

MONTHLY NEWSLETTER

JULY 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.	The Reserve Bank of India (RBI) has released a Master Circular for Management of Advances to all Primary Urban Cooperative Banks (UCBs) which consolidates and updates all the instructions / guidelines on the subject issued till date. Primary UCBs are expected to lay down, with the approval of their boards, transparent policies, and guidelines for credit dispensation, in respect of each broad category of economic activity, keeping in view the credit exposure norms and various other guidelines issued by the RBI from time to time.	CLICK HERE
2.	RBI provides clarification: Banknotes from the Star series are officially recognized as legal tender.	CLICK HERE
3.	The RBI has declared the inclusion of "NongHyup Bank" in the Second Schedule of the RBI Act, 1934. This noteworthy decision signifies a momentous occasion for NongHyup Bank, originating from Jung-gu, Seoul, South Korea. The bank has been dynamically conducting operations in India since its inception in 2016.	CLICK HERE

CORPORATE LAWS, SECURITIES LAWS AND CAPITAL MARKETS

S. No.	Particulars	Link
1.	The Securities and Exchange Board of India (SEBI) has issued the revised Master Circular for issue and listing of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper. As per the Circular, Stock Exchanges shall provide a platform for making applications through Intermediaries and App based / web interface applications from investors for blocking the mode for application value up to INR 5 lakhs.	CLICK HERE
2.	SEBI has issued guidelines for alternative investment funds (AIFs) to transfer assets not sold during the winding-up process to a new liquidation scheme or distribute such unliquidated investments in-specie, subject to a 75% consent by value of investors in each case.	CLICK HERE

S. No.	Particulars	Link
3.	SEBI has issued clarification regarding Implementation of the circular on upstreaming of clients' funds by Stockbrokers (SBs) / Clearing Members (CMs) to Clearing Corporations (CCs). As per the framework, no clients' funds shall be retained by SBs/CMs on End of Day (EoD) basis. The clients' funds shall all be up streamed by SB/CMs to CCs only in the form of either cash or lien on FDRs.	CLICK HERE
4.	The SEBI has introduced a framework to enhance the penetration of the Mutual Fund industry, and to facilitate new types of players to act as sponsors of MFs, an alternative set of eligibility criteria is introduced. This is with the objective of facilitating fresh flow of capital into the industry, fostering innovation, encouraging competition, providing ease of consolidation and easing exit for existing sponsors.	CLICK HERE
5.	The IBBI, vide notification dated July 20, 2023, has issued the IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2023, clarifying that the regulatory fee of 0.25% on corporate insolvency resolution plans will not be payable in cases where the approved resolution plan in respect of insolvency resolution of a real estate project is from an association or group of allottees in such real estate project.	CLICK HERE
6.	ICICI Bank Ltd. v. The Deputy General Manager & Ors., 2023: DHC:5088, Delhi High Court The Hon'ble Delhi High Court has recently held that the proceedings under the SARFAESI Act, 2002 are to be treated as a carve out to, and remain unaffected by, the orders and directions passed under the SEBI Act, 1992. The Court observed that the mischief sought to be cured by the SARFAESI Act was the lack of a statutory mechanism that provided, and further allowed, banks to realise their security interests with minimum interference from courts.	CLICK HERE
7.	Sunflag Iron & Steel Co. Ltd. v. J. Poonamchand, 2023 SCC OnLine Bom 1214 The Hon'ble Bombay High Court has held that appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 cannot be prevented on account of initiation of proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016. Further, in terms of Section 7(5) of the IBC, until and unless the NCLT is satisfied that there has been a default and admits the application on such ground, the mere filing of an application under Section 7 of the IBC would not act as a bar to any other proceedings under any other statute.	CLICK HERE
8.	Dauphin Cables Pvt. Ltd. Vs. Praveen Bansal Resolution Professional & Ors., Company Appeal (AT) (Insolvency) No. 634-636 of 2023 The Hon'ble NCLAT held that, If the Committee of Creditors ("CoC") undergoes reconstitution after the approval of a resolution plan due to the reclassification of a creditor, it is necessary to present the approved Resolution Plan once again to the reconstituted CoC for their evaluation.	CLICK HERE

INDIRECT TAX

S. No.	Particulars	Link
1.	The Central Board of Indirect Taxes & Customs (CBIC) has issued guidelines concerning the taxation of services carried out by one state's office of an organization for the office of the same organization located in a different state.	CLICK HERE
4.	The Central Board of Indirect Taxes and Customs (CBIC) has issued a clarification on the taxability of shares held in a subsidiary company by the holding company. CBIC has clarified that securities are considered neither good nor service in terms of the definition of goods under Clause (52) of Section 2 of the CGST Act and the definition of services under Clause (102).	CLICK HERE
5.	The Central Board of Indirect Taxes and Customs (CBIC) has notified the "Account Aggregator" as the systems with which information may be shared by the common portal under section 158A of the CGST Act, 2017.	CLICK HERE
6.	In Re Siri miri Nutrition Food Products Private Limited (GST AAR Karnataka) KAR ADRG 26/2023 The Karnataka Authority of Advance Ruling (AAR) has held that Chocolate Peanut Chickees attract 18% GST, whereas other chikkies attract 5% GST. The bench observed that the product "Chocolate Peanut Chikkies " contains cocoa powder. Cocoa and Cocoa Preparations are covered under Chapter 18. Chapter heading 1806 covers Chocolate and other food preparations containing cocoa, and chapter heading 1806 90 20 covers Sugar Confectionery containing Cocoa. Thus, the product "Chocolate Peanut Chikkies," which contains cocoa powder, is covered under the chapter heading 1806 90 20 and attracts 18% GST.	CLICK HERE
7.	In Re Aesthetik Engineers Private Limited, 10/WBAAR/2023-24 dated 26.06.2023, West Bengal AAR The West Bengal Authority of Advance Ruling (AAR) has held that no separate registration is required for each type of business, i.e., manufacturing, reselling, or providing services carried on from the same place of business. The bench has observed that, as per the proviso to Section 25(2) of the GST Act, separate registration in a State may be granted to a person who has multiple places of business in that State.	CLICK HERE
8.	Guardian Landmarks LLP vs. Commissioner of Central Excise and Service Tax, Pune II, Service Tax Appeal No. 88084 of 2019, CESTAT, Mumbai The CESTAT Mumbai, held that, once the customer cancels the booking and the booking amount was returned, the service contract gets terminated and once it is established that no service is rendered, the refund of tax for such service become admissible. Further observed that when no service has been provided then the assessee cannot be saddled with service tax liability and the tax deposited by the assessee will be considered as 'deposit' and keeping the said tax amount by the Revenue Department is violative of Article 265 of the Constitution which specifically provides that "No tax shall be levied or collected except by authority of law.	CLICK HERE
9.	M/s Devi Traders vs. The State of Andhra Pradesh, W.P.No.3659 of 2023 (A.P. High Court) The Hon'ble High Court of Andhra Pradesh has held that proceedings under Sections 73 and 74 of the CGST Act, 2017 are not controlled by Section 61 alone, but can be taken up by resorting to the audit of accounts under Section 65 also, as a strict interpretation of the wordings of Section 74, viz., "where it appears to the proper	CLICK HERE

S. No.	Particulars	Link
	officer that any tax has not been paid” indicates a wider amplitude, subsuming in it not only Section 61 and 65 but also any other credible information from a different source.	
10.	M/s. Rashleela Enterprises Pvt. Ltd. Vs. The Commissioner, Service Tax Appeal No. 50773 of 2017 The Delhi Bench of the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) has held that excavation and raising of ore are classifiable under "business auxiliary service" and not under "mining service". The bench has observed that where there is excavation or raising of ore, the same would not be classifiable under site formation service. The activity of excavating boulders would also not be a service simpliciter, as it involves further processes to make the boulders fit for client usage. Thus, the same would be classifiable under "business auxiliary service".	CLICK HERE
11.	Commissioner of Service Tax-IV Vs. Prime Focus Ltd., Civil Appeal Diary No(s). 23042/2023 The Supreme Court has held that the 3D conversion services provided by the assessee, including services such as ‘imparting special effects’, ‘postproduction service’, ‘digital asset management and content service’ and ‘digital restoration service’, will not fall under the ambit of ‘video-tape production’ under Section 65(120) of the Finance Act, 1994.	CLICK HERE

CUSTOMS, SEZ AND FOREIGN TRADE

S. No.	Particulars	Link
1.	Polaris India Private Limited Vs. Principal Commissioner of Customs, Customs Appeal No. 52881 of 2019 The Delhi Bench of the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) has held that Ranger and Brutus Vehicles imported by Polaris India are not designed for the transportation of persons. The bench has observed that the Ranger (non-electric) Vehicles deserve to be classified under CTH 8704 and the Ranger (electric) and Brutus Vehicles deserve to be classified under CTH 8709.	CLICK HERE
2.	Safir P. v. Commissioner of Customs (Preventive), 2023/KER/41888, Kerala High Court The Hon'ble Kerala High Court has held that a vehicle cannot be seized by Customs Authorities on a mere apprehension that it may be used as a means of transporting smuggled goods. The Court observed that under Section 115 of the Customs Act, 1962, (which provides for 'Confiscation of conveyances'), the power of confiscation can only arise if the vehicle was used or is being used for smuggling goods and not for apprehended use or future use.	CLICK HERE
3.	JSW Steel Ltd. Vs. Commissioner of Central Excise, Excise Appeal No. 1975 of 2012 The Mumbai Bench of the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) has held that Waste or Rubbish that is thrown up during manufacture cannot be said to be a product of manufacture and cannot be subject to excise duty. The bench has observed that Waste Pickle Liquor (WPL) is nothing but waste that	CLICK HERE

	emerges in the process of manufacturing steel articles or finished goods. It's not an end product or finished product, and merely because it fetches some price in the market does not bring it out of the category of waste.	
4.	Rajeev Khatri Vs. Commissioner of Customs (Export), CUSAA 3/2021 & CM APPL. 5517/2021 The Delhi High Court has quashed the penalty against customs brokers on the grounds that knowledge is a necessary element for committing abetment. The bench has observed that knowledge of a wrongful act of omission or commission, which rendered the goods liable for confiscation under Section 111 of the Customs Act, is a necessary element for the offence of abetting the act.	CLICK HERE
5.	Centre for Marine Living Resources & Ecology Vs. The Commissioner of Customs, Customs Appeal No.110 of 2010 The Bangalore (CESTAT) has held that the vessel Sagar Sampada is an Ocean-Going Vessel that is eligible for import duty exemption in respect of spares, parts, and other specific items for the vessel's repair. The bench has observed that ocean-going vessels include scientific research vessels. FORV Sagar Sampada is a Scientific Research vessel, and hence, the question of not treating the appellant as an Ocean-Going Vessel does not arise. It is an Ocean-Going Vessel registered with the Director General of Shipping. Since the Notification allows spares for repairs of ocean-going vessels by a ship repair unit registered with the Director General of Shipping, Government of India, the question of denying this benefit does not arise.	CLICK HERE

INTELLECTUAL PROPERTY RIGHTS

S. No.	Particulars	Link
1.	Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India, 2023: DHC:4783-DB, Delhi High Court In a landmark judgement, the Division Bench of the Hon'ble Delhi High Court has held that the powers conferred upon the Controller under Chapter XVI of the Patents Act, 1970 pertaining to determination of anti-competitive licensing and pricing of Standard Essential Patents (SEPs) will override the "general provisions" of the Competition Act, 2002, and the Competition Commission of India (CCI) does not have the jurisdiction to investigate any anti-competitive patent licensing, a power, which the Court held, was only available with the Controller of Patents under the Patents Act, 1970.	CLICK HERE
2.	Krishna Kishore Singh Vs. Sarla A Saraogi & Ors, Cs (Comm) 187/2021, Delhi High Court. Upon viewing the impugned movie, the court held that the film is an explicit re-enactment of Sushant Singh's life and the circumstances leading up to his tragic death, with a particular focus on the subsequent investigation. The movie follows a specific sequence of events that bear a striking resemblance to known details about Sushant Singh's life, as reported in the media. The similarities between the movie and Sushant Singh's real-life events are not mere coincidences but deliberate re-enactments.	CLICK HERE

3.	<p>Hero MotoCorp Ltd. v. Shree Amba Industries, 2023:DHC:5757, Delhi High Court</p> <p>The Hon'ble Delhi High Court recently held that Hero's design for a front fender for its 'HERO HF DELUXE' motorcycle is incapable of registration under Section 2(a) of the Designs Act, 2000, and accordingly denied interim relief to the Plaintiff. The Court observed that a front fender of a motorcycle is an external part which is visible to the viewer and that it has no independent life as an article of commerce in itself. The Court further observed that if the contentions of the Plaintiff were to be allowed and the fender design is registered, then it would result in the creation of a monopoly in favour of the Original Equipment Manufacturers, which would be against public interest.</p>	CLICK HERE
4.	<p>Pepsico India Holdings Pvt Ltd. V. Kavitha Kuruganti, 2023: Delhi High Court 4460</p> <p>PepsiCo had filed an appeal before the Hon'ble Delhi High Court against the Order of the Protection of Plant Varieties and Farmers Rights Authority, revoking their registration with respect to plant variety- FL 2027 potato variety (also known as the FC-5 potato, which is used in the popularly used in the 'Lays' brand of chips), inter alia on the grounds that the registration was not in public interest.</p> <p>The Hon'ble High Court, while dismissing the appeal, held that 'any person' could oppose the registration of a plant variety on the grounds of 'public interest' under the Plant Varieties Act, 2001.</p>	CLICK HERE
5.	<p>Himalaya Wellness Company & Ors. V. Wipro Enterprises Pvt. Ltd., 2023: Delhi High Court: 4685</p> <p>The Hon'ble Delhi High Court has held that the 'EVECARE' line of wellness products of the Defendant are passing off as the 'EVECARE' and 'EVECARE FORTE' products of the Plaintiff, which the Plaintiff adopted over 20 years ago. While holding that no case of infringement was made out since the Plaintiff did not make out any grounds under Sections 9 and 11 of the Trade Marks Act, 1999, the Court held that the Defendants had committed the tort of passing off, since both products were targeted at the same class of consumers and a person of ordinary prudence would be confused as to the origin of the Defendants' products.</p>	CLICK HERE
6.	<p>Jayson Industries and Anr. Vs. Crown Craft (India) Pvt. Ltd., CS(COMM) 580/2022, Delhi High Court</p> <p>The Delhi High Court held that Crown Craft, the defendant, had made a credible challenge to the validity of the design. As the prior publications submitted by the defendant made the vertical ribs and the products flanges prima facie not novel and original, the Court refused an interlocutory injunction in Favor of Jayson Industries.</p> <p>The Court in the case reiterated important principles relating to prior publication stating that to be a valid publication, the publication must disclose the design by way of use, in a tangible form, or any other manner. It pointed out that a single publication must negate the novelty and originality of the design, and substituting trade variants would not make a design novel. The Court warned against mosaicking of prior art references to negate novelty and originality.</p>	CLICK HERE
7.	<p>TV 18 Broadcast Ltd. Vs Bennett, Coleman, And Company Limited, CS(COMM) 279/2022, Delhi High Court</p> <p>The High Court held that, the “Bhaiyaji Kahin” mark used by the plaintiff is registered under classes 38 and 41. In contrast to the registration under class 38, the registration under class 41 contains a disclaimer about the term “Bhaiyaji”. There is no question</p>	CLICK HERE

	<p>in my opinion after reading the classification that television shows, particularly those relating to news, belong in class 41 and not class 38. There is a blatant exclusion for television broadcasts in class 38. Telecommunication services, such as television transmission, are also included in class 38. Therefore, names of television stations like Times Now, CNN News18, News18, and similar ones will be included in class 38. The subject of class 41 would be the titles of the shows that are shown on these networks. Therefore, class 41 would be the applicable class for finding infringement.</p>	
8.	<p>Sun Pharma Laboratories Limited Vs Glenmark Pharmaceuticals, CS(COMM) 711/2022</p> <p>The Court held that the balance of convenience unequivocally lies in favour of Sun Pharma as it had been utilizing the mark “ISTAMET” since 2011, which established a considerable period of usage and market recognition, whereas Glenmark launched their product under the “INDAMET” mark quite recently, in 2022. The Court thus opined that this scenario suggested that Glenmark consciously chose to use the impugned mark despite the existing opposition, thus accepting the associated risks. This action could be construed as either negligence or a strategic gamble on Glenmark’s part. Additionally, the well-established principle that ‘first in the marketplace’ holds the right, applies here, favouring Sun Pharma.</p>	CLICK HERE

ARBITRATION LAWS

S. No.	Particulars	Link
1.	<p>ARG Outlier Media Private Limited vs HT Media Limited, 2023: DHC:4366, Delhi High Court</p> <p>The Hon'ble Delhi High Court has held that an arbitration agreement which is not properly stamped, cannot be admitted in evidence. However, once the Agreement has been admitted in evidence by the Arbitrator, who has passed an award by relying on the said Agreement, the award cannot be set aside on the basis that the agreement was insufficiently stamped.</p>	CLICK HERE
2.	<p>M/s Abhijeet Angul Sambalpur Toll Road Limited v. National Highway Authority of India, 2023: DHC:4320-DB</p> <p>The Division Bench of the Hon'ble Delhi High Court, while partially setting aside an order of the same Court, held that the refusal of the Arbitral Tribunal to entertain the counter-claims does not result in an Interim Award.</p>	CLICK HERE
3.	<p>Srei Equipment Finance Limited Vs. Seirra Infraventure Private Limited, AP 281/2023 with AP 283/2023</p> <p>The Hon'ble Calcutta High Court held that there is little doubt that party autonomy is one of the fundamental underpinnings of the Arbitration Act where all decisions, from the appointment of arbitrators to venue and procedure, are made subject to the choice exercised by the parties to an arbitration agreement. The right to choose an arbitrator in accordance with an agreed procedure for appointment however stops at the doorway of 11(6) when the parties surrender that right to the High Court or the Supreme Court, as the case may be. The Court then steps in to make that choice in the matter of the appointment of an arbitrator.</p>	CLICK HERE

COMPETITION LAWS

S. No.	Particulars	Link
1.	<p>The U.P. Glass Manufacturers Syndicate vs. Competition Commission of India & Ors., Competition Appeal (AT) No. 07 of 2023</p> <p>The NCLAT held that the CCI can only direct parties to publish details of the proposed transaction either on receiving response from the parties to the SCN or report of the Director General (“DG”) (as the case maybe). However, in the present case, after the issuance of the SCN by the CCI, AGI submitted voluntary modifications, which was accepted by the CCI. Thus, the occasion on part of the CCI to direct parties to publish details of the Proposed Transaction never arose in the present case.</p>	CLICK HERE
2.	<p>In Re: Devendra Nath and M3M India Private Limited, Case No. 02 of 2023, CCI</p> <p>The CCI received a complaint against M3M India Private Limited (“M3M India”) for indulging in alleged abuse of dominant position, in violation of Section 4 of the Competition Act.</p> <p>The CCI defined the relevant market as the market for the provision of services of development and sale of residential flats in Gurgaon. The CCI inter alia noted that: (a) M3M India is not dominant in the relevant market due to the presence of several significant players. Further, the complainant failed to disclose any material to demonstrate the dominance of M3M India; and (b) bereft dominance of M3M India, the question of M3M India abusing its dominant position in the relevant market does not arise.</p>	CLICK HERE
3.	<p>Sanjay Kumar Vs. Karagiri Studio, Case No. 4 of 2023</p> <p>Defrauding consumers and supply of spurious goods are consumer concerns and don’t fall within the ambit of Competition Act, 2002</p>	CLICK HERE

OTHER LAWS

1.	<p>Reserve Bank of India & Ors Vs. A.K. Nair & Ors. Civil Appeal No(S). 529 Of 2023, SC</p> <p>The Supreme Court invoked Article 142 of the Constitution of India to direct RBI to extend the benefit of reservation in promotion to an employee with disability, who was denied the same for a long time.</p> <p>The Hon’ble Supreme Court of India held that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, did not contain any express provision for reservation to persons with disabilities serving in the feeder cadre, though there were provisions indicating that merely because an employee is one living with a disability, they ought not to be denied promotion. However, mere absence of an express mandate for reservation in promotion for persons with disabilities did not absolve the Government from keeping reserved vacancies on promotional posts.</p>	CLICK HERE
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