RBI/FEMA

1. MASTER CIRCULARS ISSUED

The Reserve Bank of India (**RBI**) has issued updated Master Circulars on various topics which can be accessed from RBI website *viz.* https://www.rbi.org.in/Scripts/BS_ViewMasterCirculardetails.aspx

2. NO EDF REQUIRED ON RE-EXPORT OF UNSOLD ROUGH DIAMONDS FROM SNZ: RBI

In order to facilitate re-export of unsold rough diamonds imported on free of cost basis at Special Notified Zone (**SNZ**), RBI has clarified that the unsold rough diamonds, when re-exported from the SNZ (being an area within the Customs) without entering the Domestic Tariff Area (**DTA**), do not require any Export Declaration Form (**EDF**) formality. ***-[RBI/2015-16/110 A.P. (DIR Series) Circular No.1, dated 2nd July, 2015]***

3. MAKE USE OF CREDIT INFORMATION IN CRILC BEFORE OPENING CURRENT ACCOUNTS : RBI TO BANKS

Keeping in view the importance of credit discipline, especially for reduction in NPA level in banks, RBI has advised banks to make use of the credit information available in Central Repository of Information on Large Credits (**CRILC**) for opening current accounts.

Further, banks are advised to make use of the information available with CRILC and not limit their due diligence to seeking NOC from the bank with whom the customer is supposed to be enjoying the credit facilities as per his declaration. ***–[RBI/2015-16/112 DBR. Leg. BC. 25./09.07.005/2015-16, dated 2nd July, 2015]***

4. APPLICABILITY OF CREDIT CONCENTRATION NORMS REVISED

RBI has amended the Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 dated March 27, 2015 and Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 dated February 22, 2007 with regard to the applicability of credit concentration norms.

It has revised the credit concentration norms stating that in determining concentration of credit / investment, the following items shall be excluded by NBFCs:

(A) NBFCs investments in shares of:
   (i) its subsidiaries,
   (ii) companies in the same group (to the extent they have been reduced from Owned Funds), and

(B) book value of debentures, bonds, outstanding loans and advances (including hire-purchase & lease finance) made to, and deposits with:
   (i) subsidiaries of NBFC and
   (ii) companies in the same group (to the extent they have been reduced from Owned Funds).

-[RBI/2015-16/114 DNBR (PD) CC. No. 064/03.10.001/2015-16, dated 2nd July, 2015]

5. FDI IN TOBACCO COMPANIES: CLARIFICATIONS ISSUED

RBI has announced that the FDI in manufacturing of tobacco products like cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes is prohibited. It has been clarified that the prohibition applies only to the manufacturing of these products and not to FDI in other activities relating to these products like wholesale cash and carry, retail trading which shall be governed by the sectoral restrictions laid down in the FDI policy framed by the Department Of Industrial Policy & Promotion, Ministry of Commerce and Industry. ***–[RBI/2015-16/116 A.P. (DIR Series) Circular No.2, dated 3rd July, 2015]***

6. REGULATORY FRAMEWORK FOR SUBMISSION OF ANNUAL RETURN BY NBFCs REVISED

As per the revised regulations, all non-deposit taking NBFCs (**NBFCs-ND**), with assets less than Rs. 500 crore are required to submit an Annual Return. Two new Return Formats have been created to capture important financial parameters of the respective categories of NBFCs, *i.e.*

(i) NBS 8 for NBFCs-ND with assets size between Rs.100-500crore, and
(ii) NBS 9 for NBFCs-ND with assets size below Rs. 100crore.

RBI has announced that the Annual Return should be submitted within 30 days of closing of the financial year, i.e. by 30th April of every year. Considering that most of these NBFCs will be filing such return for the first time, the Annual Return for the year ending March 31, 2015 may be filed by 30th September 2015.

Further, Non-deposit taking NBFCs with assets of Rs. 50- 500crore that have already submitted the prescribed returns for the quarter ending March 31, 2015 are not required to submit the annual return for the year ending March 2015 (to avoid duplication).

-[RBI/2015-16/119 DNBS (IT). CC. No. 01/24.01.191/2015-16, dated 9th July, 2015]

7. NBFCs: ACQUISITION/ TRANSFER CONTROL DIRECTIONS REVISED

RBI has revised the Non-Banking Financial Companies (Approval of Acquisition or Transfer of Control) Directions, 2014. Henceforth, prior written permission of the Reserve Bank shall be required for:

(i) any takeover or acquisition of control of an NBFC, which may or may not result in change of management;
(ii) any change in the shareholding of an NBFC, including progressive increases over time, which would result in acquisition/ transfer of shareholding of 26 per cent or more of the paid up equity capital of the NBFC. Prior approval would, however, not be required in case of any shareholding going beyond 26% due to buyback of shares/ reduction in capital where it has approval of a competent Court. The same is however required to be reported to the Reserve Bank not later than one month from its occurrence;
(iii) any change in the management of the NBFC which would result in change in more than 30 per cent of the directors, excluding independent directors. Prior approval would not be required for those directors who get re-elected on retirement by rotation.

-[RBI/2015-16/122 DNBR (PD) CC. No. 065/03.10.001/2015-16, dated 9th July, 2015]

8. PREPAID PAYMENT INSTRUMENT (PPI) GUIDELINES: NEW CATEGORY OF PPI FOR MASS TRANSIT SYSTEMS INTRODUCED

RBI has introduced a new category of semi-closed Prepaid Payment Instrument (**PPI**) in PPI guidelines with the following features:

- The semi-closed PPIs will be issued by the mass transit system operator (**PPI-MTS**) after authorization under the Payment and

Settlement Systems Act, 2007 to issue and operate such semi-closed PPIs;

- The PPI-MTS will necessarily contain the Automated Fare Collection application related to the transit service to qualify as PPI-MTS;
- Apart from the mass transit system, such PPI-MTS can be used only at other merchants whose activities are allied to or are carried on within the premises of the transit system;
- The PPI-MTS issuer will ensure on-boarding of merchants (only those permissible as under (iii) above) following due procedure applicable to any other PPI issuer;
- The PPI-MTS will have minimum validity of six months from the date of issue;
- The issuer may decide upon the desired level of KYC, if any, for such PPIs;
- The PPI-MTS issued may be reloadable in nature and at no point of time the value/balance n PPI can exceed the limit of Rs. 2000/-;
- No cash-out or refund will be permitted from these PPIs;
- Funds transfer under the Domestic Money Transfer (DMT) guidelines will also not be applicable to these PPIs;
- All other extant guidelines for escrow arrangement, customer grievance redressal mechanism, and agent/merchant due diligence, reporting and MIS requirements etc applicable to issue of PPIs would continue to be applicable in respect of PPI-MTS.

-[RBI/2015-16/123 DPSS. CO. PD. No. 58/02.14.006/2015-16, dated 9th July, 2015]

9. ADVANCES ON CREDIT CARD ACCOUNTS: PRUDENTIAL NORMS ISSUED

RBI has advised banks to treat credit card accounts as non-performing if the minimum amount due is not paid fully within 90 days of the payment due date mentioned in the credit card statement.

Further, the banks shall report a credit card account as 'past due' to credit information companies (**CICs**) or levy penal charges only when a credit card account remains 'past due' for more than three days. ***-[RBI/2015-16/126 DBR. No. BP. BC. 30/21.04.048/2015-16, dated 16th July, 2015]***

10. ISSUE OF SHARES UNDER ESOP SCHEME TO PERSONS RESIDENT OUTSIDE INDIA AMENDED

In terms of the extant instructions, an Indian Company can issue shares under ESOP Scheme, to its employees or employees of its Joint Venture or Wholly Owned Overseas Subsidiary/Subsidiaries who are resident outside India, directly or through a Trust, provided that the scheme has been drawn in terms of regulations issued under the SEBI Act, 1992 and face value of the shares to be allotted under the scheme to non-resident employees does not exceed 5 per cent of the paid up capital of the issuing company.

RBI has announced that an Indian Company may issue employees' stock option and/or sweat equity shares to its employees/directors or employees/directors of its Holding Company or Joint Venture or Wholly Owned Overseas Subsidiary/Subsidiaries who are resident outside India, provided that:

a. the scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013, as the case may be;
b. the "employee's stock option"/ "sweat equity shares" issued to non-resident employees/directors under the applicable rules/regulations are in compliance with the sectoral cap applicable to the said company;
c. issue of "employee's stock option"/ "sweat equity shares" in a company where foreign investment is under the approval route shall require prior approval of the Foreign

Investment Promotion Board (**FIPB**) of Government of India;

d. issue of "employee's stock option"/ "sweat equity shares" under the applicable rules/regulations to an employee/director who is a citizen of Bangladesh/Pakistan shall require prior approval of the FIPB of Government of India.

-[RBI/2015-16/128 A. P. (DIR Series) Circular No.4, dated 16th July, 2015]

11. BANKS CAN PROVIDE EXPORT FACTORING SERVICES ON NON RECOURSE BASIS ALSO: RBI

In order to facilitate exports, Authorised Dealer Category – I (**AD Category –I**) banks have been permitted to provide 'export factoring' services to exporters on 'with recourse' basis by entering into arrangements with overseas institutions for this purpose without prior approval from the RBI subject to compliance with guidelines issued by the Department of Banking Regulation in this regard.

Taking into account the recommendation made by the Technical Committee on Facilities and Services to the Exporters, RBI has allowed banks to factor the export receivables on a non-recourse basis also, so as to enable exporters to improve their cash flow and to meet their working capital requirements. However, AD Category-I banks who intends to provide the factoring services on non-recourse basis should comply with the requirements mentioned in the circular. ***-[RBI/2015-16/129 A.P. (DIR Series) Circular No. 5, dated 16th July, 2015]***

12. FOREIGN INVESTMENT BY FOREIGN PORTFOLIO INVESTORS IN INDIA: CLARIFICATIONS ISSUED

In terms of FEM (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, investments by Foreign Portfolio Investors (**FPI**) within the limit for investment in corporate bonds are required to be made in corporate bonds with a minimum residual maturity of three years.

In this regard, RBI has clarified that the restriction on investments with less than three years residual maturity shall not be applicable to investment by FPIs in Security Receipts (**SRs**) issued by Asset Reconstruction Companies (**ARCs**). However, investment in SRs shall be within the overall limit prescribed for corporate debt from time to time.

-[RBI/2015-16/131 A. P. (DIR Series) Circular No. 6, dated 16th July, 2015]

13. VALUE ADDED SERVICES EXTENDED THROUGH ATMs BY PRIMARY UCBs

RBI has permitted Primary (Urban) Co-operative Banks (**UCBs**) to offer services that can be offered *via* a standardized ATM machine like bill payments, account transfers etc. at their on-site / off-site / mobile ATMs. The UCBs may, however, ensure that there are enough technological safeguards in place for ensuring data security. ***-[RBI/2015-16/139 DCBR. CO. LS (PCB) Cir. No.2/07.01.000/2015-16, dated 30th July, 2015]***

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FOREIGN TRADE

1. AREAS OF OPERATION OF SOME PRE SHIPMENT INSPECTION AGENCIES AMENDED

The Directorate General of Foreign Trade (**DGFT**) has amended the Appendix-2G of Appendices and Aayat Niryat Form of FTP 2015-20 in order to amend the Area / Region of Operation of some of the Pre-Shipment Inspection Agencies (**PSIAs**). ***-[Public Notice No. 24/2015-2020, 2nd July, 2015, (DGFT)]***

2. AGENCIES AUTHORIZED TO ISSUE CERTIFICATE OF ORIGIN (NON PREFERENTIAL) ENLISTED

DGFT has authorised the following agencies to issue the Certificate of Origin (Non-Preferential):

(i) Federation of Kutch Industries Associations, Gujarat;

(ii) M/s Indian Merchants' Chamber, New Delhi; and

(iii) M/s National Chamber of Industries & Commerce, Uttar Pradesh.

-[Public Notice No. 25/2015-2020, 6th July, 2015, (DGFT)]

3. ADDITIONAL QUANTITY ALLOCATED FOR EXPORT OF RAW SUGAR TO USA UNDER TARIFF RATE QUOTA

DGFT has allocated the additional quantity of 2095 MTs of raw cane sugar to be exported to USA under Tariff Rate Quota (**TRQ**) up to 30.09.2015. ***-[Public Notice No. 26/2015-2020, 7th July, 2015, (DGFT)]***

4. ONLINE PAYMENTS THROUGH DEBIT /CREDIT CARDS OPERATIONALISED

DGFT has launched the facility of online payment of application fees through Credit/Debit cards and electronic fund transfer from 53 Banks (list of banks annexed to the circular). ***-[Trade Notice No.07/2015, 7TH July, 2015, (DGFT)]***

5. MERCHANDISE EXPORTS FROM INDIA SCHEME(MEIS) AMENDED

DGFT has made certain amendments/additions in Table 1 (which contains List of Country Groups) and Table 2 (which contains code wise list of products with reward rates) of Appendix 3B under the Merchandise Exports from India Scheme (**MEIS**). ***-[Public Notice No. 27 and 28/2015-2020, 14th & 15th July, 2015 (DGFT)]***

6. IMPORT OF CERTAIN CONTROLLED SUBSTANCES UNDER NDPS ACT, 1985 ALLOWED

DGFT has permitted import of certain Controlled Substances subject to No Objection Certificate from Narcotics Commissioner of India, Gwalior. ***-[Notification No 15/ 2015-2020, 21st July, 2015, (DGFT)]***

7. EXPORT POLICY OF SAWN TIMBER AMENDED

Export of sawn timber to Nepal made exclusively out of imported wood logs through the port of Kolkata has been permitted from the Land Customs Station (**LCS**) of Raxaul. ***-[Notification No 16/ 2015-2020, 28th July, 2015, (DGFT)]***

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CORPORATE

1. COMPANIES ACT 2013: PAYMENT OF ADDITIONAL FEES RELAXED AND DATE OF FILING OF ANNUAL RETURNS AND FINANCIAL STATEMENTS EXTENDED

The Ministry of Corporate Affairs (**MCA**) has issued the General Circular granting relaxation of additional fees and extending last date of filing of forms MGT-7 (*i.e.* Annual Return) and AOC-4 (*i.e.* Financial Statements).

It has been clarified that provisions of Companies Act, 2013 relating to financial statements, auditors reports and boards reports shall apply in respect of financial years commencing on or after 1st April, 2014. Form AOC-4 and AOC-4 XBRL (formats used for filling financial statements) have to be used for filing of such statement for financial years commencing on or after 1st April, 2014. Further form MGT-7 used for filing annual returns shall apply in respect of financial years ending after 1st April, 2014.

In this regard, the Ministry has informed that electronic versions of AOC-4, AOC-4 XBRL and MGT-7 shall be made available for e-filing by 30th September. Further, a separate form for filing Consolidated Financial Statement (**CFS**) with nomenclature AOC-4 CFS will be made available latest by 30th October.

Therefore, MCA has relaxed the additional fee payable on Forms AOC-4, AOC-4 XBRL and MGT-7 up to 31st October, 2015. Further, a company which is not required to file its financial statement in XBRL format and is required to file its CFS would be able to do so without additional fees up to 30th November, 2015. ***-[General Circular No.10/2015, 13th July, 2015 (MCA)]***

2. CIRCULATION AND FILING OF FINANCIAL STATEMENTS: CLARIFICATIONS ISSUED

MCA has clarified that proviso to section 101(1) of the Companies Act, 2013 allows general meetings to be called at a shorter notice than twenty one days.

In this regard, a company holding a general meeting after giving a shorter notice as provided under section 101 of the Act may also circulate its financial statements (to be laid/considered in the same general meeting) at such shorter notice.

Further, in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding/parent Indian Company may place/file such unaudited accounts to comply with the requirements of Section 136(1) and 137(1) as applicable. However, these would need to be translated in English, if the original accounts are not in English language.

Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under Companies Act, 2013.

In case this is not possible, a statement indicating the reasons for deviation may be placed/filed along with such accounts. ***-[General Circular No. 11/2015, 21st July, 2015, (MCA)]***

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SECURITIES

1. SAHARA's MUTUAL FUND LICENSE CANCELLED BY SEBI

Securities and Exchange Board of India (**SEBI**) ordered Sahara's fund management licence would stand cancelled after 60 days from the date of the order. It has directed Sahara Asset Management Company (**AMC**) not to take any new subscription from the investors including existing investors in systematic investment plans and also not to levy any penalty on the investors for not depositing the instalments. SEBI has asked the fund house to transfer its activities to a new sponsor and a SEBI-approved AMC at the earliest. ***[Order No. WTM/PS/26/IMD/DoF-III/JULY/2015 in the Matter of Sahara Mutual Fund, 28th July, 2015 (Whole Time Member), SEBI]***

2. SEBI HAS JURISDICTION TO REGULATE ISSUANCE OF GLOBAL DEPOSITORY RECEIPTS BY INDIAN COMPANIES: SC

The short question that arose in this appeal related to the jurisdiction of SEBI under the SEBI Act, 1992 to initiate proceedings against the respondents as Lead Managers to the Global Depository Receipts (**GDRs**) issued outside India based on investigations held by it and on its conclusion that in relation to transaction of sale/purchase of underlying shares released on redemption of GDRs in the securities market in India, the Lead Managers had committed fraud on the investors in India and that such fraudulent intention existed at every stage of the GDR process till sale/purchase of underlying shares in the securities market in India.

The further question that arose for consideration is that if the said question is answered in the affirmative, whether the SEBI was justified in passing its impugned order dated 20.06.2013, debarring the respondents herein from rendering services in connection with instruments that are defined as securities under Section 2(h) of the Securities Contracts (Regulation) Act, 1956 (**SCR Act, 1956**) and such debarment for a period of 10 years prohibiting the respondents from accessing the capital market directly or indirectly under SEBI Act, 1992 and the regulations framed there under was justified.

When the order of SEBI dated 20.06.2013 was challenged by the respondents before the Securities

Appellate Tribunal (**SAT**), Mumbai, the Chairman of the Tribunal in his minority view upheld the order of the SEBI while the members of the Tribunal by way of their majority view set aside the order of SEBI debarring the respondents and ruled that regulation of GDRs is outside the purview of SEBI. In the above stated background SEBI has come forward with appeal before the Hon'ble Supreme Court.

The Apex court in conclusion set aside the majority view of the SAT and upheld the power of SEBI over GDRs stating that GDRs are issued on the basis of underlying shares, which are governed by Indian law, and given the facts of the case which involved a sell-down by certain parties after converting the GDRs into underlying shares, there was an adverse impact on the Indian securities markets.

The Supreme Court has now remanded the case back to SAT to be dealt with in the next three months. ***- [Securities and Exchange Board of India v. Pan Asia Advisors Ltd. & Anr., dated 6th July, 2015 (SC)]***

3. GUIDELINES ISSUED ON ENFORCEMENT OF CYBER SECURITY AND CYBER RESILIENCE FRAMEWORK BY MIIs

SEBI through this circular has given guidelines for cyber security and cyber resilience which has to be enforced by Market Infrastructure Institutions or MIIs (*i.e.* stock exchanges, depositories and clearing corporations) and put in place a system including making necessary changes in bye-laws, rules and regulations within six months from the date of this circular.

The policy once approved by the board of these public utilities would have to be reviewed by it at least once a year. MIIs would also have to designate a senior official as chief information security officer whose function would be to assess, identify and reduce cyber security risks, respond to incidents, establish appropriate standards and controls.

MII should identify critical assets based on their sensitivity and criticality for business operations, services and data management. To this end, MII should maintain up-to-date inventory of its hardware and systems, software and information assets (internal and external), details of its network resources, connections to its network and data flows. No person by virtue of rank or position should have any intrinsic right to access confidential data, applications, system resources or facilities. ***- [CIR/MRD/DP/13/2015, 16th July, 2015, (SEBI)]***

4. MINIMUM CONTRACT SIZE IN EQUITY DERIVATIES SEGMENT INCREASED TO Rs. 5 LAKHS

At present, the minimum contract size in equity derivatives segment is Rs. 2 lakhs. The requirement was recently reviewed and it has been decided to increase the minimum contract size in equity derivatives segment to Rs. 5 lakhs.

The lot size for derivatives contracts in equity derivatives segment shall be fixed in such a manner that the contract value of the derivative on the day of review is within Rs. 5 lakhs and Rs. 10 lakhs. For stock derivatives, the lot size (in units of underlying) shall be fixed as a multiple of 25, provided the lot size is not less than 50. For index derivatives, the lot size (in units of underlying) shall be fixed as a multiple of 5, provided the lot size is not less than 10.

The stock exchanges shall review the lot size once in every 6 months based on the average of the closing price of the underlying for last one month and wherever warranted, revise the lot size by giving an advance notice of at least 2 weeks to the market. The provision contained in the circular shall be made effective from the next trading day after expiry of October 2015 contracts.

-[CIR/MRD/DP/14/2015, 13th July, 2015, (SEBI)]

5. POLICY LAID DOWN FOR ANNULMENT OF TRADES UNDERTAKEN ON STOCK EXCHANGES

SEBI vide this circular has clarified that examination of trade(s) for annulment may be taken up either *suo moto* by stock exchange or upon receipt of request from a stock broker. Stock exchanges shall prescribe the procedure for submission of requests by stock brokers, including mechanism to submit requests in electronic form. Stock brokers shall submit such request to the stock exchange within 30 minutes from execution of trade(s) which is sought to be annulled. However, stock exchange may consider requests received after 30 minutes, but no longer than 60 minutes, only in exceptional cases.

Stock exchanges shall expeditiously, not later than start of next trading day, examine and decide upon such requests. As an alternate mechanism, stock exchanges may consider resetting the price of trade(s) under consideration to an appropriate price(s), if price reset is deemed to be a less disruptive mechanism as compared to trade annulment.

Annulment or price reset shall be taken only in exceptional cases. In cases, wherein request for annulment of trade(s) has been submitted to more than one stock exchange by a stock broker, in respect of similar trades, stock exchanges shall jointly take a decision on such requests. Decision of price reset or annulment shall be conveyed to all counterparties. A mechanism of review shall also be provided, in which case the matter shall be referred to stock exchange's independent oversight committee on 'Trading and Surveillance function'.

The oversight committee shall expeditiously examine the request of stock brokers and provide its recommendations on the matter within 30 days of receipt of request by the stock exchange. Stock exchange shall convey its decision on the review request of the stock brokers within 2 working days of receipt of the recommendations from the committee.

Stock exchanges shall charge an application fee equal to 5% of the value of trade(s)for accepting annulment request from a stock broker, subject to minimum fee of Rs. 1 lakh and maximum fee of Rs. 10 lakhs. Stock exchanges may suitably increase the upper limit of the application fee as deemed necessary to discourage frequent or frivolous requests for annulment. The amount realised as application fee shall be credited to the "Investor Protection Fund" of the concerned stock exchange. ***-[CIR/MRD/DP/15/2015, 16th July, 2015, (SEBI)]***

6. SEBI (PROHIBITION ON RAISING FURTHER CAPITAL FROM PUBLIC AND TRANSFER OF SECURITIES OF SUSPENDED COMPANIES) ORDER, 2015 ISSUED UNDER SEBI ACT

In order to ensure effective enforcement of listing conditions and improve compliance environment among the listed companies, SEBI has issued SEBI (Prohibition on Raising Further Capital From Public and Transfer of Securities of Suspended Companies) Order, 2015 under section 11A read with section 11 of SEBI Act, 1992.

It has been decided that (i) a suspended company, its holding and/or subsidiary, its promoters and directors shall not, issue prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities, directly or indirectly, till the suspension is revoked. (ii) The suspended company and the depositories shall not effect transfer, by way of sale, pledge, etc., of shares of a suspended company held by promoters /promoter group and directors till three months after the date of revocation of suspension by the concerned recognised stock exchange or till securities of such company are delisted in accordance with the applicable delisting requirements, whichever is earlier. ***-[General Order No. 1 of 2015, 20th July, 2015, (SEBI)]***

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COMETITION

1. HYUNDAI MOTORS, MAHINDRA REVA AND PREMIER FOUND IN VIOLATION OF COMPETITION LAWS

Competition Commission of India (**CCI**) has levied a penalty of Rs.420.26 crore on car manufacturer Hyundai Motor India Ltd for violating antitrust laws in the supply of genuine spare parts and diagnostic tools. CCI also found Mahindra Reva Electric Vehicles Pvt. Ltd, a subsidiary of Mahindra and Mahindra Ltd, and Doshi Holding Pvt. Ltd-promoted Premier in violation of competition laws.

While Hyundai was penalized 2% of its annual turnover in India for three years, Reva and Premier were exempted from penalties.

CCI had slapped 14 other car manufacturers with fines to the tune of Rs.2,554 crore in an order dated 25 August 2014. At that time, CCI couldn't proceed against these three companies on account of a Madras High Court stay challenging the authority and jurisdiction of the regulator.

However, the High Court on 4 February confirmed CCI's jurisdiction to look into practices of these three car manufacturers.

The regulator in the present judgment held that the three companies had entered into agreements that adversely affected market competition and abused their dominant position in the supply of spare parts.

Genuine spare parts of automobiles manufactured by these companies were not made available in the open market, which affected services of independent mechanics to compete with authorised service stations, the CCI order said. CCI found that Hyundai and Reva earned a high mark-up on spare parts sourced from original equipment suppliers and the price at which they were made available to consumers.

CCI also said that the designs, specifications, drawings and technologies provided by Hyundai to its equipment suppliers would not be exempted under Section 3(5) of the Competition Act, 2002, which protects exclusive rights granted under intellectual property rights. ***-[Shri Shamsher Kataria v. Honda Siel Cars India Ltd. & Ors., 27th July, 2015, (CCI)]***

2. FOUR PUBLIC SECTOR INSURANCE COMPANIES PENALISED Rs. 671 CRORE FOR BID RIGGING

The case related to bid rigging in public procurement for social welfare schemes, which beneficiaries were BPL and poor families and "as such the same was taken as an aggravating factor".

National Insurance Co Ltd, New India Assurance Co Ltd, Oriental Insurance Co Ltd and United India Insurance Co Ltd have been fined for manipulating the bidding process initiated by Kerala Government for selecting insurance service provider for Rashtriya Swasthya Bima Yojna and Comprehensive Health Insurance Scheme (**CHIS**) for the years 2010- 11, 2011-12 and 2012-13.

CCI noted the impugned conduct of these companies to have resulted in manipulation of the bidding process in contravention of the provisions of Section 3(1)read with Section 3(3)(d) of the Competition Act.

Accordingly, penalties of Rs 162.80 crore, Rs 251.07 crore, Rs 100.56 crore and Rs 156.62 crore were imposed upon National Insurance, New India Assurance, Oriental Insurance and United India Insurance, respectively. ***-[In Re: Cartelization by Public Sector Insurance Companies, (CCI)]***

3. KANNADA FILM ASSOCIATIONS PENALISED FOR LIMITING AND RESTRICTING THE MARKET OF DUBBED FILMS/ SERIALS IN KANNADA LANGUAGE

CCI has slapped penalties on Karnataka Film Chamber of Commerce (**KFCC**), Karnataka

Television Association (**KTVA**) and Kannada Film Producers Association (**KFPA**).

The case pertained to allegations that these entities indulged in anti-competitive activities by not allowing the release and broadcast of any dubbed content, within Karnataka. In a rare move, the Commission has also asked the three groupings to bring a "Competition Compliance Manual" to educate their members about the basic tenets of competition law principles.

The regulator noted the three entities action resulted in limiting and restricting the market of dubbed films/ serials in Kannada language which violates competition norms.

CCI also found that the prohibition on the exhibition of dubbed content prevents the competing parties in pursuing their commercial activities. The three film organisations had argued that the dubbed content destroys the local language and culture, and deprives local artistes of opportunities. However, CCI found no merit in the justification and found them to be indulging in anti-competitive conduct in contravention of the Act.

Hence, KFCC has been asked to pay a penalty of Rs. 16.82 lakh, which accounts for 10 percent of its average annual turnover for three financial years. For KTVA, the penalty is Rs. 1.74 lakh whereas in the matter of KFPA, the fine amounts to Rs. 1.68 lakh. In both cases, the penalty amounts of 8 percent of its three-year average annual turnover. Together, fine on the three entities is Rs. 20.24 lakh. ***-[Kannada Grahakara Koota & Ors., v. Karnataka Film Chamber of Commerce (KFCC) & Anr., 27th July, 2015, (CCI)]***

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INDIRCT TAXES

a. CUSTOMS

1. CUSTOMS DUTY EXPEMPTED ON CUT AND POLISHED DIAMONDS IMPORTED BY SPECIFIED AGENCIES

Subject to certain conditions, Custom duty has been exempted on import of diamonds by three specified agencies (one in Mumbai, two in Surat) for grading, certification and re-export. ***-[Notification No. 40/2015-Customs, dated 21st July, 2015]***

2. ANTI-TB DRUGS, EQUIPMENT AND DIAGNOSTICS EXEMPTED FROM CUSTOMS DUTY

Notification No. 49/2013-Customs dated 29.11.2013 amended so as to extend the exemption of specified anti-tuberculosis drugs, equipment and diagnostics from customs duties till 31 March 2016 and the table of exempted items has also been altered. ***-[Notification No. 41/2015-Customs, dated 30th July, 2015]***

3. ANTI-DUMPING DUTY ON IMPORT OF STEEL AND FIBRE GLASS MEASURING TAPES AND THEIR PARTS AND COMPONENTS EXTENDED FOR FIVE YEARS

Levy of anti-dumping duty (**ADD**) on imports of steel and fibre glass measuring tapes and their parts and components, falling under chapter 90 of Customs Tariff Act (CTA), originating in or exported from the People's Republic of China has been extended for a period of five years from 9th July, 2015. ***-[Notification No. 31/2015 -Customs (ADD), dated 9th July, 2015]***

4. ADD ON IMPORT OF PHENOL EXTENDED FOR FIVE YEARS

Levy of ADD on imports of Phenol, falling under Customs Tariff Heading 2707 99 00 of CTA, originating in or exported from South Africa has been extended for a period of five years from 10 July, 2015. ***-[Notification No. 32/2015 -Customs (ADD), dated 10th July, 2015]***

5. ADD ON IMPORT OF GLASS FIBRE EXTENDED FOR ONE YEAR

Levy of ADD on imports of Glass Fibre and articles thereof, falling under Chapter 70 of CTA, originating in or exported from the People's Republic of China, has been extended up to 13th July, 2016. ***-[Notification No. 33/2015 -Customs (ADD), dated 13th July, 2015]***

6. ADD ON IMPORT OF COMPACT FLUORESCENT LAMPS EXTENDED FOR FIVE YEARS

Levy of ADD on imports of Compact Fluorescent Lamps (**CFL**) with or without ballast or control gear or choke, whether or not assembled, either in completely knocked down or semi knocked down condition, falling under heading 8539 of the CTA, originating in, or exported from the People's Republic of China, has been extended for a further period of five years. ***-[Notification No. 34/2015 -Customs (ADD), dated 28th July, 2015]***

7. STATUTORY AUTHORITIES SHOULD ACT IN A \ FAIR MANNER, SO THAT IT ENCOURAGES FOREIGN INVESTMENT WHICH LEADS TO ECONOMIC GROWTH: BOMBAY HC

Petitioner Company filed a writ of mandamus for release of its wine products by the brand name of Jacob's Creek & directing the authority concerned to issue the NOC. The wine products were withheld by the Commissioner of Customs, Mumbai on the ground that FSSAI has refused to issue a NOC with respect to these wine products on the ground that the sample contains "Acidity Regulator: Tartaric Acid (INS334)" and "Antioxidant: ISO Ascorbic Acid (INS315)".

Hon'ble High Court while allowing the writ held that the Respondent being a statutory authority cannot act in an arbitrary fashion disregarding the law under which it was constituted. Tartaric Acid and Ascorbic Acid being clearly included in the Regulations, and the fact that the Petitioner's alcoholic wines have been imported in this country for over a decade without any complaint or untoward incident, Respondent ought to have looked at the Regulations framed by them, a little more carefully before refusing to give the NOC to the Petitioner.

Further, the High Court instructed that statutory authorities act in a manner that is fair, transparent and with a proper application of mind, so that it encourages foreign investment which ultimately leads to the economic growth of the country. ***-[M/s Pernod Ricard India Pvt Ltd v. UOI and Others, dated 28th July, 2015 (Bombay HC)]***

b. CENTRAL EXCISE

1. APPROPRIATE DUTY OF EXCISE: AMENDMENTS AND CLARIFICATION ISSUED

Notification Nos. 30/2004-CE, 1/2011-CE and 12/2012-CE amended, so as to clarify that the condition of payment of appropriate duty of excise on inputs, that had been inserted into the said exemptions for certain goods, does not require actual payment of duty but includes nil duty also. ***-[Notification No. 37/2015 – CEx, Notification No. 38/2015 – CEx, & Notification No. 39/2015 – CEx, all dated 21st July, 2015]***

2. CONDITIONS, SAFEGUARDS AND PROCEDURES FOR DIGITALLY SIGNED INVOICES IN CENTRAL EXCISE AND SERVICE TAX ISSUED

CBEC has prescribed conditions, procedures and safeguards for issue of invoices, preserving records in electronic form, and authentication of records and invoices by digital signatures. Class 2 or Class 3 digital signatures issued by the Certifying Authority in India are to be used, and the assesse has to inform the department fifteen days in advance of use regarding, inter alia, the name of the certifying authority, the name and other details of the person authorised to use the signature, and the period of validity of the signature. As regards electronic records, it is made clear they must be preserved for five years and that print-outs must be provided to the

central excise officers if asked for. ***-[Notification No. 18/2015-CEx (N.T.), dated 6th July, 2015]***

3. TRANSPORTATION CHARGES AND TRANSIT INSURANCE CHARGES BEFORE 'PLACE OF REMOVAL' CAN BE INCLUDED IN TRANSACTION VALUE: SC

The issue was whether transportation and insurance cost incurred before the place of removal to be included in transaction value.

The Apex Court observed that what is to be determined is the 'place of removal' and that depends on the facts of each case. 'Place of removal' is the place or premises from where the excisable goods are to be sold after their clearance from the factory and from where such goods are removed. Thus, 'place of removal', in a given case becomes a crucial determinative factor for the purpose of valuation. In the present context, if it is found that transportation charges and transit insurance charges were incurred after the 'place of removal', then they are not to be included. On the other hand, if these charges are incurred before the 'place of removal' then they are to be included while arriving at the transaction value. ***-[CCE, Mumbai-III v. M/s EMCO Ltd., dated 31st July, 2015 (Supreme Court)]***

4. TWO DIFFERENT NOTIFICATIONS FOR TWO SIMILAR ASSESSEES IS INCORRECT : SC

The respondent herein was engaged in the business of ship breaking activities. It had imported a foreign vessel for the purpose of breaking it and selling it as scrap.

The respondent impugned the validity of Notifications Nos. 102/87-CE and 103/87-CE, both dated 27.03.1987, whereby whole of the duty of excise was exempted in respect of iron and steel scrap obtained by breaking the ship subject to the condition that customs duty should have been levied at the rate of Rs.1400/- per Light Displacement Tonnage (**LDT**).

With the stipulation of such a condition, giving the exemption of payment of excise duty only to those who had paid customs duty at Rs.1400/- per LDT, another class of persons who also paid custom duty under Section 3 of the Customs Tariff Act, 1975, albeit at a lesser rate, was excluded.

The respondent who belonged to the excluded category, had challenged the said Notification as arbitrary and violative of Article 14 of the Constitution.

It is held by the Hon'ble Supreme Court that the two Notifications both dated 27.03.1987 pertain to same goods namely those falling under Heading 72.15 and 73.09 of the second Schedule to the Act. Customs duty is can be levied on these goods under Section 3 of the Customs Tariff Act. The said duty can be paid under any of the two methods. When two methods are permissible under the statutory scheme itself, obviously option is that of the assessee to choose in all those methods to pay the custom duty. Thus, duty paid is to be naturally treated as validly paid. Merely because with the adoption of one particular method the duty that becomes payable is lesser would not mean that two such persons belong to different categories.

The Supreme Court upheld the order of the High Court with a minor beneficial (to the assessee) modification. Revenue Appeal dismissed. ***- [UOI & Ors v. M/s N S Rathnam & Sons, dated 29th July, 2015 (Supreme Court)]***

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c. SERVICE TAX

1. COLLECTION OF TOLL IS NOT TO BE CONSIDERED AS BAS: CESTAT, MUMBAI

Appellant in the present case are awarded contract by NHAI for collection of toll on three various National Highways which has been awarded by two contracts (i) Fixed Remuneration contract and (ii) Toll right

contracts. In both the contracts, the appellant is collecting the toll and depositing the same with NHAI and either retains part of the amount which has been collected as toll or gets paid from NHAI by a fixed amount.

Hon'ble CESTAT, Mumbai held that the Appellant herein is not promoting or marketing or selling goods produced by a client nor the promoting or marketing services provided by the client, inasmuch that undisputedly NHAI is a statutory body. Further, the Agreement entered into between the parties does not indicate anywhere that the Appellant is appointed as an agent/representative and the said agreement talks of collection of amounts as "fee" to be known as "toll". Thus, the Appellant is not rendering any service which is incidental or auxiliary (BAS Services) on behalf of NHAI. ***-[Ideal Road Builders Pvt Ltd v. CST, Mumbai, dated 1st July, 2015 (CESTAT, Mumbai)]***

2. WHARFAGE CHARGES NOT A TAXABLE SERVICE UNDER PORT SERVICES: SC

In the instant case, Gujarat Maritime Board (**GMB**) had entered into an agreement with a private entity whereby a licence was granted to the entity to construct and use a jetty for landing of goods and raw materials manufactured by it in its cement factory which was situated close to the said jetty at Pipavav port. It was argued that the wharfage charges, which were being collected by GMB from its licensee, were subject to service tax under the taxable category of "port services". Hon'ble Supreme Court, after due consideration of the factual and legal matrix held that it is the Board itself that charges or recovers wharfage charges from the licensee UCL and does not authorize UCL to recover such charges from other persons. And that being the position, it is clear that no service is rendered by a port or by any person authorized by such port and, therefore, the very first condition for levy of service tax is absent on the facts of the present case. So far as the direct berthing facilities provided for captive cargo is concerned, the lease rent charged for use of the waterfront also does not include any service in relation to a vessel or goods and cannot be described as "port service". - ***[CCE, Bhavnagar v. M/s Gujarat Maritime Board, Jafrabad, dated 22nd July, 2015 (Supreme Court)]***

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INTELLECTUAL PROPERTY RIGHTS

1. TERRITORIAL JURISDICTION FOR TRADEMARK / COPYRIGHT INFRINGEMENTS, ONLY AT THAT DISTRICT COURT WHERE CAUSE OF ACTION AROSE: SC

The issue in this case was the interpretation of section 62 of the Copyright Act, 1957 and section 134(2) of the Trade Marks Act, 1999 with regard to the place where a suit can be instituted by the plaintiff. The Apex Court held that in case the plaintiff does not carry on business or has branch office or head office etc. at a place where cause of action arises then surely such a plaintiff uses the provisions of Section 134(2) of the Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957 to file a suit where the plaintiff is having an office or carrying on business or residing.

However, these provisions cannot be invoked to file a suit claiming infringement of trade mark/copyright in case the plaintiff is carrying on business at the place where cause of action arises or has either a branch office or a head office at the place where the cause of action arises.

The Hon'ble Supreme Court has clarified that object of Section 134(2) of the Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957 was to give convenience to the plaintiff. However, these provisions have to be read in such a manner that it should not lead to harassment of defendants in a case where plaintiff is carrying on business or resides or works for gain or has a branch office or a head office or a registered office at the place where the cause of action arises, and in spite of that a suit is sought not to be filed at such place where the cause of action

arises and where the plaintiff has an office or is carrying on business, but at another court simply because a plaintiff has an office or carries on business or resides although the cause of action does not arise at such latter place. - ***[Indian Performing Rights Society Ltd v. Sanjay Dalia & Anr., dated 1st July, 2015 (Supreme Court)]***

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CONSUMER

1. NON CONEYANCE OF TERMS AND CONDITIONS OF INSURANCE POLICY AMOUNTS TO UNFAIR TRADE PRACTICE AND DEFICIENCY IN SERVICE: NCDRC

The fact of the case is that the complainant took a credit card from Opposite Party Bank and was consequently insured with the petitioner insurance company for accident benefit policy. The complainant met with a fire accident in her own house and got severely injured. She took treatment for her burn injuries and sent a reimbursement request with the insurance company for expenses incurred by her over the treatment of the burn injuries under the policy.

Her claim was repudiated and it was contended that the complainant suffered only 20% to 25% disability and according to the terms and conditions of the policy unless there is permanent/partial loss or damage at the time of accident, she was not entitled to get the insured amount.

Both the fora below ruled in favour of the complainant and it was contended before the national commission that their decision was beyond their jurisdiction and the terms and conditions of the policy and an insurance contract has to be construed according to its terms and conditions.

The National Consumer Disputes Redressal Commission (**NCDRC**) while upholding the decision of state and district commission held that since the terms and conditions of the policy heavily relied upon by the OPs were not conveyed to the complainant and the OPs failed in establishing that the terms and conditions of the group personal accident policy in question were brought to the notice of the complainant, there is deficiency in service on part of OPs. Thus, the District Forum has rightly held them liable for deficiency in service as also for the unfair trade practice. ***[United India Insurance Company v. Mrs. Dinaz Varvatwala & Ors., 1st July, 2015, (NCDRC)]***

2. CLAIM FOR DAMAGES SETTLED WITH BANK WITHOUT INTIMATION / APPROVAL OF POLICY HOLDER ISINVALID: NCDRC

Respondent's fertilizer store was damaged in an earthquake and accordingly presented a claim for damages with the insurance company. Insurance company settled the claim for much smaller amount at the instance of the State Bank of India and the complainants refused to accept the same.

National Commission held that the petitioner insurance company had paid the amount to the insured bank of the complainant and obtained receipt from the bank without notice to the respondent/complainant and such settlement, which was arrived at without any intimation to the complainant, could not be binding on him so far as their claim in respect of the balance amount is concerned. ***[New India Assurance v. M/s Shashikant Fertilizers, 13th July, 2015, (NCDRC)]***

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ENVIRONMENT

1. TRIBAL CONSENT CANNOT BE VERIFIED BEFORE HANDING OVER FORESTS: MTA

The issue whether consent from tribal village councils is essential before using forests heard by the National Green Tribunal (**NGT**) on the Thoubal multipurpose dam project, which has been under construction since 1989 in Manipur.

The Ministry of Tribal Affairs (**MTA**) has told the court it does not have the power or a mechanism to verify claims of state governments that consent of tribals had been sought under the Forest Rights Act, 2006, before handing over forests to industry. - ***[The Business Standard, dated 30th July, 2015]***

2. APPOINTMENT OF NODAL OFFICER BY NGT TO ENSURE COMPLIANCE OF EIA NORMS IN CONSTRUCTION OF BUILDINGS

NGT has appointed the State Director of Environment as the Nodal Officer of the five-member committee formed to inspect building projects constructed without Environmental Impact Assessment (**EIA**). The principal bench also warned the authorities of contempt proceedings if its directions were not followed. - ***[The Times of India, dated 22nd July, 2015]***

3. NGT RAISES QUESTIONS ON DELHI GOVERNMENT's PLAN TO PROCURE 10,000 NEW BUSES

NGT has questioned the Delhi government's proposal to deploy 10,000 new DTC buses in the wake of alarming proportions of air pollution in the capital and directed it to come out with a proper study to support its contention.

NGT raised questions like where is the space to park these buses? Have you carried out any study or you are just saying like this only without any research? Do you know how much noise your buses make? Have you checked any of your vehicles of noise pollution?

The green bench also slammed DTC for not submitting status report on inspection of its buses by a team set up by Central Pollution Control Board and Delhi Pollution Control Committee and said there has to be a limit to even CNG emissions. - ***[The Economic Times, dated 20th July, 2015]***

4. NGT QUASHESTWO OFFICE MEMORANDA OF MOEF ON CLEARANCES

The NGT has quashed two office memoranda of the Environment Ministry dealing with the issue of clearances for major and minor projects, saying they suffered from infirmity of lack of inherent jurisdiction and authority.

The office memorandum of December 12, 2012 states that whenever any case of violation of Environment Clearance Regulations of 2006 is brought to the notice of the Ministry, it would verify the veracity of the complaint through regional offices and then seek the explanation of Project Proponent.

The June 27, 2013 office memorandum states that in case of any violation, the project proponent has to be restrained from carrying out any construction or operational activity without the required clearance.

The tribunal held as *ultra vires* the above two office memoranda, to the Environmental Protection Act, 1986, and the notification of 2006 titled Environment Clearance Regulations. ***-[The Business Standard, dated 7th July, 2015]***

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