

# MONTHLY NEWSLETTER

## JUNE 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 *inter alia* from Banking laws & FEMA, Corporate Laws, Securities Laws and Capital Markets, Competition Laws, Indirect Taxes, Customs and Foreign Trade, Intellectual Property Laws, and Arbitration Laws.

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).

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**BANKING LAWS & FEMA**

<b>S. No.</b>	<b>Particulars</b>	<b>Link</b>
1.	The Reserve Bank of India (RBI) has notified certain amendments to the Master Direction - Risk Management and Inter-Bank Dealings. As per the extant regulatory framework, AD Cat-I banks operating International Financial Services Centre (IFSC) Banking Units (IBUs) are permitted to offer Non-Deliverable Derivative Contracts (NDDCs) to persons resident outside India. Such derivatives are cash-settled in foreign currency. With a view to developing the onshore INR NDDC market and providing residents the flexibility to efficiently design their hedging programmes, it has been decided to permit: (a) AD Cat-I banks operating IBUs to offer NDDCs involving INR to resident non-retail users for the purpose of hedging. Such transactions shall be cash settled in INR; and (b) The flexibility of cash settlement of NDDCs transactions between two AD Cat-I banks, and between an AD Cat-I bank and a person resident outside India in INR or any foreign currency.	<a href="#">CLICK HERE</a>
2.	The RBI has expanded the scope of the Trade Receivables Discounting System (TReDS) to include insurance facilities, permitting all entities eligible under the Factoring Regulations Act, 2011 (FRA) to enter into TReDS transactions, and enabling secondary market operations on TReDS platforms. The expansion of scope of TReDS is aimed at further easing the operation of TReDS and providing greater liquidity to the Indian corporate sector.	<a href="#">CLICK HERE</a>
3.	The RBI has reviewed the borrowing limits in Call and Notice Money Markets for Scheduled Commercial Banks (SCBs). SCBs can now set their own borrowing limits in these markets, excluding small finance banks and payment banks. The revised policy provides SCBs with greater flexibility, autonomy, and the opportunity to optimize their short-term funding strategies. This move is expected to enhance market efficiency and competitiveness.	<a href="#">CLICK HERE</a>
4.	The RBI has a branch authorization policy for urban cooperative banks (UCBs) under which, UCBs that comply with the applicable Financially Sound and Well Managed (FSWM) criteria are eligible for a general permission to open new branches up to 10% of the number of full-fledged branches at the end of the previous financial year, with a maximum of five branches. To avail of this general permission, UCBs must formulate a policy approved by their Board of Directors that considers the bank's financial health, viability study of new branches, and customer service.	<a href="#">CLICK HERE</a>
5.	The RBI has issued various instructions to Regulated Entities (REs) regarding compromise settlements in respect of stressed accounts from time to time, including the Prudential Framework for Resolution of Stressed Assets, which recognises compromise settlements as a valid resolution plan. With a view to provide further impetus to resolution of stressed assets in the system as well as to rationalise and harmonise the instructions across all REs, the RBI has decided to issue a	<a href="#">CLICK HERE</a>

S. No.	Particulars	Link
	comprehensive regulatory framework governing compromise settlements and technical write-offs covering all the REs, as detailed in the Annex of the Notification.	
6.	The RBI has issued Guidelines on Default Loss Guarantee (DLG) in Digital Lending, which will come into effect from June 8, 2023. The DLG Guidelines allow Regulated Entities (REs) such as Commercial Banks, Cooperative Banks, and Non-Banking Financial Companies (NBFCs) to enter into DLG arrangements with Lending Service Providers (LSPs) or other REs. DLG is a contractual agreement between an RE and a qualified entity that guarantees compensation for default-related losses. The total DLG coverage on outstanding loans should not exceed five percent of the outstanding loan portfolio.	<a href="#">CLICK HERE</a>
7.	The RBI has notified amendments to the Master Circular on Agency Commission wherein Agency Banks dealing in transactions pertaining to collection of indirect taxes through ICEGATE payment gateway and their respective receipt transactions must submit their claims for Agency Commission to the RBI's Mumbai Regional Office.	<a href="#">CLICK HERE</a>
8.	The RBI has directed that Authorised Persons may facilitate remittances by resident individuals under purpose 'studies abroad' as mentioned in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000 for payment of fees to foreign universities or foreign institutions in IFSCs for pursuing certain specified courses.	<a href="#">CLICK HERE</a>
9.	The RBI has announced that the Mumbai Interbank Forward Outright Rate (MIFOR) will cease to be a significant benchmark after June 30, 2023, following the cessation of the US Dollar LIBOR. An updated list of 'Significant Benchmarks' administered by Financial Benchmarks India Pvt. Ltd. (FBIL) has been provided.	<a href="#">CLICK HERE</a>

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### CORPORATE LAWS, SECURITIES LAWS AND CAPITAL MARKETS

S. No.	Particulars	Link
1.	The Ministry of Corporate Affairs (MCA) has notified that section 14(1) of the Insolvency and Bankruptcy Code, 2016 will not apply to corporate debtors involved in transactions related to the Oilfields (Regulation and Development) Act, 1948. This includes Production Sharing Contracts, Revenue Sharing Contracts, Exploration Licenses, and Mining Leases. Additionally, any connected or ancillary transactions, arrangements, or agreements, such as Joint Operating Agreements, are also exempted from the provisions of section 14(1) of the Code.	<a href="#">CLICK HERE</a>
2.	MCA has introduced new rules to amend the Limited Liability Partnership (LLP) Rules, 2009. These rules are called the Limited Liability Partnership (Amendment) Rules, 2023 and they come into effect from the date of their publication in the Official Gazette. The amendment has substituted LLP Form 3 pertaining to Information with regard to Limited Liability Partnership Agreement and changes therein.	<a href="#">CLICK HERE</a>
3.	MCA has issued a notification introducing amendments to the Companies (Accounts) Rules, 2014. The new rules, called the Companies (Accounts) Second Amendment Rules, 2023, come into effect upon their publication in the Official Gazette. The specific amendment relates to Rule 12 of the Companies (Accounts) Rules, 2014. Within sub-rule (1B) of this rule, an additional proviso is inserted stating that for the financial year 2022-2023, Form CSR-2 (related to Corporate Social Responsibility) should be filed separately by 31st March, 2024, after filing other specified forms.	<a href="#">CLICK HERE</a>
4.	SEBI has issued a circular to stockbrokers, depository participants, and clearing members regarding the implementation of the upstreaming of clients' funds to clearing	<a href="#">CLICK HERE</a>

S. No.	Particulars	Link
	corporations. The circular specifies that no clients' funds should be retained by stockbrokers or clearing members on an end-of-day basis. Instead, the funds should be upstreamed to clearing corporations in the form of cash, lien on fixed deposit receipts (FDRs), or pledge of units of Mutual Fund Overnight Schemes (MFOS). The circular also provides certain modifications to the original framework to address practical difficulties in implementation. The provisions mentioned in the circular will come into effect from September 1, 2023.	
5.	SEBI has made amendment to the process of getting certified copies of orders and circulars. They will no longer accept demand drafts for payment. Instead, a non-refundable fee of ₹50 per order or ₹5 per page (whichever is higher) must be paid through NEFT/RTGS/IMPS or the SEBI payment gateway. The payment details should be sent to a specified email address. All other rules from the 2019 Circular remain the same. This circular is issued under Section 11 of the Securities and Exchange Board of India Act, 1992, and it takes immediate effect. Approval has been given by the competent authority.	<a href="#">CLICK HERE</a>

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#### COMPETITION LAWS

S. No.	Particulars	Link
1.	<b>ICAI v. CCI, WP(C) 2815/2014, Delhi High Court</b>  The Hon'ble Delhi High Court has held that power of the Competition Commission of India (CCI) is limited to the regulation of markets and does not extend to the review of the decisions taken by statutory regulators in exercise of their statutory powers. The Court made these observations while setting aside an order passed by the CCI dated 28.02.2014, directing the Director General (DG) to conduct investigation into the matter relating to Continuing Professional Education (CPE) program being conducted by Institute of Chartered Accountants of India (ICAI). The Court observed that the power of ICAI to frame the CPE Program for maintenance of professional standards cannot be considered as abuse of its dominant position. The Court further observed that the Competition Act, 2002 does not contemplate CCI to act as an appellate court or a grievance redressal forum against the decisions taken by statutory regulators, in exercise of their statutory powers and are not interfaced with trade or commerce. Accordingly, the Hon'ble Court allowed the Appeal of ICAI.	<a href="#">CLICK HERE</a>
2.	In a Press Release, the CCI has approved the proposed combination involving Housing Development Finance Corporation Limited (HDFC Limited) acquiring additional shares of HDFC Life Insurance Company Limited (HDFC Life) and HDFC ERGO General Insurance Company Limited (HDFC ERGO). This merger has resulted in HDFC becoming the fourth largest bank in the world by market cap.	<a href="#">CLICK HERE</a>

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#### INDIRECT TAX

S. No.	Particulars	Link
1.	<b>M/s. Concrete Products and Construction Co. Versus Commissioner of GST &amp; Central Excise, Excise Appeal No.41577 of 2013, CESTAT – Chennai</b>  The Hon'ble Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Chennai has held that profit made on transportation charges need not be included in the assessable value and the excise duty is not leviable. The Tribunal observed that excise duty is not a tax on profits but only on the actual value of the finished goods.	<a href="#">CLICK HERE</a>

S. No.	Particulars	Link
2.	<p><b>Munjaal Manishbhai Bhatt v. Union of India, C/SCA/1350/2021, Gujarat High Court</b></p> <p>A division bench of the Hon'ble Gujarat High Court has read down paragraph 2 of Notification No. 11/2017- Central Tax (Rate) dated 28th June 2017 to the extent that the deeming fiction of deducting a flat rate of 1/3rd of total consideration towards the value of land in a supply of construction service of a building or civil structure (where consideration is received after issuance of Occupation or Completion Certificate), is <i>ultra vires</i> the provisions as well as the scheme of the GST Acts, and that the application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India. The Court held that such a deeming fiction will only be available at the option of the taxable person in cases where the actual value of land or undivided share in land is not ascertainable.</p>	<a href="#">CLICK HERE</a>
3.	<p><b>M/s Compuage Infocom Limited Vs. Assistant Commissioner, S.B. Sales Tax Revision / Reference No. 182/2017 , Rajasthan High Court</b></p> <p>The Jaipur Bench of the Rajasthan High Court held that the burden to prove that a specific product falls within a particular tariff is always on the revenue, more so when the revenue is trying to classify products in the residual entry as against the specific entry.</p>	<a href="#">CLICK HERE</a>
4.	<p><b>M/s Vedmutha Electricals India Private Limited, AAR No. 05/AP/GST/2023, AP AAR</b></p> <p>The Andhra Pradesh AAR has ruled that full credit of the GST charge is included in the tax invoice issued by the supplier even if later commercial or financial credit notes are issued. The AAR observed that there is no requirement for the applicant to reverse the ITC proportionately to the extent of the financial or commercial credit note issued by the supplier.</p>	<a href="#">CLICK HERE</a>
5.	<p><b>M/s. Kellogg India Pvt. Ltd. v. Commissioner of CGST &amp; CE, Belapur, Service Tax Appeal No. 87665 of 2022, CESTAT, Mumbai</b></p> <p>The Mumbai CESTAT has quashed the service tax demand against Kellogg India and held that salary is out of the purview of service tax. The tribunal is of the view that the basic principle of charging service tax at <i>ad valorem</i> is that the service provider has to receive consideration from the service recipient. As per the show cause notice, the appellant has not received any consideration, and, therefore, the question of payment of service tax does not arise.</p>	<a href="#">CLICK HERE</a>
6.	<p><b>M/s MEK Peripherals India Private Limited, MAH/AAAR/DS-RM/04/2023-24, Maharashtra AAAR</b></p> <p>The Maharashtra AAAR has ruled that the incentives earned by a reseller, from a foreign entity, is not in the nature of trade discount, and will have to bear 18% GST on such an incentive, since the place of provision of service was in India (location of the supplier). The AAAR held that the supply of goods in respect of which the incentives are purported to be given are rendered by the distributors and not by US LLC, and hence the target based incentives could not be considered to be a "trade discount".</p>	<a href="#">CLICK HERE</a>
7.	<p><b>RHC Global Exports Pvt. Ltd. v. Union of India, C/SCA/5978/2023, Gujarat High Court</b></p> <p>The Hon'ble Gujarat High Court has held that the Gujarat State GST Officers had jurisdiction to conduct search and seizure proceedings in SEZ Units by virtue of Section 6(2) of the Gujarat GST Act, 2017. The Petitioner contended that their Unit</p>	<a href="#">CLICK HERE</a>



S. No.	Particulars	Link
	in the SEZ at Surat was outside of the purview of State GST, and were thus exempt from any inspection or investigation by State GST authorities. The Court observed that if such a view were to be taken, then the purpose of the GST Act would be defeated.	

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**CUSTOMS, SEZ AND FOREIGN TRADE**

S. No.	Particulars	Link
1.	Customs Circular in relation to mandatory additional qualifiers in import/export declarations in respect of certain products.	<a href="#">CLICK HERE</a>
2.	Customs Circular on Simplified regulatory framework for e-commerce exports of Jewellery through Courier mode.	<a href="#">CLICK HERE</a>
3.	Customs Circular on mandatory additional qualifiers in import/export declarations in respect of certain products.	<a href="#">CLICK HERE</a>
4.	Customs Circular on electronic Repairs Services Outsourcing (ERSO) – initiation of pilot at ACC Bengaluru.	<a href="#">CLICK HERE</a>
5.	<b>The Kennel Club of India v. Union of India, W.P.Nos.23230 &amp; 23231 of 2016 &amp; 10496 of 2017, Madras High Court</b>  The Hon'ble Madras High Court has quashed DGFT Notification No. 3/2015-2020 dated 25.04.2016, which placed a restriction on the import of dogs into the Country for commercial breeding or other commercial activities. The Union had contended that commercial breeding of foreign dogs would bring alien diseases, which would gravely prejudice native breeds. The Court observed that given the effective measures for quarantine and testing of the animals prior to permitting entry into India, there was no reasonable justification for the ban, and accordingly quashed the impugned notification.	<a href="#">CLICK HERE</a>

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**INTELLECTUAL PROPERTY RIGHTS**

S. No.	Particulars	Link
1.	<b>M/s Mangalore New Sultan Beedi Works v. State of Karnataka &amp; Others, WRIT PETITION NO. 10870 OF 2023, Karnataka High Court</b>  The Karnataka High Court has ruled that a civil dispute between parties does not automatically halt criminal proceedings under the Copyright Act. The court observed that the Act provides for both civil remedies and criminal prosecutions, as the nature and objectives of these proceedings differ. While civil proceedings aim to prevent, remedy, or compensate for copyright infringement, criminal proceedings primarily serve a punitive purpose. The court emphasized that the statutory scheme enacted by Parliament supports the continuation of criminal proceedings, even if a civil dispute is ongoing. It stated that the mere existence of a civil dispute does not serve as grounds to halt criminal proceedings under the Copyright Act.	<a href="#">CLICK HERE</a>

S. No.	Particulars	Link
2.	<p><b>Decco Worldwide Post Harvest Holdings B.V &amp; Anr. v. The Controller of Patents and Designs &amp; Anr., AID No. 11 of 2021, Calcutta High Court.</b></p> <p>The Hon'ble Calcutta High Court has set aside the order of the Controller of Patents, rejecting a Patent Application filed by agrochemical multinational UPL's postharvest division <i>Decco Worldwide</i>, for their invention titled "<i>A fungicidal treatment for black sigatoka</i>," to prevent leaf-disease that infects banana plants. The appellant applied for grant of patent for an invention which provides for a treatment method for black sigatoka, a leaf-spot disease in banana plants. The application was rejected on the basis of Section 3(h) of the Patents Act, 1970, and on additional grounds of insufficient disclosure, lack of novelty, and lack of inventive step. The court however, set aside the impugned order, holding that the same does not explain why the subject invention falls under "agriculture". The court further held that the findings on lack of inventive step was misdirected as the controller did not consider the explanation in the written submissions of the Appellant.</p>	<a href="#">CLICK HERE</a>
3.	<p><b>I Am The Ocean, LLC Vs Registrar Of Trade Marks [Comm Miscellaneous Petition (L) No.3899 Of 2023], Bombay High Court</b></p> <p>The Hon'ble Bombay High Court recently set aside the Order of the Senior Examiner of Trade Marks and remanded the matter for reconsideration, after making scathing observations that the Senior Examiner had completely abdicated his quasi-judicial function by passing an order rejecting the trademark application without considering the submissions placed on record by the Applicant.</p>	<a href="#">CLICK HERE</a>
4.	<p><b>Marico Ltd. v. Dabur India Ltd., 2023:DHC:3984, Delhi High Court</b></p> <p>The Hon'ble Delhi High Court has restrained Dabur from circulating a WhatsApp advertisement disparaging the goodwill and reputation of its product "Nihar Natural Shanti Badam Amla Hair Oil" and registered "Nihar" trade marks. Marico sought an ad interim injunction to restrain Dabur from circulating or forwarding its WhatsApp Advertisement or Print Advertisement on Amla hair oil. The Court observed that while there was no prima facie case with respect to the print advertisement, the WhatsApp advertisement showed that the print advertisement is directly aimed at the Plaintiff.</p>	<a href="#">CLICK HERE</a>

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#### ARBITRATION LAW

S. No.	Particulars	Link
1.	<p><b>IRCTC v. M/s Goel &amp; Goel, OMP(COMM) 229/2021, Delhi High Court</b></p> <p>The Hon'ble Delhi High Court has held that Indian Railway Catering &amp; Tourism Corp. Ltd. (IRCTC) falls within the definition of "State" under Article 12 of the Constitution of India and is therefore bound by its affidavit before any court of law, and cannot file contrary affidavit before the arbitral tribunal to frustrate a claim in the arbitration. The Court also held that an arbitration award cannot be challenged on the grounds of lack of evidence in making the award for damages, when the parties agreed to not lead any evidence at all at the commencement of the arbitration. Furthermore, the Court reiterated that a plea of fact or law not taken before the arbitral tribunal, cannot be permitted to be raised for the first time before the Court under Section 34 of the Arbitration and Conciliation Act, 1996.</p>	<a href="#">CLICK HERE</a>

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S. No.	Particulars	Link
2.	<p><b>Medeor Hospital Limited Formerly Rockland Hospitals Limited v Ernst and Young LLP, 2023:DHC:2926</b></p> <p>The Hon'ble Delhi High Court ruled that it should only interfere with an arbitral award under section 34 of the Arbitration and Conciliation Act, 1996 if there are clear instances of unfairness or errors of law. The court must not overturn the award based on its own idea of justice. The High Court emphasised the significance of upholding the independence of the arbitration process and respecting the arbitrator's authority as the ultimate decision-maker in resolving disputes. The court will not intervene in an arbitral award unless there are serious issues with the decision-making process, ensuring that arbitrators' decisions are generally respected and upheld.</p>	<a href="#">CLICK HERE</a>

**[End of Newsletter]**

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