

# THE NEWSLETTER

## UPDATE YOURSELF

### Exemption to Pay GST on Inward Supplies from an Un-registered Person

**U**nder Section 9 (4) of the Central Goods and Services Tax Act, 2017 (“CGST Act”) it is given that if a registered person receives a supply of (i) goods, (ii) services, or (iii) both, from an unregistered person, the tax in respect of such supply shall be paid by the said registered person/recipient under reverse charge basis. Taking into consideration the difficulty faced by businesses to comply with the aforementioned provision, the Central Government issued a Notification No-8/2017-Central Tax (Rate) dated 28.06.2017 (“Notification”), whereby the intra state supplies of goods or services or both received by a registered person from an unregistered person were exempted from whole of tax payable as per the reverse charge mechanism under Section 9 (4) of CGST Act. Also, by virtue of the *proviso* to the Notification, the said exemption was available only if the aggregate value of transactions did not exceed Rs. 5000/- in a day with effect from 01.07.2017. However, even after issuance of the Notification, businesses were not entirely satisfied as the transactions above Rs. 5000/- were still liable to be taxed. Therefore, the Central Government *vide* another Notification No. 38/2017-Central Tax (Rate) dated 13.10.2017, amended the Notification by omitting the *proviso* to the Notification, which was limiting the exemption only to the transactions whose aggregate value is Rs. 5000/- or less in a day. Consequently, the exemption from payment of the GST under reverse charge basis in case of inward supplies from an unregistered person shall now be available to all the registered persons, irrespective of the value of transaction. Further, the said exemption is valid only till 31.12.2018. Similar notifications have been issued under the State Goods and Services Tax Act, and Integrated Central Goods and Services Tax Act. Hence, conjoint reading of all the notifications, effectively provide that the registered person who receives intra-state/inter-state supplies of goods or services or both from an unregistered person, is not liable to pay the tax under reverse charge basis till 31.03.2018.



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### Interest Expenditure cannot be Disallowed due to merely transfer of SPNs Before Redemption

**T**he Hon’ble Gujarat High Court (“Court”) in the case of *Nirma Ltd. v. ACIT* [[2017] 86 taxmann.com 286 (Gujarat)], held that merely because right before the date of redemption, the promoter group transferred Special Purpose Notes (“SPNs”) to banks and offered difference by way of capital gains, the entire transaction could not be held sham and assessee could not be disallowed interest expenditure u/s 36(1)(iii) of the Income Tax Act, 1961 (“Act”). The question that arose before the Court was whether interest on SPNs was required to be disallowed, when the

said interest was in respect of the capital borrowed for the purposes of the business. The Income Tax Department also contested that entire transaction was a sham.

The brief facts of the instant case are that the assessee company had issued freely transferable SPNs, in order to raise funds for its upcoming Soda Ash Plant. The assessee company resolved to redeem the SPNs prematurely and raised a claim u/s 36 (1) (iii) of the Act for the premium and interest which it had already paid. Just before the date of redemption, the promoter group transferred the SPNs to the banks in lieu of which they were offered by the bank, a difference between the purchase price and redemption price of SPNs as capital gain difference. The Income Tax Department disallowed the claim of the assessee u/s 36 (1) (iii) of the Act, on a ground that the expenditure for which the amount was borrowed in the form of SPN was a capital expenditure and the transaction related to SPNs was a sham and colourable transaction only to provide gain to the promoters. The Court further noted that, for the purpose of deduction u/s 36 (1) (iii) of the Act, it is necessary that the capital must have been borrowed by assessee for the purpose of business and assessee must have paid interest on that borrowed amount. Further, Section 36 (1) (iii) makes no difference between money borrowed to acquire capital asset or revenue asset. In this case, the assessee company, investors, bank, financial institutions and sundries were aware that the SPNs would be foreclosed. Only because the promoters, the banks and financial institutions traded in such SPNs, the same would not indicate any colourable exercise for tax planning. Mere early redemption would not be enough to hold that from the inception there was a device created by the company to defeat the interest of Income Tax Department.

### Clarification on Taxability of Printing Contracts and its Treatment under New Regime of GST

The Ministry of Finance *vide* Circular No. 11/11/2017-GST dated 20.10.2017 (“Circular”) has clarified the issue regarding taxability of printing contracts and its treatment under the new regime of GST. The issue was relating to the rate of GST on supply of printed material, for example, books, pamphlets, reports, envelopes, cards, etc. The unclarity surrounding the issue arose on the account that if the printed material was to be considered as a supply of goods, i.e., goods

falling under Chapter 48 or 49 of the First Schedule to the Customs Tariff Act, 1975, the applicable rate was 5% or 12%, whereas, if the same was to be considered as a supply of service, i.e., services falling under heading 9989 of the scheme of classification of services, the applicable rate would be as high as 18%. The Circular has clarified that such printing contracts are to be taxed as though they are ‘composite transactions’ and the rate applicable shall be that of a principal supply. The predominant element of the printing contract shall have to be seen to ascertain the applicable rate. The Circular, further prescribes that the printing of books, pamphlets, brochures, annual reports, etc., where only the content is being supplied by the publisher and the physical inputs like paper belong to the printer, than the same shall be considered as a supply of printing service. On the other hand, in case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper, etc., whereby the design and logo are supplied to the printer by the recipient of such goods and the physical inputs belong to the printer, predominant supply is that of goods and the supply of printing of the content is ancillary to the principal supply of goods. The Circular has merely provided few illustrations, but each case needs to be analyzed independently to examine the predominant element of each printing contract. However, the Circular does bring some clarity on how printing contracts may be treated under GST in the upcoming years.



## No Single Arbitration Reference Allowed for Disputes Arising out of Different Agreements

The Hon'ble Supreme Court ("Court") in the case of *M/s. Duro Felguera, S.A v. M/s. Gangavaram Port Limited* [Arbitration Petition No. 30 of 2016 decided on 10.10.2017] examined the issue as to whether there can be a single arbitration reference arising out of different agreements inter-linked to a single transaction. M/s. Gangavaram Port Limited ("GPL") awarded a tender work to M/s Duro Felguera, S.A. ("DF") and its Indian subsidiary M/s. Felguera Gruas India Private Limited ("FGI") through an agreement ("Original Contract"). Later the Original Contract was split up into five (5) contracts for five (5) packages ("Contracts") with different works, wherein four (4) of such Contracts were with FGI and one contract was with DF. Each contract had an arbitration clause. Further, a tripartite memorandum of understanding ("MoU") was entered between DF, FGI and GPL wherein they have agreed to carry out the works as per the priority of documents listed therein. When dispute arose, FGI issued four (4) arbitration notices and DF issued one (1) arbitration notice, whereas, GPL issued a comprehensive arbitration notice to constitute a single arbitral tribunal. The contention of the respondent is that the arbitration clause contained in the Original Contract had been covered in the MoU, which would prevail over the arbitration clauses covered under the Contracts. Therefore, it would be just and proper to make a composite reference and have a single arbitral tribunal of international commercial arbitration for settling the disputes. The petitioner on the other hand claimed that there cannot be a composite reference as the Contracts were substantially different, independent and separate in their content and subject matter. The Court, in order to examine the above issue referred Section 11(6) of the Arbitration and Conciliation Act, 1996, wherein the power of the Court or the High Court is given to only examine the existence of an arbitration agreement. Therefore, in the instant case, where there were five (5) separate contracts dealing with separate and distinct works and having independent existence with separate arbitration clauses, there cannot be a single arbitral tribunal for international commercial arbitration. Further, the Court distinguished the instant case from *Chloro Controls India Private Ltd. v. Severn Trent Water Purification Inc. and Others* [(2013) 1 SCC 641], wherein the arbitration clause in the principal agreement required that any dispute or difference arising under or in connection with the principal agreement, which could not be settled by friendly negotiation and agreement between the parties, would be finally settled by arbitration. The words thereon 'under and in connection with' in the principal agreement was very wide to make it more comprehensive. Therefore, it was held that all agreements pertaining to the entire disputes are to be settled by a composite reference. In the instant case, the arbitration clause in the Contracts does not depend on the terms and conditions of the Original Contract. Therefore, the Court held that there has to be different arbitral tribunals for all Contracts.



## IGST Rate on Supply of Taxable Goods by a Registered Supplier to a Registered Recipient for Export

The Central Government vide Notification No. 40/2017-Central Tax (Rate) and 41/2017-Integrated Tax (Rate) dated 23.10.2017, has exempted the intra-State supply and inter-state supply of taxable goods in excess of the amount calculated @ 0.05% and @ 0.1% respectively, by a registered supplier to a registered recipient for export, subject to fulfilment of the following conditions:

- i) Supplier shall supply the goods to the recipient on a tax invoice;

- ii) Recipient shall export the said goods within a period of ninety (90) days from the date of issue of a tax invoice by the supplier;
- iii) Recipient shall indicate the GSTIN of the supplier and the tax invoice number issued by the supplier in respect of the said goods in the shipping bill or bill of export;
- iv) Recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce;
- v) Recipient shall place an order on supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the Supplier;

# GST

Good And Services Tax



vi) The registered recipient shall move the said goods from place of registered supplier –

- directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
- directly to a registered warehouse from where the said goods shall be moved to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;

vii) If the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse;

viii) In case of situation referred to in condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator. Thereafter, the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

xi) When goods have been exported, the recipient shall provide copy of shipping bill or bill of export along with proof of export general manifest or export report having been filed to the supplier as well as jurisdictional tax officer of such supplier.

## No Disallowance, if There is Short Deduction of Tax

Recently, the Hon'ble Income Tax Appellate Tribunal, Mumbai Bench ("ITAT") in the case of *Dish TV India Ltd. v. Assistant Commissioner of Income-tax, Range-11(1), Mumbai* [[2017] 86 taxmann.com 177] dated 10.10.2017 has held that disallowance under Section 40(a)(ia) of the Income Tax Act, 1961 ("Act") will not get attracted in case of shortfall in deduction of tax under a *bonafide* belief that the TDS has to be deducted under the different provisions of the Act. In the instant case, Dish TV India Ltd. ("Assessee") incurred Rs. 41,41,92,984/- towards expenditure in relation to customer support services and Rs. 36,61,17,648/- towards expenditure in relation to CAS, Middleware and SMS charges. The Assessee deducted TDS on the same @ 2% u/s 194C of the Act, considering the said payments as payment towards contract. However, the assessing officer ("A.O.") while finalising the assessment of the Assessee, considered the said payment as payment towards technical services availed by the Assessee and disallowed the said expenditures u/s 40(a)(ia)



of the Act, by holding that the TDS on the said payments should have been deducted @10% u/s 194J of the Act. On appeal, the Commissioner of Income Tax (Appeals) (“CIT(A)”) deleted the addition made by the A.O. by holding that of TDS, it is a case of shortfall in deduction of TDS and the said shortfall in deduction of TDS will not invoke the provisions of Section 40(a)(ia) of the Act. When this matter went to the Hon’ble ITAT, for adjudication the Hon’ble ITAT considered the contentions of both the parties and decided the issue. The Departmental Representative placed reliance on the case of *CIT v. PVS Memorial Hospital Ltd.* [60 taxmann.com 69 [Ker. – HC], in which the Hon’ble Kerala High Court held that deduction of TDS under wrong provisions of law will not save the assessee from the provisions of Section 40(a)(ia) of the Act. Whereas, the Assessee placed reliance *CIT v. S.K. Tekriwal* [361 ITR 432], in which the Hon’ble Calcutta High Court held that the provisions of Section 40(a)(ia) of the Act could not be invoked in case of shortfall in deduction of TDS on account of applying wrong provisions of the Act in good faith. The ITAT, being aware of the contrary non-jurisdictional High Court decisions, followed the decision of ITAT (Visakhapatnam Bench) in the case of *S.R. Associates v. ACIT* [ITA No. 345/Viz/2013], wherein, it was held that provisions of Section 40(a)(ia) of the Act, would not apply in the case of shortfall in deduction of TDS and as held that a view favourable to the Assessee is required to be taken when contrary judgment of two non-jurisdictional High Courts are there by relying on the judgement of Hon’ble Supreme Court in the case of *CIT v. Vegetable Products Ltd.* [[1973] 88 ITR 192].



### Females have a Right to Stay in there Marital House Irrespective of any Proprietary Right

The Hon’ble Bombay High Court (“Court”) while hearing an appeal from the order of the family court in the case of *Roma Rajesh Tewari v. Rajesh Dinnath Tewari* [Writ petition no. 10696 of 2017] dealt with an issue of dispossession of wife from the home owned by her husband’s father (“Matrimonial Home”), impending a marital dispute between the spouses. In the instant case, the respondent husband had filed a petition for nullity of marriage before the family court, which was opposed by the appellant wife who herself made allegations of torture against her husband and the in-laws. Thereafter, during the pendency of the dispute even on repeated efforts by petitioner, she was not allowed to enter in the Matrimonial home which led her to seek an interim injunction against her husband and his family members restraining them from dispossessing her from the Matrimonial Home. The family court allowed her petition and passed an order of *status quo*, thereby restraining the respondent husband and his family members from forcibly disposing the appellant wife from the Matrimonial Home. Aggrieved by this, the respondent husband filed an application to vacate the order of *status quo* on the ground that the petitioner was already married to another man, meaning that marriage with the respondent husband was null and void *ab initio* and that the appellant wife had no right to stay in the Matrimonial Home. The family court vacated the previous order which led the appellant wife to approach the Court. The Court referred to Section 19 of the Protection of Women from Domestic Violence Act, 2005, providing that the woman has a right to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. According to the provision such a right is secured by the order of the magistrate. Therefore, the Court relying on the afore stated provision has held that the petitioner wife has a right to reside in the Matrimonial Home, whether she has any right, title or interest in the said household or not.



## QUICK TAKEAWAYS

- The Hon'ble Delhi High Court in the matter of *State (NCT of Delhi) v. Munna*, held that mere silence cannot be taken as proof of consensual sexual relations.
- The last date for filing GSTR-2 and GSTR-3 for the month of July, 2017, has been extended to 30.11.2017 and 11.12.2017 respectively. Further, the timeline for filing revision of GST Tran-1 has been extended upto 30.11.2017.
- The Hon'ble Supreme Court of India in *Parbatbhai Aahir & Ors. v. State of Gujarat & Anr.*, held that FIRs cannot be quashed on the ground of settlement between the parties for such offences, which are not merely private or civil disputes but become a matter of societal interest.
- The Hon'ble Bombay High Court in *Lakshmi Subhash Yadav v. State of Maharashtra and Ors.*, held that the benefits granted to contractual employees under the Maternity Benefit Act, 1961, cannot be retrospective in nature.
- Degrees/diplomas granted by nursing training institutes approved by state council will have validity within state only.
- The Hon'ble Supreme Court in *Suresh Kumar Wadhwa v. State of M.P. & Ors.*, held that right to forfeit' is a 'contractual right'.
- The Hon'ble Madras High Court held that the 'fundamental right to hold public meetings' cannot be denied merely on the apprehension of a law and order situation that could be arisen.
- Gain from sale of asset was to be taxed u/s 50 of the Income Tax Act, 1961, even though it was not used for business purpose for several years.
- The Hon'ble Supreme Court in *Santosh v. The State of Maharashtra*, observed that merely because the accused does not confess, it cannot be said that he was not cooperating in the investigation.
- SEBI after consultation with the Govt. of India and RBI has now permitted the foreign portfolio investors to participate in commodity derivatives contracts traded in stock exchanges in IFSC.
- The Hon'ble Gujarat High Court has held that even on marriage with a Muslim and embracing Islam, a Hindu daughter has a legal right to inherit property under the Hindu Succession Act.
- The NCLT, New Delhi Bench, held that the power of attorney holder is authorized to initiate insolvency process under the Insolvency and Bankruptcy Code, 2016.
- RBI in exercise of power conferred under SARFAESI Act, 2002, has specified the 'Net Owned Fund' for Asset Reconstruction Companies of minimum Rs. 100 crores on an ongoing basis with effect from 10.10.2017.
- The Hon'ble Delhi High Court in *Commissioner of Income-tax (Exemptions) v. Indian Society of the Church of Jesus Christ of Latter Day Saints*, held that a society formed with an object to promote, sustain and carry out programmes and activities of Church, was eligible to claim exemption available to a trust u/s 11 of the Income Tax Act.
- The Hon'ble Supreme Court has held that NBFC is entitled to initiate both arbitration proceedings and proceedings under the SARFAESI Act with respect to a loan account and the 'doctrine of election' is not attracted in such a scenario.
- RBI revised the limits for investment by foreign portfolio investors ("FPIs") in govt. securities Medium Term Framework. The limits for investment by FPIs for October-December, 2017, is increased by Rs. 80 billion in Central Government Securities and Rs. 62 billion in State Development Loans.
- The Hon'ble Supreme Court in *Sri Chittaranjan Maity v. Union of India*, held that the arbitrator cannot grant interest for the period between the date of cause of action and date of award, if the parties by agreement had resolved that interest shall not be payable
- Ministry of Corporate Affairs *vide* its notification dated October 18, 2017, notified the commencement of provisions of Section 247 of the Companies Act, 2013, for valuation by the registered valuer.

## KNOWLEDGE CENTRE

### FAQs on Stamp and Registration of Documents

**Q.1. If a single transaction involves several documents, is it compulsory to pay stamp duty on all documents?**

Generally, in a single transaction all documents involved are required to be stamped. However, certain states have exempted some transactions where all documents are not required to be stamped. For instance, in Rajasthan, documents used in single transaction of sale, mortgage and agreement/other document for deposit of title deeds and settlement, only the principal instrument shall be stamped and each of the other instruments shall be chargeable with a duty of Rs. 200/-. However, the principal document shall be a document on which highest duty would be chargeable in respect of the transaction.

**Q.2. Whether any other duty is also required to be paid along with the payment of stamp duty.**

Certain states have prescribed additional duties in the form of cess/surcharge. In the state of Rajasthan, two additional duties are required to be paid in addition to the amount of stamp duty. The said two surcharges are 10% of stamp duty for development of basic infrastructure facilities and 10% of stamp duty for conservation and propagation of cow and its progeny.

**Q.3. Whether any document related to several transactions, shall be chargeable with the aggregate amount of duties of each transaction involved.**

A single document comprising several transactions in Rajasthan shall be chargeable with the aggregate amount of stamp duties of each transaction involved, for which each separate document for each transaction is chargeable.

**Q.4. If any document falling within two or more entries of the stamp duty given in the schedule, how much amount of stamp duty shall be payable on such document?**

In Rajasthan, in such a situation the highest amount of stamp duty amongst all entries shall be payable on such document .

**Q.5 Should the parties be present at the time of registration of any document?**

The Parties themselves, their representatives/ assigns or their agents duly authorized by power-of-attorney, should be present in the Sub-Registrar office at the time

of presentation of a deed so that the Sub-Registrar will verify whether the document has been executed by Parties.

**Q.6. At which place a document related immovable property should be registered?**

Any testamentary instrument which creates, declares, assigns, limits or extinguishes, in present or in future, any right, title or interest, of the value of Rs. 100/- and more in an immovable property, shall be registered in the district where such immovable property is situated.

**Q.7. Whether any stamp duty is payable on conversion of a private limited company, unlisted public limited company or partnership firm into limited liability company.**

Generally, on such conversion no stamp duty is payable, as there will be document which will be executed for the same. However, different states treat this in different manner and have entry for such conversion. For instance, in Rajasthan the Rajasthan Stamp Act, 1998, has specific entry for payment of stamp duty on conversion into limited liability partnership.

**Q.8. Can a stamp paper used for one purpose be used for another transaction?**

No, a stamp paper once used for a purpose cannot be used for another purpose. For eg., an affidavit executed for a purpose cannot be executed for another purpose.

**Q.9. Is it necessary to incorporate full description of the immovable property in the documents?**

Yes, it is necessary to incorporate full description along with map/plan/details of adjoining houses or streets etc. to the boundaries of the immovable property to which a document relates.

**Q.10 How much amount is required to be paid for late stamping of any document?**

In the state of Rajasthan, on late stamping of any document one has to pay:

- i) amount equivalent to the amount of stamp duty required to be paid on such instrument; and
- ii) a penalty at the rate of 2% of deficient stamp duty per month for the pending period of insufficient stamping or 25% of deficient stamp duty, whichever is higher, but not exceeding two times of such deficient stamp duty.

## EDITORIAL

### THE ZOMBIE TRADEMARK

- By *Adv. Ankit Sareen, Associate*

A 'zombie', in the voodoo cult, is a 'corpse brought back to life by supernatural power'. In the popular American idiom, however, the term has taken on a more morbid meaning. Zombie trademarks in a literal sense are used to signify and symbolize those brands which though have not been used for a long time, but are still alive as their prior use had engraved an impression and reputation in the minds of its users. No other individual other than the long lost registered user can use the mark. Other than the registered user, if an individual or group of individuals wants to use that mark they have to have permission of the proprietor or from the registrar of the trade marks. This is done in order to properly utilize the available marks in the industry and also for the protection of the consumer from any deceitful act of an unauthorized user of the mark.

#### **Zombie Trademark 'Back from dead'**

When a trademark is used commercially in relation and in connection to the goods or services for which the proprietor or the registered user intends its use for, it creates a goodwill in the mind of people using it. A mark is said to have become abandoned when its proprietor or the registered user stops using that trademark with the intention of not using it again in the near future. In such cases to be determined the intention of the party previously using the mark has to be taken into strong consideration. The goodwill of a mark diminishes after its abandonment, which logically follows the death of the mark. But similar to zombie virus, the goodwill of the product can also result in defying the natural order of 'life after death'. Sometimes a brand imprints an image upon the minds of its users making it ever memorable and the consumers also continue to appreciate them, if only for the sake of nostalgia.

Well, technically a brand in its lifespan carries with itself the same brand name and reputation which is created by its original proprietor at the time of manufacture of that product. The brand may pass through various hands that doesn't imply that it would carry with itself the same quality and the same genuineness, which it had at the time of its manufacture. Thus the use of a brand for the purpose of trademark is confined only up till the use in the course of trade. Course of trade begins at the manufacture level when the goods lie at the hands of the proprietor of that trade mark until it reaches the consumers. As soon as the goods reach the consumers the course of trade ends. The purpose of ending the use with the course of trade at that instance is to let the buyer beware that the quality or the genuineness of the product, as promised by the manufacturer, was limited only up to the point when the goods were handed over to the buyer by the authorized seller or the proprietor himself. It may happen that the acquiring brand owner may have the best intentions to use the goods and deliver the same quality and genuineness to the consumers. But the failure on his part cannot let the brand suffer as a whole. Consumer might feel cheated as the consumer's disappointment in a zombie brand that changed hands in the after life is more poignant (or actionable) than consumer disappointment in a brand that changed hands while still alive.

The Trademark Office certainly classifies a mark as dead or alive, which evolves satisfactorily into the concept of 'zombie trademark'. The aim of debating about zombie trademark is not targeted to refer the recent increase in popularity of zombie culture in the field of intellectual property or to swerve the trademark applications it has inspired, but it actually aims towards the revival of an otherwise 'dead' mark. This practice does not involve bringing together of two dead trademarks to create a new living one, but it does require the resurrecting of a dead mark from the trademark graveyard.



Unlike the limited lives of patents and copyrights, a trademark can exist in perpetuity so long as it is being used by its proprietor or by the list of registered users subject to renewal in cases where registration is essential. The only requisite it need to comply is that the mark should stay alive. But many a times, due to countless unavoidable reasons, a venture stops using its mark.

This, in common term is called ‘abandoning a mark’. The abandonment of a trademark can be done at any stage:-

1. When the application for the registration is still pending, or
2. At any later stage when it has been used for some time being.

Abandonment depends upon various reasons, to name a few, it may be a result of failure to respond to an office action or maybe upon the failure to file a required affidavit. But let’s discuss about the abandonment caused by non-use of the mark. Abandonment though may appear to be a tricky concept, but in terms of ‘non-use’, a trademark would be deemed to be abandoned when its owner stops using it with no intention of resuming its use in the near future. The abandonment may not necessarily be permanent in nature, hence these brands or marks are nicknamed as zombie; implying they are dead yet alive. A dead trademark can be brought back to life if it fulfills the desired conditions.

### **CONCLUSION**

As far as India is concerned the concept of ‘zombie trademark’ is still at amateur level. People are not aware of what zombie trademark actually is and what are its advantages and disadvantages. People, who know about it, can use it to their advantage and for people who are not even acquainted with its existence and applicability may suffer losses due to its improper applicability. There is an absence of statutory law and legal base through which zombie trademarks can be made applicable and enforced in today’s practical and legal scenario.

Whether we actually require it or not into our legal system is a question of debate and should be left to the discretion of legislative intent and judicial interpretation. After all the research and examination, all that can be said is, they are ‘living dead’ i.e., they are dead yet alive.

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