

# MONTHLY NEWSLETTER

## JANUARY 2023

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) 'FULLY ACCESSIBLE ROUTE' FOR INVESTMENT BY NON-RESIDENTS IN GOVERNMENT SECURITIES – INCLUSION OF SOVEREIGN GREEN BONDS**



The RBI has decided to designate all Sovereign Green Bonds issued by the Government in the fiscal year 2022-23 as 'specified securities' under the FAR, under Section 45W of Chapter IIID of the Reserve Bank of India Act, 1934, without prejudice to permissions/ approvals, if any, required under any other law. These Directions are applicable with immediate effect.

*(Source: Notification No. RBI/2022-23/169 dated 23<sup>rd</sup> January 2023)*

### **(2) EXTENSION OF DEADLINE TO UPDATE SAFE DEPOSIT LOCKER AGREEMENTS**

The RBI, vide Circular No. DOR.LEG.REC /40 /09.07.005 /2021-22 dated 18.08.2021, had directed

all banks to update Safe Deposit Locker Agreements with their clients, on the basis of the Model Locker Agreement of the Indian Banks' Association by 01.01.2023. However, since many clients are yet to update their Locker Agreements with the banks, it has been decided to extend the deadline to comply with the earlier circular to 31.12.2023, in a phased manner. In this regard, the Banks must notify their clients by 30.04.2023 of all the revised requirements, and ensure that at least 50% of their existing customers must have executed the agreements by 30.06.2023, and 75% by 30.09.2023.

*(Source: RBI Notification No. RBI/2022-23/168 dated 23<sup>rd</sup> January 2023)*

### **(3) RBI LISTS ELIGIBLE CRAS FOR RISK WEIGHTING CLAIMS FOR CAPITAL ADEQUACY PURPOSES**

The RBI has notified the following domestic Credit Rating Agencies (CRA) under Basel III Capital Regulations, which banks can use for risk weighting their claims for capital adequacy purposes. These include: Acuite Ratings & Research Limited (Acuite); Credit Analysis and Research Limited (CARE); CRISIL Ratings Limited; ICRA Limited; India Ratings and Research Private Limited (India Ratings) and INFOMERICS Valuation and Rating Pvt Ltd. (INFOMERICS).

*(Source: RBI Notification No. RBI/2022-23/162 dated 9<sup>th</sup> January 2023)*

### **(4) RBI ADVISORY TO G-SEC MARKET PARTICIPANTS ON USE OF 'PRICE/YIELD RANGE SETTING'**

Pursuant to RBI circular IDMD /1615 /08.02.032 /2019-20 dated 12.12.2019 advising the participants in the Government Securities (G-Sec) market about the "Price / Yield range setting" facility provided on the e-Kuber platform as a risk management measure, the RBI has noticed that there have been a few instances of Fat-finger / Big-figure error by the bidders in the G-Sec auctions conducted by the RBI, which suggests that some of the market participants are yet to put in place the "Price / Yield range setting" facility in their system. The RBI has therefore advised market participants to utilise the "Price / Yield range setting" facility provided on the e-Kuber platform before placing bids in the Primary Market auctions.

*(Source: RBI Circular No. RBI/2022-23/163 dated 11<sup>th</sup> January 2023)*

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## FOREIGN TRADE

### **(1) IMPLEMENTATION OF RODTEP COMMITTEE REPORT IN RELATION TO ANOMALIES ETC.**

Appendix 4R under Para 4.59 of the Foreign Trade Policy 2015-20 has been revised for exports made from 16.01.2023 to 30.09.2023. These revisions in 432 HS codes are being made on account of recommendations of the RoDTEP Committee in relation to apparent errors or anomalies in the earlier notified rates/caps made vide DGFT Notification no. 19 dated 17.08.2021.

*(Source: Foreign Trade Notification No. 53/2015-20 dated 9<sup>th</sup> January 2023)*

### **(2) AMENDMENT IN IMPORT POLICY CONDITION OF UREA [EXIM CODE 31021000] IN THE ITC (HS) 2022, SCHEDULE – I (IMPORT POLICY)**

The policy condition of Urea under EXIM code 31021000 has been amended w.e.f. 24.01.2023, whereby Fertilizer Marketing Entities (FEMs) authorised by the Department of Fertilizers have been allowed to file Bills of Entry at Indian ports for import of Urea (for agriculture purposes) on Government Account.

*(Source: Notification No. 54/2015-20 dated 24<sup>th</sup> January 2023)*

### **(3) POLICY CLARIFICATION REGARDING REGISTRATION UNDER THE PAPER IMPORT MONITORING SYSTEM**

The DGFT has released a policy circular, clarifying the applicability of the Paper Import Monitoring System (PIMS). Vide the circular, it has been clarified that PIMS registration is mandatory, regardless of the quantity of the paper imported, or the mode of transportation. It has also been clarified that PIMS registration is mandatory even in cases of import under Advance Authorisation, DFIA, SEZ, EOU etc.

*(Source: Policy Circular No. 45/2015-20 dated 23<sup>rd</sup> January 2023)*

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## CORPORATE LAWS

### **(1) HERO FINCORP LIMITED V. M/S HEMA AUTOMOTIVE PRIVATE LIMITED**

In 2018-2019, Hero Fincorp Limited (“Financial Creditor/Appellant”) had extended financial facilities to M/s Hema Automotive Pvt. Ltd. (“Corporate Debtor”), where the latter defaulted in repayments. The Financial Creditor filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor. On 08.07.2022 the Adjudicating Authority initiated CIRP against the Corporate Debtor.

The Financial Creditor was the sole member in the Committee of Creditors (“CoC”). The Resolution Professional published Form-G and the last date for receipt of Expression of Interest was 24.10.2022. Before the period could expire, the CoC passed a resolution on 19.10.2022 for liquidation of the Corporate Debtor. However, the Adjudicating Authority vide an order dated 23.11.2022 rejected the application for liquidation and directed the CoC to reconsider its decision.

It was observed that the Explanation to Section 33(2) of IBC clarifies that CoC can decide to liquidate the Corporate Debtor any time after its constitution under Section 21(1) including its before the confirmation of the Resolution Plan, and at any time before the preparation of Information Memorandum. The Bench observed that Form-G was issued after preparation of the Information Memorandum and the last date for receiving Expression of Interest was 24. 10. 2022, therefore, the application for liquidation was rightly rejected.

*(Source: HERO FINCORP LIMITED V. M/S HEMA AUTOMOTIVE PRIVATE LIMITED, Company Appeal (AT) (Insolvency) No.1540 of 2022)*

**(2) PROJECT-WISE CIRP OF A REAL ESTATE COMPANY UNDER IBC, 2016**

To amend the Insolvency and Bankruptcy Code, 2016 (IBC), the Central Government and the Insolvency & Bankruptcy Board of India (IBBI) initiated a discussion paper on January 18, 2023, to form the basis of such changes. It was to propose and recognize the project specific Corporate Insolvency Resolution Process of a Real Estate company with defaulted projects, for ensuring that homebuyers unable to get possession of their properties won't be stuck in long legal battles, overturning the National Company Law Tribunal, Chennai Bench's order dated 25th of April, 2022 in the case of Mr. N. Kumar v Tata Capital Housing Finance Ltd, where the NCLT had held that project-wise CIRP of a real estate company is not covered under Insolvency and Bankruptcy Code, 2016 (IBC) and is outside the purview of the IBC, 2016.

*(Source: File no. 30/38/2021-Insolvency dated 18<sup>th</sup> January 2023)*

**(3) COMPANIES' NEW AMENDMENT RULES FOR THE REGISTRATION OFFICES AND FEES FOR COMPANIES.**

Exercising the powers conferred by sections 396, 398, 399, 403 and 404 read with sub-sections (1) and (2) of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the followings rules further to amend the companies (Registration Offices and Fees) Rules, 2014, namely: -

Short title and commencement: - (1) These rules may be called the companies Registration Offices and Fees) Amendment Rules, 2023. (2) They shall come into force with effect from 23<sup>rd</sup> January 2023.

*(Source: Notification no. G.S.R. 45(E) dated 20<sup>th</sup> January 2023. )*

**(4) REVISING FORM NO. AOC-5: THE COMPANIES (ACCOUNTS) AMENDMENT RULES, 2023**

The Ministry of Corporate Affairs notified the Companies (Accounts) Amendment Rules, 2023 to amend the Companies (Accounts) Rules, 2014 on 20<sup>th</sup> January 2023. to amend the Companies (Accounts) Rules, 2014. These Rules shall come into

force with effect from 23<sup>rd</sup> January, 2023. The Form in the Annexure for Form no. AOC-5, in the 2014 Rules, has been substituted.

*(Source: Notification no. G.S.R. 40(E) dated 20<sup>th</sup> January 2023.)*

**(5) AMENDING THE COMPANIES (SHARE CAPITAL AND DEBENTURE) RULES, 2014**

The Ministry of Corporate Affairs (MCA) has published the Companies (Share Capital and Debentures) Amendment Rules, 2023 to amend the Companies (Share Capital and Debenture) Rules, 2014. These Rules were published on 21<sup>st</sup> January, 2023 and are effective from 23<sup>rd</sup> January, 2023.

In Rule 17 on "Buy-back of shares or other securities", sub-rule (14) shall be substituted with: "(14) There shall be a declaration with the return filed with the Registrar in Form No. SH. 11, signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder."

In the Annexure the following forms shall be substituted namely: i. Form No. SH-7 which states "Notice to Registrar of any alteration of share capital" Form No. SH-8 which states "Letter of Offer" and Form No. SH-9 which states "Declaration of Solvency".

*(Sources: Notification no. G.S.R dated 21<sup>st</sup> January 2023)*

**(6) AMENDMENT IN THE COMPANIES (INCORPORATION) RULES, 2014**

The MCA has notified the Companies (Incorporation) Amendment Rules, 2023 by amending the Companies (Incorporation) Rules, 2014. The Rules are to come into force with effect from 23<sup>rd</sup> January 2023. Rules that have been amended along with revision of Form INC-3 One Person Company-Nominee Consent Form, INC-14 Declaration, INC-15 Declaration and RD-GNL-5-Form for filing addendum for rectification of defects or insufficiency omitted, Revision to RUN, INC-4, INC-6, INC-9, INC-12, INC-13, INC-18,

INC-20, INC-20A, INC-22, INC-23, INC-24, INC-27, INC-28, INC-31, SPICE+ (INC-32), INC-33, INC-34, INC-35 and RD-1.

*(Source: Notification no. G.S.R 42(E) dated 19<sup>th</sup> January 2023)*

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## SECURITIES LAWS AND CAPITAL MARKETS

### **(1) SECURITIES AND EXCHANGE BOARD OF INDIA (REGISTRARS TO AN ISSUE AND SHARE TRANSFER AGENTS) (AMENDMENT) REGULATIONS, 2023**

The Securities and Exchange Board of India has notified the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) (Amendment) Regulations, 2023. These Regulations will amend the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993. The Amended Regulations were notified by SEBI on 9<sup>th</sup> January, 2023 and are effective from that date.

The amended regulations state that a registrar to an issue and share transfer agent who has been granted a certificate of registration will have to pay a fee to keep its registration in force. Since the certificate of registration is granted for 6 years, the fee will be payable subsequently every 3 years.

The scheme of payment of fees shall be as follows: A registrar to an issue and share transfer agent who seeks to carry on the activities as a registrar to an issue and share transfer agent shall pay a fee of two lakh and seventy thousand rupees;

A registrar to an issue or share transfer agent who seeks to carry on the activity either as a registrar to an issue or as a share transfer agent shall pay a fee of ninety thousand rupees.

*(Source: Notification no. No. SEBI/LAD-NRO/GN/2023/112 dated 9<sup>th</sup> January 2023)*

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## COMPETITION LAWS

### **(1) SUPREME COURT DENIES INTERIM RELIEF TO GOOGLE AGAINST THE CCI ORDER**

The CCI passed an Order on October 20 2022, via which it found Google misusing its dominant position especially with regard to android mobile device ecosystem. Accordingly, the CCI imposed a provisional penalty of approximately INR 13,38,00,00,000 (Indian Rupees one thousand three hundred thirty-eight crore) (USD 162.26 million) at the rate of 10% on Google's turnover and issued certain behavioral directions and directed Google to comply within 90 days. The directions include mandating Google to make amends in its policy regarding Play Store i.e., not make the licensing of its Play Store to the device manufacturers conditional upon pre-installing certain Apps such as Google Maps, YouTube etc. Aggrieved, on December 20, 2022, Google challenged the CCI Order before the NCLAT, and in the interim, sought stay on the penalty and the Directions. NCLAT refused to grant stay on the Directions.

The Apex Court three-judge bench refused to interfere with the NCLAT Order and inter alia held that since the Appeal is pending before the NCLAT, the SC will refrain from expressing its opinion on the merits; and the findings of the CCI cannot be held to be without jurisdiction or manifest error at an interlocutory stage.

*(Source: GOOGLE LLC & ANR V. COMPETITION COMMISSION OF INDIA & ORS., Civil Appeal no. 229 of 2023, Supreme Court)*

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## INDIRECT TAXES AND CUSTOMS

### **(1) GST RATE CHANGES FROM 1ST JANUARY 2023**

A few items witnessed a GST rate slash beginning from 1st January 2023 in India. Further, few were exempted from GST. The Central Board of Indirect Taxes and Customs (CBIC) issued fresh CGST notifications on 30<sup>th</sup> December 2022, implementing the revisions made at the 48<sup>th</sup> GST Council meeting earlier the same month.

Notification no. 12/2022-Central Tax (Rate) revises the GST rates applicable to certain items. Earlier, ethyl alcohol sold to Oil Marketing Companies (OMCs) or Petroleum refineries for blending with motor spirit (petrol) attracted an 18% GST. The revision states that the above sale will attract 5% GST supplied on or after 1st January 2023. Accordingly, denatured ethyl alcohol and other spirits of any strength will continue to be charged 18% GST.

Sharp pellets, bran pellets, and pellets of any other residues or the same items in any other form obtained by sifting, milling or working of cereals or leguminous plants shall be taxed at a 5% GST rate. On the other hand, Notification no. 13/2022-Central Tax (Rate) exempts the supply of husks from pulses, chilka and concentrates, chuni or churi, and khanda primarily used as cattle feed. In simpler words, no GST is payable on the husks of pulses and the items given above for cattle feed.

Further, mathematical boxes, colour boxes and geometry boxes shall attract a GST rate of 12%, while pencil sharpeners have been kept out of this entry, unlike earlier. The fruit pulp or juice-based drinks, not carbonated, will have a 12% GST levy.

As per Notification no. 14/2022-Central Tax (Rate), supply of peppermint essential oil (*Mentha piperita*), Spearmint oil, Water mint oil, horsemint oil and bergamot oil by any unregistered person to registered persons, attracts GST on a reverse charge basis. It applies to sales made on or after 1st January 2023.

Lastly, the government has added an explanation to clarify the exemption of renting residential dwellings to registered persons. Notification no. 15/2022 - Central Tax (Rate) mentions that exemption will apply if the tenant, who is also a proprietor, uses such rented place as their own residence and on their own account. In other words, the expense must not be charged to the proprietor's account.

*(Source: Circular No. 189/01/2023-GST dated 13<sup>th</sup> January 2023))*

## **(2) CBIC NOTIFIES THE CUSTOMS VALUATION RULES 2023**

Importers will have to furnish additional information at Customs Automated System while filing a bill of entry in case of "specified goods".

The centre has notified the Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023, aimed at addressing the undervaluation of specified imported goods.

*(Source: Circular No. 01/2023-Customs dated 11<sup>th</sup> January 2023)*

## **(3) THE CUSTOMS (ASSISTANCE IN VALUE DECLARATION OF IDENTIFIED IMPORTED GOODS) RULES, 2023**

Exercising the powers granted under by section 156 read with section 14 of the Customs Act, 1962, the Central Government notified the Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023. They shall come into force on 11th day of February, 2023. The explanation behind the issuance of the Rules was to establish a mechanism for checking the undervaluation of the class of imported goods. The government's belief that by undervaluing their commodities, importers are avoiding taxes. This affects and lowers the value of the products to the government.

*(Source: Notification no. 03/2023-Customs G.S.R 19(E) dated 11<sup>th</sup> January 2023)*

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## **INTELLECTUAL PROPERTY RIGHTS**

### **(1) IP MITRA: FOR STARTUPS UNDER EXTENDED SCHEME FOR FACILITATING OF STARTUPS UNDER INTELLECTUAL PROPERTY PROTECTION (SIPP)**

The Office of the Controller General of Patents, Designs & Trade Marks (CGPDTM) has introduced "IP Mitra" to support Startups in

patents, trademarks, and designs for facilitating Start-Ups Intellectual Property Protection (SIPP) by rendering help to intended entrepreneurs in a variety of ways.

IP Mitra can provide help to intended and budding entrepreneurs in a variety of ways, beginning from, assisting in filing, and facilitating the process of IP applications along with expert advice on various legal aspects of Intellectual Property. It can help to broaden one's IP portfolio and empower the stakeholders for establishing and running new ventures in the IP world through their experiences and skills.

The SIPP scheme has been prolonged for a period of three years to increase its effectiveness taking into account the knowledge gathered from its initial deployment. With the help of IP Mitra, startups can look forward to a much simpler time, creating and directing innovative technology, and successfully marketing them to sustain the growth of the Indian economy.

Provisions have been made in e-filing portals of Patents, Designs & Trade Marks for receiving requests for on boarding of eligible entities as empanelled IP Mitra (facilitators). It is on the Office of CGPDTM to publish the list of such empanelled "IP Mitra" on its website after finding eligible requests. Existing "facilitators" are also required to submit their requests through e-filing portals and separate requests for Patents, Designs & Trade Marks, through the respective e-filing portals.

*(Source: Press Release dated 19.01.2023)*

## **(2) SUBWAY IP LLC V. INFINITY FOOD**

Subway IP filed an application for interim injunction to restrain infinity food from using its 'SUBERB', 'VEGGIE DELICIOUS', and 'SUB ON A CLUB' marks that allegedly infringed the Plaintiff's registered 'SUBWAY', 'VEGGIE DELIGHT', and 'SUBWAY CLUB' trademarks. It was also claimed that the Defendant's website, food preparation, restaurant ambiance and menu cards were deceptively similar to the Plaintiff's. Before the institution of the suit, the Defendant made certain changes to its restaurant and logo to minimize the similarities. It submitted that in light of the changes made, the Plaintiff's claim for infringement could no longer subsist.

The Court held that 'SUBERB' does not infringe on any of the plaintiff's marks. The first syllable of both the marks, i.e., 'SUB' is a generic word as it is an abbreviation of 'Submarine Sandwich'. Thus, no exclusivity can be claimed over the word 'SUB'. Removing the non-distinctive parts of both the marks, the Court noted that the remaining syllables 'ERB' and 'WAY' were evidently dissimilar.

The Court further noted that prior to the institution of the suit, the defendants had already changed the impugned marks to 'VEG LOADED REGULAR' and 'TORTA CLUB', which were obviously dissimilar to the plaintiff's marks. It noted that the similarities between the two marks, i.e., the words 'VEG' and 'CLUB' were *publici juris* and common to trade over which no monopoly could be claimed.

The Court also declined to grant an injunction over the similarities in the ambiance, menus, and food items in the restaurant. It held that no monopoly can be claimed over such aspects, and in any case, the defendants had altered the décor of their restaurant to remove the alleged similarities. Therefore, the Court dismissed the application and declined the prayer for injunction.

*(Source: SUBWAY IP LLC V. INFINITY FOOD CS(COMM) 843/2022, Delhi High Court)*

## **(3) CAPITAL FOOD V. RADIANT INDUS CHEM**

Capital Food ("Plaintiff") is the holder of registered trademark 'SCHEZWAN CHUTNEY' in class 30. It claimed that it uses a Chinese word and an Indian word in conjunction to create a unique and inherently distinctive mark. The Plaintiff's filed an application in a suit seeking interim injunction restraining Radiant Indus Chem ("Respondent") from using the mark 'SCHEZWAN CHUTNEY' to describe its products. It claimed that the two marks bore several similarities in inter alia, their names, trade dress and packaging. The plaintiff also submitted that their mark had acquired distinctiveness and a secondary meaning due to its extensive goodwill and reputation in the market.

Upon hearing the submissions of the parties, the Court of Learned Single Judge held that the mark 'SCHEZWAN CHUTNEY' was descriptive in

nature and carried no inherent distinctiveness. The court applied the ‘Imagination Test’, i.e., it noted that little imagination was required on the consumer’s part to get a description of the product from its trademark. The court also applied the ‘Competitors’ Need Test’, noting that the competitors of the plaintiff were likely to use the words ‘SCHEZWAN CHUTNEY’ to describe their products. ‘SCHEZWAN CHUTNEY’ directly depicts a Chutney which has a Schezwan flavour, making the mark descriptive. Furthermore, it was also observed that a large number of producers used the impugned mark, which indicated that the industry recognized the said mark as a description of the product. Therefore, the court ultimately rejected the prayer for grant of interim injunction.

A division bench of the High Court overturned its earlier order rejecting interim injunction. While the single judge held that secondary meaning could not be established by the mere use of sales figures and the quantum of investment in the product, the division bench disagreed with these findings. It held that the appellant’s ‘SCHEZWAN CHUTNEY’ mark had acquired secondary significance owing to its advertisement and sales figures. The Court stayed the findings of the single judge with respect to interim injunction.

*(Source: CAPITAL FOOD V. RADIANT INDUS CHEM FAO(OS) (COMM) 16/2023 & CAV 62/2023 & CM APPLs.3778-3781/2023, Delhi High Court)*

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## ENVIRONMENT LAWS

### **(1) MISSION LIFE PAVILION TO BE SET UP AT BHARAT PARV EVENT TO ENCOURAGE PEOPLE TO BECOME PRO PLANET**

Prime Minister Shri Narendra Modi, had launched Mission Life in October 2022, with the motive of it making the fight against climate change democratic, allowing everyone to contribute in it. The Ministry of Environment, Forest and Climate Change set up a pavilion on the theme Mission LIFE during ‘Bharat Parv’ organized by Ministry of Tourism, from 26th January to 31st January, 2023 at Red Fort, New Delhi on the occasion of celebration of

the 74th Republic Day. The pavilion will remain open for the general public from 5pm to 9pm on 26<sup>th</sup> January 2023 and from 12pm to 10pm on 27<sup>th</sup> January to 31<sup>st</sup> January 2023, respectively.

*(Source: Press Release Id 1893416 dated 24<sup>th</sup> January 2023)*

**[End of Newsletter]**

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