

eMagazine

Edition 129

October 2014



Arbitration

'Brands'



IE Standing Orders Act



eMagazine from The Institute of Company Secretaries of India, Mysore Chapter

Dear Readers,

Warm Greetings from the Mysore Chapter of ICSI!



CS. Ajay Madaiah B.B.
Chairman
Mysore Chapter

India is making a giant leap in the space segment with its successful Mars Orbiter Mission (MOM), by ISRO successfully entering the orbit of the red planet. With this, India has become the first nation in the world to have entered the Mars orbit in the first attempt- it sure has made all Indians proud.

During the month of September 2014, the Chapter has conducted four career awareness programs in the colleges at Mysore and has reached more than two hundred students to make them aware of our Institute & the Profession. CII Mysore branch has scheduled a program on Indirect Tax in association with our Chapter in October, 2014. Further, the Chapter has organised crash courses for executive students. I request the members and students to take part in the sessions actively and make it a success.

Inside

-: Editorial Team :-

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Just let it go...

I heard a funny story about a cowboy who ambled into the local blacksmith shop and picked up a horseshoe, not realizing it had just come from the forge. He immediately dropped the hot shoe, shoved his seared hand into his pocket and tried to act nonchalant.

The blacksmith half smiled and asked, "Kinda hot, wasn't it?"

"Nope," replied the cowboy, "just don't take me long to look at a horseshoe, that's all."

I chuckle at the story because it illustrates the widespread truth that most of us have difficulty admitting mistakes. But even more compelling is our almost universal urge to be right.

I learned of one particular preacher in Church left his pulpit to go to medical school and become a doctor. An old friend saw him several years' later and expressed surprise at his career change, but said he assumed it had been because he could care for people in a more concrete way now that he was practicing medicine.

"Not at all," the doctor responded honestly, "the reasons were purely economic. I discovered that people will pay more money to care for their bodies than for their souls."

Several years lapsed before the friend saw him again and discovered that he had left medicine for law. "What was your reason this time?" the friend asked.

"Simple economics again," replied the ex-minister, ex-doctor attorney. "I learned that people will pay more to prove they are right than to care for either body or soul."

In conflict, most folks want to come out on top. When they are wronged, they want justice. If no justice is forthcoming, they lament about the unfairness of it all and brood in righteous indignation. Many people will go to great lengths to prove they are right - and at tremendous cost, financial, emotional, health and happiness.

In the end, some people discover they paid far too high a price to be right.

The only solution, of course, is to let it go. For it often comes down to one simple and poignant question: **Do You Want to Be Right or Well?** Truth is, too often you can't be both. But when you let go of being right, you can get on with healing.



Words Worth Millions

The biggest Communication Problem is that
We do not listen to understand.
We listen to reply.



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Arbitration

Arbitration as a dispute resolution mechanism has always been the preferred option despite the challenges it has faced time and again as to how effective it really is. In some instances, the challenge has been due to the power vested with Indian courts to set aside arbitral awards citing wider issues of 'public policy'. In certain other instances, it has been a debated interpretation of the provisions of the Arbitration and Conciliation Act, 1996 (Indian Arbitration Act) as to whether Indian courts can intervene in matters governed by foreign seated arbitrations.



A couple of recent decisions that are summarized below have set an encouraging path that courts should adopt while dealing with such issues. For a clearer understanding, it is relevant to examine the current legal framework and the law laid down by courts.

The Indian Arbitration Act is divided into two parts – Part I applies to arbitrations that take place within India and Part II applies to international commercial arbitrations that are held outside India. The question that is often raised by contracting parties is whether Indian courts will have jurisdiction over arbitrations governed by Part II of the Indian Arbitration Act i.e. international commercial arbitrations. The decision in *Bhatia International* laid

down that Part I of the Indian Arbitration Act would equally extend to arbitrations that are held outside India, unless it was expressly or impliedly excluded by the parties. This decision was widely debated in as much that the very essence of arbitration as an effective dispute resolution mechanism would stand to reason.

In the landmark *Balco decision in 2012*, the Hon'ble Supreme Court, in its wisdom and realizing the interpretational fallacy of the decision in the *Bhatia International* case, finally reversed the decision and confirmed the legal position that Part I of the Indian Arbitration Act would apply only to arbitrations seated in India. The Hon'ble Supreme Court upheld the principle of territoriality and settled the position that Part I of the Indian Arbitration Act would have no application to international commercial arbitrations held outside India. It was however specifically stated that the said position of law would be applicable only as regards arbitration agreements executed after the date of the *Balco judgment* i.e. 6 September 2012. The question therefore remained as to the position of the arbitration agreements executed prior to 6 September 2012.

Early this year in the matter between *World Sport Group (WSG)* and *MSM Satellite*, the question that arose was whether arbitration as a dispute resolution mechanism would be available should there be any determination required of matters alleging fraud, misrepresentation or the like. In this matter, although a division bench of the Hon'ble Bombay High Court initially granted relief to *MSM*, the Hon'ble Supreme Court overturned the decision in favour of *WSG* by applying the doctrine of severability since the contract containing the arbitration provision was itself being challenged. It was held by the Hon'ble Supreme Court that the agreement of the parties to resort to arbitration was not rendered inoperative merely for the reason that allegations of fraud have to be inquired into. This decision marked a shift from the approach traditionally followed by Indian courts that allegations like fraud or misrepresentation can only be inquired by courts and not arbitrators.



In a more recent decision involving *Reliance Industries Limited and Union of India*, the matter in question was whether an express choice of law to govern an arbitration agreement would ensure that Part I of the Indian Arbitration Act will not be applicable even where parties have not expressly excluded Part I. The Hon'ble Supreme Court made a distinction as between the substantive law governing the main contract and the law governing the arbitration agreement. With this decision of the Hon'ble Supreme Court, it now appears clear that even pre-*Balco* arbitration agreements would have enough protection provided they have contractually and expressly agreed that foreign law would govern the arbitration agreement, which would then imply exclusion of Part I of the Indian Arbitration Act, and consequentially, exclusion of the jurisdiction of Indian courts.



It is also relevant to note that in the *Reliance Industries* matter, the Hon'ble Supreme Court while holding that Part I of the Indian Arbitration Act would not be applicable also held that in the event a final award is made against the *Union of India* pursuant to the arbitration held outside India, the enforceability of the same in India can be resisted on the ground of public policy. It was also specifically accepted that such principle of public policy will necessarily be applied by courts in England (which was the forum contractually agreed between the parties) should arbitrability be challenged, given that the substantive law governing the contract is Indian law.

On the one hand, this decision settles the law as to the inapplicability of Part I to arbitrations held outside India, where parties have expressly or impliedly excluded its applicability. It also clarified the position that even where issues of public policy are involved, foreign courts can be approached to seek appropriate remedy and the issue of public policy alone will not dilute the contractual understanding and agreement of the parties to subject all their disputes to arbitration outside India and seek all their remedies before courts outside India.

While the law on this has been emerging positively, it is necessary that while drafting contracts with an arbitration mechanism for dispute resolution, clear and precise provisions are incorporated to reflect the intention of the parties taking into account the law laid down in various decisions from time to time. These decisions clearly reflect a pro-arbitration stand of Indian courts and should provide the necessary confidence to the contracting parties involved in international commercial transactions.

Quotes on Arbitration:

“Do I believe in arbitration? I do. But not in arbitration between the lion and the lamb, in which the lamb is in the morning found inside the lion.” - **Samuel Gompers**

“For an arbitrator goes by the equity of a case, a judge by the law, and arbitration was invented with the express purpose of securing full power for equity.” - **Aristotle**

Career Awareness Programs

Institute of Commerce & Arts

On 04.09.2014 Mysore Chapter of the ICSI organised a Career Counselling Programme at Mysore Institute of Commerce & Arts, Mysore. Around 60 students from various streams attended the programme. CS Pracheta M, Management Committee Member of the Mysore Chapter explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc. She then spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. Brochures containing brief details of the Company Secretaryship Course were distributed to the participants. CS Pracheta M also clarified the various doubts and issues that were raised by the participants and thanked the management for providing the Institute this opportunity.



Marimallappa's PU College

On 11.09.2014 Mysore Chapter of the ICSI organised a Career Awareness Programme at Marimallappa's PU College, Mysore. Around 113 students from Commerce stream attended the programme. CS Sabareeshan C K, Past Chairman, Mysore Chapter of ICSI explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc.



Seshadripuram Degree College


On 16.09.2014 Mysore Chapter of the ICSI organised a Career Awareness Programme at Seshadripuram Degree College, Mysore. Around 50 students from B. Com., & BBM attended the programme. CS Ajay Madaiah B B, Chairman, Mysore Chapter of ICSI explained about the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc. He highlighted the importance of making the right career choice so as to be successful in life. He then spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. Brochures containing brief details of the Company Secretaryship Course were distributed to the participants.



MCM First Grade College

On 17.09.2014 Mysore Chapter of the ICSI organised a Career Awareness Programme at MCM First Grade College, Mysore. Students from B. Com., & B.B.M., department and faculties of the college had attended the programme. CS Ajay Madaiah B B, Chairman, Mysore Chapter of ICSI explained in detail the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc. He then spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. Brochures containing brief details of the Company Secretary Course were distributed to the participants. CS Ajay Madaiah B B also clarified the various doubts and issues that were raised by the students and thanked the management for providing the Institute this opportunity.





In today's globalized era, branding is power. A brand can be many times more valuable than the business it represents. For example, many sportswear brands are much more valuable than the factories, equipment, technology, manpower and other assets used for such business. Why?

The answer is simple - even though a product is very similar to that of a competitor, a better branded product commands more revenue. The brand becomes the number one selling tool. A brand commands substantial IPR value, which can be realized by either selling the brand, or licensing it and receiving royalty, or by other business structures.

Why is it that brand power ensures so much of accruing benefit?

That is because, when entrepreneurs build a brand, they are creating a distinct asset. Inside every great brand is the core set of values, the core of the overall experience that the brand represents. Branding gives instant connect with the consumer and assures him/her of a distinct identifiable and recurring quality and experience. It is this experience, connect and assurance that pulls customers and generates consequent revenues. Time, effort, strategy, expertise, capital, labour and other valuable resources have been invested to painstakingly create the brand.

Can Governmental regulation restrict a brand owner from exploiting the brand value which has been created after so much effort and investment?

For example, does regulation reg. contents on cigarette packs amount to invasion of brand IPR? No, since such regulation does not in any manner prevent branding. However, in some countries, there are plain packaging regulations which require cigarettes to be sold in unbranded packs, so that smokers are not able to differentiate between cigarette brands, which will in turn lead to reduced smoking. While public health concerns may be the justification for such regulations, the same is opposed by the cigarette companies on the following grounds-

- a) Such regulations unfairly undermine long term investments in branding;
- b) They affect brand loyalty;
- c) it is snatching away of legitimate IPR without compensation;
- d) if logic of unhealthiness can be extended to other products like alcohol, high fat / salt foods, sugary candies and so on;
- e) it could lead to consumer confusion on the origin and quality of the products;
- f) it could also lead to significant increase in consumer fraud due to counterfeit products and illicit trade, thereby causing damage to public health and safety;

and so on. Are IPR and public health indirectly related? The impact of IPR is quite wide and the ramifications of IPR issues are only increasing, in quantity and complexity.

WEB YATRA

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India is the Second Largest populated country in the world. Because of this we are having the great opportunity to invest our Money in the various sectors. <http://investindia.gov.in/> provides best information in realizing the “Make in India” declaration from the Prime Minister. Invest India is the official website by the Government dedicated to investment promotion and facilitation. It provides specific information to a foreign investor as well as Indian investors to assists in expediting regulatory approvals, and offers hand-holding services. This <http://investindia.gov.in/> broadly contains the Following:

- About India
- Doing Business in India
- Investment Polices
- Contact Information
- Investment Opportunities
- Advantage in India
- Quarry relating to Investment
- Investment Guide
- JV opportunities
- Useful Links etc.,

Invest India is also working with some large companies and sovereign wealth funds who are considering substantial investments into India in the near term. This site gives the quality input and supportive services to the each and every prospective investor.



e-TOOLS FOR THE PROFESSIONALS

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ES File Explorer: An Android application for mobiles

ES File Explorer is an Android application which allows us to manage files, folders and applications. This application allows us to access data from mobile and share with other devices and also, we can access home PC from this application in mobile through wi-fi. We can easily move, copy, rename, delete files or folders by touching and holding an item in a list or icon view with a multi-select option. It gives option for Zipping and unzipping with encryption as well. It gives quick and easy way to browse through folders and files on your Android device with a favourites button, pretty convenient as we can use it to instantly get to the SD card home folder, root directory, bookmarked or frequently used folders and files.

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I&E Law Cafe

Column on Industrial &
Employment laws

12

Industrial Employment (Standing Orders) Act, 1946

- IE (SO's) Act, 1946 stands for "Industrial Employment (Standing Orders) Act, 1946.
- Applicable to every industrial establishment engaging **100 or more** workmen on any day of preceding 12 months.
- In Karnataka, Maharashtra, Madhya Pradesh etc., it is applicable **if 50 or more** workmen are engaged on any day of preceding 12 months.
- Standing Orders serves as **Charter of establishment** which is mutually agreed between employer and employee that lays down the broad outlines for conduction of employer – employee relationship.
- It covers various aspects ranging from defining the Company to Classification of the employees, their recruitment, retrenchment, laying off, superannuation and disciplinary procedures.
- Every Industrial Establishment will have to have their own certified standing orders **within 06 months** from the date of commencement of the operations.
- Till the SO's is certified, model standing orders are applicable.
- Recent addition to the matters to be provided under the Standing Orders is having a committee to **prevent sexual harassment of women employee** - based on ruling of Supreme Court of India in **Vishaka Vs. State of Rajasthan, 1997.**
- If there is **conflict between** the terms and conditions in the **appointment letter** and the certified standing orders, **then SO's shall prevail** over appointment letter.
- For certifying, SO's will have to be submitted **in 05 sets to respective jurisdictional Deputy Labour Commissioner.**
- Certified standing orders will **come in to force** on the **date of expiry of 30 days** from the date of its certification or on the expiry of 07 days from the date of authentication of SO's.
- Certified standing orders will have to be conspicuously displayed in a language which is understood by majority of workmen.
- Failure to comply with SO's will attracts fine of **Rs.5000/- and Rs.200/-** for every day on continuation of Offence.

Note: w.e.f., October'2013, the exemption extended to IT, ITES and other Technology driven companies (like R & D) from the application of all the provisions of the IE (SO) Act, 1946 has been further extended for a period of five years by the Government of Karnataka.



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First ever raid by CCI on JCB

In a first, the Competition Commission of India has raided offices of UK-based construction equipment maker JCB in connection with a case of abuse of dominant position to keep away competitors from the market. The regulator had ordered a detailed probe into the matter after finding prima-facie evidence that JCB India and its subsidiary JC Bamford Excavators had abused their dominant position in market for construction equipment.

SEBI adds 'colour' to mutual funds

Fund houses started colour coding their schemes from July 2013 following a SEBI diktat. Schemes with low risk are denoted with blue colour, those with medium risk with yellow and schemes with high risk in brown.

Net fishing regulations issued by Ministry of Environment and Waters

The decision permanently prohibits fishing by nets in breeding and reproduction areas as well as in fisheries and natural or industrial marine reserves. It also includes inland waters such as natural or artificial lakes and natural lagoons or those have been extended, as well as oil and gas fields and facilities.

Govt approves Projects impacting Green

Debang plant requiring 9,900 acres of forest is one of hundreds of projects which were repeatedly rejected in the past, that have been approved since Modi came to power in May. That trend has alarmed environmentalists, who say the country's natural habitat is under assault in the name of industrial development.

Express News

- ✓ **RBI keeps interest rate unchanged at 8%**
- ✓ **Chinese businesses seek investment-friendly environment in India- official media in Beijing**
- ✓ **Government looking at merging FMC with SEBI to better monitor futures market**
- ✓ **India plans committee to ease customs norms for boosting international trade**
- ✓ **India – Japan to sign Advance pricing agreement to untie tax hassles**
- ✓ **India expected to emerge biggest rice exporter by 2015**
- ✓ **CCI probes public sector general insurance firms for alleged unfair business practices with regard to third party administrators (TPAs).**
- ✓ **Companies can now transfer manpower from existing units to SEZs without losing tax benefits**
- ✓ **Pentagon approves two technology transfer licences to India and in an unprecedented move has set aside USD 20 million for strategic cooperative science and technology projects with India.**
- ✓ **Accept self-attested documents to open account: RBI to banks for KYC**
- ✓ **US to launch fresh review of India's patent regime**

Recommended Article for your reading:

Three charts that explain India's battle at the WTO

Click this link: <http://bit.ly/ZXWlrc>



How tropical cyclones are named?

The practice of naming storms (tropical cyclones) began years ago in order to help in the quick identification of storms in warning messages because names are presumed to be far easier to remember than numbers and technical terms. Hurricanes and tropical cyclones in the Atlantic have had their own names since 1953, a convention begun by Miami's National Hurricane Centre and maintained and updated by the World Meteorological Organization (WMO), a Geneva-based agency of the United Nations. But naming came to South Asia and the Middle East only recently. For years cyclones that originated in the north Indian Ocean were anonymous affairs. But finally they clubbed together and agreed on their favourite names. That was when an international panel on tropical cyclones led by the WMO sat down and decided to name their cyclones as a committee in the spirit of co-operation and consensus. Eight countries - India, Pakistan, Bangladesh, Maldives, Myanmar, Oman, Sri Lanka and Thailand - took part. They came up with a list of 64 names- eight names from each country - for upcoming cyclones. The list goes alphabetically, according to each country.



Did You Know?

Honest and Concurrent Use

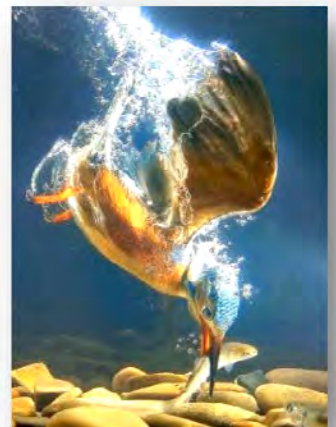
Section 12 of the Trade Marks Act, 1999 provides for registration of a trademark in case of honest and concurrent use depending upon the subjective discretion of the Registrar. The principle of 'honest concurrent use' allows a business to register a trade mark which would otherwise be in conflict with a mark that has already been registered. A trademark owner may seek to register his trademark, notwithstanding the existence of a prior registered trademark for identical or similar goods and services, if he can establish the following conditions:

1. The quantum of the concurrent use of the trademark in connection with the goods concerned and the duration, area and volume of the trade.
2. The degree of confusion likely to ensue from the resemblance of the marks, which is to an indication of the measure of public inconvenience.
3. The honesty of the concurrent use
4. The relative inconvenience, which would be caused if the marks were registered, subject if necessary to any conditions and limitations.

Pick of the month

Where would someone file a case for cheque bouncing as prosecuting jurisdiction?

In *Dashrath Rupsingh Rathod vs. State of Maharashtra & Anr. Case*, the Supreme Court overruled its earlier judgment on jurisdiction of courts in Sec. 138 cases of dishonour of cheques and held that the complaint can only be filed in the court within whose jurisdiction the bank that dishonored the cheque is situated. Eg - If a cheque is issued from a person having his Bank's branch at Bangalore and the same is put to realisation at Mumbai and the cheque gets dishonoured, then the place of filing case is Bangalore, not Mumbai. But before this judgment, it was Mumbai.





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Service Tax Updates

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CUSTOMS & FTP

Amends Notification No. 36/2001-Cus. (NT) dated August 3, 2014 to reduce tariff values of crude palm oil, RBD Palm Oil, Gold and Silver. [No. 76/2014-Cus. \(NT\) dated September 15, 2014](#)

Case Law

The HC of Ahmedabad held that no additional duty is leviable on the vessels and other floating structures imported into India for breaking up under Section 3(1) of the Customs Tariff Act, 1975.

[Shivam Engineering Co Vs. Uol \[2014-TIOL-1563-HC-AHM-CUS\]](#)

The High Court of Delhi held that since the Foreign Trade Policy expressly provides that a status holder will have the privilege of exemption from providing a Bank Guarantee in respect of any scheme, the Handbook of Procedures, which is for providing the procedure in aid of the FTP cannot impose a condition which militates against the said Policy. Thus, in this view, the repugnancy between clause 4.7.3 of the Handbook of Procedures and paragraph 3.10.4(v) of the FTP must be resolved in favour of the FTP. The condition imposed under clause 4.7.3 of the Handbook of Procedures to the extent that it requires a "status holder" to provide a bank guarantee to the Custom Authorities for the duty free inputs is contrary to policy and is, thus, liable to be disregarded. [BRG Iron & Steel Co. Pvt. Ltd. Vs. Uol & Others \[2014-TIOL-1526-HC-DEL-CUS\]](#)

Ministry of Corporate Affairs

Notifications/Circulars/News

It has been clarified that for the purposes of "Real Estate Investment Trust" or "Infrastructure Investment Trust" or such other trusts set up under the regulations prescribed under the SEBI Act, 1992, a trust or trustee representing these trusts, is not barred for a trustee, being a body corporate, to hold partnership in an LLP in its name without the addition of the statement that it is a trustee. [Gen Circ No. 37/2014 dt Oct 14, 2014](#)

It has been clarified that in respect of cases pertaining to director appointment under Sec 160 of Companies Act, 2013, the Board of directors of a sec 8 company shall decide as to whether the deposit made by or on behalf of the person failing to secure more than 25% of the valid votes is to be forfeited or refunded. [Gen Circ No. 38/2014 dt Oct 14, 2014](#)

Second Proviso has been added to Rule 6 of Companies (Accounts) Rules, 2014 which deals with Manner of Consolidation

of Accounts, whereby exemption has been given in respect of preparation of consolidated financial statement by an intermediate WOS, other than a WOS whose immediate parent is a company incorporated outside India. Also, nothing contained in this rule shall subject to any other law or regulation, apply for the F.Y commencing from 01.04.2014, in case of a company which does not have a subsidiary or subsidiaries but has one or more associate companies or JVss or both, for the consolidation of financial statement in respect of associate companies or JVs or both, as the case may be.

[Companies \(Accounts\) Amendment Rules, 2014 dt Oct 14, 2014](#)

Rule 10A has been inserted which says that for the financial years commencing on or after 1st April, 2015, the report of the auditor shall state about existence of adequate internal financial controls system and its operating effectiveness. However, auditor of a company may voluntarily include the statement referred to in this rule for the financial year commencing on or after 1st April, 2014 and ending on or before 31st March, 2015.

[Companies \(Audit and Auditors\) Amendt Rules, 2014 14.10.14](#)

According to Rule 9(3)(IV)(Appointment and Qualification of Directors) Rules 2014 notified on 31st March, 2014, every individual who is to be appointed as director of a company shall make an application electronically in Form DIR-3 to the CG for allotment of DIN along with verification by the applicant for applying for allotment of DIN in Form DIR-4 (affidavit by an applicant) and when there is any change in particulars stated in DIR-3 the applicant shall intimate to the CG within 30 days of such change through Form DIR -6 along with verification in Form DIR-7 (affidavit by an applicant). The MCA through the above notification omitted the said verification in both the cases by an applicant who applies for DIN and also inform the changes stated in the DIR-3 with effect from 18th September, 2014.

[Companies \(Appointment and Qualification of Directors\) Amendment Rules, 2014 dated 18th September, 2014](#)

CENVAT

Notifications/Circulars/News

Effective 06.08.2014, the CG has made it mandatory to pre-deposit a prescribed percentage of amount while preferring an appeal. In this regard, the CBEC has issued certain clarifications. [No 984/08/2014 - CX dated 16.09.2014](#)

Case Law

The Tribunal held that aluminum dross and skimmings which arise as a by-product in the process of manufacture of aluminum products are manufactured goods and hence excisable in view of the Explanation added to Section 2(d) of the CE Act, 1944.

[Hindalco Indts Ltd. Vs. CCE \[2014-TIOL-1762-CESTAT-MUM-LB\]](#)

The Tribunal held that assessee is eligible for Cenvat credit on Welding Electrodes used for repair and maintenance of the plant and machinery, which is used for manufacture of final products.

Tamil Nadu Newsprint and Papers Ltd. Vs. CCE [2014-TIOL-1719-CESTAT-MAD]

VAT, Sales Tax and Entry Tax

Case Law

The High Court of Allahabad held that Revive Instant Starch, which contains 90% tapioca starch and about 3% of other additives is liable to be charged to tax under Entry 118 of Schedule II Part A of Uttar Pradesh Value Added Tax Act, 2008.

Marico Ltd. Vs. Commr of Commercial Taxes [2014-VIL-260-ALH]

The HC of Punjab and Haryana held that interest under Sec 25(5) of the Haryana General Sales Tax Act, 1973 would be calculated from the date of passing of the revisional order and no liability on account of interest could be maintained for the period prior to the said date. *Globe Hi-Fabs Vs. State of Haryana & Others*

The Supreme Court of India held that supply of explosives by assessee to his contractor for using the same by the contractor in assessee's mining operation in mining area is sale of goods.

Hindustan Zinc Ltd. Vs. CTO [2014-VIL-18-SC]

Service Tax

Notifications/Circulars

CBEC has clarified certain aspects on the applicability of ST respect to cash calls or capital contribution in case of Joint Venture transactions:

- Transactions between members of JV - JV and the members of the JV are distinct persons and therefore services provided by JV to its members or vice and between members of the JV would be taxable.
- Cash calls - These are capital contributions made by the members of the JV to the JV. If cash calls are merely transactions in money, then the same is excluded from the definition of 'service'. Whether cash call is merely a transaction in money which may or may not tantamount to service will be dependent on the terms of the JV agreement.

No. 174/5/2014-ST dated 24.09.2014

Case Law

The HC of Mumbai held that cellular mobile service provider is not entitled to avail Cenvat credit on tower parts & pre-fabricated buildings. *Bharti Airtel Ltd. Vs. CCE*

The Tribunal held that notional interest on interest free security deposit cannot be added to the rent agreed upon b/w the parties for the purpose of levy of ST on renting of immovable property.

Murli Realtors Pvt. Ltd. Vs. CCE [2014-TIOL-1728-CESTAT-MUM]

The Tribunal held that prior to July 1, 2010, builder/developer is not liable to pay ST on construction services provided to individuals who purchased flats/residential units in residential complex. *Josh P John Vs. Commr of ST*

FEMA/RBI/SEBI

Notifications/Circulars

RBI permitted to issue equity shares against any other funds payable by the investee company, remittance of which does not require prior permission of the Gol or RBI under FEMA, 1999 or any rules/ regulations framed or directions issued thereunder, subject to the following conditions; The equity shares shall be issued in accordance with the extant FDI guidelines on sectoral

caps, pricing guidelines etc. as amended by RBI, from time to time; Explanation: Issue of shares/convertible debentures that require Government approval in terms of para 3 of Sch 1 of FEMA or import dues deemed as ECB or trade credit or payable against import of second hand machinery shall continue to be dealt in accordance with extant guidelines; The issue of equity shares under this provision shall be subject to tax laws as applicable to the funds payable and the conversion to equity should be net of applicable taxes. *APDIR Circ No.31 dt Sept 17, 14*

As per the extant regulations, Foreign Portfolio Investors (FPIs) were permitted to approach any AD Bank for hedging their currency risk on the market value of their entire investment in equity and/or debt in India, subject to certain conditions. The RBI has now decided to permit FPIs to hedge the coupon receipts arising out of their investments in debt securities in India falling due during the following twelve months. However, this is subject to the condition that the hedge contracts are not eligible for rebooking on cancellation. Further, the contracts may be rolled over on maturity, provided that the relative coupon amount is yet to be received. *A.P. (DIR Series) Cir No.28 dt Sept 8, 2014*

The SEBI has, amended the corporate governance norms contained in clause 49 of the equity listing agreement ("Listing Agreement") in light of the changes made by the Companies Act, 2013, effective from October 1, 2014.

No. CIR/CFD/POLICY CELL/7/2014 dated September 15, 2014

Direct Taxes

Notifications/Circulars

The India has entered into DTAA with Bhutan and Columbia. The provisions of the said DTAA shall have effect in India from April 01, 2015. *No 42 dt 05.09.2014, Notn No. 44 dt 23.09.2014*

The Central Government has notified the Protocol to the India-Poland DTAA which seeks to amend certain provisions of the Poland DTAA. *No 47 dated 24.09.2014*

The extant rules on issuance of certificate for lower TDS or no TDS, have been amended to provide that while the certificate for lower TDS would be issued to the person who made an application for issue of such certificate, the certificate for no TDS shall be issued direct to the person responsible for deducting the tax under advice to the person who made an application for issue of such certificate. *No. 46/2014, dated 24-9-2014*

Under the IT Act, 1961 ('Act') read with the Rules, renewable energy devices in the nature of: (a) windmills and any specially designed devices which runs on wind mills; and (b) any other devices including electric generators and pumps running on wind energy were eligible for depreciation allowance at 80% if the same was installed on or before March 31, 2012. The CBDT has now provided that such depreciation allowance would also be available to wind mills and wind mill driven devices installed on or after April 01, 2014. *No. 43 dated 16.09.2014*

The Finance Act 2012 had prescribed that where an international transaction or specified domestic transaction was within the prescribed 'tolerance limit/range', the international transaction / SDT would be regarded as being at arm's length. For the FY 2012-13, the 'tolerance limit/range' was prescribed at 1% for 'wholesale trading' and 3% for other international transactions or SDT. The CBDT has now continued the above tolerance limit/range for the FY 2013-14 as well. *No.45 dt 23.09.2014*

The CBDT had earlier extended the due date for furnishing of the tax audit report under section 44AB of the Act from September 30, 2014 to Nov 30, 2014. *F.No. 153/53/2014-TPL dt 26.09.2014*