



From the Chairman's Desk

Dear Friends,

LET THIS FESTIVAL OF LIGHTS BRING HEALTH, WEALTH, SUCCESS & PROSPERITY TO YOU ALL!

The Chapter activities during the month of October, 2007 went full steam having already gained the momentum in previous month.

The Chapter conducted 7 Career Counselling Programs during the month covering more than 400 students. A record breaking 77 Career Counselling Programs have been held during this year till date. I sincerely thank the Team of Career Counsellors for their effort in achieving this unprecedented result. The members are aware that the Chapter has hosted a web Portal, first of its kind which has received well deserved recognition and appreciation.

All India Radio broadcast an interview of some of our successful students under "Yuvavani" during the month. This has helped in enhancing awareness among the public on the course and the Institute.

The Chapter having already got record Registrations for Foundation Course from students of Semi Urban & Rural Areas the responsibility now stands shifted on us the members to work out a practicable schedule for guiding and coaching the students. I had requested the members to volunteer to adopt some locations from where the students have registered for coaching and guiding. I am awaiting the response from you all.

The Chapter has taken initiative to arrange special lecture sessions on week ends at the Chapter premises mainly for the benefit of rural students who are otherwise not able to attend coaching classes due to logistic problems. The members are requested to join these sessions and add value by participating in the sessions actively. I also request the members take the initiative of sponsoring the catering arrangements to the students during week end sessions.

I request the members to get in touch with the Chapter office or Mr. Anshuman with their suggestions.

The registration of large number of students is only the beginning. The fruits of success of these efforts rest on the support and co-operation from all members. I am sure the members would spare no efforts in making this journey grand success!

CS. D D Bhat

Editors:

CS. Dattatri H M
CS. Sarina C H
Omkar N G
and
'Spectrum' Team

Inside...

Column on IPR

Inside a Patent ... 2
3 questions from legal angleon
Designs...2

IT for Corp Professionals

Primo PDF – PDF Converter...3
Web Yaatra: My iris...3
Legal Roundup...4
Chapter News...4

Investor Secretary...5

Article: Clauses Make Agreements

Flawless...6

Living Room: Gossip...8

Book Review:

Way of the peaceful Worrier...9

News of Use...9

Words worth millions...9

Spectrum Space...10

Company Rules Amendment...10



Intellectual Property Rights

Inside a Patent

Lokesh.V DME,M.Com,PGDBA,PGDIPRL,AMIMA

IP Management, Strategic Planning and Initiatives L&T Ltd, Mysore Campus

“Necessity is the Mother of all Inventions, But patent right is the father”

- Josh billings

3 Questions from Legal Angle

**Ulhas S Bhat, CS
Mangalore**

Designs

How to know whether any registration for design already exists?

Any person can apply in the Regional Design Office, for inspection of the Register of Designs or for a search thereof with following documents:

- (1) If the registration number is known, Form No. 6 along with the prescribed fee of Rs.500/-
- (2) If the representation of the article or the specimen of the article is filed (in duplicate), Form No. 7 along the prescribed fees of Rs.1,000/-

Note: Alternatively file Form 7.

Why to Register designs?

The registered proprietor gets the exclusive right to apply the design to an article in the class in which it has been registered. they get better protection, can sue for infringement, if rights are infringed. This right is available for 10 years after registration and is renewable for further period of 5 years.

What is the procedure for registration of designs?

Any person who desires to register a design is required to submit the following documents to the Regional Design Office:

A Patent is a monopoly or exclusive right granted to an inventor, who has invented a novel and useful thing. The rights granted to the inventor include: Right to use, to license, to sell, to manufacture. The main purpose of Patent is to protect technological advancement and provide incentive to the inventor in return for his disclosure of his novel and useful creation. In India, the provision related to the Patents is protected by The Patents Act, 1970. The eligibility to get a patent it must be novel, non obvious and industrially applicable.

1. Novel: It should be new and different from the existing technology or ‘State of the Art’. The invention must never have been made before, published, known, carried out before or used before.
2. An Inventive Step or Non Obvious: The invention must represent sufficient advancement in technology compared to the existing technology. In other words, the technology advancement should not be obvious to a person of ordinary skill in the concerned field.
3. Industrially applicable: The invention should be useful and industrially applicable, should be possible to produce in multiples.

In general, following are excluded from Patent protections:

1. Scientific theory, a discovery and mathematical methods.
2. Schemes, rules or methods, such as those for doing business, performing purely mental acts or playing games.
3. Methods of medical treatments for humans or animals or diagnostic methods.
4. Plants and Animals other than micro-organisms.
5. Computer programs per se (allowed in US)
6. An invention the use of which would be contrary to law or morality or injurious to public health.
7. A new use of a known substance or known process is not patentable. Similarly, a new use of a known machine or apparatus is also not patentable.
8. A substance obtained by a mere mixture resulting only in a mere collection of the properties of the components cannot be patented.
9. The mere arrangement or rearrangement or duplication of known devices, each functioning independently of one another in a known way.
10. A method of agriculture or horticulture.
11. An invention relating to atomic energy.

The time of filing an application for grant of Patent is vital and plays a crucial role in grant of patent. Generally, when you conceive a novel idea, you are advised to conduct a basic search in the available patent databases until you satisfy yourself on the novelty, non-obviousness and inventive step in the invention.

Patents are granted only if no prior disclosures have been made relating to the invention. For this purpose, prior art disclosures also include any published papers, conference papers, speeches and general discussion with any one who is not bound by a confidentiality agreement. Any person who claims to be the actual inventor of the invention can file an application for grant of patent. An inventor can also assign his right to file an application to any person or organization.

In India, it is the person who applies for the patent first, who is entitled for the grant of patent. The right to apply for a grant of Patent is assignable.

- a. Application in Form-1 along with the prescribed fees
- b. Representation (in quadruplicate of size 33 cm X 20.5 cm with a suitable margin) of the article. Drawings/sketches should clearly show the features of the design from different views and state the view (e.g. front or side).
- c. A statement of novelty and disclaimer (if any) in respect of mechanical action, trademark, word, letter, numerals should be endorsed on each representation sheet which should be duly signed and dated.
- d. Power of attorney (if necessary).
- e. Priority documents (if any) in case of convention application claimed under Section 44 of the Designs Act, 2000.

Defects in the application:

If any defects are noticed on examination of the application should be corrected and the application resubmitted within six months from the official date of the application.

Refusal of Application:

In case the defects as required by the Controller are not rectified, a personal hearing will be provided to the applicant. At such a hearing the controller will decide whether the application should be accepted or not.

The decision of the Controller will be communicated in writing to the applicant or his agent stating the reasons for the decision.

An accepted application is then notified in the Official Gazette for objections, if any, from interested persons. If no objections received, the right will be granted.

IT For Corporate Professionals



- PDF Converter

- Amitkumar Hegde B Com, MCA(Final)

Now a days PDF (Portable Document Format) which was created by Adobe® has become more popular than Adobe® itself. Most of the downloadable documents on internet are in the form of PDF. The main reason for PDF to be so popular is its amazing compression and ability to maintain its original form. If you send MS Word document with stylish fonts to your friend, he may not be able to see the same thing as the fonts that you have used may be absent on his computer. So the better way is to send it PDF form.

Now the question is how to convert a document to PDF form? Well then log on to www.primoPDF.com and download a utility called "PrimoPDF", a freeware utility.

Once you install this software, it creates a new virtual PDF printer in your computer. So whenever you want to convert a document to PDF, open it in the corresponding software and print it with the PrimoPDF printer. Once you click on print, a dialog box pops up asking you to provide the file name etc.

You can also set the Document properties and Set Security privileges such as password to open the document. Once you are done, Click on OK button and your document gets printed as a PDF file.

There are many such utilities out of which I found PrimoPDF to be faster and effective. Go ahead, start producing your PDF documents for free....!



- Amitkumar Hegde B Com, MCA(Final)

I was just looking for a website which can provide comprehensive information about finance; and I stopped at www.myiris.com. This web site is an all in one solution for financial information; be it stocks/shares, mutual funds, income tax, insurance or loan. Even though the presentation is little bit cluttered, each subject is covered with greater accuracy and detail.

The website has separate sections for Share, Tax, Mutual Funds, Loans, and Insurance etc. Each of these sections provide valuable information on the subject matter. For example if you go in to the Loans section, you get a list of loan rates. You can also search for a particular loan such as home loan and see which bank offers a better bargain.

You can get more details about the particular lender as well as compare different lenders and make a rational choice. If you want to know which is the best insurance plan to suit your needs just give it a search.

The site also provides tips and tutorials on various financial aspects such as Financial Planning, Insurance, and Mutual Funds etc. You can also subscribe for a free daily newsletter which keeps you updated with International Markets, Key domestic and international news, stocks to watch out for etc.

So go ahead take control of your financial future....

Legal Round-up

Income Tax

➤ Amendment in Valuation of Perquisites

Income-tax (fourteenth amendment) Rules, 2007 to amend Rule 3 Valuation of Perquisites is promulgated on 7th November 2007. Notification refers to Valuation of Rent-free accommodation and determination of the value of perquisites provided by way of use of motor car to an employee by an employer, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act.

Notification No. 271/2007, Dated 7-11-2007

➤ Penalty under section 271(1)(c) not permissible.

The Hon'ble High Court held that, the books of accounts revealed that the expenses were incurred by the assessee but not able to produce the proper vouchers for the expenses incurred and this is not amount to concealment of income. Therefore Penalty under section 271(1)(c) is not permissible on the basis of addition of income by disallowing expenses

C.I.T. Vs. Cafco Syndicate Shipping Co. [2007] 294 ITR 134 (Mad)

CENVAT

➤ Manufacture/Dutiability

The Tribunal has held that the process of lamination of fabrics with plastic granules resulting in a new product amounts to manufacture under excise law

Arif Y. Divasli & Ors. Vs. CCE (2007) (82) RLT 602

Valuation

➤ Dealer incentives not to be included

The Tribunal has held that amounts collected by the manufacturers from dealers for the purpose of managing and operating a dealer incentive scheme are not includible in the value of excisable goods sold to such dealers since the amounts were unrelated to the transactions of sale of goods.

Chapter News:

SIRC Appreciates Mysore Chapter

The SIRC, in its recent meeting, has appreciated the various activities of the Mysore Chapter. Here is the excerpt of the letter from SIRC Chairman Mr. S. Diraviyam;

"The Mysore Chapter has surpassed its targets in respect of Foundation and Regular Courses. It has also conducted a record number of career counselling programmes. The students of Mysore have excelled various competitions held by the Institute at the National level, which shows only the painstaking effort the Managing Committee in grooming the students for participating in these prestigious competitive events. The ICSI-Mysore Chapter is incubating young talents, right at the start of their professional education, so as to become a robust professional in the years ahead. Equally, the website of the Mysore Chapter is so creative, innovative, and useful; to put in a nut shell it is 'unreservedly a brilliant effort'.

We congratulate the ICSI-Mysore Chapter for all its achievements and we are sure that the tempo of good work which is being carried out now will be maintained".

Career Counselling - Continued

During October, Mysore Chapter conducted 7 career counselling programs in Holenarasipura and Nanjangud colleges

Commencement Of Oral Coaching Classes

A fresh batch of 144 session Oral Coaching Classes were commenced on 11th October 2007 to prepare Intermediate Group I students for the June 2008 examination. The classes attended by 20 students are being held at 6 AM from Thursday to Tuesday.

Interview with Successful Students Broadcast In All India Radio

A program titled "AN INTERVIEW OF SUCCESSFUL STUDENTS OF THE INSTITUTE OF COMPANY SECRETARIES OF INDIA" was broadcast by the All India Radio in the Yuvavani program in FM 100.60 at 8 PM on 30th October 2007. The students interviewed were **Mr. Rakesh S.** and **Ms. Pracheta M.** who have won the National Level Moot Court Competition in Bangalore.

Updating of the Website

The website www.icsi.edu/mysore was made operational and customized by the chapter. Link has been provided to the CSMYSORE group, the e-Parivaar of Mysore Company Secretaries. Further, the newsletters published by the chapter from April 2007 has been uploaded in the Institute's website.

Revamping the Library

An exercise to revamp the library was undertaken during the month. The books available in the library were reviewed, old, outdated books were identified and disposed off.

Study Circle Meetings

Chapter conducted Study Circle Meetings on all 4 Sundays in October on topics MRTP, Interpretation of statutes, WTO and General Clarifications.

CCE Vs. Reliance Industries Ltd. (2007 (216) ELT 289),

> CENVAT Credit

The Rajasthan High Court has held that CENVAT credit is not admissible on cement used in the construction of the foundation for installation of machinery.

Union of India Vs. Hindustan Zinc Limited (2007 (82) RLT 459)

> Credit on basic excise duty

The Tribunal has held that CENVAT credit of basic excise duty is available as an offset against the payment of the National Calamity Contingent Duty (NCCD) on manufactured goods.

Prag Bosimi Synthetics Ltd. Vs. CCE (2007 (216) ELT 254)

> Credit on capital goods

The Tribunal has held that CENVAT credit is not deniable on capital goods on which depreciation which had been claimed earlier was subsequently reversed by filing a revised income tax return.

Vizianagara Iron & Steel Products (P) Ltd. Vs. CCE (2007 (82) RLT 383)

> Credit on leased capital goods

The Tribunal has held that where the capital goods purchased by the manufacturer were leased out to another company, no CENVAT credit is required to be reversed if there was no removal of goods from the factory and no unutilized credits were transferred to the lessee.

Sri Chamundeshwari Sugars Ltd Vs. CCE (2007 (82) RLT 522),

> Refund

The High Court of Punjab and Haryana has held that refund of excess interest paid is governed by the provisions of Section 11 B of the CE Act.

CCE Vs. Northern Minerals Ltd. (2007 (82) RLT 694)

> Limitation for recovery of interest

The Tribunal has held that no limitation period is prescribed for recovery of interest under Section 11AB of the CE Act, 1944.

Gujarat State Fertilizers & Chemicals Ltd Vs. CCE (2007 (82) RLT 510)

Investor Secretary

Sreeraj M, CS Final, Mysore

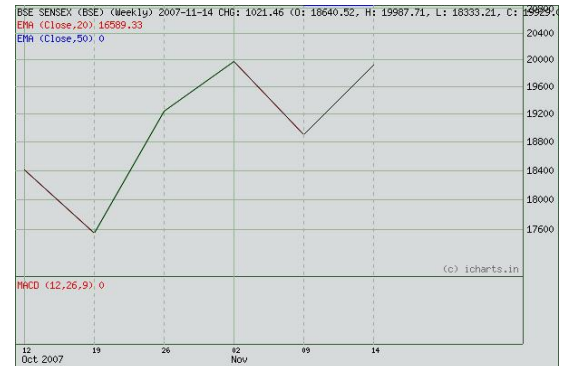
Dear All,

It was Diwali without fireworks at the stock markets. The SENSEX closed at 19959.17 points as on 14th November 2007 from its all time high of 20238 points attained on 30th October 2007. The NIFTY closed at 5937.90.

Market Outlook

The markets could be highly volatile depending upon the global cues. It is advisable not to initiate any fresh purchases for medium or long term until this down trend ends.

The U.S economy is likely to slow down causing worries to global markets and most of the global indices are in intermediate down trends now.



Even if there is a rally or two, it could be arrested by the persisting volatility and the liquidity will be low. Even after the Participatory Notes drama shackling the markets we cannot rule out the possibility of NIFTY kissing the 6000 – 6200 levels.

Tan's Portfolio (Status as on 14th November 2007)

(Seems Like Mr. Tan had whale of a Deepavali with such mind boggling returns)

Sl.No.	Name of the Stock	Purchase Price (Purchased on 11 th Oct 2007)	Current Market Price (as on 11 th September 2007)	Returns (In %)
1.	Bharat Forge	294.10	354.35↑	20.49%
2.	Energy Dev	75.75	266.95↑	252.41%
3.	India Nippon	149.35	149.50↑	0.10%
4.	McDowell Holdg	225.50	234.70↑	4.08%
5.	Sasken Comm	319.65	271.90↓	-14.94%
6.	Taj GVK Hotels	142.35	144.35↑	1.40%
7.	Vakrangee	180.70	158.85↓	-12.09%
8.	iGATE Solutions	340.35	362.10↑	6.39%
TOTAL RETURNS				257.84 %

Stock Ideas

1. Buy Hotel Leela Palace at the Current Market Price (CMP) of Rs.51 with a target of Rs. 72
2. Buy Bosch Chassis at the CMP of Rs. 371.90 for the long term
3. Buy Punjab Tractors at the CMP of Rs. 203.10 (Buy in parts with a medium term outlook)
4. Buy Mangalam Cement at the CMP of Rs.179 for long term
5. Buy Vakrangee Software at the CMP of Rs.158.85 (Buy in every declines for the intermediate term)

Disclaimer:

Trading and investment in stock market is risky and volatile. All the contents (and views) in this article is for informational purposes and is not a recommendation or an offer or solicitation of an offer to any person with respect to the purchase or sale of the stocks discussed in this article. The author may be trading/investing in, or have positions in the securities mentioned. The author is not responsible for profit or loss incurred by anybody. Please do your home work before investing.

Service Tax

➤ Sale, maintenance, consultancy and training in relation to softwares

The Tribunal has held that the activities of sale, development, maintenance, consultancy and training in relation to software are chargeable to service tax under the taxable category of consulting engineers services and not as management or business consultancy services.

SAP India Systems, Applications and Products in Data Processing Private Ltd. Vs. CST (2007 (11) STJ 1)

➤ Activities under collaboration agreement

The Tribunal has held that specified activities undertaken by the two contracting parties to a collaboration agreement cannot be treated as advice or consultancy services and hence not chargeable to service tax as management consultancy services.

Telephone Cables Ltd. Vs. CCE (2007 (11) STJ 15)

➤ Taxable event

The Tribunal has held that the liability to pay service tax is based on the taxable event and has consequently held that services rendered prior to the introduction of the levy on such services cannot be charged to tax, notwithstanding the fact that the consideration was paid subsequently.

CCE Vs. SRF Ltd (2007- TIOL-1586)

➤ Hire purchase contracts

The Tribunal has held that in case of hire purchase contracts, the taxable event is the hire, which will be the date on which contract is entered into between the parties, and the instalment payments are merely the obligations of the hirer. Therefore, the service tax rate that was effective on the date of contract is the relevant one for the discharge of tax.

Art Leasing Ltd. Vs. CCE (2007 (8) STR 162)

➤ Service Tax paid on Transportation

The Tribunal has held that service taxes paid on transportation of goods from the factory, being the place of removal, to the customer premises are admissible as credits. However, in another decision in India Japan Lighting Pvt. Ltd. Vs. CCE (2007 (8) STR 124), the Tribunal has held to the contrary. The matter has now been referred

Article

CLAUSES MAKE AGREEMENTS FLAWLESS

Monika Bhardwaj, B.Com (H), ACS
Anand Wadadekar, M.Com, M.A(Eco), PGDFBFS

In common parlance the terms 'Agreement' and 'Contract' are used as synonyms. But in legal jargon, these two terms are not the same. Agreement is a vital element for a contract to become valid, but it's not a contract in itself. The enforceability of an agreement makes it a Contract. It is said that, "Every Contract is an agreement, but every Agreement is not a contract."

In India, the entire law covering the concept of 'Agreement' is embodied in the Indian Contract Act, 1972. Commencing from our day-to-day life to the important decisions of the business world everybody is exposed to either one (express) or the other (implied) form of an Agreement; whether it's an account opening form or a joint venture / technical collaboration; agreements touch life of every person.

However, in industry, drafting an Agreement is crucial task and extreme caution is required so as to protect the interest of the concerned entity. Increasing business activities makes it imperative to carefully 'draft' or 'vet' an agreement since this is the stage where potential disputes can be avoided and course of actions can be framed or freed.

The art of drafting in India has developed without the aid of formalized structure of legislation; instead, it is totally based on legal traditions. Of late, India has immensely benefited by exchanging the drafting techniques with the rest of the world. Each type of agreement has some peculiar clauses, which need extra caution and care.

The purpose of this Article is to highlight the importance of drafting an agreement vis-à-vis few important clauses in an agreement. This article shall focus on drafting the general commercial agreements. Here in this article the term 'Agreement' is used as a synonym of the term 'Contract'.

Indemnity

Almost all commercial agreements have an indemnity clause, wherein one party agrees to indemnify the other from the losses / damages caused by its own acts. Such clauses are inevitable and need to be capped. Further, amount of risk involved in the indemnification needs to be compared with the benefits to be derived out of the business relationship. Indemnification for exemplary, consequential, indirect and incidental damages should be avoided. In view of the risk involved, these clauses need careful drafting. Root cause analysis is required for the existence of such clauses. If not required in a particular situation, such clauses should be avoided.

Jurisdiction

'Jurisdiction' determines which Court should properly adjudicate a case / dispute i.e. Competent Court. Jurisdiction means the authority to govern or legislate and such authority is derived out of the subject, type or cause of action. The clause excluding one out of two competent courts should not be against the public policy. "The contract ousting the jurisdiction of the Indian courts, however, the Indian courts was not without jurisdiction.

It was held that the agreement ousting the jurisdiction was void as it was opposed to the public policy [Rajendra Sethia vs. Punjab National Bank (AIR 1991 Delhi 285)]. That means, if a court in India has jurisdiction to entertain the suit and in agreement it is specifically agreed that any dispute between the parties will be submitted to a Foreign Court. Being opposed to public policy, such clause would be void. The plea that party agreed to submit to the

to the Larger Bench by the Bench deciding the India Cement case (supra).

India Cements Limited Vs. CCE (2007 (8) STR 43)

➤ Commission collected by clearing and forwarding agents

The Tribunal has held that the commission collected by clearing and forwarding agents on behalf of the principal will not be includible in the value of taxable services rendered by such agents.

U.M. Tharaith & Company and S.J.C. Pharma Vs. CCE (2007-TIOL-1655)

Entry Tax

➤ Entry tax is constitutional

The Karnataka High Court has reiterated that the levy of tax under the Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1979, is compensatory in nature and hence the enactment is constitutional.

United Breweries Ltd. Vs. State of Karnataka [(2007) 9 VST 594]

Customs

➤ Ministry of Finance issued below circulars:

Customs valuation (Determination of Value of Export Goods) Rules, 2007-Instructions.

Circular No. 37/2007 dt 09-10-2007

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 - Instructions.

Circular No. 38/2007 dt 09-10-2007

Drawback Schedule, 2007-08 - increase in drawback rates with retrospective effect from 1.4.2007 - exemption from filing supplementary claims.

Circular No. 39/2007 dt 09-10-2007

➤ Appeal after payment of Duty/interest

The Tribunal has held that duty or interest paid pursuant to the order of an adjudicating authority and challenged immediately thereafter would be considered as payment under protest and a claim for refund thereof would not be barred by limitation.

CC Vs. Uma Mercantile Pvt. Ltd. (2007 (82)

Foreign Court will not up held. This can be considered for stay of a suit but cannot be a ground for rejection of a plaint.

Arbitration

Of late, the number of disputes in the industry has increased tremendously. Initially, the principal burden was on Courts that have traditionally captured the majority of such disputes. In an attempt to control litigation costs and expediting the process of dispute resolution, many companies are looking to employ alternate dispute resolution mechanisms - commonly referred to as ADR -- to avoid the lengthy court procedures. Two of the most commonly used ADR mechanisms are 'mediation and arbitration'. Mediation is a voluntary process through which the parties meet and try to negotiate a resolution to their dispute by referring to a third-party facilitator. Arbitration is a process that results in a binding decision that the parties can seek to enforce through the courts. Arbitration through a single arbitrator, mutually appointed by the parties, is a cost effective and speedy way for dispute resolution. Generally companies seek mediation and if they fail, they prefer to refer the dispute to Arbitration. Therefore Arbitration clause is very must.

Intellectual Property Rights

Intellectual Property Rights (IPR) has gained significant importance amidst globalization and liberalization. The agreement should provide for the protection of IPR of the parties. Mere acquisition of Intellectual Property (IP) rights is of little importance if it cannot be enforced effectively. Well-framed IP clauses are the best means to limit the instances of IP violations. Declaration of ownership on all Intellectual Property Rights on the subject matter is imperative. The party must seek protection of the intellectual property rights on its own products / services. At the same time, indemnification should be taken for Intellectual Property Rights infringement of any third party.

Force Majeure

Sometimes inspite of all the efforts, a party finds it difficult to fulfill its obligations under the Agreement for some reasons beyond its control. The situation becomes pathetic if the damage clause is severe. Here comes the 'Force Majeure' clause to rescue. Such clauses enables a party to escape from the liability arising out of non-performance of its duties under the agreement for some reasons beyond its control / unpredictable circumstances viz. delivery failure due to transport strike, non payment of dues due to banker strike, act of god, lock-outs, war, riot, sabotage etc. Such clause needs care, the party suffering from any factor considering Force Majeure must inform the other party about the existence of such factor responsible for non-performance and must take due care for resumption of its obligations under the agreement at its earliest possible otherwise it may lead to termination of the agreement itself. The period of delay / non-performance should be excluded from the total term of the agreement.

Termination Clause

Every agreement must contain an 'exit' clause. At times, it becomes difficult to carry the relationship throughout the term of the Agreement; then in such circumstances this clause comes handy. This depends upon the position and requirement of the contracting parties. Sometimes, the parties intentionally agree not to provide exit clause to one of the contracting party or to provide some lock-in period or to provide exit under some particular situations viz. in case of material breach of the terms of the agreement / insolvency etc..

Other cautions

Exclusive agreements should be avoided. Generally these agreements attract anti-trust laws. Any agreement, which is a restraint on the civil rights of a party, is generally void. Agreements wherein one party is to reveal some

➤ **CA certificate for ruling out unjust enrichment**

The Tribunal has held that the Chartered Accountants certificate certifying that the incidence of duty was not passed on to consumers was adequate to rule out unjust enrichment, unless evidence to the contrary was available. However, the Tribunal, in *Skycell Communications Ltd. Vs. CC (2007 (82) RLT 789)*, has held that for the purpose of substantiating a refund claim, books of accounts and a Chartered Accountant's certificate are only corroborative evidence and cannot, in the absence of sales invoices, be considered as conclusive proof that the incidence of duty was not been passed on to the buyers.

BPL Ltd. Vs. CC (2007 (82) RLT 659)

Valuation

➤ **Reasons for rejecting Transaction value**

The Tribunal has held that the transaction value cannot be rejected for reasons other than those laid down under the proviso to Rule 4(2) of the CVR.

Omex International Vs. CC (2007 (216) ELT 248)

➤ **No increase in Transaction value base don Quotation**

The Tribunal has held that the transaction value of imported goods cannot be enhanced on the basis of a quotation, in the absence of contemporaneous imports at the higher price.

Super Duper T.V. Vs. CC (2007 (147) ECR 352)

FTP

➤ **100% EOU's to subcontract abroad**

The Central Government has issued a notification prescribing the procedures for 100% EOUs/units in the EHTP/STP/BTP to subcontract abroad. The units may subcontract part of the production process and send intermediate products abroad without any prior permission. However, when the finished goods are sought to be brought back, prior intimation to the concerned Development Commissioner and Customs Authorities is required to be given.

M.C. & I. (D.C.) Notification No. 31 (RE-2007)/2004-09, dt. 04/10/2007

confidential information to the other for the execution of the agreement, must provide non-disclosure clause for maintaining the confidentiality of the information till the time it comes into public domain; without breaching the terms of the agreement. In employment agreement, clause containing any restraint on the civil rights of the employee should be avoided.

In almost all agreements, the potential disputes should be kept in mind and accordingly the safeguards should be provided viz. in case of leases; refund of security deposit should be protected, in case of delay in refund the possession of premises should be retained, in case of non-vacation liquidated damages should be provided and so on. The clause pertaining to the governing law should be carefully considered since it provides the enforcement mechanism for the agreement. Scope of work, consideration, relationship between the contracting parties and the procedural part should be clearly stated. In conglomerates, the specific policies of the entity needs to be adhered whether it's anti-corruption, anti-boycott or any other to save it from the consequences of international laws. The main purpose of an agreement is to bring transparency in a transaction, minimize chances of disputes by bringing as much clarity as is possible and also to avoid any misinterpretation.

To conclude, we can say that, 'Clauses' play a crucial role in agreements and contracts and help in creating a legal relationship which is transparent and forward looking.



Gossip

A woman repeated a bit of gossip about a neighbor. Within a few days the whole community knew the story. The person it concerned was deeply hurt and offended. Later the woman responsible for spreading the rumor learned that it was completely untrue.

She was very sorry and went to a wise old sage to find out what she could do to repair the damage.

«Go to the marketplace," he said, "and purchase a chicken, and have it killed. Then on your way home, pluck its feathers and drop them one by one along the road."

Although surprised by this advice, the woman did what she was told.

The next day the wise man said, "Now go and collect all those feathers you dropped yesterday and bring them back to me."

The woman followed the same road, but to her dismay, the wind had blown the feathers all away. After searching for hours, she returned with only three in her hand.

"You see," said the old sage, "it's easy to drop them, but it's impossible to get them back. So it is with gossip.

It doesn't take much to spread a rumor, but once you do, you can never completely undo the wrong."

➤ **Fulfillment of export obligation.**

The Central Government has restored the condition relating to block-wise fulfillment of export obligation ('EO') under the Export Promotion Capital Goods (EPCG) Scheme which has been withdrawn earlier this year.

D.G.F.T. Notification No. 54 (RE-2007)/2004-09 dt. 01/10/2007

News of Use

➤ **Amendment to Bonus Act**

On 27th October, 2007 the President has promulgated the Payment of Bonus (Amendment) ordinance, 2007 containing the following amendments:-

i) Amendment to clause (13) of Section 2 of the Payment of Bonus Act, 1965 to raise the eligibility limit for payment of bonus from the salary or wage of Rs. 3500/- per month to Rs. 10000/- per month.

ii) Amendment to section 12 of the Payment of Bonus Act, 1965 to raise the ceiling for calculation purpose from the salary or wage of Rs. 2500/- per month to Rs. 3500/- per month;

iii) Deletion of clause (vi) of section 32 of the Payment of Bonus Act, 1965 so as to cover the employees employed through contractors on building operations.

Thus the employees, including those employed through contractors on building operations will be entitled to receive bonus as per the revised ceilings, for the year 2006-07 and onwards.

The Ordinance shall be deemed to have come into force on 1st April, 2006.

Ministry of Labour & Employment New Delhi, Kartika 07, 1929/October 29, 2007 NR:LK:29/10/07

➤ **Guideline for Valuation of shares.**

Income Tax Department, Ministry of Finance has come out with guideline for valuation of shares to be issued under the ESOP Scheme and Sweat equity route vide Notification No. 264/2007, dated 23-10-2007.

The fair market value of any specified security or sweat equity share, being an equity share in a company, on the date on which the option vests with the employee, shall be determined as per the guidelines of the notification. Separate criteria's are provided for listed and unlisted companies.

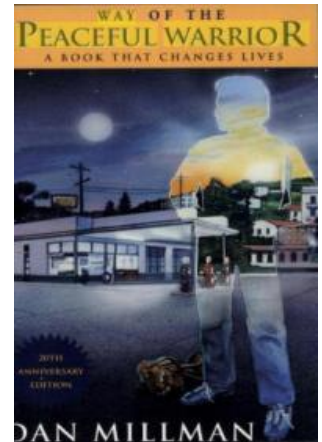
Notification No. 264/2007, dated 23-10-07.

Book Review

Way of the Peaceful Warrior By Dan Millman

CS. Nimmoo Kinger PCS Mysore

This book took me by surprise. I had expected to keep me entertained during a bus trip to Bangalore. But it did much more: grabbed my interest and had me glued to it till I eventually finished reading it. This book is a spiritual saga about rediscovering life's larger meaning and purpose. It is a story of a college student and world champion Dan Millman who is haunted by a feeling of dissatisfaction. By luck, he meets an old man called Socrates and his world is changed forever. The story is a spiritual odyssey into realms of light and shadow, romance and mystery. Narrated from the heart, and with humor, the book is a MUST read.



Comments by Dan, the author:

Way of the Peaceful Warrior began my own journey as a writer and teacher. I've been blessed by thousands of letters I've received over the years. When I wrote it, I had no idea that so many people, young and old, from different walks of life, would find my story so inspiring. Over the years I've asked myself why. I believe it's because my story also touched upon universal themes-our common quest for meaning and purpose and direction. Somehow it reminds readers of what they had always known but forgotten -- the bigger picture and essential perfection of our lives unfolding.

Quotes from Peaceful Warrior

<http://dhruvworld.com/moviepeacefulwarrior.htm>

- There are no ordinary moments
- This moment is the only thing that matters.
- Everything has a purpose, even this, and it's up to you to find it.
- A warrior does not give up what he loves, he finds the love in what he does.
- I call myself a Peaceful Warrior... because the battles we fight are on the inside.
- The journey is what brings us happiness not the destination .
- The ones who are hardest to love are usually the ones who need it the most.
- Joy: [to Dan, touching his chest] I don't think your leg was the only thing that got broken.
- A warrior is not about perfection or victory or invulnerability. He's about absolute vulnerability.
- There is no starting or stopping - only doing.
- People are not theirs thoughts, they think they are, and it brings them all kinds of sadness.
- Death isn't sad. The sad thing is: most people don't live at all.
- Nobody on this planet can do what you're trying to do.
- Take out the trash, Dan. Your mind is your trash.
- Socrates: Everyone wants to tell you what to do and what's good for you. They don't want you to find your own answers, they want you to believe theirs.

Dan Millman: Let me guess, and you want me to believe yours.

Socrates: No, I want you to stop gathering information from the outside and start gathering it from the inside.

➤ PN traffic runs into SEBI red light

Amid a deluge of foreign money that drove the market too high too fast, Sebi has proposed restrictions on participatory note (PN)—an offshore derivative instrument (ODI) used by foreign investors to play the Indian stock market. These are investors who are either not willing to get registered with Sebi or are barred from doing so. In a note issued late Tuesday, the capital market regulator has suggested that PNs should not be issued to these overseas investors for trading in Indian equity derivatives like Nifty futures.

PNs are issued by foreign institutional investors (FIIs) and their sub-accounts for investing in stocks as well as derivatives. Significantly, Sebi has also proposed certain limits on PN issuance for buying stocks in the spot market.

The Economic Times 17/10/2007

➤ Convergence with IFRS

ICAI published a concept paper on Convergence with International Financial Reporting Standards (IFRS). The concept paper talks about the present status of Indian Accounting Standards and strategy for Convergence with IFRS

Source:

<http://www.icai.org/icairoot/announcements/announ1186.pdf>

➤ GUIDELINES FOR ISSUING PREFERENCE SHARES AS PART OF REGULATORY CAPITAL

With a view to providing a wider choice of instruments to Indian banks for raising Tier I and Upper Tier II capital, it has been decided to allow banks to issue the certain types of preference shares in Indian Rupees, subject to extant legal provisions as per the guidelines prescribed.

- i) Tier I capital: Perpetual Non-Cumulative Preference Shares (PNCPS)
- ii) Upper Tier II capital
 - a) Perpetual Cumulative Preference Shares (PCPS)
 - b) Redeemable Non-Cumulative Preference Shares (RNCPS)
 - c) Redeemable Cumulative Preference Shares (RCPS)

Source:

<http://www.rbi.org.in/scripts/NotificationUser.aspx?id=3899&Mode=0>

News update: Companies Bill unlikely to be placed in the on going winter session

Spectrum this month . . .

Hello Friends!!!!

It's a Jolly time for the Mysore Chapter. We are all excited and gearing up to meet the President. In spite of the December exams, the spectrum team is involved in churning out newer strategies and intense planning to make the President's visit a memorable one.

Also, the study circles are moving in top speed. The interest that the students are evincing in bringing their doubts to the Study circles is evidence enough that they are damn serious about the forthcoming exams in December. This month we focused on themes such as Service tax, Corporate taxation and Company law.

We are also happy about the linking of the Mysore website with that of the Institute. We are reaching newer horizons. We are passionate about the CS Mysore Mantra "LET US GROW TOGETHER". We will keep you informed of all our activities, and here's hoping that you contribute too.

Till we meet you again next month, Have a Festive time! and trust that you will gear up well for the next round of exams.

- **Spectrum Friends**

➤ Company Name Availability - New Amendments

The new rule for availability of name shall come into force with effect from the 19th November, 2007. Now the maximum time allowed for adoption of Name is restricted to 90 days as against 6 months. The name allowed shall lapse after expiry of sixty or ninety days, as the case may be, from the date it is allowed first. Now the promoter has given 2(two) opportunities for re-submission of their application after the original application is filed.

The name allowed by the Registrar before 19th November, 2007, if not adopted, shall lapse after the expiry of a period of six months from the date on which the name was initially allowed or renewed.

In case the name has not been renewed earlier, the applicant on or before the date of expiry, may apply for one time extension of such name for a further period of thirty (30) days on payment of 50% of the fee (i.e.Rs.250/) for the application at the initial stage.

(Refer : Notification No.G.S.R.720 (E), Dated 16-11-2007 - Companies (Central Government's) General Rules and Forms (Third Amendment) Rules, 2007 - Substitution of Rule 4A.)

In lighter vein...



Interviewer: What is your qualification?

Candidate: Sir, I am Ph.D.

Interviewer: What do you mean by Ph.d?

Candidate: Passed high school with Difficulty!!!

Disclaimer

The information contained in this newsletter is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate. No one should act on such information without appropriate professional advice.