



Mysore Chapter

# eNewsletter 79

August 2010



**Karnataka Mooters win  
first four places for SIIRC**

# CSMysore

**3 Years Young**



**Members Strong**

For Private Circulation Only

## -:Editorial Team:-

CS. Dattatri H M,  
CS. Sarina C H,  
CS. Omkar N G,  
CS. Rashmi M R

## Support Team:

CS. Harish B.N.,  
CS. Ravishankar Kandhi,  
CS. Abhishek Bharadwaj,  
Kiran T

For past editions of eNewsletter:

<http://www.icsi.edu/mysore> or  
<http://www.esnips.com/web/icsimysore>

Join 1000+ members' strong  
"CSMysore" eParivaar at

<http://www.groups.google.com/group/csmysore>

## Disclaimer:

Views and other contents expressed or provided by the contributors are their own and the Chapter does not accept any responsibility. The chapter is not in any way responsible for the result of any action taken on the basis of the contents published in this newsletter. All rights are reserved.



## Message from Chairperson



**Dear CS Fraternity,**

## Happy Independence Day!

It is heartening to note that the Karnataka Mooters have presented SIRC the gift of Championship in the ICSI All India Moot Court Competition held in New Delhi last week. The win was in style – Mysore team bagged first, third and fourth place and Bangalore team bagged second place. Further **Mr. Rahul achieved a hat-trick win** and Ms. Navya bagged third place for Mysore chapter in the 8th National Level Elocution Competition. ***Congratulations to all the teams for creating this new record in the history of SIRC!***

Students are eagerly waiting for their results to be announced on 25th August 2010. Some will win and some will not. Those who do not pass, shall take this as an opportunity to know the subjects much better than earlier and gain much more expertise than the one who pass this time itself!

This way, every one can win! All the best!!

Congratulations to CSMysore eParivaar on the occasion of its third anniversary with 1000+ members spread across the country! The quality service it is providing to the professional fraternity is commendable!

Yours in CS fraternity,  
*CS K. Sarina Chouta Harish*

# Inside.....



Activities at Mysore Chapter...3

Words worth Millions...12

### Articles:

CSMysore: 3 Years Young, 1000 members Strong....4

Patent Infringement...6

Company Deposits **Part 3**: Legal Provision Pertaining to Deposits .... 7

### Columns:

**Book Review:** Hitler's War and War Path ...9

**Web Yatra:** Legal Services India...9

**IT for professionals:** Editor...9

**Legal Roundup ... 11**

**News Room...13**

### Spectrum Space...10

Learners' Corner: One Man Company

Did you know?: United Stock Exchange

Pick of the Month: MIBID and MIBOR

# KARNATAKA MOOTERS WIN FIRST FOUR PLACES

Karnataka Mooters, representing SIRC rocked at 8<sup>th</sup> All India Moot Court Competition held at New Delhi on 6<sup>th</sup> and 7<sup>th</sup> August 2010. All the semifinalists were from Karnataka. About 25 teams participated in this national event from all parts of India.



Mr. Rakesh S. and Ms. Madhuri Hegde from Mysore are the **WINNERS**.



Ms. Ramya, Ms. Mansi, Ms. Qudsiya and Mr. Deepak team from Bangalore are the **Runners-up**.

Third place was bagged by Mr. Kunal and Ms. Ramya from Mysore

Fourth place was bagged by Mr. Abhilash and Ms. Soundarya from Mysore.

Winning Track Record of Mysore Chapter			
Year	All India Moot Court Competition	All India Company Law Quiz	All India Elocution Competition
2007	<b>Winners:</b> Team of Ms. Pracheta M. and Mr. Rakesh S.	<b>Runners-up:</b> Ms. Pracheta M. and Mr. Kamal Kumar	<b>Runners-up:</b> Ms. Rashmi M R
2008	<b>Winners:</b> Team of Ms.Pavithra P, Mr. Rakesh S, Ms. Vijayalakshmi K. and Mr. A.M. Chinmaya	<b>Winners:</b> Mr. Prashanth D.S. and Ms. Reshma Anwar	<b>Winner:</b> Ms.Soundarya S
2009	Team of Mr.Santhosh, Ms.Shwetha, Ms.Saumya and Mr.Kumarpal represented SIRC	<b>Winners:</b> Mr. Chinmaya A.M and Ms. Veena Bhat.	<b>Winner:</b> Ms. Madhuri Hegde
2010	<b>Winners:</b> Team of Mr. Rakesh S. and Ms. Madhuri Hegde	To be held	<b>Winner:</b> Mr. Rahul R.B. Ms Navya – 3 <sup>rd</sup> Place



## Mr. Rahul wins National Elocution competition!

Mr. Rahul achieved a hat-trick win for Mysore chapter in the 8<sup>th</sup> National Level Elocution Competition. Ms. Navya bagged third place in the competition.

# CSMysore

## 3 Years Young

## 1000 Members Strong

Visit: <http://groups.google.com/group/csmysore>



Be it a student or member of any corporate profession. Be at any one in the corporate life who have joined the eParivaar – the feel is the same:

*"CSMysore has made a difference, a positive difference!!"*

This is nothing less than a Nobel Prize for the team working for the motto "Let's grow together"!

Mysore is renowned as cultural capital. And it is the culture that alone can connect. That's why in Mysore the movement has begun. Now thousands of the voices can be heard across the country saying "I am a proud CSMysorian and let us grow together".

*Yet, it is just the beginning!*

Long way to go in achieving the 'connecting professionals' effort transform into a movement 'Bharat Jodo', and reach lakhs of professionals and students across the nation, even beyond the borders!

*We are committed. And we need you in this movement!*

CSMysorians are committed towards professional development and thereby support economic progress of the nation.

*".....सह वीर्यं करवावहै | तेजस्विनावधीतमस्तु ..."*

*"...May we work conjointly with great energy|| May our study be vigorous and effective...."*

**For Team – CS Mysore  
CS. Dattatri H M**

**Congrats Team CSMysore!**

It's my pleasure to be a part of this great Forum since inception. 'Whatever I am today is only because of CSMysore e-Parivaar'.

*"Aano Bhadraha Kratavo Yantu Vishwataha..."* means "Let the good things come from all parts of the World..." In CS Mysore, great knowledge is coming from all parts of India and abroad.

Answering few questions in this eParivaar made me to search for answers from the Books, websites and other sources. Thus it increased my knowledge and power to attend queries immediately. So now you can say, I am a Mini Google Search Engine (!!!)



For sharing knowledge, even SKY IS ALSO NOT THE LIMIT...!!! All izzz Well...

**Chakri G Hegde,  
Nissin Foods India Ltd, Bangalore**

CSMysore eParivaar is an expert adviser for queries in all corporate areas. Congratulations to one and all for taking strength over 1000!

Though the members in e-Parivaar might not have talked/met each other, it gives a feeling that we know each other from several years.



Wish to see feedback from many more members! Let us take from e-parivaar, at the same time, let us contribute our views. Let us follow "give & take" policy.

**CS. Omkar Nagesh Gayatri**  
B.Com, LLB, ACS, PGDHRM & DISM  
AT&S India Pvt Ltd, Nanjangud

*Many heartiest congratulations for 3 year old wonder baby!*

Bhagavad Gita says: "...do your duty and don't expect anything including reward".

Normally few solve problems and others come to the forum as and when they are getting problems. I encourage all of them to support others and do a bit of ground work before raising queries. This way, forum can turn more meaningful.



CS Mysore is a learning forum. Learn and grow together.

**CS. A Rengarajan**  
Lucas Indian Service Ltd, Chennai

*I find CS Mysore vibrant, amazing & interesting. I feel really proud to be a member! I will continue to be help my friends and also be benefitted by their knowledge & experience.*

*My best wishes to CS Mysore for all the success in future.*

**Vivek Aggarwal**

*It's my pleasure to be a part of eParivaar. The journey has gone well and many congratulations. Let the awareness spread around a long way!!!*

**CS. Abhilash**



**3 years** and 1000 members! I am proud that I have been associated with the Group since one and half years. The mails floating around the forum are undoubtedly valuable in taking our esteemed profession to greater heights. No doubt, it is a great achievement.

Even during my busy schedules I never felt the mails filling my inbox from the forum as irritating/"junk".

**On the improvement part, I have following suggestion to make:**

1. Avoid mails that are not relevant for our profession.
2. I remember, we had constituted a committee to take care of unanswered mails. May be due to paucity of time the initiative did not continue. It needs to be reactivated.
3. We are professionals. Our approach should be professional in all respects. Address the query/answer to the one it is meant, avoid using abbreviations, do not leave the "Subject" blank, and choose the appropriate wordings in the subject.
4. Before asking the query, take 2 minutes to search for the past discussions on the subject to which your query relates - Google in the group page. When the query is under discussion, try to bring the past discussion in the loop.

In this occasion, I wish eParivaar a great success.

**CS. Vivek Hegde, B.com, ACS, CWA  
PCS, Bangalore**

### **Heartiest congratulations!**

*I am really very thankful to the CSMysore group. Every time I had a doubt as to what should be my next step I have mailed this group and someone or the other would come up with an idea, at that moment one feels really very thankful since you know you have someone on whom you can depend. You do not have to worry whether it is a silly doubt. Slowly the eParivaarians have become one big family helping one another.*

*Today there is a total change in attitude. Every professional is willing to share his file, check lists to others and this really goes a long way when we work. I applaud this change in attitude since I have always felt knowledge shared is knowledge gained.*

**My advice to the fellow eParivaarians will be:**

1. Whenever one has a query please compose a new mail and do not go into the reply mode since this will affect your co-professional.
2. Please do not pass strong comments on others replies or queries since this will hurt the sentiments of your co-professional.
3. Read and keep updating yourself since this is the only way to success. My heartfelt thanks to CSMysore and my best wishes.



**CS. Jayashree Chandrasekaran, PCS, Chennai**



**CSConnect is an initiative from CSMysore eParivaar** to provide connectivity and create link between prospective MTs/Fresher CS with the Companies /Firms/PCS. Currently CSConnect has identified Mysore, Bangalore and Chennai as initial locations to extend our support and hoping to extend this support to other cities as well.

**Team:** The Team "CSConnect" has good skilled professionals who are working behind the screen and ensuring quick placement. This team will share the available profiles with the job giver/seeker on regular basis.

**CSConnect Flash:** CSConnect Team shares info on opening for experienced members via CSConnect Flash mail in CSMysore e-Parivaar.

**News Page:** Every quarter we publish CSConnect news page, which contains the statistics about number of mails received from MT/ CS and how many candidates details have been sent to the concerned Company/PCS.



*We need your support in making this platform more effective and nurture the future of our profession.*

**CS. Sunil Kumar B.G. B.B.M., A.C.S. PCS, Mysore**

*Toady, information is abundant!  
But attention is deficient.*

*eParivaar is channelizing the much needed information to the readers thus reducing the attention deficiency. Most difficult and complicated queries are answered with authenticity and simplicity.*

*Still, there is a space for improvement! Quality is not a full stop, it is just a comma, so just carry on good work.*

*I wish eParivaar many more anniversaries with sustained success.*



**CS. Alagar**  
Genicon Business  
Solutions Pvt Ltd, Chennai

## Patent Infringement

**Lakshmi Manjunath**, LLB, CS(Final)  
Bangalore. [lakshmiseventeen@gmail.com](mailto:lakshmiseventeen@gmail.com)



In the camera industry, Polaroid won a major litigation against Eastman Kodak and collected almost \$1 billion in damages. In another case, Minolta was sued by Honeywell, and Honeywell won a judgment of almost \$200 million. Johnson & Johnson's Cordis Corp., unit won patent infringement jury awards of about \$325 million against Boston Scientific and about \$270 million against Medtronic. All issues were against Patent Infringement.

Patent infringement is applying a patented invention without license from the patent holder. In many countries, commercial application only constitutes patent infringement.

A patentee will have the "right to exclude others from making, using, selling, or offering to sell" a "process, machine, manufacture, or composition of matter" that infringes the patentee's patent. It is infringement when one "makes" a patented device or invention without license.

Patents are territorial, and infringement is only possible in a country where a patent is in force. For example, if a patent is filed in the United States, then anyone in the United States is prohibited from making, using, selling or importing the patented item, while people in other countries may be free to make the patented item in their country. The scope of protection may vary from country to country, because the patent is examined by the patent office in each country or region and may have some difference of patentability, so that a granted patent is difficult to enforce worldwide.

In any suit for infringement of a **process patent**, the Court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process; or the patent holder has been unable through reasonable efforts to determine the process actually used by the alleged violator: Provided that the patent holder first proves that the product made by the violator is identical to the product directly obtained by the patented process. With this new amendment of reversal of burden of proof on process patents, it is increasingly considered prudent to possess a process patent to ward off potential process

infringement suits. According to this amendment, the defendant in a suit for infringement would be expected to prove his innocence rather than the plaintiff proving his guilt.

It is important to note that in **process patent**, infringement is not determined by comparing the accused product with the product commercially sold by the patent owner (patentee), as the commercial product sold by the patent owner is irrelevant to the scope of the patent protection.

When a defendant is using the patent under the valid license, he does not fall under the category of infringement. However he has to provide details of the license & grant, be it oral or written. Written permission requires a document and oral grant can be provided by mentioning the place & time at which grant was provided. Only a registered licensee can file a case against patent infringement.

In the Landmark case of *Frearson V. Loe*, it was clearly held that if a person makes a thing or an invention merely by way of bonafide experiment, with a view to improve invention being subject matter of a patent; it is not an encroachment on the exclusive rights granted by the patent monopoly.

Under certain circumstances, a defendant can take shelter stating he was not aware of existence of the patent against which infringement case is filed against & can claim shelter under the law. Hence, there are no hard & fast rules laid for proving patent infringement. Each claim is fact dependant & shall be dealt individually.

India has undertaken to revamp the offices of the Controller General of Patents, Designs and Trademarks and modernization and computerization is being carried out in the patent offices. These improvements are fallout of the realization that patent enforcement cannot be strengthened without effective patent infrastructure. A patent can now be granted in less than three years, as opposed to an average of five to seven years, which it used to take only a few years ago.

***Infringement of IPR is viewed seriously and many companies are successfully enforcing their rights.***

***However major limitation in protection of IPR is that the protection is territorial – it is protected only in the country where it is registered.***



# Legal Provisions Governing Company Deposits

CA. Kamlesh C. Agrawal B.Com; LL.B; FCA  
Allahabad, kcagarwal44@yahoo.co.in



### Companies (Acceptance of Deposits) Rules 1975:

By virtue of the power bestowed under Section 58 A (1) of the Companies Act 1956, the Central Government, in consultation with the RBI, framed this Rule to prescribe the limit up to which, the manner in which and the condition subject which deposit may be invited or accepted by a Company either from the public or from its members.

**(A) Deposit Defined:** Deposit means any deposit of money with, and includes any amount borrowed by, a company, **but does not include:**

- Amount received from Government or guaranteed by Government.
- Amount borrowed from bank and financial institution.
- Amount received from local authority or foreign body or national.
- Inter Corporate Deposit (I C D s).
- Security deposit from employees.
- Advance money received for supply of goods, property or services, security deposit received from a purchasing or selling agent, dealer or distributor.
- Deposit received by a public limited company from its Director/s .
- In case of a private limited Company any amount received from its shareholders, Directors and their relatives,
- Amount raised by issue of Debenture / bond fully secured by the mortgage of immovable property.
- Unsecured Convertible debentures.
- Share application money or calls in advance.
- Amount received in trust or in transit.
- Unsecured loan from promoters of the company in pursuance of a stipulation of Financial Institutions.
- Commercial Paper.

**(B) Eligibility to invite deposit:** A company having Net Owned Fund of rupees 1 crore or above can only invite deposit. It is note worthy that the *restriction is on the invitation of deposit and not on its acceptance*. The “Net Owned Fund” has been dealt with in the “explanation” to section 45 IA of the RBI Act, 1934.

If a company is in default in repayment of deposit already accepted or payment of interest there on, it shall not be eligible to invite, accept or renew any deposit till the time such default continues.

**(C) Quantum of deposit that a company can accept:** A Company can accept deposit from its shareholders, against unsecured debentures and deposit guaranteed by its directors, up to 10% of its Paid-up Capital and Free Reserves. Deposit from public can be accepted up to 25% of its Paid-up Capital and Free Reserves. This is 35% in case of Government companies. In such companies there is no separate limit for shareholders. Paid-up capital and Free Reserve to be considered from the last audited Balance Sheet. Therefore, any increase in the Paid-up Capital of the company during current year by way of public or rights will not increase its deposit acceptance limit. The deposit acceptance limit shall increase in the next accounting year only.

**Paid-up Capital** excludes Redeemable Preference Shares. Contrary to common belief, the credit Balance in the Securities Premium Account (earlier known as Share Premium Account) is treated as part of paid up capital and not as part of free reserve.

**Free Reserve** includes general reserve, Credit balance of Profit & Loss Account, Government Subsidy received (non-returnable), Capital or debenture Redemption Reserve created out of profit. But it does not include the Revaluation Reserve, Reserve for depreciation or bad debts. However, the debit balance of Profit & Loss Account, Deferred Revenue Expenditure, intangible assets, and amount of un-provided depreciation shall be deducted from Free Reserve.

**(D) Period of Deposit:** Deposit can not be accepted repayable on demand. The deposit can be accepted for a period between 6 months and 36 months. However, to meet short term requirement, Non-NBFC companies may accept deposit for a period between 3 months to 6 months provided the total of such deposit and deposit received from members does not exceed 10% of its paid up capital and free reserve. NBFCs may accept deposit for a period between 12 months and 60 months. Whereas Housing Finance Companies may accept deposit between 12 months and 84 months.

**(E) Interest on deposit:** The maximum interest which may be offered on deposit presently is 12.5% per annum. However, the cap on maximum interest payable on deposit keeps on changing from time to time in tandem with RBI’s

monetary policy. In case of cumulative deposit scheme the *compounding of interest is allowed not earlier than monthly rest*. It may be noted that in past companies resorted to daily compounding of interest on cumulative deposits. Therefore, to check this practice government came out with this clarification.

**(F) Brokerage on deposit :** A duly authorized person by the company to procure deposit for it ,will only be eligible for brokerage on deposit mobilized. Brokerage on deposit mobilized is payable once and not every year. The brokerage scale has been provided in the Rules as under:

1 year Deposit 1%      2 Year Deposit 1.5%  
3 Year Deposit 2 %

**(G) Statement in lieu of Advertisement:** If company does not intend to invite deposit from public, it will not be required to insert any advertisement in the news paper. Instead, it will deliver, before accepting any deposit, a Statement in lieu of Advertisement containing all particulars which are required to be included in the advertisement, duly signed by directors, to ROC.

An advertisement or Statement in lieu of Advertisement filed with ROC remains valid till the expiry of 6 months from the close of the financial year in which these documents were filed with ROC or till the date of next AGM in which accounts are adopted, whichever is earlier.

**(H) Filing of Text of advertisement with ROC:** Advertisement shall be signed by majority of directors on the Board as constituted on the day when the aforesaid advertisement was approved and filed with ROC before publication.

**(I) Ad in the news paper for soliciting deposit :** Company intending to invite deposit from public shall get inserted advertisements in two leading news papers , one of which will be in vernacular language and other will be in English, both circulating in the state where registered Office of the company is situated.

The advertisement shall contain the name of company, date of its incorporation, name and address of its directors, nature of its Business, detail about its subsidiaries, Profit before and after tax, dividend declared in past, summarized financial position as appearing in last two Balance Sheets, contingent liabilities, certain statutory declarations, terms and conditions and date of approval from Board.

It is note worthy that the *definition of "prospects" as contained in section 2 (36) of the Companies Act, also covers the advertisement issued for inviting deposit*. Thus such advertisements are prospectus. Therefore, the provisions of section 68 of the Companies Act, regarding civil and criminal liabilities for fraudulently inducing a

person to subscribe share in or debenture of a company shall *mutatis mutandis* apply to advertisement inviting Deposit in a company.

**(J) Fixed Deposit Application Form:** All deposits in a company shall be accepted only through the Fixed Deposit Application Form supplied by the company. Strictly speaking, even usage of photo copied form is not permitted. The form shall contain same particulars which the company is required to furnish in the advertisement inserted in the news papers for inviting Fixed Deposit including the terms and conditions.

Generally these have a clause that "company shall have a right to amend terms and conditions without any notice to or any approval from the depositor and such amendment shall be binding on the depositor". To safeguard the interest of the depositors, the Rules provides that no company shall reserve to it self, directly or indirectly, a right to alter, to the prejudice or disadvantage of the depositor, the terms and conditions of deposit after it is accepted.

The FD Application Form shall contain a declaration from the depositor to the effect that the amount being deposited by him with the company is not out of the fund acquired by him by borrowings from any other person.

It is interesting to note that under the **Indian Contract Act , 1872**, a blank FD Application Form provided by the company to public or its shareholder, is an **invitation** by the company to public or shareholder to **make an offer** of deposit to company. On receiving such an **offer** (i.e. filled in FD Application Form along with cheque / bank draft) from public/shareholder, the company may or may not **accept it**. **Offer** of deposit is deemed to have been **accepted** the moment FD amount cheque or bank draft is sent by the company to its banker for collection. Therefore, if after submitting the deposit application form to company, applicant changes his mind and does not wish to make deposit, he may withdraw his deposit application provided the F D cheque/ bank draft has not been sent to company's banker for collection. Such withdrawal of application form shall be construed as **withdrawal of an offer** by the applicant before the same was **accepted**, which is perfectly legal.

Deposit may be accepted in joint names not exceeding three. The option of payment instruction available are "Either or Survivor", "Number one or Survivor", "Anyone or Survivor".

Depositor (s) shall be entitled to appoint a nominee to collect the amount of deposit after the death of deposit holder(s). The nomination shall be executed in the Form No. 2 B of the Companies (Central Government) General Rules and Form 1956. *[Legal provisions will continue in the next edition -Editor]*



## Hitler's War and the War Path

By: David Irving



“WHAT’S IN NAME?” When we read the book *Hitler's War and the War Path*, we can rewrite the same sentence to “IT’S ALL ABOUT THE NAME”! In this book we get a clear picture of Adolf Hitler and his path towards war. The book unfolds the secrets of Hitler’s life. It thoroughly explains it in a logical sequence.

The book reflects life of Adolf Hitler right from his childhood to his journey of becoming a strong German Dictator. The book mainly focuses on Adolf Hitler’s identity and events that happened in his life. This book acts as a mirror to Hitler’s own biography ‘mein kampf’ ( *Meaning in English: My Struggle*) and puts light on aspects of life of hard work, smart work, leadership qualities, brilliant mass communication and power of bonding.

## Book Review

Radhika.D.Patel B.Com  
CS (Final), Bangalore



## www.legalserviceindia.com



## Web Yatra

Pavan Kumar M S,  
CS (Final), Mysore



Laws are the silent assessors of God. Friends, Legal Service India is a leading Indian portal focused on Indian Laws. This site can be called as reservoir of Indian legal services. It provides information on all Laws, Legal News and present issues. Various forms like Company Registration Form, Tax Forms, and Notary Forms etc., are available. This portal acts as a complete guide on Family Law, Income Tax Law, Criminal Law, Constitutional Law, Arbitration, Company Law, etc.,

Further, site provides information about PIL (Public Interest Litigation), Lok Adalat and its significance. Current legal issues are discussed by experts in discussion forum of the site. Articles by the professionals will not only provide information but also enlightens the budding professionals to face the challenges in the journey of their professional life.

Site provides monthly digest of Supreme Court of India Judgements, Case Studies on the land mark Judgements in India, Issues Concerning legal profession, Chatting facilities, famous trails and Law store where we can find law books related to all subjects. Hope this site will meet your entire legal requirement. Make use of this legal reservoir and get benefited.

## “Editor” from Serenity Software

## IT for Professionals

Amitkumar Hegde, B.Com, MCA,  
Bangalore



Documentation being routine, there needs to be a tool which can help us in writing grammatically correct sentences and not just a ‘Spell Check’. I was looking for something which can start after the spell checker and help find hidden errors which are only visible to a proof reader. For example do you think there is a problem with this sentence? “He brought me a cold glass of water.”

My search ended with a nice utility called “Editor” from Serenity Software. They say “English is littered with wordy phrases, needless repetitions, clichés, trite expressions, vague terms, redundancy, pretentious language, illogical statements, homonym confusions, jargon, misspelled terms, incorrectly formed plurals and possessives, and other common problems.” and that is what they help to correct. Download a trial copy form [www.serenity-software.com](http://www.serenity-software.com) (it is not a freeware by the way.) and feed in a document that you have created to see how many subtle mistakes which are hard to notice.

The best part is it will not correct the mistakes. It will give a suggestion on the mistakes and depending on the context you can consider the suggestion. In most of the cases its advice will be correct though. By the way the sentence I mentioned had to be “He brought me a glass of cold water.” Did you get it the first time? If not probably the software is worth its money.



Compilation:  
CS. Ravishankar Kandhi,  
Bangalore



## Learners' Corner

# One Person Company



CS. Srinath Toona,

Clause 2 (z) of the Companies Bill 2009 ('the Bill') defined it to be "One Person Company" means a company which has only one person as a member; The following are the reproduced clauses of the Bill pertaining to OPC:

**Formation:** Clause 3(1)(c): *A company may be formed for any lawful purpose by any one person, where the company to be formed is to be a One Person Company, by subscribing his name to the memorandum in the manner prescribed and complying with the requirements of the act in respect of registration.*

*Provided that the memorandum of a One Person Company shall indicate the name of the person who shall, in the event of the subscriber's death, disability or otherwise, become the member of the company: Provided further that it shall be the duty of the member of a One Person Company to intimate the Registrar the change, if any, in the name of the person referred to in the preceding proviso and indicated in the memorandum within such time and in such form as may be prescribed, and any such change shall not be deemed to be an alteration of the memorandum.*

Clause 3 (2): *A company formed under sub-section (1) may be either (a) a company limited by shares, or (b) a company limited by guarantee, or (c) an unlimited company.*

Further few important provisions, of which issues can be identified, with respect to OPC are-

- An OPC can be formed for charitable purpose and registered without suffixing "Ltd" to its name which is on par with section 25 company of the Companies Act, 1956. However, for this purpose, the company has to satisfy the conditions mentioned in Clause 4 of the bill such as company shall also enjoy the privileges and be subject to all the conditions and obligations of a limited company.
- Clause 5 envisages that an OPC shall have to conform to the requirement of the Bill regarding the memorandum. But it does not prescribe the manner in which the said requirements have to be complied with.
- As per Clause 13 OPC can also be converted into private and/or public company effect of which shall be taken only when the approval of the Tribunal is granted.
- There has to be more explanations with respect to the Articles of Association for an OPC, at least contents of it.

*However, the Bill is yet to get suitable modifications to address the existing gaps in the draft Bill. To conclude, a simpler structure of legislature should be enacted for the successful implementation of the intention of any legislation.*

## MIBID and MIBOR

MIBID and MIBOR stands for Mumbai Inter-Bank Bid Rate and Mumbai Inter-Bank Offer Rate. National Stock Exchange(NSE) had developed and launched the NSE Mumbai Inter-bank Bid Rate (MIBID) and NSE Mumbai Inter-bank Offer Rate (MIBOR) for the overnight money market on June 15, 1998.

This was launched by NSE on recommendation of the Committee for the Development of the Debt Market. Now, the **MIBID/MIBOR** rate have been used as a bench mark rate for majority of deals struck for Interest Rate Swaps, Forward Rate Agreements, Floating Rate Debentures and Term Deposits.

## United Stock Exchange



*USE, India's newest stock exchange, marks the beginning of a new chapter in the development of Indian financial markets. It represents the commitment of ALL 21 Indian public sector banks, respected private banks and corporate houses to build an institution that is on its way to becoming an enduring symbol of India's modern financial markets.*

*Sophisticated financial products such as currency and interest rate derivatives are exciting introductions to Indian markets and hold immense opportunities for businesses and trading institutions alike. USE also boasts of Bombay Stock Exchange, as a strategic partner. In the years to come, USE aims to become India's most preferred stock exchange, providing a range of sophisticated financial instruments for diverse market participants to trade on and manage their risks efficiently.*



# Legal Roundup

CS. Abhishek Bharadwaj, Bangalore

Veena Bhat Kibballi, Mysore

V. Sasikumar & D. Saravanan, Chennai and

CA. Ashit Shah, Pune

## CENVAT

### Notifications/Circulars

The CG has provided that CENVAT credit cannot be utilized for payment of the Clean Energy Cess, leviable under Section 83 of the Finance Act, 2010.

(Source: Notification No. 26/2010-CE (NT) dated 29/6/2010)

The processes of pickling (i.e removing of surface oxides from metals by use of chemicals) and oiling of metals do not amount to manufacture under excise law.

(Circular No 927/17/2010- CX dated 24.6.2010)

Credit is not admissible on input bottles broken due to handling during storage and clearance of final products.

(Circular No. 930/20/2010-CX dated 9/7/2010)

The goods which are exempt from payment of duty or chargeable to nil rate of duty are not eligible to be exported under bond nor are they entitled for refund of input credits under Rule 5 of the CENVAT Credit Rules, 2004.

(Circular 928/18/2010- CX dated 28.6.2010)

### Case Laws - Manufacture

The water purifying system emerging at the site after erection piece by piece cannot be treated as moveable goods subject to duty.

(CCE Vs. Shivsu Watek P. Ltd. (2010 (255) ELT 101)

The processes of cutting/ slitting of plates/ coils into narrower strips do not amount to manufacture in excise law.

(The Tribunal, in Swastik Engineering Vs. CCE (2010 (255) ELT 261),

### Case Laws - CENVAT/MODVAT

The HC of Punjab and Haryana has held that CENVAT credit can be claimed on gas used for cutting of scrap of iron and steel into smaller pieces to be fed into furnaces for production of steel ingots.

(CCE Vs. Nabha Steel (P) Ltd. (2010 (254) ELT 252),

CENVAT credit cannot be claimed on tattoos supplied with chewing/bubble gum, as they are neither packing material nor inputs and are only sale promotion material and hence not eligible as per the provisions.

Perfetti Van Melle India Pvt. Ltd. Vs. UOI (2010 (254) ELT 620)

Wrigley India Pvt. Ltd. (2010 (255) ELT 201, Punjab & Haryana HC)

CENVAT credit is admissible on packing material where the value thereof is included in the assessable value of the final product.

(CCE Vs. International Tractors Ltd (2010 (255) ELT 203, Punjab & Haryana HC)

The credit is admissible on cement/TMT bars and steel tubes used for construction of tanks/pipelines which are further used for rendering of taxable output services.

(Sai Samhita Storages P. Ltd. Vs. CC&CE (2010 (255) ELT 91)

The rule 6 of the CENVAT Rules is not applicable to goods cleared without payment of duty under CT-3 certificates.

(Dharamsi Morarji Chemical Co. Ltd. Vs. CCE (2010 (255) ELT 314)

CENVAT credit on inputs used exclusively in manufacture of exempt final products is not admissible merely for the reason that the manufacturer has reversed 8% of the value of such exempt products.

(In CCE Vs Inogent Laboratories Pvt Ltd (2010 (255) ELT 152)

### Case Laws - Valuation

The principle of provisional assessment is not applicable to goods subject to MRP based valuation.

(Kinetic Engg. Ltd. Vs. CCE Pune-I (2010 (254) ELT 289)

Price variation clause can be positive or negative in nature, resulting in either a demand or refund of duty as the case may be and the transaction value has to adjusted considered accordingly.

(Prem Conductors Pvt. Ltd. Vs. CCE (2010 (255) ELT 144)

The discounts granted by way of credit notes are admissible deductions where the buyer is aware of such discounts at the time of clearance of goods.

(Gujarat Borosil Ltd. Vs. CCE (2010 (176) ECR 199)

The doctrine of unjust enrichment is not applicable to refund claims of redemption fine or penalty.

(Akash Stone Industries Ltd. Vs. CC(I) (2010 (176) ECR 227)

## Customs

### Notifications/Circulars

The CG has started the facility of round the clock clearance of export consignments at major ports from 15/07/2010.

(www.expressbuzz.com, dated 07/07/2010)

The CG has clarified that where assessments are provisional, for the purpose of sanction of refund of 4% ADC, the date of payment of duty would be that at the time of import of goods and not the date of finalization of such assessment. Therefore, importers would be eligible to obtain refunds if the claims are filed within one year of such payment.

(Customs Circular No. 23 dated 29/07/2010)

### Case Laws - Classification

The import restrictions applicable on goods for medical use will not apply on import of shower and shaving gels, shampoo/conditioners, hair and body creams etc. since these goods are in the nature of toiletries and cosmetics and are not intended for medical use.

(Max Overseas Vs CC (2010 (254) ELT 479)

### Case Laws - Valuation

In the absence of documentary evidence (by way of price list etc) indicating that a rebate/ discount was given to the importer by the overseas related supplier, adjustments on account of quantity/ commercial levels under Rules 5 and 6 (for identical and similar goods) of the erstwhile Customs Valuation Rules, 1988 cannot be carried out.

(Permod Ricard India (P) Limited Vs CC (Civil Appeal No. 5840 of 2008, SC)

The supply of imported goods where a part of the consideration is paid to a third party, at the direction and stipulation of the supplier, such part is to be included in the assessable value since it is a condition of sale of the imported goods.

(Coal India Limited Vs CC (2010-TIOL- 887)

### Case Laws - Others

The excess redemption fine and penalty cannot be transferred to the Consumer Welfare Fund because the bar of unjust enrichment is not applicable to such fine and penalty.

(Amaravathi Textiles Vs CC (2010-TIOL- 925),

The transaction values of imported goods cannot be accepted where the description of such goods is mis-declared in the invoices and the bills of entry.

CC Vs Rabbani Exports (2010 (177) ECR 225)

The claim for exemption from customs duty on imported goods, on the basis of Duty Entitlement Pass Book (DEPB) scrips obtained against forged documents, is not a valid one in law.

*Friends Trading Co. Vs Union of India (2010 (254) ELT 652),*

The imposition of penalty should be determined on the basis of the pith and substance of the show cause notice even if the correct provisions of law are not mentioned therein.

*(CC Vs Vikram Jain (2010 (255) ELT 39)*

## Foreign Trade Policy

The CG has amended the Handbook of Procedures to provide that for availing the benefits under the export promotions schemes of the FTP, it is mandatory for the exporter to declare his intentions in the shipping bills. This amendment will be applicable to exports effected on and from 1st January 2011.

*(Public Notice No. 82/2009-14 dated 16/07/2010)*

### Case Law

The entire premises of an EOU are to be treated as a warehouse. Imported goods warehoused in the premises of an EOU and intended for use in manufacture cannot be treated to have been removed for home consumption and hence no duty can be demanded.

*(Paras Fab International Vs CCE (2010 - TIOL - 963)*

Customs authorities can invoke bank guarantees in case of violation of the conditions of an exemption notification.

Advance licences secured through fraudulent means would not confer any right to the importer.

*(Shri Shakambari Export Vs ACC (2010-TIOL-499), the Madras High Court)*

The customs authorities have no jurisdiction to decide matters relating to deemed export drawback as they are governed by the FTP.

*(In Loknath Exports Vs CC (2010 (255) ELT 284)*

## Antidumping Duty

### Notifications/ Circulars

The CG has imposed a provisional anti dumping duty on import of Glass Fibre and articles thereof falling under Tariff Heading 7019 of the Customs Tariff Act originating in or exported from China PR. This duty will be effective up to 13/01/2011.

*(Customs Notn No. 75/2010 dated 08/07/2010)*

## Service Tax

The cost of materials used for development and printing of film are deductible for arriving at the value of photography service for purpose of levy of service tax.

*(CCE Vs. Vahoo Colour Lab & Ors (2010-TIOL-494),*

The activities of cutting and bending of coils for manufacture of finished goods on which service tax has been paid are eligible input services.

*(Rashtriya Ispat Nigam Ltd. Vs. CCE (2010 (26) STT 405),*

Landing, parking and aircraft maintenance services provided by the airport authorities in relation to aircraft owned and operated by the assessee for business purposes are eligible input services.

*(Force Motors Ltd. Vs. CCE (2010 (26) STT 473),*

tax authorities had dropped proceedings for levy of sales tax on such cards.

*(Tribunal, in CCE Vs. Idea Mobile Communications Ltd. (2010 (19) STR 18),*

The services received towards construction of staff quarters are eligible input services.

*(In The Lakshmi Vilas Bank Ltd. Vs. CCE (2010 (19) STR 40)*

### Updates from CA Ashit Shah:

#### Notifications/ Circulars

Services provided by State Government or their departments / agencies under Centrally Sponsored Schemes (CSS) to the Central Government is not a taxable services as there is no principal and agent relationship between Central and State Government as State Governments are bound to implant the centrally processed schemes on receipts of grants from Central Government.

*(Circular No. 125/7/2010 - ST dt 30-07-2010)*

## Sales Tax

Penalty for misuse of Form C cannot be imposed where goods purchased on the basis of such forms have been used towards supply of free of cost warranty replacements for customers and the costs, of which have been subsequently recovered from the manufacturer/supplier of such goods.

*(The Allahabad HC, in CTT Vs. Kanpur Tractors Private Limited [(2010) 36 PHT 406]*

## FEMA & SEBI

### Updates from Genicon:

#### Take out Finance - ECB:

Infrastructure Sector Companies are now permitted to take-out financial arrangement through ECB, under the approval route, for refinancing of Rupee loans availed from the domestic banks with subject to the conditions as elaborated in the circular.

*A.P. (DIR Series) Circular No. 05 of 2010-11.*

Takeover Regulations Advisory Committee (TRAI) has issued draft Takeover regulations for public comment. Interested parties may give their comment / inputs on the regulation on or before August 31, 2010.

## Others

An insurance company cannot reject a claim on the ground of absence of policyholder's postmortem report.

*(Delhi District Consumer Forum, case law)*

## Words worth Millions

"The greatest crime is to compromise with injustice and wrong"

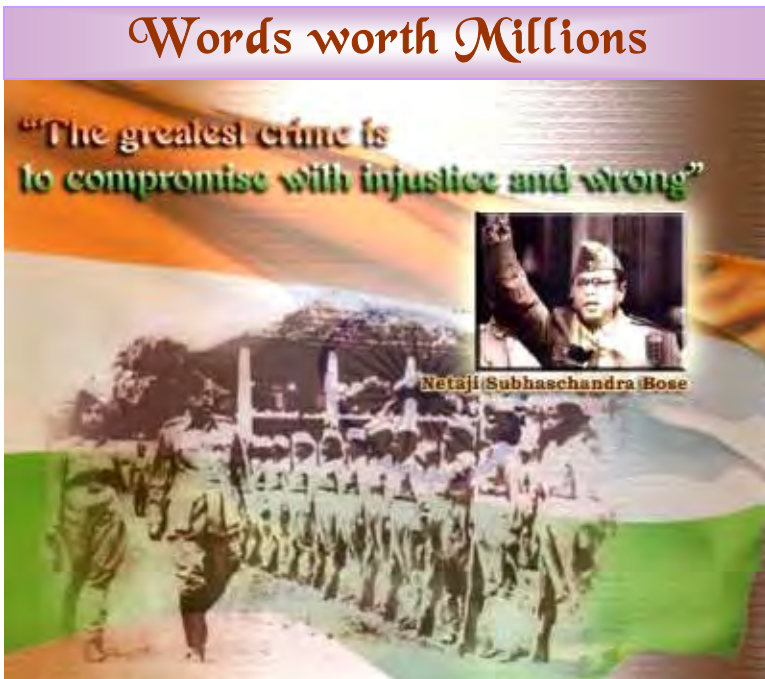


Netaji Subhaschandra Bose

Service tax paid in relation to telephone services, rent a cab services and chartered accountant's services are eligible input services.

*(CCE Vs. M/s Andhra Pradesh Paper Mills Ltd. (2010-TIOL-904),*

The value of SIM cards is includible in the taxable value for purpose of levy of service tax, particularly where the sales





### Indian cross-border M&As likely to rise: survey

Cross-border merger and acquisition (M&A) deals involving Indian companies may rise considerably in the next 18 months, with the country figuring among the top four target markets for acquirers in the Asian region, a survey said. As per a survey conducted by global consulting firms Mercer and Kroll, 83 per cent of the survey respondents expected Asian cross-border acquisitions to increase in the next 18 months. "India is one of the top four markets Asian bidders will be targeting over the next 18 months," the survey revealed. India is preferred as the target market by 22 per cent of the respondents. The other top three target markets are Greater China, preferred by 49 per cent of the respondents, followed by North America (29 per cent) and South-East Asia (27 per cent).

### Insurers against 'overcharging' hospitals

Insurance companies have taken their fight against hospitals for overcharging patients covered by health insurance to the finance ministry, seeking support for their plan to take hospitals off the preferred list if they do not reduce drastically the costs of standard procedures.

### Australia to appeal against WTO approval

A 90-year ban on New Zealand apples being imported to Australia has been overturned by the WTO. In 2007, Australia decided to allow the imports, subject to strict quarantine conditions, to prevent the spread of the bacterial disease **fire blight**. New Zealand believed the conditions were too strict and anti-competitive for its growers and took the case to the WTO. The case has been decided in New Zealand's favour. Australian apple growers fear New Zealand imports could bring in fire blight disease. The Australian Government has appealed against the decision and the apples will remain banned until the outcome of the appeal is known, which may be determined by the end of this year.

### Vietnam becomes attractive to FDI

Significant changes over the past three years have made Vietnam become more attractive to not only tourists but also investors and businesses from all over the world, according to Research and Market. In the July country report of the world's leading market research company, it

advised investors and businesses to invest or expand their business in Vietnam, a country that started its renewal process in 1986, became a market economy in the 2000s, and joined the World Trade Organisation in 2007. The report provided information on the investment environment and an overview of foreign investments in Vietnam, and problems related to taxation and banking systems.

### DTAAs to be renegotiated

India has taken steps to re-negotiate all existing Double Taxation Avoidance Agreements (DTAAs) to revise Article concerning Exchange of Information to specifically provide for exchange of banking information, if in case such a provision does not exist in the existing Article. Government has proposed to review the India-Mauritius Double Taxation Avoidance Convention (DTAC) to incorporate appropriate changes in the DTAC for prevention of treaty shopping and to strengthen the mechanism for exchange of information on tax matter between India and Mauritius and also taken steps to conclude a Tax Information Exchange Agreement (TIEA) in line with international standards, with Cayman Islands as India does not want to enter into DTAA with Cayman Islands.

### India Proposes new tariff on Plastic from Saudi

The Indian government's latest proposal to place new duties on plastics imports from Saudi Arabia and Oman is the third round of tariffs targeting Gulf producers. China and India levied similar tariffs on Saudi and Omani firms last summer and the EU targeted a UAE company in Ras al Khaimah this year. The new tariffs had created particular concern in Saudi Arabia, the region's biggest chemical producer.

### WTO Criticizes EU Tariff Policy

The European Union has been rebuked by the World Trade Organisation for the way it imposes extra duties on imports it deems unfairly priced, with potential implications for a wide range of products ranging from shoes to glazed tiles. In a notable victory for China, a WTO panel found in an interim report that the EU's practice of imposing a single national blanket duty on imports covered by so-called "anti-dumping" measures breaks global trade rules.