



eNewsletter - 81

Mysore Chapter

October 2010

Mysore Celebrates 400th Dasara

Dasara:

Those Days

These Days



For Private Circulation Only

Words worth Millions...



"Peaceful coexistence is possible among nations; no matter how deep the differences between them, how far apart they are in their political and economic systems, no matter how intense the issues that divide them"

Lal Bahadur Shastri
2nd Prime Minister of India
2 Oct 1904 to 11 Jan 1966

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Message from Chairperson



Dear Professional Colleagues and Students,

September 26, 2010 has been one of the most memorable moments in the history of the Mysore Chapter; a milestone was reached with the laying of the foundation stone of the Mysore ICSI House. The event had the privilege of playing host to highest number of ICSI officials, both from the Centre and SIRC. The weekend had a number of firsts – starting with SIRC meeting, held at Mysore for the first time, it culminated with the Regional Conference of the Students hosted by Mysore Chapter for the first time ever.

On behalf of the Managing Committee, I thank every one of you that has sent us heart warming wishes on the momentous occasion of 'Shilanyaas'. It is our ardent desire to have the building project completed in less than a year from now. However herculean it may seem with the funds at our disposal, I am sure we can still have an state-of-art centre with the support of our CS brethren and the Industry.

Have a great festive week – Happy Dasara to you and your family!

Yours in CS fraternity,

CS K. Sarina Chouta Harish

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Shilaanyaas for ICSI House in Mysore

ICSI Mysore Chapter celebrated its historic event on 26th September 2010. On that day, foundation stone was laid for its own premises – the dream for more than a decade. Location is on a prime land situated next to KRS Road, opposite to J K Tyres. Project cost is estimated at Rs. 50 lakhs. The event was graced by all top officials of the ICSI.

Guest of Honour Rtn. Parthanath, recognized the managerial and advisory role of a CS in promoting the corporate governance practices in the Industry. He emphasized that a congenial place such as Mysore has the ability to possess a Training Institute of top caliber, while wishing that The ICSI House, Mysore would have these features. The Chief Guest Rtn. Jagadeesh Kumar, expressed his happiness in the services rendered by professionals like CS. CS

Vinayak Khanvalkar lauded the efforts of the Mysore Chapter in acquiring the premises of its own. CS N. K. Jain explained to the gathering the acceptance of most of the recommendations made by the ICSI to the Government at its behest, in the wake of high profile corporate scam in the recent past. He further explained the efforts of the Institute to elevate the profession of the Company Secretary to International levels by associating with Institutes of similar profession in several other countries.



The 6th Students' Regional Conference of the Southern India Regional Council (SIRC) of ICSI was held in Mysore for the first time ever on Sunday the 26th September 2010 at the Tourism Development Centre, Pooja Bhagavat MMCE.

It was attended by well over 250 Students of the ICSI. The Chief guest Shri S. L Ramachandra, Managing Partner, Gopika Perfumery Works & Secretary of NIE, commenting on the common career choice of the masses being Engineering and Medicine, appreciated the students for choosing the profession of Company Secretary, as professional management is essential for and is the life blood of business.

CS Vinayak Khanvalkar stressed on the need for students to develop a good character, alongside academic development. CS Jagannatham Puttaparthi, said that students should prepare for their role as Company Secretaries well, with a well laid out foundation. CS N. K. Jain quoted the example of purchase of medicine at a

CS Jagannatham Puttaparthi, Chairman, SIRC; **CS N. K. Jain**, CEO & Secretary, **CS K. Sarina C H** Chairperson, Mysore Chapter; **Rtn, Jagadeesh Kumar**, C&MD, Neulite Products; **CS Vinayak Khanvalkar**, President, ICSI; **Rtn. Parthanath**, C&MD, Sagas Autotec; **CS Datla Hanumanth Raju**, Past President of ICSI

Students' Regional Conference



CS. Kamal Kumar, Secretary Mysore Chapter; **CS. Datla Hanumanthraju**, Past President, ICSI; **Shri S. L. Ramachandra**, Secretary, NIE; **CS. Vinayak Khanvalkar**, President, ICSI; **CS. Jagannatham Puttaparthi**, Chairman, SIRC, **CS. N. K. Jain**, Secretary & CEO, ICSI; **CS. K Sarina C H**, Chairperson, Mysore Chapter

Chemist “the expired medicines would only be a reject’. He emphasized, hence, that there should be a constant endeavour to update knowledge and this should be the fulcrum of professionals. CS Datla Hanumanthraju, Past President, ICSI, opened the session with an impressive career advice to the Students.

CS Srilatha T. G., Vice Chairperson and Student Ms Sowmya conducted the proceedings through the day, which saw several technical presentations, Management games coordinated by students from Bangalore Chapter and a personality development session by Ms Kavitha Muraliprakash.

The conference was graced by officials of SIRC and Members of the Mysore Chapter.

Study circle meetings were held on 5th, 12th & 19th of September 2010 at the Chapter premises

Defence is the best offence



Sajjad A Qadir

CEO, Windfall Information Technology Systems Pvt. Ltd.
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It is only human tendency to bring forth a defensive attribute against an unassailable opponent.

An example of the game of cricket will enable a better understanding of what I am trying to imply here and to relate to it.

*There should be a paradigm shift in the way of investing; prime focus needs to be shifted from aggressive capital expansion to **Capital Protection**.*

An intelligent investor is the one who realizes that if the downside is taken care of – then the upside will take care of itself. It should be etched in an investor’s mind that the market is unpredictable, it is *after all the big boss and one can never outsmart the big boss*.

A widely accepted universal rule “the boss is right and even if the boss is wrong he / she is always right” is aptly applicable to the markets.

Seldom an investor realizes that it’s smart to play safe rather than going all out and allowing the reflexes to function based on herd mentality. Every day we see the so called Gods; analysts, promoters, fund managers appear on what I call *Cartoon Network for Business Community* (CNBC) predict the future trends of THE market.

In cricket there are several teams competing with each other in various tournaments, some of them are strong while others are weak. When the weak is pitted against an inviolable contender, the weaker side invariably walks towards the pitch with a defensive strategy. They are mentally prepared to bowl and bat with a defensive approach. Each ball is bowled with a little or no scope for letting the opponent score whilst the shots are played with a defensive stroke in a bid to save wickets.

Indian stalwart and the legacy of cricket, Sachin Tendulkar a man who posses all the qualities required to be known as the best cricketer in the world has a defensive streak in his style of playing. Each time he steps onto the field, he doesn’t stride towards the pitch with a mindset of the god of cricket. He walks with sheer humbleness and modesty, adhering to defensive strokes in the first few overs and then gradually shifting to moderately aggressive game once he is settled.

Same is the case when it comes to investing. An investor who invests his significant amount of capital in the market should realize that his opponent is the market whose daily turnover is over Rs.200,000 crores. Thus implying every investor is pitted against an indisputably unassailable contender, the big boss, the Market itself.

Hence investors should adopt a defensive tactic.

Every investor is pitted against an indisputably unassailable contender, the big boss, the Market itself. No one can predict market accurately.

Hence investors should adopt a defensive tactic. Capital Protection is the key to a march towards safeguarding your valuable life savings.



I would like to shed light on a conveniently ignored fact - the day someone has the ability to predict the markets accurately, the markets will shut down in a matter of few months.

Surprisingly naïve investors respond to such predictions by making impulsive investment decision. What they do not realize is that they are the last in queue to receive news related to various business strategies a company plans to implement, thus leading to opportunity lost as it has already been stolen by the ones who were standing way ahead in the queue. The approach that a

prototype investor has while investing, has become obsolete. There is a dire need to break free from this stereotype ideology whilst investing.

Capital Protection is the key to a march towards safeguarding your valuable life savings. It simply means.....and be with that India is a growth story in making, and every Indian should capitalize from it. My belief is that it’s essential for every Indian, to enhance their financial literacy.



Mouse Trap

A mouse looked through the crack in the wall to see the farmer and his wife open a package. "What food might this contain?" The mouse wondered. He was devastated to discover it was a mousetrap.

Retreating to the farmyard, the mouse proclaimed this warning: "There is a mousetrap in the house! here is a mousetrap in the house!"

The chicken clucked and scratched, raised her head and said, "Mr. Mouse, I can tell this is a grave concern to you, but it is of no consequence to me. I cannot be bothered by it."

The mouse turned to the pig and told him, "There is a mousetrap in the house! There is a mousetrap in the house!" The pig sympathized, but said, "I am so very sorry, Mr. Mouse, but there is nothing I can do about it but pray. Be assured you are in my prayers."

The mouse turned to the cow and said, "There is a mousetrap in the house! There is a mousetrap in the house!" The cow said, "Wow, Mr. Mouse. I'm sorry for you, but it's no skin off my nose. "So, the mouse returned to the house, head down and dejected, to face the farmer's mousetrap . . . alone. . .

That very night a sound was heard throughout the house.

The farmer's wife rushed to see what was caught. In the darkness, she did not see it. It was a venomous snake whose



tail was caught in the trap. The snake bit the farmer's wife. The farmer rushed her to the hospital.

When she returned home she still had a fever. Everyone knows you treat a fever with fresh chicken soup. So the farmer took his hatchet to the farmyard for the soup's main ingredient:

But his wife's sickness continued. Friends and neighbors came to sit with her around the clock. To feed them, the farmer butchered the pig. But, alas, the farmer's wife did not get well... She died.

So many people came for her funeral that the farmer had the cow slaughtered to provide enough meat for all of them for the funeral luncheon. And the mouse looked upon it all from his crack in the wall with great sadness.

So, the next time you hear someone is facing a problem and you think it doesn't concern you, remember: When one of us is threatened, we are all at risk. We are all involved in this journey called life. We must keep an eye out for one another and make an extra effort to encourage one another.

Letter from Readers...

Great job indeed! Compliments to the entire team of spirited professionals. Keep up the good work!

One suggestion...if you could arrange to circulate the eNewsletter to all the chapters of ICSI, it would motivate them. I get this newsletter from sporadically from some professional friends.

Hitender Mehta

Council Member & Former Chairman, ICSI-NIRC

It is a great pleasure to read the Mysore Chapter's eNewsletter. The quality of articles and other content is very good and informative. Also seen lot of improvement on regular basis and touching all important topics. Keep it up .

CS Anil Dulani

Chevrolet Sales India P Ltd.

Congratulations for 3 years young... 1000 members strong CS Mysore eParivaar. Wish you become 5 years young...5000 members strong!



I am happy to note the contents of the newsletter are very useful for the profession. Lot of students writing articles shows how talent is being generated by the newsletter.

I hope this eNewsletter create history amongst all existing newsletters in the country. Pray god be with you for making this possible...leading you all the times...loading with all the flames.

CS. Balachandra Sunku

GM Corporate Affairs & CS,
I Comm Telecommunications, Hyderabad



Deposits at NBFCs

CA. Kamlesh C. Agrawal B.Com; LL.B; FCA
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“Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998” are similar to those specified in the Companies (Acceptance of Deposits) Rules 1975, except few additional requirements typical to NBFCs. These are being discussed here under briefly.

Non-Banking Financial Company (NBFC): It has been defined as a Loan Company, an Investment company, an Asset Finance Company. Recently, RBI has created a new category of NBFC called Infrastructure Finance Company vide its notification no. RBI/2009-10/316 dated 12-2-2010.

Registration of NBFCs with RBI before commencing business is mandatory. Also it has to maintain necessary Net Own Fund.

Definition of Deposit: The receipts excluded from the definition of deposit are the same as are specified in the Companies (Acceptance of Deposits) Rule 1975. In addition, following also not be a ‘deposit’ under the directions:

1. In case of an NBFC which is a public limited company, the deposit received from the relatives of directors;
2. Any amount received by an NBFC as hybrid debt or subordinated debt (maturity period 60 months or above);
3. Amount received by a non-deposit taking NBFC by issuance of ‘perpetual debt instruments’;
4. Any amount of loan taken from a Mutual Fund; and
5. Any amount received from a non corporate entity registered under the state enactment relating to money lending.

Hybrid Debt means capital instrument which possesses certain characteristics of equity as well as debt.

Subordinated debt means fully paid-up capital instrument which is unsecured and subordinated to the claims of other creditors and is free from restrictive clause and is not redeemable at the instance of the holder or with out the consent of the supervisory authority of NBFC.

Period of Deposit: Min. 12 months; Max. 60 months. No repayment on demand.

Credit Rating: Under para 4 (1) of the Direction all the NBFCs having specified Net Own Fund are compulsorily required to obtain at least, minimum investment grade Credit Rating (MIGR) for their FD Program from an approved Credit Rating Agency(CRA). This is not required for Asset Finance Companies.

Approved CRA	MIGR
CRISIL	FA - (FA Minus)
ICRA	MA - (MA Minus)
CARE	CARE BBB (FD)
FITCH	I/t A - (i n d) (FD)

Compliance with prudential norms: Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Direction, 2007 and Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Direction, 2007 are applicable to all NBFCs, except Investment Companies which are not accepting public deposits and NBFC being a Government company. These Directions covers following areas:

1. Income Recognition in relation to loans & advances and investments.
2. IAS framed by ICAI to be followed.
3. Asset Classification.
4. Provisioning Requirement.
5. Disclosure in the Balance Sheet.
6. Constitution of the Audit committee.
7. Accounting Year.
8. Schedule to the Balance Sheet.
9. Transaction in Government Securities.
10. Submission of a certificate from Statutory Auditor to RBI.
11. Requirement as to capital adequacy.
12. Loan against own shares prohibited.
13. No loans and investments, if company in default in repayment of deposit.
14. Restriction on investment in land & building and unquoted shares.
15. Concentration of credit / investment.
16. Submission of Half Yearly return.
17. Exposure to capital markets.
18. Norms relating to infrastructure loan.
19. Information on change in address, directors, auditors, etc. to be submitted.
20. Norms relating to Infrastructure loan.

Capital Adequacy Ratio : Every NBFC accepting or holding deposit shall maintain a minimum capital adequacy ratio of 12% consisting of Tier I and Tier II capital, of its aggregate risk weighted asset and of risk adjusted value of off Balance Sheet items. The total of Tier II capital, at any point of time, shall not exceed 100% of Tier I capital.

Every *systemically important non-deposit taking NBFC* shall maintain a minimum capital ratio consisting Tier I and Tier II capital of 10% of its aggregate risk weighted assets on Balance Sheet and of risk adjusted value of off Balance Sheet items. Such ratio shall not be less than 12% by March 2010 and 15% by March 2011.

The total of Tier II capital shall never ever exceed the amount of Tier I capital.

Tier I Capital: It means owned fund as reduced by investment in shares in other NBFCs and in shares and debentures, bonds, outstanding loans and advances including hire purchase and lease finance made to and deposit with subsidiaries and companies in the same group exceeding, in aggregate, ten percent of owned fund.

Tier II Capital includes:

1. Non- Convertible Preference shares,
2. Revaluation Reserve at a discounted rate of 50%.
3. Hybrid debts capital instrument, and
4. Subordinated debt
5. Perpetual debt instrument issued by a systemically important non-deposit taking financial company in excess of what qualifies for Tier I capital to the extent the aggregate does not exceed Tier I capital

Systemically important non-deposit taking Non-Banking financial company means a NBFC not accepting/holding public deposit and having total assets of Rs. 100 Crore and above as shown in the last audited Balance Sheet.

Net Owned Fund (NOF): As against manufacturing or other companies where the NOF of minimum Rs. 1 crore is compulsory for inviting the deposit, in NBFCs the minimum required NOF is only Rs. 25 lac if NBFC was registered prior to 21/04/99 and Rs. 200 lacs, if registered on or after 21/04/99.

Ceiling on quantum of deposits: The ceiling is worked out as number of times of company's NOF. The ceiling varies from 1.5 time to 4 times of NOF of the company. For example, an Assets Finance company can accept public deposit up to one and one half times of its net owned fund. However, it can accept deposit up to four times of its NOF, if it has minimum investment grade credit rating. It may here be noted that for Asset Finance Company there is no mandatory credit rating requirement. Thus, the ceiling limit also varies with credit rating grade.

Ceiling on the rate of interest: The maximum rate is 12.5 % p.a. The interest may be compounded at rests not shorter than monthly rest.

No NBFC shall invite or accept or renew **repatriable deposit** from NRIs under Non-Resident (External) Account Scheme at a rate exceeding the rate for such deposit with Scheduled Commercial Bank. The period of above deposit shall not be less than 1 year and more than 3 years.

Payment of brokerage and expenses can be up to 2% of the amount of deposit mobilized. The reimbursement of expenses is limited to 0.5% of the fund mobilized by a broker.

Payment of interest on over-due deposit shall be at the rate applicable to deposit, for the over due period.

Intimation of maturity of deposit to depositor shall be made at least 2 months before its maturity.

Particulars to be specified in the FD Application Form: The Form shall contain all the particulars specified in the NBFCs and Miscellaneous Non-Banking Companies (Advertisement) Rules, 1977. Particulars are similar with manufacturing company's FD Forms. However, following are additional:

1. Specific category of depositor; i.e. whether depositor is a shareholder or a director or promoter of the company or a member of public.
2. The credit rating assigned and the name of the credit rating agency. However, in case of Asset Finance Company Credit rating is not applicable but the company shall insert an statement that "Public deposit held by it does not exceed one and one half times of its NOF or Rs. 10 Crore whichever, is less.
3. The F. D. form shall contain statements on the following:
 - (a) In case of non-repayment of the deposit the depositor may approach to the Bench of CLB with full address of CLB.
 - (b) In case of any deficiency in servicing deposit, the depositor may approach the Consumers Forum.
 - (c) The financial position of the company as disclosed in the Application form is correct. The company and directors are responsible for the correctness and veracity thereof.
 - (d) The deposit solicited by the company is unsecured.
 - (e) Though financial activities of the company are regulated by RBI, RBI does not undertake any responsibility for the financial soundness of the company or for the correctness of the statement or representation made or opinion expressed by the company and for repayment of deposit /discharge of liability by the company.
 - (f) Total amount of exposure, both fund and non-fund based extended to and aggregate dues from companies in the same group or other entities or business ventures in which the directors and/or the company are holding substantial interest on the last day of the financial year.
 - (g) The F.D Application form shall contain following verification

"I have gone through financial and other statement/ representation furnished /made by the company and after careful consideration I am making the deposit with the company at my own risk and volition."

KYC Norms: New depositor shall get introduced by an existing depositor or agent of that NBFC. (RBI Notn., 134 dt. 12/01/2000). Depositor shall also furnish the proof of identity, residential address and recent photograph as required under The Prevention of Money Laundering Rules, 2005.

Minimum lock-in-period of deposit: Company shall not make premature repayment of deposit or grant loan against deposit within 3 months (lock-in period) from the date of its acceptance, except in case of death of a depositor.

Pre-mature payment: After lock-in period pre payment may be made. However, no interest on the pre-mature payment made between 3 and 6 months of deposit acceptance. Beyond 6 months the company shall reduce the rate of interest on such deposit by 2% from the announced rate.

Loan against deposit: Loan may be made by Company after the expiry of 3 months, up to 75 % of the deposit amount at a rate of interest 2% above the FD rate.

Defaulting NBFCs who have intimated the default to CLB under Section 58AA of the Companies Act, can make premature payment of only tiny deposits i.e. deposit up to Rs. 10,000/- or grant a loan against such tiny deposits only.

Maintenance of percentage of assets: NBFCs shall continue to invest 5% to 25% (as may be specified by RBI) of deposits outstanding on the last working day of the second preceding quarter in unencumbered approved securities. Company shall create a floating charge on this Statutory Liquid Asset in favour of Trustee representing Depositor of the company.

Reserve Fund: Every NBFC shall create a reserve fund and transfer therein a sum not less than 20% of its net profit before any dividend is declared.

Opening of Branches and appointment of agents: A registered NBFC having NOF of up to ₹ 50 Crore may open branches and appoint agents any where within its state. If NOF is more than 50 crore and credit rating is double A or above, it may open branches and appoint agents any where in India.

Board's report: Directors Report shall include total number and amount of matured but unclaimed/unpaid deposits existing on the last day of the financial year. If such amount exceeds rupees five lakh, a statement be made on the steps taken or proposed to be taken for the repayment of such deposit.

Copies of Annual Accounts and returns to be furnished to RBI within 15 days of relevant AGM of the company.

Auditor's Certificate to RBI to the effect that the full amount of liabilities to the depositors, are correctly reflected in the balance sheet, and that the company is in a position to meet the amount of such liabilities to the depositors.

Returns to RBI in the First Schedule is mandatory.

Direction does not apply to an insurance company, a stock exchange, a stock broking company in general and a loan company, an investment company and an asset finance company if they accept / hold any public deposit. To claim the exemption from the application of the Direction, the Investment Company should have to fulfill following two additional conditions:

- (i) it has acquired shares/securities of its group/holding/subsidiary only;
- (ii) it does not trade in such shares/securities.

[\[to be continued...\]](#)



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Web Yatra

Pavan Kumar MS,
Student CS Professional Program, Mysore



Laws are not masters but servants, and he rules them who obey them. India prides herself as the largest democracy in the world. Finding most applicable sections from hundreds of pages of law documents is too daunting for common people. Laws are often vague and one needs to see how they have been interpreted by the judicial courts. www.indiankanoon.org is a website helps us in achieving results by breaking law documents into smallest possible clause and by integrating law/statutes with court judgments. Forum is a platform in the site to pose our queries under any Act or law in India.

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Law and justice are not always the same. Law is an instrument used to deliver justice.

Hope www.IndianKanoon.org helps you in your search for Indian laws and their interpretations.

ICSI has notified Elections for the Central and the Regional Councils

Whoever gets elected, will formulate the policies for the future of the profession.

Let us not miss the opportunity to elect right candidates having vision for the profession. Please speak to candidates contesting for regional and central councils to understand their vision for the profession. Measure their capability. Decide whom to vote.

Let us ensure that we vote!

Dates for Physical Voting: Delhi/New Delhi/ Mumbai (or any other place where elections are required to be held on two days): Friday & Saturday, the 10th & 11th December, 2010. Other places: Friday, the 10th December, 2010. Time: 8.00 A.M. to 8.00 P.M.

If you are voting through Postal Ballot, take care to ensure receipt of your ballot papers at ICSI before 5.00 P.M. on Friday, 10th December, 2010.



Compilation:
CS. Ravishankar Kandhi,
Bangalore

Learners' Corner

Mezzanine Debt



In this globalised era, increase in the number of companies and the volume of transactions made the financial system more complex. Induction of the new and different financial instruments in the markets has brought a sea change in the functioning of the global capital and debt markets. India is no different than other countries. Today, more than 90% of corporate entities across the world depend on debt to finance their projects.

The terms of lending funds by debt financier depends on the risk associated with the repayment of debt by borrower. To reduce the probability of default in repayment of the debt, the financial package offered to the borrower must offer suitable incentives, in terms of both potential financial gain and freedom to grow his business. Therefore, the central issue is *"How can the terms of lending be matched to the business's requirement whilst retaining appropriate incentives to motivate the entrepreneur?"*

The answer lies in understanding the financial structure and appropriate financial instruments used to secure the debt. There are many principal types of debts such as Overdraft, Term loan, Hire purchase and leasing, Secured debt, Fixed charge, Floating charge, Debentures, Unsecured debt, Mezzanine Debt, etc. The selection of type of debt by the entrepreneurs depends on his nature of business, finance requirement, suitability and many other factors.

"Mezzanine finance" is one among different modes of debt finances. It is a risky debt and therefore, it carries higher level of interest rate than less risky types of debt. This debt will less usually be fairly long term with a fixed interest rate. It is provided by lenders specialized in this type risky-debt lending. Such lenders usually require an 'equity kicker' in the form of options or warrants on ordinary equity or sometimes an equity stake at the outset alongside the main equity investors. Normally, the mezzanine lenders will not provide the majority of the equity financing.

The total return is a blend of returns from two different instruments. To achieve his total expected return, the mezzanine financier will need performance from the 'equity-kicker'. However the majority of his return will depend on the performance of the debt. This type of specialist funding is often associated with more highly leveraged buy-outs.



Base Rate instead of PLR

Reserve Bank of India (RBI) has replaced the existing system of prime lending rate (PLR) to new Base Rate in order to make the credit market more transparent and ensure that banks pass on the lower cost of fund automatically to existing customers.

Henceforth the rates of Interest on the funds borrowed by the entities will be reset periodically based on the base rate issued by RBI which is fixed on the basis of cost of funds.

BIG BSE



As of 31.12.2009;

- + BSE is the world's number 1 exchange in terms of the number of listed companies (over 4900).
- + It is the world's 5th most active in terms of number of transactions handled through its electronic trading system.
- + It is in the top ten of global exchanges in terms of the market capitalization of its listed companies. The companies listed on BSE command a total market capitalization of USD Trillion 1.28 as of Feb, 2010.

Source : www.bseindia.com



Customs

Case Laws - Classification

The Tribunal has held that the predominant function test should be the basis of classification of imported goods which perform composite functions.

Sohams Foundation Engineering Private Limited Vs CC (2010 (180) ECR 58)

Case Laws - Others

The Tribunal has held that a penalty cannot be imposed in the absence of any material on record to conclude that the importer has facilitated the mis-declaration of the value of export goods so as to avail undue drawback benefits.

M J Joshy Vs CC (2010-TIOL-1207)

Foreign Trade Policy

Notifications/Circulars

The Central Government has amended the existing notification granting exemption to import of goods under the Export Promotion Capital Goods (EPCG) Scheme so as to provide that authorization for annual requirement under the EPCG Scheme shall indicate the export products thereunder. The importer is also required to submit a certificate from a Chartered Engineer certifying the nexus of the imported capital goods with the export products.

Customs Notn No. 92/2010 dated 10/09/2010

The Central Government has issued the updated All Industry Rates (AIR) of Duty Drawback with effect from 20/09/2010.

Customs Notn. 84/2010 dated 17/09/2010

Case Laws

The Tribunal has held that the import of goods without an Importer Exporter Code (IEC) number is a violation of the Foreign Trade (Development & Regulation) Act, 1992

CC Vs Greater Pacific Capital (2010-TIOL-1203)

The Tribunal has held that the burden to prove that the goods imported by the importer have not been utilized in the manner prescribed under the relevant

Advance Licenses coupled with the Customs Notification is on the authorities.

Cello Thermoware Ltd. Vs CC (2010 (180) ECR89)

Reporting under FDI Scheme

The RBI has advised the AD Category-I banks to monitor the FDI reporting to the RBI through their channels.

A.P. (DIR Series) Cir No. 13 dated 14.09.2010.

Consolidated FDI Policy:

The DIPP has been issued Consolidated FDI Policy which is updated upto 1st October, 2010 through the Circular 2 for the year 2010 This is valid upto March 31, 2011.

IPP F. No. 5(14)/2010-FC Dated 30.09.2010.

FDI in Limited Liability Partnership (LLP's):

The Department of Industrial Policy and Promotion has issued discussion papers on FDI in limited liability partnership (LLP) for stakeholders comment.

Shares for Consideration other than Cash to foreign investor:

The numerous Companies are using this route as loopholes for issuing the shares to the Foreign National /NRI's for consideration other than cash including sweat equity shares. To streamline issue, the DIPP has issued discussion paper on issue of shares for consideration other than case to foreign investor for stakeholders comment.

CENVAT

Case Laws - CENVAT/ MODVAT

The Allahabad High Court has held that in a situation where irregular CENVAT credit is availed but not utilized, no interest and penalty can be levied.

CCE Vs. Ashoka Metal Décor (P) Ltd. (2010 (256) ELT 524)

⊙ CS. Omkar N G, Mysore

⊙ V. Sasikumar & D. Saravanan, Team Genicon, Chennai

The Chattisgarh High Court has held that welding electrodes used in repairs of plant and machinery are eligible inputs under the Credit Rules.

Ambuja Cements Eastern Ltd. Vs. CCE (2010 (256) ELT 690)

The Karnataka High Court has held that credit is eligible on inputs used in repair and maintenance of plant and machinery.

CCE Vs. Alfred Herbert (India) Ltd (2010 (257) ELT 29)

The Tribunal has held that credit of service tax paid on outdoor catering services is not admissible since such services not 'used in or in relation to the manufacture' of final product.

CCE Vs. Sundaram Brake Linings (2010 (178) ECR 303)

Valuation

The Larger Bench of the Tribunal has held that the charges recovered by the dealers towards pre-delivery inspection and after sale service charges from buyers are includible in the value of goods.

Maruti Suzuki India Ltd. Vs. CCE (2010-TIOL-1127-CESTAT)

The Tribunal has held that the cost of secondary packing for the purpose of convenience of transportation of goods is not includible in the value of goods.

CCE Vs. Lagan Jute Machinery Co. Ltd. (2010 (256) ELT 284)

The Delhi High Court has held that the manufacturer exporter is not entitled to claim rebate on both inputs as well as final products under Rule 18 of the Central Excise Rules.

Grasim Industries Ltd Vs Union of India (2010 (256) ELT 553)

Service Tax

Case Laws

The Karnataka High Court has held that no service tax is chargeable on import of taxable service prior to the enactment of Section 66A of the Finance Act, 1994.

CST Vs M/s Toyoda Iron Works (2010-TIOL-584)

The Madras High Court has held that as long as the attributes of utility, sale / purchase and delivery and transferability of software being 'goods' are fulfilled as defined under Article 366(12) of the Constitution of India, the nature of the transaction and the imposition of tax thereon would depend upon the dominant intention of the contracting parties; and imposition of service tax under the heading of Information Technology Software Services cannot be held to be unconstitutional.

Infotech Software Dealers Association Vs UOI (2010-TIOL-620)

The Tribunal has held that Goods Transport Agency (GTA) services availed for procurement of inputs, being a service necessary and in relation to the manufacture of final products, are eligible input services.

Kerala Minerals & Metals Ltd Vs CCE (2010 (19) STR 505)

The Tribunal has held that the procurement of orders by a commission agent in India, which are received and acted upon by an overseas supplier, fulfills the necessary condition of delivery and use of service outside India for the purpose of export of Business Auxiliary Services under the Export of Services Rules.

EM Jay Engineers Vs CCE (2010-TIOL-1200)

Powers of adjudication of Central Excise Officers

The Board has decided to confer the power of adjudication on Superintendents for cases involving service tax up to Rs. 1 lakh in a show cause notice, except in respect of issues relating to taxability of services, valuation of services and cases involving extended period. Accordingly the monetary limits for adjudication of cases has been revised vide Notification No. 48/2010 - Service Tax dated 8th September 2010.

Circular No. 130/12/2010-ST, Dt 20.09.2010

Sales Tax

Case Law

The Supreme Court has held that the determining factor for exemption under Section 5(3) of the CST Act is an inextricable link between the penultimate sale and the export sale. The 'same goods' theory, as pronounced in the earlier decisions which requires that the goods procured should be exported as such in the same form, has no application when the transactions (i) between the taxpayer and the exporter and (ii) the exporter and foreign buyer are inextricably connected. Where the goods procured undergo processing before export, it needs to be established that the purchases and the processing by the exporter were undertaken to meet the specific requirements under the export order of the foreign buyer.

State of Karnataka Vs. Azad Coach Builders Pvt. Ltd. [(2010) VIL-12-SC-CB]

The Supreme Court has held that no tax will be leviable on import of goods from outside India for execution of a project on a turnkey basis provided there exists an inextricable link between the imports and the domestic sale.

Indure Limited Vs. Commercial Tax Officer [2010 - VIL - 14 - SC]

The Karnataka High Court has held that for computing the taxable turnover liable to works contract tax, a contractor shall be eligible for deduction towards depreciation on the owned machinery used for execution of works contract. The deduction will be available even if it is not specifically provided in the Rules.

Larsen & Toubro Limited Vs. State of Karnataka [(2010) 34 VST 53 (Karn.)]

SEBI

Computation of Fees and Charges advised to Portfolio Managers

Under the SEBI (Portfolio Managers) Regulations 1993, the inter se relationship between the portfolio manager and client, mutual rights, liabilities and obligations relating to management of funds or portfolio of securities are specified in the agreement signed between the portfolio manager and the client. The contents of the agreement are laid

out in Regulation 14 to be read with Schedule IV of the Regulations.

Circular No : Cir./IMD/DF/13/2010 Dated on : 05.010.2010

SEBI tightens listing norms for securitised paper

The Security & Exchange Board of India has announced a standard listing agreement with monthly disclosure requirements to stock exchanges for lenders who sell their loans through the securitisation route if they wish to list their securitised instrument.

RBI

New Series of WPI (Base 2004-05=100)

The series on Index Numbers of Wholesale Prices with base 1993-94=100 had been in use since April 2000. Now Ministry came out with the new series of Wholesale Price Index with the base year 2004-05=100 from August 2010, on September 14, 2010.

There are a number of significant changes in the new series in terms of weighting diagram, coverage, and price collection mechanism. There is a reduction in the weight of 'Primary Articles' by 1.9 percentage points. On the other hand, weights of 'Fuel and Power' and 'Manufactured Products' have gone up by 0.7 percentage points and 1.2 percentage points, respectively. In terms of coverage, the number of commodities in the new series has gone up significantly to 676, as compared to 435 commodities of the earlier series.

Further, in order to ensure a better representation of price, the number of price quotations has also increased significantly to 5482 from 1918 price quotations of the old series. The latest WPI revision to the base year 2004-05=100 is a welcome development and will be better representative of overall inflation of the economy.

RBI Monthly Bulletin - October 2010



India, Indonesia get into free-trade mode

India and Indonesia, a member country of the Association of South East Asian Nations (Asean), operationalised a free-trade agreement signed between the two in 2009. The CBEC, on 4th October, 2010 notified amendments to the Customs Tariff (Determination of Origin of Goods) under the Preferential Trade Agreement between India and Indonesia, a member country of the Asean, effective 1st October 2010. Besides Indonesia, five other Asean members - Vietnam, Myanmar, Malaysia, Singapore and Thailand - have also ratified the FTA with India. The free-trade agreement between India and the Asean member countries slashes import duties on thousands of products like seafood, chemicals and apparel on either side. India signed the free-trade agreement on goods with the Asean in August 2009 but the agreement had to be separately ratified by each member country for the agreement to be effective. The Central Board of Excise and Customs (CBEC) on 4th October 2010 issued a notification bringing the FTA with Indonesia into force from 1 October 2010. Other Asean member countries are expected to operationalise the FTA in the coming months as the respective countries ratify the India-Asean free-trade agreement.

India for ASEAN alliance to counter 'aggressive' China www.hindustantimes.com

In a calibrated assertion against China's increasing military assertiveness, India will strengthen its cooperation with countries in the extended neighborhood, especially in the ASEAN (Association for Southeast Asian Nations) region, without escalating tensions, said highly placed government sources.

India is getting closer to countries such as Japan, South Korea and Vietnam, which have tense relations with China. However, Foreign Secretary Nirupama Rao said India aims that "the engagement quotient in the ties (with China) should go up and the confrontation quotient should come down." In Washington, India's ambassador to the United States, Meera Shankar was far more direct. "We are somewhat concerned over – and it's not directed towards India – increasing Chinese assertiveness in terms of Chinese behaviour vis-à-vis many issues on which it may have difference with its neighbouring countries," she said. Shankar also added that there were concerns about 'capacities' the Chinese were building. There are concerns about transparency, intentions and the

purposes for which these capacities are being built," she said.

India is keenly watching the unraveling power play in China, in which the army is becoming more assertive. China is actively engaged in Sri Lanka, Nepal, Pakistan and Myanmar, fostering economic ties and pumping investments, to India's discomfort. China's recent actions on Kashmir have caused heartburn in Delhi. The issue of stapled visa to the residents of Jammu & Kashmir as well as Beijing aiding projects in Pakistan Occupied Kashmir are reflective of such a "mutated stance", these sources said.

Will US sanction on China tire sustain?

www.af.reuters.com

A U.S. union group said on Wednesday it was confident President Barack Obama's decision to slap 35-percent duty on Chinese tires would be upheld when a still-secret World Trade Organization panel ruling is made public in the coming months. China challenged the U.S. action at the WTO and a dispute-settlement panel issued its preliminary confidential ruling to both sides in late September. The final report will be released to both parties in early November. It won't be made public until it has been translated into all the official languages of the WTO, McPherson said.

Indian Union Cabinet approves Judicial Accountability Bill

The Union Cabinet has approved the Judicial Standards and Accountability Bill, 2010 to regulate the conduct of Supreme Court & High Court judges and bring transparency into the judicial system. Moreover, it empowers an oversight committee to investigate complaints lodged against judges.

WTO Okays Transparency Mechanism

www.mb.com.ph

The Committee on Trade and Development (CTD) of the World Trade Organization (WTO) has approved a proposal by Brazil, China, India and the United States to establish a transparency mechanism for preferential trade arrangements (PTAs). To assist the committee in its consideration of each PTA, the notifying member is to submit detailed information, and the WTO secretariat is to prepare a factual presentation of the PTA.