MONTHLY NEWSLETTER

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APRIL 2016

RBI/FEMA

1. THE RESERVE BANK OF INDIA TO REVIEW/INSPECT GOVERNMENT BUSINESS PERIODICALLY

In order to have 'first hand information' about government business conducted by banks, RBI will hold periodic meetings with senior executives of the lenders. Such meetings will be held by the Regional Offices concerned of the Reserve Bank of India, except in the case of State Bank of India, where the meetings will be held by the Central Office. It has been decided to introduce offsite monitoring of government business. The purpose of the informal meetings would be to maintain a line of communication with the agency bank and to have first-hand information and feedback on government business being conducted by it. - ***[DGBA.GAD.No-3147/44.01.001/2015-16, dated 7th April, 2016]***

2. APPLICABILITY OF CONCENTRATION OF CREDIT/ INVESTMENT NORMS

As per the extant guidelines of the Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions 2015, any non-banking financial company not accessing public funds, either directly or indirectly, or not issuing guarantees may make an application to the Bank for an appropriate dispensation from the concentration of credit/ investment norms. On a review, RBI has decided that concentration of credit/ investment norms shall not apply to a systemically important non-banking financial company not accessing public funds in India, either directly or indirectly, and not issuing guarantees. – ***[DNBR (PD) CC.No.077/03.10.001/2015-16, dated 7th April, 2016]***

3. NAME OF "RABOBANK INTERNATIONAL (COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.), CHANGED

The name of "Rabobank International (Cooperatieve Centrale Raiffeisen- Boerenleenbank B.A." has been changed to "Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A." in the Second Schedule to the Reserve Bank of India Act, 1934 and published in Gazettee of India (Part III Section 4) dated December 19,2015 – ***[DBR.No.Ret.BC.87/12.07.131A/2015-16, dated 7th April, 2016]***

4. NAME OF "KOREA EXCHANGE BANK CO., LTD", CHANGED

The name of "Korea Exchange Bank Co., Ltd" has been changed to "KEB Hana Bank" in the Second Schedule to the Reserve Bank of India Act, 1934. – ***[DBR.No.Ret.BC.88/12.07.137A/2015-16, dated 7th April, 2016]***

5. INSTRUCTIONS ON TRADING IN PRIORITY SECTOR LENDING CERTIFICATES (PSLCS)

In furtherance to the Government of India's Notification dated February 04, 2016 specifying "Dealing in Priority Sector Lending Certificates (PSLCs) in accordance with the Guidelines issued by the Reserve Bank of India", the RBI has issued

instructions on trading in PSLCs which is annexed with the circular. To facilitate trading in PSLCs, a trading platform is being provided through the CBS portal (e-Kuber). The detailed user manual/ instructions for trading on the platform are available on the portal. – ***[FIDD.CO.Plan.BC.23/04.09.01/2015-16, dated 7th April, 2016]***

6. KEEPING DEPOSITS WITH AN INDIAN COMPANY BY PERSONS RESIDENT OUTSIDE INDIA DOES NOT REQUIRE ANY APPROVAL FROM THE RESERVE BANK OF INDIA

Under Section 160 of the Companies Act, 2013, it is provided that a person who intends to nominate himself or any other person as a director in an Indian company is required to place a deposit with the said company. In this context, there was ambiguity that whether such deposits will require any specific approval from the Reserve Bank under Notification No. FEMA 5(R), in cases where the deposit is received from a person resident outside India. RBI has now clarified that keeping deposits with an Indian company by person's resident outside India, in accordance with section 160 of the Companies Act, 2013, in a current account (payment) transaction and, as such, does not require any approval from Reserve Bank. Refunds of such deposits, arising in the event of selection of the person as director or getting more than twenty five percent votes, shall be treated similarly. – ***[A.P. (DIR Series) Circular No.59, dated 13th April, 2016]***

7. THE RESERVE BANK OF INDIA CAPS ISSUANCE OF RUPEE DENOMINATED BONDS AT RS. 5,000 CRORE

For fixing of aggregate limit of foreign investment in corporate debt in rupee terms, it has been notified by the RBI that the maximum amount that can be borrowed by an entity in a financial year, under the automatic route by issuance of rupee denominated bonds, will be Rs.50 billion (5,000 crore), and not USD 750 million. Further, the minimum maturity period for rupee denominated bonds issued overseas has been reduced to three years from five years in order to align with the maturity prescription regarding foreign investment in corporate bonds, through the Foreign Portfolio Investment (FPI) route. The current limit of USD 51 billion for foreign investment in corporate debt has been fixed in rupee terms at Rs. 2443.23 billion (2,44,323 crore). The directions contained in the circular have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) – ***[A.P. (DIR Series) Circular No.60, dated 13th April, 2016]***

8. RATIONALIZATION AND REPORTING OF OVERSEAS DIRECT INVESTMENTS (ODI) FORMS

At present, application for ODI is required to be made in Form ODI – Part I (comprising six sections) for direct investments in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) under automatic route / approval route. Further, remittances and other forms of financial commitment undertaken by the Indian Party (IP) are reported in Form ODI Part II. In order to capture all data pertaining to the IP undertaking ODI as well as the related transaction, it has been decided by RBI to subsume Form ODI Part II within Form ODI Part I. The rationalised and revised Form ODI has also been Annexed with the circular. Further, a new reporting format has also been introduced for Venture Capital Fund (VCF) / Alternate Investment Fund (AIF), Portfolio Investment and overseas investment by Mutual Funds. – ***[A.P. (DIR Series) Circular No.62, dated 13th April, 2016]***

9. FOREIGN INVESTMENT ALLOWED IN THE UNITS OF INVESTMENT VEHICLES REGISTERED AND REGULATED BY SEBI

With a view to rationalising foreign investment regime for Alternative Investment vehicles and to facilitate

foreign investment in collective investment vehicles for real estate and infrastructure sectors, RBI has decided, in consultation with the GoI, to allow foreign investment in the units of Investment Vehicles registered and regulated by SEBI or any other competent authority. At present, Investment Vehicle include the following:

- Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014;
- Infrastructure Investment Trusts (InvITs) registered and regulated under the SEBI (InvITs) Regulations, 2014;
- Alternative Investment Funds (AIFs) registered and regulated under the SEBI (AIFs) Regulations 2012.

Further, unit shall mean beneficial interest of an investor in the Investment Vehicle and shall include shares or partnership interests. Salient features of this new investment regime can also be found in the present circular. – ***[A.P. (DIR Series) Circular No. 63, dated 21st April, 2016]***

10. GUIDELINES ON INVESTMENT ADVISORY SERVICES (IAS) OFFERED BY BANKS

IAs are defined and regulated by SEBI under the SEBI (Investment Advisors) Regulations, 2013, and entities offering these activities need to be registered with SEBI. In view of the same RBI has advised that

i. Henceforth, banks cannot undertake IAs departmentally. Accordingly, banks desirous of offering these services may do so either through a separate subsidiary set up for the purpose or one of the existing subsidiaries after ensuring that there is an arm's length relationship between the bank and the subsidiary.

ii. The sponsor bank should obtain specific prior approval of Department of Banking Regulation before offering IAs through an existing subsidiary or for setting up a subsidiary for this purpose. (Setting up of any subsidiary will, as hitherto, be subject to the extant guidelines on para-banking activities of banks).

iii. All bank sponsored subsidiaries offering IAs will be registered with SEBI and regulated as per the SEBI (Investment Advisors) Regulations, 2013, and shall adhere to all relevant SEBI rules and regulations in this regard.

iv. IAs provided by the bank sponsored subsidiaries should only be for the products and services in which banks are permitted to deal in as per Banking Regulation Act, 1949.

v. The instructions/guidelines on KYC/AML/CFT applicable to the subsidiary, issued by the concerned regulator, as amended from time to time, may be adhered to in respect of customers to whom IAs is being provided.– ***[DBR.No.FSD.BC.94/24.01.026/2015-16, dated 21st April, 2016]***

11. IDF-NBFCS ALLOWED TO RAISE FUNDS THROUGH SHORTER TENOR BONDS AND COMMERCIAL PAPERS (CPS)

As per extant instructions of the RBI, IDF-NBFCs are allowed to raise resources through issue of bonds of minimum five year maturity. On a review and with a view to facilitate better ALM, RBI has decided to allow IDF-NBFCs to raise funds through shorter tenor bonds and commercial papers (CPs) from the domestic market to the extent of upto 10 per cent of their total outstanding borrowings. – ***[DNBR (PD).CC.No. 079/03.10.001/2015-16, dated 21st April, 2016]***

12. FOREIGN EXCHANGE MANAGEMENT (REMITTANCE OF ASSETS) REGULATIONS, 2016 NOTIFIED

The Reserve Bank of India (RBI), in consultation with the Government of India, has repealed and

superseded the Foreign Exchange Management (Remittance of Assets) Regulations, 2000 and notified the Foreign Exchange Management (Remittance of Assets) Regulations, 2016 (Notification No. FEMA 13(R)/2016-RB dated April 1, 2016). – ***[A.P. (DIR Series) Circular No. 64/2015-16 [(1)/13(R)], dated 28th April, 2016]***

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FOREIGN TRADE

1. ELIGIBILITY OF LIQUID GLUCOSE UNDER FOCUS MARKET SCHEME

DGFT upon receiving representations stating 'Liquid Glucose' is a Maize product and not sugar, its export may be permitted under Focus Market Scheme and the consequential benefits, it has clarified that all items under HS code 1702 are Sugar as HS code 1702 lists "Other Sugar". Accordingly, it has been stated that the export item Liquid Glucose is "Sugar" and therefore not eligible for FMS benefits. ***[Trade Notice No. 01/2016, 7th April, 2016, (DGFT)]***

2. REQUIREMENT OF CERTIFICATION REGARDING EXPORT OF BETEL LEAVES

Export of Betel Leaves to European Union is permitted by the DGFT subject to registration with The Agricultural and Processed Food Products Export Development Authority (APEDA), which is the designated competent authority. ***[Notification No. 01/2015-2020, 8th April, 2016, (DGFT)]***

3. NEW PSIAs RECOGNIZED

Nine Pre-Shipment Inspection Agencies have been approved under the heading New (Pre Shipment Inspection Agencies) PSIAs recognised in terms of FTP 2015-20. The List of agencies approved can be accessed from the circular. They have been recognised for three years. ***[Public Notice No. 02/2015-2020, 8th April, 2016, (DGFT)]***

4. DEFINITION OF E-COMMERCE INTRODUCED

In exercise of powers conferred by Section 5 of FT (D&R) Act 1992, read with paragraph 1.02 of the Foreign Trade Policy, 2015-2020, the Government has defined E-Commerce to mean-buying and selling of goods and services, including digital product, conducted over digital and electronic network. For services, it shall mean the export of goods hosted on a website accessible through the internet to a purchaser. While the dispatch of goods shall be made through courier or postal mode, as specified under the MEIS, the payment for goods purchased on e-commerce platform shall be done through international credit/debit cards and as per the Reserve Bank of India Circular (RBI/2015-16/185) (Circular No. 16th dated September 24, 2015 as amended from time to time. ***[Notification No. 02/2015-2020, 11th April, 2016, (DGFT)]***

5. NO MEIS BENEFIT ON EXPORT OF TAMARIND KERNEL POWDER

No MEIS benefit is to be granted on "Tamarind Kernel Power" as per the DGFT. Exporters are classifying the item under a wrong code and claiming benefit. The correct ITC (HS) code of "Tamarind Kernel Power" is "13023290". ***[Trade Notice No. 02/2016, 19th April, 2016, (DGFT)]***

6. IMPLEMENTATION OF TRACK AND TRACE SYSTEM FOR EXPORT OF

PHARMACEUTICALS AND DRUG CONSIGNMENT

The procedure for implementation of the Track and Trace system for export of pharmaceutical and drug consignments has been amended by the DGFT. According to the amended position, if the Government of the importing country has mandated a specific requirement, the exporter has the option of adhering to the same and is not required to follow the procedure listed in Public Notice No. 52/2015-2020 dated 5th January, 2016. If an exporter is seeking to avail such exemption from bar coding the exporter has to move an application to the Pharmaceuticals Export Promotion Council of India (Pharmexcil) for this purpose. ***[Public Notice No. 03/2015-2020, 21st April, 2016, (DGFT)]***

7. INTRODUCTION OF POLICY FOR IMPORT OF DOGS

In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, the Central Government has introduced policy conditions on import of dogs. Import of dogs is allowed only for the following specific purposes:- (i) Pet dog with valid pet book and relevant records/documents in the name of importer; (ii) Dogs imported by the R&D Organisations for conducting research with the recommendation of CPCSEA; (iii) For the internal security by the Defence and Police Force. Import of commercial dogs for breeding or any other commercial activities other than the purposes mentioned above is not permitted. ***[Notification No. 03/2015-2020, 25th April, 2016, (DGFT)]***

8. AMENDMENT IN CRITERIA FOR RECOGNITION AS STATUS HOLDER

As per a DGFT Notification, all exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance. An applicant shall be categorized as status holder on achieving export performance during the current and previous three financial years (earlier it was 2 financial years). For Gems & Jewellery Sector the performance during the current and previous two financial years shall be considered for recognition as status holder. The export performance will be counted on the basis of FOB of export earning in free foreign exchange. ***[Notification No. 04/2015-2020, 29th April, 2016, (DGFT)]***

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CORPORATE

1. FOREIGN DIRECT INVESTMENT (FDI) IN E-COMMERCE

In order to provide clarity to the extant policy, guidelines for foreign direct investment on e-commerce sector have been formulated and issued through the press note by DIPP, ministry of Commerce & Industry. Under automatic route FDI upto 100% is permitted in Business to Business (B2B) e-commerce. FDI in Business to Consumer (B2C) is permitted under certain conditions. Under B2C model or the marketplace model, the e-commerce entity acts merely as facilitator and does not own any goods being sold. Conditions under which FDI in retail e-commerce is permitted are: 1) where single brand retail entity operates through brick and mortar shops and undertakes retail trading online; (2) Indian manufacturer selling its own single brand products through e-commerce retail.

E-commerce has been defined as buying and selling of goods and services including digital products over

the digital and electronic networks including computer, television and mobile networks and any other internet application based network. E-commerce entity is a company incorporated under Companies Act 2013 of a foreign company covered under Section 2(42) of companies Act 2013 or office branch or agency of foreign company. FDI in inventory model has not been allowed. Inventory based models is when the e-commerce entity owns inventory of goods and sells directly to consumers. FDI upto 100% under automatic route is permitted under marketplace model where e-commerce entity acts merely as facilitator and does not own any goods being sold.

The e-commerce entity cannot own the goods being sold. Not more than 25% of the value of the sales can be effected through one vendor or its group companies. Online marketplaces are prohibited from directly or indirectly influencing the sale price of goods. Sellers (and not the e-commerce entity) should be responsible for the performance of goods and services they sell, including for providing warranties and guarantees, delivery of goods and after-sales services. The e-commerce platform should provide full contact details of sellers. However, e-commerce entities can provide logistical support to sellers to assist in providing warranty/after-sales services. Online marketplaces are permitted to purchase goods from sellers registered on the e-commerce platform on a B2B basis. ***[Department of Industrial Policy and Promotion, Press Note 3(2016)]***

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SECURITIES

1. DISLCOSURE OF PROPRIETARY TRADING BY COMMODITY DERIVATIVES BROKER AND "PRO-ACCOUNT" TRADING TERMINAL

In order to increase transparency between client and broker in commodity derivative market, it has been decided by SEBI that broker has to disclose to his client whether he does client based business (thus earning commission) or proprietary trading (essentially trading for direct gain using his own funds) as well. This information has to be disclosed upfront to new clients at the time of entering KYC agreement and within a month of the circular in case of existing clients. ***[SEBI/MRD/SE/Cir- 42 /2003 dated November 19, 2003]***

Members have been advised to commit trading "pro-account" from the terminals rather than putting orders on pro-account from various locations. (SEBI/MRD/SE/Cir-32/2003/27/08 dated August 27, 2003). Thus, facility of placing orders on "pro-account" through trading terminals shall be extended only at one location of the members as specified / required by the members. Trading terminals located at places other than the above location shall have a facility to place orders only for and on behalf of a client by entering client code details as required / specified by the Exchange / SEBI. Member requiring the facility of using "pro-account" through trading terminals from more than one location is required to submit an undertaking to the stock exchange stating the reason for using the "pro-account" at multiple locations and SEBI on a case by case basis will consider the request. ***[SEBI/HO/CDMRD/DMP/CIR/P/2016/49, 25th April, 2016, (SEBI)]***

2. ELECTRONIC BOOK MECHANISM FOR ISSUANCE OF DEBT SECURITIES ON PRIVATE PLACEMENT BASIS

SEBI through the a circular has laid down a framework for issuance of debt securities on private placement basis through an electronic book mechanism. The mechanism is made mandatory for all private placements of debt securities in primary market with an issue size of Rs. 500 crores and above. However, in case of issues with a single investor or where the size of issue is less than Rs.500 crore, the issuers can choose between the existing mechanism and the new electronic book mechanism. However, for all issues below Rs. 500 crore, issuer shall disclose the coupon, yield, amount raised, number of investors and category of investors to the Electronic Book Provider and/ or to the information repository for corporate debt market.

Electronic Book Provider (EBP): The electronic book mechanism shall be provided by recognized stock exchanges after approval from SEBI. Eligibility condition for EBP shall include, an on-line platform for receiving bids, own website/ URL, necessary infrastructure like adequate office space, equipment's, risk management capabilities, manpower and other information technology infrastructure, adequate backup and recovery plan. EBP would be subject to periodic audit by Certified Information Systems Auditor (CISA) under Annual System Audit prescribed by SEBI.

The circular further provides definition for issuer, arranger, sub arranger and institutional investor. In terms of rules and responsibilities, arranger or sub-arranger or EBP shall ensure Know Your Client (KYC) of the participants. Issuer shall ensure compliance with all requisite laws, rules and regulations. Pre Placement Memorandum shall ensure disclosures as has been prescribed in acts, rules, regulations, etc. Issuer shall specify minimum issue size which shall be inclusive of green shoe option along with details with respect to green shoe option. PPM may not contain coupon rate but can contain upper ceiling limit. EBP will lay down the procedure for uploading of the private placement offer letter/ placement memorandum containing details about private placement, list of the eligible participants for bidding through electronic book, respective time lines for each event etc.

The circular also contain procedure for book mechanism which includes a pre-bid procedure, bidding and post bidding details. ***[CIR/IMD/DF1/48/2016, 21st April, 2016, (SEBI)]***

3. SEBI TO RE-INVESTIGATE IF CONTROL IN TV 18 WAS DIVESTED IN FAVOUR OF RELIANCE THROUGH CONVERTIBLE DEBENTURES WITHOUT OBSERVING THE REQUIREMENTS OF TAKEOVER REGULATION

In the instant case, SAT found an anomalous situation with respect to 'control' as understood under regulation 2(1)(e) of the Takeover Regulations,2011 and whether it has been divested without receiving any consideration and meeting obligations under takeover regulation. Upon hearing both sides, this issue has been ordered by SAT to be re-investigated by SEBI. The facts of the case are Independent Media Trust, whose sole beneficiary was Reliance Industries entered into an arrangement with Bahl Group which had around 51% control through six holding companies in TV 18 (July, 2012). The arrangement was called a Zero Coupon Optionally and Fully Convertible Debentures (ZOCD). Bahl group issued these debentures which were subscribed by Independent Media Trust. Under the ZOCD arrangement, Respondent in this appeal (Independent Media Trust) was either allowed to ask for refund of the amount invested without interest or seek conversion of ZOCD's into equity shares of

the six holding companies. This option could be exercised at any time during the period of maturity, which was ten years. [Although, the option was never exercised] On exercise of option ZOCD would convert in 99.997% shareholding of the six holding companies held by Bahl Group (0.003 % amounting to 60,000 shares remaining with the group). The six holding companies utilized the fund from ZOCD to increase its shareholding of TV 18 to 71%.

In May, 2014, Respondent entered into a Share Purchase Agreement to acquire 100% equity shares of six holding companies held by the Bahl Group (i.e. 60,000 shares). Thus, essentially acquiring 71% stake of Bahl Group in TV 18.

Takeover Regulation, 2011 requires the acquirer of 25% or more of voting rights in a target company to make disclosure of Open Offer. The dispute here concerns, that the appellant alleges that the requirement of making this open offer was triggered in July 2012 when the ZOCD agreement was entered and not when the Share Price Agreement was entered into. Also according to appellant, respondent has made disclosure of a grossly depressed offer price, when the highest negotiated share price should have been much higher. This is because for valuation of open offer, the amount disclosed by respondent under the Share Price Agreement also included the amount paid by him under the ZOCD agreement (in May 2012, which according to appellant should be separately treated). According to the appellant, the acquisition of Target Company was in two tranches. In the first phase in 2012 through ZOCD and then in 2014 when remaining 0.003% shares were acquired in the Group that had controlling stake in the Target Company.

According to the respondent the duty to disclose, in case of convertible securities under the Takeover Regulations, 2011, gets triggered on the date on which the option to convert such securities into shares is exercised. In the present case, the option for conversion of ZOCDs has not been exercised by respondent and therefore, the six holding companies have not issued equity shares in favour of respondent.

The Tribunal accepted the argument made by the respondent regarding obligation to make public announcement regarding convertible debentures triggered only when the option is exercised. Appellants argument that acquisition of 60,000 shares amounted to 0.003 % stake can be accepted only when it is established that by entering into ZOCD arrangement, the respondent had acquired 99.997% interest in the six holding companies, even before the option for conversion was exercised. This issue was raised before SEBI and has not been challenged by the appellant in the present appeal. The tribunal accordingly held that appellants were barred from raising this argument without challenging the SEBI order concerning this issue.

But studying the ZOCD arrangement led Tribunal to believe that respondent through Bahl Group exercised direct control over the six holding companies and indirect control over the target company & TV 18 even before respondent exercised its option to seek conversion of ZOCDs into equity shares. ***[Victor Fernandes v. SEBI & Others., 13th April, 2016, ((SAT)]***

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COMPETITION

1. SUB-LICENSEES OF MONSANTOS TECHNOLOGY DO NOT HAVE TO DESTROY SEEDS, PATENT LINES AND GERM PLASM PENDING DISPOSAL OF FINAL PROCEEDINGS

COMPETITION COMMISSION OF INDIA (CCI) vide an order dated 10th February, 2016 had made a preliminary order holding Monsanto to be abusing its dominant position and asked the Director General to investigate in the case. The informants who were sub-licensors of BT cotton technology (Monsanto was sub-licensing the tech.) had also asked for interim relief, restraining MMBL (Monsanto owns major stake in the two holding companies of MMBL) from terminating their sub-license agreements.

MMPL terminated the sub-license agreements of informants citing non-fulfilment of payment obligations. Informants on the other had relied on arbitration proceedings that are pending before Bombay High Court regarding refund of excess trait fee paid by the Informants. The 'trait value' is the estimated value for the trait of insect resistance conferred by the BT gene technology.

Termination triggered clauses which required destruction of all seeds, parent-lines and germ plasm, containing the technology of Monsanto. Informant had developed 293 varieties of cotton hybrids, imbibing the technology of OPs, which are unique to soil, temperature and climatic conditions prevalent in a particular area. These seeds are then sold to 40,000 producer farmers and through them to millions of farmers. The informants therefore alleged that the destruction of parent-lines and cotton germplasm of these varieties of seeds being produced by the Informants will lead to irreparable and irretrievable loss to the Informants as well as to the farmers who are dependent on the Informants for cotton seeds peculiar to them. Further, if informants exit the sphere, considering the long gestation of market, taking years for a hybrid variety to be developed and approved, would leave a huge vacuum in the market.

The Commission allowed interim relief considering the irretrievable loss that operation of termination clauses would result in: Leading to destruction of hybrid varieties that have been developed over the years, through reliance on Opposite Party's technology. This relief is pending the disposal of final proceedings before the commission. Commission noted that Delhi High Court (vide order dated 19th February 2016) has accorded sufficient protection to Opposite Parties by restraining the sale of seeds manufactured by Informants after 30th November, 2015. ***[M/s Nuziveedu Seeds Limited (NSL) & Others v. Mahyco Monsanto Biotech (India) Limited (MMBL), 13th April, 2016, (CCI)]***

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INDIRECT TAXES

a. CUSTOMS

1. NOTIFICATION OF SIMPLIFIED PROCEDURE FOR UNITS ENGAGED IN MAINTENANCE, REPAIR AND OVERHAUL OF AIRCRAFTS

Notification No. 12/2012-Customs dated 17.03.2012 has been amended so as to prescribe simplified procedure for units engaged in Maintenance, Repair and Overhaul of aircrafts. Importers will no longer have to follow the procedures under the rules governing exemptions for goods imported for specific purposes. Instead, under the new conditions, inter alia, the DGCA approved Quality Manager in the organisation has to certify the list of imports, and the items have to be installed / used within three years of import. – ***[Notification No. 29/2016-Customs, dated 26th April, 2016 & Notification No. 19/2016-Central Excise, dated 26th April, 2016]***

2. EXEMPTION TO VESSELS CARRYING EXCLUSIVELY COSTAL GOODS FROM VARIOUS PROCEDURAL REQUIREMENTS

The central government has exempted the vessels carrying exclusively coastal goods from the provisions of section 92, section 93, section 94, section 95, section 97 and section 98(1) of the Customs Act 1962. – ***[Notification No. 56/2016-Customs (N.T.), dated 27th April, 2016]***

3. VESSELS CARRYING EXCLUSIVELY COSTAL GOODS TO FILE MANIFEST

Central government has directed that the provisions of Section 30 and 41 of the Customs Act 1962 would be applicable to the vessels carrying exclusively coastal goods operating from berths used by vessels carrying imported goods or export goods, as the case may be. This means that such vessels need to file a manifest with the customs authorities. Also, the person-in-charge of such vessel or his agent shall deliver to the proper officer, a coastal manifest, and prior to the arrival of the vessel or departure as the case may be. – ***[Notification No. 57/2016-Customs (N.T.), dated 27th April, 2016]***

4. ADD ON NORMAL BUTANOL OR N-BUTYL ALCOHOL

Definitive anti-dumping duty levied on Normal Butanol or N-Butyl Alcohol, originating in, or exported from the European Union, Malaysia, Singapore, South Africa and USA, for a period of five years. – ***[Notification No. 13/2016-Customs (ADD), dated 13th April, 2016]***

5. ADD ON BARIUM CARBONATE

The Central Government has levied definitive anti-dumping duty on Barium Carbonate originating in or exported from China PR for a period of five years. – ***[Notification No. 14/2016-Customs (ADD), dated 21st April, 2016]***

6. ADD ON SYNCHRONOUS DIGITAL HIERARCHY TRANSMISSION EQUIPMENT

The Central Government has levied definitive anti-dumping duty on imports of Synchronous Digital Hierarchy Transmission Equipment originating in, or exported from China PR and Israel for a period of five years. – ***[Notification No. 15/2016-Customs (ADD), dated 26th April, 2016]***

7. WAIVER OF REQUIREMENT OF CONSIGNEE PROOF OF ADDRESS FOR COURIER CONSIGNMENTS VALUED BELOW INR 50,000

As per the extant KYC guidelines for courier companies, they have to obtain proof of identity and proof of address before delivering an imported package to an individual. Considering the problems being faced like individuals often find it difficult to produce present/current proof of address, CBEC has decided that in cases where the proof of present address is not available with the individual, the proof of identity collected at the time of delivery along with the address recorded for the delivery purpose by the courier companies would suffice for KYC verification. The above dispensation for proof of address would be available only in respect of individuals for import of documents, gifts/samples/low value dutiable consignments upto the maximum CIF value limit of Rs. 50,000/. – ***[Circular No. 13/2016 – Customs, dated 26th April, 2016]***

b. CENTRAL EXCISE

1. CENVAT CREDIT RULES, 2004 AMENDED

During the Budget 2016, Rule 6(3) of the Cenvat Credit Rules was amended that, a manufacturer

or output service provider engaged in manufacture of dutiable and exempted goods/services shall follow any one of the following options applicable to him, namely:-

i. pay an amount equal to six per cent (6%) value of the exempted goods and seven per cent(7%) value of the exempted services subject to a maximum of the total credit available in the account of the assessee at the end of the period to which the payment relates; or

ii. pay an amount as determined under sub-rule (3A):

Rule 6(3) (i) has now been further amended as follows-

i. pay an amount equal to six per cent(6%) value of the exempted goods and seven per cent. of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; – ***[Notification No.23/2016 - Central Excise (N.T.), dated 1st April, 2016]***

2. FIELD FORMATIONS NOT TO ISSUE ANY SHOW CAUSE NOTICE WHERE THEY DO NOT AGREE WITH THE AUDIT OBJECTIONS ON MERIT

As per the extant instructions it is required to issue show cause notice "to safeguard revenue" in the matter of any audit objection from the CAG's audit or department's internal audit. The show cause notice was then transferred to the call book pending final settlement of the issue. CBEC has now instructed that the central excise field formations are not to issue show cause notices where they are contesting the objection. In cases where they agree with the objection, they will issue show cause notices and proceed to adjudicate them. No notice arising out of audit objections will be transferred to the call book except under specific instructions from the CBEC. – ***[Circular No. 1023/11/2016 – CX, dated 8th April, 2016]***

c. SERVICE TAX

1. EXEMPTION FOR CERTAIN SERVICES PROVIDED BY GOVERNMENT

Notification No. 25/2012- Service Tax dated 20.06.2012 has been amended, so as to exempt from Service Tax, certain services provided by Government or a local authority to business entity. This includes, inter alia, merchant overtime charges (MOT) payable to customs or central excise officers for inspection, container stuffing or other such duties in relation to import or export cargo. – ***[Notification No. 22/2016-Service Tax, dated 13th April, 2016]***

2. SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006 AMENDED

Rule 6 Sub Rule 2, clause (IV) of the Service Tax (Determination of Value) Rules, 2006 provides that interest on delayed payment of any consideration for the provision of services or sale of property shall not be part of taxable value. This clause has now been amended and a proviso is inserted to the effect that this benefit will not be available for interest on delayed payment to the government or a local authority for services provided by it, if the payment was allowed to be deferred on payment of interest. – ***[Notification No. 23/2016 - Service Tax, dated 13th April, 2016]***

3. POINT OF TAXATION PRESCRIBED FOR SERVICES RECEIVED FROM THE GOVERNMENT OF INDIA

Rule 7 of the Point of Taxation Rules, 2011 amended so as to prescribe that in case of services provided by the Government or local authority to any business entity, the point of taxation shall be the earlier of the dates on which-

a. any payment, part or full, in respect of such service becomes due, as specified in the invoice, bill, challan or any other document issued by the Government of India or local authority demanding such payment; or
b. payment for such services is made. – ***[Notification No. 24/2016 - Service Tax, dated 13th April, 2016]***

4. CLARIFICATION ON ISSUES REGARDING LEVY OF SERVICE TAX ON THE SERVICES PROVIDED BY GOVERNMENT

Post Budget 2016, doubts were received from several quarters including business and industry associations in respect of various aspects pertaining to the taxation of services from government and local authorities to a business entity. Accordingly, the CBEC has issued the circular to clarify the doubts. – ***[Circular No.192/02/2016 - Service Tax, dated 13th April, 2016]***

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INTELLECTUAL PROPERTY RIGHTS

1. DRAWINGS/DIAGRAMS ARE 'DESIGN' UNDER THE DESIGNS ACT 2000 AND NOT 'ARTISTIC WORK' UNDER THE COPYRIGHTS ACT 1957

The Plaintiff in this matter claimed protection of its work under section 2(c) – 'artistic work' of the Copyrights Act for its drawings/diagrams related to loader/receiver used in the field of plastic auxiliary equipment. As per the Plaintiff, the defendant no.1 copied and substantially reproduced the artistic work of drawing, etc, of the plaintiffs and also copied the said drawings to manufacture similar product. It was held that there is no cause of action and the suit is not maintainable. The Court observed that upon meaningful reading of the plaint, it is found that the entire claim of the appellants/plaintiff for an article i.e. design falls within the meaning of Section 2 (d) of the Design Act 2000 and does not fall under the Copyright Act 1957, as the artistic work in Section 2 (c) of the Copyright Act 1957 is totally different from the copyright mentioned in Section 15 (2) of the Copyrights Act 1957 – ***[IPEG Inc. & Ors. v. Kay Bee Engineers & Anr., dated 7th April, 2016 (Gujarat HC)]***

2. DELHI PUBLIC SCHOOL SOCIETY (PLAINTIFF) ENTITLED TO INTERIM RELIEF WITH REGARD TO THE USAGE OF THE TRADEMARK 'DPS'

The issue involved in this case was whether the Plaintiff has made out a prima facie case and balance of convenience is in its favour for grant of interim relief restraining the defendants from using the trademark/name "DPS" prefixed to the words "World Foundation" and "World School", which is a case of infringement and /or passing off by the defendant No. 1, as the school of the plaintiff and further adopting the crest/logo in violation of Copy Right of the plaintiff. The Court after discussing the yardsticks of infringement and passing off and various precedents, observed that the schools established by the Plaintiff society, are known as Delhi Public Schools and are popular by the branch names and the public at large and students, staff refers to the same as 'DPS'. Thus, it was held that the plaintiff has made out a case for interim relief with regard to the usage of the trademark 'DPS'. – ***[Delhi Public School Society v. DPS World Foundation and Anr., dated 18th April, 2016 (Delhi HC)]***

3. PLAINTIFF IS NOT PRECLUDED FROM FILING A SUIT WHERE ITS HEAD OFFICE/ PRINCIPAL OFFICE IS SITUATED, EVEN THOUGH IT HAS A SUBORDINATE OFFICE AT A PLACE WHERE THE CAUSE OF ACTION AROSE

The Court after considering the provisions of CPC and catena of judicial precedents on the point held that the plaintiff is not precluded from filing a suit where its head office/ principal office is situated, even though it has a subordinate office at a place where the cause of action arises by resort to Section 62 of the Copyright Act and Section 134 of the Trade Marks Act. In such a situation, the plaintiff, could maintain a suit at either of the two places, namely, where its head office/ principal place of business is situated and where he resides or works for gain, and also at the place where the plaintiff may have subordinate office and a part of cause of action has arisen. In fact, even if the plaintiff does not have a subordinate office at the place where cause of action has arisen, by resort to Section 20(c) CPC, the plaintiff would be entitled to file a suit within the jurisdiction of the Court where the cause of action has arisen, wholly or partly. – ***[M/S RSPL Ltd. v Mukesh Sharma & Anr., dated 5th April, 2016 (Delhi HC)]***

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CONSUMER

1. PENALTY FOR NON DELIVERY OF PLOT, REFUND OF AMOUNT AT 18% INTEREST

The NCDRC has imposed a fine on property development firm for failure to deliver a plot even after ten year of signing an agreement for sale of plot which was to be delivered within 12-18 months. Commission appointed a retired judge to verify the state of development and found no development around the area and basic amenities missing. The firm has been asked to refund the entire amount at 18% interest with a fine of Rs.50, 000. ***[Bikramjit Kalra & Anr., v. M/s Mahagun Real Estate Private Limited, 7th April, 2016, (NCDRC)]***

2. FINE FOR NON DELIVERY OF FLAT INSPITE OF DELAY OF 9 YEARS, REFUND OF AMOUNT ORDERED AT 18%

In the instant case the NCDRC has imposed a fine of Rs. 4.5 lakh and asked the property developer to refund the amount paid for flat at 18% and a further cost of 1 lakh for litigation. The possession was promised in 38 months and there was a delay of almost 9 years. ***[Rajesh Kumar Agrawal v. Parsvnath Developers Ltd., 26th April, 2016, (NCDRC)]***

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ENVIRONMENT

1. THE MINISTRY OF ENVIRONMENT HAS ADVISED GOVERNMENT DEPARTMENTS, MINISTRIES TO HIRE ONLY CNG VEHICLES

In a step towards pollution control in the national capital, environment ministry has written to all ministries and central government departments located in the national capital to hire only CNG-fuelled vehicles. - ***[The Times of India, dated 28th April, 2016]***

2. CABINET APPROVES CHANGES IN BILL ON AFFORESTATION

The Union cabinet chaired by Prime Minister Mr. Narendra Modi gave its approval to move official amendments in the Compensatory Afforestation Fund Management And Planning Authority (CAMPA) Bill, 2015. The CAMPA Bill is meant to

promote afforestation and regeneration activities to compensate for forest land diverted to non-forest uses, by regulating and managing $5.3 billion (almost Rs. 350 Billion) collected over years. - ***[The Times of India, dated 20th April, 2016]***

3. INDIA AND GERMANY SIGN AGREEMENT TO REJUVENATE GANGA

India has signed an agreement with Germany to adopt and replicate, wherever possible, the best practices of the river basin management strategies of the European rivers Rhine and Danube to rejuvenate the river Ganga. The project duration will be of three years (from 2016 to 2018). Besides sharing technological know-how and practical experience, Germany's financial contribution would be to the tune of nearly Rs. 22.5 crore for the project. - ***[The Times of India, dated 13th April, 2016]***

4. THE GOVERNMENT OF INDIA NOTIFY RULES TO DISPOSE OF GARBAGE; SPECIAL ATTENTION ON MANAGING SANITARY WASTE

Manufacturers of sanitary pads/napkins and diapers in India will have to provide a pouch or wrapper for disposal along with the packets of their sanitary products. The government made this provision mandatory for manufacturers of sanitary products under its new solid waste management rules, released by the MoEF. - ***[The Times of India, dated 5th April, 2016]***

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