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RBI & FEMA

(1) RBI HAS ISSUED FRAMEWORK FOR RESOLUTION OF COVID-19 RELATED STRESS OF INDIVIDUALS AND SMALL BUSINESSES



The Reserve Bank of India on 5 May, 2021 has issued a framework for Resolution of Covid-19 related stress of Individuals and Small Businesses. Lending institutions are permitted to offer a limited window to individual borrowers and small businesses to implement resolution plans in respect of their credit exposures while classifying the same as Standard upon implementation of the resolution plan.

The following borrowers shall be eligible for the window of resolution to be invoked by the lending institutions:

1. Individuals who have availed of personal loans excluding the credit facilities provided by lending institutions to their own personnel/staff.
2. Individuals who have availed of loans and advances for business purposes and to

whom the lending institutions have aggregate exposure of not more than Rs. 25 crores as on March 31, 2021.

3. Small businesses, including those engaged in retail and wholesale trade, other than those classified as micro, small and medium enterprises as on March 31, 2021, and to whom the lending institutions have aggregate exposure of not more than Rs. 25 crores as on March 31, 2021.

The credit reporting by the lending institutions in respect of borrowers where the resolution plan is implemented shall reflect the “restructured due to COVID-19” status of the account.

(Source: RBI Notification No. RBI/2021-22/31 DOR.STR.REC.11/21.04.048/2021-22 dated 05.05.2021)

(2) RBI -SPONSOR CONTRIBUTION TO AN OVERSEAS AIF SHALL QUALIFY AS ODI

The Reserve Bank of India through circular dated May 12, 2021 has amended the Master Direction on Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad. Any sponsor contribution from a sponsor Indian Party to an Alternative Investment Fund (AIF) set up in an overseas jurisdiction, including International Financial Services Centres (IFSCs) in India, as per the laws of the host jurisdiction, will be treated as Overseas Direct Investment (ODI).

(Source: RBI Notification No. RBI/2021-22/38 A.P. (DIR Series) Circular No. 04 dated 12.05.2021)

(3) RBI HAS MADE MANDATORY FOR PREPAID PAYMENT INSTRUMENTS (PPI) ISSUED BY BANKS AND NON-BANKS SHOULD BE INTER-OPERABLE BY 31ST MARCH 2022

The Reserve Bank of India has made it mandatory for PPI issuers to give the holders of full-KYC PPIs (KYC-compliant PPIs) interoperability by 31st March 2022, through authorised card networks (for PPIs in the form of cards) and UPI. However, the PPIs for Mass Transit Systems (PPI-MTS) shall remain exempted from interoperability while Gift PPI issuers have the option to offer interoperability. The maximum amount

outstanding in respect of full-KYC PPIs (KYC-compliant PPIs) has been increased from ₹1 lakh to ₹2 lakh.

All cash withdrawal transactions shall be permitted in respect of full-KYC PPIs issued by non-bank PPI issuers as well subject to conditions. Further, the cash withdrawal limit from point of sale (PoS) terminals using debit cards and open system prepaid cards issued by banks in India has been rationalized to Rs 2,000 per transaction within an overall monthly limit of Rs 10,000 across all locations.

(Source: RBI Notification No. FEMA. RBI/2021-22/40 DPSS.CO. PD. No. S-99/02.14.006/2021-22 dated 19.05.2021)

(4) RBI HAS RELAXED TIMELINE FOR COMPLIANCE WITH VARIOUS PAYMENT SYSTEM REQUIREMENTS

The Reserve Bank of India through circular dated May 21, 2021 has relaxed the timeline for compliance with various payment system requirements till September 30, 2021, keeping in view the resurgence of the COVID-19 pandemic.

(Source: RBI Notification No. FEMA. RBI/2021-22/41CO.DPSS.POLC.No. S-106/02-14-003/2021-2022 dated 21.05.2021)

(5) RBI HAS AMENDED THE FOREIGN EXCHANGE MANAGEMENT (BORROWING AND LENDING) REGULATIONS, 2018



The Reserve Bank of India has published the Foreign Exchange Management (Borrowing and Lending) (Amendment) Regulations, 2021 in partial modification of Foreign Exchange

Management (Borrowing and Lending) Regulations, 2018.

The Amendment is brought under regulation 7 which deals with Lending in Indian Rupees by a Person Resident in India in which a new sub-clause (iii) has been inserted as follows:

An Authorised Dealer (AD) in India may lend to a person resident outside India for making margin payments in respect of settlement of transactions involving Government Securities by the person resident outside India, subject to such terms and conditions as may be specified by the Reserve Bank.

(Source: RBI Notification No. FEMA. 3(R)2/2021-RB dated 24.05.2021)

FOREIGN TRADE

(1) DGFT EXTENDS THE VALIDITY OF REGISTRATION CUM MEMBERSHIP CERTIFICATE TILL 30TH SEPTEMBER 2021

The Director-General of Foreign Trade has extended the validity of Registration cum Membership Certificate (RCMC) beyond 31st March 2021. The Export Promotion Councils (EPCs) issues RCMCs to its member, however, due to the COVID-19 pandemic, exporters may find it difficult to get re-validations of their RCMCs from their respective councils. Therefore DGFT has directed the Regional Authorities, not to insist on valid RCMC from the applicant for any incentive/authorization till 30th September 2021.

(Source: Trade Notice No. 04/2021-2022 dated 10.05.2021)

(2) DGFT HAS REVISED SCHEME FOR PROVIDING ASSISTANCE TO EXPORTERS OF SUGAR

The Central Government on 29 December, 2020 notified the Scheme for providing assistance to sugar mills for expenses on marketing costs including handling, upgrading and other processing costs and costs of international and

internal transport and freight charges on export of sugar. The scheme is revised on 20.05.2021 for the Central Government to provide a lump sum assistance for expenses on export of sugar limited to MAEQ of sugar mills for the sugar season 2020- 21 in the following manner:

1. For internal transport and freight charges including loading, unloading, and fobbing etc. @ Rs.2400 per MT
2. For ocean freight against shipment from Indian ports to the ports of destination countries etc. @ Rs.1600 per MT.

(Source: Ministry of Consumer Affairs food and Public Distribution Notification No. F. No. 1(6)/2020-SP-I dated 20.05.2021)

CORPORATE LAWS

(1) RELAXATION IN TIMELINE FOR FILING FORMS UNDER COMPANIES ACT AND LLPS ACT

In furtherance to the Circulars dated 03-05-2021, the Ministry of Corporate Affairs [“MCA”] has granted additional time upto 31.07.2021 for companies / LLPs to file such forms (other than a CHG-1 Form, CHG-4 Form and CHG-9 Form) without any additional fees.

Further revised the list of forms for which due date extension and waiver of additional fees is provided upto 31-07-2021, which were due to be filed between April 1 to May 31. The list now also includes Form AOC-4, MGT-7, PAS-3, DIR-12 etc.

(Source: General Circular No. 06/2021 and 07/2021 dated 28-05-2021)

(2) CLARIFICATION ON OFFSETTING THE EXCESS CSR SPENT FOR F.Y. 2019-20

MCA has clarified on offsetting the excess Corporate Social Responsibility (CSR) amount spent for FY 2019-20 and stated that where a company has contributed any amount to ‘PM CARES Fund’ on 31.03.2020 which is more than the minimum amount prescribed under Section 135(5) of the Companies Act, 2013, such excess

amount or part thereof can be offset against the requirement for FY 2020-21 subject to certain conditions.

(Source: Circular No. CSR-01/4/2021-CSR-MCA dated 20-05-2021)

(3) CLARIFICATION ON SPENDING CSR FUNDS FOR COVID CARE INFRASTRUCTURE, ESTABLISHMENT OF OXYGEN PLANTS ETC.



MCA has clarified that creation of health infrastructure for COVID care, establishment of medical oxygen generation and storage plants, manufacturing and supply of oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19 or similar such activities, are eligible CSR activities.

(Source: General Circular No. 09/2021 dated 05-05-2021)

(4) RELAXATION IN TIMELINE FOR CONDUCTING BOARD MEETINGS

In view of the second wave of Covid-19, the MCA has extended the timeline for holding board meetings from 120 days (as per section- 173 of the Companies Act, 2013) to 180 days for the quarters April to June and July to September, 2021.

(Source: General Circular No. 08/2021 dated 03-05-2021)

(5) CASE LAW (SC): APPROVAL OF RESOLUTION PLAN DOES NOT MEAN THAT GUARANTORS ARE ABSOLVED OF LIABILITIES TOWARDS BANK

The personal guarantees furnished by directors, promoters or in some instances, as chairman or

managing directors to banks and financial institutions which led to release of advances to various companies, were invoked / recovery proceedings and later insolvency proceedings were initiated. The insolvency proceedings are at different stages. It was contended that the power conferred upon the Union under Section 1(3) of the Insolvency and Bankruptcy Code, 2016 (“the Code”) could not have been resorted to in the manner as to extend the provisions of the Code only as far as they relate to personal guarantors of corporate debtors.

The Apex Court held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.

(Source: Lalit Kumar Jain Vs. Union of India Transferred Case Civil No. 245/2020 dated 21-05-2021)

SECURITIES LAWS AND CAPITAL MARKETS

(1) FORMAT OF COMPLIANCE REPORT ON CORPORATE GOVERNANCE BY LISTED ENTITIES

The SEBI has inserted “Annexure-IV” to the format of disclosures, in the compliance report on Corporate Governance by listed entities.

As per the provisions of Regulation 27(2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a listed entity is required to submit a quarterly compliance report on corporate governance.

In order to bring transparency and to strengthen the disclosures around loans / guarantees/comfort letters/ security provided by the listed entity, to promoter/promoter group entities or any other entity controlled by them,

SEBI has mandated such disclosures by inserting “Annexure-IV” to be made on half yearly basis, in the Compliance Report on Corporate Governance.

(Source: Circular No. SEBI/HO/CFD/CMD-2/P /CIR/ 2021 /567 dated 31-05-2021)

(2) BUSINESS RESPONSIBILITY AND SUSTAINABILITY REPORTING BY LISTED ENTITIES



SEBI has introduced new reporting requirements on Environment, Social and Governance (ESG) parameters called the Business Responsibility and Sustainability Report (BRSR), which seeks disclosures from listed entities on their performance against the nine principles of the National Guidelines on Responsible Business Conduct (NGBRCs).

The applicability of BRSR is on top 1000 listed entities and in order to give time to companies to adapt to the new requirements, the reporting of BRSR shall be voluntary for FY 2021 –22 and mandatory from FY 2022 –23.

(Source: Circular No. SEBI/ HO/CFD/CMD-2/P/CIR/2021/562 dated 10-05-2021)

(3) SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) (AMENDMENT) REGULATIONS, 2021

SEBI has issued SEBI (Substantial Acquisition of Shares and Takeovers (Amendment) Regulations, 2021. The Regulations provide that upon a public announcement of an open offer for acquiring shares of a target company being made, the board of directors of such target company shall constitute

a committee of independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendation. The amendment provides that while providing reasoned recommendations on the open offer proposal, the committee shall disclose the voting pattern of the meeting in which the open offer proposal was discussed.

(Source: SEBI Notification No. SEBI/LAD-NRO/GN/2021/19 dated 05-05-2021)

COMPETITION LAWS

- (1) **CCI RECEIVES NOTICE UNDER GREEN CHANNEL FILED BY MOTHERSON SUMI SYSTEMS LIMITED (MSSL), SAMVARDHANA MOTHERSON INTERNATIONAL LIMITED (SAMIL), SUMITOMO WIRING SYSTEMS LIMITED (SWS) RELATING TO AN INTRA-GROUP REORGANIZATION OF THE MOTHERSON GROUP AND IS DEEMED APPROVED**



The CCI has approved the Intra – Group reorganization of the Motherson Group under the green channel.

MSSL, a flagship company of the Motherson Group, is a leading automotive component manufacturer for original equipment manufacturers. SAMIL is the largest shareholder of MSSL. SAMIL provides operational, strategic, and management support to all Motherson Group companies. SAMIL is *inter alia* engaged in the business of manufacturing automotive components and ancillaries.

SWS (Indirect Acquirer) is a Japanese company. It manufactures and sells wiring harnesses for

automobiles and their components, electric wires, and cables for automobiles, electronic components for automobiles as well as components for electric vehicles.

The proposed combination is envisaged through following:

- i. MSSL's entire domestic wiring harness undertaking (DWH Undertaking) will be demerged into a newly incorporated wholly-owned subsidiary of MSSL i.e., Motherson Sumi Wiring India Limited (MSWIL) And
- ii. SAMIL will be amalgamated by absorption into MSSL, being the resultant company. Subsequently, MSSL will be renamed as Samvardhana Motherson International Limited (New SAMIL).

(Source: Press Release No. 011/2021-22 dated 27.05.2021)

- (2) **CCI APPROVES THE ACQUISITION OF YES ASSET MANAGEMENT (INDIA) LIMITED (YES AMC) AND YES TRUSTEE LIMITED (YES TRUSTEE) BY GPL FINANCE AND INVESTMENTS LIMITED (GPL)**

GPL, a non-deposit taking and non-systemically important Non-Banking Financial Company, is primarily engaged in the business of making investments in mutual funds and providing referral and support services to White Oak Capital. GPL is part of the White Oak Group. The White Oak group is an investment management and investment advisory group founded by Mr Prashant Khemka.

YES AMC belongs to the YES Bank Limited group. It acts as an asset management company / investment manager to YES Mutual Fund.

The proposed combination envisages acquisition of 100% equity shares of YES AMC and YES Trustee by GPL. By way of these acquisitions, GPL will acquire Yes Mutual Fund and become its sole sponsor.

(Source: Press Release No. 09/2021-22 dated 17.05.2021)

(3) CCI HAS DECIDED TO EXTEND THE TIME FOR SUBMISSION OF PUBLIC COMMENTS ON CONFIDENTIALITY REGIME AS PROVIDED IN REGULATION 35 OF THE CCI (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.

The Commission has sought public consultation on the detailed draft of the revised Regulation 35 of the General Regulations. The Comments were invited from the public by May 12, 2021. Due to the difficulties arising in the wake of COVID-19, the Commission has extended the time for submission of comments from the public by one month. Accordingly, the comments may now be e-mailed to atdregistry@cci.gov.in by June 12, 2021.

(Source: Press Release No. 08/2021-22 dated 17.05.2021)

INDIRECT TAXES AND CUSTOMS

I. GST

(1) CENTRAL GOODS AND SERVICES TAX (FOURTH AMENDMENT) RULES, 2021

The CBIC has issued Central Goods and Services Tax (Fourth Amendment) Rules, 2021, which has made certain amendments in Rule 23 which relates to revocation of cancellation of registration, by inserting new sub rules 90(5) and

90(6) which deal with withdrawing application for refund etc.

(Source: Notification No. 15/2021-Central Tax, dated 18-05-2021)

(2) RELAXATION IN TIMELINES FOR GST COMPLIANCES



In view of severe pandemic, the CBIC has granted certain relaxations in timelines for GST filings, which includes, the due date for filing Form GSTR-1 for the tax period April 2021, shall be extended till 26-05-2021, Form GSTR-7 and GSTR-8 for the tax period April 2021, shall be extended till 31-05-2021 etc.

(Source: Notification Nos. 10/2021, 11/2021, 12/2021, 13/2021, 14/2021, dated 01-05-2021)

(3) CASE LAW - DELHI HC: PERMITS TRAN-01 FILING TILL JUNE 30, CITES ABSENCE OF EFFECTIVE REVISIONAL MECHANISM

Delhi HC directs Revenue to either re-open the online portal so as to enable assessee to file FORM TRAN-01 electronically or to accept the same manually on or before June 30, 2021. While clarifying that view taken is not just on the stance that online system is facing shortcomings as GST is in trial-and-error phase, it also delves on “rationality/validity of the statutory provisions”, highlights the irrationality of Rule 117(1A) which applies to only one class of persons who faced technical difficulties on common portal without defining said concept anywhere in Act/Rules framed thereunder. HC notes plethora of decisions by this Court as well as other HCs wherein it has been acknowledged that the unutilized input tax credit (ITC) is a vested right of the taxpayers under Article 300A of the Constitution of India, 1950 that cannot be taken away on account of technical grounds. Opines

that “a genuine mistake should not result in the Petitioner’s losing out on their accumulated credit which is protected by Article 300A of the Constitution”.

(Source: Super India Paper Products & Ors. Vs. Union of India & Ors. W.P (C) 1150/2020 & CM APPL. 3814/2020, dated 27-05-2021)

II. CUSTOMS

(1) GOVERNMENT EXEMPTS IGST ON IMPORTS OF SPECIFIED COVID-19 RELIEF MATERIAL

The Central Government has exempted certain categories of goods as stated in its earlier Notifications No. 27/2021 and 28/2021 from whole of the integrated tax leviable under Section 3(7) of the Customs Tariff Act read with Section 5 of the IGST Act, 2017, when imported into India, subject to certain conditions as mentioned in the said Notification.

(Source: Notification No. 32/2021 - Customs (N.T.), dated 31-05-2021)

(2) FAST TRACK APPROVAL FOR OXYGEN CYLINDER IMPORT FOR COVID RELIEF ACTIVITIES IN INDIA



The Ministry of Finance has stated that the Petroleum and Explosive Safety Organization (PESO) will now grant online approval for import of cylinders and pressure vessels for storage and transportation of medical oxygen on submission of manufacturer’s particulars; ISO certificate of manufacturer; List of Cylinders their specifications, drawings & batch number; Hydro test certificate and Third-Party inspection Certificate. Physical inspection of global

manufacturer’s production facilities will not be conducted before granting such approval.

(Source: Public Notice No. 51/2021, dated 27-05-2021)

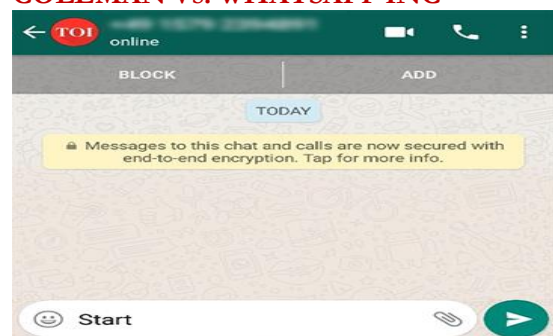
(3) CASE LAW- DELHI HC: IGST IMPOSITION ON IMPORT OF OXYGEN CONCENTRATOR AS GIFT FOR PERSONAL USE UNCONSTITUTIONAL

Delhi HC had reserved order in 85 year old’s plea challenging the levy of IGST on the import of oxygen generators as gift for personal use in India. The petitioner challenged a notification dated 01.05.2021 issued by the Ministry of Finance stating that it would force payment of IGST of 12 % on the oxygen concentrator which was accordingly quashed by the High Court. It was the case of the petitioner that the imposition of any sort of levy by the state on the import of oxygen/oxygen generators or concentrators for personal use abridges the said invaluable right and such imposition deserves to be struck down as being violative of Article 14 & Article 21 of the Constitution of India. The High court opined that the IGST exemption by the centre on May 3, 2021 for oxygen concentrators imposed by the State Government, or via any entity, relief agency or statutory body, authorised by the State Government shall also be extended to individuals as well.

(Source: Gurcharan Singh Vs. Union of India W.P (C) 5149/2021, CM No. 16554/2021, dated 21-05-2021)

INTELLECTUAL PROPERTY RIGHTS

(1) CASE LAW (DELHI HC): BENNETT COLEMAN Vs. WHATSAPP INC



- In this case, Bennett Coleman (hereinafter referred to as the “Plaintiff”) is the owner and registered proprietor of several newspaper brands and his publications are said to be widely considered of high repute. Further, the Plaintiff also offers its print publication in digitised format i.e. E-papers, on its website on a subscription model whereby a consumer can subscribe to the same upon paying a subscription fee and can readily access Times Group newspapers. The news articles/ contents published on Plaintiff's website as well as in its newspapers constitute "the original literary work" within the meaning of copyright thereby being entitled copyright protection.
- However, in June, 2020 the Plaintiff became aware of unauthorized and illegal circulation/distribution of the Plaintiffs proprietary e-newspapers and stated that due to access and permission granted by the Defendants to various users, numerous channels and groups are created by known and unknown administrator/users.
- The Delhi High Court on an application filed to it by the Plaintiff, granted an *ex-parte* interim injunction against the unauthorized transmission and dissemination of the Plaintiff's Times of India e-newspapers by the Defendant on platforms such as Whatsapp and Telegram.

(Source: Bennett Coleman Vs. Whatsapp Inc. CS (COMM) 232/2021 & I.As. 6565-6567/2021, dated 21-05-2021)

(2) CASE LAW: DR. REDDYS LABORATORIES LIMITED Vs. WEST COAST PHARMACEUTICAL WORKS (DELHI HC)

- Dr. Reddys Laboratories (hereinafter referred to as the “Plaintiff”) has registrations for its ‘OMEZ’ trademark/trade name and claims to be one of the leading manufacturers of Omeprazole capsules. Whereas, West-coast Pharmaceutical Works (hereinafter referred to as the “Defendants”) do not hold any registration for its impugned mark 'OMES' till date.
- A plaint was filed by the Plaintiff alleging infringement and passing off, by the Defendant, of Omeprazole capsules, under a

trade name which, according to the Plaintiff, is deceptively similar to the registered trademark of the Plaintiff.

Further, there was no reason for the Defendant to also use the said name for its product which was phonetically similar to the Plaintiff's registered trademark. Since, the products are identical, available through the same trade channels and cater to the same customer base, there is every likelihood on an unwary customer purchasing the product of the defendant believing it to be that of the plaintiff.

- However, the plaint is completely silent regarding the longevity of use, by the defendant, of its trademark and of the sale by the defendant of the allegedly infringing products. The Delhi High Court in the said case denied an *ex parte* ad interim injunction sought by the Plaintiffs to restrain the Defendant's use of the ‘OMES’ mark. The court held that the balance of convenience, irreparable loss, and public interest did not weigh in the plaintiff's favour at this stage and the defendant must be allowed to file a response.

(Source: Dr. Reddys Laboratories Limited Vs. West Coast Pharmaceutical Works (Delhi Hc) CS(COMM) 242/2021, dated 28.05.2021)

ENVIRONMENT LAWS

(1) ANDRA PRADESH PCB EXTENDS THE VALIDITY PERIOD OF CONSENT FOR OPERATION/ AUTHORIZATION TILL 30TH JUNE 2021



Andhra Pradesh Pollution Control Board vide its notification dated 11th May 2021 has extended the validity period of consent to operate under the water (prevention & control of pollution) Act and Air (prevention & control of pollution) Act upto 30th June 2021 for all industries/establishments, who have valid consent to operate up to 30th April 2021 or thereafter upto 29th June 2021.

In order to ease the pressure on industries amidst the unprecedented COVID-19 lockdown, the board has decided to extend the validity period.

(Source: APPCB Circular No. APPCB/Chairman Peshi/2021, dated 11.05.2021)

(2) RAJASTHAN PCB GRANTS TEMPORARY RELAXATION FROM SEEKING CONSENT TO ESTABLISH/ OPERATE FOR MANUFACTURING OF LIFE SAVING MEDICAL EQUIPMENTS ETC.

The Rajasthan State Pollution Control Board on 1st May 2021, in order to ensure adequate supplies of life saving medical equipment, personal protective equipment and gears, sanitizers and oxygen gas cylinders, has given temporary relaxation in the mandatory requirement of seeking prior consent to establish/operate / Acknowledgement under the provisions of Water (prevention & Control of Pollution) Act, 1974 and Air (prevention & Control of Pollution) Act, 1981. The above relaxation shall be valid for a period of 90 days and all such units shall have to mandatorily apply for seeking the due Consents after the end of the relaxation period as per the categorization of the industries issued by the State Board. Further, the above order does not exempt or absolve the said units/project proponents from seeking compliance with any other act/regulation as applicable to it as per prevailing laws.

(Source: RPCB Office Order No. F14(5)Adm/RPCB/Plg/SPL 1-37 dated 01.05.2021)

[End of Newsletter]
