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RBI & FEMA

(1) RBI HAS REVISED THE THRESHOLD FOR RESOLUTION OF COVID-19 RELATED STRESS OF SMALL BUSINESSES



The Reserve Bank of India vide the Notification has increased the threshold for Resolution of Covid-19 related stress of Individuals and Small Businesses.

Clause 2 of the above circular specifies the eligibility conditions for MSME accounts to be considered for restructuring under the framework, which inter alia include sub-clause (iii) which states that the aggregate exposure, including non-fund based facilities, of all lending institutions to the MSME borrower should not exceed ₹25 crore as on March 31, 2021. Now based on a review, it has been decided to enhance the above limit from ₹25 crore to ₹50 crore.

(Source: RBI Notification No. RBI/2021-22/47 DOR.STR.REC.21/21.04.048/2021-22 dated 04-06-2021)

(2) RBI NOTIFIES THE EXTENSION OF TIME FOR SUBMISSION OF RETURNS UNDER SECTION 31 OF THE BANKING REGULATION ACT, 1949.

The Reserve Bank of India vide its Notification has extended the time limit for submission of accounts and balance-sheet together with the auditor's report till 30th September 2021.

Under section 31 of the Banking Regulation Act, 1949 read with Section 56 the Act, accounts and balance-sheet referred to in section 29 of the Act together with the auditor's report shall be published in the prescribed manner and three copies thereof shall be furnished as returns to the Reserve Bank within three months from the end of the period to which they refer. In terms of the first proviso to the above section, Reserve Bank may in any case extend the said period of three months for the furnishing of such returns by a further period not exceeding three months. Therefore, all UCBs, State Co-operative Banks, and Central Co-operative Banks shall ensure submission of the aforesaid returns to Reserve Bank on or before 30th September 2021.

(Source: RBI Notification No. RBI/2021-22/49 DoR.RET.REC.19/12.05.009/2021-22 dated 04-06-2021)

(3) THE RESERVE BANK OF INDIA (CERTIFICATE OF DEPOSIT) DIRECTIONS, 2021

The Reserve Bank of India vide the Notification has published the Master Direction – Reserve Bank of India (Certificate of Deposit) Directions, 2021 which is effective from 7th June 2021.

The Certificate of Deposits (CDs) shall be issued to all persons resident in India and shall be issued by Scheduled Commercial Banks; Regional Rural Banks; and Small Finance Banks.

The CDs shall be issued only in dematerialised form and held with a depository registered with Securities and Exchange Board of India and shall be issued in minimum denomination of ₹5 lakh and in multiples of ₹5 lakh thereafter.

The tenor of a CD at issuance shall not be less than seven days and shall not exceed one year and the CDs shall be traded either in Over-the-Counter (OTC) markets, including on Electronic Trading Platforms, or on recognised stock exchanges with the approval of the Reserve Bank.

Further the Banks are not allowed to grant loans against CDs, unless specifically permitted by the Reserve Bank and there shall be no grace period for repayment of CDs.

(Source: RBI Notification No. RBI/2021-22/79 FMRD.DIRD.03/14.01.003/2021-22 dated 04-06-2021)

(4) THE RESERVE BANK OF INDIA ISSUES GUIDELINES ON DISTRIBUTION OF DIVIDEND BY NBFCs

Reserve Bank of India through the Circular has issues guidelines on distribution of dividend by NBFCs. NBFCs, eligible to declare dividend, may pay dividend, subject to the following:

1. The Dividend Payout Ratio is the ratio between the amount of the dividend payable in a year and the net profit as per the audited financial statements for the financial year for which the dividend is proposed.
2. Proposed dividend shall include both dividend on equity shares and compulsorily convertible preference shares eligible for inclusion in Tier 1 Capital.
3. In case the net profit for the relevant period includes any exceptional and/or extraordinary profits/ income or the financial statements are qualified (including 'emphasis of matter') by the statutory auditor that indicates an overstatement of net profit, the same shall be reduced from net profits while determining the Dividend Payout Ratio.
4. The Reserve Bank shall not entertain any request for ad-hoc dispensation on declaration of dividend.

These guidelines shall be effective for declaration of dividend from the profits of the financial year ending March 31, 2022 and onwards.

(Source: RBI Notification No. RBI/2021-22/59 DOR.ACC.REC. No.23/21.02.067/2021-22 dated 24-06-2021)

FOREIGN TRADE

(1) DGFT IMPOSES BAN ON THE EXPORT OF AMPHOTERICIN-B INJECTION

The Director General of Foreign Trade has restricted the export of Amphotericin-B injections falling under the ITCHS Code Ex 30049029, Ex 30049099 used in the treatment of black fungus disease, due to rising cases of Mucormycosis among patient who have recovered from coronavirus.

(Source: Notification No. 07/2015-2020 dated 01-06-2021)

(2) MINISTRY OF COMMERCE ISSUED SCHEME GUIDELINES FOR PRODUCTION LINKED INCENTIVE SCHEME FOR WHITE GOODS (AIR CONDITIONERS AND LED LIGHTS) MANUFACTURERS IN INDIA

The Ministry of Commerce and Industry has notified the Production Linked Incentive (PLI) Scheme for White Goods (Air Conditioners and LED Lights) manufacturers in India, to create complete component ecosystem in India and make India an integral part of the global supply chains. The application window for the Scheme shall be open from 15th June 2021 to 15th September 2021.

The tenure of the scheme shall be from the financial year 2021-2022 to financial year 2028-29 and the scheme shall extend incentive ranging from 4-6% on net incremental sales of eligible products over their sale in the base year.

(Source: Public Notice Release ID No. 1724514, dated 04-06-2021)

(3) DGFT PLACES REMDESIVIR INJECTION EXPORT POLICY UNDER THE RESTRICTED CATEGORY

The Director General of Foreign Trade has notified revising the export policy on Remdesivir injections and APIs against the Advance Authorization and have been moved from 'prohibited' to 'restricted' category.

(Source: Notification No. 08/2015-2020 dated 14-06-2021)

CORPORATE LAWS

(1) COMPANIES (INCORPORATION) FOURTH AMENDMENT RULES, 2021

The Ministry of Corporate Affairs has issued the Companies (Incorporation) Fourth Amendment Rules, 2021. The amendment provides that the application for incorporation of a company shall be accompanied by e-form AGILE – PRO-S (INC-35) containing an application for registration of the following numbers, namely: -

1. GSTIN with effect from 31st March, 2019
2. EPFO with effect from 8th April, 2019
3. Professional Tax Registration with effect from the 23rd February, 2020;
4. Opening Bank Account with effect from the 23rd February, 2020;
5. Shops and Establishment Registration

(Source: Notification No. G.S.R. 392(E) dated 07-06-2021)

(2) THE COMPANIES (MEETINGS OF BOARD AND ITS POWERS) AMENDMENT RULES, 2021



The Ministry of Corporate Affairs has published the Companies (Meetings of Board and its Powers) Amendment Rules, 2021 to further amend the Companies (Meetings of Board and its Powers) Rules, 2014.

Through this amendment Rule 4, has been omitted which deals with restriction on conducting Board Meeting through Video

Conferencing/Other Audio-Visual Means for selected agenda items, however due to the COVID pandemic, MCA granted relaxation for conducting meeting through VC till 30th June 2021, which now permanently allows virtual resolutions on financial statements and restructuring.

(Source: MCA Notification No. G.S.R. 409(E) dated 15-06-2021)

(3) MCA ISSUES CLARIFICATION ON PASSING OF ORDINARY AND SPECIAL RESOLUTIONS BY COMPANIES UNDER THE COMPANIES ACT, 2013.

The Ministry of Corporate Affairs on 23rd June 2021 has decided to allow companies to conduct their EGMs through VC or OAVM or transact items through postal up to 31st December, 2021.

Due to the pandemic caused by COVID-19 across the country, the companies are requested to take all decisions of urgent nature requiring the approval of members through the mechanism of postal ballot or e-voting, without holding a general meeting which requires physical presence of members at a common venue.

(Source: MCA General Circular No.10/2021 dated 23-06-2021)

(4) MCA EXTENDS THE TIMELINE FOR FILING FORMS BY COMPANIES AND LLPS

In view of COVID-19 pandemic, the Ministry of Corporate Affairs through the Circular has extended the timeline for filing of all forms (except Form CHG-1, CHG-4 & CHG-9) under Companies Act, 2013 and LLP Act, 2008 till 31st August, 2021. No additional fess shall be levied for submission of Forms till 31.08.2021.

(Source: MCA General Circular No.11/2021 dated 30-06-2021)

(5) MCA RELAXES TIMELINE FOR INTIMATION OF CREATION OR MODIFICATION OF CHARGES

Consequent upon the Circular No. 11/2021, the Ministry of Corporate Affairs through the

Circular has exempted the period between 01.04.2021 to 31.07.2021 while calculating the timeline for creation or modification of charges.

(Source: MCA General Circular No.12/2021 dated 30-06-2021)

(6) CASE LAW (NCLAT): SINCE DEBT CLAIMED BY FINANCIAL CREDITOR IS TIME-BARRED. APPLICATION FILED BY FINANCIAL CREDITOR SHOULD BE DISMISSED: NCLT

- The Application was filed u/s 7 of the Code by M/s. Asset Reconstruction Company India Limited (Financial Creditor) for the purpose of initiating the Corporate Insolvency Resolution Process (CIRP) against M/s. Manohamma Hotel Investments Private Limited ("Respondent"). The Respondent/Corporate Debtor, has stood as a Corporate Guarantor in respect of the loans availed by the Principal Borrower viz. M/s. Anandram Developers Private Limited ("ADPL"). From Part-IV of the Application, it is seen that on 28.11.2005, Indian Overseas Bank had sanctioned Term Loan of an amount of INR 30 Crore to M/s. Anandram Developers Private Limited ("ADPL"), the Principal Borrower and in respect of whom the Liquidation proceedings were pending before this Adjudicating Authority. In order to secure the loan, the Respondent/Corporate Debtor had executed Guarantee Agreement in favour of Indian Overseas Bank for the repayment of the Term Loan. Upon failure to repay the due amounts by ADPL, on 31.12.2007, the Indian Overseas Bank classified the account of ADPL as non-performing asset ("NPA").
- Further, the Supreme Court in the matter of Asset Reconstruction Company (India) Limited -Vs- Bishal Jaiswal & Anr. has held that the balance sheet entry made in the books of the Corporate Debtor, under the facts and circumstances of the case, on being examined, would amount to acknowledgment of debt under Section 18 of the Limitation Act, 1963. However, in the present case, from the list of documents it may be noted that the Financial Creditor has not placed on record any of the balance sheet of the Corporate Debtor to garner support therefrom in order to repel the

contention of the Respondent-Corporate Guarantor on the aspect of Limitation.

- In order to arrive at a conclusion and in order to ascertain the 'debt' and 'default', the Adjudicating Authority has to come to the conclusion only based upon the documents which are filed by the parties. If the parties fail to file any documents, inspite of opportunity being granted, then the Tribunal is perforce required to arrive at a conclusion based on the documents available on record and cannot arrive at a conclusion on premises and suppositions. The debt as claimed by the Financial Creditor was time barred and the Financial Creditor has failed to place on record any shred of document recognized under the law to substantiate that the debt falls well within the period of limitation. Hence this Adjudicating Authority, based on the documents filed by the Financial Creditor, comes to an irresistible conclusion that the debt on the part of the Respondent/Corporate Guarantor was time barred and as such the Application filed by the Financial Creditor is liable to be dismissed and accordingly, the Application stands dismissed as barred by limitation.

(Source: Asset Reconstruction Company India Ltd Vs Manohamma Hotel Investments Pvt Ltd 2021-TIOLCORP-45-NCLT dated 01-06-2021)

SECURITIES LAWS AND CAPITAL MARKETS

(1) THE SECURITIES AND EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY SHARES) REGULATIONS, 2021

The Securities and Exchange Board of India has published the SEBI (Delisting of Equity Shares) Regulations, 2021 which shall apply to delisting of equity shares of a company including equity shares having superior voting rights from all or any of the recognised stock exchanges where such shares are listed.

A company may delist its equity shares from one or more of the recognized stock exchanges on which it is listed without providing an exit

opportunity to the public shareholders if after the proposed delisting, the equity shares remain listed on any recognized stock exchange that has nationwide trading terminals.

The company shall make an application to the relevant recognised stock exchange for in-principal approval of the proposed delisting of its equity shares in the Form specified by the recognised stock exchange from time to time, not later than fifteen working days from the date of passing of the special resolution or receipt of any other statutory or regulatory approval, whichever is later.

(Source: Notification No. SEBI/LAD-NRO/GN/2021-25 dated 10-06-2021)

(2) SEBI RELAXES THE MINIMUM VESTING PERIOD IN CASE OF DEATH OF EMPLOYEES UNDER SEBI (SHARE BASED EMPLOYEE BENEFIT) REGULATIONS, 2014

The Securities and Exchange Board of has issued the Circular stating that the minimum vesting period of one year shall not apply in case of death (for any reason) of an employee and in such instances all the options, SAR or any other benefit granted to such employee(s) shall vest with his/her legal heir or nominee on the date of death of the employee.

The above relaxation shall be available to all such employees who have deceased on or after 1st April, 2020.

(Source: SEBI Circular No. SEBI/HO/CFD/DCR2/CIR/P/2021/576 dated 15-06-2021)

(3) LISTED DEBT SECURITIES OF EQUITY LISTED COMPANIES IS INCLUDED UNDER THE SYSTEM DRIVEN DISCLOSURES FOR THE ENTITIES

SEBI through the Circular has issued clarification regarding Automation of Continual Disclosures as per SEBI (Prohibition of Insider Trading) Regulations, 2015 for System driven disclosures for inclusion of listed Debt Securities. It has now been decided to include the listed debt securities of equity listed companies under the purview of

the said System Driven Disclosures for the entities.

The Depositories and Stock Exchanges shall make necessary arrangements such that the disclosures pertaining to listed Debt Securities along with equity shares and equity derivative instruments are disseminated on the websites of respective stock exchanges with effect from July 01, 2021.

(Source: SEBI Circular No. SEBI/HO/ISD/ISD/CIR/P/2021/578 dated 16-06-2021)

(4) THE SECURITIES CONTRACTS (REGULATION) (AMENDMENT) RULES, 2021

The Ministry of Finance has published the Securities Contracts (Regulation) (Amendment) Rules, 2021 to further amend the Securities Contracts (Regulation) Rules, 1957.

As per the amendment under rule 19(2) an applicant company shall satisfy the stock exchange that its articles of association provide that the company shall use a common form of transfer and the fully paid shares will be free from all lien etc.

(Source: Ministry of Finance Notification No. G.S.R. 423 (E) dated 18-06-2021)

COMPETITION LAWS

(1) CBDT ISSUES DIRECTIONS TO CCI TO AVAIL EXEMPTION UNDER IT ACT

The Central Board of Direct Taxes through the Notification has directed that the Competition Commission of India:

1. Shall not engage in any commercial activity;
2. Activities and the nature of the specified income shall remain unchanged throughout the financial years;
3. Shall file return of income;
4. Shall file the Audit report along with the Return, duly verified by the accountant

along with a certificate from the chartered accountant that the above conditions are satisfied.

This notification shall apply with respect to the financial years 2021-2022, 2022-2023, 2023-2024, 2024-2025 and 2025-2026.

(Source: Notification No. SO. 2246 (E) dated 09-06-2021)

(2) CCI APPROVES THE PROPOSED COMBINATION RELATING TO THINK & LEARN PRIVATE LIMITED (BYJU'S) ACQUISITION OF CERTAIN STAKE OF AAKASH EDUCATIONAL SERVICES LIMITED (AESL) AND THEREAFTER MERGER OF BYJU'S AND AESL UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002



The CCI has approved the proposed combination which will result in merger of AESL into BYJU'S, as a consequence of which, BYJU'S will be the surviving entity. As such, BYJU'S shall effectively acquire complete and sole control over AESL.

BYJU'S is a private limited company incorporated in India which directly and through its subsidiaries, provides technology based online educational services. Whereas, AESL is an unlisted public limited company incorporated in India provides curriculum-based coaching for K-12 students and test preparatory services for various competitive examinations such as, engineering examinations, medical examinations, Olympiads, National Talent Search Examination, etc

(Source: Press Release No. 14/2021-22 dated 07-06-2021)

(3) CCI ACQUISITION OF ADDITIONAL EQUITY SHAREHOLDING BY HEINEKEN INTERNATIONAL B.V. ("HIBV") OF UNITED BREWERIES

LIMITED ("UBL") UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002

The proposed transaction relates to HIBV's potential acquisition of additional equity stake up to a maximum of approximately 16.40 percent shareholding in UBL.

HIBV is an investment holding company and is a direct/ indirect shareholder for all non-Dutch companies that form part of the Heineken Group. Heineken Group is an international group of companies engaged in the production, manufacture, packaging, distribution, marketing and sale of beer, non-alcoholic beer, cider and cider-based beverages, and a range of other beverages.

UBL is a public limited company incorporated under the Companies Act, 1956 and is principally engaged in the manufacture, sale and distribution of beer in India.

(Source: Press Release No. 18/2021-22 dated 21-06-2021)

(4) CCI APPROVES ACQUISITION BY ADANI GREEN ENERGY LIMITED ("ACQUIRER") OF SB ENERGY HOLDING LIMITED ("TARGET") UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002

The Proposed Combination envisages the acquisition of the entire (i.e., 100%) shareholding of the Target by the Acquirer from the Target's existing shareholders.

The Acquirer (being a part of the Adani Group) is engaged in the business of power generation through renewable energy. In India, the Acquirer and its subsidiaries are engaged in the business of power generation inter alia through (i) solar energy, (ii) wind energy and (iii) hybrid energy.

The Target, through various special purpose vehicles ("SPVs") is engaged in generation, supply and sale of electricity and energy produced from renewable sources. The Target is the ultimate holding company for SPVs formed in India that focus on developing renewable energy projects.

(Source: Press Release No. 20/2021-22 dated 29-06-2021)

(5) CASE LAW - GOOGLE IS 'PRIMA FACIE' IN VIOLATION OF INDIA'S ANTITRUST REGULATIONS FOR WHICH DETAILED INVESTIGATION MUST BE ORDERED U/S 26(1): CCI



- The Information was filed by two individuals, Mr. Kshitiz Arya and Mr. Purushottam Anand ('Informants') u/s 19(l)(a) of the Act against Google LLC, Google India Private Limited, Xiaomi Technology India Pvt. Ltd. & TCL India Holdings Pvt. Ltd. alleging contravention of Sections 3 and 4 of the Act. It was alleged that Google had entered into anti-competitive agreements with OP-3 and OP-4. OP-1 was multinational technology company specializing in internet-related services and products. It had been averred that majority of smart mobile and tablet manufacturers in India were using OP-1's Android Operating System. Further, OP-2 was an Indian subsidiary of OP-1. OP-3 and OP-4 were leading manufacturer/seller/distributor of smart TV devices in India.
- The Commission had prima-facie held Google to be in contravention of Section 4 in respect of the market for licensable operating systems for smart mobile devices in India. The Commission had prima facie opined that certain clause of agreements entered into between Google and OEMs, Mobile Application Distribution Agreement (MADA) and Android Compatibility Commitments (ACC) amounted to abuse of dominant position by Google in violation of various provisions of Section 4 of the Act.
- Google contended that competition in the smart TV segment was driven by access to over-the-top ("OTT") content which takes place over several channels, including smart TVs, streaming sticks, set-top boxes and other connected devices that plug into TV sets. Thus, Google claims to compete in a fiercely competitive smart TV sector against multiple well-resourced and established players.

- The Commission was of the prima facie opinion that by making pre-installation of Google's proprietary apps (particularly Play Store) conditional upon signing of ACC for all android devices manufactured/ distributed/ marketed by device manufacturers, Google has reduced the ability and incentive of device manufacturers to develop and sell devices operating on alternative versions of Android i.e. Android forks, and thereby limited technical or scientific development relating to goods or services to the prejudice of consumers in contravention of Section 4(2)(b) of the Act. Therefore, given the dominance of Google in the relevant markets and pronounced network effects, by virtue of this restriction, developers of such forked Android operating system are denied market access resulting in violation of Section 4(2)(c) of the Act.
- In relation to the mandatory preinstallation of the all the Google Applications under TADA, it is observed that the device manufacturers who sign this agreement cannot pick and choose from amongst the Google Applications for preinstallation. In essence, this entails compulsory tying of 'must have' Google apps (such as Play Store), which the device manufacturers would like to have on their devices, with other apps where other credible alternatives may be available. The Commission was of the prima facie opinion that mandatory preinstallation of all the Google Applications under TADA amounts to imposition of unfair condition on the smart TV device manufacturers and thereby in contravention of Section 4(2)(a)(i) of the Act. It also amounts to prima facie leveraging of Google's dominance in Play Store to protect the relevant markets such as online video hosting services offered by YouTube, etc. in contravention of Section 4(2)(e) of the Act. All these aspects warrant a detailed investigation.

(Source: *Kshitiz Arya v. Google LLC, Case No. 19 of 2020, decided on 22-06-2021*)

INDIRECT TAXES AND CUSTOMS

I. GST

(1) MINISTRY OF FINANCE ISSUES NOTIFICATION CLARIFYING ON THE TAX LIABILITY ON ISSUANCE OF COMPLETION CERTIFICATE.

The Ministry of Finance (Department of Revenue) vide the Notification No. 06/2019-Integrated Tax (Rate) had earlier mentioned that the tax liability shall arise “on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier”.

Based on the recommendation by GST Council in its 43rd meeting held on 28.05.2021, the Department clarified tax liability vide this notification by substituting the words as “in a tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls”.

(Source: Notification No. 03/2021-Integrated Tax (Rate), dated 02-06-2021)

(2) MINISTRY OF FINANCE NOTIFIES CHANGES IN CGST RATE OF SERVICES.

The Ministry of Finance vide the Notification has notified the GST charges on Maintenance, repair or overhaul services in respect of ships and other vessels, their engines and other components or parts to be 5% which shall be in force from 2nd June 2021.

(Source: Notification No. 02/2021-Integrated Tax (Rate) , dated 02-06-2021)

(3) CENTRAL GOVERNMENT RELAXES TAXES LEVIABLE ON GOODS USEFUL AGAINST COVID 19

The Central Government through the Notifications has relaxed the central tax, integrated tax and UT tax leviable on following goods by fixing the maximum rate of tax to be levied on the same. The notification is issued in

view of second wave of Covid-19 outbreak for (i) Medical Grade Oxygen, (ii) Tocilizumab Nil, (iii) Amphotericin B Nil, (iv) Remdesvir, (v) Heparin (anti-coagulant), (vi) Covid-19 testing kits, (vii) Inflammatory Diagnostic (marker) kits, (viii) Hand Sanitizer, (ix) Helmets for use with non-invasive ventilation, (x) Gas/Electric/other furnaces for crematorium, (xi) Pulse Oximeter, (xii) High flow nasal canula device, (xiii) Oxygen Concentrator/ generator, (xiv) Ventilators, (xv) Non-invasive ventilation nasal or oronasal masks for ICU ventilators, (xvi) Canula for use with ventilators, (xvii) Temperature check equipment and (xviii) Ambulances.

The notifications shall remain in force up to and inclusive of the 30th September, 2021.

(Source: Notification No. 04/2021 & Notification No. 05/2021 -Central Tax (Rate), dated 14-06-2021

Notification No. 04/2021 & Notification No. 05/2021 -Integrated Tax (Rate), dated 14-06-2021

Notification No. 04/2021 & Notification No. 05/2021 -Union Territory Tax (Rate) dated 14-06-2021)

(4) CASE LAW - JUSTICE ABHAY AHUJA DELIVERS DISSENTING VIEW IN CHALLENGE TO CONSTITUTIONAL VALIDITY OF SECTION 13(8)(B)

- The petitioner is a service provider, providing service to customers located outside India. These overseas customers are engaged in manufacture and / or sale of goods. Such overseas customers may or may not have establishments in India. However, petitioner provides services only to the principal located outside India and in lieu thereof receives consideration in convertible foreign currency from the principal located outside India.
- Section 13 of the IGST Act deals with situations where the location of the supplier or the location of the recipient is outside India. While sub-section (2) generally provides that the place of supply of services shall be the location of the recipient of services, exceptions are carved out in sub-sections (3) to (13). As per sub-section (8), the place of supply of the services mentioned therein shall

be the location of the supplier of services which is intermediary services in terms of clause (b). Thus, by way of a deeming fiction, in the case of intermediary services where the location of the recipient is outside India, the place of supply shall be deemed to be the location of the supplier of services which is in India, thus bringing into the tax net what is basically export of services. Therefore, the export of service by the petitioner as an intermediary would be treated as intra-state supply of services under section 13(8)(b) read with section 8(2) of the IGST Act rendering such transaction liable to payment of central goods and services tax (CGST) and state goods and services tax (SGST).

- Judgement per Justice Ujjal Bhuyan held that by artificially creating a deeming provision in the form of section 13(8)(b) of the IGST Act, where the location of the recipient of service provided by an intermediary is outside India, the place of supply has been treated as the location of the supplier i.e., in India. This runs contrary to the scheme of the CGST Act as well as the IGST Act besides being beyond the charging sections of both the Acts. Therefore, section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017 is ultra vires the said Act besides being unconstitutional.
- Judgement per Justice Abhay Ahuja held that when there is a specific provision dealing with the case of Petitioner viz. Section 13 (8)(b) of the IGST Act, which has been enacted pursuant to the powers under Article 269A (5) of the Constitution of India, the challenge appears to be without substance. Further, section 8(2) and section 13(8)(b) have different purposes. Section 8 deals with nature of supply whereas Section 13 deals with place of supply, Section 13 (8) (b) cannot be linked with Section 8 (2) of the IGST Act. Therefore, the challenge with reference to the charging sections of Acts which operate in different fields in respect of supplies of different natures appears to be unnecessary, Hence Section 13 (8) (b) is not ultra vires Section 9 of the CGST Act and MGST Act.

(Source: Dharmendra M. Jani Vs UOI W.P No.2031 Of 2018, Dated 16-06-2021)

II. CUSTOMS

(1) **THE CBIC RESCINDED NOTIFICATION WHICH REDUCED THE IGST RATE ON OXYGEN CONCENTRATOR IMPORTED IN INDIA FOR PERSONAL USE FROM 28% TO 12%**

The Central Government has vide the Notification rescinded the Customs Notification which reduced the IGST rate on Oxygen Concentrator imported in India for personal use falling under Heading 9804 of the First Schedule to the Customs Tariff Act, from 28% to 12%.

Further, vide Notification No. 05/2021-Integrated Tax (Rate) dated June 14, 2021 the Central Government reduced the IGST rate on Oxygen Concentrators/ generators to 5% upto September 30, 2021. Now GST rate on all the Oxygen Concentrators/ generators whether imported for personal use or not has been reduced to 5% IGST and 2.5% CGST/ UTGST.

(Source: Notification No. 33/2021 - Customs, dated 14-06-2021)

INTELLECTUAL PROPERTY RIGHTS

(2) **CASE LAW - SONY PICTURES HAS BEEN GRANTED INJUNCTION IN ITS FAVOUR – AGAINST UNAUTHORISED BROADCAST, MAKING AVAILABLE, COMMUNICATING TO THE PUBLIC OR DISTRIBUTION OF THE CRICKET MATCHES**

- Sony Pictures filed a suit against numerous defendants primarily praying for a permanent injunction against reproducing, making available, distributing, broadcasting, and so on of the cricket matches between India's tours of England and Sri Lanka. During the pendency of the suit, Sony Pictures prayed for an interim injunction asking for more or less similar reliefs.
- The Court granted an injunction in favour of Sony Pictures against websites including their

redirects, mirrors and alpha-numeric versions. A dynamic injunction was also granted against rogue websites, which may reproduce, broadcast, make available, communicate to public or distribute the cricket matches. The Court also passed an order asking ISPs to block the mentioned and other rogue websites, and asked Government of India to give appropriate directions to prevent infringement of copyrights of Sony Pictures in the matches.

(Source: Sony Pictures Network India Pvt. Ltd. vs Www.Sportsala.Tv And Ors. CS(COMM) 289/2021, dated 04-06-2021)

(3) CASE LAW: “SINGH + SINGH” PRIMA FACIE DECEPTIVELY SIMILAR TO “SINGH & SINGH” : HC GRANTS INTERIM RELIEF TO LAW FIRM IN TRADEMARK INFRINGEMENT CASE



- The Delhi High Court temporarily restrained the Canada-based law firm, ‘Singh + Singh Lawyers LLP’ (‘S&S Canada’) from infringing the trademark of the reputed Indian law firm, ‘Singh & Singh Law firm LLP’ (‘S&S India’). ‘Singh’ is not only an extremely common surname in India, it is also prevalent among legal practitioners.
- The present dispute focuses on the deception of S&S India’s foreign clients who might mistake S&S Canada as the former, or its associate. S&S India is an Indian law firm practicing in IP, IT, technology, media & entertainment and other areas of law under the ‘Singh & Singh’ name since 1997. The name has been a registered as a trademark since 2005. They claimed that till May 2021, S&S Canada operated through separate individual practices under the names of ‘GSC Law’ and ‘KSK Law’ in Canada, but had now adopted the name ‘Singh + Singh’. Insisting that their clientele extends beyond borders to US, Japan,

Australia and Canada, S&S India accused S&S Canada of infringing their trademark under Section 29(2)(c) of the Trade Marks Act.

- S&S Canada argued that they were a law firm registered and operating in Toronto, Canada. They had no practice beyond Canada, certainly not in India, and that of the two partners of the firm, one was a permanent resident and the other, a citizen of Canada. Importantly, they additionally sought refuge in Section 35 of the Trade Marks Act, which restricts the rights of a registered trademark holder, by preventing them from interfering with the bona fide use of their own name in course of trade.
- The court noted the predominantly identical names of the firms, identical legal services provided and the identical class of customers. It observed that although S&S Canada was currently practicing in Canada only, S&S India’s reputation and goodwill was global and, in an internet-driven world, reputation could not be confined to geographical boundaries. S&S Canada’s significant online presence, the similarity of the colour combination of the logos in addition to the identical names pointed towards a strong possibility of confusion between the two. The court was thus convinced that a prima facie case existed in favour of S&S India.

(Source: Singh & Singh Law Firm Llp & Anr. Vs Singh + Singh Lawyers Llp & Ors. CS(COMM) 263/2021, dated 02-06-2021)

ENVIRONMENT LAWS

(1) THE ENVIRONMENT (PROTECTION) AMENDMENT RULES, 2021.

The Ministry of Environment, Forest and Climate Change on 16th June 2021 has published the Environment (Protection) Amendment Rules, 2021 to further amend the Environment (Protection) Rules, 1986. As per rule 5(3) (d), the Central Government shall within a period of 120 days from the date of publication of the Notification in the Official Gazette consider all the objections received against such notification and may within 180 days from such day of publication impose prohibition or

restrictions on location of such industries and the carrying on of any process or operation in an area.

Provided that on account of COVID-19 pandemic, for the purpose of this clause, the period of validity of the notification expiring in the financial year 2020-2021 and 2021- 2022 shall be extended up to 31st December, 2021 or six months from the end of the month when the relevant notification would have expired without any extension, whichever is later.

(Source: Ministry of Environment, Forest and Climate Change Notification No. S.O. 2346(E), dated 16.06.2021)

(2) MINISTRY OF ENVIRONMENT ISSUES ORDER ON RECOGNITION OF PRIVATE LABORATORIES

The Ministry of Environment, Forest and Climate Change on 16th June 2021 in suppression of its earlier notification dated 21st February 2021 has issued the following order in recognising private laboratories by the central pollution control board.

All environmental laboratories shall obtain accreditation from the National Accreditation Board for Testing and Calibration Laboratories Accreditation for all criteria testing parameters as defined by Central Pollution Control Board along with certification for Occupational Health and Safety Management System before submission of application to the Central Pollution Control Board.

The recognition of laboratory shall be granted for the validity period of ISO45001:2018 certification from a recognised agency and shall be valid for the same premises of its operation for which the application is made.

(Source: Ministry of Environment, Forest and Climate Change Notification No. S.O. 2340(E), dated 16-06-2021)

[End of Newsletter]
