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RBI & FEMA

(1) RBI HAS INTRODUCED GUIDELINES FOR APPOINTMENT OF STATUTORY CENTRAL AUDITORS (SCAS) / STATUTORY AUDITORS (SAS) OF COMMERCIAL BANKS

The Reserve Bank of India [“RBI”] has introduced the guidelines for the appointment of statutory central Auditors. Commercial Banks (excluding RRBs) and UCBs will be required to take prior approval of RBI (Department of Supervision) for appointment/reappointment of SCAs/SAs, on an annual basis in terms of the above-mentioned statutory provisions. For Entities with an asset size of ₹15,000 crores and above as at the end of the previous year, the statutory audit should be conducted under joint audit of a minimum of two audit firms. In order to protect the independence of the auditors/audit firms, Entities will have to appoint the SCAs/SAs for a continuous period of three years, subject to the firms satisfying the eligibility norms each year.

(Source: RBI Notification No. DoS.CO.ARG/SEC.01/08.91.001/2021-22, dated 27.04.2021)

(2) RBI HAS ISSUED THE NOTIFICATION RELATED TO DECLARATION OF DIVIDENDS BY BANKS

RBI has issued notification related to the declaration of dividend by commercial banks. While Banks may pay dividend on equity shares from the profits for the financial year ended

March 31, 2021, the Commercial Banks are subject to the quantum of dividend being not more than fifty percent of the amount determined as per the dividend pay-out ratio. Further, all banks shall continue to meet the applicable minimum regulatory capital requirements after dividend payment.

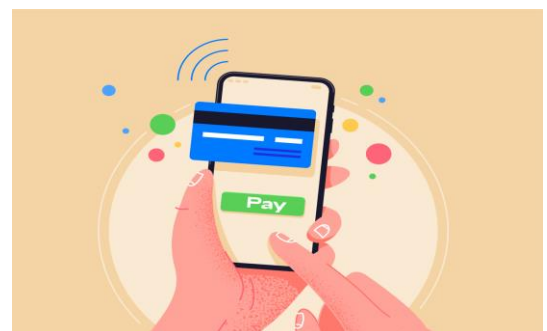
(Source: RBI notification no. DOR.ACC.REC.7/21.02.067/2021-22 dated 22.04.2021)

(3) RBI HAS NOTIFIED TO EXTEND INTEREST EQUALIZATION SCHEME ON PRE AND POST SHIPMENT RUPEE EXPORT CREDIT

RBI has extended Interest Equalization Scheme for pre and post-shipment Rupee export credit, with the same scope and coverage, for three more months i.e., up to June 30, 2021. The extension takes effect from April 01, 2021 and ends on June 30, 2021 covering a period of three months.

(Source: RBI Notification no. DOR.CRE.REC.06/04.02.001/2021-22 dated 12.04.2021)

(4) RBI HAS ENHANCED THE LIMIT OF MAXIMUM BALANCE PER CUSTOMER AT END OF THE DAY FROM ₹1 LAKH TO ₹2 LAKH



Considering the progress made by Payment Banks in furthering financial inclusion and for giving more flexibility to the Payment Banks, it has been decided by the RBI to enhance the limit of maximum balance at the end of the day from ₹1 lakh to ₹2 lakh per individual customer of Payment Banks.

(Source: RBI Notification no. DoR.LIC.REC.5/16.13.218/2021-22 dated 08.04.2021)

FOREIGN TRADE

(1) DGFT HAS LAUNCHED DGFT 'COVID-19 HELPDESK' FOR INTERNATIONAL TRADE

The Directorate General of Foreign Trade ["DGFT"] has undertaken to monitor the status of exports and imports and difficulties being faced by trade stakeholders in view of the surge of COVID-19 cases. DGFT has accordingly operationalised a 'COVID-19 Helpdesk' to support and seek suitable resolutions to issues arising in respect of International Trade.

(Source: DGFT Trade Notice No. 02/2021-2022 dated 26.04.2021)

(2) DGFT HAS AMENDED THE EXPORT POLICY OF INJECTION REMDESIVIR AND REMDESIVIR API.



DGFT through a notification has amended the export policy of Injection Remdesivir and Remdesivir API. DGFT has prohibited the exports of Injection Remdesivir and Remdesivir Active Pharmaceutical Ingredients (API) w.e.f. 11th April 2021.

(Source: DGFT Notification No. 01/2015-2020 dated 11.04.2021)

(3) DGFT HAS PROVIDED RELAXATION IN LATE CUT PROVISION OF MEIS APPLICATIONS FOR EXPORTS MADE IN THE FINANCIAL YEAR 2019-20

DGFT has provided relaxation in the late cut provisions for Shipping bill (s) of the period 01.04.2019 to 31.03.2020, so that if such shipping bills are submitted on or before 30.09.2021, for a MEIS claim, no late cut would be applicable.

(Source: DGFT Public Notice No. 53/2015-2020 dated 09.04.2021)

CORPORATE LAWS

(1) CLARIFICATION ON SPENDING CORPORATE SOCIAL RESPONSIBILITY (CSR) FUNDS FOR SETTING UP MAKESHIFT HOSPITALS AND TEMPORARY COVID CARE FACILITIES.



The Ministry of Corporate Affairs ["MCA"] has clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID care facilities' is an eligible CSR activity, and a company may undertake the same in consultation with the State Government, provided it ensures proper compliance of all the rules and circulars issued by the MCA in this regard.

(Source: General Circular No. 05/2021 dated 22-04-2021)

(2) COMPANIES (ACCOUNTS) SECOND AMENDMENT RULES, 2021

For the financial year commencing on or after 01.04.2022, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date

when such changes were made and ensuring that the audit trail cannot be disabled.

(Source: MCA Notification No. G.S. R. 247 (E) dated 01-04-2021)

SECURITIES LAWS AND CAPITAL MARKETS

(1) RELAXATION IN TIMELINE FOR COMPLIANCES UNDER SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS

In view of the ongoing second wave of the COVID-19 pandemic and restrictions imposed by various state governments, Securities and Exchange Board of India ["SEBI"] has provided certain extensions to the due dates for compliances under SEBI (LODR) Regulations.

Further listed entities are now permitted to use DSC for all filings/submissions made to the stock exchanges until 31.12.2021.

(Source: Circular No. SEBI/ HO/ CFD/ CMD1/P/CIR/2021/556 dated 29-04-2021)

(2) RELAXATIONS RELATING TO PROCEDURAL MATTERS – ISSUES AND LISTING

In view of the impact of the COVID-19 pandemic and the lockdown measures undertaken by Central and State Governments, SEBI has further extended the relaxations pertaining to rights issues opening up to September 30, 2021, as specified in its circular dated May 06, 2020.

The issuer along with other recognized intermediaries shall also ensure that the refund for un-allotted/partial allotted applications shall be completed on or before T+1 day, while complying with instructions specified under the previous circular.

(Source: Circular No. SEBI/ HO/ CFD/ DIL2/CIR/P/2021/552 dated 22-04-2021)

(3) CASE LAW: IN RE SHRI MUKESH D. AMBANI & ORS (SEBI)

- An investigation was conducted into the alleged irregularities relating to the issue of 12 crore equity shares in January 2000 by Reliance Industries Ltd at a price of Rs. 75 per share to 38 allottee entities. In January 2020, promoter's stake in Reliance Industries increased by 6.83 per cent after conversion of 3 crore warrants issued in 1994.
- However, it was alleged that the promoter group failed to make an open offer in accordance with Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997. Since the promoters and Persons Acting in Concert have not made any public announcement for acquiring shares, it is alleged that they have violated the provisions of regulation 11(1) of Takeover Regulations.
- SEBI accordingly, after taking into account the aforesaid observations and in exercise of power conferred upon the board under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, imposed (under Section 15H of SEBI Act, 1992, for violation of Regulation 11(1) of Takeover Regulations), a fine of Rs 25 crore on Mukesh Ambani, Anil Ambani, Kokilaben Ambani, Nita Ambani, Tina Ambani, Reliance Industries Holding, Reliance Realty and others. The fine has to be paid jointly and severally.

(Source: Adjudication Order No. Order/ KS/ AE/2021-22/11266-11299, dated 07-04-2021)

COMPETITION LAWS

(1) CASE LAW: DELHI HIGH COURT HAS DISMISSED WHATSAPP, FACEBOOK'S CHALLENGE TO CCI ORDER FOR INVESTIGATION IN NEW PRIVACY POLICY

The Hon'ble Delhi High Court has rejected Facebook Inc and its subsidiary WhatsApp's challenge to an order by the Competition Commission of India ["CCI"] directing an

investigation into WhatsApp's new privacy policy. The bench has observed that it would have been prudent for CCI to wait for the judgements of Supreme Court and Delhi High Court, but not doing so would not make the regulator's order "perverse" or "wanting of jurisdiction". There is no merit in the petitions of Facebook and WhatsApp to impede the investigation directed by the Competition Commission of India (CCI).

(Source: Bar & Bench)

(2) CCI HAS DECIDED TO REVIEW THE EXTENT CONFIDENTIALITY REGIME AS PROVIDED IN REGULATION 35 OF THE COMPETITION COMMISSION OF INDIA (GENERAL) REGULATIONS, 2009



The Competition Commission of India [“CCI”] has decided to review the extant mechanism and to institutionalise a dispensation that can satisfactorily address the twin competing claims without compromising the sanctity of the information furnished by the parties or the rights of the parties to defend themselves effectively. It has proposed that the parties would submit their confidential as well as non-confidential versions of their filings on self-certified basis.

(Source: Press Release No. 03/2021-22 dated 13.04.2021)

INDIRECT TAXES AND CUSTOMS

I. GST

(1) COMPANIES ALLOWED TO FURNISH RETURNS THROUGH ELECTRONIC VERIFICATION CODE (EVC).

The Central Board of Indirect Tax and Customs (CBIC) has notified Central Goods and Services Tax (Second Amendment) Rules, 2021, which has allowed the companies to furnish the return in FORM GSTR-3B and FORM GSTR-1 using invoice furnishing facility, verified through EVC, during the period from 27-04-2021 to the 31-05-2021.

(Source: Notification No. 07/2021–Central Tax, dated 27-04-2021)

(2) IMPLEMENTATION OF PMT-03 TO RE-CREDIT THE ITC SANCTIONED AS REFUND

The CBIC has issued an advisory on implementation of PMT-03 to re-credit the Input Tax Credit (ITC) sanctioned as refund. In order to enable the operationalisation of re-crediting of ITC sanctioned as refund towards tax wrongly paid or paid in excess by debiting the credit ledger, a new enhanced PMT-03 functionality has been developed and deployed in the system.

(Source: Advisory No. 8 /2021-Refunds, dated 20-04-2021)

(3) CASE LAW: SUPREME COURT RESTORES ORDER EXTENDING LIMITATION PERIOD FROM 14.03.2021 EXCLUDED FROM COMPUTING LIMITATION PERIOD UNTIL FURTHER ORDERS - SC

The steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant–public in all the states. Therefore, it was decided to restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable

or not, shall stand extended till further orders. It was further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

(Source: Misc. Application No. 665/2021 in SMW(C) No. 3/2020, dated 27-04-2021)

(4) CASE LAW: POWER OF PROVISIONAL ATTACHMENT "DRACONIAN"; QUASHES ORDER ATTACHING 'TRADE RECEIVABLES' - SC

- The appellant-assessee, engaged in manufacturing of lead as per client's specifications, was served by notice u/s 74 of SGST Act to produce certain documents which inter alia included invoices pertaining to inward and outward supplies for the years 2017-18 and 2018-19 and proof of payment of GST. Thereafter, the assessee was served with a Departmental memo to explain the alleged illegal claim of ITC for the relevant period. Subsequently, a notice was issued by Joint Commissioner (after the delegation of Commissioner's powers u/s 83) to the customers of assessee who owed money to the assessee, for provisionally attaching an amount of Rs. 5 crores due to the assessee u/s 83 of HPGST. The assessee challenged both the provisional attachment order and delegation of powers by Commissioner to Joint commissioner, before the HC by writ petition. HC dismissed the writ petition. Hence, the assessee approached the SC.
- SC lays down parameters on the exercise of power for ordering a provisional attachment, quashes orders passed by Joint Commissioner (JC) (a delegate of Commissioner) provisionally attaching Assessee's trade receivables from its

customers. Observes that "High Court was...clearly in error in declining to entertain the writ proceedings" on the ground that assessee has an alternative and efficacious remedy of appeal u/s 107 of HPGST Act and that another writ petition filed by GM Powertech (Assessee's supplier held for a serious tax fraud), has also not been entertained and it has been relegated to avail alternative remedy.

- SC cites absence of formation of opinion and breach of mandatory pre-conditions for valid exercise of powers u/s 83 of HPGST Act. Further, stating there were no pending proceedings against assessee, clarifies, mere fact that proceedings u/s 74 concluded against GM Powertech, would not satisfy requirements of Section 83, and holds that "order of provisional attachment was ultra vires section 83 of the Act"

II. CUSTOMS

(1) THE CUSTOMS (VERIFICATION OF IDENTITY AND COMPLIANCE) REGULATIONS, 2021

CBIC has published the said Regulations for the purpose of verification of identity of persons with a view to protect the interest of revenue or preventing smuggling and shall be applicable on persons who are newly engaging in import or export or customs broker activity after the commencement of these regulations except Central/State Government (s) and Public Sector Undertakings. The person selected for verification has to submit required documents/information on the common portal after which, the proper officer, will undertake the verification process, and shall prepare a verification report on the Customs Automated Systems.

(Source: Notification No. 41/2021 - Customs (N.T.), dated 05-04-2021)

(2) THE MINISTRY OF FINANCE (MoF) EXEMPTS CUSTOM DUTY ON MEDICAL OXYGENS, VACCINES FOR 3 MONTHS



The MoF has waived off whole of the customs duty and health cess on import of medical oxygen, oxygen storage tanks and other oxygen related equipment's for a period of 3 months. The Centre also directed customs officials to clear all import consignments, including life-saving drugs and oxygen equipment, used in COVID treatment on the highest priority.

(Source: Notification No. 28/2021–Customs [G.S.R. 286(E)], dated 24-04-2021)

(3) CASE LAW: CHAIZUP BEVERAGES LLP VS THE ASSISTANT COMMISSIONER

The Hon'ble Madras High Court in the said case held that an option has been extended to an assessee engaged in zero-rated sale to either claim benefit of duty-drawback or refund of ITC; Thus, rejects reliance of Revenue on Para 2.5 of Clarificatory Circular dated October 09, 2018. The High Court made it clear that a Circular cannot stand in the way of a benefit under a statutory scheme for "Paragraph 2.5 of the circular, insofar as it is contrary to the statutory provisions of Section 54(3) is bad in law"

(Source: W.P No. 10972 of 2020, dated 26-03-2021)

INTELLECTUAL PROPERTY RIGHTS

(1) CASE LAW: TATA SONS PRIVATE LIMITED VS DINESH KUMAR (DELHI HC)

- TATA Sons Private Limited (hereinafter referred to as the "Plaintiff") is the owner and registered proprietor of a well-known trademark 'TATA'. However, Mr. Dinesh Kumar (hereinafter referred to as the "Defendant") who is in the business of manufacturing tyre repair patches for two wheelers and three wheelers has a trademark registration for a word mark 'TATA BYE-BYE' incorporating the plaintiff's well-known mark and word TATA, thereby infringing the plaintiff's right to the well-known mark and brand.
- An application was filed under Order 39 Rule 1 & 2 CPC seeking an ex parte injunction to restrain the defendant from dealing in any business unauthorizedly using the plaintiff's well-known trademark TATA and permutation/ combinations thereof amounting to infringement of plaintiff's trademark.
- The defendant was then restrained by an ex parte injunction from manufacturing, selling, offering for sale, supplying, advertising, directly or indirectly dealing in any business unauthorizedly using the plaintiff's Well-known mark.

(Source: CS (COMM.) 210/2021 & I.As. 5991-97/2021, dated 28-04-2021)

(2) CASE LAW: SUN PHARMACEUTICAL INDUSTRIES VS NUKIND HEALTHCARE P. LTD. & ANR

- Sun Pharmaceutical Industries (hereinafter referred to as the "Plaintiff") has registrations for its 'REVITAL' trademark/label/carton packaging and trade dress and has acquired immense goodwill and reputation in the same. Whereas, Nukind healthcare P. Ltd & Anr (hereinafter referred to as the "Defendants") do not hold any registration for the impugned mark 'NUVITAL' or its label/trade dress/packaging till date.
- A suit was filed by the Plaintiff for permanent injunction restraining infringement of trademark & copyright, passing off, unfair competition, damages, delivery up, etc. against the Defendants since the impugned mark 'NUVITAL' seems deceptively similar to

Plaintiff's prior registered and used trademark 'REVITAL' for identical goods.

- The Delhi High Court in the said case granted an ex-parte interim injunction restraining the Defendant dealing in medicinal preparations/health supplements under their 'NUVITAL' mark or any mark deceptively similar to the plaintiff's registered 'REVITAL' mark.

(Source: CS(COMM) 209/2021, dated 22.03.2021)

ENVIRONMENT LAWS



(1) THE MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE HAS PROPOSED DRAFT NOTIFICATION ON ASH UTILISATION

The Ministry of Environment, Forest and Climate Change [“**MOEF**”] has issued draft notification on ash utilisation. The draft has based on the polluter pays principle (PPP) thereby ensuring 100 % utilisation of fly ash by the coal or lignite based thermal power plants and for the sustainability of the fly ash management system. The ash generated from coal or lignite based Thermal Power Plants shall be used for manufacturing bricks, cement manufacturing, construction of dams etc.

(Source: Notification no. G.S.R. 285(E) dated 22.04.2021)

(2) CASE LAW: MADRAS HC DIRECTS STATE TO FORM EXPERT BODY TO KEEP RIVERS FREE FROM EFFLUENTS

The Hon’ble Madras High Court has directed the state government to constitute an expert body to formulate appropriate measures, whether to curb the extent of effluents discharged by the industry or to relocate industries which are close to the banks of flowing water bodies.

(Source: W.P. No. 34310 of 2017, dated 20.04.2021)

[End of Newsletter]
