



Mysore
Chapter

eNewsletter

November 2009

Countdown begins for
KARNATAKA CS MAHOTSAVA

18th & 19th December 2009,
Bengaluru



For Private Circulation only



Dear Readers,

I was privileged to attend the 37th National Convention of the Institute held at Hyderabad from 5th to 7th November 2009. Students who have brought glory to our chapter by winning the National Level Company Law Quiz and Elocution Competition were felicitated at the convention. The convention had sessions of interest for both practicing members as well as members in employment.

We are delighted that CS. R. Sridharan, Central Council Member of ICSI and Ms. Lakshmi Subramanian, Vice Chairperson of SIRC of ICSI have kindly consented to address our members and students on challenging issues on 28th November 2009. We hope that the members and students of the chapter will make best use of this opportunity to meet the dignitaries.

The Chapter is proposing to hold industrial visits for the benefit of students. These visits will expose the students to real life corporate environment and help them in broadening their horizon. About 20-25 students will be sent to industries like, JK, AT&S, Decorative Laminates and various other industries.

Inside.....

Chapter Activities ...3

Articles

Apostille - International Authentication procedure of documents ...4

Reverse Merger – Alternate Approach to access Capital Markets...07

Common Seal – Relevance in today's corporate world...8

IPR: Innovation Brokering...10

Columns:

Book Review: Statutory Guide for NBFCs ...05

Observer – Conventions and Conferences... 06

IT for Corporate Professionals: Google Book Downloader...06

Living Room – Who can open one's mind?...09

Spectrum Space:

Did you know?...09

Pick of the Month...09

Legal Roundup...11

WTO & ASEAN Updates...12

:eNewsletter Team:

CS. Dattatri H M, CS. Sarina C H,
CS. Omkar N G, CS. Rashmi M R, &
'Spectrum' Team

KARNATAKA CS MAHOTSAVA

“LEADING THE CHANGE - MEETING THE CHALLENGES”

18th & 19th December 2009

at Taj Residency, M.G. Road, Bangalore.

organised by Bangalore, Mangalore & Mysore chapters jointly with SIRC.

HONOURABLE SHRI H.R.BHARDWAJ, HIS EXCELLENCY THE GOVERNOR OF KARNATAKA, has kindly consented to Inaugurate as the CHIEF GUEST.

Padmabhushana, Dr. VEERENDRA HEGGADE, Dharmadhikari, Shree Kshetra Dharmasthala, Karnataka, has kindly consented to Grace the Inauguration as the GUEST OF HONOUR.

Please block the dates in your diary. Get in touch with your chapter to join hands in organizing the event.

For past editions of eNewsletter click:

<http://www.icsi.edu/mysore> or

<http://www.esnips.com/web/icsimysore>

Mysore Chapter has its eParivaar “CSMysore”. To join visit:

<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 reserved.

Talk on Direct Tax Code, 2009

A talk on Direct Tax Code, 2009 was held by the chapter on 4th October 2009 at 3 PM at the Chapter Premises. CS. Anshuman A.S., detailed the changes proposed to be brought about in the new Code. The talk was attended by members and students.

Retail Revolution in India

The Chapter associated with Mallamma Marimallappa Women's Arts & Commerce College, Mysore for organizing a two day national level seminar on "Retail Revolution in India" at Mysore on 8th and 9th October 2009. CS. C.K. Sabareeshan, Past Chairman of the Chapter delivered the keynote address at the seminar. The seminar was attended by our members and students besides faculty of various Colleges in Karnataka.



Full Day Workshop on LLP Act, 2008



A full day workshop was organized by the chapter on LLP Act, 2008 on 11th October 2009 at Hotel Kings Kourt. The workshop was divided into 4 sessions. The workshop started with Dr. Sairam Bhat, Asst. Prof. of National Law School of India University, Bangalore giving an overview of the LLP legislation in the context of International practices. The 2nd and 3rd sessions was addressed by CS. C.V. Madhusudhanan, partner of M/s. KSR and Co, Coimbatore on LLP Agreement and Conversion issues. In the 4th session, CS. Pavithra P. of Nagarajan & Co, Bangalore deliberated on practical and procedural issues on formation of LLPs. The workshop was attended by about 30 delegates from Mangalore, Bangalore and Mysore.

Workshop on Guidance Note on Dividend

The Chief Guest for the Workshop was CS. Dattatri H. M., Company Secretary, Essilor India Private Limited, Bangalore. The program was attended by 22 delegates. The Technical Session highlighted the intentions of SSB and importance and requirement of SS and Guidance notes.

"Guidance note on Dividend" issued by the Institute was taken for discussion in the interactive session. Few members shared their practical experience in their work and also came out with certain suggestion which could be recommended to SSB to incorporate in Guidance notes. The participants expressed their views that the chapter should conduct this type of sessions very frequently.

Workshop on Guidance Note on Meeting of Board of Directors

Abhishek Bharadwaj A.B. of Essilor India Private Limited, Bangalore was the speaker for the workshop on Guidance Note on Meeting of Board of Directors held at the Chapter Premises on 25th October 2009 @ 3 PM. The workshop started with some basic concepts to refresh the participants on the topic and then it continued with concentrating on the core and technical aspects which enhanced the knowledge of the participants. Members present shared their immense experience on the topic.

Refresher Camp for Commerce & Management Teachers

Chapter associated with Staff Training College, University of Mysore for updating the knowledge of management and commerce teachers of University of Mysore. About 40 teachers of Mysore University are participating in this 21 day event which was inaugurated by CS. Anshuman A.S., chairman of the Chapter on 29th October 2009 at 11 AM. Speaking at the occasion, CS. Anshuman appraised the teachers about various legislative changes being brought about in Corporate Law, Direct Taxes etc. and other recent developments.

Further, on 31st October 2009, CS. Anshuman delivered a lecture on "Direct Tax Code, 2009 and its impact on personal taxation" which was well appreciated by the participants.

Words worth Millions

Everything can be sacrificed for truth, but truth can't be sacrificed for anything.

- Swami Vivekananda



Apostille

(International Authentication procedure of documents)

CS. R. Balakrishnan,

Company Secretary, HITS Africa Ltd, Kingdom Of Bahrain

bala@hits-africa.com

1. Introduction: Many a times, documents like board resolution, power of attorney, indemnity etc., are transferred from one country to another – say by the parent company to the holding company, associate company or subsidiary company from one country to the other country. Such documents may have to be presented to various Government authorities, regulators and actions are taken based on those documents. In case of power of attorney issued, the power of attorney holder takes the actions as delegated in the power of attorney. Many a times the authenticity of the document presented is questioned. This article deals with the aspect of such authentication the process 'Apostille' and Legalization of the document.

2. What is Apostille and legalization?

Apostille and legalization is the process by which the document in question is authenticated by a Notary Public and legalized by the concerned ministry of the respective country's embassy. The procedure has been laid down by the Hague convention of 5th October 1961 (convention de la Hague dated 5th October 1961). Pursuant to the Hague convention held in October 1961, the member countries – more than 140 countries have become the members of Hague convention – the respective countries have agreed for the procedure to be followed for authenticating the documents and the member countries have agreed, that the documents would be accepted once the procedure of Apostille and legalization is done. [India is also one of the members to this convention.](#)

- ✓ Author has been named in the Limca Book of Records for being the first professional in India awarded with Certified Internal Control Specialists (CICS) by the Internal Control Institute (ICI).
- ✓ Authored "Compliance Guide to Corporate Governance" and "Handbook on Audit Committee" published by Taxmann.
- ✓ First Indian to be awarded as Company Secretary of the year by the Institute of Chartered Secretaries and Administrators, London

An Apostille is only to confirm that the signature, seal or stamp on the document is genuine and not the contents of the document. The certifying authority (for example in UK, the Foreign & Commonwealth office) generally reserves their comments of the contents of the document.

5. What is the procedure of doing the Apostille and legalization?

Whenever the document is prepared, the same is required to be signed by the person / persons preparing it in front of a Notary public and then present the document to the Notary public. The Notary certifies the document on the face of the document as "Certified True copy of the original" after verifying the documents with the original document along

with a date and put his stamp. Then the Notary puts a stamp on the back side of the document or at the last page of document, if the documents are running in multi pages, each and every page is certified as true copy of the original in such a case.

There after the document is taken to the Ministry of Foreign Affairs of the concerned country's embassy of the country in which the documents are issued for attestation. Based on the Notary's authentication and certificate the concerned Ministry of Foreign Affairs of the respective country's

embassy of the country in which the documents are issued, gives the attestation to the document along with the required stamps affixed to the document.

6. How the attestation is done

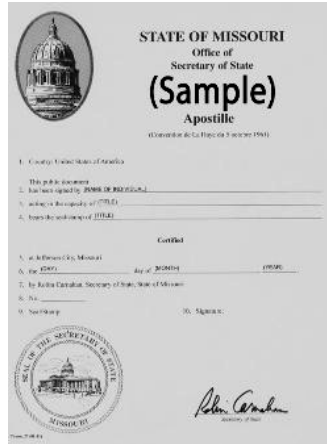
Generally, by and large, the Ministry of Foreign Affairs have the printed form of Apostille cum certification / attestation form with them which they attach to the document by way of pasting the form on the last page of the document.

The front page is the printed form and in the back side of the form, the concerned embassy requires the necessary stamps to be affixed (similar to the procedure, we have in India – either getting the documents prepared on a stamp paper of



getting the franking done by the designated centers for this purpose on the face of the document especially when the power of attorney or lease, indemnity and affidavit documents are prepared).

When the required stamps are affixed to the document, the concerned embassy, while attesting the document also puts their rubber stamp. At the top it states the Embassy of the concerned country locate at followed by a serial number and date. Then the rubber stamp reads that “we approve the stamp and also the signature of the concerned signatory of the Foreign Affairs stating that without responsibility from the authorities for what the contents of the documents are and signed by the Consulate.



In short, the Notary and the concerned Ministry of Foreign Affairs along with Consulate certifies for the person who has signed it and it is a genuine document and they do not certify for the content of the document. This means, the certifying authority of the document, after verifying the original is genuine and the contents of the document is left to the parties about which the authorities are no way concerned.

7. Acceptability of the documents

The document which bears the Apostille and legalization would be readily accepted by all the countries without going into the genuineness of the document since the document is legalized by the embassy of the concerned Ministry of Foreign Affairs of the country’s embassy and this would go a long way to help the countries where documents are transferred from one country to other country without

questioning the authenticity. The author’s own experience is that the legalization procedure really helps in the routine working since the author is a company secretary of different countries and documents are brought from one country to another after legalization which is well accepted by the regulators and Government officials.

8. India is a party for the Authentication of documents

India is a party to the Hague Convention and the Government of India has issued necessary circular on this. For information about authentication of documents, one could see the U.S Department of State Authentications Officer Webpage. The guidance for consular officers about authentication of documents is

also available at 7 Foreign Affairs Manual 870. The following office in India could be contacted if one wishes to have any guidance / clarification etc., relating to the legalization / authentication of an Indian document:

Attestations Office, Ministry of External Affairs, (CPV Division), Patiala House, Tilak Marg (near India Gate), New Delhi - 110 001, Tel. +011-91-11-2338-7931

9. Conclusion

In India, as understood by the author, the concerned ministry has issued circular for accepting the legalized documents by the Government authorities and also by regulators and this would go a long way in dealing with the concerned people and would help the enterprises who operate in different countries and who are required to bring documents from one country to another.

Statutory Guide for Non Banking Financial Companies

Publisher: Taxmann, Price: Rs.750/-

Book Review

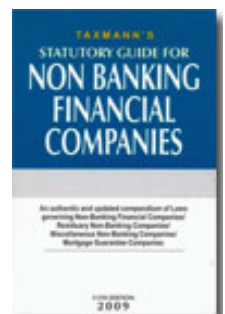
CS. Amaresh Epari
Company Secretary, GMR Group



Non-banking financial company (NBFC) functions akin to that of banks in today’s corporate world. It engages in the business of loans and advances, acquisition of shares/stock/bonds/debentures/securities issued by government or local authority or other securities of like marketable nature, leasing, hire-purchase, insurance business, chit business, but does not include any institution whose principal business is that of agriculture activity, industrial activity, sale/purchase/construction of immovable property. To elaborate all legal matters of an NBFC in one book is voluminous task and this is taken care by Taxmann’s “Statutory Guide For Non Banking Financial Companies”

What the Book Offers: An authentic and updated compendium of laws governing non-banking financial companies / residuary/miscellaneous non-banking financial companies. Also it contains an overview of obligations and procedures relating to NBFCs and a list of notifications and circulars governing the NBFCs.

Why this Book? An attempt is made to bring under one umbrella the different forms of NBFCs. The glossary section of this book covers the synopsis and definitions of various topics of NBFCs which helps the reader to comprehend the subject without wasting much time.





Conventions and Conferences

CS Dattatri H M

CM - Legal & CS, Essilor India Pvt. Ltd., Bangalore

These days conducting conventions and conferences have become a normal phenomenon. Throughout the year, we keep observing one or the other organization conducting conferences. A team of enthusiastic members of organizations put in their efforts, time and energy for the success of such conferences. Many others contribute in terms of knowledge, resources, funds etc for such success. Once conference is over, delegates return with lot of memories to cherish and organizers take rest! Is that the end we are looking at or what else can be achieved by these conferences?

- gaining visibility for the organization and profession;
- uniting members for a common cause;
- forming opinions by passing resolutions;
- show of strength and put pressure of authorities for fulfilling of demands;
- learning of various relevant but difficult developments;
- show of talents and recognition to talents;
- saving some money for the future activities of the organization;
- networking among co-professional; and many more.



What we need to be clear before stepping into conducting of conferences is to know what we want to achieve by that and rigorously planning and implementing it. Normally once conference is over, we tend to take rest and forget after actions. This may reduce the basic idea of conducting a conference itself into an annual ritual, leading us nowhere.

What do you think, are we really serious about achieving some genuine ends in conducting conferences? Do we really pursue such objectives even after the conference, until we achieve the ends?

Google Book Downloader



CS. Sunil Kumar B G,
Mysore

Google Book Search- a unique place to search and read your favourite books before actually purchasing or to take reference from that book for your documents. Google Book search lets you to download non copyright and public domain books and documents in PDF format. But you can't download copyright Books from Google Book Search. Several restrictions are enforced for preventing downloading of copyright books. You can read some pages from that book at the maximum. Here is a small utility Google Book Downloader for downloading and saving of books as PDF format from Google Book search.

Features:

- Download any book from Google Books marked as 'Full view'
- Partially download any book from Google Books marked as 'Limited preview'
- Access to any book available only for US citizens
- Searching for hidden pages (not indexed by Google Books)



Requirements: Microsoft .net Framework 3.5 SP1 (Download from here [Link](#)). Google Book Downloader can only download books which are marked as full view. If you try to download copyright book, then downloading of all pages of book is not allowed. To get this downloader tool, visit this webpage;

<http://googlebookdownloader.codeplex.com/Release/ProjectReleases.aspx?ReleaseId=31783>

To know how to use this tool, click this below mentioned link;

<http://googlebookdownloader.codeplex.com/Wiki/View.aspx?title=How%20to%20use%20it%3f>



Reverse Merger

Alternate Approach to Access Capital Markets

CS. Amar Kakaria ACS, ACA, ACWA
amar@fusionadvisors.in

There have been radical changes in the business approach of corporate world in the 21st century. Companies have witnessed different business life cycles from the 'Great Depression' in 1929 to the best of times till recent 2007 and have been guided by the word 'Innovation' subsequent to every such event which holds vigour even today.

The result of one such innovative thought made the Indian corporate world more familiar with the concept of "Reverse Merger", during the early 90's, which was more prominent among the western countries. This notion gained more eminence in early 2000 in India. It was instrumental in being an alternate approach, for many companies, to explore the capital market which was otherwise not feasible through the primary market route due to variety of reasons.

The term 'Reverse Merger' is nowhere defined in the legal books albeit it is a generic term christened by the corporate world. In layman's language, when a financially strong company merges itself with a financially weak company it is a reverse merger. In this activity the financially strong company loses its entity. In a simple merger, generally, two equally strong companies collaborate and there might be a new resultant company or else any one of them might have the existence. Reverse Merger too is governed by Sec. 391-394 of the Companies Act, 1956 and also the same set of rules, procedures etc. apply as in case of a simple merger.

This strategy has obliged quite a few corporate houses in various manners and under different circumstances i.e. whether a downturn or a bull phase. Following are some of the express benefits:

- ✓ Alternate route to access capital markets with proven results;
- ✓ Value creation for existing stakeholders besides new promoters;
- ✓ Easier access to foreign capital markets;
- ✓ Direct / indirect tax benefits and incentives to the merged entity ;
- ✓ Effective mobilisation of funds from banks / financial institutions;
- ✓ Attractive investment destination for PE / VC funds;
- ✓ Choice to have controlling / majority stake in cost-effective manner; and
- ✓ Possibility of faster inorganic growth due to share swap

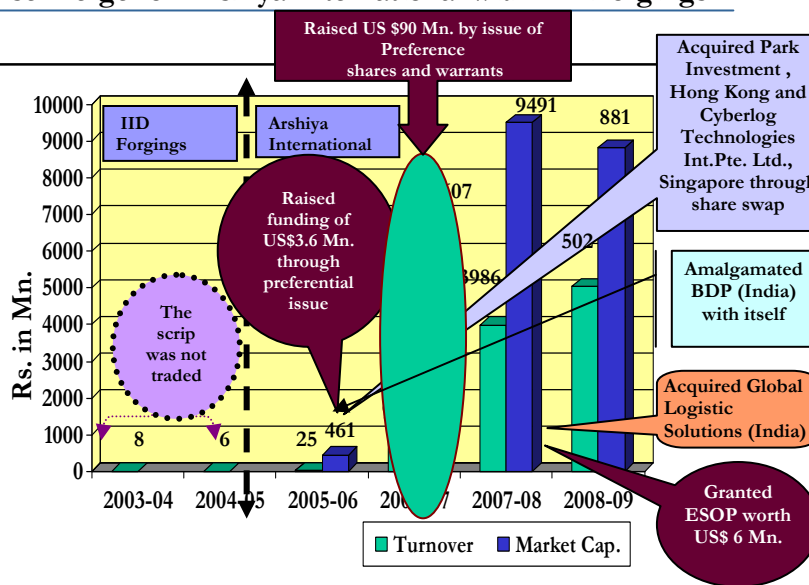
Several reputed companies like Kingfisher Airlines (Aviation Sector), Marksans Pharma (Healthcare Sector), Indo Bonito Multinational (Trading), etc have got listed domestically using Reverse Merger mechanism. Following is the case study of Arshiya International, a leading logistics company. The list of companies adopting this strategy range from SME to large entities across diversified industries. The feasibility of going 'Reverse' being a subjective issue, the success would depend on vision and the execution capabilities of the

company. The recent months have witnessed failure of even large IPOs proving capital market entry strategy somewhat futile for the time being.

We are entering in a highly dynamic era of business cycle defining new structural changes and this recommends a reciprocal shift from the laid down business strategies to run the business successfully, as there is no exception to it.

Carl Lewis has rightly said - "I may be walking slowly, but I never walk backwards; and **whenever, I walk backwards, its for a Long Jump.**" Going reverse might prove to be more effective!!!

Case Study : Reverse Merger of Arshiya International with IID Forgings



- In 2000, entered the booming logistics segment by incorporating a JV, BDP (India), with US multinational logistic company, BDP International, in India.
- Merged with IID Forgings, a non-operational company listed on BSE, in the year 2005, to access the capital markets without going through the cumbersome formalities.
- At present, it has become a well reputed brand across the logistic segments having presence in countries like US, Hong Kong, Singapore and Middle East, apart from India.
- Has recently diversified into rail freight business followed by FTWZ's. (Source: BSE)



Common Seal

Relevance in today's Corporate World

CS. A Padma Venkatesh
 Company Secretary, Totem Infrastructure Limited, Hyderabad
 upadmashenoy@gmail.com

The Common Seal – often referred to as the signature of the corporate entity is more often than not deemed as the substantial mark of identification for the corporate entity in question. However, in today's computerized corporate scenario, Common Seal has lost its gloss and has come to exist more as a ritual than a requirement. Today, Common Seal is hardly used on any document other than the Share Certificates and even this minimal use is fast diminishing with the advent of "Demat Accounts".

- c. Authorisation by the Board/ Committee is required to affix the Common Seal on any instrument. The resolution must also authorise at least two directors and the secretary or other persons who shall sign the instrument, in token of their presence.
- d. The authorised person shall sign and affix the Common Seal on the document/ share certificate(s) in the presence of the authorised directors/secretary.

Common Seal and the Provisions in Law:

- a. Section 34 of the Companies Act, 1956 specifies that every company on incorporation should have common seal for corporate use.
- b. Article 84 of Table A of Schedule I of the Act also indicates that the board shall provide for a Common Seal and this seal shall be affixed on a document only on the authority of the Board or a Committee of the Board, and also specifies the process to be adopted for any such affixation.
- c. Section 50 empowers use of official seal outside India.
- d. The guidance note on Compliance Certificate specifies the maintenance of register of documents sealed containing the details like date of sealing, people in whose presence it was sealed, etc.
- e. Companies (Issue of Share Certificate) Rules, 1960, provides for affixing Common seal on the share certificates.
- f. SS-8: It is the signature of the company and binds the company for all obligations undertaken in the document.

Does Common Seal still hold its high status?

Today, Common Seal is hardly used on any document other than the Share Certificates and even this minimal use is fast diminishing with the advent of "Demat Accounts".

The Companies Act does not say that it is compulsory for a Company to have a Common Seal.

It can probably be dispensed with in the new Companies Bill 2009.

The provisions above were in line with the then prevailing English Law. This might have been relevant and apt during the pre-computer era, but with the electronic communication gaining momentum and the rise of dematerialized share certificates, the need to have a Common Seal needs to be revised. The seal in fact, is a relic of the days when medieval barons used their rings to make a characteristic impression as their approval.

It is not compulsory that common seal should be of specific shape or metal but the company name should be engraved on it. The use of seals, whether in wax, lacquer or embossed on paper to authenticate documents is a practice as old as writing itself. Apart from preventing forgery, the presence of an unbroken seal indicated that the sealed document had not been tampered with. A look into the purpose and usage of common seal in current transactions is warranted to examine the real need to have the concept of Common Seal.



Although the Companies Act continues with the regulations for a Common Seal, it is clear that failure to affix the Common Seal on any deed or document by itself will not absolve the directors of their liability or be a ground on which the company can escape its obligations.

Rules and Regulations around the usage of Common Seal

- a. At the first Board Meeting of the Company, the common seal of the company is adopted by means of a resolution.
- b. It must be under safe custody of Authorised person.

For all practical purposes, the common seal is as good as dead. Eventually, it is the overall circumstances of a given case that would weigh with the courts and not the mere

affixation or otherwise of the Common Seal on the document. Thus, the Common Seal is no more as revered as it used to be. According to the Apex court, merely due to the absence of a resolution, the contract could not have been held to be invalid or illegal. *Panchanan Dhara & Others vs Monmatha Nath Maity (Decd.) thru L.R.S. [2006] 131 Comp Cas 577 (SC).*

Common Seal is not mandatory under the Act. If a company is floated without share capital or with shares in electronic form, then it is not illegal for such company to operate without a Common Seal. Limited Liability Partnership form of business may have its own Common Seal, depending upon the terms of the Agreement.

The transactions today are just a click-away where real-time execution of documents takes place without even the requirement of face-to-face meeting of the parties involved.

There are very few cases today, where one of the parties insists on affixing the Common Seal, but not necessarily based on the requirement of statute. Of course, in some cases where pre-structured documents mandate affixing the Common Seal, its use cannot be dispensed with, except with mutual consent of the parties involved.

The Government is now giving final touches to the new Companies Bill, 2009 in line with recommendations from various committees. As a part of this process, the merits of retaining the Common Seal as part of the statute book can be reviewed and probably dispensed with, to be in line with the existing global practices. However, it may be noted that in the New Companies Bill, 2009 Section 48 of the Companies Act, 1956 is retained as **clause 21**, while Section 50 of the same Act is scrapped.

LIVING ROOM

Who can open one's mind?

Holman Hunt, a famous painter had once done a beautiful painting. The painting depicted a beautiful garden in which there was a small house. It showed God holding a lantern in one hand and knocking the door of a house from the other hand.

One of his friends who saw the painting told Holman that there was a flaw in the painting. Holman wanted to know what was the fault in the painting.



His friend told- "Holman! There is no handle to the door!"

Holman replied- "There is no flaw in the painting. The door in the painting is of the heart and it opens only from inside! Even God cannot open it from outside!!"

The same thing applies to our mind. There is no handle from outside to open our mind. We have to open our mind to receive fresh ideas and knowledge. It is not possible for anybody to open our mind from outside and put the knowledge & skills. Even God cannot!!



Ms. Madhuri (above) and Ms. Veena are receiving prizes in the recently held national convention for winning in the elocution and quiz competitions respectively.

Did You Know?

Corporate India has seen OTCEI (Over the Counter Exchange of India) and Integrated Stock Exchanges (ISE) coming up from cradle and going to grave without accomplishing the purposes.

Now, SEBI is making it easy for Small Medium Enterprise Exchanges (SMEs) to enter OTCEI and ISE. SMEs would be exempted from the eligibility norms applicable for IPOs and FPOs prescribed in the SEBI (ICDR) Regulations, 2009. The other features would be minimum IPO application of Rs.1 Lakh and upper limit being of Rs.25 crore which enables for small corporates to stock market access & liquidity and also Merchant Bankers ensuring for market making.

(Info Courtesy: CS. Harish B N)

Pick of the Month

Can a director who did not hold qualification shares within 2 months be included in the list of contributories?

A director can act as a director for 2 months without possessing qualification shares. Where a director resigns from the office within such 2 months without acquiring the qualification shares, his name cannot be included in the list of contributories, if the co. goes into winding up.

(Zamir Ahmed Vs Banaji, 1957) (Info Courtesy: Chakri G Hegde)



Innovation Brokering

V. Lokesh,

IP Management, Strategic Planning & Initiatives, L&T Limited, Mysore

"Innovation is often given a complex definition. We prefer the simple one: 'new ideas that work'."

- Geoff Mulgan

Innovation is everywhere and Innovation led competitiveness are merely slogan; they are hard realities from the advertisement on TV to the design of mobile phone in your pocket to the services delivered on the streets of your city. The old usage "Necessity is the mother of invention" drives to bring creativity in providing solutions.

Have you ever seen any analogy between Thomas Edison, the famous inventor of the electric bulb and IDEO, a design and innovation based consultancy based in USA? Both have implemented "Innovation or Technology brokering" into their practices to bring innovation into their products. The beauty of Innovation Brokering is not inventing something new to the world but it is the ability to re-image and recreate a product while using old ones. Edison didn't invent the electric light but he leveraged the different existing technologies to make a better light bulb. On the same concept, IDEO has developed over 3000 new products in over 40 different industries since it was founded in 1978. Their designers work with companies from different industries, to get broad view of the latest technologies available worldwide and thus develop innovative and efficient products. IDEO has developed slit valve for specialized bicycle water bottle after getting an idea from similar valves being used in shampoo bottles. The improvement phases in telephone also illustrate the technology brokering. As the first generation phones were moved to cordless and now to mobile phones.

Innovation Brokering shifts the focus from R&D teams sitting in closed labs and inventing something new to making R&D scientists interact directly with customers and bring about innovations by combining earlier existing inventions. R&D teams now work in collaboration with marketing and manufacturing people. Innovation Brokering link with the concept of empathetic design (user friendly design) and provide solutions to problems of customers. Thus it paves the way for not only "Thinking out of the box" but also "Thinking into other boxes".

Innovation Brokers exploit past to create future. First, they capture good ideas from both within and outside the organization. They closely analyze the environment to get the pulse of the unfilled needs and desires. Secondly, they try to keep the ideas alive. Generally a company loses ideas when employees walk away. So there should be a proper mechanism to have a record of all ideas. Then in the next step they imagine new uses of these ideas. How can they draw meaning out of these ideas through innovations? Finally they put the promising ideas to test.

Often the closed innovation syndrome supports NIH (Not Invented Here) behavior. It means the corporate intentionally or unintentionally avoids certain knowledge because it was not invented within the organization. On the other hand open innovation systems support "Wisdom of Crowds" i.e. the ideas coming from different directions and even reaching out to broader public for contribution. The Googling Innovation (Google- search engine) also promotes creative ideas from everywhere. The employees are given 20% time to do the pet projects, which are unrelated to their core work. Wal-Mart also continues to grow through innovations in the inventory management. Sampling foundation also follows this democratization of innovation. The focus of foundation is TED (Technology, Entertainment, Design). TED website presents video and audio downloads of the conference speakers to the public and thus promoting ideas at large. Serving the social cause is considered above all. Even innovation can do miracles in this. Hopelab created by Pam (wife of ebay cofounder, Pierre) develop a video game that motivates young cancer patients to comply with the requirements of the treatment.

In the business world, the innovation is a binding concern. If a company doesn't adapt to fit changing realities, it risks losing its position in the market. It can be difficult to find time from our busy schedules and think about doing things in a different way. Too often we operate on autopilot. But if we make it a habit of thinking differently it would bring a sea change in our lives and many useful innovative solutions can be generated in the process.

The beauty of Innovation Brokering is not inventing something new to the world but it is the ability to re-image and recreate a product while using old ones.

Innovation Brokering provide solutions to particular problems of customers.

Thus it paves the way for not only "Thinking out of the box" but also "Thinking into other boxes".



Customs

Case Law - Valuation

Declared Transaction Value (TV) cannot be rejected for reasons other than those laid down under the proviso to Rule 4(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988

Apar Industries Ltd. Vs. CC (2009 (94) RLT 388)

Royalty or technical license fee is includible in the TV of imported goods only where such royalty or licence is in relation to the imported goods.

Sundaram Dynacast Pvt. Ltd. Vs. CC (2009 (94) RLT 514) and Annapurna Earcanal Pvt. Ltd. (2009-TIOL-1967-CESTAT)

Case Law - Others

Scope of an exemption notification cannot be extended through a circular issued subsequently by the CBEC.

V.K. International Vs. CC (2009 (94) RLT 398)

Excess duty paid on account of an error in the assessment of a Bill of Entry can be refunded after correction of the Bill of Entry

Symrise Private Limited Vs. CC (2009 (94) RLT 641)

Customs authorities cannot deny the importer the benefit of the exemption notification certified by the competent authority.

CCE Vs. Lotus Power gear Pvt. Ltd. (2009 (94) RLT 645)

CENVAT

Notifications/ Circulars

Valuation of manufactured goods by a job worker would be determined on the basis of the price at which such goods are normally sold by the principal

CBEC Circular no 902/22/2009-CX dated 20.10.2009

Case Law - Valuation

Excess transit insurance charges recovered from the customer do not form part of excisable goods.

Neha Powerlines Pvt Ltd & Vs CCE[2009 (94) RLT 497]

Discount offered by the manufacturer to the dealer is not includible in the value of goods.

Confident Dental Equipments Ltd Vs CCE [2009 (94) RLT 602]

CENVAT/MODVAT

CENVAT credit on eligible fuel used for captive generation of electricity is permissible only in proportion to the electricity used within the factory in relation to manufacture of dutiable goods.

Maruti Suzuki Ltd Vs CCE [2009 (94) RLT 223]

Supplies to 100% EOUs are 'deemed exports' and refund of CENVAT credit is hence available.

NBM Industries Vs CCE [2009 (94) RLT 367]

Case Law - Others

Period of limitation for refund of duties is not applicable to claims on account of erroneous debit entries made in the PLA.

CCE Vs Magnum Iron and Steel Pvt Ltd [2009 (94) RLT 262]

SERVICE TAX

Notifications/Circulars

Construction activities regarding execution of works contracts for building canals is exempted from levy of Service Tax.

Notification No. 41/2009 dated October 23, 2009

Case Laws

Only Central Government can collect service tax on the taxable service covering the value of SIM cards, activation charges etc. and no sales tax could be levied as there is no sale of goods involved in such cases.

BPL Mobile Cellular Ltd Vs State of Kerala [2009-TIOL-555]

Service tax is payable only on the service component in respect of retreading of Old Tyres i.e. labour and other charges.

Chakita Ranjini Udyam Vs CCE [2009 (94) RLT 439]

Training on computer software is taxable as manpower training or coaching service w.e.f 1.07.2003 and the activity is not taxable under any other category from a prior date.

Micro Academy (India) Pvt Ltd Vs CST [2009 (94) RLT 435]

Assessee is not liable to pay service tax if the taxable services are fully provided outside India.

Intas Pharmaceutical Ltd. Vs CST, [(2009) 22 STT 230]

Assessee is not liable to pay service tax in respect of any taxable service received from abroad prior to 18.04.2006.

Jet Speed Audio(P) Ltd. Vs CCE [(2009) 22 STT 308]

Mere transportation of goods would not be covered under Cargo Handling Service unless loading, unloading, packing or unpacking or handling of cargo is the primary object of the contract between the parties.

CCE Vs Scrap Material Handling Co. [(2009) 16 S.T.R. 68]

Production of electricity amounts to manufacture and there would thus be no service tax liability on this activity

NTPC SAIL Power Co Pvt., Ltd., Vs CCE [(2009) 16 STR 206]

Service tax paid on GTA services availed for transport of vehicles from the factory to the showroom is available as CENVAT credit for providing output services

CCE Vs Shariff Motors [2009- TIOL-1571-CESTAT]

Sales Tax

Case Law

If no order determining any tax liability has been passed, the refund amount due to the assessee cannot be withheld by the assessing authority

Nallakumar Sago Factory Vs. ACCT [(2009) 25 VST 338]

No entry tax is leviable on entry of goods into the local area if the goods are in the course of transit.

South Eastern Coalfields Ltd And Another Vs. ACCT [(2009) 24 VST 348]

Contract for providing buses on payment of monthly rent will be liable to sales tax as a transfer of the right to use goods (vehicles) where the control and possession in the vehicles has been transferred to the lessee.

Commissioner of Trade Tax Vs. Ashok Kumar Gupta, [(2009) NTN (Vol 41.) - 107 (All)]

VAT

Notifications

In Karnataka, Sale of white or refined sugar imported has been exempted from tax with until March 2010.

Notification No. FD 175 CSL 2009 dated October 15, 2009

Foreign Trade Policy (FTP)

India - ASEAN treaty on Services:

News: India and ASEAN are discussing modalities for liberalizing the markets for services.

The Economic Times, New Delhi, 13/10/2009

Case Law

Refund of accumulated CENVAT credits cannot be claimed under the CENVAT Credit Rules where goods are supplied to the developers of Special Economic Zones (SEZ) since the developers do not export any goods.

CCE Vs. Tiger Steel Engineering (India) Pvt. Ltd. (2009 (242) ELT 378)

DTA unit would be entitled for drawback on exports of finished products even in cases where intermediate products were processed at 100% EOU and supplied to the DTA

unit for manufacture of the exported product.

S. P. Apparels Vs. CC (2009 (242) ELT 424)

Duty cannot be demanded transfer of goods from a 100% EOU to unlicensed premises which is subsequently granted a private bonded warehouse

CC Vs. Comat Technologies Pvt. Ltd. (2009 (94) RLT 529)

Antidumping Duty

Notifications

Anti-dumping duty has been imposed on sun and/ or dust control polyester film and plain medium density fiber board.

Customs Notification No. 111/2009-Cus dated 29/09/2009 and 116/2009-Cus dated 8/10/2009

WTO & ASEAN Updates

Climate Talks Drift Slowly from Barcelona to Copenhagen

Another round of climate change negotiations concluded on Friday with minimal advances. The week-long meeting in Barcelona, Spain marked the final week of a three-week session begun in Bangkok, Thailand in October. The Barcelona meetings were also the final round of negotiations prior to the UN climate convention's Conference of the Parties (COP), which will take place in Copenhagen, Denmark from 7-18 December.

G20 Finance Ministers Fall Short on Climate Finance, Subsidies: NGOs

Finance ministers from the Group of 20 achieved broad consensus on economic stimulus plans at their meeting on 6-7 November in St Andrews, Scotland. But, to the dismay of many in civil society, they fell short of conclusive agreements on how they plan to cut fossil fuel subsidies and finance the global fight against climate change.

Members Approve Ministerial Wording on 'TRIPS Non-Violation', E-Commerce

With less than three weeks remaining before trade ministers descend on Geneva for the WTO's seventh ministerial conference, trade delegates at the organisation's headquarters are preparing wording for a ministerial decision to be issued at the meeting's close.

Kerala fishermen protest India-Asean FTP

Nov 11, 2009 The Kerala Fisheries Coordination Committee (KFCC) comprising several fishermen unions

from the state on Tuesday said India-Asean Free Trade Agreement (FTA) would adversely impact the livelihood of a million fishermen in the state as cheap imports will cut down demand for local produce.

Although the central government has repeatedly claimed that some fish products are on the sensitive list and thereby won't be affected by the FTA, the fishermen committee claimed that even a marginal reduction in tariffs on sensitive products would significantly bring down price and impact the livelihood of traditional fishermen.

Taking 'look east policy' forward

November 09, 2009 The 15th Association of Southeast Asian Nations (ASEAN) Summit held in the seaside town of Cha-am, Thailand last month successfully brought together leaders of 16 Asian countries at the table pushing for greater Asian economic and political integration. For India it was yet another step towards furthering its 'Look East' Policy (LEP) launched in 1992 as a response to the new geo-economic and geo-strategic landscape following the end of the Cold War, and connecting to its East and Southeast Asian neighbors.

