MONTHLY NEWSLETTER

Lexport
Interpreting India for commerce

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RBI/FEMA

1) RURAL BANKS ALLOWED TO ISSUE PERPETUAL DEBT TO AUGMENT CAPITAL

RBI has allowed regional rural banks to issue Perpetual Debt Instruments eligible for inclusion as tier 1 capital, with a view to providing these banks with additional options for augmenting regulatory capital funds. This will help the regional rural banks to maintain the minimum prescribed Capital to Risk-weighted Assets Ratio (CRAR), besides meeting the increasing business requirements. The terms and conditions for issuance of Perpetual Debt Instruments have been provided in the Annex to the Circular. – ***[DOR.RRB.No.21/31.01.001/2019-20, dated 01st November, 2019]***

2) REVISION OF LIQUIDITY RISK MANAGEMENT GUIDELINES FOR NBFCS

RBI has revised the extant guidelines on liquidity risk management for non-banking finance companies (NBFCs) in order to strengthen and raise the standard of asset liability management (ALM) framework applicable to them. All non-deposit taking NBFCs with asset size of Rs. 100 crore and above, systemically important core investment companies and all deposit taking NBFCs irrespective of their asset size will segregate the 1-30 day time bucket in the statement of structural liquidity into granular buckets of 1-7 days, 8-14 days, and 15-30 days.

The net cumulative negative mismatches in the maturity buckets of 1-7 days, 8-14 days, and 15-30 days shall not exceed 10 per cent, 10 per cent and 20 per cent of the cumulative cash outflows in the respective time buckets. The NBFCs should adopt liquidity risk monitoring tools/metrics in order to capture strains in liquidity position, if any. – ***[DOR.NBFC (PD) CC. No.102/03.10.001/2019-20, dated 04th November, 2019]***

3) GUIDELINES ON COMPENSATION OF WHOLE TIME DIRECTORS/ CHIEF EXECUTIVE OFFICERS/ MATERIAL RISK TAKERS AND CONTROL FUNCTION STAFF

RBI had issued the Guidelines on compensation *vide* Circular DBOD No.BC.72/29.67.001/2011-12 dated January 13, 2012, applicable to Whole Time Directors / Chief Executive Officers / Risk Takers and Control Function Staff, etc. for implementation by private sector and foreign banks from the financial year 2012-13. Now, with the objective to better align these Guidelines with FSB Principles and Implementation Standards for Sound Compensation Practices and the

Supplementary Guidance issued by FSB in March 2018 on the use of compensation tools to address misconduct risk. Consequently, a Discussion Paper on the proposed Guidelines was published on the RBI website and comments were invited from banks and other interested parties by March 31, 2019. The final Guidelines, taking into consideration the responses received, have been provided in the Annex to the Circular. These Guidelines will be applicable for pay cycles beginning from/after April 01, 2020. – ***[DOR.Appt.BC.No.23/29.67.001/2019-20, dated 04th November, 2019]***

4) REVISION OF HOUSEHOLD INCOME LIMITS FOR BORROWERS OF NBFC-MFIS

Taking into consideration the important role played by MFIs in delivering credit to those in the bottom of the economic pyramid and to enable them play their assigned role in a growing economy, RBI has decided to increase the household income limits for borrowers of NBFC-MFIs from the current level of Rs.1,00,000 for rural areas and Rs.1,60,000 for urban/semi urban areas to Rs.1,25,000 and Rs.2,00,000 respectively. Further, the limit on total indebtedness of the borrower has been increased from Rs.1,00,000 to Rs.1,25,000. In light of the revision to the limit on total indebtedness, the limits on disbursal of loans have been raised from Rs.60,000 for the first cycle and Rs.1,00,000 for the subsequent cycles to Rs.75,000 and Rs.1,25,000 respectively. – ***[DOR.NBFC (PD) CC. No.103/22.10.038/2019-20, dated 08th November, 2019]***

5) TECHNICAL SPECIFICATIONS FOR ALL PARTICIPANTS OF THE ACCOUNT AGGREGATOR (AA) ECOSYSTEM

The NBFC-AA consolidates financial information of a customer held with different financial entities, spread across financial sector regulators adopting different IT systems and interfaces. In order to ensure that such movement of data is secured, duly authorised, smooth and seamless, RBI has put in place a set of core technical specifications for the participants of the AA ecosystem. Reserve Bank Information Technology Private Limited (ReBIT), has framed these specifications and published the same on its website (www.rebit.org.in). – ***[DOR NBFC (PD) CC.No.104/03.10.001/2019-20, dated 08th November, 2019]***

6) WITHDRAWAL OF EXEMPTIONS GRANTED TO HOUSING FINANCE INSTITUTIONS

Housing Finance Institutions as defined under Clause (d) of Section 2 of the National Housing Bank Act, 1987 are currently exempt from the provisions of Chapter IIIB of Reserve Bank of India Act, 1934. On a review, RBI has decided to withdraw these exemptions and make the provisions of Chapter IIIB except Section 45-IA of Reserve Bank of India Act, 1934, applicable to them. Following the withdrawal of these exemptions, RBI can, on being satisfied that the HFC is unable to pay its debt or if its continuance is detrimental to public interest, order its winding it up. It will be considered that the HFC is unable to pay its debt if it fails to meet within five working days any lawful demand. – ***[DOR NBFC (PD) CC.No.105/03.10.136/2019-20, dated 11th November, 2019]***

7) REVIEW OF POLICY FOR NON-RESIDENT RUPEE ACCOUNTS

As per the extant guidelines, any person resident outside India, having a business interest in India, may open a Special Non-Resident Rupee Account (SNRR account) with an authorised dealer for the purpose of putting through bona fide transactions in rupees. With a view to promote the usage of INR products by persons resident outside India, it has been decided, to expand the scope of SNRR Account by permitting person resident outside India to open such account for:

i. External Commercial Borrowings in INR;
ii. Trade Credits in INR;
iii. Trade (Export/ Import) Invoicing in INR; and
iv. Business related transactions outside International Financial Service Centre (IFSC) by IFSC units at GIFT city like administrative expenses in INR outside IFSC, INR amount from sale of scrap, government incentives in INR, etc. The account will be maintained with bank in India (outside IFSC).

Further, it has been decided to rationalise certain other provisions for operation of the SNRR Account, as under:

i. Remove the restriction on the tenure of the SNRR account opened for the purposes given at paragraph 3 above as the proposed transactions are more enduring in nature.
ii. Apart from Non-Resident Ordinary (NRO) Account, permit credit of amount due/ payable to non-resident nominee from account of a deceased account holder to Non-Resident External (NRE) Account or direct remittance outside India through normal banking channels. – ***[A.P. (DIR Series) Circular No. 09, dated 22nd November, 2019]***

8) RE-EXPORT OF UNSOLD ROUGH DIAMONDS FROM SPECIAL NOTIFIED ZONE OF CUSTOMS WITHOUT EXPORT DECLARATION FORM (EDF) FORMALITY

In order to facilitate re-export of unsold rough diamonds imported on free of cost basis at SNZ, it was clarified in July 2015 that the unsold rough diamonds, when re-exported from the SNZ (being an area within the Customs) without entering the Domestic Tariff Area (DTA), do not require any EDF formality.

It was also clarified that entry of consignment containing different lots of rough diamonds into the SNZ should be accompanied by a declaration of notional value by way of an invoice and a packing list indicating the free cost nature of the consignment. Under no circumstance, entry of such rough diamonds is permitted into DTA. However, for the lot/ lots cleared at the Precious Cargo Customs Clearance Centre, Mumbai, Bill of Entry shall be filed by the buyer. AD bank may permit such import payments after being satisfied with the bona-fides of the transaction. Further, AD bank shall also maintain a record of such transactions. Now the facility is extended to the lot / lots cleared at the centres which are duly notified under the Customs Act 1962 specified by CBIC in addition to Precious Cargo Customs Clearance Centre mentioned above. – ***[A.P. (DIR Series) Circular No. 10, dated 22nd November, 2019]***

9) AMENDMENT TO REPURCHASE TRANSACTIONS (REPO) (RESERVE BANK) DIRECTIONS, 2018

With a view to regulate the financial system of the country to its advantage, the RBI has issued the

Repurchase Transactions (Repo) (Reserve Bank) Directions, 2018 (Updated as on November 28, 2019), applicable to all the persons eligible to participate or transact business in market repurchase transactions (repos) in India. – ***[FMRD.DIRD.21/14.03.038/2019-20, dated 28th November, 2019]***

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FOREIGN TRADE

1) AMENDMENT IN POLICY CONDITION OF SI. NO. 55 AND 57, CHAPTER 10 SCHEDULE – 2, ITC (HS) EXPORT POLICY, 2018

In addition to other existing policy conditions, export of Rice (Basmati and Non – Basmati) to European Union Countries will require 'Certificate of Inspection' from EIC/EIA with immediate effect. – ***[Notification No. 29/2015-2020, 4th November, 2019 (DGFT)]***

2) AMENDMENT IN POLICY CONDITION NO. 3 OF CHAPTER 88 AND INCORPORATION OF POLICY CONDITION NO. 3 IN CHAPTER 95 OF ITC (HS) 2017, SCHEDULE-I (IMPORT POLICY)

Policy Condition for Nano Category of Civil Remotely Piloted Aircraft (RPAs) is laid down in sync with the Guidelines issued by the Directorate General of Civil Aviation *vide* F.No.05-13/2014-AED Vol. IV dated 27th August, 2018 and O.M. No.R-11017/05/2017-PP dated 27/09/2019 of WPC wing of Department of Telecommunications, Ministry of Communication.

Import of Unmanned Aircraft System (UAS)/Unmanned Aerial Vehicle (UAVs)/ Remotely Piloted Aircraft (RPAs)/ drones is Restricted' requiring prior clearance of the Directorate General of Civil Aviation (DGCA) (DGCA) and import license from DGFT.

Further, import of Civil Remotely Piloted Aircraft (RPA) is governed as per the Guidelines issued by the Directorate General of Civil Aviation *vide* F.No.05-13/2014-AED Vol. IV dated 27th August, 2018.

However, Nano category (less than or equal to 250 grams) and operating below 50ft/ 15 meters above ground level requires Equipment Type Approval (ETA) from WPC Wing, Department of Telecommunications for operating in de — licensed frequency band(s)and does not require import clearance of the Directorate General of Civil Aviation (DGCA) or import license from DGFT–***[Notification No. 30/2015-2020, 8th December, 2019 (DGFT)]***

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CORPORATE

1) DELHI HC INTERPRETS SECTIONS 164(2) & 167(1) CA 2013 RE: DISQUALIFICATION OF DIRECTORS

The Delhi High Court has, in the matter of Mukut Pathak & Ors v. Union of India & Anr. and other writ petitions, given its interpretation of Sections 164(2) and 167(1) of the Companies

Act 2013 (the "Act") pertaining to the disqualification of directors. It has opined on the impugned list of 74,920 directors disqualified on account of non-filing of annual returns for a block of three consecutive years from 2014-2016 and on the lists of disqualified directors where part of the defaults were post 1 April 2014, for the block of financial years 2012-14 and financial years 2013-15. It disagrees with the judgement of the Karnataka High Court (Refer KM update below), Madras High Court and Gujarat High Court inasmuch as the said Courts have held that the defaults for the financial year ending 31 March 2014 cannot be considered for determining whether a director had incurred disqualification under Section 164(2) of the Act. The single judge of the Delhi High Court held that:

The provisions of Section 164(2) must be applied prospectively. However, such prospective operation should take into account the failure to file financial statements pertaining to the financial year ending 31st March 2014. Even though the financial year ending 31st March 2014 ended prior to Section 164 coming into force on 1st April 2014, the AGM in respect of that financial year was required to be held within six months of the end of the financial year, i.e., by 20 September 2019, annual return is required to be filed within sixty days from the AGM and financial statements are required to be filed within thirty days of the AGM. If a company failed to file its annual returns within thirty days from the holding of the AGM or from the last date for holding such meeting for the financial year 2013-14, it would be in default for the purpose of considering defaults in respect of three financial years contemplated under Section 164(2). "*Plainly, a director cannot be heard to contend that he had acquired a vested right not to be penalised for this default since it pertains to filing returns for a financial year that had closed prior to section 164 coming into force……. Merely because the returns to be filed pertain to a period prior to 1 April 2014 is of no relevance considering the default in doing so has occurred after the provisions of section 164 had become applicable……. Merely because an enactment draws on events that are antecedent to its coming into force does not render the said enactment retrospective"*

Therefore, the list of disqualified directors published on 15th September 2017 containing 74,920 individuals, on account of failure of the concerned companies to file their annual returns for FY ending 31 March 2014, 31 March 2015 and 31 March 2016 (FY 2013-14, FY 2015-16 and FY 2015-16), these directors stand disqualified with effect from 1st November 2016 to 31st October 2021.

The second list published on 3rd October 2017, containing names of 34,047 directors disqualified for defaults pertaining to FY 2012-13, FY 13-14 and FY 14-15 and the third list containing names of 37,237 directors disqualified for defaults pertaining to FY 2011-12, FY12-13 and FY 13-14 were unsustainable for the reason that their disqualification was premised on defaults committed prior to Section 164 coming into force on 1st April 2014.

The *audi alterem partem* rule or the principles of natural justice did not apply to the petitioner directors given the nature of Section 164(2), as it would have the effect of obstructing and rendering the provision inefficient. This view

was also taken by the Karnataka High Court and the Gujarat High Court.

Directors who were disqualified to act as directors on account of default under Section 164(2)(a) and (b) were also disqualified to act as directors of companies that are not in default. To argue otherwise would go against the legislative intent. A director under Section 164(2) shall not be eligible to be re-appointed as director of 'that company' or appointed in any 'other company' for a period of five years. The expression 'other company' is used to refer to all companies other than the company which has committed the defaults specified in clauses (a) and (b) of Section 164(2) and cannot be read as non-defaulting companies in which the director was not holding the office of a director at the material time. The term appointment would include 'reappointment' as well.

Directors incurring a disqualification under Section 164(2) are not required to demit their office as director in all companies by virtue of Section 167(1)(a) of the Act, prior to the amendments introduced with effect from 7 May 2018 under the Companies (Amendment) Act 2018 i.e., proviso to Section 167(1)(a) and proviso to Section 164(2). The operation of these amendments cannot be read to apply retrospectively. However, if the directors suffer any of the disqualifications under Section 164(2) on or after 7 May 2018, the clear implication of the provisos to Section 164(2) and 167(1)(a) of the Act are that they would demit their office in all companies other than the defaulting company.

The Court explained that applying the two provisions retrospectively would result in an absurd situation - If the provisions of Section 167(1)(a) are applied to disqualified directors under Section 164(2)(a) and (b), all directors of such a defaulting company would demit their office immediately on incurring the disqualification. In addition they would cease to be directors of any other company in which they are directors. Consequently, a defaulting company can never appoint a director. This could not have been the legislative intent of including Section 167 in the Act. Further, the proviso to Section 164(2) which provides that any person who is in default of 164(2) (a) or (b) would not incur disqualification for a period of six months is not clarificatory and cannot be read to apply prior to 7 May 2018. Besides, Section 167(1) provides for a punitive measure against directors of a defaulting company and such provisions cannot be inferred to apply retrospectively.

Therefore, as the plain language of Section 164(2) read with Section 167(1)(a) clearly leads to an absurd situation, the rule of literal interpretation could not be applied for interpreting Section 167(1)(a). The Bombay High Court has resolved this issue in *Kaynet Finance Limited vs Verona Capital Limited* (decided on 9 July 2019), by reading down the provisions of Section 167(1)(a) to be applicable only in cases where a director had incurred disqualification under Section 164(1) of the Act and not to 164(2) of the Act. This means that clause (a) of Section 167(1) has been read as "*he incurs any of the disqualification specified in Section 164(1)*" instead of "*he incurs any of the disqualification specified in Section 164".* The

Delhi High Court concurred with this view of the Bombay High Court.

The deactivation of the DIN of the directors is not sustainable as neither the provisions of the Companies Act nor the Rules framed thereunder stipulate cancellation or deactivation of DIN on account of a director suffering a disqualification under Section 164(2) of the Act. The conditions in which DIN may be cancelled have been specified in the Rules and it cannot cancel the same on any other ground without reference to such Rules. **– *[Mukut Pathak & Ors* v. *Union of India & Anr and other writ petitions,* (*W.P.(C) 9088/2018 &CM Appln. No.35006/2018) 4TH November 2019, (High Court of Delhi)]***

2) INSOLVENCY & LIQUIDATION PROCEEDINGS RULES FOR NBFCS/HFCS NOTIFIED

The MCA has notified Rules governing the insolvency and liquidation proceedings of "financial service providers" (FSPs) under the Insolvency & Bankruptcy Code in terms of section 227 of the Code. It has also notified Non-banking finance companies (which include housing finance companies) with asset size of Rs.500 crore or more as per last audited balance sheet, as the category of FSPs to whom the Code and Rules will apply. The Rules come into force with effect from 15 November 2019.

For the purposes of the said Rules, the expression "corporate debtor" in the Code shall mean "financial service provider" and the provisions of the Code relating to the Corporate Insolvency Resolution Process (CIRP), liquidation process and voluntary liquidation process of the corporate debtor shall apply *mutatis mutandis* to the insolvency resolution process of a FSP, subject to the following modifications:

A CIRP can be initiated against a FSP only by an application made by the appropriate regulator. The appropriate regulator for NBFCs and HFCs is the Reserve Bank. The Form for application/fees, conduct of proceedings has been provided in the said Rules.

The application will be dealt with in the same manner as an application by a financial creditor under Section 7, except that on the admission of the application, the Adjudicating Authority (AA) shall appoint the individual proposed by the appropriate regulator as the Administrator. Such an Administrator will exercise powers and functions of the insolvency professional, interim resolution professional, resolution professional or liquidator under the Code.

An interim moratorium will commence on and from the date of filing of the application till its admission or rejection. The license or registration of the NBFC/FSP shall not be suspended or cancelled during the interim moratorium and the CIRP. The provisions of sub-sections (1), (2) and (3) of Section 14 of the Code will apply during the interim moratorium.

The RBI/appropriate regulator will constitute an Advisory committee within 45 days of the insolvency commencement date which will advise the Administrator in the operation of the FSP during the CIRP.

On the approval of the resolution plan by the CoC, the Administrator shall seek 'no objection' of the appropriate regulator that it does not object to the persons who would be in control of the FSP post the approval of the resolution plan. The appropriate regulator shall, without prejudice to Section 29A, issue 'no objection' on the basis of the 'fit and proper' criteria applicable to the business of the FSP. If the appropriate regulator does not refuse to give 'no objection' within 45 days of receipt of such application, the 'no objection' shall be deemed to have been granted.

With respect to the liquidation process of FSPs, the license or registration of the NBFC/FSP shall not be suspended or cancelled during this process without giving an opportunity to the liquidator of being heard. Before passing an order of liquidation under section 33 and an order of dissolution under section 54 of the Code, the AA shall provide the appropriate regulator an opportunity of being heard.

With respect to a voluntary liquidation of the FSP, the FSP shall obtain prior permission of the appropriate regulator for initiating voluntary liquidation and the AA shall provide the appropriate regulator an opportunity of being heard before passing such an order.

The bar on transferring, encumbering, alienating any of its assets or beneficial interest therein by the corporate debtor/FSP, during the interim moratorium and under section 14 of the Code, will not apply to third party assets or properties in possession of the FSP, including funds, securities and other assets required to be held in trust for the benefit of third parties. The Administrator shall take control and custody of such third-party assets only for the purpose of dealing with them in the manner that may be notified by the Central Government under Section 227 of the Code.

The Rules provide for the form for making an application. **– *[Ministry of Corporate Affairs, 15th November, 2019 and 18th November, 2019 (MCA)]***

3) KEY FINDINGS OF SC IN THE MATTER OF COC OF ESSAR STEEL LTD. VS. SATISH KUMAR GUPTA & ORS.

The Supreme Court, in the matter of *Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors.*, has set aside the judgement of the NCLAT, dated 4 July 2019, which ordered modifications to the resolution plan submitted by Arcelor Mittal India Pvt. Ltd. ("Resolution Applicant") on the ground that there exists an equitable right between Financial Creditors (FCs) and the Operational Creditors (OCs) in terms of the amount provided in a resolution plan and power of distribution of the amount under such a plan rests with the Resolution Applicant and not with the Committee of Creditors ("CoC"). The SC allowed the appeals filed by the CoC of Essar Steel Ltd and directed the CIRP of the corporate debtor (CD) to be conducted in accordance with the plan submitted by the Resolution Applicant, as amended and accepted by the CoC, including payment of different amounts to different classes of creditors, as this was in accordance with Section 30(2) of the I&B Code r/w Rule 38 of the CIRP Regulations.

While upholding the constitutional validity of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the SC held that ultimately it is the commercial wisdom of the requisite majority of the CoC that must prevail on the facts of any given case, which would include the distribution of assets. There is no residual equity jurisdiction in the Adjudicating Authority or NCLAT to interfere in the merits of a business decision taken by the requisite majority of the CoC, provided it is otherwise in conformity with the provisions of the Code and the Regulations. The decision of the CoC must, however, reflect the fact that it has taken into account maximising the value of the assets of the CD and adequate balancing of interest of all stakeholders, including OCs. If these considerations are satisfied, the AA must pass the Resolution Plan.

With respect to the question of payment to secured and unsecured creditors and operational creditors, the SC held that although protecting creditors in general is, no doubt, an important objective, it was important to protect creditors from each other. The amended Regulation 38 of the CIRP Regulations does not lead to the conclusion that FCs and OCs or secured and unsecured creditors must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of OCs rights under Regulation 38 means stating as to how it has dealt with the interests of OCs, which is not the same thing as saying they must be paid the same amount of their debt proportionately. Quite clearly, secured and unsecured FCs are differentiated when it comes to amounts to be paid under a resolution plan, together with what dissenting secured and unsecured FCs are to be paid and, most importantly, OCs are separately viewed from the secured and unsecured FCs in the statutory Form H of the CIRP Regulations. The Code and the Regulations, read as a whole, together with observations of expert bodies and SC's judgement, all lead to the conclusion that the equality principle cannot be stretched to treat unequals as equals as that will destroy the very objective of the Code – to resolve stressed assets. Equitable treatment is to be accorded to each creditor depending on the class to which it belongs: secured or unsecured, financial or operational.

The Supreme Court however struck down the term "mandatorily" in amended Section 12 of the Code in relation to the completion of the resolution process within a period of 330 days from the insolvency commencement date, including any extension period granted and time taken in legal proceedings in relation to such resolution process, as being manifestly arbitrary under Article 14 of the Constitution and as being unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g). Consequently, it held that the time taken in relation to a CIRP must be ordinarily completed within the outer limit of 330 days from the insolvency commencement date, including any extension period granted and time taken in legal proceedings in relation to such resolution process. If the delay is attributable to the tardy process of the AA and/or the NCLAT itself, it may be open in such cases for the AA and/or NCLAT to extend time beyond 330 days. It is only in exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which the resolution of the

stressed assets of the CD must take place, beyond which it is to be driven into liquidation. ***–[Committee of Creditors of Essar Steel India Limited Through Authorised Signatory* v. *Satish Kumar Gupta & Ors., 15th November, 2019 (Supreme Court of India)]***

4) INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY FOR INSOLVENCY RESOLUTION PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS) RULES 2019

The MCA has also notified the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019, with effect from 1 December 2019.

A Guarantor under the said Rules means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part.

The 'excluded assets' for the purposes of exclusion from the estate of the bankrupt which will vest in the bankruptcy trustee includes unencumbered personal ornaments not exceeding Rs. 1 lakh and unencumbered single dwelling unit not exceeding Rs. 20 lakh if the unit is in an urban area and Rs. 10 lakh, if the unit is in a rural area.

An application to initiate insolvency resolution can be made either by the guarantor (in Form A) or the creditor (demand notice for payment of default amount in Form B) along with an application fee of Rs. 2,000. The application by the guarantor is required to be served on the corporate debtor and every financial creditor and the application by the creditor is to be served on both the corporate debtor and guarantor. A copy of the application is also to be provided to the Resolution Professional within 3 days of his appointment. Such an application may be withdrawn at the request of the applicant before its admission. Withdrawal of the application after admission may be permitted by the Adjudicating Authority at the request of the applicant, only with the agreement of 90% of the creditors. ***– [Ministry of Corporate Affairs, 15th November, 2019 (MCA)]***

5) IBBI REGULATIONS FOR INSOLVENCY RESOLUTION AND BANKRUPTCY PROCEEDINGS OF PERSONAL GUARANTORS TO CORPORATE DEBTORS

Following notification of provisions relating to the insolvency and bankruptcy of personal guarantors to corporate debtors and Rules for application to the Adjudicating Authority, the IBBI has notified separate Regulations for the process of Insolvency Resolution and for bankruptcy proceedings of personal guarantors to corporate debtors, with effect from 1 December 2019.

The Insolvency Process Regulations, *inter alia*, prescribe the following: (i) eligibility to act as a resolution professional for an insolvency resolution process; (ii) manner of receipt and verification of claims of creditors; (iii) manner of preparation of list of creditors, holding the meetings of the creditors and voting in the

meeting; (iv) contents of the repayment plan; and (v) procedure of filing of application for issuance of discharge order, etc.

The Bankruptcy Process Regulations, *inter alia*, prescribe the following: (i) eligibility to act as a bankruptcy trustee for the bankruptcy process; (ii) manner of preparation of reports and timeline for submission by the bankruptcy trustee; (iii) manner of collating claims and formation of committee of creditors, holding meetings of the committee and voting in the meeting; and (iv) manner of realisation of assets of the bankrupt and its distribution, etc. ***–[Insolvency and Bankruptcy Board of India, notification 20th November, 2019 (IBBI)]***

6) DISSENTING FC IS NOT AT PAR WITH OTHER CREDITORS IF THE CIRP IS INITIATED BEFORE AMENDMENT TO REGULATION 38 OF CIRP REGULATIONS 2016

The Supreme Court, in the matter of Rahul Jain vs. Rave Scans Pvt. Ltd., has held that where the resolution process has begun before the amendment to Regulation 38 of the CIRP Regulations and the resolution plan has been prepared and approved before such amendment, a dissenting financial creditor could not claim a pay-out that matched with that offered to other financial creditors. The amended Regulation 38 omitted the specific provision for payment of liquidation value to dissenting financial creditors, with effect from 5 October 2018. In the present case, the resolution process began prior to 5 October 2018, specifically in January 2017, therefore, the appellant could not invoke amended Regulation 38 to claim a greater payout. It thus set aside the NCLAT order which had directed modification of the resolution plan to provide parity to the dissenting financial creditor (Hero Fincorp Ltd.) with similarly situated creditors and restored the order of the NCLT approving the original Resolution Plan. – ***[Rahul Jain v. Rave Scans Pvt. Ltd, Civil Appeal No.7940 of 2019, 8th November, 2019]***

7) CREDITORS CANNOT PURSUE PENDING SUITS/ARBITRATION PROCEEDINGS UPON COMPLETION OF MORATORIUM IF THE RESOLUTION PLAN/REVISED RESOLUTION PLAN HAS BEEN SUCCESSFULLY APPROVED

The NCLAT has, in the matter of Kotak Mahindra Prime Ltd v. Mr. Bijay Murmuria & Ors., held that although it is open to a creditor to proceed with a suit or arbitration proceeding, if pending, on completion of the Moratorium, once a creditor files its claim before the RP and the same is taken into consideration by the successful resolution applicant in its resolution plan by providing for the same treatment as given to similarly situated Creditors, thereafter the creditors cannot take the benefit of sub-section (6) of Section 60 of the Code nor can they pursue the suit or arbitration proceeding or file a fresh suit or arbitration proceeding for the same claim. Once the resolution plan is found to be in accordance with Section 30(2) and is approved by the AA, it is binding on all stakeholders including Financial Creditor, Operational Creditor and the Corporate Debtor etc. The Creditors cannot be allowed to pursue alternative remedy of suit or arbitration proceeding even if it is pending.

In the present case, the appellant /financial creditors' claims were not entertained by the RP as they were not filed in time in terms of the CIRP Regulations. The resolution plan was approved by the CoC on 20 October 2019 with 92.74% voting shares and the AA approved the Resolution Plan under Section 31 of the Code. Thereafter, the resolution applicant made a revised offer based on the claim made by the appellants and on amount as distributed to other financial creditors. A revised plan was approved by the AA. Nevertheless, the appellant creditors suggested they should be allowed to continue with the arbitration proceedings, which was refused by the AA. The NCLAT agreed with AA and directed the successful resolution applicant to pay pro-rata amount i.e., the same percentage of claim amount as made available to other similarly situated financial creditors. ***–[Kotak Mahindra Prime Ltd* v. *Mr. Bijay Murmuria & Ors., 13th November, 2019 (NCLAT)]***

8) CREDITOR UNDERGOING INVESTIGATION UNDER PMLA CANNOT BE PART OF COC

The NCLAT, in the matter of Asset Reconstruction Company (India) Ltd. vs. Mr. Koteswara Rao Karuchola Resolution Professional of Viceroy Hotels Ltd., has held that a creditor undergoing an investigation under the Prevention of Money Laundering Act, 2002 (PMLA), whose assets were provisionally attached, cannot be allowed to be a part of the Committee of Creditors (CoC). Although it admitted that there existed a dispute as to whether the said creditor qualified to be a financial creditor or not, it held that after the constitution of the CoC, the Resolution Professional could not, without the CoC's permission, entertain an application to include a financial creditor, in this case, after a three month delay.

The NCLAT set aside the order of the Adjudicating Authority which had ignored these circumstances. It however, did not go into the question of whether a forfeiture of an amount received under a Business Transfer Agreement (BTA), on account of inability of the transferee to perform its part of the BTA would come within the meaning of 'financial debt' and therefore whether the transferee could be included as 'financial creditor'. ***–[Asset Reconstruction Company (India) Ltd.* v. *Mr. Koteswara Rao Karuchola Resolution Professional of Viceroy Hotels Ltd, Company Appeal (AT) (Insolvency) No. 633 of 2018, 18th November, 2019 (NCLAT)]***

9) CIRP REGULATIONS AMENDED: THE IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (THIRD AMENDMENT) REGULATIONS 2019

IBBI has amended the Insolvency Resolution Process for Corporate Persons Regulations 2016 (CIRP Regulations), effective from 27 November 2019, with a view to enhance transparency and accountability in the conduct of CIRPs and of the Insolvency Professionals (IPs), and to facilitate the IBBI, the Insolvency Professional Agencies (IPAs) and the IPs to discharge their statutory obligations. The Amendment Regulations, *inter alia*, provide as under:

IPs are required to file a set of Forms, under a new Regulation 40B, covering the life cycle of a CIRP, on an electronic platform hosted on the IBBI website within the prescribed timelines. IPs shall be liable to action permissible under the Code, including refusal to issue or renew Authorisation for Assignment, for failure to file a Form or for inaccurate or delayed filing.

Regulation 38 (mandatory contents of a resolution plan), which was earlier amended with effect from 5 October 2018, has been further amended, in view of recent caselaw relating to dissenting financial creditors, to substitute sub-regulation 1 as under: (1) The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of Section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.

A new Regulation 25A has been inserted to empower an authorised representative to cast his vote in respect of each financial creditor or on behalf of all the financial creditors he represents, in accordance with the provisions of sub-section (3) or sub-section (3A) of Section 25A (rights and duties of authorised representatives of financial creditors). – ***[No.IBBI/2019-20/GN/REG052, Insolvency and Bankruptcy Board of India (IBBI), 27th November, 2019]***

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SECURITIES

1) SEBI ENHANCES ACCOUNTABILITY OF CREDIT RATING AGENCIES

Following recent amendments to the SEBI (Credit Rating Agencies) Regulations 1999 providing disclosure of loan defaults by clients of the Credit Rating Agencies (CRA) and lenders, SEBI has further enhanced the governance and accountability of CRAs to direct that:

(i) An MD/CEO of a CRA shall not be a member of a rating committee; (ii) Ratings committees shall report to a Chief Rating Officer (CRO); (iii) One third of the Board of a CRA shall consist of independent directors if the board is chaired by a non-executive director; (iv) If the board is chaired by an executive director, half the board shall consist of independent directors; (v) The Board of the CRA shall constitute a Ratings Sub-Committee to which the CRO shall report. It shall also constitute a Nominations and Remunerations Committee chaired by an independent director; (vi) The CRA shall record the minutes of the meeting with the management of the issuer on the rating process and incorporate it in the note of the Rating committee; and (vii)The CRA shall meet the audit committee of the rated entity at least once a year to discuss related party transactions, internal financial control and disclosures made by the management that have a bearing on the rating of listed NCDs. –***[SEBI/HO/MIRSD/CRADT/CIR/P/2019/121, 4th November, 2019 (SEBI)]***

2) SEBI ISSUES GUIDELINES TO OPERATIONALISE SEBI (FPI) REGULATIONS 2019

In order to facilitate the transition to and operationalise the SEBI FPI Regulations 2019, which came into effect from 23 September 2019, SEBI has issued operational guidelines for Foreign Portfolio Investors (FPIs), Designated Depository Participants (DDPs) and Eligible Foreign Investors (EFIs). With the issue of these Operating Guidelines, the existing Circulars, FAQs and other guidance issued by SEBI (specified in the present guidelines) stand withdrawn. However, the directions/guidance issued by SEBI that are specifically applicable to FPIs will continue to remain in force.

The guidelines provide guidance on the process of re-categorisation of FPIs, processing of FPI applications by DDPs, guidance for specific FPI applicants/entities such as bank, insurance, pension fund, appropriately regulated entities investing on behalf of clients and entities that are at least 75% owned by another entity. The guidelines also provide for obligations of DDPs, KYC requirements, investment conditions, conditions for issuance of ODIs and eligibility and KYC norms for EFIs. – ***[IMD/FPI&C/CIR/P/2019/124, 4th November, 2019 (SEBI)]***

3) ENHANCED DUE DILIGENCE FOR DEMAT OF PHYSICAL SECURITIES

SEBI has directed listed companies and Depositories to follow a due diligence process in respect of dematerialisation of physical shares remaining after 1 April 2019. The transfer of shares in physical mode was barred by SEBI with effect from 1 April 2019. In order to prevent fraud and misuse of process of demat of the remaining physical shares, SEBI has issued the following directions:

All Listed companies or their Registered Transfer Agents (RTAs) shall provide data of their members holding shares in physical mode, including the name of shareholders, folio numbers, certificate numbers, distinctive numbers and PAN etc., called the "Static Database", as on March 31, 2019, to the Depositories, latest by December 31, 2019. The format for this data shall be specified jointly by the Depositories and be communicated to Issuer companies / their RTAs.

Depositories shall capture the relevant details from the static database and put in place systems to validate any dematerialization request received after December 31, 2019. The depository system shall retrieve the shareholder name(s) recorded against the folio number and certificate number in Static Database for each DRN request received after this date and validate the same against the demat account holder(s) name as available in the records of the Depositories.

In case of mismatch of name on the share certificate(s) vis-à-vis name of the beneficial owner of demat account, the depository system shall generate flag/alert. In instances, where such flags / alerts have been generated, the following additional documents explaining the difference in name, shall be sought, namely (i) Copy of Passport (ii) Copy of legally recognized marriage certificate (iii) Copy of gazette

notification regarding change in name (iv) Copy of Aadhar Card.

In the case of complete mismatch of name on the share certificate(s) vis-à-vis name of the beneficial owner of demat account, the applicant may approach the Issuer company / RTA for establishing his title / ownership.

Depositories are required to communicate to SEBI, the status of implementation of the provisions of this Circular in their Monthly Report. –
[SEBI/HO/MIRSD/RTAMB/CIR/P/2019/122, 5th November, 2019, (SEBI)]

4) DISCLOSURE OF DEFAULT BY LISTED ENTITIES

In its board meeting held on 20 November 2019, SEBI has approved the following:

With effect from 1 January 2020, listed entities are required to disclose any default in repayment of principal or interest on loans from banks/financial institutions, which continues beyond 30 days from the pre-agreed payment date, within 24 hours from the 30th day.

The requirement of submitting Business Responsibility Reporting (BRR) as part of annual reports has been extended from top 500 listed entities to top 1000 listed entities, based on market capitalization.

Revamp of the Rights Issue process and consequential amendments to the ICDR and LODR Regulations with the aim of reducing the timeline for completion of Rights Issue from T+55 days to T+31 days and to introduce trading and demat of rights entitlements (REs).

New Portfolio Managers Regulations, 2019 based on recommendations made by a working group that reviewed the existing regulations. The proposed 2019 regulations provide for:

(i) Enhanced eligibility criteria for Principal Officers and employees with decision making authority in managing clients' portfolios and define role of Principal officer clearly; (ii) Mandatory employment by Portfolio Managers of at least one person with defined eligibility criteria in addition to Principal Officer and Compliance Officer; (iii) Enhanced net-worth requirement of Portfolio Managers from INR 2 Crores to INR 5 Crores. Existing Portfolio Managers to meet the enhanced requirement within 36 months; (iv) Increase in minimum investment by clients of Portfolio Managers to Rs. 50 lakhs from 25 lakhs. Existing investments of clients may continue as such till end date of the PMS Agreement or as specified by the Board; (v) Discretionary Portfolio Managers to invest only in listed securities, money market instruments, units of Mutual Funds and such other securities/ instruments as specified by SEBI from time to time, while Non-discretionary/ Advisory Portfolio Managers to invest not more than 25% of their AUM in unlisted securities; (vi) Mandatory appointment of custodian for all Portfolio Managers, except those providing only advisory services to clients; and (vii) Restriction on off market transfers from/to clients' accounts, with certain exceptions to facilitate operational convenience. ***–[SEBI Board Meeting, PR No.24/2019, (SEBI)]***

5) SEBI MANDATES DISCLOSURE OF DEFAULTS IN LOAN/INTEREST REPAYMENT & UNLISTED DEBT SECURITIES

Following its decision to mandate listed entities to disclose defaults in loan repayments to banks and financial institutions, SEBI has issued a circular providing for details and formats of such disclosure. SEBI has noted that while the SEBI LODR Regulations require specific disclosures with respect to delay/default in payment of interest/principal on debt securities like NCDs, NCRPS, etc., similar disclosures with respect to loans from banks/financial institutions are not being made by them. This is now required in view of many banks/financial institutions undergoing stress on account of large corporate loans turning into stressed assets/NPAs.

With effect from 1 January 2020, all listed entities having specified securities (equity and convertible shares), NCDs and NCRPS shall make a disclosure in the prescribed formats when there is a default in payment of interest/instalment obligations on loans, including revolving facilities (cash/credit) from banks and financial institutions which continues beyond 30 days, within 24 hours from the 30th day of default.

"Default" means non-repayment of interest or principal amount in full on the date on which the debt has become due and payable ('pre-agreed payment date'). For revolving facilities, default would occur if the outstanding balance remains continuously in excess of the sanctioned limit or drawing power, whichever is lower, for more than 30 days.

In case of unlisted debt securities, disclosure is to be made promptly but no later than 24 hours from the occurrence of default, in line with existing disclosure requirements for listed debt instruments. ***–[SEBI/HO/CFD/CMD1/CIR/P/2019/140, 21st November, 2019 (SEBI)]***

6) SAT ORDER ON MATERIALITY OF DISCLOSURES IN OFFER DOCUMENTS

In relation to a non-disclosure of 'rejection' of Forest Clearance (FC) by the MoEF for an application for iron ore mining, in the IPO prospectus, SAT, in its order dated 14 November 2019, has strongly emphasized that the letter and spirit of the disclosure requirement under the ICDR Regulations is the need for disclosing all material events in clear terms with very little discretion for judging the degree of materiality. The issuer is expected to disclose, even when it doubts whether there is materiality.

It held that even though the approval for FC was under a reconsideration process and was eventually granted, the non-disclosure of the 'rejection', at the relevant time, in the prospectus amounted to violation of Regulations 57(1), 57(2)(a)(ii) and 64(1) of the ICDR Regulations and Regulation 13 of the SEBI (Merchant Bankers) Regulations 1992, for the following reasons:

The 700 crore plus investment in the newly promoted company, ESL, for the manufacture of steel, by the parent company ECL and an MoU between them to supply iron ore for a 20 year period to ESL, were critical events which were all disclosed by ECL and therefore, any event

which would lead to a disruption, delay or even a temporary halt, which would affect the time schedule, cost, production etc. in the said project was undoubtedly a material event for both ESL and ECL.

Although Guideline 4.14 of the Forest Conservation Act, 1980 provides for provisions related to rejection/reopening of cases, such request is required to be made within three months from the date of the issue of the rejection letter, with full justification for reconsideration. However, the application for reconsideration of the 16 January 2009 letter of rejection was taken up by ECL only on 24 July 2009. Therefore, the contention that they were strictly following guidelines was contrary to the facts on record. Given the core role that the project would play in future performance, profitability and viability of the business, even if it was considered only an "initial rejection", it was material information to be disclosed irrespective of whether finally the project got clearance or not.

In holding so, SAT rejected the appellants' submissions that: (i) The so-called rejection was only the first step in the process of clearance and there is a provision for reconsideration under the guidelines; (ii) The risk scenarios in case of a failure to obtain approval, availability of raw materials as per the agreement or from other sources and its impact on competitive prices were highlighted in the prospectus under the heading "risk factors"; (iii) The company has undergone CIRP and has now been taken over by Vedanta Ltd. As per the approved resolution plan, all penalties, fines against the company stood written off in full and were permanently extinguished. Therefore even if it was held that the company had violated ICDR provisions, no penalty could be imposed on it; (iv) The proposed project was not material to the business of the company as it had other sources to procure the necessary iron ore. Therefore it would not affect the profitability of the company; (v) FAC is only an advisory body. Rejection by the FAC is not a rejection by the MoEF.

Accordingly, SAT upheld SEBI's finding with respect to the materiality of the information to be disclosed in the IPO prospectus. However, it reduced the maximum penalty of Rs. 1 crore imposed by SEBI on the issuer company/ESL and the merchant bankers to Rs. 50 lakhs on the ground that non-disclosure of the initial round of rejection of the proposal in the prospectus did not fall in the category where maximum penalty was imposable. The continued effort by the appellant companies in pursuing the matter for reconsideration, as well as in detailing the risk factors with the possibility of not getting the final approval, in the prospectus, were mitigating factors. The penalty of Rs. 50 lakh on ECL for violation of clause 36 of the Listing Agreement was not considered to be harsh or excessive as the penalty imposable under Sections 23(A)(a) and 23E of the SCRA [Penalty for failure to comply with listing/delisting conditions] is a maximum of Rs. 1 crore and 25 crores, respectively. ***–[Electrosteel Steels Ltd. vs. SEBI, 14th November, 2019 (SAT)]***

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COMPETITION

1) CCI APPROVES THE ACQUISITION OF SHAREHOLDINGS IN MUMBAI INTERNATIONAL AIRPORT LIMITED ("MIAL").

CCI approves the acquisition of shareholdings in Mumbai International Airport Limited ("MIAL") by Adani Properties Private Limited ("APPL") from Bid Services Division (Mauritius) Limited ("BSDA") and ACSA Global Limited ("ACSA"), under Section 31(1) of the Competition Act, 2002 ("Act") The proposed combination relates to acquisition of 23.5 percent equity stake of MIAL by APPL from BSDA and ACSA. APPL proposes to acquire 13.5 percent equity shares of MIAL from BSDA and 10 percent equity shares of MIAL from ACSA. The acquirer i.e., APPL is a member of the Adani Group which is a diversified infrastructure conglomerate. APPL is engaged in let-out and/or leasing of immovable properties and wholesale trading of commodities. APPL has various subsidiaries, associates and joint venture companies/ entities, which are into real estate business, financial services, generation of power using renewable sources of energy and LPG terminal setup. The target i.e. MIAL, a public company registered at Mumbai, is engaged in operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing the Chhatrapati Shivaji International Airport ("CSIA") at Mumbai. Its services include activities incidental to air transportation such as operation of terminal, airway facilities, etc. The Commission approved the proposed combination under Section 31(1) of the Act. – ***[PRESS RELEASE No. 18/2019-20, 14th November, 2019, Competition Commission of India (CCI)]***

2) CCI APPROVES INVESTMENT INECOM EXPRESS PRIVATE LIMITED (ECOM) BY CDC GROUP PLC (CDC).

CCI approves investment inEcom Express Private Limited (Ecom) by CDC Group plc (CDC), under Section 31(1) of the Competition Act, 2002 The Proposed Combination relates to investment in Ecom by CDC. CDC is a Development Finance Institution, wholly owned by the DFID, UK Government, which is stated to provide scarce and patient capital to private sector entrepreneurs in developing countries. Ecom is engaged in delivery, fulfilment & warehousing and digital services such as eKYC facilitation for the customers of banks, NBFCs and other companies that require such services; facilitation towards verification of the assets of said customers; facilitation towards contact point verification of said customers; and facilitation of the Digital Original Seen and Verified service. –***[PRESS RELEASE No. 19/2019-20, 14th November, 2019, Competition Commission of India (CCI)]***

3) CCI APPROVES MERGER OF THE BNP PARIBAS (BNPP) MUTUAL FUND AND THE BARODA (BOB) MUTUAL FUND, UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002.

The Proposed Combination relates to merger of the BNP Paribas Mutual Fund and the BOB Mutual Fund. The Parties propose to amalgamate (i) BOB Asset Management

Company (AMC) into BNPP AMC; and (ii) BNPP Trustee Company (TC) into BOB TC. After the merger BNPP AMC and BOB TC will be the surviving entities. BNPP AMC is the dedicated AMC for BNPP Mutual Fund and acts as the investment manager of BNPP Mutual Fund. BNPP AMC is also a registered as Portfolio Manager under SEBI Regulations. It provides portfolio management services and advisory activities. BNPP TC is the trustee company of BNPP Mutual Fund.

BOB AMC is the dedicated AMC for BOB Mutual Fund and acts as the investment manager of BOB Mutual Fund. BOB TC acts as the trustee for BOB Mutual Fund.***–[PRESS RELEASE No. 20/2019-20, 14th November, 2019, Competition Commission of India (CCI)]***

4) CCI APPROVES THE SECONDARY ACQUISITION IN DELHIVERY PRIVATE LIMITED (DPL) BY SVF DOORBELL (CAYMAN) LTD. (SVFD)

CCI approves the secondary acquisition in Delhivery Private Limited (DPL) by SVF Doorbell (Cayman) Ltd. (SVFD), under Section 31(1) of the Competition Act, 2002, today.

The proposed transaction entails secondary acquisition of up to 3.28% of the issued and paid up share capital of DPL on a fully diluted basis by SVFD. Subsequent to this acquisition, SVFD will hold up to approximately 25.72% the issued and paid up share capital of DPL. SVFD is a holding company set up to hold its proposed investment in DPL on behalf of SoftBank Vision Fund L.P., a venture capital fund focused on making long-term financial investments in companies. DPL is engaged in the market for provision of third party logistics (3PL) services in India. As part of its logistics services, DPL provides transportation, warehousing, freight services and overall fulfillment services to various customers. DPL's logistics services are provided to enterprises or persons who operate across different business models and are present across the value chain (big brands, small and medium enterprises, e-commerce platforms) etc. ***–[PRESS RELEASE No. 17/2019-20, 14th November, 2019, Competition Commission of India (CCI)]***

5) CCI APPROVES ACQUISITION OF 4.94% SHAREHOLDING IN SUZUKI MOTOR CORPORATION (SMC) BY TOYOTA MOTOR CORPORATION (TMC) AND THE ACQUISITION OF 0.24% SHAREHOLDING IN TMC BY SMC

The proposed combination relates to the acquisition of a minority shareholding of 4.94% in SMC by TMC, and the acquisition of a minority shareholding of approximately 0.24% by SMC in TMC. TMC is a Japanese multinational automotive manufacturer. TMC also provides services in other fields such as housing, financial services, communications, marine and biotechnology, and afforestation. In India, TMC is engaged in the manufacturing and sale of automobiles through its subsidiary, Toyota Kirloskar Motor Private Limited, and in providing financial services through its subsidiary, Toyota Financial Services India. TMC is also engaged in the sale of commercial vehicles through its indirectly held joint venture, Hino Motors Sales India Private Limited. SMC is a Japanese multinational corporation inter-alia

engaged in the business of automobiles, motorcycles and outboard motors. In India, SMC is engaged in the manufacturing and sale of automobiles and two wheelers through its subsidiaries viz. Maruti Suzuki India Limited, Suzuki Motor Gujarat Private Limited and Suzuki Motorcycle India Private Limited. – ***[PRESS RELEASE No. 21/2019-20, 26th November, 2019, Competition Commission of India (CCI)]***

6) CCI APPROVES THE ACQUISITION OF 37.40% OF THE PAID UP SHARE CAPITAL AND JOINT CONTROL OF ADANI GAS LIMITED ("AGL") BY TOTAL HOLDINGS SAS

Total Holdings, a 100% subsidiary of Total S.A. (Total), is the ultimate parent company of the Total group entities worldwide. Total, together with its subsidiaries, is an international integrated energy producer. Total Group is engaged in oil and gas industry, including upstream operations in hydrocarbon exploration, development and production, and downstream operations in refining, petrochemicals, specialty chemicals, trading and shipping of crude oil and petroleum products and marketing. In India, through its subsidiaries, joint ventures and minority interests, Total Group exports natural gas at wholesale level to Indian coasts where the respective customers purchase and import its natural gas into India. AGL is engaged in the wholesale supply of natural gas and downstream (retail) supply of natural gas through city gas distribution (CGD) networks to industrial, commercial, domestic and automotive customers in India (including supplies to oil marketing companies). –***[PRESS RELEASE No. 23/2019-20, 28th November, 2019, Competition Commission of India (CCI)]***

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INDIRECT TAXES

a. CUSTOMS

1) EXPORT OF JUTE PRODUCTS FROM BANGLADESH BY SPECIFIED EXPORTERS

The CBIC *vide* present Circular has rescinded the Notification Nos. 24/2018- Customs (ADD) the dated 7th May, 2018, 41/2018- Customs (ADD) and 42/2018- Customs (ADD) dated 24th August, 2018 which had prescribed provisional assessment on export of jute products from Bangladesh by specified exporters. – ***[Notification No. 43/2019-Customs (ADD), dated 11th November, 2019]***

2) ADD ON CLEAR FLOAT GLASS

Anti-dumping duty imposed on imports of Clear float glass originating in or exported from Pakistan, Saudi Arabia and UAE for a period of five years in pursuance of Final findings of Designated Authority in sunset review of notification No. 48/2014-Customs (ADD) dated 11.12.2014.- ***[Notification No. 45/2019-Customs (ADD), dated 10th December, 2019]***

3) CBIC MANDATES QUOTING OF DOCUMENT IDENTIFICATION NUMBER IN ALL COMMUNICATIONS

CBIC has issued instructions Circular on the procedure to be followed for generation and quoting of Document identification Number

(DIN) on all GST/ Customs communication with Taxpayers and concerned persons, by the officers of the Central Board of Indirect Taxes and Customs (CBIC), with effect from 8th November 2019. – ***[Circular No. 37/ 2019 – Customs, dated 05th November, 2019 & Circular No.122/41/2019 – GST, dated 05th November, 2019]***

4) CBIC DIRECTS DIRECTORATE OF SYSTEM & DATA MANAGEMENT TO TAKE NECESSARY STEPS TO IMPLEMENT AUTO OUT OF CHARGE UNDER ECCS

CBIC has clarified that sending a CBE after x-ray screening to the Shed Superintendent/Appraiser, merely for giving OOC order, adds an avoidable step in the automated clearance process. Therefore, the Board is of the view that ECCS should automatically give OOC to goods covered under facilitated CBE which has been 'cleared' on Customs X-ray screening. Hence in view of the foregoing, Directorate of System & Data Management shall take necessary steps to implement Auto OOC and all Chief Commissioners are requested to issue suitable Public Notice and Standing order, for the guidance of the stakeholders and the concerned officers. – ***[Circular No. 40/2019 – Customs, dated 29th November, 2019]***

5) MANDATORY UPLOADING OF SPECIFIED SUPPORTING DOCUMENTS AND MENTION OF DOCUMENT CODE AND IRN IN BILLS OF ENTRY (BOE)

CBIC has informed that e-Sanchit has now being modified so as to mandate uploading of Invoice/ Invoice cum packing list and Transport Contract i.e., Bill of Lading/ Airway bill etc., as the case may be for every Bill of Entry. Earlier, for imports, uploading of at least one document on e-Sanchit was mandatory for every Bill of Entry. However, with effect from 2nd December, 2019 for every Invoice and Bill of Lading / Airway Bill declared in the Bill of Entry, the reference of IRN generated from e-Sanchit with the relevant document code as developed by Directorate of Systems must be provided. The reference of the document codes from e-Sanchit in the Bills of Entry has been made mandatory. – ***[Circular No. 42/2019 – Customs, dated 29th November, 2019]***

b. GST

1) CENTRAL GOODS AND SERVICES TAX (SEVENTH AMENDMENT) RULES, 2019

The CBIC has amended the CGST Rules, 2017 primarily related to Simplification of the Annual Return / Reconciliation Statement. Following amendments are made to the CGST Rules:

1. Changes are made in the Statement or declarations to be given along with the refund application.
2. Changes have been made to simplify GSTR-9 and GSTR-9C forms. HSN-wise reporting of inward supplies is made optional. – ***[Notification No. 56/2019 – Central Tax, dated 14th November, 2019]***

2) CBIC NOTIFIES TRANSITION PLAN UNDER GST FOR J&K REORGANIZATION

The present Notification prescribes a special procedure for those persons whose principal place of business or place of business lies in the erstwhile State of Jammu and Kashmir till the 30th day of October, 2019; and lies in the Union territory of Jammu and Kashmir or in the Union territory of Ladakh from the 31st day of October, 2019 onwards. This special procedure is to be followed till 31st December 2019.

i. The tax period for October and November 2019 shall be from 1 October to 30 October 2019 and 31 October to 30 November 2019, respectively.
ii. Such persons shall pay applicable tax under an appropriate head in Form GSTR-3B irrespective of the tax charged in the invoices issued on or after 31 October 2019.
iii. An option is provided to transfer input tax credit (ITC) from existing registration to new registration in J&K or Ladakh in the following manner:
   - If ITC is transferred to both, J&K and Ladakh unit, it shall be in the ratio of their turnover.
   - Transfer shall be carried out through Form GSTR-3B for any tax period before the transition date. Transferor should debit the amount under the head "ITC Reversed-Others" and transferee should credit the same under "ITC Available- All other ITC".
   - Balance of state tax, where principal place of business lies in Ladakh from 31 October 2019, shall be transferred as balance of union territory tax.
iv. The provision of compulsory registration will not apply for inter-state supply between J&K and Ladakh from 31 October 2019 till 31 December 2019. – ***[Notification No. 62/2019 – Central Tax, dated 26th November, 2019]***

3) EXPLANATION REGARDING BUS BODY BUILDING

The CBIC *vide* present Notification inserted an explanation regarding Bus Body Building in Notification No. 11/2017-Central Tax (Rate) dt. 28.06.2017 in following words:
"Explanation- For the purposes of this entry, the term "bus body building" shall include building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975." – ***[Notification No. 26/2019-Central Tax (Rate), dated 22nd November, 2019]***

Similar Notifications have been issued under the Integrated Tax (Rate) and Union Territory Tax (Rate). - ***[Notification No. 25/2019- Integrated Tax (Rate), dated 22nd November, 2019 & Notification No. 26/2019- Union Territory Tax (Rate), dated 22nd November, 2019]***

4) CLARIFICATION REGARDING RESTRICTIONS IN AVAILMENT OF INPUT TAX CREDIT IN TERMS OF SUB-RULE (4) OF RULE 36 OF CGST RULES, 2017

Sub-rule (4) to rule 36 of the CGST Rules has been inserted *vide* Notification No. 49/2019- Central Tax, dated 09.10.2019. The said sub-rule provides restriction in availment of input tax credit (ITC) in

respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of Section 37of the CGST Act. To ensure uniformity in the implementation of the provisions of the law across the field formations, the CBIC has clarified following issues:

1. What are the invoices / debit notes on which the restriction under rule 36(4) of the CGST Rules shall apply?
2. Whether the said restriction is to be calculated supplier wise or on consolidated basis?
3. FORM GSTR-2A being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in respect of invoices / debit notes whose details have not been uploaded by the suppliers?
4. How much ITC a registered tax payer can avail in his FORM GSTR-3B in a month in case the details of some of the invoices have not been uploaded by the suppliers under subsection (1) of section 37?
5. When can balance ITC be claimed in case availment of ITC is restricted as per the provisions of rule 36(4)? – ***[Circular No. 123/42/2019– GST, dated 11th November, 2019]***

5) CLARIFICATION REGARDING OPTIONAL FILING OF ANNUAL RETURN UNDER NOTIFICATION NO. 47/2019-CENTRAL TAX DATED 9TH OCTOBER, 2019

Notification No. 47/2019-Central Tax dated 9th October, 2019 provides for special procedure for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees and who have not furnished the annual return under sub-section (1) of Section 44 of the said Act read with sub-rule (1) of Rule 80 of the CGST Rules. *Vide* the said Notification, it is provided that the annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date for the financial year 2017-18 and 2018-19, in respect of those registered persons. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the CBIC has clarified the following issues:–

a. As per proviso to sub-rule (1) of Rule 80 of the CGST Rules, a person paying tax under Section 10 is required to furnish the annual return in FORM GSTR-9A. Since the said Notification has made it optional to furnish the annual return for FY 2017-18 and 2018-19 for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees, it is clarified that the tax payers under composition scheme, may, at their own option file FORM GSTR-9A for the said financial years before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of FORM GSTR-9A for the said period.

b. As per sub-rule (1) of Rule 80 of the CGST Rules, every registered person other than an Input Service Distributor, a person paying tax under Section 51 or Section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return as specified under sub-section (1) of Section 44 electronically in FORM GSTR-9. Further, the said notification has made it optional to furnish the annual return for FY 2017-18 and 2018-19 for those registered persons whose

aggregate turnover in a financial year does not exceed two crore rupees. Accordingly, it is clarified that the tax payers, may, at their own option file FORM GSTR-9 for the said financial years before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of FORM GSTR-9 for the said period. – ***[Circular No. 124/43/2019 – GST, dated 18th November, 2019]***

6) CLARIFICATION REGARDING FULLY ELECTRONIC REFUND PROCESS THROUGH FORM GST RFD-01 AND SINGLE DISBURSEMENT

The CBIC in its Circular dated 18th November 2019, has issued a clarification regarding fully electronic refund process through FORM GST RFD-01 and single disbursement. CBIC in its earlier Circular dated 31.12.2018 has specified that the refund application in the above form shall be filed electronically with all supporting documents. However, various post submission stages of processing of the refund application continued to be manual. Finally, refund procedure was made fully electronic and was deployed on the common portal with effect from 26.09.2019.

Now the CBIC has issued this present Circular laying down procedure for electronic submission and processing of refund applications in supersession of all earlier circulars on the subject.

Key Points of the Circular:-

- Provides the types of the refunds for which applications shall be filed in FORM GST RFD-01 on the common portal and the same shall be processed electronically.
- The Circular specifies certain modalities which shall be followed for all refund applications filed in FORM GST RFD-01.
- Deficiency memos to be issued within 15 days starting from the date of generation of Application Reference Number.
- It has also been clarified that any refund claim for a tax period may be filed only after furnishing all the returns in FORM GSTR-1 and FORM GSTR-3B which were due to be furnished on or before the date on which the refund application is being filed.
- Provisional Refund: It is clarified that in such cases, the proper officer shall refund on a provisional basis ninety percent of the refundable amount of the claim (amount of refund claim less the inadmissible portion of refund so found) in accordance with the provisions CGST Rules.
- Application for refund of integrated tax paid on export of services and supplies shall be made to a Special Economic Zone developer or a Special Economic Zone unit.
- Further, detailed guidelines covering various types of refunds claims which may be followed while scrutinizing refund claims for completeness and eligibility has been laid down as under:
- Guidelines for refunds of unutilized Input Tax Credit.
- Guidelines for refund of tax paid on deemed exports.
- Guidelines for claims of refund of Compensation Cess.
- Clarifications on issues related to making zero-rated supplies.
- Refund of transitional credit.
- Refund of TDS/TCS deposited in excess.

The Circular also contains a list of all statements /declarations /undertakings/certificates and other supporting documents to be provided along with the refund application. – ***[Circular No. 125/44/2019 – GST, dated 18th November, 2019]***

7) CLARIFICATION ON SCOPE OF THE NOTIFICATION ENTRY AT ITEM (ID), RELATED TO JOB WORK, UNDER HEADING 9988 OF NOTIFICATION NO. 11/2017-CENTRAL TAX (RATE) DATED 28-06-2017

CBIC has issued clarification on Job work services. It has been clarified that as per the CGST Act, 2017, 'Job work' means any treatment or process undertaken by a person on goods belonging to another registered person and the expression 'job worker' shall be construed accordingly. As per the circular issued by CBIC, a Registered person is a clear demarcation between the scope of the entries at item (id) and item (iv) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017.

On the basis of above, if any service provided by way of treatment or processing undertaken by a person on goods belonging to another registered person will be considered under the Job work service and liable @12%. It means any service provided to Non-registered person by way of treatment or processing will be covered under manufacturing service and liable @18%. – ***[Circular No. 126/45/2019-GST, dated 22nd November, 2019]***

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INTELLECTUAL PROPERTY RIGHTS

1) CALCUTTA HIGH COURT FOUND THE MARK "ACTIVE SANGITA" TO BE DECEPTIVELY SIMILAR TO THE MARK "ACTIVE WHEEL" OF THE PLAINTIFF

The Calcutta High Court while granting a ex parte interim injunction decree restraining the Respondent from infringing and passing off the Petitioner's registered trademark "ACTIVE WHEEL" by using a deceptively similar mark "ACTIVE SANGITA" in respect of detergent powder observed that the mark used by the Respondent were *prima facie* infringing of the Petitioner's mark. Further, the Court observed that the artistic work of the Respondent was a colourable and deceptive imitation of the Petitioner's artistic work. – ***[Hindustan Unilever Limited* v. *Sambhu Das, dated 13 November, 2019 (Calcutta HC)]***

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CONSUMER

1) A CONSUMER FORUM/COMMISSION AFTER HAVING COME TO THE CONCLUSION THAT THE COMPLAINT/APPEAL WAS BARRED BY LIMITATION, IT COULD NOT CONSIDER THE MERITS OF THE MATTER

The Supreme Court has observed that a consumer forum/commission after having come to the conclusion that the complaint/appeal was barred by limitation, it could not consider the merits of the matter.

In this case, National Consumer Dispute Resolution Commission (NCDRC) had refused to condone delay of 150 days in preferring the first appeal. Having thus observed, NCDRC also observed that there was apparent lack of merits in the matter and thus dismissed the appeal on grounds of both an inordinate delay as well as on an apparent lack of merits. ***–[M/s Singal Udyog v. National Insurance Company Limited and Ors., Civil Appeal 9161 of 2019 (Supreme Court of India)]***

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ENVIRONMENT

1) NGT SLAPS RS. 10 CR PENALTY ON FARIDABAD BUILDER FOR VIOLATING ENVIRONMENTAL NORMS

The NGT slapped an interim penalty of Rs. 10 crore on a Faridabad builder for violating environmental norms and causing pollution, observing that "environment is priceless". The green panel directed Haryana government and the state pollution control board to black list the project proponent - Smart Housing Pvt Ltd - from undertaking such projects in future till environmental norms are fully carried out. – ***[The Times of India, dated 27th November, 2019]***

2) SC ASKS MANUFACTURERS TO APPROACH GOVT ON NGT ORDER PROHIBITING RO UNITS

The Supreme Court asked RO purifier to approach the government within 10 days on their grievance over the National Green Tribunal's order prohibiting the use of their units at places where total dissolved solids (TDS) in water are below 500 mg per litre. In May this year, the NGT had directed the government to regulate the use of reverse osmosis or RO purifiers and prohibit them where TDS in water are below 500 mg per litre, besides sensitising public about ill-effects of demineralised water. – ***[The Times of India, dated 22nd November, 2019]***

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