

RNM ALERT

Thinking of the Bottom Line – Think of Us



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U.N. Marwah

Dear Readers,

The landmark judgment by the Hon'ble Supreme Court of India in the case of *Vodafone International Holdings B.V. Vs. Union of India & Anr.* has shaken the government pundits who were counting on a favourable judgement to shore up revenues and control an increasing deficit. The tax demand, if upheld would have led to the government earning 2 billion USD in tax revenues, including penalties. The foreign investors on the other hand have hailed it as a victory for the rule of law and gives the India Story a further impetus by reiterating the strength of an independent and fair judicial system

which does not allow the government bureaucrats to change the rules of the game mid course. The judgement has drawn a distinction between sham transactions for which they have advised a 'look through' policy and genuine tax planning available to international investors under a 'look at' policy to evaluate the entire transaction as a whole avoiding a dissecting approach. The judgement has wide ramifications to all international structuring under cross border transactions relevant to India.

The Reserve Bank of India during January 2012 slashed the Cash Reserve Ratio (CRR) by 50 basis points giving hope for greater credit access to India Inc. Another round of CRR cut to inject further liquidity into the market is expected in April 2012. As per India's industrial production announced in January 2012, Factory output grew 5.9% in November from a year earlier, a sharp turnaround from a 4.7% decline in October. With the inflation in control, things may just be looking up again for the Indian economy.

Internationally, major banks are now focusing on expanding their business in the growing emerging market, especially in Asia. They have opened new branches and are expanding their networks in these regions. In addition, they have started to look for opportunities to purchase good-quality loan assets from their European peers.

With the India's most populous State, Uttar Pradesh (UP) going to polls very shortly India Inc and policy makers are waiting with abated breath on how events unfold. The Union Budget of India, normally announced each year on February 28 will be postponed due to the UP elections. Many are expecting a reform oriented Budget to instill further investor confidence.

Regards,

U.N. Marwah

For and behalf of the RNM Alert Editorial Board

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DIRECT TAX

➤ Case Laws

Deemed Dividend

Sec2 (22)(e): Deemed dividend-Not a share holder-Loan or advance

Assessee Company took certain loan from two companies. Assessing Officer was of view that said loan was to be added to assessee's income as deemed dividend under section 2(22)(e). The Court held that an assessee who is not a share holder of company, from which he received a loan or advance, cannot be treated as being covered by definition of word 'dividend' as provided in section 2(22)(e). (A.Y. 2006-07).

[Source: CIT v. Navyug Promoters (P) Ltd. (2011) 203 Taxman 618 (Delhi)(High Court)]

Charge of Income Tax

Sec 4: Income-Mutuality-Transfer fee-Non occupancy charges-Members-Housing Society [Sec2(24)]

Amount received in excess of the limits prescribed under the law from its members by the Housing Society is also exempt from tax on the principle of mutuality. (A.Y. 2005-06).

[Source: ITO v. Damodar Bhuvan CHS Ltd. ITA No. 1610/Mum/2010 dated 16-9-2011 Bench 'D'. 421 (2012) 43-B BCAJ. (2012) Jan 33]

Scope of Total Income

Sec 5: Income-Accrual-Builder-Slum rehabilitation project-Sale of TDR-Project completion method-Method of accounting(Sec 145)

Assessee being a builder, had taken a slum rehabilitation project. Assessee had been allotted TDR in lieu of handing over possession of constructed transit building. Assessee has sold the TDR in two installments. Assessing Officer taxed the receipts of TDR as independent income. Assessee contended that as they are following project completion method as per AS. 7, income from project had to be computed in year of completion. The Tribunal directed the Assessing Officer to compute the income of project after taking into consideration entire expenditure and receipt from beginning of year including TDRs. In case the project was not found complete, Assessing Officer would set off TDR receipts against work in progress and no income would be assessed on account of TDR receipts separately. (A.Y. 2007-08).

[Source: ACIT v. Skylark Build (2011) 48 SOT 306 (Mum.)(Trib.)]

Profit & Gain from Business & Profession

Sec 14A: Business expenditure-Exempted income-Method of computation-Reasonableness-Rule 8D-Prospective

Section 14A(2), 14(3) and Rule 8D are prospective. For earlier years the Assessing Officer is required to reject the claim of assessee with regard to the extent of such expenditure for cogent reasons and then determine the amount of such expenditure on the basis of reasonable and acceptable method of apportionment. (A.Y. 1998-99 to 2005-06).

[Source: Maxopp Investment Ltd. &Ors. v. CIT (2011) 64 DTR 122 (Delhi)(High Court)
CIT v. Escorts Finance Ltd. &Ors. (2011) 64 DTR 122 (Delhi)(High Court)]

Sec 14A: Business expenditure-Exempted income–Dividend-No expenditure incurred

When no expenditure in fact incurred in earning dividend income, no disallowance is permissible. (A.Y. 1997-98).

[Source: CIT v. Reliance Industries Ltd. (2011) 339 ITR 632 (Bom.)(High Court)]

Sec 14A: Business expenditure-Exempted income-Interest free funds

If there were funds available, both interest free and interest bearing, then a presumption would arise that interest free funds have been generated for investments and no disallowance of interest could be made under section 14A. (A.Y. 2004-05).

[Source: Bunge Agribusiness (India) (P) Ltd. v. Dy. CIT (2011) 64 DTR 201 (Mum.)(Trib.)]

Sec 36(1)(iii): Business expenditure-Interest on borrowed capital-Year of allowability–Compromise decree

Assessee could not repay the loan due to financial difficulty. Lender filed the suit and demanded the interest. After some time a consent decree was passed on 8-2-2001 on which the assessee has agreed to repay the loan with interest. The assessee claimed the interest as deduction on the ground that same was crystallised when the consent term was passed. Assessing Officer held that the interest cannot be allowed in the relevant year. The Court held that since compromise decree was passed on 8-2-2001, assessee was entitled to claim deduction of that liability in year in question. (A.Y. 2000-01)

[Source: CIT v. Jain Studio Ltd. (2011) 203 Taxman 522 (Delhi)(High Court)]

Sec 37(1): Business expenditure-Capital or revenue-Removal of encroachments

The assessee claimed the expenditure on removal of encroachments as a revenue deduction on the ground that the expenditure was incurred in the normal course of the business. The AO, CIT(A) & Tribunal rejected the claim on the basis that the assessee had acquired an advantage of an enduring nature. The High Court (for an earlier year, Airport Authority of India v. CIT 303 ITR 433) upheld the view of the authorities that the expenditure was capital in nature. For the present year, the issue was referred to the Full Bench. HELD by the Full Bench reversing the lower authorities:

Expenditure incurred to fine tune trading operations to enable the management to run the business effectively, efficiently and profitably leaving the fixed assets untouched would be an expenditure of a revenue nature even though the advantage obtained may last for an indefinite period. On facts, the land belonged to the assessee and the amount paid for removal of encroachers was not for acquisition of new assets. The payment was made to facilitate its smooth functioning of the business i.e. in relation to carrying on the business in a profitable manner (Airport Authority of India 303 ITR 433 (Delhi) reversed; Bikaner Gypsum v. CIT 187 ITR 39 (SC) followed)

[Source: Airport Authority of India v. CIT (Delhi)(High Court)(Full Bench). www.itatonline.org]

Capital Gain

Sec 50C: Capital gains-Special provision for full value of consideration in certain cases–Stamp valuation not challenged by assessee under section 50C(2)

Assessee sold a piece of land value of which sale deed was registered was found to be value below valuedetermined by Stamp Valuation Authority. Assessing Officer invoked provisions of section 50C and broughtto tax differential. As the assessee has accepted the valuation determined by Stamp Valuation Authority andnot availed the opportunity under sub section(2) of section 50C for demonstrating that fair market value wasless than stamp duty valuation, Tribunal held that Assessing Officer had rightly invoked the provision ofsection 50C.

Sanjaybhai Z. Patel v. ACIT (2011) 48 SOT 231 (Ahd.)(Trib.)

Sec 54: Capital gains-Profit on sale of property used for residential house-Investment of sale consideration-No requirement that such investment should be in the name of assessee only-Property purchased in the joint names of assessee and husband(Sec54EC)

To claim exemption under section 54 and 54EC what is material is investment of sale consideration inacquiring residential premises or constructing a residential premises or investing amount in bonds set out insection 54EC, there is no requirement that such investments should be in name of assessee only. Assessee sold her residential house property and invested part of sale proceeds in purchasing residential house propertyand specified bonds in joint names of assessee and her husband. The Court held that as entire considerationhad flown from assessee and no consideration had flown from her husband, merely because either in saledeed or in bonds her husband's name is mentioned, in law, he would not have any right, and assessee couldnot be denied benefit of deduction under section 54 and 54EC. (A.Y. 2007-08).

[Source: DIT v. Jennifer Bhide (2011) 203 Taxman 208 (Karn.)(High Court)

CIT v. Voith Paper Fabrics India Ltd. (2011) 64 DTR 58 / 245 CTR 516 (P&H)(High Court)]

Cash Credit

Sec 68: Cash credits–Deposits-Burden of proof-Public notice

Assessee company raised deposits by public notice and brought on record every possible information regarding the depositors which was included in the application forms submitted by them, the Court held that it has discharged the initial onus that lay on it under section 68, hence addition could not be made merely for the reason that no confirmation letters were filed in respect of some depositors. (A. Y. 1997-98)

[Source: CIT v. Samtel Color Limited (2011) 64 DTR 46 (Delhi)(High Court)]

International Taxation

Transfer of shares of foreign company by non-resident to non-resident does not attract Indian tax even if object is to acquire Indian assets held by the foreign company

A Cayman Island company called CGP Investments held 52% of the share capital of Hutchison Essar Ltd, an Indian company engaged in the mobile telecom business in India. The shares of CGP Investments were in turn held by another Cayman Island company called Hutchison Telecommunications. The assessee, a Dutch company, acquired from the second Cayman Islands company, the shares in CGP Investments for a total consideration of US \$ 11.08 billion. The AO issued a show-cause notice u/s 201 in which he took the view that as the ultimate asset acquired by the assessee were shares in an Indian company, the assessee ought to have deducted tax at source u/s 195 while making payment to the vendor. This notice was challenged by a Writ Petition but was dismissed by the Bombay High Court. In appeal, the Supreme Court remanded the matter to the AO to first pass a preliminary order of jurisdiction which the AO did. This order was challenged by the assessee by a Writ Petition which was dismissed by the High Court (329 ITR 126 (Bom)). On appeal by the assessee, HELD allowing the appeal.

[Source: Vodafone International Holdings B.V. vs. UOI (Supreme Court)]

Assessment Procedure

Sec147: Reassessment-Reason to believe-Absence of new material. Assessment u/s 143(3)

Assessing Officer reopened the assessment on the ground that business expenses claimed by the assessee could not be allowed as no business was carried on in the relevant assessment year. It was found that earlier years the expenses were allowed under section 143 (3), therefore in the absence of any fresh material before the Assessing Officer, reopening of assessment on the basis of material which was already taken into consideration by the Assessing Officer at the time of original assessment was not valid. (A.Y. 2001-02)

[Source: CIT v. Trimurti Builders (2011) 64 DTR 91 (MP) (High Court)]

Sec147: Reassessment-Sanction-Commissioner-Joint Commissioner-Curable irregularity-Sanction of Commissioner instead of Joint Commissioner renders reopening invalid(Sec148,151(2),292B)

The AO issued a notice u/s 148 to reopen an assessment. As u/s. 143 (3) order had not been passed & 4 year had elapsed, the AO ought to have obtained the sanction of the Joint/Additional CIT u/s 151(2). Instead, he routed the file through the Additional CIT and obtained the sanction of the CIT. On appeal by the assessee, the Tribunal struck down the reopening on the ground that correct sanction had not been obtained. On appeal by the department, HELD upholding the Tribunal.

[Source: CIT v. SPL's Siddhartha Ltd (Delhi) (High Court). www.Itatonline.org]

**Sec147: Reassessment-Non disclosure of primary facts-Prima facie reason–
Assessment under section 143(1)(Sec14A,143(1))**

What is necessary to reopen an assessment is not final verdict but a prima facie reason. Once reason is recorded by Assessing Officer and subject to other conditions laid down in enabling provision, Assessing Officer assumes jurisdiction to issue notice under section 148. Merely because for earlier assessment years issue in dispute has been decided by Commissioner (Appeals) in favour of assessee cannot be a fetter to Assessing Officer in exercising his jurisdiction under section 147. (A.Y 1999-2000)

[Source: Asst CIT v. Tube Investments of India Ltd (2011) 133 ITD 79 (Chennai) (TM) (Trib)]

**Sec147: Retrospective amendment no basis beyond 4 years. AO not to delay
passing objection order**

For AY 2005-06, the AO passed a s. 143(3) order in which he allowed s. 80-IA deduction. Thereafter, after the expiry of 4 years, he reopened the assessment u/s 147 on the ground that in view of the retrospective amendment to the Explanation to s. 80-IA by the F (No. 2) Act 2009 w.r.e.f. 1.4.2000, the assessee, being a works contractor, was not eligible for s. 80-IA deduction. The AO took 6 months to deal with the objections and passed the assessment order within 2 weeks. On a Writ Petition filed by the assessee to challenge the assessment order, HELD allowing the Petition.

[Source: Doshion Ltd Vs. ITO (Gujrat High Court)]

**Sec154: Rectification of mistake-Prima facie adjustment-
Intimation(Sec143(1)(a))**

Where the issue involved is debatable, an intimation under section 143(1) (a) disallowing claim based on such debatable issue on ground that it is prima facie inadmissible, cannot be sustained. When error is pointed out it is the duty of Assessing Officer to amend under section 154(1)(b).

[Source: Asst CIT v. Haryana Telecom Ltd (2011) 133 ITD 99 (Delhi) (Trib)]

Tax Deduction at Source

Sec194 C: Deduction at source-Sub-Contractors-Union of Truck operators

The assessee was a truck operators' union and procured contracts for its members. During the assessment of its income, the Assessing Officer made an addition after disallowance under section 40(a)(ia) of the Income Tax Act, on the ground that it failed to deduct tax at source as required under section 194 C (2) of the Act. The Court held that there being no sub contract the tax was not deductible at source under section 194C.

[Source: CIT v. Truck Operators Union (2011) 339 ITR 532 (Mad.) (High Court)]

Appeals & Revision

Sec263: Revision of orders prejudicial to revenue-Exemption-Capital gains- Investment in house with in time specified u/s139(4)(Sec54F))

Commissioner passed the order u/s 263 withdrawing exemption u/s 54F, on the ground that new house was registered in favour of the assessee beyond the due date prescribed under sub section (1), of section 139 and that the assessee failed to deposit the sale proceeds as provided under section 54F (4). High Court held that Tribunal was justified in setting aside the order of the Commissioner by holding that the investment made by the assessee being with in time specified under section 139(4), the assessee is eligible for exemption under section 54F in view of the binding decision of the Jurisdictional High Court. (A.Y. 2006-07)

[Source: CIT v. Vrinder P. Issac (Smt) (2011) 64 DTR 376 (Karn.) (High Court)]



INDIRECT TAX

Service Tax

➤ Case Laws

Business Does Not Necessarily Imply Requirement of Profit Motive

Word & Phrases- Business- Used in a taxing statute, it implies sense of occupation or profession, which occupies time, attention and labour normally with object of making of profit as against support or pleasure- Section 65(94) of Finance Act, 1994

[Source: Punjab Ex-servicemen Corporation v Union of India, 2012 (25) STR 122 (P&H)]

Cenvat Credit Cannot be Denied on Change of Name of the Company

Cenvat credit- Input service- Change of name of the company- Fact of change of name not disputed- Credit not deniable in respect of such invoices merely on the ground that the same were issued in earlier name of the company- Rule 3 of Cenvat Credit Rules, 2004.

[Source: Showa India (P) Ltd. v Commissioner of Central Excise, Faridabad, 2012 (25) STR 152 (Tri-Del)]

Input Services Need Not be Used Within Same Factory

Services rendered for maintenance of wind mills for generation of electricity which in turn transmitted to appellant's unit falls under definition of input service as there exists direct nexus in the manufacture of final product- Absence of any provision in Cenvat Rules which stipulates input services to be used in the factory and not at the different place- Services rendered for maintenance of wind mill integrally connected with the manufacture of final product and hence, eligible for Cenvat Credit- Rules 2(1)(ii), 4(1) and 4(7) of Cenvat Credit Rules, 2004

[Source: Maharashtra Seamless Ltd. v Commissioner of C. Ex., Raigad, 2012 (25) STR 167 (Tri-Mumbai)]

Cenvat Credit of Outdoor Catering

Cenvat Credit of Service Tax- Input Service- Outdoor Catering Service- Cost of outdoor service recovered from workers/employees- Employer/manufacturer cannot take credit of that part of service tax which was borne by ultimate consumers viz. workers/employees- Impugned order set aside- Rule 2(1) of Cenvat Credit Rules, 2004

[Source: Commissioner of C. Ex., Pune-I v Bosch Chassis Systems India Ltd., 2012 (25) STR 175 (Tri-Mumbai)]

Credit Availed Prior to Making Payments of Service Tax

Credit availed prior to making payments of Service tax and charges- HELD: Credit was permissible as there was no dispute about genuineness of the service provider- However, for period between dates of taking of credit and payments, as the assessee had enjoyed monetary benefit, they were liable to pay interest and penalty- Rules 14 and 15 of Cenvat Credit Rules, 2004

[Source: Praveen Jain & Co. Pvt. Ltd. v Commissioner of Service Tax, Delhi, 2012 (25) STR 196 (Tri-Del)]

➤ Notifications/Circulars

Refund of Service Tax to Exporter

The Central Government has superseded Notification 17/2009-ST dated 07.07.2009 by which so far Service Tax Refund (STR) was made available to exporters, by issuing **Notification No. 52/2011-Service Tax**. Now, any further claim of refund can be made accordance to the term and condition mentioned in the new notification.

Under this Notification, now refund of Service tax paid on specified service can be claimed either (i) on the basis of Schedule of Rate (Electronic Service Tax Refund Scheme has been launched with effect from 03/01/2012) or , (ii) on the basis of documents. Under former Notification, refund could be claimed only on the basis of documents.

[Source: Notification No. 52/2011-Service Tax. Dated 30-12-2011]



CENTRAL EXCISE

➤ Case Laws

FOB Value Does Not Need to be Equal to Present Market Value

Export under DEPB Scheme- FOB value- Declaration of- Exporter is not bound to fix FOB value at PMV (Present Market Value) – Exporter is free to sell goods at a profit- Impugned order fixing FOB value to be equal to PMV being without any legal basis, hence, set aside- C.B.E.& C. Circular Nos. 69/97- Cus. dated 8-12-1997, 27/2000-Cus., dated 5-4-2000 and 77/2002-Cus., dated 27-11-2011.

[Source: Kanak Metal Industries v Commissioner of Customs, Jodhpur, 2012(275) ELT 115 (Tri-Del)]

Input Credit of Barbed Wire

Cenvat Credit- Input credit- Barbed wire- Assessee manufacturing and clearing transmission line tower hence eligible to Cenvat Credit on barbed wire which is anti climbing devise- Rule 3 of Cenvat Credit Rules, 2004.

[Source: Commissioner of Central Excise, Nagpur v KEC International Ltd., 2012(275) ELT 112 (Tri-Mumbai)]

Valuation Under Central Excise

Sales at distributor's premises- In such case, distributor's commission and freight expenses upto distributor's premises are includible in assessable value- Section 4 of Central Excise Act, 19445

[Source: Hindustan Coca- Cola Beverages P. Ltd. v C.C.E., Chandigarh, 2012(275) ELT 103 (Tri-Del.)]

No Demand for Interest if Time-Barred

Limitation- Demand for interest on the differential duty paid consequence to issue of supplementary invoices is subject to the bar of limitation- Show cause notice issued on 25-04-2008 proposing the demand for interest in relation to differential duty paid on 12-5-2006- Demand for interest clearly time-barred- Section 11AB of Central Excise Act, 1944.

[Source: Paramount Rubber Industries v Commissioner of C.Ex., Delhi- IV, Faridabad, 2012(275) ELT 98 (Tri-Del)]

Refund Due to Reduction in Prices After Clearance

Refund- Valuation (Central Excise)- Reduction in prices after clearance- Price variation clause- Refund consequent to downward revision of prices after clearance- Whether assessment is provisional or not is not at all relevant provided refund claim filed within time limit- Refund allowed- Section 11B of Central Excise Act, 1944- Rule 7 of Central Excise Rules, 2002.

[Source: K.J.V. Alloys Conductors P. Ltd. v Commissioner of C.Ex., Hyderabad, 2012(275) ELT 90 (Tri-Bang.)]



RBI & SEBI UPDATES

➤ Circular

External Commercial Borrowings (ECB) Policy–Infrastructure Finance Companies (IFCs)

It has now been decided that the designated AD Category – I banks should certify the **leverage ratio** (i.e. outside liabilities/owned funds) of IFCs desirous of availing ECBs under the **approval route** while forwarding such proposals to the Reserve Bank of India.

[Source:RBI/2011-12/367 A.P. (DIR Series) Circular No.70 dated January 25, 2012]

External Commercial Borrowings – Simplification of procedure

As a measure of simplification of the existing procedures, it has been decided to delegate powers to the designated AD category-I banks to approve the following requests from the ECB borrowers, subject to specified conditions:

a) Cancellation of LRN

The designated AD Category-I bank may directly approach DSIM for cancellation of LRN for ECBs availed, both under the automatic and approval routes, subject to fulfillment of the following conditions:-

- (i) no draw down for the said LRN has taken place; and
- (ii) the monthly ECB-2 returns till date in respect of the LRN have been submitted to DSIM.

b) Change in the end-use of ECB proceeds

The designated AD Category-I bank may approve requests from ECB borrowers for change in end-use in respect of ECBs availed under the **automatic route**, subject to the following conditions:-

- (i) the proposed end-use is permissible under the automatic route as per the extant ECB guidelines;
- (ii) there is no change in the other terms and conditions of the ECB;
- (iii) the ECB is in compliance with the extant guidelines; and
- (iv) the monthly ECB-2 returns till date in respect of the LRN have been submitted to DSIM.

The AD Category – I bank shall continue to monitor the utilization of end-use proceeds and changes in the end-use should be promptly reported to DSIM, RBI in Form 83. However, change in the end-use of ECBs availed under the **approval route** will continue to be referred to the Foreign Exchange Department, Central Office, Reserve Bank of India, as hitherto.

The above modifications to the ECB guidelines will come into force with immediate effect.

[Source:RBI/2011-12/366 A.P. (DIR Series) Circular No.69 dated January 25, 2012]

Guidelines on Compensation of Whole Time Directors / Chief Executive Officers / Risk takers and Control function staff, etc.

As hitherto, private sector and foreign banks operating in India would be required to obtain regulatory approval for grant of remuneration to WTDs/ CEOs in terms of Section 35B of the Banking Regulation Act, 1949 (B.R. Act, 1949). The approval process will involve, inter alia, an assessment whether the compensation policies and practices are in accordance with the Financial Stability Board (FSB) Principles.

[Source: RBI/2011-12/349 DBOD No. BC. 72 /29.67.001/2011-12 dated January 13, 2012]

Foreign investment in Single-Brand Retail Trading Amendment to the Foreign Direct Investment (FDI) Scheme

It has now been decided that FDI up to 100 per cent would be permitted in Single Brand product trading under the Government route subject to the terms and conditions as stipulated in Press Note No. 1 (2012 Series) dated January 10, 2012 issued by Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India.

[Source: RBI/2011-12/348 A. P. (DIR Series) Circular No.67 dated January 13, 2012]

Foreign Exchange Management Act, 1999-Export of Goods and Services-Forwarder's Cargo Receipt

It has now been decided that authorized dealers may accept Forwarder's Cargo Receipts (FCR) issued by IATA approved agents, in lieu of bill of lading, for negotiation/collection of shipping documents, in respect of export transactions backed by letters of credit, if the relative letter of credit specifically provides for negotiation of this document in lieu of bill of lading even if the relative sale contract with the overseas buyer does not provide for acceptance of FCR as a shipping document, in lieu of bill of lading.

[Source:RBI/2011-12/345 A. P. (DIR Series) Circular No.65 dated January 12, 2012]

External Commercial Borrowings (ECB)

The ECB limit for eligible borrowers under the automatic route was enhanced to USD 750 million or equivalent per financial year per borrower for permissible end-uses under the automatic route vide A.P. (DIR Series) Circular No. 27 dated September 23, 2011. Consequent to the enhancement in limits, the revised average maturity guidelines under the automatic route are as follows:-

- a) ECB up to USD 20 million or equivalent in a financial year with minimum average maturity of three years; and
- b) ECB above USD 20 million and up to USD 750 million or equivalent with minimum average maturity of five years.

Accordingly, the requirement of average maturity period, prepayment and call / put options specified vide A.P. (DIR Series) Circular No.17 dated December 4, 2006 (for additional amount of USD 250 million) has been dispensed with.

It is also clarified that the eligible borrowers under the automatic route can raise Foreign Currency Convertible Bonds (FCCBs) up to USD 750 million or equivalent per financial year for permissible end-uses. Similarly, corporates in specified service sectors, viz. hotel, hospital and software, can raise FCCBs up to USD 200 million or equivalent for permissible end-uses during a financial year subject to the condition that the proceeds of the ECB should not be used for acquisition of land.

Vide para 2(viii) of A.P. (DIR Series) Circular No.01 dated July 04, 2011, ECB / FCCB availed of for the purpose of refinancing the existing outstanding FCCB were to be reckoned as part of the limit of USD 500 million available under the automatic route as per the extant norms. Consequent to the enhancement in the limits under the automatic route, it is clarified that the ECB / FCCB availed of for the purpose of refinancing the existing outstanding FCCB will be reckoned as part of the limit of USD 750 million available under the automatic route as per the extant norms.

[Source:RBI/2011-12/340 A. P. (DIR Series) Circular No.64 dated January 05, 2012]



CORPORATE FINANCE

➤ Latest News

INVESTMENT BANKING

New York's Berenson Values VarunBajpai's Startup I-bank At \$60M

Violet Arch Capital Advisors, a start-up investment bank set-up by former SBI Macquarie Infrastructure Fund CEO VarunBajpai, has roped in New York-based Berenson & Company as a strategic investor by selling around 7.5 per cent stake. The deal with Berenson & Co, a financial advisory and investment management firm, values six month old Violet Arch Capital at \$60 million. **Violet Arch started by acquiring Alchemy Shares & Stock Brokers from its promoters that included RakeshJhunjunwala.**

[Source: Reuters, January 06, 2012]

Merchant Bankers To Disclose Post-listing Performance Of Companies

Market regulator SEBI has mandated all merchant bankers to disclose the performance of the companies (whose public issues they have managed) on various parameters, in a move that will allow investors to weigh their investment decisions based on the track record of the respective banker handling the issue. In case more than one merchant banker is associated with a public issue, all merchant bankers who have signed the due diligence certificate shall disclose the track record.

[Source: The Hindu business Line, January 10 2012]

VENTURE CAPITAL

Healthkart Raises Rs 27Cr From Sequoia Capital, Omidyar

Ten-month-old Gurgaon-based start-up Bright LifecarePvt Ltd, which runs the online health store Healthkart.com, has raised Rs 27 crore in second round of funding from existing investor Sequoia Capital and another new investor Omidyar. The fund raised is expected to be used for expansion of its product portfolio and developing an online magazine

[Source: The VentureBay, January 11,2012]

Accel, SVB And K Ganesh Invest \$5M In Online Jeweller Bluestone

Accel Partners, and K Ganesh, founder of TutorVista Global (now under the UK-based Pearson Group) have invested up to \$5 million in Bluestone.com, an online jewellery store run by Bangalore-based Jewels Online Distribution India Pvt Ltd. Bluestone.com was founded by VidyaNataraj and Gaurav Singh Kushwaha in mid-2011. Before co-founding the e-commerce initiative, Nataraj was a senior strategy consultant at PricewaterhouseCoopers in India. She also grew her family business Landmark

Ltd, one of India's largest lifestyle retail chains selling books and music, before its acquisition by TATA Trent.

[Source: Reuters, January 24, 2012]

Sequoia Capital Invests \$6.6M In Knowlarity Communications

Gurgaon-based Cloud telephony start-up Knowlarity Communications has received Rs 34 crore (\$6.6 million) from venture and growth capital investor Sequoia Capital. **Incorporated in 2009, Gurgaon-based Knowlarity offers Cloud telephony solutions in India.** Knowlarity plans to use the funding to strengthen its R&D activities and expand marketing operations. After establishing its presence in India and Indonesia, Knowlarity is now planning to extend its solutions and services to other international markets

[Source: Vccircle, January 19, 2012]

RajanAnandan-backed eTechies Raises \$2M From Inventus Capital

eTechies.in, an online and onsite technical support provider for desktops, laptops, printers and other digital peripherals, has raised \$2 million from Inventus Capital in a series A funding round. **Earlier, eTechies raised an angel round from Google India MD Anandan who invested in his personal capacity.** The start-up currently employs around 70 people, around one-third of whom are engineers on the field who undertake 130-140 service tickets per day in New Delhi alone. Overall, eTechies receives 800-1,000 laptop repair requests per month and 40 per cent of its 5,500 customers are SOHOs (small office/home office).

[Source: Vccircle, January 18, 2012]

E-recharge Start-up Freecharge Raises Rs 20Cr From Sequoia Capital

Freecharge.in, an 18-month-old recharge portal run by Mumbai-based Accelyst Solutions Pvt Ltd, has raised Rs 20 crore (\$3.9 million) from Sequoia Capital in its series A round of funding. The site has grown its customer base to 1.5 million and currently records 10,000 transactions a day. Freecharge also provides discount coupons of popular food joints and retailers, equivalent to the recharge value..

[Source: The Hindu business line, January 25, 2012]



PRIVATE EQUITY

Zephyr Peacock Invests Up To Rs 50Cr In Gadhia Solar

The PE firm invests in small-to-medium biz and the funding varies between \$5 million and \$20 million. The solar energy company provides energy solutions by using parabolic concentrated technology and has implemented some of the world's largest solar thermal systems during the past two decades. The company has a dedicated research and development (R&D) team in Germany and owns a manufacturing plant in India.

[Source: Reuters, January 27, 2012]

Cloud-based Start-up Peel-Works Raises Rs 3.25Cr From IAN

Indian Angel Network has announced an investment of Rs 3.25 crore in Peel-Works, a Cloud-enabled sales force transformation and BPO company based in Mumbai. Set up by a team of management graduates with experience in the FMCG sector and HR & sales management domains, Peel-Works offers solutions for large-to-medium-sized companies in FMCG, telecom and insurance space who conduct their businesses using indirect sales force. As part of the investment, Sadeesh Raghavan & Srikant Sastri from Indian Angel Network will join Peel-Works' board.

[Source: Vccircle, January 27, 2012]

Olympus Invests \$100M In DM Healthcare; India Value Fund Part-exits

Olympus Capital Asia Investments Ltd has invested over Rs 500 crore (\$100 million) for a significant minority stake in India Value Fund-backed DM Healthcare Pvt Ltd, in one of the single largest private equity investments in the healthcare business till date. DM Healthcare is a Kochi-based healthcare services provider with operations in India and the Middle East. The fund is used for growth and expansion of the company in India and secondary purchase of a portion of India Value Fund's shareholding (22% at USD 50mn in the company).

[Source: The Economic times, January 11, 2012]

General Atlantic To Invest Up To \$125M In Fourcee Infra

Kicking off a big-ticket transaction in India in the New Year, global private equity major General Atlantic is investing up to \$125 million to buy a minority stake in Fourcee Infrastructure Equipments Pvt Ltd, a Mumbai-based freight and logistics company. The investment will be through a mix of fresh capital infusion into the company and a secondary transaction to buy out some stake of the existing investors, the sources add. This will be the third round of funding for the company.

[Source: The Newspolitan, January 09, 2012]



MERGER & ACQUISITION

Strides Arcolab Sells Subsidiary Ascent Pharma To Watson For \$393M

Bangalore-based Strides Arcolab Ltd has sold its entire 94 per cent holding in Ascent Pharma Health Ltd, its subsidiary operating in Australia and South-east Asia, to NYSE-listed Watson Pharmaceuticals, Inc., at an enterprise value of AU\$375 million (\$393 million). Ascent is one of the top five generic pharmaceutical companies in Australia with presence across several South-east Asian countries like Singapore where it is the leading generic pharmaceutical company.

[Source: The Economic Times, January 24,2012]

Nippon Life To Buy 26% In Reliance Capital Asset Management For \$290M

Japan's largest life insurer Nippon Life Insurance Company has signed an agreement with Reliance Capital Ltd to buy 26 per cent stake in Reliance Capital Asset Management Ltd (RCAM) for Rs 1,450 crore (\$290 million). RCAM is part of the public-listed Reliance Capital, the flagship financial services company under Anil Ambani-led Reliance ADA Group

[Source:The Economic Times, January 19,2012]

Network18 Group To Buy Bulk Of Eenadu For \$395M; RIL To Part Fund

RaghavBahl-led Network18 Group is acquiring a string of regional language news besides general entertainment TV channels under Eenadu Group owned by Reliance Industries Ltd(RIL) for uptoRs 2,100 crore(\$395 million).**Reliance Industries previous invested around Rs 2,600 crore to buy major portion of privately held Eenadu.**

[Source:The Economic Times, January 3,2012]

Career Launcher Buys Noida-based G.K. Publications

CL Educate Ltd, formerly known as Career Launcher India Ltd, has acquired Noida-based G.K. Publications Pvt Ltd, a publisher of competitive exams books. The deal will help CL Educate (one of India's oldest test preparation chains) in backward integration and content pool expansion.

[Source:INdeucapital, January 11,2012]



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