Vol. 06 | June 2023

Official Newsletter

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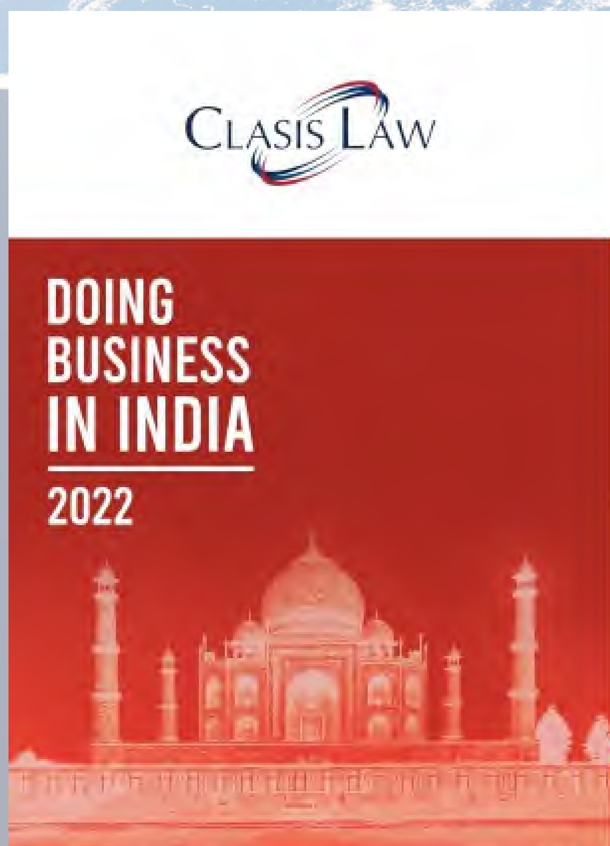
DOING BUSINESS IN INDIA

We are pleased to share the **Fourth Edition** of our guide titled ***"Doing Business in India"***.
The guide intends to give the reader an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.



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FEATURED ARTICLE

Framework for Ship Leasing in Gift City in India

Authors
Dinesh Gupta, Associate Partner
Yash Jain, Associate
Clasis Law

The Gujarat International Finance Tec-City **(Gift City)** has emerged as a dynamic hub for global financial services in India. With a view to promote the International Financial Services Centre **(IFSC)** at Gift City as a global hub for ship leasing and related activities, the International Financial Services Centres Authority **(IFSCA)** had constituted an expert committee to provide its recommendations. The expert committee examined the existing legal and regulatory regime in Gift IFSC in India and compared the Gift IFSC with those of global top-ranking marine hubs. The committee submitted its report on Ship Acquisition, Financing and Leasing **(SAFAL)** wherein it provided useful recommendations for realizing the true transformational potential of India's shipping industry. The SAFAL committee recommended, inter alia, that ship lease should be notified as a financial product under the IFSCA Act and that the IFSCA should put in place an enabling framework for ship leasing activities in Gift IFSC.

In line with the recommendations of the SAFAL committee, the IFSCA issued a notification on 7 January 2022***(1)*** to notify ship leasing as a financial product under the IFSCA Act. According to this notification, ship leasing shall include operating lease, and hybrid of operating and financial lease of a ship or ocean vessel, engine of a ship or ocean vessel, or any other part thereof.

Subsequently, the IFSCA issued a framework dated 16 August 2022***(2)*** **(Framework)** for undertaking ship leasing activities in the Gift IFSC. While the operating lease transactions will qualify as be permitted non-core activity under the Finance Company Regulations***(3)***, the financial lease including hybrid of operating and financial lease will be a permitted core activity. On 22 March 2023, the IFSCA amended the Framework to further allow voyage charters and other commercial transactions for employment of ships under the category of operating lease.

FEATURED ARTICLE

In terms of the Finance Company Regulations and the Framework, the minimum owned fund***(4)*** requirement for undertaking operating lease (i.e., a permitted non-core activity) is USD 200,000, however, for undertaking the financial lease activity (i.e., a permitted core activity), the lessor entity will have to maintain a minimum owned fund of USD 3 million.

A person desirous to undertake the ship leasing activities in the Gift IFSC can set up a company or a limited liability partnership **(LLP)** or a branch or a trust. In the case of a company, it is mandatory that its promoters are located in FATF compliant jurisdictions. In the case of LLP or Trust, the partners or the trustees, as the case may be, shall be required to comply with this requirement. Once the entity or branch is set up, the applicant/entity will be required to obtain prior approval of the IFSCA. The applicant will also be required to obtain a letter of approval from the development commissioner before the ship leasing operations can be commenced. The entities will also have to comply with other applicable laws including Merchant Shipping Act as well as the circulars/notifications issued thereunder.

From a foreign exchange regulations perspective, any entity set up in the Gift IFSC is considered as a non-resident. Therefore, a foreign entity proposing to set up ship leasing business will not be required to comply with the foreign direct investment policy and the foreign investment rules. However, in case an Indian entity or an Indian resident individual wishes to set up a ship leasing entity in the Gift IFSC, then such Indian entity or resident shall be required to comply with the overseas direct investment related framework. The permissible activities under the operating lease category including operating lease, voyage charters, commercial transactions for employment of ships, assets management support services, sale and lease back, purchase, novation, transfer, assignment and other similar transactions in relation to ship lease. Under the finance lease category, the lessor can undertake financial leasing, hybrid of operating lease and financial lease, and all such activities which are allowed under operating lease category.

On 6 April 2023***(5)***, the IFSCA, in order to facilitate lessors/lessees to undertake the ship leasing activities, allowed 'ship broking' services in the Gift IFSC. Ship broking is a well-recognized global professional service in the shipping business and the ship brokers are considered specialist intermediaries in ship leasing business.

FEATURED ARTICLE

The development of the ship leasing business in Gift IFSC signifies a notable advancement for the Indian maritime sector, presenting a promising sector that is likely to attract the global investors. The favourable tax regime, regulatory framework, and skilled workforce in the Gift IFSC make it an attractive destination for ship leasing companies and therefore, ship leasing activities are expected to grow significantly in the coming years similar to the aircraft leasing and financing vertical.

Footnotes

1. Notification No. F. No. IFSCA/2021-22/GN/021 dated 7 January 2022 issued by the IFSCA
2. Circular no. F. No. 496/IFSCA/FC/SLF/2022-23/001 dated 16 August 2022 issued by the IFSCA
3. International Financial Services Centres Authority (Finance Company) Regulations, 2021
4. "Owned fund" for a lessor under this Framework shall mean the paid-up-capital and free reserves balance in share premium account and capital reserves representing surplus arising out of sale proceeds of asset, excluding reserves created by revaluation of asset, as reduced by accumulated loss balance, book value of intangible assets and deferred revenue expenditure, if any.
5. Circular No. F. No. 206/IFSCA/Anc. Aux/2020-21 dated 6 April 2023 issued by the IFSCA

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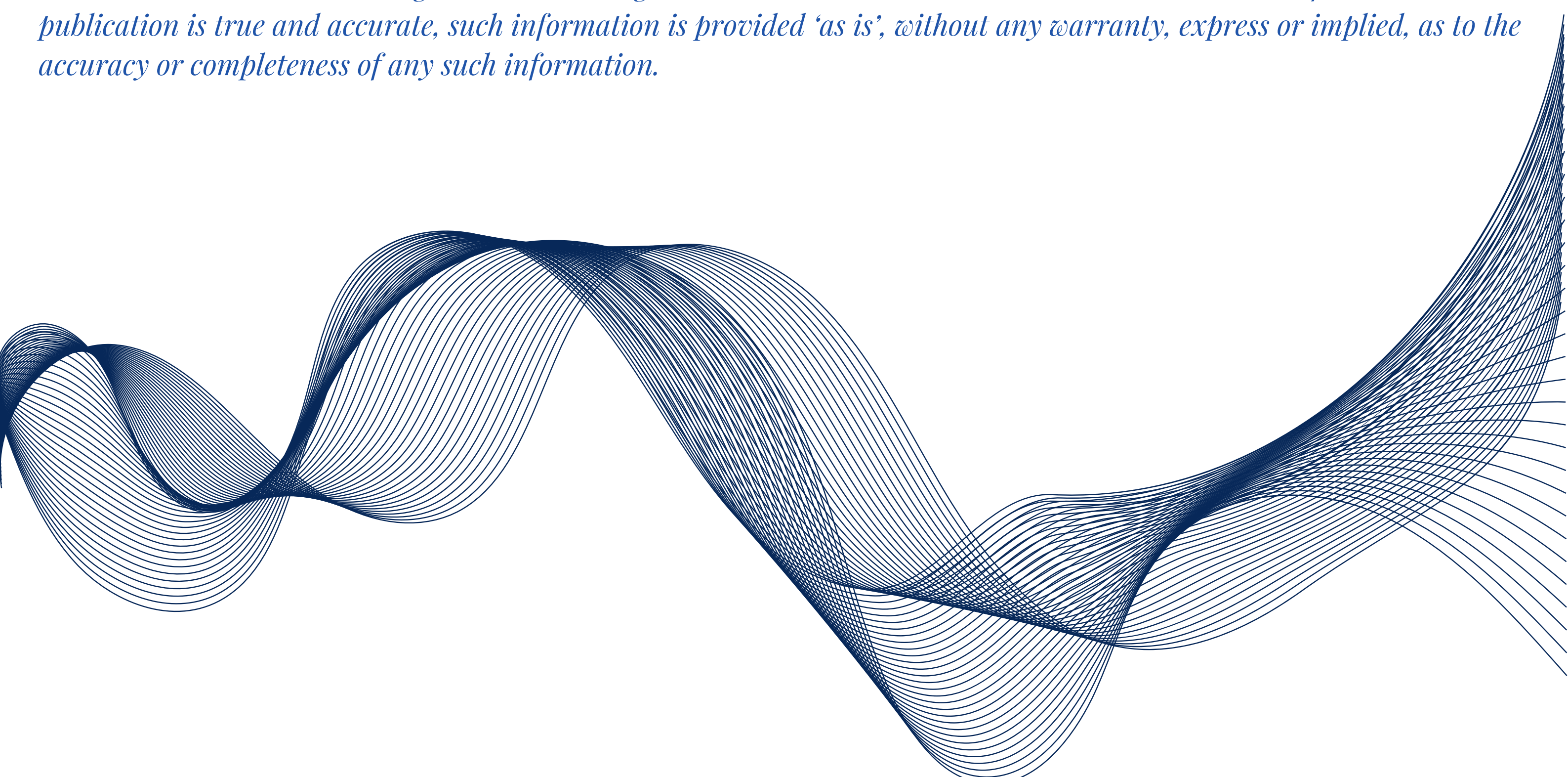


Karnataka High Court Set Aside Registrar's Order Contravening Civil Courts Order of Dismissal of Suit for Specific Performance

Introduction

In a recent judgment, the Karnataka High Court held that when a civil court dismisses a suit for the specific performance of an agreement for sale, the registrar cannot direct the registration of the sale deed in contradiction to the court's order.

Facts

The Petitioners in this case executed an agreement of sale on November 9, 1998 (Agreement), in favour of Respondent no. 3, agreeing to sell the suit property. Earnest money was paid as part of the agreement. Subsequently, Respondent No. 3 prepared the sale deed, which was signed by Petitioners 1 to 6. As petitioner no. 7 was a minor, Petitioner No. 1 signed on his behalf. When the sale deed was presented for registration on August 21, 2002, the Petitioners did not appear, and as a result, the sub-registrar (Respondent no. 2) refused to register the deed on March 6, 2004, u/s 34 of the Registration Act, 1908 (Act). Meanwhile, Respondent No. 3 filed an appeal u/s 73 of the Act with the District Registrar (Respondent no. 1). However, during the pendency of the appeal, Respondent No. 3 also filed a suit before the Civil Judge (Sr. Dn.), seeking specific performance of the Agreement (Suit). The Suit was subsequently dismissed by the Civil Court on September 23, 2010. Despite this dismissal, Respondent No. 1 proceeded with the appeal and, on September 27, 2013, issued an order directing Respondent No. 2 to register the sale deed. The Petitioners challenged this order before the High Court through a Writ Petition.

Contentions raised

The Petitioners argued that the enquiry conducted by Respondent No. 1 lacked legal basis, as Respondent No. 1 did not have the power to hold such an enquiry. They further contended that Respondent No. 3 did not take any steps to summon the Petitioners before Respondent No. 2, justifying the refusal to register the document. Lastly, they claimed that Respondent No. 1 failed to consider the civil court's decree, rendering his order unsustainable. The Petitioners relied on the Punjab High Court's judgment in the case of Avnash Rani*(1)*. On the other hand, Respondent No. 3 argued that the dismissal of the civil suit did not affect the appeal, as the Petitioners had already received the complete sale consideration by that time, and therefore, Respondent No. 1's order was in accordance with the law. Respondents No. 1 and 2 contended that the Petitioners admitted the execution of the sale deed during the enquiry, and the suit for specific relief was not relevant to the enquiry. The key question before the Court was whether the District Registrar, under section 73 of the Act, was justified in disregarding the judgment of the Civil Court.

Observations of the Court and Conclusion

The Court acknowledged that the Petitioners were

the undisputed owners of the property. In the Civil Suit, Respondent No. 3 had sought specific performance of the agreement of sale, which was subsequently dismissed on March 29, 2010, and remained unchallenged. The Court noted that the suit was dismissed before the Respondent No. 1 issued his order on September 27, 2013. The Court then examined various sections of the Act, including sections 32, 34, 35, 71, 72, 73, and 74, which deal with the registration of documents, the powers of the sub-registrar to conduct an inquiry, and the procedure for application to the registrar in case of registration refusal.

The Court emphasized that the power of the registrar, u/s 73, to hold an enquiry is broader than those of the sub-registrar u/s 35. However, the Court found that Respondent No. 1's order was contrary to the judgment of the Supreme Court in the case of *Veena Singh***(2)**, where it was held that mere signing of the instrument does not constitute execution. The court observed that Respondent No. 1 had ignored the civil court's judgment and had, during the enquiry, involved himself in the dispute between the Petitioners and Respondent No. 3.

The court further with concurrence referred to the judgment in the case of *Avnash Rani***(3)**, which held that *"once the parties were before the civil court, the registrar's jurisdiction lacked bona fide."*

In conclusion, the Court held that the decision to order the registration of the sale deed, despite the dismissal of the suit for specific performance by the civil court, was contrary to the law. The Court found that the registrar's jurisdiction lacked bona fide and by allowing the appeal, set aside Respondent No. 1's order.

Footnotes

1. Avnash Rani and Ors. vs. Addl. Deputy Commissioner-cum-Registrar, Ferozepur and Ors. AIR 2009 P&H 35
2. Veena Singh (Dead) through L.R. vs. The District Registrar/Additional Collector (F/R) and Ors. (2022) 7 SCC 1
3. Supra

Delhi High Court Culls out the Principles of Comparative Advertisement

Introduction

The Hon'ble High Court of Delhi **("Court")**, in a suit*(1)* filed by the manufacturers*(2)* of Dettol handwash **("Dettol")**, refused to grant an interim injunction against the manufacturers*(3)* of Santoor handwash **("Santoor")** on the grounds that the advertisement broadcasted by Santoor did not disparage Dettol handwash, and the advertisement was within the four corners of the principles of comparative advertisement.

Facts

The dispute, in this case, arose out of an advertisement broadcasted by Santoor **("impugned advertisement")**. The impugned advertisement shows an adorable young girl, named Priya by the Court, expresses her wish to play with her mother. However, as her mother was gardening, her hands are dirty. Further, the scene shows her mother washing her hands with Santoor handwash, manufactured by the defendant. Having washed her hands, she plays with her daughter. Priya finds her mother's hands extremely soft and feels thrilled. This is when a voice-over begins announcing: *"haath itne soft ki chhodne ka mann na kare"*. After caressing Priya's cheeks, her mother pulls out from the shelf, a plastic bottle, labelled "ORDINARY HAND WASH".

The bone of contention is the shape of the plastic bottle as it bears the shape of Dettol handwash which is manufactured by the plaintiff. Priya's mother proceeds to replace the plastic bottle with Santoor with which she had initially washed her hands. A voice-over announces, *"saadhaaran handwash ke muqable naye Santoor Handwash mein hain chandan ke gun jo rakhe haathon ko soft" ("as compared to ordinary hand washes, Santoor Hand Wash has, in it, the benefits of sandal, which keeps the hands soft")*. A second voice-over announces *"ab har sparsh mein komalta"* ("now, softness in every touch").

In view of the above advertisement, Dettol filed a commercial suit seeking permanent injunction along with an application seeking interlocutory injunctive relief which was decided by way of the judgment herein.

Contentions of the Parties

Dettol urged that the features of the impugned advertisement disparage Dettol as: the removal of Dettol from the shelf indicates that, till then, Priya's mother was using Dettol; the replacement of the Dettol bottle with the Santoor bottle rubbishes Dettol as lacking moisturizing properties; the word "ordinary" used with reference to Dettol indicates that Dettol was inferior to Santoor; the impugned advertisement far crosses the *lakshman rekha* of comparative advertisement. Although Dettol agreed that puffery of one's product is permissible, denigration of the other is not and the impugned advertisement was *ex facie* denigrating and disparaging in nature.

Countering the above submissions, Santoor contended that the impugned advertisement only states that the defendant's Santoor Hand Wash

contains sandal, the plaintiff's product does not contain sandal and sandal has skin softening/moisturising properties. At no point does the impugned advertisement state that the defendant's product does not contain softening or moisturising qualities. It was submitted that that promotion of products involving natural ingredients, and prepared using Ayurvedic principles, is permissible. Every comparative advertisement involves an exhortation to a prospective customer, to choose the product of one person over another which does not indicate that the product of the latter is harmful in any way. It was further argued that the time taken in replacement of the bottle was miniscule.

Santoor contended that puffery is permissible and it necessarily involves an element of comparison of one product with the other. Further, it is permissible to extol the product which is advertised but not denigrate the other product. Where verifiable statements of fact, such as statistical comparisons are made, it is necessary that the comparison is factually true, failing which it would not be permissible. Thus, Santoor submitted that the impugned advertisement did not amount to disparagement of Dettol.

Findings of The High Court

The Court conducted a holistic and intricate analysis of the principles of comparative advertisement previously laid down by different High Courts. Upon a detailed discussion, the Court culled out a list of the principles of comparative advertisement emerging from the analysis as under:

- Where the advertisement does not directly or indirectly refer to the plaintiff's product, the plaintiff could not claim that its product was being targeted merely because it enjoyed a lion's share of the market.
- Even if the rival product was not specifically targeted, an indirect representation, which was sufficient to identify the product, was as good as direct targeting.
- Comparative advertising is protected under Article 19(l)(a) as commercial speech and a certain amount of disparagement is implicit.
- Subject to (v) *infra*, an advertisement must not be false, misleading, unfair or deceptive, irrespective of whether it is extolling the advertised product or criticising its rival. An advertisement has necessarily to be honest.
- Puffery is the only exception, as puffery, by its very nature, involves exaggeration and embellishment, and an element of untruth is bound to exist in it. Puffery is not, therefore, to be tested on the anvil of truth. Some element of hyperbole and untruth is inherent in puffery.
- Mere puffery is not actionable. One can claim one's goods to be better than others. Extolling the virtues of the plaintiff's product as containing natural ingredients, absent in other products, was not disparaging. Extolling of one's positive features is permissible.
- Denigration of a rival's product is completely impermissible. An advertisement cannot claim that a competitor's goods are bad or inferior. The subtle distinction between claiming one's goods to be superior, and the other's goods to be inferior has to be borne in mind.
- Serious statements of facts cannot be untrue.
- What matters is the impression that the advertisement registers in the viewer's mind. The hidden subtext, so long as it is apparent to the consumer, matters. The impact could be conveyed by clever advertising or innuendo instead of conveying of a direct message.
- The reasonable man, from whose vantage point the advertisement is to be assessed, is a right-thinking member of the public, and not a member of any particular class or section.

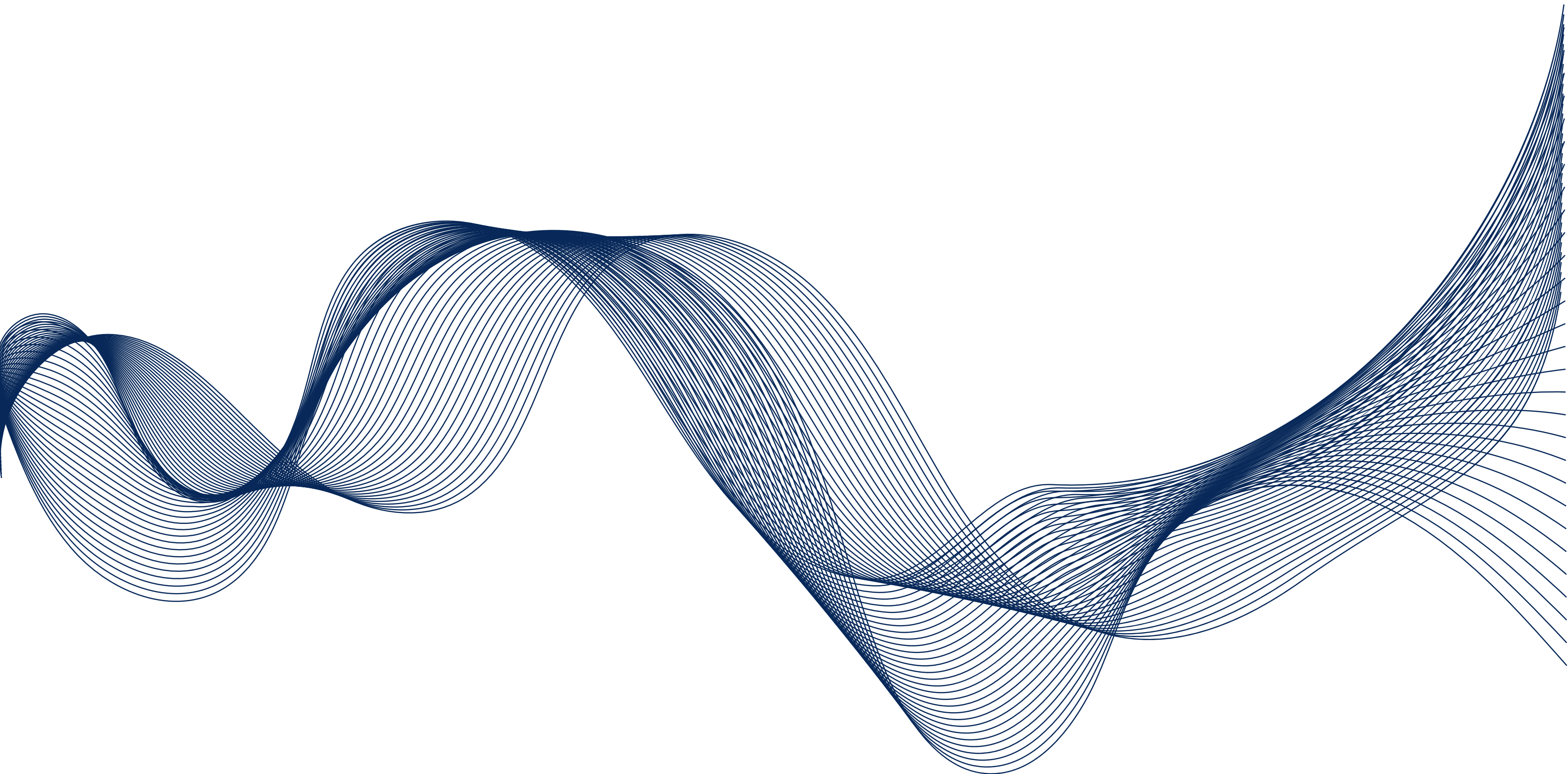
- While examining whether an advertisement is disparaging, the Court is required to see (a) the intent of the advertisement, (b) the manner of the advertisement and (c) the story line of the advertisement, and the message that it seeks to convey.
- The Court should neither undertake an over-elaborate analysis, nor be too literal in its approach.
- Words used in the advertisement are meant to be understood in their natural, general and usual sense and as per common understanding and not with the specific aim of catching disparagement.
- The time spent in showing the product is irrelevant; what is relevant is the context in which the product is shown.
- A plaintiff cannot afford to be hypersensitive, as the choice of the article which a consumer would select would depend on various factors including market forces, economic climate and nature and quality of the product.
- It is necessary to provide a fair amount of latitude to the advertiser as well.

Conclusion

Based of the above-listed principles, the Court found that the there was no direct reference, to any property, or characteristic, positive or negative, of Dettol and that it would be reading too much into the impugned advertisement to call it derogatory or deprecating of Dettol. Therefore, Court held that Dettol did not make out a *prima facie* case of denigration or disparagement, and thus, dismissed the interlocutory application.

Footnotes

1. Reckitt Benckiser (India) (P) Ltd. v. Wipro Enterprises (P) Ltd., 2023 SCC OnLine Del 2958.
2. Reckitt Benckiser (India) (P) Ltd. (Plaintiff)
3. Wipro Enterprises (P) Ltd. (Defendant)



In the matter of Regaal Resources Limited ("Company") for violation of section 4 read with section 10 and section 13 of the Companies Act, 2013 ("Act")

The Company suo-moto filed an application before the Registrar of Companies, West Bengal **("ROC")** in form GNL-1 seeking adjudication of penalties for violations of the provisions of section 4 read with section 10 of the Act. Therefore, ROC scheduled a hearing for adjudication. The authorized representative of the Company submitted that the Company had altered its main objects in 2015 inter alia for pursuing the business of manufacturing and dealing in fine and heavy chemicals, alkalies, manures, etc. and incorporated the words *"the business of fine chemical, etc."* in its memorandum of association **("MoA")**. Subsequently, the Company began the process of manufacturing starch under the assumption that starch is a part of chemical and it is not a food substance. However, upon advice, when it came to the knowledge of the Company that starch is a food substance and is not covered under the existing main objects, it altered its MoA in 2020 to include the business of starch. Since during the financial years 2018-19 and 2019-20 the Company had engaged in manufacturing and dealing of starch without a specific clause in its MoA, it had violated the provisions of section 4 of the Act. The authorized representative contended that the non-compliance was unintentional and did not adversely affect the interests of any person. After consideration of the facts and submission made by the authorized representative, ROC concluded the matter by imposing a penalty of INR 2,00,000/- on the Company and INR 50,000/- each on the officers in default.

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In the matter of Adani Power Limited ("Company") for violation of section 189 read with section 188 of the Companies Act, 2013 ("Act")

During the course of inquiry under section 206 of the Act, the inquiry officer observed from the financial statement of the Company filed for the financial years 2017-18, 2018-19 and 2019-20 that it had entered into the related party transactions without complying with the section 184(2) and 188 of the Act. Additionally, the Company had not recorded such related party transactions in the register of contract as required under section 189 of the Act. In this regard, the Registrar of Companies, Gujarat, Dadra and Nagar Haveli **("ROC")**, issued a notice to the Company and officers in default for the aforementioned violations. In response, the authorized representative of the Company submitted that since the transactions mentioned in the financial statements were conducted at arm's length prices and were in the ordinary course of business, thus they should not be covered under sections 188 of the Act. Furthermore, the authorized representative argued that the penal provisions provided under section 189(6) do not apply to the Company and the show cause notice issued to the Company Secretary does not fall under the category of officers in default as defined in section 189(6) of the Act. Therefore, the name of Company Secretary

should be removed from the adjudication proceedings. The presenting officer countered by stating that the Company had failed to provide documentary evidence to the inspecting officer to prove that the related transactions were conducted in the ordinary course of business and were at arm's length basis. Therefore, ROC imposed a penalty of INR 75,000/- each on the Managing Director, Whole Time Director and Chairman cum Director of the Company.

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In the matter of Essar Shipping Limited ("Company") for violation of section 204 of the Companies Act, 2013 ("Act")

During the inspection, it was observed from the Secretarial Audit Report for the financial year 2018- 2019 that the Secretarial Auditor had not mentioned in their report the non-compliance of section 186 of the Act as well as the failure to maintain Minutes Books of the Board Meeting and Audit Committee Meeting in accordance with secretarial standards issued by the Institute of Company Secretaries of India.

Consequently, the Registrar of Companies, Gujarat, Dadra and Nagar Haveli **("ROC")** issued an adjudication notice to the Secretarial Auditor of the Company for violation of section 204 of the Act. The authorized representative of Secretarial Auditor explained that the Company did not have any operations and was running in losses. He further stated that the observation made by the inspecting officer was due to an inadvertent error by the Secretarial Auditor and no unfair advantage was made by Secretarial Auditor nor any loss was caused to the investor(s) due to such non-disclosure. However, as the Company had violated provisions of section 204, ROC imposed a penalty of INR 2,00,000/- on the Secretarial Auditors of the Company.

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In the matter of Konwert India Motors Private Limited for violation of section 42(3) of the Companies Act, 2013 ("Act") read with Rule 14(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("Rules")

The Registrar of Companies, Tamilnadu **("ROC")** observed that the Company had passed special resolution for issue of private placement on April 24, 2021 and had filed form MGT-14 for the aforesaid resolution on August 24, 2021. However, the private placement offer letter was issued by the Company on April 24, 2021.

In terms of section 42(3) of the Act read with rule 14(8) of the Rules, a Company shall issue a private placement offer cum application letter only after the relevant special resolution or Board resolution has been filed with the Registrar of Companies. Since the Company had issued private placement offer letter prior to filing of form MGT-14, it was non-compliant of section 42 of the Act. Accordingly, ROC imposed a penalty of INR 2,00,000/- on the Company and INR 1,00,000/- each on every Director cum Promoter.

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In the matter of Comviva Technologies Limited for violation of Section 135 of the Companies Act, 2013 ("Act")

The Company, its key managerial personnel **("KMP")** and directors filed an application with the Registrar of Companies, NCT of Delhi and Haryana **("ROC")** admitting non-compliance under section 135 of the Act. The Company had an unspent amount of INR 550,122/- for the financial year 2020-21, that was required to be transferred to a fund specified in Schedule VII of the Act within six months from the end of financial year. The Company had transferred the amount to Prime Minister's National Relief Fund **("PMNRF")** within the specified timeline but due to a technical issue the amount had bounced back into the Company's bank account on the same day and remained unnoticed. Once the Company became aware of it, it transferred the amount to PMNRF and made good the default. Taking into account the application and subsequent submissions, ROC passed an order on September 27, 2022 and imposed a penalty on the Company and all applicants. Thereafter, the Company appealed before Regional Director, Northern Region **("RD")**, requesting the discharge of non-executive directors and independent directors from the imposed penalty. After reviewing the facts, RD referred the matter back to ROC for de novo adjudication. Subsequently, ROC reconsidered the matter and issued a letter to the Company to seek clarifications on prayers made in the appeal. Pursuant to receipt of reply and supporting documents, ROC issued a show cause notice to the Company to specifically seek input on the issue of officers in default as mentioned in the appeal.

Accordingly, the roles performed by various officers/directors concerning the CSR provisions were highlighted. ROC stated that the Company along with the applicants had voluntarily applied for adjudication, hence, as a result, non-executive directors and independent directors were also included for adjudication. Therefore, the request to exclude them was hit by the principle of estoppel. ROC further explained that section 135 of the Act imposes responsibility for CSR compliance on the Board of directors (which is inclusive of all directors viz. executive, non-executive and independent directors). Additionally, the FAQs issued by the Ministry of Corporate Affairs also clearly describe CSR as a Board driven process. The KMPs who do not hold Board positions would not be liable under section 135 of the Act. However, all directors as on the relevant date would be held accountable for failing to fulfill their legal obligations.

Thus, ROC levied a penalty of INR 11,00,244/- on the Company and INR 55,012.20/- each on all the directors.

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In the matter of Vijaynagar Bio-Tech Private Limited ("Company") for violation of section 203 of the Companies Act, 2013 ("Act")

The Registrar of Companies, Andhra Pradesh **("ROC")** had levied a penalty of INR 33,72,000/- on the Company and its officers in default for non-appointment of whole-time Company Secretary within 6 months from the cessation of the previous Company Secretary.

As a result, the Company filed an appeal before Regional Director, Hyderabad ("RD"). An opportunity of being heard was given to the Company and it was submitted that the previous Company Secretary had resigned due to Covid-19 pandemic. The Company had searched for a suitable candidate for the position of Company Secretary for a long time and finally succeeded in appointing another whole-time Company Secretary on July 25, 2022. The Company prayed for a reduction in the penalty based on reasons such as hampering of mobility of people due to Covid-19 pandemic, registered office of the Company was in a remote location, and Company is a closely held private company and the shareholders and Board of directors comprised of family members. Further, the Company stated that Managing Director and Chief Financial Officer of the Company are responsible for managing day to day affairs, therefore, non-executive directors should not be considered on equal footing when imposing penalties for non-compliance.

After considering the facts and circumstances, RD reduced the penalty imposed by ROC and penalized the Company and officers in default with INR 4,88,000/- for non-compliance of section 203 of the Act.

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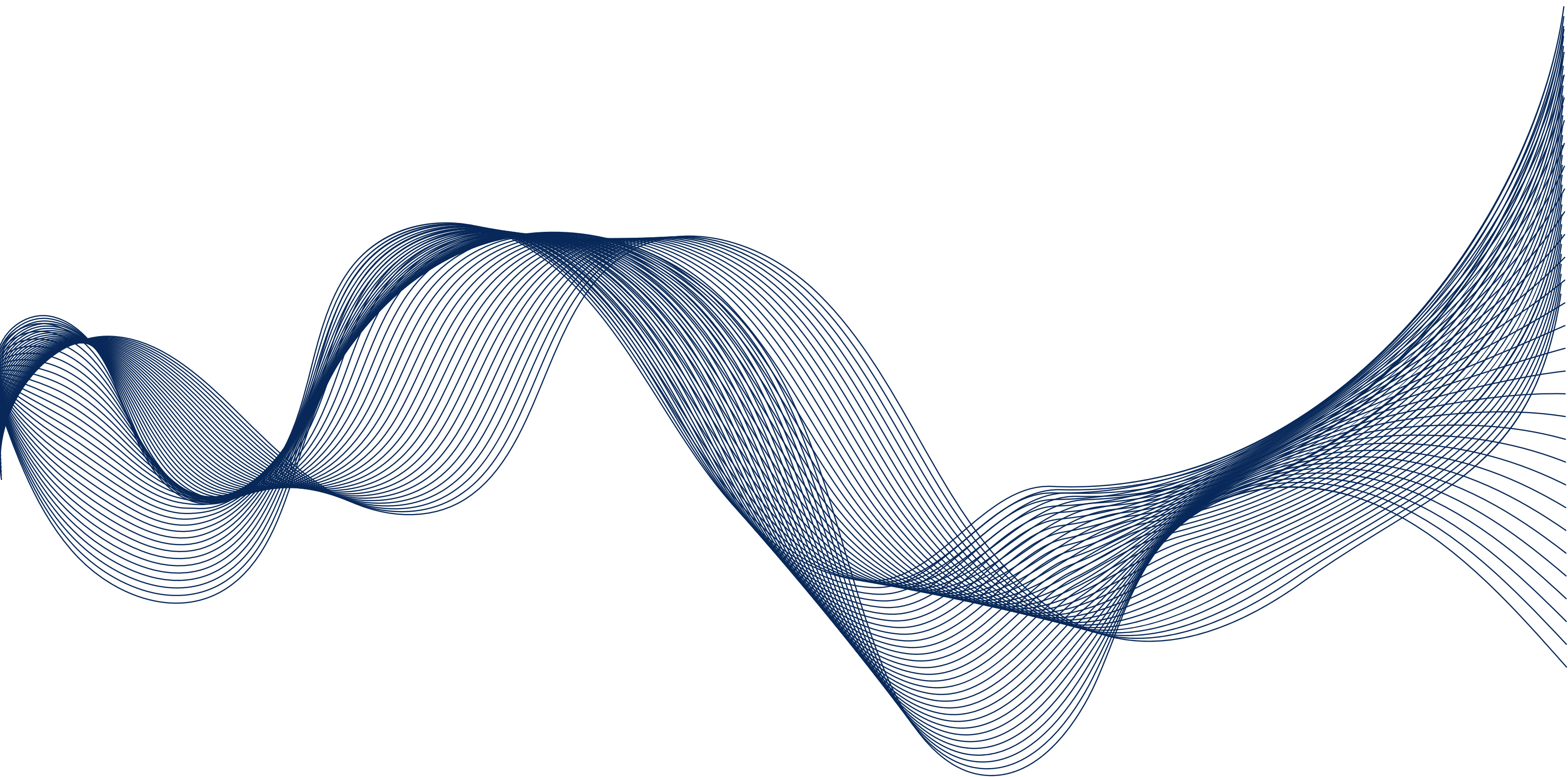


Introduction of Legal Entity Identifier for issuers who have listed and/or propose to list non-convertible securities, securitised debt instruments and security receipts

On 3 May 2023, the Securities and Exchange Board of India **("SEBI")** issued a circular on the Introduction of Legal Entity Identifier (LEI) for issuers who have listed and/or propose to list non-convertible securities, securitized debt instruments and security receipts. LEI is a unique global identifier for legal entities participating in financial transactions. LEI is designed to create a global reference data system that uniquely identifies every legal entity, in any jurisdiction, that is party to a financial transaction. It is a unique 20-character code to identify legally distinct entities that engage in financial transactions. Presently, RBI directions, inter alia, mandate non-individual borrowers having aggregate exposure of above INR 25 crores, to obtain LEI code. In view of the above, issuers having outstanding listed non-convertible securities as on 31 August 2023, shall report/ obtain and report the LEI code in the Centralized Database of corporate bonds, on or before 1 September 2023. Similarly, issuers having outstanding listed securitised debt instruments and security receipts as on 31 August 2023, shall report/ obtain and report the LEI code to the Depository(ies), on or before 1 September 2023.

Further, issuers proposing to issue and list non-convertible securities, on or after 1 September 2023, shall report their LEI code in the Centralized Database of corporate bonds at the time of allotment of the ISIN. Similarly, issuers proposing to issue and list securitised debt instruments and security receipts, on or after 1 September 2023, shall report their LEI code to the Depositories at the time of allotment of the ISIN. The requirement of LEI for issuers proposing to list/having outstanding municipal debt securities shall be specified later.

Entities can obtain the LEI code from any of the Local Operating Units (LOUs) accredited by the Global Legal Entity Identifier Foundation (GLEIF). In India, the LEI code may be obtained from Legal Entity Identifier India Ltd (LEIIL), a subsidiary of the Clearing Corporation of India Limited (CCIL), which has been recognised by the Reserve Bank of India as issuer of LEI under the Payment and Settlement Systems Act, 2007 and is accredited by the GLEIF as the LOU in India for issuance and management of LEI codes. The Depositories shall:

(a) map the LEI code to existing ISINs by September 30, 2023; and
(b) for future issuances, map the LEI code provided by the issuers with the ISIN at the time of activation of the ISIN.

This circular shall come into force with immediate effect.

Additional requirements for the issuers of transition bonds

On 4 May 2023, SEBI issued a circular providing additional requirements for the issuers of transition bonds. On 2 February 2023, the revised definition of 'green debt security' was notified in the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. On 6 February 2023, SEBI issued the revised disclosure requirements for such issuances. 'Transition bonds' is one of the sub categories of the revised definition of 'green debt security'. As per the SEBI (Issue and Listing of Non-Convertible Securities), transition bonds comprise of "funds raised for transitioning to a more sustainable form of operations, in line with India's Intended Nationally Determined Contributions." In order to facilitate transparency and informed decision making amongst the investors in the transition bonds and to ensure that the funds raised through transition bonds are

not being misallocated, SEBI decided to prescribe certain additional requirements for issuance and listing of transition bonds. Accordingly, the following are prescribed.

An issuer desirous of issuing transition bonds shall make the following additional disclosures:

(a) Disclosure in the offer document for public issues/private placements of such transition bonds, as specified in the circular.
(b) Disclosure in the Centralised Database for corporate bonds, as specified in the circular.

(c) Disclosure to Stock Exchanges, in case of a revision in the transition plan, as specified in the circular.

(d) Disclosure in the annual report, as specified in the circular.

The provisions of this circular shall come into force with immediate effect. The provisions of this circular shall be appended as new Chapter IX-B of the Operational Circular.

Amendment to the Master Direction (MD) on KYC – Instructions on Wire Transfer

On 4 May 2023, the Reserve Bank of India ("RBI") decided to amend the Master Direction (MD) on KYC dated 25 February 2016, to update the instructions on Wire Transfer (Section 64 of the MD), also aligning the same with the relevant FATF Recommendation. The key amended instructions of Section 64 of the MD on KYC are as follows:

(A) Information requirements for wire transfers for the purpose of this Master Direction:

- All cross-border wire transfers shall be accompanied by accurate, complete, and meaningful originator and beneficiary information as mentioned below:

a. name of the originator; b. the originator account number where such an account is used to process the transaction; c. the originator's address, or national identity number, or customer identification number, or date and place of birth; d. name of the beneficiary; and e. the beneficiary account number where such an account is used to process the transaction. In the absence of an account, a unique transaction reference number should be included which permits traceability of the transaction.

- In case of batch transfer, where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, they (i.e., individual transfers) are exempted from the requirements of clause (i) above in respect of originator information, provided that they include the originator's account number or unique transaction reference number, as mentioned above, and the batch file contains required and accurate originator information, and full beneficiary information, that is fully traceable within the beneficiary country.
- Domestic wire transfer, where the originator is an account holder of the ordering RE, shall be accompanied by originator and beneficiary information, as indicated for cross-border wire transfers in (i) and (ii) above.
- Domestic wire transfers of rupees fifty thousand and above, where the originator is not an account holder of the ordering RE, shall also be accompanied by originator and beneficiary information as indicated for cross-border wire transfers.
- REs shall ensure that all the information on the wire transfers shall be immediately made available to appropriate law enforcement and/or prosecutorial authorities as well as FIU-IND on receiving such requests with appropriate legal provisions.

- The wire transfer instructions are not intended to cover the following types of payments:
- Any transfer that flows from a transaction carried out using a credit card/ debit card/ Prepaid Payment Instrument (PPI), including through a token or any other similar reference string associated with the card / PPI, for the purchase of goods or services, so long as the credit or debit card number or PPI id or reference number accompanies all transfers flowing from the transaction. However, when a credit or debit card or PPI is used as a payment system to effect a person-to-person wire transfer, the wire transfer instructions shall apply to such transactions and the necessary information should be included in the message.
- Financial institution-to-financial institution transfers and settlements, where both the originator person and the beneficiary person are regulated financial institutions acting on their own behalf.

It is, however, clarified that nothing within these instructions will impact the obligation of an RE to comply with applicable reporting requirements under PML Act, 2002, and the Rules made thereunder, or any other statutory requirement in force.

Further, Responsibilities of ordering RE, intermediary RE and beneficiary RE, effecting wire transfer, have also been provided. In addition, the definitions of the relevant terms used in the amended Wire Transfer instructions are being added in Section 2 (Definitions) of the MD on KYC. The amended provisions shall come into force with immediate effect.

Testing Framework for the Information Technology (IT) systems of the Market Infrastructure Institutions (MIIs)

On 5 May 2023, SEBI issued the Testing Framework for the Information Technology (IT) systems of the Market Infrastructure Institutions (MIIs). MIIs (i.e. Stock Exchanges, Clearing Corporations and Depositories) are systemically important institutions as they, inter-alia, provide infrastructure necessary for the smooth and uninterrupted functioning of the securities market. Therefore, it is imperative to devise a comprehensive testing framework to manage the IT systems/applications of MIIs throughout their lifecycle, which can assist the MIIs in performing thorough risk assessment before deploying any IT systems in production/ live environment. Based on the recommendations of the Technology Advisory Committee (TAC), MIIs are directed to ensure the following requirements while establishing the testing framework of their IT systems/ applications:

(a) All MIIs should do extensive testing, validation and documentation whenever new systems/ applications or changes to existing systems/applications are introduced before the deployment in a production/live environment.

(b) A comprehensive methodology for system testing, functional testing, application security testing should be established and the same shall be approved by Standing Committee on Technology (SCOT) of respective MIIs. The scope of testing shall, inter-alia, cover business logic, system function, security controls and system performance under load and stress conditions. Any dependency on the existing systems shall be properly tested.

(c) Testing should be carried out in a separate environment that replicates/mirrors the production environment in order to minimize any disruption.

(d) All MIIs shall have the practice of traceability matrix to ensure that the test plan covers all intended functionality of the IT system and application.

(e) All MIIs shall adopt the practice of using automated testing techniques to run the test cases automatically, which may increase the depth and scope of tests and ultimately help to improve the software quality.

(f)All MIIs shall establish policy/procedures on the use of third party systems/applications/software codes to ensure these systems are subject to review and testing before they are integrated with the systems of the MIIs.

(g)All MIIs shall ensure that core code components operate as intended and do not produce unintended consequences. Further, any new code shall not have any impact on the existing functionality. All MIIs shall also ensure that Application Programming Interface Testing is done so that the concerned application can interact with other applications without causing disruptions of any kind.

(h) All MIIs should perform regression testing for changes (e.g. enhancement, rectification, etc.) to an existing IT system to validate that it continues to function properly after the changes have been implemented. After fixing the defects found during the testing, all MIIs shall perform regression testing again to ensure that other existing functionalities are not affected during fixing the defects. All MIIs shall explore to capture the automated test cases so that regression testing can be performed multiple times with much wider coverage test cases in a short time.

(i) All MIIs may institute tools to measure test/code coverage to assess comprehensiveness of the test.

(j) All Issues identified from testing, including system defects or software bugs, should be properly tracked and remediated immediately. Major issues that could have an adverse impact on the MII should be reported to their SCOT and addressed prior to deployment to the production environment.

(k) All MIIs should ensure that the results of all testing, including results of User Acceptance Testing (UAT), that was conducted, are documented in the test report. The same shall be checked by the auditor during System and Network Audit.

(l) All MIIs shall periodically conduct non-functional testing such as volume testing, resilience testing, scalability testing, performance testing, stress testing, application security testing, BCP testing, negative/destructive testing etc. for all IT systems/applications throughout their lifecycle (pre-implementation, post-implementation, after changes).

(m) All MIIs shall perform white box testing or structural testing, which shall inter-alia include analyzing data flow, control flow, information flow, coding practices, exception and error handling within the system

The circular shall come into force with immediate effect.

Formalisation of Informal Micro Enterprises on Udyam Assist Platform

On 9 May 2023, the RBI issued a notification on formalisation of Informal Micro Enterprises (IMEs) through Udyam Assist Platform (UAP).

The Ministry of Micro, Small and Medium Enterprises ('MSME'), Government of India launched the UAP to facilitate formalisation of IMEs through online generation of Udyam Assist Certificate. Registration on the platform is done with the assistance of Designated Agencies which are RBI regulated entities (including scheduled commercial banks, non-banking financial companies, etc.).

The Government of India, vide Gazette Notification S.O. 1296(E) dated 20 March 2023, specified that the certificate issued on the UAP to IMEs shall be treated at par with Udyam Registration Certificate for the purpose of availing Priority Sector Lending (PSL) benefits.

Government of India has clarified to RBI that IMEs are those enterprises which are unable to get registered on the Udyam Registration Portal (URP) due to lack of mandatory required documents such as Permanent Account Number (PAN) or Goods and Services Tax Identification Number (GSTIN). Hence such enterprises are unable to avail the benefits of Government schemes or programmes. Further, it has been clarified that the turnover of enterprises exempted from filing returns under the provisions of the Central Goods and Services Tax Act, 2017 shall be the sole criterion to be defined as IMEs for the purpose of UAP. Accordingly, IMEs are those enterprises that are not covered in the Goods and Services Tax regime.

An interface has been created between the UAP and Udyam Registration Portal (URP) to enable the transition and migration of the IMEs from UAP to URP, once IMEs obtain the mandatorily required documents. In view of the aforementioned notification and clarification, IMEs with an Udyam Assist Certificate shall be treated as Micro Enterprises under MSME for the purposes of PSL classification.

Registration with the FINNET 2.0 system of Financial Intelligence Unit–India (FIU-India)

On 9 May 2023, SEBI issued a circular on SEBI registered debenture trustees to be registered with the FINNET 2.0 system of Financial Intelligence Unit–India (FIU-India). FIU-India, vide letter dated 19 April 2023 addressed to designated directors and principal officers of Debenture Trustees, has specified guidelines including red flag indicators for detecting suspicious transactions by the Debenture Trustees under Rule 7(3) of Prevention of Money Laundering (Maintenance of Records) Rules, 2005. It has been informed by FIU-India that:

(a) all Reporting Entities falling under Debenture Trustee segment registered in FINNET1.0 system of FIU-India are required to re-register themselves in FINNET2.0 system/ module1; and

(b) those reporting entities who have not yet registered themselves with FIU-India are required to be registered in FINNET2.0 system/ module of FIU-India immediately in light of the FATF mutual evaluation.

In view of the above, all the SEBI registered debenture trustees are advised to register/ re-register themselves in FINNET2.0 system of FIU-India as soon as possible.

Direct Market Access (DMA) to SEBI registered Foreign Portfolio Investors (FPIs) for participating in Exchange Traded Commodity Derivatives (ETCDs)

On 10 May 2023, SEBI issued a circular on Direct Market Access (DMA) to SEBI registered Foreign Portfolio Investors (FPIs) for participating in Exchange Traded Commodity Derivatives (ETCDs). In order to promote institutional participation in ETCDs, SEBI, vide Circular dated 29 September 2022 permitted FPIs to participate in ETCDs subject to certain conditions specified therein. SEBI vide Circular dated 3 April 2008, Circular dated 20 February 2009 and Circular dated 2 August 2012 laid down framework of DMA facility for institutional investors or through investment manager, as the case may be. DMA facilitates the clients of a broker to directly access the exchange trading system through the broker's infrastructure to place/execute orders without

manual intervention by the broker. DMA enables the clients of a broker to have advantages viz. direct control over orders, faster execution of orders, reduced risk of errors associated with manual order entry, maintaining confidentiality, lower impact costs for large orders and implementing better hedging and arbitrage strategies. Based on representations received for enabling DMA facility to FPIs in ETCDs and deliberations by the Commodity Derivatives Advisory Committee (CDAC) of SEBI, SEBI decided to allow stock exchanges to extend DMA facility to FPIs for participation in ETCDs subject to the following conditions:

(a)Stock exchanges/brokers shall adhere to the provisions stipulated in SEBI Circulars mentioned above which include procedure for application for DMA, operational specifications, Client authorization and broker-client agreement, risk management, etc.

(b)The provisions of Circular dated 29 September 2022 allowing FPIs to participate in ETCDs shall remain applicable.

The provisions of this circular shall come into immediate effect.

Master Circular–Basel III Capital Regulations

On 12 May 2023, RBI issued the Master Circular on Basel III Capital Regulations. The instructions contained in the Master Circular dated 1 April 2022 have been suitably updated/amended by incorporating relevant guidelines, issued as of date. A list of circulars consolidated in this Master Circular is contained in Annex 26 to the presently issued notification. Basel III reforms are the response of Basel Committee on Banking Supervision (BCBS) to improve the banking sector's ability to absorb shocks arising from financial and economic stress, whatever the source, thus reducing the risk of spill over from the financial sector to the real economy. During Pittsburgh summit in September 2009, the G20 leaders committed to strengthen the regulatory system for banks and other financial firms and also act together to raise capital standards, to implement strong international compensation standards aimed at ending practices that lead to excessive risk-taking, to improve the over-the-counter derivatives market and to create more powerful tools to hold large global firms to account for the risks they take. For all these reforms, the leaders set for themselves strict and precise timetables. Consequently, the Basel Committee on Banking Supervision (BCBS) released comprehensive reform package entitled "Basel III: A global regulatory framework for more resilient banks and banking systems" (known as Basel III capital regulations) in December 2010.

Ministry of Corporate Affairs amends fast track merger rules

The Ministry of Corporate Affairs (MCA), vide its notification dated May 15, 2023 (Notification), amended Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Merger Rules) to expedite the approval process of the fast-track mergers. This Notification shall come into force on June 15, 2023. As per the amended Rule 25 of the Merger Rules, the Central Government (i.e., Regional Director (RD) shall have a period of 30 (thirty days) (Waiting Period) to wait for the objections and/or suggestions from the Registrar of Companies (RoC) and the Official Liquidator (OL) on the scheme of merger (Scheme). The timelines for the confirmation/approval of the Scheme under fast-track route shall be as follows:

(a) The RD to confirm the Scheme within a period of 15 (fifteen) days post-expiry of the Waiting Period if:

- no objection or suggestion is received from the RoC and the OL prior to the expiry of the Waiting Period, and
- the Scheme is in public interest or in the interest of creditors.

(b) The RD to confirm the Scheme within a period of 30 (thirty) days post-expiry of the Waiting Period if:

- any objection or suggestion is received from the RoC and/or the OL prior to the expiry of the Waiting Period,
- such objections or suggestions are not sustainable, and
- the Scheme is in public interest or in the interest of creditors.

(c) In case the Scheme is not in public interest or in the interest of creditors, then within a period of 60 (sixty) days from the date of receipt of Scheme, RD will file an application before the National Company Law Tribunal to consider such Scheme.

(d) The Scheme shall be approved automatically if prior to expiry of a period of 60 (sixty) days from the date of receipt of Scheme:

- no confirmation order is issued by the RD under (a) or (b) above; or
- no application is filed by the RD under (c) above.

Risk disclosure with respect to trading by individual traders in Equity Futures & Options Segment

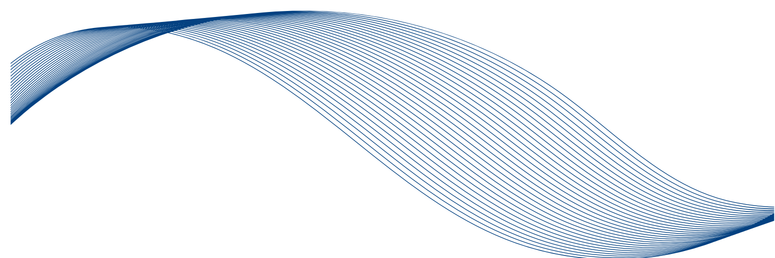
On 19 May 2023, SEBI, with a view to facilitating informed decision making by the investors trading in derivatives segment, decided to introduce 'Risk disclosures' with respect to trading in equity Futures & Options (F&O) segment. Over time there has been increased participation of investors in Indian securities market, including, in the derivatives segment. While investors are expected to make investment decisions based on their own due diligence and risk appetite, it is important to empower them with detailed information about the risks associated with trading in derivatives.

Accordingly, all stock brokers shall display the 'Risk disclosures' given at Annexure-I of this circular on their websites and to all their clients in the manner as specified below:

(a)Upon login into their trading accounts with brokers, the clients may be prompted to read the 'Risk disclosures' (which may appear as a pop-up window upon login) and shall be allowed to proceed ahead only after acknowledging the same.

(b)The 'Risk disclosures' shall be displayed prominently, covering at least 50 percent area of the screen.

All Qualified Stock Brokers (QSBs) shall maintain the Profit and Loss (P&L) data of their clients on continuous basis as per the format given at Annexure-II of this circular. The P&L data of the clients shall be retained for at least 5years. The provisions of this circular shall come into force with effect from 1 July 2023.



Off Beat Section

International Day of Yoga raising awareness since inception

Yoga is an ancient physical, mental and spiritual practice that originated in India. Today it is practiced in various forms around the world and continues to raise awareness across the globe. The International Day of Yoga has been celebrated annually on June 21 since 2015. Let us read about a few astounding facts of International Day of Yoga since its inception in 2015.

In 2015, around 35,985 people, including the Prime Minister of India and dignitaries from 84 nations, performed 21 asanas (yoga postures) for 35 minutes in New Delhi. The event at New Delhi established two Guinness world records.

In 2017, the Indian prime minister participated in the Lucknow event and practised yoga with 51,000 participants.

In 2018, the Prime Minister of India led an estimated 50,000 volunteers to mark the fourth anniversary of the International Yoga Day event in Dehradun at the Forest Research Institute.

The theme for the year 2021 day was "**Yoga for well-being**". Because of the COVID-19 pandemic, the Indian mission to the United Nations organized an online celebration on UN WebTV in place of face-to-face yoga events.

The 8th International Yoga Day in 2022 was celebrated in various parts of India, but the main event was held in Mysore and the prime minister of India led a crowd of over 15,000 people in the Mysore Palace Premises.

Source - https://en.wikipedia.org/wiki/List_of_International_Days_of_Yoga

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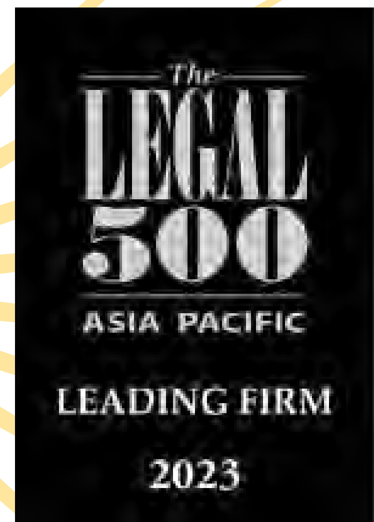
Notable Recognitions & Accolades



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Tolstoy House,
4th Floor, Tolstoy Marg,
New Delhi – 110 001, India
Tel : +91 11 4213 0000
Fax : +91 11 4213 0099

Bajaj Bhawan,
1st Floor, 226, Nariman Point,
Mumbai – 400 021, India
Tel : +91 22 4910 0000
Fax : +91 22 4910 0099

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