

# MONTHLY NEWSLETTER

## FEBRUARY 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



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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) RBI RELEASES GENERAL CIRCULAR TO INITIATE COMPANIES FRESH START SCHEME 2020 AND ASKS NBFCs TO IMPLEMENT CORE FINANCIAL SERVICES SOLUTION**



RBI asked certain class of Non-Banking Financial Companies (NBFC) to mandatorily implement 'Core Financial Services Solution (CFSS)' by September 30, 2025 in order to provide seamless customer interface as well as have a centralised data base. In a circular, Reserve Bank of India (RBI) said it has been decided that NBFCs - Middle Layer and NBFCs - Upper Layer with 10 and more 'fixed point service delivery units' as on October 1, 2022 shall be mandatorily required to implement CFSS. CFSS is akin to the Core Banking Solution (CBS) adopted by banks. CFSS shall provide for seamless customer interface in digital offerings and transactions relating to products and services with anywhere/anytime facility, enable integration of NBFCs' functions, provide centralised database and

accounting records, and be able to generate suitable MIS, both for internal purposes and regulatory reporting. However, NBFC - Upper Layer shall ensure that the CFSS is implemented at least in 70 per cent of 'Fixed point service delivery units' on or before September 30, 2024. In the case of NBFC - Base Layer and NBFC - Middle and Upper Layers with fewer than 10 'Fixed point service delivery units', implementation of CFSS is not mandatory.

*(Source: RBI General Circular No. RBI/2021-22/175 dated February 23, 2022)*

### **(2) RBI CIRCULAR ON GOVERNMENT FIXING THE DATE OF CLOSURE OF RESIDUAL TRANSACTIONS OF BANKS FOR MARCH 2022**

RBI has informed all agency banks that the Government of India has decided that the date of closure of residual transactions for the month of March 2022 be fixed as April 11, 2022. In view of the ensuing closing of government accounts for the financial year 2021-22, receiving branches including those not situated locally, should adopt special arrangements such as courier service etc., for passing on challans/scrolls, etc., to the Nodal/Focal Point branches so that all payments and collections made on behalf of government towards the end of March are accounted for in the same financial year. These instructions regarding special messenger arrangements may please be informed to all branches concerned.

*(Source: RBI Circular No: RBI/2021-22/176 dated February 24, 2022)*

### **(3) RBI STATEMENT ON DEVELOPMENTAL AND REGULATORY POLICIES**

RBI vide Press Release has issued **Statement on Developmental and Regulatory Policies**. an on-tap liquidity window of ₹50,000 crore at the repo rate with tenors of up to three years was announced to boost provision of immediate liquidity for ramping up COVID-19 related healthcare infrastructure and services in the country. Banks were incentivised for quick delivery of credit under the scheme through extension of priority sector classification to

such lending up to March 31, 2022. Banks were expected to create a COVID-19 loan book under the scheme. By way of an additional incentive, such banks were eligible to park their surplus liquidity up to the size of the COVID-19 loan book with the RBI under the reverse repo window at a rate 25 bps lower than the repo rate, i.e., 40 bps higher than the reverse repo rate.

Banks in India are allowed to undertake transactions in the offshore Foreign Currency Settled Overnight Indexed Swap (FCS-OIS) market with non-residents and other market makers. Banks may participate through their branches in India, their foreign branches or through their IFSC Banking Units.

*(Source: RBI Press Release No: RBI/ 2021-2022/1694 dated February 10, 2022)*

#### **(4) RBI HAS NOTIFIED THE OPERATIONAL INSTRUCTIONS FOR TRANSACTIONS IN CREDIT DEFAULT SWAP (CDS)**

RBI issued Operational instructions transactions in credit default swap (CDS) by Foreign Portfolio Investors (FPI). The FPIs are eligible to be categorised as non-retail users and are allowed to buy and sell CDS protection under credit derivatives directions. These Directions shall come into effect from May 09, 2022.

As per the instruction, Selling of CDS protection by all FPIs shall be subject to a limit specified by the Reserve Bank from time to time. The aggregate limit of the notional amount of CDS sold by FPIs shall be 5% of the outstanding stock of corporate bonds. Clearing Corporation of India Ltd. (CCIL) shall disseminate the utilisation of aggregate limit based on the reporting by the market makers for transactions in OTC market and reporting by stock exchanges for transactions on exchanges.

FPIs shall not sell any CDS protection once aggregate limit is utilised. The limit utilised for CDS protection sold by the FPI shall be

released upon the exit of the CDS position by the FPIs.

*(Source: RBI Circular No. RBI/2021-22/155 dated February 10, 2022)*

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## **FOREIGN TRADE**

### **(1) MINISTRY OF COMMERCE EXTENDS THE LAST DATE FOR SUBMITTING APPLICATION FOR SCRIP BASED SCHEMES**

The Ministry of Commerce and Industry vide its notification has extended the last date for submitting online applications under MEIS, SEIS, ROSCTL, ROSL and 2% additional ad hoc incentive till 28<sup>th</sup> February 2022.

In supersession of the existing laid down provisions in the Hand Book of Procedures, 2015-20 with regard to last date for submitting online applications for scrip based claims, the last date for submitting online applications stands revised to 28<sup>th</sup> February 2022 for the following schemes i.e

1. for MEIS (for exports made in the period (s) 01.07.2018 to 31.03.2019, 01.04.2019 to 31.03.2020 and 01.04.2020 to 31.12.2020),
2. for SEIS (for service exports rendered for FY 18-19 and FY 2019-20),
3. for 2 % additional ad hoc incentive (under para 3.25 of the FTP – for exports made in the period 01.01.2020 to 31.03.2020 only)
4. for Rebate of State & Central Taxes and Levies (ROSC TL) (for exports made from 07.03.2019 to 31.12.2020) and
5. for ROSL (for exports made upto 06.03.2019 for which claims have not yet been disbursed under scrip mechanism).

*(Source: Notification No. 53/2015-2020, dated February 01, 2022)*

**(2) DGFT NOTIFIES AMENDMENT IN EXPORT POLICY OF INJECTION REMDESIVIR AND REMDESIVIR ACTIVE PHARMACEUTICAL INGREDIENTS (API)**

The DGFT vide its notification has removed export curbs on Remdesivir Injection and its active pharmaceutical ingredients (APIs).

Earlier, the department restricted the export of injection Remdesivir and Remdesivir Active Pharmaceutical Ingredients (API), drug which is used in COVID-19 treatment. However, due the decline in covid-19 cases, the export policy of Injection Remdesivir and Remdesivir Active Pharmaceutical Ingredients (API), Amphotericin – B injections, Enoxaparin (Formulation and API) and Intra-Venous Immunoglobulin (IVIG) (Formulation and API) has been made 'Free' with immediate effect.

*(Source: Notification No. 56/2015-2020, dated February 24, 2022)*

**(3) DIGITAL PLATFORM FOR ISSUE OF REGISTRATION CUM MEMBERSHIP CERTIFICATE**

The DGFT vide circular has directed that issuing and filing of registration cum membership certificate shall be through digital platform from next financial year, i.e., 01.04.2022. The prevailing procedure for submitting applications directly to the designated registering authorities will continue till 31.03.2022.

Clarification on the new procedure is available on help manual and FAQs published on official website of DGFT.

*(Source: Notification No. 35/2021-2020, dated February 24, 2022)*

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**CORPORATE LAWS****(4) THE MCA ISSUED THE CIRCULAR NUMBER 01/2022 ON DUE DATE EXTENSION FOR THE FILING OF AOC-4, AOC-4 (CFS), AOC-4 XBRL AOC-4 NON-****XBRL FORMS TILL 15TH MARCH 2022, AND MGT-7/MGT-7A FORMS TILL 31ST MARCH 2022.**

Keeping in view various requests received from stakeholders regarding relaxation of levy of additional fees for annual financial statement/return filings required to be done for the financial year ended on 31.03.2021, it has been further decided that no additional fees shall be levied up to 15.03.2022 for the filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non- XBRL and up to 31.03.2022 for filing of e-forms MGT-7/MGT- 7A in respect of the financial year ended on 31.03.2021 respectively. During the said period, only normal fees shall be payable for the filing of the aforesaid mentioned e-forms.

*(Source- General Circular No. 01/2022, dated February 14 2022)*

**(5) SAT QUASHES SEBI ORDER AGAINST HDFC BANK FOR INVOKING PLEDGED SHARES.**

The Securities Appellate Tribunal (SAT) has quashed an order issued by the Securities and Exchange Board of India (SEBI) against HDFC Bank for invoking shares pledged by broker BRH Wealth Advisor. On January 21, 2021, the market regulator imposed a penalty of Rs. 1 crore on the private sector lender for flouting directions passed in an interim order dated October 07, 2019. SEBI also directed HDFC Bank to deposit Rs. 159 crores along with 7 percent interest. HDFC Bank had challenged the SEBI directions before SAT. The SAT judgment is critical as there are other lenders who have filed appeals in identical cases.

*(Source: <https://www.mylawman.co.in/2022/02/legal-> dated February 21, 2022)*

**(6) SINTEX LENDERS TO SEEK EXTRA TIME FROM NCLT TO COMPLETE THE RESOLUTION PROCESS**

Lenders of Sintex Industries will approach the National Company Law Tribunal (NCLT) to seek an extension of time for the completion of the Corporate Insolvency Resolution Process (CIRP) and select a bidder for the debt-ridden



textiles maker. The Committee of Creditors (CoC) in a meeting held on February 21, 2022 "discussed and approved the proposal for extension of CIRP period beyond 330 days", Sintex Industries said in a regulatory filing.

*(Source: [https://www.businessstandard.com/article/companies/sintex-lenders-to-see-extra-time-from-nclt-to-complete-resolution-process-122022101172\\_1.html](https://www.businessstandard.com/article/companies/sintex-lenders-to-see-extra-time-from-nclt-to-complete-resolution-process-122022101172_1.html) dated February 21, 2022)*

## **(7) DISSOLUTION NOTICE OF M/S KANWAL FINANCIERS PVT. LTD (IN LIQUIDATION)**

The Official Liquidator attached to the Hon'ble High Court of Punjab and Haryana at Chandigarh have filed application Under Section 481 of the Companies Act, 1956 for dissolution of M/s Kanwal Financiers Pvt. Ltd. Whereas the Hon'ble High Court vide order dated 17.02.2022 directed for issuance of notice inviting objections, if any, in respect of Dissolution of MIS Kanwal Financiers (Pvt.) Ltd. In compliance of aforesaid order dated 17.02.2022, Notice was given to the Creditors, Contributories, Stakeholders, Shareholders and General Public to file objections, if any, to the dissolution of MIS Kanwal Financiers (Pvt.) Ltd to the OL within 30 days from the date of publication of the notice. In case, no objections are received, further proceedings will be initiated for dissolution of the company. Any objection raised after the expiry of time stipulated herein shall not be entertained and aggrieved person may take recourse to Rule 285 of the Companies (Court) Rules, 1959 read with Section 559 of the Companies Act, 1956 as may be advised, in case company get dissolved.

*(Source: Company Appeal No. 22 of 2022 in CP No. 18 of 1999)*

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## **SECURITIES LAWS AND CAPITAL MARKETS**

### **(1) APPROACH TO SECURITIES MARKET DATA ACCESS AND TERMS OF USAGE OF DATA PROVIDED BY DATA SOURCES IN INDIAN SECURITIES MARKET**

With increasing size and complexity of financial markets, addressing information asymmetry and having adequately informed investors and multiple stakeholders in the market cannot be overemphasised. In order to enhance the quantum as well as the ease of accessibility and usability of data disseminated in public by various data sources in Indian securities market, including the MIIs (Stock and Commodity Exchanges, Clearing Corporations and Depositories etc.), SEBI, through its Market Data Advisory Committee (MDAC), reviewed the extent of free access and usage of data being provided in the public domain or otherwise by the respective sources of data in Indian securities market. the regulatory intent behind public dissemination of data in a disclosure based regulatory regime was deliberated in detail by MDAC. Accordingly, keeping in view the deliberations and recommendations of MDAC on this issue, all market intermediaries including the other data sources in Indian securities markets are advised to make note of the following: "As far as the data provided by various data sources in Indian securities markets pursuant to regulatory mandates for reporting and disclosure in public domain are concerned, such data should be made available to users, 'free of charge' both for 'viewing' the data as also for download in the format as specified by regulatory mandate for reporting, as well as their usage for the value addition purposes." Apart from the data made available free of cost, data which is chargeable should be appropriately identified as such in public domain.

*(Source: Circular No. SEBI/HO/DEPA-III/DEPA-III\_SSU/P/CIR/2022/25, dated February 25, 2022)*

### **(2) COMPANIES TO ANNOUNCE STOCK SPLIT IN FEBRUARY 2022**

The Board of Directors of Schaeffler India, Shree Ganesh Biotech, Bhatia Communications and

Retail and JBM Auto have approved sub-division of its shares in February 2022. To enhance liquidity in stock by attracting small size investors, listed companies decided to announce sub division of shares or share split from time to time. In this regard, four listed companies — Schaeffler India, Shree Ganesh Biotech, Bhatia Communications and Retail and JBM Auto are going to split their shares in this month. It won't change their fundamentals, only the price of shares will come down that will enable small ticket sized investors to buy and sell these stocks.

(Source: <https://economictimes.indiatimes.com/markets/sebi dated February 22, 2022>)

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## **COMPETITION LAWS**

### **(1) CCI DISMISSES COMPLAINTS AGAINST SHOPEE, AMAZON**

India's competition watchdog has dismissed complaints filed against two e-commerce companies - Shopee and Amazon. While Singapore-based Shopee had faced allegations that its method of operations was like dominant ecommerce platforms Amazon and Flipkart, and that it was indulging in "deep discounting", the complaint against Amazon was that the US-based company and its related parties were using unfair trade practices to conduct business on the platform. CCI said Shopee was launched in November 2021 at a time when there were many existing players - Amazon, Flipkart, Myntra and Nykaa - and so did not possess "significant market power".

(Source: [https://economictimes.indiatimes.com/tech/technology/ci-dismisses-complaints-against-shopee-amazon/articleshow/90033764.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/tech/technology/ci-dismisses-complaints-against-shopee-amazon/articleshow/90033764.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst))

### **(2) CCI IMPOSES HEFTY PENALTY ON 6 TYRE MANUFACTURERS FOR CARTELIZATION**

The CCI observed that in an ongoing cartel where prices are being kept high over a long period of

time, it is not necessary that prices increase after every meeting between the members of the cartel. The Tyre Companies under the aegis of ATMA had been meeting every quarter to discuss key issues and challenges faced by the tyre industry. This gave the Tyre Companies a convenient platform to come together and share their individual price sensitive data and take collective decisions on the prices of tyres. Further, the existence of ATMA that collates sensitive information relating to supply, prices, etc. from various players in the market provided a platform for coordination among the manufacturers. Therefore, considering all this, the CCI deduced that as the market is highly concentrated with a few players holding a large share, there is a strong possibility of conducive environment for collusive behaviour. Accordingly, the CCI directed the Tyre Companies to cease and desist from indulging in any activity relating to agreement, and ATMA to disengage and disassociate itself from collecting wholesale and retail prices through the member tyre companies or otherwise. In furtherance to this, it also imposed penalty upon the contravening parties at the rate of 5% of average turnover for the last preceding three financial years, which was from 2011-2014. A total penalty of INR 425.53 crore was imposed on Apollo Tyres, INR 622.09 crore on MRF Ltd., INR 252.16 crore on CEAT Ltd., INR 309.95 crore on JK Tyre and INR 178.33 crore on Birla Tyres along with a penalty of INR 0.084 crore on ATMA u/s 27(b) of the Act.

(Source: *Ministry of Corporate Affairs vs. Apollo Tyres and Ors., Reference Case No. 08 of 2013*)

### **(3) THE COMPETITION (AMENDMENT) BILL 2022: A LOW-KEY BILL WITH WIDER IMPLICATIONS**

The budget session of Parliament has resumed. Of the pieces of legislation to be taken up, the Competition (Amendment) Bill, 2022, has been fairly low key. It has not attracted scrutiny like India's farm laws or regulation of crypto assets. However, it significantly overhauls the Competition Act of 2002 and would have far-reaching implications. Further, requiring the CCI to mandatorily issue penalty guidelines and give reasons in case of any divergence from these will give India Inc much-needed certainty.

(Source:

<https://www.livemint.com/opinion/online-views/a-low-key-bill-with-wide-implications-for-our-economy-11647548332989.html> )

**(4) CCI V. STATE OF MIZORAM WITH M/S TAMARAI TECHNOLOGIES PVT. LTD V. STATE OF MIZORAM, 2022 SCC ONLINE SC 63**

The Supreme Court found merit in the Appellant's reliance upon CCI v Bharti Airtel, (2019) 2 SCC 521, wherein it was held that notwithstanding the sectoral regulation, any agreement which facilitates dominant position and its abuse or has an adverse effect on free competition in the market comes within the clutches of the 2002 Act. The Court thus overruled the High Court's finding, that on account of being res extra commercium lotteries were not covered by the 2002 Act. The Supreme Court clarified that any agreement that shall be anti-competitive in nature would necessarily come under the purview of the 2002 Act, which would allow the CCI to have jurisdiction over the same without encroaching upon the specific sectoral regulations. The Supreme Court answered this question in the affirmative and took note of the expansive definition of 'service' under S. 2 (u) of the 2002 Act, which includes 'service of any description'. It held that one who purchases a lottery ticket is a potential user and the selling agents of the ticket tenders a service and by the virtue of this lottery tickets do come under the purview of Competition Act and the jurisdiction of the CCI of India cannot be oust on the mere pretext that lottery tickets are res extra commercium and are governed solely by the Regulation Act.

(Source: *Competition Commission of India v. State of Mizoram and Ors., 2022 SCC OnLine SC 63*)

**(5) CCI DISMISSES AIOVA'S ANTITRUST COMPLAINT AGAINST AMAZON FOR FAILING TO PROVIDE SUFFICIENT MATERIAL**

The present information has been filed by All India Online Vendors Association (hereinafter, 'AIOVA'/'Informant') under Section 19(1)(a) of the Competition Act (hereinafter, the 'Act') alleging contravention of provisions of Sections 3(4) of the Act by Amazon Seller Services Pvt. Ltd.

(hereinafter, 'OP-1'), Amazon Wholesale India Pvt. Ltd. (hereinafter, 'OP-2'), Amazon Retail India Pvt. Ltd. (hereinafter, 'OP-3'), Cloudtail India Pvt. Ltd. (hereinafter, 'OP-4'), and Prione Business Services Pvt. Ltd. (hereinafter, 'OP-5') (collectively referred to as 'Opposite Parties'/'OPs'). The Commission noted that the Informant had not complied with the requirements despite numerous opportunities and also noted that the Informant had not filed the certificate under Section 65B of the Indian Evidence Act, 1872. The Commission thereupon decided to pass an appropriate order in due course based on such material on record as could be considered in terms of the Competition Commission of India (General) Regulations, 2009.

(Source: *AIOVA Sellers Association vs. Amazon Seller Services Pvt. Ltd and ors., Case No. 29 of 2020*)

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## **INDIRECT TAXES AND CUSTOMS**

**(1) COACHING CENTRES TO PAY 18% GST ON COMPOSITE SUPPLY BASIS - CLARIFIES CBIC**

The Central Board of Indirect Taxes and Customs (CBIC) has clarified that, Coaching Institutes need to pay 18% GST on Composite Supply basis. A coaching institute cannot deposit GST on individual items basis for the supply of notebooks, t-shirts, bags, sweatshirts, etc. to students along with coaching service.

(Source: <https://www.thehindubusinessline.com/economy/coaching-institutes-need-to-pay-gst-on-composite-supply-basis-clarifies-cbic/article65074062.ece>)

**(2) STATE HAS THE POWER TO LEVY EXCISE DUTY IN RESPECT OF ALCOHOLIC LIQUOR FOR HUMAN CONSUMPTION BUT IT CANNOT LEVY SUCH DUTY ON WASTAGE OF LIQUOR AFTER DISTILLATION**

The Commissioner of Excise, Orissa (second appellant) granted licence in favour of Utkal Distilleries (Respondent – Company) for manufacturing, bottling, blending and reduction of Indian Made Foreign Liquor (IMFL) from rectified spirit, subject to the respondent Company installing one rectification column to rectify/ purify the rectified spirit to be used in manufacturing of IMFL. While hearing an appeal challenging demand notice issued to Utkal Distilleries calling upon it to pay excise duty on the weak spirit, which was more than 2% allowable wastage, the Supreme Court has held that the State has power to levy excise duty only in respect of the alcoholic liquor for human consumption, by virtue of Section 27(1) r/w/s 2(6) of the erstwhile Bihar and Orissa Excise Act, 1915. A Division Bench of Justice B.R. Gavai and Justice L. Nageswara Rao observed from perusal of Section 27(1) of the said Act that the State's power to impose duty on import, export, transport and manufacture is only in respect of any excisable articles imported, exported, transported and manufactured.

*(Source: State of Orissa vs. Utkal Distilleries Ltd., Civil Appeal Nos. 5666-5668 of 2009)*

### **(3) INTEREST ON BELATED FILING OF GSTR-3B RETURN NOT RECOVERABLE WITHOUT ADJUDICATION SAYS JHARKHAND HIGH COURT**

The Jharkhand High Court has ruled that recovery of interest under CGST Act, 2017 for delay in filing the GSTR-3B return cannot be initiated without following any adjudication proceedings under the Act in the event the interest liability is disputed by the assessee. The High Court observed that the Coordinate Bench of the Jharkhand High Court in the case of Mahadeo Construction Company versus Union of India (2020) had ruled that though the liability of interest under Section 50(1) of the CGST Act is automatic, but the same was required to be adjudicated by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act in the event an assessee had disputed the computation or the very levability of such interest. The Jharkhand High Court in that case had held that till the adjudication was completed by the Proper Officer under the CGST Act, the amount of interest could not have been termed as an amount payable under the CGST Act or the Rules made thereunder

and no recovery proceedings under Section 79 of the CGST Act could have been initiated for recovery of the interest amount. The High Court observed that the Petitioner/Assessee R.K Transport had disputed the liability towards interest levied by the revenue authorities, and despite the same the revenue department had raised a demand for payment of interest due to delay in furnishing the GSTR-3B return without initiating any adjudication proceedings under Section 73 or 74 of the CGST Act. The High Court thus observed that the case of the Assessee was covered by the rationale rendered by the Coordinate Bench in the case of Mahadeo Construction Company (2020). The High Court therefore allowed the writ petition of the Assessee and granted liberty to the revenue authorities to initiate adjudication proceedings under Section 73 or 74 of the CGST Act to determine the interest liability of the Assessee, after giving it an opportunity of hearing.

*(Source: R.K. Transport Private Limited Versus The Union Of India Through The Principal Commissioner, Central Goods And Services Tax And Central Excise, Ranchi And Another, W.P.(T) No. 1404 of 2020)*

### **(4) SUPPRESSION OF FACT CANNOT BE ALLEGED WHEN FACTS WERE WITHIN THE KNOWLEDGE OF THE DEPARTMENT.**

The Kolkata Bench of Customs, Excise and Service Tax Appellate (CESTAT) has ruled that service tax is not applicable on the activity of installing and maintaining a fixed facility for supplying oxygen gas. The Tribunal while setting aside the demand for service tax which was confirmed by the Adjudicating Authority, noted that the fixed facility installed by the assessee was used by the assessee itself and it is in no way construed as supporting activity for the buyer/client of the assessee. The fixed charges received by the assessee from the buyer/client cease to fall within the ambit of business support services.

*(Source: Commissioner of Central Excise & Service Tax, Bolpur vs. M/s. Goyal MG Gases Private Limited, Service Tax Appeal Nos. 75463, 75492 of 2015)*

### **(5) CESTAT DIRECTS CENTRAL EXCISE DEPT. TO RECONSIDER REFUND OF**



**CENVAT CREDIT TO TATA CONSUMER PRODUCTS**

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The Bangalore Bench of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) directed the Central Excise Department to reconsider the refund of cenvat credit to Tata Consumer Products. The Tribunal said it would meet the ends of justice if the matter was sent back to the file of the adjudicating authority, who shall verify the inadvertent error which was not disbelieved by the First Appellate Authority and who shall also verify the closing balance in the cenvat credit as on the date of the appellant's claim as appearing in the appellant's books.

*(Source: Tata Consumer Products Ltd. Versus Commissioner Of Central Tax & Central Excise, Central Excise Appeal No. 20057 of 2021)*

**(6) GST COLLECTION FALLS EVEN AS GOVT RAISES MONTHLY TARGET; DOUBTS OVER AMBITIOUS MARCH GOAL**

Even as the government raised the target for monthly GST collections twice in two months, the collections are still significantly below the revised target. GST collections in February stood at Rs 1.05 lakh crore, which is Rs 10,000 crore shorter than the revised target. To compensate for low collections in previous months of the current fiscal, the government set an ambitious monthly GST target of Rs 1.1 lakh crore for December-March and asked taxmen to step up efforts to achieve the goal. However, after a lower-than-target collection of Rs 1.03 lakh crore in the month of December, the government again revised the target to Rs 1.15 lakh crore for February and Rs 1.25 lakh crore for March. Out of the total indirect tax collections of Rs 11.2 lakh crore estimated in FY20, the government has estimated to raise Rs 6.63 lakh crore from GST. Out of the total tax collections under GST, 79% is expected to come from central GST, 4% from the integrated GST, and 16% from the GST compensation cess, according to the Budget documents.

*(Source: [https://www.business-standard.com/article/economy-policy/gst-collection-up-18-yoy-at-over-rs-1-33-trn-in-feb-finmin-122030100493\\_1.html](https://www.business-standard.com/article/economy-policy/gst-collection-up-18-yoy-at-over-rs-1-33-trn-in-feb-finmin-122030100493_1.html))*

**INTELLECTUAL PROPERTY RIGHTS****(1) SOOTHE HEALTHCARE PVT. LTD. V. DABUR INDIA LTD., CS(COMM) 18/2022, ORDER DT. MARCH 3, 2022**

The Delhi High Court refused an interim injunction to Soothe Healthcare Pvt. Ltd ('Plaintiff') against Dabur India Ltd. ('Defendant') in a suit alleging trademark infringement and passing off on the ground that no prima facie case was made out. The Plaintiff claimed to be involved in the business of personal hygiene products and the registered proprietor of the marks SUPER CUTESTERS, SUPER CUTES and SUPER CUTEZ in Class 5. The Plaintiff cited revenue and advertising figures to claim goodwill and reputation in its marks. As per the Plaintiff, it came across the defendant's use of the deceptively similar SUPER PANTS mark and sent it a letter demanding cessation of all use. On the other hand, counsel for Defendant argued that SUPER is a laudatory word which is common to trade and that Defendant has sought registration for the device SUPER PANTS which includes the DABUR mark of the Defendant. Defendant also argued that there is no similarity in packaging of the rival products. The court agreed that the packaging is dissimilar and the word SUPER is common to trade and used by various sellers in a laudatory and descriptive manner. It was also held that registration for the Plaintiff's marks would not give exclusive right over use of the word SUPER.

*(Source: Soothe Healthcare Pvt. Ltd. v. Dabur India Ltd., CS(COMM) 18/2022)*

**(2) MICROSOFT CORPORATION & ANR. VS. VACATION RENTAL SERVICES PRIVATE LIMITED & ORS.**

Microsoft (Plaintiff) filed a suit against Vacation Rental Services Pvt Ltd (Defendants) before the Delhi High Court seeking permanent injunction from using its well-known trademark "MICROSOFT" word/logo. Plaintiffs adopted the trademark "MICROSOFT" in 1975 and it got registered in 1984 under Class 9 goods, and has been

adjudged to be a "well-known" trademark by various courts. It is the case that Defendants, without any authorization or license from Plaintiffs, are using the trademarks of Plaintiffs and are misrepresenting their affiliation to Plaintiffs, in order to defraud innocent customers. A criminal complaint was filed against Defendants under various sections of Indian Penal Code, 1860, Information Technology Act, 2000 and the Telegraph Act, 1885. Learned Magistrate, Saket District Court has taken cognizance of the offences in the matter. Upon conducting search and seizure, Delhi Police seized many hard disks, laptops, email accounts, Wi-Fi routers, load balance broadband router etc. from the premises of Defendant. Plaintiff stated that Delhi Police recovered various fake invoices issued to the alleged victims in the computer system of Defendant containing the "MICROSOFT" logo in addition to the words 'Microsoft Support' and also mentions Plaintiffs' address at Redmond, United States. Plaintiffs stated about criminal proceedings in Spain, wherein various persons have been involved in committing the crime of continuous mass fraud, money laundering and other related crimes. The Bench of Justice Jyoti Singh held out a prima facie case in favor of Plaintiffs, restraining Defendants from using Plaintiffs' "MICROSOFT" trademarks or indulging in activities and services bearing the impugned mark, identical or deceptively similar to the Plaintiffs' registered trademarks, as described in the suit, amounting to infringement of Plaintiffs' trademark rights and leading to passing off, dilution and tarnishing of Plaintiff's trademarks, or misrepresenting and impersonating as Plaintiffs.

*(Source: Microsoft Corporation & Anr. Vs. Vacation Rental Services Private Limited & Ors., CS(COMM) 158/2022)*

### **(3) FOOD DELIVERY APPS - ZOMATO, SWIGGY, DUNZO ENTANGLED IN LEGAL PROCEEDINGS**

Indian Hotel and Restaurant Association has moved the Bombay High Court against food delivery apps - Zomato, Swiggy and Dunzo for delivering food items from illegal and unauthorised outlets. The Petitioners argued that during the pandemic when restaurants were shut and these food delivery apps were on and permitted to deliver food, a substantial number of allegedly illegal outlets put up their menu on these food delivery apps. The Association on being aware of the same, addressed a letter to the

Executive Health Officer informing them of the same. Accordingly, notices were issued to these delivery companies to stop pick up from these allegedly unauthorised companies. In light of the same, the Petitioners sought the following directions –

- Register criminal proceedings against the officials of food delivery apps
- prohibit illegal vendors from operating and encroaching the roadside area
- To prohibit supply of LPG cylinders to the illegal vendors
- Take actions against the officials of the delivery companies for using non - commercial vehicles for commercial use.

The Bombay High Court is yet to hear the matter in detail and pass any orders.

*(Source: Indian Hotel and Restaurant Association & Anr. v. Municipal Corporation for Greater Mumbai (MCGM))*

### **(4) ADOBE, INC VS. NAMASE PATEL AND OTHERS, CS(COMM) 159/2022**

Adobe (Plaintiff) filed a suit before the Delhi High Court against Namase Patel & Ors. (Defendant) seeking permanent injunction restraining infringement of the Plaintiff's trademark, passing off, dissemination of confidential information, unfair trade practices, transfer of domain names, rendition of accounts and damages against Defendant No.1 - Namase Patel, who has registered the domain names www.addobe.com and www.adobee.com. The mark "ADOBE" was coined by Plaintiff in 1980 and has been used internationally by it in respect of computer software and other IT related services. It is the case that Defendant No. 1 is engaged in illegal conduct for the last several years by using the above mentioned infringing domain names. It is stated that Defendant No.1 is a habitual registrant of variations of well-known trademarks and there are several orders, which have been passed against him under the proceedings by the Arbitral Forum under the ICANN's Uniform Domain-Name Dispute Resolution Policy (hereinafter "UDRP"). A forensic audit was conducted wherein it was found out that Defendant No. 1 is using a catch-all configuration feature wherein all the emails, which may have been sent with a spelling error of the Plaintiff's domain name i.e., "...@addobe.com" or "...@adobee.com",

is received by Defendant No.1's mailbox. The said domain names are infringing variants of the Plaintiff's trade mark "ADOBE". Defendant No.1 is stated to be using the subdomains 'photoshop.addobe.com' and 'spark.adobee.com', whereas 'SPARK' and 'PHOTOSHOP' are both products of Plaintiff. The Bench of Justice Prathiba Singh held out a prima facie case in favor of Plaintiffs, and restrained Defendants from using the Infringing domain names www.addobe.com and www.adobee.com and further registering any domain name, which incorporates the Plaintiff's trademark 'ADOBE' or 'PHOTOSHOP' or 'SPARK'. The court directed Cyber Cell, Mumbai Police to conduct an investigation and place on record a status report as to information regarding the individuals who have registered the infringing domain names and the email address, and lastly the court passed necessary directions for blocking the access to the infringing domain names.

*(Source: Adobe, Inc vs. Namase Patel And Others, CS(Comm) 159/2022)*

**(5) NEXTHERMAL CORPORATION & ANR. VS. CHETAN DHIMAN, CS(COMM) 151/2022**

Nexthermal Corporation (Plaintiffs) filed a suit before the Delhi High Court against Chetan Dhiman (Defendants) to restrain from using the trade mark/trade name 'Nextherm' word and logo. Plaintiff is a US-based company and an industrial heating innovation leader, involved in manufacturing and selling electric heating elements, systems and engineering services that solve process application problems. Initially it was incorporated as by name "Hotset" and then later on, it changed its name to "Nexthermal". Plaintiff is the registered proprietor of several 'Nexthermal' Marks. It is the case that Defendant is using its infringing marks in connection with manufacturing and selling electric heating elements, systems and engineering services etc. Defendant through various third-party websites like Indiamart, Justdial, etc. is openly and extensively advertising, promoting and offering for sale its goods and service, under the infringing marks. The Bench of Justice Jyoti Singh restrained Defendant from using its "Nextherm" marks, which is identical to and/or deceptively similar to and/or conceptually similar to and/or is a deceptive variant of, and/or includes the "Nexthermal" marks of Plaintiff, which amounted to infringement of trademarks and copyrights subsisting in Plaintiff's marks. The Bench

further restrained Defendants from disclosing and suspending/taking down the website, if any, maintained under the Infringing marks and/or any other domain name which is deceptively or conceptually similar to, or contains Plaintiffs' "Nexthermal" Marks, and transfer all such domain names in favor of Plaintiffs.

*(Source: Nexthermal Corporation & Anr. Vs. Chetan Dhiman, CS(COMM) 151/2022)*

**(6) DELHI HIGH COURT SETS ASIDE CENTRAL GOVT ORDER REJECTING RE-REGISTRATION OF MUSIC RIGHTS COMPANY PPL**

The Delhi High Court Bench of Justice Yogesh Khanna set aside an order of the Central government rejecting re-registration application of Phonographic Performance Limited (PPL) as a Copyright Society thereby directing the government to reconsider the application in a 'reasonable time'. The Court was dealing with two petitions filed by the PPL challenging the two orders of the Central government. It was argued that the Petitioner was a registered copyright society till the introduction of an amendment in the Copyright Act in 2012 which mandated that every society, already registered, shall get itself registered again within a period of one year. The Court also set aside the order through which the government granted registration to Recorded Music Performance Limited (RMPL) holding that it was done in violation of the order passed by the court wherein it had granted an ad-interim stay to the PPL.

*(Source: Bar and Bench - <https://www.barandbench.com/news/litigation/delhi-high-court-sets-aside-central-govt-order-rejecting-re-registration-music-rights-company-ppl>)*

**(7) KHADI & VILLAGE INDUSTRIES COMMISSION V. RAMAN GUPTA AND OTHERS, CS(COMM) 133/2022**

The Delhi High Court granted an ex parte ad interim injunction to Khadi & Village Industries Commission ('Plaintiff') against Raman Gupta and Ors. ('Defendants') in a suit for trademark infringement and passing-off. The Plaintiff claimed to be the registered proprietor of KHADI word and logo marks as well as the Charkha Logo. It also averred that its KHADI marks are promoted

through a statutory corporation and in recent times enormous emphasis has been given globally also to promote Khadi products. The Plaintiff also claimed that during the recent pandemic, it expanded its business to various medical products such as hand sanitizers, etc. which are also used extensively by the consuming public. It was the case of the Plaintiff that the Defendants were using the trading style/corporate name/trade mark KHADI BY HERITAGE and the Charkha Logo in various forms to promote and sell medical products, including through the Defendants' website located at <https://lnkd.in/dJhgSWHh>. The Plaintiff averred that use of the KHADI marks by the Defendants in relation to the medical products raises enormous concerns in respect of the quality of these products apart from constituting violation of various statutory and common law rights of the Plaintiff. The Court held that use of the KHADI marks, especially, for medical products without any quality control is not only violative of the rights of the Plaintiff but also of concern to the interest of the general public as there is no quality supervision. The Court further held that the Plaintiff had successfully made out a prima facie case and non-grant of an ex parte order could cause enormous damage to the consuming public on a day-to-day basis. Consequently, the court passed an order restraining the Defendants from using the Plaintiff's marks and the infringing domain names and corresponding websites. It also directed the Registrars of the infringing domain names to suspend the use of these domain names upon receipt of the order.

*(Source: Khadi & Village Industries Commission v. Raman Gupta and others, CS(COMM) 133/2022)*

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## ENVIRONMENT LAWS

### **(1) ABSENCE OF JUDICIAL MEMBER IN WESTERN ZONE NGT, MUMBAI HIGH COURT SEEKS RESPONSE OF THE STATE.**

The Goa Bench of Bombay High Court has sought for the response of the government on a PIL seeking to assign at least one judicial member who can function along with an expert member of National Green Tribunal (NGT). The petitioner referred to the order made by the Supreme Court in Writ

Petition (Civil) No.1235/2017, in which an interim order was made to restrain the Chairperson of the NGT from constituting a Single Member Bench instead of a Division Bench comprising of one judicial member and an expert member. It was further submitted that presently only some matters are being taken up by the Principal Bench and access to the NGT is rendered most difficult. She submits that environment matters normally can bring no delay and if there is no appropriate forum to seek redressal, then, environment protection can be rendered a casualty.

*(Source: Goa Foundation v. National Green Tribunal, PIL WP No. 4 of 2022)*

### **(2) TESLA TO PAY \$275K OVER CLEAN AIR ACT VIOLATIONS IN US**

Elon Musk run Tesla has agreed to pay a \$275,000 penalty for violating the Clean Air Act at its electric vehicle (EV) manufacturing plant in Fremont, California. The US Environmental Protection Agency (EPA) announced a settlement with Tesla Motors after it found Clean Air Act violations at their automobile manufacturing plant.

*(Source: [http://timesofindia.indiatimes.com/articleshow/89774670.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/89774670.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) dated as on 04-03-2022.)*

### **(3) BIDEN EPA BACKTRACKS ON TRUMP-ERA WATER POLICY- WILL THE NEW STANCE LEAD TO EFFICIENCY OR ADD TO ADMINISTRATIVE BACKLOG?**

US EPA recently issued two memoranda announcing a more flexible timeline for its review of state and tribal water quality standards (WQS), replacing a Trump-Era policy that set defined deadlines for these reviews. On February 4, 2022, US EPA Assistant Administrator Radhika Fox issued a memorandum entitled "Rescission of Memorandum Titled: 'Policy for the EPA's Review and Action on Clean Water Act Program Submittals'", rescinding a Trump-era water office memorandum from June 3, 2019. On the same day, Deborah G. Nagle, Director of the Office of Science and Technology (OST), issued a memorandum entitled "Decision-Making Principles for EPA Headquarters' Concurrence on



Water Quality Standards Decisions” to all Water Division Directors.

(Source:  
<https://www.freshlawblog.com/2022/03/04/biden-epa-backtracks-on-trump-era-water-policy-will-the-new-stance-lead-to-efficiency-or-add-to-administrative-backlog/#more-11148> dated as on 05-03-2022)

#### **(4) ENVIRONMENT MINISTRY PURSUES EASE OF BUSINESS ONE OFFICE ORDER AT A TIME**

In addition to the amendments proposed in the country's laws related to wildlife protection and biodiversity protection, India's environment ministry has introduced a series of changes in the regulations through office orders. The changes brought through office orders, a regular feature in the ministry now, pave way for diversion of forest land up to one hectare of forest land in exceptional circumstances and a star rating system for state authorities incentivising faster green clearances. Environment sector experts note that in many cases the changes brought by these office orders are without proper public consultation.

Over the past few months, India's Ministry of Environment, Forest and Climate Change (MoEFCC) has proposed amendments to two key legislations- The Wild life Protection Act 1972 and the Biological Diversity Act 2002. While environmentalists and conservationists focus on the changes proposed in the two laws, dubbing them as dilutions, there are some other office orders that the environment ministry has introduced over the past two months, which push for ease of business and could further weaken the country's green regulations. Amendments to legislation are usually done in public consultation while office orders are communications from an authority to carry out/guide certain actions, which do not undergo a public consultation phase. Among the orders by the MoEFCC, one order paves the way for forest clearance to residential projects up to one hectare on forest lands in exceptional circumstances. Another order introduces a star rating system to incentivise state environment authorities recommending environment clearances in the least possible time. The ministry also sent out an order to announce revisions in the rates of the Net Present Value (NPV) that is levied for the diversion of forest lands.

(Source:  
<https://india.mongabay.com/2022/02/environment-ministry-pursues-ease-of-business-one-office-order-at-a-time/> dated as on 05-03-2022)

#### **(5) MINING ON THE SHIFTY SANDS OF GOAN POLITICS**

After a decade of uncertainty, mining features less prominently in the electoral rhetoric of Goa's politicians, reflecting perhaps the waning influence of the sector. The Goa government has repeatedly erred on the mining issue, according to the Supreme Court. Civil society activists say the government's latest attempt at restarting the mining sector by auctioning old dumps is another mistake.

(Source:  
<https://india.mongabay.com/2022/01/mining-on-the-shifty-sands-of-goan-politics/> dated as on 05-03-2022)

#### **(6) FSSAI OPERATIONALIZES THE PROVISION REGARDING USAGE OF RECYCLED PLASTIC**

The Draft Food Safety and Standards (Packaging) First Amendment Regulations, 2022 is in the process of approval by Food Authority, meanwhile, to allow the FBOs to make use of recycled plastics as food contact materials. FSSAI has decided to operationalize the said Draft Regulations. Products made of recycled plastics including carry bags used for packaging, storing, carrying or dispensing of food products shall conform with the National Standards / Regulations specifications.

(Source:  
[https://fssai.gov.in/upload/advisories/2022/01/61ea5c8e8713cDirection\\_Recycled\\_Plastics\\_19\\_01\\_2022.pdf](https://fssai.gov.in/upload/advisories/2022/01/61ea5c8e8713cDirection_Recycled_Plastics_19_01_2022.pdf) dated as on 05-03-2022)

**[End of Newsletter]**

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