

MONTHLY NEWSLETTER

MARCH 2021

Dear Readers,

We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

Our newsletter will cover updates from RBI, FEMA, Foreign Trade, Corporate Laws, Securities Laws and Capital Markets, Competition Laws, Trade & Indirect Taxes and Customs, Intellectual Property Laws, Environment Laws etc.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at mail@lexport.in.

Regards,
Team Lexport



ABOUT US

Lexport is a full-service Indian law firm offering consulting, litigation and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website www.lexport.in.

OUR LEGAL TEAM

Srinivas Kotni
Rajiv Sawhney
Raj Latha Kotni
Ashmeet Singh Chugh
Ashima Puri Chhibbar
Sandeep Chatterjee
Urvashi Kalra
Akshay Kumar
Shantam Gorawara
Dimple Saraswat
S. Ram Narayan
Shakshi Choraria
Naina Gupta

DISCLAIMER

The information contained in this Newsletter is for general purposes only and Lexport is not, by means of this newsletter, rendering legal, tax, accounting, business, financial, investment or any 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.

INDEX

| | |
|-------------------------------------|-------|
| RBI & FEMA | ... 2 |
| Foreign Trade | ... 2 |
| Corporate Laws | ... 3 |
| Securities Laws and Capital Markets | ... 4 |
| Competition Laws | ... 4 |
| Indirect Taxes and Customs | ... 5 |
| Intellectual Property Rights | ... 6 |
| Environment Laws | ... 7 |

RBI & FEMA

(1) RBI HAS INTRODUCED THE MASTER DIRECTION ON AMALGAMATION OF URBAN COOPERATIVE BANKS



The Reserve Bank of India ["RBI"] has introduced the master directions on amalgamation of urban cooperative banks ["UCB"]. These directions shall apply to all Primary (Urban) Co-operative Banks. The decision of amalgamation shall be approved by a two-third majority of the total number of Board members of both the amalgamating and amalgamated UCBs and the draft scheme shall be approved by shareholders of each UCB.

(Source: RBI Master Direction DOR.MAM. No.49/09.16.901/2020-21 dated 23.03.2021)

(2) RBI HAS DECIDED TO DEFER THE APPLICABILITY OF LIMITS ON NON-CENTRALLY CLEARED DERIVATIVES EXPOSURES

RBI has decided that non-centrally cleared derivatives exposures will continue to be outside

the purview of exposure limits till September 30, 2021.

(Source: RBI DOR.No.CRE.BC.47/21.01.003/2020-21 dated 23.03.2021)

(3) RBI HAS EXTENDED THE CHEQUE TRUNCATION SYSTEM (CTS) ACROSS ALL BANK BRANCHES IN THE COUNTRY

RBI had earlier announced the pan-India coverage of CTS by bringing all branches of banks in the country under image-based CTS clearing mechanism through press release dated 05.02.2021. Now it has been noticed by the RBI that customers are facing hardship due to the longer time taken and cost involvement in the collection of cheques. To leverage the availability of CTS and provide a uniform customer experience, it has been decided to extend CTS till 30.09.2021.

(Source: RBI DPSS.CO.RPPD.No.SUO21102/04.07.005/2020-21 dated 15.03.2021)

FOREIGN TRADE

(1) AMENDMENT IN IMPORT POLICY OF COPPER AND ALUMINIUM

The Directorate General of Foreign Trade ["DGFT"] has amended the import policy of copper and aluminium. The non-ferrous metal import monitoring system shall require the importers to submit advance information in an online system.

(Source: DGFT notification no. 6/2015-2020 dated 31.03.2021)

(2) DGFT HAS AMENDED THE SCALE OF FEE FOR APRIL TO JUNE QUARTER



विदेश व्यापार महानिदेशालय
DIRECTORATE GENERAL OF
FOREIGN TRADE

CORPORATE LAWS

DGFT has notified that no fee shall be charged on an application for updation of Import Export Code (“IEC”) between April-June each year.

(Source: DGFT Public notice No. 49/2015-20 dated 31.03.2021)

(3) DGFT HAS EXTENDED THE DEADLINE TO INSTALL AND OPERATIONALISE THE RADIATION PORTAL MONITOR

DGFT has extended the deadline to install and operationalise the Radiation portal monitor in designated seaports till 30.09.2021.

(Source: DGFT public notice no. 45/2015-2020 dated 25.03.2021)

(4) CHANGES IN NECESSARY DOCUMENTS WHILE APPLYING FOR IMPORT AUTHORIZATION FOR IMPORT OF DENATURED ETHYL ALCOHOL



DGFT has amended the provision related to the documents required while applying for import authorisation for importing denatured ethyl alcohol. The additional documents are as follows:

- a) Import and usage pattern of last five years, indicating year wise production of finished products.
- b) Approved finished capacity of finished products, produced at plant sites.
- c) Valid environmental clearances.

(Source: Trade Notice No. 46/2020-2021 dated 16.03.2021)

(1) COMPANIES (MANAGEMENT AND ADMINISTRATION) AMENDMENT RULES, 2021

MCA has notified the mandatory filing of Annual Return by every company except OPC and small companies in Form No. MGT-7. One Person Companies and Small Companies shall file their Annual Return in Form No. MGT-7A.

(Source: MCA Notification No. G.S.R. 159 (E), dated 05-03-2021)

(2) COMPANIES (INCORPORATION) THIRD AMENDMENT RULES, 2021

MCA has amended the Companies (Incorporation) Rules, 2014. The said amendment seeks to insert the following question, namely: “Do you wish to perform Aadhar authentication for GSTIN registration?” These rules will be effective from 05.03.2021.

(Source: MCA Notification G.S.R. 158(E) dated 05.03.2021.)

(3) AMENDMENT TO SCHEDULE V OF THE COMPANIES ACT, 2013

MCA has amended the limits of effective capital in case of payment of yearly remuneration to Managerial Persons and Directors.

(Source: MCA Notification No. S.O. 1256 (E) dated 18-03-2021)

(4) COMPANIES (ACCOUNTS) AMENDMENT RULES, 2021



MCA has amended the existing Companies (Accounts) Rules, 2014, stating that every company using accounting software for maintaining its books of accounts, shall from 01.04.2021 onwards, would use an accounting software that has requisite features for recording of audit trail of every transaction.

(Source: MCA Notification No. G.S.R...(E) dated 24-03-2021)

(5) CASE LAW: MINORITY SHAREHOLDERS DO NOT GET A RIGHT TO A SEAT ON THE BOARD: SUPREME COURT



The appeals were filed by Tata Consultancy Services Pvt Ltd (TCS) against findings rendered by the NCLAT, which had held to be illegal, the proceedings of the Sixth Meeting of the Board of Directors of TATA Sons Limited held on 24.10.2016 in so far as it relates to the removal of Cyrus Pallonji Mistry as Executive Chairman of Tata Sons Limited and consequently as a Director of the Tata Companies. The NCLAT order had also restrained Ratan N. Tata and the nominees of Tata Trust from taking any decision in advance & also restraining the Company, its Board of Directors and Shareholders from exercising the power under Article 75 of the Articles of Association against the minority members except in exceptional circumstances and in the interest of the Company.

While considering the impugned NCLAT Order, the Hon'ble Supreme Court categorically held that Sections 241 and 242 of the Companies Act, 2013 do not specifically confer the power of reinstatement, nor we would add that there is any scope for holding that such a power to reinstate can be implied or inferred from any of the powers specifically conferred.

It was also held by Supreme Court that Article 75 of Articles of Association of Tata Sons was nothing but a provision for an exit option to shareholders and after attacking Article 75 before the NCLT, Mistry Group could not ask it to go into the question of fixing fair value compensation for exercising an exit option.

(Source: 2021-TIOLCORP-19-SC-CA-LB Civil Appeal No. 440-441 of 2020 dated 26-03-2021)

SECURITIES LAWS AND CAPITAL MARKETS

(1) SECURITIES AND EXCHANGE BOARD OF INDIA (ANNUAL REPORT) RULES, 2021



The Securities and Exchange Board of India ["SEBI"] in supersession of the Securities and Exchange Board of India (Annual Report) Rules, 1994, has introduced Securities and Exchange Board of India (Annual Report) Rules, 2021. The Rules mandate the government to submit a report to the Central Government giving a true and full account of its activities, policies and programmes during the previous financial year within 90 days after the end of each Financial year.

(Source: Notification No. G.S.R. 176(E)/ [F. No. 2/8/2019-RE] dated 12.03.2021)

(2) CASE LAW: WHETHER A WHATSAPP MESSAGE ON FUTURE EARNING WHICH WAS 'FORWARDED AS RECEIVED' WOULD CREATE PIT LIABILITY?

The Securities Appellate Tribunal ["SAT"] has set aside SEBI's insider trading charges against few individuals, who circulated alleged unpublished price sensitive information about the financial

results of half-a-dozen companies. The case pertains to the circulation of Unpublished Price Sensitive Information (UPSI) in various private WhatsApp groups about certain companies. It was held that sharing of UPSI by entities before an official announcement amounts to a violation of SEBI's regulation that prohibit insider trading activities.

(Source: Misc. Application No. 346 of 2021, dated 22.03.2021)

COMPETITION LAWS

(1) CASE LAW: INVESTIGATION BY ED UNDER FEMA DOES NOT BAR INVESTIGATION BY CCI



An investigation by the Enforcement Directorate (“ED”) under the Foreign Exchange Management Act, 1999 (“FEMA”) does not bar another probe by the Competition Commission of India (CCI) for violations of Competition law, the CCI argued before the Karnataka High Court in the Amazon-Flipkart case.

Additional Solicitor General submitted that there can be parallel investigation under FEMA. The Court was hearing two petitions moved by Amazon and Flipkart seeking to quash the probe ordered by CCI against them for alleged violations of Competition Law.

(Source: Bar & Bench)

(2) CASE LAWS: CCI HAS ORDERED MAKE MY TRIP AND GO IBIBO TO PERMIT FAB HOTELS, TREEBO TO BE LISTED ON ITS ONLINE PORTALS



The Competition Commission of India [“CCI”] has directed Make My Trip and Go Ibibo to allow FabHotels and Treebo to be listed on its online portals, after noticing that such delisting disturbs competition in the market by preventing access to an important channel of distribution.

CCI has noticed that denial of market access need not be complete and absolute in nature. Denial of market access in any manner that takes away the freedom of a substitute to strive effectively and on the merits in the relevant market can amount to the denial of market access under the provisions of the Act.

(Source: Case No. 14 of 2019 and Case No. 1 of 2020 dated 13.03.2021)

(3) CASE LAWS: CCI HAS ORDERED DIRECTOR GENERAL TO INVESTIGATE INTO WHATSAPP NEW PRIVACY POLICY AS IT IS “EXPLOITIVE AND EXCLUSIONARY”

The Commission is of the considered opinion that WhatsApp has prima facie contravened the provisions of Section 4 of the Act through its exploitative and exclusionary conduct, in the garb of policy update. A thorough and detailed investigation is required to ascertain the full extent, scope and impact of data sharing through involuntary consent of users.

Accordingly, the Commission directs the Director General (“DG”) to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. The Commission also

directs the DG to complete the investigation and submit the investigation report within a period of 60 days from the receipt of this order

Lastly, it is noted that WhatsApp has filed its submissions dated 03.02.2021 in two versions viz. confidential as well as non-confidential (filed on 25.02.2021). The confidential versions were kept separately during the pendency of the proceedings. The DG, however, shall be at liberty to examine the confidentiality claims as per law. Further, it is made clear that no confidentiality claim shall be available in so far as the information/ data that might have been used/referred to in this order for the purposes of the Act in terms of the provisions contained in Section 57 thereof.

It is also made clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

(Source: Suo Moto Case No. 01 of 2021 dated 24.03.2021)

INDIRECT TAXES AND CUSTOMS

I. GST

(1) **TURNOVER LIMIT FOR GST E-INVOICING REDUCED**

The Central Board of Indirect Tax and Customs [“CBIC”] has reduced the threshold limit for Goods and Services Tax (GST) e-Invoicing to Rs. 50 Crores (Rupees fifty crores) from Rs. 100 crores (Rupees hundred crores) with effect from 01.04.2021.

(Source: Notification No. 05/2021 G.S.R. 160(E). dated 8-03-2021)

(2) **CASE LAW: NOTICE FOR RECOVERY UNDER GST MUST BE ISSUED IN FORM NO. GST DRC- 07**

The Gujarat High Court in the case of *Rajkamal Building Infrastructure Private Limited Vs Union of India* has concluded that the notice should have been issued in Form GST DRC 07. The Notice should specify the amount of tax, interest and penalty payable by the person chargeable with tax

(Source: Special Civil Application No. 21534 of 2019, dated 23-03-2021)

II. CUSTOMS

(1) **BILL OF ENTRY (FORMS) AMENDMENT REGULATIONS, 2021**

CBIC has amended the existing Bill of Entry (Forms) Regulations, 1976. As per the amendment, in case of vessels arriving at customs port, the authorised person will have to file the bill of entry before the end of the day (including holidays) preceding the day on which such vessel arrives, to get a clearance for home consumption and in case of aircraft arriving at customs airports, the authorised person will have to file the bill of entry before the end of the day (including holidays) of the arrival of such aircraft.

(Source: Notification No. 35/2021-Customs (N.T.) [G.S.R. 219(E)], dated 29-03-2021)

(2) **BILL OF ENTRY (ELECTRONIC INTEGRATED DECLARATION AND PAPERLESS PROCESSING) AMENDMENT REGULATIONS, 2021**

CBIC has amended the existing Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018. The filing of the bill of entry by the authorised person would now take place on Customs Automated System or Indian Customs Electronic Data Interchange System.

(Source: Notification No. 34/2021-Customs (N.T.) [G.S.R. 218(E)], dated 29-03-2021)

(3) **AMENDMENT IN SECTION 46 OF THE CUSTOMS ACT 1962**

The amendment seeks to bring legislative changes under Section 46 of the Customs Act 1962 by requiring the importers to file Bills of Entry

before the end of the day (including holidays) preceding the day of arrival at a Customs port/station at which such goods are to be cleared for home consumption or warehousing.

(Source: Public Notice No. 30/2021-JNCH, dated 29-03-2021)

(4) CASE LAW: VIOLATION OF PRINCIPLES OF NATURAL JUSTICE IS A GROUND FOR INVALIDATING AN ORDER



Principles of Natural Justice

The Hon'ble Bombay High Court in the case of *SYSKA LED Lights Pvt. Ltd. Vs Union of India* held the order confiscating the imported goods of the petitioner passed under Section 111(m) of the Customs Act, leaving him with an option to redeem the confiscated goods upon payment of redemption fine of Rs. 4,00,000/- under Section 125 of the Customs Act, to be invalid. The Court further, held that the order has breached the principles of natural justice and also violated the statutory provisions.

(Source: Writ Petition (L) No. 3933 of 2020, dated 25-03-2021)

(5) CASE LAW: DRI OUSTED WITH THE JURISDICTION TO ISSUE SCN. SC SETS ASIDE DRI SHOW CAUSE NOTICE AGAINST CANON INDIA.

The Supreme Court in this case was hearing an appeal against an order of CESTAT which denied BCD exemption to digital still image video cameras ("DSIVC") and ordered consequential confiscation, demand duty, interest and penalty. The primary issue before the Court was whether the DRI had the authority in law to issue a Show Cause Notice to the assessee under Section 28(4)

of the Customs Act, 1962 and question the clearance of the DSIVC by the Customs Authorities (Deputy Commissioner of Customs) after permitting exemption. The Court found that the DRI did not have the power to issue a Show Cause Notice and it arrived at this conclusion on the basis that the term used in Section 28(4) was "the proper officer" as opposed to 'a' or 'any' proper officer.

As per the Court this showed the intention of the Parliament to designate the proper officer who had assessed the goods at the time of clearance. In this regard, the Court held that the nature of power to recover the duty is essentially a power of review of the earlier decision of assessment. Such conferral of the power of review by Section 28 should be on the officer who in the first instance assessed and cleared the goods viz., the Deputy Commissioner of Customs.

(Source: 2021-TIOL-123-SC-CUS-LB CIVIL APPEAL NO. 1875 OF 2018 dated 09.03.2021)

INTELLECTUAL PROPERTY RIGHTS



(1) CASE LAW: PERMANENT INJUNCTION GRANTED TO PLAINTIFF FOR HIS LARSEN & TOUBRO TRADEMARK

The Delhi District Court has granted an order of permanent injunction restraining the defendants from using any deceptively similar marks along with a compensation of Rs 1 Lakh for using the

impugned trademark 'Larsen & Toubro', in relation to their goods having an identical and deceptive resemblance to the plaintiffs' said trademarks.

(Source: CS (COMM.)/564/2019 dated 17-03-2021)

(2) CASE LAW: SETTING OUT TWO SEPARATE PRAYERS FOR INJUNCTION, ONE FOR INFRINGEMENT AND OTHER FOR PASSING OFF A SINGULARLY UNWISE PRACTICE

The Hon'ble Bombay High Court has called for ceasing on the practice of seeking separate reliefs of an injunction for passing off and infringement when pleadings were presented in respect of infringement and called the practice *singularly unwise*. The Court explained that there was no one-to-one correspondence between a cause of action and relief.

(Source: Commercial IP suit (L) NO. 3761 OF 2021, dated 22.03.2021)

ENVIRONMENT LAWS



(1) THE CENTRAL POLLUTION CONTROL BOARD HAS NOTIFIED SOP FOR REGISTRATION OF PRODUCERS, IMPORTERS & BRAND- OWNERS (PIBOS) UNDER THE PLASTIC WASTE MANAGEMENT RULES, 2016

The CPCB has notified the SOP for PIBOs for its effective implementation. The PIBOs have been

provided three options for implementation of the EPR plan. PIBOs shall apply to CPCB for online registration on the portal. EPR Action Plan must be submitted state-wise and for each state in which plastic is being introduced in the market. For ease of compliance, CPCB has clarified that PIBOs can engage multiple Waste Management Agencies.

(Source: SOP, dated 25.03.2021)

(2) PLASTIC WASTE MANAGEMENT (AMENDMENT) RULES, 2021



The Ministry of Environment, Forest and Climate Change has issued the Draft Notification for amendment in Plastic Waste Management Rules. The amended rules cover brand-owners and plastic waste processors also.

The rules have proposed to ban the manufacture, use, sale, import and handling of some single-use plastic items on a PAN India basis. Thermoset plastic and Thermoplastic will also fall within the ambit of these rules.

(Source: Notification no. G.S.R. 169(E), dated 11.03.2021)

[End of Newsletter]
