

**Highlights****Corporate Brief**

- RBI notifies Foreign Exchange Management (Cross Border Merger) Regulations, 2018
- SEBI puts in place new policy measures to address investor grievance
- SEBI sets separate limit of interest rate futures for Foreign Portfolio Investors
- Ministry of Environment, Forest & Climate Change drafts National Forest Policy, 2018
- Mandatory hallmarking of gold jewellery in phases, BIS rules to be notified
- Government working on 'cash-back' scheme for counterfeits sold on e-commerce platforms
- RBI discontinues Letter of Undertaking and Letter of Comfort as instruments of trade credit

**GST Brief**

- Recommendations made during GST Council Meeting

**Litigation Brief**

- Dr. Subhash Kashinath Mahajan Versus The state of Maharashtra and anr.

8th June 2011. SCORES is a web based centralized system to capture investor complaints against listed companies and registered intermediaries and is available 24\*7 to facilitate investor grievances in a speedy manner and the complaints are lodged electronically. SEBI received inputs from listed companies and intermediaries that investor grievances can be resolved faster if the grievance been taken up directly with the entity at the first instance. Consequently, SEBI reviewed the procedure for filing and redressal of investor grievances using SCORES. Accordingly, if the investors approach the concerned listed company or registered intermediary first with all requisite details to redress the complaints. In case, the listed company or registered intermediary fails to redress the complaint to investor's satisfaction, the investor may file complaint in SCORES. [See SEBI Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2018/58 dated 26<sup>th</sup> March 2018]

**Corporate Brief**

➔ **RBI notifies Foreign Exchange Management (Cross Border Merger) Regulations, 2018**

RBI has notified regulations relating to merger, amalgamation and arrangement between Indian companies and foreign companies namely, Foreign Exchange Management (Cross Border Merger) Regulations, 2018 ("the regulations"). The regulations, define 'Cross Border Merger' as a merger, amalgamation or arrangement between an Indian company and foreign company in accordance with the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016 notified under the Companies Act, 2013. Highlights of the regulations are: (i) in case of inbound merger, the regulations allow the resultant company to issue or transfer any security to a person resident outside India subject to pricing and sectoral foreign investment conditions and FEMA (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017; and (ii) in case of outbound merger: (a) the regulations allow resident Indian entities to acquire or hold securities of the resultant company in accordance with FEMA (Transfer or issue of any Foreign Security) Regulations, 2004, and (b) a resident individual may acquire securities outside India provided that the fair market value of such securities is within the limits prescribed under liberalized remittance scheme laid down in the Act or rules framed thereunder. [See RBI notification no. FEMA.389/2018-RB dated 20<sup>th</sup> March 2018]

➔ **SEBI puts in place new policy measures to address investor grievance**

SEBI, introduced a platform to redress investor grievances through SEBI Complaints Redress System ("SCORES") on

➔ **SEBI sets separate limit of interest rate futures for Foreign Portfolio Investors**

RBI in its statement on development and regulatory policies released on 2<sup>nd</sup> August 2017, proposed to allocate a separate limit of Rs. 5,000 crore to Foreign Portfolio Investors ("FPIs") for taking long position in Interest Rate Futures ("IRFs") in order to facilitate further market development and to ensure that FPIs access to bond futures remain uninterrupted during the phase when FPI limits on government securities are under auction. Accordingly, it has been decided to allocate a separate limit of Rs. 5,000 crore to FPIs for taking long position in IRFs. The limit will be calculated as follows: (i) for each interest rate instrument, position of FPIs with a net long position will be aggregated. FPIs with a net short position in the position will not be reckoned; and (ii) FPIs can acquire new long position in excess of Rs. 1,800 crore at any point of time. [See SEBI Circular No. IMD/FPIC/CIR/P/2018, dated 8<sup>th</sup> March 2018]

➔ **Ministry of Environment, Forest & Climate Change drafts National Forest Policy, 2018**

Ministry of Environment, Forest and Climate Change in order to integrate the vision of sustainable forest and wildlife management by incorporating strategies for enhancing eco system, protection and conservation, climate change mitigation and adaption, and improving the livelihood of tribals and other forest dependent population has decided to revise the existing National Forest Policy, 1988. A new draft National Forest Policy, 2018 ("the Policy") has been prepared by the Ministry after nation-wide consultation with the stakeholders and is open for comments from public/private organizations, experts and concerned citizens. The

main strategies to be adopted to achieve the objectives of the Policy are: (i) sustainable management of forests; and (ii) management of trees outside forests. [See Ministry of Environment, Forest & Climate Change Notification No. F.No. 1-1/2012-FP (Vol. 4), dated 14<sup>th</sup> March 2018]

### ➤ *Mandatory hallmarking of gold jewellery in phases, BIS rules to be notified*

Mandatory hallmarking of gold jewellery, will become reality any time during the next quarter, from financial year 2018-2019, if the government decides to go ahead with it. The Bureau of Indian Standard (“BIS”) has submitted rules under the amended BIS Act enacted two years ago, to the law ministry, which is understood to have cleared them. The matter now lies with the Ministry of Consumer Affairs. According to the rules, three categories of purity: (i) 22 carat; (ii) 18 carat; and (iii) 14 carat will be hallmarked at designated centres. The demand from some states such as Maharashtra, for hallmarking 23 carat jewellery, will be taken up at a later stage.

### ➤ *Government working on ‘cash-back’ scheme for counterfeits sold on e-commerce platforms*

**Centre** to tackle the menace of counterfeit products being sold on e-commerce platforms, is mulling cash-back scheme where e-commerce companies will reimburse consumers the money spent on an item in case it turns out to be copied product and not original that was promised by the merchant. The Consumer Affairs Ministry, which operates a helpline for e-commerce customers, will be the nodal ministry which would focus on counterfeits. The system already exists in countries like Canada and Hong Kong.

### ➤ *RBI discontinues Letter of Undertaking and Letter of Comfort as instruments of trade credit*

**RBI** has decide to discontinue Letter of Undertaking (“LOUs”) and Letter of Comfort (“LOCs”) as instrument of trade credit. This move could potentially hit the importers who rely of LOUs and LOCs to get bank guarantees. LOCs and bank guarantees for trade credits for imports into India may continue to be issued subject to compliance with the provisions contained in Department of Banking Regulation Master Circular on “Guarantees and Co-acceptances” dated July 1, 2015 as amended from time to time. [See RBI Notification No. RBI/2017-18/139, dated 13<sup>th</sup> March 2018]

## GST Brief

### ➤ *Recommendations made during GST Council Meeting*

**Government of India, Ministry of Finance** has in its 26<sup>th</sup> GST Council meeting held in New Delhi, taken key decisions, which inter-alia, include: (i) GST returns simplification: two different return filing models are being considered by the GST Council, one with focus on simple and taxpayer friendly and other with focus on plugging tax leakages; (ii) postponement of certain provisions: the reverse charge mechanism on supply from unregistered dealers has been further deferred until 30th June 2018; (iii) implantation of e-way bill mechanism: (a) the nationwide e-way bill mechanism will be implemented from 1st April 2018; and (b) e-way bill for intra-state movement of goods will be implemented in a staggered manner from 15th April 2018. The states of Tamil Nadu, Karnataka and Kerala are likely to implement intra-state e-way bill in the first place; and (iv) extension of exemption to exporters: a special drive is proposed to clear refunds to exporters in an accelerated manner. Manual refund claims in the light of technical glitches in online filing of refunds.

## Litigation Brief

### ➤ *Dr. Subhash Kashinath Mahajan Versus The state of Maharashtra and anr.*

#### **Questions Of Law Addressed:**

1. Can the courts issue guidelines on a subject matter, where the law is clear and unambiguous?
2. Whether Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“Act”) puts an absolute bar against the grant of anticipatory bail in light of Section 438 of Cr.P.C.?

#### **Facts of the Case:**

3. The Appellant was serving as Director of Technical Education in the State of Maharashtra when a complaint was filed by Respondent No. 2 (the original complainant) against two of his non-scheduled caste seniors working at Government Distance Education Institute. It was his complaint that these two seniors made adverse entry in his annual confidential report questioning his integrity and character.

4. The Respondent No. 2 lodged an FIR with Karnad Police Station, Pune under the Atrocities Act on 04.01.2006.
5. As per the procedure laid by the act, the concerned Investigating Officer applied for sanction under Section 197 Cr. P.C. against the accused to the Appellant who was a Director of Technical Education during the relevant time. The sanction was refused by the Appellant on 20.01.2011.
6. Pursuant to this refusal, the 'C' Summary Report was filed against the two accused which was not accepted by the lower court.
7. The Complainant (Respondent No. 2 herein) then lodged an FIR dated 28.03.2016 against the Appellant assailing that the Appellant was not competent to grant/refuse the sanction as the two accused are Class- I officers and only the State Government could grant sanction. Therefore, according to Complainant, the Appellant committed offence of illegally dealing with the matter of sanction since he did not have the powers to grant or refuse the sanction.
8. The Appellant after being granted anticipatory bail applied to the High Court under Section 482 Cr. P.C. for quashing the proceedings on the ground that he had merely passed a bonafide administrative order in his official capacity. And that his action in doing so cannot amount to be an offence even if the order was erroneous. The High Court rejected the Petition. Hence, this SLP.

from the settled basic principles of the Constitution of India.

2. The question with regard to Section 18 of the Act, expressly excluding Section 438 of Cr.P.C. was considered in light of "purposive interpretation" principle and Doctrine of Proportionality, stating that a procedural penal provision affecting liberty of citizen must be read consistent with the concept of fairness and reasonableness. This Hon'ble Court observed that the exclusion of Section 438 of the code applies when a prima facie case of commission of offence under the said Act and on the other hand, if the allegations appear to be prima facie motivated and false, such exclusion does not apply. Therefore, it was held that there is no absolute bar against the grant of anticipatory bail in cases under the said Act.
3. This Hon'ble Court observed that the cases of false implications and misuse of the Act are on the rise and therefore, after considering various judgments, it was held that the complaints under the Act shall be construed exceptionally to the normal rule of registering FIR if any information discloses commission of cognizable offence. Accordingly, it was directed that:-
4. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the said Act, and are not frivolous or motivated;
5. In view of acknowledged abuse of law of arrest in cases under the Act, arrest of a public servant can only be made after approval of the appointing authority and a non-public servant can be arrested after approval of SSP which may be granted in appropriate cases for reasons recorded and the same must be scrutinized by the Magistrate for permitting detention.

\*\*\*

*Disclaimer:*

*For private circulation to the addressee only and not for re-circulation. Any form of reproduction, dissemination, copying, disclosure, modification, distribution and/or publication of this Newsletter is strictly prohibited. This Newsletter is not intended to be an advertisement or solicitation. The contents of this Newsletter are solely meant to inform and is not a substitute for legal advice. Legal advice should be obtained based on the specific circumstances of each case, before relying on the contents of this Newsletter or prior to taking any decision based on the information contained in this Newsletter. ZEUS Law disclaims all responsibility and accepts no liability for the consequences of any person acting, or refraining from acting, on such information. If you have received this Newsletter in error, please notify us immediately by telephone.*

Copyright © 2014 ZEUS Law. All rights reserved. Replication or redistribution of content, including by caching, framing or similar means, is expressly prohibited without the prior written consent of ZEUS Law.

***Observations and Ruling of the Hon'ble Court:***

1. On the issue of jurisdiction and competency of this Hon'ble Court to issue guidelines, it was staunchly stated that this Hon'ble Court is the ultimate interpreter of the Constitution, and howsoever clear the law maybe, the Doctrine of Judicial Review cannot be overshadowed and each law has to mandatorily pass through the test of Articles 14, 19 and 21 of the Constitution of India. A plethora of judgments were cited whereby there were various guidelines issued to bring the faulty laws under the ambit of the Constitution of India, making clear that no procedural technicality could hinder the path of this Hon'ble Court to make the laws reasonable and non-arbitrary. Hence, it was concluded that even though the validity of the said Act was upheld by previous decisions, this Hon'ble Court was very much competent to issue guidelines/directions, if there was a glaring deviation