

MONTHLY NEWSLETTER AUGUST 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 announced enhancement of transaction limits for small value digital payments in offline mode to ₹500 from the earlier cap of ₹200.	CLICK HERE
2.	The RBI has issued fresh guidelines for lenders on penal charges in loan accounts to ensure that penal interest/ charges are not used as a revenue enhancement tool by them, over and above the contracted rate of interest.	CLICK HERE
3.	The RBI has issued detailed guidelines to reset the interest rates for equated monthly installments (EMI) in floating interest loans.	CLICK HERE
4.	Abhijit Mishra V. Reserve Bank of India & Anr. W.P.(C) 3693/2019 and C.M. No. 34242/2020 The Delhi High Court has dismissed two public interest litigations filed against Google Pay alleging that the payment platform violated regulatory and privacy norms under the Indian law. The Court held that Google Pay is a mere third-party app provider for which no authorization is required from RBI under the provisions of Payments and Settlement Systems Act, 2007.	CLICK HERE

CORPORATE LAWS, SECURITIES LAWS AND CAPITAL MARKETS

S. No.	Particulars	Link
1.	The Ministry of Corporate Affairs (MCA) has notified the Companies (Incorporation) Second Amendment Rules, 2023, which introduces a new Form RD-1, through which a company may seek approval from the Regional Director.	CLICK HERE
2.	The Securities and Exchange Board of India (SEBI) has introduced the Securities and Exchange Board of India (Settlement Proceedings) (Second Amendment) Regulations, 2023 which shall be deemed to have come into force from 17.01.2023. Settlement Proceedings will now be overseen and managed by a Panel of Whole Time	CLICK HERE

S. No.	Particulars	Link
	Members (WTM) and marks a significant shift in how settlement proceedings are conducted within SEBI's regulatory framework.	
3.	In a significant move, SEBI has reduced the timeline for listing of shares in Public Issue from existing T+6 days to T+3 days. The timelines for submission of application, allotment of securities, unblocking of application monies and listing shall prominently be made a part of pre-issue, issue opening and issue closing advertisements issued by the Issuer for public issues in terms of the ICDR Regulation. This notification has been made voluntary for public issues opening on or after 01.09.2023, and shall be mandatory for public issues on or after 01.12.2023.	CLICK HERE
4.	The Assistant Commissioner of Central Tax v Mr. Sreenivasa Rao Ravinuthala & Anr. [COMPANY APPEAL (AT) (CH) (INS.) NO. 346/2021] The National Company Law Appellate Tribunal ("NCLAT"), Chennai Bench has held that Central Excise Authority is not a Secured Creditor under IBC. The Bench observed that usage of the words 'save as provided in' in Section 11E of Central Excise Act, 1944 is in the nature of an exception, intended to exclude the class of cases, mentioned in Companies Act, 1956, The Recovery of Debts due to Banks and the Financial Institutions Act, 1993, SARFAESI Act, 2002 and IBC.	CLICK HERE
5.	M/s Bezel Stockbrokers Private Limited v Security Exchange Board of India & Anr. [Company Petition No. (IB)-251(ND)/2021] The National Company Law Tribunal ("NCLT"), New Delhi Bench has held that a stockbroker company is a financial service provider under IBC. The Bench observed that since Corporate Applicant, being a stockbroker, was dealing in the activities of buying, selling, or dealing in securities etc., which in terms of Section 3(15) of IBC 2016 are a "Financial Product" belonging to another person. Hence, in terms of Section 3(16) of IBC 2016, the Corporate Applicant was providing "Financial Service" or in other words, it was a "Financial Service Provider".	CLICK HERE
6.	M/s Blue Frog Media Pvt. Ltd. [CP (IB) No. 4360/MB/C-I/2018] The NCLT, Mumbai Bench has held that a Resolution Professional is responsible to conduct due diligence relating to Section 29A of IBC, to identify ineligibility of resolution applicant, if any. Additional information, documents or clarifications can be sought from the Resolution Applicant by the Resolution Professional. The mere submission of an affidavit by the resolution applicant under Section 29A of IBC would not suffice.	CLICK HERE
7.	Ritu Tandon v M/s Rain Automotive India Private Limited [Company Petition No. (IB)-1095(ND)/2019] The National Company Law Tribunal ("NCLT"), New Delhi Bench has held that a Resolution Professional or Liquidator cannot assign a debt or Not Readily Realizable Assets ("NRRAs"), when the avoidance applications under Sections 43,45, 50 and 66 of IBC are pending adjudication before the NCLT. The NRRAs can only be assigned once the Debt/Demand is determined or crystallized through NCLT's adjudication.	CLICK HERE

COMPETITION LAW

S. No.	Particulars	Link
1.	<p>Synco Industries Limited vs. Hero FinCorp Ltd. Case No. 09 of 2023</p> <p>The Competition Commission of India (CCI) held that Hero FinCorp did not violate Section 4 of the Competition Act. To assess the matter under Section 4 of the Act, the CCI determined the relevant market, involving examination of the relevant product market and the relevant geographic market as per Sections 2(t) and 2(s) of the Act. Further noted that the relevant product market is the “market for the provision of loans against property.” The Commission observed that there are numerous service providers operating in this relevant market, competing with one another to offer loans against property.</p>	CLICK HERE

INDIRECT TAX

S. No.	Particulars	Link
1.	<p>Tagros Chemicals India Pvt. Ltd. v. Union Of India, 2023:GUJHC:37264-DB, Gujarat High Court</p> <p>The Hon'ble Gujarat High Court has directed refund of IGST with interest to the petitioner, who had inadvertently paid excess IGST. The case pertained to a Purchase Order received for the supply of goods meant for exports. Vide Notification No.41/2017 - Integrated Tax (Rate) dated 23.10.2017, the concessional rate of 0.1% IGST is applicable on supply of goods meant for exports. The petitioner, who had paid 18% IGST, realised their error, and had issued a credit note to the buyer. The petitioner had also applied for refund of the excess amount of INR 23,09,100/-, pursuant to which a SCN was issued and the refund claim was rejected. The Court, relying on the judgement of the Hon'ble Supreme Court in <i>Bonanzo Engineering & Chemical Pvt. Ltd. v. Commissioner of Central Excise, (2012) 4 SCC 771</i>, held that the inadvertent payment of duties on goods exempted from payment does not convert the goods into liable goods under the Act. The Hon'ble Court thereby allowed the petition, quashed the order in original, and directed the refund of excess amount to the petitioner, with applicable interest.</p>	CLICK HERE
2.	<p>In Re Sai Service Private Limited, TSAAR Order No. 13/2023, Telangana AAR</p> <p>The Telangana Authority of Advance Ruling (AAR) has held that Input Tax Credit (ITC) cannot be availed on test-drive vehicles when retained in a workshop as a replacement vehicle. The Bench has observed that the availability of ITC depends on the occurrence of a future event, i.e., whether he retains the vehicle in his workshop as a replacement vehicle or sells vehicles. If the vehicle is further supplied, then ITC can be claimed.</p>	CLICK HERE
3.	<p>Commissioner of Central Excise Vs. M/s Denis Chem Lab Ltd. & Anr., Civil Appeal Nos. 6024-6028 of 2009</p> <p>The Supreme Court has ruled that in order to determine whether a product would fall under the description of “Intravenous Fluids” so as to be eligible for exemption from excise duty, it is the composition of the product in question which is relevant and not whether the product is used for treatment of any particular disease. Intravenous Fluids are specially formulated liquids that are injected into a vein to prevent or treat dehydration. They are used in people of all ages who are sick, injured, dehydrated from</p>	CLICK HERE

S. No.	Particulars	Link
	exercise or heat, or undergoing surgery. Intravenous rehydration is a simple, safe and common procedure with a low risk of complications.	
4.	M/s Bajaj Finance Ltd. Versus Commissioner of Central Excise & GST, Pune-I, Service Tax Appeal No. 90043 of 2018 The Mumbai Bench of the CESTAT has held that penal interest and cheque bouncing charges received by Bajaj Finance as “consideration” for “tolerating an act” are not leviable to service tax under Section 66E(e) of the Finance Act, 1994. The Bench has observed that demand for service tax in respect of the amount collected on account of bouncing of cheques cannot be sustained as the charges are penal in nature and thus are not towards consideration for any service.	CLICK HERE
5.	Coventry Estates Pvt. Ltd. v. The Joint Commissioner CGST and Central Excise, 2023: BHC-OS:7961-DB, Bombay High Court The Hon'ble Bombay High Court has held that the belated hearing of the Show Cause Notice ("SCN") would amount to a violation of the principles of natural justice. In the present case, the notice for a personal hearing was sent after almost 10 years of seeking to adjudicate the show cause notice. The petitioner challenged show cause notice and notice for a personal hearing, contending that the unreasonable delay of more than 10 years in adjudication of the SCN, vitiates the proceedings. The department attempted to justify the delay by stating that the same occurred due to the shifting of the Commissionerate and reorganisation of the field formations. The Court held that Section 73(4) of the Finance Act, 1994 provides that a determination of SCN must take place within six months or one year from the date of issuance of the SCN and that the maximum time limit for the issuance of a SCN is 5 years, and that the inordinate delay in proceedings frustrates the entire adjudication process.	CLICK HERE
6.	DGAP Versus M/s Subway Systems India Pvt. Ltd., Case No. 08/2023 The Competition Commission of India CCI held that charging royalty and advertising expenses does not amount to profiteering. The Tribunal observed that the rate of GST in respect of Royalty Services was 12% and the rate of GST on Advertisement Charges was 5% in the case of Print media and 18% (other than Print media), and there had been no reduction in the rates of tax, due to which Section 171 of the CGST Act did not apply.	CLICK HERE

CUSTOMS, SEZ AND FOREIGN TRADE

S. No.	Particulars	Link
1.	Commissioner of CGST And Central Excise, Mumbai East v. Flemingo Travel Retail Ltd., RP(C) 1017/2023 in Civil Appeal No. 2753/2023, Supreme Court of India The Hon'ble Supreme Court, in a significant step, has recalled its judgement dated 10.04.2023, wherein the Court had held that Duty Free Shops ("DFS") in airports, being beyond the Customs frontier of India, could not be saddled with any Indirect Tax, and that collection of Service Tax on rental transaction with Mumbai International Airport would be unconstitutional. In the said Revision Order, the 3-judge bench of the Hon'ble Court observed that the impugned judgement dated 10.04.2023 adverted only to the submissions of the	CLICK HERE

	respondents, and the submissions of the Government were neither recorded nor considered. Accordingly, the Review Petition was allowed, and the matter was restored and tagged with 25 other similar Appeals pending before the Supreme Court.	
2.	Nidhi Kapoor v. Principal Commissioner and Addl. Secretary to the Govt. of India & Ors., 2023: DHC:5933-DB, Delhi High Court – Batch Matters The Hon'ble Delhi High Court has held that importation of gold would fall within the scope of 'prohibited category' under Section 2(33) of the Customs Act, 1962, and that redemption in case of importation of gold which is brought into India illegally in the form of smuggling does not entitle the owner or importer for automatic release/redemption of such item, and therefore, as a necessary corollary, a decision to allow release/redemption of the goods confiscated with or without imposition of fine, in addition to payment of requisite duty, is vested in the discretion of the Adjudicating Officer.	CLICK HERE
3.	Industrial Development Bank of India (Through stressed assets stabilization fund Constituted by Government of India) v. Superintendent of Central Excise and Customs and others [CIVIL APPEAL NO. 2568 OF 2013; AUGUST 18, 2023] The Hon'ble Apex Court held that in case of winding up, the customs authorities have the first right to sell the imported goods under the Customs Act, 1962 ('Customs Act') and adjust the sale proceeds towards payment of customs only. The Court ruled that Customs Act does not create a first charge overriding the charge in favour of secured creditor, in view of Section 529A of the Companies Act, 2013.	CLICK HERE

INTELLECTUAL PROPERTY RIGHTS

S. No.	Particulars	Link
1.	Foodlink F and B Holdings India Pvt. Ltd. v. Wow Momo Foods Pvt. Ltd., 2023:DHC:5521, Delhi High Court The Hon'ble Delhi High Court granted interim injunction against Wow Momo from using the mark "Wow! China Bistro", which the Court held was deceptively similar to the "China Bistro" trade mark of the Plaintiff. The Court observed that Infringement, unlike passing off, is to be decided on a plain comparison of the rival marks and that goodwill and reputation have little, if any, part to play in the process. The Court further observed that the consumer, moreover, must be one who is not overly familiar with either mark. The classical test is whether such a consumer, endowed with average intelligence and imperfect recollection, who chances on the plaintiff's mark at one point of time, and on the defendant's some time later, is given to wonder whether he has seen the mark, or a mark associated with it, earlier.	CLICK HERE
2.	Mankind Pharma Ltd. v. Novakind Bio Sciences Pvt. Ltd., 2023:DHC:5653, Delhi High Court The Hon'ble Delhi High Court granted interim injunction against Novakind from using the suffix "kind", stating that the suffix was not endemic to pharmaceutical preparations, and that there is every likelihood of a customer of average intelligence and imperfect recollection, who chances across the defendant's "NOVAKIND" product, to believe it to be one of the KIND family of the marks belonging to the plaintiff, Mankind.	CLICK HERE

3.	Hero MotoCorp Ltd. v. Shree Amba Industries, 2023:DHC:5757, Delhi High Court 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.	CLICK HERE
4.	Paul Components Pvt. Ltd. v. Hi Tech Pvt. Ltd., 2023: DHC:5612, Delhi High Court The Hon'ble Delhi High Court clarified that when there is a <i>prima facie</i> case of trademark infringement, an injunction should typically be granted, except if the use of the contested mark predates the plaintiff's mark and registration. The plaintiff sought a permanent injunction against the defendant's use of 'HTA' and 'ARS-HTA' marks, the plaintiff had registered the HTA word mark and device mark, while the defendant had no such registration. The court granted an interim injunction to the plaintiff, noting that the defendant's mark's use date (1985) came after the plaintiff's "HTA" mark's usage date (1977).	CLICK HERE
5.	Dr. Reddy's Laboratories Ltd. & Anr. v. The Controller of Patents and Ors., 2023:DHC:5520, Delhi High Court The Hon'ble Delhi High Court has held that a petition for the revocation of patent under Section 64 of the Patents Act, 1970 cannot be held to be a "suit" within the meaning of Section 10 of the Code of Civil Procedure, 1908 ("CPC"), and hence no stay can be granted against a revocation petition before the Delhi High Court, pending another infringement Suit between the same parties, instituted before the High Court of Himachal Pradesh. The Court further opined that the Stay of Suit under Section 10 CPC pertains to the stay of trial, and that even in a case where Section 10 CPC applies, the Court which is seized of the later suit may still pass interlocutory orders under Order XXXIX of the CPC and other cognate provisions.	CLICK HERE

OTHER LAWS

S. No.	Particulars	Link
1.	Kishore Balkrishna Nand vs. State of Maharashtra, 2023 INSC 602 While quashing a defamation case, the Hon'ble Apex Court emphasized on exception 8 of section 499 of the Code of Criminal Procedure, 1973, and observed that exception 8 to section 499 clearly indicates that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. Even otherwise by perusing the allegations made in the complaint, we are satisfied that no case for defamation has been made out. The Hon'ble Apex Court finally held that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject matter of accusation.	CLICK HERE
2.	A. Sreenivasa Reddy vs. Rakesh Sharma, 2023 INSC 614	CLICK HERE

	<p>The Hon'ble Supreme Court in its recent decision observed that protection under section 197 of Code of Criminal Procedure, 1973 ("CrPC"), is not available to a person working in a Nationalized Bank. In the present case, the Hon'ble Supreme Court held, "Although a person working in a Nationalised Bank is a public servant, yet the provisions of Section 197 of the CrPC would not be attracted at all as Section 197 is attracted only in cases where the public servant is such who is not removable from his service save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the Government. In this view of the matter, even if it is alleged that the appellant herein is a public servant, still the provisions of Section 197 of the CrPC are not attracted at all."</p>	
3.	<p>Swapan Kumar Das @ Swapan Das & Anr. Vs. State of West Bengal & Anr., CRR No. 2864 of 2018, In Dwaipayan Das Vs. State of West Bengal & Anr.</p> <p>The Hon'ble Calcutta High Court observed that the legislature has enacted the provision of Section 498A of IPC to strike out the dowry menace from society. But it is observed in several cases that by misusing of said provision new legal terrorism is unleashed. Harassment and torture enumerated in the definition of security u/s 498A cannot be proved solely by the <i>de facto</i> complainant. The criminal law allows the complainant to file a criminal complaint but the same has to be justified by adducing cogent evidence. Both the CDs recorded show no such evidence by which prima facie offence against the present petitioners can be established. The direct allegation against the husband by the de-facto complainant is merely from her version. There is no supporting documentary or medical evidence.</p>	<p>CLICK HERE</p>

[End of Newsletter]
