there was continuous cause of action, because the petitioners had not handed over the possession, nor had the OP refunded the amount paid by the complainant. — [*DLM Enclave v. Naresh Batham, dated 30th April, 2014 (NCDRC)*]

ENVIRONMENT

9.1. NO EFFECTIVE STEPS AGAINST EFFLUENT DISCHARGE BY SUGAR MILLS IN RIVER GANGA WOULD INVITE COERCIVE ORDERS AGAINST POLLUTION CONTROL BOARDS: NGT

In a case NGT has warned the Central and Uttar Pradesh Pollution Control Boards that it would pass "coercive orders" if effective steps were not taken to control pollution due to effluent discharged by sugar mills and a dairy firm in the river Ganga. - (*The Hindu, dated 23rd April, 2014*)

9.2. NGT ORDERS TERMINATION OF SAND MINING LEASES OF 18 MINES IN BETUL DISTRICT

NGT has ordered closing of mining leases of 18 mines in Betul district approved by the district-level environmental committee on grounds that they were not approved by a competent authority. According to the central law, sand mining on land measuring five hectares or more requires environmental clearance (EC) from MoEF and clearance for areas smaller than that is given by State Level Environment Impact Assessment Authority (SEIAA). — (*The Times of India, dated 23rd April, 2014*)

9.3. ESSAR POWER PLANT AT MAHAN ORDERED TO TAKE STEPS ABOUT FLY ASH OR FACE CLOSURE: NGT

NGT has directed Essar Power to comply with its directions on removal and storage of fly ash at its Mahan coal-based power plant or face immediate shutdown. — (*The Financial Express, dated 25th April, 2014*)

9.4. YAMUNA RIVERFRONT DEVELOPMENT PROJECTS TO BE SCRAPPED BY DDA WHEREVER REQUIRED

After an expert panel recommended to the NGT that the planning authority's recreational spots located in active floodplain areas would kill the river and cause floods in the city, the Delhi Development Authority (DDA) said that it would scrap, wherever required, its ambitious Yamuna riverfront development (YRFD) projects so that the river's floodplains could be saved. – *(The Hindustan Times, dated 28th April, 2014)*

9.5. NGT ORDERS MAHARASHTRA POLLUTION CONTROL BOARD TO DECIDE NORMS ON VEHICULAR HORNS WITHIN ONE MONTH

In order to reduce the noise pollution caused by honking of horns of the vehicles, NGT has directed the Maharashtra Pollution Control Board (MPCB) to fix standards for horns to be fitted on vehicles within a month. – *(The Indian Express, dated 28th April, 2014)*

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