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## RBI/FEMA

### 1) **EXIM BANK'S GOVERNMENT OF INDIA (GOI) SUPPORTED LINE OF CREDIT (LOC) OF USD 29.95 MILLION TO THE GOVERNMENT OF THE REPUBLIC OF KENYA**

Export-Import Bank of India (Exim Bank) has entered into an agreement dated July 11, 2016 with the Government of the Republic of Kenya for making available to the latter, a GoI supported LOC of USD 29.95 million for financing upgradation of Rift Valley Textiles factory (RIVATEX East Africa Limited) in the Republic of Kenya. The goods including plant, machinery, equipment and services including consultancy services from India for exports under this agreement are those which are eligible for export under the Foreign Trade Policy of the GoI and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under this agreement, goods and services of the value of at least 72 per cent of the contract price shall be supplied by the seller from India and the remaining 28 per cent of goods and services may be procured by the seller for the purpose of the eligible contract

from outside India. The credit agreement under the LOC is effective from February 17, 2017. Under the LOC, the terminal utilization period is 60 months after the scheduled completion date of the project. - *[A.P. (DIR Series) Circular No. 32, dated 2nd March, 2017]*

### 2) **EXIM BANK'S GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT OF USD 15 MILLION TO THE GOVERNMENT OF THE REPUBLIC OF KENYA**

Export-Import Bank of India (Exim Bank) has entered into an agreement dated July 11, 2016 with the Government of the Republic of Kenya for making available to the latter, a GoI supported LOC of USD 15 million for financing development of various small and medium enterprises in the Republic of Kenya. The goods including plant, machinery, equipment and services including consultancy services from India for exports under this agreement are those which are eligible for export under the Foreign Trade Policy of the GoI and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under this agreement, goods and services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India and the remaining 25 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India. The credit agreement under the LOC is effective from February 17, 2017. Under the LOC, the terminal utilization period is 60 months after the scheduled completion date of the project. - *[A.P. (DIR Series) Circular No. 33, dated 2nd March, 2017]*

### 3) **EXIM BANK'S GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT OF USD**

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## **23.50 MILLION TO THE GOVERNMENT OF THE REPUBLIC OF MALAWI**

Export-Import Bank of India (Exim Bank) has entered into an agreement dated August 05, 2016 with the Government of the Republic of Malawi for making available to the latter, a GoI supported LOC of USD 23.50 million for financing construction of a new water supply system from Likhubula river in Mulanje to Blantyre in the Republic of Malawi. The goods including plant, machinery, equipment and services including consultancy services from India for exports under this agreement are those which are eligible for export under the Foreign Trade Policy of the GoI and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under this agreement, goods and services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India and the remaining 25 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India. The credit agreement under the LOC is effective from February 20, 2017. Under the LOC, the terminal utilization period is 60 months after the scheduled completion date of the project. - *[A.P. (DIR Series) Circular No. 34, dated 2nd March, 2017]*

## **4) EXIM BANK'S GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT OF USD 26 MILLION TO THE GOVERNMENT OF THE REPUBLIC OF SENEGAL**

Export-Import Bank of India (Exim Bank) has entered into an agreement dated July 15, 2016 with the Government of the Republic of Senegal for making available to the latter, a GoI supported LOC of USD 26 million for financing acquisition of buses in the Republic of Senegal. The goods including plant, machinery, equipment and services including

consultancy services from India for exports under this agreement are those which are eligible for export under the Foreign Trade Policy of the GoI and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under this agreement, the goods and services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India and the remaining 25 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India. The credit agreement under the LOC is effective from February 16, 2017. Under the LOC, the terminal utilization period is 60 months after the scheduled completion date of the project. - *[A.P. (DIR Series) Circular No. 35, dated 2nd March, 2017]*

## **5) EXIM BANK'S GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT OF USD 78 MILLION TO THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE**

Export-Import Bank of India (Exim Bank) has entered into an agreement dated August 11, 2016 with the Government of the Republic of Sierra Leone for making available to the latter, a GoI supported LOC of USD 78 million for financing transmission line and substation project in the Republic of Sierra Leone. The goods including plant, machinery, equipment and services including consultancy services from India for exports under this agreement are those which are eligible for export under the Foreign Trade Policy of the GoI and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under this agreement, goods and services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India and the remaining 25 per cent of goods and services may be procured by the seller for

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the purpose of the eligible contract from outside India. The credit agreement under the LOC is effective from February 16, 2017. Under the LOC, the terminal utilization period is 60 months after the scheduled completion date of the project. - *[A.P. (DIR Series) Circular No. 36, dated 2nd March, 2017]*

## 6) REPORTING OF GOLD MONETISATION SCHEME TRANSACTIONS DIRECTLY THROUGH THE GOVERNMENT ACCOUNT AT CENTRAL ACCOUNTS SECTION

In order to have uniformity in reporting, reconciliation and accounting, RBI has advised that agency banks may report the Gold Monetisation Scheme transactions i.e., receipt, payment, penalty, interest, commission for mobilisation, handing charges, etc., directly through the government account maintained for the purpose at Central Accounts Section, RBI, Nagpur, on a daily basis as in the case of the transactions of Public Provident Fund (PPF) Scheme, 1968. - *[DGBA.GAD.No.2294/15.04.001/2016-17, 6th March, 2017]*

## 7) NBFC CASH LOAN AGAINST GOLD RESTRICTED TO RS 25,000

RBI has instructed that Non-Banking Finance Companies (NBFCs) cannot lend more than Rs 25,000 in cash against gold. The earlier provision for NBFC was that high value loans against gold of Rs. 1 lakh and above must only be disbursed by cheque. RBI reduced the amount to Rs 25,000 from the earlier Rs. 1 lakh in line with the provisions of the Income Tax Act, 1961. - *[DNBR (PD) CC.No.086/03.10.001/2016-17, dated 9th March, 2017]*

## 8) HEDGING GUIDELINES AMENDED

With a view to providing operational flexibility to multinational entities and their Indian subsidiaries exposed to currency risk arising out of current account transactions emanating in India, the RBI has amended the extant hedging guidelines. Under the amended guidelines, Indian subsidiaries of non-resident companies are eligible to undertake, as per the Foreign Exchange Management Act, all foreign currency-rupee derivative contracts. - *[A.P. (DIR Series) Circular No. 41, dated 21st March, 2017]*

## 9) RBI RESTORES STATUS QUO ANTE ON FOREIGN EXCHANGE PURCHASE FROM CUSTOMERS

RBI has restored limits regarding purchase of foreign exchange from foreign citizens (i.e. foreign passport holders) by authorised persons to the extent of only US \$ 3000 or its equivalent. Earlier, in the wake of demonetisation, RBI had permitted foreign citizens to exchange foreign exchange for Indian currency notes up to a limit of Rs. 5000/- per week till January 31, 2017. - *[A.P. (DIR Series) Circular No. 42, dated 30th March, 2017]*

## 10) THE LIMITS FOR INVESTMENT BY FPIs IN CENTRAL GOVT SECURITIES HAVE BEEN INCREASED BY RS110 BILLION, WHILE THE SAME FOR SDLS ARE UP BY RS60 BILLION

RBI increased foreign portfolio investors' (FPI) limits on investment in government bonds by an aggregate Rs.170 billion for the April- June period. The limits for investment by FPIs in Central Government securities have been increased by Rs.110 billion, while the same for State development loans (SDLs) are up by Rs.60 billion. - *[A.P.(DIR Series) Circular No. 43, dated 31st March, 2017]*



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## FOREIGN TRADE

### 1) FOREIGN TRADE POLICY ON IMPORT AND EXPORT TO DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

The Notification seeks to update the Foreign Trade Policy, 2015-2020 to account for current UN Security Council Resolutions concerning Democratic People's Republic of Korea (DPRK) up to Resolution 2321(2016) of November 30, 2016. The resolutions describe the items that are prohibited for direct or indirect import and export to Democratic People's Republic of Korea (DPRK). *–[Notification No. 41/2015-2020, 2<sup>nd</sup> March, 2017, (DGFT)]*

### 2) DELETION OF MEIS BENEFIT

The MEIS benefit on Flour, Meal and Powder of Guar seeds under EXIM Code 11061000 is made ineligible. *–[ Public Notice No. 60/2015-2020, 7<sup>th</sup> March, 2017, (DGFT)]*

### 3) IMPORT OF UN-SHREDDED METALLIC SCRAP

Para 2.54(d)(iv) of the Handbook of Procedures, 2015-2020 has been amended to reflect the list of designated ports for imports of un-shredded metallic scrap and the period for installation and operationalisation of Radiation Portal Monitors and Container Scanner in these ports is extended upto 31<sup>st</sup> March, 2018.

Following entry sea ports are notified ports for import of unshredded metallic scrap: 1. Chennai, 2. Cochin, 3. Ennore, 4. JNPT, 5. Kandla, 6. Mormugao, 7. Mumbai, 8. New Mangalore, 9.

Paradip, 10. Tuticorin, 11. Vishakhapatnam, 12. Pipava, 13. Mundra and 14. Kolkata.

Further, any ICD can handle clearance of un-shredded metallic scrap provided the same passes through any of the designated sea ports as mentioned above. Also import consignments shall be subject to pre-inspection certificate from the country of origin. The existing designated sea ports namely Chennai, Cochin, Ennore, JNPT, Kandla, Mormugao, Mumbai, New Mangalore, Paradip, Tuticorin, Vishakhapatnam, Pipava, Mundra and Kolkata will be further allowed to import un-shredded scrap till March 31, 2018 by which time they are required to install and operationalise Radiation Portal Monitors and Container Scanner. Such sea ports which fail to meet the deadline will be derecognized for the purpose of import of un-shredded metallic scrap w.e.f. 01.04.2018. *–[ Public Notice No. 63/2015-2020, 27<sup>th</sup> March, 2017, (DGFT) and Trade Notice No. 19/2016, 30<sup>th</sup> March, 2017 (DGFT)]*

### 4) AMENDMENT IN EXPORT POLICY OF EDIBLE OILS

Export of Groundnut oil, Sesame oil, Soyabean oil and Maize (Corn) oil in bulk, irrespective of any pack size, has been exempted from the prohibition on export of edible oil. *–[ Notification No. 43/2015-2020, 27<sup>th</sup> March, 2017, (DGFT)]*

### 5) EXTENDING MERCHANDISE EXPORT FROM INDIA SCHEME (MEIS) BENEFIT ONIONS FRESH OR CHILLED.

The MEIS benefit for export of 'Onions Fresh or Chilled' under ITC (HS) code 07031010 is extended up to June 30, 2017. *–[ Public Notice No. 64/2015-2020, 31<sup>st</sup> March, 2017, (DGFT)]*

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## CORPORATE

### 1) THE CAUSE OF ACTION UNDER SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE IS AVAILABLE TO AN OPERATIONAL CREDITOR

The Respondent Company had a project which involved development of plot of land in Greater Noida. The Petitioner had made payment towards allotment of commercial shop. Since the construction could not take off, the commercial shop was not delivered and there was an admitted debt of Rs. 29,44,175/- and accordingly Petitioner served a demand notice under Section 8 of the Code. Petitioner claimed that since the debt was admitted and demand notice was not replied to, insolvency proceedings should be initiated against the Respondent Company and debt owed is 'operational debt'.

The Tribunal explained that 'operational debt' as defined under Section 5(21) of the Code, is a claim in respect of provision of goods or services including dues on account of employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to Central or State Government or local authority. In the present case, the Tribunal further explained, the debt has not arisen out of the provision of goods or services. Neither it has arisen out of employment or dues which are payable under statute to Centre/State Government or local authority.

The Tribunal further examined and held that Petitioner is not an 'operational creditor' as per the Section 5(20) of the Code, as 'operation creditor' is one to whom corporate debt is owed and whose liability from the entity comes from a transaction on operations. The Tribunal held that the Petitioner had

not supplied any goods or rendered any service to qualify as 'operational creditor'.

The Tribunal held that Section 9 read with Section 5(20) and Section 5(21) cannot be read so widely to include within its scope even cases where dues are on account of advance made to purchase the flat or commercial site from a construction company like the Respondent Company. Court also refused to admit the application, given that there are remedies recognized and available under the Consumer Protection Act and the General Law of land. – *[Mukesh Kumar and Anr. v. AMR Infrastructures Limited, 31<sup>st</sup> March, 2017, (NCLT, Principal Bench)]*

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## SECURITIES

### 1) REDRESSAL OF COMPLAINTS AGAINST STOCK BROKERS AND DEPOSITORY PARTICIPANTS

The processing of complaints against stock brokers and depository participants has been in operation since June 2011. To make the system more efficient it has been decided by SEBI that stock brokers and depository participants are required to address complaints within 15 days of receipt of complaint. In case additional information is required, the same shall be sought within 7 days from the receipt of complaint. In such case, the period of 15 days shall run from receipt of additional information. – *[SEBI/HO/MIRSD6/CIR/P2017/20, 10<sup>th</sup> March, 2017, (SEBI)]*

### 2) ADVERTISEMENT GUIDELINES FOR MUTUAL FUNDS

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Disclosing Performance Related Information in Mutual Funds Advertisements: In place of current requirement of publishing scheme's returns over twelve month period for past three years, the performance of mutual funds in terms of CAGR for the past 1 year, 3 years, 5 years and since inception needs to be advertised.

Performance advertisement of Mutual Fund schemes should provide information based on period computed from last day of month-end preceding the date of advertisement, rather than last day of preceding quarter-end. Performance of other schemes managed by the fund manager shall be disclosed in a summarized manner, by providing performance of such other schemes managed by the concerned fund manager in terms of CAGR for the past of 1 year, 3 years and 5 years along-with the respective scheme's benchmark.

Further, for advertisement published in internet-enabled media, Mutual Funds shall be permitted to provide an exact website link to such summarized information on performance of other schemes managed by the concerned fund manager. –/[*CIR/IMD/DF/23/2017, 15<sup>th</sup> March, 2017, (SEBI)*]

### 3) DISCLOSURES RELATING TO REGULATORY ORDERS AND ARBITRATION MATTERS ON WEBSITES OF CLEARING CORPORATION

SEBI has decided that all regulatory orders i.e. orders against clearing members and arbitration/appellate awards by arbitrators need to be made available to investors. It has been decided that the Clearing Corporations shall post all regulatory orders and arbitration/appellate awards issued since June 20, 2012, on their websites within 30 days. Further, all regulatory orders and arbitration/appellate awards as and when issued by Clearing Corporations from the

date of this circular shall be posted on their website immediately.

Clearing Corporations are also required to disseminate information with respect to brief profile, qualification, areas of experience / expertise, number of arbitration matters handled, pre-arbitration experience, etc. of the arbitrators on their website. – [*SEBI/HO/MRD/DRMNP/CIR/P/2017/24, 16<sup>th</sup> March, 2017, (SEBI)*]

### 4) SUBMISSION OF ACCOUNTS FOR DEBT SECURITIES

SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations, 2015 (SEBI ILDM regulations) requires that an issuer making issue of debt securities under these regulations, on a private placement basis, shall submit its accounts prepared in accordance with National Municipal Accounts Manual or in accordance with similar Municipal Accounts Manual adopted by the respective State Government for at least three immediately preceding financial years.

SEBI in this regard received feedback that due to processes followed by Municipalities there is a time lag of one year as audited financial statements needs to be approved by governing body. Noting the operational difficulty in submitting audited accounts of the year immediately preceding the year of private placement issue of debt securities, and to give impetus to municipal bond market in India, it has been decided that issue of debt securities under these regulations in FY-2017-18 will be required to submit: Audited accounts for the financial years 2013-14, 2014-15 and 2015-16 in the information memorandum to the stock exchanges; (2) For the immediately preceding FY i.e. FY 2016-17, the issuers shall submit the half yearly financial statements, as available (audited or unaudited) as on September 2016. However, the audited accounts of FY 2016-17 have to be submitted within one year



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from the end of that FY (i.e. by March 31, 2018) to the recognized stock exchanges, where the debt securities have been listed. Such audited statements are required to be displayed on the website of the issuer and the recognized stock exchanges. Issuer shall also be required to provide a copy of such audited accounts if requested by the investor. – *[CIR/IMD/DF-1/ 25 /2017, 22<sup>nd</sup> March, 2017, (SEBI)]*

## **5) OPERATIONAL/EXITED STOCK EXCHANGES PLACED ON THE DISSEMINATION BOARD.**

SEBI *vide* its Circular dated October 10, 2016 had provided a period of three months to the Exclusively Listed Companies (ELCs) on the Dissemination Board (DB) to submit an action plan to list or to provide exit to shareholders to the designated stock exchanges. The time to submit action plan has been extended to March 31, 2017. Through present Circular SEBI extended the time period for submitting action plan till June 30, 2017.- *[SEBI/HO/MRD/DSA/CIR/P/2017/27, 27<sup>th</sup> March, 2017, (SEBI)]*

## **6) THE LIABILITY TO PAY INTEREST UNDER SECTION 28A OF SEBI ACT READ WITH SECTION 220 OF INCOME TAX ACT IS AUTOMATIC AND ARISES BY OPERATION OF LAW.**

The question before the Tribunal was whether Recovery Officer (RO) can demand interest on the amount due to SEBI and can Section 28A of the SEBI Act, 1992 be invoked.

An investigation was conducted against the Appellants regarding Initial Public Offer (IPO) of shares and pending the final orders, the Appellants were barred from securities market. Order for disgorgement of unlawful gains was passed against

the Appellants. In July 2013, Ordinance on Securities Law Amendment was promulgated, and Section 28A was inserted in the SEBI Act, 1992 with a view to provide a mechanism for recovery of the amounts specified in that Section. Parliament enacted the Ordinance in August 2014 and it received the assent of the President and became effective with retrospective effect.

Based on the newly inserted Section 28A, the RO raised a demand of Rs. 6 Crore from the Appellant (Rs. 4 Crore being the original sum to be paid with additional interest). Since the sum was not paid, the Appellants were declared defaulters and Notice of attachment was issued to them. Now, the Appellants came before the Tribunal challenging the Order of the RO, demanding interest on account of delay in paying the disgorgement amount to SEBI.

Counsels for Appellants argued that Section 28A cannot be made retrospectively applicable and also no interest liability was specified in the disgorgement orders, and thus RO is not justified in demanding interest for delayed payment.

The basic argument was that Section 28A does not contain any substantive provision for levy of interest on delayed payment of amounts. The Tribunal rejected this reading of the Section. Tribunal noted that legislature has incorporated Section 220 of Income Tax Act, 1961 in Section 28A of SEBI Act, 1992 and in this manner has statutorily imposed interest liability on the delayed payment of the amounts set out in Section 28A of the SEBI Act, 1992. In other words, the liability to pay interest under Section 28A of SEBI Act, 1992 read with Section 220 of Income Tax Act, 1961 is automatic and arises by operation of law. However, on the issue of retrospectivity, the Tribunal clarified that where the orders passed by SEBI prior to 18.07.2013 (date from when the Act was declared effective) do not envisage interest liability for the delayed payment of the amounts specified in the respective orders, on insertion of Section 28A, the RO is authorised to

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demand interest on the amount remaining unpaid after expiry of 30 days from 18.07.2013 and not for the period prior to 18.07.2013. –[*Mr. Dushyant N. Dalal & Others v. SEBI, 10<sup>th</sup> March, 2017, (SAT)*]

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## COMPETITION

### 1) PRACTICE OF MANDATING NOC PRIOR TO APPOINTMENT OF STOCKISTS AND FIXATION OF TRADE MARGINS HELD ANTI-COMPETITIVE.

The case involves complaint by The Belgaum District Chemists and Druggists Association (“BCDA”) before the erstwhile DGIR for alleged practice of Abbott India Limited and Geno Pharmaceuticals of first requiring ‘No Objection Certificate’ (NOC) from ‘All India Organisation of Chemists and Druggists’ or from ‘Karnataka Chemists and Druggists Association’ before supply of essential medicines, thus restricting the supply of essential medicines to some of the members of BCDA.

The Commission went on to examine whether the implementation of such a practice violated Section 3(3) of the Competition Act, 2002 (“the Act”). Section 3(3) of the Act, describes and holds agreements or decisions to have appreciable adverse effect on competition where they directly or indirectly determine purchase or sale price or limits supply of goods or its production.

The Commission then went on to examine whether the alleged practice of requiring NOC is in violation of Section 3(3) of the Act. By making reference to previously decided cases on this matter, the Commission noted that such practice of mandating NOC as a pre-requisite for appointment of stockists amounts to limiting and restricting the supply of pharmaceutical drugs in the market and is in violation

of the provisions of Section 3(1) read with Section 3(3)(b) of the Act.

The practice of mandating NOC prior to the appointment of stockists results in limiting and controlling of the supply of drugs in the market and amounts to anti-competitive practice, violates the provisions of Section 3(1) read with Section 3(3) (b) of the Act and thus held Karnataka Chemists and Druggists Association in contravention of the Act.

The Commission also noted that the practice of fixation of trade margins by Karnataka Chemists and Druggists Association through publication of bulletin/publication amounted to determination of price. It is observed that, although the maximum retail price of pharmaceutical products is normally fixed by the manufacturers, determination of price for wholesalers and retailers by the Chemists and Druggists Associations can have no justifiable explanation but being an attempt to discipline the price competition amongst wholesalers at one end and amongst retailers on the other.

Accordingly, a cease and desist was passed and since a monetary penalty in a previous matter had already been imposed, no further penalty was imposed by the Commission, considering the alleged practice was during the same investigation period. –[ *The Belgaum District Chemists and Druggists Association v. Karnataka Chemists and Druggists Association & Others, 2<sup>nd</sup> March, 2017, (CCI)*]

### 2) ENHANCED EXEMPTION LIMITS FOR COMBINATIONS

The Ministry of Corporate Affairs (MCA) issued a Notification in March 2016 providing exemptions to combinations where the target company had assets of Rs. 350 crore or turnover of up to Rs. 1,000 crore from the applicability of Section 5 of the Competition Act, 2002 (requirements for seeking CCI approval). These limits had been enhanced



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from the earlier limits of Rs. 250 crore for assets and turnover of Rs. 750 crore respectively.

As per the notification, threshold exemption limits under the Competition Act, 2002 have been made applicable to all forms of combinations and clarity has been provided on the methodology to be adopted for calculating the relevant assets and turnover of the target entity when only a portion or segment or business of one enterprise is being combined with another.

However, the aforesaid exemptions (given in March 2016 Notification of MCA) applied only to combinations which resulted from acquisitions, and not to cases of mergers or acquisition of control. Further, even in cases where only a segment/portion/business of an enterprise was being combined with another enterprise, the transferor's total assets and turnover were being considered for determining the applicability of the exemption instead of the relevant assets and turnover attributable to the target segment/portion/business. Now, in light of the recent notification, the threshold exemptions will apply to mergers/ amalgamations as well as to cases of acquisition of control. Also, only the relevant assets or turnover of the target unit or business segment that is to be merged or acquired will be taken into account. -[*Ministry of Corporate Affairs, 27<sup>th</sup> March, 2017, (MCA)*]

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## INDIRECT TAXES

### a. CUSTOMS

#### 1) EXEMPTION FOR RE-IMPORT OF CUT & POLISHED DIAMONDS AMENDED

Notification No.09/2012-Cus dated 9<sup>th</sup> March, 2012 amended so as to permit the exemption for re-

import of cut and polished diamonds by exporters to be extended to such imports if made by authorised agencies or offices of specified laboratories on behalf of the exporters. - [*Notification No. 07/2017 - Customs, dated 1st March, 2017*]

#### 2) INCLUSION OF HAZIRA (SURAT) PORT IN THE LIST OF PORTS MENTIONED IN EXPORT PROMOTION (EP) SCHEMES

The CBEC *vide* present Notification amended various notifications to include Hazira (Surat) port in the list of port mentioned in export promotion scheme. - [*Notification No. 08/2017 - Customs, dated 23rd March, 2017*]

#### 3) REDUCTION OF BCD FROM 30% TO 10% ON SUNFLOWER SEEDS

Notification No.12/2012-Customs dated 17<sup>th</sup> March, 2012 amended so as to reduce the BCD from 30% to 10% on sunflower seeds falling under tariff item 1206 00 90 [i.e. other than of seed quality] for the purpose of extracting and refining of oil subject to Actual User condition, for the period from 1st April, 2017 to 30th September, 2017. - [*Notification No. 09/2017 - Customs, dated 23rd March, 2017*]

#### 4) BCD IMPOSED ON WHEAT AND TUR

Notification No.12/2012-Customs, dated the 17th March, 2012 amended, so as to impose Basic Customs Duty of 10% on Wheat and Tur, with immediate effect. - [*Notification No. 10/2017 - Customs, dated 28th March, 2017*]

#### 5) DEEPER TARIFF CONCESSIONS IN RESPECT OF SPECIFIED GOODS IMPORTED UNDER THE IJCEPA

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Notification No. 69/2011-Customs, dated 29th July, 2011 amended so as to provide deeper tariff concessions in respect of specified goods imported under the India-Japan Comprehensive Economic Partnership Agreement (IJCPEA), w.e.f. 1st of April, 2017. - **[Notification No. 11/2017 - Customs, dated 31st March, 2017]**

## **6) REVDANDA NOTIFIED AS FULL-FLEDGED CUSTOMS PORT**

The CBEC has notified Revdanda port in Maharashtra for loading of export goods and unloading of import goods of all classes. Earlier it was notified only for specified categories of goods. - **[Notification No. 15/2017- Customs (N.T.), dated 2nd March, 2017]**

## **7) FORMAT OF SHIPPING BILL CHANGED FOR SPECIFIED EXPORTS BY COURIER**

The CBEC has changed the format of shipping bill to be used for specified imports by courier. The format used for exports under MEIS is now extended to other commercial imports, with some exceptions, of value up to Rs. 25000 where transaction in foreign exchange is involved. - **[Notification No. 16/2017- Customs (N.T.), dated 3rd March, 2017]**

## **8) CUSTOMS CARGO SERVICE PROVIDER TO PROVIDE THE INFORMATION REGARDING ARRIVAL AND THEIR DEPARTURE AFTER THE CLEARANCE OF THE IMPORTED GOODS TO THE CONCERNED AUTHORITY**

Regulation No. 6(1) of the Handling of Cargo in Customs Areas Regulations, 2009 has been amended to provide that the Customs Cargo Service provider

shall be liable to provide information to the Deputy Commissioner or Assistant commissioner of Customs regarding arrival of imported goods in the customs area and subsequent information on the clearance of said imported goods. - **[Notification No. 24/2017- Customs (N.T.), dated 31st March, 2017]**

## **9) BILL OF ENTRY (ELECTRONIC INTEGRATED DECLARATION) REGULATIONS, 2011 AMENDED**

The CBEC has modified Regulation No. 4 of the Bill of Entry (Electronic Integrated Declaration) Regulations, 2011 dealing with the time when bill of entry shall be deemed to be filed. - **[Notification No. 26/2017- Customs (N.T.), dated 31st March, 2017]**

## **10) BILL OF ENTRY (FORMS) REGULATIONS, 1976 AMENDED**

The CBEC has amended the Bill of Entry (Forms) Regulations, 1976 *vide* inserting a Regulation No. 4. The said Regulation stipulates the provisions with regard to the period upto which bill of entry is to be presented by an importer or a person authorised by him who has a valid licence under the Customs Broker Licensing Regulations, 2013 without late presentation charges. - **[Notification No. 27/2017- Customs (N.T.), dated 31st March, 2017]**

## **11) ADD ON INDOLINONE**

ADD imposed on the imports of Indolinone originating in or exported from the People's Republic of China up to and inclusive of 20th November, 2019. - **[Notification No.9/2017 - Customs (ADD), dated 24th March, 2017]**

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## 12) CBEC ISSUES FRESH GUIDELINES FOR PROSECUTION IN CUSTOMS CASES

The CBEC vide the present Circular has instructed its field formations afresh in the process of deciding upon and prosecuting filing criminal cases in court under the Customs Act. The adjudicating authority is to take decision immediately upon adjudicating the case. However, every case that is decided against the notice is not necessarily a fit case for prosecution, as the standards of evidence are different. CBEC points out that Adjudication proceeds on the basis of preponderance of probability, while criminal prosecution requires the case to be established beyond reasonable doubt. Furthermore, factors like the gravity of the offence and the quantum of duty evaded would also weigh in the decision, in addition to the quality of evidence. - *[Circular No. 07/2017 - Customs, dated 6th March, 2017]*

Notification No 25/2012-Service Tax, dated 20.6.2012 amended by adding a proviso to item 9(b) so as to withdraw the exemption for services provided to educational institutions in relation to admissions and examinations, except in the case of pre-school and schools. - *[Notification No. 10/2017-Service Tax, dated 8th March, 2017]*

## 2) SERVICE TAX (ADVANCE RULINGS) RULES AMENDED

Service Tax (Advance Rulings) Rules have been amended to define 'Authority' as Authority for Advance Rulings as defined in clause (e) of Section 28E of the Customs Act, 1962. - *[Notification No. 12/2017-Service Tax, dated 31st March, 2017]*

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### b. CENTRAL EXCISE

#### 1) CENTRAL EXCISE (ADVANCE RULINGS) RULES AMENDED

Central Excise (Advance Rulings) Rules have been amended to define 'Authority' as Authority for Advance Rulings as defined in clause (e) of Section 28E of the Customs Act, 1962. - *[Notification No. 8/2017 - Central Excise (N.T.), dated 31st March, 2017]*

### INTELLECTUAL PROPERTY RIGHTS

#### 1) BOMBAY HC LISTS AND ILLUSTRATES THE GUIDING PRINCIPLES IN A PASSING OFF ACTION

Bombay HC observed that in a passing off action, the guiding principles may fairly be said to be these:

- a) All three probanda of the Classical Trinity must be satisfied: (1) the existence of the plaintiff's goodwill (2) misrepresentation by the defendant; and (3) the likelihood of damage.
- b) Actual damage need not be proved; its likelihood is enough. It is never necessary to show fraud or fraudulent intent and the defendant's state of mind is irrelevant. But a distinction must be made between likelihood of misrepresentation, likelihood of confusion

### c. SERVICE TAX

#### 1) EXEMPTION FOR SERVICES RELATING TO ADMISSION / EXAMS RESTRICTED TO SCHOOLS



and likelihood of damage. Confusion is not always deception, but the purpose of deception is to confuse and confound.

- c) The misrepresentation must be as to source, provenance or origin of the goods or services. The deceit or deception may run in either direction -- the defendant passes off his goods as having been manufactured by the plaintiff, or 'hijacks' the plaintiff's reputation by claiming the plaintiff's goods to be the defendant's. In either case, the misrepresentation has to be as to the source.
- d) In a passing off action brought *quia timet*, expecting 'proof' of misrepresentation may be unrealistic. Very different considerations may arise where the rival goods have remained in the market for a long period of time. In that situation, it would be unsafe at the interlocutory stage to assume likelihood of confusion. It is one thing to speak of a consumer of average intelligence and imperfect recollection; it is another to take him for a fool. That is not the law's demand. The longer the period of such co-existence, the greater should be the reluctance to assume that the consumer is being deceived or is even likely to be deceived. The material does not have to be iron-clad or fool-proof, but there must be some material shown. A mere assertion will not suffice, and there is no presumption in law that misrepresentation is always inevitable. It is incorrect to say that in passing off proof of misrepresentation is never necessary.
- e) Reputation and goodwill in passing off are not of the generalized kind such as might be shown by high sales. It must be shown that the public is 'moved to buy by source' -- that it wants or desires certain goods because of their origin. There may be many different ways to demonstrate this, but it must be

shown, and cannot be assumed. There must be a one-ness, a unity, between the product and its source.

- f) Delay is not to be confused with acquiescence. The latter implies knowledge, and where knowledge of the defendant's mark and product is shown and this is coupled with a long period of inaction against the alleged invasion of a claim of exclusivity, it is no answer to say 'there is no positive act', for acquiescence is also not explicit consent, but is silent assent. Mere inaction is not acquiescence either, but prolonged inaction coupled with the knowledge of an invasion of that right might well be.
- g) The general principles governing the grant of an injunction always apply. A plaintiff must make out a prima facie case. He must show the balance of convenience favours him, and he must demonstrate that irretrievable injury will be caused by the injunction being refused. - *[Torrent Pharmaceuticals Limited vs Wockhardt Limited And Anr., dated 15th March, 2017]*

## **2. UNDER THE DESIGNS ACT, MERE REGISTRATION OF A DESIGN ABROAD WOULD NOT BE A GROUND FOR CANCELLATION OF DESIGN IN INDIA UNLESS IT IS SHOW THAT THE PRIOR DESIGN HAS BEEN PUBLISHED ABROAD PRIOR TO THE DATE OF REGISTRATION: CALCUTTA HC**

The Calcutta HC observed that Design is a conception, suggestion or idea of a shape and not an article. If it has been already anticipated it is not "new or original". If it has been pre-published it cannot claim protection. A design which is prior published cannot be considered as new. Publication

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before registration defeats the proprietor's right to protection under the Act. Under the designs Act, mere registration of a design abroad would not be a ground for cancellation of design in India unless it is shown that the prior design has been published abroad prior to the date of registration. It, thus, follows that prior registration of a design abroad is not a bar. Publication is essentially a question of fact to be decided as per the evidence laid in each case. Existence of a design in the publication record/office of a Registrar of design abroad may or may not, depending on the facts of each case, amount to prior publication. As there is no specific definition of publication in the Designs Act, 2000, any document that is accessed by the public can be considered as publication.

To constitute prior disclosure by publication to destroy the novelty of a registered design, the publication of the design applied to the same article, would have to be in tangible form. Prior publication of a trade catalogue, brochure, book, journal, magazine or newspaper containing photographs or explicit picture illustrations that clearly depict the application of the design on the same article with the same visual effect would be sufficient. When the novelty of an article is tested against a prior published document, the main factor required to be adjudged is the visual effect and the appeal of the picture illustration. - *[ITC Limited vs. The Controller Of Patents And Designs & Ors., dated 6th March, 2017]*

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## CONSUMER

### 1) BANK GUARANTEEING LETTER OF CREDIT CANNOT BE HELD TO BE A SERVICE PROVIDER FOR THE PURPOSE

### OF REMEDY UNDER CONSUMER PROTECTION ACT, WHEN THE PURPOSE OF TRANSACTION IS COMMERCIAL.

The complainant was supplier of wet glue and to secure payment of goods, it obtained a Letter of Credit from the buyer. The buyer received the goods, however the bank on which the letter of credit was drawn did not honour the commitment citing that buyer did not fulfil all the conditions/ requirements before payment on letter of credit could be made to complainant/supplier.

The Apex Commission examining the issue found that it was not clear from the evidence produced before it that the five partners of the complainant firm were engaged in the affairs of the firm exclusively for the purpose of earning their livelihood by means of self-employment. According to the Commission, it was evident that transaction in question was for commercial purpose and the letter of credit opened against the Appellant Bank was solely for commercial purpose. The Commission observed that the LC Bank cannot be held to be a service provider to the Complainant, and since the Complainant is not a consumer, the appeal stands to be dismissed. -*[Bank of India & Others v. M/S Punjab Hide and Company & Others, 15<sup>th</sup> March, 2017, (NCDRC)]*

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## ENVIRONMENT

### 1. SUPREME COURT BANS SALE OF BS-III VEHICLES FROM APRIL 1

The Apex Court while observing that the health of the citizen is more important than the commercial interests of the automobile industry, ordered a freeze on the registration and sale of BS-III fuel compliant vehicles by "any manufacturer or dealer" on and from April 1. It was held that "On and

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from April 1, 2017, such vehicles that are not BS-IV compliant shall not be sold in India by any manufacturer or dealer, that is to say that such vehicles, whether two-wheeler, three-wheeler, four-wheeler or commercial vehicles will not be sold.” The court further prohibited registration of vehicles meeting BS-III standards on and from April 1. - *[The Hindu, dated 30th March, 2017]*

## 2. NO ENTRY IN NCR FOR POLLUTING OIL TANKERS

The NGT directed public sector oil companies to stop plying tankers carrying petroleum products, which are BS I or BS II-compliant, in Delhi and the rest of NCR. NGT was hearing applications filed by various contractors seeking registration of BS IV diesel vehicles, purchased to transport petrol from the company premises to various petrol pumps in Delhi-NCR. - *[The Times of India, dated 31st March, 2017]*

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