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## RBI/FEMA

### 1) **RBI ALLOWS BANKS A LEVEL-PLAYING FIELD IN ECB REFINANCE**

The RBI, in order to provide a level playing field, has decided, in consultation with the Government of India, to permit the overseas branches/subsidiaries of Indian banks to refinance ECBs of highly rated (AAA) corporates as well as Navratna and Maharatna PSUs, provided that the outstanding maturity of the original borrowing is not reduced and all-in-cost of fresh ECB is lower than the existing ECB. - *[A.P. (DIR Series) Circular No.15, dated 4th January, 2018]*

### 2) **EXIM BANK'S GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT OF USD 100 MILLION TO THE GOVERNMENT OF THE REPUBLIC OF KENYA**

Exim Bank has entered into an agreement dated January 11, 2017 with the Government of the Republic of Kenya for making available to the latter, a GoI supported Line of Credit (LOC) of

USD 100 million for agricultural mechanization project in Kenya. Under the arrangement, financing export of eligible goods and services from India would be allowed which are eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement. The goods include plant, machinery and equipment and services include consultancy services. 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 Agreement under the LoC is effective from January 01, 2018. – *[A.P. (DIR Series) Circular No.16, dated 25th January, 2018]*

### 3) **EXIM BANK'S GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT OF USD 71.40 MILLION TO THE GOVERNMENT OF CÔTE D'IVOIRE**

Exim Bank has entered into an Agreement on May 22, 2017 with the Government of Côte d'Ivoire for making available to the latter, a GoI supported Line of Credit (LoC) of USD 71.4 million for the purpose of financing the Upgradation of four Military Hospitals in Abidjan Korhogo, Bouake and Daloa regions' in Côte d'Ivoire. Under the arrangement, financing export of eligible goods and services from India would be allowed which are eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement. The goods include plant, machinery and equipment and services include consultancy services. Out of the total credit by

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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 Agreement under the LoC is effective from December 15, 2017. – **[A.P. (DIR Series) Circular No.17, dated 25th January, 2018]**

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## FOREIGN TRADE

### 1) ENLISTMENT OF APEDA'S REGIONAL OFFICES UNDER LIST OF AGENCIES AUTHORIZED TO ISSUE CERTIFICATE OF ORIGIN (NON-PREFERENTIAL)

Agricultural and Processed Food Products Export Development Authority (APEDA), is enlisted under Appendix 2E of FTP, 2015-2020 for issuing Certificate of Origin (Non-Preferential). – **[Public Notice No. 50/2015-2020, 9<sup>th</sup> January, 2018 (DGFT)]**

### 2) CERTIFICATE OF ORIGIN OF GOODS FOR EUROPEAN UNION GENERALISED SYSTEM OF PREFERENCES (EU-GSP)

Transition period for registering under the Registered Exporters System (REX) for EU Generalized System of Preferences (GSP) has been extended up to 30.06.2018. – **[Public Notice No. 51/2015-2020, 9<sup>th</sup> January, 2018 (DGFT)]**

### 3) AMENDMENT IN THE AYAT NIRYAT FORMS

Amendments have been made in Ayat Niryat Forms (ANF) 4A, 4E, 4F, 4G, 4H & 4I of Handbook of Procedures 2015-2020 in light of implementation of

GST and non-issuance of EP copies of Shipping Bills by Customs Authorities. – **[Public Notice No. 52/2015-2020, 12<sup>th</sup> January, 2018 (DGFT)]**

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## CORPORATE

### 1) THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2017 RECEIVES PRESIDENT'S ASSENT

The Insolvency and Bankruptcy Code (Amendment) Act, 2017 has received the assent of the President on the 18th January, 2018. It shall be deemed to have come into force on the November 23, 2017.

The Insolvency and Bankruptcy Code (Amendment) Bill, 2017 was introduced in Lok Sabha on December 28, 2017. The Bill seeks to plug potential loopholes and prohibit "certain persons", such as wilful defaulters, from submitting resolution plans to let them take charge of the company. The Bill incorporates the amendments listed in the Ordinance promulgated on November 23, 2017 barring the following changes:

- a. The ineligible persons having an account classified as non-performing assets (NPAs) shall be eligible to submit a resolution plan if they make payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan.
- b. A scheduled bank, an asset reconstruction company (ARC) registered with RBI and an Alternate Investment Fund (AIF) registered with SEBI are excluded from the definition of 'connected persons' in relation to Explanation (iii) of clause (j) of Section 29A (Persons not eligible to be resolution applicant) of Insolvency and Bankruptcy Code, 2016.

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- c. The committee of creditors shall approve the resolution plan by a vote of not less than 75% of voting share of the financial creditors after considering the feasibility and viability of the resolution plan in addition to such requirements as may be specified by the Board, before according its approval. However, committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (refer to update dated November 23, 2017 below), where the resolution applicant is ineligible under Section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it.

*–[Ministry of Corporate Affairs, 18<sup>th</sup> January, 2018 (MCA)]*

## 2) AN APPLICATION UNDER INSOLVENCY AND BANKRUPTCY CODE MAY BE MADE EVEN IN CASES WHERE A WINDING-UP PETITION HAS BEEN ADMITTED BY A COMPANY COURT

The issue which arose before the High Court in the case was whether it (or any Company Court for that matter) has jurisdiction to stay proceedings filed by a corporate debtor before the NCLT, even though a previously instituted company petition was admitted, but where a provisional liquidator had not been appointed.

In its judgment, the Court held that the order of admission or the order of appointment of provisional liquidator, will not create any bar on filing of petition and passing of orders by NCLT as the Order of admission is merely commencement of proceedings and not final order of winding up which is passed under Section 481 of the Companies Act, 1956. Till the company is ordered to be wound up

i.e., the final order is passed, NCLT can entertain a petition or an application.

Affirming the supremacy of the IBC, the court further held that, winding up petitions retained by the High Court are being decided under the Companies Act, 1956 only as a transitional provision. Furthermore, this transitional provision cannot in any way affect the remedies available to a person under IBC vis-à-vis the company against whom a petition is filed and retained in the High Court, as the same would amount to treating IBC as if it did not exist on the statute book and would deprive persons of the benefit of the new legislation. But even in such a case, there is no express or implied bar from other creditors of such company or the corporate debtor from filing fresh proceedings under IBC. –[Jotun India Private Limited v. PSL Limited, 5<sup>th</sup> January, 2018, (Bombay High Court)]

## 3) NEW WEB-SERVICE LAUNCHED BY MCA AND

To improve ease of doing business, MCA has launched new web service Reserve Unique Name (RUN) for reserving 'name of proposed company' and for changing name of existing company w.e.f. 26th January 2018. Accordingly, it has amended the following Rules:

I. [Companies \(Incorporation\) Amendment Rules, 2018](#) w.e.f. January 26, 2018

- Rule 9 regarding Reservation of name has been substituted to provide that an application for reservation of name shall be made through the web service available at [www.mca.gov.in](http://www.mca.gov.in) by using RUN (Reserve Unique Name) along with prescribed fee which may either be approved or rejected by the Registrar, Central Registration Centre. Before the introduction of RUN web-form, application for reservation of



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name was to be made in Form INC-1 with up to 6 choices of name. Further, to apply for reservation of company name, a minimum of 2 Director Identification Numbers and 1 Digital Signature was required.

- In Rule 10 reference to INC-7 has been omitted.
- Rule 12 regarding application for incorporation of companies has been substituted to provide that an application for registration of a company shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form No.INC-32 (SPiCe) along with the prescribed fee. In case pursuing of any of the objects of a company requires registration or approval from sectoral regulators such as the RBI, the SEBI, registration or approval, from such regulator shall be obtained by the proposed company before pursuing such objects. Also a declaration in this behalf shall be submitted at the stage of incorporation of the company.
- A new proviso has been added to sub-rule 1 of Rule 38 whereby for incorporation of a company having more than seven subscribers or where any of the subscriber to the MOA/AOA is signing at a place outside India, MOA/AOA shall be filed with INC-32 (SPiCe) in the respective formats as specified in Table A to J in Schedule I without filing form INC-33 and INC-34.
- A new proviso has been added to sub-rule 2 of Rule 38 providing that in case of companies incorporated, with effect from the **26th day of January, 2018**, with a nominal capital of less than or equal to rupees ten lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC-32 (SPiCe) shall not be applicable.
- Form INC-1 has been replaced by Reserve Unique Name Form while Form INC – 7 has

been omitted. Also, Forms SPiCe(INC-32), INC-3, INC-12, INC-22, INC-24 have been substituted while forms SPiCe MoA(INC-33) and SPiCe AoA(INC-34) have been revised to replace reference to Form INC – 1 with RUN

## II. [Companies \(Registration Offices and Fees\) Amendment Rules, 2018](#) w.e.f. January 26, 2018

- In Rule 10 (3) regarding rectification of the defects or incompleteness or for re-submission of any application or e-form or documents, a proviso has been inserted stating that no re-submission of the application is allowed in the case of reservation of a name through web service – RUN.
- In the Annexure, in item I (Fee for filings etc. under Section 403 of the Companies Act, 2013), for the entire Table of Fees to be paid to the Registrar has been substituted. This table prescribed for small companies and one person companies shall be applicable provided the said company shall remain as said class of company for a period not less than one year from its incorporation.
- The table of fees shall be applicable for any such intimation to be furnished to the Registrar or any other officer or authority under Section 159 of the Act, filing of notice of appointment of auditors or Secretarial Auditor or Cost Auditor. The table of fee and calculation of fee as applicable for increase in authorised capital shall be applicable for revised capital in accordance with S. 233(11) of the Companies Act, 2013 (after setting off fee paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company).
- The table of fee shall also be applicable for filing revised financial statement or board report under Section 130 and 131 of the Companies Act, 2013.

## SECURITIES

### III. Companies (Appointment and Qualification of Directors) Amendment Rules, 2018 – effective upon publication in the gazette

- In Rule 9 the marginal heading has been substituted with 'Application for allotment of Director Identification Number before appointment in an existing company.'
- Rule 9(1) has been substituted to provide that every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the Central Government for allotment of a Director Identification Number (DIN) along with prescribed fees. In case of proposed directors not having approved DIN, the particulars of maximum three directors shall be mentioned in Form No.INC-32 (SPICe) and DIN may be allotted to maximum three proposed directors through Form INC-32 (SPICe).
- In Rule 9(3)(a) new sub-clause (iiia) inserted providing that an applicant along with Form DIR-3 shall also submit board resolution proposing his appointment as director in an existing company.
- Rule 9(3)(b) has been substituted to provide that Form DIR-3 shall be signed and submitted electronically by the applicant using his/her own Digital signature certificate and shall be verified digitally by a company secretary in full time employment of the company or by the managing director or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company.

*-[Ministry of Corporate Affairs, 26<sup>th</sup> January, 2018 (MCA)]*

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### 1) **ONLINE FILING SYSTEM FOR OFFER DOCUMENTS, SCHEMES OF ARRANGEMENTS, TAKEOVERS AND BUY BACKS**

In order to facilitate ease of operations in terms of seeking observations on draft offer documents, draft letter of offers and draft schemes of arrangement, SEBI has introduced an online system for filings related to public issues, rights issues, institutional placement programme, schemes of arrangement, takeovers and buy backs. All Merchant Bankers that are required to file the offer documents and related documents in physical form with SEBI under the provisions of aforesaid Regulations shall simultaneously file the same online through SEBI Intermediary Portal at <https://siportal.sebi.gov.in>. Similarly, Recognized stock exchanges filing the draft scheme of arrangement and related documents in physical form with shall simultaneously file the same online through SEBI Intermediary Portal.

The simultaneous filing of documents as mentioned above i.e., physical and online shall start from February 1, 2018 and continue till March 31, 2018. Thereafter, from April 1, 2018 physical filing of the aforesaid documents shall be discontinued and only online filing will be accepted. –

*[SEBI/HO/CFD/DIL1/CIR/P/2018/011, 19<sup>th</sup> January, 2018 (SEBI)]*

### 2) **TIMELINES FOR COMPLIANCE WITH VARIOUS PROVISIONS OF SECURITIES LAWS BY COMMODITY DERIVATIVES EXCHANGES**

SEBI vide its Circular dated November 26, 2015, has prescribed Timelines for compliance with various provisions of securities laws by commodity derivatives exchanges and had asked all national commodity derivatives exchanges to constitute an oversight committee for 'product design', chaired by

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a Public Interest Director, within three months. However, SEBI has observed that the commodity derivatives exchanges have been adopting varied approach in complying with the above requirement both in the constitution and the functioning of such oversight committees. In order to bring uniformity with respect to the role of the oversight committee on product design, and after having discussions with commodity derivatives exchanges on this issue, it is decided that the functions of the oversight committee for 'Product Design' in all the commodity exchanges shall be:

- To oversee matters related to product design such as introduction of new products/contracts, modifications of existing product/contract designs etc. and review the design of the already approved and running contracts.
- To oversee SEBI inspection observation on Product Design related issues.
- To estimate the adequacy of resources dedicated to Product design related function.

The recognized stock exchanges operating in the IFSC shall also be required to constitute an oversight committee for product design and discharge their functions as enumerated above.-  
[SEBI/HO/CDMRD/DMP/CIR/P/2018/12,  
22<sup>nd</sup> January, 2018, (SEBI)]

### 3) **PENALTY IMPOSED ON PROMOTER/DIRECTOR FOR RE- ACQUIRING SHARES INITIALLY TRANSFERRED, WITHOUT COMPLYING WITH SEBI REGULATIONS, WHICH IS REGARDLESS OF ANY ASSUMPTION OF FORGERY IN THE EVENT OF INTIAL TRANSFER BY SUCH PROMOTER//DIRECTOR**

The Appellant has filed an appeal against the order of the Adjudicating Officer (AO) who had imposed a penalty of rupees one crore on the Appellant for alleged breach of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations), SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (SAST Regulations) and SEBI (Prevention of Insider Trading) Regulations, 1992 (PIT Regulations).

The Appellant was the promoter and director of Empower Industries India Limited (EIIL) and held 80% of the total shareholding of EIIL. The Appellant handed over huge percentage of shares in physical form along with share transfer forms to a finance broker to arrange personal loan. However, no loan was made and shares were transferred further to the family members of the finance broker. Further, a Board meeting was also announced which was subsequently cancelled and during the investigation period the share price also artificially increased. Thereafter, since no loan was given, the shares were returned back.

Appellant's argument was that the shares were transferred on the basis of false and fabricated share transfer forms. Therefore, any manipulation in the price or volume of the shares or any circular movement of the shares by any third parties cannot be attributed to the Appellant.

The Tribunal found no merit in the argument. It noted that the real question that arises from the appeal is whether the AO could have found the Appellant guilty of violating SEBI Act and the regulation framed thereunder, without considering the plea of the Appellant that the shares were transferred by forging his signature. In this regard, it was observed, that even assuming that the shares of EIIL belonging to the Appellant were transferred by forging the signature of the Appellant, that fact had no bearing on case, because, penalty was imposed on the Appellant for acquiring shares of EIIL from



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third parties without complying with the provisions contained in the regulations framed under the SEBI Act and not on account of transferring the shares of EIL belonging to the Appellant. Regulation 10 & 11(1) of the Takeover Regulations mandatorily requires a person acquiring 15% or more shares to make public announcement/ open offer.

The Tribunal also noted that EIL announced a Board meeting which was subsequently cancelled and on the basis of the corporate announcement the share price increased. Thus, the Tribunal held that a misleading corporate announcement was made to lure the investors to trade in the shares of EIL and during the investigation period, the Appellant in connivance with the finance broker manipulated and conspired. This is clear from the fact that the finance broker along with his family members traded 49% of the shareholding of EIL (during the investigation period and during the period of corporate announcement) which resulted in increase in the price and volume of EIL. Thereby, the appeal was dismissed and penalty was sustained. *Devang D. Master v. SEBI, 5<sup>th</sup> January, 2018, (SAT)*

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## COMPETITION

### 1) NAIR COAL SERVICES, KARAM CHAND THAPAR GROUP AND NARESH KUMAR AND COMPANY, FOUND GUILTY OF ACTING IN COLLUSIVE AND CONCERTED MANNER

Nair Coal Services Pvt. Ltd., Karam Chand Thapar & Bros (CS) Ltd. and Naresh Kumar & Co. Pvt. Ltd. have been found by the Competition Commission of India (CCI), to be in contravention of the provisions of Section 3(1) read with Section 3(3)(c) and Section 3(3)(d) of the Competition Act, 2002 for acting in a collusive and concerted manner which eliminated and lessened the competition besides manipulating the bidding process in respect

of the tenders floated by Maharashtra State Power Generation Co. Ltd. (MAHAGENCO) for award of contract of coal liasoning work for its various thermal power stations. The three firms quoted identical basic rates in respect of the tender floated by MAHAGENCO in 2005 and also quoted rates in a manner that each of them could get the chosen thermal power stations. The three firms have entered into an arrangement in respect of the tenders floated during the period 2005-13 whereby they not only allocated the market but also rigged the bids.

CCI observed that the case fell in the category of hard core cartels as the parties reached an agreement to submit collusive tenders and to divide the markets which warranted the matter to be dealt with utmost severity. Accordingly, CCI invoked the stringent provision of the law which enables it to impose a higher penalty in case of agreements entered into by cartels. Hence, a penalty at the rate of 2 times of the total profits earned from provision of coal liasoning services to all power generators for continuance of the cartel for 2010-11 to 2012-13 years was imposed upon the parties. Resultantly, CCI has imposed a penalty of Rs. 7.16 crore, Rs. 111.60 crore and Rs. 16.92 crore upon NCSL, KCT and NKC for the anti-competitive conduct. Besides, a cease and desist order was also issued against the above companies. – *[Surendra Prasad v. Maharashtra State Power Generation Company Limited & Others, 10<sup>th</sup> January, 2018 (CCI)]*

### 2) CCI INVITES COMMENTS FROM PUBLIC IN RESPECT OF PROPOSED COMBINATION BETWEEN BAYER AND MONSANTO

Pursuant to the notice filed by Bayer Aktiengesellschaft (Bayer) in relation to acquisition of the entire shareholding of Monsanto Company (Monsanto), CCI has invited comments/objections/suggestions in writing, from any person(s) adversely

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affected or likely to be affected by the proposed combination, as the Commission is of the *prima facie* opinion that the proposed combination is likely to have an appreciable adverse effect on competition and, accordingly, has directed Bayer, in terms of Section 29(2) of the Competition Act, 2002, to publish details of the combination for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.

Bayer, the Acquirer, is a German stock corporation, and is a life sciences company with competencies in the areas of health care and agriculture. The activities of Bayer are carried out in three main divisions *viz.* pharmaceuticals, consumer health, and crop sciences. Monsanto is a global provider of agricultural products for farmers, *viz.* seeds, biotechnology traits, and herbicides. – *[Press Release, 5<sup>th</sup> January, 2018, (CCI)]*

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## INDIRECT TAXES

### a. CUSTOMS

#### 1) DHAMRA AND DIGHI PORTS ADDED TO THE EXPORT PROMOTION (EP) SCHEMES

Dhamra and Dighi Ports have been included in the list of ports mentioned in Export Promotion (EP) Schemes Notifications. – *[Notification No. 3/2018 – Customs, dated 12th January, 2018]*

#### 2) TEMPORARY IMPORT OF PROFESSIONAL EQUIPMENT AND SPORTS GOODS UNDER A.T.A. CARNET EXEMPTED FROM DUTY

The CBEC has exempted the goods (Professional Equipment and Sports Goods under A.T.A. Carnet), when imported into India, from the whole of the duty of customs and from the whole of the integrated tax. – *[Notification No. 4/2018 – Customs, dated 18th January, 2018]*

#### 3) CHANGES IN THE DRAWBACK RATES OF CERTAIN EXPORT GOODS

The GoI *vide* its Notification No. 89/2017- Customs dated 21.9.2017 had notified the All Industry Rates (AIRs) of Duty Drawback effective from 1.10.2017. As a step towards more efficient Input Tax Neutralization on the exports, after considering various representations from the trade and industry, the Government of India has enhanced the All Industry Rates of duty drawback for 102 tariff items. The Export Items mainly include Marine and Seafood Products, Automobile Tyres and Bicycle Tyres/Tubes, Leather and Articles of Leather, Yarn and Fabric of Wool, Glass Handicrafts and Bicycles, etc. The Enhanced Rates of Duty Drawback will be effective from 25.1.2018. – *[Notification No. 8/ 2018 - Customs (N.T.), dated 22nd January, 2018]*

A Circular No. 4/2018-Customs, dated 24th January, 2018 has also been issued in this regard.

#### 4) ADD ON TOLUENE DI-ISOCYANATE (TDI)

Definitive anti-dumping duty imposed on imports of "Toluene Di-Isocyanate (TDI)" originating in or exported from China PR, Japan and Korea RP for a period of five years (unless revoked, superseded or amended earlier). – *[Notification No.3/2018-Customs (ADD), dated 23rd January, 2018]*



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## 5) ALL THE CENTRES OF STATE BANK OF INDIA, ALL PUBLIC SECTOR BANKS, ETC. ALLOWED FOR SALE OF SEIZED /CONFISCATED GOLD

The CBEC, in addition to the centre(s), viz., Mumbai, New Delhi, Calcutta, Chennai, Ahmedabad, Jaipur, Cochin, Bangalore and Shillong, has allowed the sale of seized /confiscated gold found ripe for disposal at all the centres of State Bank of India, all Public Sector Banks (approved by RBI to import and sell gold), MMTC Ltd. and STC Ltd which also have authorisation from their competent authorities / head offices to dispose/sell the seized/confiscated gold handed over to them. Further all the other conditions prescribed in the Ministry's letter vide F.No.711/164/93-CUS (AS) dated 08.08.2005 shall be followed. – *[Circular No. 01/2018 – Customs, dated 11th January, 2018]*

### b. GST

## 1) EFFECTIVE RATE OF TAX UNDER COMPOSITION SCHEME FOR MANUFACTURERS AND OTHER SUPPLIERS PRESCRIBED

The CBEC has amended Notification No. 8/2017 - Central Tax so as to prescribe effective rate of tax under composition scheme for manufacturers and other suppliers. – *[Notification No. 1/2018- Central Tax, dated 1st January, 2018]*

## 2) CENTRAL GOODS AND SERVICES TAX (AMENDMENT) RULES, 2018

The CBEC has notified the Central Goods and Services Tax (Amendment) Rules, 2018 to further amend the Central Goods and Services Tax Rules, 2017. Some of the key amendments are:

- Extension in the time limit for submission of Form GST ITC-03 to 180 days (previously 90 days) from the date of composition levy.
- For registrants under composition levy, the rate of tax prescribed shall be applied to the State/Union territory turnover.
- Persons having registered voluntarily under GST would be eligible to make an application for cancellation of registration at any time. The previous time limit of one year has been removed.
- Extension in the time limit for cancellation of GST registration (*vide* Form REG-29) has been extended to 31 March 2018 (previously 31 December 2017) for those registrants who are not required to be registered under GST.
- Valuation Rules in case of supply of lottery, betting, gambling and horse racing have been introduced vide Rule no. 31A under CGST Rules, 2017.
- Clarification on the manner of determination and reversal of input tax credit in respect of capital goods has been prescribed.
- Entities having the same PAN and registered in the same state as an input service distributor can issue invoice/credit note/debit note to transfer the credit of common input services.
- Transporters to carry a copy of tax invoice/bill of supply during transportation in case of non-applicability of e-Way Bill to such persons.

- About filing refund of integrated tax paid on exports-
  - Shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India. The same is applicable only to exporter of goods.
  - Similarly, export invoices processed by customs shall pertain to export of goods.
- Commencement of generation of e-Way Bills for the movement of goods on consignment has been brought into effect from 1 February 2018. – **[Notification No. 3/2018 – Central Tax, dated 23rd January, 2018]**

### 3) REDUCTION OF LATE FEE IN CASE OF DELAYED FILING OF VARIOUS FORMS

- GSTR-1: NIL Return – INR 20 Per day (CGST INR 10 + SGST INR 10); Others – INR 50 Per day (CGST INR 25 + SGST INR 25). Earlier INR 200 Per day (CGST INR 100 + SGST INR 100). – **[Notification No. 4/2018 – Central Tax, dated 23rd January, 2018]**
- GSTR-5: NIL Return – INR 20 Per day (CGST INR 10 + SGST INR 10); Others – INR 50 Per day (CGST INR 25 + SGST INR 25). Earlier INR 200 Per day (CGST INR 100 + SGST INR 100). – **[Notification No. 5/2018 – Central Tax, dated 23rd January, 2018]**
- GSTR-5A: NIL Return – INR 20 Per day (CGST INR 10 + SGST INR 10); Others – INR 50 Per day (CGST INR 25 + SGST INR 25). Earlier INR 200 Per day

(CGST INR 100 + SGST INR 100). – **[Notification No. 6/2018 – Central Tax, dated 23rd January, 2018]**

- GSTR-6: INR 50 Per day (CGST INR 25 + SGST INR 25). Earlier INR 200 Per day (CGST INR 100 + SGST INR 100). – **[Notification No. 7/2018 – Central Tax, dated 23rd January, 2018]**

### 4) EXTENSION OF DUE DATE FOR FILING THE RETURN IN FORM GSTR-6

The CBEC has extended the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 under Section 39(4) of the Central Goods and Services Tax Act, 2017 read with Rule 65 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2017 to February, 2018, till March 31, 2018. – **[Notification No. 8/2018 – Central Tax, dated 23rd January, 2018]**

### 5) NOTIFICATION OF E-WAY BILL WEBSITE

The CBEC has amended Notification No. 4/2017-Central Tax dated 19.06.2017 to notify the electronic portal for furnishing electronic e-Way Bill - [www.ewaybillgst.gov.in](http://www.ewaybillgst.gov.in). – **[Notification No. 9/2018 – Central Tax, dated 23rd January, 2018]**

### 6) CGST, IGST, UTGST RATES OF 53 SERVICES REDUCED

The CBEC has amended Notification No. 11/2017- Central Tax (Rate) so as to notify CGST rates of various services as recommended by Goods and Services Tax Council in its 25th meeting held on 18.01.2018. These rates have come into effect from 25th January 2018. –

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***[Notification No. 1/2018-Central Tax (Rate), dated 25th January, 2018]***

Similar notifications have been issued under Integrated Goods and Services Tax Act and Union Territory Goods and Services Tax Act. – ***[Notification No. 1/2018-Integrated Tax (Rate), dated 25th January, 2018 & Notification No. 1/2018-Union Territory Tax (Rate), dated 25th January, 2018]***

## **7) NOTIFIED SERVICES EXEMPTED FROM CGST, IGST, UTGST RATES**

Notification No. 12/2017- Central Tax (Rate) amended so as to exempt certain services as recommended by Goods and Services Tax Council in its 25th meeting held on 18.01.2018 like Providing information under RTI Act, 2005 from GST, legal services provided to Government, Local Authority, Governmental Authority and Government Entity, Transportation of goods from India to a place outside India by air or sea until 30th September 2018, Life Insurance to personnel of Coast Guard, etc. – ***[Notification No. 2/2018-Central Tax (Rate), dated 25th January, 2018]***

Similar notifications have been issued under Integrated Goods and Services Tax Act and Union Territory Goods and Services Tax Act. – ***[Notification No. 2/2018-Integrated Tax (Rate), dated 25th January, 2018 & Notification No. 2/2018-Union Territory Tax (Rate), dated 25th January, 2018]***

## **8) SERVICES SUPPLIED BY THE GOVERNMENT BY WAY OF RENTING OF IMMOVABLE PROPERTY TO A REGISTERED PERSON TO BE TAXED UNDER RCM**

The CBEC amended Notification No. 13/2017-Central Tax (Rate) so as to specify services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a registered person under CGST Act, 2017 to be taxed under Reverse Charge Mechanism (RCM). – ***[Notification No. 3/2018- Central Tax (Rate), dated 25th January, 2018]***

Similar notifications have been issued under Integrated Goods and Services Tax Act and Union Territory Goods and Services Tax Act. – ***[Notification No. 3/2018-Integrated Tax (Rate), dated 25th January, 2018 & Notification No. 3/2018-Union Territory Tax (Rate), dated 25th January, 2018]***

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## **INTELLECTUAL PROPERTY RIGHTS**

### **1) BOMBAY HC ALLOWED A WRIT PETITION CHALLENGING DIRECTIONS ISSUED BY THE REGISTRAR OF TRADE MARKS WHEREBY THE PETITIONER'S TRADEMARK WAS REMOVED FROM THE REGISTER OR IS NOT BEING PERMITTED TO BE RESTORED OR RENEWED**

The petitioner through the present writ petition prayed for issuance of Writ of Prohibition or any other Writ or direction in the nature of prohibition prohibiting the respondent No.1 or his subordinate officers from removing the trademark 'KLITOLIN' under No.379894 from the records of the register of trademarks



maintained by respondent No.1. The petitioner is also praying for quashment of the directions issued by the respondent No.1 whereby the petitioner's trademark was removed from the register or is not being permitted to be restored or renewed. The case of the Petitioner was that it was getting its trademark renewed from time to time from 21.08.1988 to 21.08.2009. The trademark was due for renewal on 21.08.2009. However, inadvertently, petitioner did not tender application for renewal. It is the contention of the petitioner that the respondent No.1 also failed to issue the requisite mandatory notice in Form O-3 to the registered proprietor under Section 25(3) of the Trade Marks Act, 1999.

The Bombay HC in view of a division bench Judgment in the case of Cipla Limited Vs. Registrar of Trade Marks and another, allowed the writ petition of the Petitioner observing that the respondent No.1 was mandatorily required to issue a notice in Form O-3. – *[Kleenage Products (India) Private Limited v. The Registrar of Trade Marks and Anr., dated 17th January, 2018 (Bombay HC)]*

## 2) “AYUR”- A GENERIC MARK: BURDEN OF PROOF ON THE PERSON CLAIMING DISTINCTNESS IN FAVOUR OF A GENERIC OR DESCRIPTIVE MARK IS MUCH HIGHER: DELHI HC

The plaintiff in the present case claims to be the registered proprietor of the mark "AYUR" in various classes. The Court observed that the protection of a trademark is dependent on whether the mark adopted is generic, descriptive, suggestive, arbitrary or fanciful. The marks, which are generic, descriptive or suggestive have lower level of legal protectability and the marks, which are arbitrary or fanciful, have higher level of legal protectability. If a person adopts a mark,

which is generic or descriptive in nature, he runs the risk of the mark having a lower level of legal protectability. In the present case, plaintiff had adopted the word "AYUR" to describe its products. The word "AYUR" as noticed above is a word derived from the Sanskrit Religious Texts of the Vedic Puranas. The word "AYUR" is neither an arbitrary nor a fanciful mark having a higher level of legal protectability. The Plaintiff thus cannot *prima facie* claim any proprietorship on the word 'AYUR' per se. The Court further observed that the plaintiff having adopted a mark, which is generic or descriptive, cannot claim legal protectability for the mere asking. It is not that a generic or descriptive mark will never have any legal protectability but the burden of proof on the person claiming distinctness in favour of a generic or descriptive mark is much higher. The plaintiff not only would have to show that the mark adopted by the plaintiff, because of its extensive use has acquired distinctness and is identifiable only with the goods of the plaintiff but also that the adoption of the mark by the defendants is identical and deceptively similar to the mark of the plaintiff. – *[M/S Three-N-Products Pvt. Ltd. v. M/S Kairali Exports And Anr., dated 3rd January, 2018 (Delhi HC)]*

## 3) ANTICIPATORY BAIL DENIED BY THE MADHYA PRADESH HC AS DUPLICATE WIRES OF FINOLEX COMPANY WERE FOUND IN THE SHOP OF THE APPLICANT

The applicant filed the present application under Section 438 of Cr.P.C. for grant of anticipatory bail. The applicant apprehends his arrest in connection with Crime No.274/2017 registered by Police Station Sabalgarh, District Morena Pr for offence punishable under Sections 483, 486

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of IPC, Sections 63, 65 of the Copyright Act and Sections 103, 104 and 107 of the Trademark Act. It is submitted by the counsel for the applicant that according to the prosecution case, the applicant was found in possession of duplicate electricity wires of Finolex Company. It is submitted by the counsel for the applicant that no offence under Sections 63 and 65 of the Copyright Act is made out and the offence under Sections 103, 104 and 107 of the Trademark Act is bailable. Per contra, it is submitted by the counsel for the State that the artistic work in the form of a diagram of mono "Finolex Company" has been registered under the Copyright Act and Section 13 of the Copyright Act would apply in case if there is an infringement of the artistic work. The artistic work has been defined under Section 2 (c) of the Copyright Act and, therefore, it cannot be said that no offence under Sections 63 and 65 of the Copyright Act has been made out.

Considering the allegations made against the applicant as well as the fact that the diagram in the form of mono of the "Finolex Company" has been registered under the Copyright Act, which would fall within the definition of artistic work as defined under Section 2 (c) of the Copyright Act, and since duplicate wires of Finolex Company have been found in the shop of the applicant, the Court dismissed the present application for grant of anticipatory bail. – *[Mukesh Garg vs The State Of Madhya Pradesh, dated 15th January, 2018 (Madhya Pradesh HC)]*

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## CONSUMER

### 1) NCDRC UPHOLDS ORDER DIRECTING COLLEGE TO REFUND THE ENTIRE FEES AND PAY PENALTY OF RUPEES FIFTY THOUSAND AS THE INSTITUTE WAS OPERATING WITHOUT AFFILIATION FROM THE GOVERNING BODY

Complainant Anil Kumar Kumawat, a student of the institute, had alleged that the institute was operating in the absence of an affiliation to the Pharmacy Council of India, which led to the disqualification of his application for a job.

Observing that in such instances, most students are kept in the dark about the legality of the courses, the national consumer forum said that, it is quite often observed in our country that some of the professional institutes run by private organizations allure the students by misleading advertisements and promises and collect huge fees or donations.

The Complainant alleged that despite being placed with a pharmaceutical company in Mumbai, he lost his job on the grounds of having produced a forged degree. Holding the institute guilty of deficiency in services, the National Consumer Disputes Redressal forum upheld the order passed by the district forum in Rajasthan and directed the Institute to refund the fees along with penalty of Rs. 50,000. –*[Goyanka College of Pharmacy & Anr. v. Anil Kumar Kumawat, 11<sup>th</sup> January, 2018, (NCDRC)]*

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## ENVIRONMENT

### 1. ENSURE FLATS IN LAKE CATCHMENT AREA HAVE SEWAGE PLANTS: NGT

The NGT ordered the Karnataka State Pollution Control Board (KSPCB) to issue a directive to all 99 apartment complexes discharging sewage into Bellandur and Varthur lakes to install modular sewage treatment plants in the available space without posing a threat to structural safety. – *[The Times of India, dated 30th January, 2018]*

## 2. DON'T ALLOW NEW POWER PLANTS IF THEY VIOLATE MOEF NORMS: NGT

The NGT has directed the Ministry of Environment and Forests (MoEF) not to grant clearance to any new thermal power plant till they comply with the standards set by it, after a plea alleged that many of them were flouting norms and causing pollution. – *[The Times of India, dated 24th January, 2018]*

## 3. NGT RAISES PENALTY ON BUILDER TO RS 190 CRORE FOR FLOUTING GREEN NORMS

The NGT modified its judgement dated September 27, 2016 to enhance the environmental compensation cost imposed on Goel Ganga Developers India Private Limited from Rs. 100 crore to Rs. 190 crore in a review proceeding relating to illegal constructions at an integrated housing project at Vadgaon Budruk off Sinhagad road. The developer has to pay the money within a month towards restoration and restitution of environment damage, besides Rs. 5 crore for contravening the mandatory provisions of several environmental laws and for exceeding the limit of the available environment clearance without taking the consent of the pollution regulator. – *[The Times of India, dated 9th January, 2018]*

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