



Mysore Chapter

eNewsletter - 73

February 2010

*Program at ICSI Mysore
on 07th March 2010*

3

UUMANG'10

...the zeal to excel!

6

*How artificial
an Artificial Person can be?*



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From Chairperson's Desk



Dear CS Fraternity,

Greetings to you and your family on behalf of the newly elected office bearers of the Chapter!

I deem it my privilege to be addressing you for the first time as the Chairperson of the Mysore Chapter of this prestigious Institute!

Please permit me to take a quick moment to introduce my colleagues in the Committee this year – CS Srilatha T.G. as Vice-Chairperson, CS S. Smitha as Secretary and



CS S. Kamal Kumar as Treasurer; representing the students on the Facilities Committee are Ms. Shwetha Nadig, Ms. Sowmya and Mr. Kunaal.

I have had an opportunity to watch my alma mater grow from a fledgling Chapter to a Chapter with an awesome strength of 1500 students. The Chapter owes it to the services of all the Members and the Office bearers that have preceded us, for taking it from strength to strength. The mainstay of our profession is certainly quality in services. It is, therefore, my earnest request to all the students to hone their professional, as well as, soft skills untiringly.

One of the mega events this year is UMANG '10 coming up on the eve of the Foundation Day, on Sunday the 7th March 10. We, the Managing Committee, sincerely hope that all the students and members have received the communication.

While I am sure you will show up at UMANG '10 with the same zeal and excitement that we share, the Managing Committee sincerely looks forward to your wholehearted support and co-operation for all the activities at the Mysore Chapter through the coming months and years.

Sincerely yours,

K. Sarina Chouta Harish

Words worth Millions

"Before you start some work, always ask yourself three questions - Why am I doing it, what the results might be and will I be successful. Only when you think deeply and find satisfactory answers to these questions, go ahead."

Chanakya

Republic Day Celebrations:

CS. Anshuman A. S., Past Chairman of the Chapter, hoisted the flag at 9.15 a.m. and addressed the gathering. The importance of being a Sovereign, Socialistic Republic was stressed upon. The newly appointed Chairman of the Managing Committee CS. K. Sarina Chouta Harish requested the students to continue their involvement in the chapter activities. Tree Saplings were planted as an initiative to imbibe the concept of Environmental Protection. Ms. Shambhavi M., Foundation student of the Chapter spoke on the occasion. Mr. Subodh M. R., Final student delivered the vote of thanks.



Panel discussion on GST: With the recent release of the White Paper on GST, Governments at both the Centre and State has initiated the process of dialogue with the industry at large to receive views and feedback on the proposed structure of the GST. CII organized a Seminar on GST on 29th January 2010 at Hotel Sandesh The Prince, Mysore wherein CS. Anshuman, past chairman of the Mysore Chapter of ICSI participated as panel member from ICSI Mysore.

Study Circle Meetings: The study circle meetings were held on 10th, 17th & 24th of January 2010 at the chapter premises. On 10th January 2010, the discussion was on “UMANG-2010” wherein Mr. Kiran T & Ms. Vijayalakshmi Karur were elected as Chief Coordinators and coordinators for various committees were elected for the program. On 17th January 2010, the coordinators held a meeting to discuss the schedule for “UMANG-2010”. On 24th January 2010, the Coordinators of various committees along with the Chief Coordinators held a discussion with the Secretary of the Chapter, CS. Smitha Christy.



Mysore Chapter is coming up with program UMANG '10, the Annual Talents' Day on Sunday, 7th March 2010 at Bahadur Institute of Management Sciences, Mysore.

Umang - the zeal to excel, is the passion to bring out the best in each budding professional, by providing a solid platform for the furtherance of professional studies. Umang intends to turn the saplings called 'students' into strong rooted 'trees'. **Umang is of the students, by the students and for the students** with the support of all at the Chapter.

The Program provides a platform to students to exhibit the academic and non-academic talents. The participants for the program include students of CS, CA, CWA and College students in and around Mysore. Exciting competitions like Essay, Elocution and Quiz have been scheduled. The participants will initially compete in the Preliminary Round to be held on 28th February 2010 and the finalists will be watched for their outstanding talents on 7th March 2010.

Apart from the competitions there will be *Technical Presentations* - to provide budding professionals a platform to develop presentation skills, *Session on Personality Development* - to orient students into successful professionals, *Management Games* - to experience the fun in learning management tools, *Mock Stock* - to gain the thrill and excitement of stock trading. The meritorious students will be felicitated on the day.

The grand finale is the *Cultural Extravaganza*, our young talents will set the stage ablaze with live performances. Are you with us?!

Looking forward to your presence on 7th March 2010.

(For more details contact Mysore Chapter on Ph: 0821-2516065, E-mail: spectrum.umang@gmail.com, mysore@icsi.edu)



Discounted Cash Flow

A Key Valuation Method

CS. Amar Kakaria ACS, ACA, ACWA
amar@fusionadvisors.in

Despite being one of the most complex methods of stock valuation, Discounted Cash Flow (DCF) analysis gained wide popularity following the Great Stock Market Crash of 1929. Though DCF calculation has been used in some form or other since ancient times, it was formally expressed in modern economic terms for the first time by Mr Irving Fisher in his book "The Theory of Interest" in 1930.

Discounted Cash Flow method is generally used to estimate the attractiveness of an investment opportunity. Analysts usually discount projected cash flows at Weighted Average Cost of Capital (WACC) to determine the Net Present Value (NPV) of a particular project, using the following formula:

$$DCF = \frac{CF_1}{(1+r)^1} + \frac{CF_2}{(1+r)^2} + \dots + \frac{CF_n}{(1+r)^n}$$

CF = Annual Cash Flow

r = Discount Rate (WACC)

Estimated cashflows include all types of inflows and outflows related to the project considered for valuation. Generally it is assumed that the enterprise will run till infinity and hence, cashflows also need to be projected accordingly. However, instead of projecting the cash flows till infinity, a terminal value approach can be used. A simple annuity can be used to estimate the terminal value after certain years.

WACC is the overall required return on the company as a whole and usually, calculated as per Capital Asset Pricing Model (CAPM). It is the average of the costs of company's sources of financing viz. capital and debt, each of which is weighted by its proportionate use in the given situation.

As a thumb rule, if the net present value calculated using DCF analysis is higher than the current cost of the investment, it is believed to be a good opportunity and vice-versa. Given the fact that the Management is well-verse with the business, their guidance about future performance carries substantial weightage while arriving at the enterprise valuation. Since DCF relies upon management projections to calculate the enterprise value, it is considered to be one of the most scientific and reliable methods of valuations.

DCF is regularly used in corporate finance management, real estate development as well as

investment finance wherein future projections are likely to be somewhat more certain.

However, we must understand that there are many complexities and variations while projecting future cashflows as well as determining WACC. As the time lapses, it is even more difficult to have a more realistic estimate of the future cashflows. Sometimes, DCF can be merely a mechanical tool which may not be suitably applied for real-life situation. Further, one need to extremely cautious while using this tool because small changes in input can make huge difference in valuation of the enterprise.

ABC Group - Discounted Cash Flow (Rs in Lakhs)

	FY09A	FY10E	FY11E	FY12E	FY13E
	-	Year 1	Year 2	Year 3	Year 4
Net Sales	115.98	175.76	246.50	386.40	516.50
YoY Increase		52%	40%	57%	34%
EBITDA	15.6	25.8	40.5	94.1	157.2
EBITDA Margins	13.5%	14.7%	16.4%	24.4%	30.4%
Less: Depreciation	-	10.4	14.3	17.9	21.1
EBIT	15.6	15.4	26.2	76.3	136.1
Less: IT on EBIT	5.2	5.1	8.7	25.2	44.9
NOPAT	10.5	10.3	17.6	51.1	91.2

Cash Flow Statement

	Year 1	Year 2	Year 3	Year 4
NOPAT	10.3	17.6	51.1	91.2
Add: Depreciation	10.4	14.3	17.9	21.1
Change in Working Capital	(5.9)	4.4	12.2	13.0
Capex	50.0	50.0	50.0	50.0
Free Cash Flow (A)	(23.4)	(22.5)	6.8	49.3
Terminal Value (B)				586.6
Total (C = A+B)	(23.4)	(22.5)	6.8	635.9
NPV of FCF (D)	(20.1)	(16.6)	4.3	26.7
NPV of Terminal Value (E)				317.9
Enterprise Value (F = D+E)				312.3
Net Debt				28.1
PV of Equity				284.1

Assumptions: WACC - 16.5% Perpetual Growth Rate: 1%

Parameter	Value	Criterion
Risk Free Rate (Rf)	8.0%	Yield on 10 year G-Sec paper
Market Returns (Rm)	17%	Compounded annualised return on BSE Sensex for last 20 years
Beta (B)	1.5	Beta analysis of the comparable companies
Cost of Equity (COE)	22%	= Rf + B*(Rm-Rf)
Cost of Debt (COD)	14.0%	Ability to raise capital from Banks
Tax Rate (t)	33%	Applicable Tax Rate
Target Debt to Capital Employed Ratio (D/CE)	0.4	Target Company Debt Equity Ratio
Weighted Average Cost of Capital (WACC)	16.5%	= COD*(D/CE)*(1-t) + COE*(1-D/CE)

Two States: "The Story of My Marriage"

Publisher - Rupa & Co
Author - Chetan Bhagat
Price - Rs. 95

Book Review

CS. Pratap Rudra,
Asst. Company Secretary,
Strides Arcolab, Bangalore



Makes an entertaining weekend read. We all love a sneak peek into the love life of others (although half of us wouldn't admit it even to our best friend). But when one of India's most popular writers today, served more than a generous helping of his very own love story on a delectable platter, the readers are bound to get unruly with irrepressible curiosity and clamor for an "early bird" bite.

Well, I got my copy as soon as it hit the stands and unabashedly finished it in one sitting. It is fun book and a page turner.

Some might even find it inspiring, especially those on the brink of courageously hurling themselves or getting helplessly hurled into cross state / cross culture / cross caste or cross sub - caste marriages.. Needless to say, anyone with anything remotely hybrid in their upcoming marriages or proposed proposals would be well advised to read this book. They might find useful tips on how to convince disgruntled parents that their match is nothing short of "being made in heaven". An attentive reader might realize that beneath all the humor the author is sharing an endearing story of how he got married to the girl he loved despite all odds. The book is sprinkled with anecdotes of the glaring differences between north Indian (Punjabi) and south Indian (Tamil Brahmin) cultures. Chetan Bhagat manages to highlight these differences with humor and none of it is unkind.

You don't have to be in the throes of a hopeless love life to relate to this book. Just pick your copy and read it and it even makes an attempt at national integration!!!



IT for Professionals

Amitkumar Hegde B.Com, MCA,
Bangalore



Computer virus has always been a nightmare. Choosing the best antivirus out of a pile of antivirus programs is one of the toughest jobs ever. Even I frequently keep changing my antivirus program. Since a couple of months I have been using AntiVir and am quite satisfied by its performance. You can download Antivir from <http://www.free-av.com> . There are many versions available but I am using "AntiVir Personal Edition Classic" which is free.

The main qualities that I look for in an antivirus tool are: Frequency of Virus Definition Updates, Memory & CPU utilization and Ease of Use. As I checked out, AntiVir could detect almost all new viruses. It could even detect some of the viruses that could not be detected by renowned Norton Antivirus. The Scanner can scan Local Drives and Active Processes. Process is a running program. If the virus is in memory then scanning Active processes will catch the virus which has accidentally remained undetected.

You can configure the program for your requirements using the Extras>Configuration menu. I would always suggest you to move all detected virus to Quarantine which you can set using the Configuration Dialog box. Quarantine is a special black box maintained by the antivirus program which stores all the affected files. Once the file is in Quarantine, it can no longer affect the system. Later you can delete the files form the quarantine.

You can update the virus database directly by connecting to net. If you do not have an internet connection, download the recent virus definition file form internet (It will be a .zip file which can even be downloaded form third party websites). Once you have the recent update file, go to Update>>manual Update, select the update file and click on Open.

As a good practice install your antivirus program beforehand and keep it updated. If you try to install antivirus after your system is affected by a virus, chances are that the virus will not allow you to install antivirus or antivirus program will start malfunctioning. Almost all new viruses are smart enough to alter antivirus files to keep themselves safe once they are up and running. So do not wait anymore go get your copy of antivirus and protect your valuable documents.



How artificial, an Artificial Person can be?

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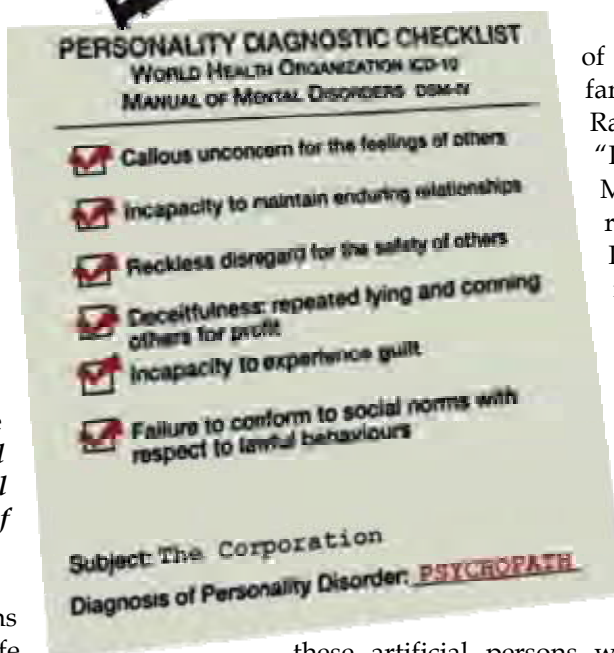
“The concept of incorporated artificial person, the company”; who else knows it better than the Company Secretaries?

This concept has found place in the list of most influential concepts that changed the lives of the mankind on this earth. Even if someone asked in our dreams, “What is a Company?” we could quickly answer “A company is an artificial juridical person.... just like natural persons, it can buy and sell properties, borrow money, can sue and be sued and can carry on business of its own... with its shareholders having limited liability only to the extent of their investment in the company.....”

Some time ago I was watching a documentary movie “The Corporation” (www.thecorporation.com). The documentary analyses the nature of corporations and extends the above definition “..... corporations are special kinds of persons, persons having no moral conscious, having single objective of making as much money as it can!!”

While recognizing the good contributions from the corporations in making the life better, it continues to demonstrate that *the corporations, in its over enthusiastic pursuit of increasing the wealth of its stake holders, have developed high disregard to the feelings and safety of others and even of its workers, lost concern about environment and the society at large, it can be deceitful to any extent for profit and it never experiences the guilt!*

The examples, data and visuals used in this documentary are convincingly powerful. Statements like “if cost to comply is much less than earnings from non compliance, corporations just consider it just a business decision not to comply...” are like the one which we hear even in the Indian circumstance. Personalities like Prof. Noam Chomsky and some of the



CEOs also appear in the document. From India Dr. Vandana Shiva has expressed her views on the excesses of the artificial person ‘the corporation’ on the mankind.

Today food, education, shelter, health.... everything has got commercialized. We are experiencing incredible rise in the food prices, petroleum products, shelter, health and education... resulting in

spoiling the equilibrium of human life. In response to the famous slogan from Bharata Ratna Sir M Vishweshwaraiah “Industrialise OR Perish”, Mahatma Gandhi had candidly responded “Industrialise AND Perish”. Is this turning into a reality?

What next? We can not imagine a world without corporations. We have come a long way. Perhaps, the only alternative left is to make corporations realize their social responsibility. Imposing social responsibility will not work as

these artificial persons will find ways and means of getting over it. Societal Responsibility Consciousness is something which needs to be cultivated among the corporate minds. After all it is all the human minds that run these artificial persons.

A voluntary guideline on Corporate Social Responsibility that was recently published by MCA becomes highly relevant in this backdrop. Responsibility to keep up the conscious is on us, the corporate professionals.

Do we know and understand what we owe to society? Are we ready to take up the challenges? We ought to!



Lunch with God

A little boy wanted to meet God. He knew it was a long trip to where God lived, so he packed his suitcase with a bag of potato chips and a six-pack of root beer and started his journey. When he had gone about three blocks, he met an old woman. She was sitting in the park, just staring at some pigeons. The boy sat down next to her and opened his suitcase. He was about to take a drink from his root beer when he noticed that the old lady looked hungry, so he offered her some chips. She gratefully accepted it and smiled at him.

Her smile was so pretty that the boy wanted to see it again, so he offered her a root beer. Again, she smiled at him. The boy was delighted! They sat there all afternoon eating and smiling, but they never said a word.

As twilight approached, the boy realized how tired he was and he got up to leave; but before he had gone more than a few steps, he turned around, ran back to the old woman, and gave her a hug. She gave him her biggest smile ever.

When the boy opened the door to his own house a short time later, his mother was surprised by the look of joy on his face. She asked him, "What did you do today that made you so happy?" He replied, "I had lunch with God." But before his mother could respond, he added, "You know what? She's got the most beautiful smile I've ever seen!"

Meanwhile, the old woman, also radiant with joy, returned to her home. Her son was stunned by the look of peace on her face and he asked, "Mother, what did you do today that made you so happy?" She replied! "I ate potato chips in the park with God." However, before her son responded, she added, "You know, he's much younger than I expected."

Too often we underestimate the power of a touch, a smile, a kind word, a listening ear, an honest compliment, or the smallest act of caring, all of which have the potential to turn a life around. People come into our lives for a reason, a season, or a life time! **Embrace all equally!**



Web Yatraa



Santosh S Hegde
CS Executive, Bangalore

Are you looking for complete Tax solutions under one webpage? Here is one user friendly and informative web portal - www.IndiaTaxes.com.

This portal is a one point solution for all tax queries whether it is Income Tax, TDS, Sales Tax, Service Tax or Central Excise. Apart from tax, basics of accounting are also provided in this website.

Being professionals, catching latest amendment is very important. The law stated in this site is amended with latest developments to ensure that whatever we learn is the latest and updated.

Also, it provides utilities like, Opinion poll, Tax Calculators, Tax Calendars, Tax Planning Tips, Recent Updates and Tools, which helps the users very much in day today working. Surf this site and master the tax laws of India.

Till next month, Happy Surfing!!!



Stamp Papers

K Vijayshyam Acharya, B Com, LLB, ACS, CA, Bangalore

This article attempts to briefly dwell upon a few issues relating to stamp papers and payment of stamp duty with special reference to Karnataka Stamp Act.

1. Stamp papers do not have any expiry period. Section 54 of the Indian Stamp Act, 1899 and Section 52 of the Karnataka Stamp Act, 1957 provide that valid and usable stamp papers which are not required for immediate use can be surrendered within the period specified therein. Such specified period applies merely for surrender and does not

mean that the stamp paper is rendered unusable thereafter, or its validity period has expired.

2. When more than one stamp paper is used for a single instrument / document, there is no requirement, unless specifically stated in the Stamp Rules of the State, that stamp papers for the required value should bear consecutive serial numbers. However, all the stamp paper sheets should be used for the instrument. Needless to say, the aggregate value of all such stamp paper sheets should not be less than the prescribed value.
3. If very old stamp papers of different dates have been used for a single instrument/ document, it may, depending on other surrounding circumstances, be an indication that authenticity of the instrument / document could be doubted, but the same cannot, by itself, be conclusive evidence that the instrument/ document is not genuine or is forged.
4. Every instrument, not having been previously executed by any person, if executed in Karnataka, is chargeable to duty as per the provisions of The Karnataka Stamp Act, 1957 even though it does not relate to a person, subject matter, transaction or property in Karnataka. For example, a loan agreement signed in Karnataka by a borrower resident outside India is chargeable under the said Act, even though the lending Bank is also outside India and the loan is not expressed in Indian Rupees.
5. Under The Karnataka Stamp Act, 1957, stamp duty is chargeable upon execution (i.e., signing) or upon receipt



There are many doubts with respect to stamp papers that are being posed frequently to professionals.

Here is an attempt to list out concluded clarifications to such questions. It is like a ready reference on stamp papers for corporate professionals.

of the instrument in Karnataka. Failure to register such instrument after execution cannot be an excuse for non-payment of proper stamp duty thereon. Similarly, proper payment of stamp duty on an instrument not registered will not in any manner dilute the effects of non-registration as per The Registration Act, 1908.

6. Every instrument chargeable with duty, executed out of India is to be stamped within three months after it has been first received in Karnataka.

7. It is advisable for every instrument to clearly indicate who will bear the stamp duty thereon. In the absence of express agreement between the parties, stamp duty expense shall be borne by

such party as specified for this purpose in the Karnataka Stamp Act, 1957.

8. If an instrument/ document does not bear stamp duty of the requisite value, a Court can only deem the document to be not properly stamped, but cannot, only on that ground, hold the document to be invalid. Such instrument is still admissible in evidence on payment of prescribed duty and penalty. In fact, even an agreement executed on a plain paper could be admitted in evidence by paying the prescribed duty and penalty. However, mere admissibility as evidence is only a threshold and does not by itself imply that such instrument/ document is genuine.
9. If an instrument is not adequately stamped, its admissibility as evidence should be objected to; once admitted, mere insufficiency of stamp duty may not cause the Court, at a subsequent stage of the proceeding, to ignore the instrument.
10. The party, who propounds an instrument and claims that it was in fact executed and is genuine, will have to prove it. If the opposite party denies it or alleges that such instrument is forged, the burden does not shift to such opposite party to prove so.



Inter Corporate Loans, Investments, Guarantees and Securities

Part 1

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Sections 372A of the Companies Act, 1956 (The Act), clarifies the provision about the Inter Corporate Loans, Investment, Guarantees and Securities (hereinafter called as Proposal). The Section was inserted by the Companies (Amendment) Act, 1999 w.e.f 31.10.1998. As these transactions are integral part of corporate affairs, understanding the provisions of law takes significant importance.

The history of legislation on inter-corporate investments has been one of gradual liberalisation. Earlier, the Companies Act, 1956, regulated investments with limits of 10 per cent of the investee company's capital and 20 per cent of its net worth for aggregate investment in companies in the same group and 30 per cent of its net worth for aggregate investment subject to the board's approval. For investment beyond these limits, shareholder and central government approval were necessary. Similar limits were laid down for inter-corporate loans separately. Subsequently, the law was liberalised to give flexibility to the board of directors to pass a resolution unanimously, to make aggregate inter-corporate loans or investments as one pool up to 60 per cent of its net worth or 100 per cent of its free reserves and can exceed these by special resolution of the shareholders.

Inter Corporate Loans, Investment, Guarantees and Securities are integral part of corporate affairs. Provisions relating to these transactions are liberalized and penal provisions for violations are made severe.

Therefore, understanding the provisions of law takes significant importance.

So, here is an attempt to present the provisions of section 372A in brief:

LOANS includes the Debentures or any other money given by one company with another company. **INVESTMENT** includes investment in securities of any other body corporate, shares, debentures, convertible debentures, bonds etc. defined under the SCRA, 1956 and SEBI, 1992.

BODY CORPORATE Section 2(7) of the Companies Act, 1956 defines 'body corporate' as a *company incorporated outside India* but it doesn't include (a) Corporation Sole (b) Co-operative Society and any other body corporate not being a company defined under the Act.

Limitation on the power of Board

The Board can approve the proposal for any of the four transactions mentioned herein only up to:

- a) 60% of Paid up share capital & free reserve "or"
- b) 100% of Free Reserve ; Which ever is higher.

Approval of shareholders

If the aggregate of all loans, investment, guarantee or security exceeds the above said limit, then the prior approval of shareholders in general meeting is necessary by passing the special resolution and the notice of general meeting shall clearly indicate the following (a) specific limit of loan, investment, guarantee and securities (b) particular of Company in which the investment is being made (c) Purpose of investment (d) source of funds (e) other details, if any. **But** guarantee may be given even in excess of limits without prior approval of the shareholders if the following conditions are fulfilled:

1. Board resolution passed with the consent of all the directors of the company.
2. Prior approval of the public financial institution has been received.
3. Some exceptional circumstance prevents the Company from obtaining the approval.
4. The Board Resolution shall be confirmed by the shareholders within 12 months form the date of passing the resolution or in the Annual

General Meeting held next after the resolution is passed by the Board, whichever is held earlier.

Permission of public financial institutions:

Where a Company receives term loan from a public financial institutions referred under Section 4A of the Act and there is a default in repayment or payment of interest, then the concerned company shall be required to take prior approval of the concerned institute before making/ providing any loan, investment, guarantee or securities. This approval is required even if the proposal is within the specific limit of 60% of paid up share capital & free reserves or 100% of Free reserves, whichever is higher.

No blanket permission by the shareholders:

Every proposal in excess of the limits of 60% or 100% shall be specifically approved at the general meeting.

To be concluded...



Compilation:
Ravishankar Kandhi, CS Final, Bangalore

Learners' Corner:

Exchange Traded Funds (ETFs)

ETFs are Index-based investment products that allow investors to buy and sell exposure to an index through a single financial Instrument. For example, in India, the exposure of SENSEX can be traded through an instrument wherein the increase or decrease of the index's points will be determinant of Instrument's profit or loss.

ETFs open-ended exchange traded funds that are traded on a stock market like share of any individual listed company. They can be traded at any time during the market hours and can be sold short or margined. But they are shares of a portfolio like mutual fund, not of an individual company. They represent the shares of ownership in either open-end fund or unit investment trusts that hold the portfolio of shares or stocks, which are specifically designed for to track the performance of the index for which ETFs are created. These ETFs significantly differ from one market to other, sector/industry and region.

India joined the ETF club in December 2001 with the launch India's first ETF 'Nifty BeES' (Nifty Benchmark Exchange-traded Scheme) by Benchmark Mutual Fund, based on the S&P CNX Nifty Index.

Although this is not a new concept it has attracted many investors in the recent times who believe ETFs simply as a form of diversified equity investment. Though few theories which argue that these funds are disadvantageous for ordinary investors the market share of ETFs has been increasing year by year. ETFs are the fastest growing mutual fund structure in the world.



Did you Know?

Nidhi or Mutual Benefit Company:

As per sub-section (1) of section 620A of the Act, 'Nidhi' or 'Mutual Benefit Society' means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be. Thus, for an association or a body corporate to become a 'Nidhi' or a 'Mutual Benefit Society', the following conditions laid down by section 620A of the Act must be fulfilled:

- It must be a company as defined under section 3 of the Act.
- It must be declared to be a 'Nidhi' or 'Mutual Benefit Society' by a notification in the Official Gazette by the Central Government.

Source: www.mca.gov.in

Pick of the month

Whether a company whose shares are not traded on the stock exchanges, can be considered a 'Vanishing Company'?

No. The non- trading of the shares of the company on the stock exchanges may not be considered as a reason for suspecting a company as a vanishing company as trading is a market phenomenon.

The criteria for identification of a vanishing company:

A company would be deemed to be a vanishing company, if it is found to have:

- Failed to file returns with Registrar of Companies (ROC) for a period of two years;
- Failed to file returns with Stock Exchange (SE) for a period of two years (if it continues to be a listed company);
- It is not maintaining its registered office of the company at the address notified with the Registrar of Companies/ Stock Exchange; **and**
- None of its Directors are traceable.

Notes:

- All the conditions mentioned above would have to be satisfied before a listed company is declared as a vanishing company;
- The conditions mentioned at (a), (c) & (d) would suffice to declare a company as vanishing if such company has been de-listed from the Stock Exchange.

Source: www.mca.gov.in



CENVAT

Case Laws

In terms of the CBEC Instructions Manual, duty is payable on samples drawn for quality testing/ control.

Positive Packaging Industries Ltd. Vs CCE (2010 (249) ELT 57)

CENVAT credit is available in respect of inputs used in the manufacture exported final products irrespective of the fact that these products were otherwise exempt from duty.

Techno Economic Services Pvt. Ltd. Vs CCE (2009-TIOL-1970)

CENVAT credit of the balance 50% available on capital goods in the second year is not deniable for the reason that the goods have not been put to use as long as the goods are in the possession of the manufacturer.

Unimark Remedies Ltd Vs CCE (2009 (95) RLT 808)

Customs

Notifications/Circulars

Partial/full exemption from customs duty to specified goods when imported from Korea effective from 01/01/2010.

Customs Notifications No. 151/2009 dated 31/12/2009 and 152/2009 dated 31/12/2009.

Partial/full exemption from customs duty to specified goods when imported from certain member States of ASEAN effective from 01/01/2010. Presently Singapore, Thailand and Malaysia have been included in the notification.

Customs Notifications No. 153/2009 dated 31/12/2009

Case Law - Classification

Imported goods should be classified under specific entry when there is one and not under the residual entry.

Menon Technical Services Pvt. Ltd. Vs CC (2010 (249) ELT 383),

Case Law - Valuation

Royalty payments and technical know how fees are not to be included in the transaction value of imports for the purpose of levy of customs duty.

Shasun Chemicals and Drugs Limited Vs CC (2010 (249) ELT 80)

The Tribunal has held that the transaction value of imported goods cannot be rejected on the basis of the price of the goods whose nature, character, specifications and other features are not similar to that of the imported goods since such goods cannot be considered as comparable.

Pankaj Gandhi Vs CC (2010 (249) ELT 121)

Foreign Trade Policy (FTP) Notifications/Circulars

The Central Government has extended the period of export obligation upto 31/12/2011 for the 'Advance Authorisation Holders' who have imported raw sugar between 21/09/2004 to 15/04/2008

Public Notice No. 29/2009-14 dated 07/01/2010

Case Law

Benefit of a concessional rate under the EPCG Scheme is not available if a valid EPCG licence is not held by the importer on the date of import.

Precot Mills Ltd. Vs CC (2009 (95) RLT 853)

Goods manufactured by a 100% EOU wholly from indigenous raw materials and supplied to the DTA would only be charged to excise duty. Further use of imported consumables in the manufacture of such goods would not render them liable to excise duty equal to customs duty.

CCE Vs. Asian Peroxides Ltd. (2009 (249) ELT 155)

Antidumping Duty Notifications

Anti dumping duty imposed on import of 'Tyre Curing Presses' falling under tariff heading 8477.51.00 originating in or exported from China PR.

Customs Notification No. 1/2010-Cus., dated January 8, 2010

Levy of anti dumping duty extended on imports of Polytetrafluoroethylene from Russia till 7/11/2010.

Customs Notification No. 2/2010 dated 1/01/2010).

Service Tax Case Laws

Commission agent acting also as a consignment agent is covered within the definition of C&F Agent.

CCE Vs. M/s Mahaveer Generics, [2010-TIOL- 20]

No restriction on distribution of input credit relating to one unit of a manufacturer / service provider to another unit subject to the fulfillment of the prescribed conditions under Rule 7 of the CENVAT Credit Rules, 2004.

Ecof Industries Pvt Ltd Vs. CCE, [2009- TIOL- 2109]

Commission agent service received by appellants for procuring purchase orders as well as for collection of sale price is an eligible input service as such service is one integrated service and received as such.

Pan Asia Corporation Vs. CCE, [2009 (95) RLT 863]

CENVAT credit is admissible even in respect of export of final product chargeable to nil duty.

Noble Grain India Pvt. Ltd. vs. CCE [2009 (95) RLT 864]

Cenvat credit is admissible on outward transportation beyond the place of removal where the risk and reward remains with the seller.

Hindustan Coca Cola Beverages Pvt. Ltd. Vs. CCE, [2010 (17) S.T.R. 140]

Catering service, rent-a-cab services are all eligible input services.

Dr. Reddy's Lab Ltd. Vs. Commissioner of Central Excise, [2010 (24) STT 90]

Custom house agent services availed at the port for export of goods are eligible input services.

CCE Vs. Fine Care Biosystems, [2010(17) S.T.R. 168]

Sales Tax Case Law

Benefit of stock transfer of goods to branch / consignment agent cannot be rejected merely because the goods have been sold by the branch / consignment agent on the same day, especially in the absence of any incriminating document to prove that the goods have moved in pursuance of any prior contract of sale.

State of Tamil Nadu Vs. Coimbatore Pioneer Rolling Mills [(2010) VIL 02 HC (Mad)]

Goods in question purchased by the dealer against form C are not covered by his registration certificate; amounts to a false declaration if goods are purchased at the concessional rate and hence penalty under Section 10A of the CST Act is imposable.

Simbhaoli Sugar Mills Ltd. Vs. Commissioner of Trade Tax [(2009) NTN (Vol. 41) - 332]



International Patent Filings Drop for First Time in 32 Years

ICTSD Report: The World Intellectual Property Organisation (WIPO) has reported a 4.5 percent decrease in international patent filings under the Patent Cooperation Treaty in 2009, marking the first time in the PCT's 32-year history that filings have dropped. The drop in patent filings could have a significant impact on WIPO's finances. The PCT system accounts for about three quarters of this funding. Despite the fact that developing countries make up 78 percent of the membership to the PCT, they only accounted for 14 percent of the patent filings. Of these 14%, 10% is just from China and South Korea alone. An estimated 155,900 patents were filed via the PCT in 2009, a decline from the 163,249 that were filed in 2008.

CCI directs banks to withdraw Prepayment Penalty: Banks say 'No'

Rediff Report : Competition Commission of India, sent notices to atleast 15 banks, non-banking financial companies and Indian Banks' Association seeking explanation on why they penalise borrowers who choose to foreclose loans, as such penalisation will suppress the competition by limiting the chances of a borrower to switch their loan to another lender. Many of these institutions have replied to CCI, to make it clear that the removal of prepayment penalty will result in higher lending risk and may cause asset-liability mismatch in banks. "if CCI insists that banks should stop penalising foreclosures, banks will have to hike the lending rates by atleast 0.25 per cent to cover the risk," a top IBA official told PTI.

Indian publishers Vs. Google

Indian publishers' group called Indian Reprographic Rights Organisation (IRRO) and the Federation of Indian Publishers and several Indian publishers and authors moved to a US court against the Google Book Settlement's (GBS 2.0) alleging copyright violation for scanning several books in Indian languages without notifying the authors. The publishers, who have moved court against the Google Book Settlement include Star Publications Pvt. Ltd., Abhinav Publications, Daya Publication House and Pustak Mahal

Amendment to Copyright Act, 1957

The government plans to amend the Copyright Act, 1957 to allow the conversion of copyrighted books into the Braille format without any royalty and licence fees. The amendment has been approved by the Cabinet and is slated to be tabled in Parliament in the budget session.

India joins WTO procurement scheme as observer

Yahoo Report: India has joined the World Trade Organization's government procurement agreement as an observer, a first step to membership in the scheme regulating trade in goods bought by governments, a WTO spokesman said on Wednesday. The agreement, which 41 of the WTO's 153 members have signed up to, has been in the spotlight since U.S. President Barack Obama included controversial "Buy American" provisions in a stimulus package early last year, preventing many countries from bidding for public contracts under the programme. India joins 22 WTO members with observer status. A further nine countries, including China, are already negotiating full membership.

India-Asean meet on services from March '10

Business Standard Report: Officials from India and the 10-nation bloc Asean will begin meetings from next month to discuss ways to conclude the talks to widen their free trade agreement (FTA) to include services and investment. New Delhi and Asean aim to increase their \$44-billion trade to \$50 billion by the end of this year itself.

Glaxo, Voltas in brand war

Voltas has been opposing Glaxo's move saying that it was already using a series of names beginning with "vol" — such as Volfruit, Volfarm, Volpump etc. and also have a registration that allows the company to launch pharmaceutical substances under the brand name "voltas". Volmax would then be deceptively similar to Voltas, is what they claim. The Delhi High Court last week quashed an IPAB order that dismissed Glaxo's plea to obtain trade mark protection for Volmax. The court has directed IPAB to consider the matter afresh and give its ruling within six months.

Google Vs Gooje

Google Inc has sent a cease and desist letter to the operators of a Chinese search website whose logo bears a close resemblance to its own. Gooje's home page is adorned with a Google-styled logo and the familiar paw print logo of China's top home-grown search engine, Baidu Inc. Gooje has already stopped using its original URL, www.gooje.com. Visitors typing in the address now get automatically redirected to dierqi.com, though the content appears to be the same.

Apple, Microsoft sued for patent infringement

The patent in question, entitled "Apparatus, method and a computer readable medium for generating media packets," was awarded to Emblaze, who filed for the patent in 2002.