

Newsletter for May, 2016
By Amita Desai & Co.



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MCA UPDATES:

A. COMPANIES (REGISTRATION OFFICE AND FEES) AMENDMENT RULES, 2016

- Ministry of Corporate Affairs (“MCA”) vide notification dated May 6, 2016 has issued Companies (Registration Office And Fees) Amendment Rules, 2016 prescribing the **revised format for Form GNL-1**(Form for filing an application with Registrar of Companies) and **GNL-4** (Form for filing addendum for rectification of defects or incompleteness).
- The link of the above notification is as under:
http://www.mca.gov.in/Ministry/pdf/Rules_09052016.pdf

B. CLARIFICATION WITH REGARD TO PROVISIONS OF CORPORATE SOCIAL RESPONSIBILITY UNDER SECTION 135 OF THE COMPANIES ACT, 2013

- On May 16, 2016 vide its General Circular number 05/2016 Ministry of Corporate affairs has provided clarification with regard to provisions of Corporate Social Responsibility under Section 135 of the Companies Act, 2013.
- It is clarified that while undertaking Corporate Social Responsibilities activities under provision of Companies Act, 2013, **Companies shall not contravene any other prevailing laws of land including Cigarettes and other tobacco products Act (COTPA), 2003.**
- For details, please refer the below mentioned link:
http://www.mca.gov.in/Ministry/pdf/General_circular05_16052016.pdf

C. RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING OF VARIOUS E-FORMS UNDER THE COMPANIES ACT

- Ministry of Corporate Affairs (“MCA”) vide its General circular number 06/2016 dated May 16, 2016 has provided relaxation for additional fees and has extended the last day for filing till **June 10, 2016** for all e-forms which were due for filing by Companies between March 25, 2016 and May 31, 2016.
- The link of the above circular is as under:
http://www.mca.gov.in/Ministry/pdf/General_circular_16052016.pdf

D. ENFORCEMENT OF SECTIONS WITH RESPECT TO SPECIAL COURTS UNDER COMPANIES ACT, 2013

- MCA vide its notification dated May 18, 2016 provided that Section 2(29)(iv), section 435-438 (both sections inclusive) and section 440 of the Companies Act, 2013 are enforced with effect from **May 18, 2016**
 - i. Section 2(29)(iv): the Special Court established under section 435;
 - ii. Section- 435- Establishment of special courts
 - iii. Section 436- offences triable by special courts
 - iv. Section 437- Appeal and revision
 - v. Section 438- Application of code to proceedings before special court
 - vi. Section 440- Transitional provisions
- The link of the above notification is as under:
http://www.mca.gov.in/Ministry/pdf/NotificationOrder_19052016_1.pdf#

E. DESIGNATED THE SPECIAL COURTS FOR THE PURPOSES OF TRIAL OF OFFENCES IN TERMS OF COMPANIES ACT,2013

- MCA vide its notification dated May 18, 2016 provided the **list of special courts** for the purposes of trial of offences punishable under the Companies Act, 2013 with **imprisonment of 2 years or more** in terms of section 435 of the Companies Act, 2013.
- For list of special courts please refer the below mentioned link:
http://www.mca.gov.in/Ministry/pdf/NotificationOrder_19052016_2.pdf

F. COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2016

- Ministry of Corporate Affairs (“MCA”) vide its notification dated May 23, 2016 has amended Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016 and substituted the proviso in Rule 4(2).
- The Board of a Company may decide to undertake its CSR activities approved by the CSR Committee, through
 - (a) a **Company established under section 8** of the Act or a registered trust or a registered society, established by the Company, either singly or along with any other Company, or
 - (b) a Company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature :

Provided that if, the Board of a Company decides to undertake its CSR activities through a Company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such Company or trust or society shall have an established **track record of 3 years** in undertaking similar programs or projects; and the **Company has specified the projects or programs** to be undertaken, the modalities of utilisation of funds of such projects and programs and **the monitoring and reporting mechanism**”.

- The link of the above notification is as under:
http://www.mca.gov.in/Ministry/pdf/Notification_CSR_30052016.pdf

G. RELAXATION OF ADDITIONAL FEES AND EXTENSION OF TIME FOR FILING OF E- FORMS BY COMPANIES UNDER COMPANIES ACT 2013 AND FOR ANNUAL RETURN (FORM 11) BY LLP

- Ministry of Corporate Affairs (“MCA”) vide its General circular number 07/2016 dated May 31, 2016 has provided relaxation for additional fees and extension of time limit for filing till **July 10, 2016** for all e-forms which were due for filing by Companies between March 25, 2016 and June 30, 2016.
- Further relaxation for additional fees and extension of time limit for filing **Annual Return (Form 11) by LLPs** in respect of Financial Year ending on March 31, 2016 is provided upto **June 30, 2016**
- The link of the above circular is as under:
http://www.mca.gov.in/Ministry/pdf/GeneralCircular07_31052016.pdf

Amita Desai & Co.



RBI UPDATES:

A. FOREIGN EXCHANGE MANAGEMENT (MANNER OF RECEIPT AND PAYMENT) REGULATIONS, 2016

RBI vide its Notification dated May 2, 2016 has issued the following Regulations in respect of manner of Receipt and Payment in exercise of the powers conferred by Section 47 of the Foreign Exchange Management Act, 1999 and in supersession of Notification No. FEMA.14/2000-RB dated May 3, 2000 & Notification No. FEMA.17/2000-RB, as amended from time to time dealing with Receipt from and Payment to a person Resident outside India.

- Every receipt in foreign exchange by an authorized dealer, whether by way of remittance from a foreign country or by way of reimbursement from his branch or correspondent outside India against payment for export from India, or against any other payment are mentioned in the said notification.
- Receipt for export may also be made by the exporter in the form of a bank draft, cheque, pay order, foreign currency notes/ travelers cheque from a buyer during his visit to India, provided the foreign currency so received is surrendered within the specified period to the authorized dealer of which the exporter is a customer.
- In addition to the above mentioned it can also be done by debit to FCNR/ NRE account maintained by the buyer with an Authorised Dealer or an Authorised Bank in India, in rupees from the credit card servicing bank in India against the charge slip signed by the buyer where such payment is made by the buyer through a credit card.
- A person resident in India may make payment for import of goods in foreign exchange through an international card held by him/ in rupees from international credit card/ debit card through the credit/ debit card servicing bank in India against the charge slip signed by the importer/ as prescribed by Reserve Bank from time to time pursuant to certain provisions.
- The link for the aforesaid manner of payment by alternative way is as under:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10392&Mode=0>

B. FOREIGN EXCHANGE MANAGEMENT (DEPOSIT) REGULATIONS, 2016

Reserve Bank of India (RBI) vide its circular dated May 5, 2016 has revised the Regulations issued under the Foreign Exchange Management (Deposit) Regulations, 2000. Accordingly, in consultation with the Government of India, the said regulations have been repealed and superseded by the Foreign Exchange Management (Deposit) Regulations, 2016.

- The above mentioned regulations seek to regulate deposits between a person resident in India and a person resident outside India.
- No restriction under these regulations shall be applicable for opening of rupee/ foreign currency deposit accounts by certain persons.
- A person resident outside India may open deposit accounts with Authorized Dealer/ authorized bank/Indian Company under various schemes. Details of the scheme have been specified in the respective schedules and the major features are highlighted as follows:
 - Non-Resident (External) Account (NRE) Scheme
 - Foreign Currency (Non-Resident) Account (Banks) (FCNR(B)) Scheme
 - Non-Resident (Ordinary) Rupee (NRO) Account
 - Special Non-Resident Rupee (SNRR) Account
 - Escrow Account
 - Acceptance of deposit by a Company in India from NRIs and PIOs on repatriation basis
 - Acceptance of deposits by Indian proprietorship concern/ firm or a Company from NRIs and PIOs on non-repatriation basis
 - Other deposits (subject to Regulations 6 and 7 of the Deposit Regulations)
- The funds credited to the NRO account should be repatriated abroad immediately, subject to payment of the applicable Income tax and other taxes in India. The amount repatriated abroad should not exceed USD one million per financial year.
- Authorised Dealers may issue International Credit Cards (ICCs) to NRIs and PIOs, the debits of which are subject to the conditions for use of the ICCs by residents. Charges on the use of ICCs should be settled by the NRI/PIO out of inward remittances or balances held in NRE/ FCNR(B)/ NRO accounts.
- A brief description of the above mentioned features is available in the below link:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10382&Mode=0>

C. FOREIGN EXCHANGE MANAGEMENT (EXPORTS OF GOODS AND SERVICES) REGULATIONS, 2015

RBI vide its Circular No.68 dated May 12, 2016 has revised certain Regulations on Review which were felt necessary. Further, in consultation with the Government of India, the above said Regulation are repealed and superseded by the Foreign Exchange Management (Exports of Goods and Services) Regulations, 2015.

- The Annexure to the Circular contains detailed directions relating to dealings of Authorised Dealers (ADs) with their exporter clients.

- ADs may bring the contents of the circular to the notice of their constituents concerned.
- The directions contained in the said Circular have been issued under Section 10(4) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) which states that an authorised person in all his dealings in foreign exchange will comply with such general or specific orders as the Reserve Bank of India may think fit to give.
- In addition, the directions contained in this circular have also been issued under Section 11(1) of the FEMA, 1999 (42 of 1999), which states that the reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made there under, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.
- The above mentioned reference to the sections of FEMA Act, 1999 are without prejudice to permissions/ approvals, if any, required under any other law.
- The link for the aforesaid regulations is as under:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10393&Mode=0>

D. ESTABLISHMENT OF BRANCH OFFICE (BO)/ LIAISON OFFICE (LO)/ PROJECT OFFICE (PO) IN INDIA BY FOREIGN ENTITIES - PROCEDURAL GUIDELINES

On May 12, 2016, RBI had issued procedural guidelines for Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India by foreign entities.

The Procedure for Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India by foreign entities are as follows:

- **Eligibility criteria for Applications from persons resident outside India**
 - i. AD Category-I may consider such applications bank as per the guidelines issued by the Reserve Bank of India, whose principal business falls under sectors where 100 % FDI in terms of FEMA Notification No. 20/2000-RB dated May 3, 2000.
 - ii. Prior approval of Reserve Bank of India in the following cases
 - a. the applicant is a citizen of or is registered/incorporated in Pakistan
 - b. the applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands
 - c. The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting.
 - d. The applicant is a Non-Government Organisation (NGO), a Non-Profit Organisation, or a Body/ Agency/ Department of a foreign government.
 - iii. The non-resident entity desirous of establishing a BO/LO in India should have a financially sound track record as provided in Regulation 4 (a) of the Notification.

- iv. An applicant that is not financially sound and is a subsidiary of another Company may submit a Letter of Comfort (LOC) [as provided in Regulation 4. a. of the Notification] from its parent/group Company satisfies the prescribed criteria for net worth and profit.

➤ **Procedure for applying**

The application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in Form FNC along with the prescribed documents mentioned in the Form and the LOC, wherever applicable, Then AD Category-I bank will conformity with the FEMA Regulations and Directions in and in compliance with the extant KYC norms, grant approval to the foreign entity for establishing BO/LO/PO in India.

➤ **Issuance of UIN by Reserve Bank of India**

All foreign entities which have been granted permission for establishing BO/LO in India on Reserve Bank's website, the AD Category-I bank shall before issuing the approval letter to the applicant forward a copy of the Form FNC to RBI for allotment of Unique Identification Number (UIN) to each BO/LO. After receipt of the UIN from the Reserve Bank, the AD Category-I bank shall issue the approval letter to the non-resident entity for establishing BO/LO in India.

➤ **Validity of LO and PO**

The validity of an LO is generally for three years for all entities and two years for Non-Banking Finance Companies (NBFCs) and entities engaged in construction and development sectors.

➤ **Other conditions**

- a. An applicant that has received permission for setting up of a BO/LO/PO shall inform the designated AD Category I bank as to the date on which the BO/LO/PO has been set up.
- b. The BO/LO/PO for which approval has been granted is not opened within six months from the date of the approval letter, the approval shall lapse.

➤ For details code please refer the below mentioned link:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10398&Mode=0>

E. RESERVE BANK OF INDIA (CO-OPERATIVE BANKS - INTEREST RATE ON DEPOSITS) DIRECTIONS, 2016

RBI vide Master Direction dated May 12, 2016 issued Directions on being satisfied that it was necessary in exercise and expedient in the public interest to do so in exercise of the powers conferred by Sections 21 and 35 A read with section 56 of the Banking Regulation Act, 1949.

- The provisions of the direction shall apply to every co-operative bank licensed or permitted to carry on banking business in India by the Reserve Bank of India.
- Co-operative banks shall pay interest on deposits of money (other than current account deposits) accepted by them or renewed by them in their Domestic, Ordinary Non-Resident (NRO), Non-Resident (External) Accounts (NRE) and Foreign Currency (Non-resident) Accounts (Banks) Scheme {FCNR(B)} deposit account on the terms and conditions specified in the said directions.

- No interest shall be paid on deposits held in current accounts, provided that balances lying in current account standing in the name of a deceased individual depositor or sole proprietorship concern shall attract interest from the date of death of the depositor till the date of repayment to the claimant/s at the rate of interest applicable to savings deposit as on the date of payment.
- Floating rate domestic term deposits shall be linked to a directly observable and transparent market determined external benchmark
- Interest on savings deposit shall be credited at quarterly or longer intervals and Interest on savings bank accounts, including those frozen by the enforcement authorities, shall be credited on regular basis irrespective of the operational status of the account.
- Co-operative banks shall not mark any type of lien, direct or indirect, against NRE savings deposits.
- The link for the above mentioned directions is as under:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10394&Mode=0>

F. MONEY TRANSFER SERVICE SCHEME - SUBMISSION OF STATEMENT/RETURNS UNDER XBRL

RBI vide its Circular No.70 dated May 19, 2016 invited attention of Authorised Persons, who are Indian Agents under Money Transfer Service Scheme (MTSS) who were required to submit quarterly statement of the quantum of remittances received in the prescribed format, are now advised to report the above mentioned statement in eXtensible Business Reporting Language (XBRL) system from the quarter ending June 2016.

- The reporting platform may be accessed at <https://secweb.rbi.org.in/orfsxbrl/>.
- For user name and password, Authorised Persons, who are Indian Agents under Money Transfer Service Scheme (MTSS) are advised to submit the duly filled in form (Annex I) through email on or before May 30, 2016.
- The directions contained in this circular have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.
- Detailed information alongwith Annex I is on the above pasted link:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10405&Mode=0>

G. RUPEE DRAWING ARRANGEMENT - SUBMISSION OF STATEMENT/RETURNS UNDER XBRL

Attention of Authorised Dealer Category – I (AD Cat – I) banks is invited by RBI vide its Circular No.71 dated May 19, 2016 wherein AD Cat- I banks were required to submit statement E on total remittances received every quarter.

- Authorised Dealer Category – I (AD Cat – I) banks are now advised to report the above mentioned statement in eXtensible Business Reporting Language (XBRL) system from the quarter ending June 2016.

- The reporting platform may be accessed at <https://secweb.rbi.org.in/orfsxbrl/>.
- For User name and password, Authorised Dealer Category – I (AD Cat – I) banks are advised to submit the duly filled form (Annex I) through email on or before May 30, 2016.
- The directions contained in this circular have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.
- Detailed information alongwith Annex I is on the above pasted link:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10406&Mode=0>

H. FOREIGN EXCHANGE (COMPOUNDING PROCEEDINGS) RULES, 2000 (THE RULES) - COMPOUNDING OF CONTRAVENTIONS UNDER FEMA, 1999

RBI vide its Circular No.73 dated May 26, 2016 invited attention of Authorised Dealers to paragraph number 7 and 8 of the Master Direction on Compounding of Contraventions under FEMA, 1999.

- With a view to provide comfort to individuals and corporate community by minimizing transaction costs and the same time taking a serious view of wilful, malafide and fraudulent transactions, the RBI empowered to compound all the contraventions of Foreign Exchange Management Act, 1999.
- In order to ensure more transparency and greater disclosure it has now been decided to host the compounding orders passed on or after June 1, 2016 on the Bank's website (www.rbi.org.in), for disseminating the information pertaining to compounding orders.
- It has also been decided to put the guidance note on the Bank's website for information of general public
- However, the abovementioned guidance note is meant only for the purpose of broadly indicating the basis on which the amount to be imposed is derived by the compounding authorities in Reserve Bank of India.
- Authorised Dealers may bring the contents of this circular to the notice of their constituents and customers concerned.
- The directions contained in this circular have been issued under section 10 (4) and 11 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999) as explained earlier.
- The directions of the aforesaid Circular is as follows:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10424&Mode=0>



SEBI UPDATES:

A. REVISED FORMAT UNDER SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVER) REGULATIONS, 2011

- SEBI vide Circular No. 52 dated May 02, 2016 has issued revised formats for Disclosures under Regulation 10(5) pertaining to Intimation to Stock Exchanges in respect of acquisition under Regulation 10(1)(a) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
- While filing the reports, the acquirers are required to report compliance under Chapter V of the regulations. However, there was no specific time period mentioned in the formats for reporting of such compliance. In order to bring it in line with the requirement under regulation 10(1)(a), it is not prescribed that the compliance should be reported for a period of 3 years.
- The link of above Circular is given below :
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1462179239778.pdf

B. DEALING OF CASES PRIOR TO APRIL 01, 2014 FOR ALLOTMENT OF SECURITIES TO MORE THAN 49 BUT NOT EXCEEDING 200 INVESTOR

- SEBI vide Circular No. 53 dated May 21, 2016 issued circular on procedure to deal with cases prior to April 01, 2014 for allotment of securities to more than 49 and upto 200 investors in a financial year.
- SEBI vide Circular No CIR/CFD/DIL3/18/2015 (the **circular**) issued circular stating the procedure to deal with the cases of prior to April 01, 2014 for allotment of securities to investors exceeding 49 but not exceeding 200.
- Para 7 of the circular provides for submission of a certificate from an independent peer reviewed Chartered Accountant certifying the compliance.

- SEBI vide circular no.53 the certificate can also be provided from an independent peer reviewed Company Secretary.
- The link of above Circular is given below :
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1462275156209.pdf

C. GUIDELINES FOR PUBLIC ISSUE OF UNITS OF INFRASTRUCTURE INVESTMENT TRUSTS

- SEBI vide Circular No 55 dated May 11, 2016 issued circular on guidelines for public issue units on Infrastructure Investment Trusts.
- The circular provides guidelines public issue for the units of Infrastructure Investment Trusts.
- The link of above Circular is given below :
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1462967438179.pdf

D. SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) (AMENDMENT) REGULATIONS, 2016

- SEBI vide notification no. 2016-2017/006 hnotified regulations the Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2016.
- The notification shall come into force upon publication in the Official Gazette.
- Word “willful defaulter” has been inserted as **clause (n)** after clause (m) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 which means any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes any person whose director, promoter or principal officer is categorized as such.
- The link of above notification is given below :
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464246436158.pdf

E. SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2016

- SEBI vide notification no. 2016-2017/001 notified regulations the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2016.
- The notification shall come into force from April 01, 2016.
- Form A (audit report with unmodified opinion) and Form B (for audit report with modified opinion) has now been substituted with Statement on Impact of audit qualification.
- Listed entities having equity shares listed shall in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

- The recognised stock exchange(s) shall review the Statement on Impact of Audit Qualifications and the accompanying annual audit report submitted.
- The link of above notification is given below :
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464244385630.pdf

F. SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE AND LISTING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES) (AMENDMENT) REGULATIONS, 2016

- SEBI vide notification no. 2016-2017/005 notified regulations the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) (Amendment) Regulations, 2016.
- The notification shall come into force upon publication in the Official Gazette.
- Word “willful defaulter” has been inserted as **clause (t)** after clause (s) of sub- regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 which means any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes any person whose director, promoter or principal officer is categorized as such.
- The link of above notification is given below:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464246276543.pdf

G. SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE AND LISTING OF DEBT SECURITIES) (AMENDMENT) REGULATIONS, 2016

- SEBI vide notification no. 2016-2017/004 notified regulations the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) (Amendment) Regulations, 2016.
- The notification shall come into force upon publication in the Official Gazette.
- Word “willful defaulter” has been inserted as **clause (n)** after clause (m) of sub- regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 which means any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes any person whose director, promoter or principal officer is categorized as such.
- Sub regulation (1) of regulation 4 is been substituted by and provides that no issuer can make public issue if the issuer or the person in control of the issuer or its promoter or its director is restrained or prohibited or debarred by the Board from accessing the securities market or dealing in securities or the issuer or any of its promoters or directors is a wilful defaulter or it is in default of payment of interest or repayment of principal amount in respect of debt securities issued by it to the public, if any, for a period of more than six months.

- Sub-paragraph C has been inserted after sub- paragraph B in Schedule I of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008
- The link of above notification is given below :
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464245839323.pdf

H. SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) (SECOND AMENDMENT) REGULATIONS, 2016

- SEBI vide notification no. 2016-2017/002 notified regulations the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2016.
- The notification shall come into force upon publication in the Official Gazette.
- Word “willful defaulter” has been inserted as **clause (ze)** after clause (ze) but before clause (zf) of sub- regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 which means any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes any person whose director, promoter or principal officer is categorized as such.
- Regulation 6A has been inserted after Regulation 6 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 which provides that no willful defaulter shall make a public announcement that would attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations.
- The link of above notification is given below :
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464245549280.pdf

I. SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (THIRD AMENDMENT) REGULATIONS, 2016

- SEBI vide notification no. 2016-2017/003 notified regulations the Securities and Exchange Board of India (Issue Of Capital And Disclosure Requirements) (Third Amendment) Regulations, 2016.
- The notification shall come into force upon publication in the Official Gazette.
- This notification shall be applicable to the issuer who shall file offer documents with the Registrar of Companies on or after the date of commencement of the regulation.
- Word “willful defaulter” has been inserted as clause (zn) after clause (zm) of sub- regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue Of Capital And Disclosure Requirements) (Third Amendment) Regulations, 2009 which means any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes any person whose director, promoter or principal officer is categorized as such.

- Regulations 5 and 6 has been inserted after Regulation 4 of the Securities and Exchange Board of India (Issue Of Capital And Disclosure Requirements) (Third Amendment) Regulations, 2009 which provides that no issuer shall make public of equity securities if the issuer or any of its promoters is a willful defaulter and issuer making right issue of specified securities shall make disclosures in Part G of Schedule VIII respectively
- The link of above notification is given below:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464245320010.pdf

J. DISCLOSURE OF THE IMPACT OF AUDIT QUALIFICATION BY THE LISTED ENTITIES

- SEBI vide Circular No 56 dated May 27, 2016 issued circular on disclosure of the impact of audit qualification by the Listed entities
- In consultation with SEBI Advisory Committees, Institute of Chartered Accountants , Stock Exchanges and Industry Bodies it has been decided to streamline the existing process
- The Link of above Circular is given below :
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464333727033.pdf

K. RESTRICTION ON REDEMPTION IN MUTUAL FUNDS

- SEBI vide Circular No 57 dated May 31, 2016 issued circular for circumstances under which restriction on redemption of Mutual Fund may be applied.
- In order to bring more clarity and to protect the interest of the investors, the following requirement is prescribed to be observed before imposing restriction on redemptions:
- Restriction may be imposed when there are circumstances leading to a systemic crisis or event that severely constricts market liquidity or the efficient functioning of markets such as:
 - i. Liquidity issues** - when market at large becomes illiquid affecting almost all securities rather than any issuer specific security. AMCs should have in place sound internal liquidity management tools for schemes. Restriction on redemption cannot be used as an ordinary tool in order to manage the liquidity of a scheme. Further, restriction on redemption due to illiquidity of a specific security in the portfolio of a scheme due to a poor investment decision shall not be allowed.
 - ii. Market failures, exchange closures** - when markets are affected by unexpected events which impact the functioning of exchanges or the regular course of transactions. Such unexpected events could also be related to political, economic, military, monetary or other emergencies.
 - iii. Operational issues** – when exceptional circumstances are caused by force majeure, unpredictable operational problems and technical failures (e.g. a black out). Such cases can only be considered if they are reasonably unpredictable and occur in spite of appropriate diligence of third parties, adequate and effective disaster recovery procedures and systems.

- Restriction on redemption may be imposed for a specified period of time **not exceeding 10 working days in any 90 days period.**
- Any imposition of restriction would require specific approval of Board of AMCs and Trustees and the same should be informed to SEBI immediately.
- **No redemption requests upto INR 2 lakh shall be subject to such restriction.**
- Where redemption requests are above INR 2 lakh, AMCs shall redeem the first INR 2 lakh without such restriction and remaining part over and above INR 2 lakh shall be subject to such restriction.
- The Link of above Circular is given below:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464693701007.pdf

Amita Desai & Co.



DIPP UPDATES:

1. NEW REFORM BY GOVERNMENT OF INDIA FOR LEGAL AND INSTITUTIONAL MACHINERY FOR DEALING WITH DEBT DEFAULT “INSOLVENCY AND BANKRUPTCY CODE, 2016”

On May 12, 2016, Rajya Sabha passed the major economic reform Bill moved by the Government i.e., Insolvency and Bankruptcy Code, 2016”.

➤ **Introduction:**

In India, the legal and institutional machinery for dealing with debt default has not been in line with global standards. The recovery action by creditors, either through the Contract Act Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Sick Industrial Companies (Special Provisions) Act, 1985 and the winding up provisions of the Companies Act, 1956 have neither been able to aid recovery for lenders nor aid restructuring of firms.

➤ **Objective:**

The objective of the new law is to **promote entrepreneurship, availability of credit, and balance the interests of all stakeholders** by consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals.

➤ **Salient features of the law are as follows:**

1. Clear, coherent and speedy process for early identification of financial distress and resolution of companies and limited liability entities if the underlying business is found to be viable.
2. Two distinct processes for resolution of individuals, namely- “Fresh Start” and “Insolvency Resolution”.
3. Debt Recovery Tribunal and National Company Law Tribunal to act as Adjudicating Authority and deal with the cases related to insolvency, liquidation and bankruptcy process in respect of individuals and unlimited partnership firms and in respect of companies and limited liabilities entities respectively.

4. Establishment of an Insolvency and Bankruptcy Board of India to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities.
5. Insolvency professionals would handle the commercial aspects of insolvency resolution process. Insolvency professional agencies will develop professional standards, code of ethics and be first level regulator for insolvency professionals members leading to development of a competitive industry for such professionals.
6. Information utilities would collect, collate, authenticate and disseminate financial information to be used in insolvency, liquidation and bankruptcy proceedings.
7. Enabling provisions to deal with cross border insolvency.
8. For details code please refer the below mentioned link:
http://finmin.nic.in/press_room/2016/InsolvencyBankruptcyCode2016.pdf

2. NATIONAL INTELLECTUAL PROPERTY RIGHTS POLICY

On May 12, 2016 Finance Minister Mr. Arun Jaitley released the Nation's first policy on Intellectual property Right.

In India, Intellectual property is regulated by several laws, rules and regulations under the jurisdiction of different Ministries/ Departments. A number of authorities and offices administer the laws. The legal provisions need to be implemented harmoniously so as to avoid conflict, overlap or inconsistencies among them.

➤ Executive Summary

Creativity and innovation have been a constant in growth and development of any knowledge economy. There is an abundance of creative and innovative energies flowing in India. India has a TRIPS compliant, robust, equitable and dynamic IPR regime.

An all-encompassing IPR Policy will promote a holistic and conducive ecosystem to catalyse the full potential of intellectual property for India's economic growth and socio-cultural development.

➤ Vision Statement

In India, where creativity and innovation are stimulated by Intellectual Property for the benefit of all; where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared

➤ Mission Statement

Stimulate a dynamic, vibrant and balanced intellectual property rights system in India to:

- i. foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development, and

- ii. focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.

The Policy lays down **seven objectives** which are elaborated with steps to be undertaken by the identified nodal Ministry/ department. The Objectives are briefly mentioned below.

➤ **Objective 1: IPR Awareness: Outreach and Promotion**

To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society

The steps to be taken towards attaining this objective are outlined below:

- i. Adopt the national slogan "Creative India; Innovative India" and launch an associated campaign on electronic, print and social media, including by linking the campaign with other national initiatives such as "Make in India", "Digital India", "Skill India", "Start Up India", "Smart Cities" and other new initiatives in the future;
- ii. Create a systematic campaign for promotion of India's IP strengths by conveying to all stakeholders the value and benefits of IP by Customizing programs for specific needs of industries, MSMEs, start-ups, R&D institutions, science and technology institutes etc.

➤ **Objective 2: Generation of IPRs**

The steps to be taken towards attaining this objective are outlined below:

- i. Use the campaign "Creative India; Innovative India" to propagate the value of creativity and innovation
- ii. Carry out a comprehensive IP audit or base line survey in various sectors in cooperation with stakeholders to assess and evaluate areas of strength and potential.

➤ **Objective 3: Legal and Legislative Framework**

To have strong and effective IPR laws, to balance the interests of rights owners with larger public interest.

It is an acknowledged fact that a strong and balanced legal framework encourages continuous flow of innovation and is among the bare necessities to fuel a vibrant knowledge economy.

The steps to be taken towards attaining this objective are outlined below:

- i. Review existing IP laws, where necessary, to update and improve them or to remove anomalies and inconsistencies
- ii. Engage constructively in the negotiation of international treaties and agreements in consultation with stakeholders

➤ **Objective 4: Administration and Management**

To modernize and strengthen service-oriented IPR administration

The Offices that administer the different Intellectual Property Rights (IPOs) are the cornerstone of an efficient and balanced IPR system, administering laws, granting or registering IP rights, providing IPR related services to users, including dissemination of IPR related information for the benefit of research & development

The steps to be taken towards attaining this objective are outlined below:

- i. The administration of the Copyright Act 1957 alongwith the office of the Registrar of Copyrights, under the Department of Higher Education, is being transferred to the Department of Industrial Policy and Promotion;
- ii. Restructure, upgrade and modernize IPOs taking into account the rapid growth and diversity of IP users and services, higher responsibilities and increased workload;

➤ **Objective 5: Commercialization of IPR**

Get value for IPRs through commercialization

The value and economic reward for the owners of IP rights comes only from their commercialization. A concerted effort should be made for capitalizing the existing IP assets in the country. Entrepreneurship should be encouraged so that the financial value of IPRs may be captured.

The steps to be taken towards attaining this objective are outlined below:

- i. Provide a platform for IPR owners and users of IPRs by acting as a facilitator for creators and innovators to be connected with potential users, buyers and funding agencies.
- ii. Promote licensing and technology transfer for IPRs; devising suitable contractual and licensing guidelines to enable commercialization of IPRs; promote patent pooling and cross licensing to create IPR based products and services

➤ **Objective 6: Enforcement and Adjudication**

To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements

The primary obligation of protecting IP rights is on the IPR owners who can seek legal remedies for enforcement of their rights; Along with providing an effective mechanism for enforcement of IP rights, it is equally important to balance the rights of the public in a manner conducive to social and economic welfare and to prevent misuse or abuse of IP rights

The steps to be taken towards attaining this objective are outlined below:

- i. Create awareness of the value of IP and respect for IP culture by Educating the general public; Engaging with all levels of industry, including e-commerce; Sensitizing inventors, creators of IP on measures for protection and enforcement of their rights.
- ii. Assistance to smaller firms for protection of their IPRs internationally will be enhanced, such as DeitY's Support for International Patent Protection in Electronics and IT (SIP-EIT);

➤ **Objective 7: Human Capital Development**

To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs

The steps to be taken towards attaining this objective are outlined below:

- i. Strengthen and empower RGNIIPM, Nagpur to conduct training for IPR administrators and managers in industry and business, academicians, R&D institutions; IP professionals; inventors and civil society; train the trainers and develop training modules; develop links with other similar entities at the international level; provide legal training for examiners
- ii. Strengthen IP Chairs in educational institutes of higher learning to provide quality teaching and research; develop teaching capacity and curricula and evaluate their work on performance based criteria.

Thus, the Department of Industrial Policy and Promotion shall be the nodal point to coordinate, guide and oversee implementation and future development of IPRs in India. The responsibility for actual implementation of the plans of action will remain with the Ministries/ Departments concerned in their assigned sphere of work. Public and private sector institutions and other stakeholders, including State governments, will also be involved in the implementation process.

For details code please refer the below mentioned link:

http://dipp.gov.in/English/Schemes/Intellectual_Property_Rights/National_IPR_Policy_12.05.2016.pdf

3. ACHIEVEMENTS AND HIGHLIGHTS ON EASE OF DOING BUSINESS.

Department of Industrial Policy & Promotion (DIPP) has issued the report on 8th May, 2016 consisting achievements and highlights of ease of doing Business initiated by Government of India.

➤ **Introduction:**

India's rank in the Doing Business Report 2015 was 142 among 189 countries which improved to 130 in the Doing Business Report, 2016. Government of India has emphasized on the importance of 'Ease of Doing Business' and it is a major pillar of 'Make in India' initiative. It is working extensively on improving India's rank in the World Bank Group's Doing Business Study.

➤ **Highlights:**

The key highlight points which are facilitated by this initiative:

- i. Requirement of minimum paid up capital and **common seal** under the **Companies Act 2013 done away with.**
- ii. Registration for Permanent Account Number (PAN), Tax Deduction Account Number (TAN), EPFO (Employees' Provident Fund Organization) and ESIC (Employee's State Insurance Corporation) and incorporation of Company can be done through a single form on eBiz portal.
- iii. Time taken for obtaining PAN and TAN on eBiz portal has been brought down to T+1 days.
- iv. Provision for applying for Company name and Director Identification Number (DIN) at the time of incorporation with **single Form-INC29** has been made
- v. Requirement of bank account for registration with EPFO and ESIC has been eliminated.
- vi. **Physical submission of documents for export and import is not required** and Number of documents required for imports and exports have been reduced to three. They can be submitted electronically by using digital signatures.
- vii. Custom ICEGATE Portal has been integrated with Food Safety and Standards Authority of India (FSSAI), Animal and Plant Quarantine, Drug Controller and Wildlife Control Bureau for imports
- viii. Insolvency and Bankruptcy Code with provision of easy and faster exit, has been passed by the Parliament

➤ **Achievements In Delhi And Mumbai**

The highlights points of achievements of “ease of Doing Business” in metro cities like Delhi & Mumbai

- i. Unified building Bye-laws have been notified.
- ii. Online registration of Value Added Tax (VAT) with real-time Tax Identification Number (TIN) allotment has been introduced.
- iii. **Delhi VAT Sewa App** has been developed whereby permanent business registration is done without need for field verification by VAT inspector. This step has eliminated instances of corruption and irregularities during field verification.
- iv. Requirement of inspection has been removed to make registration of Shops and Establishments real-time.

v. **VAT and Profession tax registration has been integrated into a single process.**

vi. Municipal Corporation of Greater Mumbai has introduced fast track approval system for building permits with features such as Common application form; online transfer of application and receipt of NOC; Online system has been integrated with AAI & NMA.

➤ **Starting A Business**

Registration with ESIC and EPFO by eliminating all physical touch-points; registration with ESIC and EPFO without opening a bank account; **integrated Form INC 29** for registration of

Company in MCA with 3 registration services viz. 'Name Availability', 'Director Identification Number' and 'incorporation of Company' with one form and one payment.

➤ **Construction Permits**

Mumbai: Municipal Corporation of Greater Mumbai (MCGM) has completed the process of single window approval by integrating with internal departments as well as, AAI and NMA through a common application form.

Delhi: Municipal Corporations of Delhi has completed the process of single window approval by integrating with internal departments as well as DMRC, Delhi Fire Services, DUAC, AAI and NMA through a common application form.

➤ **Getting Electricity**

Maharashtra and Delhi have implemented the lump-sum charges for electric connection thereby removing the need of an estimate and an inspection for the same. They have also made online application for connections above 100KVA mandatory. Only two documents required for getting electricity connection; viz Identity proof and Proof of ownership/occupancy of premises.

➤ **Trading Across Borders**

Central Board of Excise and Customs(CBEC) has implemented Single Window Interface for Facilitating Trade (SWIFT) (online single window for clearance of goods) on the ICEGATE portal by integrating FSSAI, Animal Quarantine, Plant Quarantine, Drug Controller and Wildlife Control Bureau for imports.

➤ **Enforcing Contracts**

The Arbitration and Conciliation Act has been amended to reduce the time taken in arbitration proceedings and grounds on which an award may be challenged, Also Commercial Appellate Division Bench and Commercial Division Benches are functioning in Bombay High Court and Delhi High Court.

➤ **Digitization Process For Registering Property**

In Delhi, all sub-registrar offices have been digitized and sub-registrar's records have been integrated with the Land Records Department. In Maharashtra, all property tax records have been digitized.

➤ State Level Regulatory Reforms

In majority of states online filing and payment of Value Added Tax and Central Sales Tax have been implemented. Many states have eliminated pre-registration VAT inspections and replace them with post- registration advisory visits

A number of states have implemented Common Application Form and established dedicated single windows, backed by legislation or state notifications to establish and empower them. Clear timelines has been laid down for processing applications related to construction permits which will help investors to plan their construction effectively

Some states have allowed for self-certification under the Minimum Wages Act, 1948, the Shops and Establishment Act and Payment of Wages Act, 1936.

For details code please refer the below mentioned link:

http://dipp.gov.in/English/Investor/Ease_DoingBusiness/EODB_Initiatives_18May2016.pdf

4. PATENTS (AMENDMENT) RULES, 2016

- Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide its notification dated May 16, 2016 through Controller General of Patents Designs And Trademarks has passed Patents (Amendment) Rules, 2016.
- For the startup, The Government has come up with Patent amendment Rules for more innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property
- **Startup** means an entity, Where more than five years have not lapsed from the date of its incorporation or Registration; the turnover for any of the financial years, out of the aforementioned five years, did not exceed rupees twenty-five Crores; and it is working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property
- Provided that any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered as a startup
- A patent agent shall file, leave, make or give all documents only by electronic transmission duly authenticated, including scanned copies of documents that are required to be submitted in original: Provided that the original documents that are required to be submitted in original, shall be submitted within a period of fifteen days, failing which such documents shall be deemed not to have been filed.

For details, please refer the below mentioned link:

http://www.ipindia.nic.in/IPActs_Rules/Patent_%28Amendment%29Rules_2016_16May2016.pdf

ARTICLE OF THE MONTH

SOCIAL MEDIA AND ITS CONNECTION FOR INSIDER TRADING

BACKGROUND OF INSIDER TRADING

- In India, the Insider Trading case was first encountered in 1940s. Various Committee Reports were prepared and the same cited various instances of directors, agents, officers, auditors possessing strategic information regarding economic conditions of the company regarding the size of the dividends to be declared, or of the issue of bonus shares or the awaiting conclusion of a favorable contract prior to public disclosure.
- Considering this, Section 307 and 308 were incorporated in the Companies Act, 1956 for



maintenance of a register by the companies to record the directors' shareholdings in the company and prescribing the duty of the directors and persons deemed to be the directors to make disclosure of their shareholdings in the company.

- Post that also various recommendations were made by different Committees and considering the needs of the rapidly advancing securities market, a comprehensive legislation known as the SEBI (Insider Trading) Regulations, 1992 was formulated by the Securities and Exchange Board of India (SEBI).
- SEBI came up with several amendments as and when there was a need for a stronger legal and enforcement framework for prevention of Insider Trading.

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992 ("PIT Regulations")

- SEBI on 15th January, 2015 had notified the SEBI (Prohibition of Insider Trading) Regulations, 2015.
- The new Regulations chalk out a stricter and more focused regulatory regime to toughen the Insider Trading regulations

CONNECTED PERSON AS PER PIT REGULATIONS



- As per Section 2 (d) of the SEBI PIT Regulations a Connected Person means:

any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself

and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

- Section 2(e) chalks out the list which shall be considered as deemed to be connected persons unless the contrary is established.



- SEBI vide its order dated 4th February, 2016 in the matter of trading in the shares Palred Technologies Limited (“PTL”) by Mr. Palem Srikanth Reddy and 14 others has observed that having “*mutual friends*” on Facebook will form the basis of determination and to

establish connection between the parties who have committed Insider Trading in violation of PIT Regulations.

BRIEF DESCRIPTION OF THE CASE

- SEBI had conducted an Investigation into the Scrip of Palred Technologies Limited (“PTL”) during the period of September 18, 2012 to November 30, 2013 to ascertain the violation of the SEBI Act, 1992 and the PIT Regulations 2015.
- PTL was incorporated in the year 1999 and its name was changed from Four Soft Limited to PTL in December, 2013. PTL was listed on both BSE as well as NSE.
- During 2007-08, PTL was facing financial difficulties and post its recovery and after achieving financial stability PTL took two major decisions: (i) Slump sale of software solution business to other entity namely Kewill Group and (ii) Declare Interim Dividend at Rs. 29/- per share and reducing 50% of the capital of the Company by paying a value of Rs. 29/- per share (both treated as Unpublished Price Sensitive Information).
- Because of this, the shareholders received an amount far higher than the then ruling market price of the shares. Subsequently, the price of the shares also started rising substantially. It was later revealed through investigation that Mr. Palem Srikanth Reddy-CMD, CEO were part of a cartel of above 15 people termed as ‘insiders’ and were in possession of unpublished price sensitive information (“UPSI”) on the basis of which they traded in the scrip of PTL.

- During the Investigation it was also revealed that Mr. Ameen Khwaja (one of the accused) did not himself trade in the securities of the PTL but his relatives did and Mr. Pirani Ameen Abdul Aziz was connected to Mr. Ameen Khwaja through mutual friends on Facebook. He was employed with Deloitte Tax Services India Pvt Limited, a group company of Deloitte Touche Tohmatsu India Pvt. Limited, which had conducted the due diligence of PTL during the slump sale. It was found that Mr. Pirani had also traded in the script of PTL on the basis of UPSI communicated/counseled by Mr. Ameen Khwaja through CMD.



EXTRACT FROM SEBI'S ORDER

- “The PSI regarding the slump sale of software solutions business to Kewill group came into existence on September 18, 2012, i.e. when the non-disclosure agreement was executed between Kewill group and PTL. The non-disclosure agreement (having a confidentiality clause) was a binding contract on both the sides. Disclosure of the agreement would certainly have an impact on the deal. Therefore, the same can be considered to be an ‘unpublished price sensitive information’ (hereinafter referred to as ‘UPSI’) which

had definitely originated on September 18, 2012 and the same had remained unpublished till August 10, 2013 at 13.01 hrs. in terms of the Regulation 2(ha) (vi) of the PTI Regulations. The period of such UPSI was from September 18, 2012 to August 10, 2013.”

SO HOW IS “INSIDER” INTERPRETED



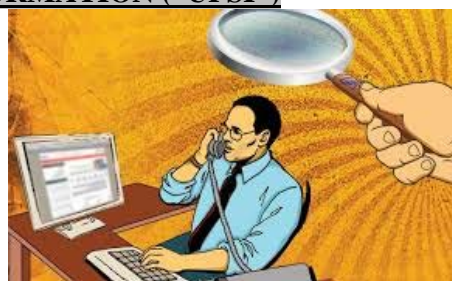
Insider means any person who is:

- (i) A connected person; or
- (ii) in possession of or having access to unpublished price sensitive information

WHAT IS UNPUBLISHED PRICE SENSITIVE INFORMATION (“UPSI”)

UPSI is a piece of information which is yet to be made public by a company but which, if published, would materially affect the market price of the shares of a company. In the present case,

- (i) the slump sale of the business of the Company;
- (ii) the proposed special dividend; and
- (iii) the capital reduction of shares which were known well in advance leading to do Insider Trading.



OUR TAKE

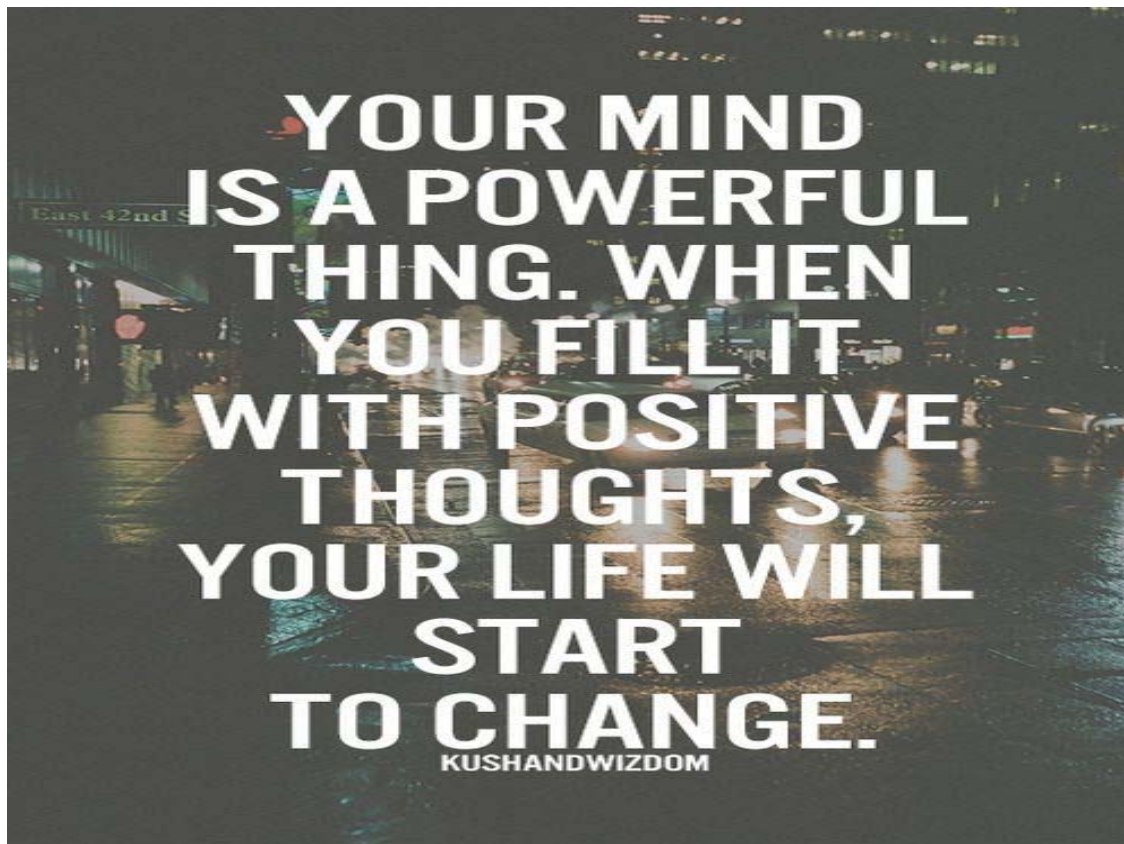


SEBI by giving this order has for the first time taken the help of the social media to catch the market manipulators and established a connection between the parties who have violated the provisions of the PIT. Insider trading—and the laws that seek to contain it—is always an intriguing subject and to be sure, proving guilt in insider trading cases is not an easy matter, SEBI has tighten the norms by considering that having mutual friends on Facebook will form the basis of establishing connection and thereby considering as Connected Person. However the Judiciary will finally decide Can it be considered as Connected Person where there is just a mutual friends relationship on Face book , though it is a good move by SEBI in the

era of Social Media to investigate the matter further, taking lead from some connection between the wrong doers.

Amita Desai & Co.

INSPIRATIONAL QUOTES



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