Lakshmikumaran & Sridharan
corporate

corporate amicus

September 2015 / Issue – 49

An e-newsletter from
Lakshmikumaran & Sridharan, India

Contents

Article
Plastics – To ban or not to ban, is the question! 2

Notifications & Circulars 4

Ratio Decidendi 5

September
2015

Article

Plastics – To ban or not to ban, is the question!

By **Dr. Smita Bhatia**

Plastic packaging is big business. The India Brand Equity Foundation (IBEF) estimated the Indian packaging industry to be at about US$28 billion in 2014, with roughly half the market share belonging to plastic packaging.[1] Polyethylene and Polyethylene terephthalate (PET) account for nearly 70% of the polymers used in flexible packaging.[2] However, if a small Dehradun-based NGO has its way, the face of this industry could be altered forever.

The National Green Tribunal's (NGT) intervention stems from a petition filed by Him Jagriti, which sought a ban on the use of plastic bottles, multilayered plastic packages and PET bottles for packaging of carbonated soft drinks and to phase out the use of plastic polyethylene for all other non-essential items.[3] The NGT took cognizance of the health and environmental impacts of plastic packaging and indicated that, prima facie, it was of *'the view that there has to be restriction placed upon such packaging and generation of municipal waste.'*[4] The NGT further ordered that a Public Notice be issued to the manufacturers and users of multi-layered/PET bottles packaging, so that interested parties could address the tribunal before the matter was finally disposed.[5] Specifically, the NGT asked the parties to address:

1. Whether there should or should not be ban on the use of plastic packaging in food items;
2. Whether or not there should be complete ban or complete prohibition for use of plastic packaging in pharmaceutical formulations of any kind;
3. Whether there should be a partial ban on either of the above, and if yes, its extent.

Is banning plastics the best answer to the underlying health and environmental concerns? If yes, are there readily-available alternatives that are less harmful, environment friendly, and sustainable? What would be the cost associated with switching to non-polyethylene, non-PET alternatives, if any? Would the benefits outweigh the costs? Are the health concerns stemming from a specific chemical substance(s) used in plastic packaging, leaching into the container? Are the environmental concerns more from a lack of infrastructure for handling plastic waste? Stakeholders and policy makers need to

1 http://www.ibef.org/download/Flexible_Packaging060112.pdf

2 Ibid. at Fig. 8.

3 NGT OA 15/2014: Him Jagriti Uttaranchal Welfare Society Vs. Union of India & Ors.

4 NGT Order dated March 3, 2015 on OA 15/2014.

5 Ibid.

© 2015 Lakshmikumaran & Sridharan, India
All rights reserved

carefully consider all aspects of this issue prior to arriving at a final decision.

In the meantime, we should consider how chemical substances, including those used in plastic packaging, are managed elsewhere in the world. The European Chemical Agency manages the registration, evaluation, authorization, and restriction of chemicals (REACH) database. Since its inception in 2007, the REACH database has grown to hold information on the properties of over 13,000 unique chemical substances. Canada's Chemical Management Plan (CMP) and the US Toxic Substance Control Act (TSCA) are similar science-based chemical management practices. These state of the art chemicals management regimes are based on assimilation of scientific data on over 100,000 different chemical substances. The primary purpose of these regimes is to develop measures to protect humans and the environment by assessing hazards and risks of the chemical substances. India has set up the National Chemical Profile to document chemical substances, however, it only has just over 3000 listed substances, thus providing very little technical support to policy makers, industry and general public to make informed decisions.

Plastic waste is not unique to India. What is unique is the management of plastic waste. Countries that have successful plastic waste management programs share certain common attributes. For example, the processes of waste collection and segregation, technologies for waste recycle, reuse or disposal were put in place at the time regulations were enacted. Another attribute is the coalescence of all stakeholders – government, industries, the public and NGOs - in consortia or associations. These consortia or associations help in understanding and addressing a multitude of issues across the whole social spectrum without favoring to a select few. Finally, a majority of the citizens in these countries have taken it upon themselves to do their part in the proper disposal of plastic waste to minimize the environmental impact.

Any knee-jerk reaction, such as a total ban on plastic packaging, will not address the health and waste management issues. Instead, it may negatively impact the nation's economic health and dampen the prospects of the "Make in India" initiative.

There is, however, a silver lining. The scrutiny of plastics presents an opportunity to all stakeholders to channel the plastic health and waste management issues towards a more sustainable outcome. Such collaboration can raise awareness on plastic waste management and develop better insights across the plastic supply chain. After all, waste management is a shared responsibility between government, industry and consumer public. Perhaps, *Swachh Bharath* and Make in India can co-exist for the benefit of all.

[The author is a Director, Corporate Practice (Environmental Law), Lakshmikumaran & Sridharan, Delhi]

© 2015 Lakshmikumaran & Sridharan, India
All rights reserved

Notifications & Circulars

Companies (Management and Administration) Rules, 2014 amended: The Ministry of Corporate Affairs has amended the Companies (Management and Administration) Rules, 2014 by Notification dated 28-8-2015. In terms of Section 115 read with Rule 23 of the said Rules, a special notice required to be given to the Company shall be signed individually or collectively by such number of members holding not less than one per cent of total voting power or holding shares on which an aggregate sum of not more than INR 5 lakh has been paid on the date of notice. Now, in terms of the amending notification, the words, *"not more than five lakh rupees"* have been substituted with the words *"not less than five lakh rupees"*. Further, the format of annual returns to be submitted by every company in Form No. MGT-7 has also been amended to exclude *inter alia* details in relation to securities premium account with respect to share capital and disclosures in relation to corporate social responsibility and include details of outstanding debentures in addition to the deposits and loans under the particulars of Indebtedness.

SEBI notifies new listing regulations: The Securities Exchange Board of India (SEBI) has notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 by Notification No. SEBI/LAD-NRO/GN/2015-16/013, dated 2-9-2015 to consolidate and streamline the provisions of existing listing agreements for different segments of the capital market. In terms of Press Release No. 226/2015, a time period of ninety days has been given for implementing the Regulations. However certain provisions are applicable with immediate effect, such as (i) passing of ordinary resolution instead of special resolution in case of all material related party transactions subject to related parties abstaining from voting on such resolutions, in line with the provisions of the Companies Act, 2013 and (ii) re-classification of promoters as public shareholders under various circumstances.

Receipt of 'deposits' by companies – Deposits from relative of Director of private company, excluded: Companies (Acceptance of Deposits) Rules, 2014 has been amended by Ministry of Corporate Affairs Notification dated 15-9-2015 to amend the definition of 'deposit'. It is now stated that 'deposit' does not include any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company. Earlier, the exclusion was only in case of deposit from Director. Proviso to sub-clause (viii), in Rule 2(1)(c) has also been substituted in this regard.

Companies (Accounts) Rules, 2014 amended: The Ministry of Corporate Affairs has by Notification dated 4-9-2015, amended the Companies (Accounts) Rules, 2014. In terms of the notification, Rule 4A has been inserted, which states that the financial statements shall be filed by the companies in forms specified in Schedule III and comply with the Accounting Standards or Indian

© 2015 Lakshmikumaran & Sridharan, India
All rights reserved

Accounting Standards as applicable. Further, a proviso to sub-rule (3) of Rule 8 has been inserted to exempt Government Companies engaged in producing defence equipment from furnishing prescribed information and details in its Board report.

Companies (XBRL) Rules, 2015 notified: The Ministry of Corporate Affairs has by Notification dated 9-9-2015, notified the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2015 in supersession of Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011. According to the notification, companies or class of companies as prescribed under Section 137 of the Companies Act, 2013 with the exception of companies in banking, insurance, power sector and non-banking financial companies are required to file their financial statement and other documents in e-form AOC-4 XBRL using the XBRL taxonomy as stated in Annexure II. Further, companies required to furnish cost audit reports under sub-section (6) of Section 148 of the Companies Act, 2013 shall file such report and other documents using the XBRL taxonomy as stated in Annexure-III in e-form CRA-4 specified under the Companies (Cost Records and Audit) Rules, 2014.

Anchor investors - Minimum allotment requirement revised: The SEBI has notified the SEBI (Issue of Capital and Disclosure Requirements) (Sixth Amendment) Regulations, 2015 which shall be applicable to issuers filing offer documents with the Registrar of Companies on or after the date of commencement of these regulations. In terms of the notification, allocation to anchor investor shall be permitted, subject to a minimum allotment of Rs. 5 crore per such investor with a minimum of 5 investors and a maximum of 15 investors for allocation upto Rs. 250 crore and an additional 10 investors for every additional Rs. 250 crore or part thereof. Notification No. SEBI/LAD-NRO/GN/2015-16/18 dated 10-9-2015 has been issued by SEBI in this regard.

Ratio Decidendi

Mis-description in Arbitration Agreement not to effect application for appointment of arbitrator: The Supreme Court of India has held that mis-description of the parties in an agreement will not affect maintainability of an application for appointment of arbitrator so long as the parties can prove to the Court that the applicant and the contracting party are one and the same entity. The Petitioner here had filed an application for appointment of arbitrator in a contractual dispute. One of the contentions of the Respondent was that the sub-agreements entered into by the Respondent is with Taiyo Membrane Corporation but the application for appointment of arbitrator was filed by "Taiyo Membrane Corporation Pty. Ltd." which is not a party to the arbitration agreement. The Petitioner however submitted that both the entities were one and the same. [*Taiyo*

© 2015 Lakshmikumaran & Sridharan, India
All rights reserved

Membrane Corporation Pty. Ltd. v. *Shapoorji Pallonji and Company Ltd.* - Arbitration Case (Civil) No. 2 of 2015, decided on 9-9-2015, Supreme Court]

Competition law – Restriction on discounts, when not fatal: Competition Commission of India has held that until and unless regulation of discounts leads to appreciable adverse effect on competition, such practices do not become anti-competitive *per se*. The case involved the allegation, that the Opposite Party had sent communications to its dealers/ distributors that discounts more than the limit stipulated by it should not be given. The Commission however found that there was no absolute restriction or prohibition and that the distributors were just asked to route the extra discount proposals through them. The Commission in this regard also noted that since the price does not restrict the resellers to sell below a particular price, the same does not raise any competition concern to require any intervention by the Commission. Explanation (e) to Section 3(4) of the Competition Act was relied by the CCI here. [*Shubham Sanitarywares* v. *HSIL Limited* - Case No. 9 of 2015, dated 9-9-2015]

Winding up - Subsequent higher offer not valid ground for refusing confirmation of sale or offer already made: The Supreme Court has held that the increase in value of property due to subsequent development is not a relevant consideration in determining the legality of the order accepting the bid for sale of company property. During winding up proceedings, the Company Judge accepted a bid received for sale of property of the company. No objections of fraud or irregularity in the sale were made by the stakeholders, nor was there any objection from anyone that the price offered was inadequate. Post issue of order by Company Judge, the value of the property increased and the order confirming the bid was challenged by stakeholders. [*Vedica Procon Private Ltd.* v. *Balleshwar Greens Private Ltd.* - 2015 (8) SCALE 713]

Winding up - Sale of Property without proper publicity and valuation not valid: The official liquidator obtained two valuations of the sale property and did not inform the court about the higher valuation. Auction notice of property was also issued by him without reserve price. The Supreme Court has in this regard held that the conduct of the Official Liquidator in selling the property at a price much lower than the highest valuation, without proper publicity through advertisement or fixing any reserve price for the assets cannot be sustained in law. The Court in observed that this is particularly so when a previous assessment had valued the assets at a much greater value. Further, it was noted that the Company Judge failed to exercise its judicial discretion to see that the properties are sold at a reasonable price, as when the valuation report was submitted before him, it ought to have been disclosed to the secured creditors and other interested persons in order to ascertain the market value of the property, before it was sold. [*Tech Invest India (Pvt.) Ltd.* v. *Assam Power & Electricals Ltd.* - 2015 (8) SCALE 652]

© 2015 Lakshmikumaran & Sridharan, India
All rights reserved

NEW DELHI
5 Link Road,
Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9811
E-mail : lsdel@lakshmisri.com

MUMBAI
2nd floor, B&C Wing,
Cnergy IT Park,
Appa Saheb Marathe Marg,
(Near Century Bazar)Prabhadevi,
Mumbai - 400025.
Phone : +91-22-24392500
E-mail : lsbom@lakshmisri.com

CHENNAI
2, Wallace Garden,
2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU
4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West, Bangalore-560 055.
Ph: +91(80) 49331800
Fax:+91(80) 49331899
E-mail : lsblr@lakshmisri.com

HYDERABAD
'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church, Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

AHMEDABAD
B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE
607-609, Nucleus, 1 Church Road,
Camp, Pune – 411 001. Maharashtra
Phone : +91-20-6680 1900
E-mail : lspune@lakshmisri.com

KOLKATA
2nd Floor, Kanak Building
41, Chowringhee Road, Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH
1st Floor, SCO No. 59, Sector 26,
Chandigarh - 160026
Phone : +91-172-4921700
E-mail : lschd@lakshmisri.com

GURGAON
OS2 & OS3, 5th floor,
Corporate Office Tower,
AMBIENCE Island, Sector 25-A,
Gurgaon- 122001
Phone: +91- 0124 – 477 1300
Email: lsgurgaon@lakshmisri.com

EUROPE
Lakshmikumaran & Sridharan SARL
35-37, Avenue Giuseppe Motta, 1202 Geneva
Phone : +41-22-919-04-30
Fax: +41-22-919-04-31
E-mail : lsgeneva@lakshmisri.com

Disclaimer: *Corporate Amicus* is meant for informational purpose only and does not purport to be advice or opinion, legal or otherwise, whatsoever. The information provided is not intended to create an attorney-client relationship and not for advertising or soliciting. Lakshmikumaran & Sridharan does not intend to advertise its services or solicit work through this newsletter. Lakshmikumaran & Sridharan or its associates are not responsible for any error or omission in this newsletter or for any action taken based on its contents. The views expressed in the article(s) in this newsletter are personal views of the author(s). Unsolicited mails or information sent to Lakshmikumaran & Sridharan will not be treated as confidential and do not create attorney-client relationship with Lakshmikumaran & Sridharan. This issue covers news and developments till 15th September, 2015. To unsubscribe e-mail Knowledge Management Team at newslettercorp@lakshmisri.com

www.lakshmisri.com www.addb.lakshmisri.com www.lakshmisri.cn www.lakshmisri.ch

© 2015 Lakshmikumaran & Sridharan, India
All rights reserved