

Highlights

- Patent office issues draft pharma norms.
- Insurance Cos allowed to invest in Equity Exchange Traded Funds.
- RBI eases norms for Foreign Portfolio Investors.
- Depositor Education and Awareness Fund Scheme finalised by RBI.
- SC: Termination of lease agreement does not amount to attachment, distress or execution.
- SC: No arrests under Section 66A of the IT Act without prior approval of senior police officials.

Corporate Brief

➤ Patent office issues draft pharma norms.

The Indian Patent Office has issued a draft guideline for registration of pharmaceutical patents, a move which is seen by many as a direct fall-out of the litigation involving Novartis AG for their drug 'Glivec'. In terms of the revised guideline, the Indian Patent Office has used the term "enhanced therapeutic efficacy" as the criteria to allow for new patents for a previously known drug substance. The said norm replaces the term "enhanced efficacy" as previously used. The revised guideline is in tandem with the April 2013 ruling of the Hon'ble Supreme Court wherein it had been held that an incremental innovation in the case of a drug product is patentable only if it demonstrates "enhanced therapeutic efficacy".

In 2006 Novartis AG had sued the Indian Patent Office and the Government of India contending that the crystal form of Imantinib Mesylate enhances bioavailability of the drug, and therefore meets the criteria for enhanced efficacy. The Hon'ble Supreme Court however defined "enhanced efficacy" as a therapeutic enhancement rather than just enhancement of bioavailability. Bioavailability refers to the availability of the active ingredients of the drug in a patient's body once administered.

➤ Insurance Cos allowed to invest in Equity Exchange Traded Funds.

The Insurance Regulatory and Development Authority ('IRDA') has allowed insurers to invest in Equity Exchange Traded Funds ('ETF'). In its Circular dated 03.03.2014, IRDA has stated that investments in ETFs may mitigate the concentration risk and offer to insurers the ability to manage funds with operational convenience. Previously, IRDA had issued a Draft Guideline on Investment in Equity ETFs on 08.01.2014 seeking comments.

The guidelines formalised by IRDA permits insurers to invest in Equity ETFs subject to the following conditions; (i) Investment can be made only in passively managed schemes of the Mutual Funds which are registered with SEBI, and governed by the SEBI (Mutual Funds) Regulation, 1996, (ii) The Overall Expense Ratio shall be less than 0.50% of the daily net assets of the scheme, (iii) Investments can be made only in ETFs which invest in domestic equities, (iv) The instruments are listed on at least one Exchange that has connectivity

to national terminals, (v) The exposure to stocks through ETF shall not be reckoned for the overall exposure norms prescribed for individual stocks (vide Regulation 9 of IRDA Investment Regulations, 2009). Certain other conditions are also prescribed in the Circular for insurers investing in equity ETFs. [See IRDA/F&I/INV/CIR/074/03/2014 dated 03.03.2014]

➤ RBI eases norms for Foreign Portfolio Investors.

RBI has revised the extant guidelines for Portfolio Investment Scheme for Foreign Institutional Investor ('FII') and Qualified Foreign Investor ('QFI'), and has put in place a framework for investments under a new scheme called the 'Foreign Portfolio Investment' scheme. The scheme puts in place an easier registration process and operating framework for such foreign investors.

Under the scheme, the existing portfolio investor classes, namely, FIIs and QFIs, have been subsumed under the term 'Registered Foreign Portfolio Investor' ('RFPI'). RFPIs have been allowed to purchase and sell shares and convertible debentures of Indian companies through registered brokers on recognised stock exchanges in India. The individual and aggregate investment limits for the RFPIs shall be below 10% or 24% respectively of the total paid-up equity capital, or 10% or 24% respectively of the paid-up value of each series of convertible debentures issued by an Indian company.

RFPIs will also be able to open a Special Non-Resident Rupee ('SNRR') account and a foreign currency account with an Authorised Dealer bank in India, and to transfer sums to the foreign currency accounts to the SNRR account at the prevailing market rate for making genuine investments in securities. The repatriable proceeds may be transferred from the SNRR account to the foreign currency account.

RFPIs have also been permitted to trade in all exchange traded derivative contracts on the stock exchanges in India. RFPIs can offer cash or foreign sovereign securities with AAA rating or corporate bonds or domestic Government securities, as collateral to the recognised stock exchanges for their transactions in the cash as well as derivative market segments. [See A.P. (DIR Series) Circular No. 112 dated 25.03.2014]

➤ Depositor Education and Awareness Fund Scheme finalised by RBI.

The insertion of Section 26A in the amended Banking Regulation Act, 1949 ('Act') empowers RBI to establish the Depositor Education and Awareness Fund ('Fund'). The Fund is meant to be utilised for the promotion of depositor's interest and for such other purposes which may be necessary for the promotion of depositor's interest as specified by RBI from time to time. In terms of section 26A of the Act, the amount to the credit of any account in India with any bank which has not been operated upon for a period of 10 years or any deposit or any amount remaining unclaimed for more than 10 years shall be credited to the Fund, within a period of 3 months from the expiry of the said period of 10 years. The RBI has now finalised the Depositor Education and Awareness Fund Scheme for notification in the Official Gazette. As of current date, Indian banks have over INR 3,600 crore of unclaimed deposits lying in their accounts. [See RBI/2013-14/527 dated 21.03.2014]

➤ 183 Sections of Companies Act, 2013 notified.

The Ministry of Corporate Affairs has notified 183 Sections, and 6 Schedules of the Companies Act, 2013 bringing the total number of Sections notified to 470. All the Schedules have also now been notified. The notified portions cover the key requirements of the new law relating to incorporation, management, board functioning accounts and audit, and are effective from 01.04.2014.

➤ RBI, SEBI revise AML guidelines.

SEBI and RBI have issued revised anti-money laundering ('AML') guidelines. Among the other changes, the time period of maintenance of due-diligence records have been reduced to 5 years (from 10 years). Also, reporting entities are now required to maintain records of identity of their clients, and as well as beneficial owners, account files and business correspondences for a period of 5 years.

Litigation Brief

➤ SC: Termination of lease agreement does not amount to attachment, distress or execution.

In the case of *Phatu Rochiram Mulchandani v. Karnataka Industrial Areas Development Board and Ors* the Supreme Court has held terminating a lease agreement with a company in liquidation does not come within the mischief of section 537 of the Companies Act, 1956 ('Act').

The Apex Court, in this case, was confronted with the question whether the appellant corporation could have ventured to cancel the allotment of an industrial plot made in favour of the company in liquidation (respondent company in this case) after an order had been passed to wind up the respondent company,

Section 537 of the Act provides for avoidance of certain attachments, executions etc. in winding up by or subject to supervision of the Court. As envisaged under section 433 of the Companies Act the winding up proceedings are deemed to commence from the date of presentation of the winding up petition and once such proceedings are initiated, assets of the company cannot be interfered with without the leave of the Court.

In the present case the appellant corporation passed the order of cancellation (and served notice of termination) of the lease-cum-sale agreement only after the company petition had been presented and the order of winding up had been passed against the respondent company.

However, the Supreme Court observed that serving of a cancellation notice simpliciter does not come within the mischief of Section 537 as a termination of a lease agreement by itself does not amount to attachment, distress or execution. It was held that no

permission was required before cancelling a lease and to the contrary application and requisite permission under Section 537 would be required only once the lease had been terminated.

[See (S.L.P (Civil) No. 14161 of 2010)]

➤ SC: No arrests under Section 66A of IT Act without prior approval of senior police officials.

An Order passed by the Supreme Court in the matter of *Shreya Singhal v. Union of India*, had hit the headlines in India. Two young women were arrested for posting their "so called" objectionable comments on Facebook. The comments were about the propriety of shutting down Mumbai after the death of a political leader in the state of Maharashtra. By and large, people felt that the comments were the expression of views on social matters rather than any criminal activity.

The arrested women were released later and it was decided to close the criminal cases against them. It was felt by the Petitioner that the police had misused its power by invoking Section 66A of the Information Technology Act, 2000 (hereinafter referred to as "the Act") in this case. The Petitioner, a public spirited person, challenged the constitutional validity of Section 66A *inter alia* contending that it violates the freedom of speech and expression.

The Hon'ble Supreme Court has given partial relief by directing all the State Governments in India not to make arrests under Section 66A of the Act without prior approval of senior police officials. As per the Order issued, the concerned police officer under the State's jurisdiction may not arrest any person until prior approval has been obtained from an officer, not below the rank of the Inspector General of Police in the metropolitan cities or of an officer not below the rank of Deputy Commissioner of Police or Superintendent of Police at the district level, as the case may be.

All the states / Union Territories have to ensure compliance with the aforesaid advisory till further orders of the Hon'ble Supreme Court are passed before effecting any arrest under Section 66A of the Act.

[See (2014) 1 Supreme Court Cases (Civ) 283]

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