



Mysore Chapter

eNewsletter - 84

January 2011



*Happy
Sankranti*



3
Milaap 2011

Words worth Millions...



"Neither money pays, nor name pays,
nor fame, nor learning; it is
CHARACTER that cleave through
adamantine walls of difference"

Swami Vivekananda

12 January 1863 to 4 July 1902

12th January is National Youth Day

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Message from Chairperson



Dear Professional Colleagues and Students,

Here's Wishing you a Very Happy Sankranthi !

As I prepare to move on, I deem it my privilege to have
got an opportunity to serve my Alma Mater as a
Chairperson. It makes me feel proud to be a part of this
great legacy of Company Secretaries. What was a
chanced decision has indeed turned out to be a great
career!

We have had certain landmark events in 2010; one of
them certainly is the 'Shilanyaas' of the Mysore Chapter
of ICSI. The successive committees have the
responsibility of turning this into a reality and continue
to run it as a revered seat of learning.

One of our concerns, here at the Chapter, is that we may
start facing talent crunch to run the Chapter activities,
as there is a preference amongst the young blood to
migrate out of Mysore. Perhaps, issues of job
opportunities for CS students have to be addressed in
larger forums.

On behalf of the Committee, I sincerely thank all the
members and students for extending support in the
activities of the Chapter during 2010

Wishing the Students a great career with CS!

Thank you,

Yours in CS fraternity,

CS K. Sarina Chouta Harish

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ICSI Bangalore Chapter invites the students of Karnataka to participate in the
7th State Level Student's Conference:

Milaap 2011

.....Meeting of Minds

To be held on 19th and 20th February 2011
at Sri Bhagavan Mahaveer Jain college, 34, 1st Cross, J. C. Road, Bangalore.

You can write to the souvenir being brought out in the event! Send articles by 10th February 2011 to the Students facilitation Committee over email id: milaap.cs@gmail.com

**16 ADP
HRS FOR
STUDENTS**

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ACTIVITIES AT CHAPTER

**INDIA
CORPORATE
WEEK**
December 14 - 21, 2010

Celebration of India Corporate Week

Mysore Chapter celebrated India Corporate Week by organizing a seminar on "Sustainable Business" at the SDM-IMD, Mysore on 16th December 2010. In the program, CS. C. K. Sabareeshan, Past Chairman of Mysore Chapter delivered a talk on "Risk Management" and Prof N. R. Govinda Sharma delivered a talk on "Business Strategies for Small & Medium Enterprises". Chapter published a Special Edition of E Magazine dedicated to India Corporate Week in Dec 2010.

New Managing Committees in three Chapters of Karnataka:

Mysore Chapter:	Bangalore Chapter:	Mangalore Chapter
CS. D. D. Bhat CS. Anshuman A. S. CS. Srilatha T. G. CS. Jayasheela Bhat CS. Sunil Kumar B G CS. Parvati Hegde CS. Sarina C. H.	CS. Ganapathi Bhat CS. Kannan S. CS. Manjunatha Reddy CS. Dattatri H. M. CS. S. C. Sharada CS. Hari Babu Thota CS. Srinivasan R.	CS. Ullas Kumar Melinamogaru CS. Y. V. Balachandra CS. P. V. Rai CS. Abdul Aziz CS. K. Chetan Nayak CS. R. Subramanyam CS. M. V. Bhat

**Congratulations and wishing all the success in professional development endeavors
of new Managing Committees.**

FDI IN RETAIL: A PERSPECTIVE

Post independence, India followed a policy of a closed economy till 1991. Forget attracting foreign capital, private capital or private sector investment was prohibited in many sectors. Even if permitted, capacity constraints were imposed. The logic was that larger private enterprises will misuse the strength of their size to exploit employees and consumers in the quest for profits, whereas large public sector enterprises which are closely monitored by the Government will combine the benefits of economies of large scale with concern for public welfare, generate employment, promote import substitution and so on. Thus, Governmental intervention will ensure overall prosperity and progress.

Without getting into a debate as to the merits or otherwise of such policy, it is to be admitted that subsequent ideology, whether fully implemented or not, was (or is) quite different. The country's ability to attract foreign money indicates its urge to prosper. If foreign money is flowing into the country, it shows increased interest for our economy by investors abroad. Thus, it is an indication that the domestic economy is strong. Moreover, if the intention and policy of the Government is oriented towards attracting foreign capital, it is a sign that the Government is keen on progress. If the Government seeks to restrict foreign capital, it is regressive thinking.

The demand for allowing foreign investment into the Indian retail sector without any restrictions is largely justified in this perspective.

One of the main arguments of the opponents of the earlier closed economy policy is that the perceived benefits are idealistic but may not be practically achievable if conclusions are not based on detailed analysis. Well, if so, the same might be said of the subsequent ideology as well. No doubt, there are proven examples of economies which prospered due to foreign capital inflow – China, Brazil, Thailand, Japan, South Korea and the like.

Committed long term infusion of foreign capital, popularly in the form of Foreign Direct Investment (FDI) could prop up the performance of an economy. However, to just say that foreign capital inflow = prosperity is an over-simplification. The well intended enthusiasm for foreign capital is ignoring the fact that the usual primary motive for capital investment is a return. If freely allowed, capital investment has the tendency to first chase profits, without worrying about other factors. If water is allowed without any restriction to flood into an uneven field, it will just gush into low lying areas, whereas the actual requirement of water could be more elsewhere in the field. A flood of hot money without proper canalization could create imbalances and asset bubbles which do more harm than good.

In all countries which have prospered thanks to foreign capital inflow, there are checks and balances whose purpose is to ensure that the intended objects are actually achieved. This could be by way of tax measures to slow capital inflows, tariff protection, Central Bank intervention in currency markets by buying foreign currency, capital controls, and the like. Much has been said about China's reluctance to allow the strengthening of its currency. Whether desirable or not, protectionism is a timely remedy, at least in the short term. Countries which at one time have criticized protectionism themselves have indulged in it, when the going gets tough. More surprisingly, some countries talk of open market and protectionism at the same time – they demand open market in other countries to which they seek to export but implement protectionism at home to safeguard the interests of their citizens.

Therefore, a simplistic conclusion that any restriction on FDI in Indian Retail is a sign of lack of orientation towards progress, is to say the least, incomplete, hasty and devoid of proper analysis. True, FDI in Indian Retail could bring in some benefits; but

The demand for allowing foreign investment into the Indian retail sector without any restrictions is largely justified in the perspective that it is a sign that the Government is keen on progress. If the Government seeks to restrict foreign capital, it is regressive thinking. To what extent this perspective is justified?



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"The views mentioned in this article are purely personal and does not have any relation to Himatsingka Seide."



what is surprising is the hue and cry that these benefits can be seen only with FDI in Indian Retail and that Indian retail, agriculture, retail infrastructure, food supply, and the like will be seriously undermined in the absence of such FDI. True, the small retailer or the kirana store may still survive the onslaught of any form of organized retail; but what is surprising is the clamour that FDI in Indian Retail is the only redemption for the otherwise beleaguered Indian farmer. True, FDI in Indian Retail could incidentally lead to creation of some cold chain storage facilities and other infrastructure; but what is surprising is the claim that FDI in Indian Retail is the only solution to overcome the absence of such facilities and that such FDI is a complete and immediate solution to all such infrastructural shortcomings.

Another simplistic conclusion is that restricting FDI in Indian Retail will curtail competition. This is far from truth. On the other hand, allowing such FDI could further increase competition, but is that an urgent requirement in a market with many players? The underlying assumption

here seems to be that unless Indian retailers are pitched against international retail giants, there is no competition in the true sense. Another assumption is that Indian retailers will adopt best practices only when they compete with such international giants. Both these assumptions are biased. As long as a truly competitive market exists, it is to the advantage of the consumer, irrespective of who the players in such market are. Restricting FDI in Indian Retail could probably promote better competition amongst organized retailers, help them to understand the market better and adopt best practices tailor made in the Indian context. Further, in a competitive market, every retailer will yearn to adopt better practices to outdo and stand apart from rivals and even otherwise, the discerning Indian consumer of this generation who has widely traveled across the globe will be easily able to shun retailers whose practices are not world class. If such Indian consumer is satisfied with sub-optimal practices by Indian retailers, then would foreign retailers bother to give him more?

LIVING ROOM

APPROACH



A lion woke up one morning feeling really rowdy and mean.

He went out and cornered a small monkey and roared, "Who is mightiest of all jungle animals?"

The trembling monkey says, "You are, mighty lion."

Later, the lion confronts an ox and fiercely bellows, "Who is the mightiest of all jungle animals?"

The terrified ox stammers, "Oh great lion, you are the mightiest animal in the jungle!"

On a roll now, the lion swaggers up to an elephant and roars, "Who is mightiest of all jungle animals?"

Fast as lightning, the elephant snatches up the lion with his trunk, slams him against a tree half a dozen times leaving the lion feeling like it'd been run over by a safari wagon. The elephant then stomps on the lion till it looks like a corn tortilla and ambles away.

The lion lets out a moan of pain, lifts his head weakly and hollers after the elephant –

"Just because you don't know the answer, you don't have to get so upset about it!"

Think before approaching...



WEB YATRA

*Pavan Kumar MS,
Student CS Professional Program, Mysore*

Here is a wish that this year be glorious and rewarding, let our entire future endeavor shower with success. Happy New Year to you all. In this first month of year 2011, let's start our journey of websites with www.onecaselawperday.com.

Case laws play crucial role in interpreting the provisions of the law. Being professionals, we shall update ourselves each day with latest cases decided by judicial and quasi judicial authorities. As the name of the site suggests, this site updates us with one case law each day on areas like Company Law, Economic laws, Forex Laws, Labour Laws and other General Laws.

Other than the above areas, site also deals with securities laws, tax Laws, Marine Insurance Act, Environment Act etc..., Here, we will get detail information related to facts, decision with reason. Hope this site assists you with a new case law everyday. Wish you a very happy surfing.



IT FOR PROFESSIONALS

Amitkumar Hegde, B.Com, MCA,
Bangalore



When we work for an organization involving extensive documentation which needs collaborative effort between two or more people, who are spread across different time zones, concept of collaborative online workspace becomes quite attractive. Microsoft has a tool called SharedView which makes it quite simple if you want multiple people to look at the same document at a time. All it requires is a hotmail/live account and the SharedView installed on the machine.

Open up the SharedView which adds a top bar to your desktop. Click on the button on the left side to open up the menu which will allow you to start a session or join a session. If you want a session, click on Start Session, which will generate the invitation information. Just copy and paste it to an email and send it across to all the stakeholders. Once they receive your invitation they can join your session by using the information provided on the invitation.

You can choose to share the entire desktop or a portion of it based on requirement. You can use the inbuilt chat box to communicate with the participants. By default the one who starts the session will have full control of what is being shared. But another participant can request for control to make changes remotely.

Some important tips on using SharedView from the website:

- Being a web based program, to start a session using this program, you must sign in using a Windows Live ID (Passport ID). However, you can use any e-mail ID or even a friendly name to join a session. A friendly name is a name of your choice. This is the name that others in the session will use to identify you.
- If you want to start a session and do not have a Windows Live ID, you can continue installing this program. However, before signing in, you must get a new Windows Live™ ID.
- You must have a working Internet connection to use this program.

Download it form: <http://connect.microsoft.com/site94>

POT OF GOLD



On March 23, 2009, the stalwart Tata Motors Group eventually did manage to successfully launch their much-awaited 'Tata Nano' - the car that also goes by the nick of 'One lakh car'! At its launch, Ratan Tata,

Chairman of the Tata Group, stood next to his dream-finally-materialized carving out a picture of immense pride and accomplishment! Who else could relate better to the obstacles faced on road to realizing this seemingly elusive goal; a feat that took him more than 6 years to accomplish as he fought against all odds towards building what is today the cheapest option in the segment of family cars on the Indian roads! His unflinching patience and perseverance ultimately did pay off! Such is the power of undying *Patience!*

Prior to implementing enterprising ventures, successful businessmen/entrepreneurs of the likes of Ratan Tata, may initially follow their gut instincts, however, much of their time is spent researching, studying, thinking about the feasibility of the venture and most importantly waiting for the right moment to bring the decision to effect! Their plans may further face uncalled difficulties but to deal with them requires loads of patience! Patience is a virtue they say and it is exhibited in every aspect of life. Even nature does not bring about changes instantly - a plant without persistent and patient nurturing may never bear fruits.

Successful entrepreneurs may initially follow their gut instincts. However, much of their time is spent researching, studying, thinking about the feasibility of the venture and most importantly waiting for the right moment to bring the decision to effect! Their plans may further face uncalled difficulties but to deal with them requires loads of patience! Patience is a virtue they say and it is exhibited in every aspect of life.



Sajjad A Qadir

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Being patient with any situation helps make the right decision eventually!

On the road to achievement, life presents us with ample chances which, if utilized at the right time, can lead us to path-breaking avenues. How many of us have had the disappointing feeling of missing out on great chances coming our way? Many of us have had this misfortune. Turns out that opportunity does not knock doors more than once! A famous quote by Henry Hartman goes as *"Success always comes when preparation meets opportunity!"* Therefore, the use of *Opportunity* is critical. An analogy on the lines of the ideas aforementioned may be seen in one of the most skillful prey-hunters known to us - the tiger! A tiger very tactfully but patiently pursues its prey and pounces to make its final killing move only when it recognizes the right opportunity! Fact is that a patient opportunist can never fail in his pursuit for success.

Being synonymous to wild territories for hopeful investors like most of us, equity markets are sometimes a scene of heavy chaos. Therefore, in unclear market conditions, it is highly advisable to stay calm, patient and wait for the right opportunity to strike an entry. In our thirst for fruitful investments, in spite of having done all our research maximally, we may sometimes face setbacks. These setbacks cause some men to break and others to break records! *Note that a man's success may be measured not by how high he climbs but how high he bounces when he hits bottom!* Tackling hurdles whether big or small, requires perseverant, patient hearts that are prepared and that have the will to grab lucrative opportunities provided

by the markets from time to time. You may be tempted to make quick bucks on risky market securities from time and again but how many people can you reckon with for having been lucky always? Wouldn't it be wiser to keep prowling in the markets as a respectable tiger? If a tiger, being a beast can practice self-reliance, patience, techniques; then why can't we humans, being the crown of creation, do the same?

There is a famous Chinese proverb - 'Give a man a fish and you can feed him for a day. Teach a man to fish and you feed him for a lifetime.' You may be a patient personality waiting for the right opportunity to come by to strike but you will find no gains if you lack *Technique!* In most great achievers, almost invariably, a peculiar style of working that is unique to their own is more than

often spotted. This technique of theirs differentiates them from the crowd when it comes to being able to successfully achieve apparently impossible feats. Warren Buffett, who may be easily regarded as the most successful investor has never been shy about following his own set of rules that were in most cases contrary to mass market sentiment. Your foolproof, solid investment techniques that may later be regarded as your own school of investment, will gradually turn out be the technique of fishing emphasized in the proverb. This technique if mastered and practiced optimally, helps build substantial profits for you from time to time. All terms such as strategy, processes, timing, etc. that are regarded as key entrepreneurial ingredients are in fact embedded in Technique.

The technique is the roadmap that one follows as one moves from vision to execution. The bottom line is to only

do a very few things right in your life so long as you don't do too many things wrong!

Now, consider yourself as a potter trying to make that one 'perfect' pot in your life. That perfect pot which you need to design would shape up if the elements in the pot-making material are those of the type - **Patience, Opportunity and Technique (POT)!** And if you were ever in pursuit of turning this perfect pot into your 'Pot of Gold', you would need to cook up your life instances in this pot with Perseverance as the unfazed fuel used for cooking all throughout! The recipe cooked would be gold always, namely, Success! If we may pass on the Technique to create a pot of gold to each one, we will have transformed each one's ordinary pot into a Pot of Gold, thereby spreading success all around! Pots of Gold all around!

Company Deposits – Part 8

DEPOSITS: CONTRAVENTIONS AND DEFAULTS

Where deposit was accepted by the company in contravention of Rules and same was not refunded within 30 days of such acceptance or extended period, if any, a penalty equal to twice the amount of deposit shall be imposed on the company. However, out of this penalty amount, the depositor shall be refunded of his deposit amount by the court. In addition to this, every officer of the company who is in default shall be punishable with imprisonment which may extend to 5 years and shall also be liable to fine.

Where a company invites / accepts deposit in excess of the limits prescribed in the Rules or in contravention of the manner of advertisement prescribed or other conditions provided in the Rules:

1. If the contravention relates to acceptance of deposit, company shall be punishable with fine which shall be equal to the amount of deposit accepted.

2. If contravention relates to invitation of deposit, company shall be punishable with a fine which may extend to Rs. Ten lakhs but shall not be less than Rs. Fifty thousand. In addition to this, every officer of the company who is in default shall be punishable with an imprisonment which may extend to 5 years and shall also be liable to fine.

(iii) Whoever does not comply the order of tribunal for repayment of deposit to depositor, shall be punishable with imprisonment which may extend to 3 years and shall also be liable to a fine of rupees five hundred per day during which the

non-compliance continues. (iv) Whoever fails to comply with the provisions of Companies Act pertaining to small depositors or fails to comply with the order of tribunal pertaining to small depositors, shall be punishable with an imprisonment which may extend to 3 years and also with a fine of rupees five hundred per day during which the non-compliance continues.

(v) An offence in connection with the acceptance of deposit shall be a cognizable offence under the Code of Criminal Procedure, 1973. However no court shall take cognizance of such offence unless its complaint is made by the Company Law Board.

Prosecution for offence:

Prosecution for offence may be initiated by ROC, a shareholder, person authorized by the Central Government by filing a complaint in the court of First Class Magistrate. (Section 621 and 622 of the Companies Act, 1956)

Remedy / rights available to a depositor in case of default by company in repayment of deposit:

If unfortunately, a company defaults in repayment of deposit a depositor has following legal remedies:

1. The immediate remedy or right available to a depositor is to apply to Company Law Board [National Company Law Tribunal] under section 58 A (9) of the Companies Act, 1956 in the Form No. 4 prescribed under CLB Regulations with the prescribed fee of Rupees fifty for a direction to the Company to repay the amount

An offence in connection with the acceptance of deposit shall be a cognizable offence under the Code of Criminal Procedure, 1973.



However no court shall take cognizance of such offence unless complaint is made by the Company Law Board.

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of deposit to him. The application must be accompanied with the photo copy of FDR issued by the company. The Board, on depositor(s) application, or on its own motion, may direct to company to repay the deposit immediately or in a phased manner or subject to certain condition.

Even where only one or two depositors have made application to seek an order for repayment of their deposits, the CLB may make an order for payment of all the deposits. Application is to be made to the regional bench of the Company Law Board with in whose jurisdiction the registered office of the company falls, and not within whose jurisdiction the depositor resides.

The NCLT may pass necessary order to company to repay the deposit amount to depositor. However, if the Company still does not pay to depositor, the Company shall be subjected to stringent penalties which shall include fine and imprisonment. However, if the company is unable to refund its deposits as per schedule of payment specified by CLB, the CLB may reschedule the original payment schedule. In C L B can also fix the installment for repayment of the deposit.

A careful reading of Section 58A (9) reveals that a defaulting company can not itself approach to CLB for granting the installment for the repayment of public deposit. It is the CLB alone which, if thinks fit and proper, may do so suo moto.

It may be noted that no order for repayment of a deposit can be made by NCLT under section 58 (9) unless the sum repayable is a "deposit" under section 58A or Rules framed there under. Therefore, any amount placed with the company which falls into the "exempted category", i.e. it is not a deposit under the Act and Rules, then remedy provided in this section can not be resorted to, for recovery of such amount. A typical example, may be an Inter Corporate Deposit (ICD) placed by a company with other. In this case no order for repayment of ICD can be sought from NCLT because it is not a "deposit" with in the meaning of Section 58A and rules framed there under.

2. Moreover, under the Companies Act, 1956, a right to apply to high court under section 433(e) to have the company wound-up on the ground of company's inability to pay its debts, is also available to a depositor. But in this case the deposit amount must be exceeding Rs.1 lac. In fact, this is not a practical solution to the problem. Moreover, courts rarely pass winding up order in such cases.

3. The depositor may also move to Consumer Court for deficiency in service on the part of company and sue for repayment of deposit amount and for payment of damages. This legal remedy is neither costly nor very lengthy and is preferable.

4. Above all, the depositor as an unsecured creditor, has the right available to him under the general Civil Law to file a suit for recovery of dues from the company. However, such legal course is very lengthy, time consuming and costly and therefore, is not advisable at all.

5. If company is in default in repaying the deposit, it shall pay interest @ 18% p.a. on the deposit amount, for the overdue period. Moreover, in case of small deposit, as defined in section 58 AA, the interest @ 20% shall be paid for the over due period.

Disqualifications of a Company in default : A company which is in default in repayment of its deposit (i) can not Buy Back its Shares (Section 77 B of Companies Act ,1956) and (ii) can not give any loan, guarantee, provide any security or make any acquisition till the time such default continues [Section 372A (4) of Companies Act, 1956].(iii) In case of loss or inadequacy of profit in the company even the minimum remuneration as

permitted under schedule XIII of Companies Act, 1956 can not be paid to managerial personnel.

Duties of an auditor of a company accepting deposit:

1. Companies (Auditor's Report) Order 2003:

In pursuance to this order, where company has accepted deposits from public, every auditor of a company will report whether the directives issued by the Reserve Bank of India and provisions of section 58A and 58 AA of the act and rules framed there under, i. e. Companies (Acceptance of deposits) Rules 1975 where applicable have been complied with. If not, the nature of contraventions should be stated; if an order has been passed by Company Law Board whether same has been complied with or not.[para 4 (vi)]. Thus we may notice that if company has accepted deposit in contravention of the act and rules the auditor has to report it.

2. Certificate under Companies acceptance of deposit Rules and RBI Direction :

Every company whether NBFC or a non-NBFC which accepts deposit is required to furnish return of deposit to ROC and RBI every year. The auditor of the company has to certify the correctness of the figures appearing in these Returns.

3. Auditor's Certificate to RBI :

Every NBFC holding deposits shall furnish to RBI a certificate from its auditor, to the effect that the full amount of liabilities to the depositors, are properly reflected in the balance sheet, and that company is in a position to meet the amount of such liabilities to the depositors.

4. Contravention of section 3(1)(iii)(d) of the Companies Act, 1956 :

If auditor finds that a private limited company has accepted deposit from public and thus lost its character as private limited company under section 43 of the Companies Act, 1956 he shall mention this fact in his report.

5. Auditor's Report under section 227 (3) (f) of the Companies Act 1956 :

The Auditors Report shall mention that whether any director of the company is disqualified from being appointed as director under clause (g) of sub-section (1) of section 274. This sub-section, inter alia, deals with the disqualification of a director from being appointed as director in any other public limited company, when such person is already director of a public company which has failed to repay its deposit on due date and such failure continues for one year or more.

6. Additional Audit Report in case of NBFCs:

In addition to every report made by the auditor under section 227 of the companies Act, 1956 on the accounts of a non-banking financial company examined by him, the auditor shall also make a separate report to the BOARD OF DIRECTORS of the company on the matters specified in the Paragraphs 3 and 4 of Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008.

Moreover, where auditor finds that there is non-compliance of any direction (s) of RBI, by the company under audit, he shall make a separate report, specifying the details of such non-compliance, to Reserve Bank of India.

[to be continued...]



Compilation:
CS. Ravishankar Kandhi,
Bangalore



Learners' Corner

WHAT DETERMINES THE RATE OF INTEREST?



Rate of Interest is the percentage of money paid as interest by the borrower to the lender of money and are normally expressed for a period of one year (example: 8% per annum).

The lender would expect the interest on his lending amount based on the risk involved in receiving the same back to him. If the lender has assurance of getting his investment back with zero percent default, certainly he will lend at a lowest possible rate. For example the investment made on treasury bills issued by Government authorities, which carry zero default risk, the rate of interest expected on such investment/lending would be interest rate very less. The interest rates being paid on government treasury securities are also used as a benchmark rate while determining the interest rate in many other cases.

If lending involves risks such as **Default Risk (DR)** where the borrower defaults paying back the principal amount or **Prepayment Risk (PR)** where the borrower pays back the borrowed money before the completion of the period for which the same was lent or **Inflation Risk (IR)** where the money lent loses the purchasing power due to raise in the rate of goods/commodities or **Reinvestment Risks (RR)** where the amount lent may not get reinvested at the same interest rate at which they were previously invested or **other events** where the risks are involved in lending money, the rate of interest expected by the lender would be Benchmark Rate + Premium for the risk taken for lending his money.

For instance, if a lender invests in a government issued bond the default risk will normally be zero and hence he receives only benchmark rate as his interest. If he invests the same amount to a corporate where the default risk is exists he will charge premium in addition to benchmark rate. i.e., **(Rate of interest = Benchmark Rate + Default Risk)**. Similarly, depending on the risk involved in lending and type of risk, the premium on benchmark rate will be charged. The amount of premium to be charged differs from one lender to the other as well as one borrower to another.

In case the lending involves all aforesaid risks the lender may charge Benchmark Rate + premium on DR + IR + RR + PR + other events.

A company is unable to hold its AGM within the due date? What is the remedy available?

If a company is unable to hold its AGM within the due date, it can apply to the Registrar of Companies, for extension of time. The application has to be made in e-Form 61 citing the reasons for not holding the same within due date. The Registrar if satisfied with the explanations provided may extend the time for holding the AGM by a period not exceeding three months. However, extension of time for holding the first AGM cannot be done.

HOW MUCH IS THE INDIAN EXTERNAL DEBT?



As per the report issued at the Ministry of Finance at its web site - at the end of September 2010 the Indian External Debt was around Rs. 11,80,000 Crores.

(i.e., US\$ 2,62,344 Millions. Exchange rate considered as Rs. 45 = 1\$) This includes both Short term and Long term owing.

ANNOUNCEMENT:

“Only This Much Challenge” has been designed to groom and nurture Professional course students for knowledge sharing and enrichment. For more details [click here.](#)

LEGAL ROUNDUP

CENVAT

Notifications/Circulars

Packaged software or canned software would henceforth be liable to excise duty based on their MRP. The abatement would be at 15% of such MRP.

(Notification No 30/2010-CX (NT) 21.12. 2010)

Case Laws - Classification

The classification of capital goods cannot be disputed at the buyer's end for the purpose of denying credit on such goods.

Flextronics Technologies (India) Pvt. Ltd. Vs. CCE, Bangalore (2010 (181) ECR 142)

Case Laws - Valuation

Excess freight collected is a profit on transportation and not an additional consideration on which excise duty can be levied.

Mercedes Benz India Pvt. Ltd. Vs. CCE (2010 (260) ELT 149)

MRP valuation cannot be adopted in respect of clearance from one unit to another of goods which are still in the form in which they cannot be marketed in retail.

CCE Vs. Eveready Industries Limited (2010-TIOL-1417)

Cylinder rental charges and service charges on cylinder holding/bulk storage collected from customers are not includible in the transaction value.

CCE Vs. Sicgil India Ltd. (2010-TIOL-1530)

Case Laws - CENVAT/MODVAT

Credit on capital goods cannot be denied merely for the reason that such goods have been procured from a non-financing company.

CCE Vs. Sicgil India Ltd. (2010-TIOL-1530)

A manufacturer is eligible to avail CENVAT credit on plastic crates used for handling and transportation of finished products to the customers' premises.

Miltech Industries Pvt. Ltd. vs. CCE (2010-TIOL-1512)

On payments of excess duties, a refund claim has to be filed and credit of such duties cannot be taken suo moto.

Tansi Watch Assembly Unit Vs. CCE (2010-TIOL-1585)

Case Laws - Others

Interest would be payable on the amounts refunded after the expiry of

three months from the date of filling of refund claim with the department.

CCE Vs. Reliance Industries Ltd. (2010 (259) ELT 356)

The time limit prescribed under Section 11B is not applicable on refunds of CENVAT credits accumulated due to export of finished goods.

GTN Engineering (I) Ltd. Vs. CCE (2010 (259) ELT 625)

CS. Abhishek Bharadwaj, Mysore

Team Genicon, Chennai

CA. Ashit Shah, Mumbai

Customs

Notifications/Circulars

The CG has rescinded Notification No 31/2010 which provided an exemption from customs duty on software.

(Customs Notification No. 126/2010 dated 21/12/2010)

The Mumbai Commissionerate has issued guidelines in relation to re-credit of the 4% ADC, paid at the time of import.

(Public Notice No.123/2010 dated 1/12/2010)

The CG has clarified that Industrial Process Controller System (PXI) is a measuring and control system and as an automatic data processing machine.

(Circular No.42/2010-Customs, dated 29/11/2010)

Case Laws - Valuation

The contemporaneous price of a small sample consignment should not be considered for enhancing the declared value of imported goods.

CC Vs Venus Gas Appliances (2010-TIOL-1611)

The value of contemporaneous imports two months subsequent to the import of the impugned goods can be relied upon to compute the value for the purpose of levy of customs duty.

CC Vs Kiran Pandy Chem Ltd. (2010-TIOL-1599)

Case Laws - Others

The assessee is entitled for interest at the specified rate on delayed refund of import duty and not on delayed refund of a security deposit.

Calcutta Iron and Steel Co. Vs CC (2010 (260) ELT 311)

No penal action can be initiated against an importer on the ground that the bill of entry is not filed or the goods are not cleared, within the prescribed time-limits, from the customs station.

CC Vs Guljag Industries Ltd. (2010 (259) ELT 710)

Penalty may be reduced in the event export obligations in terms of value have been fulfilled by the importer even though export obligations w.r.t. quantity has not been fulfilled.

Craftsman Vs CC (2010 (181) ECR 348)

Foreign Trade Policy

Notifications/ Circulars

The CG has extended the validity of the notification providing exemption to import of goods under the Duty Entitlement Passbook Scheme.

(Notification No. 124/2010 dated 15/12/2010)

The CG has clarified that units set up in Free Trade Warehousing Zones in sector specific SEZs can store goods for the following purposes: (1) For development of the zone or for setting up of units; or (2) For manufacture and export/DTA sale of goods and services or finished products of units in that sector specific SEZ.

(MOCI Instruction No. 71 dated 12/11/2010)

The CG has extended the limit of duty free import of samples for all exporters from INR 1,00,000 to INR 3,00,000.

(Public Notice No. 17/2009-14 (RE -2010) dated 06/12/2010)

Case Laws

Export obligations in relation to import of cars under the EPCG scheme can be fulfilled by foreign exchange earned through tour and travel activities.

CC Vs Air Travel Bureau Ltd (2010 (260) ELT 78)

In case of problems associated with export goods, they should be provisionally released on submission of bonds and there is no requirement for filing of bank guarantees.

Rajguru Enterprises Private Limited Vs CC (2010 (260) ELT 108)

Antidumping Duty Notifications/ Circulars

The CG has imposed a definitive anti-dumping duty on the import of Synchronous Digital Hierarchy transmission equipment, originating in or exported from China PR and Israel.
(Notification No. 125/2010 dated 16/12/2010)

The CG has imposed a definitive anti-dumping duty on the import of Phenol, originating in or exported from Thailand and Japan.
(Notification No. 120/2010 dated 01/12/2010)

The CG has clarified that import of CFL from China and Hong Kong in CKD/SKD condition will also attract anti dumping duty.
(Circular No. 43/2010 06/12/2010)

Service Tax Notifications/ Circulars

Notification No. 02/10 dated 27.02.2010, which had exempted the consideration for the right to use canned software, has been rescinded.
(Notification No. 51/2010 dated 21.12.2010)

The CG has clarified that hire charges levied by electricity transmission and distribution companies for electricity meters installed at the premises of the consumers are exempted from levy of service tax.
(Circular No. 131/ 13/ 2010 dated 07.12.2010)

Case Laws

A notification affecting the rights of assessee is not retrospectively applicable unless it is expressly stated to be so.

Karvemu & Co. Vs. Under Secretary, Department of Revenue (2010 (20) STR 591)

The aspect of service element in the renting of immovable property is independently covered under the Union List of the Constitution and does not encroach upon the corresponding entry in the State List thereof.

Shubh Timb Steels Ltd. Vs. UOI (2010 (20) STR 737)

Information Technology software services have been made taxable only with effect from 16.05.2008 under the category of Information Technology Software Services.

SAP India Private Ltd. Vs. CCE (2010-TIOL-1569)

Taxable service received from outside India prior to 18.4.2006 is not liable to service tax under the reverse charge mechanism.

Maharashtra Seamless Ltd. Vs. CCE (2010-TIOL-1563)

Courier services used for day to day business operations are eligible input services.

CC&CE Vs. Apar Industries (2010 (20) STR 624)

The provisions of the CENVAT Credit Rules do not envisage availment of credits on the strength of debit notes.

Godrej Consumer Products Ltd. Vs. CCE (2010 (20) STR 609)

CENVAT credit of the service tax paid on outward transportation of goods is eligible if the ownership of goods remains with the seller until the goods are delivered to the customer.

Priya Industrial Packaging (P) Ltd Vs. CCE (2010 (29) STT 311)

Purchase and sale of time slots have been made taxable only with effect from 01.05.2006 under the category of Sale of Space or time for Advertisement.

Needwise Advertising Pvt Ltd Vs. CST (2010-TIOL-1619)

Exemption is provided to taxable services of transfer of right to use for commercial exploitation for canned or package.

[Notification No. 53/2010 - dated 21-12-2010]

The exemption from payment of service tax under the management, maintenance or repair service was granted when the service was provided in relation to management, maintenance or repair of roads.

[Notification No. 54/2010 - dated 21-12-2010]

Exemption had been granted for transportation of certain specified goods by Rail till July 2010 vide Notification No. 08/2010.

[Notification No. 56/2010 - dated 21-12-2010]

Exemption had been granted for transportation of goods by Rail vide Notification No. 33/2009 w.e.f. 01-09-2009. This notification was rescinded on 27-02-2010 vide Notification No. 07/2010 and made such services be taxable from 01-04-2010.

[Notification No. 55/2010 21-12-2010]

Abatement of 75% on transportation of goods by Rail

[Notification No. 57/2010 - dated 21-12-2010]

Exemption has been granted to services provided in relation to General Insurance business under Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme

[Notification No. 59/2010 - dated 21-12-2010]

Case Laws

Commission received from bank for recovery of loan from farmer could not

be covered within the definition of Business Auxiliary Services.

[Bhima SSK Ltd. - 2010 (20) STR 675 (Tri - Mumbai)]

Payment of service tax made under mistake and refund claim has been filed beyond the time limit prescribed under section 11B of Central Excise, refund not granted.

[MGM International Exports Ltd. - 2010 (20) STR 663 (Tri - Chennai)]

Sales Tax Case Law

Under a works contract transaction, the provision for deduction of tax at source will apply to the taxable turnover arrived at after deducting the service component.

Toubro Vs. State of Haryana and others [(2010) 37 PHT 508 (P&H)]

In printing of lottery tickets, property in ink and processing materials, namely, chemicals, etc. are passed on to the customers and accordingly there will be a tax on the value of such goods during the execution of the contract for printing of lottery tickets.

Commissioner of Trade Tax Vs. Aristo Printers Pvt. Ltd [2010 VIL (67) ALH]

FEMA & SEBI

RBI has clarified that *FIRC should not be issued against remittance for credit to NRE account* through RTGS / NEFT / NECS / ECS. However, when banks convert the foreign currency into rupees, at that time of conversion the Bank need to issue FIRC.

DPSS (CO) EPPD No. 1309 / 04.03.01 / 2010-11 dated 15th December, 2010.

RBI has issued Certificate of Registration to the High Mark Credit Information Services Pvt. Ltd. to carry out the credit information services.

Others - IPR

- Court grants injunction against two companies for infringing trademark of Ashok Leyland.
- Geographical Indication Registration is proposed for Kundan Meena, a traditional Kundan Jewellery is believed to have originated in royal courts of Rajasthan and Gujarat.
- WIPO has launched an On-line Tool to Assist in Filing International Trademark Applications.
- Google and forty six other companies finally won the Trademark infringement suit over Android.
- Wi- Lan Incorporation has settled a patent dispute with LG electronics and LG Electronics Mobilecomm U.S.A.



India rejects US Company's patent for anti - HIV drugs

In a much needed relief to Indian pharmaceutical companies as well as patients, India rejected a patent application filed by US-based Company, Abbott Laboratories, for the anti-HIV drugs Lopinavir and Ritonavir after a 4 year long legal battle over intellectual property rights. These are crucial drugs needed for second line treatment for patients who have developed resistance to first line drugs.

Sony Sues LG over Patent Theft

Sony filed a patent-infringement suit against LG Electronics, seeking to block the South Korean phone maker from selling devices in the U.S. The suit, which was filed with the U.S. International Trade Commission, or ITC, alleges that LG violated patents related to photo-based caller ID, direction keys, signal transmission and phone number lighting display. Some of the phones alleged to incorporate the patents include LG's Fathom and Xenon devices. The suit addresses seven patents and 10 LG phones.

Dabur completes acquisition of Namaste

FMCG major Dabur has completed the acquisition of the US based personal care firm Namaste Group for \$100 million (about Rs. 451 crore) in an all-cash deal. The company's wholly-owned subsidiary Dermoviva Skin Essentials has completed the acquisition process by acquiring 100 per cent stake in leading personal care companies of Namaste Group, US.

Dangerous Neighbours

In the Indian Ocean, China is pursuing a string-of-pearls strategy - ostensibly to safeguard her energy-vital sea-links, but equally designed to bottle-up the Indian Navy.

The latest Pentagon report unveils her rapid accretion of nuclear weapon systems and staging some of them forward into Tibet. China has now expanded its claim over the Tawang Tract to include all of Arunachal, even protesting Asian Development Bank loans for the State. China has also reopened the Sikkim question and escalated tensions in Ladakh. Chinese intrusions have gone up by

about 52 percent over last year and its soldiers are more aggressively staking out territory across the LOC.

China is raising its profile in Maoist-afflicted Nepal and extending the railway from Lhasa to Khasa on the Nepalese border. She has already built a strategic road through eastern Nepal close to our sensitive Siliguri corridor. To the west, China is provocatively constructing surface communication links and hydroelectric projects in PoK. Another provocation is issue of stapled visas to Indian Kashmiris for visiting China; encouraging them to defy our travel laws. She has consistently ignored our protestations on both issues. China has committed to build two civilian, unsafeguarded nuclear reactors for its ally, which will help augment its N-stockpile.

IFC eyes funding in Gujarat

The World Bank Group arm, International Finance Corporation (IFC) has set its eyes on the 'green' projects in India especially focusing on Gujarat and Rajasthan. IFC has identified potential investment areas under solar power, wind energy and gas-based energy for its upcoming funding plans. IFC has invested about \$1 billion so far, while in coming months, it will invest in renewable energy generating companies.

China insists rail link to India

Out of the three Chinese intended rail network plans beyond its borders, connecting India through Moreh of which Indian Railways has begun initial preparations, the Jiribam to Moreh proposed broad gauge track is one.

According to an online edition report in Asia Times, in order to connect the two countries, India and China by rail, Indian Railways began initial preparations to extend a broad gauge track from Jiribam in south-western Manipur to Moreh on the border with Myanmar.

South Africa might enter BRIC

South Africa, the largest economy of the African continent, is set to join the group of BRIC nations – Brazil, Russia, India and China – which will help India in making inroads into the continent hitherto untapped by Indian companies. BRICS will also help the forum of the emerging nations have greater say in global issues like WTO negotiations and climate change.