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**Chapter 4  
FORIEGN TRADE POLICY  
2015-20**

*For Private Circulation Only*

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Dear Professional Colleagues,

I am happy to meet and greet you all through the E-magazine. I hope you all had a wonderful Ugadi Festival with family and friends and I wish the festival of Hindu New Year brings in lot of success and the prosperity to all our readers. The month of April 2019, was one of busy months for the professionals with ACTIVE form getting extended at the last minute and also the coming 2 months keeping all of us occupied with the new forms introduced by MCA in early May. I hope the webinar of the ICSI has helped all the fellow professionals in understanding the requirements under new forms. I wish all our readers a month ahead of learning and I would also like to wish students who are appearing for CS Examination in the June 2019 Session.

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# Foreign Trade Policy 2015-20 – Chapter 4 – Duty Exemption / Remission Schemes – Procedural aspects and New Developments

## Brief History

India's Foreign Trade Policy also known as Export Import Policy ("EXIM") in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position. Foreign Trade Policy is prepared and announced by the Central Government (Ministry of Commerce). Foreign Trade Policy or EXIM Policy is a set of guidelines and instructions established by the DGFT (Directorate General of Foreign Trade) in matters related to the import and export of goods in India. The main objective of FTP is as under -

- a. To generate employment;
- b. Provide reasonable priced quality products to customers;
- c. Improving the competencies through enhancement of technical improvements of local talent to cover Indian agriculture, industry and services;
- d. Accelerate economy from low level of economic activities to high level of economic activities to take maximum benefits from global economic opportunities;
- e. Prior to Year 2004, the Foreign Trade Policy was called EXIM Policy. Each FTP will be having objectives and set guidelines to achieve those objectives. After the introduction of liberalization in Indian economy, 1992-97 policy was the first EXIM Policy which aimed to dismantle the protectionist and regulatory policy towards a globally oriented economy.

## Legal Frame work

The Foreign Trade Policy ("FTP") is notified by Central Government, in exercise of Powers conferred under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No.22 of 1992) [FT (D&R) Act], as amended. FTP would be covering period of 5 Years and the current FTP is 2015-20 (ie., from April 2015 to March 2020); There would be regular review of this Policy to facilitate and easy of operations and the latest MID Term review was undertaken and updated during Mid of December 2017 for the existing prevailing FTP which facilitated various procedural improvements and benefits for Import and export fraternity;

Given the above we would now discuss in this article Chapter 4 of FTP in specific Procedural aspects on Advance Authorization Scheme procedural aspects with practical experiences in liaisoning with DGFT and opportunities for Chartered Accountants ("CA");

## Chapter 4 of FTP – Duty Exemption / Remission Schemes

The objective of scheme under this chapter is to enable the exporters to procure goods into India ("Import of Goods") duty free including replenishment of inputs or duty remission to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved in export of goods / services, which are manufactured in India thereby leveraging exporters who are manufacturing in India, an level playing field to compete with global competitors; AAS is

generally valid for 18 Months from the date of issue. Basically, there are two schemes which is operational currently under this Chapter –

- a) Duty exemption schemes which consists of the below –
  1. Advance Authorization (“AAS”);
  2. Duty Free Import Authorization (“DFIA”);
- b) Duty Remission Schemes which includes Duty Drawback (“DBK”).

Now in the below, we would now discuss the procedural aspects and practical aspects of AAS including practical experiences in new developments in this regard and opportunities for CA’s and CE’s in this area. After reading this discussions, please do refer to the below for more details in this regard -

- a) Refer any publications book on Foreign Trade Policy & Handbook of Procedures (“HPB FTP 2015-20”) (with forms, Circulars & Public Notices) for quick access to various provisions and Appendix required in this regard.
- b) Refer to website - <http://dgft.gov.in/>

AAS basically is issued to allow duty free import of inputs, which is physically incorporated in export products (considering the normal scrap in the process), in addition fuel, oil, catalyst which is consumed / utilized in the production process of exports would also covered and is monitored by Director General of Foreign Trade (“DGFT”), In India currently there are 12 regional DGFT who are monitoring and administratering various schemes. In Karnataka, DGFT office is situated at 6TH FLOOR, KENDRIYA SADAN, C AND E WING, KORAMANGALA, 2ND BLOCK, and 17TH MAIN ROAD, BANGALORE - 560034;

Now, we would take you through a bird’s eye view of the entire procedure of requirement for AAS-

### **Eligible Applicant for AAS**

AAS benefit can be applied by either the manufacturer exporter of the goods or by merchant exporter who is tied up supporting manufacturer who exports the goods, while for Pharma products

manufactured through Non Infringing process shall be issued to manufacturer exporter only. Now, one may be thinking what all constitutes exports for applying AAS. Hence, for this chapter exports would cover –

- Physical exports (including exports to SEZ);
- Intermediate Supply; and / or
- Supply of goods to categories mentioned in Para 7.02(b),(c), (e), (f),(g) and (h) of FTP – Basically to cover supplies to EOJ/ STP / EHTP / BTP, Supplies of Capital goods against EPCG and various supplies to Nuclear power projects, Supplies to project funded by Department of Economic Affairs etc.,

There is a specific provision to obtain AAS based on Annual requirements who fulfils the below requirements –

- Exporters with minimum 2 years export performance; and
- Are entitled upto 300% of FOB value of physical exports or FOR value of deemed exports in preceding financial year or Rs 1 Crs whichever is higher.
- While exporters opting for Annual requirement need to have Standard Input Output Norms (“SION”) fixed and cannot go with ad hoc norms under Para 4.03 of HBP;

### **Step by Step Procedure for AAS**

- a. Identify and segregate (into Imported and Indigenous) your Raw materials requirement for manufacturing of your Exported Finished goods;
- b. Review your Export Order Book in hand and workout corresponding requirements of Imported Raw materials required with complete details such as Country of import, their usage in Bill of Material (“BOM”), their INCO Terms, HSN codes of Raw materials.
- c. AAS is issued for inputs used in final products on the following basis –

- As per Standard Input Output Norms (“SION”) notified (available in HBP FTP 2015-20); OR
  - On self-declaration basis as per Para 4.07 of HBP FTP 2015-20; OR
  - Applicant specific prior fixation of norms by the Norms Committee; OR
  - On Self Ratification scheme as per Para 4.07A of HBP FTP 2015-20.
- d. AAS application needs to be made online under <http://dgftcom.nic.in/eComapplications.html>
- e. One must take care of Value Addition (“VA”) by import of Raw material which needs to be –
- There needs to be minimum VA of 15% and for items mentioned in Appendix 4D (such as copper wires and various specified petroleum products) the minimum VA of 8% is allowable;
  - In case of Gems & Jewellery detailed VA is provided in Para 4.61 of FTP HBP 2015-20;
  - Minimum VA for Tea is prescribed at 50%;

Value Addition is computed = (FOB value of Exports realized (Less) CIF value of inputs imported under AAS) / CIF Value of Inputs imported under AAS \* 100;

Now, we would see which all duties are exempted if imported under AAS –

- a. Basic Customs Duty;
- b. Safeguard Duty;
- c. Transitional product specific safeguard Duty;
- d. Antidumping Duty;
- e. Additional customs duties levied under Sec 3(1), 3(3) and 3(5) of Customs Tariff Act, 1975;
- f. IGST for all imports till 1st Oct 2018 (Latest developments).

Chartered Accountants have a very vital role in AAS and can undertake the below activities –

- a. Expert advisory on various giving opinions on various benefits under FTP 2015-20, Chapter 4 – on eligibility of applicants claiming Duty exemption schemes in particular AAS;
- b. Regional DGFT are insisting on getting various details Certified by Chartered Accountants such

- as various Quantitative details on last 3 Years Production and relative consumption of raw materials required as accounted in the books of accounts of the AAS applicant;
- c. For Export Discharge Obligation Certificate (“EODC”) examining the books and certifying as per the prescribed under Appendix 26A of HBP FTP 2015-20;
  - d. Lesioning with DGFT on various matters such as preparation of AAS application, follow up with DGFT, providing response to DGFT on various queries raised, assisting in applying for EODC, Assisting in obtaining e-BRC, designing various online tools for tracking and complying with various statutory requirements under FTP HBP 2015-20;

### Latest Developments under AAS

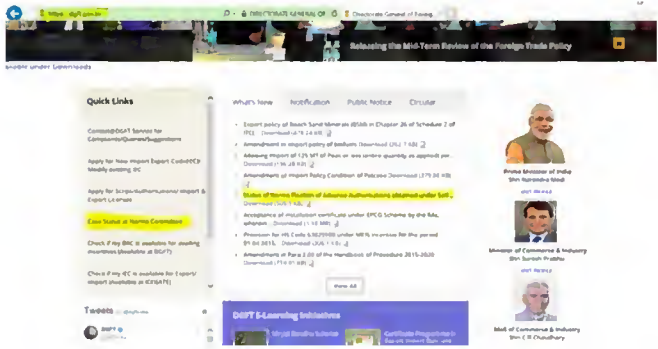
- a. Department of Revenue issued recent Notification No. 57/2015-20 dated 20th Mar 2019 exempting and extended the exemption of payment of IGST on imports of materials under AAS. This is an extension of benefit to exporters who were facing severe cash flow crisis post implementation of GST; Accordingly there has been an amendment to Para 6.01(d)(ii) of FTP 2015-20 to this effect. Hence till the validity of FTP 2015-20 the exemption from payment of IGST on import of goods
- b. Further, as per the recent Policy Circular No.19/2015-20 dated 14th Feb 2019 any licenses issued on or after 1st Mar 2019 onwards for imports through EDI ports the corresponding Advance License or EPCG applied by imports with regional authorities would be issued via communication on approval through registered mobile number with DGFT and registered email id with below message –

**“Authorization No.....Dated.....has been issued against RA File No..... No Authorization on security paper is required to be issued. You can print / view Authorization details online”**

This is an very welcoming move by DGFT to avoid the lead time for receipt of hard copy of Licenses and retention of the same and also takes care of the

security and mis use of the License. But if any imports are planned from NON EDI ports then the manual AA and EPCG would be continued as previously been followed.

- c. One can refer to the recent Trade Notice No.24/2018 dated 16th Aug 2018 where by one can check the status of Norms fixation of AAS obtained under Self declaration;
- d. One can also check the status of Norms Committee meeting which would be available online.



**Complexities under AAS**

- a. Considering the current business environment, if applicant options for adhoc norms and obtains the AAS with application been made to DGFT New Delhi for Norms fixation and subsequent

there is change in Inputs based on various inputs used based on value engineering / upgraded technology. Then during EODC need to get certified the actual usage of inputs and pay the differential duty along with interest;

- b. An applicant who applies and obtains AAS and there would be various small export consignment orders obtained post receipt of Advance License, he needs to examine the feasibility of obtaining the AAS. The applicable fees for AAS currently is Rs 1 per Rs 1000 or part thereof subject to minimum fees of Rs 200 and maximum of Rs 1 Lacs + GST.
- c. During obtaining EODC, in case the realization of export proceeds is not available then applicant needs to pay back the differential duty with interest. Considering current e-BRC technical difficulties faced via various Banks and its integration to EDPMS – applicants are facing severe difficulties to obtaining timely e-BRC reflected in JDGFT website.

In our Next article, we would discuss on Accounting Treatment of various benefits under FTP HBP 2015-20 and its complexities by the way of FAQs which would easy exporters on their procedural clarifications;





## LEI CODE : Legal Entity Identifier Code for Entities participants in Financial Transaction

The LEI system has been implemented in a phased manner for participants (other than individuals) in the over-the-counter markets for rupee interest rate derivatives, foreign currency derivatives and credit derivatives in India in terms of **RBI circular FMRD.FMID No. 14/11.01.007/2016-17 dated June 1, 2017** and for large corporate borrowers of banks in terms of **RBI Circular DBR.No.BP.BC.92/21.04.048/2017-18 dated November 2, 2017**.

### A. LEI Code :

The Legal Entity Identifier (LEI) code has been conceived of as a key measure to improve the quality and accuracy of financial data systems for better risk management post the Global Financial Crisis.

The LEI is a 20-character unique identity code assigned to entities who are parties to a financial transaction. Globally, It helps in labelling an entity with an Identity number which has entered into financing transactions and are registered with multiple agencies having varied registration numbers.

use of LEI has expanded beyond derivative reporting and it is being used in areas relating to banking, securities market, credit rating, market supervision, etc.

LEI is a unique 20 character alphanumeric code assigned to a legal entity once registered, using standard ISO 17442: 2012 standard and is of following structure:

First Four Characters (1-4)	Fifth & Sixth Character (5-6)	Seventh to Eighteenth Characters (5-18)	Nineteenth to Twentieth Character (19-20)
First 4	These	There 12	These

Characters are Identification Numbers of LOU (For LEIL it is 3358)	are reserved Digits - Set to Zeros (00)	Characters are Alphanumeric Random Number set according to transparent and sound allocation Policies	are calculated and checked Digits under ISO 17442
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### B. APPLICABILITY :

1. All Eligible Participants in the OTC Derivative markets
2. Large Corporate Borrowers
3. All Eligible Participants in Non- Derivative Market

#### 1. All Eligible Participants in OTC Market :

Reserve Bank of India vide notification dated June 1, 2017 has decided to implement the LEI system for all participants in the Over-the-Counter (OTC) markets for Rupee Interest Rate derivatives, foreign currency derivatives and credit derivatives in India, in a phased manner. Accordingly, all current and future participants would be required to obtain the unique LEI code as per time lines given below in table.

Phase	Entities	Date by which LEI Code Obtained
Phase - 1	Entities regulated by RBI / SEBI / IRDA / PFRDA and Corporate With Net Worth above Rs 10000 million	1st August 2017
Phase - 2	Corporate With Net Worth between Rs 2000	1st October 2017

	million and Rs 10000 million	
Phase -3	Corporate With Net Worth between Rs 700 million and Rs 2000 million	1st December 2017
Phase -4	Corporate With Net Worth between Rs 700 million and below	31st March 2018

## 2. Large Corporate Borrowers :

Reserve Bank of India vide notification dated November 2, 2017 Banks shall advise their existing large corporate borrowers having total exposures of 50 crore and above to obtain LEI.

For all borrowers of banks having Total Fund Based and Non-Fund Based exposure of Rs. 5 crore and above, would be issued in due course. obtain LEI as per time lines given below in table.

Total Exposure of Schedule Commercial Bank	To be Completed By
1000 Crore and above	March 31, 2018
Between 500 Crore and 1000 Crore	June 30, 2018
Between 100 Crore and 500 Crore	March 31, 2019
Between 50 Crore and 100 Crore	Dec 31, 2019
Between 5 Crore and 50 Crore	Yet to be notified

## 3. All Eligible Participants in Non- Derivative Market

Reserve Bank of India vide notification dated November 29, 2018 has decided that All participants, other than individuals, undertaking transactions in the markets regulated by RBI viz., Government securities markets, money markets (markets for any instrument with a maturity of one year or less) and non-derivative forex markets (transactions that settle on or before the spot date) shall obtain Legal Entity Identifier (LEI) codes by the due date indicated in the table given below.

### For Non Derivative :

In case of non-derivative forex transactions, while all inter-bank transactions shall be subject to LEI requirement, client transactions shall require LEI code for transactions involving an amount

equivalent to or exceeding USD one million or equivalent thereof in other currencies.

### For NRI :

Non-resident entities undertaking financial transactions in the relevant markets shall also require LEI code. Such entities that are not legal entities in their country of incorporation (e.g., funds operated by a non-resident parent/management company that are each registered as an FPI) shall use the LEI code of the parent/management company. Entities undertaking financial transactions shall ensure that their LEI code is considered current under the rules of the Global LEI System. Lapsed LEI codes shall be deemed invalid for transactions in markets regulated by RBI.

Schedule for Implementation of LEI in the Money market, G-sec market and Forex market

Phase	Net worth of Entities	Proposed Deadline
Phase - i	Above Rs.10000 million	April 30, 2019
Phase - ii	Between Rs.2000 million and Rs 10000 million	August 31, 2019
Phase- iii	Up to Rs.2000 million	March 31, 2020

## C. REGISTRATION PROCESS FOR LEI CODE :

- Make Registration at LEI with <https://www.ccilindia-lei.co.in>
- Create Account
- File online registration form with necessary details with following details.
  - Legal Name of Entity
  - Industry Classification
  - Type of Entity
  - PAN Number
  - Details of Parent Company
  - Other Details if required
- Email verification received for authorised person; email verify the same before proceeding further
- Mode of payment and submit application
- After Submitting form reference number generated and received in email with draft documents in registered email id from LEI department.
- Prepare all necessary documents physically and attached all the documents as given in checklist received from LEI Department.



- h. All the physical documents sent to following address :  
Legal Entity Identifier India Limited  
CCIL Bhawan  
3rd Floor, S.K.Bole Road , dada (West)  
Mumbai - 400028  
Maharashtra
- i. The LEI department will verify all the documents and after all verification make the payment link or payment mode as selected
- j. Within Some days LEI Code will be generated and it will be valid for 1 year from the date of issuance. after one year LEI code will be renewal as per the details given in the site.

#### D. DOCUMENTS REQUIRED FOR LEI CODE :

Following documents required as per the registration entity as specified by the LEIL and the format also given in website <https://www.ccilindia-lei.co.in> in download section:

- a) Certificate of Incorporation / Registration of Certificate
- b) PAN Card
- c) Undertaking - Cum Indemnity as format given by LEIL
- d) Audited Financial Statement
- e) Board Resolution as format Specified by LEIL
- f) Power of Attorney as per format Specified by LEIL
- g) Auditor's Certificate as per format

#### E. PAYMENT CHARGES FOR LEI CODE : LEIL announces the reduction of fees for New Registration with effect from 1st Jan 2019.

##### For New Registration:

Rs.4500 + 810 (18% GST) = Rs.5,310 (Revised from Rs 5000+GST=Rs.5900) With effect from Jan 1, 2019

##### For Renewal: (Renewal fees are not applicable at the time of new registration.)

Rs.3000+ 540 (18% GST) = Rs.3,540 (Revised from Rs 3500+GST=Rs.4130) With effect from Jan 1, 2019

*\*\*Applicants who have received official intimation from LEIL for payment or have made payment to LEIL prior to 1st Jan 2019 will continue to pay fees based on the fees applicable during that period.*

#### F : LEI BENEFIT TO INDUSTRY

As global business and third-party relationships becomes more complex, the need for clear and speedy business identification grows. Common standards, like LEI, enable better identification and better data sharing, helping to lower costs and speed up business processes. Of course, appropriate due diligence is still necessary; one number won't magically solve all Know Your Business (KYB) requirements. But, as an added data point and extra check to ensure you can trust your business relationships, LEI is another useful tool for international business growth.

## Words Worth Million





# National Festivals and Holidays



An overview of the Karnataka Industrial Establishments (National and Festival Holidays) Act, 1963

The Karnataka Industrial Establishments (National and Festival Holidays) Act, 1963 (the 'Act') was enacted to provide for the grant of national and festival holidays to persons employed in industrial establishments in the State of Karnataka.

## Applicability

Industrial Establishment means:

- a) Factory;
- b) Shop or establishment;
- c) Plantation;
- d) any other establishment notified by State Government.

## Grant of Holidays under the Act

### I. National and festival holidays

In every calendar year the employee shall be allowed holiday on the following days ('National holidays'):

- a) January 26th (Republic Day);
- b) May 1st (May Day);
- c) August 15th (Independence Day);
- d) October 2nd (Gandhi Jayanthi); and
- e) November 1st (Kannada Rajyosthava).

In addition, the employee is entitled for five (5) other holidays for festivals as provided under the Schedule.

### II. Holiday on the polling day, for House of the People or State Legislative Assembly ('Election holiday')

Employer is liable to grant paid leave on the day of polling to an employee, whose name is included in the electoral roll of the constituency where such election is held.

If an employee works on any above-mentioned holiday shall, at his option be entitled to :

- a) Twice the wages; or
- b) Wages of such day and a compensatory leave on another day with wages.

## Display of list of holidays

The employer within December 31st of every year shall:

- a) display the list of holidays declared for the calendar year on the notice board; and
- b) send a copy of the list of holidays to the Inspector (Labour officer) concerned.

## Penalty

Any employer who fails to grant national, festival and holiday on the day polling will be punishable with fine which, for the first offence may extend to Rs. 125/- and for second and subsequent offences may extend to Rs. 250/-.



## GST: Advance Rulings – Part 7

**Applicant: M/s. Arihant Enterprises**  
**Advance Ruling No.: GST-ARA-126/2018-19/B -29**  
**dated 19.03.2019**

### Brief Facts & Issues before the Authority

The applicant is a Pune-based ice-cream retailer who engaged in the business of reselling ice-cream in wholesale as well as retail sale packages. It purchases ice-cream from a sole manufacturer and sells as- it- is without any further processing. Further, it doesn't provide any kind of serving or dining facilities to its customers.

The applicant approached the Authority for Advance Ruling – Maharashtra with four questions:

1. Will the supply of ice-cream from retail outlets be treated as supply of goods or services?
2. Whether the supply, not being a composite supply, would be treated as supply of services?
3. If it is composite supply, then how taxability would be decided?
4. If it is a supply of services, would there be GST @ 2.5 per cent?

### Authority's Observation

After going through the submissions made by the Applicant and the Department, the Authority has restricted itself to the key issue such as whether the supply of ice-cream from its outlets would be treated as 'supply of goods or service or composite supply'. Further, the Authority relied on the definitions, 'Goods' defined under Section 2(52), Services under Section 2(101) and Supply under Section 7 of the Central GST Act, 2017. The Authority also differs the applicant's outlet from the restaurants wherein generally the customers order food for the purpose of consuming the same in its premises.

### Authority's Ruling

1. Will the supply of ice-cream from retail outlets be treated as a supply of goods or services?

*The supply of ice-cream by the applicant from its retail outlets would be treated as 'Supply of Goods'.*

2. Whether the supply, not being a composite supply, would be treated as a supply of services?

*No.*

3. If it is composite supply, then how taxability would be decided?

*Not answered in view of the answer to Question No. 1 above*

4. If it is a supply of services, would there be GST @ 2.5 per cent?

*Not answered in the view of the answer to Question No. 1 above.*

The above Ruling is in line with M/s. Kundan Mishthan Bhandar. With the latest Ruling in the case of M/s. Arihant, the classification of over-the-counter sales has been settled.

### GST: Advance Rulings – Part 2 Edition 176 December 2018

M/s. Vservglobal Private Limited - Advance Ruling No. GST-ARA-03/2018-19/B-59 dated 07.07.2018  
The Maharashtra Appellate Authority for Advance Ruling in its Order MAH /AAAR/SS-RJ/22/2018-19 dated 26.02.2019 upheld the above ruling.

To be continued...



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*Solved cases of Supreme Court and NCLAT*

## ***Delhi Diaries 15***

# **63 MOONS TECHNOLOGIES LTD. V. UNION OF INDIA AND ORS. – DEFINITION OF PUBLIC INTEREST**

In the article for July 2018 in this Column, we had seen the implications of empowering the Government to take over companies on the ground of “Public Interest” and had examined a judgment of the NCLAT on that issue. The occasion has now arisen to understand from the Supreme Court, the ambit of “Public Interest” which can be considered sufficient ground to issue directions of various natures to Companies.

In the case of 63 Moons Technologies Pvt. Ltd. v. Union of India the Supreme Court vide its judgment dated April 30, 2019 laid down the law on the scope of the term Public Interest in these scenarios. We may remember, that the National Spot Exchange Limited (NSEL) was the subject matter of unfavourable media and regulatory interest a few years ago NSEL was a subsidiary of Financial Technologies India Ltd. (FTIL) with FTIL holding 99.9% shares in NSEL. FTIL subsequently changed its name to 63 Moons Technologies Ltd. (63 Moons). One Mr. Jignesh Shah and his family held about 45% shares in FTIL and the public held 43% shares in FTIL. FTIL was a profitable company with a large turnover, 900 employees and was in the business of providing software for trading in stocks in India. NSEL provided an online platform for trading of commodities.

In July 2013, due to some complaints by traders that some other traders had duped them to the tune of Rs. 5600 Crores, the Forward Markets Commission recommended to the Department of Consumer Affairs to verify the quantity and quality

of the commodities at various warehouses. This further resulted in various civil and criminal proceedings against the promoters of NSEL, i.e, FTIL. It then came to light that employees of NSEL had permitted some traders to trade on the platform without depositing the necessary goods in exchange for monetary kickbacks. Thereafter, the Additional Secretary of the Department of Economic Affairs wrote to the Ministry of Corporate Affairs that FTIL and NSEL were maintaining separate corporate identities only to defraud the public and hence the corporate veil ought to be lifted and the two companies amalgamated. Hence it was proposed that the two companies be merged under Section 396 of the Companies Act, 2013 and a notification was issued to that effect. The said notification was challenged by way of Writ Petition before the Bombay High Court. It is under these circumstances that the Court came to consider the ambit of Public Interest.

The Court considered all the prerequisites of Section 396 of the Companies Act and particularly examined the concept of Public Interest therein. In the case of State of Bihar v. Kameshwar Singh, way back in 1952, the Court had given a broad definition of public interest as something in the general interest of the community as different from the private interest.

The Court also relied upon the judgment in Janata Dal v. H.S. Choudhary wherein reference was made to Stroud’s Judicial Dictionary which defined Public Interest as:-

“Public interest — 1. A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.”

and in Black’s Law Dictionary as

“Public Interest — Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government”

Therefore applying the above definitions to the facts of the present matter, the court analyzed as follows:-

“In the context of compulsory amalgamation of two or more companies, the expression “public interest”

would mean the welfare of the public or the interest of society as a whole, as contrasted with the “selfish” interest of a group of private individuals. Thus, “public interest” may have regard to the interest of production of goods or services essential to the nation so that they may contribute to the nation’s welfare and progress, and in so doing, may also provide much needed employment. “Public interest” in this context would, therefore, mean the combining of resources of two or more companies so as to impact production and consumption of goods and services and employment of persons relatable thereto for the general benefit of the community. Conversely, any action that impedes promotion of industry or obstructs growth which is in national or public interest would run counter to public interest as mentioned in this Section.”

However, seeing that the said test had not been met in this matter, the Court held the notification to be ultra vires Section 396 of the Companies Act and also Article 14 of the Constitution. Accordingly the appeal of 63 Moons was allowed and the Amalgamation order was set aside.

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## *Living Room*



## **La Tomatina**

La Tomatina (Spanish pronunciation: [la toma'tina]) is a festival that is held in the Valencian town of Buñol, in the East of Spain 30 kilometres (19 mi) from the Mediterranean, in which participants throw tomatoes and get involved in a tomato fight purely for entertainment purposes. Since 1945 it has been held on the last Wednesday of August, during a week of festivities in Buñol. It started the last Wednesday of August in 1945 when some young people spent the time in the town square to attend the Giants and Big-Heads figures parade. The young boys decided to take part in a parade with musicians, Giants and Big-Heads figures. The energy of jovialities caused one participant's big head to fall off. The participant flew into a fit of rage, began hitting everything in his path. There was a market stall of vegetable that fell victim to the fury of the crowd. People started to pelt each other with tomatoes until the local forces ended that fruit battle.

The following year, some young people engaged in a pre-planned quarrel and brought their own tomatoes from home. Although the police broke it up, this began the early tradition. In the following years, the young boys' example had unwittingly made history.



## EXPRESS NEWS

- Vodafone Idea Boards OKs Merger of its 2 Units
- Akashika Foods to take over Maiyas Beverages and Food
- United Bank of India exploring out of Court Settlements to expedite recovery

### **IL&FS board seeks punitive action against Deloitte, BSR**

The government-appointed board of Infrastructure Leasing & Financial Services has proposed punitive action against Deloitte Haskins & Sells (DHS) and BSR & Co, part of the KPMG network.

In its report to the Ministry of Corporate Affairs (MCA), the board said it had found the two firms failed to issue warnings about shortcomings while auditing the books of IL&FS Financial Services (IFIN), a subsidiary of IL&FS.

Earlier, the Serious Fraud Investigation Office (SFIO), the investigation wing of the MCA, had in its ongoing probe allegedly found that DHS failed to exercise due diligence.

Both the board and the MCA are of the view that action must be taken against DHS and BSR, including the possibility of invoking Section 140 (5) of the Companies Act, which allows barring an auditor for a period of five years, and also Section 147, which deals with punishment for contravention of rules.

### **India Inc's top lines see 18.4% growth, profits remain muted.**

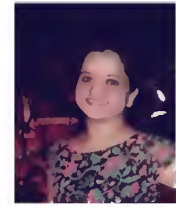
Growth in net profit was 9.4 per cent in the March 2019 quarter. The initial trend in the March 2019

quarter results show that revenue continued to grow in double-digits though at a slower rate, while net profit growth fell to single digits. For a sample, of the 42 companies that declared results so far, net sales grew by 18.4 per cent year-on-year after 36-42 per cent growth in the previous three quarters. Growth in net profit was 9.4 per cent in the March 2019 quarter after trending above 10 per cent in the previous five quarters.

### **TV9's minority shareholders move NCLT**

Minority shareholders, led by former TV9 chief executive officer Ravi Prakash, have moved the National Company Law Tribunal (NCLT) alleging that the company's majority shareholders had violated its restraining orders.

The minority shareholders, who together claim to hold a 9.43% stake in TV9, sought to set aside the sale of the company and block the appointment of four nominees of the new majority owners to the board, claiming such acts violated the tribunal's orders. Alleging oppression and mismanagement, the minority shareholders, including directors MKVN Murthy and Clifford Pereira, urged the tribunal to stop the director-nominees of the majority shareholders from conducting board and shareholder meetings and from infusing fresh capital.



## Companies Act, 2013

### Updates on Amended Rules

MCA has amended National Company Law Tribunal Rules, 2016, which is to be known as National Company Law Tribunal (Second Amendment) Rules, 2019.

In the principal rule, following sub-rules shall be inserted after sub-rule (2) of rule 84;

“(3) In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be;

(a) At least five percent of the total number of members of the company; or

(b) One hundred members of the company, whichever is less; or

(a) Member or members holding not less than five percent of the issued share capital of the company, in case of an unlisted company;

(b) Member or members holding not less than two percent of the issued share capital of the company, in case of a listed company.

(4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be;

(a) At least five percent of the total number of depositors of the company; or

(b) One hundred depositors of the company, whichever is less; or;

Depositor or depositors to whom the company owes five percent of total deposits of the company.”

### ***Company Law Tribunal (Second Amendment) Rules, 2019, dated 8<sup>th</sup> May 2019.***

MCA has amended Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, which is to be known as Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019.

As per the new rules no application in Form No.STK-2 shall be filed by a company unless it has filed overdue returns in Form No. AOC-4 or AOC-4 XBRL and Form No. MGT-7 up to the end of the financial year in which the company ceased to carry its business operations.

Provided further that, if any notice in Form STK-7 has been issued by the Registrar, pursuant to the action initiated under sub-section (1) of section 248, a company shall not be allowed to file an application in Form No. STK-2.

### ***Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019, dated 8<sup>th</sup> May 2019***

#### **Notifications**

MCA has appointed 30<sup>th</sup> January, 2019 as the date on which the provisions of section 465 of the Companies Act, 2013 so far as they relate to the repeal of the Companies Act, 1956 (1 of 1956) [that in except in so far as they relate to the repeal of the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961)] shall come into force.

### ***S.O. 560(E), Dated 30<sup>th</sup> January 2019.***