Seth Dua & Associates
Solicitors & Advocates

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Editorial:

Demonetisation: The Big Reboot

The sudden and abrupt announcement by the government to make the currency notes of INR 500 and INR 1,000 invalid as legal tender from mid night of 8 November is part of the government's attempt to crack the whip on black money, fake currency and counter terrorism. The currency of the aforesaid denominations constitutes around 86% of the total value of the currency in circulation. The government has relied upon Section 26(2) of the Reserve Bank of India Act for its action, which empowers the government to declare that any series of bank notes, of any denomination, shall cease to be legal tender through a gazette notification.
The demonetization saga was unveiled after disappointing collections were made under the Income Disclosure Scheme (IDS), which provided people with the option to disclose unaccounted money. The impact of this questionable move has been felt across various sectors with differing intensities and which may linger for an inordinate period of time.
According to the statistics of Consumer Electronics and Appliances Manufacturers Association the sales of consumer durables including TVs, refrigerators, washing machines has fallen by 40 percent. Another reputed analyst has estimated a loss in sales in the FMCG sector around Rs.3,800 crore.
In the automotive sector, sales during the month of December have fallen a 16-year low with overall volumes shrinking by 19 percent. In a study conducted by Society of Indian Automobile Manufacturers it was derived that all segments of the industry have been hit including the sale of two-wheelers, one of the major transport medium in India, which have dropped considerably by 22 percent, cars by 8 percent and commercial vehicles by 5 percent.
A study conducted by the Knight Frank, a real estate consultancy firm shows that the real estate sector across India has swindled too, with housing sales across the top eight cities falling by 44 percent during October-December quarter of 2016, which is the lowest recorded in six years. The international agencies including the World Bank has also estimated a shrink in the GDP growth of India due to demonetization.
The Indian economy has always balanced itself upon four pillars with three of its pillars, i.e. private investment, domestic consumption and exports marginally losing its footing while the fourth pillar i.e. Public Investment, as always, lacking the much needed sheen.
Therefore to mitigate the effect of demonetization as well as to accelerate the economic growth, the BUDGET 2017 must act as a catalyst to put all growth drivers on full steam and throttle and should serve as an excellent opportunity for Finance Minister Arun Jaitley to reform, rejuvenate and restart the story of 1 trillion dollar Indian economy.

NEW LEGISLATIONS
Benami Transactions (Prohibition) Amendment Act, 2016

The Benami Transactions (Prohibition) Amendment Act, 2016 ("**Amendment Act**") came into force with effect from November 01, 2016. The Amendment Act seeks to amend the provisions of the Benami Transactions (Prohibition) Act, 1988 ("**Principal Act**") to curb the issues of black money and money laundering in the country.

The Amendment Act:

a. has renamed the Principal Act as Prohibition of Benami Property Transactions Act, 1988 ("**New Act**");
b. has tried to give a comprehensive definition of benami transactions clearly setting out the transactions to be excluded from the definition;
c. provides for establishment of adjudicating authorities; setting up of appellate tribunal and power of Central Government to designate one or more Courts of Session as Special Courts for speedy and smooth trial of offences punishable under the New Act; and
d. provides for attachment, adjudication, confiscation and vesting of benami property and has prescribed penalties and punishments in respect of the offences punishable under the New Act.

Rights of Persons with Disabilities Act, 2016

India was one of the first countries to sign and ratify the UN Convention on the Rights of Persons with Disabilities (" **Convention**").
Pursuant to its commitments under the said Convention, the government has come up with the Rights of Persons with Disabilities Act, 2016 ("**Disability Law**") which has replaced the two decade old Persons with Disability Act, 1995. The Disability Law received the assent of the President on December 27, 2016.
Highlights of the Disability Law:

a. The new legislation provides an exhaustive list of 21 disabilities as against 7 under the old law;
b. Responsibility has been cast upon the appropriate government to protect the persons with disability from cruelty, inhuman treatment, abuse, violence and exploitation and ensure their safety and provide access to justice and an environment for enjoyment of legal capacity on an equal basis;
c. Government funded educational institutions have been entrusted with the responsibility of providing inclusive education to the children with disabilities;
d. Measures have been taken to facilitate and support employment of persons with disabilities by providing them vocational training and self-employment opportunities and formulating policies that encourage non-discrimination in employment;
e. The appropriate government has been entrusted to take measures for security social security, health, rehabilitation and recreation facilities to the persons with disabilities;
f. Every child with benchmark disability between the age group of 6 to 18 years will have access to free education;
g. Reservation for persons with benchmark disabilities in higher educational institutions and vacancies in government establishments;
h. Appropriate government to conduct and promote awareness campaigns and sensitization programmes;
i. Constitution of a Central Advisory Board/State Advisory Boards on Disability to formulate a policy for the empowerment of persons with disabilities and the full enjoyment of rights; and
j. Constitution of a National Fund for persons with disabilities and a State Fund for persons with disabilities.

Repealing and Amendment Act, 2016

The present government has been instrumental in identifying and weeding out the redundant laws from the statute books and had even approved the constitution of a committee to carry out a review to identify obsolete laws.
The Repealing and Amendment Act, 2016 was introduced in pursuance of the government's objective to eliminate obsolete legislations for efficient governance. At the 2015 Economic Times Global Business Summit, Prime Minister Narendra Modi had stated that, "Our country suffers from an excess of old and unnecessary laws which obstruct people and businesses. We began the exercise of identifying unnecessary laws and repealing them. 1,877 Central laws have been identified for repeal."
In addition to repealing the obsolete laws, the Repealing and Amendment Act, 2016 has brought about minor changes in the Sexual Harassment of Women at the Work Place (Prevention, Prohibition and Redressal) Act, 2013, and the Governors (Emoluments, Allowances and Privileges) Amendment Act, 2014.

Indian Trusts (Amendment) Act, 2016

The Indian Trusts (Amendment) Act, 2016 ("**Trusts Amendment Act**") received the assent of the President on July 26, 2016. The Trusts Amendment Act has amended the Indian Trusts Act, 1882 ("**Old Act**") by substituting Section 20 of the Old Act, which lists out the securities wherein the trust money can be invested by the trustee, with the new Section 20 which provides that the trust money should be invested in the securities authorized by the instrument of trust or as notified by the Central Government.
The Trusts Amendment Act has further omitted the proviso to Section 20A of the Old Act which provides exceptions to the general rule that the trustee may invest in redeemable securities whose price exceeds its redemption value.

Taxation Laws (Second Amendment) Act, 2016

Taxation Laws (Second Amendment) Act, 2016 seeks to amend the Income Tax Act, 1961 and the Finance Act, 2016.

Amendments in the Income Tax Act, 1961:

Section 115BBE:

The rate of tax on the income u/s 68, 69A, 69B, 69C and 69D of the Income Tax Act, 1961 and disclosed by the assessee or determined by the assessing officer, as the case may be, has been increased from 30% to 60%.

Section 271AAB:

In sub section 1, the assessing officer may direct the assessee to pay penalties at specified rates, in case the search has been initiated under Section 132 on or after July 01, 2012, but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President.
Further, a new sub-section (1A) has been inserted which provides the penalty provisions in case the search has been initiated under Section 132 on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President.
In clause (2), the undisclosed income shall refer to the undisclosed income referred to in sub-section (1) or the new sub section (1A).

Section 271AAC:

Section 271AAC, which provides for imposition of penalties on determination of income referred to in Section 68, 69A, 69B, 69C and 69D of the Income Tax Act, 1961, has been inserted after Section 271AAB and the said Section will have effect from April 01, 2017.

Amendments in the Finance Act, 2016:

Section 2:

In third proviso to sub section (9), the words and figures 115BBE shall be omitted; and After the sixth proviso to sub section (9), a seventh proviso has been inserted for computation of surcharge on the advance tax payable by the assessee.

Insertion of Chapter IX-A

Further, the Taxation Laws (Second Amendment) Act, 2016 has introduced a new chapter i.e. Chapter IXA - Pradhan Mantri Garib Kalyan Yojana, 2016 ("Scheme").
The Scheme provides an opportunity to persons having undisclosed income in the form of cash or deposit in an account maintained with a specified entity (which includes banks, post office etc.) to declare such income and pay tax at the rate of 30% of the undisclosed income, surcharge at the rate of 33% on the amount of tax and a penalty at the rate of 10% of the undisclosed income.
The amount of undisclosed income declared under the Scheme will not be included in the total income of the declarant for any assessment year.

DEFENCE & AVIATION SECTOR

Strategic disinvestment of 26% equity shares in Bharat Earth Movers Limited

The Government of India, Ministry of Defence, in a press release has communicated that an in-principal approval of the Cabinet Committee on Economic Affairs ("**CCEA**"), for strategic disinvestment of 26% equity shares in Bharat Earth Movers Limited ("**BEML**"), an Indian Public Sector Undertaking.
Established in May 1964, BEML operates on three major business verticals for associated equipment manufacturing — mining and construction, rail and metro and defence and aerospace.
BEML, under the administrative control of Ministry of Defence, provides equipment support to Indian Army and other defence forces by manufacturing variants of Tatra vehicle for all terrain operation.
The government currently holds 54.03% stake in BEML, it is proposed that the said shareholding would be sold to the strategic buyers to be identified by the government of India by following due procedure.
An evaluation committee will be appointed which will also have representation from the administrative ministry will arrive at a valuation, invite bids and recommend a reserve price.
The core group of secretaries on disinvestment, which is headed by cabinet secretary, will be meeting to finalise the terms and conditions of the sale, including price. Thereafter, the terms and conditions of will be sent to CCEA for final approval.

Cabinet Committee on Economic Affairs approves disinvestment in Pawan Hans

The Cabinet Committee on Economic Affairs (CCEA) at its meeting held on October 27, 2016 gave in-principle approval for strategic disinvestment of central public sector enterprises (CPSES) including Pawan Hans Helicopters Ltd.

CCEA has approved the recommendation for selling the entire government stake to a strategic buyer identified through a two-stage auction process. The decision was taken based on the recommendations of the core group of secretaries on disinvestment.
Pawan Hans was incorporated in the year 1985 with the primary objective of providing helicopter support services to the oil sector for its off-shore exploration operations, services in remote and hilly areas and charter services for promotion of tourism. At present, the Government owns 51% stake and Oil and Natural Gas Corporation owns the rest.

Transfer of pending Defence Industrial License applications from the Department of Industrial Policy and Promotion, Ministry of Corporate Affairs to the Ministry of Home Affairs

As per the office memorandum dated December 6, 2016, issued by the Department of Industrial Policy and Promotion, Ministry of Corporate Affairs ("**DIPP**"), it has transferred 90 pending industrial license applications for grant of license in the defence sector to the Ministry of Home Affairs (Arms Division) ("**MHA**").
As per the office memorandum, a licensing committee has been constituted by MHA to review and process the applications for manufacture of arms and ammunitions for the new manufacturers and for all matters related to existing manufacturers including the application of capacity revision by general or special order under the Arms Rules, 2016.

Change in Competent Authority for disposal of requests by vendors for allowing period of discharge

As per a recent office memorandum issued by the Department of Defence Production, Ministry of Defence, the Secretary, Defence production has been appointed as the competent authority for disposal of requests by vendors for allowing period of discharge as per Para 5.2 of Revised Offset Guidelines 2012, Appendix – D to Defence procurement Procedure, 2013 and 2016. The said office memorandum further clarifies that all disposal shall be based on the recommendations of Collegiate Committee Mechanism on Defence Offsets.

CORPORATE LAWS

CORPORATE LEGAL UPDATES

Notification of Companies (Incorporation) Fifth Amendment Rules, 2016
The Ministry of Corporate Affairs ("MCA") has notified the Companies (Incorporation) Fifth Amendment Rules, 2016 which come into force with effect from January 01, 2017. According to these Rules, now a company can be incorporated only using consolidated SPICe (Simplified Proforma for Incorporating a Company electronically) forms viz. SPICe (INC-32), soft copy of the Memorandum of Association ("e-MoA") and soft copy of Articles of Association ("e-AoA"). The e-MoA and e-AoA are required to be signed by the subscribers and witnesses by affixing their respective digital signatures.
The filing fee for form SPICe has also been reduced from INR 2,000 to INR 500 and number of resubmissions is also reduced from three to two.

<u>Clarification on Conversion of a Company Limited by Guarantee into a Company Limited by Shares</u>

MCA has specified that a company limited by guarantee [other than a company incorporated under Section 25 of the Companies Act, 1956 or Section 8 of the Companies Act, 2013 ("CA, 2013")] may convert itself into a company limited by shares subject to the following conditions:

1. Share capital should be equivalent to the guarantee amount.
2. A special resolution is passed by its members authorising such a conversion omitting the guarantee clause in its MoA and altering the AoA to provide for the articles as are applicable for a company limited by shares.
3. Filing of special resolution in form MGT- 14 within thirty days of passing of resolution in the Board Meeting.
4. Filing of form INC-27 within thirty days from date of the passing of the special resolution enclosing the altered MoA and AoA and a list of members with the number of shares held aggregating to a minimum paid up capital which is equivalent to the amount of guarantee.

Notification on Transfer of Pending Proceedings to National Company Law Tribunal

MCA has notified that with effect from December 15, 2016, following matters shall get transferred to National Company Law Tribunal ("NCLT"):

(i) Pending proceedings relating to cases other than Winding up:

All proceedings relating to arbitration, compromise, arrangements and reconstruction, other than winding up have been transferred to the Benches of the NCLT having territorial jurisdiction with effect from December 15, 2016. All such proceedings shall be instituted and conducted under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(ii) Pending proceeding relating to Voluntary Winding up:

All applications and petitions of voluntary winding up of companies pending before a High Court as on December 15, 2016 shall continue with the High Court having Jurisdiction.

(iii) Pending proceedings of Winding up on the ground of inability to pay debts:

All the winding up petitions on the ground of inability to pay its debts pending before a High Court, in which the petition has not been served on the respondent have been transferred to the Bench of the NCLT having territorial jurisdiction. All such petitioner shall be deemed to have been filed under The Insolvency and Bankruptcy Code, 2016.

(iv) Pending proceedings of Winding up matters on the grounds other than inability to pay debts:

All winding up petitions filed on the grounds other than inability to pay debts which are pending before a High Court and where the petition has not been served on the respondent have been transferred to the Bench of the NCLT having territorial jurisdiction. All such petitions shall be deemed to have been filed under the provisions of the CA, 2013

Notification of the NCLT (Procedure for reduction of share capital of Company) Rules, 2016

MCA has notified the NCLT (Procedure for reduction of share capital of Company) Rules, 2016 which come into force with effect from the December 15, 2016.

Pursuant to the above said Rules, now, a petition relating to reduction of share capital of a Company under Section 66 of the CA, 2013 shall be filed before NCLT and all the proceeding shall be instituted and conducted under the NCLT (Procedure for reduction of share capital of Company) Rules, 2016.

Notification of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016

MCA has notified the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 which come into effect from December 26, 2016.
Pursuant to the provisions of Section 248 to 252 of the CA, 2013 and above said Rules, following is the renewed procedure for removal of name of the Company from Registrar of Companies ("RoC") records:

(i) Removal of name of company RoC suo-motu basis

The RoC may remove the name of any company where RoC has reasonable cause to believe that—

a. A company has failed to commence its operations within one year from the date of incorporation.
b. The subscribers have not paid the subscription money within a period of one hundred and eighty days from the date of incorporation and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation;
c. A company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company.

Provided the RoC shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(ii) Application by the Company for removal of its name from RoC records

A company may pass a special resolution after extinguishing all its liabilities and file an application in the prescribed form i.e. (Form STK-2) to RoC for removal of its name. The fee for filing of Form STK-2 is INR 5000.
The following documents are required to be filed along with Form STK-2:

a. Indemnity bonds by every director
b. Affidavit by every director
c. Statement of account duly certified by Chartered Accountant not older than 30 days before the date of submission of form STK-2.
d. Special Resolution certified by every director.
e. Statement regarding pending litigation if any, involving the company.
f. NoC from the appropriate regulatory authority, if applicable.

The RoC after being satisfied with the Form STK-2 and documents shall intimate the regulatory authorities having jurisdiction over the company inviting their objections for proposed action of striking off name of company, if no objection received within a period of 30 days, the RoC shall proceed with the striking off or removal of name of company from the RoC.

- ***SECURITIES LAWS***

FEMA, SEBI AND OTHER LAWS RELATED TO SECURITIES

Notification of Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2016

Securities and Exchange Board of India ("SEBI") has, vide its notification dated November 30, 2016, amended the SEBI (Real Estate Investment Trusts) Regulations, 2014 ("Regulations"). Under the amended regulations, definition of real estate or property has been broadened by introducing within its ambit rent generating or income generating hotels, hospitals, convention centres, and additionally common infrastructure, industrial parks and Special Economic Zones ("SEZ").

The Amendment further has inserted a new sub – regulation to sub- regulation(2) of the Regulations whereby the slabs for minimum initial offer size and public floats proposing to be raised by the Real Estate Investment Trust ("REIT") are introduced and are produced below:

#	**Post issue capital**	**Offer size (minimum)**
1.	Less than INR 1,600 crores	25% OR INR 250 crores, whichever is higher
2.	Equal to or more than INR 1,600 crores but less than INR 4,000 crores	INR 400 crores
3.	Equal to or more than 4,000 crores	10%

However, the public float in all cases shall be increased to a minimum of 25% within a period of three years from the date of listing. Additionally, any units offered to sponsor or the manager or their related parties or their associates shall be excluded from the calculation of the offer size.

Further, REITs are now permitted to invest via a two-level structure through a holding company, subject to sufficient shareholding in the holding company and the underlying Special Purpose Vehicle ("SPV"). This substantially reduces costs of consolidation, and added capitalisation at the holding company level through the primary markets. Thus an

analogy can be drawn between REITs and Companies under the Companies Act, 2013 ("CA, 13"), which similarly permits investments through two layers.

Notification of SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2016

SEBI has, vide its notification dated November 30, 2016 amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. The amendment mandates that reservation on competitive basis shall be in accordance with the conditions laid down in the Regulations provided that in the event of under – subscription in the employee reservation portion, the unsubscribed portion shall be allotted on a proportionate basis, for a value in excess of two lakhs rupees, subject to the total allotment to an employee not exceeding five lakhs rupees.

Amendment in Foreign Exchange Management (Transfer or Issue of security by a person resident outside India) Regulations, 2000

RBI has, vide notification dated October 20, 2016, amended that any Foreign Venture Capital Investor ("FVCI") which has obtained registration under the Securities and Exchange Board of India (Foreign Venture Capital Investor) Regulations, 2000 ("FVCI Regulations") will not require any approval from RBI and can invest in Equity or equity linked instrument or debt instrument issued by an Indian company whose shares are not listed on a recognised stock exchange at the time of issue of the said securities / instruments and engaged in any of the sectors like Biotechnology, IT related to hardware and software development, Nanotechnology, Seed research and development, Research and development of new chemical entities in pharmaceutical sector, Dairy industry, Poultry industry, Production of bio-fuels, Hotel-cum-convention centres with seating capacity of more than three thousand, Infrastructure sector. Further it can also invest in equity or equity linked instrument or debt instrument issued by an Indian 'startup' irrespective of the sector in which the startup is engaged. Prior to this amendment, RBI approval was mandatorily required to be obtained by FVCI thus unnecessarily deferring and complicating the procedure. Such simplification has done away with the apprehension of the FVCI.

Circular of streamlining the process for Acquisition of shares pursuant to Tender – Offers made for Takeovers, Buy Back and Delisting of Securities

SEBI vide its circular dated December 9, 2016 has ruled that the transfer of shares of shareholders under the tender offers would be made directly to the account maintained by the clearing corporation. The clearing corporation will utilise the securities towards the settlement obligations under the offer and will directly credit the unaccepted tendered shares under such offer to shareholder's bank and demat accounts respectively. Such welcome measure shall reduce the systematic risk for investors and ease the process of implementation. This amended procedure shall be applicable to all the offers for which Public Announcement is made on or after January 2, 2017.

Notification on reviewing the sectoral caps and simplification of Foreign Direct Investment ("FDI") Policy

RBI vide its notification dated October 20, 2016 has done away with the Government approval and compliance with the sectoral conditions for the portfolio investments up to aggregate foreign investment level of 49% or sectoral cap, whichever is lower, provided such investment does not result in change in ownership leading to control of Indian entities by non – resident entities.

Additionally, foreign investment by way of swap of shares has been permitted provided the resident company in which the investment is made is engaged in an automatic route sector subject to the condition that irrespective of the amount, valuation of the shares involved in the swap arrangement will have to be made by a Merchant Banker registered with the SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country.

Further, foreign investment in Limited Liability Partnership ("LLP") is permitted under the automatic route if the LLP is engaged in sector where 100% FDI is allowed and there are no attendant FDI linked performance conditionality to the sector.

RBI Simplifies Norms related to ECB

Prior to simplification, under the extant ECB guidelines, designated AD Category-I banks were authorized to approve requests from borrowers for changes in repayment schedule during the tenure of the ECB, i.e., prior to maturity, provided average maturity and all-in-cost are in conformity with applicable ceilings/ norms. To simplify the procedure relating to ECB, under the liberalized scheme, the powers have been delegated to designated AD Category-I banks to approve requests from borrowers for extension of matured but unpaid ECB, subject to the following conditions:

a. No additional cost is incurred;
b. Lender's consent is available; and
c. Reporting requirements are fulfilled.

Further, powers are also delegated to designated AD Category – I bank to approve cases of conversion of matured but unpaid ECB into equity subject to same conditions as set out above.

It should also be noted that if the ECB borrower concerned has availed credit facilities from the Indian banking system including overseas branches/subsidiaries, any extension of tenure / conversion of unpaid ECBs into equity (whether matured or not) shall be subject to applicable prudential guidelines issued by the Department of Banking Regulation of RBI, including guidelines on restructuring. Further, such conversion into equity shall also be subject to consent of other lenders, if any, to the same borrower or at least information regarding conversions shall be exchanged with other lenders of the borrower.

Government of India ("GoI") allowed 100% FDI in 'Other Financial Services'

Pursuant to Press Note dated October 25, 2016, GoI has decided to allow foreign investment up to 100% under the automatic route in 'Other Financial Services'. Other Financial Services will include activities which are regulated by any financial sector regulator viz. RBI, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Pension Fund Regulatory and Development Authority, National Housing Bank or any other financial sector regulator as may be notified by the GoI of India in this regard. Such foreign investment shall be subject to conditionalities, including minimum capitalization norms, as specified by the concerned Regulator/ Government Agency.

Salient features of the revised regulatory framework are as under:

a. In financial services, activities which are not regulated or partly regulated by any financial sector regulator or where there is lack of clarity regarding regulatory oversight, foreign investment will be allowed up to 100% under the Government approval route.
b. Foreign investment in an activity which is specifically regulated by a specific act, will be restricted to foreign investment levels/limits, if any, specified in that particular act.
c. Downstream investment by any entity engaged in 'Other Financial Services" will be subject to extant sectoral regulations and provisions of Principal Regulations.

d. Prior to the aforestated press note, 100% FDI was allowed under automatic route for only 18 specified Non Banking Financial Companies (NBFC) activities including merchant banking, under writing, portfolio management services, financial consultancy and stock broking and that too subject to adherence to certain conditions including fulfillment of minimum capitalization norms.

Indians Outside Can Buy Health, General Insurance in Forex

Pursuant to RBI's notification dated November 17, 2016, the following amendments in Foreign Exchange Management (insurance) Regulations, 2000 have been notified:

(i) All general/health insurance policies permitted by Insurance Regulatory and Development Authority of India ("IRDAI") are allowed to be placed in foreign exchange. No RBI permission is required for issuance/renewal of any insurance policy;
(ii) Payment of insurance premium in foreign currency by Indian Resident is no longer required irrespective of currency for settlement of claim;
(iii) Resident outside India may obtain general/health insurance policy on payment of insurance premium in foreign currency irrespective of currency for settlement of claim. However, if the premium is paid in INR, settlement of claim will be in INR;
(iv) Resident going abroad for employment purpose may also take health insurance policy on payment of premium in INR; and

Claims settlement under cashless international health insurance policies to hospitals providing treatment or through Third Party Administrator ("TPA") arrangements allowed.

Implementation of The Insolvency and Bankruptcy Code, 2016.

The Insolvency and Bankruptcy Code, 2016 ("Code") was passed by the Parliament on May 11, 2016 and was notified in the official gazette on May 28, 2016.
The objectives of the Code are as follows:

a) to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons;
b) to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues; and
c) to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

The Code extends to the whole of India; however, Part III of this Code does not apply to the state of Jammu and Kashmir. It applies only to the extent of insolvency, liquidation or bankruptcy.
Persons covered under the Code are as follows:

- Companies incorporated under the CA, 2013 or under any previous company law;
- Companies governed by any special act, to the extent the provisions are consistent with the Act;
- Limited Liability Partnerships ("LLPs");
- Any other body corporate incorporated under any act for the time being in force, as the Central Government may specify;
- Partnership Firms; and
- Individuals;

The Code has constituted an Insolvency and Bankruptcy Board of India ("IBBI") that seeks to consolidate and amend laws relating to reorganization as well as insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. The Board for Industrial and Financial Reconstruction ("BIFR") has become redundant; therefore, corporate insolvencies shall be dealt by the NCLT and proprietorship and partnership insolvencies by the Debt Recovery Tribunal ("DRT"). It envisages one law for bankruptcy and has repealed two laws and amended eleven in relation to the same. The Code covers companies, partnerships, limited liability partnerships and individuals. However, more can be included.

Under the Code, various institutions have been established for the smooth implementation of the Code:

- The IBBI as mentioned above to oversee the entire process;
- Insolvency Resolution Professionals to guide the insolvency process and agencies to regulate these professionals. The Model Bye-Laws and Governing Body of Insolvency Professional Agencies and in relation to the Insolvency Professional Agencies have been notified by the IBBI;
- Information utilities which will collect, collate and disseminate financial information related to a debtor; and
- Adjudicating Authorities (AA) as discussed below.

For adjudication, there are two authorities specified under the Code to exercise judicial control over the insolvency and liquidation process; firstly, for companies, LLPs and other limited entities the authority is the NCLT; secondly, for individuals and partnerships, the authority is the DRT and appeals lie before the Debt Recovery Appellate Tribunal. Their role is limited to ensuring due process rather than adjudicating on the merits of the insolvency resolution. The Supreme Court shall have appellate jurisdiction over NCLT and DRT.

BANKING AND FINANCE

Investment by a Foreign Venture Capital Investor ("FVCI") registered under SEBI (FVCI) Regulations, 2000

In order to further liberalise and rationalise the investment regime for FVCIs and to give a fillip to foreign investment in the Startups, the current regulatory provisions have been reviewed, in consultation with the Government of India and accordingly amendments have been carried out in Schedule 6 of Foreign Exchange Management (Transfer or Issue of security by a person resident outside India) Regulations, 2000 ("Principal Regulations"), through Foreign Exchange Management

(Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2016. Under the revised regulatory framework, FVCIs can now invest in equity or equity linked instrument or debt instrument issued by an Indian 'Startup' irrespective of the sector in which the Startup is engaged without any approval of RBI.
The RBI, vide A.P. (DIR Series) Circular No. 7 dated October 20, 2016, has issued directions to All Category - I Authorised Dealer Banks with respect to Investment by a FVCI registered under SEBI (FVCI) Regulations, 2000. The highlights of this revised regulatory framework for investment by FVCIs are as under:

1. A SEBI registered FVCI will not require any approval from the RBI and can invest in:

i. Equity or equity linked instrument or debt instrument issued by an Indian company whose shares are not listed on a recognised stock exchange at the time of issue of the said securities/instruments and engaged in any of the sectors specified in annexure to Schedule 6 of the Principal Regulations.
ii. Equity or equity linked instrument or debt instrument issued by an Indian 'startup' irrespective of the sector in which the startup is engaged. The definition of start up has been added in the Principal Regulations.
iii. Units of a Venture Capital Fund (VCF) or of a Category I Alternative Investment Fund (Cat-I AIF) (registered under the SEBI (AIF) Regulations, 2012) or units of a Scheme or of a fund set up by a VCF or by a Cat-I AIF.

2. Downstream investments by a Venture Capital Fund (VCF) or a Cat-I AIF, which has received investment from FVCI, shall have to comply with the provisions for downstream investment as laid down in Schedule 11 of the Principal Regulations.

3. A FVCI may open a foreign currency account and/or a rupee account with a designated branch of an Authorised Dealer for the purpose of making transactions only and exclusively under Schedule 6 of the Principal Regulations.

4. The consideration for all investment by a FVCI shall be paid out of inward remittance from abroad through normal banking channels or out of sale / maturity proceeds of or income generated from investment already made as per paragraph 1 above.

5. There will be no restriction on transfer of any security/instrument held by the FVCI to any person resident in or outside India.

6. An entity receiving investment directly from a registered FVCI will be required to report the investment, mutatis mutandis, in form FCGPR.

Security and Risk Mitigation measure - Technical Audit of Prepaid Payment Instrument issuers
Prepaid payment instruments ("PPIs") are those which facilitate purchase of goods and services against the value stored on such instruments. The value stored on PPIs represents the value paid for by the holder, by cash, by debit to a bank account, or by credit card.
PPIs can be issued as smart cards, magnetic stripe cards, internet accounts, internet wallets, mobile accounts, mobile wallets, paper vouchers and any such instruments which can be used to access the prepaid amount.
The RBI, vide its circular RBI/2016-17/178,DPSS.CO.OSD.No.1485/06.08.005/2016-17, Dated - December 09, 2016 ("Circular") has asked banks and companies issuing PPIs to conduct special

security audit saying that any cyber attack could prove a dampener at a time when the Government is urging people to go in for digital transactions in a big way. All authorised entities/banks issuing PPIs in the country are advised to:

1. Carry out a special audit of their systems by empaneled auditors of the Indian Computer Emergency Response Team (CERT-In) on a priority basis and immediately comply with the audit report recommendations.
2. Take appropriate measures to mitigate phishing attacks considering that, given the digital push, a large number of users are likely to be first time users of the digital channels.
3. Implement additional safety measures depending on risk perception or threats as they emerge.

Framework for imposing monetary penalty on Authorised Payment Systems Operators / banks under Payment and Settlement Systems Act, 2007 ("PSS Act")

The PSS Act provides for the regulation and supervision of payment systems in India and designates the RBI as the authority for that purpose and all related matters. Any person desirous of commencing or operating a payment system needs to apply for authorization under the PSS Act. Section 30 of the PSS Act confers powers upon RBI to impose penalties/fines for certain contraventions/offences more particularly described in section 26 (2) and 26 (6) of the PSS Act. Section 31 of the PSS Act empowers RBI to compound contraventions/ offences committed by the entity. In view of this, the RBI vide its circular No. RBI/2016-17/97, DPSS.CO.OD.No.1082/06.08.005/2016-17 dated - October 20, 2016 ("said Circular") has put in place a framework for imposition of penalty/fine under section 30 of the PSS Act and compounding of contraventions/offences under section 31 of the PSS Act. The brief details of the framework as laid down in the said Circular are as under:

Nature of offences	This framework for imposition of penalty/fine/compounding, inter alia, includes the following types of contraventions/offences: i. Contravention of provisions of the PSS Act. ii. Non-compliance of directions or order made there under. iii. Violation of terms and conditions of authorisation.
Compounding	'Compounding' is a voluntary process. The contravener may apply for the compounding of an offence by way of submitting an application in the format prescribed in the said Circular.
Operational Procedure	RBI will follow the following procedure before imposing the penalty/fine or compounding of the offence on the payment system operators / banks (entity/ies); a. Issue of letter to the entity calling for explanation citing the offence. b. Based on the explanation and information/evidence submitted by the entity, the RBI will examine whether the contravention/offence can be considered for compounding or levy of penalty/fine. c. Issue of show cause notice for imposing penalty/fine/compounding, in case

	theRBI is not satisfied by the explanation. d. Personal hearing to the entity to be given, if requested in writing, before taking any penal action. e. Imposition of penalty/fine or compounding of contravention/offences.
Amount of Penalty/fine	The amount of penalty/fine would be based on the nature of contravention/offences with a minimum penalty of INR 5,00,000. Where the contravention/violation is not quantifiable, a penalty of minimum INR 5,00,000 with a maximum of INR 10 million would be levied.
Method of payment of penalty/fine	The RBI will directly debit their current account, while those not having the facility with the RBI will have to deposit the amount into a designated account of the RBI within one week of the issue of written order.
Disclosure	The entities, on whom penalty/fine is levied, are required to disclose the penalties/fines in their Annual Financial Statements for the year in which the penalty is levied.

Operating Guidelines for Payments Banks

The RBI had, on November 27, 2014, issued guidelines for setting up of payment banks. According to these guidelines, the primary objective of setting up of payments banks is to further financial inclusion by providing (i) small savings accounts and (ii) payments / remittance services to migrant labour workforce, low income households, small businesses, other unorganised sector entities and other users, by enabling high volume-low value transactions in deposits and payments / remittance services in a secured technology-driven environment.
The RBI examined the need for separate operating guidelines for payments banks in view of the differentiated nature of business and financial inclusion focus of these banks and issued operating guidelines for payment banks vide its circular No. RBI/2016-17/80, DBR.NBD.No.25/16.13.218/2016-17 dated October 6, 2016 ('Circular'). The summarised operating guidelines as given in the said Circular are mentioned herein below:

Prudential Regulation	The prudential regulatory framework for payments banks (PBs) will largely be drawn from the Basel standards.
Large exposures limits	Large exposure limits shall not be more than five per cent of the total outside liabilities of the PB.
Inter-bank borrowings	PBs will be permitted to participate in the call money and Collateralised Borrowing and Lending Obligation ("CBLO") market as both borrowers and lenders. These borrowings would, however, be subject to the limit on call money.

Investment classification and valuation norms	PBs shall maintain a minimum investment to the extent of not less than 75 per cent of demand deposit balances and maintain balances in demand and time deposits with other scheduled commercial banks, which shall not be more than 25 per cent of its demand deposit balances ("DDB"). Total deposits shall not exceed 100% of the DDB. PBs will not be allowed to classify any investment, other than those made out of their own funds, as Held-to-maturity category and will not be allowed to participate in 'when issued' and 'short sale' transactions. PBs will be permitted to invest in bank certificate of deposits within the limit applicable to bank deposits.
Restrictions on loans and advances	PBs will not be permitted to lend to any person including their directors but they can lend to their employees out of banks own funds.
para-banking activities	PBs will not be permitted to undertake any para-banking activity except those allowed as per the Licensing Guidelines.
Product approval	PBs should submit application with a list of financial products they intend to offer with a clear description. If any product is introduced later, it should be disclosed to the RBI and the RBI can put certain restrictions on it.
Risk management	Credit risk is not applicable and the provisions regarding market risk, Internal controls, audit and compliance and strategic and reputational risk management shall be as applicable to scheduled commercial banks.
Cash Reserve Ratio, Statutory Liquidity Ratio, disclosures and statutory/regulatory reports	The cash reserve ratio and statutory liquidity ratio requirements and the various disclosures and statutory/regulatory reports will be as applicable to commercial banks.
Ownership and control regulations	The existing provisions in this regard as applicable to private sector banks, as covered in the Master Directions on Issue and Pricing of shares by Private Sector Banks DBR.PSBD.No.95/16.13.100/2015-16 dated April 21, 2016 and Master Directions on Ownership in Private Sector Banks DBR.PSBD.No. 97/16.13.100/2015-16 dated May 12,

	2016, are applicable to PBs as well, except what is provided in the existing regulation contained in the Licensing Guidelines.
Corporate governance	The existing provisions as applicable to banking companies shall be applicable to PBs as well and constitution and functioning of committees of the board, management level committees, remuneration policies as applicable to private sector banks.
Cash Reserve Ratio, Statutory Liquidity Ratio, disclosures and statutory/regulatory reports	The cash reserve ratio and statutory liquidity ratio requirements and the various disclosures and statutory/ regulatory reports will be as applicable to commercial banks.
Banking Operations	The annual plans for opening of physical access points by the PBs for the initial five years would need prior approval of RBI. It may liberalize the requirement of prior approval. An employee of the PB should be available for sufficient duration, at a fixed location known to the customers at the district level, to attend to customer grievances and support the agent supervision
Regulation of Business Correspondents ("BCs")	PBs can engage all permitted entities including the companies owned by their business partners and own group companies on an arm's length basis as BCs. These companies can have their own branches managed by their employees operating as "access points" or may engage other entities/persons to manage the "access points" which could be managed by the latter's staff. Inter-operability of the BCs will be allowed except for opening of savings and current accounts. BCs cannot undertake any offline transactions and will be exempted from the requirement of having a base branch for a certain number.
Bank charges, lockers, nominations, facilities to disabled persons, etc.	Bank charges, lockers, nominations, facilities to disabled persons, as applicable on scheduled commercial banks.
Bank deposits	PBs can accept only savings and current deposits. The aggregate limit per customer shall not exceed INR 100,000 as provided in the Licensing Guidelines. All RBI and Banking Regulation Act, 1949

	provisions and RBI directions relating to minimum balance, inoperative accounts, unclaimed deposits including transfer of such deposits to the Depositors Education and Awareness Fund maintained by RBI on a regular basis, nominations, cheques/drafts, etc., will be applicable to the PBs. A PB may provide account statements on paper but cannot issue passbook.
KYC requirements	PBs may decide not to take the wet signature while opening accounts and instead rely upon the electronic authentication/ confirmation of the terms and conditions of the banking relationship. PBs should ensure that every customer, including customers of mobile companies on-boarded comply with the KYC regulations, which could include simplified account opening procedures.
Foreign exchange business	PBs are required to comply with all the conditions attached with the AD Cat II licence issued to them and also implement the provisions of Foreign Contribution (Regulation) Act, 2010 as applicable to commercial banks.
Currency distribution	PBs may, at their option, exchange mutilated and defective notes at their branches, subject to compliance with RBI norms. All customer grievance issues related to a particular access point should be addressed both at the access point and at the district level location and PBs will be covered by the Banking Ombudsman. Mechanism of grievance redressal should be clearly communicated to RBI along with the application for licence.
Outsourcing of operations, internet banking and mobile banking	The extant provisions in this regard as applicable to scheduled commercial banks, shall be applicable to PBs as well. Further, loading of PPI balances through other bank credit cards will be permitted.
Implementation of Ind AS	Implementation of Ind AS would be applicable to PBs once they become scheduled banks.

- ***STARTUP INDIA INITIATIVE***

RBI issues ECB Guidelines for Start-Ups

The Reserve Bank of India (RBI) vide Notification dated October 27, 2016 has issued guidelines for startups to access debt or debt instruments under the External Commercial Borrowing (ECB) framework. Start-ups can borrow up to $3 million or equivalent per financial year — either in rupees, or any convertible foreign currency or a combination of both — for a minimum average maturity period of three years, under the ECB framework.
'Startup' has been defined as a private limited company (as defined in the Companies Act, 2013), or a registered partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act,2002), which fulfills the following conditions:

a. incorporated or registered in India not prior to five years;
b. its turnover for any of the financial years has not exceeded INR 250 million; and
c. it is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property;

RBI said the lender/investor in the ECB should be a resident of a country which is either a member of the Financial Action Task Force or a member of a FATF-Style Regional Body, and should not be from a country identified in the public statement of the FATF. Overseas branches/subsidiaries of Indian banks and overseas wholly owned subsidiary/joint venture of an Indian company will, however, not be considered as recognized lenders under this framework. According to the RBI, the borrowing can be in the form of loans, non-convertible, optionally convertible or partially convertible preference shares. Conversion into equity is freely permitted, subject to regulations applicable for foreign investment in start-ups. The ECB proposed to be availed by the start up may carry an interest rate, as mutually agreed between the borrower and the lender.

COMPETITION LAW

Competition Commission of India ("CCI") directs the DG to cause an investigation for the allegation of abuse of dominance against GAIL (India) Limited

An information was filed by one Rico Auto Industries Ltd., Omax Autos Ltd., and Rico Castings Ltd. ("Informants"), primarily engaged in the business of auto components manufacturing. It was alleged that GAIL (India) Ltd. ("GAIL"), had imposed unfair and discriminatory conditions under the Gas Sale Agreement ("GSA"), in contravention of the provisions of Section 4 of the Competition Act, 2002 (Abuse of Dominant Position).
The CCI inter alia observed that the mysterious silence by the opposite party in not replying to the Informants for reduced contracted quantity, not replying to the proposal of the Informants for amicable settlement of the alleged dispute in spite of there being a provision of the same within the GSA and not divulging the reasons for suspension of gas, together appear to be pima facie unfair. The CCI also noted that suspension of gas supplies without prior notice, denial of dispute resolution when an informant contests the legality of take or pay liability, also suggest pima facie that GAIL has abused its dominant position in the relevant market.
Consequently, the CCI vide its order dated October 03, 2016 directed the Director General ("DG") under the provisions of Section 26(1) of the Act, to cause investigation into the alleged contravention.

CCI directs DG to investigate into unfair price discrimination by Association of Man-made Fibre Industry of India

An information was filed by a non-profit organisation ("Informant") against Association of Man-made Fibre Industry of India and several others inter alia alleging for the abuse of dominance with regard to

practice of unfair price discrimination and following non-transparent practice by refusing to disclose discount policies to the customers, thereby contravening the provisions of Section 4 of the Act (Abuse of Dominant Position).
The CCI on perusal of the information filed by the Informant inter alia observed that the opposite party, in order to protect its business interests, alogwith its entire value chain in the domestic market, had adopted discriminatory pricing policy by segmenting the buyers in the VSF market, which was unfair and discriminatory in terms of Section 4(2)(a)(ii) of the Act.
Based on the above discussion, the CCI vide its order dated November 10, 2016 directed the DG to cause investigation into the matter and file a report of the same.

CCI Closes the Case against Indian Oil Corp. Ltd. for alleged abuse of dominance

An information was filed by Shri Prem Lal and Shri Amrish ("Informants") against Indian Oil Corporation and others inter alia alleging that arbitrarily transferring their LPG consumer numbers from one opposite party to the other without their consent amounted to the abuse of dominance, which is in contravention of the provisions of Section 4 of the Act (Abuse of Dominant Position).
The CCI vide its order dated November 10, 2016 identified the relevant market as the market for the provision of services for distribution of LPG cylinders in Badaun district of UP, and concluded that the market share of Indian Oil Corporation Ltd. was very low to be a dominant player in the relevant market and hence no case can be made out for abuse of dominant position.

CCI closes case against M/S Super Cassettes Industries Pvt. Ltd on Account of no Competition issue

An information was filed by one Mahendra Kumar Rathore ("Informant"), sole proprietor of "Baran Cable Network (BCN)" and authorised to run cable signals in the town of Baran, Rajasthan. It was alleged that M/S Super Cassettes Industries Pvt. Ltd. had imposed a unilateral MOU on the informant as a pressure tactic to enter into an understanding with it to broadcast its copyrighted work, which the informant does not require.
The CCI on perusal of the information filed by the informant inter alia observed that the MOU was primarily a copyright infringement notice, which was issued against violation of copyright and for protecting the Intellectual Property Rights of the copyright holder. The CCI concluded vide its order dated November 10, 2016 that the allegations raised by the Informant did not raise any competition concerns and the matter was dismissed under Section 26(2) of the Act.

CCI closes case against DLF Universal Ltd. on grounds of Lack of Retrospective Effect

An information was filed by Shri Abdul Basit and Shri Abdul Azim ("Informants") against DLF Universal Ltd. inter alia alleging for the abuse of dominance by DLF with regard to refusal to give possession of the apartments to the Informants and forfeiture of the 75% of the entire sale consideration.
The CCI vide its order dated December 05, 2016 observed that the apartments were allotted to the Informants, possession was offered subject to payment of outstanding dues, completion of paper work, cancelation of allotment and forfeiture of amount related to a time when either the Act itself was not enacted or Section 4 of the Act was not in force. Thus, the CCI dismissed the matter on the grounds that the alleged abuses were made prior to enforcement of Section 4 of the Act.

COMPAT affirmed the CCI order against the car manufacturers for anti-competitive conduct in the spare parts market

The Competition Appellate Tribunal ("COMPAT") vide order dated December 09, 2016 found that Ford India Pvt. Ltd ("Ford"), Nissan Motor India Pvt. Ltd ("Nissan") and Toyota Kirloskar Motor Pvt. Ltd

("Toyota") are guilty of anti-competitive conduct in the spare parts market, ruling that there could not be any restrictions on the supply of spare parts.
COMPAT upheld a 2014 order of the Competition Commission of India ("CCI") pertaining to 14 car makers. The penalty imposed by COMPAT differs from that levied by CCI. The COMPAT imposed a 2% penalty on the companies' annual average turnover from spare parts for the three financial years proceeding the year of inquiry into the issue of their anti-competitive activity.
In its order, the COMPAT said that the three companies—Ford, Nissan and Toyota—denied independent workshops access to spare parts. The companies also entered into agreements which led to restrictions being placed on third-party workshops.
COMPAT directed the companies to remove all restrictions on original equipment suppliers selling spare parts in the aftermarket. The companies are also required to open additional distribution channels for spare parts. These changes have to be effected within a year. Further the COMPAT directed the companies to make information available regarding spare parts manufactured, their maximum retail price, and arrangements for their availability over the counter, and details of matching quality alternatives and maintenance costs.

COMPAT partially upheld CCI order in the Public Sector Insurance Companies matter

The Competition Appellate Tribunal ("COMPAT") vide order dated December 09, 2016 found that National Insurance, New India Assurance, Oriental Insurance and United India Insurance are guilty of cartelization and bid rigging by the Kerala government for selecting insurance service provider for Rashtriya Swasthya Bima Yojna ("RSBY") for 2010-11, 2011-12 and 2012-13.
COMPAT upheld a 2014 order of the Competition Commission of India ("CCI") pertaining to 4 national Insurance companies. The penalty imposed by COMPAT differs from that levied by CCI. COMPAT reduced INR 6.71 billion penalty slapped by the CCI on four public sector insurance companies to just INR 20 million.
The COMPAT held that "there is no hesitation in confirming that bid rigging constituting contravention of Section 3 of the Act did take place, and on the facts of the case and the legal position, we agree that the Appellants should suffer the penal consequences."
However, the COMPAT questioned the interpretation of the term "turnover" used to calculate the 2 per cent penalty imposed by the CCI and noted that "penalty has to be calculated with reference to the gross premium received by UIICL as insurance provider under RSBY scheme and penalty for each of the Appellants will be a proportion of their share in such premium."

COMPAT set-aside penalty imposed on Indian Jute Mills Association (IJMA) and Gunny Trade Association (GTA) by CCI on account of cartelizing to hike the price of jute bag

The Competition Appellate Tribunal ("COMPAT") by its order dated July 01, 2016 has over-ruled the above stated order of CCI wherein the Indian Jute Mils Association (IJMA) and Gunny Trade Association (GTA) were penalized for alleged cartelization in pricing of jute bags. It was alleged that the jute manufacturers have acquired a monopoly position as a result of the circular of the Government under the Jute Price Maintenance Act, 1987 that 100% sugar to be produced by the sugar factories is to be mandatorily packaged in the jute bags.
It was further alleged that IJMA and GTA took advantage of their monopoly, the jute mills have unreasonably hiked the prices of jute bags from INR 53.50/bag in April 2010 to INR 64.50/bag in February 2011. It was alleged that such a drastic increase in the sale price of the jute packaging material was possible only because of an agreement/understanding among all the members of the IJMA and GTA, who were quite conscious of the fact that they enjoy complete monopoly.
The COMPAT noted that "A careful scrutiny of the record shows that neither the informants produced nor the DG could collect any substantive evidence to prove that there was an agreement between GTA and IJMA about fixation of price" further the COMPAT observed that the case for proving a cartel offence essentially boils down to production of viable evidences (direct or circumstantial) which should be substantial and impactful so that an act of collusion can be established in terms of Section 3(3) of the Competition Act. Robust and modern techniques for investigations (such as e-discovery examination etc) should be developed by the DG for establishing the cartel offences.

COMPAT reverses the order given by the CCI by ordering investigation on ground of Lack of Proper Finding

The Competition Appellate Tribunal ("COMPAT"), vide its order dated November 09, 2016 reversed the decision given by the CCI on June 08, 2016 by ordering the Director General ("DG") to investigate into the allegations abuse of dominance and role of private standards in foreclosing competition against Digital Cinema Initiatives, Walt Disney Company and other producers of Hollywood films.

The information was filed by M/s K. Sera Sera Digital Cinema Pvt. Ltd., a company engaged in the business of digital cinema services involving digital projection and screening of films in India. COMPAT expressed complete disagreement with the CCI's decision to not direct an investigation into the allegation of 80% of Hollywood film producers mandating screening of their films only by the use of a particular technology, which drove out several exhibitors who want to use a different technology. While COMPAT agreed with the CCI's ruling of private standards not necessarily foreclosing competition, however, it disagreed with the pre-liberalization stance taken by the CCI in justifying this alleged anti-competitive act.

COMPAT observed that the allegations need to be examined in a broader context because it would help in validating claims and counter claims. In order to be sure of what is reasonable and to what extent restrictions can be imposed is a matter of appreciation and required fact finding. COMPAT also observed that it is imperative to adopt the approach of determining the relevant market in order to examine the issue of dominance effectively before dismissing the ground, however, this approach was not adopted by the CCI in this particular case.

COMPAT Remanded the Uber Taxi matter to CCI with a direction to DG to cause an investigation

The Competition Appellate Tribunal ("COMPAT"), vide order dated December 07, 2016 directed the Director General ("DG") to conduct an investigation into the allegations contained in the Information filed by M/s. Meru Travels Solutions Private Limited ("Meru") against M/s. Uber India Systems Private Limited ("UBER") for abusing its dominant position in radio taxi market by way of predatory pricing in Delhi-NCR.

COMPACT has heard both the parties had has referred to all the facts and allegations being provided. As per them Dominance has to be examined on the benchmark of Section 4 read with Section 19(4) in order to form a prima facie view in accordance with Section 26(1) of the Act. In order to justify the Commission's opinion, the order has considered transport as a State subject and has considered the taxi market as Delhi (Not NCR).

COMPACT has given a deadline of 60 days for investigations which can be extended with due reason and will give its judgment after giving opportunity to the parties to file their replies/objections and affording them opportunity of personal hearing.

TECHNOLOGY, MEDIA AND TELECOMMUNICATION

TRAI's recommends on encouraging data usage in rural areas through provisioning of Free Data

Data providing operators include a host companies in India. Data Services vary from Mobile Data to Broadband services to providing Wi-Fi services. Companies' part of these includes big mobile operators such as Vodafone, Airtel & Idea and other operators such as Reliance, MTNL, BSNL, etc. All of these companies are actually governed by the rules & regulations of TRAI. One of the main aims of TRAI currently is to provide free data in rural & remote areas.

For this certain recommendations have been put forward. Firstly, TRAI has given a 100mb access service free to users in these areas for using internet services. The meet this implementation, the cost is to be taken out of the USOF. For this, to increase participation, other third party aggregators needed to be introduced to facilitate schemes which were TSP-Agnostics and non-discriminatory in implementation. The other thing they think they are focusing on is to provide these service to handset

which do support internet services but are not smart phones since a majority of people in these areas don't or cannot afford smart phone.

The introduction of schemes for the provisions of free data services into the Indian telecom market would create the benefits in terms of Greater digital inclusion, Increased spend on telecommunication services and innovation in content and services and would thus help in narrowing the gap between the rural & urban areas in digital space.

Licensing Framework for Audio Conferencing, Audiotex, Voice Mail Services

TRAI received a reference from DoT on January 19, 2016 for review of the terms & conditions for issue of fresh licenses for Voicemail/ Audiotex/ UMS and for migration of existing licenses. Keeping in view the changes in technology and the resultant new user applications and services, there was a need to review different aspects of licensing and as a result recommendations were given.

The features of these recommendations include a new chapter for authorisation titled 'Audio-Conferencing/ Audiotex/ Voice Mail Services' keeping the earlier Access service licenses to also provide these services. The operating condition clauses of the existing license service should be made part of the Unified Licenses. There should not be standalone licenses for Unified Messaging Services. The UMS service should be provided with Access Service authorization or Internet Service authorization under Unified Licenses.

TRAI has recommended these steps with an option for existing services to migrate to the UL. There should not be any mandatory migration as per the guidelines for the new regime. But they have introduced an 8% license fee for existing license who do not migrate to the UL.

TRAI on Net Neutrality

TRAI has released its most comprehensive consultation paper yet on the issue of net neutrality, the principle that seeks equal access to all Internet content, emphasizing the need for Internet service providers to not misuse existing Internet traffic management techniques to discriminate.

In the past year or so, TRAI has issued two papers on various aspects of net neutrality without taking a final view. TRAI outlined two approaches to traffic management.

"First, a broad approach which involves defining what would constitute 'reasonable' traffic management practices. Second approach would be a narrow approach, which would limit itself to a negative list of non reasonable traffic management practices," it said. "Thus, a discussion on net neutrality must be.

It stressed on the importance of a broader understanding of net neutrality among authorities, saying it is "important to identify core principles of net neutrality for India and the types of practices that might be regarded as being in violation of these core principles". This new consultation paper basically has recommendations on provisioning of free data.

The main highlight was that "There can be two policy/regulatory approaches to achieve this end. First, a broad approach which involves defining what would constitute 'reasonable' traffic management practices. Further, this reference to reasonable management of 'Internet traffic' also brings into question the treatment of specialized/ managed services that are delivered using IP but do not serve the same functionality as the public Internet; or those that may require a level of quality that cannot be guaranteed on the Internet,"

Consultation Paper on Captive VSAT CUG policy

TRAI on recommendation from DoT dated on March 16 2016 and on the basis of the this DoT sought these recommendation of TRAI on minimum License Fee in respect of 2nd Hub in Captive VSAT CUG network and terms and conditions of Captive VSATCUG License.

The TRAI paper has also sought industry views on whether licence fee for a second VSAT hub, (being used independently or for redundancy purposes) should be the same as the first VSAT hub, and also the quantum of per annum fee for the second hub. At present, the licence fee stands at Rs 10,000 per annum per VSAT earth stations installed, in case of the first hub. But in case the licensee wants to put second hub for geographical redundancy or, say, operational diversity and if that second hub station remains commissioned, a minimum license fee of Rs 16 lakh per annum for up to 100 captive VSATs is applicable in addition to the license fee payable for the first hub.

The Authority further consulted some of the Captive VSAT licensees, who brought out some additional issues related to applicability of Royalty charges and delay in approvals in augmentation of bandwidth

for Captive VSAT. It has decided to include these issues also for the consultation of the stakeholders, so as to provide comprehensive recommendations on issues concerning captive VSAT licensees.

Consultation on Model for Nation-wide Interoperable & Scalable Public Wi-Fi Network

Realizing the importance of public Wi-Fi networks as complementary to existing landline and cellular mobile infrastructure in improving broadband penetration and adoption in the country, the TRAI released a consultation paper on "Proliferation of Broadband through Public Wi-Fi Networks" on 13th July 2016. This is a major step towards the Digital India initiative.

A few of the important issues pointed out in the consultation paper for a successful, scalable and sustainable public Wi-Fi infrastructure in the country include (i) technical interoperability and seamless connectivity of Wi-Fi networks (ii) innovative payment, commercialization, and monetization models; and (iii) collaborative partnerships between various entities of the ecosystem.

With the use of Wi-Fi, there could be many improvements in internet market such as providing better in-building coverage, mobile data offload thus relieving capacity in the macro cellular networks which use the scarce licensed spectrum & possible ubiquitous seamless Internet.

Digitally Safe Consumer Campaign By Google

Google has teamed up with the Ministry of Consumer Affairs in India to launch a country-wide 'Digitally Safe Consumer' campaign in order to raise awareness and protect consumer interest on the internet. As part of the campaign, Google will work on educating consumer organisations in India, help in training members of the Consumer Affairs department, and also work with officials in the National Consumer Helpline.

Google will start rolling out this year-long campaign in January 2017, and it will work towards organizing 'Digital Literacy, Safety & Security' workshops. Google will rely on the 'Train the Trainer' model for this exercise, and plans to train around 500 people, including 250 consumer organizations across the country.

The educational campaign will also feature write ups, posters, interactive quizzes and audio-visuals that will help educate users about the challenges of Internet safety and security.

TRAI's Consultation on the Review of the Regulatory Framework for Interconnection

The Authority is undertaking a review of the existing regulatory framework for interconnection with the ultimate objective of facilitating effective and expeditious interconnection between TSPs in a consultative manner. The main objectives of the consultation paper dated October 21, 2016, for review of the Regulatory framework are following:

- Laying Down Fair, Reasonable and Non-Discriminatory Terms and Conditions for Interconnection Agreement between telecom service providers (TSPs), in view of the technological, market, licensing, regulatory and legal developments in the telecommunication services sector in India since 2002
- Whether it is appropriate to mandate only those TSPs who hold significant market power (SMP) in a licensed service area to publish their Reference Interconnect Offers (RIOs)? If yes, what should be the criteria for reckoning a TSP as SMP? If no, what could be the other approaches to streamline the process of interconnection in a fair, reasonable and non discriminatory manner?
- What should be the framework to ensure timely provisioning/ augmentation of E1 ports and its various aspects?
- What should be the time-frame for entering into interconnection agreement when a new TSP with a valid telecom license places a request for interconnection to an existing TSP?
- Whether interconnection and interconnection agreement should be service-specific or service-agnostic (i.e. a TSP can send any type of traffic on a point of interconnection which is allowed under the terms and conditions of the license given to it)? What are the advantages/ disadvantages of having service specific POIs when the TSPs are equipped with call data record (CDR) based billing systems?

TRAI's recommends Penalty of INR 50 Crores on Vodafone, Airtel and Idea

The regulator received various letters containing complaints from the new entrant Reliance Jio providing details of inadequacies of E1 ports from the three incumbent TSPs. i.e. Vodafone, Airtel and Idea. To resolve the issue in hand TRAI wrote letters to the three incumbent operators to justify and

explain their position, to which the three TSPs along with COAI responded stating that they are in no position, by way of network resources or financial resources to terminate the volumes of traffic Reliance Jio which are markedly asymmetric also mentioning that their members are not obliged to entertain interconnect requests which are derived from abnormal induced traffic patterns that game the IUC regime and are anti-competitive in nature.
In furtherance of this show cause notices were also issued to the three TSPs, asking as to why actions under the provisions of TRAI Act, should not be initiated against them for violation of the provisions of License Agreements and the Standards of QoS of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009. The TSPs further responded on the grounds/reasons which did not appeal the Authority and it rejected them as non- tenable. The Authority was of the view that the TSPs are in non-compliance of the terms and conditions of the license agreement and denial of interconnection to Reliance Jio appears to be with ulterior motive to stifle the competition, anti-consumer and against public interest. TRAI in a strongly worded recommendation letter dated October 21, 2017 stated that such non-compliance of the terms and conditions of the license warrants recommendations for revocation of the license, however mindful of the fact that such revocation would lead to great inconvenience to the consumers, they would recommend a penal action of Rs. 50 Crores per LSA wherever the POI congestion exceeded the allowable limit.

TRAI issued consultation on draft regulations [the Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016

As part of the consultative process, the draft Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016 has been uploaded on the TRAI's website. The basic principles of non-exclusivity, non- discrimination, transparency, level playing field and fair completion have been retained in these draft regulations. Some of the new features of the draft regulations are as follows:-

• A common interconnection framework for all addressable systems namely DTH, HITS, DAS and IPTV.
• "Must carry" provision for all addressable systems, on first come first serve basis. DPOs to publish information about its platform including available capacity and declare the rate of carriage fee.
• No carriage fee is to be paid by a broadcaster if the subscription of the channel is more than or equal to 20% of the subscriber base.
• The rate of carriage fee has been capped at 20 paisa per channel per subscriber per month. Further, the carriage fee amount will decrease with increase in subscription.
• The distributors of TV channels may offer discounts on the carriage fee rate declared by them not exceeding 35% of the rate of the carriage fee declared.
• The interconnection agreements to be signed in accordance with the Reference Interconnection Offer (RIO).
• Broadcaster to offer to a distributor, a minimum of 20% of the maximum retail price of its pay channel(s) or bouquet(s) of pay channels as distribution fee. They may also offer discounts on the maximum retail price provided that the sum of discounts and distribution fee in no case shall exceed 35% of the maximum retail price, so declared.

Guidelines for TSPs for ensuring transparency and uniformity in the process of tariff recharges, payments through Third Party Apps, Websites

The industry regulator TRAI with an objective to ensure transparency and uniformity in the process of tariff recharges, payments through Third Party Apps, Websites (Channel partners) to the subscribers, issued the following guidelines to the TSPs providing access services or internet services;
• There should not be any difference in the features of tariff products and the benefits available on the TSP's website and Channel partner's website(s)/apps(s). a mechanism should be introduced by the TSPs where a new tariff product or any change in any tariff product is concurrently updated on Channel Partner's website(s)/app(s). Only after ensuring updation of such tariff product(s) on Channel Partner(s), tariff product should be made live for the subscribers. • TSPs should ensure and direct the Channel Partner(s) that any agreement between Channel Partner and Sub- Channel partner(s) should

include suitable clauses on subscriber relations, attending subscriber grievances, recharge process and tariff updation apart from other technical requirements and guidelines as contained in the agreement between the TSP and Channel Partner. Since Channel Partner(s) and Sub-Channel Partner(s) are non-licensed entities and are appointed by the TSPs based on mutually agreed terms and conditions, all responsibilities for ensuring compliance of terms and conditions of the license agreement and other regulatory guidelines shall remain with the TSP.
• Any new tariff product or any change in an existing tariff product should be made live only at midnight (between 00:00 Hrs and 02:00 Hrs) on the date of the launch or change in tariff product.

TRAI on mobile banking (USSD channel)

TRAI in its notification brought in the November laid down few amendments for revising the ceiling tariff. TRAI vide Telecommunication Tariff (Sixty First Amendment) Order dated on November 22, 2016 has inserted to the principle tariff order, for revising the ceiling tariff downwards for USSD based Mobile Banking and Payment Services and other related aspects. The Mobile Banking (Quality of Service) (Amendment) Regulations is being issued increasing the maximum number of stages for completing a mobile banking transaction from 5 to 8.
The Authority was of the view that a ceiling tariff of Rs. 0.50 per USSD session for mobile banking and payment service (which may comprise of one or more banking transaction as per agreement between bank/bank agent) would be reasonable to compensate the TSPs, regardless of whether the session results in a successful or a failed banking transaction, to meet the expenses incurred in the use of USSD for mobile banking service.
The Authority through this decided that usage of USSD channel should be allowed for offering payment services to al
l the authorized entities regulated under the Payments and Settlement Act, 2007 of RBI and payments being received on Bharat Bill Payment System (BBPS).

Consultation paper on 'Spectrum, Roaming and QOS related requirements in Machine-To-Machine (M2M) Communications'

Keeping in view the exponential evolution in the digital space and the growing importance of machine-to-machine (M2M) connectivity, TRAI had issued a consultation paper on the matter inviting views from stakeholders. This paper is TRAI's response to query raised by Department of Telecommunications (DoT), which on January 5, 2016. M2M communication has potential to bring substantial social and economic benefits to governments, citizens, end-users and businesses through increase in productivity and competitiveness, improvements in service delivery, optimal use of scarce resources as well as creation of new jobs.
DoT envisaged the recommendation of TRAI on three aspects related to M2M communications; M2M spectrum requirements; M2M roaming requirements; and quality of service in M2M services. Apart from the specific issues referred by DoT through the reference, the authority realized that certain other regulatory aspects, including policy and licensing framework for M2M service providers, various technical challenges in implementation, allocation and utilization of various network codes, data protection, and privacy issues also need to be deliberated.
Therefore, these issues have also been included in this consultation paper for comments/inputs of the stakeholders. The consultation paper questioned the framework for introduction of M2M Service providers in the sector. The further questions was that whether the amendment in the existing licenses of access service/Internet Service Provider license and/or licensing authorization in the existing Unified License and UL (Virtual Network Operators) license or should it be kept under Other Service Providers category registration. The paper also sought opinion about the quantum of spectrum required to meet the M2M communications, keeping a horizon of 10-15 years.

Unified Licensing guidelines and amendments (WOL)

The amendment in brought in the provision of Right to use the spectrum and frequency assignment by the licensor in public interest. The amended clause personifies that the License agreement does not confer any right to assignment and use of spectrum for which separate specific Frequency Assignment shall be required from Wireless Planning and Coordination (WPC) Wing of the Department of Telecommunications, Ministry of Communications & IT which will permit utilization of appropriate

frequencies/band for the establishment, maintenance and operation of wireless elements of Telecom Service, under specified procedure, terms and condition. This will include payment of the assignment and the right to use spectrum prescribed by WPC Wing from time to time.
The provision also lies down that the Licensee has to obtain, among others, site clearance from WPC in respect of fixed stations and its antenna mast. For this purpose the Licensee shall separately apply online on WPC wing. The procedure and instructions provided in by the order should be abided by the licensee and the service providers. This specific amendment is applied only to ASPs (Access Service Providers) under Unifies License and the existing related clauses are applicable to other services mention in UL as well.

REAL ESTATE, INFRASTRUCTURE AND HOSPITALITY

Online Property Registration Search introduced in Delhi

Delhi government's revenue department has introduced a web portal which enables the user to check the status of an immoveable property registration with the concerned sub-registrar of assurances.
An e-search on the said web portal will reveal not only the status of the immoveable property registration, but also the documents related to it, including sale deed, mortgage and lease deed.
The said web portal will have data for all immoveable properties that fall under the urban peripheries of Delhi, including all colonies and plotted settlements to which the urban property registration system applies.

Landowner's permission not required for erecting power transmission lines

In a matter filed by a cement manufacturer from Chhattisgarh, the cement manufacturer challenged the Power Grid Corporation's decision to erect towers for power transmission lines on its limestone mine lease area without its consent. The of Justices A. K. Sikri and R. Banumathi hearing the matter said, "As per the provisions of the Indian Telegraph Act, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest."
Removing roadblocks in reaching electricity to every village, the Supreme Court has ruled that no prior consent of landowners was required to lay overhead power transmission lines and erect towers to support these lines. Through the judgment, the Supreme Court settled the issue which gave rise to conflicting judgments from various High Courts.

Project Settlement Policy for exit of builders from unfinished projects in U. P.

On the directions of the government of Uttar Pradesh (U. P.), the three authorities of Noida, Greater Noida and Yamuna Expressway Industrial areas have approved the Project Settlement Policy which provides an exit to the builders from development projects in case construction has not yet been started by the builder on the project land or in case the projects have not been completed in stipulated time and are still at an unfinished stage.
As per the said Project Settlement Policy, in case where a builder has not started construction on a project land and no third party rights have been created, the project will be cancelled and such builder can surrender the leasehold land back to the relevant authority. In such a case, 30% of the amount deposited by the builder for the project will be forfeited by the relevant authority, while 70% will be put into an escrow account, with the relevant authority also as a party to the escrow account. The amounts paid by the prospective buyers to the builder at the time of making bookings in such project will be distributed amongst such prospective buyers from the amounts deposited in escrow account. The amount returned to such prospective buyers will be the initial amount paid without including interest. If there is an existing agreement between the builder and such prospective buyers regarding the interest amount, it will have to be borne by the builder in terms of such agreement.
In case a builder has completed the project but is unable to procure the completion certificate due to any outstanding dues payable by such builder to the relevant authority towards the project land, in such a scenario in order to facilitate registry of the units in the project in favour of the prospective buyers, a fresh rescheduled payment policy with respect to such dues payable by the builder to the relevant authority will be initiated, subject to fulfilment of certain conditions by the builder, such as the lease deed with respect to the project land must be registered in the name of the builder, 25% of the total rescheduled payment shall be made by the builder to the authority immediately and the

remaining 75% amount may be paid by the builder to the authority in six monthly instalments, and in case of any further default in repayment by the builder a 3% penal interest shall be payable by the builder to the authority on the outstanding amount for which there is a default in repayment, etc.
In case the builder has deposited the full premium amount with the relevant authority but has defaulted in paying the lease rent for the project land and the construction of the project has been completed, such builders will be permitted to grant the sub-lease rights in the project to the prospective buyers of the units in the project, provided that such builders pay an additional 10% amount above the due lease rent together with the due lease rent to such authority.
Further, subject to conditions imposed by the relevant authority, the builders have also been permitted to sell the unutilized floor area ratio (FAR) to a co-developer and utilize the money so received for completing their projects.

Union Cabinet approves Merchant Shipping Bill, 2016

The Union Cabinet has approved the new Merchant Shipping Bill, 2016 for tabling in Parliament.
The Merchant Shipping Bill, 2016 is a revamped version of the Merchant Shipping Act, 1958. The Bill provides for repealing of Merchant Shipping Act, 1958 as well as for the repealing of the Coasting Vessels Act, 1838.
The Merchant Shipping Act, 1958 had become a bulky piece of legislation over the years as a result of various amendments carried out in the Act from time to time. It was amended various times between 1966 and 2014 resulting in an increase in the number of sections to more than 560 sections. These provisions have been meticulously shortened to 280 sections in the Bill.
The provisions of the Bill will simplify the law governing the merchant shipping in India. Further, certain redundant provisions will be dispensed with and remaining provisions will stand consolidated and simplified so as to promote case of doing business, transparency and effective delivery of services. Some of the salient features relate to the augmentation of Indian tonnage, the promotion of coastal shipping, the introduction of welfare measures for seafarers, and the registration of certain residual category of vessels not covered under any statute.

NITI Ayog to launch 3-year plan for economic growth

Government think tank NITI Aayog will come out with three-year action plan with a view to accelerate economic growth and make it more inclusive by focusing on the health sector. The three-year action plan will replace the over six decade old five-year plans. The three-year action plan will not contain revenue projection for 2017-18, though it will have the details for 2018-19 and 2019-20.
NITI Aayog has also been entrusted with the work on the 15-year Vision Document and a seven-year strategy which would guide the government's development works till 2030.
The Ministry of Power has issued guidelines for cross-border electricity trade between India and the neighbouring countries of Bangladesh, Bhutan and Nepal. The guidelines provide a detailed framework on trade agreements, tariffs, trade through power exchanges in India, transmission system scheduling and accounting, grid operation and security, etc.

ENVIRONMENT & CLIMATE LAWS

Environmental Clearance norm eased for construction & development projects

Ministry of Environment, Forest and Climate Change ("MOEFCC") has issued a notification for ensuring Ease of Doing Responsible Business; and streamlining the permissions for buildings and construction sector by integration of environmental condition in building bye-laws.
Now, the local authorities like Development Authorities, Municipal Corporations, may certify the compliance of the environmental conditions prior to issuance of completion certificate for a building, as applicable as per the requirements stipulated for such buildings, based on the recommendation of the environmental cell constituted in the local authority. The local authorities while integrating the environmental concerns in the building bye-laws, shall be guided by parameter such as size of the project as stipulated in the said notification. The States adopting the objectives and monitorable environmental conditions in the building bye-laws and relevant State laws and incorporating these conditions in the approvals given for building construction making it legally enforceable shall not require a separate environmental clearance from the MOEFCC for individual buildings.

The States may forward the proposed changes in their bye-laws and rules to the MOEFCC, who in turn will examine the said draft bye-laws and rules and convey the concurrence to the State Governments. When the State Governments notifies the bye-laws and rules concurred by the MOEFCC, the Central Government may issue an order stating that no separate environment clearance is required for buildings to be constructed in the States or local authority areas. The State Governments where bye-laws or rules are not framed may continue to follow the existing procedure of appraisal for individual projects and grant of environmental clearance for buildings and constructions.

INTELLECTUAL PROPERTY AND PHARMACEUTICALS

Restriction on The Monopoly Of Indian Performing Rights Society Limited And Phonographic Performance

The Department of Industrial Policy and Promotion (DIPP) vide its office memorandum 06-04/2016-CRB/LU dated 06.10.2016 has issued a clarification regarding the current status of Indian Performing Rights Society Limited (IPRS) and Phonographic Performance Limited (PPL). Earlier both the societies were registered under the pre amended Copyright Act, 1957 for carrying out Copyright business in the field of musical & literary works and sound notification works respectively. The registration of both the societies expired on 21.06.2013, pursuant to which both of the organizations have applied for re-registrations under section 33 of the Copyright (Amendment) Act, 2012. Despite lapse of registrations, both IPRS and PPL continued to issue licenses for copyright works. While the DIPP notified of having constituted an enquiry against IPRS in view of certain allegation of malpractices against it, the IPRS and PPL now has been restrained from issuing any fresh licenses. The restraining order was passed by the Delhi High Court on 23.12.2016 while hearing the writ petition filed by Event And Entertainment Management Association . Alleging that in-spite of lapse of registrations of both IPRS and PPL on 21.06.2013 and furthermore, there being no registration in favor of Novex Communications Private Limited and therefore is not a copyright society, licenses for copyrighted work, are being been issued and granted by the said IPRS, PPL and Novex Communications Private Limited, for which they do not even have copyright and thus, in violation of Section 33 of the new Copyright (Amendment) Act, 2012.

The Petitioner in the present case approached the Hon'ble Court seeking a writ of mandamus against Indian Performing Rights Society Limited (IPRS), Phonographic Performance Limited (PPL) and Novex Communications. The petitioners further submitted before the court that is not even a copyright society but is still operating as one. The Respondent No.1 in the present case being Union of India accepted the notice in the Court and even submitted that they have been receiving complaints against the IPRS and PPL and that they have even initiated a enquiry against them. In view of admission by the Union of India that applications for registration as copyright societies are still pending and that an office memorandum to this effect has already been uploaded on the website of DIPP, the Hon'ble Court restrained IPRS, PPL and Novex Communication Private Limited from acting in contravention of section 33 of the Copyright Act, 1986. Subsequently, on a fresh application having been filed by the erstwhile copyright societies for modification and clarification of the order dated 23.12.2016, the Hon'ble Court on 29.12.2016 held that rights of copyright owners cannot be held to be obliterated in the absence of copyright societies. Since erstwhile copyright societies, as well as, Novex Communication Private Limited claim to be assignees/agents of the copyrighted works, the Hon'ble Court as an interim measure amongst others, has allowed the erstwhile copyright societies, as well as, Novex Communication Private Limited to collect royalty for the copyrighted works subject to providing an invoice to the event management association and confirming that it is the owner/assignee/ authorized agents of the copyrighted works, apart from uploading on its websites the assignment deeds of the copyrighted works and provide the same when demanded by the event management association and putting up a search engine on its website to identify the owner of the copyrighted works.

India Signs Mou With Singapore On Industrial Property Cooperation

On 4th October, 2016 the Singapore Prime Minister on his visit to the Capital, along with the Indian Prime Minister Mr. Narendra Kumar Modi, witnessed the signing of a crucial Memorandum of

Understanding (MOU) between the Intellectual Property Office of Singapore (IPOS) and the Department of Industrial Policy & Promotion (DIPP). This is one first bilateral MOU signed between both the countries on the aspect of Industrial Property Protection. As per the MOU signed, a Joint Coordination Committee will be established, which will facilitate bilateral exchanges and cooperation to foster innovation, and support Indian companies in tapping on Singapore as a regional intellectual property hub for their innovation-related activities.

The priority initiatives under the pact would be exchange of best practices, experiences and knowledge on intellectual property awareness among the public, businesses and educational institutions of both countries. Both sides would also exchange experts in the field of intellectual property; spreading of best practices, experiences and knowledge on intellectual property with the industry and universities. The MOU will enable India to exchange experiences in the innovation and intellectual property space that will substantially benefit entrepreneurs, investors and businesses on both sides.

CSIR Urges Laboratories From Indulging Into The Malpractice Of Filing Unwantend Patents

The Director General of the Council of Scientific and Industrial Research (CSIR), has reprimanded 38 laboratories affiliated to it to refrain from seeking patent protection for their inventions without considering the benefits and advantages of such applications. Accusing the laboratories of filing applications for patent registrations without carrying out any technical, commercial or legal evaluation, by such an action, the CSIR aims at curbing the indiscriminate number of applications seeking patent registrations.

The step comes in light of several pitfalls which hoards the intent of filing such applications. Apart from huge amounts of finances which are involved for filing patent applications abroad leading to loses to CSIR, the Director General also cited that the intent behind filing unnecessary applications by the individual scientist is for getting promotions and the labs are simply doing so for increasing the number of applications filed. The reason cited by the Direct General is not unfounded and it has been witnessed by the CSIR is several cases that there is no mechanisim or system to find any prospective licensee for the patent and upon retirement of the scientist who filed patent application, neither the scientist nor the lab bothers about it.

In view of the growing need to strike a chord between unnecessary filing of patent applications and promote development of relevant and important inventions, the CSIR has now cleared the roadmap that from here on 25% of the cost of domestic patent filings and 50% of the cost of foreign patent filings will be borne by the concerned laboratory.

Introduction Of The New Medical Devices Rules In Drugs And Cosmetics Act, 1940

The Ministry of Health and Family Welfare has published in India’s Official Gazette on October 17, 2016, the new Medical Devices Rules in Drugs And Cosmetics Act, 1940. The said rules will be applicable in respect of substances covered under sub-clause (i) of clause (b) of section 3 used for in vitro diagnosis; substances that are in the nature of mechanical devices covered under sub-clause (ii) of clause (b) of section 3; and devices specified from time to time by the Central Government by notification in the Official Gazette under sub-clause (iv) of clause (b) of section 3 of the Drugs and Cosmetics Act, 1940.

By introducing the new Rules the Centre has focused on creating a separate registration and oversight system for medical devices and drugs. Also, theses new rules will be defining the duties and functions of the Centre Licensing Authority and State Licensing Authority.

Under the new rules, the Drug Controller of India shall be the Centre Licensing Authoring and shall be the competent authority for the enforcement of the new rules with function related to issuance of license for manufactures who intends to manufacture class C and class D medical devices along with class A and class B medical devices. This will be a relief for medical devices manufacturers as no separate license from the state licensing authority will be required separately for the manufacturing of Class A and Class B medical devices.

The State Drug Controller shall be the State Licensing Authority and shall be competent authority for enforcement of these rules in matters related to manufacture of Class A and Class B medical Devices. However, people who are engaged in the manufacturing predicate medical devices will require a separate approval from Centre Licensing Authority before applying to the State Licensing Authority.

These new rules have introduced four new classes for medical devices on the basis of their functions and impact. The medical devices which will have low risk will fall under Class A; medical devices having low moderate risk will fall under Class B; medical devices having moderate high risk will fall under Class C and medical devices having high risk will fall under Class D.

Notification Issued By Central Government Banning 344 Fixed Dose Combination Drugs Quashed By Delhi High Court

On 01.12.2016, the Delhi High Court decided several writ petitions which the Hon'ble Court was hearing under Pfizer Limited & Ors. Vs. Union of India &Ors W.P.(C)-2212/2016 along with Federation Of Pharma Enterpreneurs & Anr vs. Union of India & Anr. W.P.(C)-2500/2016

In the present case the Government of India on 10th of March, 2016 issued 344 notifications in exercise of its powers conferred under Section 26 A of the Drugs and Cosmetic Act, 1940 ("Act") banning the manufacture of 344 fixed dose combination drugs. The Petitioners filed 454 petitions against the impugned notifications, alleging that the Central Government while issuing the said notifications failed to follow the statutory procedure prescribed under the law.

The Central Government in its defense submitted that the licenses for manufacture of Fixed Drug Combination (FDC) were issued by the State Licensing Authority without the prior approval of the Drug Controller in view of which the manufacturers were asked to apply for licenses to the Drug Controller. The Hon'ble Court while adjudicating the 454 petitions held that firstly, the Central Government should have cancelled the licenses of the manufactures which as per the Central Government were wrongly issued. Secondly, the applications which were received were not considered by the Drug Controller and the same were transferred to ten committees which were instituted by the Central Government for consideration of the said applications. Thirdly, the ten committees formed by the Central Government failed sustainably to execute the purpose for which they were formed and further the Central Government formed another committee which instead of considering the applications went into the aspect of risk to consumers and therapeutic value and therapeutic justification on basis of which the impugned notifications were issued.

The Hon'ble Court further observed that even though it is the responsibility of the Central Government to look after the welfare of public, however in light of the facts it appears that the Central Government has performed its function in haphazard manner and there was no time given to the manufacturers before issuing notification under Section 26 A of the Act. As a consequence thereto, all the impugned notifications were quashed by the Hon'ble Court.

TAXATION

Ahmadabad ITAT holds that MFN clause in India Switzerland Tax Treaty is not operative automatically without re-negotiations

The Ahmadabad Bench of the Income-tax Appellate Tribunal in the case of Torrent Pharmaceuticals Ltd. v ITO: ITA No. 624/ Ahd/ 2012 has held that benefits provided by the Most Favoured Nation clause ('MFN') provided in the India Switzerland Tax Treaty are not applicable at present automatically without re-negotiations between both the States activating operation thereof.

In the above case, the taxpayer had remitted certain payments towards professional and consultancy services to tax residents of Switzerland, without withholding any taxes in India, for the reason that, due to presence of MFN clause in India Switzerland Tax Treaty, the restrictive definition of 'fees for technical services' provided in India Portugal Tax Treaty, containing condition of 'make available' therein, would be applicable.

The assessing officer and CIT(A) rejected the aforesaid contention of the taxpayer. On further appeal, the ITAT confirmed the order of CIT(A) by holding that, since, the condition of 'make available' is not present in India Switzerland Tax Treaty, the same cannot be borrowed from Indian Portugal Tax Treaty on account of MFN clause, as the said clause is not automatic and operation of the same would be activated after re-negotiations of the existing Tax Treaty between India and Switzerland.

It may be noted that with effect from April 1st 2012, the Protocol to the Indo-Swiss treaty has been amended which now states that re-negotiation of the treaty is no longer needed for availing the lower

tax rate owing to the MFN clause. However, re-negotiation is required to avail the benefit of a restricted scope of definition of FTS under the Treaty.

Madras High Court holds that VAT is not applicable on inter-state sale of goods by Flipkart

The Madras High Court, recently, in the case of WS Retail Services Private Limited v Union of India & Ors.: W.P. No. 3442 of 2016, has held that, online sale of mobile phones, computer spare parts, cameras etc., by the taxpayer via the online portal Flipkart, through warehouses located in various cities, is an inter-state sale, not liable for VAT under the Puducherry VAT laws. However, the said sale is liable for Central Sales Tax.

The taxpayer had consigned the goods from its various warehouses to the courier delivery hub in Puducherry. Accordingly, it was held that the said movement of goods is an inter-state sale and the delivery to the end customer is the first sale within the Territory of Puducherry (delivery to courier delivery hub in Puducherry is not a sale).

Supreme Court holds section 10A/ 10B of the Income-tax Act, 1961 to be a deduction provision and not an exemption provision

The Supreme Court of India, recently, in the case of CIT vs Yokogawa India Ltd.: Civil Appeal no.8498/ 2013 held that tax holiday provisions provided by sections 10A and 10B of the Income-tax Act, 1961 are deduction provisions and not exemption provisions.

Accordingly, the deductions by sections 10A and 10B of the Income-tax Act, 1961 would be available while computing gross total income of the taxpayer under chapter – IV of the Income-tax Act, 1961 and not at the stage of computing the total income under chapter – VI of the said Act.

The above decision of the Hon'ble Supreme Court is based on the premises that, the term 'deduction' used in section 10A clarifies the intention of the legislature of allowing the said tax holiday as deduction and not as an exemption.

In addition, the deduction under section 10A is available to an eligible undertaking on an independent basis without any connection/ concern with other eligible or non-eligible units. Therefore, the deduction under section 10A and section 10B has to be provided to the eligible undertaking and not the assessee, at the stage of computing the gross total income and not the total taxable income.

In view of the above decision, the tax payers can set off losses of eligible undertaking with other eligible/ non-eligible units.

Payment for Non-Compete right is eligible for depreciation

The Bangalore Bench of the Income-tax Appellate Tribunal in the case of Sangeetha Mobiles Pvt. Ltd. vs. Addl. CIT: ITA No.1185/ Bang/ 2016, has held that payment made by the taxpayer towards non-compete right constitutes acquiring of intangible asset, which is eligible for depreciation.

In the above case, the taxpayer had acquired various tangible and intangible assets through an asset purchase agreement and claimed depreciation on payment for non-compete fees. The assessing officer, however, disallowed the said claim on the basis that, since the non-compete rights were not transferable; the same did not constitute an intangible asset in the hands of the taxpayer.

On appeal, the Tribunal held that the rights acquired by the taxpayer on account of payment for non-compete right were transferable and, accordingly, the taxpayer was eligible to claim depreciation thereon.

The Tribunal, while pronouncing the above decision, duly considered the decision of the Delhi High Court in the case of Sharp Business System (India) Ltd. vs. DCIT: 254 CTR 233 and Karnataka High Court in the case of CIT vs Ingersoll Rand International: 48 taxmann.com 349. Both the said decisions are contrary on availability of depreciation in respect of payment for non-compete right.

The Bangalore Bench of the Income-tax Appellate Tribunal in the present case followed the decision of jurisdictional Karnataka High Court and held that non-compete rights acquired by the taxpayer were transferable and therefore, taxpayer was eligible to claim depreciation on the same.

It is important to point out here that the Delhi High Court in the case of Sharp Business System (India) Ltd. vs. DCIT: 254 CTR 233 had held that depreciation would not be available in respect of non-compete right if the same is non-transferable.

Delhi High Court holds that VAT credit is allowable in respect of retail invoice issued inadvertently in place of a tax invoice

The Delhi High Court, recently, in the case of Commissioner of VAT vs. M/S J C Decaux Advertising India Private Limited: VAT Appeal 1/2017, has dismissed the appeal filed by Delhi VAT Department against the decision of the VAT Tribunal, wherein, the VAT Tribunal had held that, the taxpayer is eligible to claim VAT credit on the basis of a retail invoice issued inadvertently by the vendor in place of a tax invoice.

The taxpayer had purchased printer banners from Jumbo Digital Prints in order to resell the same to their end customers. The vendor had charged VAT on said sale and deposited the same with the Government treasury. However, the vendor, inadvertently, owing to usage of some old stationary, issued retail invoice to the taxpayer instead of a tax invoice.

The tax credit claimed by taxpayer on the basis of above mentioned retail invoice was disallowed by the VAT officer and the VAT Commissioner. On further appeal, the Delhi VAT Tribunal held that input tax credit cannot be denied to the taxpayer merely because of irregularity on the part of the selling dealer.

The Delhi VAT Tribunal also observed that, the selling dealer had issued a certificate to taxpayer that the VAT collected from the taxpayer was duly deposited with the Government treasury and issuance of retail invoice was an inadvertent mistake.

The Delhi VAT Department's appeal against the decision of the Delhi VAT Tribunal has been dismissed by the Delhi High Court on the basis that no substantial question of law arises from the decision of the Delhi VAT Tribunal.

CASE LAWS

Bimla Kothari v. Unitech Limited [(2016) 138 SCL 213/75 (NCLT- New Delhi)]

The issues in this matter that were raised before the NCLT are as follows:

• Whether the Companies Act 2013 applies to public deposits made on or before 1.04.2014?

• Whether the petition filed by the depositors for recovery of their deposits made prior to 1.04.2014 under Section 73 would be maintainable or not?

The respondent company has accepted deposits but failed to make payment on the maturity. The holders being aggrieved party filed a petition before the NCLT for the recovery of their deposits.

NCLT held that Rule 19 of the Companies (Acceptance of Deposits) Rules, 2014 clarifies the applicability of the said provisions, prior to or after coming into force of the Companies Act, 2013. There the term deposit mean and include all the previous deposit accepted by the company.

The respondent contented that since the deposits were made before the enactment of the Companies Act 2013, and the petitioner's only recourse lies with the Civil Court as they do not come within the definition of "depositors" as per Companies Act, 2013. Hence, this particular act was not applicable and the petitioners were in violation of the provisions of Companies Act, 2013.

The NCLT on the final note allowed the petition and each and every depositor was entitled to recover their dues in execution proceeding together with costs and interest on their deposits. This would be without prejudice to the rights of the applicants to seek recovery of their dues from other tangible assets of the Respondent Company or take recourse to any other remedy available under the Civil law.

Michael Hart V. Ninestars Information Technologies Limited [(2016) 4 Comp LJ 7 (Mad)]

The issue in this matter before the Hon'ble High Court of Madras was to determine the maintainability of winding up petition filed on the ground that the company failed to pay its admitted liability to the petitioner and was unable to pay all its debts arising in the usual and ordinary course of business, consequently becoming as a commercial insolvent.

In the present case the respondent company had sought services of a foreign consultant by signing a consultation agreement. The consultant had regularly sent the invoices for the respective months.

The respondent company did not make payment even after agreed to settle the claim on receipt of legal notice from petitioner. Consequently, the petitioner sent statutory notice and filed the present petition when not received any response from respondent company.

The court came to a conclusion and held that no doubt, it is true, not that all the 'failures' to pay the debt, would fall under the purview of 'unable' to pay debt. But, at the same time if such 'failure' is not

resulting out of any bona fide contention on the part of the company and, on the other hand, in spite of having sufficient opportunity to settle the dues, if the company fails to do so, this court can, going by the facts and circumstances of the case, certainly, being such 'failure' under the purview of 'unable' to pay the debts or due. Accordingly, the Hon'ble Court allowed the present petition for winding up of the company.

PAN Asia Advisors Limited and its promoter, Mr. ArunPanchariya v. SEBI

PAN Asia Advisors Limited ("**PAAL**") and its promoter Mr. ArunPanchariya ("**AP**") (collectively referred to as "**Appellant**") has appealed to Securities Appellate Tribunal ("**SAT**") against the order of SEBI dated June 20, 2013 wherein Appellant has been debarred from rendering services in connection with securities and accessing the capital market for a period of 10 years.

In the given case, PAAL was appointed as the lead manager to Global Depositories Receipt ("GDRs") issue by six (6) entities including Ashahi Infrastructure & Projects Ltd. ("**Ashahi**")outside India. It is pertinent to note that the Appellant had observed the same modus operandi with all the six (6) entities.By appointing PAAL as the the Lead Manager, Asahi decided to raise funds frominvestors outside India through the issuance of GDRs. Vintage, an overseas company owned by AP obtained a loan from European American Investment BankAG ("**EURAM Bank**") to acquire the GDRs to be issued by **Ashahi**. Correspondingly, Ashahi itself provided some form of security to the bank towards repayment of loan. It is pertinenttonote that the object of the loan was to fund Vintageto take down GDR issue of Asahi and the said loan amount was to be transferred. AP then transferred the GDRs to FIIs /sub accounts that were controlled by AP who, in turn, sold the shares received from the conversion of GDRs in the Indian securities marketto entities with whom AP was connected.

This internal arrangement has made it appear to the investors in India that foreign investors have found Ashahi to have great potential by subscribing to the GDR issuance and thus violated the provisions of SEBI Act, 1992 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**"). Accordingly, SEBI passed an order against the Appellant for committing fraud and misrepresentation.

Against the said order, PAN Asia and its promoter appealed to the SAT.SAT while upholding the SEBI order, were of the view that, creating such artificial impression in the minds of the investors that the GDRs of Ashahi had commanded considerable interest constitutes fraud on the investors under the PFUTP Regulations. Hence, no fault can be found with the decision of the SEBI in debarring the market access and rendering services for a span of 10 years. Thus, the appeal was dismissed.

SEBI v. Burren Energy India Limited & Others

Burren Energy India Ltd. ("**Burren/Acquirer**"), was incorporated under laws of England and Wales to acquire the entire shareholding of Unocal Bharat Ltd. ("U**BL/PAC**"). The shares of UBL were held by Unocal International Corporation ("**UIL**"). UBL did not carry out any business activity but, at the relevanttime, held 26.01% shareholding in an Indian listed company Hindustan Oil Exploration Company Limited ("**Target Company**").

Burren entered into a Share Purchase Agreement ("**SPA**") with UIL on February 14, 2005 ("**Execution Date**") to acquire entire shareholding of UBL and consequently indirectly acquired 26.01% shareholding in the Target Company, attracting the SEBI Takeover Regulations. Pursuant to SPA, Acquirer along with PAC made a Public Announcement ("**PA**") in the form of a Public Offer for purchase / sale of 20% shares of Target Company to the public on February 15, 2005. On the Execution Date, Acquirer appointed two directors to the board of UBL and UBL appointed the same two persons as directors in the Target Company. Such appointment was held to be in violation of Regulation 22(7) of Takeover Regulations, 1997 which states that an Acquirer or PAC cannot be appointed as directors of the Target Company whose shares are involved under open offer, during the offer period. SEBI thus imposed a penalty of 25 lakhs each on Acquirer and PAC. However on appeal to SAT, they opined that as there was no Memorandum of Understanding between the parties and hence the date of public announcement that wouldtrigger of the commencement of the 'offerperiod'. The order of SEBI was reversed and set aside taking into account that the Directors were appointed prior to the PA and hence cannot be held liable.

SEBI challenged the order of SAT before the Supreme Court ("**SC**") by way of an appeal on the contention that a MOU may also include a concluded contract / agreement between parties. Hence,

even if parties had not executed an MOU, the offer period had to commence from Execution Date. SC held that in the event, no MOU has been entered into between the Acquirer and Target Company, but a SPA has been entered prior to making a PA, the date of SPA shall be considered as the date of commencement of offer period. Thus, SC set aside the order of SAT and upheld the order of SEBI.

Class Action Suits Can Be Filed Under The Consumer Protection Act 1986

Delay in handing over possession of the flat by the developer/builder has become a regular phenomenon and has time and again left the consumers helpless. The present case clears the ambiguity surrounding a very pertinent provision under the Consumer Protection Act 1986. The main issue before the National Consumer Dispute Redressal Commission **[NCDRC]** in the present case was "Whether a group of cooperative societies, firms, associations etc could join hands to file a joint complaint under Section 12 (1) (c) of the Consumer Protection Act 1986".

In the present case a group of aggrieved consumers [i.e the Complainant(s)] had filed a consumer complaint against the developer [i.e the Opposite Party]. Vide order dated May 24, 2016 the division bench of NCDRC referred the adjudication on the above mentioned issue to a larger bench for its decision. While interpreting the scope and ambit of Section 12 (1) (c), it was observed by the NCDRC that a complaint under Section 12 (1)(c) of the Consumer Protection Act 1986 can be filed only on behalf of or for the benefit of all buyers, having a common interest or a common grievance and seeking the same/identical relief against the same person. The bench further observed that a cooperative society or a group of cooperative societies, firms, an association shall not be entitled to file a complaint under Section 12 (1) (c) of the Consumer Protection Act 1986 unless the cooperative society itself is a consumer as defined under Section 12 (1) (d) of the Consumer Protection Act 1986. The NCDRC further opined that the decision in one complaint filed in a representative capacity will bind all the buyers of the project. Therefore once a complaint in a representative capacity is filed under Section 12 (1) (c), and requisite permission for filing the same is given by the Consumer Forum, the second individual complaint under Section 12 (1) (c) will be liable to be dismissed with liberty to seek impleadment in the complaint already instituted.

On the point of maintainability of the complaints filed in representative capacity, the NCDRC observed that a complaint under Section 12 (1)(c) of the Consumer Protection Act, 1986 is maintainable before the Commission where the aggregate of the value of the goods purchased or the services hired or availed of by all the consumers on whose behalf or for whose benefit the complaint is instituted and the total compensation, if any, claimed in respect of all such consumers exceeds Rs.1 crore. Further, the value of the goods purchased or the services hired and availed of by an individual consumer or the size, or date of booking / allotment / purchase of the flat would be wholly irrelevant in such a complaint where the complaint relates to the sale / allotment of several flats / plots in the same project / building. The present decision of the consumer forum will surely curb the multiplicity of consumer complaints and is an effective step towards faster adjudication of the consumer complaints.

No Discretionary Power To Extend Timelines Under The Commercial Courts Act

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ("Act") is an important step taken by the Government of India to expedite the adjudication of the commercial disputes.

In the present case Oku Tech Private Limited ("the Plaintiff") had filed a suit on November 21, 2015, pursuant to which Sangeeta Aggarwal & Ors ("the Defendant") were served with a notice on November 27, 2015. The outer limit of 120 days to file the written statement expired on March 26, 2016. However, the Defendants filed the written statement on May 7, 2016. Thereafter an application was filed by the Defendants seeking condonation of delay in filing the written statement. The Plaintiff while opposing the said application submitted that as per the relevant provisions of Code of Civil Procedure 1908, the Defendants had to file their written statement within 120 days from the date on which summons were received. Reference was further made to Section 16 read with the Schedule of the Act in terms of which the second proviso to Order V Rule 1 of the Code of Civil Procedure, 1908 as well as the proviso to Order VIII Rule 1 of the Code of Civil Procedure, 1908 have been amended to provide a binding timeline for the filing of a written statement, which cannot be extended at the discretion of the Court. However, it was contended by the Defendant that in view of Section 16 of the

Act, the term "may" provides the Court a discretion to extend the time limit to file the written statement, and condone the delay in filing the written statement.

The Hon'ble Delhi High Court while interpreting the amendments made to the Code of Civil Procedure 1908 (i.e the substituted provisos to Order V Rule 1, Order VIII Rule 1 and Order VIII Rule 10) by virtue of the Act observed that the insertion of the substituted provisos gives a clear indication regarding the legislative intent to bar courts from having the discretion to grant any extension beyond the time limit stipulated under the statute. Considering an outer limit of 120 days from the date of service of summons has been prescribed in the Act, failure to file the written statement by the Defendant within such a stipulated time would amount to instant forfeiture of the right to file the written statement. The Court further opined that the very object of the Act and the amendments brought about in the Code of Civil Procedure 1908 were to be strictly adhered with. Therefore it could not be construed that the time period for filing a written statement in a commercial suit in terms of the Act can be extended.

Parties May Provide For The Provision Of An Appeal In Arbitration Clause

An arbitration clause is of much significance in any agreement. The intent behind incorporation of such a clause in any agreement is to make the process and manner of resolution of a dispute abundantly clear. In the present case M/s. Centrotrade Minerals and Metal Inc. ("**Centrotrade**"), and the Hindustan Copper Limited ("**HCL**"), entered into a contract for sale of 15,500 Dry Metric Ton (DMT) of Copper Concentrate to be delivered at Kandla Port in the State of Gujarat. The same was delivered and the payments had been made. However, a dispute arose between the parties as regards the weight of the material supplied. Clause 14 of the contract (i.e the Arbitration Clause) entered into between the parties provided for an arrangement of Two-Tier Arbitration procedure. As per the said clause, all disputes were to be settled by the arbitration panel of the Indian Council of Arbitration ("**ICA**") in accordance with the rules of Arbitration of ICA, but in case of disagreement with the 'arbitration result' in India, either party had the right to a second arbitration in London (U.K.) in accordance with the Arbitral and Conciliation rules of the International Chamber of Commerce ("**ICC**"). It was further agreed in view of the said clause that the result of this second arbitration will be binding on both the parties.

The Arbitration clause was invoked by Centrotrade. The Arbitrator appointed by the ICA passed a nil award. Being aggrieved by the decision of ICA, Centrotrade in view of Clause 14 took matter to London where an award was made upholding the claim of Centrotrade. An application for enforcement of the award passed by ICC was filed by Centrotrade before the Court of District Judge at Alipore. The said application was transferred to the High Court of Calcutta which whilst allowing the application executed the award in favour of Centrotrade. Aggrieved by the decision of the High Court, HCL filed an appeal before the Supreme Court of India.

The main for consideration issue before the Supreme Court was "Whether a settlement of disputes or differences through a two-tier arbitration procedure as provided for in Clause 14 of the contract between the parties is permissible under the laws of India?"

HCL contended that the provisions of the Arbitration and Conciliation Act 1996 do not sanction an appellate arbitration and that the same is contrary to public policy. The Supreme Court of India observed that the appellate arbitration structure is not in contravention to the laws of India and the "arbitration result" (as used in Clause 14 of the contract) had all the elements and ingredients of an arbitration award. It was further observed that the fact that recourse to a court is available to a party for challenging an award at court does not ipso facto prohibit the parties from mutually agreeing to a second look at an award with the intention of an early settlement of disputes and differences outside court. It was further observed by the Apex Court held that "there is nothing in the Arbitration and Conciliation Act 1996 that prohibits the contracting parties from agreeing upon a second instance or appellate arbitration-either explicitly or implicitly".

Applicability Of The Arbitration And Conciliation (Amendment) Act, 2015 To Court Proceedings

The Arbitration and Conciliation (Amendment) Act, 2015 ("Amended Act") came into force on October 23, 2015. Ever since then, there has been immense ambiguity surrounding its applicability to proceedings initiated before the Amended Act came into force. Several Courts in India have given their

interpretation on whether the Amended Act should apply retrospectively or prospectively to court proceedings arising out of arbitration proceedings initiated before the Amended Act came into force. In the present case Raffles Education Corporation Limited ("Raffles"), and Educomp Solutions Limited ("Educomp") entered into a Master Joint Venture Agreement dated 16.05.2008 which resulted in the incorporation of Educomp Raffles Higher Education Limited ("ERHEL") as a joint venture company.

The parties had agreed to resolve their disputes through arbitration seated in Singapore, with the governing law as Singapore Law, and arbitration to be conducted in accordance with the rules of the Singapore International Arbitration Centre ("SIAC"). Certain disputes arose between parties wherein the Petitioner proceeded to initiating arbitration in Singapore and also filed for the appointment of an emergency arbitrator under the SIAC rules. The emergency arbitratorappointed by SIAC passed an Interim Emergency Award in the favor of Raffles. Soon an application before the High Court of the Republic of Singapore ("SHC") under Section 12 of the International Arbitration Act was filed for the enforcement of the Emergency Award against Educomp. Raffles thereafter secured an enforcement order dated 04.02.2016 against Educomp.

Educomp acted in contravention of the Emergency Award which led to the filing of a petition before the High Court of Delhi by Raffles under section 9 of the Arbitration and Conciliation Act, 1996 seeking interim reliefs similar to what had been granted under the Emergency Award. In the present case, the main issue for consideration before the Delhi High Court was whether the Petition filed by Raffles was maintainable per se and whether the Amended Act should be interpreted as not applicable to court proceedings for the reason that the same would make the Amended Act a retrospective legislation.

Educomp contended that Part 1 of the Arbitration and Conciliation Act 1996 is inapplicable to proceedings held outside India and that by choosing Singapore as the Seat, the parties have impliedly excluded the applicability of Section 9 of the Arbitration and Conciliation Act 1996 and that therefore the present Petition is not maintainable. It was further contended that the Amended Act is inapplicable to the present arbitral proceedings by virtue of Section 26 of the Amended Act, as the arbitral proceedings had commenced prior to the date of commencement of the Amended Act. On the contrary, Raffles relied on the exception provided by the Amended Act (under Section 2(2)) which clearly states that Sections 9, 27, 37(1)(a) and 37(3) from Part 1 of the Amended Act would be applicable for foreign seated arbitrations, subject to an agreement to the contrary.

Keeping in view the contentions of both the parties, the Delhi High Court observed that the Amended Act would be applicable to all arbitration-related court proceedings commenced after October 23, 2015 even if the related arbitration is instituted prior to October 23, 2015. The Court relied on Section 26 of the Amended Act, which in its easiest interpretation provides that the Act will not be applicable to the arbitral proceedings commenced before the Amended Act, but it would apply to **proceedings in relation to arbitral proceedings** commenced on or after the commencement of the Amended Act. The word 'in relation' is the key word and it covers all the proceedings which are connected to arbitral proceedings, including court proceedings. The Court therefore allowed the present Petition and made it clear that choice of a foreign law or a foreign seat or foreign institutional rules does not amount to implied exclusion of Section 9 of the Arbitration and Conciliation Act 1996.

In view of the divergent views taken by the High Courts across the country on the applicability of the Amended Act, the question of law regarding the retrospective applicability of the Amended Act to arbitral proceedings vis-à-vis court proceedings however, is currently pending adjudication before the Supreme Court.

No Wage Discrimination Between Permanent And Temporary Employees Henceforth

The present case culminates from the contradicting stand taken by the Punjab & Haryana High Court in various cases regarding the pay structure of temporary employees/ ad-hoc workers. The main issue before the Supreme Court was whether temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like) are entitled to the same wages as that of permanent employees, if they discharge similar duties and responsibilities as that of permanent employees.

The Supreme Court laid emphasis on the concept of "Equal pay for equal work" and observed that an employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities in a welfare state. Further considering India is a signatory to the International

Covenant onEconomic, Social and Cultural Rights, 1966, there is no escape from the obligations thereunder in view of the different provisions of the Constitution. While analyzing the issues faced by the temporary employees, the Supreme Court held that :-

a. "If the temporary employees / ad-hoc workers are not paid same wages as what a permanent worker gets it would be considered as violation of Article 14 (Right to equality) in the eyes of the law.
b. The right of equal wages is also backed by Article 39 which makes it states responsibility to pay equal wages for equal work.
c. But for the same the kind of work done by temporary employee should be similar, quality of work done by him should be similar to that of a permanent employee, and the temporary employee must possesses the qualifications prescribed for the particular post.
d. The government cannot deny a temporary employee at least the minimum wage being paid to a permanent/regular employee along with the allowances and other benefits.
e. There should be no different payment rates for doing the same work merely for classification under unskilled, semi- skilled, or skilled workers. The same shall be discriminatory and in violation of Article 14 and 16."

The present decision provides relief to temporary workers and protects their fundamental and legal rights. The decision further establishes that the mere fact that a person is engaged on a temporary basis shall not hinder his ability to earn the amount of wages as earned by a regular worker.

[2] *Ambrish Kumar Shukla & 21 Ors Vs Ferrous Infrastructure Private Limited Consumer Case No. 97 of 2016*
[3] *Oku Tech Private Limited Vs Sangeeta Agarwal & Ors CS(COMM) 1522/2016*
[4] *Centrotrade Minerals & Metal v. Hindustan Copper Civil Appeal No 2562 of 2006*
[5] *Raffles Design International India Pvt Ltd. vs. Educomp Professional Education Ltd. O.M.P.(I) (COMM.) 23/2015 & CCP (O) 59/2016, IA Nos. 25949/2015 & 2179/2016*
[6] *State of Punjab and Ors. v. Jagjit Singh and ors Civil Appeal No. 213 of 2013before the Supreme Court of India*
[7] *LPA no. 337 of 2003, decided on 7.1.2009 ; LPA no. 1024 of 2009, decided on 30.8.2010 and CWP no. 14796 of 2003*