

# MONTHLY NEWSLETTER

## AUGUST 2022

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).

### OUR LEGAL TEAM

Srinivas Kotni  
Rajiv Sawhney  
Raj Latha Kotni  
Ashima Puri Chhibbar  
Sandeep Chatterjee  
Urvashi Kalra  
Akshay Kumar  
Swagita Pandey  
Adivitiya Raj  
Sourabh Malik

### DISCLAIMER

The information contained in this Newsletter is for general purposes only and Lexport is not, by means of this newsletter, rendering legal, tax, accounting, business, financial, investment or any other professional advice or services. This material is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Further, before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Lexport shall not be responsible for any loss sustained by any person who relies on this newsletter.

## INDEX

RBI & FEMA	... 2
Foreign Trade	... 2
Corporate Laws	... 3
Securities Laws and Capital Markets	... 4
Competition Laws	... 5
Indirect Taxes and Customs	... 6
Intellectual Property Rights	... 6
Environment Laws	... 7

## RBI & FEMA

### **(1) RBI INCREASES POLICY REPO RATE UNDER THE LIQUIDITY ADJUSTMENT FACILITY (LAF) BY 50 BASIS.**

The policy Repo rate under the Liquidity Adjustment Facility (LAF) was raised by the Reserve Bank of India on August 5, 2022, by 50 basis points, with immediate effect, from 4.90 to 5.40 percent. As a result, the Monetary Policy Committee decided to modify the rates for the standing deposit facility (SDF) and marginal standing facility (MSF) to 5.15 percent and 5.65 percent, respectively (MPC). The MPC also made the decision to keep its attention on the removal of accommodation in order to guarantee that inflation will continue to be within the target going forward while promoting growth.

*(Source: RBI Press Release 2022-2023/101 dated 5 August 2022)*

### **(2) RBI AMENDS GOLD MONETIZATION SCHEME, 2015**

The Master Direction - Liberalized Remittance Scheme has been issued again by the Reserve Bank of India (LRS). The Directions were a measure of liberalisation that made it easier for residents to send money overseas for legal current or capital account transactions, or a combination of the two.

According to the Master Direction, any received, realised, unspent, and unused foreign currency must be returned to India and given to a designated

person within 180 days of the date it was received, realised, purchased, acquired, or returned to India, as applicable.

*(Source: RBI Notification dated 4<sup>th</sup> August 2022)*

### **(3) RESERVE BANK OF INDIA RELEASES DISCUSSION PAPER ON CHARGES IN PAYMENT SYSTEMS.**

A discussion paper on fees in payment systems has been published by the Reserve Bank of India for public comment. On or before October 3, 2022, feedback regarding the issues raised therein, together with additional pertinent suggestions, may be sent by email.

RBI actions in the payment systems have been geared toward reducing frictions that may be brought on by systemic, procedural, or revenue-related concerns. Despite the fact that there are multiple middlemen in the payment transaction chain, consumer complaints are typically about expensive and opaque fees. Payment service fees should be affordable and competitively set for users while also providing the intermediaries with the best possible revenue stream. It was deemed helpful to conduct an extensive examination of the various fees assessed in the system to achieve this balance.

*(Source: RBI discussion paper dated 17<sup>th</sup> August 2022)*

\*\*\*\*\*

## FOREIGN TRADE

### **(1) REVISED IMPORT POLICY CONDITION FOR MALONYLUREA (BARBITURIC ACIDS) AND ITS SALTS.**

Malonylurea (barbituric acids) and its salts' import policy condition has been changed by a notification from the Ministry of Commerce and Industry. Before the change, the import of such substances and their salts required a NOC from the Gwalior Narcotics Commissioner. The new import policy does away with this requirement. The updated rule shall go into effect right away.

*(Source: Notification no. 23/ 2015 – 2020 dated 1<sup>st</sup> August 2022)*

**(2) ANTI-DUMPING DUTY ON OPAL GLASSWARE IMPORTED FROM UAE AND CHINA**

The Department of Revenue has announced that imports of opal glassware from the United Arab Emirates and China will be subject to anti-dumping duties. If anti-dumping duty is permitted to end, the material on file indicates that dumping will likely continue, harming the domestic industry as a result. The anti-dumping duty rates will be in place for five years starting on the date of publication.

*(Source: Notification No. 24/2022 - customs dated 3<sup>rd</sup> August 2022)*

**(3) PLANT QUARANTINE (REGULATION OF IMPORT INTO INDIA) (THIRD AMENDMENT) ORDER, 2022**

The Plant Quarantine (Regulation of Import into India) (Third Amendment) Order, 2022 was published by the Department of Agriculture and Farmers Welfare in 2022. According to the amendment, fresh fruit for human consumption imported from the United States' Pacific Northwest region (Idaho, Oregon, and Washington) must be free of certain bugs and moths.

Consignments must adhere to the Systems Approach in accordance with the established protocol, come from Idaho, Oregon, or Washington's producing areas, and have the procurement information noted on the Phytosanitary Certificate.

*(Source: Notification 3777(E) dated 3<sup>rd</sup> August 2022)*

**(4) DGFT AMENDS EXPORT POLICY OF FLOUR ITEM UNDER HS CODE 1101.**

The export policy for wheat, wholemeal atta, and resulting atta under HS Code 1101 has been changed from "Free" to "Prohibited" by the Directorate General of Foreign Trade.

The modification now makes it possible to impose export restrictions on wheat flour, which would prevent the price of wheat flour from growing and guarantee food security for the most vulnerable members of society.

Due to the ban on exporting wheat (which was implemented to control rising domestic market prices and guarantee food security in the nation), demand for wheat flour has increased on international markets, and India's exports of wheat flour have increased by 200% from April to July 2022 in comparison to the same period in 2021. The increased demand for wheat flour in international market led to significant price rise of wheat flour in the domestic market.

*(Source: Notification no. 30/2015-2020 dated 27<sup>th</sup> August 2022)*

\*\*\*\*\*

**CORPORATE LAWS**

**(1) SECURITIES AND EXCHANGE BOARD OF INDIA (MUTUAL FUNDS) (SECOND AMENDMENT) REGULATIONS, 2022**

The Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 were amended by a SEBI notification that was released. According to the change, sponsors who make investments on behalf of insurance policy or other scheme beneficiaries do not qualify to be associates of mutual funds. The modified rules will take effect right away.

*(Source: Notification No. SEBI/LAD-NRO/GN/2022/92 dated 3<sup>rd</sup> August 2022)*

**(2) THE COMPANIES (ACCOUNTS) FOURTH AMENDMENT RULES, 2022.**

The Companies (Accounts) Fourth Amendment Rules, 2022, which the Ministry of Corporate Affairs announced, amended how the books of accounts should be maintained in an electronic format.

The adjustment is made in accordance with Regulation 3, which outlines how electronic books of accounts should be maintained. According to this rule, India must always have access to

electronic books of accounts and other pertinent books and papers so that they can be used for future reference.

*(Source: Notification no. G.S.R. 624(E) dated 5<sup>th</sup> August 2022)*

**(3) COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) THIRD AMENDMENT RULES, 2022**

The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022 have been released by the Ministry of Corporate Affairs. The following e-forms under the Companies (Appointment and Qualification of Directors) Rules, 2014 have been replaced by new forms as a result of the revision.

*(Source: Notification no. G.S.R. 662(E) dated 29<sup>th</sup> August 2022)*

**(4) SECURITIES AND EXCHANGE BOARD OF INDIA V. RAJKUMAR NAGPAL & ORS.**

Reliance Commercial Finance Ltd. (“RFCL”) had entered into a Inter-Creditor Agreement (“ICA”) and had approved a resolution plan in accordance with the RBI (Prudential Framework for the Resolution of Stressed Assets) Directions, 2019. The Supreme Court had to decide whether it was mandatory for debenture holders to enter into the ICA. The Court analysed the framework of the SEBI circular entitled ‘Standardisation of procedure to be followed by Debenture Trustees in case of default by issuers of listed debt securities’ and concluded that it was mandatory to enter into the ICA if debenture holders wished to avail of a resolution plan under the RBI Directions. The holders of debt securities cannot opt for the resolution plan after its formulation without first entering into an ICA.

*(Source: Securities and Exchange Board of India v. Rajkumar Nagpal & Ors., Civil Appeal No. 5247 of 2022, Supreme Court)*

**(5) R.K. INDUSTRIES V. H.R. COMMERCIALS**

R.K. Industries (“Appellant”) had lodged the highest bid for the purchase of assets of a company

under liquidation. During the pendency of the bidding process, the NCLT had permitted the private sale of certain assets of the Corporate Debtor, thereby annulling the bidding. The order of the NCLT was set aside on appeal to the NCLAT, which directed a fresh process of private sale.

On appeal, the Supreme Court set aside the NCLAT’s directions. It held that the scope of judicial review at the liquidation stage is limited and the NCLAT ought not have interfered during the liquidation sale process.

*(Source: M/s. R.K. Industries (Unit-II) LLP v. M/s. H.R. Commercial Pvt. Ltd. & Anr., Civil Appeal No. 7722/2021, Supreme Court)*

\*\*\*\*\*

**SECURITIES LAWS AND CAPITAL MARKETS**

**(1) SECURITIES AND EXCHANGE BOARD OF INDIA (MUTUAL FUNDS) (SECOND AMENDMENT) REGULATIONS, 2022**



The Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 were amended by a SEBI notification that was released. According to the change, sponsors who make investments on behalf of insurance policy or other scheme beneficiaries do not qualify to be associates of mutual funds. The modified rules will take effect right away.

*(Source: Notification No. SEBI/LAD-NRO/GN/2022/92 dated 3<sup>rd</sup> August 2022)*



**(2) SEBI MANDATES BLOCK MECHANISM IN DEMAT ACCOUNT FOR SHARE SALE TRANSACTIONS FROM 14TH NOVEMBER 2022.**

Blocking securities on demat accounts for sell transactions is now required by the Securities and Exchange Board of India. The block mechanism facility was optional, according to the earlier notification.

A client's shares will be frozen in their demat account in favour of the relevant clearing organisation under the process if they intend to perform a sale transaction. Beginning on November 14, 2022, the block mechanism will be required.

*(Source: Circular No. SEBI/HO/MIRSD/DoP/P/CIR/2022/109 dated 18<sup>th</sup> August 2022)*

**(3) SEBI SETTLEMENT SCHEME 2022**

In accordance with the Hon'ble Securities Appellate Tribunal's ("SAT") order dated May 13, 2022 in the matter of illiquid stock options, SEBI has created a Settlement Scheme ("Scheme, 2022") for the entities against whom proceedings have been brought and are pending before any forum or authority, including Courts/SAT, Adjudicating Officer, and Recovery Officer (provided an appeal has been filed and the same is pending before the SAT/Court).

On August 22, 2022, SEBI and BSE's respective websites will make the terms and conditions of the 2022 Scheme available. The Plan will start on August 22, 2022, and finish on November 21, 2022, both inclusive, or on any other day that the Competent Authority approves.

*(Source: Public Notice dated 19<sup>th</sup> August 2022)*

\*\*\*\*\*

**COMPETITION LAWS**

**(1) CCI APPROVES COMPOSITE SCHEME OF ARRANGEMENT AND AMALGAMATION BETWEEN SHRIRAM GROUP COMPANIES**

**UNDER SECTION 31(1) OF THE COMPETITION ACT, 2002**

The combination of SBCPL and SCL is one of the Scheme's key components. The undertaking carrying on the business of financial services was demerged from SCL and transferred to and vested in SIHL. the transfer and vesting of the undertakings from SCL conducting the life insurance and general insurance operations into SLIH & SGIH, respectively. the merger of SCUF and STFC as well as the merging of SCL (together with its remaining undertaking and investments).

*(Source: PRESS RELEASE No. 27/2022-23 dated 2<sup>nd</sup> August 2022)*

**(2) CCI APPROVES ACQUISITION OF STAKE IN IIFL HOME INDIRECTLY BY ADIA GROUP**

The proposed combination entails Platinum Owl C 2018 RSC Limited (Platinum Owl/ Acquirer), acting as trustee for Platinum Jasmine A 2018 Trust, purchasing 20% of the issued and paid up equity share capital of IIFL Home Finance Limited (IIFL Home) on a fully diluted basis (Platinum Jasmine Trust)

*(Source: PRESS RELEASE No. 31/2022-23 dated 12<sup>th</sup> August 2022)*

**(3) CCI APPROVES THE ACQUISITION OF APPROXIMATELY 7.49% SHAREHOLDING IN ADITYA BIRLA FASHION AND RETAIL LIMITED ON A FULLY DILUTED BASIS BY THE CALADIUM INVESTMENT PTE. LTD(GIC INVESTOR) BY WAY OF PREFERENTIAL ISSUANCE OF EQUITY AND WARRANTS (PROPOSED COMBINATION)**

Lathe Investment Private Limited, an organisation that is completely controlled by GIC Private Limited, is the sole owner of Caladium Investment Pte. Ltd. The GIC Investor is an investment holding company that serves a specific function and is set up as a private limited company in Singapore under the management of GIC Special Investments Private Limited.

Aditya Birla Fashion and Retail Limited, a publicly traded company, produces and sells branded

apparel, footwear, and accessories (AFA) through its retail stores, exclusive brand outlets, Pantaloons stores, multi-brand outlets, shop-in-shop locations in department stores, own online retail platforms, and third-party e-commerce marketplaces. The company operates throughout India.

*(Source: PRESS RELEASE No. 36/2022-23 dated 30<sup>th</sup> August 2022)*

\*\*\*\*\*

## **INDIRECT TAXES AND CUSTOMS**

### **(1) REVISED GST RATES AS PER 47TH GST COUNCIL**

The Department of Revenue clarified the GST rates for a number of products, including electric vehicles, nicotine-containing polacrilex gum, treated sewage water, mangoes, rice bran, aquatic feed, poultry feed, and cattle feed, Bran, sharps, and other residues.

*(Source: Circular No. 179/11/2022-GST dated 3<sup>d</sup> August 2022)*

### **(2) THE INCOME-TAX (24TH AMENDMENT) RULES, 2022.**

To further update the Income-tax Rules of 1962, the Central Board of Direct Taxes published the Income-tax (24th Amendment) Rules, 2022 on August 10, 2022. The modification included a new rule 17AA that deals with keeping and maintaining books of accounts and other records.

The above-mentioned books of accounts and other documents must be kept for a minimum of ten years after the end of the applicable assessment year, whether they are written, electronic, digital, printouts of data stored electronically, digitally, or on any other type of electromagnetic data storage device.

*(Source: Notification no. G.S.R. 622(E) dated 10th August 2022)*

### **(3) INDIA YAMAHA MOTOR PVT. LTD. V. THE ASSISTANT COMMISSIONER, CHENNAI**

The Petitioner in the present case had made a short disclosure of liability for a period of four months due to an inadvertent error. Nevertheless, the Respondent directed the Petitioner to pay interest amounting to Rs. 5 crores under Section 50 of the CGST Act for belated remittance of GST.

The Petitioner filed a Writ Petition with the Madras High Court which was allowed. The Petitioner had argued that on the strength of the balances lying to its credit lying in the Electronic Cash Ledger, no interest need be levied. The Court refuted this contention holding that interest cannot be waived in such circumstances. It observed that it cannot be assumed that the available credits will be set-off against the liability.

*(Source: India Yamaha Motor Pvt. Ltd. v. The Assistant Commissioner, Chennai, W.P. No. 19044 of 2019, Madras High Court)*

### **(4) CURIL TRADEX V. THE COMMISSIONER, DELHI GOODS AND SERVICE TAX**

In the present case, the Petitioner had filed a Writ Petition against an order passed by the Sales Tax Officer cancelling the registration of the respondent. The Petitioner contended that the impugned order was not furnished to them nor was there any notice of inspection served. The Court accepted the aforesaid contentions and held that the inspection of premises without serving a prior notice is incorrect. Further, such inspection ought to have been carried out in the presence of the authorized representative of the petitioner.

*(Source: Curil Tradex Pvt. Ltd. v. The Commissioner, Delhi Goods and Service Tax & Anr., W.P.(C) 10408/2022, Delhi High Court)*

\*\*\*\*\*

## **INTELLECTUAL PROPERTY RIGHTS**

### **(1) THE REGISTRATION (GOA DRAFT AMENDMENT) ACT, 2022.**

The Registration (Goa Draft Amendment) Act, 2022, was announced by the Goa government in order to repeal section 19A of the Registration Act,

1908, as the registration of documents is now done digitally through the National Generic Document Registration System (NGDRS), which is in use in Goa. In this system, the original document is simply scanned and uploaded, therefore a real copy is not necessary.

Section 32A, which addresses the mandatory uploading of photographs, has been replaced as a result of the Amendment..

*(Source: Series I no. 17 dated 27<sup>th</sup> July 2022)*

## **(2) ONLINE PORTAL FOR SUBMISSION OF APPLICATION FOR PATENT**

The Department for Promotion of Industry and Internal Trade has released application instructions and opened a portal for online filing of patent applications. Applications must be submitted with specific documents.

*(Source: Guidelines and instructions dated 11<sup>th</sup> August 2022)*

## **(3) NEETU SINGH V. TELEGRAM**

Neetu Singh (“Plaintiff”) alleged that the Respondent (“Telegram”) was hosting unauthorized copies of her textbooks which amounted to copyright infringement. The Plaintiff sought disclosure of the identities of users who were disseminating her copyrighted works.

The Delhi High Court held that its jurisdiction could not be ousted merely because the servers on which the content was hosted were located in Singapore. The Respondent could not rely on Singaporean privacy law to evade the disclosure of identities. The Court based its decision on the fact that the Respondents had made their services available in India and were earning significant revenue herein.

*(Source: Neetu Singh v. Telegram Fz LLC, CS (Comm) 282/2022, Delhi High Court)*

## **(4) AKASH AGGARWAL V. FLIPKART INTERNET**

Akash Aggarwal (“Plaintiff”) sold clothing items on various e-commerce platform including Flipkart (“Respondent”). The plaintiff alleged

trademark infringement and passing off against the Respondent claiming that it allowed third party sellers to use the plaintiff’s brand name through the ‘latching on’ feature. The Court affirmed the plaintiff’s contentions and directed the respondent to disable the ‘latch on’ feature. It further restrained third party users from using the plaintiff’s mark.

*(Source: Akash Aggarwal v. Flipkart India Pvt. Ltd., CS(Comm) 492/2022, Delhi High Court)*

\*\*\*\*\*

## **ENVIRONMENT LAWS**

### **(1) THE BATTERY WASTE MANAGEMENT RULES, 2022.**



Battery Waste Handling Rules, 2022 were released by the Ministry of Environment, Forests, and Climate Change to ensure responsible management of used batteries. The Batteries (Management and Handling) Rules, 2001 will be replaced by the new regulation.

According to the Polluter Pays Principle, environmental compensation will be required when Extended Producer Responsibility goals, duties, and obligations are not met. The money raised for environmental compensation must be used to collect and recycle waste batteries that haven't already been collected or recycled.

*(Source: Notification no S.O. 3984(E) dated 22<sup>nd</sup> August 2022)*

**[End of Newsletter]**

\*\*\*\*\*