MONTHLY NEWSLETTER
Lexport
Interpreting India for commerce
FEBRUARY 2020

RBI/FEMA

1) MODIFICATIONS IN INTEREST SUBVENTION SCHEME FOR MSMES

The Government of India has, *inter alia*, notified following modifications in the operational guidelines for Interest Subvention Scheme for MSMEs:

i. Submission of statutory auditor certificate by June 30, 2020 and in the meantime, settle claims based on internal / concurrent auditor certificate.

ii. Acceptance of claims in multiple lots for a given half year by eligible institutions.

iii. Requirement of Udyog Aadhar Number (UAN) may be dispensed with for units eligible for GST. Unit not required to obtain GST, may either submit Income Tax Permanent Account Number (PAN) or their loan account must be categorized as MSME by the concerned bank.

iv. Allow trading activities also without Udyog Aadhar Number (UAN) – ***[FIDD.CO.MSME.BC.No.17/06.02.031/2019-20, dated 05th February, 2020]***

2) RBI ALLOWS RRBS TO ACT AS MERCHANT ACQUIRING BANKS

RBI has allowed Regional Rural Banks (RRBs) to act as merchant acquiring banks using Aadhaar Pay – BHIM app and POS terminals. RRBs have been permitted to deploy their own devices, provided it takes prior permission from RBI and have net worth of Rs. 100.00 crore or more as on March 31 of the preceding financial year, minimum CRAR at 9% and net NPA below 5% among other conditions. – ***[DOR.RRB.BL.BC.No.31/31.01.001/2019-20, dated 06th February, 2020]***

3) REVISION OF GUIDELINES FOR DEFERMENT OF DCCO FOR CRE PROJECTS

With the objective to harmonise the guidelines for deferment of date of commencement of commercial operations (DCCO) for projects in non-infrastructure and commercial real estate (CRE) sectors, the RBI has issued revised guidelines for deferment of DCCO for CRE projects *vide* present Circular. – ***[DOR.No.BP.BC.33/21.04.048/2019-20, dated 07th February, 2020]***

4) EXEMPTION FROM CRR MAINTENANCE TO BANKS

In a bid to spur credit growth and boost demand, the RBI has offered banks Cash Reserve Ratio (CRR) exemption for five years for incremental credit disbursed to automobiles, residential housing, and micro, small and medium enterprises (MSMEs) between 31 Jan-31 July,

2020. – ***[DOR.No.Ret.BC.30/12.01.001/2019-20, dated 10th February, 2020]***

5) RBI EXTENDS ONE-TIME RESTRUCTURING SCHEME FOR MSME LOANS TO DECEMBER 31, 2020

RBI has decided to extend one-time restructuring of existing loans to MSMEs classified as 'standard' without a downgrade in the asset classification is permitted, subject to the following conditions:

i. The aggregate exposure, including non-fund-based facilities, of banks and NBFCs to the borrower does not exceed Rs. 25 crores as on January 1, 2020.

ii. The borrower's account was in default but was a 'standard asset' as on January 1, 2020 and continues to be classified as a 'standard asset' till the date of implementation of the restructuring.

iii. The restructuring of the borrower account is implemented on or before December 31, 2020.

The borrowing entity is GST-registered on the date of implementation of the restructuring. However, this condition will not apply to MSMEs that are exempt from GST-registration. This shall be determined on the basis of exemption limit obtaining as on January 1, 2020. – ***[DOR.No.BP.BC.34/21.04.048/2019-20, dated 11th February, 2020]***

6) PROCEDURE FOR BANKS WHILE REPORTING THEIR TRANSACTIONS IN CDS IN FORM 'A' RETURN

On a review, RBI has decided that the banks should follow the following practice while reporting their transactions in CDs in Form 'A' Return:

A) Based on the statement issued by depositories, if the CDs issued are held by banks on reporting Friday, the issuer bank should report such CDs under item I of the Form 'A' Return i.e., "Liabilities to the Banking System in India". The CDs held by non-bank entities should be reported as "Liabilities to Others in India", as hitherto. If the bank is not in a position to segregate the holders of CDs issued between bank and non-bank entities, then the total CDs issued should be reported under item II of the Form 'A' Return i.e., "Liabilities to Others in India". The reporting of CDs should be done as per the issue price of the CDs.

B) Investments in CDs issued by other banks should be reported under item III of the Form 'A' Return i.e., "Assets with the Banking System in India" and these assets could be netted off against "Liabilities to the Banking System in India". – ***[DOR.No.Ret.BC.38/12.01.001/2019-20, dated 26th February, 2020]***

7) SHORT TERM CROP LOANS ELIGIBLE FOR INTEREST SUBVENTION SCHEME (ISS) AND PROMPT REPAYMENT INCENTIVE (PRI) THROUGH KCC

Ministry of Agriculture & Farmers Welfare *vide* their Office Memorandum, No. F. 1-20/2018-Credit-I, dated January 23, 2020 has advised that Short Term Crop Loans eligible for Interest Subvention Scheme (ISS) and Prompt Repayment Incentive (PRI) should be extended only through KCC thus making KCC a prerequisite for claiming Interest Subvention (IS) and Prompt Repayment Incentive (PRI) by farmers w.e.f. April 1, 2020. In view of this, the

RBI has advised banks to ensure that all Short Term Crop Loans eligible for Interest Subvention (IS) and Prompt Repayment Incentive (PRI) benefit are extended only through KCC w.e.f. April 1, 2020. The existing Short Term Crop Loans which are not extended through KCC shall be converted to KCC loans by March 31, 2020. Accordingly, reimbursement of interest subvention for Short Term Crop Loans through non-KCC accounts shall not be considered beyond March 31, 2020. – ***[FIDD.CO.FSD.BC.No.1785/05.02.001/2019-20, dated 26th February, 2020]***

8) LINKING OF FLOATING RATE LOANS TO THE MEDIUM ENTERPRISES WITH THE EXTERNAL BENCHMARKS

With a view to further strengthening monetary policy transmission, RBI has decided that all new floating rate loans to the Medium Enterprises extended by banks from April 01, 2020 shall be linked to the external benchmarks as indicated in the Circular DBR.DIR.BC.No. 14/13.03.00/2019-20 dated September 04, 2019. All the other instructions as contained in the aforesaid Circular remain unchanged. – ***[DOR.DIR.BC.No.39/13.03.00/2019-20, dated 26th February, 2020]***

*****

FOREIGN TRADE

1) DPIIT CLARIFICATION ON FDI IN SINGLE BRAND RETAIL TRADING (SBRT)

The Department for Promotion of Industry and Internal Trade (DPIIT) has issued a clarification with respect to FDI in Single Brand Retail Trading (SBRT) that, for the purpose of 30% mandatory sourcing from India for proposals involving FDI beyond 51%, the sourcing of goods from units located in a Special Economic Zone (SEZ) will qualify as sourcing from India, subject to the SEZ Act, 2005 and other applicable laws/ rules/ regulations. Further, goods which are proposed to be sourced by an SBRT entity from such units must be manufactured in India. However, compliance with all the conditions enumerated in the FDI Policy (in para 5.2.15.3 of Press Note 4 (2019)) and as notified under FEMA will continue to be the responsibility of the manufacturing entity. – ***[Ministry of Commerce and Industry, DPIIT File No 5(6)/2019-FDI Policy, 25th February, 2020]***

2) FDI IN INVESTMENT SECTOR

The Government has amended the Consolidated FDI Policy of 2017 with respect to the Insurance Sector to allow 100% FDI under the automatic route in Intermediaries or Insurance Intermediaries, including insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrators, surveyors and loss assessors and such other entities as may be notified by the IRDA from time to time.

The foreign investment cap of 100 percent will apply on the same terms as applicable to an insurance company, except that the condition of 'Indian owned and controlled' will not apply to such intermediaries and the composition of the Board of Directors and key management persons will be as specified by the concerned regulators from time to time.

Foreign investment in intermediaries and insurance intermediaries shall be governed by the same terms as provided under Rules 7 and 8 of the Indian Insurance Companies (Foreign Investment) Rules, 2015, i.e., foreign portfolio investment will be governed by provisions of sub-regulations (2), (2A), (3) and (8) of Regulation 5 of FEMA regulations and any increase in foreign investment will be in accordance with pricing guidelines specified by RBI in FEMA regulations, respectively.

The insurance intermediary that has majority shareholding of foreign investors is required to undertake as follows: (i) it shall be incorporated as a limited company under the Companies Act 2013; (ii) at least one from among the Chairman of the Board of Directors or CEO or Principal Officer or MD of the intermediary shall be a resident Indian citizen; (iii) it shall take prior permission of the IRDA for repatriating dividend; (iv) it shall bring in the latest technological, managerial and other skills; (v) it shall not make payments to the foreign group or promoter or subsidiary or interconnected or associate entities beyond what is necessary or permitted by the Authority; (vi) it shall make disclosures of all payments made to its group or promoter or subsidiary or interconnected or associate entities; (vii) The composition of its board of directors and key management persons shall be as specified by the concerned regulators.

The above amendment will come into effect from the date of FEMA notification. ***–[Press Note No. 1 (2020 Series), 21st February, 2020 (Ministry of Commerce and Industry)]***

*****

CORPORATE

1) MCA NOTIFIES RULES FOR ARRANGEMENT OF TAKEOVER OFFER U/S 230(11) &(12) OF COMPANIES ACT 2013

MCA has notified sub-sections 11 and 12 of Section 230 of the Companies Act 2013 with effect from 3rd February 2020. The said sub-sections provide that any compromise or arrangement may include a takeover offer and that a party aggrieved by such a takeover offer in respect of public unlisted companies and private companies may make an application to the Tribunal in the manner prescribed. The takeover offer for listed companies shall be as per the Takeover Regulations 2011.

Along with the notification of the aforesaid sub-sections of Section 230, MCA has notified amendments to the Companies (Compromises, Arrangements and Amalgamations) Rules 2016. A new sub-rule (5) of Rule 4 provides that where a member, along with any other member, holds not less than three-fourths of the shares in the company and intends to acquire any part of the remaining shares of the company, it shall make an application for arrangement for the purpose of takeover offer in terms of sub-section 11 of Section 230. The application must be accompanied by a report of a registered valuer that takes into account (i) the highest price paid by any person for shares acquired during the last twelve months and (ii) the fair price of shares after taking into account valuation parameters, including net-worth, book value of shares etc. The application shall also contain details of a bank account, opened separately by the member, in which an amount of not less than one-half of

the total consideration of the takeover offer is deposited.

"Shares" means the equity shares of the company carrying voting rights and includes any securities, such as depository receipts, which entitles the holder thereof to exercise voting rights. However, this sub-rule will not apply to the transfer or transmission of shares through a contract, arrangement or succession or any transfer made in pursuance of any statutory or regulatory requirement.

The National Company Law Tribunal Rules 2016 have also been amended to provide for the Form of application for takeover offer of companies which are not listed, the applicable Fees and additional documents required to be filed before the Tribunal. ***–[Ministry of Corporate Affairs, Notification dated 3rd February, 2020 and Ministry of Corporate Affairs Notification dated 3rd February, 2020]***

2) COMPANIES (AUDITOR'S REPORT) ORDER 2020

The MCA has issued the Companies (Auditor's Report) Order 2020 under Section 143(11) of the Companies Act 2013 (in consultation with the National Financial Reporting Authority). The Order provides for the detailed list of matters that should be included in the Auditor's Report of every company governed by this order for financial years commencing on or after 1st April 2019. The Order also provides that where the answer to any of the matters is unfavourable or qualified, the report shall state the basis for such unfavourable or qualified answer, as the case may be. Where the auditor is unable to express an opinion on any specified matter, the report should indicate such fact, together with the reasons as to why it is not possible for him to give his opinion.

The Order applies to every company, including a foreign company as defined in clause (42) of Section 2 of the Companies Act 2013, except: (i) a banking company as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949; (ii) an insurance company as defined under the Insurance Act,1938; (iii) a company licensed to operate under Section 8 of the Companies Act; (iv) a One Person Company as defined in clause (62) of Section 2 of the Companies Act and a small company as defined in clause (85) of Section 2 of the Companies Act; and (v) a private limited company, not being a subsidiary or holding company of a public company, having a paid up capital and reserves and surplus of not more than one crore rupees as on the balance sheet date and which does not have total borrowings exceeding one crore rupees from any bank or financial institution at any point of time during the financial year and which does not have a total revenue as disclosed in Scheduled III to the Companies Act (including revenue from discontinuing operations) exceeding ten crore rupees during the financial year as per the financial statements. ***–[Ministry of Corporate Affairs, Notification dated 25 February, 2020]***

3) COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) RULES 2014 AMENDED RE: COMPLIANCES FOR INDEPENDENT DIRECTORS

MCA has extended the time period for an individual to apply to the Indian Institute of Corporate Affairs at Manesar for inclusion of

his/her name in the databank of independent directors to five months from the date of commencement of the Companies (Appointment and Qualification of Directors) (Fifth Amendment) Rules 2019, that is, up to 1st May 2020.

The Fifth Amendment Rules 2019 provided, amongst others, that every individual who is appointed as an independent director as on 1st December 2019, shall, within a period of three months from this date, apply online to the Institute for inclusion of his/her name in the databank for a period of one year or five years or for his/her lifetime. The time period of three months expired on 1st March 2020.

Rule 6 has been amended to also provide that the requirement for an individual to pass the online proficiency self-assessment test will not apply when he has served as a director or key managerial personnel for a total period of not less than ten years, as on the date of inclusion of his name in the databank, in one or more body corporate listed on a recognized stock exchange (in addition to one or more listed public company; or unlisted public company having a paid-up share capital of rupees ten crore or more).

For the purpose of calculation of the aforesaid period of ten years, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies or bodies corporate at the same time will be counted only once. ***–[Ministry of Corporate Affairs, 28th February, 2020]***

4) NCLT PERMITS FOREIGN ASSETS OF SUBSIDIARIES OF CORPORATE DEBTOR TO BE INCLUDED IN CIRP/IM; HOLDS BALANCE SHEET IS NOT SOLE CRITERIA OF DECIDING OWNERSHIP OF ASSETS

The NCLT has held that the foreign oil and gas assets of Videocon Industries Ltd (VIL)/Corporate Debtor (CD) should be included in the assets of VIL for the purpose of its CIRP and Section 14 of the I&B Code will apply to such assets held by or through its subsidiaries. The foreign assets cannot be treated separately only for the benefit of the financial creditors – balancing the interest of all stakeholders, maximisation of value of assets and keeping the CD a going concern could be achieved only by including such assets. The NCLT allowed the application of Mr. Venugopal Dhoot, who is the guarantor, shareholder, former MD of VIL (parent Company of Videocon Group of Companies). It rejected the SBI's argument, amongst others, that the assets were not shown in the Balance Sheet of VIL and held that the acquisition agreements and financing agreements indicate VIL as the joint owner/purchaser and in the absence of a legal transfer of rights, interest and ownership of the assets at market value the subsidiaries/SPVs would not become the owners of these assets to the exclusion of VIL. Further, the obligations of VIL and the subsidiaries were intermingled and they were being treated as one single economic entity irrespective of the change of holding structure from time to time. ***–[Venugopal Dhoot (Applicant), in the matter between State Bank of India and Videocon Industries Limited (VIL) & Ors., 12th February 2020, (National Company Law Tribunal, Mumbai Bench)]***

5) ATTACHMENT OF ASSETS OF CORPORATE DEBTOR BY ED IS ILLEGAL AND WITHOUT JURISDICTION; SECTION 32A I&B CODE APPLIES RETROSPECTIVELY

The NCLAT has opined on the issue of whether after approval of a Resolution Plan under Section 31 of the I&B Code, it is open to the Directorate of Enforcement (ED) to attach the assets of the Corporate Debtor (CD) on the alleged ground of money laundering by erstwhile promoters. The issue arose in the context of the attachment orders against Bhushan Power & Steel Ltd post acceptance of the resolution plan of JSW Steel in the CIRP. The stand of the government of India, which has been incorporated in Section 32A(1) of the I&B Code through the I&B Amendment Ordinance 2019, is that the ED, while conducting investigation under PMLA is free to deal with or attach the personal assets of erstwhile promoters and other accused persons acquired through crime proceeds and not the assets of the CD, which have been financed by creditors and acquired by a bona-fide third party Resolution Applicant with the approval of the CoC and AA. However, the ED took a stand that it had the power to seize the assets of the CD, even after the approval of the Resolution Plan, on the ground that JSW Steel was a 'related party' of the CD as it had entered into a joint venture company (JVC) with it and was therefore ineligible to be a resolution applicant.

The NCLAT held that Section 32A(1)(a) read with the definition of 'related party' clearly shows that JSW Steel Limited is not an associate company/related party of the CD. While the JVC is an 'associate company' of the CD as well as of JSW Steel Limited, however, by virtue of both having investment in such a downstream JVC, they do not become related parties of each other. Section 32A(1) and (2) clearly suggests that the ED/ other investigating agencies do not have the powers to attach assets of a CD once the Resolution Plan stands approved and the criminal investigations against the CD stands abated. Section 32A does not in any manner suggest that the benefit provided thereunder is only for such resolution plans which are yet to be approved. The Ordinance being clarificatory in nature must be made applicable retrospectively. ***–[JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Ors., 17h February, 2020, National Company Law Appellate Tribunal]***

6) REVERSE CORPORATE INSOLVENCY PROCESS' FOR REAL ESTATE COMPANIES; CIRP SHOULD BE ON PROJECT BASIS

The NCLAT has laid down a 'Reverse Corporate Insolvency Process' for real estate companies, which is in the interest of both the allottees, the companies/Corporate Debtors (CDs) and ensures the completion of real estate projects. It stated that for real estate companies it was not possible to maximise the assets of the CD and to balance the interests of secured and unsecured creditors - financial/operational creditors, for the reason that the infrastructure (flat/apartment) that is constructed for the allottees by the CD is its asset. This asset cannot be distributed as it may be secured in favour of financial institutions, banks, NBFCs. On the other hand, the same asset is to be transferred to the allottees who are unsecured creditors. Banks usually do not accept flats in lieu of monies disbursed by them. While in a normal CIRP the CoC takes a haircut, in the case of allottees (financial creditors) there cannot

be a haircut of flats/apartments. In this situation, a 'Reverse Corporate Insolvency Resolution Process' would be appropriate wherein the resolution can reach finality without approval of a third party resolution plan. ***–[Flat Buyers Association Winter Hills vs. Umang Realtech Pvt Ltd through IRP & Ors., 17th February, 2020, National Company Law Appellate Tribunal]***

7) A PERSON HAVING ONLY SECURITY INTEREST OVER ASSETS OF CD CANNOT BE RECOGNISED AS ITS 'FC'; LENDERS OF HOLDCO (JAL) ARE NOT 'FINANCIAL CREDITORS' OF SUBSIDIARY/CORPORATE DEBTOR (JIL)

The Supreme Court, in the matter of Anuj Jain Interim Resolution Professional For Jaypee Infratech Limited Vs Axis Bank Limited Etc has given its judgement on two important issues. One, as to whether the transactions in question, whereby several parcels of land were put under mortgage with the lenders of Jayprakash Associates Ltd (JAL), the holding company of Jaypee Infratech Limited (JIL)/ the corporate debtor, deserved to be avoided as being preferential, undervalued and fraudulent, in terms of Sections 43, 45 and 66 of the Code; and second, as to whether the lenders of JAL could be recognized as financial creditors of the corporate debtor on the strength of the mortgage created by the corporate debtor as collateral security for the debt of its holding company JAL.

The Apex Court, while reversing and setting aside the NCLAT order and upholding the order of the NCLT held that, where the debts in question are in the form of third party security given by the corporate debtor (JIL) so as to secure the loans obtained by its HoldCo/JAL from the respondent-lenders, such a 'debt' is not a 'financial debt' within the meaning of Section 5(8) of the Code and hence, the respondent-lenders, the mortgagees, are not the 'financial creditors' of the corporate debtor JIL. The only area of interest of such indirect secured creditor is in recovery of its debt and not in reorganization of the corporate debtor's business. It also held that Sections 43 of the Code relating to preferential transactions applied to the transactions between JAL and JIL and agreed with the NCLT that they should be avoided, the security interest should be discharged and properties be vested in the corporate debtor/JIL, upon release of encumbrances. ***–[Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited, C.A. Nos. 8512-8527 OF 2019, 26th February 2020, (Supreme Court of India)]***

*****

SECURITIES

1) SEBI BOARD DECISIONS ON REGULATORY SANDBOX; AMENDMENTS TO INVESTOR ADVISORS /REIT/INVIT/MF REGULATIONS

All entities registered with SEBI are eligible for testing within the regulatory sandbox. The entity may participate on its own or through a FinTech firm but will be ultimately responsible for the testing. Regulated entities may test solutions even for activities for which they are not registered. The respective SEBI regulations will have a

common chapter for granting limited certificate of registration to the entity interested in applying for testing in the Regulatory Sandbox to enable it to operate in a Regulatory Sandbox without being subjected to the entire set of regulatory requirements to carry out that activity.

Amendments to SEBI (Investment Advisors) Regulations 2013, namely, (i) segregation of advisory and distribution services at the client level so as to avoid conflict of interest; (ii) Individual Investment Adviser shall not provide distribution services; (iii) mandatory agreement between Investment Adviser and the client incorporating the key terms and conditions regarding Investment Advisory Services for greater transparency; (iv) clarity in payment of fees and introduction of upper limit on the fees charged to Investors ; (v) enhanced eligibility criteria for registration as an Investment Adviser including net worth, qualification and experience requirements and grandfathering existing Individual Investment Advisers from complying with the enhanced qualification and experience as specified by the Board ; (vi) Person dealing in distribution of securities shall not use the nomenclature "Independent Financial Adviser (IFA)" or "Wealth Adviser" or any other similar name, unless registered with SEBI as Investment Adviser.

Amendments to the REIT and InvIT Regulations to include provisions for fast track rights issue of units. Further, under the InvIT Regulations, as an alternative to the requirement of 5 years' experience in infrastructure sector for an investment manager of an InvIT, the combined relevant experience of not less than 30 years of the directors/partners/employees of the investment manager shall also be considered.

Amendment to the Mutual Fund Regulations 1996 to provide for non-bank custodians to offer custodian services for gold or gold related instruments of Gold ETFs, in addition to bank-custodians. Further, the Sponsor or Asset Management Company (AMC) is mandated to invest in close ended schemes as well. Currently, investment by the Sponsor or AMC is mandatory in all schemes except close ended schemes.

Amendment to the Depositories and Participants Regulations 2018 to provide that 'pledge' shall include re-pledge of securities for margin and/or settlement obligations of the client insertion of suitable explanation to Regulation 79 (manner of creating pledge in depository). ***–[SEBI Press Release No. 7/2020, dated 17h February, 2020 (SEBI)]***

2) SEBI CLARIFICATION RE IMPACT OF MAURITIUS IN FATF'S "GREY LIST" ON FPI REGISTRATION

Following inclusion of Mauritius in the "grey list" of the Financial Action Task Force (FATF) of "jurisdictions under increased monitoring" on 21st February 2020, SEBI has issued a statement that foreign portfolio investors (FPIs) from Mauritius will, nevertheless, continue to be eligible for FPI registration, with increased monitoring as per FATF norms.

SEBI noted that the FATF construes the inclusion in the "grey list" to mean that the country has committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring, but does not call for application of enhanced due diligence to be applied to such

jurisdictions as is the case with jurisdictions in the "black list". However, it encourages its members to take into account this information in their risk analysis. Accordingly, SEBI has advised intermediaries to take note of this development. ***–[SEBI Press Release No. 10/2020, dated 25th February, 2020 (SEBI)]***

*****

COMPETITION

1) CCI APPROVES FORMATION OF A JOINT VENTURE BETWEEN MAHINDRA & MAHINDRA AND FORD MOTOR AND THE TRANSFER OF THE AUTOMOTIVE BUSINESS OF FORD INDIA TO THE JOINT VENTURE

The proposed combination envisages the formation of a joint venture, namely Ardour Automotive Private Limited, between Mahindra and Mahindra Limited (M&M) and Ford Motor Company (FMC); and the transfer of the automotive business (except powertrain business at Sanand) of Ford India Private Limited (FIPL) to the joint venture. M&M is publicly traded on the National Stock Exchange and the Bombay Stock Exchange. The Mahindra group has diversified interests across various sectors including automotive, farm equipment, agricultural products and services, smaller range power generation equipment, financial services, information technology, logistics, alternative energy, aerospace, steel processing, trading, insurance broking, real estate and infrastructure, and hospitality. FMC is an American automobile company. It has operations in various countries such as the United States, Canada, Mexico, China, the United Kingdom, Germany, Turkey, Brazil, Argentina, Australia, and South Africa. FIPL is indirect wholly owned subsidiary of FMC. ***–[Press Release No. 36/2019-20, 10th February, 2020 (Competition Commission of India)]***

2) CCI RECEIVED GREEN CHANNEL COMBINATION FROM AÉROPORTS DE PARIS SA FOR ACQUISITION OF 49% STAKE IN GMR AIRPORTS LIMITED AND 100% IN GMR INFRA SERVICES LIMITED

CCI received the following green channel combination filed under sub-section (2) of Section 6 of the Competition Act, 2002 (Act) read with egulations 5A of the Competition Commission of India (Procedure in regard to the transactions of business relating to combinations) Regulations, 2011 (Combination Regulations): Acquisition by Aéroports de Paris SA (the "Acquirer" or "ADP") of equity share capital of GMR Airports Limited ("GAL"), and GMR Infra Services Limited ("GISL") (Proposed Combination). The Notification relates to acquisition by ADP of up to (i) 100% of the equity shares of GISL directly and (ii) 49% of the equity shares of GAL directly and indirectly. The Acquirer is an international airport operator based in Paris. It carries out the following principal businesses in the airport value chain: (a) financing, (b) designing, and (c) operating infrastructure, for a network of 25 airports in 13 countries in Europe, Asia (not including India), Africa and South America. GISL is an operating and holding company and its primary business is to hold shares in GAL.

GAL is an unlisted public company, which is a subsidiary of GMR Infrastructure Limited. GAL

is engaged in developing, managing and operating airports in India and around the world, while also being engaged in associated business activities. – ***[Press Release No. 38/2019-20, 21th February, 2020 (Competition Commission of India)]***

3) CCI APPROVES THE ACQUISITION OF 74.50% OF THE ISSUED AND PAID-UP SHARE CAPITAL OF THDC INDIA LIMITED ("THDC"/ "TARGET") BY NTPC LIMITED ("NTPC"/ "ACQUIRER") FROM GOVERNMENT OF INDIA ("GOI"), UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002

The Proposed Combination relates to the acquisition of 74.50% of the issued and paid-up share capital of the Target by the Acquirer from GoI. NTPC is a Maharatna Company having presence in the power generation business. The principal business activity of the company is electric power generation through coal based thermal power plants. NTPC is also engaged in the business of generation of electricity from hydro and renewable energy sources. THDC is a government company with 74.50% of its total shares held by the Government of India and 25.50% of its shares held by the Government of Uttar Pradesh as on 31st March 2019. The Target is a Central Public Sector Unit and under the administrative control of the Ministry of Power, GoI. ***–[Press Release No. 39/2019-20, 24th February, 2020 (Competition Commission of India)]***

4) CCI APPROVES THE ACQUISITION OF 100% OF THE ISSUED AND PAID-UP SHARE CAPITAL OF NORTH EASTERN ELECTRIC POWER CORPORATION ("NEEPCO"/ "TARGET") BY NTPC LIMITED ("NTPC"/ "ACQUIRER") FROM GOVERNMENT OF INDIA ("GOI"), UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002

The Proposed Combination relates to the acquisition of 100% of the issued and paid-up share capital of the Target by the Acquirer from GoI. NTPC is a Maharatna Company having presence in the power generation business. The principal business activity of the company is electric power generation through coal based thermal power plants. NTPC is also engaged in the business of generation of electricity from hydro and renewable energy sources. NEEPCO is a power utility, primarily operating in the north-eastern region of India. The principal business activity of the Target is generation of power through hydro, thermal and solar power stations. ***–[Press Release No. 40/2019-20, 24th February, 2020 (Competition Commission of India)]***

*****

INDIRECT TAXES

a. CUSTOMS

1) EFFECTIVE RATE OF BASIC CUSTOMS DUTY PRESCRIBED

Notification No. 50/2017-Customs dated 30th June, 2017 amended further so as to prescribe effective rate of Basic Customs Duty (BCD). – ***[Notification No. 01/2020-Customs, dated 2nd February, 2020]***

2) CHANGE OF BCD ON SPECIFIED PARTS OF CELLULAR MOBILE PHONES

Notification No. 57/2017-Customs, dated the 30th June, 2017 amended so as to change the applicable BCD rate on specified parts of Cellular Mobile Phones. – ***[Notification No. 02/2020 – Customs, dated 2nd February, 2020]***

3) EXTENSION OF EXEMPTION FROM BCD AND IGST ON SPECIFIED MILITARY EQUIPMENT

Notification No. 19/2019-Customs dated the 6th July, 2019 amended so as to extend the exemption from BCD and IGST on specified military equipment, if imported by DPSUs and PSUs for the defence forces. – ***[Notification No. 03/2020-Customs, dated 2nd February, 2020]***

4) EXEMPTION ON WOOL, WOOLLEN FABRICS AND APPARELS

Notification No. 148/1994-Customs dated the 13th July, 1994 amended so as to exempt wool, woollen fabrics and apparels received as gifts by the Indian Red Cross Society. – ***[Notification No. 04/2020-Customs, dated 2nd February, 2020]***

5) WITHDRAWAL OF BCD EXEMPTION ON GOLD USED IN MANUFACTURE OF SEMI-CONDUCTOR DEVICES OR LIGHT EMITTING DIODE

Notification No. 25/99-Customs dated 28th February 1999 amended, so as to withdraw BCD exemption on Gold used in manufacture of semi-conductor devices or light emitting diode and to provide exemption to specified parts for use in manufacture of fuses and connectors. – ***[Notification No. 05/2020-Customs, dated 2nd February, 2020]***

6) EXCLUSION OF COPPER AND ARTICLES THEREOF FROM THE EXEMPTION

Notification No. 24/2005-Customs and Notification No. 25/2005-Customs, both dated the 1st March, 2005 amended so as to exclude copper and articles thereof from the exemption provided to raw materials use for manufacturing of ITA goods specified therein the notifications. – ***[Notification No. 06/2020 – Customs, dated 2nd February, 2020 & Notification No. 07/2020 – Customs, dated 2nd February, 2020]***

7) EXEMPTION OF SPECIFIED GOODS FROM HEALTH CESS

The CBIC *vide* present Notification exempted specified goods from Health Cess imposed on the medical devices falling under heading 9018 to 9022 in terms of clause 139 of the Finance Bill, 2020. – ***[Notification No. 08/2020-Customs, dated 2nd February, 2020]***

8) REVISION OF SOCIAL WELFARE SURCHARGE ON SPECIFIED GOODS

Notification No. 11/2018-Customs, dated the 2nd February, 2018 amended so as to revise the levy of Social Welfare Surcharge on specified goods. – ***[Notification No. 09/2020 – Customs, dated 2nd February, 2020]***

9) ALIGNING NOTIFICATION WITH NEW TARIFF LINES CREATED AS PER FINANCE BILL, 2020

Notifications mentioned in the Column (2) of the Table of the notification No. 10/2020-Customs, dated the 2nd February, 2020 further amended so as to align the notification mentioned in Column (2) with the new tariff lines created as per Finance Bill, 2020. – ***[Notification No. 10/2020-Customs, dated 2nd February, 2020]***

10) CUSTOMS DUTY EXEMPTION AGAINST SCRIPS ISSUED UNDER ROSCTL SCHEME

The CBIC has notified that the customs duty exemption against Scrips issued under Regional Authority under the Scheme for Rebate of State and Central Taxes and Levies (RoSCTL) Scheme and additional ad-hoc incentive for apparel and made-ups sector. – ***[Notification No. 13/2020 – Customs, dated 14th February, 2020]***

11) AMENDMENT TO CUSTOMS TARIFF (IDENTIFICATION, ASSESSMENT AND COLLECTION OF ANTI-DUMPING DUTY ON DUMPED ARTICLES AND FOR DETERMINATION OF INJURY) RULES, 1995

Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 amended so as to change the anti-circumvention provision and make certain other miscellaneous changes. – ***[Notification No. 09/2020-Customs (N.T.), dated 2nd February, 2020]***

12) AMENDMENT TO CUSTOMS TARIFF (IDENTIFICATION, ASSESSMENT AND COLLECTION OF COUNTERVAILING DUTY ON SUBSIDISED ARTICLES AND FOR DETERMINATION OF INJURY) RULES, 1995

Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995 amended so as to introduce anti-circumvention provisions in these rules and make certain other miscellaneous changes. – ***[Notification No.10/2020-Customs (N.T.), dated 2nd February, 2020]***

13) VEMGAL INDUSTRIAL AREA, KOLAR ADDED AS POST FOR IMPORT AND EXPORT

The CBIC has added Vemgal Industrial Area, Koorgal Village, Kolar as port for unloading of imported goods and loading of export goods. – ***[Notification No.12/2020-Customs (N.T.), dated 11th February, 2020]***

14) NOTIFICATION OF TRANSPORTATION OF GOODS (THROUGH FOREIGN TERRITORY), REGULATIONS, 2020

The CBIC has notified the Transportation of Goods (Through Foreign Territory), Regulations, 2020. These regulations shall apply to the movement of goods, -

(i) under the Agreement on the Use of Chattogram and Mongla Ports for Movement of Goods to and from India between the People's Republic of Bangladesh and the Republic of India (hereinafter referred to as 'ACMP');

(ii) under the Protocol on Inland Water Transit and Trade between the People's Republic

of Bangladesh and the Republic of India (herein after referred to as 'PIWTT'): Provided that the regulations shall not apply to the movement of export-import cargo between India and Bangladesh or export to third countries under the PIWTT; and

(iii) from one part of India to another through a land route which lies partly over the territory of a foreign country, not being a movement covered under (i) and (ii) above. – ***[Notification 16/2020-Customs (N.T.), dated 21st February, 2020]***

15) REVOCATION OF ADD ON PURIFIED TEREPHTHALIC ACID

The CBIC has revoked anti-dumping duty imposed on Purified Terephthalic Acid and for this purpose, rescinds the Notifications No. 28/2016-Customs (ADD), dated the 5th July, 2016 and No. 28/2019-Customs (ADD), dated the 24th July, 2019. – ***[Notification No. 03/2020-Customs (ADD), dated 2nd February, 2020]***

16) ADD ON IMPORT OF ACETONE

Anti-dumping duty extended on import of Acetone originating in or exported from Korea RP till 15th April, 2020 imposed *vide* Notification No. 05/2015-Customs(ADD) dated 18.02.2015. – ***[Notification No. 04/2020 -Customs (ADD), dated 10th February, 2020]***

17) GUIDELINES FOR VALUATION OF IMPORTED SECOND HAND MACHINERY

The CBIC *vide* present Circular has prescribing procedures/guidelines for inspection/appraisement of imported second hand machinery. Earlier Circular 25/2015 dated 15th October, 2015 stands superseded with the issue of this circular. – ***[Circular No. 07/2020 – Customs, dated 05th February, 2020]***

18) STREAMLINING EXPORT DATA TO INCLUDE DISTRICT LEVEL DETAILS IN SHIPPING BILLS

Keeping in view the endeavor of the Government of India to boost domestic manufacturing and promote exports, the CBIC has decided to incorporate additional attributes in the Shipping Bill to enable the Customs System to capture the Districts and States of Origin for goods being exported. The initiative is also aimed at bringing uniformity with the data/ information captured in the Goods and Services Tax Network (GSTN).

Accordingly, with effect from 15.02.2020, apart from the data/ information required to be furnished in the present electronic form of electronic integrated declaration mentioned in Regulation 3 of Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulations 2019 , the following additional information will be required to be furnished for every item in the Shipping Bill :-

(i) The State of Origin of goods.

(ii) District of Origin of goods.

(iii) Details of Preferential Agreements under which the goods are being exported, wherever applicable.

(iv) Standard Unit Quantity Code (SQC) for that CTH as per the first schedule of the Customs Tariff Act, 1975 – ***[Circular No.09/2020-Customs, dated 05th February, 2020]***

19) RFID SEALING FOR DEPOSIT IN AND REMOVAL OF GOODS FROM CUSTOMS BONDED WAREHOUSES

The CBIC *vide* present Circular has decided that w.e.f. from March 15, 2020, RFID sealing shall be extended to transport of goods for deposit in a warehouse as well as removal therefrom. Therefore, wherever the Warehousing Regulations mentioned above, prescribe affixing of a "One Time Lock", the importer or the owner of the goods shall use RFID anti-tamper one-time-locks ("RFID OTL"). – ***[Circular No.10/2020-Customs, dated 07th February, 2020]***

b. CENTRAL EXCISE

1) CENTRAL EXCISE DUTIES EXEMPTION AGAINST SCRIPS ISSUED UNDER ROSCTL SCHEME

The CBIC has notified that the Central Excise duties exemption against Scrips issued under Regional Authority under the Scheme for Rebate of State and Central Taxes and Levies (RoSCTL) Scheme and additional ad-hoc incentive for apparel and made-ups sector. – ***[Notification No. 1/2020 – Central Excise, dated 14th February, 2020]***

c. GST

1) DUE DATES FOR FILING OF RETURN IN FORM GSTR-3B

Return in FORM GSTR-3B for the months of January, 2020, February, 2020 and March, 2020 for taxpayers having an aggregate turnover of up to rupees five Crore in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep shall be furnished electronically through the common portal, on or before the 22nd February, 2020, 22nd March, 2020, and 22nd April, 2020, respectively.

Also, return in FORM GSTR-3B for the months of January, 2020, February, 2020 and March, 2020 for taxpayers having an aggregate turnover of up to rupees five Crore in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi shall be furnished electronically through the common portal, on or before the 24th February, 2020, 24th March, 2020 and 24th April, 2020, respectively. – ***[Notification No. 07/2020 – Central Tax, dated 3rd February, 2020]***

2) GST ON SUPPLY OF LOTTERY

Notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 amended so as to notify rate of GST on supply of lottery. – ***[Notification No. 1/2020-Central Tax (Rate), dated 21st February, 2020]***

Similar notifications have been issued under the Integrated Tax (Rate) and Union Territory Tax (Rate). – ***[Notification No. 1/2020-Integrated***

Tax (Rate), dated 21st February, 2020 & Notification No. 1/2020- Union territory Tax (Rate), dated 21st February, 2020]

******

INTELLECTUAL PROPERTY RIGHTS

1) DELHI HIGH COURT TAKES NOTE OF THE DELAYS AND LACK OF INFRASTRUCTURE AT IPAB

Delhi HC observed that the manner in which the IPAB has been functioning during the last over 15 years shows that at every stage, there has been delay in the appointments being made to the IPAB, both of judicial members and technical members. Further, adequate infrastructure and autonomy is also not granted to the IPAB in order to make its functioning efficient and smooth. Court further noted that it has been more than 16 years have passed since the IPAB has been constituted. However, the process of functioning of the IPAB has not been streamlined. Under these circumstances, some emergent steps needed to be taken by the Government to ensure that the IPAB functions in an efficient and smooth manner for the purpose for which it has been constituted. However, there appears to be clearly no progress to strengthen the IPAB or expedite the appointments process. The IPAB is completely under-staffed and lacks even basic infrastructure. – ***[Merck Sharp And Dohme Corp. vs Union Of India And Ors., dated 27th February, 2020 (Delhi HC)]***

2) DELHI HIGH COURT GRANTS INJUNCTION TO THE PLAINTIFF FOR THE MARK 'CENTRAL PARK' OR ANY OTHER SIMILAR MARK

Delhi HC while dealing with an application filed by the plaintiffs under Order 39 Rules 1 and 2 CPC seeking an ex parte ad-interim injunction to restrain the defendant, etc. from using the mark CENTRAL PARK, PROVIDENT CENTRAL PARK/ or any other mark which is similar or deceptively similar to the plaintiffs' mark 'CENTRAL PARK' in relation to their business etc. so as to infringe the plaintiffs' statutory rights in its 'CENTRAL PARK' mark, restrained the Defendant from using the marks CENTRAL PARK, PROVIDENT CENTRAL PARK/ , or any other mark which is similar or deceptively similar to the plaintiff's CENTRAL PAR. – ***[Central Park Estates Pvt. Ltd. & Ors. V/s Provident Housing Limited, dated 17th February, 2020 (Delhi HC)]***

*****

CONSUMER

1) A RESIDENTS' WELFARE ASSOCIATION, IF REGISTERED UNDER A STATUTE WILL QUALIFY AS A CONSUMER ASSOCIATION UNDER THE PROVISIONS OF SECTION 12 OF THE ACT PROVIDED, IT QUALIFIES AS A VOLUNTARY ASSOCIATION

Aggrieved by the order passed by the National Consumer Disputes Redressal Commission (NCDRC), whereby the Apex consumer form rejected the complaint filed by the appellant on the ground that, the appellant-Condominium has

no locus standi to file the complaint since neither it is a 'consumer' nor it is a 'recognised consumer association' within the meaning of Section 12 of the Consumer Protection Act, 1986 (the "Act").

The appellant/complainant is a statutory body under provisions of the Karnataka Apartment Ownership Act, 1972. It consists of members, who are the owners of the apartments in a multistorey building, namely, "Sobha Hibiscus" situated in Amballipur Village, Varthur Hobli, of South Bangalore Taluk in Karnataka.

To maintain a complaint under the provisions of the Act complainant must be either a 'consumer' within the meaning of Section 2(1)(d) of the Act or it must fit into Section 12(1) of the Act.

The Supreme Court noted that appellant-body has come into existence as per the mandatory provisions under the Karnataka Apartment Ownership Act, 1972 Act. It is clear from the objects of the said act, that it is an act to provide ownership of an individual apartment in a building and to make such apartment heritable and transferable property. In view of the mandatory provisions of the Karnataka Apartment Ownership Act, 1972 the appellant cannot be said to be a voluntary registered association for the purpose of filing a complaint before the competent authority under the provisions of the Karnataka Apartment Ownership Act, 1972. The Explanation to Section 12 of the Act makes it clear that, the recognised consumer association as referred under Section 12(1)(b) of the Act means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force. By applying the said explanation, the appellant cannot be said to be a voluntary consumer association so as to maintain a petition. Further, it will not fall within the definition of 'consumer' as defined under Section 2(1)(d) of the Act.

In essence, a voluntary consumer association will be a body formed by a group of persons coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law. The appellant association which consists of members of flat owners in a building, which has come into existence pursuant to a declaration which is required to be made compulsorily under the provisions of Karnataka Apartment Ownership Act, 1972 cannot be said to be a voluntary association to maintain a complaint under the provisions of the Act. ***–[Sobha Hibiscus Condominium v. Managing Director, M/s. Sobha Developers Ltd. & Anr, 14th February, 2020 (Supreme Court of India)]***

*****

ENVIRONMENT

1) MAINTAIN STATUS QUO ON GREEN BELTS: NGT TO SMART CITY BODY

Central bench of NGT, Bhopal ordered Bhopal Smart City Corporation Ltd. to maintain status quo in terms of green belt in the smart city coming up in Bhopal — which involves cutting of more than 6,000 trees in Tatya Tope Nagar. – ***[The Times of India, dated 26th February, 2020]***

2) NGT DIRECTS THERMAL POWER PLANTS TO TAKE PROMPT STEPS FOR SCIENTIFIC DISPOSAL OF FLY ASH

The NGT asked thermal power plants to take prompt steps for scientific disposal of fly ash, warning that the failure to do so would entail a penalty. A bench of NGT said difficulties pointed out by the plants are of no relevance as the same are to be resolved by the administration and not by the victims of pollution whose rights are being affected. – ***[The Times of India, dated 12th February, 2020]***

*****