

Corporate Buzz...

Not a single minute passes without any happening in corporate world. Be it Indian judiciary delivering judgments, Indian Govt issuing notifications, SEBI clarifying and amending circulars, we have it all present to you on real-time basis.

All under Companies Act

SC : Company law offences involving criminality, bookable under IPC; Special Court's jurisdiction upheld [\[LSI-402-SC-2015-\(NDEL\)\]](#) - SC, in a criminal appeal, set-aside Andhra Pradesh HC order that held that Special Court did not have jurisdiction to take cognizance of offences u/s 628 of Companies Act (which penalises for false statements) and for criminal conspiracy and cheating (u/s 120B and u/s 420 of IPC respectively). SC held that, *"there was no reason in law to quash a complaint against them on the ground that they were immune from prosecution under Section 628 of the Companies Act by virtue of Section 621 of that Act"*.. [Click here](#) to how Supreme Court quashed HC's order, though HC interpreted Company law provisions correctly, as also observed by SC.



SC : Sets-aside 'cryptic' HC order allowing suit based on 'checkered history' between parties [\[LSI-397-SC-2015-\(NDEL\)\]](#) - SC set aside Gujarat HC order that directed respondent co. to consider plaintiffs' extra ordinary general meeting requisition notice and granted injunction against respondent co. to hold any board meeting. SC observed that HC order was 'cryptic', 'equivocal', 'highly unsatisfactory' and did not enumerate any reason to hold that there was prima facie case and balance of convenience in favour of plaintiffs to grant injunction..[Click here](#) to read Supreme Court's thrashing on High



Court order. [Click here](#) to read Gujarat HC order [\[LSI-396-HC-2015-\(GUJ\)\]](#).

SC : Arbitration award can't convert secured creditor into unsecured; Company Law primacy upheld [\[LSI-384-SC-2015-\(NDEL\)\]](#) - SC rejected appellant's contention that it had initiated arbitration proceedings for settling money claim, and since consent award in nature of a decree was passed, nothing remained in respect of claims on hypothecation, thereby making appellant an unsecured creditor. SC held that once a charge on company's security was created, it continued to bind parties, and by arbitration award passed on consent, it could not be deduced that "hypothecation stood annulled"..[Click here](#) to read more.

MCA Katta

Amounts received by private cos. from directors/members pre-April 1, 2014, not 'deposits': MCA

MCA amends e-voting provisions; Defines 'agency' & introduces concept of 'remote e-voting'

MCA eases procedure for board approval, relieves cos. from reporting requirements with Registrar

MCA extends timelines for issue of duplicate share certificates & debenture trust deed execution

MCA clarifies & relaxes provisions relating to loans / advances to employees

HC : Settles succession law; Legal heir, not 'nominee' entitled to deceased person's shares [\[LSI-416-HC-2015-\(BOM\)\]](#) - In this celebrated case, Bombay HC interpreted Section 109A of Companies Act, 1956 (that empowers shareholder to nominate a person to whom all his shares shall vest on event

of his death) to hold that it is legal heir and not nominee who shall be ultimately vested with shares of deceased shareholder, thereby, distinguishing co-ordinate bench ruling in Harsha Nitin Kokate v. Saraswat Bank..[Click here](#) to read how Bombay HC rejected 'statutory testament' contention and held Kokate ruling as 'per incuriam'.



HC : Equates claim 'abandonment' to 'withdrawal' of petition, allows fresh civil suit [\[LSI-381-HC-2015-\(CAL\)\]](#) - HC observed that in appellant's abandonment application made before

CLB *“though the word ‘abandon’ is used, virtually the appellants intended it as withdrawal”* and also held that *“Using of word ‘abandon’ cannot be read in isolation. The averments of application in its entirety and especially the leave to institute fresh proceedings in the prayer column have to be read together in order to understand the purport of the application indicating the intention of the applicants...”*.. [Click here](#) to know how HC rejected Single Judge order that held fresh civil suit as ‘abuse of law’.

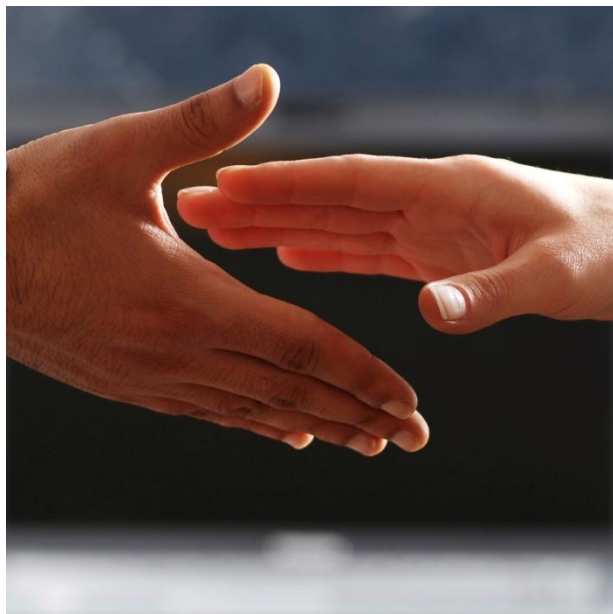
HC : Allows Regional Director to raise tax-objections to amalgamation scheme, rejects MCA Circular reliance [\[LSI-386-HC-2015-\(BOM\)\]](#) - HC allowed Regional Director to raise tax related objections to scheme of amalgamation, rejecting petitioners’ contention that he was precluded to raise such objections. It was held that, *“Regional Director is not only entitled to but is duty bound to bring to the attention of the Court any provision in the scheme which may contravene/circumvent the provisions of any law including the law pertaining to Income Tax”*..[Click here](#) to read the tax objections raised by Regional Director and what contentions were raised to prevent raising of such objections. In another case, on different set of facts, HC rejected Regional Director to raise tax objections and approved Sun-Ranbaxy amalgamation scheme [\[LSI-378-HC-2015-\(P & H\)\]](#).



HC : Sec. 391-394 ‘complete code’, overrides new Company Law’s Sec. 180; Regional Director objections dismissed [\[LSI-367-HC-2015-\(KAR\)\]](#) - HC sanctioned scheme of arrangement filed u/s 391 - 394 of Companies Act, 1956 for hiving off United Spirits Ltd’s undertaking to Enrica by way of slump sale on a going concern basis. HC rejected Regional Director’s objection that proposed scheme of arrangement did not fall u/s 391-394 but u/s 180 of Companies Act, 2013 (relating to restrictions of the powers of the Board). It held that, *“When it is held that Sec. 391 - 394 is a code by itself necessarily it would have precedence over the other provisions of the Act..... Therefore, it cannot be said that the non-compliance of Section 180 would run*

contrary to the provisions of Sections 391 to 394”..[Click here](#) to read more.

HC : UK Co. selling Indian subsidiary for 1 GBP - “conscience shocker”; Cos Act invocable [\[LSI-455-HC-2015-\(MAD\)\]](#) - HC held that transfer of shares in Indian subsidiary co. by UK holding co. on its dissolution, to respondent (foreign director of Indian Subsidiary co.) for one British Pound Sterling, to the exclusion of appellant (Indian director of Indian subsidiary co.), as ‘oppression’. Rejecting respondents’ contention that a single act of transfer of shares could not constitute oppression & mismanagement, holds that though there should be series of transactions for ‘oppression’, *“it does not mean that when the entire holding of a company incorporated in England, in the shares of a company incorporated in India is sold outside India for a consideration of one GBP, shocking the conscious of any court, the same can be rejected as an isolated instance not warranting an action under Sections 397 and 398 of the Companies Act”*..[Click here](#) to read more interesting observations of this case.



CLB : Family arrangement MoU can’t obliterate Board Resolution; Dismisses ‘dressed-up’ Sec 397/398 petition [\[LSI-410-CLB-2015-\(NDEL\)\]](#) - CLB rejected an oppression / mismanagement petition and held that the unit claimed by petitioner was not a personal fiefdom of petitioner and MoU was only a family arrangement which could not bind a company, as management of company rests solely in its Board of Directors. CLB also observed that a suit praying for similar relief was pending before Delhi HC, thus, held, *“the petition is not only an act of forum shopping but also amounts to abuse of process of this Board”*..[Click here](#) to read why CLB held the petition as ‘dressed-up’.

CLB : Private MoU between JV partners can’t be enforced through Sec 397/398 petition [\[LSI-401-CLB-2015-\(MUM\)\]](#) - CLB dismissed petition filed by a JV partner u/s 397, 398 & 402 of Cos. Act, 1956, alleging non-payment of share transfer consideration as per an MoU. It held that failure of one of the parties to a private agreement to abide by its commitment can

only be remedied in a civil suit and not in a petition under section 397 of Companies Act..[Click here](#) to read more.

CLB : Director's leave of absence 'implied' in closely held cos.; Cites mutual trust [\[LSI-373-CLB-2015-\(NDEL\)\]](#) - CLB rejected respondents' contention that petitioner's failure to attend three consecutive board meetings without obtaining leave of absence means he automatically vacates office of 'director' u/s 283(1)(g) and lost requisite right of inspection of books u/s 209(4). It held that since respondent co. was 'closely held co.', 'implied leave of absence' was granted without director's request..[Click here](#) to read this interesting case.

CLB : Approves share allotment for medical equipment purchase; Rights issue not warranted [\[LSI-450-CLB-2015-\(NDEL\)\]](#) - CLB disposed off petition filed u/s 397/398 of Cos. Act, 1956 and held that the shares issued and allotted to the respondent against imported second-hand medical machinery/equipment did not amount to oppression & mismanagement and also did not violate Sec. 81 of Cos. Act, 1956 (relating to 'Further issue of capital')..[Click here](#) to read more.

Breaking News:

[Cabinet approves Cos. Bill amendment for easing business commencement & rationalizing exemption procedure](#)

[Ramalinga Raju, all other accused pronounced guilty in Satyam fraud case](#)

[MCA issues CARO, 2015; Banking, Insurance cos, OPC kept out; Threshold for Pvt cos](#)

[MCA amends Deposit Rules; Clarifies on share application money accepted pre-April, 2014; Prescribes credit-rating agencies](#)



CLB : Mere arbitration clause in MoU no ground to invoke it, MoU-implementation necessary [\[LSI-448-CLB-2015-\(NDEL\)\]](#) - CLB rejected respondent's contention that the oppression/mismanagement petition was not maintainable as MoU had arbitration clause which should have been invoked by the petitioners and held that, "it cannot be said that issue...has to be referred to arbitration as conceived in the MoU just by seeing that there is an arbitration clause in an MoU that

MONTHLY NEWSLETTER

(MARCH & APRIL 2015 ISSUE)



has not seen the light of the day”..[Click here](#) to know what CLB had to say on applicability of doctrine of severability for arbitration clause.

SEBI Corner

SEBI Files

Govt. amends Securities Contracts (Regulation) Rules, 1957; Expands scope of 'Public Shareholding'

SEBI revises delisting timelines, prescribes 'successful' offer criteria; Promoters restricted from share sale

SEBI allows delisting post takeover, subject to disclosure of 'intention'

SEBI allows share tendering in buy back through Stock Exchange mechanism

SEBI approves smoother IPO process, takeover code relaxation for distressed cos & disclosures overhaul

SEBI introduces 'SARAL' form for demat a/c opening; Address proof norms relaxed

SEBI issues FAQs on Investment Advisers Regulations, 2013

HC : Quashes SEBI's arrest order for dues non-payment, terms it 'abuse of power' [\[LSI-370-HC-2015-\(BOM\)\]](#) - Bombay HC quashed SEBI Recovery Officer's order to arrest and detain the petitioner for non-payment of dues as there was no satisfaction as well as recording of reasons for arrest thus, it was held "the detention and arrest is patently illegal and arbitrary"..[Click here](#) to read more. [Click here](#) to read SEBI order [\[LSI-279- SEBI-2014-\(MUM\)\]](#).

SAT : Lifeline for DLF, 'overregulation' tongue-lashing for SEBI; Justice Devadhar's scathing dissent [\[LSI-369-SAT-2015-\(MUM\)\]](#) - Securities Appellate Tribunal ('SAT'), by a 2-1 majority ruling, quashes and sets aside SEBI order that restrained DLF Ltd., 6 directors

along with
CFO from
accessing
securities
market and
prohibiting
them from
dealing in
securities for
3 years,

terms SEBI order as 'troubled sea whose waters only cast up mire and dust'..[Click here](#) to read how Justice P. Devdhar dissented from majority ruling. SEBI had slammed penalty on DLF & top-management for sham share transaction & disclosure lapses [\[LSI-337- SEBI-2015-\(MUM\)\]](#). Earlier, SEBI had restrained DLF & Top-management from accessing securities markets for



grave IPO disclosure lapses [\[LSI-49- SEBI-2014-\(MUM\)\]](#).

SAT : ‘Financial duress’ no defence for non-submission of financial statements to stock exchange [\[LSI-349-SAT-2015-\(MUM\)\]](#) - SAT dismissed appeal filed against NSE’s communication intimating suspension of trading in appellant’s securities for non-submission of



financial statements for two consecutive quarters, amounting to violation of Cl. 41 of Listing agreement & Reg. 55A of SEBI (Depositories and Participants) Regulations, 1996. SAT rejected appellant’s defence that failure occurred due to dire financial duress, and held that *“assuming that the financial crisis of the appellant is genuine, permitting the investors to trade in the securities of the appellant without disclosing the unaudited financial status of the appellant would be hazardous to the interests of the investors as well as the securities market and contrary to the policy decision of SEBI”*..[Click here](#) to read more.

SEBI : Merchant Banker to independently verify company’s affairs, can’t rely on statutory auditor’s certification [\[LSI-400- SEBI-2015-\(MUM\)\]](#) - SEBI held that merchant banker has the duty to exercise due diligence and *“due diligence does not merely mean that the Merchant Banker will passively report all that has been reported to him but to examine everything that is required to give a true account of the facts in the prospectus..*[Click here](#) to other interesting observations of SEBI. A similar observation was made by SEBI in [this case \[LSI-86-SEBI-2014-\(MUM\)\]](#).

SEBI : SHA termination ‘price sensitive info’; Confirms ban on Gammon Infra’s ex-CMD [\[LSI-399- SEBI-2015-\(MUM\)\]](#) - SEBI confirmed its interim order restraining former Chairman & Managing Director of Gammon Infrastructure Projects Ltd. from accessing securities market. Rejecting noticee’s challenge to interim order’s validity on the ground that pre-decisional hearing was not granted, SEBI held that *“it is not always*



necessary for SEBI to provide the entity with an opportunity of pre-decisional hearing...principles of natural justice will not be violated if an interim order is passed and a post-decisional hearing is provided to the affected entity”.. [Click here](#) to read further observations of SEBI. [Click here](#) to read SEBI’s interim order [\[LSI-115- SEBI-2014-\(MUM\)\]](#).

SEBI : Directs promoters to make public announcement, rejects ‘lack of clarity’ defense [\[LSI-359- SEBI-2015-\(MUM\)\]](#) - SEBI held that promoter’s acquisition of 8.95% shares in target company through ‘bulk deals’ did not qualify for the exemption of making public announcement. It observed that promoters ought to have made public announcement at time of acquiring shares and held that, “*noticees have deprived the shareholders the exit opportunity at the best offer price*”..[Click here](#) to read more.



SEBI : Penalises Acquirer for takeover code violation; Interprets ‘threshold’ vis-à-vis SEBI 2009 circular [\[LSI-346- SEBI-2015-\(MUM\)\]](#) - SEBI imposed penalty of Rs. 2 Crores on acquirer & persons acting in concert for failing to make public announcement under Reg. 11(2) of SEBI

(Substantial Acquisition of Shares and Takeover) Regulations, 1997. It held that noticees crossed 5% limit in March 2010 itself and thus, current acquisition of 4.79% in multiple tranches did not qualify for exception (as provided in Reg. 11(2) proviso)..[Click here](#) to read SEBI’s interpretation of SEBI Circular dated August 6, 2009.

SEBI : Forfeiture of shares not passive acquisition, requires Takeover Code compliance [\[LSI-406- SEBI-2015-\(MUM\)\]](#) - SEBI penalised Chairman & Managing Director, Wholtime Director and their relatives (‘Noticees’) for non-compliance of Takeover Code by failing to make adequate & timely public announcements for triggering thresholds due to share forfeiture (Aug. 2005) and conversion of warrants (Feb. 2012). It rejected noticees’ contention that change in shareholding on account of forfeiture was ‘passive’



without noticee's act and held that *"forfeiture of shares is not a passive acquisition like buyback of shares since forfeiture of shares is orchestrated by the management / promoters of the company and can be made only by the Board of Directors by passing resolution"*..[Click here](#) to read more.

SEBI : Immediate rectification bringing promoter-group below 'open offer' threshold still violates Takeover regulations [\[LSI-434- SEBI-2015-\(MUM\)\]](#) - SEBI rejected promoters' contention that violation of Takeover Code (failure to make public announcement for acquisition of more than 55% threshold) was immediately rectified by reducing shareholding of promoter-group back to 54.99% (by selling shares in the market) and held that



"Takeover Regulations does not provide for any rectification mechanism... once open offer is triggered"..[Click here](#) to read further observations of SEBI.

SEBI : Gives benefit of doubt over debentures non-conversion; HC order ambiguity to rescue [\[LSI-447- SEBI-2015-\(MUM\)\]](#) - SEBI disposed off charges levied against Monnet Ispat & Energy Ltd. for failure to convert fully convertible debentures into equity shares even after expiry of 18 months from allotment of securities. It observed that non-conversion was due to lack of clarity on HC's amalgamation order [approval of amalgamation of Mount Everest Trading and Investment Ltd. into noticee] and held that, *"Noticee had taken all bonafide steps for clarification from the stock exchanges and also from a legal jurist to enable it better understand the obligation put on the FCD/Warrant holders and go ahead with the conversion of the said FCDS/ warrants"*..[Click here](#) to read more.

Forex Chase

Mint Street

RBI : Restriction on Asian countries / regions to transfer immovable property in India

RBI reviews & extends all-in-cost ceiling for ECBs till March 31, 2015

RBI extends all-in-cost ceiling for trade credits for imports till March 31, 2015

RBI cautions banks on outsourced services quality; Advises high degree of care

RBI issues guidelines to encourage banks for revitalisation of distressed

HC : Reverses Tribunal's order, showcause notice pre-requisite for FERA violation action against Director [\[LSI-372-HC-2014-\(DEL\)\]](#) - HC set aside Foreign Exchange Appellate Tribunal's order that penalised former non-executive director for company's defaults under Foreign Exchange Regulation Act, 1973 without serving Show Cause Notice. HC held that *"AT failed to deal with the central point (non-receipt of Show Cause Notice) in the appeal filed by the appellant"*..[Click here](#) to see how Delhi HC stressed on natural justice principles.

HC : Quashes FEMA Tribunal order; No obligation to preserve documents for 'belated' enquiries [\[LSI-431-HC-2015-\(DEL\)\]](#) - HC quashed Foreign Exchange Appellate Tribunal's order, whereby appellant was penalised for failure to submit exchange control copies for import transactions to authorized dealer. It was observed that the impugned transactions pertained to period December 1993 to 1996 and show cause notice was issued in

2002, thus, held adjudicating authority's enquiry to be 'highly belated' and stated *"even though there is no period of limitation prescribed therefor.. for such delays, the noticee cannot be made to suffer and the circumstance pleaded by the noticee that the documents have not been preserved or are not available would have to be given due weightage"*..[Click here](#) to read more.



Rising Competition...

We saw how MRTP Act was replaced by Competition Act, to keep pace with global economy and rising market forces. Rulings delivered by Competition Commission of India, Competition Appellate Tribunal and various Commission's approval to big ticket mergers find place under this head -

Competition Law Dossier

CCI closes 'cartelization' information against IOC; No cartel between upstream & downstream firm [\[LSI-357-CCI-2015-\(NDEL\)\]](#)

CCI approves 49% acquisition of RIL's wholly owned textile co.; Insignificant vertical relationship [\[LSI-358-CCI-2015-\(NDEL\)\]](#)

CCI approves divestment of 7 products to Emcure for Sun Pharma- Ranbaxy merger [\[LSI-403-CCI-2015-\(NDEL\)\]](#)

CCI rejects 'abuse of dominance' complaint against Tamil Nad Mercantile Bank, absent evidence [\[LSI-408-CCI-2015-\(NDEL\)\]](#)

CCI approves USA based automotive component co's acquisition by German co. [\[LSI-404-CCI-2015-\(NDEL\)\]](#)

HC : CCI empowered to recall Sec. 26(1) order, albeit 'sparingly'; Allows Google's writ [\[LSI-457-HC-2015-\(DEL\)\]](#) - In a writ petition filed by Google against Competition Commission of India (CCI), HC held that CCI has power to review / recall its prima facie order u/s 26(1), despite no express provision, and directed CCI to consider Google's application for recall of its order. HC held that *"Just like it is in the discretion of the CCI to hear or not to hear the person / enterprise complained / referred against at the stage of Section 26(1) of the Act, CCI cannot be held to be without jurisdiction to recall / review the order"*..[Click here](#) to read how HC rejected CCI's reliance on SC ruling in SAIL.

HC : Competition Act doesn't prohibit settlement between parties; Compromise terms to dictate allowability [\[LSI-413-HC-2015-\(MAD\)\]](#) - Madras HC interpreted Sec. 27 of Competition Act as conferring "wide, residuary" powers on CCI to allow settlements and compromises to be reached between parties, provided the Commission is of the considered view that such settlements and compromises (1) would not lead to the continuance of Anti-Competitive Practices (2) would not allow the abuse of dominant position to continue and (3) would not be

prejudicial to the interest of consumers or to the freedom of trade..[Click here](#) to read how HC dismissed CCI's objections to a compromise between parties.

HC : Proceedings against company u/s 48 includes proceedings against key-persons, no separate proceedings required [\[LSI-356-HC-2015-\(DEL\)\]](#) - HC ruled that, *"there cannot be two separate proceedings in respect of the company and the key-persons... scheme of the Act..does not contemplate such a procedure."*..[Click here](#) to read how HC interpreted Section 48 of Competition Act.

COMPAT : Benckiser's advertisement comparing 'Dettol' with 'Betadine' disparaging, applies 'reasonable man' test [\[LSI-398-COMPAT-2015-\(NDEL\)\]](#) - COMPAT directed Reckitt Benckiser India Ltd to cease and desist from publishing advertisement in Journal of Indian Medical Association, comparing its product 'Dettol' with Betadine Antiseptic Solution. It held that the advertisement was 'disparaging' and amounted to unfair trade practice u/s 36-A(1)(x) of MRTP Act..[Click here](#) to read how COMPAT justified application of reasonable man test to hold advertisement as disparaging.



CCI : Absolves Flipkart/Amazon of anti-competitive practices; E-commerce growing competition, retail market unaffected [\[LSI-461-CCI-2015-\(NDEL\)\]](#) - CCI dismissed complaint against Flipkart, Amazon and other e-commerce portals alleging anti-competitive practices by entering into 'exclusive agreements' with sellers of goods/services. It held that, *"it does not appear that because of these exclusive agreements any of the existing players in the retail market are getting adversely affected, rather with new e-portals entering into the market, competition seems to be growing"*..[Click here](#) to read this controversial case.

CCI : Rejects K Sera Sera's 'anti-competition' complaint against Walt Disney, absent 'abusive' conduct [\[LSI-458-CCI-2015-\(NDEL\)\]](#) - CCI rejected K Sera Sera's allegation that for defeating competition in digital cinema market, controlling prices for cinema services and preventing other market players, Walt Disney and other entertainment cos. had formed cartel and entered into ant-competitive agreement, restricting rights to release the movie - 'Avengers Age of Ultron'..[Click here](#) to read more.



CCI : Closes predatory pricing information against CRISIL; Allegations have mere 'moral value' [\[LSI-385-CCI-2015-\(NDEL\)\]](#) - CCI dismisses information filed against CRISIL Limited alleging that it abused dominant position by indulging in unfair/ predatory pricing, exclusionary conduct in public procurement and exploitative behaviour in stopping switching by customers. CCI held that *"information appears to be of general and generic nature without having been supported by any data or costs involved to establish predatory pricing etc., and as such do not seem to raise competition issues"*..[Click here](#) to know why the allegations were termed as having mere 'moral value'.

CCI : Uses post acquisition press release to nail cos for non-submission of notice [\[LSI-363-CCI-2015-\(NDEL\)\]](#) - CCI imposed penalty of Rs. 2 Crores on SCM Soilfert Ltd. & Deepak Fertilizers and Petrochemicals Corporation Ltd u/s 43A of Competition Act, 2002 for acquiring 24.46% share capital of Mangalore Fertilizers & Chemicals Ltd. without giving prescribed notice u/s 6(2) of Act..[Click here](#) to read more. CCI vide a separate order also levied penalty of Rs. 3Crores on Zuari Fertilisers & Chemicals Ltd. & Zuari Agro Chemicals Ltd. on same grounds. [\[LSI-355-CCI-2015-\(NDEL\)\]](#).

How intellectual is intellectual property!!!

This section covers all the interesting happening on intellectual property law front..

HC : Stops tribunalization of justice; Invokes 'basic structure doctrine', strikes down IPAB constitution [\[LSI-366-HC-2015-\(MAD\)\]](#) - In this celebrated and significant case, Madras HC division bench struck down IPAB

establishment provisions in Trade Marks Act. It held that the provisions relating to selection of members of Indian Legal Services as Chairman, Vice-Chairman, Judicial Member and Technical Member of IPAB under Trade Marks Act were unconstitutional, *"being affront to the separation of powers, independence of judiciary and basic structure of the Constitution"*..[Click here](#) to read this landmark judgement.




DEMAND MORE

standard essential patents. It rejected Intex's contention that Ericsson had obtained suit patents by committing fraud on Indian Patent Office over 'un-patentable' computer programs and held that, *"any invention which has a technical contribution or has a technical effect and is not merely a computer program per se as alleged by the defendant and the same is patentable"*..[Click here](#) to read how HC went ahead to observe that Intex's activities were completely mala fide.

HC: Grants injunction against Intex's 'malafide' attempt to infringe Ericsson's 'standard essential patents' [\[LSI-374-HC-2015-\(DEL\)\]](#) - In a patent infringement suit, Delhi HC restrained Intex Technology from selling cellular phones using Ericsson's

HC : BIFR scheme no shield against 'dishonesty'; Refuses stay on trademark infringement suit [\[LSI-409-HC-2015-\(DEL\)\]](#) -



The defendants in this case, contended that since they were a sick industrial company, BIFR approval was required to file an infringement suit against them. Rejecting such contention, Delhi HC ruled that, *“Holds that, “if the property/design in question does not belong to the defendants, then the provision of Section 22(1) of the SICA cannot be invoked as the said Section does not protect ‘theft’ and/or piracy and/or imitation. After all the BIFR Scheme cannot be used as a ‘shield’ to carry out illegal/infringing activities”.. [Click here](#) to read how Delhi HC interpreted SICA vis-a-vis Trade Marks Act.*

HC : ‘Comparative’ advertisement legal, furthers competition; Rejects Havell’s ‘trade puffery’ allegation [\[LSI-379-HC-2015-\(DEL\)\]](#) - HC ruled that, “*mere trade puffery, even if*



unc
om

portable to the registered proprietor,
does not bring the advertising within
the scope of trade mark
infringement"..[Click here](#) to read
interesting arguments raised by Havell
against 'Eveready' LED bulbs.

IP Law Wrap-Up

HC : Makemytours infringes
makemytrip, however, allows
use of 'my tour' in different
style [\[LSI-351-HC-2014-](#)
[\(DEL\)\]](#)

HC : Xiaomi infringes
Ericsson's standard essential
patents; CBEC to disallow
Xiaomi's products import
[LSI-350-HC-2014-(DEL)]

HC : HAVELLS a 'well-known' mark, can't be used for non-electrical goods as well
[LSI-352-HC-2014-(DEL)]

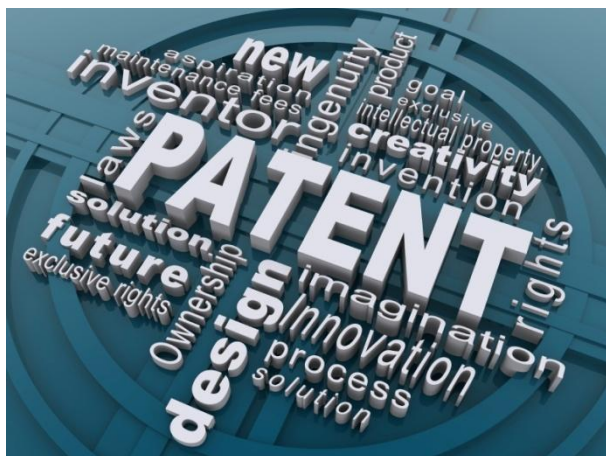
HC : Approaching non-jurisdictional High Court against Delhi trial court order 'incomprehensible' [\[LSI-353-HC-2014-\(RAD\)\]](#)

HC : Registrar's grant of
licence appealable under
statute, writ not proper course
[LSI-318-HC-2015-(DEL)]

HC : Protects Johnson & Johnson's trans-border reputation; Uses Google search to dismiss 'localized goodwill' argument [\[LSI-362-HC-2015-\(DEL\)\]](#) - Delhi HC relied on Google search for 'lucynta medicine' that showed plaintiff's NUCYNTA marked products to hold that plaintiff's mark enjoyed unique goodwill and reputation in India. It thus held that *"where the adoption of the impugned mark LUCYNTA by defendant No.1 is ex facie dishonest, the question of whether or not the plaintiff has any intention to use its mark in India is inconsequential"*..[Click here](#) to read how Delhi HC acknowledged the advent of internet media causing growth in international market, and held that concept of trans-border reputation will become weaker and whole world will be treated as one market.

Johnson & Johnson

HC : Dismisses suit against MD's patent registration in own name; Plaintiff's 'bonafides' vital [\[LSI-428-HC-2015-\(BOM\)\]](#) - HC dismissed derivation action suit instituted by minority shareholder in Gharda Chemicals, wherein plaintiff had pleaded



that patents registered by Managing Director of the Co. (Mr. Keki Gharda) in his own name, ought to have instead been applied for and registered in the name of Co. On plaintiff's apprehension that the MD may transfer the said patents in favour of a third party, HC observed ... *"whatever serious apprehension the plaintiff may have, cannot be a ground to grant relief in favour of the plaintiff considering the serious consequences of the same.."*..[Click here](#) to read how

Senior Advocate P.Chidambaram argued for respondents.

HC : Applies principle of ‘comity’ & forum conveniens; Bifurcating order & challenging in separate HC impermissible [\[LSI-423-HC-2015-\(DEL\)\]](#) - Division Bench of Delhi HC (hearing appeal against Single Judge Order) held writ petition filed against Copyright Board’s order as not maintainable, as matter already pending before Madras HC under statutory appeal u/s 72 of Copyright Act. Applying the principle of comity of courts and doctrine of forum conveniens, it held that Madras HC, before which statutory appeal had been preferred prior to the institution of writ petition from which instant appeal arose, would be the most appropriate HC..[Click here](#) to read interesting arguments raised by the parties. [Click here](#) to read the Single Judge Order [\[LSI-318-HC-2015-\(DEL\)\]](#).

HC : ‘Artistic’, gold plate Gods image copyright protected; Copyright & Designs Act interplay explained [\[LSI-417-HC-2015-\(BOM\)\]](#) - HC held that, “*the images in gold plates are themselves artistic works in which the plaintiffs have a copyright, quite apart from the base drawings which are used to make them. Any imitation of these images in gold plates or indeed any material is clearly violative of the Plaintiffs’ copyright in them*”..[Click here](#) to read how HC differentiated between design and copyright.



HC : Slams Zee for “confidentiality breach”, copying of show concept in “Badi Devrani” [\[LSI-412-HC-2015-\(BOM\)\]](#) - HC granted ad-interim injunction against Zee Entertainment, restraining it from telecasting its new TV serial ‘Badi Devrani’, similar to plaintiff’s (production house) TV show concept ‘Badki Bahu’. It held that telecasting of such TV show breached plaintiff’s confidential information and infringed its copyright in its TV show concept ‘Badki Bahu’, and stated that, “*protection of confidence is in fact a broader right than the proprietary right of a copyright*”..[Click here](#) to read the three conditions for claiming breach of confidentiality.

IPAB : IPAB empowered to implead parties, despite no specific provision in Geographical Indication Act [\[LSI-433-IPAB-2015-\(CHE\)\]](#) - IPAB allowed welfare society's petition to be impleaded as party in proceedings for grant of Geographical Indication (GI) tag to Basmati cultivating regions in Madhya Pradesh, which was initiated by Agricultural and Processed Food Products Export Development ('appellant'), for Basmati cultivating regions in north India. It rejected appellant's contention that in absence of specific provision in GI Act, a party can't be permitted to be impleaded and held that *"Intellectual Property Appellate Board is well within the power under section 92 of the Trade Marks Act to protect the right of the interested person by allowing such person to implead in a proceeding relating to Geographical Indications keeping in view of the principles of natural justice"*..[Click here](#) to read more on this Basmati rice case.

Patent Office : Accepts Cipla objections, revokes Boehringer's patent; Emphasizes 'surprising effect' to clear 'inventiveness' test [\[LSI-365-PO-2015-\(NDEL\)\]](#) -

Patent Office revoked

Germany pharma company, Boehringer Ingelheim's patent on respiratory disorder medicament containing crystalline hydrate form of Tiotropium Bromide (compound), as not an invention under Indian patent law. Patent Office held that in order to clear the test of inventiveness, patentee has to show some surprising effect in comparison to closest prior art..[Click here](#) to read how again a foreign patent was revoked in India.



**Boehringer
Ingelheim**

Master Class

A separate section where experts speak on various rulings/ notifications or legal issues...

[Critical appraisal of new e-voting norms](#)

Ministry of Corporate Affairs ('MCA') vide its [Notification dated March 19, 2015](#) amended the Companies (Management and Administration) Rules, 2014 with regard to e-voting norms. It introduced the concept of 'remote e-voting', explained the process of counting votes and stated that a resolution proposed to be considered through e-voting shall not be withdrawn.



In [this article](#), the author, Mr. Prashant Vaishampayan (Practising Company Secretary) analyses the new norms and compares them with the earlier provisions. With regard to the provision of intimation of e-voting, author notes that under new rule, advertisement is required to be published at least 21 days before general meeting alongwith a public notice on company's website, as compared to 5 days before beginning of voting period under earlier norms. The author mentions that by requiring a public notice on company's website, "MCA demonstrated its keenness on resolution of Investor grievances in respect of E-voting and related issues, by making it compulsory for the companies to disclose in detail the name, designation, address, email id

and phone number of the person responsible to address the grievances connected with e-voting facility."

[Click here](#) to read the article titled, "Critical appraisal of new e-voting norms".

[Director General & Competition Commission Powers: Madras HC Sets Precedent](#)

Madras High Court in [Hyundai Motor India Limited v. Competition Commission of India \[LSI-293-HC-2015-\(MAD\)\]](#) dismissed car manufacturers' writ against CCI order that penalised car manufacturers (not only those against whom information was filed but other car manufacturers as well) for monopolising spare parts and after sale services market. CCI had directed investigation into other car manufacturers pursuant to



Director General's ('DG') report seeking investigation into other car manufacturers. CCI further held DG to be an informant. Such interesting observations of Madras HC have become a major debate question, creating confusion over powers of DG and CCI.

The authors, **Gowree Gokhale (Partner and Head of TMT Practice at Nishith Desai Associates)**, **Huzefa Tavawalla (Co-Head, Commercial Law Practice)** and **Satish Padhi (Member, Competition Law Practice)** analyse this Madras HC ruling in depth and state that it sets a precedent. Taking the readers through each and every issue in detail, they explain how Madras HC distinguished

Delhi HC ruling in *Grasim Industries Limited v. Competition Commission* [WP(C) No.4159 of 2013]. They mention that, *"the Madras High Court has distinguished the decision of the Delhi High Court in Grasim Industries on facts by stating that the DG did not go beyond the scope of his powers as he was merely providing additional information in relation to the subject of which the CCI already had knowledge."*

[Click here](#) to read their article titled, **"Director General & Competition Commission Powers: Madras HC Sets Precedent"**

Cutting through implementation issues in 'Forced Charity' - CSR!

The mandatory CSR provision in the new Companies Act has, managed to stave off the initial stiff resistance from India Inc. and the debate/discussion has now moved to its implementation. As we discover through this article, there are a host of issues that are cropping up and require the government's attention!

The author, **Vijay Kumar (Lawyer, Madras High Court)**, in his article uses a euphemism to describe the CSR provisions in the following words ... "innovative initiative by the Legislature wherein the business houses are compelled to contribute to social causes. In a lighter vein it is 'forced charity.' Nevertheless, the author bats for retaining the same in the larger interest of society. The author though brings out the various anomalies in CSR provisions. While Sec. 135 of Cos Act is made applicable to 'company', however the CSR Rules seemingly widen the ambit



of this provision by making it applicable to holding/subsidiary/foreign company/project office in India. The author opines that such expansion of definition of the term 'company' for CSR activities is far beyond Companies Act itself.

[Click here](#) to read Adv. Vijay Kumar's in-depth article titled as "Cutting through implementation issues in 'Forced Charity' - CSR!"

Directors beware - No leaves please!

'Vacation of Office of Directors' is one of the most contentious issues in the Indian company law and in dispute matters, the provisions are invariably misapplied by one group of directors to 'remove' other director(s). The essence of the provisions lies in the compliance of valid issue of notice of board meeting and the director communicating 'leave of absence', if he is not able to attend it.



In [this article](#), Apurv Sardeshmukh (Partner, Legasis Partners, Advocates & Solicitors) provides an in-depth analysis of the provisions of 'Vacation of Office of Directors' under the Companies Act, 1956 & Companies Act, 2013, explaining the meaning & significance of the term 'leave of absence' under both Acts.

He notes the legislators' intention in the provision of Companies Act, 2013 and concludes that *"It is now clear that if a director misses all the board meetings held during a year, his office will have to be vacated."*

[Click here](#) to read the article titled, "Directors beware - No leaves please!"

Bombay HC solves a Patent Ownership Tussle!

Recently, Division Bench of Bombay HC [\[LSI-428-HC-2015-\(BOM\)\]](#), while upholding Single Judge Order [\[LSI-267-HC-2014-\(BOM\)\]](#), dismissed derivation action suit instituted by minority shareholder in Gharda Chemicals. The minority shareholder had pleaded that patents registered by Managing Director of the company in his own name, ought to have been applied for and registered in the name of company. In this

one of a kind case, principles of derivative action suit and ownership of patents were discussed.

In [this article](#), the authors, **Mustafa Safiyuddin (Chairman, Legasis Partners)** and **Nishad Nadkarni (Associate Partner)**, summarise the case and enumerate the principles for maintainability of a derivative action suit. The authors analyse the case and point out that controversies with regard to ownership of intellectual property rights arise as much attention is not paid to such finer aspects and state, *“this can lead to drastic consequences at the time these rights are sought to be enforced.”* They further mention that, *“From the perspective of patent rights, for businesses driven by innovations and inventions, it is essential to crystalise the ownership of inventions and consequent patents by specific agreements which clearly address the issue of ownership and vesting of rights in the inventions which are created by inventors irrespective of whether such inventors are employees or retainers or managerial personnel.”*



[Click here](#) to read their article titled - **“Bombay HC solves a Patent Ownership Tussle!”**

About LawStreetIndia:

LawStreetIndia (LSI) is your one stop guide to everything you need in the arena of Company law, Securities Law (SEBI/SAT), FEMA, IP laws & Competition Law. The one common thread running across most of these laws - they are all new/revamped and LSI promises to be your partner in navigating through the complexities of these legislations and bringing you upto speed with the latest developments!

To subscribe / activate your free trial, please send an e-mail to sales@lawstreetindia.com or get in touch with Amogh Velankar at +91 9833344886