

1. **RBI & FEMA**
2. **Foreign Trade**
3. **Corporate**
4. **Securities**
5. **Competition**
6. **Indirect Taxes**
 - a. **Customs**
 - b. **GST**
7. **Intellectual Property Rights**
8. **Consumer**
9. **Environment**

RBI/FEMA

1) EXTENSION OF PERIOD OF REALIZATION AND REPATRIATION OF EXPORT PROCEEDS TO INDIA

In view of the outbreak of pandemic COVID-19, RBI has decided to increase the present period of realization and repatriation to India of the amount representing the full export value of goods or software or services exported, from nine months to fifteen months from the date of export, for the exports made up to or on July 31, 2020. It is further clarified that the provisions in regard to period of realization and repatriation to India of the full export value of goods exported to warehouses established outside India remain unchanged. – [A. P. (DIR Series) Circular No. 27, dated 01st April, 2020]

2) RUPEE DRAWING ARRANGEMENT – REMITTANCE TO THE PRIME MINISTER’S CITIZEN ASSISTANCE AND RELIEF IN EMERGENCY SITUATIONS (PM-CARES) FUND

In the wake of outbreak of COVID-19 pandemic, RBI has decided to permit receipt of foreign inward remittances from non-residents through non-resident exchange houses in favour of the ‘Prime Minister’s Citizen Assistance and Relief in Emergency Situations (PM-CARES) Fund’, subject to the condition that AD Cat-I banks shall directly credit the remittances to the Fund and maintain the full details of the remitters. – [A. P. (DIR Series) Circular No. 28, dated 03rd April, 2020]

3) REVISION OF FACILITIES FOR NON-RESIDENTS AND RESIDENTS TO HEDGE THEIR FOREIGN EXCHANGE RISK

It has been announced that the existing facilities for non-residents and residents to hedge their foreign exchange risk on account of transactions permitted under Foreign Exchange Management Act (FEMA), 1999 have been revised. The revised directions are provided at Annex-I to this circular. All previous operational guidelines, terms and conditions in this regard shall stand withdrawn from the date that these directions come into effect. – [A.P.(DIR Series) Circular No. 29, dated 07th April, 2020]

4) CONSOLIDATED PROCEDURAL GUIDELINES ON SOVEREIGN GOLD BOND SCHEME OF THE GOVERNMENT OF INDIA

The Sovereign Gold Bond (SGB) Scheme was first launched by Government of India (GOI) on October 30, 2015. So far 38 tranches of the Sovereign Gold Bond Scheme have been issued. The detail of these issuances till date is given in

APRIL 2020

Annex I to the present circular. With a view to facilitate availability of all the current operative instructions on the above subject at one place, RBI has issued consolidated procedural guidelines and the rules and regulations applicable for servicing of these bonds have been updated with instructions issued till date and are given in Annex II to the present circular. – *[IDMD.CDD.2730/14.04.050/2019-20, dated 13th April, 2020]*

5) MEDIUM TERM FRAMEWORK (MTF) FOR INVESTMENT BY FOREIGN PORTFOLIO INVESTORS (FPI) IN GOVERNMENT SECURITIES

The RBI has issued Medium Term Framework for investment by FPI in government securities.

- The limits for FPI investment in Government securities (G-secs) and State Development Loans (SDLs) shall remain unchanged at 6% and 2%, respectively, of outstanding stocks of securities for FY 2020-21.

- In terms of A.P. (DIR Series) Circular No. 25 dated March 30, 2020, all investments by eligible investors in the specified securities will be under the Fully Accessible Route (FAR) from the date on which the FAR comes into effect. Also, all existing FPI investments in the specified securities shall be reckoned under the FAR. The calculation of outstanding stock of G-secs and utilization levels of limits under the MTF has accordingly been adjusted.

- The allocation of incremental changes in the G-sec limit (in absolute terms) over the two sub-categories – ‘General’ and ‘Long-term’ – shall be retained at 50:50 for FY 2020-21.

- The entire increase in limits for SDLs (in absolute terms) has been added to the ‘General’ sub-category of SDLs.

Prescribed limit for the Half yearly (April – September 2020 and October 2020 – March 2021) has also been revised. – *[A.P. (DIR Series) Circular No. 30, dated 15th April, 2020]*

6) STOP ON DECLARATION OF DIVIDENDS BY BANKS

In the back drop of COVID-19, RBI has decided that all banks shall not make any further dividend payouts from the profits pertaining to the financial year ended March 31, 2020 until further instructions. This restriction shall be reassessed by the Reserve Bank based on the financial results of banks for the quarter ending September 30, 2020. –

[DOR.BP.BC.No.64/21.02.067/2019-20, dated 17th April, 2020]

7) PROVISIONING ON INTERBANK EXPOSURE OF PRIMARY (URBAN) CO-OPERATIVE BANKS (UCBS) UNDER ALL INCLUSIVE DIRECTIONS

The imposition of All-inclusive Directions (AID) on an Urban Co-operative Bank (UCB), inter alia, restricts the bank from discharging its liabilities except as permitted by RBI. This impacts the withdrawal of interbank deposits placed by other UCBs with such bank as also timely discharge of interbank exposures such as discounted bills drawn under Letter of Credit (LC) issued by the UCB under AID.

In order to ensure that such exposures are objectively recognised in the financial statements of UCBs and also with a view to addressing the systemic impact of provisioning requirements on such exposures, RBI has decided as under:

APRIL 2020

a. The interbank exposures arising from deposits placed by UCBs with a UCB under AID and their non-performing exposures arising from discounted bills drawn under LCs issued by a UCB under AID shall be fully provided within five years at the rate of 20% annually. Further, the interest receivable on the deposits shall not be recognised as income by the UCBs.

b. If the UCBs choose to convert such deposits into long term perpetual debt instruments (e.g. Innovative Perpetual Debt Instrument - IPDI) which may be recognised as capital instrument under a scheme of restructuring/ revival of a UCB under AID, provision on the portion of deposits converted into such instruments shall not be required. – *[DOR.(PCB).BPD.Cir.No.11/16.20.000/2019-20, dated 20th April, 2020]*

8) INTEREST SUBVENTION (IS) AND PROMPT REPAYMENT INCENTIVE (PRI) FOR SHORT TERM CROP LOANS DURING THE YEARS 2018-19 AND 2019-20: EXTENDED PERIOD ON ACCOUNT OF COVID-19

In the wake of the nationwide lockdown due to outbreak of Covid -19 pandemic and the resultant restrictions imposed on movement of people, many farmers are not able to travel to bank branches for payment of their short term crop loan dues. Accordingly, to ensure that farmers do not have to pay penal interest and at the same time continue getting the benefits of interest subvention scheme, Government has decided to continue the availability of 2% IS and 3% PRI to farmers for the extended period of repayment upto 31.05.2020 or date of repayment, whichever is earlier, for short term crop loans

upto Rs. 3 lakh per farmer which have become due between March 01, 2020 and May 31, 2020. Banks are therefore advised to extend the benefit of IS of 2% and PRI of 3% for short term crop loans upto Rs.3 lakh to farmers whose accounts have become due or shall become due between March 1, 2020 and May 31, 2020. – *[FIDD.CO.FSD.BC.No.24/05.02.001/2019-20, dated 21st April, 2020]*

9) ISSUE OF ELECTRONIC CARDS FOR OVERDRAFT ACCOUNTS

The RBI has permitted banks to issue electronic cards to natural persons having Overdraft Accounts that are only in the nature of personal loan without any specific end-use restrictions. The card shall be issued for a period not exceeding the validity of the facility and shall also be subject to the usual rights of the banks as lenders. The electronic card for Overdraft Accounts in the nature of personal loans shall be allowed to be used for domestic transactions only. Further, adequate checks and balances shall be put in place to ensure that the usage of such cards is restricted to facilitate online/ non-cash transactions. The restriction on cash transaction will not apply to overdraft facility provided along with Pradhan Mantri Jan Dhan Yojana (PMJDY) accounts.

[DOR.FSD.BC.No.67/24.01.041/2019-20, dated 23rd April, 2020]

10) EXTENSION OF TIMELINES FOR SUBMISSION OF REGULATORY RETURNS

In order to mitigate the difficulties in timely submission of various regulatory returns, in view of disruptions on account of COVID-19

APRIL 2020

pandemic, RBI has decided to extend the timelines for their submission. Accordingly, all regulatory returns required to be submitted by the above entities to the Department of Regulation can be submitted with a delay of upto 30 days from the due date. The extension will be applicable to regulatory returns required to be submitted upto June 30, 2020. Further details are furnished in the Annex to the circular. – **[DOR.BP.BC.No.68/21.04.018/2019-20, dated 29th April, 2020]**

FOREIGN TRADE

1) **DEA ORDER PERMITTING MAURITIUS BASED FUNDS TO REGISTER AS CATEGORY I FPI**

Following amendment to Regulation 5(a)(iv) of the SEBI FPI Regulations 2019 allowing entities from non-FATF countries specified by the Central Government, by an order or by way of an agreement or treaty to apply for registration as a Category I FPI, the Department of Economic Affairs, MoF, issued an Order dated 13 April 2020 (attached) specifying Mauritius as an eligible country for the purposes of the aforesaid regulation.

The Financial Services Commission of Mauritius also issued a Communiqué on 13 April 2020 informing its stakeholders about the DEA Order. –**[File Number 10/6/2019-EM, 13th April, 2020 (Department of Economic Affairs)]**

2) **FDI POLICY AMENDED TO CURB ACQUISITIONS OF INDIAN COS DUE TO COVID-19 - PRESS NOTE 3 OF 2020**

The Central Government has amended the Consolidated FDI Policy 2017 to curb opportunistic takeovers/acquisitions of Indian companies due to Covid-19. Press Note 3 of 2020 issued by DPIIT amends para 3.1.1 as under:

“3.1.1 (a) A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

3.1.1(b) In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of the para 3.1.1(a), such subsequent change in beneficial ownership will also require Government approval.” –**[Press Note No. 3 (2020 Series), 17th April, 2020 (Department for Promotion of Industry and Internal Trade)]**

3) **FEM (NON-DEBT INSTRUMENTS) AMENDMENT RULES 2020 NOTIFIED**

Following Press Note 3 of 2020, the MoF has notified amendments to Rule 6 (a) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (Investment by person resident outside India) by substituting the provisos thereto as follows :

“Provided that an entity of a country, which shares land border with India or the beneficial owner of an investment into India who is situated in or is a citizen of any such country, shall invest only with the Government approval:

Provided further that, a citizen of Pakistan or an entity incorporated in Pakistan shall invest only under the Government route, in sectors or activities other than defence, space, atomic energy and such other sectors or activities prohibited for foreign investment:

Provided also that in the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction or purview of the above provisos, such subsequent change in beneficial ownership shall also require government approval”. –[Ministry of Finance, Department of Economic Affairs, 22nd April, 2020]

4) **FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) (SECOND AMENDMENT) RULES, 2020**

Following Press Note 1 of 2020 which 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, the MoF has notified this amendment in the Foreign Exchange Management (Non-Debt Instruments) Rules 2019, in Schedule I, in Para F.8 of the Table, with effect from 27 April 2020.

The following further amendments have also been made in the NDI Rules with effect from 27 April 2020:

In Schedule II related to the purchase or sale of equity instruments by Foreign Portfolio

Investors, Para 1(a)(iii) provides that FPIs investing in breach of the prescribed limit have an option to divest their holdings within five trading days from the date of settlement of trades causing the breach. In case the FPI chooses not to divest, then the entire investment in the company by such FPI and its investor group shall be considered as investment under FDI and the FPI and its investor group shall not make further portfolio investment in the company concerned. It is now provided that **the divestment of holdings by FPIs and the reclassification of FPI investment as FDI shall be subject to further conditions, if any, specified by SEBI and RBI.**

A new Rule 7A has been inserted to separately provide for “**Acquisition after renunciation of rights**” that, “A person resident outside India who has acquired a right from a person resident in India who has renounced it may acquire equity instruments (other than share warrants) against the said rights as per pricing guidelines specified under rule 21 of these rules”. The extant Explanation under Rule 7 in this regard has been deleted.

With respect to FDI in Single Brand Retail Trading under para 15.1.3 of the Table in Schedule I, in Note (3), it is clarified that: Sourcing norms shall not be applicable up to three years from commencement of the business i.e. opening of the first store **or start of online retail, whichever is earlier** for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge technology and where local sourcing is not possible. –[Ministry of Finance, Department of Economic Affairs, 27th April, 2020]

CORPORATE

1) MCA ALLOWS COMPANIES TO HOLD EGMS THROUGH VC/OAVM WITH E-VOTING/ VOTING THROUGH REGISTERED EMAIL

Following its decision to allow Board Meetings up to 30th June 2020 to be conducted through Video Conferencing (VC) or other audio visual means (OAVM), the MCA has now allowed listed companies or companies with 1,000 shareholders or more which are required to provide e-voting facility under the Companies Act, 2013 to conduct EGM through VC/ OAVM and e-Voting. For other companies, a simplified mechanism for voting through registered emails (in place of postal ballot facility) has been put in place for easy compliance, without requiring the shareholders to physically assemble at a common venue and without compromising on other requirements of the Act.

As the meetings will be conducted over VC/ OAVM, the facility for appointment of proxies has been dispensed with, while representatives of bodies corporate will continue to get appointed for participation in such meetings.

As an additional check, all companies using this option are required to maintain a recorded transcript of the entire proceedings in safe custody, and public companies are also required to host this transcript on their website for greater transparency. Further, all resolutions passed through this framework will be required to be filed with the RoC within 60 days, so that such resolutions may be viewed publicly. Other safeguards have also been provided to ensure transparency, accountability and protection of

interests of investors. *–[General Circular No. 14/2020, 8th April, 2020, (Ministry of Corporate Affairs)]*

2) COVID-19 RELATED FAQs ON ELIGIBLE CSR EXPENDITURE/ ACTIVITIES

The MCA has released FAQs providing clarification on the eligibility of CSR expenditure related to COVID-19 activities, as follows:

(i) All contributions to PM CARES Fund, State Disaster Management Authority and COVID-19 related activities under items (i) and (xii) of Schedule VII of the Companies Act 2013 relating to promotion of health care including preventive health care and sanitation and disaster management will qualify as CSR expenditure; (ii) Contributions to Chief Minister's Relief Fund' or 'State Relief Fund for COVID-19' will not qualify as admissible CSR expenditure as they are not included in Schedule VII; (iii) Payment of salary/wages to employees and workers, including contract workers, during the lockdown period shall not qualify as admissible CSR expenditure. Such payment in normal circumstances is a contractual and statutory obligation of the company, while during the lockdown period is a moral obligation of the employers; (iv) Payment of wages to temporary, casual and daily wage workers cannot be adjusted and will not count towards CSR expenditure. Such payment is applicable to all companies irrespective of whether they have any legal obligation for CSR contribution under section 135 of the Companies Act 2013; and (v) However, any ex-gratia payment made to temporary / casual workers/ daily wage workers, over and above the disbursement of wages,

APRIL 2020

specifically for the purpose of fighting COVID 19, is admissible as CSR expenditure as a onetime exception, provided there is an explicit declaration to that effect by the Board of the company duly certified by the statutory auditor. – *[General Circular No. 15/2020, 10th April, 2020, (Ministry of Corporate Affairs)]*

3) **MCA CLARIFICATION ON AGMS FOR COS WHOSE FY ENDED 31 DEC 2019**

In view of the difficulty being faced by companies to hold AGMs due to Covid-19 lockdown, the MCA has clarified that companies whose financial year (other than the first financial year) ended on 31 December 2019, their AGMs may be held within nine months therefrom (instead of six months), that is, by 30 September 2020 This will not be held to be a violation and any reference to due date of AGM under the Companies Act 2013 and rules made thereunder shall be construed accordingly. –*[General Circular No. 18/2020, 21st April, 2020, (Ministry of Corporate Affairs)]*

4) **LIQUIDATION PROCESS REGULATIONS AMENDED TO EXCLUDE PERIOD OF LOCKDOWN**

The IBBI (Liquidation Process) Regulations, 2016 have been amended to provide for a new Regulation 47A that the period of lockdown in the wake of COVID-19 outbreak shall not be counted for the purposes of the timeline for any activity that could not be completed due to such lockdown in relation to any liquidation process. This is, however, subject to the overall time-limit provided in the IB Code. –*[No. IBBI/2020-21/GN/REG060, 17th April, 2020, (Insolvency and bankruptcy Board of India)]*

5) **MNRE TREATS LOCKDOWN AS FORCE MAJEURE; EXTENDS TIME FOR RE PROJECTS**

The Ministry of New and Renewable Energy (MNRE) has directed Renewable Energy (RE) implementing agencies to treat the lockdown due to COVID-19 as Force Majeure and grant an extension of time for renewable energy projects on this account. The extension of time will be for the period of lockdown plus 30 (thirty) days to provide for normalisation after the end of the lockdown. This is a blanket extension that will not require a case to case examination nor a need to give evidence for such extension. –*[Press Information Bureau, Release ID: 1616670, 21st April, 2020]*

6) **GUJARAT HIGH COURT REFUSES TO ENTERTAIN A PETITION UNDER ARTICLES 226 AND/OR 227 OF THE CONSTITUTION OF INDIA AGAINST AN ORDER PASSED BY THE ARBITRAL TRIBUNAL IN ONGOING ARBITRATION**

A contract was executed on 5 December 2014 between the Petitioner and the Respondent for the period from 15 January 2015 to 31 March 2017 for establishing a customer care centre and accordingly, the Petitioner had outsourced customer call services to the Respondent.

Subsequently, the Petitioner became aware that Respondent used to claim and raise false and inflated invoices based on an exaggerated number of persons employed by the Respondent for the Petitioner's service call centre. The Petitioner, on further inquiry, came to know that two of its employees had in connivance with the

APRIL 2020

Respondent, committed a fraud on the Petitioner. A criminal complaint came to be filed against the Respondent on 31 March 2017. Pursuant to the criminal complaint, a charge-sheet came to be filed on 7 September 2018 before the Court of Ahmedabad Metropolitan Magistrate. It is the case of the Petitioner that with a view to elude the criminal charges, the Respondent issued a notice invoking arbitration dated 30 May 2017 and thereafter, filed a petition under Section 11 of the Act for appointment of an arbitrator. A sole arbitrator was accordingly appointed by the High Court.

The arbitral tribunal *vide* order dated 14 February 2019 (“Tribunal Order”), dismissed the preliminary objection application filed by the Petitioner to decide as to whether the disputes between the parties were arbitrable or not. Being aggrieved by the Tribunal Order, the Petitioner preferred the present petition before the Gujarat High Court under Articles 226 and 227 of the Constitution of India (“Petition”).

The court was faced with the issue whether any order passed during the pendency of arbitration proceedings under the Act, can be challenged by the writ of certiorari under Articles 226 / 227 of the Constitution of India?

The Petitioner submitted that an order passed by tribunal during arbitration proceedings can be challenged by a writ petition under Articles 226 and 227 of the Constitution of India, as provisions of the Act provide for an alternative to mechanism of adjudication of disputes under the CPC. On merits, the Petitioner relied upon judgment of the Supreme Court in *Ayyasamy v. A Paramasivam and Others*, and submitted that when there are serious allegations of fraud, they are to

be treated as non-arbitrable and it is only the civil Court that should decide such matters.

On the other hand, the Respondent relied on Section 5 (*Extent of judicial intervention*) of the Act, and also submitted that as per Section 16(6) of the Act, an award deciding competence of tribunal to rule on its jurisdiction may be challenged by the aggrieved party under Section 34 of the Act.

The Court considered the judgment of seven-judge bench of the Hon’ble Supreme Court in *S.B.P. & Co. v. Patel Engineering Ltd.*³² (“*S.B.P.*”), wherein it was held that under Section 34 of the Act, the aggrieved party has an avenue for ventilating its grievances against the award, including any in-between orders that might have been passed by the tribunal acting under Section 16 of the Act. The party aggrieved by any order of the tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the tribunal. The Supreme Court in *S.B.P.* also held that the object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Courts could be approached under Articles 226 or 227 of the Constitution of India against every order made by the arbitral tribunal.

The Court also considered the following judgments of various High Courts, which have held that an order passed by the tribunal cannot be challenged by invoking Articles 226 and/or 227 of the Constitution of India: (i) *Rajasthan State Mines and Minerals Ltd. v. M/s. R.A.M. Earth Movers Pvt. Ltd. & Anr.*; (ii) *ATV Projects India Ltd. v. Indian Oil Corporation Ltd.*; (iii) *Godawari Marathwada Irrigation Development Corporation v. M/s. S.D. Shinde and Co. Engineers and Contractors*;

(iv) *The Chief Engineer, Public Works Department, Government of Goa v. M/s. Karnatak Cement Pipe Factory*; (v) *Heiza Boilers (I) Pvt. Ltd. and another v. Union of India and Others*; (vi) *Space Wood Office Solution Pvt. Ltd., Nagpur v. Anupam Rai Construction, Nagpur*; (vii) *Business India Exhibition Pvt. Ltd. and Others v. Arvind V. Sawant (Retd. Justice) and Others*; and (viii) *Tangirala Srinivasa Gangadhara Baladitya v. Sanjay Aggarwal*.

In light of the above conspectus of law, particularly *S.B.P.*, and considering the provisions of the Act, the Court dismissed the Petition and held that an order passed by the arbitral tribunal during the course of an arbitration cannot be challenged by the Petitioner under Articles 226 and/or 227 of the Constitution of India. The Court also relied upon the order of the Supreme Court in *M/s. Deep Industries Limited v. Oil and Natural Gas Corporation*, wherein it was held that it was important to notice that the seven-judge bench in *S.B.P.* had referred to the object of the Act as being that of minimising judicial intervention, which should always be kept at the forefront when an Article 227 petition is being disposed of against proceedings that are decided under the Act, and that the policy of the Act is speedy disposal of arbitration cases as the Act is a special enactment and is also a 'self-contained' code. *-[GTPL Hathway Ltd. v. Strategic Marketing Pvt. Ltd., Special Civil Application No. 4524 of 2019, 20th April 2020 (Gujarat High Court)]*

7) SUPREME COURT HOLDS FOREIGN AWARD IN CONTRAVENTION OF GOVERNMENT'S EXPORT POLICY TO BE VIOLATIVE OF FUNDAMENTAL LAW AND PUBLIC POLICY OF INDIA

The National Agricultural Cooperative Marketing Federation of India ("Appellant") and Alimenta S.A ("Respondent") entered into a contract with subsequent addendums for supply of groundnut to the Respondent for the season 1980-81 ("Contract"). A clause in the Contract provided for the Contract to be treated as cancelled in case of prohibition of export by an executive order or legislative act by or on behalf of the government of the country of origin ("Cancellation Clause"). The Appellant was a canalising agency and it did not have requisite permits from the Government of India ("GOI") to carry on export of groundnut in 1980-81. On seeking permission to continue exports, the Appellant received a letter from the Ministry of Agriculture directing the Appellant not to undertake any exports or implement past contracts due to the restricted export policy. Resultantly, the Appellant informed the Respondent that the export of the contracted quantity was not possible because of the GOI's directive of refusing such exports.

The Respondent initiated arbitration proceedings before the Federation of Oil, Seeds and Fats Associations Ltd., London ("FOSFA"). The Appellant instituted proceedings before the Delhi High Court, which granted a stay on the arbitration proceedings. However, the Respondent continued with the arbitration proceedings and the FOSFA appointed an arbitrator on behalf of the Appellant. The parties were ultimately referred to arbitration by the Supreme Court ("Court"). In its written submissions before the FOSFA, the Appellant stated that it was not allowed to appoint its nominee arbitrator or be represented through its counsels due to the pendency of court proceedings in India.

APRIL 2020

The FOSFA passed an award directing the Appellant to pay damages to the Respondent (“Award”), and the rate of interest was increased by the board of appeal of the FOSFA. The Respondent filed a petition under the Foreign Awards (Recognition and Enforcement) Act, 1961 (“Foreign Awards Act”), seeking enforcement of the Award. After the Single Judge and Division Bench of the Delhi High Court held the Award to be enforceable, the Appellant filed an appeal before the Court.

The issue before the court was whether enforcement of the Award is against the public policy of India under the Foreign Awards Act?

The Court held that enforcement of the Award in violation of the export policy and the GOP's order would be against the public policy of India under Section 7 of the Foreign Awards Act.

The Court observed that the GOP's refusal to grant permit for exports barred the Appellant from carrying out its contractual obligations, which were covered under the Cancellation Clause (“*prohibition of export by executive or legislative order*”) in the Contract. Consequently, the Contract became void in view of Section 32 of the Indian Contract Act, 1872 (“Contract Act”) and the parties were released from performance of the Contract.

The Court held that it would have been unlawful for the Appellant to continue exports in view of the GOP's refusal to accord its permission, and both the parties had agreed that the Contract would be cancelled in such an exigency. However, the Award presupposes that supply could have been made even after the GOP's refusal to grant permits. This is against the basic

law and public policy of India as per the test laid down in *Renusagar Power Co. Ltd. v. General Electric Co.* (“Renusagar”). Therefore, the Court held the Award to be *ex facie* illegal and in contravention of the fundamental law of India. Carrying on exports without the GOP's permission would have violated the law, and thus, enforcement of the Award would be violative of the public policy of India.

The Court refused to render the Award unenforceable on the ground of lack of legal representation before the FOSFA due to absence of any proof of prejudice caused to the Appellant due to such non-representation. **–[National Agricultural Cooperative Marketing Federation of India v. Alimenta S.A., Civil Appeal No. 667 of 2012, 2020 SCC Online SC 381, 22nd April 2020, (Supreme Court of India)]**

SECURITIES

1) **SEBI FPI REGULATIONS AMENDED TO ALLOW ENTITIES FROM NON-FATF MEMBER COUNTRIES AS CATEGORY I FPI**

SEBI has amended the SEBI (Foreign Portfolio Investors) Regulations 2019 in relation to who can apply for registration as a Category I FPI under Regulation 5(a)(iv). While the extant Regulation 5(a)(iv) includes entities from the Financial Action Task Force (FATF) member countries which are appropriately regulated or unregulated funds whose investment manager is appropriately regulated, this category has been amended to also include *entities from any country*

APRIL 2020

specified by the Central Government by an order or by way of an agreement or treaty with other sovereign Governments. The amendment is effective 7 April 2020. **–[SEBI/LAD-NRO/GN/2020/09, 7th April, 2020 (SEBI)]**

2) **SEBI CLARIFICATION/FURTHER RELAXATION OF LODR COMPLIANCES**

Following relaxation of compliances under SEBI (LODR) Regulations, 2015, SEBI has further relaxed compliance /clarified as under: (i) The requirement of providing prior intimation to stock exchanges about board meetings under Regulation 29(2) of at least 5 days, if financial results are to be considered, and 2 working days in other cases, has been reduced to 2 days for board meetings held till 31 July 2020; (ii) A delay on the part of a listed entity in submitting information to the stock exchanges regarding loss of share certificates and issue of duplicate certificates, beyond the stipulated time of two days of getting the information, under Regulation 39(3), will not attract penal provisions for intimations to be made between 1 March 2020 to 31 May 2020.; and (iii) Authentication, certification of any filing, submission made to stock exchanges may be done using digital signature certifications until 30 June 2020. **– [SEBI/HO/CFD/CMD1/CIR/P/2020/63, 17th April, 2020 (SEBI)]**

3) **ONE-TIME RELAXATION WITH RESPECT TO THE VALIDITY OF SEBI OBSERVATIONS**

A public issue/rights issue may be opened within twelve months from the date of issuance of observations by SEBI, in terms of Regulation 44(1), 85 and 140. The validity of the SEBI

Observations which have expired or will expire between 1 March 2020 and 30 September 2020 has been extended by 6 months from the date of expiry, subject to an undertaking from the lead manager confirming compliance with Schedule XVI of the ICDR Regulations while submitting the updated offer document to the Board.

An issuer shall be permitted to increase or decrease the fresh issue size by up to 50% of the estimated issue size without requiring to file fresh draft offer document with the Board, provided that (1) there has been no change in the objects of the issue; (2) the lead manager undertakes that the draft offer document is in compliance with provisions of Regulation 7(1)(e); and (3) the lead manager ensures that all appropriate changes are made to the relevant section of DRHP and an addendum, in this regard, shall be made public. This relaxation is applicable to IPO/ Rights Issues/ FPO opening before 31 December 2020.

– [SEBI/HO/CFD/CIR/DIL/CIR/P/2020/66, 21st April, 2020 (SEBI)]

4) **TEMPORARY RELAXATIONS WITH RESPECT TO RIGHTS ISSUES THAT OPEN ON OR BEFORE 31 MARCH 2021**

The minimum subscription to be received in the issue u/r 86(1) has been reduced to at least seventy-five per cent (earlier ninety percent) of the offer. Provided that if the issue is subscribed between 75% to 90%, issue will be considered successful subject to the condition that out of the funds raised atleast 75% of the issue size shall be utilized for the objects of the issue other than general corporate purpose.

APRIL 2020

The minimum threshold required for not filing draft letter of offer with SEBI has been increased to Rs. Twenty Five crores from Rs. Ten crores, subject to the eligibility and general conditions as specified in Regulations 61 and 62.

The eligibility conditions with respect to Fast Track Rights Issues have been relaxed u/r 99. Amongst others, the period of three years immediately preceding the reference date in relation to listing of the equity shares of the issuer on any stock exchange, compliance with equity listing agreement and LODR regulations and no suspension from trading has been reduced to eighteen months immediately preceding the reference date under sub-regulations(a), (f) and (j), respectively; Further, the average market capitalisation of public shareholding of the issuer has been reduced to at least one hundred crore rupees in place of two hundred and fifty crore rupees;

The relaxations are, however, not applicable for issuance of warrants. –
[SEBI/HO/CFD/CIR/CFD/DIL/67/2020, 2nd April, 2020, (SEBI)]

5) SEBI RELAXES COMPLIANCE UNDER BUYBACK REGULATIONS 2018

So as to enable companies to raise funds, SEBI has temporarily, in view of Covid-19 situation, relaxed the condition imposed under regulation 24(i)(f) of the SEBI (Buy-back) Regulations, 2018 that the company shall not raise further capital for a period of one year from the expiry of buyback period except in discharge of its subsisting obligations, to a period of six months.

This relaxation will be applicable up to 31 December 2020.

This relaxation is also in line with section 68(8) of the Companies Act 2013, which prohibits a further issue of shares within a period of six months from the completion of a buy-back of shares, except by way of bonus or in discharge of subsisting obligations. –
[SEBI/HO/CFD/DCR2/CIR/P/2020/69, 23rd April, 2020, (SEBI)]

COMPETITION

1) CCI APPROVES FORMATION OF JOINT VENTURE BETWEEN ADANI GREEN ENERGY LIMITED AND TOTAL S.A. IN THE BUSINESS OF POWER GENERATION THROUGH SOLAR ENERGY IN INDIA

The proposed combination envisages Adani Green Energy Limited transferring certain of its subsidiaries to a newly incorporated company (JV). Subsequently, Total S.A. would directly or indirectly acquire 50% of the equity share capital of the JV. Total S.A. is the ultimate parent entity of the Total Group. Total Group is an international integrated energy producer with operations in every sector of the oil and gas industry. Total Group is also involved in renewable energy and power generation sectors in India. The Target Companies are active in the business of power generation through solar energy in India. –[Press Release No. 01/2020-21, 1st April, 2020 (Competition Commission of India)]

APRIL 2020

2) ACQUISITION OF UP TO 18.951% OF THE EQUITY SHARE CAPITAL OF THE RELIGARE HEALTH INSURANCE COMPANY LIMITED

CCI received the following green channel combination filed under sub-section (2) of Section 6 of the Competition Act, 2002 (Act) read with regulation 5A of the Competition Commission of India (Procedure in regard to the transactions of business relating to combinations) Regulations, 2011 (Combination Regulations): Acquisition of up to 18.951% (Eighteen point Nine Five One percent) of the equity share capital of the Religare Health Insurance Company Limited (Religare / Target) by the Trishikhar Ventures LLP (Trishikhar / Acquirer) (“Proposed Combination”). Trishikhar is a special purpose vehicle set up for the purposes of the Proposed Combination. The Acquirer is a part of the Kedaara Group which invests in a variety of companies through acquisitions and corporate restructuring. Religare provides general insurance products relating to health segment, which comprises of health insurance, personal accident insurance and travel insurance. Further, as per the Insurance Regulatory and Development Authority of India (General Insurance - Reinsurance) Regulations, 2016, it can also do inward reinsurance business. *–[Press Release No. 02/2020-21, 2nd April, 2020 (Competition Commission of India)]*

3) CCI APPROVES THE ACQUISITION BY JSW ENERGY LIMITED (“ACQUIRER”) OF GMR KAMALANGA ENERGY LIMITED (“TARGET”), UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002, IN ITS MEETING HELD

TODAY THROUGH VIDEO CONFERENCING

The proposed combination envisages the acquisition of the entire (i.e., 100%) shareholding of the Target by the Acquirer. The Acquirer (also through its subsidiaries) is engaged in power generation, power transmission, power trading, coal mining and power equipment manufacturing. Presently, the Acquirer has a power generation capacity of 4,541 MW comprising of portfolio of thermal (3,140 MW), hydro (1,391 MW) and solar (10 MW). The Target is engaged in generation of power through its coal based thermal power plant at Kamalanga village, Dhenkanal district, Odisha. *–[Press Release No. 03/2020-21, 7th April, 2020 (Competition Commission of India)]*

4) CCI APPROVES PROPOSED ACQUISITION OF 9.93% STAKE BY EMERALD SAGE INVESTMENT LIMITED IN APOLLO TYRES LIMITED

The proposed combination envisages subscription by Emerald Sage Investment Limited (Emerald) to 10.80 crores compulsorily convertible preference shares constituting approximately 9.93% of the post-issue paid up share capital of Apollo Tyres Limited (Apollo). Emerald is an investment holding company incorporated under the laws of Mauritius. Shareholders of Emerald are certain private equity funds managed by Warburg Pincus LLC, which acts as a manager to certain private equity funds. The portfolio companies owned by these private equity funds are active in a variety of sectors including energy, financial services, healthcare and consumer, industrial and business services, technology, media and

APRIL 2020

telecommunications. Apollo is engaged in manufacturing and sale of automotive tyres. Product portfolio of the Apollo group consists of tyres of passenger car, sports utility vehicle, multi utility vehicle, light trucks, etc., and retreading material. –*[Press Release No. 05/2020-21, 13th April, 2020 (Competition Commission of India)]*

INDIRECT TAXES

a. CUSTOMS

1) CHANGES CONSEQUENTIAL TO ENACTMENT OF FINANCE ACT, 2020

Notification No. 8/2020-Customs dated 02.02.2020 amended to make changes consequential to enactment of Finance Act, 2020. – *[Notification No. 19/2020 – Customs, dated 9th April, 2020]*

2) EXEMPTION OF CUSTOMS DUTY ON VENTILATORS, PERSONAL PROTECTION EQUIPMENTS, COVID-19 TESTING KITS

The CBIC has exempted customs duty on ventilators, personal protection equipments, covid-19 testing kits and inputs for these goods. – *[Notification No. 20/2020– Customs, dated 9th April, 2020]*

3) ADD ON ACETONE

Anti-dumping duty on import of Acetone originating in or exported from Korea RP, Saudi Arabia and Chinese Taipei extended till 14th October, 2020. – *[Notification No. 07/2020 - Customs (ADD), dated 15th April, 2020]*

4) MEASURE TO FACILITATE TRADE DURING THE LOCKDOWN PERIOD

The importers/ exporters and their authorised Customs Brokers were facing difficulty, during the ongoing lockdown period announced by the Government to prevent the spread of COVID-19 pandemic in the country, in obtaining notarised stamp papers for furnishing bonds required by Customs in certain situations during the assessment and clearance of goods. CBIC therefore has decided to take certain measures for a temporary period in terms of section 143AA of the Customs Act, 1962 with a view to expedite Customs clearance of goods and for maintaining balance between Customs control and facilitation of legitimate trade.

In this regard, CBIC has approved relaxation of the requirement to submit bonds prescribed under section 18, section 59 and section 143, and under notifications issued in terms of section 25 of the Customs Act, 1962, subject to compliance of certain conditions as mentioned in the present Circular. This relaxation will apply to the following categories of the importers/exporters:

- a. Government/Public Sector Undertakings (Central/State/UT Govts. Or Administrations and their undertakings)
- b. Manufacturer/Actual User importer
- c. Authorised Economic Operators
- d. Status holder
- e. All importers availing warehouse facility in terms of section 59 of the Customs Act, 1962 – *[Circular No. 17/2020-Customs, dated 03rd April, 2020 & Circular No. 21/2020-Customs, dated 21st April, 2020]*

APRIL 2020

5) CLEARANCE OF GOODS UNDER INDIA'S TRADE AGREEMENTS WITHOUT ORIGINAL CERTIFICATE OF ORIGIN

In order to mitigate the difficulties being faced by importers in producing the original Certificates of Origin (CoO) on account of disruptions caused by the Covid-19 pandemic, the CBIC has directed that the import consignments, where a preferential treatment of goods under a Free Trade Agreement has been claimed but the original hard copy of CoO has not been submitted or only digitally signed copy or unsigned copy of CoO is submitted, may be assessed and cleared provisionally in terms of section 18 of the Customs Act, 1962. The final assessment may be done subsequently on submission of the original COO certificate by the importer. The revenue may be secured through undertaking and appropriate security. – *[Circular No. 18/2020 – Customs, dated 11th April, 2020]*

6) PAPERLESS CUSTOMS – ELECTRONIC COMMUNICATION OF PDF BASED GATEPASS AND OOC COPY OF BILL OF ENTRY TO CUSTOM BROKERS/IMPORTERS

The CBIC taking note that the specific measures that reduce interface between the Customs authorities and the importers/exporters/Customs Brokers are especially relevant in these challenging times, to tackle the scourge of Covid-19 pandemic, it has been decided to enable electronic communication of PDF based Final eOoC (electronic Out of Charge) copy of BoE and eGatepass to the importers/Customs Brokers. This electronic communication would reduce interface between the Customs authorities

and the importers/Customs Brokers and also do away with the requirement of taking bulky printouts from the Service Centre or maintenance of voluminous physical dockets in the Customs Houses.

The Final eOoC copy of BoE and eGatepass copy will be emailed to the concerned Customs Broker and/or importer, if registered, once the Out of Charge is granted. The eGatepass copy will be used by the Gate Officer or the Custodian to allow physical exit of the imported goods from the Customs area.

This measure is made effective from 15th April, 2020. – *[Circular No. 19/2020-Customs, dated 13th April, 2020]*

7) ELECTRONIC SEALING – IMPLEMENTATION OF CIRCULAR DEFERRED

On receipt of representation from e-seal vendors to defer the implementation of Circular no. 10/2020 – Customs dated 07th February, 2020 regarding Deposit in and removal of goods from Customs Bonded Warehouses, the CBIC has issued new date of implementation of the said circular as 01st July, 2020. – *[Circular 20/ 2020-Customs, dated 21st April, 2020]*

b. GST

1) CENTRAL GOODS AND SERVICES TAX (FOURTH AMENDMENT) RULES, 2020

CGST Rules amended (Fourth Amendment) in order to allow opting Composition Scheme for FY 2020-21 till 30.06.2020 and to allow cumulative application of condition in rule 36(4). – *[Notification No. 30/2020 – Central Tax, dated 3rd April, 2020]*

APRIL 2020

2) **CONDITIONAL LOWERING OF INTEREST RATE FOR TAX PERIODS OF FEBRUARY, 2020 TO APRIL, 2020**

The CBIC has provided relief by conditional lowering of interest rate for tax periods of February, 2020 to April, 2020, as per the table given in the present circular. - *[Notification No. 31/2020 – Central Tax, dated 3rd April, 2020]*

Similar notifications have been issued under the Integrated Tax (Rate) and Union Territory Tax (Rate). – *[Notification No. 3/2020 – Integrated Tax, dated 8th April, 2020 and Notification No. 1/2020 – Union Territory Tax, dated 8th April, 2020]*

3) **CONDITIONAL WAIVER OF LATE FEE FOR DELAY IN FURNISHING RETURNS IN FORM GSTR-3B**

The CBIC has provided relief by conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B for tax periods of February, 2020 to April, 2020 as per the table given in the present circular. – *[Notification No. 32/2020 – Central Tax, dated 3rd April, 2020]*

4) **CONDITIONAL WAIVER OF LATE FEE FOR DELAY IN FURNISHING OUTWARD STATEMENT IN FORM GSTR-1**

The CBIC has provided relief by conditional waiver of late fee for delay in furnishing outward statement in FORM GSTR-1 for tax periods of February, 2020 to April, 2020. – *[Notification No. 33/2020 – Central Tax, dated 3rd April, 2020]*

5) **EXTENSION OF DUE DATE OF FURNISHING FORM GST CMP-08**

The CBIC has extended the due date of furnishing FORM GST CMP-08 for the quarter ending March, 2020 till 07.07.2020 and filing FORM GSTR-4 for FY 2020-21 till 15.07.2020. – *[Notification No. 34/2020 – Central Tax, dated 3rd April, 2020]*

6) **EXTENSION OF DUE DATE OF COMPLIANCE WHICH FALLS DURING THE PERIOD FROM "20.03.2020 TO 29.06.2020" TILL 30.06.2020 AND EXTENSION OF VALIDITY OF E-WAY BILLS**

The CBIC has extend due date of compliance which falls during the period from "20.03.2020 to 29.06.2020" till 30.06.2020, including for the purposes of –

- a. completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or
- b. filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above;

but, such extension of time shall not be applicable for the compliances of the provisions of the said Act, as mentioned below -

- a. Chapter IV;
- b. sub-section (3) of section 10, sections 25, 27, 31, 37, 47, 50, 69, 90, 122, 129;
- c. section 39, except sub-section (3), (4) and (5);

APRIL 2020

d. section 68, in so far as e-way bill is concerned; and

e. rules made under the provisions specified at clause (a) to (d) above;

Also, validity of e-way bills which were due to expire during the period 20th day of March, 2020 to 15th day of April, 2020 has been extended till 30th April, 2020. – *[Notification No. 35/2020 – Central Tax, dated 3rd April, 2020]*

7) EXTENSION OF DUE DATE FOR FURNISHING FORM GSTR-3B

The CBIC has extend due date for furnishing FORM GSTR-3B for supply made in the month of May, 2020. – *[Notification No. 36/2020 – Central Tax, dated 3rd April, 2020]*

8) RULE 87 (13) AND FORM GST PMT-09 OF THE CGST RULES, 2017 CAME INTO EFFECT

The CBIC has notified that the provisions of rule 87 (13) and FORM GST PMT-09 of the CGST Rules, 2017 have come into effect from 21st April, 2020. – *[Notification No. 37/2020 – Central Tax, dated 28th April, 2020]*

9) CLARIFICATION IN RESPECT OF VARIOUS MEASURES ANNOUNCED BY THE GOVERNMENT FOR PROVIDING RELIEF TO THE TAXPAYERS IN VIEW OF SPREAD OF NOVEL CORONA VIRUS (COVID-19)

The CBIC vide present circular has provided clarifications on following issues:-

i. What are the measures that have been specifically taken for taxpayers who have opted to pay tax under section 10 the CGST Act or those availing the option to pay tax under the

notification No. 02/2019– Central Tax (Rate), dated the 7th March, 2019?

ii. Whether due date of furnishing FORM GSTR-3B for the months of February, March and April, 2020 has been extended?

iii. What are the conditions attached for availing the reduced rate of interest for the months of February, March and April, 2020, for a registered person whose aggregate turnover in the preceding financial year is above Rs. 5 Crore?

iv. How to calculate the interest for late payment of tax for the months of February, March and April, 2020 for a registered person whose aggregate turnover in preceding financial year is above Rs. 5 Crore?

v. What are the conditions attached for availing the NIL rate of interest for the months of February, March and April, 2020, for a registered person whose aggregate turnover in preceding financial year is up to Rs. 5 Crore?

vi. Whether the due date of furnishing the statement of outward supplies in FORM GSTR-1 under section 37 has been extended for the months of February, March and April 2020?

vii. Whether restriction under rule 36(4) of the CGST Rules would apply during the lockdown period?

viii. What will be the status of e-way bills which have expired during the lockdown period?

ix. What are the measures that have been specifically taken for taxpayers who are required to deduct tax at source under section 51, Input Service Distributors and Non-resident Taxable persons?

x. What are the measures that have been specifically taken for taxpayers who are required to collect tax at source under section 52?

xi. The time limit for compliance of some of the provisions of the CGST Act is falling during the lock-down period announced by the

APRIL 2020

Government. What should the taxpayer do? – [Circular No. 136/06/2020-GST, dated 3rd April, 2020]

10) CLARIFICATION OF ISSUES IN RESPECT OF CHALLENGES FACED BY REGISTERED PERSONS IN IMPLEMENTATION OF PROVISIONS OF GST ISSUED

The CBIC vide present circular has clarified following issues:-

- i. An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?
- ii. An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?
- iii. Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?
- iv. Letter of Undertaking (LUT) furnished for the purposes of zero-rated supplies as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 read with rule 96A of the CGST Rules has expired on 31.03.2020. Whether a registered person can still make a zero-rated supply on such LUT and claim refund accordingly or does he have to make such supplies on payment of IGST and claim refund of such IGST?

v. While making the payment to recipient, amount equivalent to one per cent was deducted as per the provisions of section 51 of Central Goods and Services Tax Act, 2017 i. e. Tax Deducted at Source (TDS). Whether the date of deposit of such payment has also been extended vide notification N. 35/2020-Central Tax dated 03.04.2020?

vi. As per section 54 (1), a person is required to make an application before expiry of two years from the relevant date. If in a particular case, date for making an application for refund expires on 31.03.2020, can such person make an application for refund before 29.07.2020? – [Circular No. 137/07/2020-GST, dated 13th April, 2020]

INTELLECTUAL PROPERTY RIGHTS

1) BOMBAY HC UPHELD A TRIAL COURT ORDER GRANTING INTERIM INJUNCTION AGAINST A TOBACCO PRODUCT MANUFACTURER FROM USING SIMILAR PACKAGING

This appeal has been preferred against a trial court order granting interim injunction against a Tobacco product manufacturer from using similar packaging for its products as that of its opponent. It was the case of the Respondent/Plaintiff that the product/packet of the plaintiffs and defendants have lot of similarity in shape, size, colour, words, fonts and as such causes confusions in the mind of the consumers. Further that the respondents/plaintiffs are manufacturing and selling the said product since last 60 years and they have been packaging their product in yellow colour pouch without changing any colour, shape and size and, therefore,

APRIL 2020

defendants deceptively using the same with an intent to cause the damage as well as reputation to the plaintiffs product in the market. It was submitted that there has been a clear cut passing off as the colour combination of the packet/pouch was being deceptively used by the plaintiffs.

The Court after carefully observing the packets/pouch of the plaintiffs as well as the defendant's product, held that the instant case packet/pouch of the plaintiff/defendants products practically of the same size, colour scheme of the two wrappers, designed. It is likely to create confusion in the minds of the purchasers. Court upheld the impugned order passed by the Trial Court. – *[Jaju Tobacco Company and Anr VS. R.K. Patel and Company and Ors., dated 30th April, 2020 (Bombay HC)]*

2) **“Mere ownership or even registration of a mark does not lead to any presumption of the mark having a reputation and goodwill, even in the territories where the mark is being used” – Delhi HC**

The Delhi HC while deciding an application for interim injunction observed that there are no rights in a trade mark without use/utilization thereof. Also, mere ownership or even registration of a mark does not lead to any presumption of the mark having a reputation and goodwill, even in the territories where the mark is being used. The court in the present case declined the application inter-alia on the ground of delay and latches. – *[Keller Williams Realty, Inc. vs Dingle Buildcons Pvt. Ltd. & Ors., dated 17 April, 2020 (Delhi HC)]*

CONSUMER

1) **SUPREME COURT SET'S ASIDE INSURER'S LIABILITY TO COMPENSATE MP GOVERNMENT**

The Supreme Court Friday set aside the National Consumer Disputes Redressal Commission (NCDRC's) order asking an insurance company to pay over Rs 64 lakh as compensation to Madhya Pradesh government for alleged wrongful repudiation of a claim regarding damages to a helicopter, which was in transit from Canada to Bhopal in 2005.

Observing that courts should always interpret the words used in a contract in a manner that would best express the intention of parties, the top court said that on balance of probabilities the state has failed to discharge its burden that damage to the tail boom of the Bell-430 helicopter had incurred during the course of transit.

The apex court was dealing with a matter in which the Madhya Pradesh government had purchased a “transit marine insurance policy” from Bajaj Allianz General Insurance Co Ltd in July 2005 to cover the transportation of a Bell-430 Helicopter from Langley, Canada to Bhopal.

A bench comprising Justices D Y Chandrachud and Ajay Rastogi noted in the verdict that the helicopter was transported by air in a “knocked down state” and reached New Delhi on October 5, 2005 and after customs clearance, it was shifted to a hangar.

“It is undisputed that at the time of customs clearance, no damage was reported,” the bench noted in its verdict.

The bench referred to a letter addressed to the insurance firm by the state government and observed that it indicated the state's intention was to assemble the helicopter at New Delhi and then fly it to Bhopal.

“The act of unpacking the helicopter for the purpose of assembling it for undertaking the flight to Bhopal was unrelated to the usual or ordinary method of pursuing the transportation of the cargo insured,” it said.

The bench said the policy covered only those risks that were associated with transportation of the helicopter and did not cover risks associated with its flight or operation.

The bench said that change in the character of the helicopter “from a knocked down state to a ready to fly state” exposed the insurance firm to risks not contemplated by the parties under the policy.

“Once the nature of the subject-matter was altered, the cargo cannot be said to be in transit and the appellant (insurance firm) is absolved from any liability arising out of any subsequent damage to the consignment,” the bench said.

Detailing the facts, the judgement noted that on October 21, 2005, when the helicopter was in the hangar, it was inspected by a representative of manufacturer and window of crew door was reported to be damaged.

Later, in November 2005, the state informed the insurance firm that upon inspection, the tail boom of the helicopter was found to be damaged.

The insurance firm had repudiated the state's claim on the ground that loss that occurred to helicopter was after the duration of policy had ended as mentioned in one of the clause of Institute Cargo Clauses (ICC).

Thereafter, the state filed a complaint before the Madhya Pradesh State Consumer Dispute Redressal Commission (SCDRC), which found the insurance firm to be deficient in its service and directed it to pay compensation of Rs 64,89,205 to the state.

Later, the NCDRC had in August 2018 upheld the findings of SCDRC and also awarded interest at the rate of six per cent per annum from the date of repudiation till realisation.

The insurance firm approached the apex court against the NCDRC's order and argued that the state had taken delivery of helicopter, prior to the final destination that is Bhopal, and stored it in hangar.

The state's counsel had argued that there was justifiable ground for the helicopter to be stored at the hangar at New Delhi as replacement window was not available in India and the state had decided to procure it from the US.

The bench, which allowed the appeal of the insurance firm, noted in its verdict that dispute before it was with respect to damage to the tail boom of the helicopter.

Referring to several judgements of various jurisdictions, the bench said that they have dealt with the meaning of the expression “in transit” and “in the ordinary course of transit”.

While terming as "unsustainable" the orders passed by NCDRC and SCDRC, the apex court said, "While construing a contract of insurance, it is not permissible for a court to substitute the terms of the contract." – *[Bajaj Allianz General Insurance Co Ltd & Anr., v. State of Madhya Pradesh, Civil Appeal No.2366-67 of 2020, 24th April, 2020 (Supreme Court of India)]*

ENVIRONMENT

1) INSTRUCTIONS REGARDING FUNCTIONING OF NGT AMID COVID-19

The NGT vide an Office Order dated 28.04.2020 issued instructions regarding functioning of NGT w.e.f 04.05.2020 amid Covid-19. It has been instructed that till the situation of Corona improves, judicial work will be conducted by the Benches of NGT only by Video Conferencing, without physical presence/appearance of parties or their counsel in the NGT complex. Only online filing (e-filing) of cases is allowed and no physical filing is permitted. – *[NGT – Office Order NGT/PB/87/Admn/2014/590 (AD) dated 28th April, 2020]*

Disclaimer: The information contained in this Newsletter is for general purposes only and LEXport is not, by means of this newsletter, rendering accounting, business, financial investment, legal, tax, or other professional advice or services. This material is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Further, before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. LEXport shall not be responsible for any loss sustained by any person who relies on this newsletter.

As used in this document, "LEXport" means LEXport - Advocates and Legal Consultants.

Please see www.lexport.in/about-firm.aspx for a detailed description about the LEXport and services being offered by it.