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Newsletter — July 2014- December 2014

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- ***India Modi-fied***

"The ambitious climbs up high and perilous stairs and never cares how to come down; the desire of rising hath swallowed up his fear of a fall." - This statement of Tony Abbott rightly fits in the current scenario of India with the 'landmark' victory of Mr. Narendra Modi as the new Prime Minister of India. A broad endorsement of the Prime Minister Narendra Modi's agenda for economic revival and the new government's ambitious roadmap to reform the struggling economy has given the country a new dawn of hope to be soon considered as the most preferred investment destination globally. From opening up of the defence and insurance sectors to higher limits of foreign direct investment to its 'Make in India' initiative, there have been a string of measures and announcements. The underlying aim is to turnaround the economy and rebuild the investors' confidence.

The economy expanded at its fastest pace in over two and half years within the first quarter of the new government coming to power, in the financial year 2014-15. With the accelerated exports, increased cash inflows and the trade balance, confidence of investors has increased and economic growth has moderately rebounded. External sector performance improved the equity market, which reached an all time-high and has significantly improved the domestic investments.

Apart from economic revival, the new Prime Minister has also taken visible initiatives to strengthen international relations with all the superior powers of the world and has created a bilateral diplomacy. The Prime Minister made state visits to Bhutan, Nepal and Japan within the first 100 days of forming his government, followed by visits to Myanmar and Australia. Modi's SAARC diplomacy was indeed a bold step towards creating an atmosphere for multilateral economic cooperation.

He pulled off a diplomatic coup when he invited President Barack Obama to be the first US President to grace the 66th Republic Day celebration as the Chief Guest. The bonhomie between the US President Barack Obama and Prime Minister Modi have gone a long way in further strengthening of the Indo-US relations. The symbolically and symbiotically important visit followed a productive slew of announcements and breakthrough. The most significant of them was breaking the deadlock on the Civil Nuclear deal, which was stuck for the last seven years. The deal allowed India to become the sixth "legitimate" atomic power apart from the P-5 club in 2008, and marked a high point in Indo-US relations.

The US President also supported a longstanding demand from India for a greater role in the United Nations, where India is a permanent member. Apart from this, the US President Barack Obama and the Indian Prime Minister Narendra Modi unveiled plans to unlock billions of dollars in nuclear trade and to

deepen defence ties. It is reported that the new deal resolved the differences over the liability of suppliers to India in the event of a nuclear accident and also over the demands from the US on tracking the whereabouts of fissile material supplied to India.

Apart from US, Japan has also extended strategic defence and economic cooperation and has committed to invest $35 billion in India's public and private sector projects over the next five years, marking the dawn of a new era in Indo-Japan relations.

Besides these developments, India made history by becoming the first Asian nation to successfully enter the orbit of the planet Mars in its first attempt. It is the world's most cost effective interplanetary to be ever undertaken. Also, India as a member of BRICS, witnessed setting up of a proposed $100 billion development bank with its headquarters in Shanghai. It has been decided that the first President of this development bank will be from India.

These recent economic development scenarios have clearly set a platform for India's reformed arrival at a global stage and at the same time has conveyed a profound message to its neighbours in a very assertive tone that India is determined to face the challenges that the future beholds.

- ***New Legislation***

Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 ("LE Amendment Act")

Original Act: Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 ("LE Act")

In terms of the LE Act, employers of 'very small establishments', i.e. establishments in which not more than 9 (nine) persons are employed or were employed on any day of the preceding 12 (twelve) months (" **Very Small Establishments**") and 'small establishments', i.e. (establishment in which not less than 10 (ten) and not more than 19 (nineteen) persons are employed or were employed on any day of the preceding 12 (twelve) months (" Small Establishments") were exempted from furnishing returns or maintaining the registers under certain labour legislations as set out in the LE Act, provided that returns specified under the LE Act were filed by the employer.

In terms of the LE Amendment Act issued on December 10, 2014, the definition of 'Small Establishments' has been amended to increase the maximum number of persons employed in the preceding 12 (twelve) months from 19 (nineteen) to 40 (forty).

Further, the registers required to be maintained can now be filed electronically. The forms required to be filed thereunder have also been amended.

Apprentices (Amendment) Act, 2014 ("Apprentices Amendment Act")

Original Act: Apprentices Act, 1961 ("Apprentices Act")

In terms of the Apprentices Amendment Act, the following are the major amendments that have been notified vide a notification dated December 8, 2014 issued by the Ministry of Law and Justice:

A. The term 'designated trade' has now been defined as follows:

   "means any trade or occupation or any subject field in engineering or non engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act."

   The aforesaid definition has been amended to include the term *non engineering*.

B. The term 'industry' has now been defined as follows:

"means any industry or business in which any trade, occupation or subject field in engineering or non engineering or technology or any vocational course may be specified as a Designated Trade."

The aforesaid definition has been amended to include the term *non engineering*.

C. The term 'worker' has now been defined as follows:

"means any person working in the premises of the employer, who is employed for wages in any kind of work either directly or through any agency including a contractor and who gets his wages directly or indirectly from the employer but shall not include an apprentice referred to in clause (aa)."

The underlined text has primarily been added.

D. In terms of the Apprentices Amendment Act, a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any Designated Trade, unless he is not less than 14 (fourteen) years of age and for Designated Trades related to hazardous industries, not less than 18 (eighteen) years of age.

The underlined text has been added.

E. The provisions regarding contract of apprenticeship have been amended. In terms hereof, "every contract of apprenticeship shall be sent by the employer within 30 (thirty) days to the Apprenticeship Adviser until a portal-site is developed by the Central Government, and thereafter the details of contract of apprenticeship shall be entered on the portal-site within 7 (seven) days, for verification and registration. In the case of objection in the contract of apprenticeship, the Apprenticeship Adviser shall convey the objection to the employer within 15 (fifteen) days from the date of its receipt. The Apprenticeship Adviser shall register the contract of apprenticeship within thirty days from the date of its receipt."

F. Now, the employer may engage apprentices from other States for the purpose of providing apprenticeship training to the apprentices.

G. With respect to hours of work, the Apprentices Amendment Act states that the weekly and daily hours of work of an apprentice while undergoing practical training in a workplace shall be as determined by the employer subject to the compliance with the training duration, if prescribed. Additionally, regarding leave and holidays, an apprentice shall be entitled to such leave and holidays as are observed in the establishment in which he is undergoing training.

H. With the riding technology wave, now every employer is required to give trade-wise requirement and engagement of apprentices in respect of apprenticeship training on portal-site developed by the Government of India ("GoI").

- Now, every employer is free to formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in its establishment.

- ***Infrastructure***

New Foreign Direct Investment (FDI) policy in Construction Development Sector

The FDI policy in the Construction Development sector has been amended with effect from December 03, 2014.

The minimum land requirement for development of serviced plots with FDI funds has been done away with. This allows the developers to develop small group housing serviced plots without facing any practical difficulty in aggregating larger chunks of contiguous parcels of land.

The requirement of minimum constructed area for construction-development projects has been reduced from a minimum built-up area of 50,000 square meters to 20,000 square meters of floor area. Floor area will be defined as per the local laws/regulations of the respective state governments/union territories. This is intended to give a boost to smaller construction development projects. However, ambiguity prevails as to whether there would be any minimum land requirement criteria for such construction- development projects. Further, the term "township" has not been defined, again keeping it ambiguous as to what would constitute a township.

Whether the minimum floor area requirement as stated above has been fulfilled, would now require a certificate from an architect empanelled by the authority authorized to sanction building plan, which would mitigate unnecessary project delays.

Requirement of bringing the minimum FDI by an investee company within six months of commencement of a project has been reduced from US$ 10 million for wholly owned subsidiaries and US$ 5 million for joint ventures with Indian partners to US$ 5 million in all cases. The commencement of the project has been defined to be the date of approval of the building plan/lay out plan by the relevant statutory authority.

Now only the Indian investee company shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the state government/ municipal/local body concerned. Earlier either the investor or the investee company was allowed to take such responsibility.

The exit norm for an investor has also been relaxed and made more investor friendly by doing away with the minimum investment lock-in period of three years. Now the investor will be permitted to exit by merely developing trunk infrastructure including roads, water supply, street lighting, drainage and sewerage in a construction-development project. Alternatively, repatriation of FDI or transfer of stake by one non- resident investor to another non-resident investor, before the completion of the construction-development project would also be permitted by the GoI on a case-to-case basis.

It has also been clarified that 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres. Thus the operation and management companies in the business of operating and managing townships, malls/ shopping complexes and business centres can receive 100% FDI under automatic route for operation and management of completed projects.

The term "real estate business", in which FDI is prohibited, has been defined for the first time, which would help in avoiding multiple interpretations of the term. The term "real estate business" will have the same meaning as provided in Foreign Exchange Management Act ("FEMA") notification no. 1/2000- RB dated May 03, 2000 read with the Reserve Bank of India ("RBI") master circular i.e. dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.

The conditions of minimum area to be developed and the minimum FDI to be brought for a construction-development project will not be applicable to the investee/joint venture companies which commit at least 30 percent of the total project cost for low-cost affordable housing. Project using at least 40% of the Floor Area Ratio ("**FAR**") /Floor Space Index ("**FSI**") for dwelling unit of floor area of not more than 140 square meters will be considered as an 'affordable housing project'. Out of the total FAR/FSI reserved for affordable housing, at least one-fourth has to be for houses with floor area of not more than 60 square meter. This is a step taken towards "**Housing for All**" programme of the GoI.

Amendments made in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("LARR Act")

The GoI has passed the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 ("**Ordinance**") amending the LARR Act to further strengthen the provisions to protect the interests of the 'affected families' and to mitigate the procedural difficulties in the acquisition of land required for important national projects.

The Ordinance has inserted a new Section 10(A) in the LARR Act whereby it has listed down the five sectors where social impact assessment and consent of the "affected family" will not be required for land acquisition. These include:

- projects vital to national security or defence of India or every part thereof, including preparation for defence or defence production,
- rural infrastructure including electrification,
- affordable housing and housing for poor people,
- industrial corridors, and
- infrastructure and social infrastructure projects including projects under public private partnership where the ownership of land continues to vest with the GoI.

The Ordinance relaxes the period of time after which a piece of unutilised acquired land must be returned to its original owner by amending Section 101 of the LARR Act. While the original provision stated that if the acquired land is not utilised for a period of five years from the date of taking over of possession, it shall be returned to the original owners, the Ordinance has amended the said provision by relaxing the time period for such return of the acquired land to be a period of five years from the date of taking over of possession or a period specified for setting up of any project, whichever is later.

The Ordinance has eased the burden on defaulting civil servants. They can now be prosecuted only after taking sanction from the government, as against the original provision which stated that where an offence under this Act has been committed by any department of the government, the head of department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly, and did not require taking sanction from the government for such prosecution. The amendment provides that no court shall take cognizance of such offence except with the previous sanction of the appropriate government, in the manner provided in section 197 of the Code of Criminal Procedure.

Further, Section 24 (2) of the LARR Act provided that where the award for land acquisition had been passed under the erstwhile Land Acquisition Act, 1894, and five years or more has lapsed and the possession has not been taken over by the acquiring entity or the compensation has not been paid to the beneficiaries then the such land acquisition proceedings under the erstwhile Land Acquisition Act, 1894 shall become void and fresh land acquisition proceedings shall have to be initiated under the LARR Act. The Ordinance has amended the said provision and has added a proviso which excludes delay in taking possession of the acquired land due to stay or injunction granted by court or where possession has been taken but the compensation has been deposited in a court or in an account maintained for this purpose from counting the said period of five years.

The LARR Act vide Section 105 has kept 13 most frequently used Acts for Land Acquisition for the Central Government projects out of the purview of the LARR Act. These Acts are applicable for land acquisition for the purposes of national highways, metro rail, atomic energy projects, electricity related other projects, etc. Thus, a large percentage of affected families were denied the compensation and rehabilitation & resettlement measures prescribed under the LARR Act. The present amendment brought by the Ordinance brings all those exempted 13 Acts under the purview of the LARR Act for the purpose of compensation as well as rehabilitation & resettlement of the land owners and the affected families.

The Ordinance expands the scope of the term "infrastructure" for which the land acquisition can be done under the provisions of the LARR Act to include private hospitals and private educational institutions, which were left out in the original LARR Act.

The Ordinance also replaces the term "private company" in the LARR Act with "private entity", which means while earlier acquisitions for private purposes was limited to private companies registered under the Companies Act, 1956/Companies Act 2013, whereas it can now be extended to any private entity. The term "private entity" has been defined as an entity other than a government entity or undertaking and includes a proprietorship, partnership, company, corporation, non-profit organization, or other entity under any law for the time being in force.

Lastly, the original LARR Act gave the government the power to take any action necessary to remove any difficulty in implementation of the LARR Act for two years after its passage, which now has been extended to five years by the Ordinance.

Special Economic Zones Rules, 2006 Amended

The GoI has amended the Special Economic Zones Rules, 2006 vide the Special Economic Zones (Amendment) Rules, 2014 ("**SEZ Amendment Rules**") whereby it has been provided that the non-processing area of a Special Economic Zone ("SEZ") can be bifurcated into two parts, namely:

- where the social or commercial infrastructure and other facilities are permitted to be used by both the SEZ and Domestic Tariff Area entities ("**Duty Paid Dual Use Non Processing Area"**), and
- where the social commercial infrastructure and other facilities are permitted to be used only by SEZ entities

The Duty Paid Dual Use Non Processing Area shall be regulated as under:

- No exemption, concessions or drawback shall be admissible for creation of such infrastructure.
- The Customs duty, Central Excise duty, Service Tax, and other Central levies and tax benefits already availed for creation of such infrastructure shall be refunded by the developer in full, without interest.
- However, in cases of short payment of the amount refundable to the Government on account of dual use permission, interest will have to be paid at the rate of fifteen per cent per annum from the day the said amount becomes payable to the date of actual payment.
- Utilization of SEZ land shall be subject to following conditions:
    a. the land is to be put to only such use which is as per regulations of the concerned State Government or local bodies;
    b. if any exemption or refund has been taken from State or local taxes like stamp duty, change of land use etc., the same shall be refunded back to State Government or local authorities and a certificate to this effect shall be produced from the concerned authorities;
    c. No Objection Certification ("**NOC**") from the concerned State Government shall be produced before the consideration of the request by Board of Approval. The State Government may issue NOC taking into consideration (a) and (b) above.
- The area restrictions for Duty Paid Dual Use Non Processing Area shall be as follows:-
    a. Housing – not more than twenty five per cent of non-processing area;
    b. Commercial – not more than ten per cent of non-processing area;
    c. Open area and circulation area-not less than forty five per cent of non- processing area;
    d. Social and institutional infrastructure including schools, colleges, social cultural centers, training institutes, banks, post office etc. in the remaining area;
    e. FAR or FSI shall conform to the norms of the concerned local authorities.
- No sale shall be permitted of such duty paid dual use infrastructure in Duty Paid Dual Use Non Processing Area and only leasehold rights can devolve upon the users or transferees of the said dual use duty paid infrastructure in the Duty Paid Dual Use Non Processing Area.

- ***Defence***

Changes to FDI Policy in Defence Sector

Press Note 7 (2014 Series)

The Department of Industrial Policy & Promotion ("**DIPP**"), GoI has issued Press Note 7 (2014 Series) on August 26, 2014 ("**Press Note 7**"), in terms of which changes have been made to FDI Policy in respect of FDI in the defence sector. A brief comparative analysis of the earlier FDI Policy in the defence sector and the revised position pursuant to the Press Note 7 issued by DIPP is as under:

(The conditions which remained unchanged have not been included below)

Ref. No. of Consolidated FDI Policy	Earlier position	Revised position	SDA Comment
Para 4.1.3 (v)(d)	In the I&B and Defence Sectors where the sectoral cap is less than 49%, the company would need to be 'owned and controlled' by resident Indian citizens and Indian Companies, which are owned and controlled by Resident Indian citizens.	In the I&B Sector where the sectoral cap is less than 49%, the company would need to be 'owned and controlled' by resident Indian citizens and Indian Companies, which are owned and controlled by Resident Indian citizens.	*The reference to Defence Sector has been deleted, thereby implying that the conditions as specified in Para 4.1.3 (v)(d) of the Consolidated FDI Policy is not applicable on the Defence Sector anymore.* *the said para contained a requirement of 'Largest Indian Shareholder' which had to own either by itself or through a permitted combination atleast 51% of the share capital of the company.* *Accordingly, it appears that the 49% foreign shareholder can become the largest shareholder of the defence Joint Venture ("JV") where in a combination of Indian shareholders can hold the remaining 51% of the JV.*
6.2.6.1	FDI in defence sector was permitted upto 26% with GoI approval, subject to Industrial Licensing.	FDI in defence sector is now permitted upto 49% with GoI approval, subject to Industrial Licensing.	*The percentage of FDI limit has been increased from 26 to 49%*
	Note:- Investment by Foreign Portfolio Investors ("**FPI**") / Foreign Institutional Investors ("**FIIs**") (through portfolio investment) is not permitted.	**Note:-** FDI limit of 49% is composite and includes all kinds of foreign investments i.e. FDI, FIIs, FPIs, Non Resident Indians ("NRIs"), Foreign Venture Capital Investors ("FVCI") and Qualified Foreign Investors (" QF Is ") r eg ar d les s o f whether the said	*Earlier FII investment was not permitted. Now the FII investment is counted towards 49%.*

		investments have been made under Schedule 1(FDI), 2(FII), 2A(FPI), 3(NRI), 6(FVCI) and 8(QFI) of FEMA (Transfer of Issue of Security by Persons Resident Outside India) Regulations	
	FPI/FII (through portfolio investment) in companies holding defence licence as on 22 August, 2013 (date of issue of Press Note 6 of 2013) will remain capped at the level existing as on the said date. No fresh FPI/FII (through portfolio investment) is permitted even if the level of such investment falls below the capped level subsequently.	Portfolio investment by FPIs/FIIs/NRIs/QFIs and investments by FVCIs together will not exceed 24% of the total equity of the investee/ joint venture company. Portfolio investments will be under automatic route	*FII etc .investment is capped at 24% and is made under automatic route.* *The Policy , however, does not make any mention about f o r e i g n investment in the Indian JV Partner i.e. whether it will have any bearing on the calculation of the 49% FDI in the investee company or not.*
6.2.6.2	Other Conditions: License applications will be considered and licenses given by the Department of Industrial Policy & Promotion (“DIPP”), Ministry of Commerce & Industry, in consultation with Ministry of Defense (“MoD”).	Other Conditions: License applications will be considered and licenses given by the DIPP, Ministry of Commerce & Industry, in consultation with MoD and Ministry of External Affairs.	*Consultation with Ministry of External Affairs has been added*
	The applicant should be an Indian company/ partnership firm.	The applicant company seeking permission of the Government for FDI up to 49% should be an Indian company owned and controlled by resident Indian citizens.	*Partnership Firm has been removed as an eligible entity. Now the applicant entity needs to be an Indian company which is owned and controlled by resident Indian citizens.* *It may be noted that even under the earlier policy, the condition of ownership and control by resident Indian citizens was applicable to Defense JVs. Such requirement was contained in Para 4.1.3 (v)(d) of the FDI Policy.*
	The management of the applicant company / partnership should be in Indian hands with majority representation on the Board as well as the Chief Executives of the company /partnership firm being resident Indians.	The management of the applicant company should be in Indian hands with majority representation on the Board as well as the Chief Executives of the company/partnership firm being resident Indians. Chief Security Officer (CSO) of the investee/joint venture company should be resident Indian citizen	*It appears that reference to 'partnership firm' has been left out inadvertently in point (iii).* *Specific mention of the Chief Security Officer has been added, who is required to be resident Indian Citizen*

	There would be a three-year lock-in period for transfer of equity from one non-resident investor to another non-resident investor (including NRIs & erstwhile OCBs with 60% or more NRI stake) and such transfer would be subject to prior approval of the Government	-Deleted-	*The requirement of lock-in period has been removed. Therefore , transfer between NR to NR entities wouldbe permitted subject to approval of Foreign Investment Promotion Board ("FIPB").*
		Investee/joint venture company should be structured to be self-sufficient in areas of product design and development. The investee/JV company along with manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.	*New Condition*
	Applications for FDI up to 26% will follow the existing procedure with proposals involving inflows in excess of INR 12 billion being approved by Cabinet Committee on Economic Affairs ("CCEA"). Applications seeking permission of the Government for FDI beyond 26%, will in all cases be examined additionally by the Department of Defence Production ("DoDP") from the point of view particularly of access to modern and 'state-of- art' technology.	Applications for FDI up to 49% will follow the existing procedure with proposals involving inflows in excess of INR 12 billion being approved by CCEA.	*No change except the limit has been increased to 49%*
	Based on the recommendation of the DoDP and FIPB, approval of the Cabinet Committee on Security (CCS) will be sought by the DoDP in respect of cases which are likely to result in access to modern and 'state-of-art' technology in the country.	Based on the recommendation of the MoD and FIPB, approval of the CCS will be sought by the MoD in respect of cases seeking permission of the Government for FDI beyond 49% which are likely to result in access to modern and 'state-of-art' technology in the country.	*References to DoDP (department of defense production) has been removed, the proposals will now will be based on the recommendation of MoD.*
	Proposals for FDI beyond 26% with proposed inflow in excess of INR 12 billion, which are to be approved by CCS will not require further approval of CCEA.	Proposals for FDI beyond 49% with proposed inflow in excess of INR 12 billion, which are to be approved by CCS will not require further approval of CCEA.	*No change except the limit has been increased to 49%*
		For the proposal seeking Government approval for foreign investment beyond 49% applicant	*New addition, clarifying that for proposal beyond 49%, the applicant*

		should be Indian company/foreign investor. Further condition at para (iii) above will not apply on such proposals.	*company can be a foreign company. Further, the condition relating to management in Indian hands with majority representation on the Board as well as the Chief Executives being resident Indian is not applicable on such proposals.*

Press Note 1 (Series 2015)

Earlier, there was no specific list of "defence items" in the FDI Policy, the manufacturing of which would require approval of the Foreign Investment Promotion Board ("**FIPB**"). The DIPP, GoI has issued Press Note 1 on January 05, 2015 ("**Press Note 1**"), through which the activities listed in Chapter VI of the Consolidated FDI Policy, 2014 have been mapped with the National Industrial Classification ("**NIC**") - 2008.

Following is the NIC code list for "Defence items":

25200	Manufacture of weapons and ammunition
20292	Manufacture of explosives, ammunition and fire works
30400	Manufacture of weapons and ammunition
30304	Manufacture of spacecraft and launch vehicles, satellites, planetary probes, orbital stations, shuttles, intercontinental ballistic (ICBM) and similar missiles
30301	Manufacture of airplanes
30302	Manufacture of helicopter
30112	Building of warships and scientific investigation ships, etc.

From the above NIC linked table, it can be noted that the list of defence items does not include parts, components or accessories of the above stated defence items. Prior to such mapping of the defence sector items with the NIC Code, the list of defence items was considered to be wider and all-encompassing i.e. any manufacturing activity having a co-relation or use in the defence sector was covered under the FDI Policy and subject to the FDI cap and FIPB approval, which is not the case anymore.

Press Note 3 (Series 2014)

DIPP had issued Press Note 3 (Series 2014) on June 26, 2014 ("**Press Note 3**"), in terms of which the list of defence items requiring Industrial License ("**IL**") was been considerably pruned. It was further clarified in the Press Note 3 that dual-use items, i.e. items having military as well as civilian applications, other than those specially mentioned in the list, would also not require IL from Defence angle. The DIPP on October 9, 2014 further clarified that items/ parts/ components/castings/forgings/test equipment, which are not part of the said list given under Press Note 3, would not require an IL.

NIC Code Allocation to Defence Products & Products and Services for Discharge of Offset Obligation

The DIPP issued a discussion paper whereby an attempt has been made to allocate NIC-2008 Codes to (i) the defence products list for IL as listed in Press Note 3 and for (ii) list of products and services eligible for

discharge of offset obligations. The DIPP has sought comments from the stakeholders on the said discussion paper.

Draft Civil Aviation Policy Issued

The Ministry of Civil Aviation, GoI has issued a draft Civil Aviation Policy on November 10, 2014 ("**CA Policy**") inviting comments and suggestions from the stakeholders in respect of same. The CA Policy, inter alia, covers policies regarding development of airports, rationalizing the cost of aviation turbine fuel, development of the cargo sector, institutional reforms in Air India & Pawan Hans Limited, enhancement of regional connectivity, development of maintenance, repair & overhaul facilities, modernization of air navigation system, development of helicopter aviation, upgrading of rules and regulations followed by Directorate General of Civil Aviation to international standards and e-governance for speedy services and grant of clearances as well as to ensure transparency and accountability.

- ***Exchange Control***

Increase in the limit of Liberalised Remittance Scheme for resident individuals

The RBI has decided to increase the limit under the Liberalised Remittance Scheme ("**LRS**") from USD 75,000 to USD 125,000 per financial year. Further, RBI has clarified that resident individuals can now invest upto USD 125,000 per financial year under this scheme for acquisition of immovable property outside India.

Issue of equity shares under the FDI Scheme against legitimate dues

RBI has decided to permit issue of equity shares against any funds payable by the investee company to a foreign investor, the remittance of which does not require prior permission of the GoI or RBI under the FEMA, provided that:

i. The equity shares shall be issued in accordance with the FDI guidelines on sectoral caps, pricing guidelines etc. as amended by RBI from time to time;

ii. The issue of equity shares under this provision shall be subject to tax laws as applicable to the funds payable and the conversion to equity should be net of applicable taxes.

FDI in Railway Infrastructure

The GoI has decided to allow 100 per cent FDI in railway infrastructure sector under the automatic route subject to conditions and to permit FDI in the following activities of the Railway Transport sector.

For construction, operation and maintenance of the following:

iii. Suburban corridor projects through Public Private Partnership ("**PPP**");

iv. High speed train projects;

v. Dedicated freight lines;

vi. Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities;

vii. Railway Electrification;

viii. Signaling systems;

ix. Freight terminals;

x. Passenger terminals;

xi. Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivity's to main railway line and

xii. Mass Rapid Transport Systems.

FDI in Sensitive Area

From security point of view, it has been decided that FDI beyond 49 per cent of the equity of the investee company in sensitive areas will be brought before the CCS for consideration on a case-to-case basis.

Parking of ECB proceeds under External Commercial Borrowing ("ECB") Policy

The RBI has decided to permit AD Category -I banks ("**AD Banks**") to allow eligible ECB borrowers to park the ECB proceeds (both under the automatic and approval routes) in term deposits with the AD Banks in India for a maximum period of six months pending utilization for permitted end uses subject to the following conditions:

- The applicable guidelines on eligible borrower, recognized lender, average maturity period, all-in-cost, permitted end uses, etc. should be complied with.
- No charge in any form should be created on such term deposits i.e. to say that the term deposits should be kept unencumbered during their currency.
- Such term deposits should be exclusively in the name of the borrower.
- Such term deposits can be liquidated as and when required.

Security for External Commercial Borrowings

The RBI has decided that AD Banks may now allow creation of charge on immovable assets, movable assets, financial securities and issue of corporate and / or personal guarantees in favour of overseas lenders, to secure the ECB raised by the borrower, subject to satisfying themselves that:

xvii. the underlying ECB is in compliance with the applicable ECB guidelines,

xviii. there exists a security clause in the Loan Agreement requiring the ECB borrower to create charge, in favour of overseas lender / security trustee, on immovable assets / movable assets / financial securities / issuance of corporate and / or personal guarantee, and

xix. No objection certificate, wherever necessary, from the existing lenders in India has been obtained.

Rationalization / Liberalization of Overseas Direct Investments by Indian Party

The RBI has decided that the designated AD Bank may now permit creation of charge / pledge on the shares of the JV / Wholly Owned Subsidiary ("**WOS**") / Step down Subsidiary ("**SDS**") (irrespective of the level) of an Indian party in favour of a domestic or overseas lender for securing the funded and / or non-funded facility to be availed of by the Indian party or by its group companies / sister concerns / associate concerns or by any of its JV / WOS / SDS (irrespective of the level) under the automatic route by complying the prescribed conditions.

It has also been decided that the designated AD Bank may permit creation of charge (by way of pledge, hypothecation, mortgage, or otherwise) on the domestic assets of an Indian party (or its group companies / sister concerns / associate concerns including the individual promoters / directors) in favour of an overseas lender for securing the funded and / or non-funded facility to be availed of by the JV / WOS / SDS (irrespective of the level) of the Indian party under the automatic route by complying the prescribed conditions.

It has further been decided that the designated AD Bank may permit creation of charge (by way of hypothecation, mortgage, or otherwise) on the overseas assets (excluding the shares) of the JV / WOS / SDS (irrespective of the level) of an Indian party in favour of a domestic lender for securing the funded and / or non-funded facility to be availed of by the Indian party or by its group companies / sister concerns / associate concerns or by any of its overseas JV / WOS / SDS (irrespective of the level) under the automatic route by complying the prescribed conditions.

Revised pricing guideline for Issue/Transfer of Shares or Convertible Debentures under FDI Policy

The RBI has notified new pricing guidelines for Issue/Transfer of Shares or Convertible Debentures under the FDI Policy as under:

xx. **In case of listed companies**

a. The issue and transfer of shares including compulsorily convertible preference shares and compulsorily convertible debentures shall be as per the Securities and Exchange Board of India ("**SEBI**") guidelines;

b. The pricing guidelines for FDI instruments with optionality clauses shall be at the market price prevailing on the recognized stock exchanges subject to a lock-in period as stipulated, without any assured return.

xxi. **In case of unlisted companies**

The issue and transfer of shares including compulsorily convertible preference shares and compulsorily convertible debentures with or without optionality clauses shall be at a price worked out as per any internationally accepted pricing methodology on arm's length basis. Thus, the guiding principle will be that the non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreement and shall exit at a fair price computed as above at the time of exit subject to lock-in period requirement.

The issue and transfer of shares including compulsorily convertible preference shares and compulsorily convertible debentures with or without optionality clauses shall be at a price worked out as per any internationally accepted pricing methodology on arm's length basis. Thus, the guiding principle will be that the non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreement and shall exit at a fair price computed as above at the time of exit subject to lock-in period requirement.

It has also been stipulated by the RBI that an Indian company taking on record in its books any transfer of its shares or convertible debenture by way of sale from a resident to a non-resident and a non-resident to a resident shall disclose in its balance sheet for the financial year, in which the transaction took place, the details of valuation of shares or convertible debentures, the pricing methodology adopted for the same as well as the agency that has given/certified the valuation.

- ***Corporate Laws***

Filing of an intimation for resignation with the Registrar of Companies ("RoC") by a foreign directors

The Ministry of Corporate Affairs ("**MCA**") issued a notification dated January 19, 2015, thereby amending the Companies (Appointment and Qualification of Directors) Rules, 2014.

A proviso has been added by virtue of the amending provision which permits a foreign director whose form DIR-12 for resignation has already been filed by the company with RoC to authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or other resident director of the company to sign Form DIR-11 (for intimating resignation) and file the same with RoC on his behalf intimating the reasons for the resignation.

Refund of deposit amount paid by persons (other than retiring directors) proposing their names for directorship

Pursuant to Section 160 of Companies Act, 2013 ("**CA 2013**"), a person other than the retiring director who desires to stand for the directorship of the Company has to, not less than fourteen days before the concerned general meeting, make a deposit of INR 100,000 along with a notice in writing signifying his candidature as a director which amount shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent of total valid votes. The MCA has clarified its stand on refund of deposit amount of INR 100,000 paid by persons (other than retiring directors) proposing their names for directorship in case of Section 8 companies (companies formed with charitable objects etc.) under CA 2013 by stating that the Board of Directors shall act as a competent authority under Section 8 companies as to how the money deposited by or on behalf of the person shall be refunded or forfeited, who has failed to secure more than 25% of the votes.

Amendment of the provisions regulating board meetings of an Indian Company

The MCA issued a notification with respect to the Companies (Meetings of Board and its powers) Second Amendment Rules, 2014 dated August 14, 2014 bringing out amendments in the said rules:

In rule 3 sub – rule (6) which contains the provisions with respect to the meetings of Board through video conferencing and states that; with respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

Addition of a new entry for discharging the Corporate Social Responsibility ("CSR")

The MCA issued a notification dated August 6, 2014 with respect to amendment in Schedule VII under the CA 2013 with respect to Section 135 of the CA 2013, which contains the avenues for discharging the CSR obligations. The following additional activity has also been added as an eligible activity for discharging CSR obligations.

"Slum Area Development" which shall mean that any area declared as such by the GoI or any state government or any other competent authority under any other law for the time being in force.

Amendment to the definition of Related Party

The MCA has vide Companies (Removal of Difficulties) Sixth Order, 2014 amended the definition of 'Related Party' under section 2 (76) (iv) of the CA 2013 and the definition after the amendment reads as follows:

'Related Party' with reference to a company means:

i. a director or his relative;

ii. a key managerial personnel or his relative;

iii. a firm, in which a director, manager or his relative is a partner;

iv. a private company in which a director or manager or his relative is a member or director;

v. a public company in which a director or manager is a director and holds along with its relatives more than two percent of its paid-up share capital;

vi. anybody corporate whose Board of Directors, Managing director or manager is accustomed to act in accordance with the advice, directions or instructions a director or manager;

vii. any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing shall apply in sub-clauses (vi) and (vii) to the advice, directions or instructions given in professional capacity;

viii. any company which is-
- a holding, subsidiary or an associate company of such company; or
- a subsidiary of a holding company to which it is also a subsidiary;

ix. such other person as may be prescribed by the Board.

Clarification in relation to provisions governing appointment of Key Managerial Personnel

MCA issued a notification in respect of Section 203 of the CA 2013 i.e. appointment of 'Key Managerial Personnel'. Proviso to section 203(1) reads as follows:

"An individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

a. *the articles of such a company provide otherwise; or*

b. *the company does not carry multiple businesses:*

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government."

Exercising the powers conferred by the second proviso to section 203(1) of CA 2013, the MCA has notified that public companies having paid-up share capital of INR 1 Billion or more and annual turnover of INR 1 Billion or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to sub-section (1) of section 203 of the said Act.

It is further clarified that the paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

Status of the resolutions passed under the Companies Act, 1956

The MCA has issued a circular dated July 23, 2014 in relation to the resolutions passed under the Companies Act, 1956 ("**CA 1956**").

MCA noted that many companies have passed resolutions which were at different stages of implementation after coming into force of the CA 2013. Based on its examination, MCA clarified that:

a. resolutions approved or passed by companies under relevant provisions of the CA 1956 during the period from September 1, 2013 to March 31, 2014, can be implemented, in accordance with provisions of the CA 1956, notwithstanding the repeal of the relevant provision subject to the conditions that the implementation of the resolution actually commenced before April 1, 2014; and

b. this transitional arrangement will be available upto expiry of one year from the passing of the resolution or six months from the commencement of the corresponding provision in CA 2013, whichever is later.

It is also clarified that any amendment of the resolution must be in accordance with the relevant provision of the CA 2013.

Clarification in relation to Related Party Transactions

MCA has vide circular dated July 17, 2014 issued clarification relating to related party transactions (Section 188 of CA 2013).

Scope of second proviso to Section 188(1)

MCA has examined the scope of second proviso to section 188(1) which requires that no member of a company shall vote on a special resolution to approve the contract or arrangement, if such a member is a related party. Based on its examination, MCA has clarified that 'related party' referred to in the second proviso has to be construed with reference only to the contract or arrangement for which the said special resolution is being passed.

Thus, the term 'related party' refers only to such related party as may be a related party in the context of the contract or arrangement for which the said special resolution is being passed.

Applicability of Section 188 to Corporate Restructuring-Amalgamations etc.

MCA has clarified that the transactions arising out of compromises, arrangements and amalgamations dealt with under specific provisions of the CA 1956/CA 2013 will not attract the requirements of section 188 of the CA 2013.

Requirement of Fresh Approvals for Past Contracts under Section 188

MCA has further clarified that the contracts entered into by companies, after making necessary compliances under Section 297 of the CA 1956, which already came into effect before the commencement of Section 188 of the CA 2013, will not require fresh approval under section 188 till the expiry of the original term of such contracts. Thus, if any modification in such contract is made on or after April 1, 2014, the requirements under section 188 will have to be complied with.

Maintenance of Registers and Records under CA 2013 in electronic form made optional

MCA vide Companies (Management and Administration) Second Amendment Rules, 2014 dated July 24, 2014 changed the requirement of compulsory maintenance of registers and records in electronic form under CA 2013 to optional maintenance owing to the representations made to MCA indicating lack of clarity on electronic maintenance.

After the above amendment, rule 27(1) of the Companies (Management and Administration) Rules, 2014 shall read as follows:

"27. Maintenance and inspection of document in electronic form

(1) Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, may maintain its records, as required to be maintained under the Act or rules made there under, in electronic form.

Explanation.- For the purposes of this sub-rule, it is hereby clarified that in case of existing companies, data may be converted from physical mode to electronic mode within six months from the date of notification of provisions of section 120 of the Act.

Applicability of Section 4(7) of CA 1956 to Companies Incorporated under CA 2013

The MCA has clarified that there is no restriction under CA 2013 for a company incorporated outside India to incorporate a subsidiary either as a public company or a private company. An existing company, being a subsidiary of a company incorporated outside India, registered under the CA 1956, either as private company or a public company by virtue of section 4(7) of CA 1956 will continue as a private company or public company, as the case may be, without any change in the incorporation status of such company.

- ***Securities Laws***

Enactment of the Securities Laws (Amendment) Act, 2014

The Parliament passed the Securities Laws (Amendment) Act, 2014 ("Securities Amendment Act") to amend three legislations controlling the securities market transactions in India, namely the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**"), the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996. The salient features of the Securities Amendment Act are as follows:

i. Any pooling of funds under any scheme or arrangement, which is not registered with SEBI involving a corpus amount of INR 1 billion or more shall be deemed to be a Collective Investment Scheme.

ii. SEBI can call for information and records from any person including banks, authorities, boards or corporations established under Central or State Act regarding any transaction in securities relating to any investigation or inquiry. SEBI can also call for or furnish information to any authority outside India that performs similar function as SEBI in relation to the prevention or violations of securities laws subject to prior approval of the Central Government.

iii. The jurisdiction for cases of seizure has been conferred to Magistrate or a Judge designated for this purpose instead of Judicial Magistrate of the first class under section 11C of the SEBI Act.

iv. An option of settlement has also been provided to the defaulter upon the discretion of SEBI. The provision shall have retrospective operation from 20th April, 2007. Further, no appeal shall lie consequent to the settlement proceeding.

v. A minimum penalty has been prescribed for each offence under all the three Acts which are amended.

vi. SEBI has been given the power to examine the record of any proceedings in which the adjudicating officer has already passed an order. If the order is considered to be erroneous or contrary to the interests of the securities market, SEBI may pass an order enhancing the quantum of penalty, after conducting a separate enquiry and giving an opportunity of fair hearing to the offender. However, such examination cannot be done after 3 months of passing of the order or in cases where the appeal is disposed off.

vii. The amount disgorged, pursuant to a direction issued under any of the three Acts that are amended, will be credited to the Investor Protection and Education Fund established by SEBI.

Dispatch of Physical Statements to Beneficial Owners ("BO") having Zero Balance and Nil Transactions

The facility of Basic Services Demat Account ("**BSDA**") introduced by SEBI wherein it was provided that one annual physical statement of holding shall be sent to the Beneficial Owners("**BOs**") having zero balance and Nil transaction. As amendment to the said facility, SEBI has provided that Depository Participants ("**DP**") shall send atleast one annual physical statement of holding to the stated address of the BO in respect of accounts with no transaction and nil balance even after the account has remained in such state for one year. The DP shall inform the BO that the dispatch of the physical statement may be discontinued if the account continues to remain zero balance even after one year.

The DP shall inform the BO that if no Annual Maintenance Charge ("**AMC**") is received by the DP, the dispatch of the physical statement may be discontinued for the account which continues to remain zero balance even after one year. However, irrespective of the above, the DPs shall send electronic statement of holding to all the BOs whose email ids are registered with them and also send a physical statement if a BO requests for the same.

Monitoring of Compliance by Stock Exchanges

SEBI, vide various circulars had advised stock exchanges to put in place a system to monitor and review the compliance of listing conditions by listed companies and to devise framework to detect any non-compliance / violation of the applicable laws by listed companies. However, SEBI has observed that some listed companies belonging to a common group have held their Annual General Meetings ("**AGMs**"), with a time gap of 15 minutes between two AGMs. As allocation of only 15 minutes for conducting AGM of a public listed company having more than 0.1 million shareholders does not appear to be adequate enough to facilitate a constructive discussion on various matters transacted at the AGM. To remove such a practice it has been advised that all recognized stock exchanges should step up and equip their monitoring framework to identify and monitor such practices and to ensure that requirements laid down under Principles of Corporate Governance in the revised Clause 49 of the Listing Agreement are followed in letter and spirit.

Amendments to Clause 49 (Corporate Governance) of the Listing Agreement

SEBI, in continuation to its earlier circulars issued for amendments to Clauses 35B and 49 of the Listing Agreement and in line with the various circulars issued by the MCA on matters related to Corporate Governance clarifying certain provisions of the CA 2013, has decided to make further amendments to Clause 49 of the Listing Agreement with effect from October 1, 2014 in the following manner:

Applicability of Clause 49:- The Clause 49 of the Listing Agreement shall be applicable to all companies whose equity shares are listed on a recognized stock exchange. However, compliance with the provisions of Clause 49 shall not be mandatory, for the time being, in respect of the following class of companies:

viii. Companies having paid up equity share capital not exceeding INR 100 million and Net Worth not exceeding INR 250 million, as on the last day of the previous financial year, provided that where the provisions of Clause 49 become applicable to a company at a later date, such company shall comply with the requirements of Clause 49 within six months from the date on which the provisions became applicable to the company.

ix. Companies whose equity share capital is listed exclusively on the SME and SME-ITP platforms.

Clarification on applicability of appointment of woman director:- The provisions regarding appointment of woman director as provided in Clause 49 (II)(A)(1) shall be applicable with effect from April 01, 2015.

Amendment to Clause 49(II)(B)(1)(c):- The clause shall be substituted with the following:

"©apart from receiving director's remuneration, has or had no material pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year."

Amendment to Clause 49(II)(B)(3)(a):- The clause shall be substituted with the following: "The maximum tenure of Independent Directors shall be in accordance with the Companies Act, 2013 and clarifications/ circulars issued by the Ministry of Corporate Affairs, in this regard, from time to time."

Amendment to Clause 49(II)(B)(4)(b):- The clause shall be substituted with the following:

"(b) The terms and conditions of appointment shall be disclosed on the website of the company."

Amendment to Clause 49(II)(B)(7):- The clause shall be substituted with the following:

"7. Familiarisation programme for Independent Directors:

a. The company shall familiarise the independent directors with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc., through various programmes.
b. The details of such familiarisation programmes shall be disclosed on the company's website and a web link thereto shall also be given in the Annual Report."

Amendment to Clause 49(IV)(A):- The clause shall be substituted with the following:

"A. The company through its Board of Directors shall constitute the nomination and remuneration committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent. Chairman of the committee shall be an independent director. Provided that the chairperson of the company (whether executive or nonexecutive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee."

Amendment to Clause 49(V)(D):- The clause shall be substituted with the following:

"(D) The company shall formulate a policy for determining 'material' subsidiaries and such policy shall be disclosed on the company's website and a web link thereto shall be provided in the Annual Report."

Amendment to Clause 49(V) (F):- The clause shall be substituted with the following:

"(F). No company shall dispose of shares in its material subsidiary which would reduce its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal."

Amendment to Clause 49(V)(G):- The clause shall be substituted with the following:

"(G). Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal."

Amendment to Clause 49(VI):- The clause 49(VI)(C) shall be substituted with the following:

"(C) The company through its Board of Directors shall constitute a Risk Management Committee. The Board shall define the roles and responsibilities of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit."

The following clauses shall be inserted after Clause 49(VI)(c)

"(D) The majority of Committee shall consist of members of the Board of Directors"

"(E) Senior executives of the company may be members of the said Committee but the Chairman of the Committee shall be a member of the Board of Directors."

Amendment to Clause 49(VII)(A):- The following explanation shall be inserted after Clause 49(VII)(A): "Explanation: A 'transaction' with a related party shall be construed to include single transaction or a group of transactions in a contract."

Amendment to Clause 49(VII)(B):- The clause shall be substituted with the following:

"B. For the purpose of Clause 49 (VII), an entity shall be considered as related to the company if: (i) such entity is a related party under Section 2(76) of the Companies Act, 2013; or (ii) such entity is a related party under the applicable accounting standards."

Amendment to Clause 49(VII) (c):- The clause shall be substituted with the following:

"(C) The company shall formulate a policy on materiality of Related Party Transactions and also on dealing with Related Party Transactions. Provided that a transaction with a related party shall be considered material if the transaction / transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the company as per the last audited financial statements of the company."

Amendment to Clause 49(VII)(D):- The clause shall be substituted with the following:

"(D)All Related Party Transactions shall require prior approval of the Audit Committee. However, the Audit Committee may grant omnibus approval for Related Party Transactions proposed to be entered into by the company subject to the following conditions:

a. The Audit Committee shall lay down the criteria for granting the omnibus approval in line with the policy on Related Party Transactions of the company and such approval shall be applicable in respect of transactions which are repetitive in nature.

b. The Audit Committee shall satisfy itself the need for such omnibus approval and that such approval is in the interest of the company;

c. Such omnibus approval shall specify (i) the name/s of the related party, nature of transaction, period of transaction, maximum amount of transaction that can be entered into, (ii) the indicative base price / current contracted price and the formula for variation in the price if any and (iii) such other conditions as the Audit Committee may deem fit; Provided that where the need for Related Party Transaction cannot be foreseen and aforesaid details are not available, Audit Committee may grant omnibus approval for such transactions subject to their value not exceeding INR 10 Million per transaction.

d. Audit Committee shall review, atleast on a quarterly basis, the details of RPTs entered into by the company pursuant to each of the omnibus approval given.

e. Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year"

Amendment to Clause 49(VII)(E):- The following proviso and explanations shall be inserted after Clause 49(VII)(E):

"Provided that sub-clause 49 (VII)(D) and (E) shall not be applicable in the following cases:

1. transactions entered into between two government companies;

2. transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Explanation(i):For the purpose of Clause 49(VII), "Government company" shall have the same meaning as defined in Section 2(45) of the Companies Act, 2013."

Explanation(ii):For the purpose of Clause 49(VII), "all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not."

Amendment to Clause 49(VIII)(A)(2):- The clause shall be substituted with the following:

"(2) The company shall disclose the policy on dealing with Related Party Transactions on its website and a web link thereto shall be provided in the Annual Report."

Amendment to Clause 49(VIII)(F), (G) and (H):-These clauses shall stand deleted.

Amendment to clause 49(IX):- The words " The CEO, i.e. the Managing Director or Manager appointed in terms of the CA 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:" shall be substituted with: "The CEO or the Managing Director or manager or in their absence, a Whole Time Director appointed in terms of Companies Act, 2013 and the CFO shall certify to the Board that:"

Single registration for Stock Brokers & Clearing Members

SEBI has amended the SEBI (Stock Brokers and Sub- Brokers) Regulations, 1992 ("Broker Regulations") by deleting the existing requirement of obtaining registration as stock broker/ clearing member for each stock exchange/ clearing corporation by providing a single registration with any stock exchange/ clearing corporation. Accordingly, for operating in any other stock exchange(s)/ clearing corporation(s), approval will be required from the concerned stock exchange or clearing corporation.

Consolidated Account Statement ("CAS") for all Securities Assets

SEBI, in pursuance of the Interim Budget announcement in 2014 to create one record for all financial assets of every individual, has taken certain steps to implement such requirement with respect to financial assets of securities market.

i. SEBI has decided to enable a single consolidated view of all the investments of an investor in Mutual Funds ("**MF**") and securities held in demat form with the Depositories.

ii. The Depositories and the Asset Management Companies ("**AMCs**")/ Mutual Fund - Registrar & Share Transfer Agents ("**MF-RTAs**") are required to put in place systems to facilitate generation and dispatch of single CAS for investors having Mutual Fund ("MF") investments and holding demat accounts.

iii. Consolidation of account statement shall be done on the basis of Permanent Account Number ("**PAN**") of the investor.

iv. In case investors have multiple accounts across the two depositories, the depository having the demat account which has been opened earlier shall be the default depository which will consolidate details across depositories and MF investments and dispatch the CAS to the investor.

v. The CAS shall be generated on a monthly basis.

vi. If the investors receive the statements by email either from the mutual funds or by the depositories, CAS shall be sent through email. However, if the investor does not wish to receive CAS through email, an option shall be given to the investor to receive the CAS in physical form at the address registered in the depository system.

vii. A proper grievance redressal mechanism shall be put in place by the depositories and the AMCs/MF-RTAs which shall also be communicated to the investors through CAS.

viii. The CAS shall be implemented from the month of March 2015 with respect to the transactions carried out during the month of February 2015. However, if an investor does not wish to receive CAS, an option shall be given to the investor to indicate negative consent to the depository.

Notification for Securities Contracts (Regulation) (Second Amendment) Rules, 2014

SEBI has notified the following amendments in Rule 19A of the Securities Contracts (Regulation) Rules, 195 to provide that every listed public sector company which has public shareholding below twenty five per cent., on the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2014, shall increase its public shareholding to atleast twenty five per cent., within a period of three years, in the manner, as may be specified, by SEBI.

- ***Anti-Dumping Duties***

1. Additional one year of Anti-Dumping Duty ("ADD") on polypropylene

ADD has been imposed on polypropylene originating in or exporting from Singapore and imported into India. The ADD has been extended to remain in force upto July 29, 2015.

2. Extension of ADD on Ceftriaxone Sodium Sterile

ADD has been imposed on Ceftriaxone Sodium Sterile originating in or exporting from the People's Republic of China and imported into India. The ADD imposed will be levied for a period of five years.

3. Additional five year of ADD on Sodium Nitrite

ADD has been imposed on Sodium Nitrite on originating in or exporting from the European Union and imported into India. The ADD imposed will be levied for a period of five years.

4. Extension of ADD on Sulphur Black

ADD has been imposed on Sulphur Black originating in or exporting from the People's Republic of China and imported into India. The ADD imposed will be levied for a period of five years.

5. Additional six months of ADD on Electrical Insulators of Glass or Ceramics/Porcelain

ADD has been imposed on Insulators of Glass or Ceramics/Porcelain originating in or exporting from the People's Republic of China and imported into India. The ADD imposed will be levied for a period of six months.

- ***Foreign Trade Policy***

Directorate General of Foreign Trade ("DGFT") revokes physical submission of 'Importer Exporter Code ("IEC") application w.e.f. January, 2015

Recently, DGFT issued a notification for revocation of the physical filing of Form ANF-2A for issue / modification of IEC number w.e.f. January 1, 2015. The application for new IEC will need to be filed in online mode only, along with requisite documents. The decision regarding grant / refusal of IEC should be conveyed within 2 working days by concerned jurisdictional Regional Authorities.

Further, online facility is also available on e-biz portal of Department of Industrial Policy & Promotion after integration with DGFT's system. The DGFT has also prescribed new Form ANF-2A.

Foreign Trade Policy ("FTP") expected soon, Commerce Ministry discussing with other ministries to boost SEZ

The Ministry of Commerce has recently promised a different FTP to be issued as early as possible. Currently, the Ministry is deliberating on Minimum Alternate Tax & Dividend Distribution Tax related matters for SEZ with various ministries since SEZ is an instrument for enhancement of exports & manufacturing and contributes 25% to India's exports.

- ***BANKING & FINANCE***

Levy of foreclosure charges

RBI vide its circular dated July 14, 2014 has advised Non Banking Financial Companies ("**NBFC**") that NBFCs shall not charge foreclosure charges/ prepayment penalties on all floating rate term loans with immediate effect.

NBFCs – Lending against Shares

RBI vide its circular dated August 21, 2014, has laid down a minimum set of guidelines in relation to lending by NBFCs against collateral of shares. As per the guidelines, NBFCs are required to:

i. Maintain a Loan to Value ("**LTV**") ratio of 50%; and

ii. Accept only Group 1 securities (as specified in SMD/ Policy/ Cir - 9/ 2003 dated March 11, 2003, issued by SEBI) as collateral for loans of value more than INR 0.5 million, subject to review by RBI.

It is further required that all NBFCs with asset size of INR 1 billion and above shall report on-line to stock exchanges, information on the shares pledged in their favour, by borrowers for availing loans.

Review of the Non-Banking Financial Company – Factors (Reserve Bank) Directions, 2012

RBI vide its circular dated November 10, 2014, has mentioned that an NBFC for registering as an NBFC-Factor shall have to prove that its financial assets in the factoring business are at least 50% (earlier 75%) of its total assets and the income derived from factoring is not less than 50% of its gross income as opposed to the minimum 75% requirement that was provided in its notification dated July 23, 2012.

Minimum Net Owned Funds

RBI vide its circular dated November 10, 2014, has extended the time lines to comply with the requirement of minimum net owned funds ("**NOF**") of INR 20 million in relation to such NBFCs which were in existence before April 21, 1999 (Minimum NOF for such NBFCs was retained at INR 2.5 million). Now, it shall be mandatory for NBFCs to attain a minimum NOF of INR 20 million by the end of March 2017, as per the milestones given below:

- INR10 million by the end of March 2016; and
- INR 20 million by the end of March 2017.

It will be incumbent upon such NBFCs (which were in existence before April 21, 1999), the NOF of which are currently below INR 20 million, to submit a certificate from the statutory auditor certifying compliance with the revised levels at the end of each of the two financial years as given above.

The NBFCs which fail to achieve the prescribed ceiling within the stipulated time period shall not be eligible to hold the Certificate of Registration ("**CoR**") as a NBFC. The RBI will initiate the process of cancellation of CoR against such NBFCs.

Entry of Banks into Insurance Business

RBI vide its circular dated January 15, 2015, has allowed banks to undertake insurance business by setting up a subsidiary / JV, as well as undertake insurance broking / insurance agency / either departmentally or through a subsidiary subject to the conditions as laid down under the aforesaid circular ("**Conditions**").

In terms of the Conditions, banks are not allowed to undertake 'insurance business' with risk participation 'departmentally'. Banks may do so only through a 'subsidiary / JV' set up for the said purpose. Banks which satisfy the eligibility criteria (as on March 31 of the previous year) given below may approach RBI for its prior approval for setting up a subsidiary/joint venture company for undertaking insurance business with risk participation:

i. The net worth of the bank should not be less than INR 10 billion;

ii. The CRAR of the bank should not be less than 10 per cent;

iii. The level of net non-performing assets should be not more than 3 percent;

iv. The bank should have made a net profit for the last three continuous years;

v. The track record of the performance of the subsidiaries, if any, of the concerned bank should be satisfactory.

Banks desirous of setting up a subsidiary / JV for undertaking 'insurance broking' / 'corporate agency' and which satisfy the eligibility criteria (as on March 31 of the previous year) as given below may approach RBI for its prior approval to set up such subsidiary / JV:

i. The net worth of the bank should not be less than INR 5 billion after investing in the equity of such company;

ii. The CRAR of the bank should not be less than 10 per cent;

iii. The level of net non-performing assets should be not more than 3 per cent;

iv. The bank should have made a net profit for the last three continuous years; and

v. The track record of the performance of the subsidiaries, if any, of the concerned bank should be satisfactory.

- ***Technology, Media & Telecommunications***

Impact of the Budget 2014 on the Telecom, Media and Technology Sectors

The Central Government on July 10, 2014 presented the national budget. Mr. Arun Jaitly, the Minister of Finance of the recently formed government under leadership of Prime Minister Mr. Narendra Modi presented the budget.

The budget would have an impact on the telecom, media and technology sectors, inter alia other industries and sectors of the country. The highlights of the budget specific and likely to have an implication on the telecom, media and technology sectors have been discussed in the following paragraphs.

The Government has decided to impose tax on import of telecom and information technology ("**IT**") products. A basic customs duty of 10 per cent would be imposed on import of specified telecommunication products, which are outside the purview of Information Technology Agreement. India is a signatory to the Information Technology Agreement, as a member of World Trade Organisation. It is expected that this decision would encourage production of Voice-over-Internet Protocol ("**VoIP**") phones and some telecom network equipments, the demand for which is high with the rapid change in technology.

All inputs / components used in the manufacture of personal computers have been decided to be exempt from 4 per cent special additional duty. Education cess is proposed to be imposed on imported electronic products, to provide parity between domestically produced goods and imported goods.

The import of colour picture tubes has been exempted to boost local production of finished products, like old models of colour television, technically known as cathode ray TVs ("**CRT**"), which cost less compared to flat panel TVs ("**FPT**").

In relation to the e-commerce sector, the Government has provided in the budget that the manufacturing units will be allowed to sell its products through retail including e-commerce platforms without any additional approval.

The Government proposes to work towards the revival of the SEZs and make them effective instruments of industrial development.

The Government has decided to launch a pan India programme 'Digital India', in order to ensure broadband connectivity at village level, improved access to services through IT enabled platforms, greater transparency in Government processes and increased indigenous production of IT hardware and software for exports and improved domestic availability. The Government plans a special focus on supporting software product start-ups.

A fund amounting to INR 1 billion has been allocated for setting-up virtual classrooms and INR 5 billion for the National Rural Internet and Technology Mission, for provisioning of broadband and information technology skills and promoting local manufacturing of software and hardware products.

Further, with regard to the Community Radio Stations, approximately 400 permissions for setting- up have been issued. The Government in order to encourage the growth in this sector, has taken up a new scheme with an allocation of INR 1 billion. It is expected that this scheme would support about 600 new and existing Community Radio Stations.

The Government has also proposed for a sum of INR 70.60 billion for the development of 100 smart cities in the country. Further, an amount of INR 1 billion is proposed for setting up a Technology Development Fund for providing resources to public as well as private sector firms.

Telecom Regulatory Authority of India ("TRAI") Recommends Sharing of Telecom Spectrum

TRAI issued its recommendations on the "Guidelines on Spectrum Sharing" on July 21, 2014 ("Recommendations") vide Press Release No. 41/2014.

In February 2014, a Steering Committee, consisting of senior officers of TRAI and representatives of various telecom service providers was constituted that made certain suggestions to TRAI, based on which the present Recommendations have been issued. The said Committee had been constituted to frame guidelines for spectrum sharing. In the past, the telecom operators were allowed to share only passive infrastructure, such as mobile towers, but not active infrastructure, like spectrum.

In terms of the Recommendations, 'spectrum sharing' refers to an arrangement between two access licensees, where both licensees having access spectrum in the same band pool their spectrum in the same License Service Area for their simultaneous use, using a common Radio Access Network.

The major Recommendations of TRAI for sharing of spectrum can be summarised as under:

1. Two licensees are allowed to share spectrum in the bands of 800, 900, 1800, 2100, 2300 and 2500 MHz, provided both the licensees have spectrum in the same band. This implies the sharing of previously banned 3G spectrum.

2. If any one or both of the licensees, sharing their spectrum, have administratively assigned spectrum in the bands of 800, 900 and 1800 MHz, then after sharing, the said licensees will be permitted to provide only those services, which can be provided through administratively held spectrum.

3. In case both licensees are sharing the spectrum, which has either been assigned through an auction in the year 2010 onwards or on which the prescribed market value has been paid, the said licensees can offer services using technologies, which they can independently provide through their own spectrum holding.

4. A portion of additional capacity shall be counted for applying the prescribed spectrum caps of 25% of total spectrum assigned and 50% in a band. 50% of spectrum held by one telecom operator in the spectrum band being shared will be considered as additional spectrum for the other.

5. Two licensees willing to share their spectrum shall inform the DoT while entering into the spectrum sharing agreement.

6. Leasing of spectrum is specifically prohibited.

7. The spectrum usage charge rate of each of the licensees post sharing shall increase by 0.5% of the adjusted gross revenue, since spectrum sharing results in additional quantity of spectrum.

The basic objective of spectrum sharing is to provide an opportunity to telecom service providers to pool their spectrum holdings and gain better spectral efficiency.

The said Recommendations of TRAI will be considered by the DoT and placed before the Inter- Ministerial Panel Telecom Commission for its approval.

The move to allow sharing of all kinds of airwaves, if approved by the Government, will benefit incumbent players like Airtel, Vodafone, Idea Cellular, Reliance Communications, Aircel and Tata Teleservices to bring down cost of spectrum ownership.

Implementation of Additional Authentication for Online Credit Card use, E-Payments and Card Not Present Transactions

RBI has issued a directive clarifying the requirement for additional authentication and validation for Card Not Present ("**CNP**") transactions, including e- commerce, Interactive Voice Response ("**IVR**"), mail order telephone order ("**MOTO**") transactions conducted online, over phone, over e-mail and recurring transactions based on standing instructions. A typical CNP transaction is one where the merchant does not have access to or cannot visually examine the card being used for payment, since the merchant and the customer are not present at the same location.

The directive "Security Issues and Risk Mitigation Measures Related to Card Not Present Transactions" dated August 22, 2014 issued vide DPSS.PD.CO. No. 371/02.14.003/2014-2015 ("CNP Directive 2014") is in furtherance to earlier directives and circulars relating to additional authentication for CNP transactions.

Such directions date back to the year 2009, when RBI mandated providing for additional authentication based on the information not visible on the cards for all CNP transactions. Over the years, RBI has been gradually specifying categories of transaction to which the mandate shall apply. The directions were mandated for IVR transactions in 2010 and in 2011 for MOTO transactions and other recurring transactions based on standing orders.

The mandate is applicable to all transactions using cards issued in India for payments to merchants where no outflow of foreign exchange is contemplated. RBI had clarified that the mere linkage to an overseas website or payment gateway cannot be the basis for relaxation from the mandate.

The latest CNP Directive 2014 obligates all banks to comply with these mandatory directions to implement additional authentication for all CNP transactions, including e-commerce, IVR, MOTO and recurring based on standing instructions.

Additionally, in terms of the CNP Directive 2014 the RBI has mandated that in case of cards issued by banks in India are used for CNP transactions for purchase of goods and service within India, the acquisition of such transaction has to be through a bank in India and is to be settled in Indian currency only.

Re-iterating the earlier directions / clarifications, the RBI granted time till October 31, 2014 for the existing arrangement to comply with the directions.

TRAI rejects proposal to regulate and charge over- the-top apps

TRAI has decided against a proposal of the telecom operators / carriers to regulate over-the-top ("**OTT**") applications, services and players. The primary OTT applications, over which telecom operators have raised concerns, include internet based voice and texting applications.

The telecom service providers proposed the regulation of OTT applications and payment of part of the revenues by such OTT players to the telcos or the government. TRAI has stated that the telecom operators can offset the losses in revenue by the growth in the data revenues and is not keen on introducing regulations. TRAI has also shelved its plans to initiate a consultation on the subject. TRAI, however, may issue a consultation paper after certain preliminary discussions with stakeholders. Such consultation paper, if issued, would test the ground to see whether the issue of fees levying or revenue sharing is a potential problem or not.

The telecom service providers have invested billions in procuring telecom licenses and setting-up infrastructure and thus want the OTT applications / players to be regulated. As per the telecom operators, this would ensure that both the telecom service providers and the OTT players operate on a level playing field, since the subscribers of the telecom services use these OTT applications, which are available free of cost, rather than the services of the telcos.

The telecom operators are of the view that since the OTT applications use their network, the OTT players should pay all the fees that the telecom service providers pay to the government / Department of Telecommunications. This would force the OTT players to charge for their services, currently which are free of any charge.

On the other hand, the OTT players are of the view that any such move to regulate and/or seek payment is against the concept of net neutrality or free internet. This move comes in furtherance to a recent seminar organised by TRAI on "Regulatory framework for OTT services". The said decision ends a speculation that the seminar was a precursor regulating the OTT applications / services.

TRAI Recommendations on Issues relating to Media Ownership

TRAI has issued recommendations dated August 12, 2014 on the issues pertaining to media ownership vide Press Release No. 51/2014.

TRAI has divided its recommendations into the broad categories of cross-media ownership, vertical integration amongst media entities and issues affecting internal plurality. The key recommendations made by TRAI are as follows:-

1. The news and current affairs genre should be considered as the relevant genre in the product market for formulating cross-media ownership rules, due to its direct relevance to plurality viewpoints.

2. The television and print sector should be considered as the relevant segment in the product market. Under the print sector, only daily newspaper, including the business and financial newspapers should be taken into account.

3. The relevant geographic market should be defined in terms of the language and the States where the language is spoken in majority.

4. With regard to the metrics for computing market share-

   For television, a combination of reach and volume of consumption should be used.

   For print, the reach metrics should be used.

5. For computation of the market shares –

In the television segment	The GRP of a channel is to be compared with the sum of the GRP ratings of all channels in the relevant market The market share of an entity shall be sum of the market shares of all channels controlled by it.
In the print segment	The market share of a newspaper would be circulation of that newspaper compared with the combined circulation of all newspapers in the relevant market. The market share of an entity would be the sum of circulation of all newspapers controlled by it.

1. The Herfindahl Hirschman Index is to be adopted to measure the concentration in the media segment for a relevant market.

2. The cross media ownership rules must be reviewed once every three years.

3. The mergers and acquisitions in the media sector will be permitted, only if it does not breach the rule based on Herfindahl Hirschman Index.

4. Detailed annual reporting requirements to be imposed.

5. Entities such as the political bodies, religious bodies, Central and State Government ministries, departments, companies, undertakings, joint ventures and government funded entities and affiliates to be barred from entry into the broadcasting and television channel sectors. An exit route for such entities presently permitted is to be specified.

6. Strengthen the arm's length relationship between Prasar Bharti and the Government to ensure independence of Prasar Bharti.

7. The practice of 'private treaties' should be forbidden. These practices include – (i) advertising in exchange for equity of the company advertised, (ii) advertising in exchange for favourable coverage, and (iii) exclusive advertising rights in exchange for favourable coverage etc.

8. With regard to 'advertorials', a clear disclaimer should be mandated, to be printed in bold letters, stating that the succeeding content has been paid for.

9. In case of 'paid news', in addition to the above, liability should be imposed on both parties to the transaction, if it is tried to be passed off as news.

10. Ownership restrictions, such as restricting the amount of equity holding / loans, on corporate entering the media should be put- in place.

11. Appropriate regulations need to be framed to ensure editorial independence.

12. The media should not be regulated by the Government.

13. A single regulatory authority should be set-up for the television and print media sectors. Such regulatory authority must be empowered to hear, investigate and try complaints and further impose penalties for the violations.

14. TRAI states that in order to establish an institutional mechanism for the long term, the legislative and legal framework needs to be comprehensively evaluated. The implementation of the said recommendations of TRAI would help curb the unhealthy media practices, currently prevalent.

Sikkim Government Issues First Regular License for Online Gambling

In a recent major development, the Indian online gambling industry received an impetus with the grant of the first online gambling regular license for operations in India.

The Government of the State of Sikkim, which allowed online gambling activities with passing of the Sikkim Online Gaming (Regulation) Act, 2008 and the rules thereunder, has after a passage of 5 years granted the first regular license. The license has been granted to M/s. Future Gaming Solutions Private Limited, headed by lottery king Santiago Martin.

According to certain media reports, Mr. Kapil Khanna the CEO of Future Gaming confirmed the development and has indicated that the company proposes to launch its operations in the state soon. Future Gaming was the first entity to be granted the Provisional License under the legislation.

It is understood from media reports that the license that has been granted has several complex clauses and is highly ambiguous in nature. Sources close to the licensee indicate that Future Gaming proposes to launch online sports betting and online casinos, but is not very keen to offer online poker in the near future.

It is pertinent to note that the operations of Future Gaming would be restricted to the state of Sikkim, in light of the clarifications issued earlier this year by the Central Government. Presently, Sikkim might not have an extensive gaming market; however, with the operations now set to be offered online, the market can be expected to grow manifold.

With the grant of this license, it would be interesting to see the steps other Indian states initiate in this regard and follow suit, which may either be in the form of allowing online gambling in itself or executing an arrangement with the Sikkim Government allowing the accessibility to such activities from outside Sikkim.

- ***Environment and Climate Change***

Requirement for 'Consent to Establish' for New Industrial Electricity Connection

The Ministry of Environment & Forests ("**MoEF**") has issued a clarification regarding the State level policy on mandatory requirement of 'Consent to Establish' for new industrial electricity connection. MoEF has clarified that the requirement of no objection certificate/ 'Consent to Establish' by the concerned State Pollution Control Boards ("**SPCBs**")/Pollution Control Committees ("**PCCs**") for release of industrial electricity connection to the new industry is not based on any guidelines/directions of the Central Pollution Control Board ("**CPCB**"). MoEF has advised that since in some of the States, the pre-requisite of 'Consent to Establish' certificate for release of electricity connection does not exist, the other States/Union Territories may consider revisiting their provisions in this regard for improving "ease of doing business" in such States/Union Territories.

Environmental Clearance for Expansion of Coal Mining Projects

MoEF vide its official memorandum has issued fresh guidelines in continuation of earlier guidelines in relation to granting of environmental clearance for expansion of coal mining projects involving one time production capacity expansion in the existing operation. As per the said guidelines it has been decided that in respect of one time capacity expansion proposals of existing coal mining projects with production

capacity of 16 million tonnes per annum ("**MTPA**"), Expert Appraisal Committee ("**EAC**") may after due diligence consider exempting public hearing requirement laid under the Environmental Impact Assessment Notification, 2006 for expansion projects subject to the ceiling of additional production of coal up to 5 MTPA, if the transportation of additional production of coal is proposed by means of a conveyor and/or rail transport. The said dispensation would be subject to satisfactory compliance by the project proponent with the environmental clearance(s) granted to it by MoEF in the past as judged by EAC.

Standardized Procedure for Granting 'Consent to Establish' & 'Consent to Operate'

MoEF has constituted a Working Group for standardization of procedure for granting 'Consent to Establish' & 'Consent to Operate' to industries and developmental projects with the purpose of improving "ease of doing business". In this regard, the Working Group has been mandated to look into the following aspects:

- Developing standard operating procedure and inspection process relating to granting of 'Consent to Establish' & 'Consent to Operate' to industries and developmental projects including validity of consents and implementing of common consent application forms.

- Supplement inspection activities of SPCBs/PCCs with third party audit inspections and synchronizing multiple inspections under various regulations.

- Inspection frequency, granting of consents, harmonization of 'Red', 'Orange' and 'Green' categories of industries, and self-declaration and self-regulation by project proponent along with increase in penalty in case of violation.

- ***Competition Law***

Competition Commission of India ("CCI") Ordered Investigation against Maharashtra State Electricity Distribution Co. Ltd. and Others for Abusing its Dominant Position

Vidharbha Industries Association ('the Informant') filed an information against MSEB Holding Company Limited, Maharashtra State Power Generation Company ("**MSPG**"), Maharashtra State Transmission Company Limited ("**MSTCL**") and Maharashtra State Electricity Distribution Company Limited ("**MSEDCL**") alleging contravention of the provisions of section 4 of the Competition Act, 2002.

CCI inter-alia observed that on the issue of dominance, MSEDCL is a monopoly distributor of electricity in the relevant market and denies open access in the electricity distribution market due to which the consumers are left with no choice but to keep buying power at whatever rate the distribution company supplies. Therefore, the CCI was of a prima facie view that the conduct of MSEDCL amounts to denial of market access to other power generating companies for distribution of electricity in the relevant market which is in contravention of the provisions of Section 4 (2) (c) of the Competition Act, 2002. Accordingly, the CCI vide order dated August 05, 2014 directed the Director General to cause an investigation into the matter and to complete the investigation within a period of 60 days.

CCI Closed Complainant against M/s Ford India Pvt. Ltd. for Abuse of Dominance

Shri Sanjay Kumar ("the Informant") filed an information against M/s Ford India Pvt. Ltd. and its dealer M/s Harpreet Motors Pvt. Ltd. alleging inter- alia contravention of the provisions of sections 3 and 4 of the Competition Act, 2002 as the Opposite Parties resorted to delaying tactics for the purpose of hiking the price of the vehicle.

CCI observed that the existence of more than one automobile with comparable size and resources as well as the capability of manufacturing differentiated car models in terms of price, design, type of fuel, engine

displacement, distributor network, after sale service etc. indicates that there exists choice for the consumers in the relevant market.

Accordingly, CCI vide order dated September 12, 2014 inter-alia held that Ford India Pvt. Ltd. in the relevant market of multi/sport utility vehicles in India does not appear to have been in a dominant position. Therefore, it was held that no case of contravention of the provisions of section 4 of the Competition Act, 2002 is made out against them and the information is ordered to be closed in terms of the provisions contained in section 26(2) of the Competition Act, 2002.

CCI ordered investigation against Jaiprakash Associates Ltd. for Abusing its Dominant Position

Ms. Aanchal Khetarpal, ("the Informant") filed an information against M/s Jaiparakash Associates Limited ("**JPA**") alleging, inter-alia, contravention of the provisions of section 4 of the Competition Act, 2002.

CCI was of the prima facie view that the conduct of JPA in imposing the unfair and one sided terms and conditions in the "Standard Terms and Conditions or Provisional Allotment of Plot at Jaypee Greens, Noida" were abusive in terms of the provisions of section 4(2) (a) (i) of the Competition Act, 2002 and accordingly the CCI vide order dated August 05, 2014 directed the Director General to cause an investigation into the matter and to complete the investigation within a period of 60 days.

CCI closed Complaint against Insurance Regulatory and Development Authority

Shri Dilip Modwil ("the Informant") filed an information for seeking a direction from the CCI to direct the Insurance Regulatory and Development Authority ("**IRDA**") to repeal the IRDA (Licensing of Bancassurance Agents) Regulations, 2002 which allows grant of corporate agency license to banks to sell insurance products. This is alleged to lead to concentration of power in hands of bank conglomerates at the expense of lost jobs and business of insurance brokers and independent insurance agents resulting in violation of Section 3 and Section 4 of the Competition Act, 2002.

CCI inter-alia observed that IRDA while discharging its regulatory and statutory mandate cannot be said to fall within the purview of the term enterprise as defined in Section 2(h) of the Competition Act, 2002. Moreover, the Informant failed to establish as to how the provisions of Section 3 and Section 4 were applicable in the present case. Accordingly, CCI was of the prima facie view that the issue of abuse of dominance by IRDA does not arise and no case of contravention of the provisions of section 4 of the Competition Act, 2002 is made out against IRDA and the information vide order dated September 12, 2014 was ordered to be closed in terms of the provisions contained in section 26(2) of the Competition Act, 2002.

CCI Closed Complaint against Ultra Tech Cement for Contravention of the Provision of the Competition Act, 2002

Mr. Santosh Kumar Agrawal ("the Informant") filed an information against M/s Ultra Tech Cement (through its north zone marketing head at New Delhi and regional head at Indore) ("**Ultra Tech**") alleging that the conditions imposed by the Opposite Party in terms of the stockiest agreement were arbitrary and illegal and the act of stopping the regular supply of cement and accepting orders at its will was an exercise of dominant position of the Ultra Tech. Further, the act of compelling the Informant to become an exclusive dealer of the company is in contravention to the provision of section 3 and section 4 of the Competition Act, 2002.

CCI was of the view that the Informant had not provided any information/data to substantiate the allegation that Ultra Tech enjoys a dominant position. Moreover, the Informant has not submitted the stockiest agreement so as to infer whether the said agreement is an exclusive supply agreement or whether the said agreement had clauses that are restrictive in nature within the meaning of section 3(4) of the Competition Act, 2002. Even otherwise, considering the existence of competitive forces at the manufacturer level and the stockist level, the stockiest agreement does not seem to cause any appreciable adverse effect on competition in India.

Accordingly, CCI vide order dated October 01, 2014 was of the prima facie opinion that no case of contravention of any of the provisions of either section 3 or section 4 of the Competition Act, 2002 was made out against Ultra Tech. Therefore, the information is ordered to be closed in terms of the provisions contained in section 26(2) of the Competition Act, 2002.

CCI Imposed a Penalty against Super Cassettes Industries Limited for Abuse of Dominance

M/s HT Media Limited ("the Informant") filed an information against M/s Super Cassettes Industries Limited ("**SCIL**") alleging inter alia that it was abusing its dominant position in contravention of Section 4 of the Competition Act, 2002 by (i) charging excessive amount as license fees/ royalty from the informant for grant of rights for the broadcast of the SCIL's music content on Fever 104 radio station; (ii) imposing Minimum Commitment Charges ("**MCC**") to be paid to SCIL per month irrespective of actual needle hour of broadcast of SCIL's music content by the informant and (iii) making conclusion of licensing arrangements with SCIL subject to the acceptance of license fees and MCC imposed by them. The informant further alleged that SCIL was infringing section 3 of the Competition Act, 2002 by requiring radio stations including Fever 104 to enter into a license agreement to broadcast its music content, the terms which were anti-competitive.

CCI vide its order dated October 01, 2015 held that SCIL was in contravention of the provisions of section 4(2)(a)(If the Competition Act, 2002 by imposing unfair condition of MCC on private FM radio stations and inter alia directed SCIL to cease and desist from formulating and imposing the unfair condition of MCC in its agreements with private FM radio stations in India and to modify the unfair condition of MCC imposed on private FM stations in India in its existing agreements within 3 months of the date of receipt of the order. CCI also imposed a penalty on the SCIL at the rate of 8% of its average turnover of the last three years of SCIL amounting to INR 2.8328 Million.

CCI Imposed a Penalty against Indian Jute Mills Association and Gunny Trade Association for Contravention of Section 3 of the Competition Act, 2002

Indian Sugar Mills Association, National Federation of Co-operative Sugar Factories Ltd. and All India Flat Tape Manufacturers Association ('The Informants') filed an information against Indian Jute Mills Association ("**IJMA**"), Gunny Trade Association ("**GTA**") and Ministry of Textiles, GoI ("**MoT**") alleging inter alia anti-competitive agreement by the members of IJMA and GTA in fixation of sale price of jute packaging material by issuing of daily price bulletin (DPB) by GTA for jute bags for the members of the IJMA and the GTA to follow contravention of the provisions of section 3 of the Competition Act, 2002.

The Commission is of opinion that acts/ conduct of IJMA and GTA are found to be in contravention of the provisions of section 3(1) read with section 3(3)(a)/ 3(3)(b) of the Competition Act, 2002. Further, the impugned activities also fell within the meaning of 'cartel' in terms of section 2(c) of the Competition Act, 2002 in as much as they are found to be controlling the price of A- Twill jute bags. In view of the findings recorded by the Commission, IJMA and GTA are directed to cease and desist from indulging in the acts/ conduct which have been found to be in contravention of the provisions of the Competition Act, 2002. The Commission decides to impose penalty on the IJMA and GTA @ 5% of the average turnover of the last three years which amounted to INR 0.768527 Million and INR 0.035169 Million, respectively. The Commission also impose penalty on such persons who were members of the Executive Committee of IJMA and the Executive Committee and the DPB Sub- Committee of GTA @ 5% of the average income of the last three financial years which amounted to INR 3.541988 Million and INR 0.448290 Million respectively.

- ***Intellectual Property and Pharmaceuticals***

Trade Marks Filing Fees Increased

The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry has issued the Trade Marks (Amendment) Rules, 2014 vide notification no. G.S.R. 523 (E) dated August 1, 2014 and made certain amendments to the Trade Marks Rules, 2002. As per the said amendments, the official filing fees and expedite examination fees have been increased.

The filing fees, required to be paid with the trade mark applications has been increased from INR 3,500 to INR 4,000 for each class of goods and services. Additionally, the fees to be paid for expedite examination has also been increased from INR 17,500 to INR 20,000.

The modifications were notified and came into effect from the date of the notification, i.e. August 1, 2014.

The Office of Controller General Patents, Designs and Trade Marks issued a Public Notice numbered CC/Public Notice/2014-15/51 dated August 7, 2014, intimating the general public about the said modifications to the fees. It has been clarified that all the trade mark application and requests for expedite examinations filed from August 1, 2014 will be required to tender the deficient amount on or before September 30, 2014. The Registrar of Trade Marks shall initiate action on such applications or requests only upon payment of the deficient fees.

Determination of Jurisdiction in Trademark and Copyright Disputes over E-Commerce

A division bench of the High Court ("**HC**") of Delhi, comprising of Justice Badar Durez Ahmed and Justice Vibhu Bakhru, while allowing an appeal by World Wrestling Entertainment, Inc. ("**WWE**"), has laid down the principle for determining jurisdiction for trademarks and copyrights infringement suits in case of an online / e-commerce transaction.

HC has held that jurisdiction in e-commerce transactions involving a trademark or copyright dispute would be determined by the buyer's place of residence.

The appeal was preferred against an order passed in October 2013 in a suit filed by WWE (an entity incorporated in the United States of America) for the infringement its trademarks and copyrights against M/s. Reshma Collection (based in Mumbai). The said order directed the return of the plaint to the plaintiff, since the HC of Delhi did not have the jurisdiction to entertain the suit.

The judgement of the single judge referred to decisions of the Supreme Court of India, which the WWE contended, in the appeal, were either satisfied or not applicable to the present case. The decision of the division bench states the reasons for satisfaction or the non-applicability of the Supreme Court decisions in cases of online transactions.

The division bench observed that the case rests on the interpretation of the term 'carries on business' under Section 134 of the Trademarks Act, 1999 and Section 62 of the Copyright Act, 1957.

In its decision, the division bench has observed that the website referring to various goods and services is not an offer but an invitation to an offer. The invitation, if accepted by a customer in Delhi, becomes an offer made by the customer in Delhi for purchasing the goods "advertised" on the website. When, through the mode of the software and the browser, the transaction is confirmed and payment is made to the plaintiff through its website, the plaintiff accepts the offer of the customer at Delhi.

The division bench observed that the case rests on the interpretation of the term 'carries on business' under Section 134 of the Trademarks Act, 1999 and Section 62 of the Copyright Act, 1957. The Supreme Court decisions are discussed as under:-

1. **Bhagwan Goverdhandas Kedia v. Girdharilal Purshottamdas & Co.:** the Supreme Court discussed the traditional modes of determining time and where the contract was made. It was held that contracts negotiated by postal communication are an exception to the general rule that a contract is complete when the offeror receives intimation that the offeree has accepted the offer, whereas, in case of postal communication, the contract would be complete when offeree's acceptance is put into a course of transmission. However, the Supreme Court categorically observed that in case of a contract, where the offer and acceptance takes place over a conversation by telephone, the negotiations are instantaneously concluded by oral communication and the exception to the general rule of contract would not be applicable. The division bench observed that the since the online transaction are also in the nature of telephonic conversations, thus online contracts would be complete where the acceptance is communicated.

2. **Dhodha House v. S.K. Maingi: the Supreme** Court had laid down a 3-condition test to be satisfied for establishing that the plaintiff is carrying on business within territorial limits of a court. The first two conditions relate to an agent carrying on the business on behalf of the

principle, which is not applicable to the present case as WWE has no agents present. In relation to the third condition, i.e. to constitute 'carrying on business' at a place, the essential part of the business must take place at that place, the division bench had examined the above (Kedia) case. It ruled that since the transactions conducted in the present case concluded in Delhi, essential part of the business was being carried out in Delhi. The transaction between the two takes place instantaneously, the acceptance by the plaintiff is instantaneously communicated to its customer through the internet at Delhi. Therefore, part of the cause of action would arise in Delhi.

The division bench held that the Plaintiff could be said to be carrying on his business in Delhi and thus fulfilled the condition 'carrying on business'. Therefore, the HC, in the said judgment has laid down that the jurisdiction for online disputes, would be with the courts at the buyer's place of residence.

HC observed that because of the advancements in technology and the rapid growth of new models of conducting business over the internet, it is possible for an entity to have a virtual presence in a place which is located at a distance from the place where it has a physical presence.

- ***Taxation***

Direct Tax

Double Taxation Avoidance Agreement ("DTAA") between India and Bhutan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion

An Agreement between the GoI and the Royal Government of Bhutan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed in New Delhi on March 4, 2013 and has been notified on September 5, 2014. The said agreement has been given effect in India with effect from July 17, 2014.

India backs out as 51 countries sign historic Automatic Information exchange agreement

The new Organisation for Economic Co-operation and Development ("**OECD**")/G20 standard on automatic exchange of information was endorsed by all OECD and G20 countries as well as major financial centres participating in the annual meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes in Berlin on October 29, 2014. In this annual meeting, 51 countries signed Multilateral Competent Authority Agreement that will activate automatic exchange of information.

However, India has decided to back out from historic occasion of signing of the Multilateral Competent Authority Agreement. The Government source says that India is concerned about confidentiality clause in agreement that will prevent disclosure of information received.

Central Board of Direct Taxes ("CBDT") sets INR 1 billion threshold for 'resident' taxpayers eyeing AAR route

Union Budget 2014 had extended facility of seeking advance ruling class of resident taxpayers. In this regard, CBDT has recently notified category of resident taxpayers, who can seek ruling from Authority of Advance Rulings ("**AAR**"). CBDT has notified that residents who in relation to their tax liability arising out of one or more transactions valuing INR 1 billion or more in total, undertaken or proposed to be undertaken, shall be 'applicant' for purposes of seeking advance ruling. Further, CBDT has also prescribed application form for resident taxpayers seeking an advance ruling.

RBI clarifies Indian tax laws applicability for acquisition of immovable property

RBI has recently issued a clarification that transactions relating to acquisition of immovable property in India by person resident outside India who is Indian citizen / person of Indian origin is subject to applicable tax laws in India.

CBDT issues guidelines for Section 194LC long term bonds

CBDT has recently issued guidelines for deemed approval by GoI for 'long-term bonds' to qualify for concessional TDS rate under amended Section 194LC of the Income Tax Act. The Finance Act (No 2), 2014 had amended Section 194LC (w.e.f October 1, 2014) extending concessional withholding tax rate on overseas borrowings by way of issuing 'any' long term bonds, not limited to long term infrastructure bond, provided CG approves such borrowings and rate of interest. Further, the guidelines provide that bonds should have original maturity of 3 years or more. The Government approved rate of borrowing as any rate of interest which is within the 'all-in-cost ceilings' specified by RBI under External Commercial Borrowings regulations.

CBDT relaxes manpower movement threshold for SEZ tax holiday from 20% to 50%

CBDT has recently issued a Circular 14/2014 in supersession of earlier Circular 12/2014 on Section 10A/10AA of the Income Tax Act regarding the benefit on transfer of manpower in case of software industry. CBDT has revised the limit for transfer or re-deployment of technical manpower from existing units to a new SEZ unit from 20% to 50% of the total technical manpower actually engaged in software development at the end of the financial year. Thus, the transfer of employee upto these limits shall not be construed as splitting up or reconstruction of existing business. Further, CBDT has also mentioned that in the alternative, if assessee is able to demonstrate that net addition of new technical manpower in all units of the assessee is at least equal to the number that represents 50% of total technical manpower of new SEZ, Section 10A/10AA deduction shall not be denied. Further, the assessee has a choice of complying with any of the two aforesaid alternatives prescribed in the aforesaid circular.

The aforesaid circular is applicable only in case of assessee engaged in development of software or in providing IT Enabled Services in SEZ units eligible for Section 10A/ 10AA benefit. However, the aforesaid Circular shall not be applicable to assessments already completed and no appeal shall be filed by Revenue in cases where the issue has been decided by appellate authority in consonance with Circular.

- ***Case Laws***

General Laws

All India Oriental Bank of Commerce Employees Welfare Society vs. J.S. Rekhi & Others

In the case of All India Oriental Bank of Commerce Employees Welfare Society vs. J.S. Rekhi & Others, Civil Appeal No. 3821 of 2014 of Supreme Court with Civil Appeal Nos. 3822-3826 of 2014, All India Oriental Bank of commerce employees' welfare society floated a pension scheme for the kith and kin of those members dying in harness and it was modified from time to time. One of such scheme required the members to contribute a sum of INR 30 per month for a period of 25 years and on retirement such a member was to receive a sum of INR 30,000 from the society. Some of the employees of the bank who were members of the society took voluntary retirement under a scheme much before the date of their actual superannuation. Such members requested the society to pay a sum of INR 30,000 to each of them on the ground that they have retired from service and therefore entitled for the aforesaid amount. It was admitted that they had not made contribution for 25 years. The society resisted their claim on the ground that the members shall be entitled to receive the aforesaid sum only on retirement after attaining the age of superannuation and further, such of the members as per the rules. Reliance was placed by the society on its circular dated 2.2.2001 in this regard.

The members were aggrieved by the aforesaid and complained that there is no distinction between retirement on attaining the age of superannuation and voluntary retirement and therefore, each member employee shall be entitled of lump sum amount payable under the scheme.

The Hon'ble Supreme Court vide order dated 12.03.2014 allowed the above mentioned appeals, set aside the impugned order passed by the Fora and affirmed by the National Consumer Disputes Redressal Commission without any order as to costs.

Kanta vs. Tagore Heart Care and Research Centre Pvt. Ltd. and another

In the case of Kanta vs. Tagore Heart Care and Research Centre Pvt. Ltd. and another, Civil Appeal No. 6284 of 2014 of Supreme Court, Mrs. Kanta (complainant), aged about 55 years at the relevant time, suffered acute chest pain in the last week of August, 1999. She consulted a medical practitioner at Amritsar who found her symptoms to be of heart attack. Accordingly, she was advised to obtain opinion and treatment of a cardiologist and cardio vascular surgeon. She was taken to Jalandhar by her family members where they consulted Dr. Raman Chawla (Respondent No. 2), attached to Tagore Heart Care and Research Centre Pvt. Ltd (Respondent No.1). The Respondent No. 2 examined the complainant clinically on September, 1999 and conducted Echo test. He noticed that there was possibility of blockages which needed appropriate confirmation and medical treatment and accordingly he advised for admission of the complainant in the Research Centre for conducting angiography. It was made known by the complainant that she is allergic to almost all antibiotics except few. The Respondent No. 2 with the consent of the complainant's son (a medical practitioner) decided to conduct angiography on September 2, 1999.

The complainant alleged that the respondents did not follow scheduled time for performance of the angiography. She was starved for the whole night prior to the day of the angiography and though it was to be performed in the morning hours, it was performed in the afternoon. While conducting the angiography procedure, she felt severe pain in the abdomen. She immediately brought such fact to the notice of the Respondent No. 2. He ignored her complaint of the pain and continued with the procedure of angiography. After the procedure was completed, she was shifted to the recovery room. Angiogram showed LAD artery blockage to the extent of 95 percent. Though the Respondent No. 2 took permission of the complainant's son for performance of PTCA or angioplasty for removal of the blockage yet it was given up in the midway after the 15-20 minutes on the ground that she was allergic to many drugs. She was shifted to the ICU. She suffered severe pains throughout the night yet nobody attended her. In next morning, i.e. September 3, 1999, the Respondent No. 2 along with a senior doctor – Dr. Suri examined her. Dr. Suri noticed that pulse of her right leg was practically absent and as such reprimanded the Respondent No. 2. She was discharged on 08.09.1999 from the hospital. Aftermath she consulted Dr. Trehan of the Escorts Heart Institute, Delhi and got admitted there on 13.09.1999. Another Angiography was conducted at the Escort Heart Institute through radial artery of the right arm with a view to locate the extension of dissection of Aorta. Dr. Trehan expressed opinion that the Aorta dissection has taken place during the Angiography procedure done by the Respondent No. 2 at the Research Centre and that was iatrogenic in nature. However, she was given due treatment by a Senior Cardiologist. She was subjected to angioplasty on 18.10.1999. She was discharged after the hospitalisation of ten days.

The complainant alleged medical negligence on the part of the Respondent No. 2 and the Research Centre while conducting the angiography resulting into dissection of aorta which lead to further treatment due to which she incurred heavy expenditure in undergoing angioplasty and angiography at Escorts Heart Institute and claimed compensation of INR 1.1 million from the Respondent No. 2 and the Research Institute.

The Hon'ble Supreme Court vide order dated 10.07.2014 upheld the order passed by the National Consumer Disputes Redressal Commission that the complainant has not been able to prove medical negligence on the part of the Respondent No. 2 and it dismissed the appeal without any order as to costs.

SEBI

Ashok Jain V. SEBI

Mr. Ashok Jain ("Appellant") filed an appeal before Securities Appellate Tribunal, Mumbai ("**SAT**") against the order passed by the Adjudicating Officer ("**AO**") of SEBI for not making disclosure of acquisition of 5

percent and more shares or voting rights of Tumus Electric Corporation Limited ("Company") under the Regulation 7 read with Regulation 8 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("SAST Regulation, 1997") and Regulation 30 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SAST Regulation, 2011**"). The AO had imposed penalty of INR 0.3 Million for alleged violation of regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997, penalty of INR 1.3 Million for alleged violation of regulation 8(1) and 8(2) of SAST Regulations, 1997 and penalty of INR 0.1 Million for alleged violation of regulation 30(2) read with regulation 30(3) of SAST Regulations, 2011.

The Appellant contended that at the relevant time dealing in scrip of the Company were suspended and non-disclosure did not make any difference to the investors. He further contended that there no loss was caused to any investor on account of non-disclosure and hence, penalty imposed should be set aside. However, the SAT was of the view that under SAST Regulations, 1997 as also under SAST Regulations, 2011 disclosures are liable to be made within specified days irrespective of the scrip being traded on the stock exchange or not. Similarly, disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non-disclosure within the time stipulated under those regulations. Thus, penalties imposed by the AO after taking into consideration all mitigating factors cannot be said to be arbitrary or unreasonable. Accordingly, appeal was dismissed with no order as to costs.

Usha (India) Ltd V. SEBI

In this appeal filed before SAT, Mumbai, Usha (India) Limited ("Appellant Company") was alleged for not redressing various investor grievances inspite of repeated letters sent by SEBI from time to time. Consequently, SEBI issued show cause notice which was duly served to Appellant Company and on non-appearing by anyone for personal hearing on the appointed date penalty was imposed by SEBI for non-compliance.

The Appellant Company contended that it had become a defunct company with huge financial losses as the management was taken over by workers by removing erstwhile directors and due to non-repayment of dues, bank took possession of premises together with factory and sold the same in auction under provisions of SARFAESI Act, 2002. The Appellant Company further contended that all records, lying in premises, were in possession of auction purchaser and neither the workers controlling management nor auction purchaser forwarded any letter/ notice received from SEBI as a result of which investor grievances could not be redressed.

While considering the matter, SAT observed that SEBI had forwarded list of investor grievances along with notices/ reminder letters to redress 338 investor grievances within the time stipulated therein from time to time and called upon the appellant to resolve grievances of investors within 30 days from date of receipt of the letters. However, no action was taken by the Appellant Company to redress grievances of investors, inspite of repeated letters issued by SEBI. Further, considering the contention of the Appellant Company that it has been taken over by the employees and that the factory premises along with plant and machinery are in possession of the auction purchaser does not in any way absolve the Company from its obligation to redress the investor grievances. It was also observed that the Appellant Company while contending that various notices/letters/reminders issued by SEBI have not been received by the appellant, it had received the impugned order. If impugned order passed by SEBI and sent at the address of the Appellant Company is received by the Appellant Company, there is no reason as to why other notices/letters addressed by SEBI at the very same address should not be received by the Appellant Company. Therefore, SAT found was no reason to interfere with the order passed by of SEBI and accordingly, the appeal was dismissed.

Intellectual Property and Pharmaceuticals Bayer Corporation v. Union of India and Others

Bayer Corporation AG ("Bayer") had preferred the present appeal before the Bombay High Court ("**Bombay HC**") against the decision of the Intellectual Property Appellate Board ("**IPAB**") passed in March 2013, wherein IPAB upheld the compulsory licence issued to Natco Pharma Limited ("**Natco**") an Indian generic drug manufacturer, which sells a much cheaper version of German pharmaceutical company Bayer's cancer drug Nexavar in the market.

The Controller of Patents, in March 2012 granted Natco a compulsory license for the generic version of Bayer's anti cancer drug named Nexavar, allowing Natco to sell a generic version of Nexavar at INR 8,800 per month as against INR 280,000 per month of Bayer. The Controller of Patents, after considering inter

alia the price difference, allowed Natco to manufacture and sell the drug on the condition of payment of 6% (six per cent)royalty on sales to the Bayer, the Patentee of the drug.

The said compulsory license granted by the Controller of Patents was challenged by Bayer before the IPAB. Although, the IPAB dismissed the said appeal, the IPAB however raised the rate of royalty payable to 7% (seven per cent) of the net sales by Natco. The IPAB, in the said order, observed held that the Government had the right to issue compulsory license under the norms of the World Trade Organisation and that despite Bayer had obtained a patent for Nexavar in India in 2008, Bayer was unable to provide the drug on a large scale and at an affordable price.

The Bombay HC while deciding the Writ Petition held that the patented drug was not available to the public at a reasonably affordable price and Public interest is and should always be fundamental in deciding a lis between the parties while granting a compulsory licence for medicines and drugs. The rate of royalty fixed by the IPAB at 7% (seven per cent) of the net sales of Natco was upheld by the Bombay HC. The petition was dismissed by the Bombay HC stating that it has no reason to interfere with the orders of the Controller of Patents and the IPAB.

Sunny Sales v. Binod Khanna

In the present case, both Sunny Sales and Binod Khanna were engaged in the business of importing sewing and selling / trading them in India. Both imported these machines from certain Chinese manufactures, which also had some common manufacturers and sold them under the mark 'LIPU'. The primary issue before the Calcutta High Court ("**Calcutta HC**") was to decide the right to use the mark 'LIPU'. Sunny Sales sought an injunction against Binod Khanna for passing off the mark 'LIPU', claiming proprietary rights in the mark.

The Calcutta HC while deciding the case discussed the concept of reverse passing-off and refused to grant injunction in favour of Sunny Sales. The Calcutta HC found a prima facie case of reverse passing-off and observed that if the 'LIPU' mark belonged to anyone, it would be the Chinese exports and manufacturers and not the parties of the present case.

Further, the Calcutta HC observed that Sunny Sales was only an importer of the goods and not owner of trademark 'LIPU' and in order to claim proprietary rights over the mark, the importer had to show that the mark has become inextricably connected with him in the eyes of the public.

Further, the Calcutta HC held that Sunny Sales was unable to prove that the mark could be identified by the people in India with Sunny Sales and not with the Chinese manufacturers.

Tax Cases

Income Tax

Union of India and Ors vs Vodafone India Services Pvt. Ltd (Bombay High Court)

HC rules on applicability of transfer pricing provisions to issue of shares to associated enterprises Vodafone India Services Pvt. Ltd ("the assessee" or "the taxpayer"), is a wholly owned subsidiary of a Mauritian entity, Vodafone Tele Services (India) Holdings Ltd ("**VTSHL**"). The assessee has issued 289,224 equity shares to its VTSHL at premium of INR 8591 (approx US$142) per share. The said transaction was reported in Form 3CEB, although assessee claimed Transfer pricing provisions are not applicable on income arising on such transactions. During the course of assessment proceedings, Transfer pricing officer ("**TPO**") determined that the value of each shares should have been issued at its Net Asset Value ("**NAV**") of INR 53,775 (approx US$ 896) and the difference was deemed as loan to assessee for should have charged interest @ 13.5%. Accordingly, TPO computed the adjustment for the shares premium at INR 13.97 billion (approx US$232.88). Aggrieved by the order of the Dispute Resolution Panel ("**DRP**"), the assessee filed a writ petition before Bombay HC challenging the jurisdiction of the Revenue authorities to tax an International Transaction of issue of shares which had not generated any income as defined under the Income Tax Act.

Ruling in favour of assessee, HC held that share issue at premium did not give rise to 'income' to trigger TP provisions. HC made the following observations:

- Rejecting Revenue's contentions that no question of examining the issue of jurisdiction to apply Chapter X of the Act arose, as the assessee itself had filed Form 3CEB, HC ruled that ex abundanti cautela assessee had submitted Form 3CEB and informed the Revenue about the International Transaction of issue of share capital, while denying any income arising from the International Transaction. HC held that Section 92(1) of the Act very clearly brought out that income arising from an International Transaction was a condition precedent for application of Chapter X of the Act.

- The definition of income does not include within its scope capital receipts arising out of capital account transaction unless specified in section 2(24) of the Income Tax Act as income.

- There is no charge in the Income Tax Act to tax amounts received and/or arising on account of issue of shares by an Indian entity to non-resident entity in section 4,5,15,22,28,45 and 56 of the Income Tax Act.

- Further, dismissing Revenue's contention that w.e.f. April 1, 2013, the definition of income under section 2(24)(xvi) of the Act included within its scope the provisions of Section 56(2) (vii-b) of the Act, HC observed that the Parliament had consciously not brought to tax amounts received from a non-resident for issue of shares, as it would discourage capital inflow from abroad. In addition, HC also ruled that in order for income to be charged under the head income from other sources under section 56 of the Act, there must first be income arising from a transaction. HC held that as the issue of shares at a premium was on capital account and gave no rise to income, Revenue's contentions were misplaced.

- Chapter X of the Income Tax Act does not contain any charging provision but is a machinery provision to arrive at ALP of a transaction between Associate enterprises.

- Chapter X of the Income Tax Act does not change the character of the receipts but only permits re- quantification of income uninfluenced by the relationship between Associate enterprises.

CIT vs. Andhra Petrochemicals Ltd (Telangana and Andhra Pradesh High Court)

Lumpsum payment for technical know-how necessary for installation not 'royalty’

Andhra Petrochemicals Ltd (“the assessee” or “the taxpayer”) entered into collaboration-cum-service agreements with a foreign company to supply and install certain machinery and transfer relevant know-how for a consideration of USD 1 million. The Revenue alleged that the payments made to the foreign company as royalty income for transferring the patent and other technical know-how and that the same was liable to tax.

The taxpayer contended that the amounts paid to the foreign company were not royalty; (a) it was paid in lumpsum and not year after year for the use of patent or any facility; (b) the transfer of technical know-how or patent was for the limited purpose of installation and fixing the machinery and (c) the arrangement was covered by the India-UK DTAA.

On appeal, HC upheld the order of the Tribunal and concluded that in the present case the amount paid by the taxpayer to the foreign company was part of lumpsum consideration for supply of technical know-how, machinery installation and erection and the same could not be treated as royalty. Further, even if the amount was to be treated as royalty, it stood covered by the India-UK DTAA – convention dated April 16, 1981, whereunder it was not taxable as royalty and thereby the amount was not liable to taxation in India. P & O Nedlloyd Ltd. & Ors. vs ADIT (Calcutta High Court)

Tax treaty benefit available to a UK partnership firm

Two companies, one incorporated in the UK and another incorporated in the Netherlands, formed a partnership, P&O Nedlloyd ("the assessee" or "the taxpayer") vide deed of partnership with effect from January 1, 1997 having its office in the UK to carry on the business of shipping in international waters. The Revenue department issued a reassessment notice to the taxpayer. The taxpayer claimed that profit derived from the operation of ships in the International Traffic would be taxable only in the UK in accordance with Article 9 of India-UK DTAA.

A writ petition was filed by the taxpayer challenging the reassessment notice before the Calcutta HC. Before HC, the Revenue argued that assessee, being a partnership firm, was not "person" covered by India- UK DTAA. Hence, the treaty benefit should not be available to the taxpayer.

On the issue of partnership firm being a "person" under India-UK DTAA, HC noted that once it is found that said partnership is "firm" under section 2(23)(If the Income Tax Act , it becomes a person under section 2 (31)(iv) of the Income Tax Act, attracting the operation of Para 2 of Article 3 which states that a partnership which is treated as a taxable unit under the Income tax Act,1961 shall be treated as a person for the purposes of this Convention.

Accordingly, HC held that that even though a partnership firm is not a taxable unit under taxation laws of UK but it is a "person" assessable as "firm" under the Income Tax Act and hence is eligible for a treaty benefit under India-UK DTAA. Accordingly, the reassessment notice is quashed and set aside.

Service Tax

Tech Mahindra Limited vs. Commissioner of Central Excise

Tech Mahindra Limited ("the assessee") had entered into direct contract with their overseas customers for rendering the Information Technology Software Service wherein it was required to perform both offshore and onsite activities. However, the onsite activities were undertaken by the subsidiaries of the assessee located outside India for which assessee paid consideration on cost plus model.

The issue before HC was whether the onsite services provided at the customer's premises abroad prior to February 27, 2010 qualified to be export of service when the relevant rules provided that to qualify as export of service the service shall be provided from India and used outside India.

The HC held that the citus of onsite service and its provision were both abroad and the assessee being in India cannot be said to be involved and therefore, there was no export of taxable service.

Beico Industries vs. Commissioner of Central Excise and Service Tax

eico Industries Limited ("the assessee") received capital goods and input services while setting up its factory. It availed Central Value Added Tax ("**CENVAT**") credit for the same before obtaining the registration as manufacturers from Central Excise authorities.

The Central Excise authorities argued that assesses cannot avail CENVAT credit without obtaining registration and since no manufacturing activities had commenced. Stating that this was too technical a ground to deny credit, which is otherwise admissible, the Ahmedabad Tribunal held that the assessee could avail credit of Excise duty paid on capital goods received at the time of setting up of factory and input services used for erection, installation and commissioning of such capital goods. It opined that without setting up the factory, the assessee would be unable to manufacture the excisable goods unable to manufacture excisable goods. Further, it was not disputed that the assessee had paid appropriate Excise duty on clearance of goods from the factory after obtaining the requisite registration.

Therefore, it was observed that the assessee will not be denied benefit until and unless there was a specific provision in the law prescribing mandatory registration for availing such benefit. Given this, it was held that the assessee had rightly availed CENVAT credit on capital goods and input services received before obtaining the registration.

Value Added Tax ("VAT")

Anand Decors & Ors. vs. CTT, New Delhi

Anand Decors and Others ("the assessee") were manufacturing certain commodities and were registered dealers under the Delhi Value Added Tax Act, 2004 ("**DVAT Act**"). The assessee purchased motor vehicles/ cars, paid Sales tax/ VAT but did not avail input tax credit thereon under DVAT Act. The assesses were not dealers or traders in motor vehicles.

The VAT department alleged that the resale of the used motor vehicle to third parties should be added or included in the taxable turnover and thus exigible to VAT. The VAT Tribunal, upheld the contentions of VAT department and held that the sale of motor cars or other capital assets are not exempt under section 6(3) of the DVAT Act, and should be included in the taxable or business turnover of the assessee. Being aggrieved, the assessee preferred an appeal before Delhi HC.

HC mentioned the following four conditions stipulated in section 6(3) of the DVAT Act for availing exemption of VAT:

- There should be a sale of capital goods;
- The said capital goods should have been used by the dealer from the time of purchase till sale;
- The purpose for which the capital goods were used should be for making sale of taxable goods or taxable goods and non-taxable goods. The capital goods should not be exclusively used for making sale of non-taxable goods;
- The dealer should not have taken tax credit in respect of such capital goods under section 9 of DVAT Act.

Hence, HC allowed the appeal in favour of the assessee and held that sale of used cars is not subject to VAT as the four conditions stipulated in section 6(3) of the DVAT Act for availing exemption under DVAT are duly met in the present factual matrix.

State of Punjab & Ors vs. Nokia India Pvt Ltd (Supreme Court)

Nokia India Pvt. Ltd. ("the assessee") is registered under the Punjab VAT Act, 2005, engaged in the business of sale of cell phones and cell phone accessories. Assessee sold cell phones along with battery charger and other accessories in a single pack, and paid tax at 4%, as applicable to sale of cell phones under Entry 60 of Schedule B of the Act.

The issue was whether cell phone battery charger, sold as a composite package along with cell phone was eligible to concessional rate of tax applicable to "cell phones and parts thereof".

After much litigation on the issue, the matter was travelled to the Supreme Court. Before the apex court the assessee contended that cell phone, battery charger and other accessories like head phones were all sold as a single/ composite package, the battery charger not being sold independently or charged a separate price, was chargeable to tax @ 4%. The assessee argued that there was no ground to tax battery chargers sold free of cost with cell phones, at a higher rate of 12.5%. Charger is an integral part of the cell phone and such cell phone cannot be operated without a charger; when any person comes for cell phone, he purchases the cell phone and then automatically takes away the charger for which no separate money is charged.

On the other hand, VAT department argued that a battery charger is not a part of the cell phone but merely an accessory, the same being confirmed by the fact that assessee paid tax @ 12.5% on the battery chargers sold separately. According to VAT department, battery chargers are not covered under Entry 60(6)(g) in Schedule 'B' but under Schedule 'F' which covers all residuary items.

The apex court held that the mobile/cell phone charger is an accessory to cell phone and not a part of the cell phone, it cannot be held to be a composite part of the cell phone but is an independent product which

can be sold separately, without selling the cell phone. Hence, the Court held that mobile/cell phone charger is an accessory to cell phone taxable at general rate and not concessional rate.