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## RBI & FEMA

### 1.1 ELIGIBLE LIMIT OF ECR FACILITY REDUCED FOR SCHEDULED BANKS EXCLUDING REGIONAL RURAL BANKS

RBI has decided to reduce the eligibility limit for Export Credit Refinance (“**ECR**”) facility for scheduled banks (excluding RRBs). It has been decided by RBI to reduce the eligible limit of ECR facility from the level of 50 per cent of the outstanding rupee export credit eligible for refinance as at the end of the second preceding fortnight to 32 per cent with immediate effect. In this connection the reporting format appearing in Annex III of the Master Circular No. MPD. 366/07.01.279/2013-14 dated July 1, 2013 is modified accordingly. [RBI/2013-14/621, REF.No.MPD.BC.372/07.01.279/2013-14, dated 3<sup>rd</sup> June, 2014]

### 1.2 REDUCTION IN STATUTORY LIQUIDITY RATIO

RBI has decided to reduce the Statutory Liquidity Ratio (“**SLR**”) of Scheduled Commercial Banks and Local Area Banks and Regional Rural banks from 23.0 per cent of the Net Demand and Time Liabilities (“**NDTL**”) to 22.5 per cent with effect from the fortnight beginning June 14, 2014. [DBOD.Ret. BC. 117/12.02.001/2013-14, dated 3<sup>rd</sup> June, 2014 & RPCD. CO. RRB. BC. No. 106/03.05.33/2013-14, dated 4<sup>th</sup> June, 2014]

### 1.3 RBI CLARIFIES GUIDELINES ON “CAPITAL AND PROVISIONING REQUIREMENTS FOR EXPOSURES TO ENTITIES WITH UNHEDGED FOREIGN CURRENCY EXPOSURE”

The ‘Capital and provisioning requirements for exposures to entities with unhedged foreign currency exposure’ guidelines included the methodology to be followed for calculating incremental provisioning and capital requirements for bank exposures to entities with unhedged foreign currency exposures (“**EFCEs**”). Considering the hardship faced by the banks, the RBI has provided clarifications on these guidelines. The clarifications, *inter-alia*, include:

- Quarterly data from corporates may be used on a self-certification basis, subject to an annual certification by the statutory auditors;
- USD-INR annualised volatility to be provided by Foreign Exchange Dealers’ Association of India (“**FEDAI**”) to ensure consistency;
- In case of unavailability of the audited results of the last quarter to determine earnings before interest and depreciation (“**EBID**”) which is required to be compared with the likely loss on account of exchange rate movements, latest available audited quarterly or yearly results should be considered. This is relevant for private/unlisted companies;
- Exclusion of inter-bank exposures from the scope of the guidelines;
- Action to be taken in case corporates do not provide the required data in a timely manner. [DBOD.No.BP.BC.116/21.06.200/2013-14, dated 3<sup>rd</sup> June, 2014]

### 1.4 INCREASE IN THE LIMIT OF REMITTANCES FROM USD 75,000 TO USD 125,000 UNDER LIBERALISED REMITTANCE SCHEME (LRS) FOR RESIDENT INDIVIDUALS

RBI has, under the LRS for resident individuals, enhanced the existing limit of USD 75,000 per financial year (April-March) to USD 125,000 with effect from Jun 3, 2014. Accordingly, banks may now allow remittances

up to USD 125,000 per financial year, under the Scheme, for any permitted current or capital account transaction or a combination of both. RBI also made it clear that the Scheme should not be used for making remittances for any prohibited or illegal activities such as margin trading, lottery, etc. *[A.P. (DIR Series) Circular No. 138, dated 3<sup>rd</sup> June, 2014]*

#### **1.5 FOREIGN DIRECT INVESTMENT (FDI) UP TO 26 PER CENT IS PERMITTED UNDER AUTOMATIC ROUTE IN INSURANCE SECTOR**

The extant FDI policy for insurance sector has been reviewed and accordingly, effective from February 4, 2014, foreign investment by way of FDI, investment by FIIs/FPIs and NRIs up to 26% under automatic route shall be permitted in insurance sector subject to the conditions specified in the Press Note 2 (2014 Series) dated February 4, 2014 issued in by Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Government of India. *[A.P. (DIR Series) Circular No.139, dated 5<sup>th</sup> June, 2014]*

#### **1.6 PARTICIPATION BY REGISTERED FPIs, SEBI REGISTERED LONG TERM INVESTORS AND NRIs IN NON-CONVERTIBLE/REDEEMABLE PREFERENCE SHARES OR DEBENTURES OF INDIAN COMPANIES ALLOWED**

RBI has decided to allow registered FIIs, QFIs deemed as registered Foreign Portfolio investors, registered FPIs, long term investors registered with SEBI – Sovereign Wealth Funds (“SWFs”), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, foreign Central Banks to invest on repatriation basis, in non-convertible / redeemable preference shares or debentures issued by an Indian company and listed on recognized stock exchanges in India, within the overall limit of USD 51 billion earmarked for corporate debt. Further, NRIs may also invest, both on repatriation and non-repatriation basis, in non-convertible/redeemable preference shares or debentures as above. *[A.P. (DIR Series) Circular No.140, dated 6<sup>th</sup> June, 2014]*

#### **1.7 RBI ALLOWS SHARE PLEDGING IN FAVOUR OF NBFCs**

With a view to further rationalising the process and reducing the transaction time, RBI has decided, subject to certain conditions, to delegate banks the powers to allow pledge of equity shares of an Indian company held by non-resident investors in favour of the NBFCs (whether listed or not), to secure the credit facilities extended to the resident investee company for *bona-fide* business purposes/operations. *[A.P. (DIR Series) Circular No.141, dated 6<sup>th</sup> June, 2014]*

#### **1.8 RBI FURTHER SIMPLIFIES KYC NORMS FOR BANK ACCOUNTS, INTRODUCES ONE DOCUMENTARY PROOF OF ADDRESS**

RBI has decided that customers may submit only one documentary proof of address (either current or permanent) while opening a bank account or while undergoing periodic updation. In case the address mentioned as per ‘proof of address’ undergoes a change, fresh proof of address may be submitted to the branch within a period of six months.

Further, in case the proof of address furnished by the customer is not the local address or address where the customer is currently residing, the bank may take a declaration of the local address on which all correspondence will be made by the bank with the customer. No proof is required to be submitted for such address for correspondence/local address. This address may be verified by the bank through ‘positive confirmation’ such as acknowledgment of receipt of (i) letter, cheque books, ATM cards; (ii) telephonic conversation; (iii) visits; etc. *[DBOD.AML.BC. No. 119/14.01.001/2013-14, dated 9<sup>th</sup> June, 2014]*

#### **1.9 RBI ISSUES FINAL GUIDELINES ON BASEL III LIQUIDITY FRAMEWORK – SPECIFIES MINIMUM LIQUIDITY COVERAGE RATIO IN PHASED MANNER**

RBI has released the final Basel III framework on liquidity standards, which includes final guidelines on liquidity coverage ratio (“**LCR**”), liquidity risk monitoring tools and LCR disclosure standards (Annexed to this circular). It is also declared that the LCR will be introduced in a phased manner starting with a minimum requirement of 60% from January 1, 2015 and reaching minimum 100% on January 1, 2019. *[DBOD.BP.BC.No.120/21.04.098/2013-14, dated 9<sup>th</sup> June, 2014]*

#### **1.10 RBI INTRODUCES INFORMATION SYSTEM AUDIT FOR URBAN COOPERATIVE BANKS**

Keeping in view that over the years, Urban Co-operative Banks (“**UCBs**”) in India have moved away from paper based banking to electronic banking. The full suite of electronic banking viz. ATMs’ Online Banking, Mobile Banking, Online Payments, Smart cards were being offered to UCB customers and having regard to risks emanating from adoption of technology. RBI has advised UCBs as under:

- UCBs may adopt an information system (“**IS**”) audit policy, if not already done, appropriate to its level of operations, complexity of business and level of computerization.
- UCBs may also adopt appropriate systems and practices for conducting IS audit on annual basis covering all the critically important branches (in terms of nature and volume of business).
- It is further advised that the IS audits be undertaken preferably prior to the statutory audit so that IS audit reports are available to the statutory auditors well in time for examination and for incorporating comments, if any, in the audit reports.

The above instructions to be implemented during the current accounting year *i.e.* April 1, 2014 to March 31, 2015. *[UBD.BPD.Cir.No. 71/12.09.000/2013-14, dated 11<sup>th</sup> June, 2014]*

#### **1.11 FCNR (B)/NRE DEPOSITS – EXEMPTION FROM MAINTENANCE OF CRR/SLR**

RBI has decided that the exemption granted on incremental FCNR (B) /NRE deposits through circular UBD.BPD.(PCB).Cir.No.5/13.01.000/2013-14 dated August 27, 2013, from maintenance of CRR/SLR will be withdrawn with effect from reporting fortnight beginning June 14, 2014, *i.e.* only the eligible amount of incremental FCNR (B) and NRE deposits of maturities of three years and above from the base date of July 26, 2013, and outstanding as on June 13, 2014, would qualify for CRR/SLR exemption till their maturities/ premature withdrawals. *[UBD.BPD.(PCB).Cir.No.72/13.01.000/2013-14, dated 11<sup>th</sup> June, 2014]*

#### **1.12 DISCLOSURE OF SECTOR-WISE ADVANCES BY BANKS**

RBI has advised banks to disclose sector-wise advances in the ‘Notes to Accounts’ to the financial statements as per the format given in the Annex to this circular from the financial year 2014-15 onwards. *[DBOD.No.BP.BC.121/21.04.018/2013-14, dated 18<sup>th</sup> June, 2014]*

#### **1.13 ANNUAL RETURN ON FOREIGN LIABILITIES AND ASSETS REPORTING BY INDIAN COMPANIES –FORMAT REVISED**

In order to collect information on Indian companies’ Outward Foreign Affiliated Trade Statistics (“**FATS**”) as per the multi-agency global ‘Manual on Statistics of International Trade in Services’, the Foreign Liabilities and Assets (“**FLA**”) return has been modified marginally and is made available on the RBI website ([www.rbi.org.in](http://www.rbi.org.in) → Forms category → FEMA Forms) along with the related FAQs ([www.rbi.org.in](http://www.rbi.org.in) → FAQs category → Foreign Exchange). *[A .P.(DIR Series) Circular No. 145, dated 18<sup>th</sup> June, 2014]*

#### **1.14 RBI ALLOWED RESIDENTS, NON-RESIDENTS TO CARRY UP TO Rs. 25,000 ABROAD OR BRING UP TO Rs. 25,000 IN INDIA**

In view of the evolving economic conditions and with a view to facilitating travel requirements of residents travelling abroad as well as non-residents visiting India, RBI has permitted residents and non-residents, except

Pakistanis and Bangladeshis, to carry up to Rs. 25,000 in Indian currency notes while leaving the country. Earlier, Indians travelling abroad were permitted to carry only up to Rs. 10,000, while foreigners were not allowed to carry Indian currency while leaving the country. *[A.P. (DIR Series) Circular No.146, dated 19<sup>th</sup> June, 2014]*

#### **1.15 FOREIGN PLAYERS ARE ALLOWED TO HEDGE CURRENCY RISK: RBI**

RBI has decided to allow foreign portfolio investors (“*FPIs*”) to enter into currency futures or exchange traded currency options contracts without any underlying exposure up to \$10 million subject to certain conditions. *[A.P. (DIR Series) Circular No. 148, dated 20<sup>th</sup> June, 2014]*

#### **1.16 RBI ALLOWS NBFCs TO WORK AS BUSINESS CORRESPONDENTS FOR BANKS**

Taking into account recommendations of the Nachiket Mor Committee RBI has permitted non-deposit taking NBFCs (NBFCs-ND) to act as business correspondents (“*BCs*”) of banks (subject to certain conditions contained in this circular). Further, to provide operational flexibility to banks and in view of technological developments in the sector, the distance criteria for BCs have been removed. However, when formulating the board approved policy for engaging BCs, banks should keep in mind the objectives of adequate oversight as well as provision of services to customers while deciding how to modify extant distance criteria. *[DBOD.No.BAPD.BC.122/22.01.009/2013-14, dated 24<sup>th</sup> June, 2014]*

#### **1.17 UNIQUE CUSTOMER IDENTIFICATION CODE FOR BANKS’ CUSTOMERS IN INDIA**

RBI has decided to extend the time for completing the process of allotting unique customer identification code (“*UCIC*”) to existing customers up to December 31, 2014. *[DBOD. AML.BC. No.124 /14.01.001/2013-14, dated 26<sup>th</sup> June, 2014]*

#### **1.18 RBI HAS PROVIDED A BREATHING SPACE TO INFRASTRUCTURE FIRMS, ALLOWING BANKS TO TREAT LOANS TO THESE ENTITIES AS STANDARD EVEN IF THE DATE OF COMMENCEMENT OF A PROJECT IS DELAYED BY UP TO TWO YEARS**

It is clarified that multiple revisions of the DCCO (date of commencement of commercial operations) and the consequential shift in repayment schedule for an equal or shorter duration (including the start-date and the end-date of the revised repayment schedule) will be treated as a single event of restructuring, provided the revised DCCO is fixed within the respective time limits, *i.e.* within two years and one year for infrastructure projects and non-infrastructure projects, respectively, of the original DCCO, at the time of financial closure and provided all other conditions and terms of the loan remain unchanged. It is further clarified that banks could postpone the DCCO in case the infrastructure project concerned was involved in litigation or delayed due to reasons beyond the control of promoters. With extensions in both cases, the loan would be treated as a standard asset. *[DBOD.No.BP.BC.125/21.04.048/2013-14, dated 26<sup>th</sup> June, 2014]*

#### **1.19 INDIA TO IMPLEMENT US FOREIGN TAX COMPLIANCE ACT**

India and the US have agreed to implement Foreign Accounts Tax Compliance Act (“*FATCA*”), a US law that targets tax non-compliance by US taxpayers with foreign accounts. FATCA mandates reporting by US taxpayers about certain financial accounts and offshore assets and reporting by foreign financial institutions about accounts held by US taxpayers or foreign entities in which US taxpayers hold a substantial ownership interest. Indian financial institutions with overseas branches have time until December 31 to register with US authorities and obtain a Global Intermediary Identification Number (“*GIIN*”). However, they should register for GIIN only when the formal IGA is signed after cabinet approval. Further, Financial entities with overseas branches in a jurisdiction that does not have IGA but allows them to register as foreign financial institutions (“*FFI*”) should do so with the US authorities before July 1, 2014, to avoid potential withholding under FATCA. Overseas branches in a jurisdiction that does not have IGA and does not allow an FFI agreement may not register and they

would eventually be subject to withholding under FATCA. *[DBOD. AML. No. 20472/14.07.018/2013-14, dated 27<sup>th</sup> June, 2014]*

## FOREIGN TRADE

### 2.1 EXPORT OF MILK POWDER, WHEAT, EDIBLE OILS, PULSES AND NON-BASMATI RICE TO BHUTAN IS ALLOWED: DGFT

The Government of India has exempted the export of milk powder, wheat, edible oils, pulses and non-basmati rice to Bhutan from any export ban and without any quantitative restrictions. This Notification supersedes earlier Notification No. 87 of 05.12.2011 & Notification No. 104 of 05.03.2012. *[Notification No 81(RE-2013)/2009-2014, dated 13<sup>th</sup> June, 2014, (DGFT)]*

### 2.2 MINIMUM EXPORT PRICE FOR EXPORT OF ONIONS

Export of all varieties of onions [mentioned in serial number 51 & 52 of Chapter 7 of Schedule 2 of ITC(HS)] will be subject to a Minimum Export Price (“MEP”) of US\$ 300 per MT. *[Notification No 82 (RE-2013) / 2009-2014, dated 17<sup>th</sup> June, 2014, (DGFT)]*

### 2.3 EXPORT OF PIG BRISTLES AND HAIR TO EUROPEAN UNION

Conditions for export of Pig Bristles and Hair to European Union (“EU”) have been notified. A new entry at Sl. No. 38 A is added in Chapter 5 of Schedule 2 (Export Policy) of ITC (HS) Classification of Export & Import Items, as follows:

Sl. No.	Tariff Item HS Code	Unit	Item Description	Export Policy	Nature of Restriction
38 A	05021010	Kg	Pig Bristles & Hair	Free	Export to EU allowed subject to the following conditions:  (i) A ‘Shipment Clearance Certificate’ is to be issued consignment-wise by the CAPEXIL indicating details of the name and address of the exporter, address of the registered plant, IEC No. of the exporter, plant approval number, nature of export product, quantity, invoice number and date, port of loading (Name of the port) and destination.  (ii) After the shipment is made, the exporter shall also provide a ‘Production Process’ Certificate and/or Health Certificate to the buyer consignment-wise to be issued by CAPEXIL as per the requirement of EU.

*[Notification No 83 (RE-2013) / 2009-2014, dated 20<sup>th</sup> June, 2014, (DGFT)]*



## **2.4 PROHIBITION ON IMPORT OF MILK AND MILK PRODUCTS FROM CHINA IS EXTENDED FOR ONE MORE YEAR**

Prohibition on import of milk and milk products (including chocolates and chocolate products and candies/ confectionary/ food preparations with milk or milk solids as an ingredient) from China is extended for one more year, *i.e.*, till 23.6.2015 or until further orders, whichever is earlier. *[Notification No 84 (RE-2013) / 2009-2014, dated 23<sup>rd</sup> June, 2014, (DGFT)]*

## **2.5 PROCEDURE RELATING TO TRACKING AND TRACING OF EXPORT CONSIGNMENT OF PHARMACEUTICALS AND DRUGS**

The requirement of affixing bar codes on Tertiary Level and Secondary Level Packaging already implemented *w.e.f.* 01.10.2011 and 01.01.2013 respectively continue to be in force. The requirement of affixing bar codes on Primary Level Packaging was to be effective from 01.07.2014. Now this date has been deferred till a new date is notified. Earlier through Public Notice No. 31 dated 17.10.2013, mono cartons were to be treated as part of Primary Level Packaging. Now this has been modified to treat mono cartons as Secondary Level Packaging. *[Public Notice No.62/(RE 2013)/2009-14, dated 26<sup>th</sup> June, 2014, (DGFT)]*

## **2.6 EXPORT POLICY OF POTATO**

Export of Potatoes is permitted subject of MEP of US\$ 450 per MT. A new entry at Sl. No. 50 A is added in Chapter 7 of Schedule 2 (Export Policy) of ITC (HS) Classification of Export & Import Items, as follows:

<i>Sl. No.</i>	<i>Tariff Item HS Code</i>	<i>Unit</i>	<i>Item Description</i>	<i>Export Policy</i>	<i>Nature of Restriction</i>
50 A	07019000	Kg	Potatoes, Fresh or Chilled	Free	Export permitted subject to MEP of US\$ 450 per MT

*[Notification No 85 (RE-2013) / 2009-2014, dated 26<sup>th</sup> June, 2014, (DGFT)]*

## **CORPORATE**

### **3.1 AMENDMENT IN COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014**

In the Companies (Acceptance of Deposits) Rules, 2014, in Rule 5(1) following proviso has been inserted:

“Provided that the companies may accept the deposits without deposit insurance contract till the 31<sup>st</sup> March, 2015” *[G.S.R.386(E), dated 6<sup>th</sup> June, 2014, (MCA)]*

### **3.2 COMMENCEMENT OF PROVISIONS OF SUB-SECTIONS (2) AND (3) OF SECTION 74**

Provisions of the sub-sections (2) & (3) of Section 74 of the Companies Act, 2013 has come into force from 6<sup>th</sup> June, 2014. *[S.O.1459(E), dated 6<sup>th</sup> June, 2014, (MCA)]*

### **3.3 AMENDMENT IN THE COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) RULES, 2014**

In the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 after rule 8, the following rule shall be inserted, namely:-

**"8A. Appointment of Company Secretaries in companies not covered under rule 8.-** A company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time company secretary." *[G.S.R. 390(E), dated 9<sup>th</sup> June, 2014, (MCA)]*

### **3.4 MATTERS RELATING TO APPOINTMENT AND QUALIFICATION OF DIRECTORS AND INDEPENDENT DIRECTORS CLARIFIED**

Clarification on rules relating to appointment and qualification of directors and independent directors prescribed under the Companies Act has been issued. *[General Circular No. 14/2014, dated 9<sup>th</sup> June, 2014, (MCA)]*

### **3.5 CLARIFICATION FOR FILING OF FORM NO. INC-27 FOR CONVERSION OF COMPANY FROM PUBLIC TO PRIVATE**

The relevant provisions of Companies Act, 2013 (second proviso to sub-section (1) and sub-section (2) of section 14) have not been notified. In view of this, the corresponding provisions of Companies Act, 1956 (Proviso to sub-section (1) and sub-section (2A) of Section 31) shall remain in force till corresponding provisions of Companies Act, 2013 are notified. *[Circular No. 18/2014, dated 11<sup>th</sup> June, 2014, (MCA)]*

### **3.6 OFFICIAL LIQUIDATOR AT HYDERABAD SHALL HAVE TERRITORIAL JURISDICTION IN ENTIRE TELANGANA**

Central Government established the office of the Official Liquidator at Hyderabad having territorial jurisdiction for discharging the functions of the Official Liquidator in the whole State of Telangana and appoints the Official Liquidator at Hyderabad as Official Liquidator for the liquidation of companies under the said Act in the State of Telangana. *[S.O. 1524(E), dated 13<sup>th</sup> June, 2014, (MCA)]*

### **3.7 REGISTRAR OF COMPANIES AT HYDERABAD HAVING TERRITORIAL JURISDICTION IN THE STATE OF TELANGANA**

Central Government appoints the Registrar of Hyderabad to have territorial jurisdiction in the whole of the State of Telangana for discharging the functions of Registrar of Companies under various provision of Act. *[S.O. 1525(E), dated 13<sup>th</sup> June, 2014, (MCA)]*

### **3.8 VOTING THROUGH ELECTRONIC MEANS NOT MANDATORY TILL 31st DECEMBER, 2014**

Section 108 of the Companies Act, 2013 read with rule 20 of the Companies (Management and Administration) Rules, 2014 deal with the exercise of right to vote by members by electronic means (e-means). It has been decided not to treat the relevant provisions as mandatory till 31st December, 2014. To provide clarity and ensure uniformity in the e-voting procedure, clarifications on certain issues raised by the stakeholders are provided in the Annexure which is attached to the circular. *[General Circular No. 20/2014, dated 17th June, 2014, (MCA)]*

### **3.9 APPLICABILITY OF PAN REQUIREMENT FOR FOREIGN NATIONALS**

Due to difficulties being faced by Foreign Nationals while filing Incorporation form (INC-7) due to mandatory requirement of submission of PAN details of intending Directors at the time of filing the application for incorporation, the Ministry of Corporate Affairs ("MCA") has clarified that PAN details are mandatory only for those foreign nationals who are required to possess "PAN" in terms of provisions of the Income Tax Act, 1961 on the date of application for incorporation.

Further, where the intending Director who is a Foreign National is not required to compulsorily possess PAN, it will be sufficient for such a person to furnish his/her passport number, alongwith undertaking stating that

provisions of mandatory applicability of PAN are not applicable to the person concerned. The said undertaking should be in the following form:

**Undertaking**

I \_\_\_\_\_ (name), son of \_\_\_\_\_ (father's name) \_\_\_\_\_ citizen of \_\_\_\_\_ (nationality) \_\_\_\_\_ having passport No. \_\_\_\_\_ (passport Number)] declare as under:

(i) That I am not required under the provisions of Income Tax Act, 1961 to obtain Income Tax Permanent Account Number [PAN];

(ii) That in view of the above I have not been issued any PAN; and

(iii) That I undertake to furnish to the Registrar of Companies (mention jurisdiction) details of my PAN as soon as a Permanent Account Number is issued to me.

*[Circular No. 12/2014, dated 22<sup>nd</sup> June, 2014, (MCA)]*

**3.10 FORM MGT-7 NOT APPLICABLE FOR FINANCIAL YEAR 2013-14 AND INSPECTION OF RECORDS ALLOWED WITHOUT LEVY OF FEE**

It has been clarified that Form MGT-7 shall not apply to annual returns in respect of companies whose financial year ended on or before 1st April, 2014 and for annual returns pertaining to earlier years. These companies may file their returns in the relevant Form applicable under the Companies Act, 1956. It has also been clarified that until the requisite fee is specified by companies, inspections could be allowed without levy of fee. *[General Circular No. 22/2014, dated 25<sup>th</sup> June, 2014, (MCA)]*

**3.11 CLARIFICATION RELATING TO INCORPORATION OF A COMPANY BY COMPANY INCORPORATED OUTSIDE INDIA**

In view of the references having been received from the Government seeking clarity about the status of subsidiaries incorporated/to be incorporated by companies incorporated outside India. Attention, in particular, was drawn to the absence of the deeming provision of sub-section (7) of section 4 of the Companies Act, 1956 in the Companies Act, 2013 (New Act), in such references.

It has been clarified that there is no bar in the new Act for a company incorporated outside India to incorporate a subsidiary either as a public company or a private company. An existing company, being a subsidiary of a company incorporated outside India, registered under the Companies Act, 1956, either as private company or a public company by virtue of section 4(7) of that Act of 1956, will continue as a private company or public company, as the case may be, without any change in the incorporation status of such company. *[General Circular No. 23/2014, dated 25<sup>th</sup> June, 2014, (MCA)]*

**3.12 CLARIFICATION WITH REGARD TO HOLDING OF SHARES IN A FIDUCIARY CAPACITY BY ASSOCIATE COMPANY UNDER SECTION 2(6) OF THE COMPANIES ACT, 2013**

It has been clarified that the shares held by a company in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the relationship of 'associate company' under section 2(6) of the Companies Act, 2013. *[General Circular No. 24/2014, dated 25<sup>th</sup> June, 2014, (MCA)]*

**3.13 CLARIFICATION ON APPLICABILITY OF REQUIREMENT FOR A RESIDENT DIRECTOR**

The 'residency requirement' would be reckoned from the date of commencement of section 149 of the Act *i.e.* 1<sup>st</sup> April, 2014, MCA has clarified. The first 'previous calendar year' for compliance with these provisions would, therefore, be Calendar Year 2014. For newly incorporated companies, it is also clarified that companies



incorporated between 1<sup>st</sup> April, 2014 to 30<sup>th</sup> September, 2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30<sup>th</sup> September, 2014 need to have the resident director from the date of incorporation itself. *[General Circular No. 25/2014, dated 26<sup>th</sup> June, 2014, (MCA)]*

### **3.14 CLARIFICATION ON COMPANIES (INCORPORATION) RULES, 2014**

The use of the word "Commodity Exchange" may be allowed only where a "No Objection Certificate" from the Forward Markets Commission ("FMC") is furnished by the applicant. All other provisions of the Companies (Incorporation) Rules, 2014 will continue to be applicable. The certificate from FMC will also be required in cases of companies registered with the words "Commodity Exchange" before the issue of this circular. *[General Circular No. 26/2014, dated 27<sup>th</sup> June, 2014, (MCA)]*

## **SECURITIES**

### **4.1 DDPs REQUIRED TO SHARE "KYC" WITH BANKS ON WRITTEN AUTHORIZATION FROM FPIs**

Designated Depositories Participants ("DDPs") are advised to share the relevant know your client ("KYC") documents with the banks concerned based on written authorization from the foreign portfolio investors ("FPIs"). Hard copies of documents furnished by FPIs to DDPs may be transferred to the concerned bank through their authorised representative. A proper record of transfer of documents, both at the level of the DDP as well as at the bank, under signatures of the officials of the transferor and transferee entities, may be kept. *[CIR/IMD/FIIC/11/2014, dated 16<sup>th</sup> June, 2014 (SEBI)]*

### **4.2 DISCLOSURES IN THE PROSPECTUS FOR PUBLIC ISSUE OF DEBT SECURITIES**

SEBI has issued a circular which prescribes for disclosures to be made in the prospectus for Public Issue of Debt Securities and it has specified Base Issue Size, Minimum Subscription, Retention of Over-Subscription Limit and further disclosures in the Prospectus. *[CIR/IMD/DF/ 12 /2014, dated 17<sup>th</sup> June, 2014 (SEBI)]*

### **4.3 INVESTMENTS BY FPIs IN NON-CONVERTIBLE / REDEEMABLE PREFERENCE SHARES OR DEBENTURES OF INDIAN COMPANIES**

SEBI has issued a circular pursuant to RBI circular dated 6<sup>th</sup> June, 2014. Thereby FPIs are permitted to invest on repatriation basis, in non-convertible/redeemable preference shares or debentures issued by an Indian company. The investments by FPIs in the abovementioned securities shall be reckoned against the Corporate Debt Investment Limits (US\$ 51 billion). *[CIR/IMD/FIIC/13/2014, dated 17<sup>th</sup> June, 2014 (SEBI)]*

### **4.4 MINIMUM ASSETS UNDER MANAGEMENT OF DEBT ORIENTED SCHEMES**

SEBI has prescribed that an average assets under management ("AUM") of 20 crore on half yearly rolling basis shall be maintained for open ended debt oriented schemes. The existing open ended debt oriented schemes shall comply with above stated point within one year. In case of a breach of above points the Asset Management Company shall scale up the AUM of such scheme within a period of six months. Failing which the provisions of Regulation 39 (2) (c) of SEBI (Mutual Funds) Regulations, 1996 would become applicable. *[CIR/IMD/DF/ 15 /2014, dated 20<sup>th</sup> June, 2014, (SEBI)]*

### **4.5 EXTENSION OF TIME LINE FOR ALIGNMENT - ESOS AND ESPS GUIDELINES**

SEBI has made amendments to Employees Stock Option Scheme ("ESOS") and Employee Stock Purchase Scheme ("ESPS") Guidelines 1999. Existing employee benefit schemes involving securities of the company were to be aligned with SEBI's ESOS and ESPS Guidelines. The time line for alignment has been extended

through this circular. Prohibition on acquiring securities from the secondary market shall continue till the existing schemes are aligned with the new regulations to be notified. *[CIR/CFD/POLICYCELL/3/2014, dated 27<sup>th</sup> June, 2014, (SEBI)]*

**4.6 REGISTRATION FOR INTER-GOVERNMENTAL AGREEMENT WITH UNITED STATES OF AMERICA UNDER FOREIGN ACCOUNTS TAX COMPLIANCE ACT**

With regard to Inter-Governmental Agreement between India and USA to implement Foreign Accounts Tax Compliance Act (“*FATCA*”), all intermediaries are informed *inter alia* that Indian Financial Institutions would have time upto December 31, 2014 to register with US authorities and obtain a Global Intermediary Identification Number (“*GIIN*”). *[CIR/MIRSD/ 2/2014, dated 30<sup>th</sup> June, 2014, (SEBI)]*

**4.7 MODE AND THE MANNER OF COLLECTION OF MARGIN MONEY IS NOT AT THE DISCRETION OF APPELLANT: SAT**

Ruling that the mode and the manner of collection of margin money is not at the discretion of Appellant. It observed that, the law lays down unambiguously that margin ought to be collected on an upfront basis *i.e.* on or before the day on which a trade is executed, and it is not appropriate on the appellant’s part to state the fact that they collected the cheque on the day after the trading day was in keeping with a long standing practice. *[RBK Share Broking Limited v. National Stock Exchange of India, dated 10<sup>th</sup> June, 2014, (SAT)]*

**4.8 DISCLOSURES UNDER REGULATION 13(2A) OF PIT REGULATIONS, 1992 IS NOT RESTRICTED TO THERE BEING DISPROPORTIONATE GAIN OR UNFAIR ADVANTAGE: SAT**

Observing in the case before it that the Appellant became part of promoter group by acquiring India Nivesh Capital Limited (“*INCL*”) but failed to make disclosure in this regard, which was made at a delay of 16 months, the Tribunal held that irrespective of disproportionate gain or unfair advantage derived or any loss caused to the investors, obligation to make disclosures under regulation 13(2A) of the Prevention of Insider Trading (“*PIT*”) Regulations, 1992 have to be complied with. Although relevant while determining Penalty. *[India Nivesh Capitals Limited v. SEBI, dated 17<sup>th</sup> June, 2014, (SAT)]*

**4.9 SEBI CIRCULAR WAS ISSUED WITH THE VIEW TO INSTILL GREATER TRANSPARENCY AND DISCIPLINE IN THE DEALINGS BETWEEN CLIENTS AND THE BROKER AND WAS MANDATORY**

Viewing that the appellant, in the case before it sought to impugn order imposing penalty of Rs.16 lac for non-compliance with provision of SEBI circular dated December, 2009. The circular *inter alia* laid down the actual settlement of funds and securities to be done by the broker, within 24 hours or at least once in a calendar quarter or month, depending on the preference of the client. Further, it also specified that the broker shall send to the client “a statement of accounts” containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The Tribunal held that the circular was mandatory and that the subsequent clarification issued by NSE could not make it ineffective. The appeal was dismissed. *[Indira Securities Pvt. Ltd. v. SEBI, dated 23<sup>rd</sup> June, 2014, (SAT)]*

**4.10 ABRUPTLY REJECTING CONSENT APPLICATION EVEN BEFORE GIVING FULL INSPECTION OF DOCUMENTS REFERRED TO IN SHOW CAUSE NOTICE RESULTED IN PREJUDICE: SAT,**

In the instant case SEBI sent a show cause notice (“*SCN*”) to the appellant. In response to that appellant filed consent application seeking settlement of dispute. Appellant kept insisting on documents referred to in the SCN. The matter got referred from Internal Committee (“*IC*”) to High Powered Advisor Committee (“*HPAC*”) which recommended that considering seriousness of matter, it should not be settled and accordingly appellant’s consent application was set aside.

Appeal was made against this order and tribunal held that in light of Section 15JB(4) of the SEBI Act (which bars appeal against any order passed in consent proceedings) enacted retrospectively no appeal lies against the Tribunal against *any order* passed in settlement proceedings unlike Section 15T(2) where appeal does not lie only against *an order passed* with the consent of parties. Although the Tribunal also observed that consent application was rejected abruptly even before giving full inspection of documents referred to in SCN which resulted in prejudice. [*Reliance Industries Limited v. SEBI*, dated 30<sup>th</sup> June, 2014, (SAT)]

## COMPETITION

### 5.1 THE AGREEMENT WAS ALLEGED TO BE UNILATERAL, ONE SIDED AND UNFAIR AND CASE WAS DIRECTED FOR FURTHER INVESTIGATION BY DIRECTOR GENERAL

In this case the Informant's family had booked five commercial office spaces and accordingly had entered into commercial office space buyers agreements with the Opposite Party ("**OP**") (*i.e.* M/s DLF Universal Limited). It was alleged by the informant that the OP imposed unfair terms and conditions on the buyers of the commercial offices which is anti-competitive as per the provisions of Section 4(2)(a)(i) of the Competition Act.

The Competition Commission of India identified 'the services of development and sale of commercial space' to be the relevant market. Commission held that since OP was a wholly owned subsidiary of M/s DLF Limited and belongs to the DLF Group, dominance of DLF Group in the relevant market is to be examined and the case was fit for investigation by the Director General. [*Mr. Shyam Vir Singh v. M/s DLF Universal Limited*, 23<sup>rd</sup> June, 2014, (CCI)]

## INDIRECT TAXES

### – CUSTOMS

### 6.1 THE CENTRAL GOVERNMENT CONSIDERING THE REQUISITION OF DESIGNATED AUTHORITY EXTENDED THE LEVY OF ANTI-DUMPING DUTY ON IMPORTS OF "PRESENSITISED POSITIVE OFFSET ALUMINIUM PLATES" FOR A FURTHER PERIOD OF FIVE YEARS

Anti Dumping Duty ("**ADD**") levied on imports of pre-sensitised positive offset aluminium plates originating in or exported from People's Republic of China, has been extended for a further period of five years *i.e.* upto 9th June, 2019 unless revoked earlier. [*Notification No. 25/2014 - Customs (ADD)*, dated 9<sup>th</sup> June, 2014]

### 6.2 THE CENTRAL GOVERNMENT CONSIDERING THE REQUISITION OF DESIGNATED AUTHORITY EXTENDED THE LEVY OF ANTI-DUMPING DUTY ON IMPORTS OF "HOMOPOLYMER OF VINYL CHLORIDE MONOMER (SUSPENSION GRADE)" FOR A FURTHER PERIOD OF FIVE YEARS

Anti-Dumping Duty ("**ADD**") levied on imports of homopolymer of vinyl chloride monomer (suspension grade), originating in or exported from the European Union, Mexico, Taiwan, the People's Republic of China, Indonesia, Japan, Malaysia, Thailand and the United States of America has been extended for a further period of five years *i.e.* upto 13th June, 2019 unless revoked earlier. [*Notification No. 26/2014 - Customs (ADD) & Notification No. 27/2014 - Customs (ADD)*, dated 13<sup>th</sup> June, 2014]

**6.3 UNLESS CLEARED BY THE FSSAI, THE FOOD PRODUCTS CANNOT BE RELEASED BY THE CUSTOMS AUTHORITIES: KERALA HC**

Import of Coco Beans which inspection were found contaminated with fungal growth. Held that since Cocoa Beans come under 'food product', unless it is cleared by the Food Safety and Standards Authority of India ("FSSAI"), the goods cannot be released by the Customs authorities. Certificate by the Director of Plant Protection, Quarantine Storage Department, Government of India indicating that the consignment has 'passed' is of no assistance to petitioner. Petition dismissed, however, petitioner granted liberty to approach the Customs authorities seeking re-export, if it is permissible. [*M/s St George Industries v. CC & Ors.*, dated 26<sup>th</sup> May, 2014 (Kerala HC)]

**6.4 INDIAN CURRENCY, IN EXCESS OF THAT PERMITTED BY RBI, ATTEMPTED TO BE EXPORTED IS LIABLE FOR ABSOLUTE CONFISCATION: CESTAT**

In case a person attempted to export Indian currency outside India without permission of RBI more than Rs.5,000/- or Rs.10,000/- (as the case may be) in that case the Indian currency can be absolutely confiscated and it is discretion of the proper officer in the facts and circumstances of the case be allowed to redeem on payment of redemption fine and imposition of penalty. [*Peringatil Hamza v. CC (Airport), Mumbai*, dated 23<sup>rd</sup> June, 2014 (CESTAT)]

**6.5 CONDITION 2(B) OF NOTIFICATION NO 102/07, REQUIRING ENDORSEMENT THAT NO CREDIT OF SAD SHALL BE ADMISSIBLE IS MERELY PROCEDURAL**

In a case where the question was whether refund of SAD can be allowed when no endorsement was made on the commercial invoices as stipulated in paragraph 2 (b) of Notification No. 102/07 while all other conditions stipulated in the notification stood satisfied. CESTAT held that A trader-importer, who paid SAD on the imported goods and who discharged VAT/ST liability on subsequent sale, and who issued commercial invoices without indicating any details of the duty paid, would be entitled to the benefit of exemption under Notification 102/2007-Cus, notwithstanding the fact that he made no endorsement that "credit of duty is not admissible" on the commercial invoices, subject to the satisfaction of the other conditions stipulated therein.

However, Tribunal made it clear that decision is rendered only in the facts of the case and shall not be interpreted to mean that conditions of an exemption notification are not required to be fulfilled for availing the exemption. [*Chowgule & Co. Pvt. Ltd. v. CC & CCE*, dated 24<sup>th</sup> June, 2014 (CESTAT)]

**6.6 CESTAT RULES THAT RULE 3(C) OF RULES OF INTERPRETATION OF SCHEDULE GOODS ARE TO BE CLASSIFIED UNDER HEADING OCCURRING LAST IN NUMERICAL ORDER AMONG THOSE EQUALLY MERITING CONSIDERATION**

CESTAT has held that Red Bull Energy Drink is correctly classifiable under CTH 22029090 and not 22021010 as alleged by Revenue. Ingredients of product in question are Taurine, Glucuronolactone, Caffeine, Inositol, B Vitamins, Sucrose and Glucose and hence the product cannot be classified under 22021010 as the scope of that classification is limited to mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured. As per Rule 3(c) of Rules of Interpretation of Schedule goods are to be classified under heading occurring last in numerical order among those equally meriting consideration. [*CC, Mumbai v. Red Bull India Pvt Ltd & Anr.*, dated 27<sup>th</sup> June, 2014 (CESTAT)]

**– CENTRAL EXCISE****6.7 EXCISE DUTY CONCESSION GRANTED TO CAPITAL GOODS AND AUTOMOTIVE SECTOR, EXTENDED FURTHER**

The period of excise duty concession that was granted under central excise tariff Notification No. 12/2012 dated 17<sup>th</sup> March, 2012 to capital goods, consumer non-durable goods and motor vehicles, has been further extended from 30<sup>th</sup> June 2014 to 31<sup>st</sup> December 2014. [*Notification No. 06/2014 - Central Excise, dated 25<sup>th</sup> June, 2014*]

**6.8 IF THE INTENTION OF THE LEGISLATURE WAS TO COVER ANY ITEM UNDER SECTION 4A, THEN THAT ITEM SHOULD HAVE BEEN SPECIFICALLY MENTIONED IN THE NOTIFICATION, RULES CESTAT**

In an appeal against order passed by CCE, Pune and confirmed by the adjudicating authority that the toilet paper manufactured by the appellant is liable to be assessed to duty under Section 4A of the Central Excise Act, 1944 and not under Section 4 of the said Act. CESTAT has held that if intention of legislature was to cover toilet paper also under Section 4A, then same would have been specifically mentioned in notification. Demand of Rs.1.2 Cr set aside and appeal allowed. [*Kohinoor Tissue Converting Co. v. CCE, Pune, dated 30<sup>th</sup> May, 2014 (CESTAT)*]

**6.9 SO LONG AS THE GOODS REMAIN UNDER CUSTOMS CONTROL, THEY CANNOT BE SAID TO HAVE BEEN IMPORTED INTO INDIA AND, THEREFORE, THE QUESTION OF 'MANUFACTURE' & ATTRACTING EXCISE DUTY LIABILITY WOULD NOT ARISE AT ALL: CESTAT**

In a case where the appellant was a manufacturer of cosmetics and toilet products, it also imported those materials from abroad and market the same in India. The department was of the view that the activity of affixing labels and declaring MRPs amounted to 'manufacture' under Section 2 (f) (iii) of the Central Excise Act, 1944 and hence, the appellants are required to discharge excise duty liability of these goods. The Tribunal held that, the excise duty demand on imported goods contained in packages of above 10 grams or 10 ml. is not sustainable in law as the activity of labelling/affixing MRP is a statutory requirement as per DGFT Notification 44(RE-2000), and as regards the goods contained in packages of 10 grams of 10 ml. or less, the activity of labelling/re-labelling would amount to "manufacture" as there is no statutory requirement of undertaking the said activity before their import can be allowed. However, the appellant would be eligible to take CENVAT credit of the CVD paid on such goods. [*L'OREAL India Pvt Ltd v. CCE, Raigad/Thane, dated 13<sup>th</sup> June, 2014 (CESTAT)*]

**– SERVICE TAX****6.10 PROFIT MARGIN CANNOT BE CONSTRUED AS COMMISSION IN ALL CASES: CESTAT**

In a case where at retail outlets, appellants provided necessary infrastructure to Mahanagar Gas Limited ("MGL") for installing machinery for compression of gas. Appellants buying CNG from MGL who sell the same on payment of VAT/ST and appellants in turn sell to customers on RSP. No commission received by appellant from MGL. Held that profit margin cannot be construed as commission. Appellant cannot be said to provide any service of BAS to client for marketing of goods. Also, contention of AR that private parties are paying ST was rejected as in the case of private parties the invoices on the customers were raised by MGL directly and private parties are receiving commission and there is no transaction on principal to principal basis. [*Bharat Petroleum Corpn. Ltd & Hindustan Petroleum Corpn. Ltd v. CST, Mumbai, dated 4<sup>th</sup> June, 2014 (CESTAT)*]

**6.11 NOT CLAIMING THE REFUND UNDER CORRECT NOTIFICATION, APPELLANT CANNOT BE ELIGIBLE FOR ANY INTEREST FOR THE INTERVENING PERIOD, RULES CESTAT**

In a case where tax was paid on services of Commission agent on reverse charge basis and refund was claimed under incorrect notification 17/2009-ST instead of 18/2009-ST. It was noted by tribunal that before rejecting the



refund claim, no show-cause notice was issued to the appellants and no personal hearing was also granted. Held that the original authority will consider the claim as if the claim under Notification no. 18/2009-ST was filed at the initial stage. If the appellants are eligible for refund under Notification no. 18/2009-ST and satisfy the conditions, the refund will be granted. However, keeping in view the fact that the appellants have not claimed the refund under notification, they will not be eligible for any interest for the intervening period. [*M/s Monarch Catalyst Pvt Ltd v. CCE, Thane, dated 4<sup>th</sup> June, 2014 (CESTAT)*]

**6.12 APPELLANTS PROVIDING SERVICE AS COVERED UNDER 'HEALTH AND FITNESS SERVICE' HELD LIABLE FOR SERVICE TAX**

In this case there was a Booklet titled "Lifesaver" brought out by the appellant which illustrated the benefits of yoga and also contained a list the names of 20 asanas which were being taught at the institution. Further, appellant was a Trust registered under the Maharashtra State to teach the art of yoga as the yoga is therapeutic and restorative. To the question whether it all was taxable, CESTAT ruled that appellants were clearly providing a service as covered under "Health and fitness service" therefore Service Tax correctly demanded. [*Manav Sansadhan Vikas Ani Sanshodhan Manch Kabir Baug Matha Sanstha v. CCE, Pune, dated 13<sup>th</sup> June, 2014 (CESTAT)*]

**6.13 SERVICE PROVIDED BY INDIAN RAILWAYS EXEMPTED RETROSPECTIVELY BY SECTION 99 OF THE FA, 2013: BOMBAY HC**

Holding that the since the Service provided by Indian Railways exempted retrospectively by section 99 of the FA, 2013, the Hon'ble **Bombay HC** ordered that the tribunal should not have ordered pre-deposit and in the event of failure dismissed the appeal when the matter concerned Railways. Therefore Order of CESTAT was quashed and the court held that, as the appellant has a strong prima facie case in favour, the Appeal preferred by the Appellant before the Tribunal shall stand revived and restored to its file for disposal on merits and in accordance with law. [*Central Railway, DRM Office, Nagpur Division v. CCE & CC, dated 13<sup>th</sup> June, 2014 (Bombay HC)*]

**6.14 ACTIVITY UNDERTAKEN BY AGENT IN RELATION TO SALE & PURCHASE OF AGRICULTURAL PRODUCE IS EXEMPTED AS PER NOTIFICATION NO. 13/03 :CESTAT**

Granting stay, in case that the Applicants were acting as an agent on behalf of cane growing farmers for providing service (harvesting and transportation) to the sugar factory in relation to the procurement of goods or services which are inputs for the client. Activities were undertaken by the commission agent in relation to the sale and purchase of agricultural produce is exempted from service tax as per Notification no. 13/03-ST dt.20.06.2003 as amended. The tribunal held that prima facie applicants have made out a strong case in their favour. Therefore, the pre-deposit of dues are waived and recovery of the same is stayed during the pendency of the appeal. Stay petition allowed. [*M/s Pravara Oos Todva Vahtuk Majoor Sanstha Pvt Ltd v. CCE, Aurangabad, dated 16<sup>th</sup> June, 2014 (CESTAT)*]

**6.15 DELAY OF 213 DAYS IN FILING APPEAL CONDONED**

In view of the fact that a person suffering from cardiac disease or problem must take rest and cannot function as a normal person, the Madras HC disagreed with the view of the tribunal that disbelieving the applicant's plea by stating that there is no advice for taking bed rest and dismissing COD cannot be sustained. Medical Certificate produced by the appellant is not fully convincing nonetheless appeal for condonation of delay is allowed on terms. [*M/s Tojo Tyre Retread v. CESTAT & Anr., dated 18<sup>th</sup> June, 2014 (Madras HC)*]



## INTELLECTUAL PROPERTY RIGHTS

### 7.1 HAVING ONCE FILED A “COUNTER-CLAIM”, IN RESPONSE TO THE “INFRINGEMENT SUIT(S)”, IT WOULD NOT BE OPEN TO THE RESPONDENTS TO FILE “REVOCATION PETITION(S)”, AS THEY WOULD LIKEWISE BE BARRED BY THE RULE OF RES JUDICATA : SUPREME COURT

In a case where the appellant was engaged in manufacture of wind-turbines and holder of various intellectual property rights for 2,700 patents in more than 60 countries, According to appellant despite the termination of all intellectual property licence agreements respondents continued to use appellant's patents.

Appellant filed number of patent infringement suits before High Court (“HC”). Respondents filed counter claims and continued to pursue revocation petitions before Appellate Board even after consent order was passed by HC.

Issue before the apex court (Supreme Court) was that - whether both the remedies should persuade at same time to assail grant of patent. Held that, defendant in 'infringement suit' raised counter-claim seeking revocation of patent, validity of such challenge should be determined only at hands of HC that while dealing with counter-claim and that, Appellate Board would thereafter cease to have jurisdiction to adjudicate upon validity of patent.

In cases where 'infringement suits' were filed by appellant before 'revocation petitions' were filed by respondents, respondents had right to file counter-claims to seek revocation of patent, under strength and authority emerging from Section 64(1) of the Patents Act, 1970. Having once filed counter-claim in response to 'infringement suits' on same analogy as has been recorded above, it would not be open to respondents (defendants in 'infringement suits') to file revocation petitions as they would likewise be barred by rule of *res judicata*. In such cases, prayer for revocation of patent should be adjudicated, while disposing of counter-claim filed by respondents. [*Dr. Aloys Wobben & Anr. v. Yogesh Mehra & Ors., dated 2<sup>nd</sup> June, 2014 (Supreme Court Of India)*]

### 7.2 WHERE THERE WERE MATERIAL AND BROAD DISSIMILARITIES THAT NEGATIVE THE INTENTION TO COPY, MINOR OR CO-INCIDENTAL COMMONALITIES DID NOT EQUATE TO INFRINGEMENT, RULES BOMBAY HC

In this case before **Bombay HC**, the plaintiff claimed that recently released film ‘Dhoom 3’ infringed the plaintiff's copyright in his script ‘ONCE’. In the suit, the plaintiff sought an order that he should be given credit in the titles of the film. Issue was on considering the two works, would an ordinary person inevitably conclude that the defendant had copied the plaintiff's work. The court in view of the facts of the case the Hon’ble court held that applying *extrinsic test*, an objective comparison of specific expressive elements, the Plaintiff should be held to have failed. It further held that both the scripts were entirely different works. It was impossible to say that the film was a copy of the plaintiff's original work. [*Mansoor Haider v. Yashraj Films Pvt. Ltd. & Ors., dated 20<sup>th</sup> June, 2014 (Bombay HC)*]

### 7.3 APPLICABILITY OF SECTION 33 OF THE TRADE MARKS ACT, 1999

In the instant case, HC had *prima facie* come to conclusion that the acquiescence, in the facts of the case, was sufficient to deny any interim relief to the plaintiffs who claimed as registered proprietors of the trade mark. As it viewed that in the first place, Section 33 of the Trade Marks Act, 1999 dealt with the case of two registered trademarks, registered at different points of time. If the proprietor of the earlier trade mark (registered prior in point of time) acquiesces in the use of the later trade mark (registered later in point of time) for five years, he could not apply to have the registration of the later trade mark declared invalid or oppose the use of the later trade mark, unless the registration of the later trade mark was not applied in good faith.

Secondly, what the provision of Section 33 of 1999 Act meant was that after acquiescence for a period of five years, there was a complete bar in so applying for a declaration or opposing the user. It did not mean that such application could be successfully made in all other cases.

In a given case, even if the acquiescence was for a shorter period, the court might deem it fit to deny relief to the prior registered proprietor. [*Neel Electro Techniques & Ors v. Neelkanth Power Solution & Anr.*, dated 24<sup>th</sup> June, 2014 (Bombay HC)]

## ENVIRONMENT

### 9.1 NGT ORDERS CLOSURE OF BAREILLY MUNICIPAL SWM PLANT

National Green Tribunal (“NGT”) has ordered closure of Bareilly Municipal Solid Waste Management (“MSWM”) plant for operating without environmental clearances like consent and authorisation from the state Pollution Control Board (“PCB”). [*Business Standard*, dated 2<sup>nd</sup> June, 2014]

### 9.2 NGT NOTICES TO PWD, FOREST DEPARTMENT OVER FELLING TREES ILLEGALLY FOR METRO PROJECT

NGT has issued a contempt notice to the Forest Department and the Public Works Department (“PWD”) for violating its orders allowing only certain trees along a stretch between Vikaspuri and Mukarba Chowk to be cut for PWD’s elevated corridor project. [*The Hindu*, dated 4<sup>th</sup> June, 2014]

### 9.3 NGT INTERIM ORDER STOPS CAVELOSSIM CONSTRUCTION

NGT has granted *ad interim* relief for stopping all construction activity carried out by Balaji Concepts, in a low-lying area at Cavelossim as it was alleged that the construction activity was damaging water bodies and low-lying fields. [*The Times of India*, dated 6<sup>th</sup> June, 2014]

### 9.4 SUPREME COURT REFUSES TO HEAR REAL ESTATE FIRM'S PLEA AGAINST NATIONAL GREEN TRIBUNAL'S ORDER

The Supreme Court refused to entertain a plea of real estate firm Jaypee Infratech seeking a direction to Noida Authority to grant completion certificate to its projects which fall within 10km radius of a bird sanctuary. [*The Times of India*, dated 10<sup>th</sup> June, 2014]

### 9.5 30 INDUSTRIAL UNITS IN NARELA ZONE HAVE BEEN SEALED BY THE NDMC FOR ALLEGEDLY ILLEGALLY STORING AND RECYCLING PLASTIC

Thirty industrial units in Narela Zone of the national capital have been sealed by the NDMC for allegedly illegally storing and recycling plastic. The action was taken with help from the local police in pursuance of an order of the NGT regarding plastic collection and burning in Mundka and Nangloi areas. [*Business Standard*, dated 26<sup>th</sup> June, 2014]

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