

MONTHLY NEWSLETTER

SEPTEMBER 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 has issued update on the status of Withdrawal of ₹2000 Denomination Banknotes. 93% of the ₹2000 banknotes in circulation as on May 19, 2023, have since been returned. Members of the public are requested to utilize the remaining period until September 30, 2023, to deposit and/or exchange the ₹2000 banknotes held with them.	CLICK HERE
2.	The Reserve Bank of India has decided that the Regulated Entities (REs) of the Reserve Bank which are secured creditors as per the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, shall display information in respect of the borrowers whose secured assets have been taken into possession by the REs under the Act.	CLICK HERE
3.	<p>The Reserve bank of India has issued RBI (Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023.</p> <p>These directions are set to govern the operations of five prominent All India Financial Institutions (AIFIs) regulated by the Reserve Bank, viz.</p> <p>(1) The Export-Import Bank of India (EXIM Bank),</p> <p>(2) The National Bank for Agriculture and Rural Development (NABARD),</p> <p>(3) The National Bank for Financing Infrastructure and Development (NBFID),</p> <p>(4) The National Housing Bank (NHB) and</p> <p>(5) The Small Industries Development Bank of India (SIDBI).</p>	CLICK HERE
4.	The Government of India has introduced the ' PM Vishwakarma Scheme ' which aims to provide support to artisans and craftspeople to enable them to move up the value chain in their respective trades.	CLICK HERE
5.	The Reserve Bank of India ('RBI') notified the Classification, Valuation and Operation of Investment Portfolio of Commercial Banks, Directions, 2023.	CLICK HERE

S. No.	Particulars	Link
	<p>Key Points:</p> <p>General Guidelines for Investment Policy Framework: The Banks will have to adopt a comprehensive investment policy which is duly approved by Board of Directors, which includes investment criteria and objectives, derivatives in which the bank will deal, procedure for obtaining the sanction of the appropriate authority and putting through deals, etc.</p> <p>Classification of Investment by Banks: Investment Portfolio will be classified under 3 categories, namely, Held to Maturity ('HTM'), Available for Sale ('AFS') and Fair Value through Profit and Loss ('FVTPL').</p> <p>Audit, Review and Reporting: Banks will have to adhere to the following instructions:</p> <p>A half-yearly review (as of March 31 and September 30) of the investment portfolio will be undertaken by the banks which have been placed before their Boards within two months, i.e., by end-May and end-November.</p> <p>Treasury transactions will be subjected to concurrent audit by internal auditors and the results of their audit should be placed before the Chief Executive of the bank once every month.</p> <p>The Audit Committee of the Board will keep the Board informed about the overall exposure to capital markets, the compliance with the Reserve Bank and Board guidelines, adequacy of risk management and internal control systems.</p>	
6.	<p>Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd., 2023 SCC OnLine SC 1209</p> <p>The Supreme Court held that as per the amended Section 13(8) of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ('SARFAESI Act'), the borrower's right of redemption of mortgage stood extinguished once the auction notice was published.</p>	CLICK HERE
7.	<p>Religare Finvest Limited v. State (NCT of Delhi), 2023 SCC OnLine SC 1148</p> <p>The Apex Court held that express mention of directors and other individuals means that prosecution or other criminal proceedings can continue to that extent only. Therefore, criminal liability can neither be attributed to DBS nor its directors, brought in after the amalgamation, whose appointments were approved by the RBI. The Court restricted the criminal liability to LVB officials, whose individual responsibility and accountability remained unaffected by the amalgamation.</p>	CLICK HERE

CORPORATE & SECURITIES LAWS AND CAPITAL MARKETS

S. No.	Particulars	Link
1.	<p>The Ministry of Corporate Affairs has issued the Limited Liability Partnership (Second Amendment) Rules, 2023. The said Amendment has revised following forms:</p> <p>(a) Form 4: Notice of appointment, cessation, change in name/ address/designation of a designated partner or partner and consent to become a partner/designated partner.</p> <p>(b) Form 3: Information with regard to Limited Liability Partnership Agreement and changes.</p>	CLICK HERE
2.	<p>The Ministry of Corporate Affairs (MCA) has made an important announcement regarding Annual General Meetings (AGMs) for the year 2024. It grants companies the authority to conduct their AGMs through Video Conference (VC) or Other Audio-Visual Means (OAVM), in accordance with Section 96(1) of the Companies Act, 2013.</p>	CLICK HERE
3.	<p>SEBI has issued clarifications regarding Redressal of investor grievances through the SEBI Complaint Redressal (SCORES) Platform and linking it to Online Dispute Resolution platform. Submission of the Complaint and handling of the Complaint by the Entity shall be as per following directions:</p> <p>(1.) All Entities shall review the investors' grievances redressal mechanism from time to time to further strengthen it and rectify the existing shortcomings.</p> <p>(2.) All Entities who are in receipt of the complaints of the investors ("Complaint") through SCORES, shall resolve the complaint within 21 calendar days of receipt of such Complaint.</p> <p>(3.) The Complaints lodged on SCORES against any Entity shall be automatically forwarded to the concerned Entity through SCORES for resolution and submission of ATR. Entities shall resolve the Complaint and upload the ATR on SCORES within 21 calendar days of receipt of the Complaint. The ATR of the entity will be automatically routed to the complainant.</p> <p>(4.) The Complaint against the Entity shall be simultaneously forwarded through SCORES to the relevant Designated Body as mentioned under Schedule II. The Designated Body shall ensure that the concerned Entity submits the ATRs within the stipulated time of 21 calendar days.</p> <p>(5.) The Designated Body shall monitor the ATRs submitted by the entities under their domain and inform the concerned entity to improve the quality of redressal of grievances, wherever required.</p> <p>(6.) SEBI may concurrently monitor grievance redressal process by entities and Designated Bodies.</p>	CLICK HERE
4.	<p>Eva Agro Feeds Pvt. Ltd v Punjab National Bank, 2023 SCC OnLine SC 1138</p> <p>The Supreme Court held that it that though para 1(11A) has been inserted in Schedule I to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 w.e.f. 30-9-2021, it only recognizes the need and necessity for giving reasons in the event of rejecting the highest bid. It is an acknowledgment of the fundamental</p>	CLICK HERE

S. No.	Particulars	Link
	principle. Thus, intimation of the reasons for rejection of the highest bid would also be the requirement prior to 30-09-2021.	
5.	M/S. RPS Infrastructure Ltd V. Mukul Kumar, Civil Appeal No. 5590 of 2021 The Supreme Court Bench has held that admitting claims after the Resolution Plan has been accepted by the Committee of Creditors (COC) under IBC, even though the Adjudicating Authority has yet to approve the plan, would make the Corporate Insolvency Resolution Process (CIRP) an endless process.	CLICK HERE
6.	M/s Dauphin Cables Pvt. Ltd. v Mr. Praveen Bansal, Company Appeal (AT) Insolvency No. 971, 972 & 973 of 2023 The National Company Law Appellate Tribunal, New Delhi Bench, has held that IBC provisions do not indicate that all information collected by the Resolution Professional is required to be shared with Shareholders of the Corporate Debtor upon their request. The Bench upheld the NCLT order whereby Resolution Professional was permitted to submit documents in a sealed cover before the NCLT.	CLICK HERE

INDIRECT TAX

S. No.	Particulars	Link
1.	Commissioner of Central Excise & ST, Surat Vs. Central Industrial Security Force, Service Tax Appeal No. 11444 of 2014 The Ahmedabad Bench of CESTAT has quashed the penalty on the Central Industrial Security Force (CISF) on the grounds that CISF lacked clarity about the levy of service tax on the security services. The bench observed that since there was a lack of clarity about the levy of service tax on security services provided by the Central Industrial Security Force as part of the Government of India under the Ministry of Home Affairs, there was no <i>mens rea</i> on the part of the Central Industrial Security Force, and therefore, this case is covered under Section 80 of the Finance Act, 1994.	CLICK HERE
2.	Tower Vision India Private Limited Vs. Commissioner of Service Tax-Delhi, Service Tax Appeal No. 55227 of 2013 The Chandigarh Bench of CESTAT has held that prefabricated shelters and towers are essential ingredients of telecommunication services and qualify as input services. The bench observed that towers and pre-fabricated shelters form an essential ingredient in the provision of telecommunication service as they are used for the purpose of supplying the service and would qualify as 'inputs' under Section 2(k) of the Cenvat Credit Rules, 2004 and, therefore, Cenvat Credit can be availed.	CLICK HERE
3.	M/s Hero Motorcorp Ltd. Vs. Commissioner of Central Excise, Delhi-III, Excise Appeal No. 2054 of 2012 The Chandigarh Bench of CESTAT, while allowing Cenvat Credit to Hero Motocorp, held that it is the statutory obligation of two-wheeler manufacturers to clear motorcycles from the factory with mirror assembly and sari guard. Team Lexport, led by Srinivas Kotni, Managing Partner along with Akshay Kumar, Senior Associate represented the Appellant, Hero Motocorp Ltd.	CLICK HERE
4.	The Central Government, pursuant to Section 109(4) of the Central Goods and Services Tax Act, 2017, has notified the establishment of 31 benches of the	CLICK HERE

S. No.	Particulars	Link
	<p>Goods and Services Tax Appellate Tribunal (GSTAT) vide Gazette Notification dated 14.09.2023.</p> <p>The said Notification has established 3 Benches of the GSTAT for Uttar Pradesh and Maharashtra & Goa, 2 Benches each for Gujarat, Karnataka, Rajasthan, Tamil Nadu & Pondicherry, and West Bengal. The Notification has also established one Bench for the North-Eastern States seated in Guwahati, with Circuit Benches in Aizawl, Agartala and Kohima, which would be made operational at a later date. Under Section 109 of the Act, there shall be a 'National Bench' of the GSTAT situated at New Delhi, presided by a President and one Central and one State Technical Members. Furthermore, the Regional Benches, established in this Notification, will consist of a Judicial Member, and one Central and one State Technical Members.</p>	
5.	<p>Hitech Industries Vs. C.S.T.-Service Tax – Ahmedabad, Service Tax Appeal No. 12743 of 2014</p> <p>The Ahmedabad Bench of the CESTAT has held that carrying out a job of fabrication with the help of labor cannot be classified as manpower recruitment or supply agency service. The bench has observed that the assessee had been assigned the job of fabrication by the service recipient, and the assessee has been charged on the basis of the quantum of the job and not on the basis of the number of manpower or man hours. Therefore, irrespective of the number of manpower or man hours involved in the job to be carried out, the assessee is under obligation to complete a job of fabrication as assigned to him. Therefore, in this arrangement, it cannot be said that the appellant has provided the service of manpower recruitment or supply agency service.</p>	CLICK HERE
6.	<p>Central Board of Indirect Taxes and Customs (CBIC) notifies supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos under section 15(5) of CGST Act which provides that the value of such supplies as may be notified by the Government on the recommendation of the Council shall be determined in such manner as may be prescribed. To our information the Central Government is yet to determine the manner of valuation, as a pre-cursor to which the aforesaid notification has been issued.</p>	CLICK HERE

CUSTOMS, SEZ AND FOREIGN TRADE

S. No.	Particulars	Link
1.	<p>Shyam Singh Vs. Commissioner Customs, Customs Appeal No. 50033 of 2023</p> <p>The Delhi Bench of CESTAT has held that the license cannot be revoked on a mere charge of misdeclaration and undervaluation of illegal imports. The bench observed that the punishment has to be commensurate with the misconduct and that the charges against the appellant/customs broker are not so grave that the extreme punishment of revocation of license is called for.</p>	CLICK HERE
2.	<p>Bittu Travels Vs. Commissioner of Central Excise & ST, Rajkot, Service Tax Appeal No. 10526 of 2014</p> <p>The Ahmedabad Bench of CESTAT has held that exemption claim on service of rent-a-cab provided in Special Economic Zone (SEZ) to be supported by invoices. The bench has observed that the service of Rent-a-Cabs provided in SEZ is exempted however, though the assessee has claimed that it has submitted various documents such as balance sheet, ledger etc. both the lower authorities have denied the benefit</p>	CLICK HERE

	for want of invoices which were not submitted by the appellant. Even when the bench asked to produce the invoice copy, the assessee was unable to provide the same.	
3.	<p>The Ministry of Commerce & Industry has extended the timeline for availing benefits of the RoDTEP scheme. The RoDTEP scheme is extended for exports made from 01.10.2023 and shall be applicable till 30.06.2024.</p> <p>The existing rates for all the items covered under RoDTEP will be applicable for exports made from 01.10.2023 to 30.06.2024. However, it would be subject to the budgetary framework as provided under FTP 2023 so that the remissions for current financial year are managed within the approved Budget of the Scheme.</p>	CLICK HERE

INTELLECTUAL PROPERTY RIGHTS

S. No.	Particulars	Link
1.	<p>Thirumalai Chemicals Limited v. Saurabh Sharma (trading as M/s RDS Chemicals) & Ors., CS(COMM) 612/2023</p> <p>The Hon'ble Delhi High Court granted ex-parte ad-interim 'John Doe' injunction against the Defendants, who have been engaged in selling counterfeit 'DL-Malic Acid' chemicals under bags bearing the Plaintiff's trademarks. The Court observed that the Defendants were engaged in selling 100% citric acid in bags of malic acid bearing the "Thirumalai Chemicals" trademark, which the Court noted posed enormous danger to the public on account of the fact that the chemicals were labelled as 'food grade', and thus the granted interim injunctive reliefs. Team Lexport comprising Raj Latha Kotni, Partner, Rohan Garg, Partner and Anirudh Ramanathan, Associate, represented the Plaintiff, Thirumalai Chemicals Limited.</p>	CLICK HERE
2.	<p>RDB And Co. HUF Vs Harpercollins Publishers India Private Limited, CS(COMM) 246/2021</p> <p>The Hon'ble Delhi High Court has upheld a ruling that filmmaker Satyajit Ray owns the copyright over the screenplay of the 1966 Bengali film "Nayak", including the right to novelize the screenplay. A division bench rejected an appeal by RDB and Co. HUF, who contested the ruling. The plaintiff HUF sought to prevent Harpercollins from turning Bhaskar Chattopadhyay's film into a novel. The single judge had earlier allowed Harpercollins' request for a summary judgment and dismissed the suit due to lack of cause. The division bench upheld this decision, stating that Ray's copyright as the screenplay author is distinct from any rights claimed by the plaintiff HUF regarding the film itself.</p>	CLICK HERE
3.	<p>Societe Das Products Nestle S.A. vs. Kit Kat Food Products & Anr, CS/48/2000</p> <p>The Hon'ble Calcutta High Court recently resolved a long-standing trademark dispute involving two different products with the same name, "KitKat." This legal battle had been ongoing for 23 years. One "KitKat" referred to the famous chocolate-coated wafers, while the other "KitKat" pertained to "chanachur," a savory chickpea snack. In the end, the Hon'ble High Court ruled in favor of "KitKat" chocolate-coated wafer (Nestle), granting them a permanent injunction against the Defendant, preventing the Defendant from using the "KitKat" name for their product.</p>	CLICK HERE

4.	<p>Reliance Industries Limited v. Ajio Online Shopping Pvt Ltd and Ors (CS(COMM) 625/2023)</p> <p>Reliance Industries Limited and Reliance Retail Limited have filed a lawsuit to protect their trademark 'AJIO.com' due to fraudulent activities by Defendants 1 to 6. These defendants have sent deceptive communications under the name 'AJIO Online Shopping Pvt. Ltd.' to trick recipients into believing they've won prizes and coupons. To claim these rewards, victims are asked to deposit money for government taxes and processing fees using provided phone numbers instead of the plaintiffs' customer care line. The court noted that digital technology has made it easier for criminals to carry out such scams. The fraudulent activities involving the 'AJIO' brand name appear to be a large-scale operation, making it difficult for recipients to distinguish between genuine and fake communications. In response, the court issued interim injunctions, ordered the blocking of mobile numbers, freezing of bank accounts used for these activities, and ordered to initiate an investigation by the Intelligence Fusion and Strategic Operations Unit/Cyber Cell, Delhi Police to identify exact details of the defendant Nos. 1 - 6 operating through mobile numbers and also through the bank accounts.</p>	CLICK HERE
5.	<p>Ramya S Moorthy v Registrar of Trade Marks, W.P.(IPD).No.3 of 2023, Madras High Court</p> <p>The Hon'ble Madras High Court has observed that the time limit of two months prescribed under Section 21(2) of the Trade Marks Act, 1999 for filing a counter-statement to a notice of opposition would run from the date of receipt of the E-mail and not from the date of sending the E-mail. The issue arose due to conflicting language used in Section 21(2) of the TM Act and Rule 18 of the TM Rules, the latter of which states that the document would be deemed to be served at the time of sending the e-mail. The Court observed that Rule 18 of the TM Rules created a legal fiction with regard to service of notice and was not in consonance with Section 21(2) of the Act. Considering that the substantive right of an applicant was at stake, the Court concluded that the time limit would run from the date of receipt of the email.</p>	CLICK HERE
6.	<p>The Bhaktivedanta Book Trust, India Vs. HTTSPS://BHAGAVATAM.IN/#GSC.TAB=0 & ORS., 2023: DHC: 6960</p> <p>The Hon'ble Delhi High Court held that no copyright can be claimed in the Scriptures. However, any adaptations of the said work including providing an explanation, summary, meaning, exegesis/interpretation or creating any audio-visual works for eg., television series like Ramanand Sagar's Ramayana or B.R. Chopra's Mahabharata; dramatic works created by drama societies based on scriptures etc., being transformative works, would be entitled to copyright protection - being original works of the Authors themselves.</p>	CLICK HERE
7.	<p>Star India Private Limited & Anr. vs. JIOLIVE.TV & ORS. (CS(COMM) 688/2023)</p> <p>Star India Private Limited (Disney + Hotstar) and Novi Digital Entertainment Pvt. Ltd. sought an injunction to prevent the unauthorized dissemination and broadcast of the ICC Men's Cricket World Cup 2023 matches. They hold exclusive global media rights for the event and feared rogue websites would illegally stream the matches. The court, recognizing the substantial investment and protectable elements involved, granted the injunction to protect the Plaintiffs' rights and revenues. The order aimed to restrain rogue websites from broadcasting any part of the cricket matches without authorization.</p>	CLICK HERE

CRIMINAL LAW

S. No.	Particulars	Link
1.	<p>Abhishek vs. State of Madhya Pradesh, 2023 INSC 779</p> <p>In this case, a woman (Complainant) had lodged the FIR against her mother-in-law and two brothers-in-law (one of them a judicial officer). The accused persons approached the Supreme Court after the High Court refused to quash the proceedings under Section 482 CrPC.</p> <p>The Hon'ble Supreme Court observed that many of the allegations were improbable and inconsistent, and the complaint was filed only in 2013 soon after the husband filed a petition seeking divorce. Further, the Hon'ble Supreme Court observed the allegations are "far-fetched and improbable". The most striking fact that the Hon'ble Supreme Court observed was that the brothers-in-law resided in different cities and the interaction of the complainant with them was limited to only during festive season. Placing its reliance on the vagueness of the allegations, the Hon'ble Supreme Court quashed the criminal proceedings against the in-laws of the complainant under Section 498A and held that, "the allegations were mostly general and omnibus in nature."</p>	CLICK HERE
2.	<p>R Sreenivasa vs. State of Karnataka, 2023 INSC 803</p> <p>In this case, the accused was acquitted by the Trial Court. However, allowing the Appeal filed by the State, the Karnataka High Court convicted him under Section 302 IPC and the said conviction majorly placed its reliance on the "last seen theory". As, according to the prosecution, on 03.01.2002 at about 4:30 PM, an unidentified dead body of a male was found in a field. Later, the body was identified, and the allegation is that accused killed the deceased.</p> <p>The Hon'ble Supreme Court observed that, "last seen theory can be invoked only when the same stands proved beyond reasonable doubt." Further, the Hon'ble Supreme Court while acquitting the accused held that, "The burden on the accused would kick in, only when the last seen theory is established. In the instant case, that itself is in doubt."</p>	CLICK HERE
3.	<p>K. Hymavathi vs State of Andhra Pradesh, 2023 INSC 811</p> <p>The Hon'ble Supreme Court while deciding the present case observed that, "It is crystal clear that this Court keeping in perspective the nature of the proceedings arising under the Negotiable Instruments Act, 1881 and also keeping in view that the cheque itself is a promise to pay even if the debt is barred by time has in that circumstance kept in view the provision contained in Section 25(3) of the Contract Act and has indicated that if the question as to whether the debt or liability being barred by limitation was an issue to be considered in such proceedings, the same is to be decided based on the evidence to be adduced by the parties, since the question of limitation is a mixed question of law and fact. It is only in cases wherein an amount which is out and out non-recoverable, towards which a cheque is issued, dishonored and for recovery of which a criminal action is initiated, that the question of threshold jurisdiction will arise. In such cases, the Court exercising jurisdiction under Section 482 CrPC will be justified in interfering but not otherwise. In that light, this Court was of the view that entertaining a petition under Section 482 CrPC to quash the proceedings at the stage earlier to the evidence would not be justified.</p>	CLICK HERE

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