



CLASIS LAW

# Newsletter

June 2018

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## Welcome to the June Edition of the Clasis Law Newsletter

This edition brings to our readers a featured article titled “Metro Projects Likely to Drive Growth in the Infrastructure Sector”.

With the increasing thrust on mass rapid transport, several metro projects are being incubated and delivered across Tier-I and Tier –II cities. The development of metro rail systems has gathered pace with favourable govt. policies including the Metro Rail Policy- 2017 that aim to rationalize metro expansion in the country and encourage private sector participation and the public private partnership as feasible models for development of mass rapid transport systems in India.

We continue to highlight certain key judgements passed by the Hon'ble Court as well as changes in Corporate and Commercial laws and updates on Projects and Intellectual Property.

Your inputs and feedback are always welcome and we look forward to our interactions with you.

“Clasis Law’s Managing Partner and Head of Corporate Practice, Vineet Aneja is recognized as one of India’s Most Trusted Corporate Lawyers by ICCA, 2017”

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## Metro Projects Likely To Drive Growth In The Infrastructure Sector

Metro Rail projects in India have picked up pace and are likely to catalyse substantial opportunities over the next few years for the construction industry owing to a robust pipeline of projects. According to the data available, presently 425 kilometers of Metro lines are operational in 10 cities. In India, metro projects are not perceived only as a solution to transportation requirements but also as a means to transform cities. India is moving towards a metro network of more than 700 kilometers within the next few years and the government has a plan to install metro systems in 50 cities in the country in the months to come. These are the cities that have a population of more than 1 million. It is estimated that the overall cost of expansion of operational and under implementation approved metro projects is over INR 2,500 billion (Rupees two and half lakh crores), which could result in augmenting the order books of construction contractors by INR 750 -900 billion (Rupees seventy five thousand crore- ninety thousand crore) over the next three to five years. The Centre has planned an outlay of approximately INR 142.6 billion (Rupees fourteen thousand two hundred and sixty four crores) for metro projects across the country, for the current fiscal year.

With the increasing reliance of commuters on rapid transport or mass rapid transport, several metro projects are being incubated or delivered with increasing reliance on public private partnerships (PPPs) and private finance. The first metro system in India was operationalized in 1984 in Kolkata, and today there are about 10 operational metro systems functioning as lifelines to its passengers with the Delhi Metro being the largest metro project in the country.

### Regulatory Framework for Metro Projects

- a) Railways, as a subject, falls under the Union List of the Seventh Schedule of the Constitution that gives the Parliament exclusive power to enact legislation relating to it. The Metro Railways (Construction of Works) Act, 1978, which was enacted by the Centre, governs the construction of metros in the metropolitan cities and related matters, in India. Operation and maintenance of metros are governed by The Delhi Metro Railway (Operation and Maintenance) Act, 2002. Both of the aforementioned legislations were amended in 2009 with the passing of The Metro Railways (Amendment) Act, 2009. The amendment widened the coverage of both the acts to cover metro projects in all metropolitan areas of India.
- b) **Metro Rail Corporations** - The jurisdiction specific metro rail corporations are the governing bodies to oversee the development of the respective metro system and its operation. For instance the Delhi Metro Rail Corporation (“DMRC”) was incorporated under the Companies Act, 1956 with equal equity participation from the Government of India (“GoI”) and Government of National Capital Territory of Delhi (“GNCTD”); the Lucknow Metro Rail Corporation (“LMRC”) is a Special Purpose Vehicle (“SPV”) incorporated under the Companies Act 1956 jointly owned by the GoI and the Government of Uttar Pradesh (“GoUP”) with an authorized capital of INR 20 billion (Rupees two thousand crores). Similarly, Bangalore Metro Rail Corporation Limited (“BMRCL”) is also a Joint Venture between the GoI and Government of Karnataka (“GoK”) as an SPV entrusted with the responsibility of Bangalore Metro Rail Project. The Kolkata Metro Rail Corporation Limited (“KMRC”) is a GoI enterprise implementing the Kolkata (East-West metro) Corridor Project. On the other hand the Hyderabad Metro Rail Limited (“HMRL”) is a government of Telangana Enterprise; the Kochi Metro Rail Limited (“KMRL”) is a state public sector company equally owned by the GoI and the Government of Kerala (“GoK”).
- c) **Metro Rail Policy 2017** - The New Metro Rail Policy- 2017 (“Policy”) was approved by the Union Cabinet in August 2017 with an aim to rationalize metro expansion in the country. The stated objective of the this policy is to provide clarity on development of projects in terms of collaborations, participation, standardization of norms, financing and creating a procurement mechanism for effective implementation of projects. According to this policy, the metro rail projects would be considered for approval and aided by the Central government only if there is private participation and the projects ensure last-mile connectivity for commuters. The policy allows respective states to formulate rules and regulations and it empowers them to establish permanent fare fixation authorities. Further, the projects will now be cleared on the basis on economic internal rate of return of 14%. This is considered one of the widely followed best practices. It will alter the system that runs on the current financial internal rate of return of 8%.

### Various Models of Development under the Policy

The policy highlights several models for development of mass rapid transport systems in the country which are as follows:



- a) **Private Sector Participation** - The policy prescribes private participation for either complete provisioning of metro rail or for some unbundled components of the project, forming an essential requirement of the project. Metro Systems may also explore the possibility of engaging private players in Operation and Maintenance (“O&M”) as well as in provisioning of rolling stock, signaling systems etc. Some indicative O&M Models are:
- (i) A **Cost and Fee Contract** where the authority pays an operator on a monthly or annual basis and the remuneration could be inclusive of a fixed fee and a variable component. The risks are however borne by the authority.
  - (ii) A **Gross Cost Contract** is when a fixed sum is paid to the operator for a given period of time with the O&M risks being borne by the operator, whereas, the revenue risks are borne by the authority/ owner.
  - (iii) A **Net Cost Contract** where the operator collects the revenue generated from the services provided that if the revenue is lower than the O&M Cost, the remaining cost is compensated for by the authority/owner. However, in this contract all the risks during the tenure of the contract are borne by the operator.
- b) **Public Private Partnership** - It is strongly encouraged under the policy that if the state governments intend to utilize any financial assistance governed by the Viability Gap Funding (“VGF”) Scheme or from the central government, it shall mandatorily explore PPP arrangements. Some of the indicative models of involvement of private sector could be through the following:
- (i) Construction of new metro systems through Design- Build- Finance- Operate- Transfer (“**DBFOT**”);
  - (ii) Award of concessions for operational services;
  - (iii) Award of concessions for maintenance and upgradation of infrastructure.

#### **Central Government’s Support to the Metro Projects Envisaged under the Policy**

- a) **Support to PPP** - Central financing for this model is available under the VGF Scheme of the Govt. of India.
- b) **Grant** - The central government may consider providing 10% of project cost to the state government excluding the private investment, cost of the land, rehabilitation and resettlement costs and tax for development of a metro system. Private participation in some form of implementation would be required to the extent it is feasible for availing this grant.
- c) **Equity Sharing Model** - Under this model equal equity would be shared between the central government and the state government with formation of an SPV being an essential feature. This model too like most of the other models suggested under the policy has the requirement of having a private sector participation in any feasible form. The GOI will provide financial support to the metro system project in the form of equity and subordinate debt (for part of taxes) subject to an overall ceiling of 20% of the cost of the project excluding the private investment, cost of the land, rehabilitation and resettlement costs.

#### **Conclusion**

The metro projects being capital intensive require large scale funding from the central government or external funding agencies. However, according to the new policy the states will have to come up with innovative ways to raise funds through means like value capture finance tools. They will also have to issue corporate bonds for metro projects for enabling low-cost debt capital. The policy lays stress on private sector participation in implementation of the metro projects going forward.

While the opportunity in the metro space is without a doubt enticing for international EPC contractors and design firms, however, infrastructure sector being a high risk sector it is advisable to seek legal and tax advise at the drawing board stage so that the foreseeable risks could be optimized and mitigated well in advance.

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## Legal Alerts

### Section 29A of The Insolvency And Bankruptcy Code, 2016 And Its Applicability

Section 29A of the Insolvency and Bankruptcy Code, 2016 (the “Code”) was promulgated on November 23, 2017 vide the Insolvency and Bankruptcy (Amendment) Ordinance, 2017 (the “IBC Ordinance”). Subsequently, on January 18, 2018, the aforementioned Ordinance took the shape of Insolvency and Bankruptcy Amendment Act, 2017 (the “IBC Amendment Act”). Section 1 (2) of the IBC Amendment Act clarified that the said amended Act would come into force on November 23, 2017.

Section 29A as introduced by the IBC Amendment Act, inter alia provides that a person shall not be eligible to submit a resolution plan, if such person is a connected person not eligible under clauses a) to i) as set out therein.

A “connected person” is a person who is:-

- (a) A promoter or in the management or control of the resolution applicant;
- (b) A person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan;
- (c) A holding company, subsidiary company, associate company or related party of a promoter or a proposed promoter during the implementation of the resolution plan.

The object and intent to introduce Section 29A was to keep the bidders list clean and to avoid a risk of a repeat of the situation.

Recently, an Application was filed by the resolution applicant before the National Company Law Tribunal (“NCLT”), Mumbai Bench seeking permission to grant approval of the resolution plan and to hold that he is not debarred or disqualified under the provisions of Section 29A of the Code. The resolution applicant was an individual who was related to the Promoter Directors of the Corporate Debtor i.e. Wig Associates Private Limited. Therefore, the question to be considered by the NCLT was whether the resolution plan submitted by the resolution applicant can be approved by the NCLT in view of the bar created under Section 29A and Section 30 of the Code which states that the Committee of Creditors would not accept the resolution plan if the resolution applicant is ineligible under Section 29A of the Code. In the present case, the Committee of Creditors had approved the resolution plan.

The NCLT vide its order dated June 4, 2018, recorded its “satisfaction” for granting approval to the resolution plan and consequently, allowed the Application of the resolution applicant on the following grounds:-

- (a) The IBC Amendment Act vide which Section 29A has come into place on January 18, 2018, is operative with effect from November 23, 2017. Further, the IBC Amendment Act does not provide for any retrospective operation of the amended provisions including Section 29A to the insolvency proceedings pending on November 23, 2017.
- (b) It is a settled position of law that any amendment to a statute, affecting the legal rights of an individual must be construed to be prospective unless it is made expressly or impliedly retrospective. Various judicial precedents were cited and relied upon by the NCLT in support of the aforesaid proposition of law.
- (c) The NCLT specifically referred and relied upon the case of Videocon International Limited vs. SEBI reported in (2015) 4 SCC 331, wherein it was held that pending proceedings are to continue as if the unamended provisions continue to exist. Accordingly whilst relying on the various judicial precedents and specifically the case of Videocon International Limited (supra), the NCLT held that Section 29A of the Code is effective from the date of the passing of the IBC Ordinance i.e. November 23, 2017 and would not apply to the present insolvency proceedings which were initiated on July 19, 2017 i.e. prior to the IBC Ordinance.

The NCLT while granting approval to the resolution plan observed that for approval of a resolution plan, the Adjudicating Authority (NCLT) has to be ‘satisfied’ that the resolution plan as approved by the Committee of Creditors meets the requirement as set out in Section 30 (2) of the Code. Therefore, the pre requisite for approval of the resolution plan is recording of “satisfaction” by the Adjudicating Authority, which is a condition precedent.



## Corporate and Commercial

### MCA revises forms DIR-3 and DIR-6

On June 12, 2018, the MCA issued a circular revising form DIR-3 (form for application of the director identification number prior to being appointed as a director/designated partner in a company or LLP) and form DIR-6 (form for filing intimation of change in particulars of a director/designated partner to be given to the Central Government). These forms have been revised to be included as part of Rule 10 of the Limited Liability Partnership Rules, 2009. These forms will be uploaded on MCA21 Company Forms Download page with effect from June 15, 2018. In relation to this, MCA has issued a notification dated June 12, 2018 regarding the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018 which incorporates the aforementioned change and substitutes forms DIR-3 and DIR-6. Accordingly, the Limited Liability Partnership Rules, 2009 have also been amended vide the Limited Liability Partnership (Amendment) Rules, 2018 to incorporate the change in Rule 10 (that the designated partner shall apply in form DIR-3 for a designated partner identification number (DPIN) and form DIR-6 for filing an intimation of change in particulars of a designated partner to the Central Government).

### Review of the Institutional Trading Platform (ITP) framework to facilitate listing of startups

On June 12, 2018, SEBI issued a press release constituting a group to look into the existing Institutional Trading Platform (ITP) framework and suggest measures to facilitate listing of startups. SEBI had put in place the ITP framework in 2015 with a view to facilitating listing of new age companies in sectors like e-commerce, data analytics, bio-technology and other startups. However, this framework failed to gain any traction. SEBI has now discussed the issue with various stakeholders and formed a group primarily with the following objectives: (a) to review the need for present ITP framework in the current context; (b) to revisit the current ITP framework and identify the areas, if any, which require further changes; and (iii) any other issue relevant to ITP which the group may like to assess. The group shall endeavour to submit the report to SEBI within a period of one month.

### Foreign Investment in India - Reporting in Single Master Form

On June 7, 2018, the Reserve Bank of India ("RBI") issued a notification in relation to the manner of reporting of foreign investment by Indian entities (including subsidiaries of foreign entities) wherein RBI will introduce a Single Master Form ("SMF") which would be filed online by all Indian entities for reporting investments in India.

However, prior to the implementation of the SMF, RBI would provide an interface to all Indian entities which have received foreign direct investment to input data on total foreign

investment received in a specified format. This interface will be available on the RBI website from June 28, 2018 to July 12, 2018. Indian entities not complying with the aforesaid prerequisite will not be able to receive further foreign investment (including indirect foreign investment) and will be non-compliant with Foreign Exchange Management Act, 1999 and regulations made thereunder.

### Guidelines for preferential issue of units by Infrastructure Investment Trusts (InvITs)

On June 5, 2018, SEBI issued the detailed guidelines for preferential issue of units by Infrastructure Investment Trusts (InvITs). The SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations") defines a preferential issue. The guidelines provide for the following:

- a) the conditions for preferential use - a listed InvIT may make preferential issue of units to an institutional investor as defined in the InvIT regulations, on satisfaction of the conditions given in the circular;
- b) the placement document which shall contain certain disclosures as given in the Annexure to the circular;
- c) pricing - preferential issue shall be made at a price not less than the average of the weekly high and low of the closing prices of the units quoted on the stock exchange during the two weeks preceding the relevant date;
- d) restriction on allotment - no allotment shall be made, either directly or indirectly, to any party to the InvIT or their related parties except to the sponsor only to the extent that is required to ensure compliance with regulation 12(3) of the InvIT Regulations; and
- e) transferability of units - the units allotted under preferential issue shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

### Clarification with regard to provisions of Corporate Social Responsibility in the Companies Act, 2013

On May 28, 2018, the MCA issued a clarification circular with respect to Section 135(5) of the Companies Act, 2013 (Act) related to corporate social responsibility (CSR). Section 135(5) of the Act specifies that a company must ensure spending, in every financial year, at least two (2) per cent of the average net profits of the company made during the three (3) immediately preceding financial years, in pursuance of its CSR Policy. The MCA has now clarified that the provision in the first proviso to Section 135(5) of the Act which lays down that the company shall give preference to the local area and areas around where it operates, for spending the amount earmarked for CSR activities has to be followed in letter and spirit.



## Projects, Energy and Natural Resources

### **Delhi Meerut Expressway – Phase-I of the First Project under the Hybrid Annuity Model Inaugurated**

India's first 14 lane Expressway – the Delhi-Meerut Expressway, from Nizamuddin Bridge in Delhi to UP border which has been developed by NHAI and Welspun Enterprises Ltd. under Hybrid Annuity Model was inaugurated by PM Modi. This phase 1 of the Delhi-Meerut Expressway will reduce the travel time from Delhi to Meerut to just 60 minutes. Welspun developed the prestigious Package I of the Delhi - Meerut Expressway with the support of National Highways Authority of India, at a cost of about Rs 841.50 crore, in a record time of 18 months as against the estimated period of construction of 30 months. The total length of the project is 82 km, of which the first 27.74 kms will be 14-laned, while the rest will be a 6-lane expressway. The project is reported to cost almost Rs 4975.17 crore.

### **Delhi Metro's 24.82 Km stretch on the Magenta Line Inaugurated**

The 24.82-km Kalkaji Mandir-Janakpuri West stretch of Delhi Metro's Magenta Line was recently inaugurated. This stretch will bring domestic terminal of the city airport on the DMRC network and cut travel time between Noida and Gurgaon by at least 30 minutes. With the opening of this section, the total operational span of the Delhi Metro Rail Corporation (DMRC) network has reached to 277 km. At 29 metres, the five-level new Hauz Khas station is the deepest metro station in the entire network and an engineering landmark as its tunnel goes beneath that of the existing station on Yellow Line. The Magenta Line boasts of being the first driverless metro in India. It consists of 25 metro stations from Janakpuri West to Botanical Garden, consisting of 23 stations out of which 8 are elevated and rest 15 are underground. The total length of the line is 36.98 km out of which 10.466 km is elevated and 23.807 km is underground.

### **HCC Likely to Bag Coastal Road Project worth Rs. 2206 Crore**

Upon opening the bids by Municipal Corporation of Greater Mumbai (MCGM) for the Mumbai Coastal Road Package-2 tender, the joint venture of Hindustan Construction Company Ltd. (HCC) and Hyundai Development Company (HDC) emerged as the front-runner in one of the four packages of the first phase of the Mumbai Coastal Road Project. HCC joint venture placed the bid at Rs.2,206 crore for the said Package 2 which was almost 30% higher than the reserved amount of Rs.1,661 crore. Three short-listed companies including Larsen & Toubro (L&T), and joint ventures HCC-

HDC and China Gezhouba-Soma Enterprise submitted their bids for both the packages. Reportedly, the consortium of China Gezhouba-Soma Enterprise was not considered for selection for want of security clearance. Package 1 of the coastal road project starts from Priyadarshini Park to Baroda Palace near Haji Ali while Package 2 starts from Baroda Palace to the Worli end of the existing Bandra-Worli sea-link.

### **AAI clears the deck for Expansion of the Chennai Airport**

Airports Authority of India is all set commence the construction for the expansion of Chennai international airport at an investment of ₹2,476 crore with the project having secured environmental clearance. The expansion and modernization of the airport will be carried out within the existing airport premises over an area of 1301.28 acres. As the entire land is already with AAI, no additional land acquisition is required. Once the expansion is completed, the passenger capacity will go up to 30 million passengers per annum (MPPA) from the existing 14 million. The said cost of investment for the modernization of the project is meant for the (Phase-II) only and the expansion involves demolishing the existing old domestic and international terminals and reconstructing new terminals with additional 16 MPPA (domestic 10 MPPA and international 6 MPPA), said official sources.



## IP Updates

### Payment for use of trade mark considered as revenue expenditure-Delhi High Court

This is pertaining to an income tax appeal filed in the Delhi High Court by Hilton Roulunds Limited, (the “Appellant”) against the Commissioner of Income Tax (the “Respondent”) to determine whether the payment of Rs. 1 crore to the licensor for exclusive use of the trade mark “Hilton” is to be treated as capital expenditure or revenue expenditure.

The Appellant is a joint venture between Hilton Rubbers Limited (“HRL”) Roulunds Fabriker Denmark (“RF”) and Industrialisation for Developing Countries, Copenhagen (“IFU”).

The Appellant entered into a trade mark license agreement dated 27<sup>th</sup> January, 1993 (the “License Agreement-I”) with HRL for the purpose of using the trade mark “Hilton” in respect of Raw-Edge and Wrapped V-Belts and other power transmissions belts excluding flat transmission belts in India and in other countries. As per the License Agreement-I, the Appellant was required to pay 1.8% royalty to HRL at half yearly intervals. The License Agreement-I also stated that the term of the license was for a period of 10 years, and to be continued thereafter without limit of time unless terminated by either party by giving the other party at least 12 calendar months’ prior written notice, or 30 days’ notice in case of breach. Subsequently, HRL decided to exit from the Appellant by selling its shareholding to RF and entered into a new License Agreement dated 9<sup>th</sup> November, 1995 with the Appellant (the “License Agreement-II”) overriding the License Agreement-I. The License Agreement-II contains similar provisions as stated in the License Agreement-I except the payment clause for the use of the trade mark which states that the Appellant would now have to pay a lump sum fee of Rs.1 crore to HRL which replaces the earlier royalty payment clause.

While filing the returns by the Appellant with the Income Tax Office for the year 1996-97, the Income Tax Assessing Officer (“AO”) observed and concluded that since the payment of Rs.1 crore was absent in License Agreement-I and was for use of the trade mark, the expenditure of Rs.1 crore cannot be related to the business of the Appellant and held that the said expenditure was of capital and enduring nature. The Commissioner of Income Tax (Appeals) upheld the AO’s conclusion. Further, the Income Tax Appellate Tribunal (“ITAT”) after examining the matter vide its order dated 22<sup>nd</sup> December, 2004, held that “Since HRL has sold the entire shareholding in assessee and the right to use the trade mark on one day and the agreements suggest that this

*was not only a license to use the trade mark but also a sale of the trade mark by allowing the assessee to use the trade mark for an unlimited period, one inference can only be drawn that the assessee has procured the enduring benefits for its business by using the trade mark through this agreement against lump sum payment and expense incurred is capital expenditure”. The ITAT held that the right to use was for unlimited period and there was no renewal and further consideration clause in the license arrangement. Therefore, ITAT was of the view that payment of Rs. 1 crore was for an enduring benefit and hence is a capital expenditure which could not be allowed as deduction under the Income Tax Act, 1961.*

This Appeal filed in the Delhi High Court against the order of the ITAT framed the aforesaid question on the nature of the expenditure made by the Appellant for paying to HRL under the License Agreement–II. The High Court relied on and examined relevant case laws where various tests were discussed to distinguish capital expenditure and revenue expenditure.

The Court stated that a license is nothing but a permissive use of the mark, which is revocable. A ‘right to use’ is usually a license and not an assignment, except in certain circumstances. The Delhi High Court penned down the following questions to determine whether an arrangement is a license or an assignment: (i) *Whether the user acknowledges the licensor’s right and title over the mark?;* (ii) *Whether it is a mere right to use the mark or it was a transfer/assignment of a permanent nature?;* (iii) *Whether the manner of use is specified and restricted and the effect thereof on the rights of the user?;* (iv) *Whether the payment made by the user is one-time, fixed running royalty or a percentage of sales, with or without investment made by the Licensor on marketing and advertising?;* (v) *Whether the licensor has right of supervision and control over the use of the mark?;* (vi) *Whether sole and exclusive right was conferred on the user and the effect thereof?;* (vii) *Whether the user can further transfer his rights to third party, with and without consent of the licensor and the effect thereof?;* (viii) *Whether the licensor had the right to terminate the license and if so, under what circumstances?;* (ix) *Whether upon termination by the licensor, the user has to stop use of the mark?;* (x) *Whether or not the right to sue is given and conferred on the user?;* (xi) *Whether there is a transfer of goodwill of the business and/or goodwill in the mark?;* and (xii) *Whether there are multiple users of the same mark?*



The Court stated that a license agreement may contain some or all of the above stipulations and therefore nature of a license agreement can be inferred from the existence of any of the above conditions. The Court stated that sometimes the owner excludes it from using the mark and vests the trademark perpetually to the licensee without any termination clause and then those arrangements could be construed as assignment, however, this present license arrangement could not be construed as assignment due to the existence of restrictive clauses in the License Agreement-II. The question thus is whether the right in the mark "Hilton" was transferred in a manner that was to give a long-term benefit to the Appellant. According to the License Agreement-I, HRL was the owner of the mark and the Appellant was just granted the exclusive right to use the mark "Hilton". The Appellant was not given any right to initiate any legal proceedings without the permission of HRL. The termination provisions were clearly stated in the License Agreement-I. The License Agreement-II was almost identically worded to the first, except replacing the periodic royalty with a lump sum payment.

The Court stated that the settled position in law is that use by a licensee would also inure to the benefit of a licensor, for the trade mark would continue to remain with the owner, unless there was also part transfer of title. The benefit of use of the mark "Hilton" during the license period by the Appellant inures to the benefit of HRL as the Appellant only had the permission to use the mark, and the title of the mark was never transferred to the Appellant. The Court observed that the use of the mark "Hilton" merely facilitated the Appellant's business in the Indian market and the use of the mark by the Appellant during 1992-2005 benefited the Appellant as permitted user. The amount of Rs. 1 crore paid to HRL was thus, consideration for permission to use the mark, and not for acquiring ownership rights in the mark.

The Court requested the Appellant to state the present position with regards to the mark "Hilton", pursuant to which the Appellant submitted additional documents stating that the name of the Appellant was changed to 'Roulands Codan India Limited' and with subsequent change the Appellant is now known as 'Contitech India Pvt Ltd'. The Appellant has also submitted documents to prove that they had not used the mark "Hilton" and are marketing their goods under the mark "Roflex", which is their registered trademark since 10th July, 1996.

In these circumstances, the Court vide its order dated 20th April, 2018 held that the payment of Rs. 1 crore under the License Agreement-II shall be considered as revenue expenditure in view of the stipulations stated in the License Agreement-II which are not enduring in nature in relation to use of the mark "Hilton" by the Appellant.



## Recent Events

### **CII Manufacturing Innovation Conclave June 22, 2018, New Delhi**

Clasis Law was a corporate sponsor of the Confederation of Indian Industry (CII) Manufacturing Innovation Conclave held at ITC Maurya, New Delhi on June 22, 2018. Parul Kashyap, Counsel/Head of Business Development and Lovejeet Singh, Senior Associate attended the event. The conclave was attended by manufacturing and information technology companies. The conclave focused on the need of innovation and R&D for the growth of Indian manufacturing sector. The industry leaders deliberated on the road ahead for industries adopting innovation in manufacturing. The conclave also discussed increasing role of robotics and artificial intelligence in the manufacturing sector and their impact on employment.

# #BeatPlasticPollution

## BEAT PLASTIC POLLUTION

Plastic is vile. Our planet is drowning in plastic pollution. It's multiplying faster than bacteria and we must act now to prevent further destruction. Every year on June 5, Global citizens celebrate World Environment Day, which was founded by the United Nation for encouraging worldwide awareness and action for the protection of our environment.

Considering the impact of plastic pollution, the theme of this year's World Environment Day is #BeatPlasticPollution and India is the global host of World Environment Day 2018 and pledges to beat plastic pollution by 2022.

This World Environment Day, the UN is calling on people everywhere to take concrete steps to #BeatPlasticPollution in their own lives. Here are a few ways you can avoid the use of plastic in your everyday life:



- ✓ Replace plastic bags with jute or paper bags. Biodegradable bags are also available which can help in reducing pollution.

- ✓ Avoid the use of plastic bottles. Choose steel / copper/ glass bottles to store water.



- ✓ Refuse plastic plates or cutlery. Biodegradable plates made of Banana leaves are available aplenty in the market. There are also plates made of leaves stitched together.

Banana leaves



Arecanut plates



Sugarcane bagasse



Leaf plates



- ✓ Stop buying bottled water instead keep a refillable bottle handy.

- ✓ Avoid plastic straws and go for paper or steel straws for sipping beverages.



- ✓ Do not use plastic tiffin-boxes and containers and replace them with glass jars/containers.

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This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to herein. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions.

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