MONTHLY
NEWSLETTER

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RBI/FEMA

1) RATIONALISATION OF MERCHANT DISCOUNT RATE (MDR) FOR DEBIT CARD TRANSACTIONS

The RBI has capped the fee on debit card transactions at merchant outlets in order to promote digital transactions. The RBI has split the amount of MDR, the fee that shop keepers charge the customers, into two – for merchants with turn-over of less than Rs. 20 lakh and the other for more than Rs. 20 lakh. It has also suggested a different rate for the so called QR code based transactions and the point of sale transactions using the swipe machine. For merchants with higher turn-over, Rs. 1000 is the cap, and for low turn-over the maximum charge would be Rs. 200. As per the new rules, small merchants will bear MDR of 0.40% for physical PoS and the fee will not exceed Rs. 200 per transaction. While QR code-based payments will attract MDR of 0.30% with the maximum fee capped at Rs. 200. For the larger merchants taking payments via physical PoS machine the new MDR is 0.90% with a maximum cap of Rs. 1000 per transaction. Likewise the QR code-based payments will attract MDR of 0.80% with the maximum fee not exceeding Rs. 1000. It was also directed that the banks will have to ensure that the MDR levied on merchants should not exceed the cap rates and that the merchants on-boarded by banks do not pass on MDR charges to customers. These instructions shall be effective from January 1, 2018. – ***[DPSS.CO.PD No. 1633/02.14.003/2017-18, dated 6th December, 2017]***

2) RBI RAISES LIMITS FOR INVESTMENT BY FPIS IN GOVERNMENT SECURITIES

The RBI has increased the limits for investment by Foreign Portfolio Investors (FPIs) for the January-March 2018 quarter by INR 64 billion (6,400 crore) in Central Government Securities (Central G-Secs) and INR 58 billion (5,800 crore) in State Development Loans (SDLs). With effect from January 1, 2018, the revised investment limit for FPIs in G-Secs will be Rs.2,56,400 crore against the existing limit of Rs.2,50,000 crore. Within G-Secs, the general investment limit has been enhanced by Rs.1,600 crore to Rs.1,91,300 crore and the long-term investment limit by Rs.4,800 crore to Rs.65,100 crore. The revised investment limit for FPIs in SDLs will be Rs.45,100 crore against the existing limit of Rs.39,300 crore. Within SDLs, the general investment limit has been enhanced by Rs.1,500 crore to Rs.31,500 crore and the long-term investment limit by Rs.4,300 crore to Rs.13,600 crore. – ***[A.P. (DIR Series) Circular No. 14, dated 12th December, 2017]***

3) RBI ISSUES DIRECTIONS ON LIMITING LIABILITY OF CUSTOMERS OF CO-OPERATIVE BANKS IN UNAUTHORISED ELECTRONIC BANKING TRANSACTIONS

The RBI has issued directions on limiting liability of Customers of Co-operative Banks in unauthorised Electronic Banking Transactions. The revised

directions in this regard includes Strengthening of systems and procedures, Reporting of unauthorised transactions by customers to banks, Limited Liability of a Customer, Reversal Timeline for Zero Liability/ Limited Liability of customer, etc. – ***[DCBR.BPD.(PCB/RCB).Cir.No.06/12.05.001/ 2017-18, dated 14th December, 2017]***

4) SUBMISSION OF FINANCIAL INFORMATION TO INFORMATION UTILITIES UNDER THE BANKRUPTCY CODE

The RBI *vide* present Circular has advised all financial creditors regulated by RBI to adhere to certain mandatory requirements of the Insolvency & Bankruptcy Code regarding submission of financial information and information relating to assets, on which any security interest has been created, to information utilities.

According to Section 215 of Insolvency and Bankruptcy Code (IBC), 2016, a financial creditor is required to submit financial information and information relating to assets in relation to which any security interest has been created, to an information utility (IU) in such form and manner as may be specified by regulations. Chapter V of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, which has come into force with effect from April 1, 2017, has specified the form and manner in which financial creditors are to submit this information to IUs. Further, as per Section 238 of the IBC, 2016, the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

The Insolvency and Bankruptcy Board of India (IBBI) has registered National E-Governance Services Limited (NeSL) as the first IU under the IBBI (IUs) Regulations, 2017 on September 25, 2017. Hence the present Circular to ensure compliance to the provisions of the Code and Regulations. – ***[DBR.No.Leg.BC.98/09.08.019/2017-18, dated 19th December, 2017]***

5) PROMPT IMPLEMENTATION OF GOVERNMENT'S INSTRUCTIONS BY AGENCY BANKS

It is observed that some agency banks are not adhering to instructions/ notifications issued by Government (Central as well as States) promptly by stating that further communications have not been received by them from RBI.

In this connection, all agency banks are advised to scrupulously follow all the guidelines /instructions contained in various notifications of Government (Central as well as States) and take necessary actions immediately without waiting for any further instructions from RBI.

It is further advised that for queries related to such guidelines /instructions agency banks may take up the issue directly with concerned Governments and if the queries are related to reporting to RBI, then it may be addressed to DGBA /CAS, Nagpur.

[RBI/2017-18/111 DGBA.GBD/1616/15.02.005/2017-18, dated December 21, 2017]

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FOREIGN TRADE

1) REVISED EDITION OF THE HANDBOOK OF PROCEDURES OF FOREIGN TRADE POLICY, 2015-20

DGFT has notified revised edition of the Handbook of Procedures of Foreign Trade Policy, 2015-2020, which shall come into force with effect from 5th December, 2017. ***–[Public Notice No. 43/2015-2020, 5th December, 2017, (DGFT)]***

2) APPLICATION FEE FOR GRANT OF IMPORT AUTHORIZATION

The application for grant of import license may only be deposited at the Regional Authority's office, after paying the applicable fees. Further while submitting their application in DGFT, if the importers do not attach copy of the fee paid, their application will not be processed and no import authorization will be issued. ***–[Trade Notice No. 22/2018, 11th December, 2017, (DGFT)]***

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CORPORATE

1) OPERATIONAL CREDITOR'S DEMAND NOTICE CAN BE SENT BY THE LAWYER AND FINANCIAL CREDITORS MAY OFFER EVIDENCE OF THE DEBT THROUGH MEANS OTHER THAN A CERTIFICATE BY A FINANCIAL INSTITUTIONS

The Supreme Court began with a detailed review of the Insolvency and Bankruptcy Code, 2016 ("Code") and the provisions of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Based on this, it is found that the requirement under Section 9(3)(c) is not a "condition precedent to triggering the insolvency process under the Code". The certificate is only a piece of evidence to confirm the existence of the debt rather than a precondition. Given the context of the Code and the procedural nature of Section 9(3)(c), the Court found the provision to be directory in nature, and certainly not mandatory. The Court also adopted a pragmatic approach by noting that while the provisions of the Code were open to be triggered by a foreign creditor, there is no need to impose procedural hurdles in the way of such creditors. Such an approach avoids possible discrimination between foreign and domestic creditors. The Court left open the possibility that foreign creditors may offer evidence of the debt through means other than a certificate by a "financial institution". In doing so, the Court avoided "impractical, unworkable and inequitable results" in "situations which are predominantly procedural in nature".

The Court further with regard to demand notice under Section 8 of the Code, began by paying attention to the language of Section 8, which refers to an operational creditor "delivering" a demand notice. This suggests that the intention was not to require the operational creditor to send the notice itself (through employees or officers) but through authorized agents as well. Similarly, the Adjudicating Authority Rules provide for demand notice (under Section 8) as well as the application (under Section 9) to carry the signature of the person "authorized to act". Further, the relevant forms require the authorized agent to state his position with or "in relation to" the operational creditor. All of these expressions signify a wide meaning to the type of person that can sign and deliver the demand notice on behalf of the creditor, which includes a lawyer acting on behalf of a client.

The Court then considered the impact of the Advocates Act on the issue, wherein the expression "practice" is "of extremely wide import, and would include all preparatory steps leading to the filing of an application before a Tribunal". It found that the Code and the Advocates Act can be read

harmoniously to resolve any issue, thereby yielding the result that an operational creditor's demand notice can be sent by the lawyer. ***–[Macquarie Bank Limited* v. *Shilpi Cable Technologies Ltd, Civil Appeal No. 15135 OF 2017, 15th December, 2017, (Supreme Court)]***

2) NCLT APPROVES A RESOLUTION PLAN APPROVED BY 66.67% OF COC IN VALUE.

The National Company Law Tribunal, Bench at Hyderabad in the stated matter, has approved the resolution plan which was approved by only 66.67 percent of the committee of creditors in value. As per Section 30(4) of the Insolvency and Bankruptcy Code, 2016, a resolution plan can be approved by the Committee of Creditors ("CoC") by not less than 75 percent of the total voting share.

Pursuant to constitution of the CoC, comprising of eight financial creditors, a total of nine meetings of the CoC were held. The insolvency resolution process could not get completed in the mandatory period of 180 days, and an extension of 90 days was therefore granted by the Hyderabad NCLT. At the ninth meeting of the CoC held on October 27, 2017, a resolution plan was presented by the resolution professional which was approved by the members of the CoC having 55.73 percent voting power. One of the members, Indian Overseas Bank having voting power of 15.15 percent rejected the resolution plan. Further, the members of the CoC having voting power of 29.12 percent expressed that they remained open, awaiting the principle approval from their respective sanctioning authorities. As on October 30, 2017, the percentage of consenting members of CoC for approval of the resolution plan was 66.67 percent, the percentage of dissenting members of the CoC was 26.97 percent, and the percentage of the neutral members, who remained open until seeking principle approval from their respective sanction authorities, was 6.36 percent.

The Hyderabad NCLT observed that the main preamble of the Code is the resolution of a corporate debtor rather than the liquidation, and that in the instant case, the stringent stand of the three dissenting members of the CoC clearly showed that they did not exhibit positive approach in revival of the corporate debtor and were mostly interested in the liquidation of the corporate debtor.

Upon analysing the provisions of the Code, the Hyderabad NCLT further observed that Section 30(4) states that the committee of creditors may approve the resolution plan by a vote of not less than 75 percent of voting shares of the financial creditors and, Section 31 of the Code states that "if the adjudicating authority is satisfied". Therefore, the Hyderabad NCLT took a considered view that even though the committee of creditors may approve a resolution plan with not less than 75 percent of the voting shares, a discretion is given to the NCLT to approve the resolution plan.

Therefore, the Hyderabad NCLT further observed that a paramount duty is cast upon the adjudicating authority, while approving a resolution plan to exercise judicious mind in facts and circumstances to a specific case, to consider the spirit of the Code and to grant due consideration for the socioeconomic benefit/cause, etc., and therefore, the prescribed percentage of 75 percent need not be strictly interpreted. ***–[K Sashidhar* v. *Kamineni Steel and Power India Limited, The National Company Law Tribunal, Bench (Hyderabad)]***

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SECURITIES

1) DISCLOSURE OF HOLDING OF SPECIFIED SECURITIES AND HOLDING OF SPECIFIED SECURITIES IN DEMATERIALIZED FORM.

SEBI amending clause 2(c) of its Circular CIR/CFD/CMD/13/2015 dated November 30, 2015, prescribing the manner of representation of holding of specified securities, has provided through the present circular that the details of the shareholding of the promoters and promoter group, public shareholder and non-public non-promoter shareholder must be accompanied with PAN Number (first holder in case of joint holding). Further, the shareholding of the promoter and promoter group, public shareholder and non-public non-promoter shareholder is to be consolidated on the basis of the PAN and folio number to avoid multiple disclosures of shareholding of the same person.-

[SEBI/HO/CFD/CMD/CIR/P/2017/128, 19th December, 2017, (SEBI)]

2) INVESTMENTS BY FPIs IN GOVERNMENT SECURITIES.

SEBI has decided to revise the limit for investment by FPIs in Government Securities, for the January - March 2018 quarter, with effect from January 01, 2018, as follows:- (a) limit for FPIs in Central Government securities shall be enhanced to INR 191,300 cr; limit for Long Term FPIs (Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks) in Central Government securities shall be revised to INR 65,100 cr; (b) debt limit category of State Development Loans (SDL) shall be enhanced, and accordingly SDL-General shall be enhanced to INR 31,500 cr and for SDL-Long Term shall be enhanced to INR 13,600 cr. –

[IMD/FPIC/CIR/P/2017/129, 20th December, 2017, (SEBI)]

3) EXEMPTION APPLICATION UNDER REGULATION 11 (1) OF SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

Regulation 11(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations), gives power to the Board to grant exemption from the obligation to make an open offer for acquiring shares. Further, as per Regulation 11(3) of SAST Regulations, the acquirer shall file an application with the Board, supported by a duly sworn affidavit, giving details of the proposed acquisition and the grounds on which the exemption has been sought.

In order to ensure uniformity of disclosures in such applications, it has been decided to provide a standard format for filing of application with SEBI, and accordingly, SEBI has given the instructions and details in this regard at Annexure – A. To ensure uniformity of disclosures in such applications, it has been decided to provide a standard format for filing of application with SEBI. The instructions and details in this regard are given at Annexure – A of its circular. –

[SEBI/HO/CFD/DCR1/CIR/P/2017/131, 22nd December, 2017, (SEBI)]

4) FRONT RUNNING MEANS ANY TRANSACTION OF PURCHASE/SALE OF A SECURITY CARRIED BY ANY EMPLOYEE WHETHER FOR SELF OR FOR ANY OTHER PERSON, KNOWING FULLY WELL THAT THE AMC ALSO INTENDS TO PURCHASE/SELL THE SAME SECURITY FOR ITS MUTUAL FUND OPERATIONS.

The Appellants have challenged the Order passed by SEBI which has prohibited them from buying, selling or otherwise dealing in securities for a period of 10 years from the date of the interim order, and has also disgorged the amounts of illegal profits made by the Appellants.

Appellants are traders in securities market and one of the four Appellants was employed as a dealer by HDFC Asset Management Company ('HDFC AMC'

for short) who would tip one of the other Appellants before placing of the orders of the HDFC AMC and accordingly, SEBI held them guilty of violating Regulations 3 and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short).

Counsel for Appellants' argued that non-intermediary 'front running' is not an offence under PFUTP Regulations as Regulation 4(2)(q) makes only "an intermediary buying or selling securities in advance of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract" is considered a fraudulent and an unfair trade practice in securities. But the counsel changed his submissions, since the Apex court has held that non-intermediary 'front running' is also a violation of PFUTP Regulations. On the basis of Apex court judgment (in Securities and Exchange Board of India v. Dipak Patel (Civil Appeal No. 2596 of 2013), the Counsel for Appellants argued that confidentiality on sharing the information by the tipper, the HDFC AMC employee Nilesh Kapadia has to be proved; which is not done in this case. Further, whether the appellant (tippee) induced the tipper to part with such confidential information has to be established; which is also not done in the impugned order. Further, it was argued that when the first order of the HDFC AMC was placed on the trading terminal the information that HDFC AMC is entering the market has become public and any trade done by anybody thereafter cannot be termed as 'front running' on the basis of private tips.

Securities Appellate Tribunal (SAT) noted that given the facts of the case-high volumes of trades, multiple trading days, large number of trades, very proximate trade timing coupled with the admitted fact of receiving tips from the HDFC AMC Dealer which is also evidenced by the call records available in the impugned order-SEBI held that it has no doubt in concluding that the three appellants were 'front-running' the HDFC AMC orders. Further, given the magnitude of the trade it led to substantial increase in the prices of the scrips thereby affecting the securities market both in terms of its volatility and integrity. The argument that once the HDFC AMC order is placed on the trading system it becomes public information, is a fallacious argument since on-line trading system is anonymous. Accordingly, the appeals were dismissed. ***–[Rajiv R. Sanghvi & Others* v. *SEBI, 21st December, 2017, (SAT)]***

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COMPETITION

1) THE COMMISSION FOUND NO VIOLATION OF COMPETITION ACT WITH REGARD TO ALLEGATIONS RAISED AGAINST THE OPs IN THE SALE OF RESERVED MOLASSES BY SUGAR MANUFACTURERS' TO MANUFACTURERS' OF COUNTRY LIQUOR.

Informant, Dwarikesh Sugar Industries Limited, engaged in manufacturing of crystal sugars and having manufacturing units in the State of Uttar Pradesh, alleged abuse of dominance by the Opposite Parties which comprised of nine Uttar Pradesh based country liquor manufacturers. As Informant was a sugar manufacturer, the natural by-product of the process being molasses, its sale was governed by Molasses Policy, whereby it was obligated to sell 30% of the molasses (reserved molasses) to manufacturers of country liquor within the state of Uttar Pradesh and rest of the molasses could be sold off freely in the open market. The Informant alleged that it was compelled by the Opposite Parties to sell its reserved quota of molasses at unreasonably low rates. The Informant also stated that while fixing the selling price of country liquor by the Government, the cost of molasses is taken as Rs.200/- per quintal whereas the price offered by the OPs to the sugar

manufacturers for reserved molasses range between Rs. 35/- to 60/- per quintal only.

The Commission noted that the policy in U.P is a major factor for determining price of reserved molasses. To ensure uninterrupted supply of molasses throughout the year Government has fixed a ratio for dispatch of reserved and unreserved molasses. The sugar mills cannot sell unreserved molasses unless they dispatch their share of reserved molasses. The Commission examining the Molasses policy noted that from competition perspective, for fair competition in the market, there should neither be any reservation nor any dispatch ratio, and the market forces should be allowed to discover the price of molasses without getting impacted by any policy constraints. Commission further noted that although, the policy has legal backing, and the Supreme Court has held it to be non-violative and non-discriminatory.

However, on examining the different purchase price and transactions of purchases of reserved molasses, the Commission found that OPs have purchased reserved molasses independently at market determined negotiated rates and there is no price parallelism. The Commission also noted that Informant entered into negotiations with the OPs for the sale of its reserved molasses and not simply sold the reserved molasses at prices offered by the OPs. Thus, there was no evidence of coordination amongst the OPs with regard to purchase price of reserved molasses, or evidence of any agreement entered amongst the OPs to directly or indirectly determine the purchase price of reserved molasses. Accordingly, the allegations made by the Informant were not substantiated and no contravention of provisions of Competition Act, 2002 was found. However, the Commission noted that there is need to review the controls over molasses' distribution and dismantle them in a phased manner so that the industry can realize its full potential, emerging more competitive and competitive neutral. ***–[Dwarikesh Sugar Industries Limited*** **v.** ***Wave Distilleries & Breweries Limited & Others, 29th December, 2017, (CCI)]***

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INDIRECT TAXES

a. CUSTOMS

1) INCREASE OF IMPORT DUTY ON SPECIFIED ELECTRONIC GOODS

The CBEC has increased the import tariff rate on specified electronic goods including mobile phones, television sets, digital cameras, microwave ovens, LED bulbs, etc., under First Schedule to the Customs Tariff Act by invoking Section 8A (1) of the Customs Tariff Act, 1975. – ***[Notification No. 91/2017 – Customs, dated 14th December, 2017]***

2) INCREASE OF BCD ON SPECIFIED GOODS

The CBEC has increased BCD on certain goods falling under Chapter 85, 90 and 94 of First Schedule to Customs Tariff Act, 1975 including CCTV camera, digital video recorder, television, LED lamps and accordingly amended Notification No. 50/2017 prescribing effective rates of BCD and IGST on said goods imported into India. – ***[Notification No. 92/2017-Customs, dated 14th December, 2017]***

3) CONCESSIONAL RATE OF BCD DEEPENED WITH RESPECT TO SPECIFIED GOODS WHEN IMPORTED UNDER THE IJCEPA, CEPA, INDIA-ASEAN FREE TRADE AGREEMENT & IMCECA

Notification No. 69/2011-Customs, dated 29th July, 2011 amended so as to provide a deepened concessional rate of basic customs duty in respect of tariff item 8708 40 00 [gear box and parts thereof, of specified motor vehicles], w.e.f. 1st of January, 2018, when imported under the India-Japan Comprehensive Economic Partnership Agreement (IJCEPA). – ***[Notification No. 94/2017– Customs, dated 22nd December, 2017]***

Notification No. 152/2009-Customs dated 31.12.2009 amended so as to provide deeper tariff concessions in respect of specified goods imported from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement (CEPA) w.e.f. 01.01.2018. – ***[Notification No. 95/2017– Customs, dated 22nd December, 2017]***

Notification No. 46/2011-Customs dated 01.06.2011 amended so as to provide deeper tariff concessions in respect of specified goods when imported from ASEAN under the India-ASEAN Free Trade Agreement w.e.f. 01.01.2018. - ***[Notification No. 96/2017– Customs, dated 29th December, 2017]***

Notification No. 53/2011-Customs dated 01st July, 2011 amended so as to provide deeper tariff concessions in respect of specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA) w.e.f. 01.01.2018. - ***[Notification No. 97/2017– Customs, dated 29th December, 2017]***

4) CUSTOMS (FURNISHING OF INFORMATION) RULES, 2017 NOTIFIED

The CBEC has notified the Customs (Furnishing of Information) Rules, 2017 specifying the format, periodicity and manner of furnishing information required under sub-section (1) of Section 108A of the Customs Act. – ***[Notification no. 114/2017 - Customs (N.T.), dated 14th December, 2017]***

5) ADD ON PHTHALIC ANHYDRIDE

Anti-dumping duty extended on Phthalic Anhydride originating in or exported from Korea RP, Chinese Taipei and Israel up to and inclusive of the 23rd December, 2018. – ***[Notification No.56/2017-Customs (ADD), dated 21st December, 2017]***

6) CLARIFICATIONS REGARDING REFUND/CLAIM OF COUNTERVAILING DUTY AS DUTY DRAWBACK

Drawing attention to the Circular Nos. 106/95-Cus dated 11.10.1995 and 23/2015-Cus dated 29.9.2015 regarding refund/claim of Anti-Dumping Duty and Safeguard Duties as Duty Drawback respectively, with respect to Countervailing Duties which are leviable under Section 9 of the Customs Tariff Act, 1975. The CBEC has clarified that these are rebatable as Drawback in terms of Section 75 of the Customs Act. Since Countervailing Duties are not taken into consideration while fixing All Industry Rates of Duty Drawback, the Drawback of such Countervailing Duties can be claimed under an application for Brand Rate under Rule 6 or Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and/or the Customs and Central Excise Duties Drawback Rules, 2017, as the case may be. This would necessarily mean that drawback shall be

admissible only where the inputs that suffered Countervailing Duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

Further, where imported goods subject to Countervailing Duties are exported out of the country as such, then the Drawback payable under Section 74 of the Customs Act, 1962 would also include the incidence of Countervailing Duties as part of total duties paid, subject to fulfilment of other conditions. – ***[Circular No. 49/2017-Customs, dated 12th December, 2017]***

b. GST

1) EXTENSION OF TIME LIMIT FOR FILING VARIOUS FORMS UNDER GST REGIME

i. Time limit for filing FORM GST ITC-01 for the months of July, 2017, August, 2017, September, 2017, October, 2017 and November, 2017 to avail the input tax credit under sub-section (1) of Section 18 of the said Act has been extended till the 31st day of January, 2018. – ***[Notification No. 67/2017 – Central Tax, dated 21st December, 2017]***

ii. Time limit for filing FORM GSTR-5 for the months of July, 2017, August, 2017, September, 2017, October, 2017, November, 2017 and December, 2017 has been extended till the 31st day of January, 2018. – ***[Notification No.68/2017 – Central Tax, dated 21st December, 2017]***

iii. Time limit for filing FORM GSTR-5A for the months of July, 2017, August, 2017, September, 2017, October, 2017, November, 2017 and December, 2017 by a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in Section 14 of the Integrated Goods and Services Tax Act, 2017 and Rule 64 of the Central Goods and Services Tax Rules, 2017, has been extended till the 31st day of January, 2018. – ***[Notification No. 69/2017 – Central Tax, dated 21st December, 2017]***

iv. Due dates for quarterly furnishing of FORM GSTR-1 for taxpayers with aggregate turnover of upto Rs.1.5 crore has been extended for the quarter July - September, 2017 till 10th January, 2018, for the quarter 2 October - December, 2017 till 15th February, 2018 and for the quarter 3 January - March, 2018 till 30th April, 2018. – ***[Notification No. 71/2017 – Central Tax, dated 29th December, 2017]***

v. Due dates for monthly furnishing of FORM GSTR-1 for taxpayers with aggregate turnover of more than Rs.1.5 crores has been extended for the months of July - November, 2017 till 10th January, 2018, for the month of December, 2017 till 10th February, 2018, for the month of January, 2018 till 10th March, 2018, for the month of February, 2018 till 10th April, 2018 and for the month of March, 2018 till 10th May, 2018. – ***[Notification No. 72/2017 – Central Tax, dated 29th December, 2017]***

2) 1ST FEBRUARY, 2018 NOTIFIED AS THE DATE FROM WHICH E-WAY BILL RULES SHALL COME INTO FORCE

The CBEC has appointed 1st day of February, 2018, as the date from which the provisions of serial numbers 2(i) and 2(ii) of Notification No. 27/2017 – Central Tax dated the 30th August, 2017 shall come into force. – ***[Notification No. 74/2017 – Central Tax, dated 29th December, 2017]***

3) CLARIFICATION ON ISSUES REGARDING TREATMENT OF SUPPLY BY AN ARTIST IN VARIOUS STATES AND SUPPLY OF GOODS BY ARTISTS FROM GALLERIES

The issue was, if the artists give their work of art to galleries where it is exhibited for supply, whether it is taxable in the hands of the artist when the same is given to the art gallery or at the time of actual supply by the gallery. The CBEC has clarified that the supplies of the art work from one State to another State will be inter-State supplies and will attract integrated tax in terms of Section 5 of the Integrated Goods and Services Tax Act, 2017. It is further clarified that in case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply. It is only when the buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply. – ***[Circular No. 22/22/2017-GST, dated 21st December, 2017]***

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INTELLECTUAL PROPERTY RIGHTS

1) RELYING UPON THE LAW ON ACQUIESCENCE, THE DELHI HC VACATED THE INTERIM ORDER AGAINST THE DEFENDANTS USING MARK "GET MY TRIP" WHICH IS ALLEGED TO BE DECEPTIVELY SIMILAR TO PLAINTIFF'S TRADE NAME "MAKE MY TRIP"

MakeMyTrip (India) Pvt. Ltd. filed the present suit inter-alia praying for a decree of permanent injunction restraining the defendants, their franchisees, affiliates, subsidiaries, licencees and agents in any manner using the trademark GETMYTRIP infringing the plaintiff's trademark MakeMyTrip, its domain name, logo and/or device etc. On the first date of hearing, the Court restrained the defendants, its partners, etc. from selling, offering for sale, advertising, directly or indirectly dealing in any of the services under the mark GETMYTRIP or any other deceptively similar mark and also restrained from using the domain name getmytrip.com. On receipt of the notice, defendant filed an application under Order XXXIX Rule 4 CPC.

Case of the defendant is that the plaintiff has concealed material facts i.e., the plaintiff had prior knowledge of the predecessor-in-interest of the defendant using the trademark GETMYTRIP and plaintiff had been doing business with the predecessor-in-interest of the defendant being Hermes I Tickets Private Limited under the mark GETMYTRIP since 2011. The plaintiff has also used the services of the defendant under the mark GETMYTRIP.

The Delhi HC relying upon the law on acquiescence as well settled by the Supreme Court in the decision reported as (1994) 2 SCC

448 Power Control Appliances v. Sumeet Machines (P) Ltd vacated its interim order against the defendants. – ***[MAKEMYTRIP (India) Private Limited vs. Orbit Corporate Leisure Travels (I) Private Limited, dated 13th December, 2017]***

2) INTERIM INJUNCTION DENIED TO "BOOKMYSHOW" AGAINST "BOOKMYSPORTS"

The Plaintiff, Bigtree Entertainment Pvt. Ltd, filed the present suit inter alia seeking permanent injunction against the defendants in any manner using the mark "BOOKMYSPORTS", or using the prefix "BOOKMY". Plaintiff is the owner of the website "www.bookmyshow.com" and mobile app BOOKMYSHOW. In the present case, the defendant placed on record examples of numerous other companies that operate with the same domain prefix, and the plaintiff was yet to put on record any evidence suggesting that the prefix "BOOKMY" is only associated in the minds of the public with the plaintiff's business and nobody else and has thus acquired a secondary meaning and distinctiveness. Considering the fact that the words "BOOKMY" are descriptive in nature and plaintiff's trademark "BOOKMYSHOW" has not acquired a distinctive meaning it was held that no case for grant of injunction pending hearing of the suit is made out. – ***[Bigtree Entertainment Pvt Ltd* v. *Brain Seed Sportainment Pvt Ltd & Anr., dated 13th December, 2017]***

3) FOR A LAUDATORY AND DESCRIPTIVE MARK TO BE PROTECTED, IT WOULD HAVE TO BE SHOWN, BY LEADING EVIDENCE, THAT SUCH A MARK, BY EXTENSIVE USAGE, HAS ACQUIRED DISTINCTIVENESS AND IS ASSOCIATED ONLY WITH THE CLAIMANT AND/OR ITS PRODUCTS AND/OR SERVICES

The Delhi High Court made the present observation while discussing the protective nature of a mark "A+". The Court observed that mark A+ is laudatory and descriptive. Prima facie, it may not have any or may have a very low protective value unless it is used in conjunction with some other mark. For a laudatory and descriptive mark to be protected, it would have to be shown, by leading evidence, that such a mark, by extensive usage, has acquired distinctiveness and is associated only with the claimant and/or its products and/or services. – ***[Societe Des Produits Nestle S.A & Anr.* v. *Kaira District Co-Operative Milk Producers Union Ltd. & Ors., dated 5th December, 2017]***

4) TOYOTA LOSES TRADEMARK BATTLE OVER PRIUS AT SUPREME COURT OF INDIA

The Plaintiff sought to prevent the Defendants (spare parts suppliers) from using the trademarks "Toyota", "Innova" and "Prius". The first two marks were registered trademarks of the Plaintiff and the lower courts had no difficulty in finding in favour of the Plaintiff on this count. The Defendants did not contest these findings before the Supreme Court.

The contest was only with respect to the trademark "PRIUS", which the plaintiff claimed belonged exclusively to it. Interestingly, the plaintiff had no trademark registration for this mark, but the Defendant did (a registration dating back to 2002).

Plaintiff contested this registration by the defendants, claiming that it was the first user of Prius (and began using this mark as early as 1997) and that the Defendants had wrongly and dishonestly registered the same in India.

The court ruled in favour of the Defendants, noting that the Plaintiff had not supplied enough proof of its "reputation" in the Indian market. In other words, although trans-border reputation was now very much a part of Indian law, such reputation could not merely be asserted, but must be proved, and also within the "territory" of India. **–*[Toyota Jidosha Kabushiki Kaisha* v. *M/S Prius Auto Industries Limited* dated 14th December, 2017]**

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CONSUMER

1) IF THE VALUE OF GOODS IS MORE THAN THE SUM FOR WHICH THEY ARE INSURED THEN IT IS PRESUMED THAT THE POLICY HOLDER HAS NOT TAKEN OUT INSURANCE POLICY FOR UNINSURED VALUE OF GOODS.

The Supreme Court in the stated matter has held that when a group of items is insured under one heading and only some of the items and not all items are lost / stolen, then the principle of under-insurance will apply. The court also held that if all or most of the items of value covered under the policy are stolen, then the insurance company is bound to pay the value of the goods insured.

The Division Bench of the Supreme Court disposed off an appeal filed by a consumer against National Consumer Disputes Redressal Commission (NCDRC). The Complainant had filed a complaint against an insurance company which had rejected his claim of householder insurance, following a burglary in his house.

In this regard, the bench explained that under-insurance means that the insured has taken out an insurance policy in which he has valued the insured items for a sum which is less than the actual value of the insured item. The bench cited an example: In case a person gets a painting insured for Rs.1,00,000/- though the value of the same is Rs.10,00,000/-, if the painting is lost, the insured is entitled to Rs.1,00,000/- only. If all the insured goods falling under one head are stolen or lost then the insurance company cannot apply the principle of averaging out because, though the loss may be Rs.10,00,000/-, the claimant will get only one Rs.1,00,000/-as per the value assessed and the insurance premium paid by him.

It was said that if the value of the goods is more than the sum for which they are insured then it is presumed that the policy holder has not taken out insurance policy for the uninsured value of the goods and the claim is allowed by applying the principle of averaging out, i.e., the insured is paid an amount proportionate to the extent of insurance as compared to the actual value of the goods insured. ***–[I.C. Sharma* v. *The Oriental Insurance Company Limited, Civil Appeal No. 3167 of 2017, (Supreme Court)]***

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ENVIRONMENT

1. CENTRE APPROVES RS 100 CRORE PROJECT TO TACKLE STUBBLE BURNING

Seeking to handle issue of stubble burning in a comprehensive and coordinated manner, the environment ministry has approved launching of

a regional project to tackle the menace that adversely affects air quality and soil health. The project will be implemented in a phased manner under the National Adaptation Fund for Climate Change (NAFCC). The first phase of the project, costing approximately Rs. 100 crore, was approved on Thursday for Punjab, Haryana, Uttar Pradesh and Rajasthan. – ***[The Times of India, dated 28th December, 2017]***

2. GREEN NOD MUST FOR REALTY PROJECTS: NGT

The NGT has shelved Delhi Development Authority's new building bylaws which exempts realty projects from undergoing environment impact assessment (EIA). In a detailed judgment, NGT also stayed the Union Environment Ministry's notification which exempted real-estate projects (up to 1,50,000 sq m built-up area) in the country from undergoing EIA and obtaining environmental clearance (EC). – ***[The Times of India, dated 22nd December, 2017]***

3. NATIONAL GREEN TRIBUNAL CHAIRPERSON JUSTICE SWATANTER KUMAR RETIRES

National Green Tribunal Chairperson Justice Swatanter Kumar retires after completing a five-year stint as the chief of the green body.

4. NGT HOLDS ART OF LIVING RESPONSIBLE FOR YAMUNA FLOODPLAINS DAMAGE

The NGT held Sri Sri Ravi Shankar's Art of Living responsible for damaging the ecology of the Yamuna floodplains during the three-day cultural extravaganza held last year and asked the organisation to pay for the restoration works. The NGT has already fined the Art of Living Rs. 5 crore for the damage and said the amount would be used to restore the fragile floodplains. The NGT also observed that in case more funds are required, Art of Living will have to pay and if restoration costs less, the remaining amount of the already deposited Rs. 5 crore will be refunded. – ***[The Times of India, dated 7th December, 2017]***

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