



Mysore

Newsletter 54

July 2008

For Private Circulation Only

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and

'Spectrum' Team



CONVERSION OF PARTNERSHIP INTO COMPANY

S. Vivekananda B.A.L., LL.B., ACS

Part 4

(Recap: To turn firm into company either dissolve the firm and incorporate a new Company or Incorporate a Company to take over the business of the firm under Part IX of Companies Act 1956. For option 2, have min 7 partners, partnership deed, register the firm, min Rs. 1 lakh fixed capital, an agreement for conversion of firm into company among partners. Then check name availability with information that firm is getting converted into company. Then file copy of deed, latest Balance sheet, IT assessment order of the firm, NOC from partners, extract from the register of firm showing the name of the firm, Form 1, 18, 32, 37, 39, 40, 41, 3 copies of MOA & AOA & pay requisite Fee. Read on....)

Important points under Part IX

Conversion

Consent from Banker's and financial Institution is necessary. Business can run under the same name of the firm with suffix 'limited' or 'Private Limited' (Sec 573), unless there is a company already in existence with same name or ROC finds it undesirable (Sec 572).

New Company continues the business of the firm. All movable and immovable properties of the firm shall vest in the Company (Sec 575). As there is no legal transfer of assets and liabilities from the firm to the new company, there is no stamp duty or capital gains.

All legal proceeding commenced by or against the firm, may be continued in the same manner. (Sec 577).

It is advisable for the firm to obtain an indemnity from the Company against all its future transactions as the liability of the Partnership is unlimited.

Instead of executing dissolution deed, have a declaration regarding the existence of the firm and its conversion to a company and non-existence of firm business. However liabilities of the partners for their past acts shall continue until the firm is dissolved. Hence it is advisable to strike of the name of the Partnership firm from the Register maintained by the Registrar of firms and dissolve the partnership firm.

(Concluded)



RESPONSIBILITY

A very 'self-important' college freshman attending a recent football game, took it upon himself to explain to a senior citizen sitting next to him why it was impossible for the older generation to understand his generation.

"You grew up in a different world, actually an almost primitive one!" the student said, loud enough for many of those nearby to hear.

"The young people of today grew up with television, jet planes, space travel, man walking on the moon, our spaceships have visited Mars. We have nuclear energy, electric and hydrogen cars, computers with DSL, BPS, light-speed processing and..."

...pausing to take another drink of beer....

The Senior took advantage of the break in the student's litany and said,

"You're right, son. We didn't have those things when we were young, so we invented them. **Now, you - arrogant little - what are you doing for the next generation?"**

..... Words worth millions.....

"The freethinking of one age is the common sense of the next."

~Matthew Arnold"

News of Use

Remember July 31st: Last date for filing of return by Individuals/HUF/Firms: Last date for filing of return by Individuals/HUF/Firms not covered under 44AB is 31st July. Return can be filed through e-filing. For more details & uploading, please visit... <https://incometaxindiaefiling.gov.in/portal/index.jsp>

SEBI introduces Exchange Traded Currency Futures

The Board approved the amendments to regulation 32 of the SEBI (Depositories and Participants) Regulations, 1996, for doing away with the requirement of the depositories to ensure payments before effecting the transfer, in the demat system.

Business Line, dt June 20, 2008

Clause 49 come up with Compliance Audit under Competition Act:

Competition Commission has asked market regulator SEBI to amend regulations relating to corporate governance to make compliance auditing mandatory for listed companies.

Chapter News



Seminar On HR Practices for Team Building & Management Lessons from Grandma's Stories

Half day Seminar on 14th June 2008 at Rotary Centre, JLB Road, Mysore. The past Chairman of Mysore Chapter, DD Bhat, spoke eloquently on what is a Team, composition of a team, who is a leader, three-way communication, need for a good working atmosphere, advantages of working together as a Team etc. The participants were made to look at and understand the stories from their childhood from the context of Management Skills. The seminar ended with a vote of thanks proposed by CS. Nimmoo Kinger.



Interaction with CS. Harish Kumar Vaid

CS. Harish Kumar Vaid, Member, Central Council of The ICSI, visited Mysore Chapter on Sunday, 22nd June 2008 to have an interaction with the members and students at the chapter premises. CS. Anshuman A.S., Secretary, welcomed the gathering. CS. Harish Kumar Vaid spoke to the members and students about various initiatives taken by the Institute like PMQ courses, Brand Building, MOUs with other Institutes, eLearning Program etc. He was happy to note that Mysore Chapter is two member short of achieving 100% CSBF membership. The gathering was mesmerized by his down to earth problem solving approaches and eloquent speech from the bottom of his heart. CS. D.D. Bhat, Past Chairman of the Chapter proposed the vote of thanks.

Welcoming New Members

CS. Smitha S. and CS. Rashmi M.R.



Moot court

The chapter level competition to select the best four participants to represent the chapter at 6th All India National Moot Court Competition, 2008 - regional round was held at the chapter premises on 22nd June 2008. Mrs. Bollamma A.M., Principal, Sharada Vilas Law College and Dr. Bheemesh M.N., Practicing Advocate, Mysore were the judges for the event. Ms. Pracheta M.,



member of the winning team of The ICSI 5th All India National Moot Court Competition, 2008 coordinated the event.



Two teams selected to represent the chapter are:

TEAM A: Pavithra P. & Rakesh S. TEAM B: Shwetha Nadig & Subodh M.R.

Study Circle Meetings

08.06.2008: Answer to the quires on various subjects by Mr. Shrinivasa M.D.

15.06.2008: Answer to the quires on various subjects by Ms. CS. Smitha S.

22.06.2008 Answer to the quires on various subjects by Ms. Pavithra

Mr. Ramesh moves to Bangalore

One of the precious stone in the crown of Mysore Chapter has moved to Bangalore for a better opportunity. He is none other than Mr. Ramesh P.T, the office incharge of Mysore Chapter. He has been associated with the chapter for more than five years.

The significance of a counsellor's role in orienting a student can hardly be exaggerated. Such was his role, who has steered future of hundreds of students. He had just not been a guide but also a friend and a source of strength and inspiration to all the students. His attitude towards work was much beyond mere duty.



He was truly the person behind every successful programme organized by the Chapter. He always ensured the conduct of the study circles and effective participation from students in all the activities. He has undoubtedly won the hearts of the members and students in equal fervour.

Our best wishes to Mr. Ramesh. May he be successful in all his endeavours !!!
(By Mr. Sunil and Ms. Rashmi)

Best HR Practices!

It may be recalled Samvad in the previous issue suggested sharing best practices in any area including HR. Best practices refers to learnable or good practices that impact people and organizations positively. In continuation, we are sharing one of the best practices in HR.

SKF Bearings encourages fathers to be with their spouses at childbirth as part of parental responsibility. In this

ICSI Mysore e-Newsletter July 2008

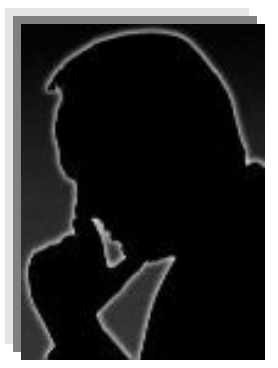
Samvad

By B Jagadeesh

Head H R, SKF Bearings Limited, Bangalore

direction, it offers 10 days paternity fully paid leave twice in the career span of the employee. Why twice, in a way it promotes 2 child norm.

I am sure you too would be experiencing or coming across practices, come and share through Samvad. Let us make Samvad truly interactive and a learning platform. I look forward to your sharing.



Recognize the recognition...

"ಇರುವುದೆಲ್ಲವೂ ಬಿಟ್ಟು ಇರದುದರಡೆಗೆ ತುಡಿದುದೇ ಜೀವನ"

(discounting what we have, keep trying for what we don't have.... is life)

- renowned Kannada Poet Gopalakrishna Adiga

We have heard and also grumbled so many times "Our profession needs more recognition from the government".... "We need more audits and certification works"... "We must be authorised to do certain works exclusively" etc... This is not the case with just us the Company Secretaries, every other professional like the CAs, the CWAs, the Lawyers have time and again raised the same questions. Every professional feels that other professionals have got more slice of recognition. Why demand more recognition? Every professional gives the same answer "It is for the survival of this profession".

Yes, we need more and more recognitions. However many questions arises from these demands for more recognition.

For 'your' survival should - doing business in India - to be made more cumbersome?

If statutory authority only makes you survive, then just think,

- are you really adding any value to the economy?
- What about existing recognitions? Are we doing justice to the existing recognitions?
- Are your reports under existing recognitions honest and bankable?
- How professional are your professional works ?

Are we - professionals from various institutes- in a position to give a 'professional answer' to these questions?

Many a times when we face these kind of questions, we get into the interpretation of "Professionalism", "market dynamics", "Ethics in profession" etc and start a never ending discussion on "present day business environment scenario across the globe". Just to hush hush the questions.

Isn't it?

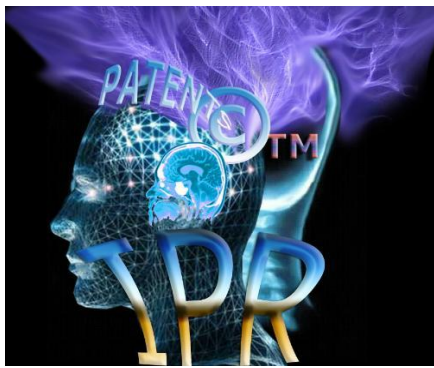
.....More Updates More Updates More Updates More Updates More Updates More Updates

ICSI members to note:

For the members of ICSI - The last date for payment of Annual Membership fee, Annual Certificate of Practice fee and Licentiate fee for the year 2008-2009 has been extended upto 31st August, 2008

Readers to note:

1. You may find all past editions of this eNewsletter at <http://www.esnips.com/web/icsimysore>
2. Mysore Chapter has its eGroup/eParivaar "CSMysore". This is dedicated to the overall growth of the professionalism through sharing of knowledge. Its home page is <http://www.groups.google.com/group/csmysore> You are welcome to join the eParivaar.
3. Legal Updates and news of use column carries only few of the case laws and updates. More updates are available at <http://www.esnips.com/web/icsimysore>
4. Are you having passion in making of the eNewsletter? Here we are to welcome you. Write to us at dattatrics@gmail.com.



Intellectual Property Rights

3V's of IP Management

Lokesh.V DME,M.Com,PGDBA,
PGDIPRL,AMIMA

IP Management, Strategic Planning and Initiatives **L&T Ltd**, Mysore Campus

IPR News

(Compiled by CS. Madhwesh, Mysore)

Teachers' Names to Appear on Test Sheets in Korea

JUNE 13, 2008 www.unbc.ca

The Korean Federation of Teachers' Association said yesterday, "In accordance with the Supreme Court's decision that intellectual property rights can be applied only when a teacher clearly writes his or her name near test questions, more teachers are feeling the need to clarify their names on exam sheets. We will have the system in place by negotiating with the government and at the same time launch a drive to raise the awareness among teachers nationwide to write their names on midterm and final exam sheets.

China issues denial over Microsoft antitrust investigation

June 23, 2008, www.pcformat.co.za

Shanghai Securities News publication to report that China will be instituting an investigation against Microsoft for alleged monopoly behaviour.

Court orders YouTube to give Viacom video logs

July 5, 2008 <http://ap.google.com>

Dismissing privacy concerns, a federal judge overseeing a \$1 billion copyright-infringement lawsuit against YouTube has ordered to disclose who watches which video clips and when as Viacom Inc. and other copyright holders argued that they needed the data to show whether their copyright-protected videos are more heavily watched than amateur clips.

[Contd in adjacent column.....](#)

Value Confidentiality It is necessary that an invention or design is not disclosed to anyone until suitable protection is filed. Disclosure is by publishing, displaying, offering for sale or selling an invention or design. Disclosure prior to filing may reduce the scope of protection that may otherwise be available or prevent a valid patent or design registration form being obtained. A confidentiality agreement is advisable before disclosing your invention or design. This is an age of soft medium information transferring. Appropriate system must be in place and awareness of its importance need to be communicated across the organization i.e. from Chairman to doorman in terms of e-mail policy, confidentiality, non-compete, employee / dealer agreements, more particularly while you conduct field trials of your to be released equipments.

Value others IP by conducting a search of the Patent, Design or Trademark register is recommended before committing resources to protect or exploit an Intellectual Property, or for any business importing the products too. The good reasons for conducting a patent or design search is, it will determine that whether manufacturing or marketing a product will infringe any patents or registered design in the market and it will also assess the degree of Patentability of an invention. Further it also help the organization to understand the new technology areas being developed and protected by others and evaluating such developments. For trademarks, a search will determine whether use of a trademark in relation to certain goods or services will infringe any registered trademark.

Value intangible investment: The new products or designs proceed to market without protection, may run into infringing of Intellectual property rights. This may arise a serious situation to resolve with defending an infringement action or settling a dispute. Other losses like adverting the product, brand etc., leads to unhealthy business reputation or relationships. Not taking steps to ensure that we are free to market the product in any country could lead to expensive and unwelcome litigation by others.

[.....Contd from adjacent column](#)

Nokia and Interdigital end patent dispute

Jul 2, 2008 www.ip-watch.org

The world's top cellphone maker Nokia and InterDigital agreed to drop patent cases in the courts against each other, sending the wireless technology firm's stock up as much as 7 percent. The lawsuits relate to certain 3G mobile phone technology patents owned by the companies and whether they were essential to the UMTS third-generation telephony standard, InterDigital said in a statement.

Google trademark bidding changes - opportunity or concern?

July 3, 2008 www.bytestart.co.uk

Google has made a significant change to the way companies bid for keywords on its search engine advertising platform by lifting ban on a company buying the rights to use another's trademark to trigger its own advert and obtain traffic from the search engine. The changes bring the policy into line with that of the US and Canada. Now, any UK advertiser can bid for the right to display their advert when a trademark is used as a search term.

Legal Round-up

Compiled by CS. N G Omkar and Pracheta M, ACS

INCOME TAX

➤ Interest free loan

The Hon`ble Court has held that it had come on the records that due to bad financial position no interest has been charged in order to safe guard the principal and assessee acted as a prudent person. Therefore no notional interest, on interest free loan for business purpose, will includible in the income of assessee

C.I.T. Vs. Govind Agencies P. Ltd. 16/08/2007 [2007] 295 ITR 290 (All)

➤ DTAA between India and Botswana effective from 01.04.2009:

CBDT Notification No : 70/2008 Dated: 18.06.2008

➤ Penalty for Concealment:

Sec 271 (1)(c) of the Income Tax Act 1961 - AY 1984-85 and AY 1985-86. During the search under s.137, certain incriminating documents were found indicating business outside the books of account. The revised return filed after the search was not a voluntary return. The penalty for concealment was leviable even if the income in the revised return was accepted.

CIT vs Mahabit Prasad Bajaj

➤ Expediting the process

The CBDT has notified steps to be taken to clear the backlog of processing of returns of A.Y. 2007-08. The CBDT had also decided to launch a time bound TDS drive to make those deductors who had not filed their TDS returns for A.Y. 2006-07 do so.

- Direct Tax Instruction No. 6 dated 18 June 2008



- Amitkumar Hegde B Com, MCA(Final)

Gone are the days of floppy. Now everybody has a pen-drive to transfer data. But how about storing all your data on the internet without shelling out a single penny? Then come to <http://skydrive.live.com>, a free online storage facility from Microsoft.

To use this service you need a windows live or hotmail id. If you already have one, then you can login to SkyDrive with the existing id. Once you sign in, 5GB of online space is all yours. You can upload any type of files with few easy mouse clicks. You can have personal folders which are only visible to you, shared folders which are visible to your friends also and public folders which anybody can access. You can create different folders to neatly organize your data. You can share a folder or remove sharing for a folder by clicking 'Folder Options' and then 'Change Permissions'.

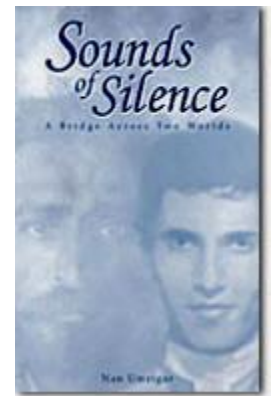
Windows Live Button at the top allows you to easily navigate to other Windows Live services such as Hotmail, Calendar and so on. So now onwards you can make your data truly portable with SkyDrive. Go create an account for yourself now...!

book review

by CS. K. Sarina Chouta Harish, Mysore

The Sounds of Silence

by Nan Umrigar



Death is a transformation; a vehicle of change from the present. But to the bereaved, these are moments of perpetual darkness. An untimely and unexpected loss of a dear one even more agonising.

Encountering an experience such as this, I often wondered why, with all his far reaching discoveries in science and technology, that man had not found out means of reaching the world, where he went following his death. That was when I was reminded of a book that I had read in the late 90s - a touching narrative of a mother connecting with her young son, whom she loses under tragic circumstances, in the Spirit world.

Sounds of Silence is based on the true experience of Nan Umrigar, the authoress. She successfully connects to her spirit son, Karl through automatic writing. Karl Umrigar, dies a successful jockey at an age of 19, begins communication with his mother after nearly six years of his demise, bringing a lot of comfort and solace to the grieving family.

Karl, in his tete a tete with his mother tells her about his life in the spirit world and the continuity of progression even there under the divine guidance of Meher Baba. The narration keeps the reader in awe, it gives hopes to the bereaved that "all is not lost after all....."

CENVAT

➤ Notification on refunds

Refunds at the prescribed percentages of total duty paid on the specified products will be available only if specified inputs are used in the manufacture of such products. In all other cases, refunds would be admissible at the residual percentage of 36%. - the fixation of special rate of refund can be requested only in a situation where the actual value addition is at 115% or higher of the percentage specified in the notification.

Notification No. 32/2008 to 38/2008 dated 10/6/2008

➤ Process of converting copper rods in to wire - Manufacture?

The Tribunal says 'no' under excise law.

Shilpa Copper Wire Industries Vs CCE (2008 (86) RLT 677)

VALUATION

➤ Expenses of after sales service is not additional consideration

Yamaha Motors India Pvt. Ltd. Vs CCE (2008 TIOL 837)

➤ Special discount for sales - Not a admissible deduction

CCE Vs Rishab Instruments Pvt. Ltd. (2008 (226) ELT 230)

CREDIT

➤ Modvat Credit on failure to maintain RG-23A:

Modvat credit was granted to the assessee even though it failed to maintain the RG-23A register because the private records maintained by it clearly established its entitlement to the credit. Modvat credit could not be denied merely because the assessee had failed to maintain the RG-23A register.

CCE vs Johnson and Johnson Ltd.

Article

INDEPENDENT DIRECTORS

- Not just a compliance but *a requirement*



CS. U Padma Shenoy

Company Secretary, CSS Technergy Limited, Hyderabad

PART 2

Independent Director's independence should include the will and ability in terms of knowledge and experience to ask the hard questions required to provide effective foresight in general, and especially in dealing with potential Conflict of Interests.

[Recap: With Indian economy growing to global levels, Indian Corporate Sector needs to upgrade the Corporate Governance System on par with the international norms. Indian MNCs are ahead in terms of quality of management and PSUs in transparency of management. Barring a few exceptions, the Indian Corporate Houses continue to function in the same conventional manner where quarterly Board Meetings are mandatory rituals. Many a times Promoters appoint 'their men' to the Board as independent directors. More often these Independent Directors end up as a decoration on the Christmas tree. They do not ensure a special check on the finances and functioning of the company. Law prescribes disqualification and not qualifications for an Independent Director. The Law requires them to have discretion to think and act independently. The Law wants shareholders to 'elect' an Independent Director and not promoters to 'select'. Read on...]

The ideal methodology to be employed in appointing an Independent Director should be based on certain values encompassing a proper mix of specialization in the areas of accounting and finance, technology relevant to the Company, Corporate Management, marketing and industry knowledge, etc. Perhaps, a skill matrix, which lists desirable competency versus those presently available on the Board, is useful in determining the gaps, which could be filled in by appointing a person with the required competencies.

It would be more appropriate that the Code of Conduct for Corporate Governance of a Company should specifically include the qualifications and attributes that the Company seeks of an Independent Director. A critical element for a person to be an Independent Director is being independent of the pressures exerted by the Management, in true sense and also as perceived by the general public. Independent Director's independence should include the will and ability in terms of knowledge and experience to ask the hard questions required to provide effective foresight in general, and especially in dealing with potential Conflict of Interests.

What ensures Corporate Governance?

The appointment of truly Independent Director to the Board of Directors is not a panacea for all the evils. An Independent Director, however, can bring about transparency in management and can help avoid situations like the not so old Enron scandal on a global level and Global Trust Bank scandal back at home.

The Corporate Sector in India today, is largely governed with people's money. A common man is also a shareholder in an Indian MNC and most of the Equity Capital comes from his pockets. Therefore the India Inc., cannot afford to witness another scandal of bankruptcy, where the root cause is a shoddy or a corrupt management. This would affect the Indian society at a ground level, bringing the complete economy to its knees both in terms of finances as well as credibility in terms of global exposure.

The writing on the wall is very clear: unless Ethics are as important as Economics, unless Fair Play is crucial as Financial Success, unless Morals are as vital as Market Share, we cannot emerge as the global Corporate Leaders.

Service Tax

➤ Construction of flat for sale - No ST

The Gauhati High Court has held that the activity of construction of flats by a builder for their subsequent sale is not chargeable to service tax under construction of complex services. It was further held that any advance received from prospective buyers before or during construction is against consideration for the sale of flats and not towards any service.

Magus Construction Pvt Ltd Vs Union of India [2008-TIOL-321-HCGUW- ST]

➤ Sales tax or Service Tax

The Tribunal has held that the dealer's margin representing the cost of providing free after sales services to the customers is not chargeable to service tax where sales tax has been paid by the dealer on the sale value of cars, including this margin

ASL Motors Pvt Ltd Vs CCE [2008 (13) STJ 244]

➤ Loading & unloading is not a separate service

The Tribunal has held that the activity of loading, which is incidental to the transportation of limestone, would be covered under transportation services and the loading activity cannot be taxed separately under cargo handling services.

CCE Vs Giriraj Brothers [2008 (10) STR 549]

Customs

➤ Variation in offer price - not a ground for rejecting declared value of TV

Big Apple Manufacturing Vs. CC (2008 (226) ELT 270)

➤ Know-how fee

The Tribunal has held that technical know-how fees paid to a foreign supplier of equipment is includible in the transaction value of the said equipment.

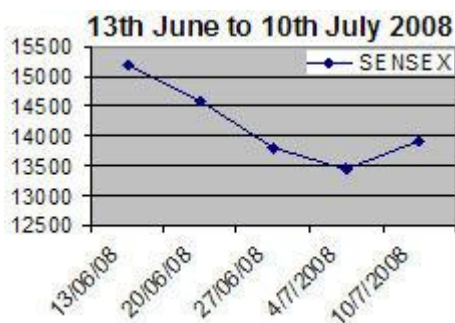
CC Vs. Mahendra Suitings Ltd. (2008 (86) RLT 620)

Investor Secretary – 10

Sreeraj M ACS Final
Bangalore



From the recession in the U.S till the shoot up in the prices of the crude, there never seems to be an end of negative news for the markets to take positive route. As on 10th July 2008, SENSEX closed with 13926.24 points and the NIFTY with 4162.20 points. Political uncertainties, soaring crude prices and surging inflation provided enough news to spoil the tempo this month. Even though the valuations seem cheap at this point of time, there is no conformation yet as to the markets having bottomed up. Some analysts opine that even 10000 levels cannot be ruled out.



My Focus: Couple of investment opportunities that caught my fancy this month were the Gold ETF's (Exchange Traded Funds) and Debt instruments. I feel that the soaring inflation has definitely something to do with the price of gold. Now, the situation is such that some of the stocks have lost by around 80%. My strategy for this month rotates around these stocks. Even if there is a minor pull back in the markets, we can expect these stocks to recover by atleast 20 to 30%.

The Future outlook:

Crude cooling down to \$100 per barrel accompanied by a stable government might give a new dawn for the indices. If this happens, we can expect the SENSEX to bounce back to 21000 levels in the next 8 - 12 months. Stocks from the IT, FMCG, Media, Telecom and Banking sectors might hold a better promise. It seems like valuations of PNB, HDFC, SBI, ICICI etc as under realized. This month, I feel the markets are eagerly awaiting the quarterly results to initiate fresh outcomes.

Tan's Portfolio

	Name of the Stock	Purchase Price (Purchased on 8th May 08)	Current Market Price (10 th July 08)	Returns (In %)
1.	Garware Wall Ropes	108.15	85.7 ↓	-20.76%
2.	Vimta Labs	82.20	60.1 ↓	-26.89%
3.	Neocure Therapeutics	22.65	29.25 ↑	29.14%
4.	Sterling Tools	69.20	55.50 ↓	-19.80%
5.	Finolex Cables	69.90	51.55 ↓	-26.25%
6.	Prism Cement	41.70	35.75 ↓	-14.27%
7.	Assam Company	27.20	23.75 ↓	-12.68%
			TOTAL RETURNS	-91.51%

Note: Send opinions, suggestions and any stock specific queries to rajfoxy@gmail.com

Disclaimer: Trading and investment in stock market is risky and volatile. All the contents/views in this article are for information and not recommendation or an offer or solicitation of an offer to any person with respect to the purchase or sale of the stocks discussed in this article. The author may be trading/investing in, or have positions in the securities mentioned. The author is not responsible for profit/loss incurred by anybody. Please do your home work before investing.

➤ **Exemption notification shall be interpreted broadly**

The Supreme Court has held that an exemption notification should be interpreted in a broad manner so as to further the objectives sought to be achieved through the grant of the exemption.

CC Vs. Reliance Petroleum Ltd. (2008 (86) RLT 505)

DGFT

➤ **Sub-Contracting:**

The Para 6.21.5 of the Hand Book Procedures (Vol. I) dealing with sub-contracting of production process abroad stands amended.

DGFT Public Notice No. 40/2008, DT. 04/07/2008

➤ **Reexport of goods and duty adjustment**

The Supreme Court has held that where imported goods are found to be defective and are reexported, the importer is entitled to either a refund of duty, if paid in cash, or an adjustment of duty, if paid by way of debit in the Duty Entitlement Passbook (DEPB) Scheme, either by way of reversal of the debit entry or by issuance of a fresh DEPB

Rochiram and Sons Vs. Union of India (2008 (226) ELT 20)

➤ **Benefit of Project Import Scheme for spares imported for initial setup**

The Tribunal has held that import of spares under the Project Import Scheme, for maintenance of machinery imported at the time of initial setup, is entitled to the benefits of the Scheme where such spares are imported prior the completion of the project and the value of the spares is within 10% of the value of the project.

Kerala State Electricity Board Vs. CC (2008 (86) RLT 527)

➤ **FOB value of export:**

FOB value of export for the purpose of Value Addition shall be arrived at after excluding the

TRADEMARK:

Whether suit under Section 134 of the Trade Marks Act, 1999 could be filed in any court inferior to the Court of District Judge:

Suit under Section 134 of the Trade Marks Act, 1999 can only be filed before the District Judge and not before any Court inferior to that of District Judge.

Section 9 of the Code of Civil Procedure also states that the Court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Section 15 of the Code says that every suit shall be instituted in the Court of the lowest grade competent to try it. The provision of Section 15 are subject to the provision of Section 9 C.P.C. and where there is a specific provision for institution of a suit in the particular Court except that nominated in the Act, shall have jurisdiction to try the suit.

Sanjai Kumar alias Mallu Vs. Manoj Kumar Sahu and Ors.

RESERVE BANK OF INDIA

Allocation of Debt Investment Limits by the Indian Government:

The Government of India has while reviewing External Commercial Borrowing policy, increased the cumulative debt investment limits from US \$3.2 billion to US \$5 billion and US \$1.5 billion to US \$3 billion for FII investments in Government Securities and Corporate Debt. Allocation of the enhanced limits has been done on a 'first come first served' basis subject to a ceiling of US \$200 million per registered entity. Allotted entities are required to utilize allocated limits within 15 days, otherwise the same will be withdrawn and allotted to the entities in the waitlist.

Press Release No. PR No. 127/2008 Dated: 20.06.2008

Overseas Direct Investment by Registered Trust / Society:

With a view to further liberalising the policy on overseas investments, it has been decided, in consultation with the Government of India, to allow Registered Trusts and Societies engaged in manufacturing / educational sector to make investment in the same sector(s) in a Joint Venture or Wholly Owned Subsidiary outside India, with the prior approval of the Reserve Bank. Trusts / Societies satisfying the eligibility criteria as prescribed in the Annex, may submit the application/s in Form ODI-Part I, through their AD Category - I bank/s.

RBI CIR. NO. 53/2007-08-RB, DT. 27/06/2008

MISCELLANEOUS

Guidelines for import of Rough Marble Blocks/ Slabs for the year 2008-09

DGFT Policy Circular No : 12(RE-2008)/2004-2009 Dated : 27.06.2008

The Central Government notified a list of institutions that had been approved by the National Committee for Promotion of Social and Economic Welfare, the approved projects / schemes specified to be carried out by these institutions, the estimated cost of the projects / schemes and the maximum amount of cost to be allowed as deduction under s.35AC of the Income Tax Act 1961

Direct Tax (NC) Notification No. 27 dated 17 June 2008

The Glass Bottles (Non-Yellowish Pink Coloured) are now added in schedule of DEPB rates with immediate effect

DGFT PUBLIC NOTICE NO. 38/2008, DT. 02/07/2008

Agency Commission, if any. This provision shall be applicable for authorizations issued on or after 1.4.2008.

DGFT PUBLIC NOTICE NO. 43/2008, DT. 04/07/2008

Company Law

- Companies incorporated in India : Not a case of international commercial arbitration : Whether control over companies exercised from outside India not relevant : Supreme Court has no jurisdiction to nominate arbitrator : TDM Infrastructure P. Ltd. v. UE Development India P. Ltd., (SC)
- Transmission and continuation of business by same entity under same name : Fresh registration to be obtained to operate in stock exchange : Nikhil Kanchanlal Vakharia v. Securities and Exchange Board of India, (SC)
- Director's resignation before presentation of dishonoured cheque : Payee impleading director as accused in complaint, malafide : DCM Financial Services Ltd. v. J. N. Sareen, SC.

MCA circular no. 13 of 2007 dated 27-9-2007, permitting ROC to register charge related documents filed up to 300 days from the date of event, without CLB approval, will stand withdrawn effective from 6th July 2008. General Circular No: 1 / 2008 dated 01.07.2008

SEBI

- **Regulations for Issue and Listing of Debt Securities By SEBI:**

SEBI has notified Regulations for Issue and Listing of Debt Securities to provide for simplified regulatory framework for issuance and listing of non-convertible debt securities (excluding bonds issued by Governments) issued by any company, public sector undertaking or statutory corporations.

Press Release No: PR No: 123/2008 Dated: 19.06.2008

Private Equity (PE) PART 2

CS. Madhwesh, Company Secretary, Kurlon Limited

[Recap: Private Equity (PE) is an investment made by non public investors, in companies that have not made public share issue. It includes forms of venture capital also. PE may be made by business enterprises in order to gain control over the other or even buy out the other. For business enterprises in financial distress, the PE investment may provide financial assistance. PE investor earns his return by means of dividend and also by means of a well priced IPO, sale of investment in a mergers/ takeovers or even buybacks. Under this method, time required to raise funds is very less. PE requires high standard of governance and thereby improves the corporate governance of the investee companies. PE can play a very important role in the development of the Small and Medium enterprises in the country. However, cost of equity is quite high compared to other sources of funding.... **Read on.]**

PE in India: In India the PE trend has grown very strong during past four years. As per Boston Analytics, PE investments around \$24.8 billion were made in India between 2004-2007. Boston Analytics also state that India's current market situation and the dynamics of its economy are likely to result in continued PE growth through 2010. At these times when the secondary market is sluggish, slowly causing the primary market also to endure a down trend, for the companies looking for capital infusion, PE seems like one of the contented way of raising funds.

In the recent past, the Indian investors as well as business enterprises are getting more interested in PE funding. PremjiInvest, a private equity fund sponsored by Mr. Azim Premji has invested \$20 million in HealthCare Global (HCG), an oncology care hospital chain (*Business standard May 6, 2008*). Nirmal Lifestyle, is proposing to raise around \$5 billion for investing in its township projects India and out of which it has plans to raise \$500-\$800 million from private equity funds (*Economic times May 6, 2008*).

So, in coming years, PE is going to play a significant role in the financial market in India and Indian corporates should be well outfitted to make best use of this development.

Law Courses through Distance / Online Learning

Anand A Wadadekar, MA Economics, MBA, AMFI, GCIPR, DIT, Pune

Distance learning opens new directions of opportunities to obtain higher education without the constraints of location and time. It takes education to masses. *This column aims to highlight the Legal and corporate Courses offered through distance / online mode by reputed law schools and Universities in India for the benefit of readers.*

*****Courses by National Law Schools:**

1. The National Law School of India University (NLSIU), Bangalore:

Two year Master of Business Laws (M.B.L)
 One year P.G. Diploma in Human Rights Law
 One year P.G. Diploma in Medical Law and Ethics
 One year P.G. Diploma in Environmental Law
 One year P.G. Diploma in Intellectual Property Rights Law

http://www.nls.ac.in/academic_programmes_distance_education.html

2. National Academy of Legal Studies and Research (NALSAR) University of Law, Hyderabad:

[Post Graduate Diploma in Patents Law](#), [Post Graduate Diploma in Media Laws](#)
[Post Graduate Diploma in Cyber Laws](#), [Post Graduate Diploma in International Humanitarian Law](#). Visit: <http://www.nalsarpro.org/>

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