

**Adjustment of *ex-gratia* paid to the employees in the compensation amount**

<b>Appellant:</b> Reliance General Insurance Co. Ltd.	<b>Court:</b> Supreme Court of India
<b>Respondent:</b> Shashi Sharma	<b>Date Of Judgment:</b> 23 <sup>rd</sup> September, 2016
	<b>Case No. :</b> Civil Appeal No. 9654 / 2016

The Supreme Court in this case has held that amount received or receivable by dependents of the deceased (who died in a motor accident) from the employer by way of *ex gratia* financial assistance on compassionate grounds can be deducted from the quantum of compensation fixed by the Motor Accident Claims Tribunal (MACT) under the head “pay and other allowances”.

However, the Bench emphasized that claims towards loss of future escalation of income and other benefits, if the deceased government employee has survived the accident and other benefits extended to the dependents of the deceased government employee including family pension, life insurance, provident fund etc. must remain unaffected and cannot be allowed to be deducted.

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**Tax on transfer of IPR depends upon *situs* of the owner**

<b>Petitioner:</b> CUB Pty Ltd. (formerly known as foster's Australia ltd)	<b>Court:</b> Delhi High Court
<b>Respondent:</b> Union of India	<b>Date Of Judgment:</b> 25 July, 2016
	<b>Case No. :</b> WP(C) 6902/2008

Certain trademarks and brands belonging to the Petitioner i.e. Cub Pty Ltd. (formerly known as Foster’s Australia Ltd.), an Australian company, were *inter alia* transferred. The Authority for Advance Rulings (AAR) on whether consideration arising to it from transfer of such intellectual property would be taxable in India ruled that intellectual property in the form of trademarks, brands and logos which were an integral part of the business of Foster's India were situated in India. Accordingly, it concluded that the resultant gains were taxable in India. This ruling was challenged before the Delhi High Court by way of a writ petition. The Delhi High Court accordingly ruled that the situs (the place to which for purposes of legal jurisdiction or taxation a property belongs) of an intangible asset is the situs of the owner of that asset and therefore, the transfer of such asset by a non-resident would not be taxable in India even if the asset was being commercially used in India.

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### Forcing husband to leave his parents – ground for divorce

<b>Appellant :</b> Not disclosed	<b>Court:</b> Supreme Court of India
<b>Respondent:</b> Not disclosed	<b>Date Of Judgment:</b> 6 October, 2016
	<b>Case No. :</b> CIVIL APPEAL NO. 3253 OF 2008

The hon'ble Supreme Court of India in this matter considering factsof the case observed that the coercion or forcing the husband to leave his parents (who are dependent on his income) amounts to cruelty on part of the wife, therefore, can be a strong ground for divorce under Hindu Law. The husband had filed a case for divorce against his wife who constantly pressurized her husband to separate from his parents so that she can draw larger benefits out of the husband's salary in absence of her in-laws.

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#### Scope of the jurisdiction of NGT

<b>Petitioners:</b> Central India Ayush Drugs Manufacturers Association and others	<b>Court:</b> Bombay High Court
<b>Respondent:</b> State of Maharashtra & others	<b>Date Of Judgment:</b> 28 September, 2016
	<b>Case No. :</b> WP 6360/2015

In this case petitioners filed writ petition *inter alia* seeking a declaration that Rule 17 of the Biological Diversity Rules, 2004 does not apply to the Indian entities or body corporates. In the alternate, it is prayed that to the extent the said Rule envisages equitable sharing of benefits by the Indian entities, it should be declared *ultra vires* to the provisions of the Biological Diversity Act, 2002 and, therefore, unconstitutional. One of the Respondent raised preliminary objection that grievances mentioned in the Petition should be raised before the National Green Tribunal ('NGT') in view of the provisions of the Section 14 of National Green Tribunal Act, 2010 ('NGT Act'). Considering provisions of the NGT Act, the Court held that considering the jurisdiction given to the National Green Tribunal only to decide civil cases, where substantial question involved is in relation to environment, it is apparent that the NGT cannot be said to be conferred with the absolute jurisdiction to adjudicate all types of disputes or even all civil disputes. A limited jurisdiction to deal with specific type of civil disputes is only made available to it. Bare reading of Section 28 of the NGT Act prescribing the bar of jurisdiction also substantiates this. Thus, power to pronounce upon the vires of any statutory provision or of any subordinate legislation cannot be read into any of the provisions which confer either appellate or original jurisdiction upon NGT. The Court further observed that NGT Act does not permit National Green Tribunal to decide upon the vires of any of the enactments which confer appellate or other jurisdiction upon it and find mention in Schedule I of NGT Act. It also does not empower it to examine validity of any Rules or Regulations made under these enactments.

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### Allegation of fraud is not escape from Arbitration

<b>Appellants :</b> A. Ayyasamy	<b>Court:</b> Supreme Court of India
<b>Respondent:</b> A. Paramasivam & Ors.,	<b>Date Of Judgment:</b> 4October, 2016
	<b>Case No. :</b> CIVIL APPEAL NOS. 8245-8246 OF 2016

In this case, the Apex Court considered the situation where allegation of fraud by one party against the other would be sufficient to exclude the subject matter of dispute from arbitration and decision thereof necessary by the civil court. The Court inter alia held that *the allegations of fraud should be such that not only these allegations are serious that in normal course these may even constitute criminal offence... Otherwise, it may become a convenient mode of avoiding the process of arbitration by simply using the device of making allegations of fraud and pleading that issue of fraud needs to be decided by the civil court.* The Court further opined that mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties.

#### Legal Update:

- Under the extant ECB guidelines, designated AD Category-I banks can approve requests from borrowers for changes in repayment schedule during the tenure of the ECB, i.e., prior to maturity provided average maturity and all-in-cost are in conformity with applicable ceilings/ norms. To simplify the procedure relating to ECB, it has been decided to delegate the powers to designated AD Category-I banks to approve requests from borrowers for extension of matured but unpaid ECB, subject to the following conditions:
  - I. No additional cost is incurred;
  - II. Lender's consent is available;
  - III. Reporting requirements are fulfilled.Further, powers are also delegated to designated AD Category – I bank to approve cases of conversion of matured but unpaid ECB into equity subject to same conditions as set out in paragraph 2 while ensuring that conversion is within the terms mentioned in paragraph C.14 of Annex to Circular dated November 30, 2015. [RBI/2016-17/92A.P. (DIR Series) Circular No. 10 dated October 20, 2016]. Click [here](#) to read and download the Circular.
- At present, paragraph F.8 of Annex B to Schedule 1 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 permits foreign investment up to 100%, under the automatic route, in Non-Banking Finance Companies (NBFCs) engaged in the 18 activities listed therein. Such investment is subject to the conditions, including minimum capitalisation norms.

As per the Reserve Bank of India Circular No. RBI/2016-17/90 A.P. (DIR Series) Circular No. 8 dated October 20, 2016 it has been decided to allow foreign investment up to 100% under the automatic route in 'Other Financial Services'. Other Financial Services will include activities which are

regulated by any financial sector regulator viz. Reserve Bank of India, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Pension Fund Regulatory and Development Authority, National Housing Bank or any other financial sector regulator as may be notified by the Government of India in this regard. Such foreign investment shall be subject to conditionalities, including minimum capitalisation norms, as specified by the concerned Regulator/ Government Agency. Click [here](#) to read and download the Circular.

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