RBI/FEMA

1) MASTER CIRCULARS

Updated Master Circulars has been issued by RBI which can be accessed from their website. - ***[RBI, 1st July, 2017]***

2) RBI RAISES FOREIGN PORTFOLIO INVESTMENT LIMIT IN GOVERNMENT SECURITIES

RBI had introduced a Medium Term Framework (MTF) in October 2015, for investment by foreign portfolio investors (FPIs) in government securities including central government securities (G-Secs) as well as state government securities (also referred as State Development Loans or SDLs). Under the MTF, the FPI investment limit in government securities were to be increased in a phased manner to reach 5% of outstanding stock for G-Secs and 2% of outstanding stock for SDLs, by 31 March 2018. Additionally, the MTF also contained other features including preferential treatment for long term FPIs, where the increase in limits was to be allocated to long-term FPIs and other such investments in the ratio of 60% and 40% respectively. Any unutilized limit in the long-term category could be released to other FPIs. In this context, long-term FPIs include Sovereign Wealth Funds (SWFs), multilateral agencies, pension/ insurance/endowment funds and foreign central banks. In line with the MTF, RBI issued a Circular on 3 July 2017 to announce increase in the limits for the quarter July 2017 to September 2017, and has also made certain modifications to the MTF.

The revised FPI limits for investment in government securities for the quarter July to September 2017 is as under:

Limits for FPI investment in Government Securities

(INR Billion)

	Central Government securities			State Development Loans			Aggregate
	General	Long Term	Total	General	Long Term	Total	
Existing Limits	1,849	461	2,310	270	--	270	2,580
Revised limits	1,877	543	2,420	285	46	331	2,751

In addition to increase the investment limits, RBI has also announced following changes to the MTF:

- Future increases in government securities (including G-Secs and SDLs) limits would be allocated to long term FPIs and other FPIs in the ratio of 75% and 25%.
- Current practice of transferring unutilized limits from long term category FPIs to other FPIs would be discontinued.

The above changes are applicable from 4th July 2017. The other conditions applicable to FPIs for investments in government securities would continue to be applicable. ***[A.P.(DIR Series) Circular No. 1, dated 3rd July, 2017]***

3) RBI ISSUES COMPENDIUM OF GUIDELINES ON FINANCIAL INCLUSION

AND DEVELOPMENT FOR SMALL FINANCE BANKS

RBI has issued Compendium of Guidelines on Financial Inclusion and Development for Small Finance Banks. In order to give a thrust to the supply of credit to micro and small enterprises (MSEs), agriculture and banking services in unbanked and under-banked regions in the country, RBI had decided to licence new "Small Finance Banks (SFBs)" in the private sector. Following a due process, in-principle approvals were given to ten applicants to set up SFBs vide press release dated September 16, 2015. Operating Guidelines for Small Finance Banks were issued on October 6, 2016, which prescribed, inter alia, broad indicative guidelines in areas related to Financial Inclusion and Development. In continuation with the same, comprehensive set of guidelines in the form of a compendium is annexed with the Circular. The guidelines are operational with effect from the date of this compendium. - ***[FIDD.CO.SFB.No.9/04.09.001/2017-18, dated 6th July, 2017]***

4) RBI FIXES CUSTOMER LIABILITY FOR UNAUTHORISED TRANSACTIONS

RBI notified that a customer will be entitled to zero liability when unauthorised transaction occurs as a result of contributory fraud, negligence or deficiency on the part of the bank irrespective of whether or not the transaction is reported by the customer. Also, there will be zero liability in the case of third-party breach where the deficiency lies neither with the bank nor with the customer but lies elsewhere in the system, and the customer notifies the bank within three working days of receiving the communication from the bank regarding the unauthorised transaction. For cases reported within four to seven days, the liability will be the transaction value or the amount stipulated for various accounts, whichever is lower and beyond seven working days, the liability will be as per bank's board approved policy. The liability will be Rs 5,000 for BSBD and SB accounts and pre-paid payment instruments and gift cards and for current/ cash credit/ overdraft accounts of MSMEs. The liability will be Rs 10,000 for current accounts/ cash credit/ overdraft accounts of individuals with annual average balance (during 365 days preceding the incidence of fraud)/ limit up to Rs. 25 lakh and credit cards with limit up to Rs. 5 lakh. The liability will be Rs. 25,000 for all other current/ cash credit/ overdraft accounts and credit cards with limit above Rs. 5 lakh.

However, a customer will have limited liability for the loss in cases where the loss is due to negligence by a customer, such as where he has shared the payment credentials, the customer will bear the entire loss until he reports the unauthorised transaction to the bank and any loss occurring after the reporting of the unauthorised transaction will be borne by the bank. - ***[DBR.No.Leg.BC.78/09.07.005/2017-18, dated 6th July, 2017]***

5) NBFCS PERMITTED TO UNDERTAKE POINT OF PRESENCE (POP) SERVICES UNDER PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY (PFRDA) FOR NATIONAL PENSION SYSTEM (NPS)

As per extant guidelines NBFCs are prohibited from undertaking PoP Services under the PFRDA for NPS. On a review, RBI has decided NBFCs with asset size of ☐ 500 crore and above which comply with the prescribed CRAR and made net profit in the preceding financial year be permitted to undertake PoP services under PFRDA for NPS after registration with PFRDA. Eligible NBFCs extending

such services shall ensure that the NPS subscription collected by them from the public is deposited on the day of collection itself (T+0 basis; T is the date of receipt of clear funds, either by cash or any other mode) with the Trustee Bank. The deposits shall be made in the Trustee Bank account opened for this purpose under the regulations framed by PFRDA for NPS. NBFCs conducting PoP services shall strictly adhere to the guidelines framed by PFRDA. Any violation of the instructions above would invite supervisory action, including but not limited to cancellation of permission to undertake PoP services. - ***[DNBR(PD)CC.No.087/03.10.001/2017-18, dated 6th July, 2017]***

6) RBI CLARIFIED THE DOCUMENTS COULD BE RELIED UPON FOR ASCERTAINING THE INVESTMENT IN PLANT AND MACHINERY FOR CLASSIFICATION OF AN ENTERPRISES AS MICRO, SMALL AND MEDIUM

RBI vide its Master Direction FIDD.MSME&NFS.3/06.02.31/2016-17 dated July 21, 2016 notified that while calculating the investment in plant and machinery, the original price thereof, shall be taken into account, irrespective of whether the plant and machinery are new or second hand. In this regard, it has been clarified that for ascertaining the investment in plant and machinery for classification of an enterprises as Micro, Small and Medium, the following documents could be relied upon:

i. A copy of the invoice of the purchase of plant and machinery; or
ii. Gross block for investment in plant and machinery as shown in the audited accounts; or
iii. A certificate issued by a Chartered Accountant regarding purchase price of plant and machinery.

It is further clarified that for the investment in plant and machinery for the purpose of classification of an enterprise as Micro, Small or Medium, the purchase value of the plant and machinery is to be reckoned and not the book value (purchase value minus depreciation). - ***[FIDD.MSME & NFS.BC.No.10/06.02.31/2017-18, dated 13th July, 2017]***

7) RBI CHANGES NORMS FOR APPOINTMENT OF AUDITORS

As per the extant rules, a statutory auditor has to be appointed for a period of four years and then there should be a rest of two years. Now the central bank extended the rest period to at least six years.

According to RBI, in some cases in private and foreign banks, the same audit firm was reappointed after a gap of two years' rest. In a few other banks, the immediately preceding statutory auditor firm was appointed on completion of the four-year tenure of the current statutory auditor. Criticising these banks, the central bank said the rest and rotation policy in the appointment of auditors have been mandated so that books are looked at afresh, "as a new team is likely to examine the issues in a bank from a different perspective." In order to make the banks follow the policy in letter and spirit, the central bank said that an auditor, after completion of its four-year tenure in a bank "will not be eligible for appointment as SCA of the same bank for a period of six years." - ***[DBS.ARS.BC.04/08.91.001/2017-18, dated 27th July, 2017]***

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FOREIGN TRADE

1) EXPORT POLICY FOR SANDALWOOD OIL

Export of Sandalwood oil has been moved from 'Free' to 'Restricted' category. ***–[Notification No. 15 /2015-2020, 5th July, 2017, (DGFT)]***

2) EXPORT OF PREFERENTIAL QUOTA SUGAR TO USA UNDER TRQ

The quantity of raw sugar i.e., 8424 MTs (Eight thousand four hundred and twenty four metric tons) to be exported to USA under Tariff Rate Quota (TRQ) up to 30.09.2018 has been notified. ***–[Public Notice No. 13/2015-2020, 27th July, 2017, (DGFT)]***

3) AMENDMENT IN IMPORT QUANTITY OF CASHEW

Quantity of import of cashew has been amended from 4 Kg to 5.04 Kg. ***–[Public Notice No. 12/2015-2020, 27th July, 2017 (DGFT)]***

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CORPORATE

1) APPLICATION TO BE REJECTED IF NOTICE OF DISPUTE HAS BEEN RECEIVED BY OPERATIONAL CREDITOR OR THERE IS RECORD OF DISPUTE.

Appellant (operational creditor) filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of corporate insolvency process in respect of the Respondent, corporate debtor.
Applicant noted that he was appointed as the stockist of the Respondent for Chandigarh, Punjab, Haryana and Himachal Pradesh. The corporate debtor had agreed to give a margin of 8% plus 2% (for transportation) of the company invoice value to the operational creditor. As per the agreement the corporate debtor would supply its products to operational creditor and the operational creditor would further supply same to the distributor and the distributor in turn to the retailers. All expenses towards marketing/promoting and salary of employees of the corporate debtor was to be paid by the operational creditor, who would subsequently claim expenses by raising debit notes upon the corporate debtor. The Operational creditor accordingly filed petition claiming existence of operational debt and filed a claim. However, corporate debtor also raised a counter claim.

The Tribunal accordingly noted that NCLT is not a forum to examine and adjudicate which portion of the claims and counter claims are admissible. Accordingly, the Tribunal noted that claim of operational debts in question are not free from dispute. Since the principle underlying is that multiplicity of proceedings is to be avoided. Quoting from the observations of Appellate Tribunal in *Kirusa Software Private Limited* v. *Mobilox Innovations Private Limited*, Tribunal noted disputes pending before every judicial authority including mediation, conciliation etc., as long as there are disputes as to existence of debt or default etc., would satisfy sub-section (2) of Section 8 of the Insolvency and Bankruptcy Code and would thus bar the operational creditor from invoking Section 8 and 9 of the Code. ***–[Sri Pitambara Enterprises v. Valeda Herbals Private Limited., 11th July, 2017, (NCLT, New Delhi Bench)]***

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SECURITIES

1) INVESTMENT BY FPIs IN GOVERNMENT SECURITIES

The limits for investment by FPIs in government securities, for the July-September quarter 2017 has been revised. Limit for investment by FPIs in Central Government securities has been enhanced to INR 187,700 crore. While the limits for Long Term FPIs [such as the Sovereign Wealth Fund (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks) in central government securities has been enhanced to INR 54,300 crore.

The debt limit category of State Development Loans (SDL) has been further categorized into SDL-General and SDL-Long Term. SDL General shall be available for investment for all categories of FPIs and have investment limit of INR 28,500 crore, while SDL-Long Term shall be available only for Long Term FPIs with limit of INR 4,600 crore.

The SEBI further clarified, that any further increase in limits for FPIs investment in Central Government securities will be in the ration of 75% for Long Term category of FPIs and 25% for the General category of FPIs. Similarly, further increase in investment limits for SDLs would be in ration of 75% for SDL-Long Term and 25% for SDL- General category of FPIs. Also the practice of transferring unutilized limits of the Long Term category to General category of FPIs shall be done away with. – ***[IMD/FPIC/CIR/P/2017/74, 4th July, 2017, (SEBI)]***

2) ONLINE FILING SYSTEM FOR FOREIGN VENTURE CAPITAL INVESTORS

SEBI has introduced an online system to be used for filing application for registration, reporting and filing under the provisions of Foreign Venture Capital Investors (FVCI) Regulations. Applicants desirous of seeking registration as FVCI, are now required to submit their applications online only, through SEBI intermediary portal at https://siportal.sebi.gov.in/. Further, all SEBI registered FVCIs are now required to file their compliance reports and submit applications for any request under the provisions of FVCI regulations, through the online system only. The aforesaid online filing system has been made operational from July 1, 2017. – ***[SEBI/HO/IMD/DF1/CIR/P/2017/75, July 6, 2017 (SEBI)]***

3) GUIDELINES FOR ISSUANCE OF ODIs WITH UNDERLYING DERIVATIVES

SEBI has come out with guidelines for the Foreign Portfolio Investors (FPIs) issuing Offshore Derivative Instruments (hereinafter referred to as ODI Issuers).

The FPIs issuing ODIs shall not be allowed to issue ODIs with derivative as underlying. However, derivative portions that are taken for hedging equity shares held by FPI issuing ODI are exempted. In case of existing ODIs with underlying derivatives not for the purpose of hedging the equity shares held by FPIs, such FPIs have to liquidate such ODIs latest by the date of maturity of ODI instrument or by December 31, 2020, whichever is earlier.

In the case of issuance of fresh ODIs with derivatives as underlying, a certificate has to be issued by the compliance officer (or equivalent) of the ODI issuing FPI, certifying the derivative's position, on which the ODI is being issued, is only for hedging the equity shares held by it, on one to one basis. The said certificate has to be submitted along with the monthly ODI reports.

SEBI also clarified that the term "hedging of equity shares" means taking a one-to-one position in only those derivatives which have the same underlying as the equity share. ***–[CIR/IMD/FPI&C/76/2017, 7th July, 2017, (SEBI)]***

4) INVESTMENT BY FPIs IN CORPORATE DEBT

In partial modification of its earlier Circular dated August 04, 2016 whereby corporate debt limit of INR 244,323 crores was redefined as the Combined Corporate Debt Limit (CCDL) for all foreign investments in Rupee denominated bonds issued both onshore and overseas by Indian corporates, it has now been decided that CCDL shall be available on tap for investment by foreign investors till the overall investment reaches 95%, after which an auction mechanism shall be initiated for allocation of the remaining limits.

The procedure to be followed where FPI investment in CCDL exceeds 95% has also been provided by SEBI. The depositories (NSDL and CDSL) shall direct the custodians to halt all FPI purchases in corporate debt securities. The depositories will then inform the exchanges (NSE and BSE) regarding unutilized debt limits for conduct of auction. Upon receipt of information from depositories.

The auction will be held only if the free limit is greater than or equal to INR 100 crore. However, if free limit remains less than INR 100 crore for 15 consecutive trading days, then auction shall be conducted on the 16th trading day to allocate the free limits.

SEBI has also provided further details on the mechanism of auction. Duration of the bidding will be for 2 hours, access would be granted to trading members or custodians, minimum bid would be for INR 1 crore with maximum bid of one-tenth of free limit being auctioned, tick size shall be INR 1 crore, pricing of bid shall be flat fee of INR 1000 or bid price whichever is higher and time period for utilization of limits shall be 10 trading days from the date of allocation.

SEBI also noted that upon sale/redemption of debt securities, FPI will have a re-investment period of two trading days. If the re-investment is not made within two trading days the limits shall convert to free limit. SEBI also clarified that a single FPI or FPI group cannot bid for more than 10% of the limits being auctioned.

On masala bonds (rupee denominated bonds issued overseas by Indian corporates), SEBI noted that issuance of such bonds overseas shall temporarily cease, until the limit utilization falls back to below 92%. The auction mechanism shall be discontinued and limits shall be available for investment on tap when debt utilization falls below 92%. In such scenario reinvestment facility mentioned above shall be terminated and cannot be availed for the same limits when utilization crosses 95% again.

SEBI also clarified that FPI Investment in unlisted corporate debt securities shall compulsorily be in dematerialized form and subject to a minimum residual maturity of three years. ***–[IMD/FPIC/CIR/P/2017/81, 20th July, 2017, (SEBI)***

5) ONLINE FILING SYSTEM FOR REAL ESTATE INVESTMENT TRUSTS (REITs) AND INFRASTRUCTURE INVESTMENT TRUSTS (InvITs).

SEBI has introduced an online system for filings related to REITs and invites. All applicants desirous of seeking registration as REITs or InvITs are now required to submit their applications online only, through SEBI Intermediary Portal at https://siportal.sebi.gov.in. Furthermore, all SEBI registered REITs and InvITs are now required to file/ submit/ apply for any request, as may be required under the provision of aforesaid Regulations

& Circulars issued thereunder, through the online system only. The aforesaid online filing system has been made operational. - ***[SEBI/HO/IMD/DF1/CIR/P/2017/83, 24th July 2017, (SEBI)]***

6) ONLINE FILING SYSTEM FOR ALTERNATIVE INVESTMENT FUNDS

SEBI has introduced an online system for filings related to Alternative Investment Funds (AIF). The online system can be used for application for registration, reporting and filing in terms of the provisions of AIF Regulations and circulars issued thereunder. Applicants desirous of seeking registration as AIF are now required to submit their application online only, through SEBI Intermediary Portal at https://siportal.sebi.gov.in. Furthermore, all SEBI registered AIFs are now required to file their compliance reports and submit applications for any request under the provisions of AIF Regulations and circulars issued thereunder, through the online system only. The aforesaid online filing system for AIF has been made operational with immediate effect. ***–[SEBI/HO/IMD/DF1/CIR/P/2017/87, 31st July, 2017 (SEBI)]***

7) CRITERIA OF FIT AND PROPER IS CONTINUOUS. LIFTING THE CORPORATE VEIL TO IDENTIFY THE PROMOTER/DIRECTOR IS ESSENTIAL.

Appellants in the present appeal were challenging the Order of the Whole Time Member (WTM) of SEBI which had cancelled the certificate of registration of Sahara Mutual Fund, consequent to the findings by SEBI that Sahara India Financial Corporation Limited ("Sahara Sponsor") is not a fit and proper person, because its Promoter-Director is not a fit and proper person and hence Sahara MF and Sahara Asset Management Company Limited are no longer fit to carry on business of mutual fund.

Therefore, the legal question that was there before the Tribunal was that if the Promoter-Director of the Sponsor of a mutual fund is found not to be a fit and proper person, then whether the sponsor itself becomes not fit and proper. Also if that be the case, then would it impact the 'fit and proper' status of the mutual fund and the AMC under the Mutual Fund Regulations.

The Tribunal however, rejected the arguments of the Appellants. The Tribunal noted that the argument that the requirement of being fit and proper for the sponsor of a mutual fund is limited to the stage of application for registration, is devoid of any merit. The Tribunal further noted that only the Applicant Company as a sponsor is to be fit and proper and the requirement that the Promoter / Director need not be fit and proper cannot be accepted. The Tribunal further took note that Subrata Roy Sahara, is a key managerial personnel of the Sahara sponsor and also a majority shareholder (80% capital) in the sponsor company.

The arguments Regulation 7A of the Mutual Fund Regulations, 1996 read with Schedule-II of the SEBI (Intermediaries) Regulations, 2008 specify that the fit and proper criteria apply to the Principal Officer and the key managerial persons of the sponsor by whatever name called and should possess integrity, reputation and character; absence of any convictions and restraint orders and competence including solvency and net worth. The Tribunal in this regard noted that fit and proper criterion is continuous. As per Regulation 7A of the Mutual Fund Regulations, 1996, apart from the sponsor / applicant, the mutual fund also needs to be fit and proper person which makes it clear that the fit and proper criteria needs to be complied with by all the three pillars of the mutual

fund framework during the existence of the mutual fund.

The Mutual Fund Regulations state that the Sponsor Company as well as its Key Managerial Persons or Key Person who controls the Company is to be fit and proper. In the interest of investors, SEBI is empowered to lift the corporate veil to the extent to identify that who controls a regulated entity cannot be faulted. In the instant case SEBI itself found that two group companies of Sahara and its Directors were not conducting their business following the rules relating to public issue and were restrained from associating themselves with any listed Company or Company which intends to raise money from the public.

It was also found that one of the Promoters / Directors is prima facie holding absolute control over the group companies. Given these facts and circumstances, lifting the corporate veil to the extent of identifying the role of the Promoter / Director in the impugned order cannot be faulted. - ***[Sahara Asset Management Company P. Ltd. v. Securities and Exchange Board of India, 28th July, 2017, (SAT)]***

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COMPETITION

1) CEASE AND DESIST ORDER AGAINST OPERATING A CENTRALLY CONTROLLED SYSTEM WHICH LIMITED CHOICE OF USERS.

CCI passed a ceased and desist order against Container Trailer Owners Coordination Committee ('Committee') and its four participating associations, namely Cochin Container Carrier Owners Welfare Association, Vallarpadam Trailer Owners Association, Kerala Container Carrier Owners Association and Island Container Carrier Owners Association (collectively 'OPs'), finding them guilty of anti-competitive conduct.

Cochin Port Trust, the Informant in the case, primarily alleged that the imposition of a 'Turn System' by the Committee from January, 2014 till September, 2014 led to the unilateral fixation of prices. It was alleged that during the Turn System, the users and container trailers were obliged to book services only through this centrally controlled system and that the Committee was restraining outside transporters from lifting the containers which was impeding the ability of the users to hire trailers of their choice. The Director General upon investigation found that the 'Turn System' imposed by the OPs not only unilaterally fixed the prices for coastal container services, but also led to limiting and controlling of such services at the Informant port. Since the Turn system was discontinued by the OPs before the investigation was ordered in the case, no penalty was levied. ***–[Cochin Port Trust v. Container Trailer Owners Coordination Committee & Others, 1st August, 2017, (CCI)]***

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INDIRECT TAXES

a. CUSTOMS

1) ALL GOODS IMPORTED BY A UNIT OR DEVELOPER OF SEZ FOR AUTHORISED OPERATIONS EXEMPTED FROM IGST

The Central Government has exempted all goods imported by a unit or a developer in the Special Economic Zone for authorised operations, from the whole of the integrated tax leviable thereon

under sub-section (7) of Section 3 of the Customs Tariff Act, 1975 (51 of 1975) read with Section 5 of the Integrated Goods and Service Tax Act, 2017 (13 of 2017). - ***[Notification No. 64/2017- Customs, dated 5th July, 2017]***

2) AIRCRAFT, AIRCRAFT ENGINES AND PARTS EXEMPTED IF IMPORTED ON LEASE

Mega Exemption Notification No. 50/2017-Customs dated 30.06.2017 amended so as to exempt aircraft, aircraft engines and parts of aircraft if imported under an agreement of transfer of right in the goods without transfer in title, or transfer of the right to use the goods, from basic customs duty as well as integrated tax provided they are re-exported upon expiry of the period of the agreement. This has been done by inserting an entry 547A to the said Notification. ***[Notification No.65/2017 –Customs, dated 8th July, 2017]***

3) IMPORT DUTY ON SUGAR INCREASED

Import duty on sugar [Raw sugar, Refined or White sugar, Raw sugar if imported by bulk consumer under tariff head 1701], increased from the present 40% to 50% with immediate effect and without an end date. - ***[Notification No. 66/2017-Customs, dated 10th July, 2017]***

4) STATIC CONVERTORS FOR CELLULAR MOBILE PHONES EXCLUDED FROM EXEMPTION

Notification No. 25/2005-Customs dated 01.03.2005 amended so as to exclude static convertors for cellular mobile telephones from the benefit of the exemption under the said notification. - ***[Notification No. 67/2017 – Customs, dated 14th July, 2017]***

5) NIGER, GUINEA ADDED TO LIST OF LEAST DEVELOPED COUNTRIES FOR EXEMPTION

Notification No. 96/2008-Customs dated 13th August 2008 amended so as to insert S. No. 35-Republic of Niger and S. No. 36 -Republic of Guinea in the list of least developed countries for duty-free imports. - ***[Notification No. 68/2017-Customs, dated 27th July, 2017]***

6) DUTY DRAWBACK CONDITIONS AMENDED RETROSPECTIVELY FROM 1 JULY

Notification No. 131/2016-Customs (N.T.) dated 31.10.2016 relating to AIRs of duty drawback amended so that the conditions prescribed under the said Notification are amended with effect from 1 July 2017. For higher rate of drawback, the condition of GST officer's certification of non-availment of CGST / IGST credit or carryover of Cenvat credit has been replaced with self-certification of the same by the exporter. - ***[Notification No. 73/2017-CUSTOMS (N.T.), dated 26th July, 2017]***

7) ADD ON GRINDING MEDIA BALLS EXTENDED FOR A PERIOD OF ONE MORE YEAR

Levy of anti- dumping duty on imports of ' Grinding Media Balls' (excluding Forged Grinding media Balls), originating in, or exported from, Thailand and people's Republic of China imposed vide Notification 36/2012- Customs (ADD) ,dated 16th July, extended for one year i.e. up to and inclusive of the 15th July, 2018. -

[Notification No. 34/2017-Customs (ADD), dated 13th July, 2017]

8) EXPORT PROCEDURES UNDER GST REGIME NOTIFIED

The CBEC has notified the new Export procedures under GST regime. Under this, a one-time permission for self-sealing will be given to exporters who are registered with GST, after inspection of the premises by customs officers; thereafter the export goods are permitted to be moved under bill of supply. There will be no ARE-1, CT-1 etc. The options of export without payment of tax or refund after payment of tax are available. Exports are zero-rated: unused input tax credit is refundable. If the exporter is not registered for GST, or if the customs refuse permission for self-sealing, the goods will have to be stuffed and sealed in the port or CFS / ICD; however, this does not apply to status holders under the Foreign Trade Policy. - ***[Circular No. 26/2017-Customs, dated 1st July, 2017]***

9) RATES OF REBATE OF STATE LEVIES ON EXPORT OF GARMENTS AND TEXTILE MADE-UP REVISED

W.e.f. 01.07.2017, the Ministry of Textiles has revised the rates of rebate of State Levies on Export of Garments and textile made-ups. - ***[Circular No. 28/2017-Customs, dated 6th July, 2017]***

10) CBEC CLARIFIES REGARDING EOU PROCEDURES IN GST REGIME

Taking note of the operational problems being faced by EOU in GST regime consequent to amendment in Notification No. 52/2003-Customs dated 31-3-2003, the CBEC has issued the present Circular to clarify, inter alia, that -

- The B-17 bond will suffice as a continuity bond for duty-free import of goods for manufacture and export;
- Information about quantity of goods to be imported can be given for periods less than a year, and can be supplemented later;
- Inter-unit transfers can be made on payment of GST but without customs duty; no procurement certificates will be required of the receiving unit. - ***[Circular No. 29/2017-Customs, dated 17th July, 2017]***

b. CENTRAL EXCISE

1) TOBACCO PRODUCTS EXEMPTED FROM WHOLE OF THE ADDITIONAL DUTIES OF EXCISE

The CBEC has exempted all goods specified in the Seventh Schedule to the Finance Act, 2005 from whole of the additional duty of excise (commonly known as health cess) leviable thereon. - ***[Notification No. 18/2017-Central Excise, dated 1st July, 2017]***

2) AREA-BASED EXEMPTIONS RESCINDED

The CBEC has rescinded the notifications under which central excise duty was exempted for goods produced in specified areas in the north-eastern states, Sikkim, HP, Uttarakhand, Jammu & Kashmir. - ***[Notification No. 21/2017-Central Excise, dated 18th July, 2017]***

3) COMPOUNDING LEVY NOTIFICATIONS RESCINDED

Pursuant to the goods coming under GST, the CBEC has terminated the compounded levy scheme in respect of pan masala, chewing tobacco and zarda by rescinding the relevant notifications and rules. - ***[Notification No. 22/2017-Central Excise (N.T.), dated 18th July, 2017]***

c. GST

1) APPOINTMENT OF OFFICERS IN VARIOUS DIRECTORATES UNDER CGST & IGST

The CBEC has appointed the officers in the Directorate General of Goods and Services Tax Intelligence, Directorate General of Goods and Services Tax and Directorate General of Audit, as central tax officers and have invested them with all the powers under the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017 and the rules made there under. - ***[Notification No. 14/2017 – Central Tax, dated 1st July, 2017]***

2) CGST RULES, 2017 AMENDED

The CGST Rules, 2017 has been amended retrospectively with effect from 1st July 2017. The changes are in:

i. Rule 24 (allowing cancellation of migrated registration till 30 September 2017);
ii. Rule 34 (rate for conversion of foreign currency referenced to customs notified rate instead of RBI rate as earlier);
iii. Rule 44 (relating to input tax credit upon cancellation of registration or transition from composition scheme); Rule 46 (details in invoice for export of goods);
iv. Rule 61 (relating to filing of returns);
v. Rules 83 and 89 (rectification of use of wrong term "sub-section" instead of "clause" in relation to rules); forms TRAN-1 and TRAN-2 (change in wording of a heading). - ***[Notification No. 17/2017 – Central Tax, dated 27th July, 2017]***

3) COMPENSATION CESS ON CIGARETTES INCREASED

Notification No. 1/2017- Compensation Cess (Rate), dated 28th, June, 2017 amended so as to increase the Compensation Cess rates on cigarettes as mentioned in the Notification with effect from 18th, July, 2017. - ***[Notification No. 3/2017-Compensation Cess (Rate), dated 18th July, 2017]***

4) COMPENSATION CESS ON REVERSE CHARGE EXEMPTED ON MARGIN SCHEME DEALERS

The Central Government has decided to exempt intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the goods and services tax compensation cess on the value of outward supply of such second hand goods, as determined under sub-rule (5) of Rule 32 of the Central Goods and Services Tax Rules, 2017, from any supplier, who is not registered, from the whole of the goods and services tax compensation cess leviable thereon under Section 8 of the Goods and Services Tax (Compensation to States) Act, read with sub-section (4) of Section 9 of the Central Goods and Services Tax

Act. - ***[Notification No. 4/2017-Compensation Cess (Rate), dated 20th July, 2017]***

5) GOODS & SERVICES TAX SETTLEMENT OF FUNDS RULES 2017 NOTIFIED

The central government has notified the Goods & Services Tax Settlement of Funds Rules 2017 under Section 53 of the CGST Act, Section 17 & 18 of the IGST Act, and Section 21 of the UTGST Act. The Rules require the GST Network to furnish periodic reports containing the specified data that will enable computation of the amounts to be transferred to the states. The Rules have been notified under a Gazette of India Extraordinary Notification dated 27 July 2017.

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INTELLECTUAL PROPERTY RIGHTS

1) BOMBAY HIGH COURT SUMMARIZES THE PARAMETERS FOR GRANT OF INJUNCTION

The Bombay High Court summarizes the parameters for grant of injunction as follows:

1) The expression 'if valid' in Section 28 and the words 'prima facie evidence of the validity of the trade mark' in Section 31 of the Trade Marks Act, 1999 (the Act) must be given their plain and natural meaning.
2) Though the object of providing registration of trade mark is to obviate the difficulty in proving each and every case of the plaintiff's title to the trade mark, the object is achieved by raising a strong presumption in law to the validity of the registration of the trade mark and heavy burden is cast on the defendant to question the validity of the trade mark.
3) A challenge to the validity of the registration of the trade mark can finally succeed only in rectification proceedings before the Intellectual Property Appellate Board. However, there is no express or implied bar taking away the jurisdiction and power of the Civil Court to consider the challenge to the validity of the trade mark at the interlocutory stage by way of prima facie finding.
4) There is nothing in the Act to suggest that any different parameters for grant of injunction are required to be applied when a plaintiff seeks injunction on the basis of registered trade mark. The relief of injunction being a relief in equity, when the Court is convinced that the grant of interim injunction would lead to highly inequitable results, Court is not powerless to refuse such relief.
5) However, a very heavy burden lies on the defendants to rebut the strong presumption in favour of the plaintiff on the basis of the registration at the interlocutory stage. The plaintiff is not required to prove that the registration of a trade mark is not invalid, but only in the cases where the factum of registration is ex facie totally illegal or fraudulent or shocks the conscience of the Court that the Court may decline to grant relief in favour of the plaintiff.
6) It is not sufficient for the defendant to show that the defendant has an arguable case for showing invalidity. The prima facie satisfaction of the Court to stay the trial under Section 124 of the Act is not enough to refuse grant of interim injunction. It is only in exceptional circumstances, such as, the registration being ex facie illegal or fraudulent or which shocks the conscience of the Court that Court will refuse the interim injunction in favour of the registered proprietor of the trade mark.

7) The Division Bench in the case of Maxheal Pharmaceuticals considered it as the view of Vimadalal, J. that it is "the practice of this Court" to grant injunction to the holder of a registered trade mark. However, there was no sound footing for the Division Bench to recognize it as a longstanding practice of this Court.
8) Though it is considered as a practice of this Court of granting injunction in favour of the plaintiff having a registered trade mark, the same cannot be treated as a total embargo on the power of the Court to refuse grant of interim injunction. In exceptional cases, that is in cases of registration of trade mark being ex facie illegal, fraudulent or such as to shock the conscience of the Court, the Court would be justified in refusing to grant interim injunction. - ***[Vinodkumar Panditrao Patil vs. Pradeep Panditrao Patil & Ors., dated 31st July, 2017 (Bombay HC)]***

2) DELHI HIGH COURT CULLED OUT THE PRINCIPLES WHICH WOULD APPLY IN AN ACTION FOR AN ALLEGED INFRINGEMENT OF A REGISTERED TRADE MARK

In an action for an alleged infringement of a registered trade mark, it has first to be seen whether the impugned mark of the defendant is identical with the registered mark of the plaintiff. If the mark is found to be identical, no further question arises, and it is established that there was infringement. If the mark of the defendant is not identical, it has to be seen whether the mark of the defendant is deceptively similar in the sense that it is likely to deceive or cause confusion in relation to goods in respect of which the plaintiff got his mark registered. For that purpose, the two marks have to be compared, "not by placing them side by side, but by asking itself whether having due regard to relevant surrounding circumstances, the defendant's mark as used is similar to the plaintiff's mark as it would be remembered by persons possessed of an average memory with its usual imperfections", and it has then to be determined whether the defendant's mark is likely to deceive or cause confusion. For determining the same, the distinguishing or essential features (and not every detail) of the two marks and the main idea, if any, underlying the two marks which a purchaser of average intelligence and imperfect memory would retain in his mind after seeing the marks, have to be noticed. It has then to be seen whether they are broadly the same or there is an overall similarity or resemblance, and whether the resemblance or similarity is such that there is a reasonable probability of deception or confusion. In doing so, the approach has to be from the point of view of a purchaser of average intelligence and imperfect memory or recollection, and not an ignorant, thoughtless and incautious purchaser. In an action for passing off, the test for deceptive similarity, i.e., as to the likelihood of confusion or deception arising from similarity of the marks of the get up, packing etc. is practically the same as in an action for infringement. However, there is one exception, it has also to be seen whether the defendant's mark or the get up, packing, etc. of his goods has, besides the essential features of the plaintiff's mark or goods, any additional features which distinguish it from the plaintiff mark or goods. Also, it has to be seen whether it is likely of reasonable probability that the defendant can pass off his goods as those of the plaintiff to a purchaser of average intelligence and imperfect memory or recollection. - ***[Mex Switchgears Pvt. Ltd vs Omex Cables Industries & Anr., dated 17 July, 2017 (Delhi HC)]***

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CONSUMER

1) PROVIDING LIFTS IN MULTI STORIED RESIDENTIAL BUILDINGS WITHOUT POWER BACK UP IS NEGLIGENT ACT.

The Complainant had filed an application alleging gross negligence on part of Builder and Company responsible for its maintenance, after his son had died in a lift mishap at a building in Ghaziabad. The complainant's grounds were that due to a power cut, their son decided to use the stairs. On reaching the third floor, he saw the elevator door open and stepped in, assuming that lift would be in place but rather fell through the shaft and sustained serious injuries which ultimately led to his death.

The builder denied negligence and alleged that lift maintenance was under the charge of Basundhara Properties Private Limited. The maintenance company denied its complicity and blamed the victim for being negligent.

The Commission, however, relied on the information that the landing door of the lift, through which the victim had walked, could only be opened manually with a key which was handed over to the maintenance company. The commission said that since the company had given custody of the key to an unauthorised person who ended up leaving it open after rescuing the trapped person, it was responsible for contributory negligence.

The Commission noted that providing lifts in a multi-storied residential building, without even minimum power back up, was certainly a negligent act and a defect or deficiency in the services rendered by the builder. Accordingly, compensation of Rs. 50 Lakh was awarded to the family of the deceased. ***–[C. Sukumaran & Anr. v. M/s Parasvnath Developers Limited & Another, 18th July, 2017 (NCDRC)]***

ENVIRONMENT

1. NGT ORDERS BUILDERS TO DEMOLISH WALLS ON RIVER YAMUNA

The NGT has directed Agra Development Authority to demolish the concrete walls built by two real estate builders on river Yamuna. A bench headed by NGT chairperson Justice Swatanter Kumar passed this order while hearing the Yamuna floodplain case. - ***[The Times of India, dated 28th July, 2017]***

2. NGT SAYS IT IS EMPOWERED TO HEAR FISHERMEN'S PLEA AGAINST USE OF PURSE SEINE FISHING GEAR

The NGT has held that it has powers to hear a petition filed by traditional fishermen opposing the use of purse senine gear, a net considered harmful to preservation of bio diversity. The Tribunal dismissed an application filed by a 72 year old fishing businessman who said NGT has no jurisdiction and that it was only the state which could lay down any policy against use of such nets. These are large nets that can reach upto 2000 meters in length and 200 m in depth.

The ruling is significant as the nets used by large fishing companies, is a threat to marine eco-system said the bio-diversity board and also affects the catch and livelihood of smaller fishermen. An association of traditional fishermen from Sindhudurg had moved the Tribunal in 2015 against use of the nets. - ***[The Times of India, dated 22nd July, 2017]***

3. NGT DECLARES 100 METRES FROM EDGE OF GANGA AS "NO-DEVELOPMENT ZONE"

The NGT while ordering a green compensation of Rs. 50,000 on anyone dumping waste in the river, ruled that a 100-metre area on either side of Ganga between Haridwar and Unnao (Uttar Pradesh) will be a "no-construction, no-development zone". The NGT also directed that no dumping or landfill could come up within 500 metres of the river or its tributaries in the Haridwar-Unnao stretch. The tribunal imposed a complete prohibition on disposing of municipal solid waste, electronic-waste or bio-medical waste on the floodplains or into Ganga or its tributaries in the same stretch. It was directed that while diverting the water from Haridwar to the Ganga canal or elsewhere, the minimum environmental flow in the main river should not fall below 20% of the average monthly lean season flow. - ***[The Times of India, dated 14th July, 2017]***

4. NGT ASKS STATES, UTS TO IDENTIFY NO-POLLUTION ZONES

The NGT has asked all states and Union Territories to identify and inform it about the "no-pollution" zones in their areas for plying of deregistered diesel cars which have been barred from running in the national capital region (NCR). The tribunal had last year ordered the Delhi government to cancel the registration of all diesel-powered vehicles over 10 years old and barred them from plying. It had then ordered that only de-registered diesel vehicles which are less than 15-years-old can get a 'No Objection Certificate' (NoC) for plying in select areas outside Delhi-NCR to be decided by states where vehicle density is less. - ***[The Economic Times, dated 7th July, 2017]***

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