

MONTHLY NEWSLETTER

NOVEMBER 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.

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RBI & FEMA

(1) RBI ISSUES MASTER DIRECTIONS ON INTEREST RATE ON DEPOSITS



The Reserve Bank of India (**RBI**) has decided to permit banks to offer interest rates on Foreign Currency (Non-resident) Accounts (Banks) Scheme (FCNR) deposits using widely accepted 'Overnight Alternative Reference Rate (ARR) for the respective currency' with upward revision in the interest rates ceiling by 50 bps.

RBI has amended the following provisions under Reserve Bank of India (Interest Rate on Deposits) Directions, 2016.

- (i) As per section 19(d) the Interest on floating rate deposits shall be paid within the ceiling of swap rates for the respective currency/ maturity and in case of fixed rate deposits, interest shall be paid within the ceiling of Overnight Alternative Reference Rate for the respective currency/ maturity.
- (ii) The Overnight Alternative Reference Rate* for the respective currency /SWAP

rates as on the last working day of the preceding month shall form the base for fixing ceiling for the interest rates offered effective in the following month.

- (iii) The Overnight Alternative Reference Rate for the respective currency / Swap rates quoted/displayed by Foreign Exchange Dealers Association of India (FEDAI) shall be used as the reference for arriving at the interest rates on FCNR (B) deposits.

(Source: RBI Circular No. DOR.SOG (SPE). REC. No 67/13.03.00/2021-22 dated 11-11-2021)

(2) RBI NOTIFIES INTEGRATED OMBUDSMAN SCHEME, 2021

The RBI has published the integrated ombudsman scheme, 2021 which provides cost-free redress of customer complaints involving deficiency in services rendered by entities regulated by the RBI.

The scheme combines the RBI's three existing Ombudsman schemes: the banking ombudsman scheme from 2006, the ombudsman scheme for non-banking financial enterprises from 2018, and the ombudsman scheme for digital transactions from 2019. The Scheme now includes the Non-Scheduled Primary Co-operative Banks with a deposit size of 50 crore and above, in addition to combining the three previous schemes. By making the RBI Ombudsman mechanism jurisdiction-neutral, the Scheme follows the 'One Nation, One Ombudsman' principle.

(Source: RBI Press Release 2021-2022/1184 dated 12-11-2021)

(3) RBI ANNOUNCES THE ACTIVATION OF RBI RETAIL DIRECT SCHEME

RBI has launched the Retail Direct Scheme which is aimed at enhancing access to government securities (G-sec) market for retail investors.

Individual retail investors can create a Retail Direct Gilt (RDG) Account with the Reserve Bank of India using an online site (<https://rbiretaildirect.org.in>) under this plan. The investors must have a PAN issued by the Income Tax Department, a rupee savings bank account in India, KYC documentation, and a registered email

and mobile number. The following methods can be used to make investments:

- (i) Primary issuance of government securities: Investors can place bid as per the non-competitive scheme for participation in primary auction of government securities and procedural guidelines for SGB issuance.
- (ii) Secondary market: Investors can buy and sell government securities on NDS-OM ('Odd Lot' and 'Request for Quotes' segments).

(Source: RBI Press Release 2021-2022/1183 dated 12-11-2021)

(4) RBI INTRODUCES PRUDENTIAL NORMS FOR INCOME RECOGNITION, ASSET CLASSIFICATION AND PROVISIONING FOR THE ADVANCES PORTFOLIO OF THE BANKS

The RBI has issued a master circular on Income Recognition, Asset Classification, Provisioning and Other Related Matters. In order to reflect a bank's actual financial health in its balance sheet and as per the recommendations made by the Committee on Financial System, the Reserve Bank has introduced, in a phased manner, prudential norms for income recognition, asset classification and provisioning for the advances portfolio of the banks.

With the introduction of prudential norms, the Health Code-based system for classification of advances has ceased to be a subject of supervisory interest. As such, all related reporting requirements, etc. also ceased to be a supervisory requirement but could be continued in the banks entirely at their discretion and the management policy.

(Source: RBI Circular No. DOR.No.STR. REC.64/21.04.048/2021-22 dated 22-10-2021)

FOREIGN TRADE

(1) DGFT TO DE-ACTIVATE IMPORT EXPORT CODES(IECs) NOT UPDATED AFTER JANUARY 01, 2014



The Directorate General of Foreign Trade (DGFT) has stated that all IECs which have not been updated after 01.01.2014 shall be de-activated with effect from 6th December 2021. The concerned IEC holders are provided a final opportunity to update their IEC in this interim period till 05.12.2021, failing which the given IECs shall be de-activated from 06.12.2021.

However, Any IEC where an online updation application has been submitted but is pending with the DGFT Regional authorities (RA) for approval shall be excluded from the de-activation list.

(Source: Trade Notice No. 25/2021-22, dated 19-11-2021)

(2) DGFT EXTENDS THE DATE FOR MANDATORY E-FILING OF NON-PREFERENTIAL CERTIFICATE OF ORIGIN (CoO)

DGFT has extended the transition period for mandatory filing of applications for Non-Preferential Certificate of Origin through the e-CoO Platform till 31st January 2022.

The existing systems for submitting and processing non-preferential CoO applications in manual/paper mode is being allowed for the stated time period and the online system is not being made mandatory.

(Source: Trade Notice No. 24/2021-22, dated 15-11-2021)

(3) DGFT PROVIDES BEST PRACTICES FOR SAFE CUSTODY OF DIGITAL TOKEN, DOCUMENTS, SCRIPS AND SECURE ONLINE TRANSACTIONS FOR EXPORTERS

DGFT has provided following best practices for safe custody of digital tokens, documents, scrips and secure online transactions. Exporters are advised to ensure that duty credit scrips are accounted for and reflected in their online module, as such scrips have not been transferred/utilized by them.

(Source: Trade Notice No. 26/2021-22, dated 26-11-2021)

(4) DGFT EXTENDS TIMELINE TO APPLY FOR ALLOCATION OF TARIFF RATE QUOTA (TRQ) UNDER INDIA-MAURITIUS CECTA

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

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

(Source: File No. 01/93/180/63/AM-21/PC-2[B]/E-27749, dated 22-11-2021)

CORPORATE LAWS

(1) SC ON LIABILITY OF DIRECTORS/ MANAGERS OF COMPANY

The Hon'ble Supreme Court of India, boldly held on October 29, 2021, in the case of Dayle De'Souza vs. Government of India, that a person cannot be prosecuted or punished merely owing to their position in a company. The Apex Court stated that being a director, manager, secretary or any other office holder in a company is not a reason enough to be prosecuted or punished unless the person had consented to or was

involved in the offence or if the offence took place due to his negligence.

(Source: Dayle De'Souza v. Government of India [SPECIAL LEAVE PETITION (CRL.) NO. 3913 OF 2020 dated October 29, 2021])

(2) NYKAA MADE A DEBUT IN THE INDIAN STOCK EXCHANGE

Nykaa made a debut in the Indian stock exchange, with a premium of over 82 % at Rs. 2,054 per share in the NSE, which was exponentially higher than their IPO issue at Rs. 1,125 per share. It has successfully crossed a market capitalization of Rs. 1 lakh crore. The shares subsequently crossed Rs. 2,205, nearly double in intra-day trading. The company's market value crossed behemoths like Hero Moto Corp Ltd., Bharat Petroleum Ltd., Tata Consumer, Cipla and UPL.

(3) SC ON FREEZING VOTING RIGHTS OF SHAREHOLDERS

The Supreme Court of India stayed the criminal proceedings in the FIR filed by the Essel Group against Yes Bank. The Apex court is of the opinion that the police in Gautam Buddha Nagar in Uttar Pradesh cannot be allowed to freeze voting rights of shareholders of the company. Not only were the proceedings stayed but the operation of two notices to the stock exchange and National Securities Depository Limited issued by the G.B. Nagar Police were also stayed. A Bench comprising Justices D.Y. Chandrachud, AS Bopanna and Vikram Nath stated "Using criminal procedure to achieve results of civil proceedings will have a dangerous consequence. Tomorrow, anybody will catch a police officer and stall the voting of a shareholder. This will be the easiest thing to do"

(Source: Yes Bank Ltd. vs State of UP & Ors. SLP(Cr) No. 009192 - / 2021)

(4) MCA ISSUES PUBLIC NOTICE ON DISQUALIFICATION OF DINS.

The Ministry of Corporate Affairs had flagged the DINs of Directors found to be disqualified under sub-section 2(a) of section 164 of the Companies Act, 2013 w.e.f. 1st November 2016 for a period of five years.

Earlier the ministry deactivated around 19 lakhs Director Identification Numbers in the MCA21 Database due to non-filing of Know Your Client.

As per clause (a) of Section 164(2) a Director who has not filed financial statements or annual returns for any continuous period of three financial years; will be disqualified for the period of 5 Years. DINs of such directors were flagged by MCA.

However, since the period of 5 years is over, DINs of disqualified directors which were flagged since November 1, 2016, will be de-flagged.

(Source: Public Notice, dated 11.11.2021)

SECURITIES LAWS AND CAPITAL MARKETS

(1) SEBI CLARIFICATION REGARDING ACTIVITIES RELATED TO UNREGULATED PRODUCT BY DEBENTURE TRUSTEES

The Securities Exchange Board of India ["SEBI"] has advised the debenture trustees to disassociate themselves from undertaking activities related to unregulated products such as digital gold. Any dealing in activities related to unregulated product by Debenture Trustees may entail action as deemed appropriate under the SEBI Act, 1992 and regulations framed thereunder.

(Source: Press Release No. 32/2021, dated 03.11.2021)

(2) SEBI PROVIDES NORMS FOR SILVER EXCHANGE TRADED FUNDS (SILVER ETFs) AND GOLD EXCHANGE TRADED FUNDS (GOLD ETFs)



The SEBI has provided the Norms for Silver Exchange Traded Funds (Silver ETFs) and Gold Exchange Traded Funds (Gold ETFs). A Silver ETF Scheme shall invest at least 95% of the net assets of the scheme in Silver or Silver related instruments. To enable the investors to take an informed decision, the SID of Silver ETFs shall, inter-alia, disclose the following:

- (i) Tracking error and tracking difference;
- (ii) Market risk due to volatility in silver prices;
- (iii) Liquidity risks in physical or derivative markets impairing the ability of the fund to buy and sell silver;
- (iv) Risks associated with handling, storing and safekeeping of physical silver;
- (v) Applicable tax provisions.

(Source: Circular No. SEBI/HO/IMD/DF2/CIR/P/2021/668, dated 24.11.2021)

(3) SEBI INVESTOR CHARTER FOR RTAs

The SEBI, in order to facilitate investor awareness about various activities where an investor has to deal with RTAs for availing Investor Service Requests, has developed an Investor Charter for RTAs, inter-alia, detailing the services provided to Investors, Rights of Investors, various activities of RTAs with timelines, Dos and Don'ts for Investors and Grievance Redressal Mechanism.

All registered Merchant Bankers are hereby advised to disseminate the Investor Charter on their websites/through e-mail and to display the Investor charter at prominent places in offices.

(Source: Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2021/670, dated 26.11.2021)

COMPETITION LAWS

(1) CCI IMPOSES PENALTY ON PAPER MANUFACTURERS FOR INDULGING IN CARTELISATION

The Competition Commission of India (CCI) pronounced its final order on 17.11.2021 regarding Anti-competitive conduct in the paper manufacturing industry, The companies involved in the matter were manufacturing paper from agricultural waste and recycled wastepaper as well as an association, which were contriving provisions of S.3(1) of the Competition Act, 2002 r.w. S.3(3)(a), the sections prohibit anti-competitive agreements.

The CCI ruled that these enterprises as well as an association were guilty of indulging in activities of cartelisation in fixing the prices of writing and printing paper. The DG notes the period of the cartel to be from Sept. 2021 till March 2013.

The case was filed Suo motu by the commission due to certain material found during ongoing investigations of some other two cases. Though 21 original paper manufactures, and the association were investigated, only 10 such paper manufactures and the association were found guilty. Hence, CCI imposed a penalty of Rs. 5 lakhs on each of the 10 paper manufacturers and further a penalty of 2.5 lakh was imposed on the association for providing its platform for anti-competitive activities. The CCI also directed the enterprises, the association and their officials who are held liable U/S. 48 of the Competition Act, 2002, to cease and desist from indulging in any anti-competitive conduct in the future.

(Source: Press Release No. No. 52/2021-22 dated 18-11-2021)

(2) CCI APPROVES ACQUISITION BY HDFC LIFE INSURANCE COMPANY LIMITED (ACQUIRER) OF 100% SHAREHOLDING IN EXIDE LIFE INSURANCE COMPANY LIMITED (TARGET) UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002

The proposed combination approved by CCI consists of acquisition of fully paid-up equity shares, representing 100% of Target by the acquirer from Exide Industries limited. After completion of the

share acquisition, Exide life, which will be wholly owned by a subsidiary of HDFC life, is to be merged with HDFC Life. The Acquirer HDFC life is an insurance company registered with Insurance regulatory and development authority of India (the IRDAI) and it has two wholly owned subsidiaries, HDFC Pension management company limited and HDFC International Life and Re Company limited. The target is also a registered life insurance company with the IRDAI and doesn't have any subsidiaries.

The acquisition is expected to be completed in 2022 and is subject to regulatory and other approvals, after completion of acquisition, the process of merger of Exide life into HDFC life will be initiated.

(Source: Press Release No. 50/2021-22 dated 02-11-2021)

(3) CCI APPROVES ACQUISITION OF MINORITY STAKE IN DELHIVERY LIMITED (DELHIVERY) BY FEDEX EXPRESS TRANSPORTATION AND SUPPLY CHAIN SERVICES (INDIA) PRIVATE LIMITED (FEDEX INDIA) AND ACQUISITION OF CERTAIN OPERATING ASSETS OF FEDEX INDIA AND TNT INDIA PRIVATE LIMITED (TNT) BY DELHIVERY

The proposed combination of acquisition relates to acquisition of minority stake in Delhivery by FedEx India and acquisition of operating assets of FedEx India and TNT by Delhivery, the parties also intend to enter into certain interconnected and ancillary transactions.

FedEx India offers logistics solutions in India under the FedEx brand providing express deliveries, warehousing and supply chain management/third party logistics services. FedEx India also caters to retail customers and provides a wide range of shipping solutions for all business needs. Delhivery is engaged in logistics services in India and caters to enterprises across different businesses and models. TNT India is a part of FedEx group and also provides logistics services in the form of express parcel deliveries, special services and freight services.

(Source: Press Release No. 53/2021-22 dated 23-11-21)

(4) CCI APPROVES ACQUISITION OF 71.25% SHAREHOLDING OF ASK INVESTMENT MANAGERS LIMITED BY BCP TOPCO XII PTE LTD.



The Acquirer BCP TopCo XII Pte Ltd. is an affiliate of funds advised or managed by affiliates of the Blackstone Group Inc. the principal activity of the acquirer is of investment holding and related activities, currently the acquirer does not have business operations in India or worldwide. ASK investment managers limited is an asset and wealth management company with an established client base in India. The target ASK investment managers limited is engaged in the business of providing financial services. The proposed combination involves acquisition of 71.25% shareholding of the Target by the Acquirer.

(Source: Press Release No. 51/2021-22 dated 15-11-21)

INDIRECT TAXES AND CUSTOMS

(1) GUIDELINES FOR DISALLOWING DEBIT OF ELECTRONIC CREDIT LEDGER UNDER RULE 86A OF CGST RULES 2017

The Central Board of Indirect Taxes and Customs has issued guidelines for disallowing debit of input tax credit (“ITC”) from electronic credit ledger. CBIC has instructed the department that, before disallowing the debit of ITC from electronic credit ledger, there must be “reasons to believe” that the input tax in the ledger is either ineligible or has been fraudulently availed by the registered person and

such reasons should be based on one or more following grounds:

- a) Credit is availed by the registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or not conducting business from the registered place;
- b) Credit is availed by the registered person on invoices or debit notes, without actually receiving goods or services or both;
- c) Credit is availed by the registered person on invoices or debit notes on which tax has not been paid to the government;
- d) The registered person claiming the credit is found to be non-existent or not conducting any business from registered place;
- e) Credit is availed by the registered person without any invoice or debit note or any other valid document for it

The guidelines further prescribe the proper authority for exercising such powers and the monetary limits of the authority under Rule 86A. CBIC instructs the amount disallowed for debit to not be more than the ITC amount and that such action to remain valid for one year only.

[Source: *Instruction No. 20/16/05/2021-GST/1552 dt. 2nd November 2021 released by Central Board of Indirect Taxes and Customs, GST Policy Wing*]

(2) GST REGISTRATION CANNOT BE CANCELLED ON HYPER-TECHNICAL GROUNDS

GST registration of the petitioner was cancelled on the grounds of non-existence of the petitioner at the registered place. Petitioner contended that in order to avoid the violation of COVID-19 protocol, the petitioner was carrying on business from some other place and has duly paid the tax to the State from time to time for carrying business which has been received and recorded by the State. The Court held that petitioner’s activity of carrying on the business from some other place cannot be called illegal and hence cancelling registration on such hyper-technical grounds is not correct. It further observed that “*the Respondent (Department) concerned will make a physical inspection of the premises in question upon notice to the petitioner and give opportunity to the petitioner to place all the documents to satisfy the respondent*”

concerned about the actual physical possession of the petitioner at the premises in question and the respondent concerned may verify the existence of the petitioner at the premises in question as well as carrying on business activity of the petitioner from the premises in question from the local people and take a final decision by not taking a hyper technical view and pass a reasoned and speaking order after giving opportunity of hearing to the petitioner or its authorized representatives.”

[Source: M/s. CIGFIL Retail Pvt. Ltd. v. Union of India, (2021-VIL-800-CAL)]

(3) THE REQUIREMENT OF PRE-SHOW CAUSE NOTICE CONSULTATION NOT MANDATORY FOR CERTAIN CASES

The Central Board of Indirect Taxes and Customs issued clarifications that exclusion of pre-show cause consultation notice under Central Excise Act, 1944 or the Finance Act, 1994 is case specific and therefore, this consultation is not mandatory for the cases booked for recovery of taxes or duties for reason of fraud, collusion, wilful misstatement, suppression of facts or contravening any provisions of the aforesaid Acts or the rules made thereunder.

[Source: Circular No. 1079/03/2021-CX, dt. 11th November 2021, released by Ministry of Finance, Department of Revenue, CBIC]

(4) DYNAMIC QR CODE CANNOT BE USED BY THE RECIPIENT LOCATED OUTSIDE INDIA FOR MAKING PAYMENT TO THE SUPPLIER IN INDIA

The Central Board of Indirect Taxes and Customs clarified that wherever the recipient of services is located outside India and an invoice is issued to him for the supply of services, that are located in India, as per the provisions of IGST Act 2017 and payment received by the supplier is in convertible foreign exchange or in Indian Rupees as permitted by RBI, then there is no requirement of having a Dynamic QR Code and the invoice may be issued without such Code.

[Source: Circular No. 165/21/2021-GST dt. 17th November 2021, released by Ministry of Finance, Department of Revenue, CBIC]

(5) E-COMMERCE OPERATORS WILL PAY GST ON RESTAURANT AND PASSENGER TRANSPORT SERVICES

The Ministry of Finance, in the exercise of the powers under Section 9(5) of the CGST Act 2017, notified that the e-commerce operators will pay tax for the supply of: a) services of transportation of passengers by omnibus or any other motor vehicle and b) ‘restaurant service’ except services supplied by restaurants, eating joints etc located at premises providing hotel accommodation services. These food delivery aggregators, including online food delivery apps, will pay taxes as if they are the suppliers of such services.

[Source: Notification No. 17/2021 (Rate) – Central Tax dt. 18th November 2021, released by Ministry of Finance, Dept. of Revenue, GOI]

(6) IF THERE IS A SUBSTANTIAL COMPLIANCE, BENEFIT OF INPUT TAX CREDIT CANNOT BE DENIED ON GROUNDS OF TECHNICALITIES

M/s. Bharat Electronics Ltd. (“the Respondent”) while filing Form TRAN-1, made an error in disclosing the correct amount in Column 6 of the form due to the misconstruction as to the purpose of the said column in the Form. The Madras High Court in an earlier decision directed the appellant to open the portal and enable the respondent to file a revised TRAN-1 form. Aggrieved by the order, the appellant preferred this intra court appeal. Here the court upholding the previous decision held that Input Tax Credit (ITC) is a beneficial scheme that has been framed for the larger public interest and therefore if there is substantial compliance, there can be no denial of benefit of ITC on grounds of technicalities.

[Source: Commissioner of GST and Central Excise and Ors. v. M/s. Bharat Electronics Ltd. [W.A.No.2203 of 2021 dt. 18th November 2021]

(7) STATE BOUND TO RECOVER DIFFERENTIAL VAT FROM DEALERS: KERALA HIGH COURT UPHOLDS VALIDITY OF DEMAND NOTICES

When the compounded tax for dealers in articles of gold, ornaments and other metals was amended

retrospectively for the year 2011-12, several writ petitions were filed by various dealers against the collection of differential tax. Such differential tax was held to be legally unsustainable by the single judge, which was appealed by the department before the division bench with the contention that retrospective operation of differential tax was well within the powers of the Government. The Hon'ble court held that the retrospectivity of tax or its collection brought in by the Finance Act 16 of 2011 is not controlled by the validation clause in Section 12 of that Act. The court ruled that *"We are of the view that the State was bound and entitled to recover the differential tax from the dealers and the demand notices were issued in valid exercise of power"*.

[Source: *Commercial Tax Officer v. Chungath Jewellery, WA No. 2312 of 2015*]

(8) MERE DEDUCTION OF TDS DOESN'T CLOSE THE CHAPTER OF TAX LIABILITY UNLESS DEPOSITED IN GOVERNMENT TREASURY

The petitioner, a pilot by profession was an employee of M/s Kingfisher Airlines. The Airlines deducted the Tax Deducted at Source (TDS) at Rs. 7,20,100/- for the Assessment Year 2009-10 and Rs. 8,70,757/- for the Assessment Year 2011-12 and since then the amount was not deposited by the Airlines in the Central Government Account. The credit when claimed by the petitioner was denied by the respondent. The Hon'ble Court held that the department is precluded from denying the benefit of the tax deducted at source by the employer during the relevant financial years to the petitioner. *"The credit of the tax shall be given to the petitioner and if in the interregnum any recovery or adjustment is made by the respondent, the petitioner shall be entitled to the refund of the same, with the statutory interest, within eight (8) weeks from the date of receipt of copy of this order,"* the bench ruled.

[Source: *Kartik Vijaysinh Sonavane v. DCIT - [2021] 132 taxmann.com 293 (Gujarat)*]

(9) ADOPTION OF ICT AND INTEGRATION OF LIMBS WITH CESTAT, ITAT AND OTHER TRIBUNALS TO REDUCE DELAY IN LITIGATION MANAGEMENT

The Supreme Court noticed that between January and March 2021, massive number of departmental appeals relating to indirect taxes were being filed

with a huge delay of 400-500 days due to various reasons. Taking note of these reasons and considering the need of institutional reform, the Supreme Court passed order on 27th August 2021 for constituting a committee to adopt Information and Communication Technology ("ICT") initiatives to reduce such delay. Accordingly, Committee submitted the recommendations for adoption of ICT for Tribunals which was now issued as directives by the court. The court further directed to extend the integration of Legal Information Management & Briefing System (LIMBS) with the IT System to Customs Excise and Service Tax Appellate Tribunal (CESTAT), Income Tax Appellate Tribunal (ITAT) and other Tribunals.

[Source: *C.C.E. AND S.T., Surat I v. Bilfinder Neo Structo Construction Ltd. Civil Appeal No(s).674/2021 dt. November 29, 2021*]

INTELLECTUAL PROPERTY RIGHTS

(1) DELHI HIGH COURT DISMISSES BHARATPE PLEAS SEEKING REMOVAL OF PHONEPE TRADEMARKS

BharatPe had filed six petitions in the Delhi HC seeking removal of PhonePe's registered trademarks which were dismissed. The issue between these two companies and the mark 'Pe' has been existing since 2018. PhonePe claims that the term 'Pe' is a distinctive part of their name and the usage of the same by BharatPe amounts to infringement of their mark. PhonePe stated that the company will move forward with the other matters in relation to the mark 'Pe' filed against 'Bharat Pe' and 'Post Pe'.

(Source: *Phonepe Pvt. Ltd. vs. Resilient Innovations Pvt. Ltd., COMM IP SUIT (L) No. 24136/2021*)

(2) BACARDI AND COMPANY LIMITED VS. BAHETY OVERSEAS PRIVATE LIMITED

The Plaintiff Bacardi is a well-known manufacturer of alcoholic beverages and manufactures and sells rum-based beverages, mixed with various fruit

essences, under the name “BREEZER”. Bahety Overseas is a manufacturer of non-alcoholic beverages. Previously, it had applied for registration of the mark “FREEZ” which was rejected and later registration was obtained for the mark “FREEZMIX.” A cease-and-desist notice was also sent by Bacardi for the usage of the mark “FREEZ” which was similar to its mark “BREEZER”. Thereafter, Bacardi filed an infringement suit against Bahety for using this trademark “FREEZMIX”. It was observed by the court that although the two marks are not similar visually, they are phonetically similar and that even though Bahety’s trademark is FREEZMIX, the suffix “mix” is in such small characters that it’s barely noticeable at first glance.

(Source: Bacardi And Company Limited vs. Bahety Overseas Private Limited & Ors, Cs(Comm) 464/2021)

(3) ACADEMY AWARD-WINNING FILM “LA LA LAND” A FAMOUS TRADEMARK

In an appeal decision, the Japan Patent Office (JPO) overturned the examiner’s rejection and decided to register the trademark “LA LA LAND” in class 25 by finding no likelihood of confusion with the Academy Award-winning film “La La Land.” A Los Angeles based private equity firm, Tsunami Capital Group, Inc., filed a trademark application for the word “LA LA LAND” in standard character on various goods in class 25 including clothing, footwear, headwear, and sportswear with the JPO on July 1, 2019. The JPO examiner rejected the mark in contravention of Article 4(1)(xv) of the Japan Trademark Law by stating that the word “La La Land” has been widely recognized as a title of the Academy Award-winning film among relevant consumers and traders. If so, the consumers at the sight of the applied mark used on the designated goods in class 12 are likely to conceive it from an entity economically or systematically connected with the filmmaker. The applicant filed an appeal against the refusal on December 16, 2020.

(Source: Appeal case no. 2020-17242, Gazette issued dated: October 29, 2021)

(4) TICTOK SKILL GAMES PVT LTD. V. HEAD DIGITAL WORKS PRIVATE LIMITED

Recently, the Delhi High Court granted an interim injunction to Tictok Skill Games Pvt Ltd against Head Digital Works Private Limited. The Plaintiff, the registered proprietor of the WINZO mark is engaged in the business of a digital gaming. The Plaintiff alleged that the Defendant is a direct competitor and is using the Plaintiff’s trademark as a meta tag/title tag on its website. The Plaintiff averred that a user searching for the Plaintiff’s goods/ services under the WINZO mark on the search engine GOOGLE.CO.IN would see the Defendant’s website with the title “WinZo game-Get Rs.50 instant Free Cash-a23.com” as one of the first search results. As per the Plaintiff, Defendant was riding on the reputation of the Plaintiff.

(Source: Tictok Skill Games Pvt Ltd. v. Head Digital Works Private Limited, CS (COMM) 613/21)

(5) FERRERO SPA & ORS. V. M.B. ENTERPRISES

Ferrero SPA (Plaintiff), a renowned Italian manufacturer of branded chocolate and confectionery products, filed a suit before the Delhi High Court against M.B Enterprises (Defendants) seeking permanent injunction for infringement of trademark, passing off, tarnishment, dilution, unfair competition, damages, rendition of accounts etc in respect of its trademark "NUTELLA" Plaintiff manufactures chocolaty confectionary products and others like "NUTELLA", "KINDER CIOCCOLATO", "TIC TAC", etc. Plaintiffs said that they coined the word "NUTELLA" in year 1964 and began using the distinctive label and the jar for its unique hazelnut chocolate spread. The applications for the word mark and the label "NUTELLA" are registered and subsisting in India as stated.

(Source: Ferrero Spa & Ors. vs. M.B. Enterprises, CS(COMM) 593/2021)

(6) GSK FILES PATENT SUIT AGAINST GLENMARK PHARMA

A suit has been filed by GSK claiming that Glenmark has infringed the Indian patent obtained by GSK for Vilanterol in 2007. Glenmark uses the same ingredients of the drug in its Vilor F and both the drugs are used to treat and prevent pulmonary

diseases. Presently, GSK has approached the court seeking the grant of appropriate damages for the infringement of its patent.

(Source: Sun Pharmaceutical Industries Ltd vs. Glenmark Pharmaceuticals Ltd, FAO-IPD 6/2021)

(7) TRAI LENS ON BROADCASTERS' ARBITRARY CHANNEL PRICING

The Telecom Regulatory Authority of India (TRAI) has stepped in to assert that it would evaluate the present rules in the New Tariff Order ("NTO") 2.0 to curb the spiralling cost after broadcasters announced their new channel pricing that reflects their intention to raise the prices of driver channels, like the General Entertainment Channels (GEC) and sports network and popular channels. Some broadcasters are "exploiting" the flexibility offered for a-la-carte pricing of TV channels, according to TRAI officials, who warned that the agency will keep a "strict watch" on them and will not hesitate to take action in the "larger interest" of consumers and the industry. According to the TRAI, "It is being publicised that any/every consumer who opts top GEC channels or sports channels would be charged an additional Rs 100. This is a 'fictional pretention', as the NTO 2.0, does not imply or specify any conditions for price increases." The new framework NTO 2.0, according to the regulator, is a 'complete code' that balances the interests of both service providers and consumers. Consumer prices should be reduced as a result of the framework. As a result, TRAI may revisit the implementation timeline in order to assist consumers in making well-informed decisions.

(Source: The Hindu – Businessline)

ENVIRONMENT LAWS

(1) SC ALLOWS SAND MINING IN BIHAR, BECAUSE BAN CAUSES LOSS TO PUBLIC EXCHEQUER



SC on 10th November 2021 observed that a total ban on legal sand mining will cause rampant increase in illegal mining and cause huge losses to public exchequer. The supreme court allowed the Bihar government to carry on mining activities and directed it to adopt a balanced approach of sustainable development ensuring environmental safeguards while dealing with sand mining.

(Source: State of Bihar v. Pawan Kumar, CIVIL APPEAL NOS. 3661-3662 OF 2020, order dated 12.11.2021)

(2) COP26 SUMMIT IN GLASGOW, 2021

COP26 was held in Glasgow from 31st October to 13th November 2021, the summit mainly dealt with the future eventuality of the world reaching nearly +3 Degree Celsius by the end of century which is surpassing the limit of below 2 Degree Celsius and ideally 1.5 Degree Celsius above pre-industrial level set by the 2015 Paris Agreement. The summit urged countries to set a target date for bringing emissions down to Net zero, India has announced its net-zero target to be in 2070. The committee also pushed countries to phase down usage of coal-based power and also encourage usage of electric vehicles.

(Source: UN Climate change conference UK 2021, <https://ukcop26.org/news/> (03.12.21, 10:51AM))

[End of Newsletter]
