

# RNM ALERT

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U.N. Marwah

Dear Readers,

The onset of monsoons is here and the weatherman reports that the rain gods shall be kind to us. A regular monsoon means that India would be able to live upto the 8.50-9.00% GDP growth projections for the current financial year.

The new provision of Section 206AA of the Income Tax Act, 1961 in regard to the disclosure of PAN while making payments on which withholding of tax provisions are applicable, is proving to be particularly onerous to Non Residents. Accordingly, all Non Resident readers are advised to apply for PAN as early as possible to avoid deduction of tax at the flat 20%, notwithstanding the rate under the relevant DTAA.

The draft of the new Takeover Code issued by the Committee headed by Mr. C Achuthan has been put up on the SEBI website for comments. The existing Code introduced in 1997 has gone through various changes and was in need for a fresh approach considering the international best practices, various pronouncements of the courts and the interests of shareholders. The major change proposed is the threshold limit for making an open offer has been increased from 15% to 25%.

The RBI has issued the latest Master Circulars as on July 1, 2010 which shall remain applicable for one year.

The RNM Team would like to wish all readers in advance a Happy 64<sup>th</sup> Independence Day.

Regards,

**U.N. Marwah**

For and behalf of the RNM Alert Editorial Board

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## DIRECT TAX

### ➤ Case Laws

#### *International Taxation*

##### *S. 5(2)*

A non-resident company having received charter fee for hiring its shipping vessels to assessee in shape of 85% of fish catch in India, sale of fish and realization of sale consideration of fish by it outside India shall not mean that there is no receipt in India and the same is chargeable u/s 5(2).

[Kanchanganga Sea Foods Ltd. v. CIT 2010] 6 taxmann.com 19 (SC)]

#### *Deductions & Exemptions*

##### *S. 10B*

EOU – profits in excess of arm's length price– disallowance on the ground that profits disclosed by assessee higher than ordinary profits – assessing officer has no power to fix profits of assessee under section 80-IA(10) – no calculation for determining excess profit – reduction of profits disclosed from eligible profits not sustainable

Exemption – Income from Sale of Scrap – Not Profit And Gain Derived From Export Oriented Undertaking Not Entitled To Exemption.

[Tweezerman (India) P. Ltd. vs. Add. CIT [2010] 4 ITR (Trib) 130 (Chennai)]

#### *Capital gains*

##### *S. 28, 45*

Liability To Tax – Law Applicable – Effect Of Insertion Of Sub – Section (3) In Section 45 with effect from assessment year 1988-89 – company entering into partnership for carrying on business of real estate development – land forming stock-in-trade of assessee transferred to firm as capital – gains on revaluation of land – assessable as capital gains

[DLF Universal Ltd. vs. DCIT [2010] 3 ITR (Trib.) (Delhi) [SB]]

##### *S. 45: Holding Period – Conversion – Stock-in-trade - Capital Asset*

When stock in trade is converted into capital asset, the holding period of capital asset

for the purpose of computing capital gains is to be reckoned from the date of conversion of stock in trade into capital asset because prior to that date, the asset was not held as capital assets; after conversion of stock in trade of shares into capital assets, shares were not held for 12 months before sale and therefore exemption under section 10(38) was not allowable.

[Lohia Metals (P) Ltd. vs. ACIT (2010) 40 DTR 246 (Chennai) (Trib.)]

***S. 54 - Profit on sale of property used for residence - investment from bank loan***

Assessee having sold self occupied flat and purchased a new residential house partly by taking bank loan and repaid the bank loan partly in the relevant year out of sale proceeds of the original flat, he is entitled for exemption under section 54.

[Ishar Singh Chawla vs. Dy. CIT (2010) 130 TTJ 108 (Mum.) (UO)]

***S. 54***

Cost of Acquisition - Assessee Inheriting Property – Previous Owner Acquiring Property prior to 1981-82 – Indexation to be with reference to 1981-82 [ACIT vs. Syed Maqbul Hussain (2010) 4 ITR (Trib) 44 (Chennai)]

***Profits & Gain from Business & Profession***

***S. 28(iiid) DEPB:***

Where the face value of the DEPB credit is offered to tax as business profits under Section 28(iiid) in the year in which the credit accrued to the assessee, then any further profit arising on transfer of DEPB credit would be taxed as profits of business under Section 28(iiid) in the year in which the transfer of DEPB credit takes place

[CIT v. Kalpataru Colours and Chemicals (2010) 6 taxmann.com 25 (BOM.)]

***S. 32(1)(ii) Depreciation***

Term “Brand” falls within ambit of section 32(1)(ii) and assessee is eligible for depreciation on the same [KEC International Ltd. v. ACIT (2010) 6 taxmann.com 34 (MUM. - ITAT)]

***S. 32 – Depreciation***

Inference of ‘use’ where asset ready to use only where asset supporting an existing and running business – Windmill – no energy generated from windmill and no such business carried on in past – business not commenced and no actual user of windmill – disallowance justified [ACIT vs. Mohit K. Mehta (2010) 3 ITR (Trib) 580 (Bangalore)]

**S. 37 & 115JB**

Business Expenditure – Ascertained Or Contingent Liability – Mercantile System of Accounting – Interest on Loan – Liability not entered in books of accounts – Interest Liability to be allowed since Assessee following mercantile system of accounting

Books Profits – A. O. cannot reopen Audited and certified Accounts – Interest Income not credited to accounts cannot be added to Book Profit u/s S. 115JB

[DCIT vs. Dune Leasing and Finance Ltd. [2010] 4 ITR (Trib) 65 Delhi]

**S. 41(1), 68**

Business Income – Deemed Income – Remission of Liability – Liability Still Outstanding – Addition under Section 41(1) Not Valid

Income from Undisclosed Sources - Share Application

Money – Identity of Contributors established – Failure by some of them to respond to Notice under Section 133 – Not Relevant – Amount not assessable as Income of Assessee.

[CIT vs. GP International Ltd. 186 Taxman 229]

**Minimum Alternate Tax**

**S. 115JB – Deduction u/s 80HHC**

For purposes of clause (iv) of Explanation 1 to section 115JB, extent of reduction in respect of deduction available under section 80HHC has to be computed strictly in accordance with provisions of section 80HHC

[CIT V/s. Al-Kabeer Exports Ltd. [2010] 6 taxmann.com 52 (Bom.)]

**S. 115JB**

Even exempt income is taxable under MAT / s.115JB

[Rain Commodities vs. DCIT (ITAT Hyderabad Special Bench)]

**Tax Assessment, search & seizure**

**S. 94(7)**

Dividend stripping transaction: In cases arising before 1-4-2002, losses pertaining to exempted income cannot be disallowed on ground that same are artificial

[CIT v. Walfort Share & Stock Pvt. Ltd [2010] 6 taxmann.com 17 (SC)]

**S. 69: Undisclosed Investment - Stamp Valuation - (S. 50C, 69B)**

Section 50C creates a legal fiction for taxing capital gains in hands of seller and it cannot be extended for taxing difference between apparent consideration and valuation done by stamp authorities as undisclosed investment under section 69 and 69B.

[ITO vs. Harley Street Pharmaceuticals Ltd. (2010) 38 SOT 486 (Hyd.)]

**S. 147 – Reopening**

Even s. 143(1)(a) cannot be reopened u/s 147 without proper “reasons to believe”.

[Pirojsha Godrej Foundation vs. ADIT (ITAT Mumbai)]

**S. 158**

Search And Seizure – Block Assessment – Undisclosed Income – Only On Basis Of Seized Material and Relating To Such Material – Seized Document Not Containing Signature Of Assessee, Date, Nature Of Transaction – Addition Cannot Be Made On Basis of Dumb Document

[ACIT vs. DR. Kamla Prasad Singh [2010] 3 ITR (Trib) 533 (Patna)]

**Deduction of Tax at Source**

**Sec 194-I, 205**

Tax deducted at source certificates furnished by assessee not showing date of payment to central government by deductor – credit for tax deducted at source must be given to assessee.

[Ahluwalia & Associates vs. ITO [2010] 2 ITR (TRIB) 582 (Ahmadabad)]

**S. 195: Deduction of tax at source – Non-resident - Fees for Technical Services**

Logistic services rendered off-shore though utilized in India. Indian company not liable to deduct tax at source.

[Sun Microsystems India Pvt. Ltd. vs. ITO (2010) 3 ITR 808 (Bang.) (Trib.)]

**S. 197(1) : Deduction of tax at source - Grant of Certificate**

If conditions for grant of certificate under section 197 are duly fulfilled, it would be impermissible for Assessing Officer to reject application merely on a whim and caprice.

[Larsen & Toubro Ltd. vs. ACIT (TDS) (2010) 190 Taxman 373 (Bom.)]

**S. 199: Deduction of tax at source - Credit for tax deducted**

When a particular income is received by assessee after deduction of tax at source and TDS has been duly deposited with Government and assessee received requisite certificate to this effect, on production of certificate assessee becomes entitled to credit of TDS, even if assessee has not directly offered said income for tax as assessee considers that same is not liable to tax.

[Supreme Renewable Energy Ltd. vs. ITO (2010) 124 ITD 394 (Chennai)]

### *Tax Administration*

**S. 260A: Appeal - Maintainability - Rule of Consistency**

If the revenue has not challenged the order of CIT(A) for assessment year 1990-91 and thus accepted the view of the CIT(A), then on principles of consistency it is not open to the revenue to challenge the similar findings in respect of earlier year.

[CIT vs. Prakash Industries Ltd. (2010) 40 DTR 20 (P & H)]

**S. 263**

Where two views are possible and AO has taken one view, CIT cannot exercise his powers under section 263 to differ with view of AO even if there has been a loss of revenue

[CIT v. Honda Siel Power Products Ltd. [2010] 6 taxmann.com 15 (DELHI)]

**S. 263: Revision – Erroneous and Prejudicial Order - Enquiry held by assessee**

Since an enquiry was specifically held with reference to which a disclosure of details was called for by the A O and made by the assessee, the observation of the CIT that the Assessing Officer had arrived at his findings without conducting an enquiry was erroneous and therefore the CIT wrongly exercised the powers by recourse to section 263.

[CIT vs. Development Credit Bank Ltd. (2010) 40 DTR 61 (Bom.)]

### *Penalty*

**S. 271(1) (C)**

Penalty – concealment of income – penalty on basis of additions in assessment order –

assessment records disclosing books of accounts duly audited and net profit declared – no conscious act of assessee leading to concealment of income – necessary information furnished by assessee – not a case for imposition of penalty

[Dabwali Transport Company vs. ACIT [2010] 2 ITR (Trib) 785 (Chandigarh)]

**S.271(1) (c)**

Raising a legal claim, even if it is ultimately found to be legally unacceptable, cannot amount to concealment ...

[Equest India Pvt. Ltd. v. ITO [2010] 6 taxmann.com65(MUM.ITAT)]

### *Wealth Tax*

**S. 2(ea)(v): Asset - Urban land - Under Construction - Commercial use**

Urban land allotted for commercial purposes viz.

industrial use. During period of construction urban land cannot be assessed to Wealth Tax.

[Apollo Tyres Ltd. vs. ACIT (2010) Tax L. R. 364 (Ker)]

**S. 2(ea) (3)**

After amendment w.e.f. 01.04.1999 any commercial establishment / business centre cannot be said to be a 'house' for purposes of clause (3) of section 2(ea) of Wealth-tax Act and will not be included as asset.

[Cravatex Ltd. v. Addl. CIT [2010] 6 taxmann.com 61 (MUM. - ITAT)]

➤ **Latest Notification/  
News**

*Income-tax (Seventh  
Amendment) Rules, 2010*

*- Amendment in rule 12*

*Notification No. 49/2010*

- An individual or HUF is required to furnish the return in Form ITR-4
- A firm is required to furnish the return in Form ITR-5
- From A.Y.2010-11 to whom provisions of section 44AB are applicable shall furnish the return electronically.

[F.No.142/15/2010-TPL, dated 9-7-2010]

## INDIRECT TAX

### Customs, Central Excise & Service Tax

#### ➤ Case Laws

#### *Limitation hits only part of refund claim*

Service Tax – Refund – Tax paid on activity which is not an advertising service, subsequently claimed as refund – Revised claim filed after correcting defects and deficiencies to be treated as filed on the date when original claim was filed – Only part of claim hit by limitation – Appellate Commissioner's order to the extent of allowing claim beyond limitation period set aside

[CST, New Delhi Vs M/s HMA Udyog Pvt Ltd, 2010-TIOL-924-CESTAT-DEL]

#### *NSE transaction charges taxable from May 2008*

NSE transaction charges were made to be liable to service tax with effect from May 2008 and the same cannot be held to be liable before 2008

[M/s Rajiv Stock Broking Limited Vs CST, Ahmadabad, 2010-TIOL-923-CESTAT-AHM]

#### *Revisionary order passed after Order-in-Appeal bad in law*

Passing of revision order by the jurisdictional Commissioner after passage of Order-in-Appeal by Commissioner(Appeals) – embarrassing to declare

exercise of jurisdiction by one Commissioner as good and another bad – Revisionary order bad in law.

[M/s Shiva Builders Vs CCE, Chandigarh, 2010-TIOL-920-CESTAT-DEL]

#### *Amount on which excise duty paid is value for service tax*

Charging of lesser value by sister concern in commercial invoices for goods manufactured and cleared to appellants customers – Proposal to demand service tax from appellants on differential value treating it as commission – When excise duty is discharged by sister

concern on the value at which goods were sold by appellant to customer, profit made by appellant not chargeable to service tax.

[M/s Aia Engineering Ltd Vs CST, Ahmadabad, 2010-TIOL-919-CESTAT-AHM]

*Cement and steel used for laying 'foundation' not inputs for capital goods*

Cenvat Credit on capital goods – in view of LB decision in Vandana Global 2010-TIOL-624-CESTAT-Del-LB - goods like cement and steel items used for laying 'foundation' and for building 'supporting structures' cannot be treated either as inputs for capital goods or as inputs in relation to the final products-analogous hearing of all

similar cases to be conducted at the earliest

[Spice Communication Vs CCE, Chandigarh 2010-TIOL-915-CESTAT-DEL]

*Tax and interest paid before issue of show cause notice, penalty not sustainable*

Section 73 of Finance Act, 1994 provides that when an assessee pays service tax and interest due before issue of show cause notice, show cause notice shall not be issued - in view of the Board's circular F.No.137/167/2006-CX-4, dated 03.10.07 penalties cannot be sustained [M/s Nischint Engineering Consultants Pvt Ltd Vs CCE, Ahmadabad, 2010-TIOL-914-CESTAT-AHM]

*Delay under bonafide belief does not attract penalty*

Appellant registered as a security service provider – under a bonafide belief that services rendered to government organizations like Municipal Corporation of Rajkot and GIDC etc. is not liable to service tax, no tax charged and collected – as soon as department directed them to pay tax, they immediately paid the same with interest – no profit can be said to have been made by not paying Service Tax when the fact remains that they were discharging their tax liability in respect of private individuals – penalty set aside but demand and interest upheld.

[M/s Docsuns Services Pvt Ltd Vs CST, Ahmedabad 2010-TIOL-909-CESTAT-AHM]

*Telephone service, Rent-a-cab service and Chartered Accountants service are input services*

Service Tax – Telephone service, Rent-a-cab service and Chartered Accountants service are input services – Service tax paid thereon eligible as CENVAT credit – No infirmity in impugned order of Appellate Commissioner

[CCE, Visakhapatnam Vs M/s Andhra Pradesh Paper Mills Ltd 2010-TIOL-904-CESTAT-BANG]

➤ **Latest Notification/ News**

*Exemption to transmission and distribution of electricity*

The Central Government vide Notification No. 45/ 2010-Service Tax, directs that the service tax payable on taxable services relating to transmission of electricity up to 26-02-2010 and on distribution of electricity up to 21-06-2010, which was not being levied during the periods, shall not be required to be paid.[Notification No. 45/ 2010-Service Tax, Dated:- 20-07-2010]

*Exemption to commercial or industrial construction at airport*

The Central Government Vide Notification No. 42/2010-Service Tax dated 28-06-2010, has exempted the taxable service of commercial or industrial construction when provided wholly within the airport, from the whole of service tax livable thereon.

This notification shall come into force on 1st day of July, 2010. [Notification No. 42/2010-Service Tax dated 28-06-2010]

*Exemption to cargo handling, warehousing and aircraft operator service*

The Central Government vide **Notification No. 41/2010 - Service Tax** has exempted the services provided by (i) a cargo handling agency in relation to, agricultural produce or goods intended to

be stored in a cold storage, (ii) storage or warehouse keeper in relation to storage and warehousing of agricultural produce or any service provided for storage of or any service provided by a cold storage, (iii) an aircraft operator in relation to transport of export goods in an aircraft, (iv) site formation and clearance, excavation and earthmoving and demolition

and such other similar activities, when provided wholly within the port or other port or airport. This notification shall come into force on 1st day of July, 2010.

[**Notification No. 41/2010 - Service Tax Dated:-28-06-2010**]

## COMPANY LAW

### ➤ Latest Notification/ News

#### *Prohibition for appointment of sole selling agents by companies in specified goods*

In exercise of the powers conferred by sub-section (1) of Section 294AA of the Companies Act, 1956 (1 of 1956), the Central Government, being of the opinion that the demand for the category of goods specified in the Table below is substantially in excess of the production or supply of such goods and that the services of the sole selling agents will not be necessary to create a market for such goods, hereby declares that sole

selling agents shall not be appointed by any company for the sale of such goods in India for a period of three years from the date of publication of this notification in the Official Gazette.

Every category of “Bulk drugs”, “drugs” and “formulations” as defined in the Drugs (Prices Control) Order, 1995, not being, –

- any bonafide preparation included in the Ayurvedic (including Siddha) or Unani (Tibb) systems of medicine; or
- any preparation included in the Homeopathic system of medicine.

[Notification No. G.S.R. 601(E)  
Dated 16-7-2010]

*GDR holder is not a member until transfer or redemption, neither Overseas Depository Bank is a nominee or beneficial owner*

Ministry of Corporate Affairs (MCA) has clarified that a Global Depository Receipt (GDR) holder is NOT a member as,

- a) Under Section 41(1) & 41(2) of Companies Act, 1956, a GDR holders name is neither entered as Subscriber to Memorandum (MoA) nor in Register of Members (RoM)
- b) Under Section 41(3) of Companies Act, 1956, an Overseas Depository Bank under GDR is neither a Depository (as per

Depositories Act, 1996) nor holds share as a Beneficial Owner (BO).

Thus, holder of GDR may become a Member only on Transfer or Redemption into Underlying Equity Shares. Though the underlying shares on transfer/redemption is allotted to Overseas Depository Bank, it cannot be considered as Nominee of GDR holder for the purpose of Section 41 & 42 of Companies Act, 1956

**[General Circular No. 1/2009 [No.17/67/2009 CL-V] dated 16th June 2009]**

***LLP appeals to lie with CLB till NCLT is constituted***

Under the LLP (Amendment) Rules, 2009 Rule 32 of LLP Rules, 2009 stands as under:

32 (1) The Registrar shall, on conversion of a firm, private

company or an unlisted public company into limited liability partnership, issue a Certificate of Registration under his seal in Form 19.

(2) In the event, Registrar has refused the registration, the applicant firm or private company or unlisted public company, as the case may be, may apply to the Tribunal within sixty days from the date of receipt of such intimation of refusal.

LLP (Amendment) Rules, 2009 has inserted a proviso here,

Provided that until the National Company Law Tribunal (NCLT) is constituted under Companies Act, 1956 the application under this sub-rule may be made to Company Law Board (CLB).

The similar provision is inserted in Schedules II, III & IV to Limited Liability

Partnership Act, 2008 under Paragraph 7, 5 & 6 wherever the word “Tribunal” occurs.

**[Notification vide S.O. 385 (E) & 386 (E) dated 4th June 2009]**

## SEBI Updates

### *New online ASBA procedure introduced for IPO*

SEBI is taking steps forward to make the public issue process completely online. Application Supported by Blocked Amount (ASBA) provides an alternative mode of payment in issues whereby the application money remains in the investor's account till finalization of basis of allotment in the issue.

1. It has been decided to make ASBA bid-cum application forms available for download and printing, from websites of the Stock Exchanges which provide electronic interface for ASBA facility i.e. Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). The ASBA forms so downloaded shall have a

unique application number and can be used for making ASBA applications in public issues.

2. In order that the Stock Exchanges fill up essential details of an issue, the Merchant Banker to the issue shall ensure that the following details are provided to the Stock Exchanges **at least 2 days before opening** of the public issue:
- a) Company Name
  - b) Type of issue
  - c) Issue opening date
  - d) Issue closing date
  - e) Price/ price band
  - f) Bidlot
  - g) Other relevant details
  - h) Soft copy of prospectus/abridged prospectus
3. The Stock Exchanges shall ensure the following:

- a) The details furnished by the Merchant Banker to the issue are duly filled in the ASBA form for a specific public issue, before making the same available on websites.
- b) The ASBA form for a specific public issue is made available on the websites of the Stock Exchanges at least one day before opening of the public issue.
- c) A unique application number for an issue is generated for every ASBA form downloaded and printed from the websites. Therefore application made using photocopy of the downloaded form shall not be accepted.
- d) Investors have online access to soft copy of the

abridged prospectus/prospectus of the public issue.

- e) For revisions of bids, investors can take print of a bid revision form.
4. Merchant Bankers and SCSBs are directed to provide a hyperlink to BSE or NSE websites for this facility on their websites.
5. This circular shall be applicable to all public issues opening **on or after July 19, 2010.**

[SEBI Circular no. CIR/CFD/DIL/7/2010 dated July 13, 2010]

### *Proposed makeover of the Takeover Regulations*

The Takeover Regulations Advisory Committee (TRAC) has proposed to replace the Securities Exchange Board of India (“SEBI”) (Substantial acquisition of

shares and takeovers) Regulations, 1997 (“Takeover Code”) in line with international standards and changing economic environment. The Committee constituted under the Chairmanship of Shri C. Achuthan has comprehensively re-written the Takeover Code and submitted a report to SEBI. The recommendations are open for public comments till 31 August, 2010. The two most significant changes in proposed regulations are the increase in threshold limit for a public offer from 15% to 25% and the requirement to give an exit opportunity to 100% public shareholders via a public offer as compared to the minimum 20% now. This proposed change would increase the cost of M&A but is in line with international best practices and bodes well for shareholder interest.

In addition, under the creeping acquisition route an acquirer holding 25% or more voting rights in a target company is allowed to acquire additional voting rights in the target company up to 5% within a financial year, without making an open offer.

[Report of the Takeover Regulations Advisory Committee dated July 19, 2010]

## Miscellaneous Laws Updates

### ➤ Latest Notification / News

#### *Life insurance benefits to Provident Fund employees increased to Rs.1lakh under EDLI*

Employee Deposit Linked Insurance (EDLI) Scheme amended to the effect that on death during employment, Family member/nominee will get the following:

- if Average balance is more than Rs.50,000/-
- then Insurance Amount = Rs. 50,000/- + 40% (Excess), subject to a maximum of Rs. 1,00,000/-

[Notification No. GSR 523(E) dated 18th June 2010.]

#### *Maximum compensation limit increased under Employees*

#### *Compensation Act*

As you are aware, Workmen's Compensation Act, 1923 becomes Employees with enhanced compensation limits, full medical expenses reimbursement, case disposal within 3 months, etc. and also applicable to casual and clericals, the said amendment which has removed the ceiling of monthly wage limit of Rs.4,000/- for the purpose of calculation of Maximum Compensation under the Act is now amended again.

Now, a new monthly wage ceiling limits of Rs. 8,000/- is introduced for the purpose of calculation of 50% of it during computation of Maximum

compensation under the Act. Hence, the maximum compensation can go UPTO 50% of 8000 which comes to Rs. 4000/- that shall be multiplied by Age factor. **Thus, effectively it was erstwhile 50% of Rs.4000 and now it is 50% of Rs.8000/-.**

[Central Government Notification No. S.O. 1258(E) vide Ministry of Labour & Employment dated 31st May 2010.]

## FOREIGN EXCHANGE MANAGEMENT ACT & RBI REGULATION

### ➤ Latest

#### Notification/

#### Circulars

#### *FEMA Master Circulars on foreign exchange law of India issued*

RBI has issued as per the annual pronouncements the following relevant Master Circulars on July 01, 2010 relevant to foreign exchange laws:

- a) Master Circular on Establishment of Liaison / Branch / Project Offices in India by Foreign Entities
- b) Master Circular on Acquisition and Transfer of Immovable Property in India by NRIs/PIOs/Foreign

Nationals of Non-Indian Origin

- c) Master Circular on Import of Goods and Services
- d) Master Circular on Foreign Investment in India
- e) Master Circular on External Commercial Borrowings and Trade Credits
- f) Master Circular on Export of Goods and Services
- g) Master Circular on Direct Investment by Residents in Joint Venture (JV) /Wholly Owned Subsidiary (WOS) Abroad
- h) Master Circular on Remittance Facilities for Non-Resident Indians

/Persons of Indian Origin / Foreign Nationals

- i) Master Circular on Miscellaneous Remittances from India – Facilities for Residents
- j) Master Circular on Compounding of Contraventions under FEMA, 1999
- k) Master Circular on Non-Resident Ordinary Rupee (NRO) Account

#### *Liberalization of External Commercial Borrowing Policy-Take-out Finance Scheme*

Keeping in view the special funding needs of the infrastructure sector, RBI has

issued a Circular to liberalize the refinancing restriction under a Take-out Finance Scheme. The said scheme is applicable to **Indian corporates in the sea port and airport, roads including bridges and power sectors** (eligible borrowers).

Under the Take-out finance scheme Rupee loans availed by eligible borrowers from domestic banks for development of new projects have been permitted to be refinanced through new ECBs, under the RBI approval route, subject to the following conditions:

a) The borrower should have a **tripartite agreement**

with the domestic banks and overseas recognized lenders for either a conditional or unconditional take-out of the loan within three years of the scheduled commercial operation date.

b) The minimum average maturity period of loan is **seven years**.

c) Any fee payable to overseas lender for pre take out period shall not exceed **100 bps per annum**.

d) Domestic banks would be governed by **prudential norms** related to take-out financing.

e) The residual loan taken up by overseas lender shall be regarded as ECB and all existing ECB norms (including reporting requirements) shall need to be complied with.

f) Domestic banks / financial institutions would not be allowed to guarantee the ECB upon take-out or carry any obligation in its balance sheet in this regard.

[A.P. (DIR Series) Circular No. 4 dated 22 July, 2010]

## CORPORATE FINANCE

### ➤ Latest News

#### PRIVATE EQUITY

#### ***Reliance Media Works offers to buy majority stake in Inox Leisure***

Reliance Media Works has offered to buy a majority stake in multiplex operator Inox Leisure in an attempt to end a prolonged tussle between the two companies over a smaller cinema chain. Two persons close to the development said the company, owned by billionaire Anil Ambani, has offered Rs 120 for every share to the owners of Inox, valuing the company at a little over Rs 740 crore.

[Source| Financial Times| 30 Jul ]

#### ***Century to raise \$50 mn from PE for Rs 900 cr project***

Bangalore-based real estate company Century Real Estate is planning to raise close to \$50 million from private equity players to fund its Rs 900 crore project in the city. The project, coming up in northern Bangalore, will be spread over 20 acres.

[Source| Economic Times| 30 Jul 2010]

#### ***Muthoot Finance sells 4%, raises Rs 157 cr***

Gold loan company, Muthoot Finance, has raised Rs 157 crore by issuing shares to the extent of 4% of the firm's capital to private equity firms

Baring Equity Partners India and Matrix partners India.

[Source| Mint| 30 Jul ]

#### ***Baring Private Equity to invest in real estate***

Baring Private Equity Partners (India) Pvt. Ltd (BPEP), the private equity (PE) fund which has traditionally invested in the information technology (IT), healthcare and financial services space, is now planning investments in real estate.

"Apart from the other sectors, real estate will be our new focus," said Rahul Bhasin, managing partner, BPEP India

[Source| Business Standard| 30 Jul]

### ***Qualcomm sells 26% stake to Tulip,GH***

US-based mobile chip maker Qualcomm today sold 26 per cent stake in its Indian broadband unit to Tulip Telecom and Global Holdings for USD 57.72 million (about Rs 268 crore).

[Source| Economic Times| 30 Jul]

### ***IL&FS Investment Managers to acquire Saffron Assets Advisors***

IL&FS Investment Managers Ltd has announced that the Board of Directors of the Company at its meeting held on July 30, 2010, has granted its approval to the Company to acquire the shares of Saffron Assets Advisors Pvt. Ltd. ("SAAPL") an, Indian entity, from Saffron Capital Securities Ltd. ("SCSL"), a Mauritius

entity, thus making it a subsidiary of the Company.

[Source| Business Standard| 30 Jul]

### ***Ashok Leyland to acquire 26% stake in UK's leading Bus Manufacturer Optare***

Ashok Leyland Ltd., the flagship company of the London-based Hinduja Group announced today that it had reached agreement with Optare PLC, a leading bus manufacturer in the UK, to subscribe for a 26% stake as a part of long-term strategic cooperation. The investment is estimated at about USD 7.5 million.

[Source| Economic Times| 30 Jul]

### ***Lakshmi Vilas Bank eyes ailing Citi NBFC***

Lakshmi Vilas Bank (LVB), the south-based, old private sector lender, is in talks with Citigroup to acquire CitiFinancial

Consumer Finance India, the struggling non-banking finance company which gives retail loans to low-income borrowers. LVB has hired investment bank JM Financial to carry out due diligence of CitiFinancial, which has a 9,000-crore balance sheet, 116 branches and close to 1,600 employees.

[Source| Business Standard| 23 Jul]

### ***JSW Steel may sell about 14% stake to Japan's JFE for \$1 billion***

SajjanJindal-led JSW Steel may sell about 14 per cent stake to Japan's JFE for Rs 4,700 crore to cut the company's debt.

[Source| Economic Times| 23 Jul]

### ***Olympus PE to put Rs 2,800 cr more in infra, tech sectors***

Three-year horizon; sequel to Rs 1,350-cr investment in Tata Power. Olympus Capital, the Asia-focused

private equity (PE) fund, is exploring more strategic investment deals with Tata Power and infrastructure supply chain companies.

[Source] **Economic Times** | 21 Jul]

## VENTURE CAPITAL

### ***Rabo Equity to acquire 20% in Vacmet***

Attracted by the rapidly-growing Indian demand for new kinds of packaging in food products, Rabo Equity Advisors, the private equity arm of Rabobank, has agreed to pick up 20% stake in Agra-based integrated packaging company Vacmet India.

[Source] **Business Standard** | 21 July]

### ***SKIL Infra looks to acquire majority stake in Everonn***

Nikhil Gandhi-controlled SKIL Infrastructure, the promoter of Pipavav Shipyard, is likely to

acquire a majority stake in Chennai-based Everonn Education to enter the country's fledgling education industry.

[Source] **Mint** | 19 Jul]

### ***Entertainment Network sells stake to BCCL for Rs 450 mn***

Entertainment Network (India) Ltd said on Friday its board has approved selling its entire stake in Times Innovative Media Ltd to Bennett, Coleman & Co Ltd for Rs 450 million.

[Source] **Economic Times** | 16 Jul]

### ***Norwest invests \$7.2 mn in Perfint***

Norwest Venture Partners (NVP) has invested \$7.2 million in Chennai-based Perfint Healthcare, a medical equipment firm set up in 2005. This is the first healthcare investment in India for the global venture and growth

equity investment firm that manages over \$ 3.7 billion capital.

[Source] **Economic Times** | 16 Jul]

### ***VC funds infuse \$6 mn into Komli***

Digital media network company Komli Media raised \$6 million of venture capital funding from existing investors Nexus Venture Partners, Helion Venture Partners and Draper Fisher Jurvetson.

[Source] **Mint** | 16 Jul]

### ***CX Partners may buy 20% in NTL Electronics***

Private equity (PE) firm CX Partners is close to buying 20% stake in electrical products company NTL Electronics India for around Rs 120 crore, said two persons familiar with the matter. Promoted by Arun and Praveen Gupta, NTL Electronics manufactures

electronic ballasts used to make energy-efficient CFLs. The Noida-based privately held firm supplies to companies such as Osram, Philips, Surya Roshni, Crompton Greaves among others.

[Source| Economic Times| 16 Jul]

### ***Ruia Group may acquire European auto-component company***

The Ruia Group, known for its buying spree, could acquire a European auto component company soon, chairman Pawan Kumar Ruia said. "We are trying to close a deal very soon in one of the auto component companies in Europe. In Europe, a lot of companies are

up for sale. We are working on some projects."

[Source| Mint| 16 Jul]

### **INVESTMENT BANKING**

#### ***HDFC to acquire 41% stake in Credila***

Housing Development Finance Corporation Limited has informed the NSE that the Corporation had agreed to acquire approximately 41% in the fully diluted equity share capital of Credila Financial Services Pvt. Limited (Credila) from DSP Merrill Lynch Capital Limited.

[Source| Mint| 09 Jul]

#### ***ICICI Venture Set Up Infrastructure Equity Fund***

India's largest private-sector lender ICICI Bank said its private equity arm- ICICI Venture Capital Fund would set up an infrastructure equity fund.

[Source| Economic Times| 06 Jul]

#### ***Intex to raise Rs 300 crore from PE investment***

IT hardware and electronics company Intex Technologies (India) is targeting 100 per cent growth in revenues for 2010-11 to Rs 1,200 crore from Rs 593 crore. The company also plans to raise Rs 250-300 crore from private equity (PE) investors in the next three-five years

[Source| Mint| 04 Jul]



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