MONTHLY NEWSLETTER

LEXport Law made easy
Advocates & Legal Consultants

NOVEMBER 2016



## RBI/FEMA

### 1. INDIAN BANKS ARE ALLOWED TO ISSUE RUPEE DENOMINATED BONDS OVERSEAS: RBI

With a view to developing the market of Rupee Denominated Bonds overseas, and also providing an additional avenue for Indian Banks to raise capital / long term funds, RBI has decided to allow Indian Banks to issue the following within the limit set for foreign investment in Corporate Bonds (INR 2,44,323 crore at present):

i. Perpetual Debt Instruments (PDI) qualifying for inclusion as Additional Tier 1 capital and debt capital instruments qualifying for inclusion as Tier 2 capital, by way of Rupee Denominated Bonds overseas; and
ii. Long term Rupee Denominated Bonds overseas for financing infrastructure and affordable housing. ***-[A.P. (DIR Series) Circular No. 14, dated 3rd November, 2016]***

### 2. GUIDELINES ISSUED FOR COMPUTING EXPOSURE FOR COUNTERPARTY CREDIT RISK ARISING FROM DERIVATIVE TRANSACTIONS

RBI has issued a Circular annexing the final Guidelines on Standardised Approach for computing exposure for counterparty credit risk arising from derivative transactions. The Guidelines contain the revised method which will replace the Current Exposure Method (**CEM**), presently being used by Banks, for measuring exposure for counterparty credit risk arising from derivative transactions. The Guidelines will be implemented from April 1, 2018. ***-[DBR. No. BP. BC. 29/21.06.201/2016-17, dated 10th November, 2016]***

### 3. GUIDELINES ISSUED ON CAPITAL REQUIREMENTS FOR BANK EXPOSURES TO CENTRAL COUNTERPARTIES

RBI has issued a Circular annexing the final Guidelines on capital requirements for Bank exposures to central counterparties. The Guidelines will be effective from April 1, 2018. ***-[DBR. No. BP. BC. 30/21.06.201/2016-17, dated 10th November, 2016]***

### 4. RBI EASES NORMS ON SCHEMES RELATED TO STRESSED ASSETS

RBI has revised the norms for restructuring the stressed corporate debt under the sustainable structuring of stressed assets (S4A) Scheme, allowing sustainable part of the debt to be treated as a 'Standard Asset' setting aside some provisions. The provisions to be made upfront should be higher of 50 per cent of the unsustainable amount or 25 per cent of the total amount of loans. Further, the RBI said the unsustainable part can be upgraded to standard category after one year of satisfactory performance of the sustainable part of the debt. The changes in S4A is based on the experience gained as well as the feedback received from stakeholders, and taking into consideration the requirements of the construction sector. ***-[DBR. No. BP. BC. 33/21.04.132/2016-17, dated 10th November, 2016***

***& DBR. No. BP. BC. 34/21.04.132/2016-17, dated 10th November, 2016]***

## 5. WITHDRAWAL OF LEGAL TENDER CHARACTER OF EXISTING RS. 500 AND RS. 1000 BANK NOTES

It has been notified that in terms of Gazette Notification No. 2652 dated November 08, 2016 issued by the Government of India, Rs. 500 and Rs. 1000 denominations of Bank Notes of the existing series issued by the RBI (hereinafter referred to as Specified Bank Notes) has been ceased to be legal tender with effect from the midnight of November 08, 2016, to the extent specified in the Notification.

A new series of Bank Notes of Rs. 500 and Rs. 1000 called Mahatma Gandhi (New) Series in different size and design, highlighting the cultural heritage and the scientific achievements of the country, has been issued. ***-[DCM (Plg) No. 1226/10.27.00/2016-17, dated 8th November, 2016]***

## 6. FOREIGN EXCHANGE MANAGEMENT (INSURANCE) REGULATIONS, 2015 NOTIFIED

Inviting attention of the Authorised Dealers to A. D. (M.A. Series) Circular No. 11 dated May 16, 2000 under which the Authorised Dealers were advised of various Rules, Regulations, Notifications/ Directions issued under the Foreign Exchange Management Act, 1999, RBI issued Circular No. 18 revising the Regulations issued under the Foreign Exchange Management (Insurance) Regulations, 2000 notified vide Notification No. FEMA. 12/2000 - RB dated May 03, 2000 c.f. G.S.R. No. 395(E) dated May 03, 2000.

Accordingly, the said Regulations notified on May 3, 2000 have been repealed and superseded by the Foreign Exchange Management (Insurance) Regulations, 2015 notified vide Notification No. FEMA 12(R)/2015-RB dated December 29, 2015 c.f. G.S.R. No. 1007(E) dated December 29, 2015. The revised notification has come into force with effect from December 29, 2015.

The Memorandum of Foreign Exchange Management Regulations relating to General/Health Insurance (GIM) and Life Insurance (LIM) in India have also been modified and annexed with the circular. ***-[A.P. (DIR New Series) Circular No. 18 [(1)/12 (R)], dated 17th November, 2016]***

## 7. EXPANSION OF INVESTMENT BASKET OF ELIGIBLE INSTRUMENTS FOR INVESTMENT BY FPIS UNDER THE CORPORATE BOND ROUTE

As per the extant Guidelines, FPIs are permitted to invest only in listed or to-be-listed debt securities. Investment in unlisted debt securities is permitted only in case of Companies in the infrastructure sector. RBI has now expanded the investment basket of eligible instruments for investment by FPIs under the Corporate Bond route to include the following:

i. Unlisted Corporate Debt Securities in the form of non-convertible debentures/bonds issued by public or private Companies subject to a minimum residual maturity of three years and the end use-restriction on investment in real estate business, capital market and purchase of land.

ii. Securitised Debt Instruments as under:
   a. any Certificate or Instrument issued by a special purpose vehicle (SPV) set up for securitisation of asset/s where Banks, FIs or NBFCs are originators; and/or
   b. any Certificate or Instrument issued and listed in terms of the SEBI Regulations on Public Offer and Listing of Securitised Debt Instruments, 2008.

***-[A.P. (DIR Series) Circular No. 19, dated 17th November, 2016]***

## 8. BORROWERS GET ADDITIONAL 60 DAYS FOR REPAYMENT OF LOANS UP TO RS. 1 CRORE

Following the demonetization of Rs. 500 and Rs. 1000 Notes and taking into consideration that small borrowers may need some more time to repay their loan dues, RBI has provided an additional 60 days beyond what is applicable for the concerned regulated entity (RE) for recognition of a loan account as substandard in the following cases:

i. Running working capital accounts (OD/CC)/crop loans, with any Bank, the sanctioned limit whereof is Rs. 1 crore or less;
ii. Term loans, whether business or personal, secured or otherwise, the original sanctioned amount whereof is Rs. 1 crore or less, on the books of any Bank or any NBFC, including NBFC (MFI). This shall include housing loans and agriculture loans.
**Note**: The limits at (i) and (ii) above are mutually exclusive limits applicable to respective category of loans.
iii. Loans sanctioned by Banks to NBFC (MFI), NBFCs, Housing Finance Companies, and PACs and by State Cooperative Banks to DCCBs.
iv. The above Guidelines will also be applicable to loans extended by DCCBs.

It is also notified that the above dispensation will be subject to the following conditions:

i. It applies to dues payable between November 1, 2016 and December 31, 2016. REs shall ensure that this is a short-term deferment of classification as substandard due to delay in payment of dues arising during the period specified above and does not result in restructuring of the loans.
ii. Dues payable before November 1, 2016 and after December 31, 2016, will be covered by the extant instruction for the respective regulated entity with regard to recognition of NPAs.
iii. The additional time given shall only apply to defer the classification of an existing Standard Asset as substandard and not for delaying the migration of an account across sub-categories of NPA.

***-[DBR. No. BP. BC. 37/21.04.048/2016-17, dated 21st November, 2016]***

*****

# FOREIGN TRADE

## 1. AMENDMENT IN STANDARD INPUT OUTPUT NORMS

Import of Boric Acid is subject to 'Actual User' condition. Therefore, Boric Acid is made ineligible for imports under Duty Free Import Authorisation (DFIA) Scheme. The Standard Input Output Norms (SION) amended accordingly. ***-[Public Notice No. 42/2015-2020, 8th November, 2016, (DGFT)]***

## 2. INCLUSION OF NEW REGIONAL OFFICE OF DGFT AT VIJAYWADA

The new Regional Office of DGFT at Vijayawada, Andhra Pradesh is included in the Appendix-l A of the Foreign Trade Policy, 2015-20.

Consequently, the territorial jurisdiction of the new Regional Authority, Vishakhapatnam is re-allocated, as whole of Andhra Pradesh excluding the districts which are under the jurisdiction of the Regional Authority, Vijayawada. ***-[Public Notice No. 43/2015-2020, 11th November, 2016, (DGFT)]***

### 3. FORMAT FOR QUARTERLY REPORT FOR WORKING UNITS AND FORMAT FOR ANNUAL PROGRESS REPORT FOR THE WORKING UNITS AMENDED

Amendments have been made in the existing formats for Quarterly Report for the Working Units and the Annual Progress Report for the Working Units [Annexure III and Annexure IV to Appendix - 6E] to monitor the domestic procurement made and corresponding duty foregone. ***-[Public Notice No. 45/2015-2020, 30th November, 2016, (DGFT)]***

*****

## CORPORATE

### 1. COMPANIES (REGISTRATION OFFICES AND FEES) SECOND AMENDMENT RULES, 2016

The Central Government has issued the Companies (Registration Offices and Fees) Second Amendment Rules, 2016. Accordingly, now Form AOC-4 can also be certified by a Company Secretary in Practice apart from a Chartered Accountant and Work Accountant in Practice.

Further, the fee for allotment of Director Identification Number (**DIN**) under section 153 of the Companies Act, 2013 and fee for surrender of DIN under rule 11(f) of the Companies (Appointment and Qualification of Directors) Rules 2014, in case of OPC and small companies and for other than OPC and small companies, has been rationalised. Now, the fee for allotment of DIN is Rs. 500/- and fee for surrender of DIN is Rs. 1000/- for all. ***-[Ministry of Corporate Affiars, 7th November, 2016]***

*****

## SECURITIES

### 1. UPLOADING THE EXISTING KYC DETAILS WITH CENTRAL KYC REGISTRY (CKYCR) SYSTEM BY REGISTERED INTERMEDIARIES

The registered intermediaries have to update their IT systems with KYC details and register all new accounts of individuals in accordance with the CKYCR template, mandatorily by October 31, 2016. Mutual funds and Intermediaries other than mutual funds may follow the following time lines:

(I) Mutual funds may ensure 30% completion of uploading of existing KYC data by November 30, 2016, another 30% of KYC data by January 31, 2017 and the rest 40% data by March 31, 2017;

(II) Intermediaries other than mutual funds may ensure 50% completion of uploading of existing KYC data by November 30, 2016 and the remaining 50% of KYC data by December 31, 2016. ***-[CIR/MIRSD/120 /2016, 10th November, 2016, (SEBI)]***

### 2. DAY COUNT CONVENTION FOR DEBT SECURITIES

Following clarifications have been provided regarding coupon payment and redemption of debt securities:

If interest payment date falls on a holiday, the payment shall be made on the following working day, however the date for future coupon payments shall be as per the original schedule. To ensure consistency of interest calculation, a uniform methodology for calculation of interest shall be

followed, and thus if February 29 falls during the tenor of a security, then the number of days shall be reckoned as 366 days (Actual/Actual day count convention) for a whole one year period, irrespective of whether the interest is payable annually, half yearly, quarterly or monthly etc. Accordingly, for half yearly interest payment, 366 days shall be reckoned twice as the denominator, 4 times for quarterly interest and 12 times for monthly interest payment.

Further to ensure uniformity in payment of interest and redemption, it has been decided that interest/redemption payments shall be made only on the days when the money market is functioning in Mumbai. ***-[CIR/IMD/DF-1/122/2016, 11th November, 2016, (SEBI)]***

## 3. REQUIREMENT OF PAN TO OPEN ACCOUNTS OF FPIs

It has been decided that the intermediaries can verify the PAN of FPIs online from website authorised by Income Tax department at the time of account-opening for FPIs. However, FPIs need to provide the copy of PAN card within 60 days of account-opening or before remitting funds out of India, whichever is earlier to their intermediaries. ***-[CIR/IMD/FPIC/123/2016, 17th November, 2016, (SEBI)]***

## 4. IT IS THE DUTY OF THE COMPANY TO KEEP THE TRADING WINDOW CLOSED WHERE ITS SHARES ARE BEING ACQUIRED AND PUBLIC ANNOUNCEMENT HAS NOT BEEN MADE

By the present common order, Securities Appellate Tribunal disposed of five appeals, which relate to the issue of trigger date of Unpublished Price Sensitive Information (**UPSI**). The allegation against the appellants were that they as Promoters-Directors benefitted from sharing UPSI and subsequently traded in the scrip of Shelter Infra Projects Ltd (hereinafter the '**Company**'). Thus, in the present appeal before the SAT, these allegations and heavy penalties imposed for violation of SEBI (Prohibition of Insider Trading) Act, 1992, were impugned.

SEBI investigation found substantial increase in the price of the scrip of shelter Infra from Rs. 9/- to Rs. 62.05 between 1st April 2009 and 22nd September, 2009. During this investigation period it was also noted that Shelter Infra (Target Company), its promoters and M/s Ramayana Promoters Pvt. Ltd. (acquirer), have entered into a Share Purchase Agreement for sale of 35.5% shares of promoters in Shelter Infra for Rs. 80 which would also result in change in management. The investigation found that appellant Company did not close the trading window in the scrip during the period SPA was being negotiated and infact took advantage of UPSI to trade in scrip. The SPA (signed on 30th July, 2009) was to be disclosed to Stock Exchanges' within 15 minutes of the Board meeting and announcement relating to public offer within 4 working days. It was noted that disclosure to Stock Exchange has not been made while announcement relating to public offer was made beyond four days.

The counsel for appellant however argued that UPSI was in operation only after signing of SPA i.e from 30th July, there was no certainty on the fructification of the SPA and remained in operation for 7 days. The delay in making public offer (only for one day according to appellants) was on account of two subsequent holidays as SPA was signed on Friday. The appellants also argued that request for closing the trading window was also sent to BSE, and it is the duty of the compliance officer and not the

Company to ensure that the trading window was closed.

Against individual appellant, the allegation was that they bought shares and traded in the scrip of Shelter Infra during the period of existence of UPSI being "an insider" attracting provisions of PIT Regulations. The first appellant, however argued that her husband was promoter/Chairman of Shelter Infra, and simply trading was done in her name. Moreover though the shares were bought during this period (for Rs. 80), they were not traded or sold with any intention to make illegal gains or take any advantage of UPSI. Counsel for respondent however argued that appellant was related to Chairman/Promoter and thus by law is an "insider". The crux of the matter amidst all the facts and arguments made by both the sides was regarding the trigger date of UPSI. The appellant argued that the trigger date arrived at by SEBI for UPSI is arbitrary. On the basis of facts the appellant argued that first draft of SPA was sent to acquirer group in June, which was devoid of several key information like the percentage of shares acquired, the price at which shares are to be acquired were left blank and there was no certainty on the relevant details, till 30th July, 2009.

SAT, however, relied on the facts and reasoning offered by counsel for SEBI, that there was an understanding between promoter shareholders and acquirer that a SPA will be entered into and also not just the appellant herein but also directors and other investors traded during this period and price of shares increased substantially. The counsel also noted that buying based on UOSI is in itself an offence and not selling does not absolve an insider from violation. Several blanks cannot be a ground to hold that the decision to enter into the SPA was not finalized, because, unless a concrete proposal of one party was accepted by another party the draft SPA would not have been prepared. Accordingly, SEBI's order was sustained, although monetary penalty was reduced. ***-[Chandra Mukherji v. SEBI, 30th November, 2016, (SAT)]***

*****

## COMPETITION

### 1. EXISTENCE OF AN ENVIRONMENT CONDUCIVE TO CARTELIZATION IS NOT ENOUGH AND COGENT EVIDENCE MUST BE COLLECTED TO PROVE ANTICOMPETITIVE ARRANGEMENT

GlaxoSmithKline Pharmaceuticals Limited (**GSK**) and Sanofi Pasteur India Private Limited (Sanofi hereafter), appealed against Competition Commission of India's order which held the appellants guilty of violating section 3(3)(d) [Section 3 of Competition Act defines and prohibits 'anti-competitive agreements' and sub-clause (3) (d) further contains express prohibition for collusive bidding or bid rigging] and imposed a penalty at 3% of their entire turnover of last three years.

The issue revolves around the supply of Quadrivalent Meningococcal Meningitis Vaccine (**QMMV**). Both GSK and Sanofi supply and cater to the demand for QMMV in India. Government of India (GoI) to prevent Haj Pilgrims from contacting meningitis, started inviting tenders (from 2002 onwards) for procurement of QMMV to be used for compulsory vaccination of all such Haj pilgrims.

Vide Tender Notice dated 25th July, 2011, request for bid for 1,82,125 doses of QMMV was made. GSK offered a bid for 1,00,000 doses of QMMV @ Rs. 3000.90 per 10 doses vial and Sanofi had given bid for supply of 90,000 doses @ Rs.2899/- per 10 doses vial. Based on DG competition report, CCI

concluded that both GSK and Sanofi had failed to refute the charge of bid rigging. It was noted that in case of this nature involving charge of bid rigging against two multinational companies it is highly difficult to find evidence of direct agreement and hence conclusion has to be drawn on the basis of conduct and circumstantial evidence. In this regard, CCI noted that GSK and Sanofi have failed to substantiate the basis of offering only half of the quantity in the tender and further prove any constraint relating to logistics.

Thus, it was concluded that their conduct was not independent or based on internal factors like production or the logistics of supplies, and they together indulged in bid rigging by sharing the tender quantity and quoted very high price in the bids.

In appeal before the Competition Appellate Tribunal (**COMPAT**), the Appellate Tribunal found the conclusions in DG report to be legally unsustainable and Commissions order holding the appellants guilty of collusive conduct as erroneous. The Appellate Tribunal found the evidence advanced by GSK and Sanofi to be cogent and sufficient to explain their bid price and quantities offered to be supplied. Sanofi had explained that it did not give bid for the entire quantity because in the previous years, it remained unsuccessful and had to destroy the vaccine by incurring huge losses. GSK had explained that it was not plausible to import vaccine from Belgium, get the same tested at Kasauli, put stickers and do packaging in a short period of 11-12 days in response to the first re-tender and 2-3 days in response to the second re-tender.

It was further noted that there is no evidence direct or indirect of any meeting between the two appellants, the bids given by them were not identical inasmuch as the quantity quoted by GSK was 1,00,000 doses and the quantity quoted by Sanofi was only 90,000 doses. The prices quoted by the appellants were also different. On the basis of this reasoning, Appellate Tribunal set aside CCI's order and also the penalties levied on either parties. - ***[GlaxoSmithKline Pharmaceuticals Limited & M/s Sanofi Pasteur India Private Limited v. competition Commission of India, 8th November, 2016, (COMPAT)]***

*****

## INDIRECT TAXES

### a. CUSTOMS

#### 1. NOTIFICATION OF DEFERRED PAYMENT OF IMPORT DUTY RULES, 2016

The facility of deferred payment of Customs duty was notified in the Finance Act, 2016. Consequently, the CBEC has notified the Deferred Payment of Import Duty Rules, 2016 laying down the Guidelines and Procedures for the Deferred Payment of Customs Duty. The facility will come into effect from 16 November, 2016. The benefit is currently extended to importers who are holding an Authorised Economic Operator (AEO) Tier 2 or 3 status.

Under the Rules, the payment of duty under Bills of Entry returned for payment between the 1st and the 15th day of a month may be made by the 17th of that month; for Bills of Entry returned for payment between the 16th and the last day of a month it may be made by the 2nd day of the next month. However, for Bills of Entry returned for payment between the 16th and the 29th of March the payment is required to be made by 31 March; only for Bills of Entry returned for payment on 30 and 31 March, the payment is allowed to be deferred till 2 April.

The facility of deferred payment may be availed by the eligible importers by making an application to the Commissioner / Principal Commissioner of Customs. ***-[Notification No. 134/2016-Customs (N.T.), dated 2nd November, 2016 & Notification No. 135/2016-Customs (N.T.), dated 2nd November, 2016 & Circular No.52/2016-Customs, dated 15th November, 2016]***

## 2. JHARSUGUDA NOTIFIED AS ICD FOR IMPORTED GOODS AND LOADING OF EXPORT GOODS

Notification No. 12/97-Customs dated 2nd April 1997 amended, so as to include Jharsuguda in Orissa as ICD for imported goods and loading of export goods. ***-[Notification No. 139/2016 - Customs (N.T.), dated 25th November, 2016]***

## 3. REQUIREMENT OF PUBLICATION OF DAILY LISTS OF IMPORTS AND EXPORTS SCRAPPED

The Central Government has rescinded the Notification No. 128/2004- Cus (N.T.) dated 19th November, 2004 (Publication of Daily List of Imports & Exports Rules, 2004) under which customs houses had hitherto been required to publish daily lists of imports and exports. ***-[Notification No. 140 /2016-Customs (N.T.), dated 25th November, 2016]***

## 4. COURIER IMPORTS AND EXPORTS (CLEARANCE) AMENDMENT REGULATIONS, 2016

The courier Imports & Exports (Clearance) Regulations 1998 has been amended to introduce a new format of Shipping Bill in Form CSB-V. ***-[Notification No. 142 /2016-Customs (N.T.), dated 29th November, 2016]***

## 5. SAFEGUARD DUTY ON HOT ROLLED FLAT SHEETS AND PLATES

Safeguard duty levied on Hot Rolled flat sheets and plates (excluding hot rolled flat products in coil form) of alloy or non-alloy steel having nominal thickness less than or equal to 150 mm and nominal width of greater than or equal to 600 mm. ***-[Notification No. 3/2016 - Customs (SG), dated 23rd November, 2016]***

## 6. ADD ON 'WIRE ROD OF ALLOY OR NON-ALLOY STEEL'

Provisional anti-dumping duty levied on 'Wire Rod of Alloy or Non-Alloy Steel' originating in or exported from China PR for a period of six months. ***-[Notification No. 51/2016-Customs (ADD), dated 2nd November, 2016]***

## 7. ADD ON LOW ASH METALLURGICAL COKE

Anti-dumping duty levied on the imports of Low Ash Metallurgical Coke originating in or exported from Australia and People's Republic of China for a period of five years. ***-[Notification No. 53/2016-Customs (ADD), dated 25th November, 2016]***

## 8. ADD ON AXLE FOR TRAILERS

Anti-dumping duty levied on Axle for Trailers originating in, or exported from People's Republic of China for a period of five years. ***-[Notification No. 54/2016-Customs (ADD), dated 29th November, 2016]***

## 9. REBATE OF STATE LEVIES ON EXPORT OF GARMENTS REVISED

The rates of rebate of state levies available to exporters upon export of garments have been revised. It has been notified that the new rates

take effect from 15 November 2016. ***-[Circular No. 51/2016-Customs, dated 9th November, 2016]***

### 10. ELIMINATION OF PRINTOUTS OF VARIOUS DOCUMENTS IN CUSTOMS CLEARANCE

With the objective to promote ease of doing business by reducing use of paper, the CBEC has decided that printouts of below documents will not be normally required in Customs Clearance:

i. GAR7 forms / TR6 challans of payment of customs duties;
ii. Transhipment permit copy in cases of transhipment from seaports to ICD / CFS / another seaport;
iii. Exchange control copy and export promotion copy of shipping bills; and
iv. Exchange control copy of bill of entry

***-[Circular No. 55/2016-Customs, dated 23rd November, 2016]***

*****

## b. CENTRAL EXCISE

### 1. EXEMPTION OF POS DEVICES AND GOODS REQUIRED FOR ITS MANUFACTURE FROM EXCISE DUTY

Point of Sale (**POS**) devices and goods required for its manufacture exempted from central excise duty till 31st March, 2017. ***-[Notification No. 35/2016 - Central Excise, dated 28th November, 2016]***

### 2. REQUIREMENT OF FILING OF COMBINED ANNUAL RETURN FORM FOR CENTRAL EXCISE AND SERVICE TAX FOR THE YEAR 2015-16 WAIVED

In view of the impending implementation of GST, CBEC has decided that Combined Annual Return for Central Excise and Service Tax for the year 2015-16, due to be filed by 30.11.2016, shall not be required to be filed. ***-[Circular No.1050/38/2016-CX, dated 8th November, 2016]***

## c. SERVICE TAX

### 1. ONLINE DATABASE, E-BOOKS, MUSIC ETC. FROM ABROAD MADE TAXABLE

Online Information and Database Access or Retrieval Services (**OIDAR services**) are currently eligible to service tax only if the service provider is located in taxable territory.

The service tax net for taxability of OIDAR services has now been widened with effect from 1 December 2016 to tax provision of such services even if the service providers are located in non-taxable territory if the service recipient is located in taxable territory.

The changes have been brought about by the following notifications:

i. ***Notification No. 46/2016-Service Tax, dated 9th November, 2016:*** Seeks to amend the Place of Provision of Services Rules, 2012 so as to amend the place of provision of 'online information and database access or retrieval services' with effect from 01.12.1016.

ii. ***Notification No. 47/2016-Service Tax, dated 9th November, 2016:*** Seeks to amend Notification No. 25/2012-ST dated 20th June , 2016 so as to withdraw exemption from Service Tax for services provided by a person in non-taxable territory to Government, a Local Authority, a Governmental Authority or an individual in relation to any purpose

other than commerce, industry or any other business or profession, located in taxable territory.

iii. ***Notification No. 48/2016-Service Tax, dated 9th November, 2016:*** Seeks to amend the Service Tax Rules, 1994 so as to prescribe that the person located in non-taxable territory providing online information and database access or retrieval services to 'non-assesse online recipient', as defined therein, is liable to pay Service Tax under the procedure for payment of Service Tax.

iv. ***Notification No. 49/2016-Service Tax, dated 9th November, 2016:*** Seeks to amend Notification No. 30/2012- ST, dated the 20th June, 2016 so as to put compliance liability of Service Tax payment and procedure on to the service provider located in the non-taxable territory with respect to online information and database access or retrieval services provided in the taxable territory to 'non-assesse online recipient'.

v. ***Notification No. 50/2016-Service Tax, dated 22nd November, 2016:*** Seeks to amend Notification No. 20/2014-ST dated 16th September, 2014 so as to provide exclusive jurisdiction to LTU-Bangalore with respect to online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a 'non-assesse online recipient'.

vi. ***Notification No. 51/2016-Service Tax, dated 30th November, 2016:*** Seeks to amend the Place of Provision of Services Rules, 2012 so as to exclude 'online information and database access or retrieval services' from the definition of 'telecommunication services'.

These changes have also been explained in ***Circular No. 202/12/2016-ST dated 9 November 2016.***

*****

## INTELLECTUAL PROPERTY RIGHTS

### 1. PLEA FOR DAMAGES DROPPED WHEN DEFENDANT AGREES TO HAVE AN INJUNCTION RESTRAINING IT FROM USING THE TRADEMARK/TRADE NAME OF THE PLAINTIFF

Plaintiff No. 1 in the present matter is the owner and controls shares in various Corporations and Companies, which are together referred to as the "Volvo Group of Companies". It is the case of the Plaintiffs' that they have adopted VOLVO, a rare Latin word, both as a Trademark and a Trade/Corporate name on 5th May, 1915.

The Plaintiff No. 2 is the exclusive and sole beneficial owner of the Trademark VOLVO, which enjoys the status of a well-known and famous Trademark in India. According to the Plaintiffs, the Defendant No. 1 Hari Satya Libricants is an entity which is engaged in the business of manufacturing and dealing in all types of lubricating oil products using the mark 'VALVO' which is visually, phonetically, structurally and conceptually similar to the Plaintiffs well known Trademark 'VOLVO'.

During the course of proceedings, it was represented by the Defendant No. 1 that in view of the stand of Defendant No. 1 and the fact that Defendant No. 1 is not using the Trademark/Trade name VALVO, the said defendant is ready to have an injunction restraining it from using the Trademark/Trade name VALVO or any other Trademark identical and/or deceptively similar to the Plaintiffs' well-known

trademark VOLVO. The suggestion was accepted by the Plaintiffs and in view of this, the plea of damages were dropped qua the Defendant No. 1. - ***[Aktiebolaget Volvo & Ors vs. Hari Satya Lubricants & Anr., dated 3rd November, 2016 (Delhi HC)]***

## 2. PHARMACEUTICAL & HEALTH CARE: PERMANENT INJUNCTION RESTRAINING THE DEFENDANTS FROM USING THE NAME/MARK GSK AS A PART OF THEIR TRADE NAME/TRADING STYLE

Plaintiffs stated to be engaged in the business of manufacturing and marketing of a wide range of pharmaceutical/ medicinal preparations and healthcare products. It is further averred that 'GSK' is an acronym derived from the company name 'GlaxoSmithKline' that is stated to be used by the Plaintiffs since the year 2000 and the said acronym and mark have become synonymous with the Plaintiffs. The plaintiffs claim that sometime in April, 2009, while browsing the website of the Registrar of Companies (ROC), it came to their knowledge that a company by the name of 'GSK Life Sciences Private Limited' is using the acronym 'GSK' as part of their Trade name. Defendant is one of the Directors of the Company.

The Plaintiffs claim that Defendant's use of the name/mark/logo 'GSK' in relation to pharmaceutical products amounts to infringement of its statutory rights in the mark 'GSK' as per Section 29(5) of the Trade Marks Act, 1999. It is further claimed that the mark/name 'GSK' is a well known mark as per Section 2(1)(zg) read with Section 11(6) of the Trade Marks Act, 1999 and therefore, deserves stronger protection.

The Court observed & held that it is evident that Plaintiffs are the registered owners of the mark 'GSK' in India in class 05 in relation to pharmaceutical and medicinal preparations. It is also evident that Defendant is operating in the field of pharmaceuticals, the field in which the Plaintiffs are also operating, and using the acronym "GSK" in its Corporate name as well as in its Trade name and is thus, infringing Plaintiffs' registered Trademarks.

It was also held that the logo of the Defendant is deceptively similar to the Plaintiffs logo. The Court granted an order of permanent injunction restraining the Defendant from using the name/mark/logo of GSK as part of their trade name.

The Court also granted an order for delivery up of all printing matters etc. to the Plaintisffs who were awarded costs. ***-[Glaxosmithkline Pharmaceuticals Ltd & Anr vs. Sarath Kumar Reddy G, dated 2nd November, 2016 (Delhi HC)]***

*****

# CONSUMER

## 1. TO ESTABLISH THAT PRODUCT HAD MANUFACTURING DEFECT - IT IS NECESSARY TO ESTABLISH THAT THE DEFECT DID NOT RESULT FROM ACCIDENT CAUSING SECURITY ISSUE BUT WAS INHERENT WHEN THE PRODUCT WAS PURCHASED

The Complainant suffered an accident while in his car and the air bags failed to open. He brought a case against the car manufacturer, alleging that air bags did not open on head-on collision which goes to show that vehicle had a manufacturing defect.

The State Commission also agreed with the reasoning and noted that safety claims made by Appellant were hollow as the sensors installed failed to send the requisite signal to activate air bags on impact. The National Commission, however held that such reasoning of the State Commission was

not based on any cogent evidence or expert evidence.

National Commission noted that the impact of the collision was caused in such a manner that the censor was broken and hence, it could not transmit message to the SRS Air bag System, but this factor does not lead to the conclusion that there was any manufacturing defect in the said vehicle in the absence of proper evidence. Accordingly, the orders passed by lower Consumer fora were set aside. ***-[M/s Toyota Kirloskar Motors v. Tirath Singh Oberoi, 22nd November, 2016, (NCDRC)]***

*****

## ENVIRONMENT

### 1. WHEN PM 2.5 AND PM 10 LEVELS CROSS 251 AND 431 MICROGRAMSCUBIC METRE, IT IS AN 'ENVIRONMENT EMERGENCY': NGT

NGT has ordered that whenever air pollution reaches severe levels, Delhi and its four neighbouring States- Haryana, Punjab, Uttar Pradesh and Rajasthan would have to take a set of emergency measures that include sprinkling water from choppers, stopping construction activities and shutting down polluting power plants and gensets. ***-[The Times of India, dated 11th November, 2016]***

### 2. SUPREME COURT BANS SALE OF FIRECRACKERS IN DELHI, NCR

The Supreme Court has banned the sale of firecrackers in Delhi-NCR in an attempt to keep the rising pollution level of the capital and its surrounding areas under check.

However, there is no restriction on bursting crackers as it would be difficult to implement and monitor, the Apex Court observed. According to the order, the licences of the existing sellers of firecrackers will be suspended and the Government will not issue new licences to any seller in this region. ***-[The Times of India, dated 25th November, 2016]***

*****