



# Newsletter - 42

June 2007

Mysore Chapter

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*From the*

## Chairman's Desk



Dear Friends,

Good wishes to you all !

The Chapter broke new ground in Career Counseling in the month of May, 2007. Usually Career Counseling is held at educational Institutions where only the prospective students participate. Considering the influence the parents have in a child selecting the courses, the Chapter targeted the parents & students together by associating with the Rotary clubs at Mysore.

On 17<sup>th</sup> May 2007 & 31<sup>st</sup> May 2007 the Career Counseling at Rotary Clubs were held. The attendance was high and the response positive. One Career counseling & lecture on Corporate Governance were held at JSS Law College on 24<sup>th</sup> May, 2007, which again was well attended. I place on record the appreciation of the Chapter for the initiative and the services rendered by Mr. C.K. Sabareeshan; Mr. A. S. Anshuman & Ms. Jayalakshmi Anshuman all members of the Management Committee. The number of student registrations for the period ending May, 2007 doubled for Foundation course as compared to corresponding period last year. The efforts therefore to target the parents for Career Counseling will continue. The Chapter is charting out a plan to visit the Colleges & schools in the towns in Mysore & neighbouring Districts. I request the members to join in these efforts. The members who are holding responsible positions in Lions Clubs/ Rotary Clubs and other professional bodies are requested to facilitate similar Career Counseling at their respective clubs and associations. The chapter is planning a lecture session and career counseling in association with Mysore chapter of National institute of Personnel management, shortly.

I once again request the members to participate in the Study Circle Meetings held every Sunday at the Chapter Office and share their knowledge & experience with the students and other members of the Chapter. At least one participation in a month may be targeted.

The Chapter has listed out the improvements in the infrastructure at the Chapter office and forwarded the same to Head Office for their approval. The members can look forward to a more impressive chapter office once the plan is implemented.

The members are requested to contribute articles to the News Letter. The members can also donate books to the Chapter Library which would go a long way in helping the students.

With Warm Regards,

D D Bhat.

# Legal Round-up

## Income Tax

### ➤ Foreign currency without declaration - No exemption

It was held that, the foreign currency for which no declarations have been produced by the respondent but only exchange vouchers issued by the exchange centers outside the country were produced, even if deposited in the NRE accounts cannot be said to be moneys standing to the credit of the respondent in the NRE accounts in accordance with the FEMA and the rules made there under and the income by way of interest on such moneys is not exempt from inclusion in the total income of the respondent under Section 10(4)(ii) of the Act.

290 ITR 260 CIT vs. Purshottam Khatri (MP-HC)

### ➤ No benefit of interest if TDS not paid

It was held that, in the case of amounts deducted at source but not paid to revenue, interest is not available on refund of such sums. The benefit of interest under section 244A is not available where although tax is deducted from the income of the assessee; the same has not been remitted by the deductor.

290 ITR 168 ACIT vs. Shri Digvijay Cement Co.Ltd. (Rajkot-AT)

### ➤ No deduction of cost if cost of previous owner not ascertained

Section 55(3) of the IT Act can be invoked where the cost to the previous owner cannot be ascertained. The previous owners, in this case, the associations of persons, had received the shares by way of gift and, therefore their cost was nil. It was also held that, cost to previous owner can be ascertainable at nil. Therefore, no cost is deductible in computing short-term capital loss.

290 ITR 163 Jayakumar B.Patil. vs. Dy CIT (Pune-AT)

### ➤ Order passed by AO - Not to be declared erroneous by CIT

It was held by the Honourable High Court of Gauhati that, if the Income-tax Officer, acting in accordance with law, makes certain assessment, the same cannot be termed as erroneous by the Commissioner merely because the order according to the Commissioner or Commissioner does not feel satisfied with the conclusions reached.

## Chapter News

### ROLE OF C S IN INDIAN ECONOMY

Mr. C.K. Sabareeshan, Former Chairman of the Mysore Chapter and ED (F) & Company Secretary, M/s. Automotive Axles Ltd. delivered a talk on the role of Company Secretaries in Indian Economy to the members of Rotary Club of Mysore - Midtown, a prestigious and vibrant Rotary Club of Mysore on 16th May 2007.



Mr. Sabareeshan lucidly explained the present corporate scenario and the role of Company Secretaries. Vide coverage of the talk and the Institute was given by the Rotary Club in its bulletin - 'ABOUT US'

The meeting was followed by a career awareness programme where the ICSI corporate CD was screened. Handouts were distributed to the participants and queries regarding the course were answered by the members of the Managing Committee of the Chapter

### TALK ON CORPORATE GOVERNANCE

A talk was arranged by the Mysore Chapter on "Corporate Governance" on Wednesday, the 23rd May 2007 at the Seminar Hall, JSS Law College, Mysore. The session was handled by Mr. C.K. Sabareeshan, Past Chairman of the Mysore Chapter and ED(F) & Company Secretary, Messrs. Automotive Axles Ltd. The program was well attended by students of the college and members.



The meeting was followed by a career awareness program where the ICSI corporate CD was screened. Handouts were distributed to the participants and queries regarding the course were answered by the members of the Managing Committee of the Chapter.

## ICSI News:

### Company Secretary Students to get ICSI's oral lessons

ICSI has embarked on a public-private partnership (PPP) model to start oral classes in small towns and far-flung areas, which will benefit scores of company secretary students. The ICSI secretary said the step was aimed at increasing the quality of students passing out from the institute.

[Source: The Financial Express, May 18, 2007]

### PREFIX TO YOUR NAME: CS

The Council of the Institute (ICSI) in its 173rd meeting held on June 23-24, 2007 has decided that a member of the Institute may prefix CS to his name in order to distinguish himself from other professionals and to create brand image of the CS profession.

[Source: www.icsi.edu]

The High Court also held that the powers under sections 154, 147 and 63 are watertight and it is not permissible for the Commissioner to invoke his powers under section 263 except where the error committed by the lower authorities is jurisdictional error.

290 ITR 395 B & A, *Plantation and Ind. Ltd. and Another vs. CIT & Others* (Gauhati-HC)

## EXCISE LAW

### ➤ Rebate by manufacturer

It has been clarified that the manufacturer is eligible to claim full rebate of duty under Rule 18 of the CE Rules on the export of goods which are manufactured from inputs procured from units located in the excise free zones in Jammu & Kashmir, North East Region and Sikkim.

(M.F. (D.R.) Instructions F.No. 209/11/2005 - CX-8, dt 3/4/07)

### ➤ Interest reduced for export goods removed for home consumption

The applicable interest rate has been reduced from 24% to 13% per annum, in relation to cases where the goods removed from the factory for exports, were subsequently diverted for home consumption.

(Notification No. 20/2007 and 21/2007 - CE (NT) dt 19/4/07)

### ➤ Amendment to CENVAT Credit Rules

The CENVAT Credit Rules have been amended to require reversals of credits availed on inputs or capital goods whose values are fully written off in the books of accounts, before being put to use. The notification further provides that if such goods are subsequently used by the manufacturer, he shall be entitled to avail the benefit of the CENVAT credit already reversed.

(Notification No. 26/2007 - CE dt 11/5/07)

## Case Laws

### ➤ Input used for manufacture of capital goods

Input used in the manufacture of capital goods which are in turn used in the manufacture of final product, Cenvat credit is available on such inputs under erstwhile Rule 57A of Central Excise Rules, 1944 and Rule 3 of Cenvat Credit Rules, 2004.

CCE v. Hotline Glass Ltd 2007 (210) ELT 69 (Tri. - Del.)

## Observer (June 5<sup>th</sup> - day to watch down)

# CFL Lamps: A small step to cool down the globe

HM Dattatri,  
Company Secretary, Essilor India

Consequent to the global warming, Climate change has turned into the biggest environmental threat India is facing.

Burning coal to generate electricity is leading to increase in global temperatures, changing monsoon patterns, faster melting of Himalayan glaciers and rising sea levels. India will be one of the worst affected countries. Large parts of India's coastal cities like Kolkata, Mumbai and Chennai will be submerged, while agriculture and fisheries production will decrease, and vector-borne diseases such as dengue will become commonplace.

We only have a few more years before climate change reaches the point of no return. Every day, India uses 18,000 MW of electricity for lighting; most of it is wasted by the use of inefficient ordinary light bulbs. To reduce CO2 emissions, India must become more energy efficient.



Compact Fluorescent Lamps use only 20% of the energy used by an ordinary light bulb. By replacing all ordinary light bulbs with CFLs, we can reduce India's CO2 emissions by 55 million tons. Modern CFLs typically have a life span of between 8,000 and 15,000 hours, whereas incandescent lamps are usually manufactured to have a life span of 750 hours or 1000 hours.

A photograph of various lamps illustrates the effect of color temperature differences (left to right): (1) CFL: General Electric, 13 watt, 6500K (2) Incandescent: Sylvania 60-Watt Extra Soft White (3) CFL: Bright Effects, 15 watts, 2644 K (4) CFL: Sylvania, 14 watts, 3000 K.



There are two main parts in a CFL: the gas-filled tube (bulb or burner) and the magnetic or electronic ballast. Electrical energy in the form of an electrical current from the ballast flows through the gas, causing it to emit ultraviolet light. The ultraviolet light then excites a white phosphor coating on the inside of the tube. This coating emits visible light. CFLs that flicker when they start have magnetic ballasts; CFLs with electronic ballasts are now much more common.



Since CFLs use less power to supply the same amount of light as an incandescent lamp of the same lumen rating, they can be used to decrease overall energy consumption. Generation of electricity is a major source of pollution in various forms. According to Environment Canada:

*"The electricity sector is unique among industrial sectors in its very large contribution to emissions associated with nearly all air issues. Electricity generation produces a large share of Canadian nitrogen oxides and sulphur dioxide emissions, which contribute to smog and acid rain and the formation of fine particulate matter. It is the largest uncontrolled industrial source of mercury emissions in Canada. Fossil fuel-fired electric power plants also emit carbon dioxide, which may contribute to climate change. In addition, the sector has significant impacts on water and habitat and species. In particular, hydro dams and transmission lines have significant effects on water and biodiversity."*

Please think over....

(Thanks to: Greenpeace & Wikipedia)

### ➤ Delay in payment of duty and Evasion

Delay in payment of duty due to financial crisis and the appellants disclosed the transaction in filing the returns and the liability to pay duty was not disputed and therefore there was no intention to evade payment of duty. In such circumstances, inference of evasion of duty cannot be drawn from mere delay in making the payment of tax in respect of transactions already disclosed by filing returns in time and therefore penalty cannot be imposed under Rule 25 of Central Excise Rules, 2002.

*Condor Power Products P Ltd v. CCE 2007 (210) ELT 137 (Tri. - Del)*

### ➤ Valuation of goods - Job work

The Tribunal has held that the value of goods manufactured as job work would be determined on the basis of the landed cost of raw material at the job workers' premises and not on the basis of 110% of the cost of production, adopted by the principal for the purpose of payment of duty.

*In Brindavan Tex Processors Pvt. Ltd. Vs. CCE (2007 (79) RLT 730)*

### ➤ Time limit for goods bought for re-making

The Tribunal has held that there is no time limit prescribed for clearance of goods brought to the factory for re-making, re-conditioning etc. and accordingly no credit is required to be reversed if such goods are not cleared within a specified period of time.

*Crompton Greaves Ltd. Vs. CCE (2007 (211) ELT 142)*

### ➤ Common inputs used for exempted products exported

The Tribunal has held that no amount is required to be reversed in respect of usage of common inputs for manufacture of exempted final products which are exported out of India.

*Sri Sai Annapurna Packaging India Pvt. Ltd Vs CCE (2007 (80) RLT 274),*

### ➤ Valuation under section 4A

The fact that the goods are sold in bulk cannot be the criteria for valuation.

*Kwality Biscuits (P) Ltd vs. CCE (Appeals-II), B'lore - 2007 (210) E.L.T. 717 (Tri.-Bang)*

### ➤ Difference of opinion - Third party order is final

In case of appeal against difference of opinion order passed by Tribunal and referring the



**Great note,**

***it will take just 60 seconds to read this and change our thinking***

Two men, both seriously ill, occupied the same hospital room. One man was allowed to sit up in his bed for an hour each afternoon to help drain the fluid from his lungs. His bed was next to the room's only window. The other man had to spend all his time flat on his back. The men talked for hours on end. They spoke of their wives and families, their homes, their jobs, their involvement in the military service, where they had been on vacation.

Every afternoon when the man in the bed by the window could sit up, he would pass the time by describing to his roommate all the things he could see outside the window. The man in the other bed began to live for those one hour periods where his world would be broadened and enlivened by all the activity and color of the world outside.

The window overlooked a park with a lovely lake. Ducks and swans played on the water while children sailed their model boats. Young lovers walked arm in arm amidst flowers of every color and a fine view of the city skyline could be seen in the distance.

As the man by the window described all this in exquisite detail, the man on the other side of the room would close his eyes and imagine the picturesque scene. One warm afternoon the man by the window described a parade passing by.

Although the other man couldn't hear the band - he could see it. In his mind's eye as the gentleman by the window portrayed it with descriptive words.

Days and weeks passed.

One morning, the day nurse arrived to bring water for their baths only to find the lifeless body of the man by the window, who had died peacefully in his sleep. She was saddened and called the hospital attendants to take the body away.

As soon as it seemed appropriate, the other man asked if he could be moved next to the window. His wish was fulfilled.

Slowly, painfully, he propped himself up on one elbow to take his first look at the real world outside. He strained to slowly turn to look out the window beside the bed.

It faced a blank wall. The man asked the nurse what could have compelled his deceased roommate who had described such wonderful things outside this window.

The nurse responded that **the man was blind and could not even see the wall.** ...She said, "Perhaps he just wanted to encourage you"

**Epilogue:** There is tremendous happiness in making others happy, despite our own situations. Shared grief is half the sorrow, but happiness when shared, is doubled. If we want to feel rich, just count all the things we have that money can't buy.

**"Today is a gift, that's why it is called the present."**

matter to third member, pending third member decision it was held that Tribunal's order is only an expression of opinion by members, and enforceable only when order by third member is passed. Impugned order is not enforceable as final order.

*M.M.Rubber Company Ltd vs. U.O.I - 2007  
(210) E.L.T. 670 (S.C)*

## Service Tax

### ➤ Circular - entry and exit loads

The CBEC has clarified that 'entry and exit loads' charged by mutual funds would not attract service tax under the category of banking and other financial services.

*Circular No. 94/5/2007- ST dt 15/05/07*

### ➤ Engineering & assistance service

It was held that the engineering services and assistance including supervision of erection and commissioning of system etc. amount to services of a consulting engineer.

*Hewlett Packard Sales (P) Ltd. vs. Commr. of Cus.,  
B'lore 2007 (6) S.T.R. 155*

### ➤ When service provider not liable?

Service provider is not liable when Show Cause Notice is issued to the recipient of service.

*GFA Anlagenbau GMBH Germany vs. CCE., Raigadh  
2007 (6) S.T.R. 131 (Tri-Mumbai)*

### ➤ No ST on Loading & Unloading charges

The elements required for adding to Service tax is restricted to amounts received by the assessee for carrying on services of C & F only and other elements like loading, unloading charges are not to be added to the value for ascertaining Service tax.

*Sri Sastha Agencies Pvt. Ltd. vs. Asst. CCE & Cus.,  
Palakkad 2007 (6) S.T.R. 185 (Tri-Bang.)*

### ➤ Procuring orders Commission: No ST

The Tribunal has held that commission received for procuring orders and passing them on to the principal is not chargeable to service tax under clearing and forwarding agents' services.

*Opel Alloys (P.) Ltd. Vs. CCE (2007 (8) STT 23)*

### ➤ Determination of date of ST liability

Relevant date for determination of service tax liability is the date on which the services were rendered by the service provider and not the date on which payment for such services was made.

*Lumax Samlip Industries Vs. CSE (2007 (8) STT 82)*

# Investor Secretary

Sreeraj M, CS Final, Mysore

Dear Friends,

In the last issue we touched on the investment objectives. This issue we shall consider some basics of investment in Equities.

## Why Equities?



The above chart indicates the movement of India's major indexes, the SENSEX and the NIFTY from 31st March 2005 till 10th April 2007. The Chart shows an impressive outlook on the indexes.

The SENSEX climbed from 7000 points in 2005 till 14000 points in 2007 as well as the NIFTY climbed from 2000 points in 2005 till 4000 points in 2007. Hence, the return comes to around 100% in 2 years inspite of a market meltdown in 2006. The result is very encouraging.

## How to Plan your investments in equities?

Planning is very important for investing in equities. Planning may be for the long term or the short term. Here are some basic tips which will help you while planning.

1. Never invest in equities from leveraged money.
2. Never use the money kept aside for commitments in near future.
3. Do not follow the tips given by anyone even the brokers. Do your own research. If you do not have time to do research take the help of a financial planner.
4. Never dream of being a fly by night investor. Have patience.
5. Investing in equities carries risk and the good news is that you can minimize it by using your common sense.
6. Choose your broker wisely.
7. Investing in equities is nothing but a mind game. One who can read the investor sentiments correctly, rules the show.
8. It is always better to have a long term outlook (even though hardly a very few follow this).
9. Never get panicked when there is a negative break out in your stock. Hold your senses and hold your emotions. After all it's your hard earned money. Always remember Equities also have a life cycle that is, for every negative break out, there is a positive outcome in the future.
10. You can also plan your investments in equities based on high risk, medium risk and low risk. Do not lend ears to free advisors and please do not give free advise.

## Sales Tax

### ➤ No interest if there is no specific provision

Relying on the case of India Carbon Ltd. (1997) 106 STC 460, the Honourable Karnataka High Court held that, in the absence of a specific provision in the CST Act empowering the authorities of the State to collect interest on delayed payment of penalty, it is not permissible for the respondent to collect interest on delayed payment of penalty. Even after the amendment of section 9 (2) of the CST Act, there is only a provision for levy of interest on delayed payment of tax and not for delayed payment of penalty.

2007 6 VST 633 Jayadeva Trading Company vs. ACCT, Chitradurga (Karnataka-HC)

### ➤ Banking business includes sale of pledged assets

It was held that banking business includes sale of pledged ornaments and is liable to sales tax on sale of pledged ornaments.

2007 6 VST 736 Federal Bank Ltd. and Others vs. State of Kerala and Others (SC)

### ➤ Incorrect circular binds the authority

The Supreme Court has held that an incorrect circular issued by the Revenue is binding on it and assessments made under the circular cannot be ordered to be reopened merely because a subsequent circular issued by the Revenue declared the earlier one to be erroneous.

Binani Industries Ltd. Vs. ACCT [(2007) 29 PHT533]

## VAT

### ➤ Notification: VAT for SEZ

By an insertion of a new rule to the Karnataka VAT Rules 2005, a registered dealer, being a developer of a SEZ or a unit located in any SEZ, is now eligible for refund of tax paid on specified inputs or is entitled for deduction of such tax from any output tax payable, subject to fulfillment of specified conditions.

Notification No. FD 165 CSL 07 dated May 16, 2007

### ➤ Power of courts to condone delay

It was held by the Hon'ble High Court of Karnataka that, there is no power in Courts to condone further delay to order appellate authority to condone delay contrary to statute. It also held that, writs under Constitution are not for directing statutory authority to act contrary to statute. This would mean that whatever be the cause of

## The Thumb Rule!

I prefer to discuss a well known thumb rule for investing in equities which signifies the percentage of your income that you can expose to equities.

% of income you can invest in equities = 100 Minus your age

### Example:

Suppose, Your age is 20 & Your income is Rupees 20,000 per month.

Therefore the maximum amount you can invest in equities is  
= (100 - your age) = (100 - 20) = 80%

= 20,000 \* 80%

= upto Rupees 16,000 per month.

## Tail Piece

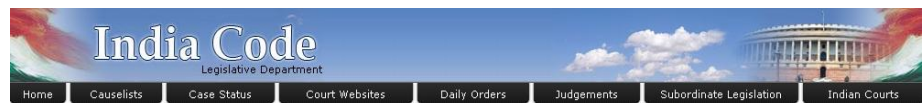
(Extract from an article in "FORTUNE" titled "How the Finance Gurus get risk all wrong" - by Banoit Mandelbrot and Nassim Nicholas Taleb reproduced in BUSINESS LINE)

"When the weather changes, nobody believes the laws of physics have changed. Similarly, I don't believe that when the stock market goes into terrible gyrations its rules have changed."

"Markets, like oceans, have turbulence. Some days the change in markets is very small and some days it moves in a huge leap. Only fractals can explain the kind of random change."

Friends, from next week, the article will focus entirely on the market news and the stocks that are worth a consideration to invest.

## Web Yaaatra



[www.indiacode.nic.in](http://www.indiacode.nic.in)

Chakri Hegde CS (Inter)

Today, most of us are finding difficult to trace the Acts of the parliament when we are in need of it. And also, all the legislations are not available at one place in an organized form.

Is it possible to get all the Acts of the Parliament at one place? Yes. Log on to [www.indiacode.nic.in](http://www.indiacode.nic.in). By clicking few buttons, we can get Acts of Parliament right from 1836.

Other features of this website are:-

- Free text search facility on the following fields-
  - Act Year, Act number, Short and long title, Act objective
- Central Acts-in Alphabetical order
- Central Acts- in Chronological order
- All about Supreme Court, High Courts, District Courts tribunals and their judgments and also web sites of various courts
- Constitution of India (with all the Articles and Schedules)
- List of Bills introduced, list of ordinances and list of notifications
- All the state legislatures of India

delay, the appellate remedy is lost where the appeal is filed beyond the stipulated period.

*2007 6 VST 519 Smt. B.S.Varada vs. Dy.CCT, Mangalore & Another (Karnataka-HC)*

## Customs law

### ➤ Gift of Capital goods imported duty free

It was held that when the capital goods are imported duty free by 100% EOU and after de-bonding, gifted to an educational institution, importer was liable to pay duty on de-bonding of goods for failure to fulfill export obligation since the benefit of exemption to educational institution under Notification No.51/96-Cus did not extend to importer.

*Anjaleem Enterprises Pvt Ltd vs. CCEC, Vadodara - 2007 (210) E.L.T 204*

### ➤ Transaction between related companies - Undervaluation has to be proved

It was held that while valuing goods for the purposes of customs duty, mere fact that two companies are related, will not amount to undervaluation per se under Section 14 of Customs Act, 1962.

*Com. of Cus., Mumbai vs. Clariant (India) Ltd. 2007 (210) E.L.T. 481 (S.C.)*

## Miscellaneous

### ➤ Entry tax

It was held by the Honourable High Court of Jharkhand in the above case that, as the petitioner has not purchased the coal from any other State of India but from abroad, where there is no sales tax and instead of sales tax, having paid customs duties or import duties, the petitioner is not liable to pay entry tax in regard to the coal, imported from outside the country (either Australia or New Zealand). Accordingly by virtue of the above decision, there will be no liability of entry tax in regard to coal if it is imported from outside the country of India.

*2007 6 VST 587 Tata Iron & Steel Company Ltd. vs. State of Jharkhand & Others*

### ➤ Trade Marks Act

It was held that grant of registration certificate with retrospective effect under Trade Marks Act, 1999 will not automatically provide benefit of exemption notification to SSI unit. The object of exemption notification 1/93-CE was to grant benefits to those

Related links for Legislative Department, Department of Legal Affairs, Department of Law and Justice, Department of Company Affairs, National Human Rights Commission, Lok Sabha and Rajya Sabha questions Constituent Assembly.

## Book Review

# The Photo Reading

Nimmo Kinger PCS, Mysore

This month I have an amazing book for you. It is part of a home study course but it is so mind boggling that I thought I should spread the word about what is available in these so-wonderful days!

“The Photo Reading Whole Mind System” by Paul Scheele teaches you to read at a speed of 25000 words a minute. Of course, it is not a normal reading session; it is Photo reading! It is an innovative way of getting through thick tomes and emerging with exhaustive knowledge of what lies within their covers. In the shortest possible time.

Let me cite a couple of examples: a tax consultant photo reads the relevant pages in a 33 volume series and is able to home in on the information he needs in a few minutes. A software engineer photo reads software manuals and is able to develop code easily and spontaneously. A manager photo read some trade journals before a meeting and was able to contribute meaningfully on topics that were not in his portfolio.

The technique is simple but as with all things, some practice is required. I photo read about 200 pages of a technical book in about 30 minutes and the next morning, everything looked very familiar to me and I knew quite a bit of the material. The possibilities that open up with this are tremendous: students can spend much less time on ‘mugging’, professionals can be uptodate with all the latest information, cooks can have various recipes at their fingertips and can create superb new ones too. Imagine the cricket scores, poetry, etc, etc that you can reel off effortlessly! All you have to do is, Photoread !

## Readers’ Voice...

“I am a regular reader of your newsletter from Mysore Chapter. In fact I wait for this issue very anxiously and the day it hits my account open it and give it a complete reading. Keep the great work going by Team Mysore chapter.

I feel proud for Mysore Chapter which is instrumental in giving this Institute some of the excellent CS who are trained very well in-house by efficient persons in Mysore. Let us keep working and believe that “EVEN ONE MAN CAN MAKE A DIFFERENCE”

Wish you all the very best and let us continue to work for our institute in every possible manner, do let me know if I can be of any assistance”.

**J Sundharesan**, PCS, Bangalore,  
Former Chairman, Bangalore Chapter of ICSI.



industries which do not have advantage of a brand name.

*Meghraj Biscuits Industries Limited vs. CCE, U.P - 2007 (210) E.L.T 161 (S.C)*

## Corporate laws

### Cases at a glance

- In a scheme of amalgamation no fees or stamp duty is required to be paid where the combined authorised capital does not exceed the authorised capital of the two companies - *Surya Commercials Ltd. In re (All)*
- Suit not maintainable against notice issued u/s.13(2) of Securitisation Act, 2002 - *Bank of India v. Manickam alias Sellakumarasamy (Mad)*
- Jurisdiction of court even after company is shifted is not ousted where pleadings reveal cause of action arising there - *Spices Valley Estate Ltd. v. T. C. Forexpress Ltd. (Mad)*
- Complaint under s. 58A of the Companies Act filed within one year of submission of balance sheet not barred by limitation - *Jorhat Tea and Industries P. Ltd. v. State of Meghalaya (Gauhati)*
- Proceedings under s. 58A involving questions of fact cannot be quashed based on assertions - *Jorhat Tea and Industries P. Ltd. v. State of Meghalaya (Gauhati)*
- Compromise decree to be set aside where records show compromise memo was signed by the erstwhile chairman under pressure - *G. V. Films Ltd. v. Jaswant Chand (Mad)*
- Whether conduct of parties breached memorandum of understanding question of fact to be determined by Company Law Board - *VLS Finance Ltd v. Sunair Hotels Ltd (Delhi)*
- Sale of property not covered under restraint order does not amount to contempt of court - *Srichand Bajaj v. Bajaj Promoters P. Ltd.*
- Mere filing of statutory returns without any supporting primary documents has no evidentiary value - *Srichand Bajaj v. Bajaj Promoters P. Ltd.*
- Where shareholders expressly declining to part with shares to outsiders, creditors have no locus standi to oppose compromise or to bid in auction -

# Spectrum Space

## Spectrum this month . . . ,

Hello Friends,

Exams are over and so is Exam tension!!! Hope all of you have performed well. As most of us were busy with exam preparations, there were not much student oriented events in the last month.

However, there was no stop for the study circles, which were conducted on all Sundays of May. We discussed various topics relevant for the exams pertaining to Wealth Tax, Holding Company Accounts, Forex Management, Company Law and so on.....

After the exams, it's time to ignite the competitive spirits! As part of the national level elocution competition, our chapter is conducting the Chapter Level Elocution competition on "Independent Directors from various functional areas are essential for good Corporate Governance". We will also conduct a "Company law Quiz" with a view to learn but with a difference.

We'll be back with more fun and news in the next month. Till, and then take care... bye bye!!

- Spectrum Friends

## Independent Director: A View

Shrinivasa ACS Final

**(This article is honored with Best Article Award by Bangalore Chapter of ICSI among articles published in the Souvenir Milaap 2007)**

The concept and role of Independent Directors have assumed significant importance particularly during the last five years, conforming to the global developments in the areas of good corporate governance.

**"Independent Director"** means a director who is a person who:

1. has not been employed by the Company or its Related Parties in the past five years;
2. is not, and is not affiliated with a company that is an advisor or consultant to the Company or its Related Parties;
3. is not affiliated with a significant customer or supplier of the Company or its Related Parties;
4. has no personal service contracts with the Company, its Related Parties, or its senior management;
5. is not affiliated with a non-profit organization that receives significant funding from the Company or its Related Parties;
6. is not employed as an executive of another company where any of the Company's executives serve on that company's board of directors;
7. is not a member of the immediate family of an individual who is, or has been during the past five years, employed by the Company or its Related Parties as an executive officer;
8. is not, nor in the past five years has been, affiliated with or employed by a present or former auditor of the Company or of a Related Party; or
9. is not a controlling person of the Company (or member of a group of individuals and/or entities that collectively exercise effective control over the Company) or such person's brother, sister, parent, grandparent, child, cousin, aunt, uncle, nephew or niece or a spouse, widow, in-law, heir, legatee and successor of any of the foregoing (or any trust or similar arrangement of which any such persons or a combination thereof are the



Prashant Modu Timblo v. Sociedade De Fomento Industrial P. Ltd.

- Rejection of account books and estimation of income not justified where no suppression of material facts - Pyarelal Mittal v. Asst. CIT (Gauhati)
- High Court can reject findings by Tribunal not based on facts - Pyarelal Mittal v. Asst. CIT (Gauhati)
- Whether assessee maintained office in India for his business purposes - Not a substantial question of law : Pawan Yadav v. Joint CIT (Delhi)

## News of Use

- **Government restricts external commercial borrowing norms**

The Government has taken steps to restrict the flow of foreign funds into the country by tightening norms to raise debt abroad. While smaller companies will find it difficult to raise loans under the new norms, the window for foreign borrowings will now be completely shut for the real estate companies.

Every year, the Government fixes the maximum interest rate at which a company can raise credit overseas. The interest rate ceilings have been lowered from 200 basis points (bps) above Libor to 150 bps above Libor for loans with a 3-5 year maturity. For debt with a maturity exceeding five years, the ceiling has been lowered from 350 bps above Libor to 250 bps above Libor. The new ceilings will be applicable to companies raising debt under the automatic route as well as those raising it under the approval route.

*The Economic Times, May 19, 2007*

- **RBI revises norms for buying and selling of NPAs**

Revising its earlier norms on purchase and sale of non-performing assets (NPAs), the Reserve Bank of India (RBI) has decided that instead of 5 per cent., at least 10 per cent. of the estimated cash flows should be realised in the first year and at least 5 per cent. in each half year thereafter, subject to full recovery within three years.

The revised guidelines come into force immediately

*The Financial Express, May 17, 2007*

- **SEBI for listing of privately-placed debt issues**

sole beneficiaries) or the executor, administrator or personal representative of any Person described in this sub-paragraph who is deceased or legally incompetent,

and for the purposes of this definition, a person shall be deemed to be "affiliated" with a party if such person (i) has a direct or indirect ownership interest in; or (ii) is employed by such party; "Related Party" shall mean, with respect to the Company, any person or entity that controls, is controlled by or is under common control with the Company.

### Who can be an independent director?

The eligibility criteria are laid down in the revised Clause 49 of the Listing Agreement, which mainly requires the person to be financially literate and who also understands various laws and regulations. Therefore professionals like chartered accountants, company secretaries, cost accountants, lawyers and people with similar experience are ideally qualified.

"We have people from diverse stream, who have proved their work in the past or who are working in some company board as a director themselves. Anybody who has proved in the past with their work can be invited to join the board as an independent director," says Vatsaraj. He went on to add that his organisation is also developing a database of independent directors from a list of professionals from varied fields.

### Role of independent directors:

As per Clause 49, an independent director shall review legal compliance reports prepared by the company as well as steps taken by the company to cure any taint. In the event of any proceedings against an independent director in connection with the affairs of the company, defence shall not be permitted on the ground that the independent director was unaware of this responsibility.

Independent directors are supposed to ensure good corporate governance. Their role is to provide unbiased and independent views to the board and represent shareholder's interest.

Bharti Tele-Venture's chairman, Sunil Mittal while addressing a Confederation of Indian Industry (CII) meeting on corporate governance said, "It is important for the chairman to manage the company in a manner that the independent directors are free to interact with the management and speak their mind."

### What are independent directors paid?

Media reports suggest that the pay packets of independent directors range from Rs 8 lakh to 12 lakh. Besides this, they are also entitled to sitting fees, which can further hike their total income to Rs 12 lakh to Rs 16 lakh a year. What's more, an independent director can be on the board of more than one company. However, SEBI has put a limit to the remunerations one earns being an independent director. A person can not earn more than 10 per cent of his total income from the remunerations he get as an independent director.

Thus if a person's total income is say Rs 1 lakh a month, then his income as an independent director should not be more than Rs 10,000.

### Independent Director in corporate governance:

Not many are aware that the Indian corporate governance code is much tighter than those in most of the world, including Europe, Japan and South Korea. Even today, in Europe there is no requirement of disclosure of quarterly results, something we have had since 2000. In today's competitive world, high quality advice, sound judgment and an outside point of view are essential at the board level.

The Securities and Exchange Board of India (SEBI) said it was in favour of compulsory listing of privately-placed debt issues, which are corporate bonds issued to no more than 50 investors, as a means to bring in more transparency and facilitate trading in such instruments.

*Business Standard, May 17, 2007*

### ➤ **Audit partner rotation made mandatory for listed companies**

Audit partner rotation may become mandatory for listed public companies in the country, with the Institute of Chartered Accountants of India (ICAI), the auditing profession regulator, toying with such a proposal to improve quality control over audit firms.

*Business Line, May 18, 2007*

### ➤ **Submission of Form 16 not required for claiming refunds**

A taxpayer is not required to file any document relating to computation of income or challans or TDS certificates (Form 16 or Form 16A) or TCS certificates alongwith these annexure-less returns, irrespective of whether a refund is claimed or not.

*Press Information Bureau, May 29, 2007]*

### ➤ **RBI modifies Banking Ombudsman Scheme**

In a bid to strengthen the grievance redressal machinery, the Reserve Bank of India (RBI) modified the Banking Ombudsman Scheme allowing bank customers to appeal against an ombudsman's decision to reject a complaint. The appellate authority under the scheme is the designated Deputy Governor of RBI, the release said. Earlier, bank customers were allowed to appeal against the order or award given by the Banking Ombudsman but they were not allowed if the application was rejected.

*The Economic Times, May 25, 2007*

### ➤ **Pvt Cos offering shares to voluntary organisations may get tax relief**

The Government is considering providing suitable tax rebates to private companies in order to encourage transfer of shares and stock options to voluntary organisations. Under the "national policy on the voluntary sector", released by the Planning Commission Deputy Chairman, the Government intends to simplify and streamline the system for granting income-tax exemption status to charitable projects under the Income-tax Act

*Business Standard, May 25, 2007*

This will play a major role in determining the future of corporate governance although there are fundamental issues of board culture and processes which need to be addressed before we settle the debate on the role and functions of independent directors. For the sake of mere compliance a company may appoint independent directors but whether they are really independent in their thinking, approach and actions is an arguable issue. Corporate governance is a vast subject and my purpose in this piece is to focus only on one aspect of it, namely the requirement of independent directors in Indian listed companies

Independent directors are therefore also seen as a check on managements, as an oversight mechanism, apart from the value addition that they bring to board deliberations. I believe we need to consider some aspects of the issue before we come to a conclusion about the need and effectiveness of independent directors in India.

There is a very significant difference between Indian managements, and managements in the US and the rest of the developed world. This is that more than 75 per cent of large listed Indian companies are family-owned, in which a family has a significant (30 per cent upwards) shareholding in the company. The balance too is largely public sector units or subsidiaries of multinational companies. Companies where the management has little or no stake in the company constitute less than 5 per cent of the large listed companies. In a company managed by "owners", there is a very strong motivation for managements to work for a long-term share price increase, i.e. long-term earnings increase, because the family's prosperity and reputation ride on the prosperity and ethical dealings of the company. In a competitive market situation, the real controls on management come from the marketplace. Managements (that is promoters) can't be unfair to any shareholder, including the small shareholder, and expect to go unpunished.

The whole effort of aligning management interests with shareholder interests, which drives the corporate governance debate in the US, is thus not as relevant in our country. The interests of the management and shareholders in India are congruent because the management is or represents promoters, who are a large shareholder with most of their wealth tied to the value of its shares in the company. Also, and this is very important, with "controlling" shareholding by the promoter, who in actual practice appoints directors, independent or others, how truly "independent" can most independent directors be?

This is why in the US, for listing on the New York Stock Exchange or Nasdaq, companies in which a group has a controlling interest of over 50 per cent are statutorily not required to have any, I repeat any, independent directors.

## **Words worth millions...**

*"Maturity is not attained by killing the child within you....its attained when u know-when not to behave like a child"*

## **In Lighter Vein...**

UN conducted a survey. The Question was: *"Please give your honest opinion about the shortage of food in the rest of the world."*

The survey was a complete failure because in Africa, people didn't know what 'food' was. In Europe they didn't know what "shortage" was. In China they didn't know what 'opinion' means. In Pakistan they didn't know what 'honesty' meant. In Saudi Arabia, they didn't know what 'please' was and Americans didn't know what 'rest of the world' mean.

