

MONTHLY NEWSLETTER

MAY 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.

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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BANKING LAWS & FEMA

| S. No. | Particulars | Link |
|--------|---|----------------------------|
| 1. | RBI has decided to amend the Master Direction on KYC to update the instructions on Wire Transfer, aligning the same with the relevant FATF recommendation. These updates include certain amendments to domestic and cross-border wire transfers. | CLICK HERE |
| 2. | It was noticed that a few Authorised Persons are levying certain fees/charges, which are payable in India on forex prepaid cards/store value cards/travel cards, etc., in foreign currency. RBI has advised that fees/charges payable in India have to be denominated and settled in Rupees only. | CLICK HERE |
| 3. | Banks/FIs are hereby advised to ensure that no new transaction undertaken by them or their customers rely on or are priced using the US\$ LIBOR or the MIFOR. Banks/FIs are also advised to take all necessary steps to ensure insertion of fallbacks in all remaining legacy financial contracts that reference US\$ LIBOR (including transactions that reference MIFOR). | CLICK HERE |
| 4. | The present instructions issued by the RBI are the updated / amended prudential guidelines on Basel III capital adequacy issued to banks. Basel III reforms are the response of Basel Committee on Banking Supervision (BCBS) to improve the banking sector's ability to absorb shocks arising from financial and economic stress, whatever the source, thus reducing the risk of spill over from the financial sector to the real economy. | CLICK HERE |
| 5. | ₹ 2000 Denomination Banknotes have been withdrawn from Circulation but will continue as Legal Tender. | CLICK HERE |

CORPORATE LAWS, SECURITIES LAWS AND CAPITAL MARKETS

| S. No. | Particulars | Link |
|--------|---|----------------------------|
| 1. | MCA has notified the Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023 which has inserted 3 provisos to Rule 4(1), which states that application for removal of name of the company under S.248(2) must be made in Form STK-2 along with a fees of ₹5000. | CLICK HERE |

| S. No. | Particulars | Link |
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| | These provisos include the mandatory filing of overdue / pending financial statements and returns. | |
| 2. | SEBI introduces Legal Entity Identifier (LEI) for issuers who have listed and/ or propose to list non-convertible securities, securitised debt instruments and security receipts. | CLICK HERE |
| 3. | SEBI devises a comprehensive Testing Framework for the Information Technology (IT) systems / applications of the Market Infrastructure Institutions (MIIs) [Stock Exchanges, Clearing Corporations and Depositories] throughout their lifecycles which can assist the MIIs in performing thorough risk assessment before deploying any IT systems in production/ live environment. | CLICK HERE |
| 4. | In order to promote dematerialization of securities, encourage ease of doing business, improve transparency in the dealings of securities of SPVs/ Hold Cos, SEBI has decided that the Manager of Real Estate Infrastructure Trusts (REITs) must ensure that the REITs shall henceforth hold the securities of Hold Cos and SPVs in dematerialized form only. | CLICK HERE |
| 5. | In order to promote dematerialization of securities, encourage ease of doing business, improve transparency in the dealings of securities of SPVs/ Hold Cos, SEBI has decided that the Investment Manager of Infrastructure Investment Trusts (InvITs) must ensure that the InvITs shall henceforth hold the securities of Hold Cos and SPVs in dematerialized form only. | CLICK HERE |
| 6. | Model Tripartite Agreement between the Issuer Company, Existing Share Transfer Agent and New Share Transfer Agent as per Regulation 7(4) of SEBI (LODR) Regulation, 2015. | CLICK HERE |

INDIRECT TAX

| S. No. | Particulars | Link |
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| 1. | CBIC Notifications seeks to extend the due date for furnishing FORMS GSTR-1, GSTR-3B and GSTR-7 for April, 2023 for registered persons whose principal place of business is in the State of Manipur. | GSTR-1 GSTR-3B GSTR-7 |
| 2. | CBIC issues Guidelines for Special All-India Drive against fake registrations by central and state tax authorities during the period from 16.05.2023 to 15.07.2023. | CLICK HERE |
| 3. | CBIC releases Standard Operating Procedure for Scrutiny of Returns for FY 2019-20 onwards. DG Systems has developed functionality “Scrutiny of Returns”, containing the online workflow for scrutiny of returns in the CBIC ACES-GST application. An advisory along with a User Manual providing for the detailed workflow of the said functionality has also been released. | CLICK HERE |
| 4. | Gameskraft Technologies Private Limited v. Directorate General Of Goods, Writ Petition No. 19570 Of 2022 The Hon’ble Karnataka High Court has quashed the GST Intimation Notice to the tune of Rs 21,000 crore and held that online/electronic/digital Rummy games and | CLICK HERE |

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| | other Online/Electronic/Digital games played on Gameskraft's platforms are not taxable as "betting" and "gambling". The Court observed that online, electronic, and digital games, which are also substantially and preponderantly games of skill and not of chance, are also not gambling. The court held that the terms "betting" and "gambling" under Entry 6 of Schedule III of the CGST Act must be given the same interpretation given to them by the courts, in the context of Entry 34 of List II of the Seventh Schedule to the Constitution and the Public Gambling Act, 1867. Therefore, the terms "betting" and "gambling" appearing in Entry 6 of Schedule III of the CGST Act do not and cannot include games of skill within their ambit. | |
| 5. | Commissioner, CGST v. Flemingo Travel Retail Ltd., Civil Appeal Diary No. 24336/2022 The Hon'ble Supreme Court has held that Duty Free shops in an airport cannot be saddled with any indirect tax, since such shops are beyond the customs frontier of India, and any levy of indirect tax would be unconstitutional. Accordingly, the Supreme Court dismissed the department appeal against a CESTAT order which had ruled in favour of the Respondent that no Service Tax was payable by them with respect to transactions in Duty Free shops during the period of dispute. | CLICK HERE |
| 6. | M/s Mahavir Metal Manufacturing Company v. Commissioner (Appeals), Central Excise and CGST [Excise Appeal No. 51200 of 2022] The Hon'ble CESTAT, New Delhi, observed that Rule 5 of the CENVAT Credit Rules, 2004 cannot be invoked to sanction the refund of unutilized CENVAT credit lying with the assessee. The bench observed that despite the fact that manufacturing was closed in the financial year 2016–2017 and the appellant had already moved on to the GST regime, the refund claim could not have been filed before April 16, 2017, i.e., more than two years after the closure of manufacturing activity. | CLICK HERE |
| 7. | CC and CE and ST, NOIDA v. M/s Interarch Building Products Pvt. Ltd. [Civil Appeal No.11330 of 2018] The Hon'ble Supreme Court of India has held that the value of the service portion in the execution of the works contract has to be determined as per Rule 2A of Service Tax (Determination of Value) Rules, 2006, or as per the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 (Composition Scheme), if adopted by the assessee, and that the assessee has to pay service tax on the service element and can claim CENVAT Credit only on the said amount. | CLICK HERE |
| 8. | Ideal Broadcasting India Pvt. Ltd. v. Union of India & Ors., WP(C) 3739/2020, Delhi High Court The Delhi High Court, in a recent judgement, has held that where an Appeal against a confirmed demand of Service Tax was filed after 01.07.2019 and subsequently withdrawn to avail the benefits under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ("SVLDRS"), the demand will have attained finality <i>a fortiori</i> , and accordingly classified under the "amount in arrears" category, and not under the "litigation" category. While differentiating between the two categories, the Court held that such dues which had attained a semblance of finality at the "cut-off date" would be classified under the "arrears" category, while such dues which were yet to attain finality would be classified under the "litigation" category. Accordingly, the Court held that the petitioner's choice of availing benefit under SVLDRS by submitting an undertaking to withdraw the appeal, finalised the dues, and thus such dues were rightly classified under the "arrears" category. The Court also held that the petitioner is estopped from raising a plea that it was forced to withdraw the appeal in order to avail | CLICK HERE |

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| | the benefit under SVLDR Scheme and further estopped from challenging the consideration of its case in the “arrears” category. | |

CUSTOMS, SEZ AND FOREIGN TRADE

| S. No. | Particulars | Link |
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| 1. | Customs Notification seeks to allow imports of Crude Soya-bean Oil and Crude Sunflower Oil at zero Basic Customs Duty and zero Agriculture Infrastructure and Development Cess for TRQ license holders for FY 2022-23 up to the 30th June, 2023. | CLICK HERE |
| 2. | Customs Notification seeks to amend Australia FTA notification to make changes in tariff preference given to Coking Coal and Raw Cotton arising out of Finance Act, 2023 | CLICK HERE |
| 3. | Customs Notification on fixation of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver. | CLICK HERE |
| 4. | Customs Notification in relation to Land Customs Stations and routes a) Anandpara (India) - Ramgarh (Bangladesh) via River Feni (b) The road from NH-8 in Anandpara (India) through Maitri Setu to Ramgarh (Bangladesh) by amendment of Principal Notification No. 63/1994-Customs (N.T.) dated 21st November 1994 | CLICK HERE |
| 5. | Customs Notification seeks to impose countervailing duty on imports of Saturated Fatty Alcohols of Carbon Chain length C10 to C18 and their blends originating in or exported from Indonesia, Malaysia and Thailand for a period of 5 Years. | CLICK HERE |
| 6. | Customs Circular on Amnesty Scheme for one time settlement of default in export obligation by Advance and EPCG authorization holders. Vide the present scheme, there will be amnesty from the interest payable on the Additional Customs Duty and Special Additional Customs Duty under the scheme. The exporters who have not completed or fulfilled their Export Obligation, will have to pay the commensurate Customs Duty saved along with interest on the unfulfilled EO, and also submit the proof of payment along with all other documents pertaining to the fulfilment of their remaining EO component to the Regional Authority for adjudication and issuance of the Export Obligation Discharge Certificate. | CLICK HERE |
| 7. | The Central Government has notified the Foreign Trade Policy, 2023 and its related Handbook of Procedure. | CLICK HERE |
| 8. | Union of India & Ors. v. Cosmo Films Ltd., Civil Appeal No. 290/2023 (Supreme Court) The Hon'ble Supreme Court has upheld the legality of 'pre-import conditions' in the Foreign Trade Policy of 2015-2020 (FTP) and Handbook of Procedures 2015-2020 (HBP) to claim exemption of IGST and GST Compensation Cess on inputs imported into India on the basis of Advance Authorisations. The bench set aside the judgment of the Gujarat High Court, which had quashed DGFT Notification No. 33 / 2015-20 dated 13.10.2017 and Customs Notification No. 79 / 2017-Customs dated 13.10.2017, by which the DGFT had imposed the 'pre- | CLICK HERE |

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| | <p>import' and 'physical export' conditions for availing IGST and Compensation Cess exemption on imports made under 'Advance Authorisation'.</p> <p>While observing that the concept of 'pre-import condition' was not alien, the court held that Para 4.13(i) of the FTP empowered the DGFT to impose pre-import conditions on articles other than those specified in Appendix-4J of the HBP. The bench remarked that the Gujarat High Court had erroneously proceeded on the assumption that only the goods specified in the said Appendix were subject to the pre-import condition.</p> | |

INTELLECTUAL PROPERTY RIGHTS

| S. No. | Particulars | Link |
|--------|--|----------------------------|
| 1. | <p>Microsoft Technology Licensing LLC v. Controller General of Patents and Designs, 2023:DHC:3342</p> <p>In a landmark judgement, the Delhi High Court has further elaborated on the contours of Section 3(k) of the Patents Act, 1970, which states that mathematical or business models, algorithms or computer programmes per se, are not patentable.</p> <p>The Court has held that if a computer-based invention provides a technical effect or contribution, it may still be patentable. The technical effect or contribution can be demonstrated by showing that the invention solves a technical problem, enhances a technical process, or has some other technical benefit and the mere fact that an invention involves a mathematical or computer-based method does not automatically exclude it from being patentable.</p> <p>The Court held that if the subject matter is implemented on a general-purpose computer, but results in a technical effect that improves the computer system's functionality and effectiveness, the claimed invention cannot be rejected on non-patentability as "computer program per se".</p> | CLICK HERE |
| 2. | <p>Applause Entertainment Private Limited v. Meta Platforms Inc. and Ors., Commercial IP Suit (Lodging) No. 10238 of 2023</p> <p>The Bombay High Court granted a dynamic injunction in favour of Applause Entertainment Pvt. Ltd. ("Plaintiff") against thirty-two (32) Instagram handles in a suit alleging copyright infringement of the OTT series, Scam 1992: The Harshad Mehta Story, which streams exclusively on the OTT platform, Sony Liv.</p> | CLICK HERE |
| 3. | <p>BPI Sports LLC vs. Saurabh Gulati & Anr. C.O. (COMM.IPD-TM) 16/2021 & I.A. 13589/2021</p> <p>The Delhi High Court recently ordered removal of the mark BPI SPORTS registered in the name of Saurabh Gulati ("Respondent") from the Register of the Trade Marks ("Register"), following a cancellation petition filed by BPI Sports LLC ("Petitioner").</p> <p>The cancellation petition was based on the Petitioner's earlier rights in BPI SPORTS mark in the United States of America (US). The Petitioner argued that the Respondent fraudulently obtained registration for the BPI SPORTS mark, which the Petitioner has been using in the US since 2009. The Court found a clear intention on the Respondent's part to steal the Petitioner's BPI SPORTS mark and ordered its removal</p> | CLICK HERE |

| S. No. | Particulars | Link |
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| | from the Register. The Court, while doing so, recognized such acts of trade mark squatting as an internationally known intellectual property misdemeanour amounting to bad faith adoption under Section 11 (10) (ii) of the Trade Marks Act, 1999. | |

ARBITRATION LAWS

| S. No. | Particulars | Link |
|--------|--|----------------------------|
| 1. | M/s. Shree Vishnu Constructions v. The Engineer in Chief Military Engineering Service & Ors., Civil Appeal No. 4361 of 2023 (arising out of SLP No. 5306 of 2022) The Supreme Court recently upheld the verdict of Telangana High Court that where the notice invoking arbitration was issued prior to the 2015 amendment to the Arbitration and Conciliation Act, 1996 ("A&C Act"), and where an application under Section 11 of the A&C Act seeking appointment of an arbitrator is made post the enforcement of the 2015 amendment, then in such cases, the 2015 amendment will not apply. | CLICK HERE |
| 2. | Roadways Solution India Infra Limited v. National Highway Authority of India, 2023:DHC:3610 The Hon'ble Delhi High Court has declared that, in accordance with Sections 20A and 41(ha) of the Specific Relief Act, 1963, courts should not award injunctions pertaining to infrastructure projects if such an injunction could result in delay. The bench observed that under Section 9 of the A&C Act, the court cannot grant a party a directive to not terminate or continue with the contract. Despite the fact that the contract was determinable in nature, the court found that no interference was needed. | CLICK HERE |
| 3. | East India Minerals Limited v. The Orissa Mineral Development Company Limited, A.P. No. 677 of 2022 The Hon'ble Calcutta High Court has ruled that once arbitral proceedings have been initiated in response to a reference under Section 21 of the Act, any delay in concluding/resuming such proceedings would not nullify the arbitral referral. It held that arbitral proceedings cannot be rendered inoperative for the reason that there was some delay in the conclusion of the proceedings or that the proceedings were stalled, and its resumption took a long time. | CLICK HERE |

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