VOLUME 1, AUGUST 2014

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THE NEWSLETTER

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Total Turnover Not To Include Receipts On The Sale Of Scrap. [1]

Dealing with the issue of receipts generated from the sale of scrap the Hon'ble Supreme Court in its judgment stated that the sale proceeds from scrap may either be shown separately in the P&L account or may be deducted from amount spent by manufacturing unit on raw material. However, when such scrap is sold, sale proceeds of scrap could not be included in the term 'turnover' for the reason that the primary activity of the manufacturing unit, in which it is engaged, has to be ascertained. Therefore, proceeds of such scrap would not be included in 'sales' in the profit and loss account. Hence, proceeds generated from

Use of social media platform by the Income Tax Department to collect factual evidence[2]

The Hon'ble ITAT Delhi while dealing with the issue of admission of additional evidence passed an interim order holding that the Linkedin profiles were not in the nature of hearsay because it is the employee who himself had given all the relevant details on the website. Accordingly, the Tribunal admitted the Linkedin profiles submitted by the tax department as additional evidence.

Copyright Applications: Online Filing

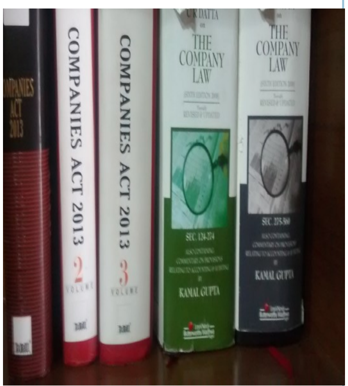
The Copyright Office has issued a notification (no. F. 27-25/2014-CO) dated 22.07.2014, stating that the online facility for filing of copyright applications has been launched from 17.2.2014. According to this notification the Copyright Counter would close from 1/8/2014 in an attempt to promote online filing of copyright applications.

[1]*Commnr. of Income Tax-VII* v. *Punjab Stainless Steel Industries* [2014]364ITR144(SC)]
[2]*GE Energy Parts Inc.* v. *ADIT*' (ITA No. 671/Del/2011)]

India Ratifies Marrakesh Treaty

India became the first country to ratify Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled. The Indian Copyright Act 1957 did not have any provision for the conversion and distribution of books in accessible formats for print impaired persons. Due to this, organisations serving visually impaired people had to get permissions from copyright holders to undertake conversions. With the ratification of this treaty, entities such as educational institutions, libraries and other such institutions working for the benefit of people with visual impairments can now create audio and braille version of books without seeking permission of the right holder.

Listed Companies to have 25 % Or Rs.4 Billion public holding in three years (PR No. 63/2014)



The Securities and Exchange Board of India (SEBI) stated that all listed companies should have at least 25 percent public shareholding in three years and minimum dilution to the public via an initial public offering for all companies should be 25 percent or 4 billion rupees whichever is lower.

Ministry Of Corporate Affairs Clarifies 'Related Party' deal Norms In Companies Act, 2013 (General Circular no. 30/2014)

MCA said that in case of Section 188(1) second proviso, clause barring one related party to vote on a special resolution related to the other, the term “related party" has to be construed with reference only to the contract or arrangement for which the said special resolution is being passed.

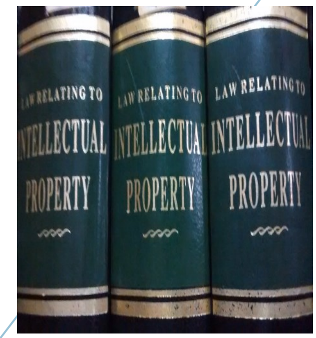
Banks Can Publish Photos Of Wilful Defaulters[3]

The Apex Court in a move that may discourage firms from defaulting on bank loans, allowed lenders to publish names and photographs of wilful defaulters in newspapers in the larger public interest pursuant to Rule 8 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2002 .

[3]*D.J. Exim* v. *SBI* SLP (C) No. 37726 SC

Bombay High Court On IPR Protection For Common Expressions[4]

The Plaintiff in the instant case claimed proprietary, statutory and common law rights over a common and colloquial phrase in Marathi 'Lai Bhaari' which happens to be the domain name of Plaintiff's social networking website. The Plaintiff had filed this application for urgent ad-interim relief to restrain Defendants from releasing a Marathi film under the title 'Lai Bhaari'. Justice G.S. Patel found that the Plaintiff did not have any proprietary rights in the phrase itself; the rights exist only in an internet domain name of which the phrase is a part. The application for Ad-interim injunction was thus refused.



Pharmaceutical Sector, FDI and Non Compete Clause

FDI in pharmaceutical sector is allowed up to 100%. FDI in greenfield projects are allowed under the automatic route however FDI in brownfield projects require prior approval of FIPB.

Department for Industrial Policy and Promotion (DIPP) had floated the idea of reducing the FDI sectoral limit in brownfield projects from 100% to 49%. However, after a review of this proposal the Cabinet decided to retain the 100% FDI limit but imposed some restrictions on non-compete clauses .

By way of Press Note 1 (2014 series) issued on 8 January 2014, the existing sectoral limits on FDI have been retained with immediate effect. Further, the government has declared that ‘non-compete’ clauses will not be allowed except in special circumstance with the prior approval of FIPB.

Indian companies and promoters can now freely divest their stakes in domestic pharma companies and even establish their own ventures in the same field without any restriction.

Procedure for receiving approval of FIPB for inserting the non compete clause has not been prescribed and will vary on case to case basis.

What are greenfield projects?

A greenfield project is one which is not constrained by prior work. It is constructing on unused land where there is no need to remodel or demolish an existing structure. Such projects are often coveted by engineers.

FDI Limit in Insurance Sector and Defence Sector has been increased from 26% to 49%

[4]*Techlegal Solutions* v. *Genelia Ritiesh Deshmukh & 7 Ors*, Suit (L) No. 629 of 2014

Stamp Duty On Hypothecation Deed: Rajasthan Perspective

Ms. Ritu Soni (Partner) and Ms. Harsha Gupta (Associate)

Like all other revenue departments, stamp department has also become more active in the recent years in collection of deficit stamp duty which in turn has made the finance world more concerned about proper stamping of the documents, more so when there is increase in defaults in repayment of debts due to downturn economy. A document which is not duly stamped is inadmissible as evidence in courts which makes the recovery of amounts difficult if the loan documents are not properly stamped. However, unlike other revenue laws *viz.* Income Tax Act, 1961 which are being regularly amended to cater the loopholes, attempts of removing loopholes in the stamp acts are less frequent in most states except with few exceptions *viz.* Maharashtra, Gujarat. This has left certain issues open for debate, one of which is stamp duty payable in hypothecation of movable properties in the state of Rajasthan. Though not specifically defined in any law[5], hypothecation is understood as charge created on movable property for securing the repayment of a debt wherein the possession of the movable property is not delivered to the lender. In strict sense, hypothecation is neither pledge as defined under the Contract Act, 1872 since the possession of the property is not parted with nor mortgage as defined under the Transfer of Property Act, 1882 since no immovable property is involved.

Interestingly, in many states including Rajasthan, in a loan transaction if the security is being taken only by way of hypothecation of movables, many banks/financial institutions pay full stamp duty only on one document (on which highest duty in payable) and the rest of the documents of the loan transaction are stamped at the nominal value. This practice has developed in light of the provision of the Rajasthan Stamp Act, 1998 in Section 5 titled as '*Several instruments used in single transaction of sale, mortgage and settlement*'. This provision only applies on three categories of transactions i.e. sale, mortgage and settlement but it does not include hypothecation. However, unlike the definition of mortgage in the Transfer of Property Act, 1882, the term mortgage deed as defined in the Rajasthan Stamp Act, 1998 is not restricted to immovable property. Thus, a view can be taken that so far as the Rajasthan Stamp Act, 1998 is concerned; the term mortgage includes creation of charge on movable properties by way of pledge and hypothecation. This view finds support from the judgments of the Hon'ble Madras High Court[6] and the Hon'ble Andhra Pradesh High Court[7].

Thus, the term 'mortgage' under the Rajasthan Stamp Act, 1998 would include the mortgage of movable property as well and will not be construed as being limited to mortgage of immovable property only. Hypothecation deed, essentially being a transaction wherein the movable property is being given as security, would fall under the definition of mortgage deed as given under the Rajasthan Stamp Act, 1998.

In most of the cases hypothecation deed is accompanied by a loan agreement. As there is no specific entry in the Schedule I of the Rajasthan Stamp Act, 1998 for stamp duty chargeable on hypothecation deed, Entry 5 (bbb) and Entry 37(b) of the Schedule I to the Rajasthan Stamp Act, 1998 become relevant. Thus the stamp duty under Entry 5(bbb)[8] is being paid by virtue of Section 5 by taking the interpretation that the hypothecation is included in mortgage deed as defined in the Rajasthan Stamp Act, 1998. However, in such situation stamp duty might be levied under specific Entry 37(b) of mortgage wherein possession of property is not given (@ 2%) instead of Entry 5(bbb) (@ 0.1%) by the stamp authorities. It may be noted that under some other state stamps legislations, *e.g.* Bombay Stamp Act, 1958, there is a specific entry for hypothecation and hypothecation is excluded from the entry corresponding to Entry 37(b). Therefore, in such states it is clear that stamp duty on hypothecation would not be levied under the entry corresponding to Entry 37(b). However, in the state of Rajasthan, the law is unclear as on date.

As a matter of practice, on hypothecation deed, the stamp duty is not being charged as per Entry 37(b) of the Schedule I of the Rajasthan Stamp Act, 1998. However, in the event of any notice/litigation on the issue as to why separate stamp duties are not being paid on each document (loan agreement, hypothecation deed, power of attorney), the lenders will have to take the stand that mortgage includes mortgage of movables which might trigger Entry 37(b) of the Schedule I of the Rajasthan Stamp Act, 1998 resulting in levy of stamp duty @2% of the amount of loan.

[5] Until the enactment of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

[6] *Chief Controlling Revenue Authority* v. *Coimbatore Alcohol and Chemicals Pvt. Ltd.,* AIR 1990 Mad 8

[7] *Hazrami Gangaram* v. *Kamlabai and Anr*, AIR 1968 AP 213

[8] Stamp duty on agreement relating to secure repayment of a loan or debt made by a bank or finance company

[9] Stamp duty on mortgage deed without delivery of possession

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