

MONTHLY NEWSLETTER

OCTOBER 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, Environmental 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
Shakshi Choraria
Swagita Pandey
Adivitiya Raj
Vishwas Chaudhary

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	... 3
Corporate Laws	... 4
Securities Laws and Capital Markets	... 5
Competition Laws	... 6
Indirect Taxes and Customs	... 7
Intellectual Property Rights	... 8
Environment Laws	... 11

RBI & FEMA

(1) RBI NOTIFIES THE STATEMENT ON DEVELOPMENTAL AND REGULATORY POLICIES



The Reserve Bank of India (“RBI”) has issued a statement on developmental and regulatory policies, including several policy initiatives relating to liquidity, payment and settlement systems, debt management, financial inclusion, and customer protection.

Key highlights from various regulatory policies:

(i) RBI has extended the deadline for small financing banks (SFBs) to apply for Special Long-Term Repo Operations (SLTRO) till December 31, 2021. In May 2021, SFBs were given a three-year SLTRO facility of ₹10,000 crore at the repo rate, to be used for new lending of up to ₹10 lakh per borrower.

(ii) Given the importance of the IMPS system in processing domestic payment transactions, it is

proposed that the per-transaction limit for channels other than SMS and IVRS be increased from ₹2 lakh to ₹5 lakh. This would result in an increase in digital payments and give customers with an additional option for making digital payments above ₹2 lakh.

(iii) For certain types of NBFCs with a higher consumer interaction, the RBI has decided to implement the Internal Ombudsman Scheme (IOS). The IOS for NBFCs, which will be similar to the IOS for banks and non-bank payment system participants, will require select NBFCs to appoint an Internal Ombudsman (IO) at the top of their internal grievance redress mechanism to examine customer complaints that are in the nature of deficiency in service and are partially or completely rejected by the NBFCs.

(Source: RBI Press Release No 2021-2022/1003 dated 08-10-2021)

(2) RBI HAS PUBLISHED THE FOREIGN EXCHANGE MANAGEMENT (DEBT INSTRUMENTS) (FIRST AMENDMENT) REGULATIONS, 2021

The RBI has published the Foreign Exchange Management (Debt Instruments) (First Amendment) Regulations, 2021 to further amend the Foreign Exchange Management (Debt Instruments) Regulations, 2019.

Through this amendment the term “Infrastructure Investment Trust” or “InvIT”/Real Estate Investment Trust or REIT has been notified under the definition clause.

As per the definition, the “InvIT/“REIT” means a business trust as defined in sub-clause (i) of clause 13A of section 2 of the Income-tax Act, 1961.”

(Source: RBI Notification No 483 dated 13-10-2021)

(3) RBI ISSUES MASTER DIRECTIONS ON THE RESERVE BANK OF INDIA (PRUDENTIAL NORMS ON CAPITAL ADEQUACY FOR LOCAL AREA BANKS) DIRECTION, 2021

The RBI has published the Reserve Bank of India (Prudential Norms on Capital Adequacy for Local Area Banks) Directions, 2021 which shall be

applicable to all Local Area Banks, licensed to operate in India by the Reserve Bank of India.

This Master Direction specifies the components of capital as well as the capital that banks must set aside to cover credit and market risks. The purpose of these Directions is to define the prudential norms in terms of capital adequacy.

(Source: RBI Circular No. RBI/DOR 2021-22/87 DOR.CAP.REC.No.61/21.01.002/2021-22 dated 26-10-2021)

(4) RBI NOTIFIES THE REVISED SCALE-BASED REGULATORY FRAMEWORK FOR NON-BANKING FINANCIAL COMPANIES (NBFCs)

The RBI has notified the revised scale-based regulatory framework for Non-Banking Financial Companies (NBFCs) which shall be effective from 1st October, 2021.

Because the SBR framework covers various aspects of NBFC regulation such as capital requirements, governance standards, prudential regulation, and so on, it was decided to first issue an integrated regulatory framework for NBFCs under SBR, which provides a holistic view of the SBR structure and timelines.

Based on their size, activity, and perceived riskiness, the regulatory structure for NBFCs will be divided into four layers. The lowest layer of NBFCs will be referred to as NBFC – Base Layer (NBFC-BL). The middle and upper layers of NBFCs will be referred to as NBFC – Middle Layer (NBFC-ML) and NBFC – Upper Layer (NBFC-UL), respectively. The Top Layer should ideally be empty, and will be referred to as NBFC – Top Layer (NBFC-TL).

(Source: RBI Circular No. RBI/2021-22/122 DOR.CRE.REC.No.60/03.10.001/2021-22 dated 22-10-2021)

FOREIGN TRADE

(1) DGFT EXTENDS THE DATE FOR MANDATORY ELECTRONIC FILING OF

NON-PREFERENTIAL CERTIFICATE OF ORIGIN



The Director-General of Foreign Trade (“DGFT”) has extended the date for Mandatory electronic filing of Non-Preferential CoO through the Common Digital Platform to 31st October 2021.

The goal of this platform is to provide a single electronic, contact-free window for CoO-related procedures. The existing procedure of issuing agencies submitting and issuing CoO(NP) using their paper-based system was scheduled to continue until September 30th, or until further orders.

(Source: Trade Notice No. 19/2021-2022 dated 01-10-2021)

(2) DGFT AMENDS THE HANDBOOK OF PROCEDURES FOR FTP REGARDING SCOMET ITEMS

The Directorate General of Foreign Trade has amended the Hand book of Procedures for Foreign Trade Policy regarding export of SCOMET items from DTA to SEZ/EOU and outside the country.

No export authorization is required for the supply of SCOMET items from DTA to SEZ/EOU under the amended provisions. When SCOMET items are physically exported out of the country, however, export authorization is necessary. All supply must be notified to the SEZ/development EOU's commissioner.

(Source: Trade Notice No. 32/2015-20 dated 29-10-2021)

(3) THE MINISTRY OF FINANCE HAS PUBLISHED THE COURIER IMPORTS

**AND EXPORTS (ELECTRONIC
DECLARATION AND PROCESSING),
AMENDMENT REGULATIONS, 2021**

The Ministry of Finance has published the Courier Imports and Exports (Electronic Declaration and Processing), Amendment, Regulations, 2021 to further amend the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. A new regulation 10A dealing with registration and surrender has been added. An Authorised Courier may surrender its registration by submitting a written application to the Commissioner of Customs. If the Authorised Courier has paid all dues to the Central Government under law, and no proceedings against the Authorised Courier are pending, the Commissioner of Customs may revoke the registration.

(Source: Ministry of Finance (Department of Revenue) Notification No. 620 dated 27-10-2021)

(4) DGFT AMENDS THE EXPORT POLICY OF DIAGNOSTIC KITS/LABORATORY REAGENTS

DGFT has lifted restrictions on export of diagnostic kits, instruments and reagents which are not used to diagnose COVID-19.

VTM kits and reagents, RNA extraction kits and reagents, as well as 15ml falcon tubes or cryovials, silicon columns, and beads, were previously prohibited from being exported.

(Source: Trade Notice No. 39/2015-2020 dated 14-10-2021)

CORPORATE LAWS

(1) MCA HAS REVISED E-FORM MGT-7/7A



**DUE DATE EXTENDED OF
CRA-4 FORM**



The Ministry of Corporate Affairs ["MCA"] has revised e-form MGT-7 and MGT-7A in line with the Companies (Management and Administration) Amendment Rules, 2021. The forms shall be available for filing under MCA-21 Company forms. It is advised to check the latest version before filing the annual return.

(Source: MCA updates dated 13.10.2021)

(2) MCA GRANTS RELAXATION ON LEVY OF ADDITIONAL FEES IN FILING OF ANNUAL FILING E-FORMS

The MCA has granted relaxation on levy of additional fees upto 31st December 2021, for E-filing of forms AOC-4, AOC-4 (CFS), AOC-4XBRL, AOC-4Non-XBRL and MGT-7/MGT-7A in respect of the financial year ended on 31.03.2021.

(Circular No. 17/2021 dated 29.10.2021)

(3) MCA EXTENDS THE LAST DATE FOR FILING COST AUDIT REPORT TO THE BOARD OF DIRECTORS

Due to the disruption caused by the COVID-19 pandemic, the MCA has further extended the due date of filing of the Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014 to 30th November 2021.

(Circular No. 18/2021 dated 29-10-2021)

(4) CASE LAW: WRIT NOT MAINTAINABLE IF STATUTORY ALTERNATIVE REMEDY AVAILABLE AT NCLAT – DELHI HIGH COURT (SUNIL TANDON V. UNION OF INDIA)

The Plaintiff approached Delhi HC on the ground that under the proviso to Section 241(2), it was only the Principal Bench of NCLT at Delhi which could entertain the petition preferred by Central Government and therefore, the very filing of the petition before the NCLT, Mumbai Bench and the passing of any order by the said Bench being coram non iudice, was a nullity.

The only issue which this Court need to determine was as to whether in the light of Plaintiff's plea that

the proceedings before the NCLT, Mumbai Bench were without jurisdiction having been filed before a Bench whose jurisdiction had been specifically ousted by the proviso to Section 241(2), the writ petition ought to be entertained or Plaintiff ought to be relegated to the NCLT/ NCLAT.

It was held that the conflicting stand taken by the parties would depend only on the interpretation of the proviso to Section 241(2) and thus, it was evident that Plaintiff was ultimately seeking to urge that a provision of the Companies Act was required to be read in a particular manner. This aspect could be and ought to be considered by the NCLT/ NCLAT which are created under the Companies Act specifically for dealing with issues arising under the said Act.

Therefore, after noticing that an efficacious alternate remedy was available by approaching the Tribunals created under the Companies Act, the HC declined to entertain the writ petition.

(Source: W.P.(C) 10645/2021 & CM APPL. 32831/2021 (stay), dated 22.10.2021)

SECURITIES LAWS AND CAPITAL MARKETS

(1) REVISED FORMATS FOR LIMITED REVIEW/AUDIT REPORT FOR ISSUERS OF NON CONVERTIBLE SECURITIES

The Securities and Exchange Board of India ["SEBI"] has published the revised formats for limited review and audit reports to be submitted by entities that have listed their non-convertible securities.

1. The Limited Review Report for quarterly standalone financial results for entities other than Banks, NBFCs is given as Annexure -I.
2. The Audit Report for quarterly standalone financial results for entities other than Banks, NBFCs is given as Annexure-III.
3. The Audited Annual Consolidated Financial Results for entities other than Banks, NBFCs is given as Annexure -V.

(Source: Circular No. SEBI/HO/DDHS/CIR/2021/0000000638, dated 29.10.2021)

(2) SEBI EXTENDS RELAXATIONS FOR COMPLIANCE WITH RIGHTS ISSUES



The SEBI has further extended the relaxations granted to companies regarding compliance with procedural norms on rights issues opening till March 31, 2022.

Further the Issuer Company shall conduct a Vulnerability Test for optional mechanism (noncash mode only), provided to accept the applications in Rights Issue (facility provided by RTA), from an independent IT Auditor, and submit the report to Stock Exchange(s).

(Source: Circular No. SEBI/HO/CFD/DIL2 /CIR/P/2021/633, dated 01.10.2021)

(3) REVISED FORMAT FOR FILING FINANCIAL INFORMATION BY LISTED ENTITIES WHOSE NON-CONVERTIBLE SECURITIES ARE LISTED

The SEBI has revised the formats for filing financial information by Listed entities whose non-convertible securities are listed. Revised format is provided for filing:

1. Standalone financial results on a quarterly basis and Standalone and consolidated financial results on an annual basis;
2. Format for Statement of assets and liabilities on half yearly basis;
3. Format for Statement of cash flows on half yearly basis;
4. Format for financial results in newspapers.

Further, in case of non-submission/delayed submission of financial results within the timelines prescribed, the listed entity shall disclose detailed reasons for such non-submission/ delay to the stock exchanges within one working day of the due date of submission of the financial results.

(Source: Circular No. SEBI/HO/ DDHS/ CIR/2021/000000637, dated 06.10.2021)

COMPETITION LAWS

(1) CCI IMPOSES PENALTY UPON FIRMS FOR BID RIGGING IN TENDER FLOATED BY GAIL

The Competition Commission of India (CCI) passes a final order against two firm i.e. PMP Infratech Pvt. Ltd. and Rati Engineering, for engaging in concerted actions that resulted in the rigging of a GAIL tender for the restoration of well sites in the Ahmedabad and Anand districts of Gujarat in 2017–18. Based on the findings of the inquiry and the electronic/documentary evidence gathered The CCI discovered that the two companies communicated often about GAIL's tender and even after they had submitted their bids. The CCI found that such conduct violated Section 3(3)(d) and Section 3(1) of the Competition Act, 2002, which prohibit anti-competitive agreements such as bid rigging. The Commission imposed a monetary penalty of Rs. 25,00,000/- on PMP Infratech Pvt. Ltd., Rs. 2,50,000/- on Rati Engineering and Rs 1,00,000/- and Rs 50,000/- on their respective individuals who managed and controlled the firms.

(Source: Press Release No. 42/2021-22 dated 11-10-2021)

(2) CCI ISSUES CEASE AND DESIST ORDER AGAINST FIRMS FOUND GUILTY OF BID RIGGING AND CARTELIZATION IN TENDER FLOATED BY FCI

The CCI issued a final order today against six firms which were found to have contravened the provisions of Section 3(1) of the Competition Act, 2002 read with Section 3(3)(d) thereof, which proscribe anti-competitive agreements.

CCI discovered that these companies engaged in cartelization in the provision of Low Density Poly Ethylene Covers (LDPE) to Food Corporation of India (FCI) by establishing prices, distributing tenders, coordinating bid prices, and manipulating the bidding process, either directly or indirectly. The case was started after FCI filed a Reference on its behalf. In this backdrop, CCI issued a cease and desist order against the firms found guilty of bid rigging and cartelization in the said tenders floated by FCI.

(Source: Press Release No. 49/2021-22 dated 29-10-2021)

(3) COVID-19 CONSIDERATIONS CONTINUE TO INFLUENCE CARTEL PENALTY IMMUNITY

The Competition Commission of India (CCI) closed two long-drawn cartel investigations in the *Automotive Bearing* case¹ and the *Composite Brake Blocks* case². Remarkably, the CCI did not impose penalties in either case - despite its otherwise strict view on penalties against cartelisation.

While the *Automotive Bearing* case involved cartelisation in the market for industrial and automotive bearings, the *CBB* case uncovered bid-rigging in tenders floated by the Indian Railways for the supply of composite brake blocks

(Source: Suo Motu Case No. 05 of 2017 In Re: Cartelisation in Industrial and Automotive Bearings AND CCI Reference Case No. 03 of 2016)

(4) CCI APPROVES ACQUISITION OF THE WORLDWIDE HEALTHCARE BPO SERVICES OF HINDUJA GLOBAL SOLUTIONS LIMITED, BY BETAINE B. VISSUES



The planned merger entails Betaine B.V. acquiring Hinduja Global Solutions Limited's (HGS) global healthcare business process outsourcing (BPO) services, as well as some assets, contracts, and employees (Betaine).

Betaine is an entity that is ultimately owned and controlled by funds comprising The Baring Private Equity Asia Fund VIII, which is a fund affiliated with Baring Private Equity Asia Pte. Ltd. Betaine was recently incorporated in the Netherlands for the purposes of the Proposed Transaction, and is an entity that is ultimately owned and controlled by funds comprising The Baring Private Equity Asia Fund VIII, which is a fund affiliated with Baring Private Equity Asia Pte. Ltd. (BPEA). Betaine is not currently involved in any business activities in India (directly or indirectly).

(Source: Press Release No. 46/2021-22 dated 18-10-2021)

INDIRECT TAXES AND CUSTOMS

(1) ANTI-ABSORPTION PROVISION INTRODUCED IN ANTI-DUMPING DUTIES ('ADD') AND COUNTERVAILING DUTIES ('CVD') RULES



The Ministry of Finance has introduced the provisions relating to 'anti-absorption' in the trade remedy measures being enforced by India. Amendments in this regard have been made in the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 ('Anti-dumping Rules') and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 ('CVD Rules'). The new Rules, effective from 27 October

2021, provide for anti-absorption review, initiation of investigation to determine absorption and determination of absorption for both countervailing duty ('CVD') and anti-dumping duty ('ADD').

[Source: Notification No. 84/2021-Customs (N.T.) dt. 27th October 2021 released by Ministry of Finance, Dept. of Revenue, GOI]

(2) CONSIDERATION OF RIGHT OF REFUND WOULD BE INDEPENDENT OF THE PROCESS OF INVESTIGATION

The Petitioner operates an e-commerce platform under the name 'Sniggy' and is registered under the *Central Goods and Services Tax Act, 2017*. Due to a spike in food orders during holidays and festive season, third party service providers i.e., *Greenfich* were engaged who charged consideration for the same along with GST which was paid by the petitioner as Input Tax Credit. An investigation was conducted by the respondent Department on the ground that *Greenfich* was a non-existent entity and ITC availed were fraudulent. The Court observed that the scheme of self-ascertainment as contained in *sub sections (5) (6) (7) (8) of Section 74 of CGST Act* did not call for making of payment and continuance of investigation. The Court further observed that it did not desire to place any sort of fetter on the power of investigation, and it would be unwise to impose any kind of time limit, for it is the authority which should be permitted to complete its investigation in a manner as may be desired by it as is permissible. The Court thus held "*the consideration of right of refund in the present factual matrix would be independent of the process of investigation and two cannot be linked together*"

[Source: Karnataka High Court, *Bundl Technologies Private Limited v. Union of India, 2021 SCC OnLine Kar 14702*

(3) ORISSA HIGH COURT RULE AGAINST CANCELLATION OF GST REGISTRATION

M/S. Bright Star Plastic Industries (Petitioner) filed a Petition against impugned Order dated April 05, 2021, passed by Additional Commissioner of CT & GST (Respondent) wherein the Respondent rejected the Petitioner's appeal questioning the Order passed by the Learned Proper Officer (LPO)

rejecting the Petitioner's application for revocation of cancellation of his GST Registration on January 07, 2021, under Section 30 (2) of the Odisha Goods and Services Tax Act, 2017 (OGST Act). The Hon'ble Orissa High Court on 4th October 2021 observed that the Respondent had failed to show that the Petitioner as a purchasing dealer deliberately availed the ITC in respect of the transactions with an entity knowing that such an entity was not in existence. Therefore, the Court revoked the GST Registration Cancellation and further held that for the fraud committed by the selling dealer, which resulted in cancellation of its registration, there cannot be an automatic cancellation of the registration of the purchasing dealer.

[Source: *Bright Star Plastic Industries v. Additional Commissioner, 2021 TIOL 1965 HC ORISSA GST*]

(4) RECTIFICATION OF ERRORS PERMISSIBLE ONLY AT INITIAL STAGES' – SUPREME COURT DISMISSES BHARTI AIRTEL'S PLEA FOR REFUND OF RS.923 CRORE

The Supreme Court barred telecom major Bharti Airtel (the Respondent) from seeking Goods and Services Tax (GST) refund of ₹ 923 crore by rectifying return. Supreme court observed that “*despite...an express mechanism provided by Section 39(9) of the Central Goods and Services Tax Act, 2017 (“the CGST Act”) read with Rule 61 of the Central Goods and Services Tax Act, 2017 (“the CGST Rules”) it was not open to the High Court to proceed on the assumption that the only remedy that can enable the Respondent to enjoy the benefit of the seamless utilization of the ITC is by way of rectification of its return submitted in Form GSTR 3B for the relevant period in which the error had occurred. Any unilateral change in such return as per the present dispensation, would have cascading effect on the recipients and suppliers associated with the concerned transactions”.*

[Source: *Union of India v. Bharti Airtel Ltd. and Others, CIVIL APPEAL NO. OF 2021 (ARISING OUT OF S.L.P. (C) NO. 8654 OF 2020)*]

(5) MERE DISPATCH OF ORDER DOES NOT IMPLY THE SERVICE AND RECEIPT OF ORDER

In the matter of M/s Ghadshyam Enterprises Vs. Commissioner Central Goods & Services Tax [Service Tax Appeal No. 50783 of 2020 (SM) dated August 18, 2021], the Hon'ble Customs, Excise and Service Tax Tribunal (“CESTAT”), New Delhi has held that mere dispatch of the order cannot be considered as service. The period of 2 months for filing the appeal has to reckon not from the date of the order announced but from the date of receipt of said order by the Appellant in terms of Section 35 of Central Excise Act. Therefore, the appeal was accepted in the favor of the M/s Ghadshyam Enterprises.

[Source: *CESTAT* [website \(https://cestatnew.gov.in/\)](https://cestatnew.gov.in/)]

(6) GST REGISTRATION CANNOT BE CANCELLED IF THE SCN NOT ISSUED IN PRESCRIBED TEMPLATE

In the matter of Suresh Trading Corporation Vs. the Assistant Commissioner (Circle) of SGST, Tamil Nadu [W.P. No. 21109 of 2021, dated 01.10.2021], the Hon'ble Madras High Court set aside the impugned order dated 10.10.2019 for cancellation of GST Registration solely on the ground that SCN which preceded the same has not been issued in the prescribed template i.e., REG- 17 under Rule 22(1) of TNGST Rules as it does not mention the date and time of personal hearing.

Further, the High Court also directed the department to issue SCN afresh in prescribed template/format inter-alia setting out the date, time and venue for personal hearing and carry the same to its logical end as expeditiously as possible.

[Source: *website of the Madras High Court*]

(7) PRE-DEPOSIT FOR FILING APPEAL UNDER GST TO BE PAID THROUGH ELECTRONIC CASH LEDGER

The Hon'ble Orissa High Court in the matter of M/s Jyoti Construction Vs. Deputy Commissioner of CT & GST, Jaipur and another [Writ Petition (C) Nos. 23508, 23511, 3513, 23514 and 23521 of 2021] has held that the Electronic Credit Ledger cannot be used to give the pre-deposit for the purpose of filing an appeal under GST and the

payment for the same must be done through Electronic Cash Ledger.

[Source: *website of the Orissa High Court*]

(8) SERVICE TAX NOT PAYABLE ON SERVICES PROVIDED TO GOVERNMENT COMPANY FOR 'TRANSMISSION OF ELECTRICITY'.

The Customs, Excise and Service Tax Appellate Tribunal, Delhi in the case of M/s Vivek Constructions Vs. Commissioner of Central Excise and Central Goods & Service Tax [Service Tax Appeal No. 50791 of 2019] has held that no Service Tax is payable on services provided to a Government Company for 'transmission of electricity'.

[Source: *CESTAT website (https://cestatnew.gov.in/)*]

INTELLECTUAL PROPERTY RIGHTS

(1) RISE BREWING CO. SUES PEPSICO FOR TRADEMARK INFRINGEMENT



The United States District Court, Southern District New York *via* its decision dated November 3, 2021 on a plea filed by Plaintiff RISE Brewing Co. (Rise and Shine Corporation) granted a preliminary injunction in its favour, restraining Defendant PepsiCo from infringing its "RISE" registered trademarks. Plaintiff brought this infringement action under the "reverse confusion" theory, which exists where a junior user selects a trademark that is likely to cause consumers to

believe, erroneously, that the goods marketed by the senior user are produced by the junior user. Plaintiff also substantiated its claims by submitting that the mark "RISE" is suggestive mark and not directly descriptive. The Judge also said that Plaintiff appears to have been the exclusive user of the principal term "RISE" to identify a single-serving, canned caffeinated beverage until the launch of Defendant's product, although there are other commercial uses of the term "RISE" among morning beverages.

(Source: *Riseandshine corporation d/b/a Rise Brewing v. PepsiCo, INC., 21 Civ. 6324(LGS)*)

(2) AIFCC FILES APPLICATION FOR REGISTRATION AS A COPYRIGHT SOCIETY FOR ALL UNDERLYING WORKS IN A CINEMATOGRAPHIC FILM/SOUND RECORDING

A new application has been received for the registration of the All-India Film Chamber of Commerce as a Copyright Society under *Section 33* of Copyright Act, 1957. The said society is said to be engaged in the business of issuing and granting licences in respect of literary, dramatic, musical, and artistic works incorporated in cinematograph films and sound recordings. The office has invited to submit its objections/comments from the stakeholders within thirty days from the date of publication of this notice.

(Source: *Copyright Office vide public notice dated 27.10.2021*)

(3) GOOGLE CANNOT TAKE ADVANTAGE OF SECTION 79 OF INFORMATION TECHNOLOGY ACT, 2000 SAYS DELHI HIGH COURT

A suit filed by DRS Logistics Ltd (Plaintiff) against Defendants Google and Just Dial for restraining Defendants from the use of Plaintiff's registered trademarks AGARWAL and / or AGGARWAL PACKERS & MOVERS and / or DRS LOGISTICS which constitute a part of ad-title, ad-text, URL and meta-tag or keywords. The Plaintiffs argued that several third-party infringers use the services of Google for inserting their infringing advertisements when a user on the internet looks for them by typing "Agarwal Packers & Movers".

Plaintiffs contended that despite several requests made, Google did not stop the use of infringing advertisements on their platforms. Google argued that its Google Ads program is an advertising service where any advertiser can create and display an online advertisement in relation to its website. The Court took note of the fact that Google cannot take advantage of *Section 79* of Information Technology Act, 2000 and it is obliged to ascertain that the keyword chosen by the advertiser is not a trademark and even if it is a trademark the same has been licensed or assigned. The Court, in light of provisions of *Sections 29(6)* and *29(8)* of TM Act, held that the use of the mark as meta-tags was held to be infringement of trademark and invisible use of trademark to divert the traffic from proprietors' website to the advertisers' / infringers' website shall amount to use of mark.

(Source: M/s DRS Logistics (P) LTD & Anr. v. Google India Pvt. Ltd. & Ors., CS(COMM) 1/2017)

(4) THE HIMALAYAN WELLNESS CO. & ORS V. ABONY HEALTHCARE LTD.

HIMALAYA WELLNESS (Plaintiff) had filed a suit before the Delhi High Court against Abony Healthcare (Defendants) restraining them from infringing the registered trademark/trade name of Plaintiff "Liv.52". Plaintiff is a well-known company, involved in the manufacture of ayurvedic medicaments, preparations and pharmaceutical grade herbal and healthcare products since 1930. "Liv.52", a formulation for treatment of hepatic ailments, was launched in 1955. It is available in the market in different variants; such as, "Liv 52 Syrup", "Liv 52 DS Syrup", "Liv 52 Tablets" etc. All the products are sold under Plaintiffs' umbrella brand 'Himalaya'. Plaintiffs claim to be clearing its products in bottles and containers, having a distinctive orange, green and white design, which, over a period of time, has become indelibly associated with Plaintiff's product.

(Source: Himalayan Wellness company & Ors. v. Abony Healthcare Limited, CS(COMM) 476/2021)

(5) CROSSFIT TRADEMARK SAGA

CrossFit, LLC (Plaintiff) filed a suit before the Delhi High Court against RTB Gym and Fitness Centre (Defendant) seeking an ex-parte injunction restraining Defendant from using in the course of trade the mark 'CROSSFIT' or any other mark/logo identical and/or deceptively similar to the Plaintiff's mark 'CrossFit'. Plaintiff is a renowned US-based company providing courses and other affiliated services regarding physical fitness and nutrition. Plaintiff first registered as LLC as Cross-Fit in 1996. In 2007, Plaintiff created the popular "CrossFit Games" which culminate in the ceremonious crowning of the "Fittest Man and Woman on Earth". In 2009, Plaintiff started its operations in India and applied for trademark registration of the 'CROSSFIT' word mark under Class 99 (comprising Classes 25 and 41) in 2011. In 2014, Plaintiff applied for international registration of the 'CROSSFIT' device mark. Plaintiff came to know about Defendant using the identical mark "CROSSFIT" for imparting identical services of gym and fitness.

(Source: Cross Fit LLC v. RTB GYM and FITNESS Centre, CS(COMM) 543/2021)

(6) SABYASACHI CRACKS DOWN COPYCATS

Sabyasachi Mukherjee, a renowned fashion designer, operating his Limited Liability Partnership Sabyasachi Calcutta LLP (Plaintiff) filed a design infringement suit before the Delhi High Court against Defendants Mr Ankit Keyal (Proprietor of Asiana Couture) restraining Defendants from infringing the designs, which are marketed by Plaintiff under the names, "Rusheeda Lehenga" (Reg. No. 85668) and "New Botanical Lehenga/P.C. Lehenga" (Reg. No. 83943). Plaintiff says that in respect of both designs, the registration attests to novelty with respect to all views of the design, i.e. the front view, the back view, the left side view and the right side view. In all views, for both designs, the registration attests to novelty residing in the surface ornamentation of the garment set. Plaintiff claims that Defendants are using a design, which is similar to the registered designs of Plaintiff as to constitute piracy. The Bench of Justice C Hari Shankar issued an injunction restraining Defendants from infringing the registered designs of Plaintiff.

(Source: Sabyasachi Calcutta LLP v. Mr. Ankit Keyal, CS(COMM) 533/2021)

(7) TARUN WADHWA V. SAREGAMA INDIA LTD. & ORS.

The Bombay High Court Bench of Justice G.S. Patel had recently given a ruling on the aspect of copyright infringement and breach of confidentiality. Mr. Tarun Wadhwa, a well-known film maker (Plaintiff) filed a suit against Saregama India Ltd. and Mr Mahesh Iyer (Defendants) that they illicitly used his material, communicated in circumstances of confidentiality, to make a Marathi film, thereby infringing his copyright in one, or possibly three, published works. Plaintiff finalized two synopsis under the title 'Haila! Zombie'. which he got registered with Screen Writers' Association (SWA). He shared these synopsis with Saregama, which was routed through one of Saregama's divisions, Yoodle Films. Saregama asked him to make some revisions in the first draft of the screenplay. Thereafter, Saregama refused any further collaboration with the Plaintiff and went on making a Marathi film 'Zombivli'. Mahesh Iyer, the other Defendant joined when Saregama had disengaged with the Plaintiff, who developed a similar concept note according to the Plaintiff.

(Source: Tarun Wadhwa v. Saregama India Ltd. & Ors., Comm. IP Suit (L) No. 4366/2021)

(8) US-BASED META COMPANY TO SUE FACEBOOK FOR INFRINGEMENT

Recently, Facebook announced a rebrand for its holding company as 'Meta'. Soon after this Arizona-based company Meta PCs files lawsuits against Meta, holding company of Facebook, Instagram and WhatsApp. The company filed for 'Meta' trademark in August, a year after it started operating.

(Source: Business standard)

ENVIRONMENT LAWS

(1) NITI AAYOG AND UNDP LAUNCHES HANDBOOK ON SUSTAINABLE MANAGEMENT OF PLASTIC WASTE FOR URBAN LOCAL BODIES (ULBs)



NITI Aayog and United Nations Development Programme (UNDP) India have launched a handbook to promote sustainable management of plastic waste in the country. The handbook covers crucial components for sustainable urban plastic waste management including, technical models, recovery facilities, IEC and digitisation, and good governance.

ULBs are mandated under the Municipal Solid Waste Management Rules, 2016, and the Plastic Waste Management Rules, 2016, to manage municipal solid waste and plastic waste at the city level.

(Source: Press Release No. 1763333, dated 12.10.2021)

(2) ALL UNIVERSITIES TO UNDERTAKE AWARENESS PROGRAMS TO AVOID USE OF SINGLE USE PLASTICS

The University Grants Commission (UGC) has directed all universities to undertake awareness programs to avoid use of single use plastics as part of 'Azadi ka Amrit Mahotsav'. An action taken report shall be prepared explaining the activities undertaken and the same shall be mailed to the mail-id provided by the commission.

(Source: Circular No. D.O. No. 14-9/2021(CPP-II), dated 08.10.2021)

[End of Newsletter]
