

# MONTHLY NEWSLETTER

## DECEMBER 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](mailto: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](http://www.lexport.in).

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## RBI & FEMA

### **(1) BRICS CHAIR 2021: BRICS ECONOMIC BULLETIN 2021**



The Reserve Bank of India (“RBI”) is releasing the BRICS Economic Bulletin 2021, which was prepared by the BRICS Contingent Reserve Arrangement (CRA) Research Group, which includes representatives from BRICS central banks, as part of India's BRICS Chair activities. The CRA Research Group was formed to help the BRICS improve their research, economic analysis, and surveillance capabilities. 'Navigating the Ongoing Pandemic: The BRICS Experience of Resilience and Recovery' is the theme of the BRICS Economic Bulletin 2021, which covers the economic recovery and its divergences, inflation risks, external sector performances, financial sector vulnerabilities, and other macroeconomic issues.

*(Source: RBI Press Release No 2021-2022/1339 dated 10-12-2021)*

### **(2) RBI RELEASES ‘DRAFT MASTER DIRECTION ON MINIMUM CAPITAL REQUIREMENTS FOR OPERATIONAL RISK’**

On 15th December 2021, The RBI posted on its website a 'Draft Master Direction on Minimum Capital Requirements for Operational Risk' for feedback from stakeholders and members of the public as part of its efforts to align the Reserve Bank's policies for banks with Basel III standards. These guidelines will apply to all commercial banks (excluding Local Area Banks, Payments Banks, Regional Rural Banks, and Small Finance Banks).

*(Source: RBI Press Release 2021-2022/1358 dated 15-12-2021)*

### **(3) STEPS TAKEN BY GOVERNMENT TO IMPROVE FLOW OF CREDIT TO MSME SECTOR.**

The Ministry of Finance (“MoF”) has listed out the measures taken by the Government for improving the flow of credit to MSME sector.

The RBI in its earlier circular, has allowed Scheduled Commercial Banks (SCBs) to deduct the amount equivalent to credit disbursed to New Micro Small and Medium Enterprises (MSMEs), who have not availed any credit facilities from banking system as on 01.01.2021, from their Net Demand and Time Liabilities (NDTL) for calculation of the Cash Reserve Ratio (CRR).

The Minister stated that this exemption is available up to Rs 25 lakh per borrower, disbursed up to fortnight ending 31.12.2021, for a period of one year from date of origination of loan or the tenure of the loan, whichever is earlier.

*(Source: RBI Press Release ID: 1783945 dated 21-12-2021)*

### **(4) RBI INTRODUCES LEGAL ENTITY IDENTIFIER FOR CROSS-BORDER TRANSACTIONS**

The RBI in order to further harness the benefits of legal entity identifier (LEI), has been decided that

AD Category I banks, with effect from October 1, 2022, shall obtain the LEI number from the resident entities (non-individuals) undertaking capital or current account transactions of ₹50 crore and above (per transaction) under FEMA, 1999.

Further, AD Category I banks may encourage concerned entities to voluntarily furnish LEI while undertaking transactions even before October 1, 2022. Once an entity has obtained an LEI number, it must be reported in all transactions of that entity, irrespective of transaction size.

*(Source: RBI/2021-22/137 A.P. (DIR Series) Circular No. 20, dated 10-12-2021)*

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## FOREIGN TRADE

### **(1) EXTENDS THE LAST DATE FOR SUBMITTING APPLICATIONS FOR SCRIP BASED FTP SCHEME**

The Directorate General of Foreign Trade ("DGFT") has extended the last date for submitting applications for Scrip based Foreign Trade Policy (FTP) scheme till 31st January 2022. The schemes include MEIS, SEIS, ROSCTL and ROSL.

*(Source: Trade Notice No. 48/2015-2020, dated 31-12-2021)*

### **(2) AMENDMENT IN APPENDIX 3 (SCOMET ITEMS) TO SCHEDULE-2 OF ITC (HS) CLASSIFICATION OF EXPORT AND IMPORT ITEMS, 2018**

The Central Government made an amendment in Appendix 3 (SCOMET items) to Schedule-2 of ITC (HS) Classification of Export and Import Items, 2018. The updated appendix and annexure were uploaded on the web portal of DGFT. In order to provide transition time to the industry, the notice shall come into effect from 19<sup>th</sup> January 2022.

*(Source: Trade Notice No. 47/2015-2020, dated 20-12-2021)*

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## CORPORATE LAWS

### **(1) EXTENSION IN TIMELINES FOR ANNUAL FILING OF E-FORMS**



The Ministry of Corporate Affairs ["MCA"] has granted relaxation on levy of additional fees in filing of e-forms AOC-4, AOC-4 (CFS), ADC-4 XBRL, ADC-4 non-XBRL upto 15.02.2022 and for filing e-forms MGT-7/7A upto 28.02.2022.

*(Source: General Circular No. 22/2021 dated 29.12.2021)*

### **(2) CLARIFICATION ON CONDUCTING EGMs THROUGH VC/OAVM**

The MCA has allowed companies to conduct their EGMs through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) or to transact items through postal ballot till 30.06.2022.

*(Source: General Circular No. 20/2021 dated 08.12.2021)*

### **(3) CLARIFICATION ON CONDUCTING AGMs THROUGH VC/OAVM**

The MCA has allowed companies whose AGMs are due in the Year 2021, to conduct it through VC or OAVM on or before 30.06.2022.

*(Circular No. 19/2021 dated 08.12.2021)*

**(4) CASE LAW: BRILLIO TECHNOLOGIES PVT. LTD. VS REGISTRAR OF COMPANIES (NCLAT DELHI)**

NCLAT in this case held that the NCLT has erroneously held that the application for reduction of share capital is not maintainable under Section 66 of the Companies Act, 2013 and the consent affidavits from the creditors are mandatory for reduction. Further, the securities premium account cannot be utilized for making payment to non-promoter shareholders, consent from non-promoter shareholders who are not traceable is required. Selective reduction of shareholders of non-promoter shareholders is not permissible. The Tribunal has dismissed the Application on untenable grounds. Hence, the NCLAT dismissed the impugned order passed by the NCLT.

*(Source: Company Appeal (AT) No. 293 of 2019)*

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**(2) SEBI TIGHTENS COMPLIANCE FOR ISSUE OF COMMERCIAL PAPERS AND NON-CONVERTIBLE SECURITIES**

The SEBI has notified the guidelines for levying fines and taking action for non-compliance with continuous disclosure requirements by the issuers of listed non-convertible securities and commercial papers. The guidelines shall come into force for the due dates of compliances falling on or after February 01, 2022. Every recognized stock exchange shall review the compliance status of the entities issue notices to the non-compliant entities within 30 days from the due date of prescribed timeline. Non-compliant entity shall ensure compliance with the requirement(s) and pay fines as per the circular within 15 days from the date of such notice.

*(Source: Circular No. SEBI/HO/DDHS\_Div 2/P/CIR/2021/699, dated 29.12.2021)*

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**SECURITIES LAWS AND CAPITAL MARKETS**

**COMPETITION LAWS**

**(1) EXTENSION IN CONDUCTING AGMs THROUGH VC OR OAVM**



The Securities and Exchange Board of India ["SEBI"] has extended the facility for conducting annual meeting and other meetings of unitholders of Real Estate Investment Trusts (REITs) and Infrastructure Investment Trust (InvITs) through VC or through OAVM till 30.06.2022.

*(Source: Circular No. SEBI/HO/DDHS/DD HS\_Div2/P/CIR/2021/697, dated 22.12.2021)*

**(1) CCI DISMISSES COMPLAINT FILED BY PHARMA WHOLESALER FOR ANTI-COMPETITIVE PRACTICES AGAINST 17 PHARMACEUTICAL COS.**

The Informant, Zippigo Pharma, is a firm engaged in the business of wholesale medicines, having started its business in 2018, and is primarily aggrieved by the alleged discrimination it is facing at the hands of the OPs, which are allegedly not offering the Informant the same terms and conditions as are available to other wholesalers. In this respect, the Competition Commission of India ("CCI") notes that with 17 pharmaceutical companies being arrayed as parties, a case under Section 4 of the Act cannot arise and it cannot be said that there is dominance of any one OP, since there are several pharmaceutical companies operating in the country, including in the state of Madhya Pradesh. The Commission prima facie observes that no competition concern is noticed in the facts and circumstances of the case and,

therefore, the delineation of relevant market and subsequent assessment of dominance and abuse may not be required in the matter.

*(Source: In Re Zippigo Pharma and Ors., [2021] 133 taxmann.com 33 (CCI), dated 02.12.2021)*

**(2) CCI APPROVES ACQUISITION OF SHAREHOLDING IN STERLING AND WILSON RENEWABLE ENERGY LIMITED BY RELIANCE NEW ENERGY SOLAR LIMITED**

The proposed combination envisages acquisition of 40% of the equity share capital of Sterling and Wilson Renewable Energy Limited (formally known as Sterling and Wilson Solar Limited) (SWREL) by Reliance New Energy Solar Limited (RNESL).

RNESL is a newly incorporated entity and is wholly owned subsidiary of Reliance Industries Limited (RIL). It does not offer any products or services in India. SWREL is claimed to be a global pure-play, end to end solar engineering, procurement, and construction (EPC) solutions provider in India and over 25 countries globally. In India, SWREL is engaged in provision of solar EPC solutions and operation and maintenance services, including for projects constructed by third parties.

*(Source: Press Release No. 55/2021-22, dated 15-12-2021)*

**(3) CCI SUSPENDS ITS APPROVAL OF AMAZON'S INVESTMENT IN FUTURE COUPONS**



On December 17, 2021, the CCI said that the approval granted for the deal between Amazon NV Investment Holdings LLC (Amazon) and Future Coupons Private Limited, allowing the former to

acquire 49% stake in the latter, will remain frozen. The CCI passed this order by virtue of its powers under Section 45(2) of the Competition Act, for misrepresentation and suppression of material facts in its merger notification to the CCI filed on September 23, 2019, for its acquisition of 49% of the equity share capital of Future Coupons Private Limited. It further imposed a penalty of INR 202 crore (approximately USD 26.57 million) on Amazon under Section 43A of the Competition Act for its failure to notify the combination under Section 6(2) of the Act. The CCI also kept its order approving the Combination, in abeyance and directed Amazon to file a new merger notification in a long form, Form-II to allow it to look afresh on various aspects of the combination

*(Source: In Re: Proceedings against Amazon.com NV Investment Holdings LLC under Sections 43A, 44 and 45 of the Competition Act, 2002, MANU/CO/0069/2021, dated 17.12.2021)*

**(4) CCI APPROVES ACQUISITION OF SHAREHOLDING IN AIR INDIA LIMITED, AIR INDIA EXPRESS LIMITED AND AIR INDIA SATS AIRPORT SERVICES PRIVATE LIMITED BY TALACE PRIVATE LIMITED**

The proposed combination envisages acquisition of 100% equity share capital of Air India Limited (Air India) and Air India Express Limited (AIXL), and 50% equity share capital of Air India SATS Airport Services Private Limited (AISATS) by Talace Private Limited (Talace).

Talace is a wholly owned subsidiary of Tata Sons, which is an investment holding company, registered as a core investment company with the RBI and classified as a “Systemically Important Non-Deposit Taking Core Investment Company”. Air India is wholly owned by the Government of India and along with AIXL, is primarily engaged in the business of providing domestic scheduled air passenger transport service, international scheduled air passenger transport service, and air cargo transport services. AISATS is engaged in the business of providing ground handling services at the following domestic airports as well as cargo handling services at Bengaluru airport.

*(Source: Press Release No. 56/2021-22, dated 20-12-2021)*

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## **INDIRECT TAXES AND CUSTOMS**

### **(1) RISE LIMITATION PERIOD FOR FILING OF APPEAL UNDER SECTION 107 OF CGST ACT TO BE CALCULATED FROM DATE OF SERVICE OF ORDER VIA EMAIL**

The petitioner failed to file its GST return timely for February 2019 and when the department issued notice for the non-filing and passed assessment order for recovery of GST, the same was served to the petitioner via e-mail, about which they were unaware and had filed the necessary return. Subsequently, when they came to know about the order, they filed an appeal against it, which was held to be time barred. The Hon'ble High Court held that the appeal is time barred because under Section 107 of the CGST Act, 2017, the statutory time limit for filing of appeal will be calculated from date of service of Order via e-mail and not from the date of uploading of Order on common portal.

*(Source: Meritas Hotels Private Limited v. State of Maharashtra, 2021-VIL-861-BOM, dated 03.12.2021)*

### **(2) FORM GSTR-3B IS A RETURN UNDER SECTION 39 OF CGST ACT**

A writ petition was filed by respondents before the Hon'ble Supreme Court against the decision of Gujarat High Court that ruled that Form GSTR-3B is not a return u/s 39 of CGST Act but is only a temporary stop gap arrangement till due date of filling the return in Form GSTR-3 is notified. The SC, relying on the judgement of Bharti Airtel Ltd., reversed the Gujarat High Court decision and re-stated that Form GSTR-3B is a return under Section 39 of CGST Act, 2017.

*(Source: Union of India & Ors. Vs. AAP And Company (Supreme Court), 2021-VIL-93-SC, dated 10.12.2021)*

### **(3) GST PAYABLE UNDER RCM ON PROCUREMENT OF RENTING OF IMMOVABLE PROPERTY SERVICES FROM SEEPZ**

The AAR Maharashtra held that, GST is payable on the procurement from Special Economic Zone unit under reverse charge mechanism. The Applicant took an immovable property on lease within SEZ area from SEEPZ Special Economic Zone Authority and sought an advance ruling on whether procurement of such services attracts GST under Notification No. 10/2017-IT (Rate) dt. 28th June, 2017. The AAR noted that SEZ Act is not aligned with the provisions of GST law and GST is not listed in the exemption list provided under Section 26 of the SEZ Act and hence GST is payable on the same.

*(Source: In Re: Portescap India Private Limited, Advance Ruling No. GST-ARA-93/2019-20/B-110, dated 10.12.2021)*

### **(4) AMOUNTS RECOVERED FROM THE EMPLOYEES FOR PROVIDING AND USE OF TRANSPORT FACILITY BY THEM IS NOT SUBJECT TO GST**

The applicant is a private company with the name Integrated Decisions and Systems (India) Private Limited that provides transportation facility to its employees and as per its company's policy, recovers partial amount spent on the transportation from its employees. It sought advance ruling on whether such partial amount recovered would be subject to GST. The Maharashtra Authority for Advance Ruling observed that for GST to be levied, there needs to be supply of goods and services and provision of transport facilities to the employees is not supply but merely a welfare and safety measure and hence not subject to GST.

*(Source: In Re: Integrated Decisions and Systems India Pvt Ltd (GST AAR Maharashtra), Advance Ruling No. GST-ARA-116/2019-20/B-113, dated 16.12.2021)*

**(5) GST LEVIABLE ON REIMBURSEMENT OF ELECTRICITY AND WATER CHARGES AND TO BE INCLUDED IN THE VALUE OF SUPPLY**

The AAR, Maharashtra held that, GST was to be payable on electricity charges and water charges as per meter reading and collected from the recipients on actual reimbursement basis. Further, there was no authorization, obtained to act as pure agent and to make payment to third parties, therefore the assessee could not be considered as a pure agent.

*(Source: M/s. Indiana Engineering Works (Bombay) Pvt. Ltd., Advance Ruling No. GST-ARA-120/2019-20/B-114, dated 16.12.2021)*

**(6) CLARIFICATIONS REGARDING GST ON SERVICE SUPPLIED BY RESTAURANTS THROUGH ECO**

With E-Commerce Operators (ECOs) becoming liable to pay GST on restaurant services vide Notification No. 17/2021-CT (Rate) dt 18.11.2021, CBIC issued a circular clarifying multiple issues regarding the same:

- ECO will be liable to pay GST on any restaurant service supplied through them, including even an unregistered supplier.
- ECO will no longer be required to collect TCS and file GSTR-8.
- Restaurant services attracts GST rate of 5%. ECO will not be liable to reverse ITC for paying concessional GST rate not being providers of restaurant service.
- ECO will need to pay entire GST in cash and no ITC can be utilized for payment of GST.

*(Source: Circular No. 167/23/2021-GST, dated 17.12.2021)*

**(7) AMENDMENTS IN FINANCE ACT, 2021**

CBIC issued NN-39/2021 wherein all the sections of Finance Act 2021 (not notified earlier) are now notified to be effective from 01.01.2022:

- (a) Section 7(1)(aa) notified: As a retrospective amendment effective from 1st July, 2017, it has been clarified that the activities or transactions by a person, other than individuals, to its members or constituents for a valuable consideration is a 'supply'. It further clarified that club/association is separate from its members and hence services supplied by the club are now subject to GST.
- (b) Section 16(2)(aa) notified: Effective from 1st January, 2022, the provision has added a fourth condition for the availing of ITC that if supplier has furnished details of invoice / debit note in his GSTR-1 then only the recipient will be able to claim the ITC of the same.
- (c) Section 75: An explanation to this Section inserted to define that the tax details furnished in GSTR-1 by the supplier will be treated as 'self-assessed tax' only.
- (d) Section 73/74: Proceedings under Sections 129 and 130 excluded and stated to be separate and independent proceedings.
- (e) Section 107: For orders passed u/s 129(3) regarding e-way bill violations, the pre-deposit will be 25% and not 10% for filing a first appeal.
- (f) Section 129 and 130: Increased the penalty to 200% of tax payable and detention/seizure provisions has been delinked.
- (g) Other section 83, 151, 152 and 168 also notified.

*(Source: Notification No. 39/2021 – Central Tax, dated 21.12.2021)*

**(8) ITC NOT AVAILABLE ON LEASE PREMIUM**

The AAR, Gujarat in two matters held that obtaining land on lease indicates that it is for construction of factory or building or shed on such land and since Section 17(5)(d) of the CGST Act restricts ITC on all goods and services received for

construction of immovable property other than plant and machinery (that exclude land), therefore accordingly, no ITC is available on such lease premium.

*(Source: JM Chemicals, 2021-VIL-436-AAR (Gujarat) and GACL Nalco Alkalies & Chemical Private Limited, 2021-VIL-432-AAR (Gujarat))*

### **(9) AADHAR AUTHENTICATION MANDATORY FOR FILING OF GST REFUND AND REVOCATION OF APPLICATION**

The CBIC notified Rule 10B of the CGST Rules which provides that for the purpose of:

- (a) filing of application for revocation of cancellation of registration in Form GST REG-21 under Rule 23,
- (b) filing of refund application in Form RFD-01 under Rule 89 and
- (c) refund under Rule 96 of the Integrated Tax (IGST) paid on goods exported out of India, authentication of Aadhar is mandatory for every registered person, w.e.f. 01.01.2022.

*(Source: Notification No. 38/2021–Central Tax, dated 21.12.2021)*

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## **INTELLECTUAL PROPERTY RIGHTS**

### **(1) RISE TRADEMARK TUSSLE BETWEEN “SONICE” AND “NISE”**

Dr. Reddy’s Laboratories Limited (“Plaintiff”) sued Sunlife Sciences Pvt. Ltd. (“Defendant”), seeking to restrain the Defendant from infringing the Plaintiff’s trademark, “NISE”. The Plaintiff claimed that during the last week of November 2021, it came to know that the Defendant had been manufacturing, marketing, supplying, and selling medicinal products under the mark “SONICE”, which was similar to Plaintiff’s mark, “NISE”. The Plaintiff had adopted the mark “NISE” in the year 1995 and obtained a registration for the mark in the year 1998. In the subsequent years the Plaintiff obtained registrations for other

“NISE” word and design marks. Pertinently, in 2015, the Defendant had applied for registration of its mark, SONICE, which was refused by the Trademarks Registry in the year 2019. The Plaintiff claimed that the rival marks are phonetically and conceptually similar and that the Defendant intentionally adopted a deceptively similar mark to trade upon the reputation and goodwill of the Plaintiff’s well-known mark, “NISE”. Agreeing with the Plaintiff, the Court held that the Plaintiff had established a prima facie case in its favour and granted an ex-parte interim injunction in the Plaintiff’s favour.

*(Source: Dr. Reddy’s Laboratories Limited vs. Sunlife Sciences Pvt. Ltd., CS (COMM) 684/2021)*

### **(2) INTERIM RELIEF IN FAVOUR OF NATURALS ICE CREAM**

The Petitioner (Siddhant Icecreams LLP) filed an application ad-interim injunction against the defendant (Natural Ice Cream) which was granted by the Court. Mr. Raghunandan Kamath is the promoter of the firm Siddhant Icecreams LLP and Kamaths Ourtimes Icecreams Pvt Ltd. The plaintiff is in the business of manufacturing, selling as well as distribution of ice cream and related products through branded ice cream parlors under the “NATURAL” family of marks. In 1984, they adopted the mark “NATURAL” under the Trademarks Act. The plaintiff in March 2021 came to know that the defendants were using the mark “NATURAL” and had advertised on Instagram and Facebook.

*(Source: Siddhant Icecreams LLP and Ors. Vs Natural Ice Cream and Anr., Commercial IP Suit (L) No. 13957/2021)*

### **(3) LEVI STRAUSS AND CO. VS. IMPERIAL ONLINE SERVICES PRIVATE LIMITED & ANR.**

Levi Strauss & Co. (Plaintiff), a renowned brand-name apparel company and a global market leader of Jeanswear, filed a suit before Delhi High Court against Imperial Online Services Private Limited (Defendants). Plaintiff has alleged that Defendants have infringed their distinctive stitching design, named as the “Arcuate Stitching Design Mark”.



This mark, which many of us have usually seen, is a common feature on the rear pockets of jeans. Plaintiff has stated that the aforesaid "Arcuate Stitching Design Mark" is registered in its favour under Classes 9, 14, 18 and 25 since 1979. The tabular statement depicting the registrations has been provided by Plaintiffs. Plaintiff states that the said mark is a "well-known" mark by virtue of Section 2(1)(zg) of the Trade Marks Act, 1999. Plaintiff has also shown a comparative analysis wherein Defendants have been indulged in copying the said "Arcuate Stitching Design Mark", in which it holds the aforementioned subsisting registration.

*(Source: Levi Strauss and co. vs. Imperial Online Services Private Limited & Anr., CS(COMM) 657/2021)*

#### **(4) MICHAEL HAYDEN HAS SUED THE ARTIST JEFF KOONS FOR COPYRIGHT INFRINGEMENT**

Jeff Koons is embroiled in yet another legal battle after the artist Michael Hayden sued him for copyright infringement in New York's Southern District Court earlier this month. Hayden claims that Koons incorporated a sculpture of a serpent and rock he created as a stage prop for Ilona Staller in the infamous 1989 series, Made in Heaven. In three works from the series (a lithograph, polychromed wood sculpture and oil painting), Koons and Staller are portrayed in various sexual positions atop the sculpture. Hayden says he only became aware of the works in 2019.

*(Source: Art Law and More)*

#### **(5) DELHI HIGH COURT ORDERS EX PARTE INJUNCTION RESTRAINING EVEREST FOOD PRODUCTS PVT LTD. FROM USING "DEGGI" MARK**

Two most well-known spices brands Mahashian Di Hatti Ltd (MDH) (Plaintiffs) and Everest Food Products Pvt Ltd. (Defendants) are under dispute wherein Plaintiffs have filed for permanent injunction, infringement of registered trademark, passing off, and damages etc against Defendant in respect of registered trademark "DEGGI". Plaintiffs claim to have, through its predecessor-in-title, adopted and started using the trademark "DEGGI" in respect of "spices & condiments" and

more particularly "Chilies & Chilies Powder." The registration was applied on 01.03.1949 for trademark/label DEGGI in respect of "Chillies" under number 137844, and it was registered. Thereafter, Plaintiffs obtained registration for trademark / label "DEGGI" under number 1827983 in respect of "Spices and condiments". Plaintiff came to know that Defendants are intending to launch its infringing identical goods under trademarks "DEGGI" / "DEGGI MIRCH" / "EVEREST DEGGI MIRCH" / "DEGGILAL" / "EVEREST DEGGILAL". Plaintiff stated that they had filed opposition before the Registry against the proposed registration of Defendant's mark and that none of the similar marks applied have since been registered in its name. The Bench of Justice Yogesh Khanna has restrained Defendants from using the mark "DEGGI" until next hearing.

*(Source: Mahashian Di Hatti Private Limited vs. Everest Food Products Pvt. Ltd., CS(COMM) 672/2021)*

#### **(6) AND THEN THERE WERE NONE – TRADEMARK SAGA**



The recently constituted Intellectual Property Division of the Delhi High Court decided an appeal filed by the company of the famous fiction writer, Agatha Christie, challenging an order passed by the Registrar of Trademarks ("TMR") refusing to register the title of her classic novel, "AND THEN THERE WERE NONE", as a trademark in Classes 9, 16 & 41. The refusal order was based on the premise that the mark is non-distinctive. The court observed that the statute governing trademarks in India confers, as a matter of right, registration to a mark which does not suffer from any of the infirmities the statute contemplates. In the absence of a mark falling prey to any of the exhaustive grounds specifically statutorily delineated, a trademark cannot be refused. The court found no

reason in the TMR's order that the mark is non-distinctive in respect of the goods/services applied for. It also noted that, being the title of the most well-known work of fiction of Agatha Christie, the mark prima facie creates an association with the author, thereby disregarding the contention of non-distinctiveness. Thus, the court held the TMR's order to be unreasoned, denying a justified right and, therefore, liable to be set aside. It remitted the matter to the TMR with a direction that the mark be registered if it does not suffer from any fatal infirmity.

*(Source: Agatha Christie Ltd v. TMR C.A.(COMM.IPD-TM) 10/2021, Order dt. 8.12.2021)*

#### **(7) USE OF THE "WINZO" MARK CONSTITUTES TRADEMARK INFRINGEMENT AND RESULTS IN MISREPRESENTATION TO CONSUMER**

The Delhi High Court granted an interim injunction to Tictok Skill Games Pvt Ltd ('Plaintiff') against Head Digital Works Private Limited ('Defendant'). 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)*

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## **ENVIRONMENT LAWS**

### **(1) NITI ORDER OF THE SUPREME COURT REGARDING FELLING OF TREES FOR THE WIDENING OF THE MATHURA-DEENG ROAD**



On 8th December 2021, the supreme court granted permission for the felling of 1803 trees for the purpose of widening of Mathura-Deeng Road in compliance of the conditions laid down by the CEC. Payment for the trees felled shall be determined after a report is submitted by the committee appointed by the SC.

*(Source: Order of the Supreme Court regarding felling of 1803 trees for the widening of the Mathura-Deeng Road, which falls in the TTZ area, Uttar Pradesh, 08/12/2021, [www.indiaenvironmentportal.org.in/](http://www.indiaenvironmentportal.org.in/) (04.01.22, 12:51AM))*

### **(2) ALL UNESCO MARKS SEMI-CENTENNIAL ANNIVERSARY OF BIOSPHERE PRESERVATION**

On 27th December, the United Nations cultural agency celebrated the 50th anniversary of its Man and the Biosphere Program (MAB), which was established in 1971 and has been encouraging a long-term relationship between humans and nature. Today 727 biosphere reserves integrate nature conservation and sustainable development in 131 countries, including 22 transboundary sites.

*(Source: UNESCO marks semi-centennial anniversary of biosphere preservation, <https://news.un.org/> (04.01.22, 01:15PM))*

### **(3) 38°C RECORD ARCTIC TEMPERATURE CONFIRMED**

A temperature record by the World Meteorological Organization (WMO). During an unusual and long-lasting Siberian heatwave, a meteorological monitoring station recorded a temperature that was more Mediterranean than Arctic. For much of last summer, average temperatures across Arctic Siberia were up to 10 degrees Celsius above normal, fuelling disastrous fires, causing massive sea ice loss, and contributing to 2020 being one of the three warmest years on record of 38°C (100.4°F) in the Russian town of Verkhoyansk has been recognized as a new Arctic.

*(Source: WMO recognizes new Arctic temperature record of 38°C, <https://public.wmo.int/> (04.01.22, 02:00PM)*

### **(4) X PROMOTING SUSTAINABILITY AND THE UN AT THE DUBAI EXPO**

The Expo 2021 Dubai was different from other Expos in the sense that the UAE government decided to use it to express the importance of global collaboration, and building a better, sustainable future. So, the theme fits directly with the UN's main mandate and interests. It was also the biggest, with nearly all the world's countries represented.

*(Source: Promoting Sustainability and the UN at the Dubai Expo: A UN Resident Coordinator Blog, <https://news.un.org/> (04.01.22, 2:15PM)*

### **(5) CLIMATE CHANGE FUELS VIOLENCE AND MASS DISPLACEMENT IN CAMEROON**

A flare-up in intercommunal fighting in northern Cameroon has forced tens of thousands of people to flee their homes and brought a halt to aid operations there, the UN refugee agency, UNHCR, said on Friday. Boris Cheshirkov explained that clashes had broken out in recent days in the village of Ouloumsa, following a dispute over dwindling water resources. UNHCR appealed to the

international community for much greater support to help developing countries adapt to the kind of climate shocks that are behind the crises that the agency is increasingly responding to.

*(Source: Climate change fuels violence and mass displacement in Cameroon, <https://indiannation.in/> (04.01.22, 03:00PM)*

**[End of Newsletter]**

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