MONTHLY NEWSLETTER
Lexport
Interpreting India for commerce
JANUARY 2020

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RBI/FEMA

1) REPORTING OF OTC CURRENCY DERIVATIVE TRANSACTIONS TO TRADE REPOSITORY

As per earlier circular on the subject, a threshold of USD 1 million, and equivalent thereof in other currencies, was stipulated for reporting client transactions in currency derivatives (currency swaps and FCY FRA/IRS) to the Trade Repository (TR). RBI has now decided that all client transactions in currency derivatives, including those with notional amount of below USD 1 mn, shall now be reported to the TR, with effect from January 06, 2020. – ***[FMRD.FMID No.23/02.05.002/2019-20, dated 01st January, 2020]***

2) 'SIGNIFICANT BENCHMARK' NOTIFIED UNDER FINANCIAL BENCHMARK ADMINISTRATORS (RESERVE BANK) DIRECTIONS, 2019

The RBI has notified following benchmarks administered by Financial Benchmarks India Pvt. Ltd. (FBIL) as a 'significant benchmark':

1. Overnight Mumbai Interbank Outright Rate (MIBOR)
2. Mumbai Interbank Forward Outright Rate (MIFOR)
3. USD/INR Reference Rate
4. Treasury Bill Rates
5. Valuation of Government Securities
6. Valuation of State Development Loans (SDL)

Further, the person administering the 'significant benchmark', shall make an application to the RBI within a period of three months from the date of this notification for authorization to continue administering these benchmarks. – ***[FMRD.FMSD.22/03.07.035/2019-20, dated 01st January, 2020]***

3) SUPERVISORY ACTION FRAMEWORK FOR PRIMARY (URBAN) CO-OPERATIVE BANKS (UCBS)

Referring to earlier Circular UBD.BPD.(PCB). Cir No. 3/12.05.001/2014-15 dated November 27, 2014 on the subject containing the Supervisory Action Framework (SAF) for UCBs, the RBI has further rationalized the SAF to make it more effective in bringing about the desired improvement in the UCBs as also expeditious resolution of UCBs experiencing financial stress. RBI will continue to monitor asset quality, profitability and capital / net worth of UCBs under the revised SAF. The main features of the revised SAF are provided in the present Circular. – ***[DOR (PCB).BPD. Cir No. 9/12.05.001/2019-20, dated 06th January, 2020]***

4) AD CAT-I BANKS PERMITTED TO VOLUNTARILY UNDERTAKE USER AND INTER-BANK TRANSACTIONS BEYOND ONSHORE MARKET HOURS

As announced in the Statement of Developmental and Regulatory Policies dated October 04, 2019, RBI has decided to accept the recommendation of the Task Force on Offshore Rupee Market to permit AD Cat-I banks to offer foreign exchange prices to users at all times, out of their Indian books, either by a domestic sales team or through their overseas branches. – ***[A.P. (DIR Series) Circular No. 15, dated 06th January, 2020]***

5) AMENDMENT TO MASTER DIRECTION (MD) ON KYC

The Government of India, *vide* Gazette Notification G.S.R. 582(E) dated August 19, 2019 and Gazette Notification G.S.R. 840(E) dated November 13, 2019, has notified amendment to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005. Further, with a view to leveraging the digital channels for Customer Identification Process (CIP) by Regulated Entities (REs), the RBI has permitted Video based Customer Identification Process (V-CIP) as a consent based alternate method of establishing the customer's identity, for customer onboarding. Consequently, the RBI has amended the Master Direction on KYC dated February 25, 2016, taking into account the aforementioned amendments to the PML Rules and introduction of V-CIP. – ***[DOR.AML.BC.No.27/14.01.001/2019-20, dated 09th January, 2020]***

6) PROCESSING OF E-MANDATE IN UNIFIED PAYMENTS INTERFACE (UPI) FOR RECURRING TRANSACTIONS

Referring to Circular DPSS.CO.PD.No.447/02.14.003/2019-20 dated August 21, 2019 on "Processing of e-mandate on cards for recurring transactions" whereby processing of e-mandate on cards / Prepaid Payment Instruments (PPIs) was permitted for recurring transactions (merchant payments), with Additional Factor of Authentication (AFA) during e-mandate registration, modification and revocation, as also for the first transaction, and simple / automatic subsequent successive transactions, subject to certain conditions. On a review of the developments since this facilitation, RBI has extended the above mentioned instructions to cover UPI transactions as well. All the instructions / conditions outlined in the Circular under reference would apply, mutatis mutandis, while processing e-mandate in UPI. – ***[DPSS.CO.PD No.1324/02.23.001/2019-20, dated 10th January, 2020]***

7) REVISION OF PROCESS OF LEVY OF PENALTY ON PAYMENT SYSTEM OPERATORS

Referring to the earlier Circular DPSS.CO.OD.No.1082/06.08.005/2016-17 dated October 20, 2016 advising the framework for imposition of monetary penalty and compounding of contraventions / offences under Sections 30 and 31, respectively of the Payment and Settlement Systems (PSS) Act, 2007 and taking note of the rapid developments since then with increased adoption of technology, availability of payment products, entry of more non-bank

players, dis-intermediation, significant surge in turnover, etc., in order to ensure that the payment systems are safe and secure and the various stakeholders conform to regulatory requirements, RBI has revised the process of levy of penalty on payment system operators by the Reserve Bank of India. A table showing the changes made to the existing framework is in Annex 1; salient features of the revised framework are in Annex 2 to the present Circular. – ***[DPSS.CO.OD.No.1328/06.08.005/2019-20, dated 10th January, 2020]***

8) MEASURES TO ENHANCE SECURITY OF CARD TRANSACTIONS

To improve user convenience and increase the security of card transactions, RBI has decided as under:

a. At the time of issue / re-issue, all cards (physical and virtual) shall be enabled for use only at contact based points of usage [viz. ATMs and Point of Sale (PoS) devices] within India. Issuers shall provide cardholders a facility for enabling card not present (domestic and international) transactions, card present (international) transactions and contactless transactions, as per the process outlined in para 1 (c).

b. For existing cards, issuers may take a decision, based on their risk perception, whether to disable the card not present (domestic and international) transactions, card present (international) transactions and contactless transaction rights. Existing cards which have never been used for online (card not present) / international / contactless transactions shall be mandatorily disabled for this purpose.

c. Additionally, the issuers shall provide to all cardholders:

i. facility to switch on / off and set / modify transaction limits (within the overall card limit, if any, set by the issuer) for all types of transactions – domestic and international, at PoS / ATMs / online transactions / contactless transactions, etc.;

ii. the above facility on a 24x7 basis through multiple channels - mobile application / internet banking / ATMs / Interactive Voice Response (IVR); this may also be offered at branches / offices;

iii. alerts / information / status, etc., through SMS / e-mail, as and when there is any change in status of the card. – ***[DPSS.CO.PD No.1343/02.14.003/2019-20, dated 15th January, 2020]***

9) AMENDMENT TO HEDGING OF COMMODITY PRICE RISK AND FREIGHT RISK IN OVERSEAS MARKETS (RESERVE BANK) DIRECTIONS, 2018

RBI *vide* present Circular amended the Hedging of Commodity Price Risk and Freight Risk in Overseas Markets (Reserve Bank) Directions, 2018 so as to substitute Para 10 of the Directions with following:

"10. Report to Reserve Bank - Banks shall submit a quarterly report to the Chief General Manager, Financial Markets Regulation Department, Reserve Bank of India through Extensible Business Reporting Language (XBRL) accessible at https://xbrl.rbi.org.in/orfsxbrl/ in the format provided in Annexure I. In case of no transactions, a "Nil" report shall be submitted by the bank." – ***[A.P. (DIR Series) Circular No. 16, dated 15th January, 2020]***

10) OPERATIONAL GUIDELINES FOR REPORTING THE CRILC– UCBS RETURN

The RBI *vide* present Circular has issued the operational guidelines for reporting the CRILC–UCBs return. In terms of the instructions, Primary (Urban) Co-operative Banks (UCBs) having total assets of 500 crore and above as on 31st March of the previous financial year (hereinafter referred to as "banks") shall report credit information, including classification of an account as Special Mention Account (SMA), on all borrowers having aggregate exposures of 5 crore and above with them to Central Repository of Information on Large Credits (CRILC) maintained by the Reserve Bank. Aggregate exposure shall include all fund-based and non-fund based exposure, including investment exposure on the borrower. – ***[DoS.OSMOS.No.4633/33.05.018/2019-20, dated 16th January, 2020]***

11) INTRODUCTION OF RUPEE DERIVATIVES AT INTERNATIONAL FINANCIAL SERVICES CENTRES (IFSC)

RBI has decided to allow Rupee derivatives (with settlement in foreign currency) to be traded in International Financial Services Centres (IFSCs), starting with Exchange Traded Currency Derivatives (ETCD). – ***[A.P. (DIR Series) Circular No.17, dated 20th January, 2020]***

12) LENDING AGAINST SECURITY OF SINGLE PRODUCT – GOLD JEWELLERY

RBI has decided that NBFCs can pool gold jewellery from different branches in a district and auction it at any location within the district, subject to meeting the following conditions:

i. The first auction has failed.

ii. The NBFC shall ensure that all other requirements of the extant directions regarding auction (prior notice, reserve price, arms-length relationship, disclosures, etc.) are met. – ***[DOR.NBFC(PD).CC.No.108/03.10.001/2019-20, dated 21st January, 2020]***

13) INVESTMENT BY FOREIGN PORTFOLIO INVESTORS (FPI) IN DEBT

RBI has made following changes to the Directions: -

a) In terms of paragraph 4(b) (i) of the Directions, short-term investments by an FPI shall not exceed 20% of the total investment of that FPI in either Central Government Securities (including Treasury Bills) or State Development Loans. This short-term investment limit is hereby increased from 20% to 30%.

b) In terms of paragraph 4(b) (ii) of the Directions, short-term investments by an FPI shall not exceed 20% of the total investment of that FPI in corporate bonds. This short-term investment limit is hereby increased from 20% to 30%.

c) FPI investments in Security Receipts are currently exempted from the short-term investment limit (paragraph 4 (b)(ii)) and the issue limit (paragraph 4(f)(iii)). These exemptions shall also extend to FPI investments in the following securities:

i. Debt instruments issued by Asset Reconstruction Companies; and

ii. Debt instruments issued by an entity under the Corporate Insolvency Resolution Process as per the resolution plan approved by the National Company Law Tribunal under the Insolvency and

Bankruptcy Code, 2016. – ***[A.P. (DIR Series) Circular No.18, dated 23rd January, 2020]***

14) AMENDMENT TO DIRECTIONS GOVERNING INVESTMENT THROUGH THE VOLUNTARY RETENTION ROUTE (VRR)

RBI has made following changes to the Directions governing investment through the Voluntary Retention Route (VRR).

i. The investment cap is increased to Rs. 1,50,000 crores from Rs. 75,000 crores.

ii. FPIs that have been allotted investment limits under VRR may, at their discretion, transfer their investments made under the General Investment Limit to VRR.

iii. FPIs are also allowed to invest in Exchange Traded Funds that invest only in debt instruments. – ***[A.P. (DIR Series) Circular No.19, dated 23rd January, 2020]***

15) REVISION OF MERCHANTING TRADE TRANSACTIONS (MTT) GUIDELINES

With a view to further facilitate merchanting trade transactions, the RBI has reviewed and revised the existing guidelines *vide* present Circular. – ***[A.P. (DIR Series) Circular No.20, dated 23rd January, 2020]***

16) CASH WITHDRAWAL USING POINT OF SALE (POS) TERMINALS

RBI has decided that the requirement of obtaining permission from the RBI be dispensed with and that henceforth, banks may, based on the approval of their Board, provide cash withdrawal facility at PoS terminals. The designated merchant establishments may be advised to clearly indicate / display the availability of this facility along with the charges, if any, payable by the customer. – ***[DPSS.CO.PD No.1465/02.14.003/2019-20, dated 31st January, 2020]***

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FOREIGN TRADE

1) CLARIFICATION ON SIMS REGISTRATION FOR SEZ/DTA

The Directorate has received a query that whether the SIMS Registration is required both at the point of import into SEZ/FTWZ and at the time of Customs Clearance for import from SEZ to DTA.

The matter has been examined in consultation with Ministry of Steel and it is clarified that in case an item of steel gets registered under SIMS at the time of entry into SEZ/FTWZ, there is no need to seek SIMS Registration again at the time of supply of such item into DTA. In other words, if the goods imported under SIMS to SEZ/FTWZ are supplied to DTA unit without any processing, the DTA unit need not seek any registration under SIMS. However, if manufacturing process in SEZ results in change of HS Code at 8-digit level, the importer in DTA shall be required to register under SIMS. ***– [Policy Circular No. 30/2015-2020, 8th January, 2020 (DGFT)]***

2) MIS-CLASSIFICATION GOODS UNDER 'OTHERS' CATEGORY AT THE TIME OF IMPORT

It has been noted that imports under 'Others' category continue to be widely used in the Bills of Entry. Accordingly, it is reiterated that all importers should file their Bills of Entry with specific codes available for the imported items under ITC(HS), 2017, Schedule — I (Import Policy) at 8 digit level, and to avoid as far as possible 'Others' category.

The matter will be reviewed shortly, and in the event of non-compliance and continued mis-classification by the importers, Government may consider bringing a licensing regime for all items imported under the 'Others' category by shifting these items from 'free' to 'restricted' category. If members of Trade and Industry are of the view that the existing HS codes are not sufficient to cover the goods that they are importing, they should immediately suggest appropriate HS codes at 8-digit level for such goods. ***– [Trade Notice No. NO. 46/2019-20, 17th January, 2020 (DGFT)]***

3) 2% ADDITIONAL AD HOC INCENTIVE FOR TWO HS CODES

A 2% additional ad-hoc Incentive for 2 HS Codes/ tariff lines 85171211 (Mobile phones, other than push button type) and 85171219 (Mobile phones, push button type) is notified for exports made with Let Export date from 01.01.2020 to 31.03.2020. ***– [Notification No: 43/2015-2020, 29th January, 2020 (DGFT)]***

4) AMENDMENT IN EXPORT POLICY OF PERSONAL PROTECTION EQUIPMENT / MASKS

Export of all varieties of personal protection equipment including Clothing and Masks used to protect the wearer from air borne particles and/or any other respiratory masks or any other personal protective clothing Including Coveralls (Class 2/3/4) and N95 masks] under the above mentioned ITC HS Codes is hereby 'Prohibited' with immediate effect till further orders. ***– [Notification No. 44/2015-2020, 31st January, 2020 (DGFT)]***

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CORPORATE

1) LAST DATE FOR FILING FORM BEN-2 EXTENDED TO 31 MARCH 2020

The time limit for filing e-form BEN-2 under the **Companies (Significant Beneficial Owners) Rules, 2018** has been further extended upto 31 March 2020, without payment of additional fee. Thereafter the fee and additional fee shall be payable. To refer to the MCA Circular dated 1 January 2020. ***– [General Circular No. 1/2020, 1st January, 2020, Ministry of Corporate Affairs]***

2) SC OPINES ON JURISDICTION OF HC/NCLT IN MATTERS OF PUBLIC LAW IN IBC PROCEEDINGS

The Supreme Court, in the matter of M/s Embassy Property Developments Pvt. Ltd. Vs. The State of Karnataka, has opined on a very

important question of law related to the High Court's jurisdiction to interfere under Article 226/227 of the Constitution with an order of the NCLT in a proceeding under the IB Code, ignoring the statutory remedy of appeal to NCLAT, and, the NCLT's jurisdiction to decide on a matter that is within the realm of public law. The SC also opined on the NCLT/NCLAT's power to inquire into questions of fraud, especially at the time of initiation of the corporate insolvency resolution process (CIRP).

The Apex Court held that:

The NCLT does not have jurisdiction to adjudicate upon disputes which revolve around decisions of statutory or quasi-judicial authorities, which can be corrected only by way of judicial review of administrative action. In the facts of this case, the NCLT did not have jurisdiction to entertain an application (by the RP, on behalf of the Corporate Debtor) against the Government of Karnataka for a direction to execute Supplemental Lease Deeds for the extension of a mining lease. The decision of the state government to refuse the benefit of deemed extension of lease is in the public law domain and hence, the correctness of the said decision can be called into question only in a superior court which is vested with the power of judicial review over administrative action. The NCLT, being a creature of a special statute to discharge special functions, cannot be elevated to the status of such a superior court. The High Court of Karnataka was therefore justified in entertaining the writ petition against the order of the NCLT directing the state government to extend the mining lease, as the NCLT was coram non judice.

Wherever the corporate debtor has to exercise a right that falls outside the purview of the IB Code, especially in the realm of public law, it cannot, through the resolution professional, take a bypass and go before the NCLT for the enforcement of such a right.

The moratorium under Section 14 of the IB Code could not have any impact upon the right of the Government to refuse the extension of the lease. The purpose of the moratorium is only to preserve the status quo and not to create a new right. What is prohibited is the right not to be dispossessed, but not the right to have renewal of the lease of such property. The Corporate Debtor, under the mining lease, was not granted an exclusive possession of an area so as to enable the RP to invoke Section 14(1)(d). Section 14(1)(d) may have no application to situations of this nature.

However, with respect to allegations of fraud and collusion, the Government could not bypass the statutory remedy of appeal to the NCLAT under Section 61 of the IB Code for the reason that the NCLT/NCLAT has the jurisdiction to enquire into fraudulent initiation of proceedings, as well as fraudulent transactions. Section 65(1) of the IB Code deals with a situation where CIRP is initiated fraudulently "for any purpose other than for the resolution of insolvency or liquidation". In the present case, as contended by the Government of Karnataka, the CIRP was initiated by one and the same person in different avatars, not for the purpose of genuine resolution of insolvency or liquidation, but for collateral purpose of cornering the mine and mining lease, the same would fall squarely within the mischief of Section 65(1).
The SC has thus clarified both the scope of interference by the High Court and the limits of jurisdiction of the NCLT in IBC proceedings so

far as matters of public law are concerned. The government has since amended Section 14 of the IB Code on Moratorium, through the Insolvency and Bankruptcy Code (Amendment) Ordinance 2019, to address a situation involving rights granted by the Central or State government. An explanation to subsection (1) thereof provides that a license, permit, registration, quota, concession, or a similar right given by the Central or State government or any authority constituted under any other law, shall not be suspended or terminated by an order of the Adjudicating authority on the ground of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of such rights during the moratorium period. ***–[M/s Embassy Property Developments Pvt. Ltd.* v. *The State of Karnataka, Civil Appeal No. 9170 of 2019, Supreme Court of India]***

3) COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) RULES, 2014 AMENDED

The Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 have been amended to provide for the following:

Every private company which has a paid-up share capital of ten crore rupees or more shall have a whole-time company secretary (Rule 8A substituted)

For the purpose of Secretarial Audit Report for bigger companies under Section 204 of the Companies Act 2013, the 'other class of companies' required to submit such a report under Rule 9(1) of the said Rules include "every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more", in addition to (a) Every public company having a paid-up share capital of fifty crore rupees or more; or (b) Every public company having a turnover of two hundred fifty crore rupees or more.

An Explanation to this sub-rule clarifies that the paid-up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.

The amendments, as above, shall be applicable in respect of financial years commencing on or after 1 April 2020. ***– [Notification, 3rd January, 2020, Ministry of Corporate Affairs]***

4) IBBI (LIQUIDATION PROCESS) REGULATIONS 2016 AMENDED

The IBBI has amended the Liquidation Process Regulations 2016, with effect from 6 January 2020. The key amendments, amongst others, relate to the operation and maintenance of a Corporate Liquidation Account, the timelines for payment by the secured creditor who realizes its assets to the liquidator, bar on the transfer of assets subject to security interest to any person who is not eligible to submit a resolution plan for the insolvency of the corporate debtor, under the IB Code and a bar on any such ineligible person to be a party to any compromise or arrangement u/s 230 of the Companies Act, 2013.

Corporate Liquidation Account [Regulation 46 substituted]

The Board shall operate and maintain a Corporate Liquidation Account (CLA) as part of the Public Accounts of India, in which a liquidator shall

deposit the amount of unclaimed dividends and undistributed proceeds, if any, in a liquidation process, along with any income earned thereon, before submitting an application for closure of the liquidation process or dissolution of the Corporate Debtor under sub-regulation 3 of Regulation 45.

Any amount held as unclaimed dividends and undistributed proceeds as on the commencement of these Amendment Regulations, i.e., 6 January 2020, must be deposited by the liquidator into the CLA within 15 days of this date, along with any income earned thereon till this date. The liquidator shall be entitled to a receipt from the Board for any amount deposited;

Failure to deposit such amount will be liable to an interest of 12% p.a. from the due date of deposit till the date of such deposit. [Until the CLA is operated as part of the Public Accounts of India, the Board shall open a separate bank account with a scheduled bank for this purpose.

The liquidator shall submit the evidence of deposit of the amount into the CLA to the authority with which the Corporate Debtor is registered and to the Board, and a statement in Form-I setting forth the nature of the amount deposited, along with the names and last known addresses of the stakeholders entitled to receive the unclaimed dividends or undistributed proceeds.

A stakeholder entitled to any amount deposited with CLA may apply to the Board in prescribed Form-J for an order of withdrawal. No proceeds shall be withdrawn without the approval of the officer to be appointed as custodian of the CLA.

The Board shall get the CLA audited annually. The audit report along with the statement of accounts of the CLA shall be placed before the Governing Board and forwarded to the Central Government.

Any amount that remains unclaimed or undistributed for a period of 15 years from the date of order of dissolution of the corporate debtor and any income or interest earned in the CLA shall be transferred to the Consolidated Fund of India

Presumption of security interest [Regulation 21A(2) substituted and (3) inserted]

A secured creditor who proceeds to realise its security, shall pay to the liquidator amounts payable under Section 53(1)(a) and (b)(i) of the Code, within 90 days from the liquidation commencement date. The excess of the realised value of the asset shall be paid within 180 days of the liquidation commencement date. In case of failure to do so, the asset which is subject to security interest shall become part of the liquidation estate. Where the payable amount is not certain by the date the amount is payable, the secured creditor will pay the amount as estimated by the liquidator and make good the difference as soon as it is ascertained.

Compromise or Arrangement (Proviso to Regulation 2B inserted)

A person who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.

Realisation of security interest by secured creditor (Sub-regulation 8 in Regulation 37 inserted)

A secured creditor shall not sell or transfer an asset which is subject to security interest to any person who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor. ***– [Insolvency and Bankruptcy Board of India, Notification 6th January, 2020]***

5) AMENDMENTS TO INDIAN STAMP ACT 1899 EFFECTIVE FROM 1 APRIL 2020

The Ministry of Finance has amended its earlier notification of amendments to the Indian Stamp Act, 1899 to provide that the amendments shall come into force with effect from 1 April 2020, instead of 9 January 2020.

The Indian Stamp (Collection of Stamp-Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019 have also been amended to come into force with effect from 1 April 2020, instead of 9 January 2020**.** ***– [Notification, 8th January, 2020, Ministry of Finance]***

6) ALLAHABAD HC UPHOLDS VIRES OF SECTION 164(2) OF COMPANIES ACT 2013

A division bench of the Allahabad High Court, in the matter of *Jai Shankar Aghari vs UoI & Ors.,* by a common judgement dated 16 January 2020, has held that Section 164(2) of the Companies Act, 2013 which stipulates that a director of a company which has not filed financial statements or annual returns for any continuous period of three financial years will be disqualified from being appointed as a director for a period of five years, is constitutionally valid. However, the financial year which ended on 31 March, 2013 will not be relevant for calculation of such period of disqualification. The three financial years relevant for attracting Section 164(2)(a) would commence from FY 2014-15 and onwards and not prior thereto. The Court relied on the Gujarat High Court judgement in *Gaurang Balvantlal Shah v UoI*, Madras High Court in *Bhagvan Das Dhananjaya Das v UoI & Anr*, Karnataka High Court in *Yashodhara Shroff vs UoI* and Telangana High Court in *Venkata Ramana Tadiparthi v UoI*.

The Court noted that the Delhi High Court, in *Mukut Pathak & Ors v Union of India & Anr and other writ petitions*, while it upheld the constitutionality of Section 164(2), took the view that the financial year ended 30 March, 2013 would apply for the reason that the AGM would be required to be held within six months and thereafter annual returns required to be submitted within 60 days of the AGM, hence, non-submission of the annual returns for FY 2013-14 would be covered within the ambit of Section 164(2)(a). However, in view of a division bench of the Lucknow Bench of the High Court having already taken a view concurring with the Gujarat, Madras and Madhya Pradesh High Courts, the Allahabad High Court did not find any reason to take a different view.

The Court also held that Section 164(2) is not violative of Articles 14 and 19(1)(g), inasmuch as, there is no embargo in carrying on business/profession and a limited prohibition is applied only in respect of a tainted Director who has failed to comply with statutory obligatory provisions of Act. There is also has a reasonable nexus with the object sought to be achieved i.e., to make compliance of statutory provisions more stringent so that the people may not have any

liberty to disobey provisions without facing any consequences.

It held the RoC's action, in deactivating the DIN of the petitioners/directors, as unsustainable in the absence of any provision to deactivate DIN of petitioners/directors if they have incurred disqualification under section 164.

On applicability of principles of natural justice, the Court differed with the Delhi, Gujarat and Karnataka High Court and held that a complete embargo on the principles of natural justice would not be justified and at least a notice to the concerned person was necessary to be given by the RoC ***-[Jai Shankar Agrahari* v. *Union Of India And Another, 16th January, 2020, (Allahabad High Court)]***

7) COMPANIES (WINDING UP) RULES 2020 NOTIFIED

The MCA has notified the Companies (Winding Up) Rules, 2020 for the purposes of Sections 271 and 272 of the Companies Act, 2013 related to Winding up by the Tribunal. The said Rules will become effective from 1 April 2020. The Rules streamline the procedure for dissolution of companies and provide for 95 different forms (WIN-1 through WIN-95) for various compliances/steps to be followed under the Rules. Amongst others, for the purpose of Section 361(1)(ii) of the Act, the following classes of companies, based on the latest audited Balance Sheet, may be ordered to be wound up by the Central Government by summary procedure, namely: (a) the company which has taken deposit and total outstanding deposits is not exceeding twenty five lakh rupees; or (b) the company of which the total outstanding loan including secured loan does not exceed fifty lakh rupees; or (c) the company of which turnover is up to fifty crore rupees; or (d) the company of which paid up capital does not exceed one crore rupees. – ***[Ministry of Corporate Affairs, 24th January, 2020]***

8) SECTION 138 NIA PROCEEDINGS WILL NOT TERMINATE PENDING CIRP UNDER I&B CODE

The Madras High Court has held that criminal prosecution initiated under Section 138 r/w 141 of the Negotiable Instruments Act, 1881 r/w Section 200 of the Cr.P.C cannot be terminated on account of the operation of the provisions of the I &B Code. Neither Section 14 nor Section 31 or any other provision of the Code bars the continuation of criminal prosecution initiated against the corporate debtor and its directors and officials. Where the proceedings under Section 138 have already commenced and during its pendency the company gets dissolved, the directors and other accused cannot escape by citing its dissolution. What is dissolved is only the company, not the personal liability of the accused covered under Section 141 of the NIA. Where the company continues to remain even at the end of the resolution process, the only consequence is that the erstwhile directors can no longer represent it.

The Court further held that Section 421 of the CrPC which provides for the mode of recovery of fine amount from the accused by a warrant of attachment/sale of movable property and/or issue of warrant to the Collector to realise the amount as arrears of land revenue, cannot prevail over the I&B Code in view of Section 238 thereof. Post-conviction, the process of recovery of the fine/compensation from the assets of the

corporate debtor will have to be in terms of the IB Code. In the instant case, the accused company had not been dissolved but its management had been taken over, therefore, the impugned prosecution against it could also continue. It was open to the petitioner (former director of the accused company) to file an application for causing production of any document or examination of any witness under Section 247 of Cr.P.C to bolster his defence. ***– [Mr. Ajay Kumar Bishnoi, Former MD M/s Tecpro Systems Ltd* vs. *M/s Tap Engineering, 9th January, 2020 Madras High Court]***

9) AMOUNT DEPOSITED IN COURT UNDER AN AWARD IS NOT 'PROPERTY' U/S 14 OF I&B CODE

The Bombay High Court, in an interim relief application for withdrawal of an amount of Rs. 8 crores (plus interest) deposited in the High Court under an Award, has held that the award debtor, HDIL, could not claim this amount as being its 'property' within the meaning of Section 14(1)(d) of the Insolvency Code. The provisions regarding a moratorium cannot apply to such cash deposits made in Court. The application for withdrawal cannot be considered a suit, proceeding or execution within the meaning of Section 14(1)(a). "*Once an amount is deposited in the Court, it is placed beyond the reach of either party without the permission of the Court. It is, therefore not 'the property' of either party pending an adjudication as to entitlement by the Court. Once the Arbitrator held that the applicant was entitled to this amount and the award became enforceable as a decree of this court, then no question remained of the amount being claimed by HDIL.*" The award was unchallenged and unsatisfied and there was no dispute that an amount of Rs. 8 crores was available with the Court. The Court allowed the application and directed the Prothonotary & Senior Master to effect the transfer by RTGS to the bank account of the award-creditor, Nahar Builders. ***– [Nahar Builders Ltd* vs. *Housing Development and Infrastructure Ltd (HDIL), 21st January, 2020, Bombay High Court]***

10) CD NOT LIABLE IN CASE OF FORCE MAJEURE EVENT SUCH AS DELAY IN GRANT OF COMPLETION CERTIFICATE

The NCLAT held that if the delay in handing over possession of a flat/apartment is not due to the 'Corporate Debtor' but force majeure, it cannot be alleged that the 'Corporate Debtor' defaulted in delivering the possession. If the apartment/ flat/ premises is otherwise ready, but offer of possession is delayed due to delay in grant of completion/ occupation certificate by the Government, this is a reason beyond the control of 'Corporate Debtor'. In the instant case, the application preferred by the allottees under Section 7 of the 'I&B Code' was dismissed and the appellant 'Corporate Debtor' (company) was released from all the rigours of 'Moratorium' and allowed to function through its Board of Directors with immediate effect. ***– [Navin Raheja* v. *Shilpa Jain and Others, 22nd January, 2020, (National Company Law Appellate Tribunal)]***

11) LEASE OF PROPERTY IS NOT 'OPERATIONAL DEBT'

The NCLAT has held that lease of immoveable property cannot be considered as a supply of goods or rendering of services and therefore recovery of enhanced rent as per lease agreement cannot fall within the definition of 'operational debt'. It allowed the appeal of the

Lessee/corporate debtor and set aside the order of the Adjudicating Authority (AA) which appointed the IRP and declared moratorium in favour of the Lessor /petitioner under Section 9 of the IBC. The Appellate Tribunal noted that the IBC does not define goods and services. Although the Bankruptcy Law Reforms Committee (BLRC) in its report of November 2015 refers to operational creditors such as "employees, rental obligations, utilities payments and trade credits" and "the lessor that the entity rents out space from to whom the entity owes monthly rent on a three-year lease", the Code does not adopt the BLRC report. Only claims in respect of goods and services have been included in the definition of operational creditor under Section 5(20) and 5(21) of the Code. ***– [M. Ravindranath Reddy* vs. *G. Kishan & Ors., 17th January, 2020, (National Company Law Appellate Tribunal)]***

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SECURITIES

1) SEBI INFORMAL GUIDANCE: SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS 2015- IN THE MATTER OF GUJARAT STATE PETRONET LTD.

SEBI has clarified with respect to 'Material Financial Relationship' as defined under the amended SEBI (Prohibition of Insider Trading) Regulations 2015, that:

Even non-monetary transactions would be construed to establish a material financial relationship.

As an immediate relative may rebut connectedness with the designated person (DP), a DP is also required to disclose the names of immediate relatives with whom he has a material financial relationship in the category of persons with whom the designated person has a material financial relationship.

In response to the below mentioned specific transactions where amount paid is in excess of 25% of the DPs' annual income, SEBI stated that:

(i) A DP making payment of fees of his granddaughter by directly depositing the fees to the account of the University is required to disclose the name of the granddaughter and in case she is a minor, the name of both the parents and guardian, if any, in addition to the minor granddaughter; (ii) A DP who has gifted a small piece of land to her daughter and another DP who has credited his daughter's account with Rs. 2 lakhs as gift on their birthdays should both disclose the name of their daughters; (iii) A DP who has deposited an amount in her niece's account for payment by her of fees for higher studies, and the niece will return the amount (without interest) over a period of time after completing her studies, should disclose the name of the niece; (iv) The DP's maternal uncle sponsor's the DP's foreign trip and the uncle has been sponsoring such trips in the past even when the person was not a DP – In this case, the DP is not required to disclose the name of his maternal uncle; (v) A DP undertakes to repay financial obligations of a person, where the actual payment takes place in parts over a period of two years, the DP is required to disclose the name of the person to whom the DP makes payment. – ***[SEBIIHO/ISD/ISD/OW/PI20201276/1,***

SEBI Informal Guidance, 3rd January, 2020, (SEBI)]

2) SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2020

SEBI has amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, specifically Regulation 17 (1B), to allow time till 1 April 2022 for the top 500 listed entities to ensure that the Chairperson of the board of such listed entity is a non-executive director and is not related to the Managing Director or the Chief Executive Officer (as per the definition of the term "relative" under the Companies Act, 2013). ***– [Notification No. SEBI/LAD-NRO/GN/2020-02, 10th January, 2020, (Securities and Exchange Board of India)]***

3) SEBI CIRCULAR ON STREAMLINING OF THE PROCESS OF RIGHTS ISSUE

Following amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2018 and the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2015 with respect to a rights issue, SEBI has issued a consolidated circular that sets out the revised process for all rights issue/fast track of Rights Issue. The Circular provides for the detailed procedure, in Annexure I, and applies to all rights issue/fast track rights issue where the Letter of Offer is filed with the stock exchanges on or after 14 February 2020. ***–[SEBI/HO/CFD/DIL2/CIR/P/2020/13, 22nd January, 2020, ((Securities and Exchange Board of India)]***

4) AMENDMENTS TO SCRA AND SEBI ACT (UNDER FINANCE ACT 2019) NOTIFIED

The Central Government has notified amendments made to the Securities (Contract Regulation) Act 1956 (SCRA) and the SEBI Act, 1992 under the Finance (No.2) Act, 2019 (in Part III and Sections 183, 184 and 185 of Part IX of Chapter VI), to come into force with effect from 20 January 2020. The amendments pertain to maximum penalties for failure to furnish or falsification of information to the stock exchanges and the Board, destruction of records and default of stock-broker, as follows:

Amendment to Section 23A SCRA, that, failure to furnish any information, document, return, report etc.to the stock exchange and to the Board will attract a penalty, which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for each such failure;

Amendments to Sections 15C, 15F and insertion of Section 15AA in SEBI Act 1992:

(i)Section 15C which pertains to penalty for failure to redress investors' grievances has been amended to provide that where the Board calls upon any listed company or any person who is registered as an intermediary, to redress the grievances of investors in writing, this will also include any means of electronic communication from the Board

(ii)Under Section 15F(a) if the stock broker fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty

which shall not be less than one lakh rupees but which may extend to one crore rupees for which the contract note was required to be issued by that broker;

(iii) A new Section 15HAA provides for penalty for alteration, destruction of records and failure to protect the electronic database of the Board, as under:

"Any person, who— (a) knowingly alters, destroys, mutilates, conceals, falsifies, or makes a false entry in any information, record, document (including electronic records), which is required under this Act or any rules or regulations made thereunder, so as to impede, obstruct, or influence the investigation, inquiry, audit, inspection or proper administration of any matter within the jurisdiction of the Board.

Explanation.—For the purposes of this clause, a person shall be deemed to have altered, concealed or destroyed such information, record or document, in case he knowingly fails to immediately report the matter to the Board or fails to preserve the same till such information continues to be relevant to any investigation, inquiry, audit, inspection or proceeding, which may be initiated by the Board and conclusion thereof;

(b)without being authorised to do so, access or tries to access, or denies of access or modifies access parameters, to the regulatory data in the database; (c) without being authorised to do so, downloads, extracts, copies, or reproduces in any form the regulatory data maintained in the system database; (d) knowingly introduces any computer virus or other computer contaminant into the system database and brings out a trading halt; (e) without authorisation disrupts the functioning of system database; (f) knowingly damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the regulatory data in the system database; or (g) knowingly provides any assistance to or causes any other person to do any of the acts specified in clauses (a) to (f),

shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to ten crore rupees or three times the amount of profits made out of such act, whichever is higher. The expressions "computer contaminant", "computer virus" and "damage" shall have the meanings respectively assigned to them under Section 43 of the Information Technology Act, 2000 ***-[Ministry of Finance, Department of Economic Affairs, 20th January, 2020]***

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COMPETITION

1) CCI'S REPORT ON MARKET STUDY ON E-COMMERCE IN INDIA

The Competition Commission of India ('the Commission') released a report titled 'Market Study on E-commerce in India: Key Findings and Observations'. The Market Study on E-commerce in India ('the study') was initiated by the Commission in April 2019 with a view to better understand the functioning of e-commerce in India and its implications for markets and competition. The objective was also to identify impediments to competition, if any, emerging from e-commerce and to ascertain the Commission's enforcement and advocacy priorities in light of the same.

The report presents the key trends identified and also discusses the issues that may, directly or indirectly, have a bearing on competition, or may hinder realisation of the full procompetitive potential of e-commerce. These include the issues of lack of platform neutrality, unfair platform-to-business contract terms, exclusive contracts between online marketplace platforms and sellers/service providers, platform price parity restrictions and deep discounts. The Commission is of the view that many of these issues would lend themselves to a case-by-case examination by the Commission under the relevant provisions of the Competition Act, 2002. The report outlines these issues and presents the observations of the Commission on the same without assessing whether a conduct is anti-competitive or is justified in a particular context.

On the basis of the market study findings, the enforcement and advocacy priorities for the Commission in the e-commerce sector in India are, inter alia, the following:

(i)Ensuring competition on the merits to harness efficiencies for consumers; (ii) Increasing transparency to create incentive for competition and to reduce information asymmetry; and (iii) Fostering sustainable business relationships between all stakeholders.

The insights gained from the study will inform antitrust enforcement in these markets. Nonetheless, bargaining power imbalance and information asymmetry between e-commerce marketplace platforms and their business users are at the core of many issues that have come up in the market study. Thus, without a formal determination of violation of competition law, improving transparency over certain areas of the platforms' functioning can reduce information asymmetry and can have a positive influence on competition outcomes.

In view of the foregoing, the report enumerates certain areas for self-regulation by the e-commerce marketplace platforms. These have been advocated with a view to reduce information asymmetry and promote competition on the merits. The Commission under its advocacy mandate urges the ecommerce platforms to put in place the following transparency measures.

Search Ranking: (i) Set out in the platforms' terms and conditions a general description of the main search ranking parameters, drafted in plain and intelligible language and keep that description up to date. (ii) Where the main parameters include the possibility to influence ranking against any direct or indirect remuneration paid by business users, set out a description of those possibilities and of the effects of such remuneration on ranking. (iii) Introduction of the above-mentioned features, however, should not entail, disclosure of algorithms or any such information that may enable or facilitate manipulation of search results by third parties.

Collection, use and sharing of data: Set out a clear and transparent policy on data that is collected on the platform, the use of such data by the platform and also the potential and actual sharing of such data with third parties or related entities.

User review and rating mechanism: Adequate transparency over user review and rating mechanisms is necessary for ensuring information symmetry, which is a prerequisite for fair competition. Adequate transparency to be maintained in publishing and sharing user reviews

and ratings with the business users. Reviews for only verified purchases to be published and mechanisms to be devised to prevent fraudulent reviews/ratings.

Revisions in contract terms: Notify the business users concerned of any proposed changes in terms and conditions. The proposed changes not to be implemented before the expiry of a notice period, which is reasonable and proportionate to the nature and extent of the envisaged changes and to their consequences for the business user concerned.

Discount Policy: Bring out clear and transparent policies on discounts, including inter alia the basis of discount rates funded by platforms for different products/suppliers and the implications of participation/non-participation in discount schemes. ***– [Competition Commission of India, January 8, 2020]***

2) ACQUISITION BY ROC STAR INVESTMENT TRUST (ACQUIRER/ROC) OF EQUITY SHARE CAPITAL OF STAR HEALTH AND ALLIED INSURANCE COMPANY LIMITED (STAR HEALTH/TARGET) FROM SNOWDROP CAPITAL PTE LIMITED

CCI received the following green channel combination filed under sub-section (2) of Section 6 of the Competition Act, 2002 (Act) read with Regulations 5A of the Competition Commission of India (Procedure in regard to the transactions of business relating to combinations) Regulations, 2011 (Combination Regulations): Acquisition by ROC Star Investment Trust (Acquirer/ROC) of equity share capital of Star Health and Allied Insurance Company Limited (Star Health/Target) from Snowdrop Capital PTE Limited (Proposed Combination) The Notification relates to the acquisition of 2.39% of equity shares of Star Health by ROC Star Investment Trust (acting through its custodian Perpetual Corporate Trust Limited). Post the consummation of the Proposed Combination, ROC will have certain rights including non-control conferring veto rights in Star Health. Acquirer is an investment vehicle managed by ROC Capital Pty Limited ("ROC Capital"), an Australian investment management company. Target is licensed as a general insurer by the Insurance Regulatory Development Authority of India (IRDA) to carry on the business of general insurance. It is currently engaged in the business of health insurance and deals in personal accident, medi-claim as well as in overseas travel insurance. – [***Competition Commission of India, Press Release No. 33/2019-20, January 9, 2020]***

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INDIRECT TAXES

a. CUSTOMS

1) GHASUAPARA LCS NOTIFIED FOR IMPORTS

Notification No. 63/1994-Customs dated 21st November 1994 amended so as to notify Ghasuapara LCS for imports. – ***[Notification No. 03/2020- Customs (N.T.), dated 15th January, 2020]***

2) ADD ON SODIUM NITRITE

Notification No. 40/2017-Customs(ADD) dated 25-08-2017 amended so as to revise anti-dumping

duty on imports of "Sodium Nitrite" originating in or exported from China PR, in pursuance of final findings of sunset review investigations issued by DGTR *vide* Notification No. 15/06/2016-DGTR dated the 8th November 2019. – ***[Notification No. 01/2020-Customs (ADD), dated 24th January, 2020]***

3) ADD ON DIGITAL OFFSET PRINTING PLATES

Provisional anti-dumping duty imposed on the imports of the "Digital offset printing plates", originating in or exported from China PR, Japan, Korea RP, Taiwan and Vietnam for a period not exceeding six months. – ***[Notification No. 2 /2020-Customs (ADD), dated 30th January, 2020]***

4) CVD ON CONTINUOUS CAST COPPER WIRE RODS

Definitive countervailing duty imposed on imports of Continuous Cast Copper Wire Rods originating in, or exported from Indonesia, Malaysia, Thailand and Vietnam for a period of five years. – ***[Notification No. 1/2020-Customs (CVD), dated 08th January, 2020]***

5) CLARIFICATION REGARDING LEVY AND COLLECTION OF SOCIAL WELFARE SURCHARGE (SWS) ON IMPORTS UNDER VARIOUS SCHEMES

The CBIC has clarified that in case of imports under Merchandise Exports from India Scheme (MEIS) and Services Exports from India Scheme (SEIS), Social Welfare Surcharge is not exempted and must be levied and collected on the imported goods. SWS is calculated at the rate of ten percent on the aggregate of duties, taxes, and cesses which are levied and collected under Section 12 of the Customs Act, 1962.

The Payment of SWS cannot be debited through duty credit scrips and therefore has to be paid by the importers in cash and with regards to the past cases of debits of SWS already made in duty credit scrips shall not be disturbed and the payments made through debit in duty credit scrips may be accepted as revenue duly collected. – ***[Circular No. 02/2020 – Customs, dated 10th January, 2020]***

6) IMPLEMENTATION OF AUTOMATED CLEARANCE ON PILOT BASIS

The CBIC has implemented automated customs clearance on a pilot basis at two customs locations- Chennai Customs House and Jawaharlal Nehru Customs House from 06.02.2020. Thereafter, the facility will be reviewed and further expanded on PAN India basis at all Customs EDI locations where RMS is enabled and functional. The important features of the automated clearance are as follows:-

i. The facility will only be for ICES locations where RMS is enabled and fully functional.

ii. All the Customs Compliance Verification (CCV) requirements under the Customs Act, rules, instructions etc will be done by the designated proper officer of Customs.

iii. The CCV would operate even while duty has not been paid or payment is under process.

iv. After completion of CCV, the proper officer of customs, on satisfaction that the goods are ready for clearance, will confirm the completion of the CCV for the particular Bill of Entry in the Customs System.

v. On confirmation of payment of applicable duty, the Customs System will then electronically

give clearance to the Bill of Entry. – ***[Circular No.05/2020-Customs, dated 27th January, 2020]***

b. GST

1) NOTIFICATION OF CERTAIN SECTIONS OF CGST ACT 2017 APPLICABLE FROM 01.01.2020

CBIC has notified Sections of CGST Act 2017 applicable from 01.01.2020 which brings into force certain provisions of the Finance (No. 2) Act, 2019 amending the CGST Act, 2017. The provisions of Sections 92 to 112 (Amendments to CGST Act, 2017), except Section 92 (Pertaining to National Appellate authority for Advance Rulings), Section 97 (Pertaining to Section 39 of CGST Act), Section 100 (Pertaining to Section 50 of CGST Act- Interest payable on amount paid by debiting cash ledger) and Sections 103 to 110 (refund; Pertaining to National Appellate authority for Advance Rulings; National Appellate authority) of the Finance Act, 2019 shall come into force w.e.f 1st January, 2020. – ***[Notification No. 01/2020 – Central Tax, dated 01st January, 2020]***

2) CENTRAL GOODS AND SERVICES TAX (AMENDMENT) RULES, 2020

The CBIC has amended the Central Goods and Services Tax Rules, 2017 to provide the scheme for E-invoicing under GST. Key Points of the Amendment are:

i. Sub-rule 1A of Rule 117 has been amended so as to provide extension of the date for submitting the declaration in FORM GST TRAN-1 till 31st March, 2020 instead of 31st December, 2019 in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension. Also, for such registered persons the time limit for filing the declaration in FORM GST TRAN-2 has been extended till 30th April 2020 instead of 31st January, 2020.

ii. In Part-B of Form REG-01 i.e. "Application of Registration" serial No 12 and 13 has been substituted.

iii. Form INV-01 has been substituted and also the scheme for generation of e-invoice has been provided. For details of the scheme on e - invoice please refer the attached document. – ***[Notification No. 02/2020 – Central Tax, dated 01st January, 2020]***

3) REVISIONAL AUTHORITY APPOINTED UNDER CGST ACT, 2017

The CBIC has appointed:

(a) the Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and

(b) the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax,

as the Revisional Authority under Section 108 of the said Act. – ***[Notification No. 05/2020 – Central Tax, dated 13th January, 2020]***

4) STANDARD OPERATING PROCEDURE (SOP) FOR EXPORTERS CLAIMING IGST REFUND

The CBIC has issued SOP to be followed by the exporters mainly to verify the existence of exporters and mitigate the risk of fraudulent refund of IGST paid through utilizing the ITC which was availed on the basis of fake invoices. – ***[Circular No.131/1/2020-GST, dated 23rd January, 2020]***

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INTELLECTUAL PROPERTY RIGHTS

1) BOMBAY HC ORDERS REMOVAL OF YOUTUBE VIDEO REVIEWING PARACHUTE COCONUT OIL BEING DISPARAGING AND DENIGRATING IN NATURE

Present suit has been filed by the Plaintiff against the Defendant who is a "YouTuber" / "V-Blogger" who has his own channel titled "Bearded Chokra" on you tube to take down the review video titled "Is Parachute Coconut Oil 100% Pure?". According to the Plaintiff, the impugned video of the Defendant makes claims and statements with regard to the Plaintiffs PARACHUTE edible coconut Oil, which are false and unsubstantiated and that the whole video is disparaging and denigrating in nature.

The Defendant contended that the statements made by him in his Impugned Video are true and constitute his bonafde opinion and was protected under the fundamental right to freedom of speech and expression. He also sought to argue the Bonnard Principle, that the content in the video was based on research and material and that once he claimed truth/justification as a defence, no injunction ought to be granted without a trial.

The Court after hearing both the parties in detail and referring to various earlier decisions, held that the Defendant's video was created and published without exercising due diligence or research and his statements in the video were made with recklessness, without caring whether they were true or false. Court held that the impugned Video is disparaging in nature and since it is not possible to dissect the innocuous parts of the video to create a coherent and acceptable version of it, the entire video must go. – ***[Marico Limited* v. *Abhijeet Bhansali, dated 15th January, 2020 (Bombay HC)]***

2) REPUBLIC TV GETS INTERIM PROTECTION FROM CALCUTTA HC AGAINST THE INFRINGING MARK 'REPUBLICHINDI'

Present suit has been filed on behalf of Republic TV against the Defendant for using domain name of www.republichindi.com.

Court held that the manner in which the defendant is using the word 'Republic Hindi' with the colour combination and font used by the defendant, the mark of the defendant is deceptively similar to that used by the plaintiff and hence granted interim injunction to the Plaintiff. – ***[Arg Outlier Media Asianet News Private Limited* v. *Shailputri Media Private Limited, dated 15th January, 2020 (Calcutta HC)]***

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CONSUMER

1) THE CONSUMER COMMISSION CAN TAKE ADDITIONAL EVIDENCE ON RECORD AT THE STAGE OF APPEAL AND REVISION

A five-judge bench of National Consumer Disputes Redressal Commission (NCDRC) has opined that additional evidence/ documents can be allowed to be presented before the Consumer Commission at the stage of appeal and revision but only if the parties presenting the same prove that the documents or evidence was not in its knowledge or that despite exercise of due diligence could not be produced at the time when the decree appealed against was passed.

A bench of President Justice R K Agrawal and members Justice V.K. Jain, Deepa Sharma, M Shreesha and Anup K Thakur said so while deciding a reference sent to it by a three-judge bench.

The question in reference was whether in Appeal Cases or the Revision Cases, the State Commission and/or the National Commission can exercise the powers of Order 41 Rule 27 of the Code of Civil Procedure, 1908 and permit the parties to adduce/bring on record the additional documents.

In deciding the reference, the five-judge bench referred to the recent judgement of the Supreme Court of India in Jiten K. Ajmera & Anr. Vs. Tejas Cooperative Housing Society wherein it was held that under Order 41 Rule 27 of the Code of Civil Procedure, 1908, a party can produce additional evidence at appellate stage.

The Supreme Court had in that case noted that the documents sought to be brought on record came into existence only after filing of the appeal before the State Commission and observed, "Under Order 41 Rule 27 CPC a party can produce additional evidence at the appellate stage, if it establishes that notwithstanding the exercise of due diligence, such evidence was not within its knowledge, or could not even after the exercise of due diligence, be produced by it at the time when the decree appealed against was passed".

Taking note of the decision of the apex court, the NCDRC five-judge bench held, "In view of the law laid down by the Hon'ble Supreme Court in Jiten K. Ajmera, either of the parties are entitled to produce additional evidence in the Appeal and/or Revision Petition at any stage if it establishes that notwithstanding the exercise of due diligence such evidence was not in its knowledge and could not, even after exercise of due diligence, be produced by it at the time when the Consumer Complaint was decided

The reference reached the five-judge bench from a two-member bench of NCDRC comprising President R K Agarwal and Member M Shreesha which was hearing a batch of revision petitions moved by insurance companies against the order of the Chhattisgarh State Commission relating to insurance claim.
Companies' advocates Rajat Khattry and Debopriya Pal sought to bring on record additional documents which were not part of the record before the State Commission like the true copy of the Miscellaneous Vehicle Package Policy along with Terms & Conditions of the Policy, true copy of the Claim form etc.

The bench, while holding that the provisions of Order 41 Rule 27 of the Code of Civil Procedure, 1908 has not been made applicable in the proceedings under the Act, referred the matter to three-judge bench saying, "This question is of great importance as a large number of cases are pending before the District Consumer Forum, the State Commission as also before this Commission, where any of the parties may seek to bring additional documents on record which were not part of the record".

The three-judge bench was of the opinion that "there is absolutely no bar in the provision of the Act that any additional evidence cannot be brought on record before the State Commission while hearing appeal" but referred the matter to the five-judge bench. ***– [Branch Manager, Universal Sompo General Insurance Company Limited & Ors.*** **v.** ***Didwaniya Exim Private Limited & Anr. 21st January, 2020 (National Consumer Disputes Redressal Commission)]***

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ENVIRONMENT

1) NGT DIRECTS CPCB TO SUBMIT REPORT ON GUIDELINES FOR EMISSION FROM RAILWAY ENGINES

The NGT has asked the Central Pollution Control Board (CPCB) to submit compliance report, within a month, on its order on guidelines enumerating locomotive standards for Railways. – ***[The Times of India, dated 22nd January, 2020]***

2) NGT SEEKS INFORMATION ON SOLID WASTE MANAGEMENT AND AIR POLLUTION IN STATES, UTS

The NGT directed the Central Pollution Control Board (CPCB) to obtain information from chief secretaries on solid waste management, restoration of polluted river stretches and air quality management in states and Union territories. Bench observed that the nature and extent of information submitted by the CPCB is not complete and available information with regard to sewage generation and treatment shows huge gap. - ***[The Times of India, dated 07th January, 2020]***

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