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WEEKLY VIEWPOINT

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INSIGHTS OF THE WEEK

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By- Vinuth Kumar (Digital Efforts)

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Bilateral News

EU TRADE ROUND-UP: INDIA TRADE TALKS, MACRON ON 'GREEN NEW DEAL' AND DEFORESTATION

The first ever ministerial level meeting of the India-EU trade and technology council (TTC) took place in Brussels this week (16 May) with working groups established to report on digital technologies, green technology and resilience in value chains, reports Mint.

The European Commission says that future cooperation will also focus on developing issues such as AI and digital skills, with a memorandum of understanding agreed on semiconductors.

High-profile politicians from both sides attended, but the meetings revealed ongoing tension over issues such as the EU's 2026 Carbon Border Adjustment Mechanism which Delhi sees as unfair to developing countries.

India has also bridled at sustainability requirements the EU wants it to sign up to, reports Politico.

Additionally, India has hit back at the EU's suggestion of cracking down on it reselling refined Russian oil to Europe by considering it a circumvention of Western sanctions, reports the Independent.

Deforestation laws don't cut it

The European Council gave the final go-ahead to a regulation that aims to minimise the risk of deforestation and forest degradation associated with products that are placed on or exported from the EU market.

The regulation sets mandatory due diligence rules for all operators and traders of palm oil, cattle, wood, coffee, cocoa, rubber and soy, requiring them to trace the commodities back to the plot of land where they were produced.

Writing on Euractiv, Pieter Cleppe, a research fellow at the Property Rights Alliance criticised the EU as "attempting to tackle the challenge as one size fits all".

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Source: Institute of Export

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IBC v/s Arbitration – A Tussle

In a landmark judgment dated 9 June 2020 re: 'Indus Biotech Private Limited v. Kotak India Venture Fund-I', the National Company Law Tribunal, Mumbai Bench-IV (NCLT), referred the parties to Arbitration by allowing an application filed by Indus Biotech Private Limited, (corporate debtor) under Section 8 of the Arbitration & Conciliation Act, 1996 (Arbitration Act) seeking reference to arbitration for settlement of the disputes between the parties, and dismissed the Company Petition filed by Kotak India Venture Fund-I (financial creditor) under Section 7 of the Insolvency & Bankruptcy Code 2016 (IBC).

BRIEF FACTS

In 2007-08, Kotak India Private Equity Group, including the financial creditor, entered into separate Share Subscription and Shareholders Agreement (agreement) with the corporate debtor. In 2007 financial creditor subscribed to equity shares and Optionally Convertible Redeemable Preference Shares (OCRPS).

The financial creditor opted for and chose to convert the OCPRS into equity shares in order to make a Qualified Initial Public Offering (QIPO) as per the applicable SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018

During the QIPO process, a dispute arose between the parties regarding calculation and conversion formula to be followed while converting the respective entities' preference shares into equity shares. The financial creditor sought to apply a conversion formula which would entitle it to 30% of the total paid-up share capital of the corporate debtor, whereas the corporate debtor sought to apply a conversion formula which would entitle the financial creditor to 10% of the total paid-up share capital. Further, the financial creditor unilaterally proposed to fix a QIPO date which was objected to by the corporate debtor.

The financial creditor, vide its letter dated 07.12.2018, unilaterally proposed to fix a new QIPO date of 30.12.2018, calling upon the corporate debtor to provide the financial creditor with an exit on 30.12.2018. The corporate Debtor vide its reply dated 24.12.2018 denied the right of the financial creditor to fix the QIPO date unilaterally, and to demand the redemption of the OCRPS, being premature.

On 31.03.2019, the financial creditor issued a Redemption Notice to the corporate debtor, inter alia calling upon the latter to pay a sum of approximately 367.09 crore to the financial creditor.

When the corporate debtor failed to redeem the OCPRS in terms of the agreement, the financial creditor filed a Company Petition under Section 7 of the IBC on 16 August 2019 seeking initiation of the insolvency proceedings against the corporate debtor.

The corporate debtor invoked the arbitration clause in the agreement by issuing a notice invoking arbitration dated 20 September 2019.

Thereafter, the corporate debtor filed an Application before the NCLT under section 8 of the Arbitration Act with a prayer to refer the parties to arbitration for settling their disputes.

ARGUMENTS OF THE APPLICANT/CORPORATE DEBTOR:

That Section 8 of the Arbitration Act, which provides for the power of a judicial authority to refer parties to arbitration, is mandatory in nature. The arbitration clause in the agreement is wide enough to cover the dispute between the parties all of which are in the nature of commercial disputes. The Company Petition is in the nature of a 'dressed up' petition, as the real dispute is with regard to the agreement between the parties and interpretation thereof.The respondent/financial creditor is not a Financial Creditor of the applicant/corporate debtor. The corporate debtor is a highly profitable and debt-free company and is in no need of resolution.The real dispute between the parties is with regard to matters pertaining to the agreement reached between the parties and interpretation of its various clauses The Applicant/Corporate Debtor has a right under section 8 of the Arbitration & Conciliation Act, 1996, to make an application at the first available opportunity before a judicial forum, to seek a reference to arbitration.

CONTENTIONS OF THE FINANCIAL CREDITOR:

That a Section 7 IBC petition belongs to a class of litigation which are incapable of being referred to arbitration as it is a matter of rights in rem which are inherently incapable of being referred to arbitration. The initiation of insolvency proceedings (CIRP) cannot be granted by an arbitrator. That the existence of an arbitration clause can never affect a Section 7 petition which was to be decided by an independent Authority. The fact of there being pre-existing disputes between the parties is irrelevant under a Section 7 petition, though it would assume significance in a petition under Section 9 of the IBC filed by an operational creditor. The IBC is a code for dealing with insolvency, either for revival or for liquidation. A Section 7 petition is not for recovery of debts and once the NCLT is satisfied of there having been a financial a debt and a default having occurred in respect thereof, the NCLT should admit the petition. The agreement provides that if the QIPO does not take place by the QIPO date, the investment will be redeemable. If it is not redeemed, it is to be treated as a 'debt'.

ISSUE BEFORE THE ADJUDICATING AUTHORITY

Will the provisions of the Arbitration & Conciliation Act, 1996 prevail over the provisions of the Insolvency & Bankruptcy Act, 2016? If so, in what circumstances ?

FINDINGS AND OBSERVATIONS

While considering the aforesaid issue the Adjudicating Authority at NCLT IV, Mumbai considered the ratios of the judgements passed by Superior Courts:

Re: In the case of Booz Allen & Hamilton v. SBI Home Finance Ltd., (2011) 5 SCC 532 (Booz Allen), it was held that generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration and all disputes relating to rights in rem are required to be adjudicated by courts and tribunals. The Supreme Court further clarified that this principle is not rigid, and disputes relating to subordinate rights in personam arising from rights in rem are arbitrable.

The Adjudicating Authority also considered the settled law 'generalia specialibus non derogant' - special law prevails over general law.

International News

INDIA ECONOMIC ALERT: WPI, IMPORT, EXPORT, TRADE BALANCE DATA TIMINGS TODAY

The domestic market indices made a marginally positive opening to the new week on Monday, which is lined with a spate of economic releases globally, including a speech from Fed Chair Jerome Powell on Friday.
At 9:15 am, Nifty50 traded 0.13% higher at 18,339.3 levels and Sensex added 35.05 points.
Back home, Monday is going to be an essential day for domestic economic development as India's WPI inflation data is set to release during the day, along with import and export figures.
The domestic wholesale price index (WPI) inflation figure for April is set to release at 12 pm on Monday, May 15.
According to Investing.com forecast, WPI inflation is likely to fall sharply to -0.2% annually in April from 1.34% in March.
India will also release its exports and imports in USD for the month of April, on Monday, which is scheduled to release at 5:50 pm on Monday.
Further, the country's trade balance figure for April is expected to release at 5:50 pm on May 15, and Investing.com forecasts the reading at -19.5 billion in the month from -19.73 billion in March.
India's merchandise trade deficit significantly narrowed to USD 15.24 billion, below market expectations of a USD 19.5 billion gap and compared to the deficit of USD 20.11 billion recorded in the same month the previous year. The trade deficit in April was the smallest since August 2021, primarily due to notable declines in both imports and exports attributed to weakening global demand, driven by persistently high inflation rates and increased borrowing costs. Imports dropped by 14.1 percent year-on-year, reaching a 20-month low of USD 49.9 billion. Additionally, exports also experienced a decline of 12.7 percent,

Source: Trading Economics

HEADLINES OF THE WEEK

- **Falling imports also indicate that domestic demand, India's proclaimed insulation against global headwinds, is ebbing.**
- **The European Council gave the final go-ahead to a regulation that aims to minimise the risk of deforestation and forest degradation associated with products that are placed on or exported from the EU market.**
- **India has also bridled at sustainability requirements the EU wants it to sign up to, reports Politico. Additionally, India has hit back at the EU's suggestion of cracking down on it reselling refined Russian oil to Europe by considering it a circumvention of Western sanctions, reports the Independent.**
- **The trade deficit in April was the smallest since August 2021, primarily due to notable declines in both imports and exports attributed to weakening global demand, driven by persistently high inflation rates and increased borrowing costs. Imports dropped by 14.1 percent year-on-year, reaching a 20-month low of USD 49.9 billion.**

TRIPPING TRADE: ON INDIA AND ITS TRADE STANCE

This financial year is off to a subdued start on the trade front. Goods exports slumped to $34.6 billion in April, the lowest since last October — the worst month for outbound shipments in 2022-23. This was the third successive contraction in exports, and 12.7% below last April's numbers. Imports shrank by a sharper 14% to trip to a 15-month low of under $50 billion. A slowing global economy had been hurting exports through the second half of 2022-23, with declines in four of six months. But April's initial estimates are troubling not just because they represent the steepest fall in recent months but also signal a sudden shift in sequential momentum akin to the use of emergency handbrakes. This March, despite lingering global demand weakness, exports had hit a nine-month high of nearly $42 billion while imports were $60 billion. The new Foreign Trade Policy enunciated a two trillion-dollar export goal to be achieved in seven years. Its first month of implementation could not have been off to a shakier start. The prospects of last year's healthy 14.7% growth that lifted total exports to about $776 billion being replicated in 2023-24 look bleak already.

ne may draw some succour from the trade deficit easing to a 20-month low. But managing the trade deficit cannot be the goal for policymakers. Falling imports also indicate that domestic demand, India's proclaimed insulation against global headwinds, is ebbing. Moreover, when imports of petroleum (down 14%), and gems and jewellery plummet, they also affect exports of value-added end products. Petroleum exports shrank 17.5% in April, while jewellery shipments slipped at 30%, marking the seventh contraction in 10 months even as other job creators such as textiles have been hit hard. That commodity prices have cooled from last year is only one reason for the shrinking trade basket. Officials concede there does not seem to be any immediate respite likely from faltering global demand.

Source: The hindu

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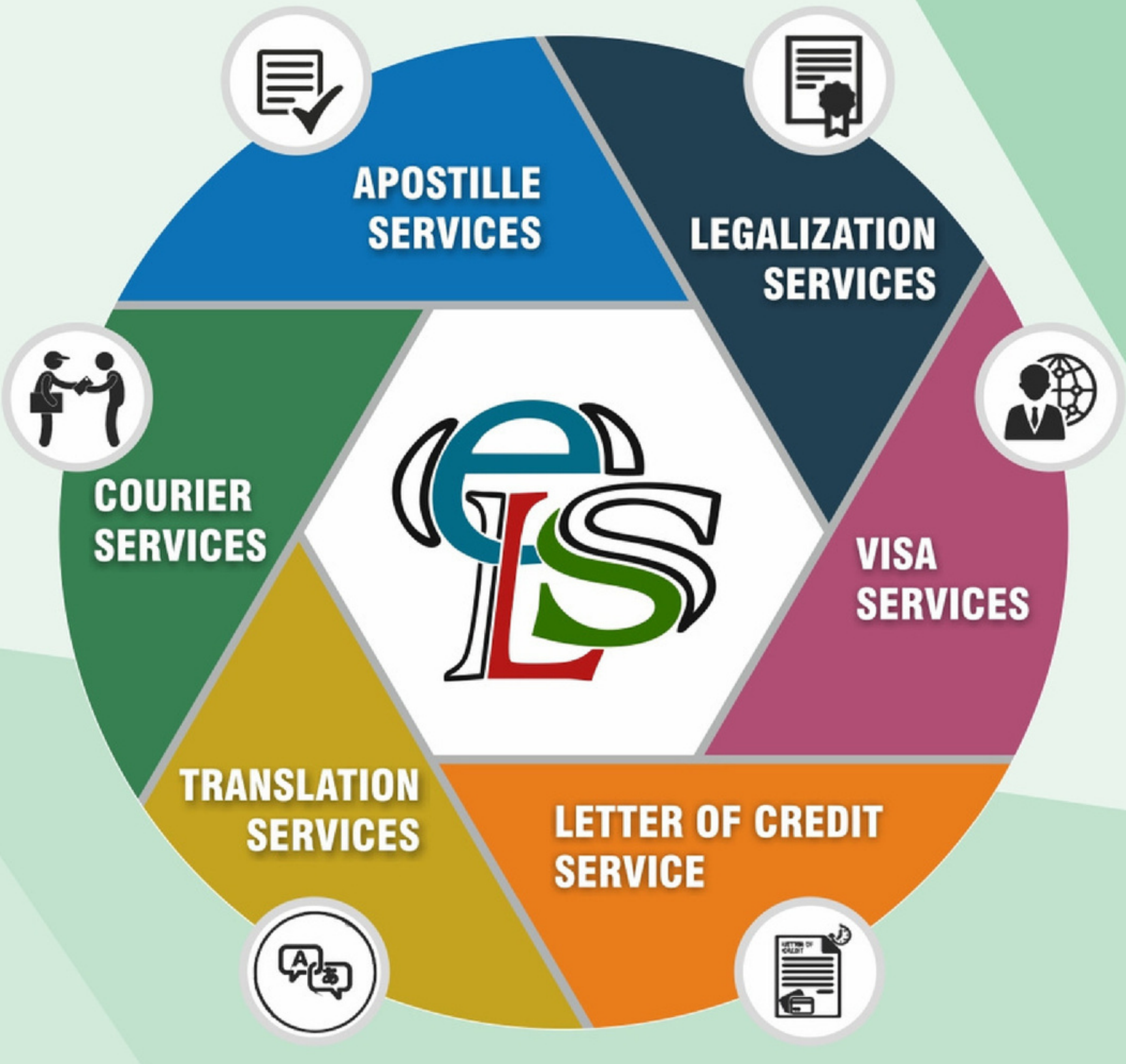

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