



Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर। इष्टार्थं कुरु। तृप्तये श्रेयते। by the law

Mission

"To develop high calibre professionals facilitating good corporate governance"

Monday, January 08, 2024

Info Capsule

President

CS Manish Gupta

Vice President

CS B Narasimhan

❖ *Capital Market and Securities Laws*

SEBI allows short-selling by all investors; F&O stocks also eligible (January 06, 2024)

The Securities and Exchange Board of India on January 05, 2024, Friday said that investors across all categories will be allowed for short-selling, but naked short-selling will not be permitted. Further, all stocks that trade in the futures and options segment are eligible for short-selling. "Short selling" means selling a stock that the seller does not own at the time of trade. Further, institutional investors will not be allowed to do day trading. This means all transactions would be grossed for institutional investors at the custodians' level. The custodians, however, will continue to settle their deliveries on a net basis with the stock exchanges.

For details:

<https://economictimes.indiatimes.com/markets/stocks/news/sebi-allows-short-selling-by-all-investors-fo-stocks-also-eligible/articleshow/106579081.cms>

❖ *Ministry of Communications*

DOT extends M2M and WPAN/WLAN Registration to all Entities (January 07, 2024)

Department of Telecommunications (DoT), Ministry of Communications (MoC), has extended Machine-to-Machine (M2M) and Wireless Personal Area Network/Wireless Local Area Network (WPAN/WLAN) registration to all entities engaged in the said businesses. All business entities (incl. Companies, Govt. Deptts./Organizations, Partnership Firms, LLPs, Institutions, Undertakings, Proprietorship Firms, Societies and Trusts) engaged in M2M service provisioning and WPAN/WLAN Connectivity Provisioning are advised to register with DoT through a simple and transparent online process via Saral Sanchar portal (<https://saralsanchar.gov.in>).

Non-compliance may lead to withdrawal or disconnection of telecom resources obtained from the Authorized Telecom Licensees.

The decision has been taken to extend the scope of the registration in order to proliferate the standard-based and secure M2M/IoT ecosystem. This also addresses the concerns of M2M Service Providers and WPAN/WLAN Connectivity Providers for M2M services, related to interface with Telecom Service Providers (TSPs), KYC, Security, Encryption, etc.

The DoT is committed to ensure building a secure and innovative M2M/IoT (Internet of Things) landscape. National Digital Communication Policy aims at creating a robust digital communication infrastructure, enable next generation technologies and ensure a holistic and harmonized approach for harnessing Emerging Technologies such as M2M/IoT.

After considering the recommendations of TRAI on "Spectrum, Roaming and Quality of service (QoS) related requirements in M2M Communications" and views of M2M industry stakeholders, the Government has decided to issue the guidelines for 'Registration process of M2M Service Providers (M2MSP) & WPAN/WLAN Connectivity Providers for M2M Services'.

For details:

<https://pib.gov.in/PressReleasePage.aspx?PRID=1993917>

❖ **Ministry of Labour and Employment**

EPFO extends five months time for Employers to upload wage details etc. regarding Pension on Higher Wages (January 03, 2023)

Earlier an online facility was made available by EPFO for submitting Applications for Validation of Option /Joint Options for pension on higher wages. The facility was for eligible pensioners / members in compliance with the Hon'ble Supreme Court order dated 04.11.2022. The facility was launched on 26.02.2023 and last date for uploading wage details after extension was 31.12.2023.

More than 3.6 lakh Applications for Validation of Option / Joint Options are still pending with the employers for processing. Therefore, in order to ensure that employers process these remaining Applications for Validation of Option / Joint Options, the Chairman, CBT EPF has kindly approved the proposal to grant another extension of time for the employers for uploading wage details online etc. till 31st May, 2024.

For details: <https://labour.gov.in/sites/default/files/pib1992884.pdf>

❖ **Indirect Tax**

Goods & Services Tax (GST)

Notification no. 04/2024 Central Tax- Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of some specified goods (e.g., Pan masala, Unmanufactured tobacco, hookah etc.)

The Central Government, on the recommendations of the GST Council, notified the special procedure to be followed by a registered person engaged in manufacturing of the goods, the description of which is specified in the corresponding entry in column (3) of the Schedule and falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule.

For details: <https://taxinformation.cbic.gov.in/view-pdf/1009983/ENG/Notifications>

❖ **Banking**

Risk Management and Inter-Bank Dealings - Hedging of foreign exchange risk (January 05, 2024)

The foreign exchange risk management facilities have been reviewed based on the feedback received from market participants and experience gained since the revised framework came into force. Also, the Directions in respect of all types of foreign exchange transactions (including cash, tom and spot) have been consolidated and some of the existing directions are suspended by the RBI. The revised Directions shall come into effect from April 05, 2024, replacing the existing Directions in Part A (Section I) of the Master Direction - Risk Management and Interbank Dealings dated July 5, 2016.

For details: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12594&Mode=0>

❖ Insurance

• Submission of Advance Reinsurance Programme (January 05, 2024)

The Insurance Regulatory and Development Authority of India (IRDAI) has issued the IRDAI (Re-Insurance) Regulations, 2018 which deal with the operational aspects of placement of reinsurance. As per the Regulation 3(A) of the above Regulations an advance reinsurance programme shall be submitted by every insurer in a specified summary format, to the Authority, at least 45 days before the commencement of the financial year.

For details:

<https://irdai.gov.in/document-detail?documentId=4297326>

• Investments in Infrastructure Debt Funds-NBFC (January 05, 2024)

Reference is drawn to Note 2 of Regulation 9 of IRDAI (Investment) Regulations 2016 which stipulates that "Investment in Infrastructure Debt Fund (IDF), backed by Central Government as approved by the Authority, on a case to case basis shall be reckoned for "investments in infrastructure. Accordingly, the Authority had allowed insurers' investments in certain IDFs on case to case basis.

For details:

<https://irdai.gov.in/document-detail?documentId=4296416>

❖ IFSCA

Inclusion of 'Finance Company' and 'Finance Unit' as 'Credit Institution' (January 05, 2024)

The International Financial Services Centres Authority (IFSCA) vide its circular dated January 05, 2024 included 'Finance Company' and 'Finance Unit' as 'credit institution' under section 2 (f) of the Credit Information Companies (Regulation) Act, 2005, as defined in IFSCA (Finance Company) Regulations, 2021. The circular aims to provide clarity on the definition and scope of 'credit institutions' operating in the IFSC, aligning with the evolving financial landscape.

The circular specifies that Finance Companies and Finance Units engaged in permissible activities, such as lending, factoring, and more, within IFSC, are recognized as 'credit institutions.' This encompasses various lending forms, credit enhancement, financial lease, and activities outlined in the FC Regulations. The inclusion extends to activities carried out by Finance Companies/Finance Units as Global/Regional Corporate Treasury Centres and those without customer interfaces.

For details:

<http://tinyurl.com/3tx5jask>

Market Watch

Stock Market Indices as on 08.01.2024	
S & P BSE Sensex	71,355.22 (-670.93)
Nifty 50	21,513.00 (-197.80)

Foreign Exchange Rates as on 08.01.2024 (https://m.rbi.org.in/scripts/ReferenceRateArchive.aspx)			
INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR / 1 JPY
83.06	90.89	105.58	0.57

❖ Pronouncement

03.01.2024	PUMA SE(Plaintiff) vs. INDIAMART INTERMESH LTD. (Defendant)	High Court of Delhi CS(COMM) 607/2021J I.A. 15564/2021(under Order XXXIX Rules 1 and 2 of the CPC)
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E-commerce websites are commercial ventures and are inherently profit oriented. They cannot, with a view to further their financial gains, put in place a protocol by which infringers and counterfeiters are provided an avenue to infringe and counterfeit.

Brief Fact

Puma SE, the plaintiff, is one of the world's leading manufacturers of sportswear and accessories. It uses the distinctive and logos, which are its source identifiers. The defendant IndiaMART IndiaMESH Ltd ("IIL" hereinafter) operates the website www.indiamart.com. Merchandise of various manufacturers are purchasable from the said website. The website allows a consumer to enter a search option in the space provided for the purpose.

The plaintiff's grievance is that, if one enters, in the said space, the search word "PUMA", various counterfeit goods, bearing fake "Puma" marks, put up by third-party sellers, are displayed for purchase. These goods also bear the plaintiff's registered trademarks. The plaintiff's grievance against IIL – which is the sole defendant in the suit – is that IIL is aiding, abetting and facilitating such infringement and passing off.

Judgement

Hon'ble Delhi High Court inter alia observed that in the ultimate eventuate, the *raison d'etre* of the Trade Marks Act is protection of the intellectual property that resides in trademarks and ensuring that customer confusion is avoided. These considerations must inform and govern the decision of any Court which is seized with a challenge alleging infringement of a trade mark, or passing off. E-commerce websites are commercial ventures, and are inherently profit oriented. There is, of course, nothing objectionable in this; but, while ensuring their highest returns, such websites have also to sedulously protect intellectual property rights of others. They cannot, with a view to further their financial gains, put in place a protocol by which infringers and counterfeiters are provided an avenue to infringe and counterfeit. Any such protocol has to meet with firm judicial disapproval.

There is nothing inherently illegal in IIL providing a drop down menu from which prospective sellers, on the Indiamart platform, can select the brand which they intend to sell. If, however, there are not, in place, sufficient checks and balances to prevent counterfeiters from misrepresenting themselves as genuine sellers, the protocol cannot withstand judicial scrutiny. Given the intent and purpose of the Trade Marks Act, and the need to protect intellectual property rights, IIL can hardly be allowed to maintain a defence that they have no participatory role to play in the process. Rule 3(1)(b)(iv) of the IT Rules entirely forecloses this defence. The provision also forecloses, to IIL, the defence that it promptly takes down any infringing listing, which is brought to its notice. Rule 3(1)(b)(iv) requires the intermediary to take reasonable steps to ensure that the use of its consumer resource does not post any infringing listing. There is obviously no use in closing the stable doors after the horses have bolted. An e-commerce platform cannot become a haven for infringers. Men are not angels. Where easy money is visible, the conscience at times takes a nap.

Prepared by Directorate of Academics

For any suggestions, please write to academics@icsi.edu

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