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RBI/FEMA

1. GUIDELINES ON RELIEF MEASURES BY BANKS IN AREAS AFFECTED BY NATURAL CALAMITIES NOTIFIED

During the hearing of the Writ Petition by Swaraj Abhiyan against Union of India and others, the Hon'ble Supreme Court had directed the concerned authorities in the Union of India, the State Governments and the Reserve Bank of India (**RBI**) and other banks to religiously implement their policies since they are ultimately intended for the benefit of the people of our country and not for the benefit of any stranger.

In this regard, all the Scheduled Commercial Banks (excluding RRBs) were advised by the RBI to ensure implementation of its guidelines on Relief Measures by banks in areas affected by Natural Calamities contained in Master Circular dated July 1, 2015. – *[FIDD. FSD. BC. No. 25/05.10.001/2015-16, dated 2nd June, 2016]*

2. NORMS FOR NBFCs TO REFINANCE INFRASTRUCTURE PROJECTS EASED BY RBI

The RBI has notified that NBFCs may refinance any existing infrastructure and other project loans by way of take-out financing, without a pre-determined agreement with other lenders, and fix a longer repayment period, and the same would not be considered as restructuring if the following conditions are satisfied:

- i. Such loans should be 'standard' in the books of the existing lenders, and should have not been restructured in the past;
- ii. Such loans should be substantially taken over (more than 50% of the outstanding loan by value) from the existing financing lenders; and
- iii. The repayment period should be fixed by taking into account the life cycle of the project and cash flows from the project.

In cases where the aggregate exposure of all institutional lenders is minimum Rs. 1,000 crore, the refinancing by NBFCs will not be considered as restructuring in the books of the existing as well as taking over lenders if the conditions mentioned in the circular are satisfied. Further, a lender who has extended only working capital finance for a project may be treated as 'new lender' for taking over a part of the project term loan as required under the guidelines. This Facility will be available only once during the life of the existing project loans – *[DNBR. CC. PD. No. 082/03.10.001/2015-16, dated 2nd June, 2016]*

3. CYBER SECURITY FRAMEWORK IN BANKS NOTIFIED

RBI has stated that banks should immediately put in place a cyber-security policy elucidating the strategy containing an appropriate approach to combat cyber threats given the level of complexity of business and

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acceptable levels of risk, duly approved by their Board.

A confirmation in this regard may be communicated to Cyber Security and Information Technology Examination (CSITE) Cell of Department of Banking Supervision, Reserve Bank of India, Central Office, World Trade Centre-I, 4th Floor, Cuffe Parade, Mumbai 400005 at the earliest, and in any case not later than September 30, 2016.

The banks have to ensure that the strategy shall deal with certain broad aspects, including but not limited to:

- (a) Arrangement for continuous surveillance;
- (b) Comprehensively address network and database security;
- (c) Protection of customer information;
- (d) Cyber Crisis Management Plan, etc.

–[DBS. CO/CSITE/BC. 11/33.01.001/2015-16, dated 2nd June, 2016]

4. SCHEME FOR SUSTAINABLE STRUCTURING OF STRESSED ASSETS NOTIFIED

RBI from time to time, issues guidelines and prudential norms on stressed assets resolution by regulated lenders. Observing that resolution of large borrowal accounts are facing severe financial difficulties and require co-ordinated deep financial restructuring which often involves a substantial write-down of debt and/or making large provisions and in order to ensure that adequate deep financial restructuring is done to give projects a chance of sustained revival, the Reserve Bank, after due consultation with banks, has decided to facilitate the resolution of large accounts which satisfy certain conditions as set out in the circular. –[DBR. No. BP. BC. 103/21.04.132/2015-16, dated 13th June, 2016]

5. THE PERIOD OF DISPENSATION OF AMORTISING SHORTFALL ON SALE OF NPAs TO SECURITISATION /RECONSTRUCTION COMPANIES EXTENDED UP TO MARCH 2017

RBI has extended the dispensation of amortising the shortfall on sale of NPAs to Securitisation Companies/Reconstruction Companies (SCs/RCs) for one Year *i.e.* up to March 31, 2017. However, for assets sold from April 1, 2016 to March 31, 2017, banks will be allowed to amortise the shortfall over a period of only four quarters from the quarter in which the sale took place.

Earlier, banks were allowed to spread over shortfall, if the sale value is lower than the net book value (NBV), over a period of two years for NPAs sold up to March 31, 2016. –[DBR. No. BP. BC. 102/21.04.048/2015-16, dated 13th June, 2016]

6. REPORTING REQUIREMENTS UNDER BASEL III CAPITAL REGULATIONS REVIEWED

On a review of the extant instructions contained in Master Circular DBR. No. BP. BC. 1/21.06.201/2015-16 dated July 1, 2015 on Basel III Capital Regulations wherein banks are required to submit a report giving the details of the debt raised soon after the issue is completed, it has been decided that banks need not submit a copy of the offer document to RBI. However, banks are required to report to the Principal Chief General Manager, Department of Banking Regulation, RBI, Mumbai, the details of the debt raised as per the format prescribed, duly certified by the compliance officer of the bank.

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The compliance with the Basel III Capital regulations will continue to be examined by the Department of Banking Supervision of the RBI, in course of the supervisory evaluation. – *[DBR. BP. BC. No. 105/21.06.001/2015-16, dated 23rd June, 2016]*

7. INDIAN STARTUPs HAVING AN OVERSEAS SUBSIDIARY MAY OPEN FOREIGN CURRENCY ACCOUNT WITH A BANK OUTSIDE INDIA

In line with the Government of India's startup initiative, it has been decided by RBI that an Indian startup, having an overseas subsidiary, may open a foreign currency account with a bank outside India for the purpose of crediting to the account the foreign exchange earnings out of exports/sales made by the said startup or its overseas subsidiary.

The balances held in such accounts, to the extent they represent exports from India, shall be repatriated to India within the period prescribed for realization of exports, in Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 dated January 12, 2016, as amended from time to time. In addition, payments received in foreign exchange by an Indian startup arising out of sales/ export made by the startup or its overseas subsidiaries will be a permissible credit to the Exchange Earners Foreign Currency (EEFC) account maintained in India by the startup.

Further, the existing facility of opening foreign currency account outside India, available to the Life Insurance Corporation of India or the General Insurance Corporation of India and their subsidiaries for the purpose of meeting the expenditure incidental to the insurance business carried on by them has now been liberalised.

Accordingly, any insurance/ reinsurance company registered with the Insurance Regulatory and Development Authority of India (IRDA) may open a foreign currency account with a bank outside India to carry out insurance/ reinsurance business. – *[A. P. (DIR Series) Circular No. 77 [(2)/10(R)], dated 23rd June, 2016]*

8. WRITING OF OPTIONS AGAINST CONTRACTED EXPOSURES BY INDIAN RESIDENTS PERMITTED

In order to encourage participation in Over the Counter (OTC) currency options market and improve its liquidity, RBI has decided to permit resident exporters and importers of goods and services to write (sell) standalone plain vanilla European call and put option contracts against their contracted exposure, i.e. covered call and covered put respectively, to any AD Category -I bank in India subject to operational guidelines, terms and conditions given in Annex I to the circular. – *[A.P. (DIR Series) Circular No. 78, dated 23rd June, 2016]*

9. SUBMISSION OF QUARTERLY RETURN REPORT BY FOREIGN BRANCHES/ SUBSIDIARIES/ JOINT VENTURES/ ASSOCIATES OF INDIAN BANKS DISCONTINUED

Vide circular DBS.CO.PP.BC 11/11.01.005/2007-08 dated March 24, 2008, foreign branches/ subsidiaries/ joint ventures/ associates of Indian banks were required to submit quarterly return for reporting of profit and asset size of overseas operations of the bank.

On a review, RBI has decided to discontinue the submission of the said return with effect from June

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30, 2016. –[DBS. CO. PPD.
15123/11.01.021/2015-16, dated 30th June, 2016]

10. FURTHER GUIDELINES FOR RELIEF MEASURES BY BANKS IN AREAS AFFECTED BY NATURAL CALAMITIES NOTIFIED

In view of the difficulties faced by farmers in areas affected by natural calamities, RBI has advised the banks to act with empathy and consider restructuring and granting fresh loans without waiting for the receipt of the insurance claims, in cases where there is reasonable certainty of receipt of the claim. –[FIDD. No. FSD. BC. 27/05.10.001/2015-16, dated 30th June, 2016]

11. A LIEN CLAUSE INCORPORATED UNDER THE RULES OF PRADHAN MANTRI JEEVAN JYOTI BIMA YOJANA

The Rules for Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) has been reviewed by the Government of India and it has been decided by the Competent Authority to incorporate a lien clause in the rules of PMJJBY with effect from June 1, 2016 whereby claims for deaths which occur during the first 45 days from the date of enrolment will not be paid, effectively meaning that the risk cover will commence only after the completion of 45 days from the date of enrolment into the scheme by the member. However, deaths due to accidents will be exempted from the Lien Clause. – [DCBR.BPD (PCB) Cir.No.20/12.05.001/2015-16, dated 30th June, 2016]

12. LICENSED UCBs ALLOWED TO OPEN ONE CONTROLLING OFFICE WITHOUT RBI PERMISSION

As per extant guidelines, licence under Section 23 of the Banking Regulation Act, 1949 (AACS) is required for opening Controlling Offices (Regional/Zonal/Administrative Office). On a review, RBI has decided that licensed UCBs which have implemented CBS and are fulfilling the criteria mentioned in this circular, may, at their discretion, and after fulfilling certain criteria as mentioned in the circular open one controlling office for a cluster of not less than 40 branches without prior approval of RBI. –[DCBR. CO. LS (PCB) Cir. No. 19/07.01.000/2015-16, dated 30th June, 2016]

13. EXTERNAL COMMERCIAL BORROWINGS (ECB) – APPROVAL ROUTE CASES

As per the extant guidelines, ECB cases coming under the approval route were required to be considered by an Empowered Committee set up by the Reserve Bank based on the parameters stated therein. With a view to rationalizing and expediting the process of giving approval, it has been decided that ECB proposals received in the Reserve Bank above a certain threshold limit (refixed from time to time) be placed before the Empowered Committee. The RBI will take a final decision in the cases taking into account the recommendation of the Empowered Committee. –[A.P. (DIR Series) Circular No. 80, dated 30th June, 2016]

14. TEMPORARY SUSPENSION OF SETTLEMENT UNDER ASIAN CLEARING UNION EURO

Vide A.P. (DIR Series) Circular No. 43 dated December 26, 2008, participants in ACU mechanism were given the option to settle their transactions either in 'ACU Dollar' or in 'ACU Euro'.

The 'ACU Dollar' and 'ACU Euro' is equivalent in value to one US Dollar and one Euro, respectively.

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Now, as the payment channel for processing 'ACU Euro' transactions is under review, RBI has temporarily suspended operations in 'ACU Euro' with effect from July 01, 2016. Accordingly, all eligible current account transactions including trade transactions in 'Euro' are permitted to be settled outside the ACU mechanism until further notice. – *[A.P. (DIR Series) Circular No. 81, dated 30th June, 2016]*

FOREIGN TRADE

1. EXEMPTION FROM DGFT LICENSE FOR THOSE WHO HAVE BEEN GRANTED PERMISSION TO OPERATE AIR TRANSPORT SERVICES BY MINISTRY OF CIVIL AVIATION

Policy condition 1 (e) of Chapter 88 of ITC (HS), 2012 has been revised by the Central Government to indicate exemption from DGFT licence for persons who have been granted permission to operate air transport services by Ministry of Civil Aviation and thereon DGCA has granted permission to import aircraft on that basis. – *[Notification No. 10/2015-2020, 20th June, 2016, (DGFT)]*

2. REVALIDATION OF IMPORT AUTHORIZATION AND IMPORT QUANTITY OF ROUGH MARBLE AND TRAVERTINE BLOCKS

Revalidation of import authorisations has been allowed with 25% increase in import quantity of Rough Marble & Travertine Blocks. The list of 472 import authorisation holders and the quantity to be increased in respect of each of authorisation holder is attached as Annexure to the Trade Notice.

In case, any authorisation holder is found to have submitted false or erroneous information or has made any mis-declaration / misrepresentation, such applicant/firm, (a) shall forfeit the allocation made in this Trade Notice, (b) shall be debarred from allocation of Rough Marble and Travertine Blocks in future and (c) shall be liable for penal action under the provisions of Foreign Trade (D&R) Act, 1992, as amended.

Authorisation holders shall file monthly returns regarding imports made by them, to the concerned Regional Authority of DGFT by the 15th of each succeeding month in which revalidation is obtained (for example, if revalidation is obtained on 9th July, the authorisation holder will file monthly return for imports made in July by 15th of August) and for each month thereafter by the 15th day. – *[Trade Notice No. 09/2016, 21st June, 2016, (DGFT)]*

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

The DGFT has allocated additional quantity of 1,146 MTs (One Thousand One Hundred and Forty Six Metric Tons) of raw cane sugar to be exported to USA under Tariff Rate Quantity upto 30.09.2016.

– *[Public Notice No. 18/2015-2020, 22nd June, 2016, (DGFT)]*

4. PROHIBITION ON IMPORT OF MILK AND MILK PRODUCTS FROM CHINA EXTENDED

Prohibition on import of milk and milk products (including chocolates and chocolate products and candies/ confectionary/ food preparations with milk or milk solids as an ingredient) from China has been extended by the Central Government for one more year, i.e. till 23.06.2017 or until further orders,

whichever is earlier. *-[Notification No. 12/2015-2020, 24th June, 2016, (DGFT)]*

5. PROCEDURE FOR AUTHORIZATION FOR EXPORT OF ITEMS IN SCOMET LIST TO IRAN SPECIFIED

The DGFT has laid down procedure to process applications for authorization for export to Iran of specified items in SCOMET list by incorporating sub-para VIII in paragraph 2.74 of the Handbook of Procedures 2015-2020 Authorization for export of items in SCOMET list to Iran would be subject to the relevant provisions contained in Annex B to the UN Security Council resolution 2231 (2015). The licensing authority, *i.e.* DGFT or Department of Atomic Energy, on completion of the IMWG process or the applicable internal process, shall seek the concurrence of Disarmament and International Security Affairs (D&ISA) Division in the Ministry of External Affairs. *-[Public Notice No. 19/2015-2020, 29th June, 2016, (DGFT)]*

6. DIRECT OR INDIRECT IMPORT/EXPORT TO/FROM IRAN

The prohibition on direct or indirect export to Iran or import from Iran of specified items has been lifted by the Central Government. Direct or indirect export to Iran or import from Iran is now permitted subject to provisions of the UN Security Council Resolution 2231(2015) (Items listed in S/2015/546 which can be accessed from UN security council website) and International Atomic Energy Agency (IAEA) specified documents (listed in INFCIRC/254/Rev.9/Part I and INFCIRC/254/Rev.7/Part 2, which can be accessed from IAEA website). *-[Notification No. 13/2015-2020, 29th June, 2016, (DGFT)]*

CORPORATE

1. THE COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2016 NOTIFIED

Under the Companies (Acceptance of Deposits) Rules, 2014 corporates were barred from issuing unsecured debt instruments. The Companies (Acceptance of Deposits) Amendment Rules, 2016 as notified by the Central Government, has addressed this issue by excluding money raised by issue of nonconvertible debentures not constituting a charge on the company's assets, and listed on stock exchange from the definition of deposits. This excludes such funds from being categorized as public deposits and thus attracting stricter norms.

Further, any non-interest bearing amount held in trust is exempt from the ambit of 'Deposit'. Also limits for accepting or renewing any deposit from members of a public company has been increased from 25% of the aggregate of the paid-up share capital and free reserves of the company to 35%. Private companies may accept from its members, deposits not exceeding 100% of the aggregate of the paid up share capital, free reserves and securities premium account. For public companies, securities premium account is not available in calculating such limits. An exemption has been granted from obtaining deposit insurance till March 31, 2017, or till the availability of a deposit insurance product, whichever is earlier. *-[Ministry of Corporate Affairs, 29th June, 2016]*

2. COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) AMENDMENT RULES, 2016 NOTIFIED

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The following amendments have been brought in by the Central Government through these rules:

- (a) Filing of e-form MR 1 is now not required for appointment of CEO, CS and CFO.
- (b) Companies are only required to disclose salaries of top 10 paid employees in the director's report to registrar and those earning in excess of Rs.1.02 crore per annum.
- (c) In case of employees working part time, the threshold is Rs. 8.54 lakh a month.

Further, listed companies have also been exempted from making several disclosures in director's report such as relationship between increase in remuneration and performance of company, comparison between remuneration of key managerial person against the performance of company and explaining parameters relied upon by directors for deciding remuneration. *-[Ministry of Corporate Affairs, 30th June, 2016]*

3. CLARIFICATION REGARDING APPOINTMENT OF AUDITORS ISSUED

Section 139 of the Companies Act provides that no listed company shall appoint or re-appoint-

- (a) an individual as auditor for more than one term of five consecutive years;
- (b) an audit firm as auditor for more than two terms of five consecutive years.

The provision requires compliance within three years from the date of commencement of the said Act.

As regards period within which order has to be complied, clarification has been issued by the

Central Government through an Order called the Companies (Removal of Difficulties) Third Order, 2016, stating that requirements of the provision have to be complied no later than the date of the first annual general meeting of the company held after three years from the date of commencement of this Act (1st April, 2014). Thus, essentially allowing auditors to be retained till 2017 annual general meeting. *-[Ministry of Corporate Affairs, 30th June, 2016]*

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SECURITIES

1. GUIDELINES FOR MAINTENANCE OF INVESTOR PROTECTION FUND (IPF) BY DEPOSITORIES ISSUED

Under SEBI regulations, depositories are required to deposit 5% (or such percentage as mandated by SEBI) of its profits from depository operations every year, in Investor Protection Fund (IPF). In the present circular, following guidelines have been issued by SEBI with regard to IPF of Depositories.

Utilization of the IPF: IPF may be utilized for investor education, assist research activities, supporting initiatives of Depository Participants for promotion of investor education and for any other means prescribed by SEBI. Depositories are also required to frame their own guidelines on utilisation of the funds keeping the above objectives in mind and get approved by Board and submit before SEBI within 30 days of the circular, with the continuing duty of informing SEBI of subsequent changes.

Constitution and Management of the IPF: IPF shall be administered by way of trust consisting of atleast one Public Interest Director (PID) of the depository, one person of eminence from an

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academic institution from the field of finance / an expert in the field of investor education / a representative from the registered investor associations recognized by SEBI and Managing Director of the Depository. The Depository shall also ensure that the funds in the IPF are kept in a separate account designated for this purpose and that the IPF is immune from any liabilities of the Depository.

Contribution to the IPF: 5% of their profits from depository operations every year starting from FY 2012-13. All fines and penalties recovered from Depository Participants and other users including Clearing Member pool account penalty shall also be deposited in IPF. Interest or Income received out of any investments made from the IPF will also form part of the fund. Funds lying to the credit of IPR (Investor Protection Reserve) / BOPF (Beneficial Owners Protection Fund) of the Depository or any other such fund / reserve of the Depository shall be transferred to IPF.

Investments of Fund: Funds of trust shall be invested in products carrying least risk such as Central Government securities, fixed deposits of scheduled banks and any such instruments which are allowed as per the investment policy approved by the Board of the Depository. The balance available in the IPF as at the end of the month and the amount utilised during the month including the manner of utilization shall be reported in the Monthly Development Report of the Depository. Depositories are required to implement the provisions of this circular within three months from the date of issuance of this circular. - *[SEBI/HO/MRD/DP/CIR/P/2016/58, 7th June, 2016, (SEBI)]*

2. NORMS RELATING TO ISSUANCE AND TRANSFER OF OFFSHORE DERIVATIVE INSTRUMENTS (ODIS) SPECIFIED

SEBI has decided that ODI Issuers shall be guided by certain provisions with regard to the norms relating to the issuance and transfer of ODI in order to bring transparency and uniformity.

Thus, ODI Issuers shall now be required to identify and verify the beneficial owners (BO) in the subscriber entities, who hold in excess of the threshold as defined under Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 i.e. 25 % in case of a company and 15 % in case of partnership firms/ trusts/ unincorporated bodies [materiality threshold]. Where no beneficial owner is identified, ODI issuers will be required to identify and verify the persons who control the operations. Identity and address proof of such beneficial owner need to be obtained and specified in the manner prescribed in Annexure (I) enclosed with this circular. Where no owner entity is identified the identity and address proof of the relevant natural person who holds the position of senior managing official of the material shareholder/owner entity should be obtained.

Where ODIs need to be transferred prior consent of Foreign Portfolio Investor is required to be taken [Regulation 22 (1) of SEBI (Foreign Portfolio Investors) Regulations, 2014] for such transfer unless pre-approved by FPI. Further, the ODI issuers shall be required to maintain with them the KYC documents.

KYC review shall be done at the time of on-boarding and once every three years for low risk clients and every year for all other clients. For existing ODI Subscriber KYC review should be done within three years for low risk clients and one

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year for all other clients from the effective date of this circular and accordingly reported in revised ODI reporting format. All ODI Issuers shall also be required to file suspicious transaction reports.

The details of the holder of ODIs have to be mandatorily reported to SEBI on a monthly basis. The ODI issuers are required to capture the details of all the transfers of the ODIs issued by them and these have to be made available to SEBI on demand including all the intermediate transfers during the month. ODI Issuers shall be required to carry out reconfirmation of the ODI positions on a semi-annual basis. In case of any divergence from reported monthly data, the same should need to be informed to SEBI in format provided.

ODI Issuers shall also be required to put in place necessary systems and carry out a periodical review and evaluation of its controls, systems and procedures with respect to the ODIs. A certificate in this regard should be submitted on an annual basis to SEBI by the Chief Executive Officer or equivalent of the ODI Issuer. The said certificate should be filed within one month from the close of every calendar year. The revised ODI reporting format is enclosed at Annexure (II). This circular shall come into effect from July 01, 2016. The reporting of the ODI in new format shall be applicable from the month of July 2016 to be submitted on or before August 10, 2016. - *[CIR/IMD/FPI&C/59/2016, 10th June, 2016, (SEBI)]*

3. PENALTY ON PROMOTERS FOR SYNCHRONIZED TRADES AND ARTIFICIALLY RAISING THE PRICE OF SHARE TO MAKE ILLEGAL PROFITS

In the instant case, appellants were charged by SEBI's Whole Time Member for executing

synchronized trades, making public announcements with the fraudulent intention of inflating the price of scrip and artificially increasing the volume of trading in scrip to enable the promoters to offload their shareholding at a higher price.

Accordingly, an order was passed by SEBI for disgorging the profits made by the appellants and banning the appellants from accessing the securities market for two years. SAT noted that three public announcements were made not with a view to implement the same but with a view to inflate the price of the scrip.

SAT also accepted that counterparty to the synchronized trades was placing large buy orders but executing few and deleting bulk of the order giving misleading impression of market depth. During this spurt in volume and price, appellants sold more than 30 lakh shares making huge profits.

However, the Tribunal found merit in the argument of appellants with regard to computation of profits which had been ordered to be disgorged and accordingly ordered the quantum of illegal profits be determined afresh. The period of restraint was also reduced from three years to the period already undergone by the appellants up to the date of present order. *-[Somani Overseas Ltd. & Others v. SEBI, 30th June, 2016, (SAT)]*

4. SAT UPHOLDS SEBI'S DECISION OF RESTRAINING APPELLANTS FROM ACCESSING THE STOCK MARKET FOR TWO YEARS

The facts of the case are that the directors of the company made public announcement of pumping in funds amounting to Rs. 30 crore by subscribing to preferential allotment of shares at Rs.30 per share.

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This was not acted upon, instead the promoters acted on the positive rally caused by this announcement and offloaded more than 30 lakh shares of SIL at the inflated prices, thereby making huge profits. Thereafter, they subscribed to shares of company under the rights issue at Rs.15 per share.

The Tribunal noted that there was no actual intention to raise funds through preferential allotment of shares. BSE repeatedly found that the company made applications without complying with requisite conditions, thus clearly showing that the company was not sincere in making the application.

The fact that appellants had complied with most of public announcement was held immaterial because, action is taken against the appellants in relation to the public announcements which are not implemented. Similarly, announcement made to acquire further 200 acre of land adjoining 55 acres of land already held by the appellants, without any feasibility study as on date of announcement, cannot be said to be bonafide announcement. Even the public announcements relating to amalgamation of companies cannot be said to be bonafide announcements as no further steps were taken in that behalf. In the ordinary course, decision to amalgamate companies is taken only if the circumstances as on that date demand amalgamation of companies.

SAT held that, these unimplemented announcements established the reasoning of Whole Time Member (WTM) of SEBI that these announcements were made with fraudulent intentions to facilitate the promoter group entities to off load the shares at inflated prices. **-[Sumeet Industries Limited v. SEBI, 30th June, 2016, (SAT)]**

5. CALL BACK OF IPO FUNDS DIVERTED CANNOT BE ORDERED WHERE ENTITIES DID INFACIT MAKE PAYMENTS TO COMPANY: SAT

The Appellants in this case were restrained by WTM of SEBI from dealing in securities market for a period of seven years for violation of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. Tijaria Polypipes Limited (**TPL**) came out with IPO. More than 25% of funds raised by IPO was used to clear debts owed by way of money raised through Inter Corporate Deposits (**ICDs**). It was noted that firm failed to disclose in the prospectus information about board resolution to raise funds through ICDs which were in the nature of bridge loans.

The Tribunal agreed on the importance and requirements of disclosure of the ICDs in the Prospectus or through the media, website, etc. According to the Tribunal information relating to an amount to the tune of 25% of the IPO proceeds is not just a material one, it is substantively material for the market to correctly evaluate the advantage and risks of an IPO. Information relating to past ICDs should also have been disclosed given the statutory requirement of a disclosure based regime in the securities market.

However, the Tribunal agreed with the arguments of appellant regarding call back of money raised through IPO for repayment of ICDs. Once a receipt of funds through ICDs is accepted, then repayment of that amount inclusive of interest from the IPO proceeds towards repayment of ICD amount cannot be faulted. Assuming that the amounts received under the ICDs were used for a purpose other than the IPO project, then the appellant could be held guilty of utilizing the IPO proceeds for purposes other than the IPO project, but that could not be a

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ground to direct the appellant to call back the amounts from the persons to whom payments were made towards repayment of ICD amount. Thus inspecting the charge of diverting funds initially promised for purchase of plant and machinery was not held to be established as plant and machinery was eventually supplied though belatedly. Accordingly, the period of debarment was reduced from seven to five years. *-[Tijaria Polypipes Limited v. SEBI, 29th June, 2016, (SAT)]*

COMPETITION

1. THREE NEW SEED MANUFACTURERES JOIN IN THE ONGOING INVESTIGATION AFAINST MONSANTO FOR HAVING UNFAIR TRADE CONDITIONS AND ABUSING DOMINANNT POSITION

CCI in the present case ruled to include the informants alleging abuse of dominant position by Monsanto Company and Mahyo Monsanto Biotech (wherein Monsanto has 50% shareholding) in the ongoing investigation in the conduct of Monsanto in imposing unfair condition in contract of leasing technology and leveraging its dominant position in BT cotton technology market for expanding their presence in BT cotton seeds market. Sub-licensees of BT technology are required to pay a onetime non-refundable technology fee of INR 50 lakh, but adopts differential pricing/discounting policy for its affiliates downstream.

There are also restrictions on sub-licensees regarding modification of the genes therein or backcrossing with public germplasm which are not maintained in case of its affiliates in the downstream market. *-[Kaveri Seed Company Limited & Others v.*

Mahyo Monsanto Biotech & Others, 9th June, 2016, (CCI)]

INDIRECT TAXES

a. CUSTOMS

1. INCLUSION OF HOSUR (TAMIL NADU) AND NATTAKKAM VILLAGE (KOTTAYAM, KERALA) AS NEW PORTS IN EP NOTIFICATIONS

The villages Hosur (Tamil Nadu) and Nattakkam village (Kottayam, Kerala) has been included in the list of inland container depot stations for making imports and exports under various incentive and duty remission schemes by the Central Government under the Foreign Trade Policy. *-[Notification No. 36/2016 - Customs, dated 1st June, 2016]*

2. IMPOSITION OF EXPORT DUTY ON SUGAR

Notification No. 27/2011-Customs, dated 01.03.2011 has been amended by the Central Government, to impose export duty of 20% on raw sugar, white or refined sugar. *-[Notification No. 37/2016 - Customs, dated 16th June, 2016]*

3. CONTINUATION OF IMPORT DUTY ON WHEAT

Notification No. 12/2012-Customs, dated the 17th March, 2012 has been amended by the Central Government, to continue with the imposition of BCD of 25% on wheat beyond 30.06.2016 and without an end date. *-[Notification No. 38/2016 - Customs, dated 17th June, 2016]*

4. REPUBLIC OF TOGO' AND 'REPUBLIC OF CHAD' INCLUDED IN THE LIST OF COUNTRIES ELIGIBLE FOR PREFERENTIAL TARIFF

Notification No. 96/2008-Customs dated 13.08.2008 has been amended by the Central Government, so as to include 'Republic of Togo' and 'Republic of Chad' in the list of countries eligible for preferential tariff under the said notification. *-[Notification No. 39/2016 – Customs, dated 21st June, 2016]*

5. DEEPER TARIFF CONCESSIONS IN RESPECT OF SPECIFIED GOODS IMPORTED FROM MALAYSIA

Notification No. 53/2011-Customs dated 01st July, 2011 has been amended by the Central Government, so as to provide deeper tariff concessions in respect of specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA) *m.e.f.* 30.06.2016. *-[Notification No. 40/2016 – Customs, dated 21st June, 2016]*

6. CHANDIGARH NOTIFIED AS CUSTOMS AIRPORT

CBEC has notified Chandigarh as a Customs airport for "Unloading of imported goods and the loading of export goods or any class of such goods". Till now Chandigarh was a customs airport for the limited purpose of defence items and passenger baggage. *-[Notification No. 83/2016 – Customs (N.T.), dated 9th June, 2016]*

7. ADD ON POLY-TETRA-FLUORO-ETHYLENE

Definitive anti-dumping duty has been imposed on Poly-tetra-fluoro-ethylene (PTFE) [Tariff Item 3904 61 00], originating in or exported from Russia, for a period of five years (unless revoked, superseded or amended earlier). *-[Notification No. 23/2016 – Customs (ADD), dated 6th June, 2016]*

8. ADD ON PENTAERYTHRITOL

Levy of anti-dumping duty on imports of Pentaerythritol, originating in, or exported from the People's Republic of China, extended for a period of one year. *-[Notification No. 26/2016 – Customs (ADD), dated 13th June, 2016]*

9. ADD ON POLY VINYL CHLORIDE (PVC) PASTE RESIN

Definitive anti-dumping duty imposed on "Poly Vinyl Chloride (PVC) Paste Resin" originating in or exported from Korea RP, Taiwan, China PR, Malaysia, Thailand and European Union for a period of five years. *-[Notification No. 27/2016 – Customs (ADD), dated 23rd June, 2016]*

10. FRESH INSTRUCTIONS REGARDING IMPORT OF GOLD/SILVER/PLATINUM

CBEC has issued fresh procedure to be followed by nominated agencies importing gold/silver/platinum under the scheme for 'Export against Supply by Nominated Agencies'. *-[Circular No. 27/2016 – Customs, dated 10th June, 2016]*

11. SIMPLIFICATION OF PROCEDURE IN SWIFT FOR CLEARANCE OF CONSIGNMENTS RELATED TO DRUGS & COSMETICS

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Single window interface for importers and exporters had been launched by the Customs department with effect from 1st April 2016 under the acronym SWIFT. Since its implementation, reports have been received highlighting problems faced by trade in relation to the import of drugs, cosmetics and medical equipment.

The CBEC after examining these issues and consulting with the Drug Controller General of India have addressed the issues and simplified the procedure for clearance of such goods. *-[Circular No. 28/2016 – Customs, dated 14th June, 2016]*

b. CENTRAL EXCISE

1. SUBSTITUTION OF THE WORD “FREE TRADE ZONE” WITH “SPECIAL ECONOMIC ZONE”

Notification No. 214/86-Central Excises dated 25.03.1986 and Notification No.67/95-Central Excises dated 16.03.1995 has been amended, so as to substitute the word Special Economic Zone (SEZ) in place of “Free Trade Zone”. The effect is that the exemptions are available if the final product is cleared to a unit in an SEZ. *-[Notification No. 24/2016 – Central Excise, dated 14th June, 2016 & Notification No. 25/2016 – Central Excise, dated 14th June, 2016]*

2. CLARIFICATION ON THE ISSUE OF DEALER REGISTRATION FOR IMPORTER

CBEC has specified that a person who is registered as a first stage dealer shall not be required to take registration as an importer, and *vice versa*. *- Notification No. 30/2016 – Central Excise (N.T.), dated 28th June, 2016.*

A circular has also been issued by the CBEC in this regard giving option to the assesses who conducts business both as a FSD and an importer, to file a single quarterly return, showing transactions of both kinds separately. *-[Circular No. 1032/20/2016 – CX, dated 28th June, 2016]*

3. CLARIFICATION ON THE SCOPE OF LEVY OF EXCISE DUTY ON BRANDED READYMADE GARMENTS

In this year's budget it has been notified that the readymade garments of MRP over Rs 1000 and bearing a brand name or sold under a brand name will attract excise duty. The issue raised was whether excise duty would be chargeable on readymade garments or made up articles of textiles which are sold by a retail store which merely affixes the retail sale price on the readymade garments or made up articles of textiles which are purchased by such retail store from the open market. It has been clarified that the present levy is not on all readymade garments and made ups, and is restricted only to readymade garments and made up articles of textiles bearing a brand name or sold under a brand name and having retail sale price (RSP) of Rs. 1000/- or above.

Further, affixing a brand name on the product, labeling or relabeling of its containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture.

However, merely because the garment is sold by the outlets (shop) of a retailer that has a name it will not attract excise duty, unless the entity affixes the brand name or price to the garment. Further, the CBEC has instructed the field formations that visits are not to be made to retail outlets except on the basis of

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specific inputs regarding duty evasion and with the approval of the Commissioner. *-[Circular No. 1031/19/2016 – CX, dated 14th June, 2016]*

c. SERVICE TAX

1. SERVICE TAX ON THE LEGAL SERVICES PROVIDED BY SENIOR ADVOCATES EXEMPTED

Notification No. 25/2012 - Service Tax, dated the 20th June, 2012 has been amended by the Central Government, so as to exempt the legal services provided by senior advocates to a business entity with a turnover up to rupees ten lakh in the preceding financial year.

Service Tax Rules, 1994 have also been amended so as to specify the business entity as the person liable to pay service tax in respect of services provided by senior advocates. Further, the extent of payment of service tax by a business entity as a recipient of services provided by senior advocates has also been prescribed. *-[Notification No. 32/2016-Service Tax, dated 6th June, 2016 and Notification No. 33/2016-Service Tax, dated 6th June, 2016 and Notification No. 34/2016-Service Tax, dated 6th June, 2016].*

2. EXEMPTION OF SPECIFIED TAXABLE SERVICES FROM THE WHOLE OF KRISHI KALYAN CESS

CBEC has exempted taxable services from the whole of Krishi Kalyan Cess leviable thereon with respect to which the invoice for the service has been issued on or before 31st May, 2016 subject to the condition that the provision of the service has been completed on or before 31st May, 2016. -

[Notification No. 35/2016-Service Tax, dated 23rd June, 2016]

3. EXEMPTION OF SERVICE TAX ON TAXABLE SERVICES BY WAY OF TRANSPORTATION OF GOODS BY A VESSEL FROM OUTSIDE INDIA

CBEC has exempted service tax on taxable services by way of transportation of goods by a vessel from outside India upto customs station in India with respect to which the invoice for the service has been issued on or before 31st May, 2016 subject to the condition of production of customs certified copy of the import manifest or import report required to be delivered under section 30 of the Customs Act, 1962. *-[Notification No. 36/2016-Service Tax, dated 23rd June, 2016]*

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INTELLECTUAL PROPERTY RIGHTS

1. GUIDELINES FOR FACILITATORS AND STARTUPS ISSUED

Guidelines have been issued by the CGPDTM for Facilitators and Start-ups for filing and processing applications for Patent, Designs and Trade Marks. - *[CG/F/Start-up/Guidelines/2016/79, dated 8th June, 2016]*

2. USE OF SAME COLOUR IN SAME SHADE AS THAT OF THE PLAINTIFF'S PRODUCT AMOUNTS TO DISPARAGEMENT AND WOULD CAUSE PREJUDICE: DELHI HIGH COURT

An undisputed fact in the present case was that colour of the razor shown in the impugned

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advertisement by the defendant is of that blue colour which is the same blue colour as that of the plaintiff's razor.

The Delhi High Court observed that in view of the identical colour of the razors of plaintiff to the razor shown in the impugned advertisement, a viewer of the impugned advertisement would therefore necessarily co-relate the razors in the impugned advertisement with the razors of the plaintiff.

Therefore, there is immediate co-relation on seeing the razors in the impugned advertisement of the defendant as that of the plaintiff inasmuch as in the fleeting snaps of the impugned advertisement it is not expected that the ordinary consumer will place any emphasis on the shape of the razors because what is most prominent in a short video advertisement is the colour of a product and not minute differences which are not emphasized in the few seconds of the advertisement. Therefore, use of the same blue colour in the same shade and which blue shade is the blue shade of the plaintiff's razors, the same will cause disparagement of the plaintiff's razors in the facts of the present case. *-[Gillette India Limited v. Reckitt Benckiser (India) Pvt Ltd, dated 1st June, 2016 (Delhi HC)]*

CONSUMER

1. WHERE BANK IS CONVINCED THAT ITS EMPLOYEES HAVE COMMITTED FRAUD, BANK HAS TO READILY ACCEPT THE LIABILITY: NCDRC

The instant case involves Mumbai Metropolitan Region Development Authority (MMRDA) investing Rs. 351.50 crore with Dena bank as fixed deposit for 366 days for which fixed deposit receipts

were issued. The bank notes that fixed deposit receipts are not original and in addition an overdraft facility was also opened which was secured against fixed deposit from which Rs. 45 cr has been withdrawn. Complainant notes that it had not applied for grant of any overdraft facility.

On maturity of the Fixed Deposit Receipts, the bank has refused to pay the proceeds to the complainant on the ground that the Fixed Deposit Receipts in the custody of the complainant were forged documents. The bank also sought to adjust from the proceeds of the Fixed Deposits, the amount outstanding in the overdraft account opened in the name of the complainant MMRDA

Commission rejected the preliminary objection that complainant is not a consumer as per definition provided in the Act. It noted that earning interest by temporary deployment of the surplus funds in a bank is altogether different from business activities such as manufacturing, trading or rendering services. Although, the complainant is a government undertaking which focuses primarily on infrastructure development of the Mumbai Metropolitan Region and not involved in the business of the collecting and deploying funds.

Therefore, it would be difficult to say that the said deployment of funds was made for a commercial purpose.

The National Commission took note of CBI inquiry of the incident wherein Senior Manager of respondent bank was charge sheeted for partaking in criminal conspiracy to supply crucial documents to a third person who carried out the forging of documents and siphoning of funds. Commission thus saw presence of clear negligence on part of Bank in performing various steps of the process required in opening fixed deposit account and

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overdraft facility, which could have avoided the fraud played on complainant.

Accordingly, Commission concurred with the view which has also been stated in several Supreme Court ruling that once the banks are convinced that their employees have acted fraudulently in relation to a customer, the banks should at once acknowledge liability turn such fraud to the customers. They should not needlessly deny a just claim of the customer on frivolous grounds. Commission thus directed the Bank to pay the entire principal amount of Rs.351.50 crores to the complainant along with the interest applicable to the said Fixed Deposit Receipts. *-[Mumbai Metropolitan Region Development Authority v. Dena Bank & 4 Others, 3rd June, 2016, (NCDRC)]*

ENVIRONMENT

1. NGT DIRECTS NCT DELHI TO CARRY OUT WATER HARVESTING

NGT has directed the NCT, Delhi, Central Ground Water Authority and Delhi Jal Board to clean, maintain and restore all the bodies, natural wells and bodies and other water bodies which are in existence in NCT of Delhi, within three weeks from the date of the order. The NGT said that it should be made sure that for the coming rainy seasons these water bodies can receive rainwater in good quantity. *- [Society for Protection of Culture Heritage, Environment, Traditions & Promotions of National Awareness (CHETNA) v. Union of India & Others, dated 3rd June, 2016 (NGT)]*

2. RHESUS MACAQUE MONKEYS DECLARED VERMIN IN HIMACHAL TO ALLOW CULLING

The Environment Ministry has declared Rhesus Macaque monkeys found in Himachal Pradesh to be "vermin" for a period of one year, allowing their culling to control their population during this time. Vermin means wild animals which are believed to be harmful to crops, farm animals, game or which carry diseases. *-[The Times of India, dated 9th June, 2016]*

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