Singh & Associates
ADVOCATES AND SOLICITORS

JULY 2013, VOL. VI, ISSUE VII

INDIAN LEGAL IMPETUS

"Meet & Greet with Singh & Associates delegates at IBA 2013, Boston at the Marriott Copley Hotel 7th - 11th October 2013"

FOREWORD

Manoj K Singh
Founding Partner

It gives me immense pleasure in introducing the July Edition of our Newsletter "Indian Legal Impetus". The entire team of Singh & Associates, Advocates and Solicitors, thank our readers for their overwhelming responses towards our endeavors in making the legal and corporate information more accessible.

The edition begins with bringing forth various strategies that may be adopted for filing the International Patent Application in a way to maximize the Patent's value. This is followed by an article discussing the various provisions of the patentability of the Computer Related Inventions and procedure to be adopted by examiners for examination of patent applications etc. Through another article a classic case of official indifference and the apathy of the Trademark Registry along with the finding of the IPAB to this effect have been discussed.

The corporate section highlights the changes and amendments made in the Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998 by bringing the recently issued "Securities and Exchange Board Of India (Buy Back Of Securities) (Amendment) Regulations, 2013", along with discussing the relevant provisions as stated in the recently passed Companies Bill, 2013.

Further, light has been thrown on the Securities Laws (Amendment) Ordinance 2013 which has been recently tabled in the Lok Sabha in order to replace the ordinance to provide more powers to capital market regulator SEBI.

Dealing with the Marrakesh Treaty for Visually Impaired/Print Disabled Persons, an article highlights on the progressive approach of UN in making literature available to visually impaired & print disabled persons along with discussing the latest judgment of Apex Court wherein the provisions of Section 8(4) of The Representation of People Act, 1951 has been discussed.

Another article "Doctrine of Estoppel: Overview" deals with the evolution of the well settled doctrine of Estoppel in UK and India which is followed by an article dealing with the conflict between the fundamental rights of the press and the rights of an under-trial for his fair adjudication.

We hope that our esteemed readers find useful the information furnished through this newsletter and also such an effort will enable them to understand and further interpret the recent legal developments thus enabling our readers to avail the new gateways. We welcome all suggestions, opinions, queries, or comments from our readers. You may send your valuable suggestions, opinions, queries or comments to **newsletter@singhassociates.in**

"Indian Legal Impetus"

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INTERNATIONAL PATENT APPLICATION FILING STRATEGIES FOR MAXIMIZING THE VALUE OF PATENTS

Mrinalini Gupta

INTRODUCTION

The cost of obtaining a patent and thereby protecting the invention in number of countries is not only expensive but a complicated task. Many a times the applicant finds himself in the hailstorm of unfathomable timing deadlines. Getting an international patent protection for an invention can impose financial burden on small and medium enterprises or entrepreneurial undertakings. Various modes/strategies can be used for filing an application for the grant of patent simultaneously in various countries.

The process of obtaining a National Patent Protection involves drafting of the application along with the complete description and claims, filling of the application, prosecution and hearing in case of opposition/infringement and finally timely payment of the renewal fee for the maintenance of the granted patent. To be precise, everything comes at a cost.

The expenditure on obtaining a patent in a single country is itself so huge than a strategy that minimizes or delays the expenses is valuable. Delaying the cost provides an additional opportunity to the patent applicant to assess and evaluate the possibility of success of the patented product or process overseas, its commercial demand, freedom-to-operate the patented product or process and more importantly the applicant is able to calculate in the due time the probability of obtaining protection in a particular foreign country. This saves the applicant from the undue expenses of filing the patent application in foreign countries where there are chances of facing rejection of the application or of the patented product or process.

Therefore, any strategy that provides enough time to the patent owner to strategically evaluate the overall potential value and demand of the invention in other foreign countries while preserving the first filing date (priority date) is looked as a welcome step.

FILING STRATEGIES

To obtain an international patent protection on an invention, any of the following three strategies can be used.

(i) Separate Applications: This is the most expensive approach and involves filing of separate patent applications in the national patent office of each country where the applicant is keen on seeking protection for its invention. In this approach, the separate applications are usually filed on the same day of filing of the initial application in the parent country. The drawback of this system is that the applicant does not get additional time to assess and evaluate the possibility of success of the invention overseas and filing fees for each of the countries in which the protection is sought begins to accrue as soon as the application is filed.

(ii) Convention application : The second approach entails filing of a patent application claiming a priority date based on the same or substantially similar application filed in one or more of the convention countries. Such an international patent application is known as convention application and is filed in accordance with the Paris Convention for the Protection of Industrial Property. This approach requires filing of application for patent firstly in a single Paris Convention member country to establish the first filing date or priority date for the application. The application can then be delayed for up to twelve months before filing in other Convention countries so that the applicant gets a year's time from the first filing date or priority date to delay the costs related to obtaining international patent protection.

(iii) PCT International Application: The Patent Cooperation Treaty (PCT) is an international agreement for filing patent applications in which the applicant has an option to file a single international patent application in one language with one receiving patent office in order to simultaneously seek protection for an invention in up to 148 countries throughout the world.

Other than being the least expensive of the three approaches, an international application filed using PCT confers up to thirty months time, from the priority date or international filing date whichever is earlier, to enter the National Offices of various member countries. Further, this is also an economical procedure that allows the inventor/applicant all additional time to assess the commercial viability of the invention. This delay is significantly advantageous for applicants in taking strategic decisions about the countries in which patent protection can be pursued.

To be unambiguous, the PCT application does not provide for the grant of an international patent, it simply provides a streamlined process for filing of patent applications simultaneously in many countries while preserving the priority date of that application.

Further, PCT route provides an International Search Report (ISR) that is very valuable to the applicant. The ISR gives the applicant a fair idea about the probability of obtaining protection of the invention through patent before incurring charges for filing and prosecution in individual countries.

CONCLUSION

Though it is true that a patent confers on the patent owner, the exclusive right to prevent others from making, using, selling, or importing the invention defined in the claims of the patent and these exclusive rights act as an incentive, however, protecting an invention in a number of countries means an extra financial burden on the inventor/applicant. The applicant needs to balance the cost incurred in obtaining the international protection through patents and the profits earned thereafter so that the protection becomes a commercial asset and not a financial burden.

Therefore, any strategy that delays the entry of the international patent application in national/regional offices of foreign countries, where applicant is keen on seeking protection for its invention, is significantly advantageous out of the three strategies discussed above, seeking international protection through PCT international application is most profitable in the sense of money and time both! ◆◆◆

EXAMINATION OF COMPUTER RELATED INVENTIONS- DRAFT GUIDELINES BY INDIAN PATENT OFFICE

Kailash Choudhary

The Indian Patent Office has issued draft guidelines for the examination of Computer Related Inventions (CRIs). The basic aim of the draft guidelines is to bring uniformity and consistency in the examination procedure. The guidelines discusses various provisions of the patentability of the CRIs, procedure to be adopted by examiners for examination of such patent applications and jurisprudence involved in granting or rejecting patents in the field of technology. The draft guidelines also discusses various examples of the contents of the complete specification such as description, claims, prior art etc. for better understanding of the issues involved. We will discuss some important points as mentioned in the draft guidelines.

DEFINITIONS

At the very outset, the guidelines define important terminologies used while dealing with the CRIs. Terms which are defined by the Indian Statutes are construed accordingly while terms which are not defined by any statute, ordinary dictionary meaning have been taken into consideration. Some of the important terms are as mentioned below:

Computer: The term "Computer" is defined in The Information Technology Act, 2000 (No. 21 of 2000) (*hereinafter IT Act) as* "any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network."

Computer Network: The term "Computer Network" is defined in IT Act as "the interconnection of one or more computers through -

(i) the use of satellite, microwave, terrestrial line or other communication media; and

(ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;"

Computer related inventions: This term is not defined in any Indian statute. For the purpose of the guidelines, the term refers to any invention which involves the use of computers, computer networks or other programmable apparatus and includes such inventions, one or more features of which are realized wholly or partially by means of a computer programme/ programmes.

Data: As per IT Act, the term "data" refers to "a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts, magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer."

Software: The term software is not defined in any statute. For the purpose of the guidelines, reference can be made to Oxford Advanced Learners Dictionary which defines the term "Software" as "the programs, etc. used to operate a computer".

Computer Programme: The term "Computer Programme" has been defined in the Copyright Act 1957 under Section 2 (ffc) as "a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result".

Per se: As per the Oxford Advanced Learners Dictionary "per se" as "'by itself' – "to show that you are referring to something on its own, rather than in connection with other things".

VARIOUS CATEGORIES OF CLAIMS CONCERNING CRIs

The draft guidelines have categorized the claims of the CRIs broadly into four categories.

1) Method/process: CRIs often carry method or process claims for e.g. "method/process for …." Likewise claims relating to mathematical methods, business methods, computer programmes per say or algorithms are claimed in method/process format. The role of the examiner becomes very critical in ascertaining whether the invention falls under one of excluded subject matter.

2) Apparatus/system: the other main preamble used for CRIs is "apparatus/system for……" and often crafted to appear in means + function format. Here, the examiners' are required to properly construe whether the claimed subject matter indeed relate to any apparatus which is novel, inventive, having industrial applicability or is just formatted to appear so.

3) Computer program product: These type of claims relating to compute programme products are only computer program per se simply expressed on a computer readable storage medium (CD, DVD, Signal etc.) are not allowable.

4) Examination procedure: The draft guidelines states that the examination procedure for CRIs is common with the other inventions to the extent of considering novelty, inventive step and industrial applicability. However, determining as to whether the subject matter is related to one of the excluded categories requires great skill and as these guidelines mainly focus on this aspect, we will discuss the same afterwords.

DETERMINATION OF EXCLUDED SUBJECT MATTER RELATING TO CRIs

- It is comparatively easy to determine the patentability of inventions relating to apparatus / system having hardware implementations than to process / method related inventions. It depends on the crucial judgment of the examiner as to whether claimed method/process can be construed to qualify under the process/method as defined in the statutes. Since the patent is granted to all fields of technology, it is important to ascertain the nature of the claimed method/process as to whether the same relates to technological field.

- The investigation of inventive step involves a check on whether the invention involves technical advance as compared to the existing knowledge. Therefore the method/process has to be judged on the technical advancement over the prior art.

- Any subject matter relating to non technological field shall not be considered patentable. The exclusion under sub-section (k) to (n) of section 3 of the Patent Act, 1970, explicitly carve out specific categories out of the purview of definition of invention under the Patent Act, 1970, considering them as mental, intellectual, aesthetic and/ or abstract subject matter not involving technical character.

- Mathematical, business related methods, computer programme per se, or algorithm, mental act, aesthetic creation, method of playing games and method of presentation of information are excluded from the ambit of patentability.

- This is one of the important points mentioned in the guidelines. Essentially all computer programmes need some hardware support for its functioning. Does this imply that all such programmers are away from the purview of computer programme per se. The question therefore, is whether a computer programme loaded on a general purpose known computer or related devices can be held patentable. In an application for patent for a new hardware system, the possibility of a computer programme forming part of the claims is not ruled out. The examiner is to carefully consider as to how integrated is the novel hardware with the computer programme. Further, whether the machine is programme specific or the programme is machine specific is important to ascertain. This requires critical analysis of the Examiners.

- For considering the patentability of computer programme in combination with hardware features, the hardware portion has to be something more than general-purpose machine.

- It is important to note that the term per se has been suffixed to the computer programme alone. Therefore, if the invention is relating to mathematical method, business method or algorithm, they are considered to be non-patentable by direct application of law.

The draft guidelines provides some illustrative examples of the claims of the patent applications to exhibit the approach, the Office adopts while deciding application relating to the excluded categories. Few illustrations are mentioned below:

Illustration 1: *An application titled, "system and method for billing augmentation" was held as a business method.*

The claims of the application recited a billing augmentation method in which a message from customer is received, analyzed for determining service charge category and accordingly billing event is generated to bill an amount to the customer. The method was simply linking business entities; hence the method is essentially a business method, because the processing steps of the method relate merely to automation of business processing steps. Hence, subject matter of these claims fall within scope of clause (k) of section (3) of the Patents Act, 1970

Illustration 2: *A patent application was filed with the following main claims:*

A method for generating a billing event for a download transaction of an application from a download server, wherein generating said billing event requires a first set of information and a second set of information, comprising:

– storing said first set of information as a metadata, said metadata comprising a plurality of blocks;

– responsive to the download transaction conducted by the download server, receiving raw transaction data, said raw transaction data comprising – a plurality of references to blocks of said metadata, and

– said second set of information;.........

The Controller held that the scope of the invention involves a subscription transaction having a transaction processing environment using a transaction manager, subscription option, pricing information and a flowchart depicting a method of processing transaction data for a carrier's billing system which involves the step of creating a billing event containing pricing information associated with the data transaction of downloading an application by processing the raw transaction data and the metadata.

Thus, it is evident that the alleged invention relates to the processing of transaction data and billing for transactions across a data network which is a mere business method.

Illustration 3: *A method of scoring compatibility between members of a social network, said method comprising the steps of:*

preparing interest compatibility scores based on expressed Interests of the members of the social network; and

computing a compatibility score between a first member of the social network and a second member of the social network based on expressed interests of the first member, expressed interests of the second member, and the interest compatibility scores between the expressed interests of the first member and the expressed interests of the second member.

The Controller held that the said method for scoring compatibility between the social network users is nothing but a business method which shall be used commercially. Thus, the subject matter of the instant invention cannot be allowed u/s 3(k) of The Patents Act, 1970. Further, the said method for scoring compatibility between the social network users, say estimating the probability and dividing the estimated probabilities from the resultant product, is a mere mathematical method which cannot be allowed u/s 3(k) of The Patents Act, 1970.

The subject matter of the instant invention, say the method for computing compatibility score, is based on a scheme/predefined set of rules which cannot be allowed u/s 3(m) of The Patents Act, 1970. Hence, the application is rejected under section 15 of the Act.

FORM AND SUBSTANCE

Judgement of patentability is comparatively easier for mathematical and business methods as compared to the computer programmes per se and algorithms related invention. The computer programmes are excluded from patentability and treated as a authors creation which is protected under Copyrights Act. Computer programmes are often claimed in the form of algorithms as method claims or system claims with some 'means' indicating the functions of flow charts or process steps. The algorithm related claims are even wider than the computer programmes claimed by themselves. A programme represents a particular set, the algorithm gives way for many programmes in different languages to be written based on the same algorithm. Thus, the inventions claimed in above forms are not patentable.

Further, when the invention is related to software/ hardware relation, the expression of the functionality as a method, is judged on its substance. It is well settled that the focus should be on the underlying substance of the invention, not on the particular form in which it is claimed. The exclusion of computer programmes per se could not be avoided merely by wording.

Illustration 4: *In an invention titled "A Transaction processing method and system", the objection of examiner was that claims(s) (1 to5) and (13 to 16) fall(s) within the scope of section 3(k) of the Patent Act.*

"A networked computer system for transaction processing comprising: a server configured to exchange data with a plurality of clients computers; a database operatively coupled to the server and storing chemical product data for a plurality of chemical products; a memory operatively coupled to the server and comprising instructions to configure the server to;

a. receive a request comprising a product identifier from a first one of the plurality of client computer,

b. query the database in response to the received request to retrieve product information,

c. send the product information to the first client computer; and a formulation means to combine ingredients to form a chemical product."

In the above case, the Controller held that the claims were drafted as a system but in fact they are nothing more than a business method as the transaction processing in the alleged system is performed by the instructions stored in the memory to configure the server which in- turn performs the functions of receiving a request, querying the database and sending the product information.

MEANS PLUS FUNCTION

Regarding Means Plus Function claims, the draft guidelines states that the same shall not be allowed if the structural features of those means are not disclosed in the specification.

Further, the Means Plus Function claims shall be rejected if the specification supports implementation of the invention solely by the computer program as these means are nothing but computer program per se.

COMPUTER RELATED INVENTION IN THE FIELD OF BIO-INFORMATICS/BIO-TECHNOLOGY

Nothing much has been stated in the draft guidelines with respect to the above field. Some examples are provided wherein the claims are directed towards computer related medium or computer medium which was objected by the Controller and the same were deleted.

At the end, the draft guidelines provides extensive flow charts illustrating procedure for examination of Computer Related Inventions.

CONCLUSION

The draft guidelines for examination of computer related inventions is a further step taken by the India Patent Office in order to bring uniformity and consistency in the examination of computer related invention. Prior to this, guidelines was issued for the examination of the biotechnology related inventions. The draft guideline discusses important issues related to computer programmes with the help of examples of decided cases and reasoning for the judgement. ◆◆◆

Bibliography:
1. Guidelines for Examination of Computer Related Invention dated 28th June 2013.

IPAB ADMONISHED THE TRADEMARK REGISTRY

Vaibhavi Pandey

The arguments related to the pendency and backlog of proceedings in the Trademark Registry or the cases where its negligence and indifference have been pointed out by the courts and tribunals are no more new or unique to us. Once again, in its decision dated 5th June, 2013 in the matter of *NWL FRANCE SERVICES SAS vs. DEPUTY REGISTRAR OF TRADEMARKS,* the Intellectual Property Appellate Board (IPAB) has chided the Trademark Registry for their indifferent and irresponsible attitude towards the applicants. In the order dated 5th June, 2013 Hon'ble Smt. Justice Prabha Sridevan in clear and distinct words termed this case as "a classic case of official indifference." This case throws light on the lack of transparency and failure to respond to the communication letters of the parties on the part of the Trademark Registry.

The ***factual circumstances*** in which the present case arose were: The applicant applied for the registration of his trademark "**WATERMAN**" in class **16 on 14th May, 1992** as a mark to be associated with the trademark no. 147630. The application was published in the journal of the Trademark Registry on **8th January, 2001** with the disclaimer stating that the registration will give no right to the exclusive use of the letter 'W' except as substantially shown in the representation. The second respondent in the above case filed a notice of opposition in March, 2001 under the provisions of Section 21 of the Trademarks Act, 1999. As per the provisions of Section 21 of the Act, the Registrar is required to serve a copy of opposition to the applicant and the applicant is required to file a reply to that opposition within a period of two months failing which his application shall be considered as abandoned. However, no such notice was served to the applicant by the Registrar and three years later, in the year 2004, the applicant came to know about the said opposition through the online status of the application available on Registry's website. Through a letter dated 15th June, 2004, the applicant stated that three years have elapsed and they have still not received any copy of opposition. The Registry never responded to the letter of the applicant, in addition to that the status of the application as observed by the applicant in the year 2008 was appearing as abandoned. On 23rd July, 2008 the applicant again addressed a letter to the Registrar stating that the abandonment was wrong and immediate steps should be taken to consider the matter. The applicant also filed an application under The Right to Information Act, 2005 and wrote several other letters to the Trademark Registry but no communication or reply was ever made by the Registry to the applicant.

Later, on 29th June, 2011 the opponents wrote to the Registrar that they and the applicant have arrived at an agreement and the opponents now want to withdraw the opposition. This letter was also received by the Registry on 8th June, 2012, almost after one year in May, 2012 the applicant found from the online status of the application that the Order of Abandonment was passed by the Senior Examiner on **3rd December, 2009**.

The IPAB expressed its shock and surprise to the irresponsible behavior of the Registry. The documents filed by the applicant clearly showed that he has not left any possible way to find out what happened to their application but they could not find even a single response from the Registry in the period of these 10 years. The Board highly criticized such an irresponsible attitude by an authoritarian body with quasi-judicial powers. One of the most important and mandatory duty of the Registrar is to reply to the letters precisely and as soon as possible. Another very shocking fact is that the status of the application was shown as abandoned when checked in July, 2008 and the order of abandonment was passed in 2009. What kind of anticipation is that? Was the order presumed by the Registry almost a year earlier to which it was actually passed? Keeping in view all the above ambiguities, the learned Chairman asked for a reply from the Trademark Registry seeking answers on the following issues-

- **How even before the order was passed the online status treated the mark as abandoned?** One of the most dubious acts of the Registry that have emerged in this case is the question as to how can an order be presumed by the Registry a year before it was actually passed. What kind of anticipation is this? An order dated 2009 and its consequences imposed in 2008 itself? Such actions on the part of government offices not only make us ponder about the case in issue but also alarm us as to how many other such cases can possibly be lying with the registry. How many other status updates have merely been "ANTICIPATED" by them? The answers lie with the Registry itself.

- **Why none of the letters written by the opponents received any reply?** This is a practice which almost everyone dealing with the government offices are familiar with. The letters sent to them are usually addressed after a very long period or they are lost somewhere in the bulk of letters pending over there. But this is not the question of one or two letter, almost a series of letters have been sent to the registry by the applicant in the period of 8 long years i.e. from 2004 to 2012 which according to the applicant have not received any response from the registry.

- **Why even after the opponent has indicated their opposition was withdrawn no communication was sent regarding order of abandonment?**

  An opposed application is considered as abandoned if there is no reply to the opposition from the applicant. However, in the present case the applicant entered into an agreement with the opponents and they subsequently withdrew their application. It was the duty of the registry to communicate the present withdrawal to the applicant and reconsider their abandonment, but no such communication was ever made regarding this to the applicant.

- **Why was the order of the abandonment passed by an examiner and not "The Registrar"?** As we all know there is a departmental hierarchy within which every office needs to work upon. Any order as to abandonment, rectification, opposition etc is passed by the Registrar himself. An examiner is only entitled to examine and publish the examination report of the application and not to pass the order of abandonment of an application.

- **If there is documentary proof that the notice of Opposition was communicated to the appellant or the counsel, the same shall be furnished.** The registry has been given an opportunity to present any evidence or proof in case any letter or correspondence as to the Opposition was made by it to the applicant.

CONCLUSION

Discrepancies, ambiguities, such words are not new or unusual to us when we talk about government offices. As appropriately described by the IPAB, this is a "*classic case of official indifference*". Such cases not only create annoyance and anguish in the minds of the general public but also adversely affect their faith in the administration. Apart from this, such irresponsible behaviors from the administrative authorities may result in severe financial losses and mental agony to the applicants. In the present case, the reply of the trademark registry is much awaited as it is going to answer several questions running in the minds of the general people.

Transparency and accountability at the administrative level are the key ingredients of a democracy like India, where the government is supposed to be "*of the people, for the people and by the people*". The purpose of the Trademarks Act itself provides "…to provide for registration and better protection of trademarks for goods and services and for the prevention of the use of fraudulent marks…" But with such cases arising every other day we can say that merely setting up goals is not sufficient but the actual spirit of the legislations enacted should also be incorporated and visible in the actions of the offices as well. Then only we can reach the expectations of our legislations and strengthen the faith of the general public in the administration. ◆◆◆

INDIA, IPR AND ITS INFLUENCE

Aayush & Priyanka

In today's intellectual era, India has shown a considerable growth in its research and development. The presence of well established state of the art labs of Indian as well as multinational companies in the country has clearly proved the Indian IP status in the world. The rise in Indian economy is a clear impact of Intellectual Property (IP) influence in the country. By setting up new technology, incubation centers in various parts of the country and providing financial aids to the technologist, the Research & Development (R&D)status of the country has been boosted up.

India being a developing nation, has taken giant leaps in competing towards Trade Related Intellectual Property Rights (TRIPS) agreement and in compliance of US and European Intellectual Property Right (IPR) structure. The 21st century can be referred to as the century of technology, knowledge and in fact the regime of intellect. The country's ability to translate knowledge into innovation to gain wealth will determine its future. Thus, the innovation is supposed to be the key to create knowledge into wealth. Therefore, issues of generation, evaluation, protection and exploitation of IP would become critically important all over the world[1]. Through this article, emphasis has been given on the IPRs impact in creating a strong backbone of the country.

NATURE OF IPR

IPRs are the territorial rights which have a fixed term and can be renewed after a stipulated time as specified in the law by way of making payment toward official fees. Exceptionally, trade secrets have an infinite life but they don't have to be renewed. Apart from this, trade secrets have another nature of being assigned, gifted, sold and licensed like any other tangible property. Unlike other moveable and immoveable properties, these rights can be separately held in many countries at the same time. IPR can be held only by legal entities i.e., who have the right to sell and purchase property. In the other way, any non autonomous institution doesn't have rights to own intellectual property. These rights are protected by their respective sections and rules[2].

IPR SCENARIO: FROM INDIAN PERSPECTIVE

Earlier when IPR was in its preliminary stage, lot of problems arose relating to its implementation, policies, Act/ Rules, financial and governmental support. Earlier, companies and inventors were also not aware of IPR, therefore risk of infringement was at an alarming level without a healthy system, companies were not interested to go for R&D process in India. This resulted in the death of inventions, high risk of infringement, economic loss and decline of an intellectual era in the country.

Keeping in view all the above problems, India has taken strong steps in strengthening IPR in the country. For example, the first Indian Patent Law came in 1856. Further, the same was modified from time to time by Indian patent system.

New patent law was made after independence in the form of the Indian Patent Act 1970. Later, it was amended in compliance with the TRIPS provision. Recently, in2005, amendments were made in IPR. While the process of bringing out amendments was going on, India became a member of the Paris Convention, Patent Cooperation Treaty, Budapest Treaty and finally signed the TRIPS agreement to comply with the International and Indian standards. Recently, India signed the "Madrid Protocol" which further enhances the applicability of Trademarks in 89 countries. Further, interest of Small and Medium Enterprises (SMEs), Indian industries, technologist, scientist and inventors are gaining in this field. More number of research oriented persons are filing their inventions on a large scale. More number of foreign companies are now establishing their in-house R&D centres in India, which is a clear sign of IPR influence in the country.

1 http://www.ccs.in/ccsindia/policy/rule/articles/IPR_India.PDF
2 http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3312695

Apart, from this, the country's first Compulsory License (CL) against the Bayer cancer drug "NEXAVAR" highlights the Indian IPR regime on the international window. This CL gives a ray of hope to Indian Pharma INC which is not capable of producing life saving drugs and now can manufacture such drugs at a very low cost. Such nature of CL boosts up the health industry of the country. Due to this, high end drugs can be manufactured and supplied to the patients at a very nominal rate which is a sign of a disease free society. According to a recent survey, it was estimated that the number of Trademark and Patent filings have increased 20 times as that of previous years.

Keeping in view the above achievements, our IPR system is still in enact stage. The continuous efforts of Indian Government gives pace to the intellectual regime but more efforts are to be taken in overcoming challenges which restrict IPR to reach the international standards.

CHALLENGES IN IPR : FROM INDIAN PERSPECTIVE

Today, IPR plays an important role in every sector and has become an important aspect of research for Pharma and research oriented industries. The continuous efforts of the government in policy establishment, IT protection, infrastructure, IPR search portals and manpower made this Industry a step ahead. In consideration of all the achievements, our industry is still facing troublesome challenges not only at domestic level but also at international level. Firstly, in India IPR lacks its roots in remote areas, such areas are considered to be the hot bed of inventions. Many people are still unaware about IPR and their advantages in taking rights for their intellectual property. In such cases, the government should promote the awareness of IPR in such remote areas. Large number of awareness camps and educational hubs have to be organized for the skilled impart of knowledge among the inventors. Secondly, a legal issue plays an important role in IPR situation in the country. Today various trademark and patent infringement matters are gaining their significance in the legal story of the country. In such increase of IPR matter, a skilled team of law persons (Judges, advocates) and IPR professionals are required. Apart from the above issues, TRIPS flexibility is yet another object to be discussed here.

Earlier, when Indian Patent system was not in compliance with TRIPS, there was a risk of a healthy Patent protection provision in India. But today the condition has totally changed. India is now a member of TRIPS agreement and our patent system is fully compliant with the TRIPS. Even though Indian Patent Act contains all the TRIPS flexibilities, the relevant provisions require fine tuning, especially of those related to the patent protection, compulsory license and government use.

CONCLUSION

Past decade attempts concluding crucial amendments to the Patent Act of 1970 and have built up a firm base for a fully functional patent system. IPR influence in the current regime is much affected by its awareness and intellect nature. In the current scenario, various important steps have been taken in reaching IPR to a new height and compliance with USPTO, EPO and other countries IPR regime and it was believed that more steps have to be taken. Further, people are still unaware about IPR and their advantages in taking rights for their intellectual property. In such cases, the government should promote the awareness of IPR in remote areas. ◆◆◆

ANALYSIS OF SEBI (BUY BACK OF SECURITIES) AMENDMENT REGULATIONS, 2013 IN RELATION TO THE EXISTING REGULATIONS AND THE COMPANIES BILL, 2013

Megha Kapoor

The Securities and Exchange Board of India [SEBI] has issued SEBI (Buy back of Securities) Amendment Regulations, 2013 [hereinafter referred to as "New Regulations"] vide notification **No.LAD-NRO/GN/2013-14/16/6348 dated 8th August, 2013** amending the existing SEBI (Buy back of Securities) Regulations, 1998 [hereinafter referred to as "Regulations"/ "Old/Earlier Regulations"]. Also, recently the Companies Bill, 2013 [hereinafter referred to as "Companies Bill"] has been passed by the Rajya Sabha. Considering the above New Regulations, Regulations and the Companies Bill an analysis has been done discussing the various provisions. The changes have been discussed point wise as follows:

1. **CEILING PRESCRIBED FOR BUY BACK FROM OPEN MARKET:** Regulation 4 of the Regulations state that a company may buy-back its shares or other specified securities from the existing security-holders on a proportionate basis through tender offer or from the open market offer. The existing regulations do not prescribes any cap on the amount on buy back of securities. However, with the issue of new regulations, a provision has been added to Regulation 4 which provides that buy-back offer from the open market shall not be made for 15% or more of the paid up capital and free reserves of the company. In this regard, clause 68 of the Companies Bill, recently approved by Rajya Sabha provides that the buy-back of securities shall be limited to 25% of total paid-up capital and free reserves. Provided that in case of buy-back of equity shares it is 25% of total paid-up equity capital in a financial year.

2. **LOCK IN PERIOD ON FURTHER BUY-BACK:** The existing regulations do not provide for any lock in period between two buy back offers. However, the new regulations has issued a sub-regulation 4 after sub-regulation 3 of Regulation 4 which provides that no offer of buy-back shall be made by any company within a period of one year from the date of closure of the preceding offer of buy back. The Companies Bill in this regards also provides that no offer of buy-back shall be made within a period of one year from the date of closure of preceding offer of buy-back.

3. **MINIMUM BUY BACK LIMIT:** The newly introduced sub regulation 3 of Regulation 14 of the new regulations provides that atleast 50% of the amount set aside for buy-back shall be utilized for buying back shares or other specified securities. There was no such limit prescribed in the existing regulations. Further, the Companies Bill is also silent with respect to such limit.

4. **PUBLIC ANNOUNCEMENT (PA):** Regulation 15(d) of the said regulations provided that the PA shall be made at least 7 days prior to the commencement of buy back. However, the new regulations has modified the said regulation and provides that the PA shall be made within 7 working days from the date of passing the resolution authorizing buy-back. It is to be noted that there is no such condition relating to the same has been provided in the Companies Bill.

5. **FILING OF COPY OF PA WITH SEBI:** The regulations provided that copy of PA shall be filed with SEBI within 2 days of making such announcement. The same has now been modified and the companies shall now be required to ensure that copy of PA shall be filed with SEBI simultaneous with the issue of public announcement.

6. **SUBMISSION OF INFORMATION PERTAINING TO BUY-BACK:** Regulation 15(i) in the regulations provided that the company shall submit the information pertaining to buy-back on daily basis to Stock Exchange and publish the same in a national daily on a fortnightly basis. However, as per the amended regulation (i) of Regulation 15, the company shall be required to submit the information regarding the shares or securities bought back to stock exchange on daily basis in specified form and the stock exchange shall upload the same on its website. Further, newly inserted

sub regulation (ia) of Regulation 15 provides that the company shall upload the information regarding the shares or other securities bought-back on its website on a daily basis.

7. **PERIOD OF BUY BACK OFFER:** The newly inserted sub regulation (k) of Regulation 15 provides that the buy-back offer shall open not later than seven working days from the date of public announcement and shall close within six months. No such condition was prescribed under the existing regulations. However, the Companies Bill provides that the buy-back shall be required to be completed within a period of 1 year from the date of passing of resolution authorizing buy-back.

8. **BUYING BACK PHYSICAL SHARES/ SPECIFIED SECURITIES:** Regulation 15A has been inserted in the new regulation which deals with buy-back of physical shares or other specified securities. Following are some of the key points:
   i. a separate window shall be created by the stock exchange, which shall remain open during the buy-back period, for buyback of shares or other specified securities in physical form.
   ii. Before proceeding with buy-back, verification of the identity proof and address proof needs to undertaken by the broker.
   iii. the price at which the shares will be bought back shall be the volume weighted average price of the shares or other specified securities bought-back, other than in the physical form, during the calendar week in which such shares or other specified securities were received by the broker

No such conditions were prescribed in the earlier regulations. Neither there is any provision relating to same in the Companies Bill.

9. **ESCROW ACCOUNT:** New Regulation 15B has been inserted which provides that before opening of the buy-back offer, the company shall create an escrow account towards security and shall deposit 25 % of the amount earmarked for the buy-back in such escrow account. No such condition was/is there either in the regulations or Companies Bill.

10. **EXTINGUISHMENT OF CERTIFICATES:** The newly inserted sub regulation 3 of Regulation 16 provides that the company shall be required to extinguish and physically destroy the security certificates so bought back during the month in the presence of a Merchant Banker and the Statutory Auditor, on or before 15th day of the succeeding month. Further, the company shall ensure that all the securities bought-back are extinguished within seven days of the last date of completion of buyback. Earlier there was no such provision under the regulations. The Companies Bill however, provides that the certificates shall be extinguished within 7 days of the last date of completion of buy-back.

11. **RESTRICTION ON DEALING IN SHARES OR SPECIFIED SECURITIES:** Regulation 19(1)(e) has been modified so as to specifically mention the period during which the promoters or the person shall be restricted to deal in shares or specified securities. As per the said regulation, the promoter or the person shall not be allowed to deal in the shares or other specified securities of the company in the stock exchange during the period or off- market, including inter-se transfer of shares among the promoters during the period from the date of passing the resolution relating to buy-back. As per the earlier regulations, such restriction was for during the period when buy back offer is open. No such condition as prescribed in the Companies Bill.

12. **RAISING OF FURTHER CAPITAL:** As per the newly inserted Regulation 19(1)(f), the company shall not raise further capital for a period of 1 year from the closure of buy-back offer, except in discharge of its subsisting obligations. However, as per the Companies Bill, a period of 6 months has be prescribed for the purpose of raising further capital except by way of bonus issue or in discharge of its subsisting obligation.

The amendments made to the existing legal framework of Buy Back Regulations have been done considering the overall interests of the various stakeholders. However, there are certain provisions in the new regulations which are in conflict with the recently passed Companies Bill and will require some kind of clarification. ◆◆◆

SECURITIES LAWS (AMENDMENT) ORDINANCE 2013

Megha Kapoor & Shresth Choudhary[1]

The Securities and Exchange Board of India (frequently abbreviated SEBI) was established in the year 1988 and all its statutory powers were granted to it on the 12th of April, 1992 under the Securities and Exchange Board of India Act, 1992. SEBI is responsible for regulating the security market of India. The Controller of Capital Issues was the regulatory authority before SEBI came into existence. The Controller of Capital Issues was established and given authority under the Capital Issues (Control) Act, 1947.

Recently, the Securities Law Amendment Ordinance 2013 was tabled in Lok Sabha in order to amend the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996. This ordinance is the result of the approval of the Cabinet that held a meeting on the 17th of July, 2013. The Cabinet in its meeting approved the recommended amendment in the Securities and Exchange Board of India (SEBI) Act and related Acts by enhancing their powers so that they are able to regulate the capital markets more efficiently and deal with the growing problem of illegal collective investment schemes and insider trading.

It may be observed that the securities regulations in India have become extremely extensive and sophisticated in the past two decades. The securities laws are being constantly updated in order to meet the market developments, whether it is in the primary market (Initial Public Offerings (IPOs), Qualified Institutional Placements (QIPs), etc.) or in the secondary markets (insider trading, market manipulation, etc.). However, SEBI has been unable to effectively enforce these laws. It may be stated that these strong laws are no good unless they can be effectively enforced by the regulator.

In order to curb this problem, the Union Cabinet approved the Securities Law (Amendment) Ordinance, 2013 which is to bring about significant changes, especially in the enforcement powers of SEBI along with its authority. Apart from a substantive change in the Ordinance relating to the expansion of the scope of collective investment schemes (CIS), all the other changes are aimed at improving the SEBI's investigative and enforcement powers.

PROVISIONS NEWLY ADDED BY THE ORDINANCE

1. COLLECTIVE INVESTMENT SCHEMES

The registration or non registration of a collective investment scheme is no longer a perquisite for invoking the jurisdiction of SEBI. There are no longer any doubts regarding SEBI's domain over innovative methods of raising funds from investors, the scope of the Collective Investment Schemes has been clarified under the Ordinance. Under section 11AA of the SEBI Act, which details with the parameters of a Collective Investment Schemes, it has now been stated that "pooling of funds under any scheme or arrangement" involving a corpus of Rs. 100 crores or more shall be deemed to be a Collective Investment Scheme irrespective of whether it is registered or not registered with SEBI. Hence, registration with SEBI is no longer a prerequisite for such a scheme to fall within the regulatory purview of SEBI

2. INVESTIGATIVE POWERS

Additional powers have been conferred to SEBI in regard to the investigation done by them. These additional powers are in support of the powers that have been granted to SEBI under section 11 of the SEBI Act. However, these rights are to be exercised only under the authority of the chairman and include the power to search and seize record statements under oath, etc. These rights will be in addition to the currently available powers of SEBI.

Moreover, SEBI has now been granted the right to call for information and record information that is relevant including the telephone call data records. This will act as a boon to SEBI as there is hardly any direct evidence available in most of the insider trading cases and due to the lack of evidence SEBI has to rely on circumstantial evidence.

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Further, the power to call for information has also been granted to SEBI wherein information may be called from international sources through regulators in other countries with whom it has entered into an agreement for the sharing of information. These powers will prove to be extremely useful in case of Foreign Direct Investment through entities such as the Foreign Institutional Investors (FIIs) where Know Your Customer (KYC) norm may not have been implemented adequately by the entities involved.

3. ENFORCEMENT METHODS / REMEDIES

Powers have been granted to SEBI to attach the violator's property, bank accounts and also to arrest and detain the violators in prison. These powers have been granted to SEBI under the ordinance as it has been noted that even when SEBI was successful in obtaining a favorable outcome in enforcing its regulations, often the consequence on the violators has been less than desirable. An example of this is the Sahara case where despite a favorable outcome from the Hon'ble Supreme Court, there have been delays and difficulties in the enforcement of the orders against the person who is guilty of non-compliance.

4. SPECIAL COURTS

Ordinance provides that special courts are to be set up in order to deal with cases involving securities regulations. This step has been taken in order to deal and settle the cases involving securities regulations in a timely manner and to avoid the unnecessary delay. However, one of the main reasons that led to the establishment of these special courts is that under the normal procedure there is no track record of criminal prosecution of securities offenders which may act as a deterrent to the markets.

IMPORTANT CASE-LAWS

SARADHA GROUP CASE

In the 70's, the legislature took steps to secure the economy of the nation. The Legislature had nationalized a large banking sector. During that time period, there were many problems which were being faced by Indians, especially which were to be named were the Indian Villagers & farmers; who were given loans but with a large amount of interest. This had been a heavy load on those Indian villagers & farmers.

The nationalization of the banking sector was to help those Indians villagers who were suffering this huge problem. The banks had come up with various schemes for the Indian villagers. This was the period for globalization. There were foreign banks who also invested huge amount of investments. The private banks were equally involved. They had also invested equally in the market. The small investment market was captured by many vultures," as stated in the judgment of; **Basabi Rai Chowdhury Vs. Union of India & Ors.**,[2] which was given my Calcutta high Courrt dated 19.06.2013. The deposits were collected from the depositors and they were paid a high rate of interest which they never got from the market by investing the same amount of investment. But to this, The system had collapsed. Because of this, the small companies came under the scanner of Reserve Bank of India. There were certain companies who were functioning without any valid license. To which the the Reserve Bank of India took action, by compelling them to stop functioning. Sanchayini Saving was also one of them.

They used to collect lump sum deposits from the depositors and pay them high rate of interest that they could not get from the market by reinvesting the said sums. Very soon, the system had collapsed. There were many who did not have access to the banks. They also did not know how to operate this. For the same, The bank had several excuses. And tye mentors also agreed with the same. The finance companies flourished, and so did the Saradha group. The involvement was of 30,000 crores. The petitioner had filed a Public interest Litigation, where she came to know that Saradha Group was one of the largest chit fund company which had been operating from Eastern India.

On April 16, 2013 the state had informed the court about the "Saradha group." One of the directors, Monaj Negel, was arrested on April 20, 2013. Later 3 other

2 MANU/WB/0147/2013

people were also arrested for the same. One of them , was Sri Sudipta Sen, nabbed from Jammu & Kashmir.

The investments were fraudulently being sold as "chit fund," under the "Chit Fund Act (1982).which is regulated by the state government.

The state government of west Bengal was warned by SEBI about the saradha group's chit fund. Saradha had changed its way, this time the group had sold large numbers of share of various listed companies, siphoning off the proceeds of the sale to accounts which have not been identified.

The Saradha group's activities like CIS and not the chit fund were being identified by SEBI in 2012 and SEBI had demanded to stop operating its investment schemes. However, the Saradha Group never stopped until it was collapsed in April 2013.

SAHARA CASE[3]

The Judgment given in this case acts as a milestone in India's Corporate landscape, as it not only sanctifies SEBI's absolute powers to investigate the matters of listed companies, but also the matters pertaining to the unlisted companies. Under this judgment, SEBI has been vested with myriad powers to investigate into any matter concerning the interest of the investors even if it pertains to companies which are not listed. It clarifies the significant points of law and removes the grey areas relating to the issues of securities by the so called unlisted companies which are trying to take advantage of the loopholes of law. This Judgment has also bridged the jurisdictional gap which previously existed between that of "the Ministry of Corporate Affairs (MCA)" & "SEBI". It is also hoped that in the future this judgment will be instrumental in preventing turf war between the "MCA" & "SEBI" concerning the jurisdiction issues as it categorically iterates that in the matter of public interest, both SEBI & MCA will have concurrent jurisdiction.

CONCLUSION

The ordinance passed by the Union Cabinet on the 18th of July, 2013 and tabled on Lok Sabha on 12th August, 2013 can be said to be exquisite in nature as it has acted as oil in a rusted mechanism. This ordinance has granted powers to SEBI that are required by it in order to regulate the securities market in today's world. SEBI was established by the government in order to control and regulate the securities market. The powers that have been granted to SEBI under the ordinance are somewhat similar to the powers that are given to the securities market regulators in foreign countries such as the USA. Hence, it may be stated that the ordinance passed by the union cabinet in regard to SEBI does not grant some special powers of SEBI but provides it with the mechanism that is required by it in order to regulate the securities market efficiently in today's world. ◆◆◆

3 MANU/SC/0735/2012

HISTORIC MARRAKESH TREATY: FOR VISUALLY IMPAIRED/ PRINT DISABLED PERSONS

Sugandha Nayak

In keeping with the fundamental objectives of non discrimination, equal opportunity, access, complete individual development, effective and inclusive participation in society, the Treaty of Marrakesh truly balanced human rights and intellectual property rights. Marrakesh, an international treaty that ensures visually impaired people to have easier access to books, unanimously adopted by member state of the UN's World Intellectual Property Organization (WIPO). The treaty was approved by representatives from WIPO's 186 member states including India at "The Marrakesh Treaty to Facilitate Access to Publish Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled" on June 27, 2013. After this treaty, books would be available in all sorts of formats such as Braille, for the print disabled/visually impaired, in order to enable them to read, learn and participate in the society.

TREATY'S AGENDA AND THE FINAL VERDICT

The treaty recognized the obligation of the right holder to make works accessible to persons with visual impairment and to the print disabled, recognized that though countries have different limitations and exceptions to their copyright law, but a uniform international framework to be followed and to ensure cross-border exchange of books in accessible format. The main agenda was to promote sharing of books in any accessible format for blind or visually impaired, and to alleviate the "book famine" experienced by many of the WHO estimated 300 million people from such disability in the world. According to World Health Organization, India has more than 63 million visually impaired people, of whom about 8 million are blind.

Considering the access of knowledge, keeping the blind persons in mind, the treaty removed barriers to access, recognized the right to read, established equal opportunities and rights for blind, visually impaired and otherwise print disabled persons who are marginalized due to lack of access to published works. Adoption of this treaty has made equal and appropriate balance between Copyright Law, its exceptions and limitations. The treaty also focused to adopt national law provisions that permit the reproduction, distribution and making available published works in accessible formats without having to seek permission from organizations that serve people who are blind, visually impaired and print disabled. This will in turn increase the availability of accessible works as different countries will be able to each produce accessible versions of materials which can then be shared with each other instead of duplicating efforts by adopting the same work.

Furthermore, because copyright law is "territorial" these exemptions usually do not cover the import or export of work covered into accessible formats, even between countries with similar rules. Organization in each country must negotiate license with the right holder to exchange special format across border, or produce their own material, a costly undertaking that severely limits access by visually impaired persons to print works of all kinds. [1]

SUBSTANTIVE PROVISION[2]

Article 2 - of the draft lays down certain important definitions. From the definition of the work, it becomes clear that this treaty is applicable to literary and artistic work. 'Accessible format copy' is defined to mean a copy of a work in an alternative manner or form in order to enable people with visual impairments to have access to these works 'as feasibly and comfortably as a person without visual impairments or print disabilities.' The breadth of this definition is welcoming. However, the US and EU policy on digital locks as well as translation rights may pose a hurdle for the realization of access and availability of such formats. Therefore, though the law requires books to be made available easily, technology and market choices by the US and EU may

1 *http://www.wipo.int/pressroom/en/articles/2013/article_0017.html, last retrieved on 02.08.2013.*
2 *http://spicyipindia.blogspot.in/search?updated-max=2013-07-07T16:16:00%2B05:30&max-results=20&start=19&by-date=false, last retrieved on 04.08.2013.*

hinder 'feasible and comfortable' access to such formats.

The footnote to Article 7 allows authorized entities to make use of technological measures and says that nothing should disturb such practices if they are in accordance with national laws.

Article 3 - Another major development has been the inclusion of the 'print disabled' as a beneficiary (along with the blind and visually impaired). This is in keeping with the objectives of non-discrimination and equal opportunity. A print disable person is someone who cannot access print due to certain visual, physical or cognitive disabilities. Example a person who has no hands cannot turn page of a printed book and is print disabled (even though his visions is fine).

Article 4.2 - The treaty allows the owner of the copyright, the beneficiary (or someone acting on his behalf) or an 'authorized entity' to make an accessible format copy of a work without the authorization of the copyright holder. Moreover, the treaty mandates that such copies be shared only with beneficiaries and be made from lawfully obtained copies. The Indian Copyright law also allows the disabled person and non-profit third parties working for the disabled to convert works into accessible formats without authorization from the right holder.

Article 5 - Cross border exchange of copyrighted works in accessible formats is one of the primary aims of the treaty. Technologically advanced developed nations have the capability to convert works into various formats, whereas the developing nations may not have the same capabilities. The treaty enables easy access to converted works across borders. This is giant step for ensuring access. However, since the treaty text uses the word 'may' and gives an impression that this provision is non-mandatory, the US and EU may take advantage of such language.

Article 9 and 14 - The treaty delegates administrative functions to the International Bureau of WIPO. The International Bureau will also help in facilitating cross border exchange of accessible formats by encouraging voluntary sharing of information so that authorized entities can identify each other. An Assembly to maintain and develop the treaty has also been created. Each Contracting State is represented by one delegate in the Assembly who has one vote.

India's Prospective & the Copyright Amendment Act, 2012 WTO/TRIPS agreement in 1994 has given India an important multilateral treaty for blind people. It has set up an unprecedented example in solving the problem in the international norm setting and it reinforced our confidence in the WIPO's significant role in managing and implementing the international copyright system. It has been found that only 1% of all the books are available in accessible formats and it is stated that 47 million of the world's visually impaired persons stay in India. In order to deal with this deficit an amendment in the Indian Copyright Act was introduced vide Copyright Amendment Act, 2012 and amendment in Section 52(1)(zb) which permits the conversion of a work into any accessible format exclusively for the benefit of persons with disabilities. This amendment was introduced much before the Marrakesh Treaty and in all probability would have been upheld as a shining example at the Marrakesh Conference, Morocco.

CONCLUSION

Prior to the treaty, it was often unlawful to allow so-called authorized entities (libraries or NGO's) in one country to send accessible format books directly to authorized entities or blind individuals in another country. This resulted in large libraries of accessible books being trapped behind national borders. As a result, the same books had to be made accessible from scratch in each new country where a blind person needed it. Now cross-border shipment will be legal with little administrative burden. The treaty reiterates the requirement that the cross border sharing of work created based on limitation and exceptions must be limited to certain special cases which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interest of the right-holder. The treaty also allows for the unlocking of digital locks on e-books for the benefit of blind people. In other words, a kindle book or iBook with digital rights management could now be unlocked and printed in Braille without consulting the rights holder. At present, 51 countries have signed the treaty making it the largest number of the countries to ever sign a WIPO-administration treaty upon adoption. ◆◆◆

A WELCOME STEP TO CLEANSE CRIMINALISATION OF POLITICS

Jitendra Kumar

On 10th July, 2013, the Supreme Court handed down a landmark judgment which struck down section 8 (4) of the Representation of People Act, 1951 (hereinafter referred to as 'Act'). The provision allowed MPs and MLAs to continue in their posts, provided they had appealed or filed an application for revision against their conviction in higher courts within three months from the date of conviction. So apparently they could not be disqualified until the appeals or revisions were exhausted.

In a country wherein, 162 out of 545 Lok Sabha MPs and 1258 out of 4,032 sitting MLAs have criminal cases pending against them[1], it is a big leap by the Supreme Court towards depurgating of Indian politics.

BACKGROUND OF THE CASE

Two Public Interest Litigations were filed by Lily Thomas and an NGO Lok Prahari in 2005 questioning the validity of section 8(4) of the RP Act, since it provides special safeguard to the sitting MPs and MLAs who have been convicted of an offence and whether Section 8(4) of the RP Act is Ultra Vires to the Constitution.

ARGUMENTS OF THE PETITIONERS

The counsel of the petitioners presented the following arguments before the Hon'ble Supreme Court of India:-

- In clause (1) of Articles 102 and 191 of the Constitution, same disqualifications are provided for a person being chosen as a Member of Parliament or Legislative Council of the State or State Assembly and for a person being a member of these bodies. Therefore, the disqualifications for a person to be elected as a member and for a person to continue as a member cannot be different.

- There is no provision in Articles 102 and 191 of the Constitution which confers power on Parliament to make a provision to protect sitting members from the disqualifications it lays down for a person being chosen as a member, parliament lacks legislative power to enact section 8 (4) of the Act and therefore it is ultra vires to the Constitution.[2]

- If a person is convicted of any offences mentioned in Sub-sections (1), (2) and (3) of section 8 of the Act, he becomes disqualified from continuing as a member immediately, notwithstanding the fact that he has filed an appeal or a revision against the conviction. So there is no legal basis to provide Sub- section (4) of section 8 of the Act.

- Finally it was contended that section 8(4) is arbitrary and discriminatory as it provides special privilege to sitting members over persons to be elected so far as disqualifications are concerned.

ARGUMENTS OF THE RESPONDENTS

- In the case of ***K. Prabhakaran v. P. Jayarajan***[3], the Constitution Bench has held that purpose behind creating section 8(4) is not to confer an advantage on sitting members but to protect the House. If a member is convicted and has been pronounced sentence of imprisonment, it would make him forfeit his membership of the House which may result in two far-reaching repercussions. Firstly, strength of political party to which such convicted member may belong shall reduce and a government surviving on a razor-thin majority could be rendered even more unstable which can make a significant impact on functioning of the Government. Secondly, if the appellate court were to set aside the conviction, the by-election already held to fill the vacancy would be fraught with legal

1 The survey dated 10th July 2013 was conducted by The Association of Democratic Reforms (ADR) and National Election Watch (NEW) available at http://adrindia.org/sites/default/files/All%20India%20Analysis%20of%20criminal%20cases%20on%20elected%20representatives.pdf

2 Lily Thomas v. Union of India, MANU/SC/0687/2013, Para 6.

3 AIR 2005 SC 688.

complications. It is due to the aforesaid two reasons, Parliament has put sitting members on a different footing.

- In general practice, acquittals in the levels of Appellate Court are very high and because of this reason, parliament has provided three months time for filing an appeal or revision in section 8 (4) of the Act so that disqualification gets deferred till the appeal or revision is decided by the Appellate or the Revisional Court.

- It was further submitted that section 8 (4)of the RP Act, does not lay down different disqualifications for members different from the disqualification laid down for persons to be chosen members in Sub-sections (1), (2) and (3) of section 8 of the Act. Section 8 (4) merely provides that disqualifications provided in Sub-sections (1), (2) and (3) of section 8 in case of sitting members takes place only when appeal or revisions is disposed of. The Parliament has such power under Article 102 (1) (e) and 191 (1) (e) of the Constitution to prescribe when exactly the disqualification would become effective in the case of sitting members with a view to protect the House.

- Finally it was submitted that Appellate Court does not have power under section 389 (1), Code of Criminal Procedure to stay the order of conviction; therefore a safeguard had to be provided under section 8(4) of the Act.

FINDINGS OF THE HON'BLE SUPREME COURT

The Hon'ble Court after going through the arguments put forward by both the parties held that once a sitting member becomes disqualified by or under any law made by Parliament under Articles 102 (1) (e) and 191 (1) (e) of the Constitution, his seat will become vacant immediately by virtue of Articles 101 (3) (a) and 190 (3) (a) of the Constitution. It further held that the Parliament cannot make a provision as in section 8(4) of the Act to defer the date of disqualification on which the disqualification of a sitting member will have effect.

Further, the court relied on the Constitutional Bench's decision in ***Election Commission of India v. Saka Venkata Rao***[4], wherein it was held that there has to be same set of disqualification for election as well as for continuing as member. Thus, Parliament does not have power to make different laws for a person to be disqualified for being chosen as a member and for a person to be disqualified to continue as member as it made by creating section 8 (4) of the Act.

For aforesaid two reasons, the Hon'ble Supreme Court held that, Parliament has exceeded its power conferred by the Constitution in enacting Sub-section (4) of section 8 of the Act and accordingly it is ultra vires the Constitution.

However the Hon'ble Court further held that this judgement of the court will be prospective in nature. Sitting members who have already been convicted under section (1), (2) and (3) of section 8 of the Act and have filed appeals or revisions in higher courts before the pronouncement of this judgment, would not come under the purview of this declaration since it will be against the principles of natural justice.

ANALYSIS OF THE JUDGMENT

There is no doubt that such verdict will help in reducing the scourge of criminalization of politics but it also leaves open a number of loopholes for dubious politicians. Given the present state of the judicial system, conviction by a trial court is often set aside by a higher court on appeal. If a member is disqualified in some case and gets an acquittal later by a higher court, there will be no scope for redressal. Hence, it can lead to filing of fraudulent cases particularly when election would be round the corner.

This judgment will not impact lawmakers who are facing charges but have not been convicted. And going by the conviction rate of Indian courts, they have little to worry about in the near future. Immediate disqualification of convicted elected representatives may lead to politically susceptible government. Not long ago, a government lost power at the Centre by just one vote.

However, the real significance of this ruling would be that it will act as a deterrent for political parties which

1 AIR 1953 SC 210.

have been giving tickets to tainted candidates. This verdict would also bring in equality between an ordinary individual and elected member who so far enjoyed an additional layer of protection from disqualification under section 8(4) of the Act.There is clearly no love lost between the Supreme Court and politicians. In today's time where scams like 2G, Coalgate, and the very recent Railway scam, have hurt the current government immensely. It is the same sceario with opposition parties, which in their ruling states are culprits of the same kind of scandals and corruption. The very essence of democracy that politicians of yesteryears, like Gandhi, Nehru and Patel stood for to serve the country's people and provide them clean, healthy and corrupt-free governance, has long been relegated to the trashcan. Under these circumstances, in the current state, this landmark ruling is more like a judicial revolution rather than being mere tokenism. ◆◆◆

DOCTRINE OF ESTOPPEL: OVER VIEW

Arvind Thapliyal & Kunal Kumar[1]

ESTOPPEL PRINCIPLE

"*Estoppel may be defined as disability whereby a party is precluded from alleging or proving in legal proceedings, that a fact is otherwise than it has been made to appear by the matter giving rise to that disability.*" HALSBURY (4th Ed, Vol. 16, para 1501, page1008).

The term "Estoppel," comes from an old-French word- "Estoupail" (or variation), which means "stopper plug", referring to placing a brake on the imbalance of the situation. The rationale behind estoppel is to prevent injustice owing to fraud or inconsistency.

In its simplest sense, doctrine of Estoppels, precludes a person from denying or to negate anything to the contrary of that which has been constituted as truth, either by his own actions, by his deeds or by his representations or by the acts of judicial or legislative officers. Estoppel is often described as a rule of evidence as indeed it may be so described. But the whole concept is more carefully viewed as a rule of substantive law.

To invoke the doctrine of estoppels, there are three conditions which must be satisfied;

1. Representation by a person to another

2. The other should have acted upon the said representation and

3. Such action should have been detrimental to the interests of the person to whom the representation has been made.

However in the case, "**Gyarsi Bai vs. Dhansukh Lal,**[2]" it was observed by the Hon'ble Apex Court that even if the first two conditions are fulfilled, but the third is not, then there is no scope to invoke the doctrine of estoppel.

TYPES OF ESTOPPEL

1. Estoppel by Silence or Acquiescence

2. Employment Estoppel

3. Reliance-based estoppels:

a. Promissory estoppel, without any enforceable contract a promise has been made by one party to another.

b. Proprietary estoppel, where the parties are litigating the title to land.

4. Estoppel by deed

5. Estoppel by record

6. Estoppel Against Minor

7. Estoppel by deed

INTERNATIONAL PROSPECTIVE

THE DEVELOPMENT OF ESTOPPEL – U. K.

In English law, a promise which has been made without consideration is generally not enforceable. It is known as a bare promise. The doctrine of promissory estoppel was first developed in **Hughes v. Metropolitan Railway Co**.[3]

Thomas Hughes was the owner of the property which was leased to the Railway Company. Under the lease agreement, Hughes was entitled to compel the tenant to repair the building within six months of notice. The Notice was served to leasee on 22 October 1874, from which the tenants had until 22 April to make those repairs. On 28 November, the tenant had sent an offer letter to owner for purchasing the same property. Negotiations began and continued until 30 December, but there was no settlement. The time of 6 months had elapsed; the owner sued the tenants for the breach of contract and also tried to evict the tenant.

The House of Lords ruled that with the initiation of the negotiations there was an implied promise by the landlord not to enforce their strict legal rights with respect to the time limit on the repairs and the tenant acted on this promise to their detriment, thus allowing the tenants more time to repair. Hence, the owner is estopped from claiming to the contrary.

However, the doctrine of estoppel had lost its value for

1 Intern
2 AIR 1965 SC 1055

3 (1876-77) LR 2 App Cas 439

some time after this case and it was resurrected by Lord Denning in the case "**Central London Property Trust Ltd v High Trees House Ltd**"[4]

In 1937, High Trees House Ltd leased a block of flats in Clapham, London, for a rate £2500/year from Central London Property Trust Ltd. Due to the prevailing conditions during the beginning of the World War II occupancy rates were drastically lower than normal. In January 1940, to ameliorate the situation the parties made an agreement in writing to reduce rent by half. However, neither party stipulated the period for which this reduced rental was to apply. Over the next five years, High Trees paid the reduced rate while the flats began to fill, and by 1945, the flats were back at full occupancy. Central London sued for payment of the full rental costs from June 1945 onwards.[5]

Based on previous judgments as **Hughes v Metropolitan Railway Co**, Denning J held that the full rent was payable from the time that the flats became fully occupied in mid-1945. However, he continued in an obiter statement that if Central London had tried to claim for the full rent from 1940 onwards, they would not have been able to. This was reasoned on the basis that if a party leads another party to believe that he will not enforce his strict legal rights, then the Courts will prevent him from doing so at a later stage. This obiter remark was not actually a binding precedent, yet it essentially created the doctrine of promissory estoppel.

THE INDIAN DEVELOPMENT OF ESTOPPEL

Estoppel has been defined under Section 115 in "The Indian Evidence Act, 1872."

"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing".

The History of doctrine of promissory estoppel in India can be traced to the case of **Ganges Mfg Co. v. Sourajmul**[6] whereby the Calcutta High Court had held that the doctrine of estoppel was not only limited to the law of evidence, but that a person may be estopped from doing acts or relying on particular arguments or contentions.

ESTOPPEL AGAINST GOVERNMENT

In **Motilal Padampat Sugar Mills vs. State of U.P.,**[7] it was held that the government was bound by its promise & was liable to exempt the appellant from sales tax for a period of three years commencing from the date of production.

ESTOPPEL AGAINST THE PRIVATE PARTIES

Taking note of section 115 of the Indian Evidence Act, which would be the governing law for deciding on the disputes between the parties, it can be held that promissory estoppel also applies in cases of dispute between private parties. It was held in the case, "**Century Spinning and Mfg Co. Ltd. v. Ulhasnagar Municipal Council**"[8] by Supreme Court, the concept of promissory estoppel also applies to private individuals/ entities.

NO ESTOPPEL CAN BE MADE AGAINST STATUTES

In **Jatindra Prasad Das Vs. State of Orissa & others**,[9] Orissa High Court, held that:

"There can be no estoppel against statutes and the Statutory Provisions and therefore, the said statutory provisions cannot be ignored on the grounds of an earlier administrative decision or precedent."

State of Bihar and others v. Project Uchcha Vidya, Sikshak Sangh and others,,[10] in which it was laid that "We do not find any merit in the contention raised by the learned counsel appearing on behalf of the respondents that the principle of equitable estoppel would apply against the State of Bihar. It is now well known, the rule of estoppels has no application where contention as regards a constitutional provision or a statute is raised."

4 [1947] KB 130
5 en.wikipedia.org/wiki/Central_London_Property_Trust_Ltd_v_High_Trees_House_Ltd
6 (1880) ILR 5 Cal 669
7 1979 AIR 621, 1979 SCR (2) 641
8 [1970] 3SCR 854
9 MANU/OR/0225/2011
10 MANU/SC/0054/2006 : (2006) 2 SCC 545

Olga Tellis v. Bombay Municipal Corporation (1985.07.10) (Right to Life and Livelihood for Homeless),[11] that there can be no estoppels against the constitution of India or against the fundamental rights.

SOME CASE-LAWS RELATED TO ESTOPPEL

i. **International Amusement Ltd. v Entertainment Tax Officer & Ors12**. It was held that "Benefits of exemption which is available to Assessee shall not be denied by Authority, unless it is justified by law."

ii. **O.P. Sharma & Ors. Vs .Union of India & Ors.,13**, once the voluntary retirement is taken by the petitioners and they have taken it without reserving any right as claimed in the writ petition, the petitioners also would be estopped in claiming any reliefs in the writ petition. ◆◆◆

11 1986 AIR 180, 1985 SCR Supl. (2) 51
12 MANU/DE/0360/2013
13 MANU/DE/0524/2013

MEDIA TRIAL VERSUS FREE AND FAIR ADMINISTRATION OF JUSTICE: NEED FOR GUIDELINES

Mithilesh Kumar

Freedom of Press is not specifically mentioned in Part III of Indian Constitution, however the Hon'ble Supreme Court in a number of judgments has recognized that freedom of speech and expression also includes freedom of press[1]. In rapidly changing socio-economic conditions of a country like India, the role of media/press has gained prominence and hence it is often quoted that "Media" is the fourth pillar of Indian Democracy. According to criminal jurisprudence, a suspect/accused is entitled to a fair trial and is presumed to be innocent till proven guilty by a Court of law. None can be allowed to prejudge or prejudice his case till the completion of trial. However, media on account of excessive coverage goes beyond its domain and publishes and covers interviews of witness or relative of a victim and prejudges the issue of conviction of the accused while the matter is pending adjudication in a court of law. This has a tendency to prejudice the mind of Court, prosecutor and general public at large.

Art. 19(1)(a) of the Constitution of India guarantees, freedom of speech and expression and Art. 19(2) permits reasonable restrictions to be imposed. However Article 19(2) does not refer to 'administration of justice' but interference of administration of justice is clearly referred to in the definition of 'criminal contempt' in Sec. 2 of the Contempt of Courts Act,1971 and in Sec. 3 thereof as amounting to contempt. Therefore, publications/coverage which interfere or tend to interfere with the administration of justice amount to criminal contempt under the Contempt of Court Act and if in order to preclude such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.

Under Article 19(1)(a) of the Constitution, the rights of the freedom of Press have been recognized as Fundamental Rights and under Article 21 of the Constitution the accused/suspect and under trial and the Civil litigant have Fundamental Right to have a free and fair trial[3]. Therefore balancing between the two fundamental rights has become inevitable and the time has come that Courts should give appropriate directions with regard to reporting of matters (in electronic and print Media) which are sub *judice*. When rights of equal weight clash, Courts have to evolve balancing measures based on re-calibration under which both the rights are given equal space in the Constitutional Scheme. In the Constitution of the United States of America, freedom of press is absolute and any interference with right of media to report, comment upon pending trial is illegal.

The Law Commission of India in order to harmonize the aforesaid two rights Freedom of Press Versus Right to free and fair trial, in its 200th Report[4] submitted on 31st August 2006 recommended various amendments to the Contempt of Court Act 1971 and measures of postponement of proceedings and further said that such powers cannot be vested in the subordinate courts where the criminal proceedings are 'active'. This is because under the Contempt of Court 1971 Act, the subordinate courts have no power to take action for contempt. Under Section 15(2), they can only make a 'reference' to the High Court. Further, the balancing of the rights of freedom of speech and the due process right of the suspect/accused as explained in Maneka Gandh's[5] case can be done more appropriately by the High Court which is a Constitutional Court. The High Court for the purpose of passing postponement orders will be a Bench of not less than two Judges.

However, it needs to be appreciated that Media also plays a good role while divulging corruption in government exchequer and in bringing out the government's inaction on many occasion to the lime light and eventually action is taken. But at the same time conflicts arise when media transgresses its domain and tries to usurp the power of judiciary and make judgmental comments on pending trials. But balancing

1 Indian Express Newspapers V Union of India 1985 SCR (2) 287
2 Bennett Coleman & Co. & Ors Vs Union Of India & Ors AIR1973 SC 106
3 Maneka Gandhi Vs Union Of India 1978 SCR (2) 621
4 www.lawcommissionofindia.nic.in/reports
5 1978 SCR (2) 621

between the rights of people to know and presumption of the accused to be innocent till he is found guilty by a competent court, has become inevitable but neck to neck competition regarding publication and coverage among various media houses having a tendency to interfere with administration of justice has become matter of concern for legislature as well as judiciary.

The Hon'ble Supreme of India in the matter Sahara India Real Estate Corporation Ltd. and Ors.Vs. Securities and Exchange Board of India and Anr[6] Constituted the five judge Constitution Bench when during the pendency of appeal despite the interim order of the Court some of the news papers published the proceedings of the judgment, the Hon'ble Court laid down appropriate guidelines with regard to reporting in electronic and print media of matters which is *sub judice* in Court including public disclosure of documents forming part of Court proceedings and also the manner and extent of publicity to be given by print/electronic media of pleadings/documents filed in proceeding in Court which are pending and not yet adjudicated upon and the court suggested following measures:-

1. PRIOR RESTRAINT

"Open Justice" is the cornerstone of our judicial system. It instills faith in the judicial and legal system. However, the right to open justice is not absolute. It can be restricted by the court in its inherent jurisdiction as done in Mirajkar's case[7] if the necessities of administration of justice so demand. That, such orders prohibiting publication for a temporary period during the course of trial are permissible under the inherent powers of the court whenever the court is satisfied that interest of justice so requires. Such a temporary prohibition of publication of court proceedings in the media under the inherent powers of the court cannot be said to offend Article 19(1)(a).

2. CONTEMPT OF COURT ACT, 1971

The media has a right to know what is happening in courts and to disseminate the information to the public which enhances the public confidence in the transparency of court proceedings. As stated above, sometimes, fair and accurate reporting of the trial (say a murder trial) would nonetheless give rise to substantial risk of prejudice not in the pending trial but in the later or connected trial. In such cases, there is no other practical means short of postponement orders that is capable of avoiding such risk of prejudice to the later or connected trial. The inaccuracy of reporting of court proceedings will be contempt only if it can be said on the facts of a particular case, to amount to substantial interference with the administration of justice. The reason behind Section 4 is to grant a privilege in favor of the person who makes the publication provided it is fair and accurate. This is based on the presumption of "open justice" in courts.

3. ORDER OF POSTPONEMENT OF PUBLICATION

Right to freedom of expression under the First Amendment in US is absolute which is not so under Indian Constitution in view of such right getting restricted by the test of reasonableness and in view of the Heads of Restrictions under Article 19(2). Thus, the *clash model* is more suitable to American Constitution rather than Indian or Canadian jurisprudence, since First Amendment has no equivalent of Article 19(2) or Section 1 of the Canadian Charter. This has led the American Courts, in certain cases, to evolve techniques or methods to be applied in cases where on account of excessive prejudicial publicity, there is usurpation of court's functions. These are techniques such as retrials being ordered, change of venue, ordering acquittals even at the Appellate stage, etc. In our view, orders of postponement of publications/ publicity in appropriate cases, as indicated above, keeping in mind the timing (the stage at which it should be ordered), its duration and the right of appeal to challenge such orders is just a neutralizing device, when no other alternative such as change of venue or postponement of trial is available, evolved by courts as a preventive measure to protect the press from getting prosecuted for contempt and

6 (2012)10SCC603

7 Naresh Shridhar Mirajkar V. State of Maharashtra AIR 1967 SC 1 also to prevent administration of justice from getting perverted or prejudiced.

4. RIGHT TO APPROACH THE HIGH COURT/ SUPREME COURT

In the light of the law enunciated hereinabove, anyone, be an accused or an aggrieved person, who genuinely apprehends on the basis of the content of the publication and its effect, an infringement of his/ her rights under Article 21 to a fair trial and all that it comprehends, would be entitled to approach an appropriate Writ Court and seek an order of postponement of the offending publication/broadcast or postponement of reporting of certain phases of the trial (including identity of the victim or the witness or the complainant), and that the Court may grant such preventive relief, on a balancing of the right to a fair trial and Article 19(1)(a) rights, bearing in mind the abovementioned principles of necessity and proportionality and keeping in mind that such orders of postponement should be for short duration and should be applied only in cases of real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial.

CONCLUSION

Though Media is the fourth pillar of Indian Democracy and under Article 19(1)(a) of the Constitution it has a fundamental right, but at the same time it cannot be allowed to transgress its domain under the garb of freedom of speech and expression to the extent as to prejudice the trial itself and the time has come to legislate to control the unfettered power of media. Unlike American Constitution, Indian Constitution has wide power to impose restriction and control the power of media under article 19(2) of the Constitution. Recently it has also come to light that the media houses are making an arrangement with corporate houses for not reporting anything against them for immoral consideration. Thus while balancing between the two fundamental rights on account of excessive coverage in an appropriate case mode of prior restraint and self regulation should be effectively invoked and those who violate the basic code of conduct must be punished under Contempt of Court Act, 1971. When rights of equal weight clash, Courts have to evolve balancing techniques or measures based on re-calibration under which both the rights are given equal space in the Constitutional Scheme. ◆◆◆

INVESTMENT OPPORTUNITIES IN INDIA

Shivananda

India is undoubtedly a very fertile land for implanting the seed of Business and investment and reap out the handsome benefits out of it. According to the UNCTAD's world investment prospects survey, India is ranked at the second position in the whole business world in terms of "most profitable destination". The Government of India has provided many facilities to NRIs, PIOs and overseas corporate bodies (OCBs). At the same time India offers a stable and prosperous foundation which is a basic requirement to develop a business.

The Government of India is promoting 'public private partnership'(PPP's)in several kinds of projects which provide several new vistas in – Infrastructure, Education, Health, sectors etc.

In India, there is a great rise of disposable Income and at the same time Health Insurance and increasing health related lifestyle challenges throughout the country.

With regards to the real estate sector, the Government of India has made out several policies & schemes for NRIs and PIOs who could foresee and are confident to invest in Indian Real Estate Sector. This sector has outperformed the other investment options in India. Considering this fact in view, India has created an easy process for foreign investors to invest in India. The Overseas Indian Facilitation Centre (OIFC) has developed an online toolkit –"Investment Guide to India". It is a simple step wise investment guide for the non resident Indians wanting to invest in India.

The Government of India also provides various investment opportunities to the Non- Resident Indians (NRIs), some of the popular ones among those are as follows-

(a) Non Resident (External) Rupee account (NER):- It can be opened only by NRIs and not by the holder of the Power of Attorney. This Account is in the form of savings, current and recurring or fixed deposits accounts. The Interest rates on these saving deposits is the same as that of domestic savings deposits.

(b) Non Resident Ordinary (NRO) Rupee account: - It can also be opened in the form of current, savings, recurring or fixed deposits accounts. It must be denominated in Indian Rupee permissible credits to NRI account or transfers from Rupee Account of Non Resident Banks.

(c) Bank's Fixed Deposit: Fixed deposits in banks are a very safe way to invest in India for the NRIs. There is no uncertainty in this investment.

(d) Foreign Currency Non-Residents Bank Account "FCNRB Account":- These are term deposits of 1 to 5 years. All the debtors, creditors permissible in NRI accounts, including credit of sale proceeds of FDI investors are permissible in FCNRB Accounts. This account can be in any truly convertible currency.

(e) Senior Citizens Saving Scheme (SCSS):- is a newly created investment opportunity for senior citizens. It can be opened by person who have attained the age of 60 years or above.

(f) National Saving Certificates: NSC is a very safe investment with handsome returns. Neither maximum limit is there for this investment nor there is any tax deduction at the source. It can be used as collateral security to get loans from banks.

SCOPE OF INVESTMENT IN VARIOUS MAJOR SECTORS

In India, 100% FDI is permitted under automatic route for various projects of Electricity Generation (except atomic energy), transmission, distribution and power trading. In the current budget (2013-14), India has approved a scheme for the financial restructuring of DISCOMS to restore the growth of energy sector in India. Furthermore, if anybody wants to set up an SEZ, the government has exempted them from the Net Foreign Exchange (NFE) obligation, applicable to regular units in such enclaves.

Due to all the above reasons, investment plans in power sector in India is very positive. Investment in power sector in India has witnessed a great boost in the recent years. Indian Power sector consists of both renewable (solar wind hydro sector) and non-renewable (petroleum & natural gas, coal etc.) resources. India is ranked in the top five world wind energy markets.

Today, in the field of pharmaceutical energy markets, India is amongst the top five pharmaceutical emerging markets in the world. The total revenue of this sector is expected to reach at US $ 74 billion by 2020. In Indian Pharmaceutical Business Markets, there are a number of mergers and acquisitions. Business in this sector has a great future because Indian Medicines are increasingly becoming popular in all the parts of the world because of cost effectiveness and easy availability. The manufacturing cost of Indian pharma companies is up to 65% lower than that of US firms and almost half of that of the European manufacturers. The Indian Commerce Ministry has set up a target of 25% growth rate in Pharma Sector exports, i.e. US $ 25 billion by the year 2014.

FDI policies for pharma sectors can be summarized as :

a) FDI upto 100% under the automotive route is permitted for Greenfield Investments (when a company establishes a subsidiary in a new country and starts its own production) in pharmaceutical sector in India.

b) FDI, up to 100% under the government approval route is permitted for ground field investments (when a company purchases an existing plant or firm, rather than constructing a new plant)

As discussed above, India is showing its regular and speedy rise in various other sectors also and the same are being accepted and recognized by the rest of the world. The Inclination of various countries towards investment and business in several sectors is the ultimate proof of Indian economical growth and confidence.

There is no doubt that today Indian market is reshaping the world's economy. India's Gross Domestic Product (GDP) is currently in the fourth position in the world after the U.S., China and Japan. Indian economy promises of high returns in almost every sector – energy, health, food, education, real estate etc. This attracts the foreign Investors & businessmen throughout the world.

CONCLUSION

Indian economy has now reached above a trillion dollar economy. Several sectors are available to the foreign investors for business opportunities and investment in India.

India is rising as a major country in playing its vital role in the global economy. India is successfully making its recognition among the best countries in the world as a dynamic growing businesses; disclosing the clear fact that India provides a suitable environment and platform for doing various dynamic businesses. According to the 'IPSOS economic pulse of the world' survey -India is the fourth most economically confident country in the world. India is also likely to become the second largest manufacturing country in the coming five years. The Government of India has always shown its keen interest in providing several schemes and rules favourable to foreign investors, to boost up and attract more and more FDI in India. This certainly provides a great opportunity entrepreneurs desired to invest and do business in India. ◆◆◆

LAND FOR SCHOOLS CANNOT BE USED FOR TECHNICAL EDUCATION : HC

Anoop Bisht

The Delhi High Court has held that government land meant for running schools cannot be used for running establishments offering Technical Degree Courses. The Court has also sought a response from the Delhi Development Authority (DDA) over alleged illegal transfer of such land for running institutes imparting technical courses.

The Court was hearing a plea challenging illegal permission for running institutions that flout the Master Plan of Delhi 2021 (MPD). The plea also sought the Court's intervention to withdraw the permission. The matter pertained to about 6,000 sq-mt of land allotted to a private educational society in West Delhi. The DDA had allotted the land to the Triveni Educational and Social Welfare Society on March 10, 1998 on leasehold basis, for running a middle school. In 2002, the Society was granted permission for running Teachers' Training course in the same school. However, while the permission was suspended on March 1, 2002, the Society continued to run the course from the school premises and developed it into a full-fledged B.Ed course.

The petitioner also brought to the Courts information that several more educational societies and private groups in Delhi were running Higher Education Institutions on lands that have been exclusively reserved for schools under MPD. "It is very unfortunate that while there is already a shortage of space in the Capital, the land allotted for schools is instead being used for higher and technical education by private parties to make profit. The State Council Educational Research Training has affiliated several institutes that continue to earn profits by using government land. Some of the schools are claiming to have letter from the Deputy Director Institutional Land, Delhi Development Authority," the plea said.

The DDA counsel, however, clarified that any letter by the deputy director in "contravention of Master Plan does not create any right in favour of DDA" and as per its bylaws, "DDA does not allow any school to run a higher education institution".

The Counsel appearing for the DDA informed the Court that, "As per the Master Plan for Delhi 2021 (MPD-2021) structural courses such as B.Ed. course, leading directly to a degree/diploma are not permitted to run on land allotted for running a school and appropriate action in accordance with law is taken on such cases,". ◆◆◆

WP(c) 4165/2011 – Management Education & Research Inst Vs National Council for teachers education & others

NEWSBYTES

EXEMPTION OF EXCISE DUTY ON REPACKING & RELABELING

The Finance Ministry on 29.07.2013 has exempted drug makers from excise duty on repacking or relabeling to ensure smooth transition to the new drug price regime. Vide its Notification No.22 /2013-Central Excise, the Central Government in public interest exempted the scheduled formulations as defined under the Drugs Price Control Order (DPCO), 2013 published vide S.O. 1221 (E) dated the 15th May, 2013, falling under Chapter 30 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and which are subjected to re-printing, re-labeling, re-packing or stickering, in a premises which is not registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder in pursuance of the provisions contained in the said Drugs Price Control Order (DPCO), 2013, from whole of the duty of excise leviable thereon under the said Central Excise Act subject to the following conditions, namely :-

(i) The scheduled formulations, in respect of which the manufacturer is liable to ensure that the Maximum Retail Price (MRP) of such formulation does not exceed the ceiling price within forty-five days of the date of notification of the ceiling price by National Pharmaceuticals Pricing Authority (NPPA), have been removed from the place of removal on payment of appropriate duty ;

(ii) The re-printing, re-labeling, re-packing or stickering, of the scheduled formulations results in downward revision of the MRP;

(iii) In respect of a given scheduled formulation, the exemption shall be valid for a period of forty-five days from the date of publication of the notification of the ceiling price in respect of such scheduled formulation by NPPA or such extended period not exceeding thirty days as may be permitted by the Department of Pharmaceuticals;

(iv) The manufacturer shall submit a prior intimation to the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, containing a list of scheduled formulations requiring re-printing, re-labeling, re-packing or stickering alongwith the notification vide which these have been notified by NPPA, various locations and addresses thereof where the scheduled formulations are proposed to be re-printed, re-labelled, re-packed or stickered and the details such as description of the scheduled formulation, present MRP, proposed MRP, batch no., quantity and date of manufacture in respect of each such location. In the case of importer and marketer, they shall submit the intimation to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over their registered office;

(v) Subsequent to the aforesaid operations being carried out, the manufacturer shall submit the details in respect of the said scheduled formulations within a period of one month of such re-printing, re-labeling, re-packing or stickering.

For the purposes of this notification, manufacturer shall include any person defined as manufacturer under paragraph 2(n) of the Drugs Price Control Order, 2013. ◆◆◆

NBFC's to engage only Registered Telemarketers

Reserve Bank of India vide RBI/2013-14/163 DNBS(PD) CC No. 353/03.10.042/2013-14 dated 26th July 2013 has notified that Non-Banking Financial Companies (NBFCs) should engage only those telemarketers who are registered in terms of the guidelines issued by Telecom Regulatory Authority of India (TRAI), from time to time, for the purpose of all the promotional or telemarketing activities.

RBI simplified Periodical Updation of KYC

Reserve Bank of India vide RBI/2013-14/161 RPCD. RRB.RCB.BC.No.84 /07.51.018/2013-14 dated 25th July 2013 has reviewed the Know Your Customer (KYC) Norms / Anti-Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT) which provides that "Banks should introduce a system of periodical updation of customer identification data (including photograph/s) after the account is opened.

At present, the periodicity of such updation should not be less than once in five years in the case of low risk category customers and not less than once in two years in case of high and medium risk categories.

However, due to the practical difficulties and/or constraints expressed by bankers and/or customers in obtaining/submitting fresh KYC documents at frequent intervals, it has been decided to review and amend the KYC Requirements. The new requirements to be followed are as follows:

a) To carry out on-going due diligence with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the client, his business and risk profile and source of funds;

b) To carry out full KYC exercise at least every two years for high risk individuals and entities;

c) To carry out full KYC exercise at least every ten years for low risk and at least every eight years for medium risk individuals and entities;

d) To carry out positive confirmation (this includes obtaining KYC related updates through e-mail/letter/ telephonic conversation/forms/interviews/visits etc.) at least every two years for medium risk and at least every three years for low risk individuals and entities; and

e) To obtain fresh photographs from minor customer on becoming major.

RBI clarified the time period for realisation and repatriation of export proceeds

Reserve Bank of India vide RBI/2013-14/147 A.P. (DIR Series) Circular No.14 dated 22nd July 2013 has clarified that the realization and repatriation period with respect to the amount representing the full value of goods or software exported as stipulation in terms of A.P. (DIR Series) Circular No. 52 dated November 20, 2012 was valid till March 31, 2013 only. Further, the time period for realization and repatriation of export proceeds from April 01, 2013 onwards till September 30, 2013, shall be reckoned as nine months from the date of export.

It has been further clarified that the provisions with respect to period of realization and repatriation of the full export value of goods or software exported to India by a unit situated in a Special Economic Zone (SEZ) as well as exports made to warehouses established outside India shall remain unchanged. ◆◆◆

RBI reduced limit for ODI

Reserve Bank of India (RBI) vide RBI/2013-14/180 A. P. (DIR Series) Circular No.23 dated August 14, 2013 has reviewed and decided to rationalize the regulations governing the Overseas Direct Investments (ODI) with immediate effect.

Under the extant provisions of FEMA on ODI, the total ODI of an Indian Party in all its Joint Ventures (JV) and / or Wholly Owned Subsidiaries (WOS) abroad engaged in any bonafide business activity should not exceed 400 % of the net worth of the Indian Party as on the date of the last audited balance sheet under the Automatic Route.

Now, it has been decided to reduce such limit in the following manner:

a) The existing limit of 400% of the net worth of the Indian Party be reduced to 100 per cent of its net worth under the Automatic Route. Accordingly, AD Category - I banks may allow ODI up to 100% of the net worth of the Indian party under the Automatic Route, as on the date of the last audited balance sheet;

b) The existing limit of 400 % of the net worth of the Indian company, investing in the overseas unincorporated entities in the energy and natural resources sectors, under the automatic route be reduced to 100 % of the net worth of the Indian company investing in the overseas unincorporated entities in the energy and natural resources sectors, as on the date of last audited balance sheet; and

c) Any ODI in excess of 100% of the net worth shall be considered under the Approval Route by the Reserve Bank of India.

Further, RBI through its circular clarified that in respect of the Navaratna Public Sector Undertakings, ONGC Videsh Limited and Oil India Ltd, the extant provision for investing in overseas unincorporated entities and the overseas incorporated entities in the oil sector (viz. for exploration and drilling for oil and natural gas, etc.), which are duly approved by the Government of India, without any limits under the automatic route, would however continue as hitherto.

The above provisions shall come into effect with immediate effect and would apply to all fresh ODI proposals on a prospective basis but would not apply to the existing JV/WOS set up under the extant regulations

RBI reviewed Liberalised Remittance Scheme for Resident Individuals

Reserve Bank of India vide RBI/2013-14/181 A. P. (DIR Series) Circular No.24 dated August 14, 2013 has reviewed the Liberalised Remittance Scheme (LRS) for Resident Individuals (hereinafter "the Scheme").

On review, it has now been decided to reduce the existing limit of USD 200,000 per financial year to USD 75,000 per financial year (April - March) with immediate effect.

in view of that, AD Category – I banks may now allow remittance up to USD 75,000 per financial year, under the scheme, for any permitted current or capital account transaction or a combination of both.

Further, the following clarifications in regard to the remittances under LRS have been issued:

a) The scheme should no longer be used for acquisition of immovable property, directly or indirectly, outside India;

b) The scheme should not be used for making remittances for any prohibited or illegal activities such as margin trading, lottery etc., as hitherto;

c) Resident individuals have now been allowed to set up Joint Ventures / Wholly Owned Subsidiaries outside India for bonafide business activities outside India within the limit of USD 75,000 with effect from August 5, 2013 subject to the terms and conditions stipulated in Notification No.FEMA 263/RB-2013 dated August 5, 2013; and

d) The limit for gift in Rupees by Resident Individuals to NRI close relatives and loans in Rupees by resident individuals to NRI close relatives in terms of A.P. (DIR Series) Circular No.17 and 18 both dated September 16, 2011 shall accordingly stand modified to USD 75,000 per financial year. ◆◆◆

Foreign Investments in Asset Reconstruction Companies

The Reserve Bank of India vide RBI/2013-14/191 A.P. (DIR Series) Circular No.28 has decided to increase the ceiling for Foreign Direct Investment in Asset Reconstruction Companies (ARC) from 49% to 74% on 19th August, 2013. The new FDI Policy includes investment by Foreign Institutional Investors (FIIs) in ARC, which was prohibited hitherto – provided, the share of FII's shall not exceed 10% of the total paid-up capital.

In addition, the restriction of an individual limit of 10% of a single FII in each tranche of Security Receipts issued by ARCs is dispensed with. ◆◆◆

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