

THE NEWSLETTER

RBI REVISES NBFC PRUDENTIAL NORMS¹

The Reserve Bank has revised the regulations for non-banking finance lenders by directing them to get themselves rated by March 2016 and those failing to achieve investment grade ratings should not accept fresh deposits or renew older ones. The notification titled ***Revised Regulatory Framework for NBFCs*** states:

"Those asset finance companies (AFCs) that do not get a minimum investment grade rating by the end of March 2016, shall not renew existing deposits or accept fresh deposits thereafter".

The Reserve Bank had come out with a new regulatory framework for NBFCs in November 2014, in which it insisted on having a much stronger capital base, failing which they would lose their registration. In the revised norms, RBI said if a company's rating is downgraded, an NBFC should regularise the excess deposit with immediate effect, stop accepting fresh public deposits and renewing existing deposits. The RBI has also tightened norms with respect to net-owned funds and pegged the mandatory requirement at Rs 2 crore for all NBFCs and has given time till April 2017 to comply.

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FOREIGN TRADE POLICY 2015-2020²

The new Foreign Trade Policy 2015-2020 ("**Policy**") which came into force on 1st April, 2015 aims to provide a framework to increase exports of goods and services, generate employment and increase the value addition in the country. The Policy, *inter alia*, introduces two schemes, namely- Merchandise Exports from India Scheme ("**MEIS**") and Service Exports from India Scheme ("**SEIS**"). In the erstwhile policy there were five schemes namely, Focus Product Scheme, Market Linked Focus Product Scheme, Focus Market Scheme, Agri. Infrastructure Incentive Scrip and VKGUY, which now have been merged into MEIS. The SEIS has replaced the Served From India Scheme (SFIS), and shall apply to 'Service Providers located in India' instead of 'Indian Service Providers'. Under the Policy, the duty credit scrips issued under the abovementioned schemes shall have no conditionality attached to them, and the goods imported against these scrips shall be freely transferable. Furthermore, the duty credit scrips can be used for payment of Customs duty, Excise duty, Service tax and fees for defaults relating to Advance Authorization. Moreover, the benefits available to MEIS and SEIS units under the Policy shall be available to units located in Special Economic Zone as well. The Policy is in line with the "Make in India" initiative, and purports to support the manufacturing and services sector in order to improve the "ease of doing business" in India.

¹ RBI/2014-15/520 March 27, 2015, DNBR (PD) CC.No. 024/ 03.10.001/ 2014-15

² http://howtoexportimport.com/UserFiles/Windows-Live-Writer/Foreign-Trade-Policy-of-India-2015-2020-_FB74/Foreign%20Trade%20Policy%202015-20.pdf (Accessed on 08.04.2015)

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INTERPRETATION OF “BEST BEFORE DATE” AND “EXPIRY DATE”³

In the case of *Amrut Distilleries Limited vs. The Authorized Officer, FSSAI*, an issue arose with respect to interpretation of the terms “Best Before Date” and “Expiry Date”. As per the Food Safety and Standards (Packaging and Labeling) Regulations, 2011 (“**Regulations**”) issued by the Food Safety and Standards Authority of India, if in a wholesale package ‘Best Before Date’ and ‘Expiry Date’ are given, then the two dates should be different and clearly specified. However, in the present case the food item of the petitioner had the same ‘Expiry Date’ and ‘Best Before Date’, and thus failed to meet the labeling requirement under Food Safety and Standards Act, 2006. The Hon’ble Court while interpreting the two terms opined that the meaning attached to phraseology- “best before” is that the period during which the product shall remain fully marketable and shall retain in specific qualities for which tacit or express claims have been made. Further beyond the prescribed date the food article may still be perfectly satisfactory. Whereas, the meaning attached to the “expiry date” signifies the end of estimated period under any stated storage conditions, after which product probably will not have the quality and safety attributes normally expected by the consumers and further that the food shall not be sold. The Court after a detailed analysis of the relevant provisions, held that in the event there is a clear distinction between “Expiry Date” and “Best Before Date” then the petitioner cannot be allowed to mention a single date for both as it would mislead the consumers to think that the product will never lose its quality. Moreover, the Hon’ble Court observed that there is no requirement to mention both “Best Before Date” and “Expiry Date” and that a wholesale package can have either “Best Before Date” or “Expiry Date”, but in case if the manufacturer intends to give both dates, then two dates should be different and clearly specified.

CLARIFICATION ON AMOUNTS RECEIVED BY PRIVATE COMPANIES⁴

In lieu of clarifications sought by various stakeholders as to whether amount received by private companies from their members, directors or their relatives prior to 1.04.2014 shall be considered as deposit under the Companies Act 2013, the Ministry of Corporate Affairs (“**MCA**”), has issued a clarification that such amounts received by private companies prior to 1.04.2014 shall not be treated as ‘deposits’ under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 as such amounts were not treated as ‘deposits’ under section 58A of the Companies Act, 1956 and rules made thereunder. However, such exemption is subject to the condition that relevant private company shall disclose, in the notes of its financial statement for the financial year commencing on or after 1.04.2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statements. Further, any renewal or acceptance of fresh deposits on or after 1.04.2014 shall, however, be in accordance with the provisions of the Companies Act, 2013 and rules made thereunder.

³ W.P. No. 33478 of 2014

⁴ F. No. 1/8/2013-CL-V, Government of India, Ministry of Corporate Affairs, Dated 30.03.2015

SECTION 66A, INFORMATION TECHNOLOGY ACT, 2000 DECLARED UNCONSTITUTIONAL⁵

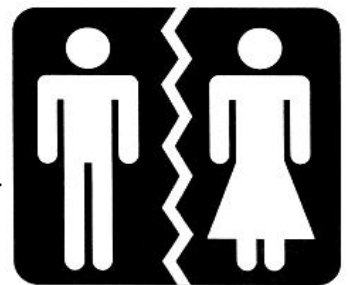
The Hon'ble Supreme Court delivered the landmark verdict in ten writ petitions that were heard together, challenging the provisions of the Information Technology Act, 2000 ("**Act**"). Section 66A of the Act provided the punishment for sending offensive messages through communication service as imprisonment to the tune of three years with fine. The Court in its verdict held that the terms used in the Section 66A to describe offensive messages such as 'grossly offensive', 'causing annoyance' are vague and may not fit in to the same compartment as their interpretation and application is subjective. The Hon'ble Court observed that there exists a difference between advocacy and incitement, while advocacy through expression of opinion in the public domain is well within the ambit of article 19(1)(a) of the Constitution of India which guarantees right to freedom of speech and expression, it is only when this advocacy reaches the level of incitement that it falls within the ambit of article 19(2) which imposes reasonable restriction on fundamental rights. The Court held that section 66A consisting of vague and imprecise terms was violative of the article 19(1)(a) and could not be termed to be a reasonable restriction imposed under article 19(2). Moreover, the Hon'ble Court also watered down section 79 of the Act and the Information Technology (Intermediary Guidelines) Rules, 2011 ("**Rules**") made there under. While section 79 is a safe harbour provision available to the Intermediaries, the Rules lay down the conditions for applicability of the safe harbour provision. Out of these conditions the significant condition is taking down of information upon intimation by the user/aggrieved party. The Hon'ble Court held that such take downs must be preceded by either a court order or a government directive.

ALIMONY NOT FOR MERE SURVIVAL⁶

The Hon'ble Supreme Court in the matter of **Shamima Farooqui vs. Shahid Khan** held that courts must direct a man to pay such alimony to his estranged wife in order to allow her to live life with dignity and not just make ends meet.

The judgment states that:

"Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband and that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right."

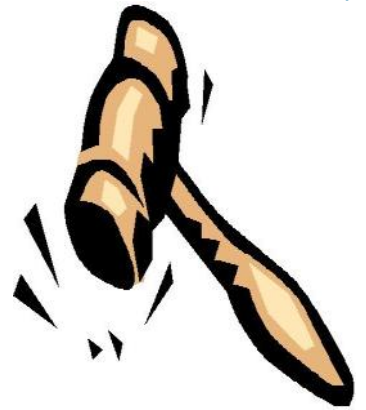


⁵ *Shreya Singhal vs. Union of India* 2015(4)SCALE1

⁶ CRIMINAL APPEAL NOS.564-565 OF 2015 (SC)

KEY PROVISIONS PERTAINING TO CONSTITUTION OF IPAB HELD UNCONSTITUTIONAL⁷

The Hon'ble Madras High Court *vide* order dated 10th March, 2015 in the matter of *Shamnad Basheer vs. Union of India & Ors.* has declared few provisions of Section 85 of the Trade Marks Act, 1999 ("**Act**") as unconstitutional for being violative of the basic structure doctrine. The Hon'ble Court has held that Section 85(2)(b) and 85(3)(a) of the Act, which provides for a Indian Legal Service officers to be elected as judicial members to the Intellectual Property Appellate Board ("**IPAB**") is unconstitutional, being an affront to the separation of powers, independence of judiciary and basic structure of the Constitution. Further, the Hon'ble Court has directed the government to re-constitute the committee responsible for selecting members to IPAB in order to provide a predominant role of judiciary in the selection process. Moreover, the Hon'ble Court also held that the technical member should be a person with expertise in the field of law, rather than a mere experience in civil service and therefore, a technical member cannot become a Vice Chairman or a Chairman without the requisite judicial qualifications. It was also pointed out by the Hon'ble Court that the recommendation of the Chief Justice of India to the post of Chairman must be given due consideration by the appointment committee of the cabinet.



RE-LOOK LAW ON JUVENILES⁸

The Hon'ble Supreme Court while hearing the plea by a murder accused, who claimed that he was less than 18 years old at the time of the alleged crime in May 2000, directed the government to re-visit the law so that a juvenile cannot get away with crimes such as rape and murder by claiming he is too young to understand the consequences of his crime. The court asked the government to take action and convince legislators to change the law and make juveniles accountable. Justice Dipak Misra recorded in his order:

"There can be a situation where a commission of an offence may be totally innocuous or emerging from a circumstance where a young boy is not aware of the consequences. But in cases of rape, dacoity, murder, which are heinous crimes, it is extremely difficult to conceive that the juvenile was not aware of the consequences."

The order further records Attorney General, Mr. Rohatgi's statement that the rate at which juveniles are being involved in heinous crimes "has actually become a matter of grave concern" for the government.



⁷ WP 1256/2011

⁸ <http://www.thehindu.com/news/national/relook-law-on-juveniles-supreme-court-tells-government/article7074821.ece>

The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015:

White Wash for Black Money

(Ms. Richa Bakiwala, Associate and Mr. Nikhil Totuka, Associate)

The Finance Minister in his Union Budget has proposed various measures to sweep out the black money which eats into the vitals of our economy and society. The Finance Minister in his speech stated that they have decided to enact a comprehensive new law on black money to specifically deal with such money stashed away abroad. In pursuance to this *The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015* ("UFIA" for short) was tabled in Lok Sabha on 20-03-2015. The UFIA provides for separate taxation of any undisclosed income in relation to foreign income and assets. The glimpses of the UFIA are as follows:

A. Date of Commencement:

- It shall come into force on the 1st day of April 2016.

B. Applicability:

- Applies to resident other than not ordinary resident in terms of provisions of section 6 of the Income Tax Act, 1961 ("IT Act" for short).
- Every person who is deemed to be an assessee in default under the provision of UFIA.

C. Scope

1. Undisclosed asset located outside India

- Asset (including financial interest in any entity) located outside India, held by assessee in his name or in respect of which he is a beneficial owner; and
- No explanation about the source of the asset is given or explanation given is unsatisfactory in the opinion of assessing officer.

2. Undisclosed Foreign Income and Asset

- Undisclosed income from a source located outside India and value of undisclosed asset located outside India.
- Value of undisclosed asset located outside India : FMV of an asset determined in such a manner as may be prescribed.

D. Computation of total undisclosed foreign income and asset

	Income from a source located outside India which has not been disclosed in the return of income furnished under IT Act	-
Add:	Income from a source located outside India in respect of which no return of income is furnished under IT Act	-
Add:	Value of undisclosed asset located outside India	-
Less:	Income which has been assessed to tax for any assessment year under the IT Act prior to assessment year to which UFIA applies	(-)
Less:	Income which is assessable or has been assessed to tax for any assessment year under UFIA	(-)
	Net undisclosed foreign income and asset	(A)*

**No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee whether or not it is allowable in accordance with the provisions of the IT Act.*

E. Charge of Tax :

30% of the amount referred as (A) above

F. Penalties

Default	Penalties
Non-disclosure of foreign income and assets	3 times of the tax assessed under UFIA may be levied
Failure to furnish a return of income before the end of the relevant assessment year in respect of foreign income or assets (including financial interest in any entity)	Rs. 10 Lakhs**
If a return of income is filed but the assessee fails to disclose foreign income or assets (including financial interest in any entity) or furnishes inaccurate particulars of the same	Rs. 10 Lakhs **
Other defaults such as failure to answer queries, sign statements, attend required meetings or produce books of accounts, etc.	Rs. 50,000 to 2 Lakhs
Continuing default in payment of tax (this penalty will be levied irrespective of whether the assessee voluntarily paid the required taxes before the levy of the penalty)	An amount equal to tax payable

**This shall not apply in respect of an asset being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to Rs. 5,00,000/- at any time during the previous year.

G. Prosecution

Default	Prosecution
Willful attempt to evade tax, penalty or interest, chargeable or impossible under the proposed legislation	3 years to 10 years (with a fine)
Willful attempt to evade payment of tax, interest or penalties	3 months to 3 years (in addition, a fine may be imposed)
Willful failure to furnish a return of income before the end of the relevant assessment year in respect of foreign income or assets (including financial interest in any entity)	6 months to 7 years (with a fine)
If a return of income is filed but the assessee willfully fails to disclose foreign income or assets (including a financial interest in any entity) or furnishes inaccurate particulars of the same	6 months to 7 years (with a fine)
If a person makes a statement or delivers an account or statement which is false and which he either knows or believes to be false	6 months to 7 years (with a fine)
If a person abets or induces in any manner another person to make and deliver a false account or a statement or declaration	6 months to 7 years (with a fine)
Repetition of an earlier convicted offense	3 years to 10 years (with a fine of Rs. 5 lakhs to Rs 1 Crore)

H. Tax Compliance for Undisclosed Foreign Income and Assets

A limited window is proposed to persons who have any undisclosed foreign assets. Such persons may file a declaration before specified tax authority within a specified period, followed by payment of tax at rate of 30 percent and an equal amount by way of penalty. Exemptions, deductions, set off and carried forward losses etc. shall also not be allowed under UFIA. Upon fulfilling these conditions a person shall not be prosecuted under UFIA and declaration made by him will not be used as evidence against him under the Wealth Tax Act, Foreign Exchange Management Act (FEMA), 1999, Companies Act, 2013 or the Customs Act, 1962. Wealth Tax shall not be payable on any asset so disclosed.

It is merely an opportunity for persons to become tax compliant before stringent provision of UFIA come into force.

UFIA will enable the Central Government to tax undisclosed foreign income and assets and punish the persons indulging in illegitimate means of generating money causing loss to revenue. It will also prevent such illegitimate income and assets kept outside the country from being utilized in ways which are detrimental to India's social, economic and strategic interests and its national security.

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