

MONTHLY NEWSLETTER

NOVEMBER 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.

Regards,
Team Lexport



ABOUT US

Lexport is a full-service Indian law firm offering consulting, litigation and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website www.lexport.in.

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RBI & FEMA

(1) RBI LAUNCHES NATION-WIDE CONSUMER FINANCIAL AWARENESS PROGRAMME



The Reserve Bank will undertake a nationwide consumer financial awareness programme with deeper outreach covering all demographic groups, especially those in rural and semi-urban areas. This programme will be run in partnership with its regulated firms.

Regional customization of the campaign is required for improved engagement. The campaign will seek to improve percolation of awareness on protection against digital and electronic financial transaction frauds, including dos and don'ts, safeguards, and prevention, while emphasising information on customer rights, customer protection, and grievance resolution mechanism.

(Source: Press Release: 2022-2023/1135 dated 2nd November 2022)

(2) RBI ISSUES NOTIFICATION ON AGENCY COMMISSION FOR DIRECT TAX COLLECTION UNDER TIN 2.0 REGIME

The Reserve Bank of India has instructed the Agency banks to submit their agency commission claims in the approved manner to CAS Nagpur for Central government transactions and the appropriate Reserve Bank of India Regional Office for State government transactions.

The offices of the agency banks that were mutually appointed under Section 45 of the RBI Act, 1934, as well as the Reserve Bank of India's own offices, respectively, are where the Reserve Bank of India conducts the general banking business for the Central and State Governments. RBI compensates agency banks with commissions for the government business they handle. On April 1, 2022, this master circular on agency commission was notified; however, with this notification, paragraph 21 has been changed.

(Source: Press Release: 2022-2023/136 dated 14th November 2022)

(3) NATIONALIZED BANKS (MANAGEMENT AND MISCELLANEOUS PROVISIONS) AMENDMENT SCHEME

The Nationalized Banks (Management and Miscellaneous Provisions) Amendment Scheme was published by the Ministry of Finance (MoF). According to the revised scheme, a full-time director, including the managing director, must devote all his time to the operations of the nationalised bank. The initial term of office must not exceed five years, and it may be extended up to a total period, including the initial term, of not more than ten years, as determined by the Central Government in consultation with the Reserve Bank. Full-time directors are also eligible for reappointment.

(Source: Notification no. S.O. 5381(E) dated 17th November 2022)

(4) THE SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA PENSION [AMENDMENT] REGULATIONS, 2022.

Small Industries Development Bank of India released the Small Industries Development Bank of India Pension [Amendment] Regulations, 2022, which are presumed to have taken effect on April 1, 2021.

Regulation 41, which addresses family pensions, contains an amendment that substitutes sub-regulation 5 as follows:

The standard family pension rate is thirty percent of the pay, with a minimum monthly payment of three thousand five hundred rupees (Rs. 3,500) and a maximum monthly payment of twenty-four thousand four hundred ninety-five rupees (Rs. 24,495).

(Source: HRDV No. L001278933A /Staff. Gen. (2) dated 14th November 2022)

(5) NATIONAL SAVINGS TIME DEPOSIT (AMENDMENT) SCHEME, 2022

The National Savings Time Deposit (Amendment) Scheme, 2022 was announced by the Central Government in a notification dated November 22, 2022. It will be regarded as having started to apply on October 1, 2022. The deposit made on or after October 1, 2022, will be subject to the adjusted interest rate as specified in the amended scheme.

(Source: Notification no. G.S.R 838 (E) dated 22nd November 2022)

FOREIGN TRADE

(1) DGFT HAS REVISED THE POLICY CONDITION OF COAL IMPORTING MONITORING SYSTEM.

Under the coal importing monitoring system, policy condition No. 7 has been updated by the Directorate General of Foreign Trade. Through which it gave notice that the importer might apply for registration up to 60 days in advance of the anticipated arrival of the import cargo and no later than 5 days prior to that date.

75 days will pass before the Automatic Registration Number expires. For the cargo to be cleared by

customs, the importer must include the Registration Number and Expiration Date of Registration in the Bill of Entry.

(Source: Notification No. 41 /2015-2020 dated 7th November 2022)

(2) DGFT ALLOWS INTERNATIONAL TRADE SETTLEMENTS IN INDIAN RUPEES FOR EXPORT PROMOTION SCHEMES UNDER THE FOREIGN TRADE POLICY

To support international trade settlement in Indian Rupees (INR), i.e., the invoicing, payment, and settlement of exports and imports in Indian Rupees, the Directorate General of Foreign Trade has made the necessary adjustments to the Foreign Trade Policy and Handbook of Procedures.

By means of Notification No. 33/2015-20, issued September 16, 2022, the DGFT had already established Paragraph 2.52(d), allowing exports and imports to be invoiced, paid for, and settled in INR in accordance with the RBI's A.P. (DIR Series) Circular No.10, dated July 11, 2022. In addition to the notification, adjustments have been made to Paragraph 2.53 of the Foreign Trade Policy to allow for the grant of export advantages and the fulfilment of export obligations for export realisations in Indian Rupees in accordance with RBI guidelines dated July 11, 2022.ood Products Export Development Authority.

(Source: Public notice No. 35/2015-2020 dated 9th November 2022)

CORPORATE LAWS

(1) COMPANIES (REGISTERED VALUERS AND VALUATION) AMENDMENT RULES, 2022

The Companies (Registered Valuers and Valuation) Amendment Rules, 2022 were published by the Ministry of Corporate Affairs (MCA). After paying the required fee, a registered valuer is required by the amendment to notify the authority of any changes to their personal

information, the makeup of their partners or directors, or any clauses in their partnership agreement or memorandum of association that may have an impact on their registration.

After paying a fee, a registered valuers organisation is required to notify the appropriate authority of any changes to the membership of its governing board, committees, appellate panel, or other details. Additionally, it is made clear that a member who serves as a full-time director for a company that is registered as a valuer will not be regarded as an employee.

(Source: Notification No. GSR...(E) dated 21st November 2022)

(2) ASSAM TEA EMPLOYEES PROVIDENT FUND ORGANIZATION V. MADHUR AGARWAL

Assam Tea Employees Provident Fund Organization (“Appellant”) submitted a claim as operational creditors of the Corporate Debtor for *inter alia* default in depositing its provident fund contributions. The resolution professional admitted the claim of the appellant, but only earmarked a part of the total claim amount in the resolution plan which was approved by the NCLT.

The appellant approached the NCLAT, which held that provident fund dues were not assets of the Corporate Debtor and have to be paid in full. It directed the discharge of the dues to the applicant in full.

(Source: Assam Tea Employees Provident Fund Organization v. Mr. Madhur Agarwal and Another, Company Appeal (AT) (Insolvency) No. 262 of 2022)

(3) CHIPSAN AVIATION V. PUNJ LLOYD AVIATION

Chipsun Aviation (“Appellant”) engaged Punj Lloyd Aviation (“Corporate Debtor”) for provision of charter services, for which the appellant paid 60 lakhs in advance. The services were never provided by the Corporate debtor and the appellant demanded a refund of the advance money. Thereafter, CIRP was initiated by the appellant.

The Corporate Debtor claimed that there was no operational debt as there was no privity of contract between the parties, since the appellant had actually contracted with Buildarch Aviation. The NCLT agreed with the Corporate Debtor’s contentions and held that the advance payment made did not fall within the ambit of operational debt. Thereafter, the NCLAT overturned the order of the NCLT and adjudged that advance payment in the present case was operational debt even if there was no privity of contract. It observed that Section 5(2) defined operational debt as a claim ‘in respect of the provision of goods and services’ and favoured a wide interpretation of the provision to include advance payment within its purview.

(Source: Chipsan Aviation Private Limited v. Punj Lloyd Aviation Limited, Company Appeal (AT) (Ins) No. 261 of 2022)

SECURITIES LAWS AND CAPITAL MARKETS

(1) SEBI RESTRICTS ACTIVITIES OF CLEARING CORPORATIONS



According to clarification from the Securities and Exchange Board of India, clearing corporations are only allowed to clear and settle reverse and repo transactions involving debt securities that are traded or dealt with on a registered stock exchange.

(2) SEBI CONSULTATION PAPER ON CLOUD FRAMEWORK

There are no restrictions on employing any cloud deployment model, according to the circular. Depending on their evaluation of the risks associated with their business and technology, SEBI regulated entities (RE) may utilise cloud computing.

It is important to keep in mind that even though IT services and functionality can be outsourced (to a cloud-based solution), RE is solely responsible for all aspects of cloud services, including but not limited to the cloud applications' accessibility, the confidentiality, integrity, and security of its data and logs, and ensuring RE's compliance with all laws, rules, regulations, circulars, etc. issued by SEBI/the Union Government/the relevant state government. The RE will therefore be responsible for any violations of the same.

Only cloud service providers (CSPs) with MeitY empaneled data centres should be used for cloud services. The STQC (or any other equivalent organisation designated by the Government of India) audit status should be current for the CSP's data centre.

Ample controls must be set up in a multi-tenant cloud architecture to guarantee that data (whether it is in transit, at rest, or in process) is segregated and inaccessible to any other tenant. The RE will evaluate, confirm, and if necessary, implement additional security controls the multi-tenancy segregation procedures put in place by CSP.

To protect the confidentiality, privacy, and integrity of data, encryption must be used at every point in the data lifecycle (at rest, in transit, and during usage).

(Source: Consultation Paper on Cloud Framework dated 4th November 2022)

(3) THE SECURITIES CONTRACTS (REGULATION) (STOCK EXCHANGES AND CLEARING CORPORATIONS) (SECOND AMENDMENT) REGULATIONS, 2022.

The Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Second

Amendment) Regulations, 2022, which address orderly winding down, were released by the Securities and Exchange Board of India.

Every clearing corporation is required by regulation 44A to create and maintain a framework for the orderly winding down of its essential activities and services, which must account for both voluntary and involuntary eventualities.

(Source: Notification no. No. SEBI/LAD-NRO/GN/2022/104 dated 15th November 2022)

COMPETITION LAWS

(1) LIST OF MERGERS

1. Ironsource Ltd. & Unity Software Inc
2. Cyberoptics Corp & Nordson Corp
3. Logicbio Therapeutics Inc & Astrazeneca PLC
4. Flagstar Bancorp Inc & New York Community Bancorp Inc
5. Renovacor Inc & Rocket Pharmaceuticals Inc

(Source: Stock Analysis mergers and acquisitions November 2022)

INDIRECT TAXES AND CUSTOMS

(2) DEPARTMENT OF REVENUE EXEMPTS CERTAIN RICE PRODUCTS FROM CUSTOMS DUTY FOR EXPORT

The Rice in the husk, rice that has been partially or entirely milled, regardless of whether it has been polished or glazed, and organic non-basmati rice are among the items that the Department of Revenue has declared exempt from customs duty when exported outside of India.

(Source: Notification No. 55/2022-Customs dated 31st October 2022)

(3) CENTRAL GOODS AND SERVICES TAX (THIRD AMENDMENT) RULES, 2022

The Central Goods and Services Tax (Third Amendment) Rules, 2022 have been published by the Central Board of Indirect Taxes and Customs. The amendment has changed the Form GSTR-9 that registered tax payers use to submit their annual returns, provide information about their purchases and sales, claim input tax credits or refunds, create demands, etc.

(Source: Notification No. 22/2022–Central Tax dated 15th November 2022)

(4) SANATHAN TEXTILE V. UNION OF INDIA

The Bombay High Court explained the nature of Notification No. 79/2017-Cus dated 13th October 2017 which granted exemption from IGST to capital goods imported under the Export Promotion Capital Goods Scheme. The said notification amended Notification No. 16/2015-Cus. The petitioner in the present case claimed that it had paid IGST on import of capital goods from when the latter notification came into effect till the same was amended *vide* the 2017 notification.

The Bombay High Court held that the 2017 notification was curative and clarificatory in nature as otherwise it would leave a whole class of importers uncovered who had imported goods between the period of the two notifications. Thus, it directed the refund of IGST to the petitioner.

(Source: M/s Sanathan Textile Pvt. Ltd. v. Union of India, Writ Petition No. 157 of 2019, Bombay High Court)

(5) M/S RENAISSANCE GLOBAL V. UNION OF INDIA

A writ petition filed before the Bombay High Court challenged the levy of customs duty on import of jewellery for remaking after melting. The petitioner's consignment of imported jewellery was detained by the customs authorities who threatened to confiscate the same and levy customs duty under Section 28 of the Customs Duty Act. The customs authorities argued that the petitioners violated the Foreign Trade Policy, 2002 which only allows import of raw material in the form of metal scrap and used jewellery.

The Court held that the import of jewellery by the petitioner for remaking in an Special Economic Zone was an authorized operation. It observed that as per Section 26 of the SEZ Act, an entrepreneur is entitled to exemption from customs duty on import of goods to carry on authorized operations. The business activities of the petitioner was permissible and was not liable for levy for customs duty.

(M/s. Renaissance Global Ltd. v. Union of India, Writ Petition No. 2003 of 2009, Bombay High Court)

INTELLECTUAL PROPERTY RIGHTS

(1) IPO GRIEVANCE PORTAL LAUNCHED BY CGPDTM AS A PART OF VIGILANCE AWARENESS WEEK



All parties involved are hereby informed that, in honour of Sardar Vallabhbhai Patel's birthday and as part of Vigilance Awareness Week, the O/o CGPDTM has established a grievance portal wherein parties involved may file complaints or grievances if they feel that a particular official has made unwarranted demands for resolving their problems with processing applications quickly.

(Source: Public notice dated 31st October 2022)

(2) AMITABH BACHCHAN V. RAJAT NAGI

The Plaintiff has alleged violation of his publicity rights as celebrity by way of the present interim

application. The said rights were earlier recognised in Titan Industries Ltd. v. M/s Ram Kumar Jewellers.

The Plaintiff is aggrieved by the Defendants' unauthorized use of his celebrity status to promote their own goods and services, without his permission or authorization.

Justice Navin Chawla opined that Defendants appear to be using Plaintiff's celebrity status for promoting their own activities, without his authorization or permission and therefore, granted an ex parte ad interim injunction in favour of the Plaintiff.

(Source: Amitabh Bachchan v. Rajat Nagi & Ors. CS(COMM) 819 of 2022, Delhi High Court)

(3) ITC LIMITED vs CENTRAL PARK ESTATES PRIVATE LIMITED

The Delhi High Court has declared ITC Limited's 'Bukhara' as a well known trademark under Section 2(zg) read with Section 11(2) of the Trade Marks Act and directed the Registrar to add it to the list of well-known trademarks upon completion of requisite formalities.

Justice Prathiba M. Singh in the judgment said that certain trademarks or names attaining the status of well-known marks have been acknowledged and recognised by courts in India for the last two-three decades.

"Illustratively, marks such as 'APPLE', 'WHIRLPOOL', 'BENZ' etc., have been recognised as 'well-known' marks even before the said marks were actually used on a commercial scale in India. The said concept of according recognition for 'well-known' marks was finally incorporated statutorily in the Trade Marks Act, 1999, thus strengthening the recognition granted to such mark," Justice Singh said.

The court said the documents placed on record by ITC Limited show that "not only has the mark 'Bukhara' been intrinsically connected to Indian cuisine" but the restaurant has also been recognised internationally as a customary stop for foreign celebrities and dignitaries.

(Source: ITC Limited v. Central Park Estates Pvt. Ltd. & Anr, C.O. (COMM.IPD-TM) 763/2022)

ENVIRONMENT LAWS



(1) CAQM ADVISES IMPLEMENTING AGENCIES TO ENSURE COMPLIANCE AND STRICT IMPLEMENTATION OF THE DIRECTIONS

The Commission for Air Quality Management in the National Capital Region and Adjacent Areas encouraged everyone involved, including industries and project proponents for construction and demolition (C&D) sites, to rigorously abide by the commission's legal directives.

In the following days, citizens have been urged to carefully adhere to the actions outlined in the Citizen Charter at each stage of the Graded Response Action Plan (GRAP).

CAQM shall use all reasonable means to ensure that its statutory directives and orders are strictly followed. Violations and disregard for the Commission's air pollution control laws and regulations are taken extremely seriously. When serious infractions occur, the Commission not only issues closure orders but also imposes Environmental Compensation (EC) and starts legal action.

(Source: Ministry of Environment, Forest and Climate Change dated 15th October 2022)

[End of Newsletter]
