7th Edition

CLV CORPORATE

(e-Communiqué from Team CLV)

(Corporate News & Legal Updates)
March 2009

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Dear Friends

Hope this Holi brought back the element of joy and peace in your otherwise busy and hectic lives and you all had a colorful and vibrant holi .

So we are back again with yet another informational edition of CLV Live at your doorstep. Off lately the need to keep oneself updated with the changing regulations and notifications has increased, this being an era of information technology. Everyone wants access to the recent amendments and regulations as quickly and accurately as possible.

We at CLV strive to keep you updated and to satisfy your informational and intellectual hunger. We understand being a professional the quest for knowledge never ends. And its only by updating ourselves with the sea changes happening in the economy that we can excel in our respective fields.

Although we try our best to incorporate all the recent activities in the segments, if there is any suggestion or any other segment that you would like us to incorporate in our e-communiqué, do let us know .

Hope that Team CLV would continue to get co-operation from its readers because it's your feedback and valuable suggestions that drive us to improve in our each edition.

Happy Learning & Sharing

Thanking you,
With Best Regards

Debasis Dixit
Team Member-Team CLV

Team CLV		
Dr. P.K. Awasthi	CS Praveen Bharti	Ramesh Panigrahi
CA R.K. Dhiman	CS Debasis Dixit	Advocate R.K. Panigrahi
CA K.C. Dugal	CS Pradeep Debnath	Advocate Sharad Saxena
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CA Ravinder Agarwal	CS Bir Shankar	Neeraj Awasthi
CA Sunil Kejriwal	CA Sanjay Panigrahi	Ajit Singh
		Richa Saxena

Reader's Review

Dear CLV Team Members,

I extend my sincere thanks for the numerous effort made by the members of the CLV to collect, structure, consolidate and demonstrate the legal updates for the benefit of the professionals. These efforts signify the growing orientation of CLV members towards knowledge updation and sense of sharing with the same to professional fraternity, which I oblige, congratulate and wish all the best for future endeavors.

Satish Kumar Nirankar
Company Secretary
Religare Capital Markets Limited

Dear CLV Team,

Thanks for your continuous fantastic job. Keep it up.

But I have certain objections on your opinion that "The economic conditions are improving and we professionals can take a breath of relief as the market is coming back on its track" (First line of third Para)…Contd...

Pankaj Kumar
SWAROVSKI INDIA PRIVATE LIMITED
Company Secretary

Thank You very much

R.Hariprasad Reddy
Company Secretary
LANCO

Thanks to CLV team for systematic coverage. Very helpful to professionals. Continue the vision and improvise.

CS S K Pandab,
M. Com, LLB

Dear Team CLV
Fantastic professional work. Just keep it up
R.K. Agarwal
CWA

Dear CLV Team,

Thanks much for this valuable edition.

CS Naubahar

CORPORATE RESTRUCTURING

NPCIL SIGNS PACT WITH AREVA FOR SETTING UP REACTORS

Nuclear Power Corporation of India Ltd signed a pact with the world's biggest reactor manufacturer, Areva of France, to set up nuclear reactors in the country. The pact provides for the "engagement of NPCIL and Areva in discussions for preparing the contract and related details for setting up two to six 1,650 MWe (mega watt electric) new-generation European Pressurised Reactor (EPR) units, including life-time fuel supply for these reactors."

GAIL-IFFCO MOU

GAIL (India) Ltd and Indian Farmers Fertiliser Cooperative Ltd (IFFCO) have recently signed a memorandum of understanding (MoU) for co-operation in natural gas sector related opportunities in India. Under this agreement, both the companies would jointly evaluate the potential of setting up of a gas-based power plant and other industries, including chemicals, fertilisers, compressed natural gas (CNG) and piped natural gas (PNG). The two will also explore the possibility of sourcing of natural gas/LNG for the identified projects. Based on the techno-economics of the project, a joint venture company between GAIL and IFFCO would be formed for implementing the projects.

EATON ENTERED MOU WITH TATA MOTORS

Eaton Corporation has signed an agreement with Tata Motors, whereby its truck group will supply heavy duty synchronized transmissions to Tata Motors for use on its world truck programme in India as well as global markets. The Initial production will take place at Eaton plants in Tczew, Poland, and Wuxi, China, with production moving to its new facility in Pune, India, as volumes increase.

TATA TELE ARM, UNITECH SIGN TOWER SHARING DEAL

Unitech Wireless has signed an infrastructure sharing deal with Wireless-TT Infoservices Ltd (WTTIL), the tower arm of Tata Teleservices Ltd, and Quippo Telecom Infrastructure Ltd (QTIL).

Unitech Wireless will lease tower infrastructure from WTTIL and QTIL across India. This agreement will enable Unitech Wireless to roll out GSM services as planned — by the second half of 2009. The tower sharing deal was one of the pre-conditions for Unitech to close the equity deal with the Norway-based mobile firm Telenor.

CORPORATION BANK-TATA MOTORS' MOU

Corporation Bank has signed a memorandum of understanding with Tata Motors Ltd for financing of Tata Motors vehicle. A bank release said here that banks offers loans up to 85 per cent of on-road price, for tenure ranging up to seven years, at a rate of 11.75 per cent. The car loan facility will be available at all branches of the bank. Subject to adherence of bank's norms, the loans will be sanctioned within seven days. Corporation Bank and Tata Motors will jointly organise sales promotion activities and display each other's products and offerings at the respective premises

INFOTECH, MITSUBISHI HEAVY SIGN MOU

Infotech Enterprises Japan KK, a subsidiary of Infotech Enterprises Ltd, has signed an agreement with Mitsubishi Heavy Industries (MHI), a leading heavy machinery manufacturer, to provide engineering services support. This is the first engagement for Infotech in Japan after Infotech commenced operations in August 2008. a press release. Infotech will provide engineering services ranging from conceptual to detailed design, analysis, MRO, manufacturing process and technical publications. Infotech will contribute to various product portfolios of MHI.

QUEST TO WORK WITH TEXTRON FOR GLOBAL SEZ

QuEST Global has said it is working with the US-based Textron Inc for the development of a global special economic zone (SEZ) in Karnataka. The SEZ is being built in four phases with an investment of Rs 200 crore and will give direct employment to 7,500 people. Quest Global has also signed an MoU with Sikorsky to explore the possibility of setting up a manufacturing base for components. It has signed expression of interest with five companies as well. The SEZ, endorsed by the Ministry of Commerce and Industry, covers 300 acres and is focused on precision engineering. As a sector-specific economic zone, this area will provide build-to-suit requirements to companies seeking to establish businesses and manufacturing facilities in the region for the aerospace and defence, industrial and automotive industries. Development of the SEZ, currently in Phase I, began in January 2009.

EMAMI BIOTECH, CALCUTTA TRAMWAYS PACT FOR SELLING BIO DIESEL

Emami Biotech Ltd has signed a Memorandum of Understanding with Calcutta Tramways Company (CTC) for the supply of 250 kilo litre of bio diesel a month, according to a press statement issued by the company. The company has a capacity to produce 300 tonnes of bio diesel a day at the Haldia plant. Bio diesel is a diesel-equivalent, processed fuel derived from biological sources (such as vegetable oils), which can be used in unmodified diesel-engined vehicles.

The MoU with CTC would instil confidence among other government organisations to use the product and play a pro-active role to ensure a pollution-free environment.

YES BANK TIES UP WITH ZAMEEN ORGANIC

YES Bank has tied up with Zameen Organic to support fair trade movement and production of eco-friendly organic cotton. The tie-up aims to create equal opportunities for producers and workers, especially the economically marginalised ones. The business model empowers farmers to have effective and end-to-end control on the ‘Fair Trade Organic Cotton’ supply chain.

MMTC, SICAL SIGN PACT FOR IRON ORE LOADING TERMINAL PROJECT

MMTC Ltd has signed a formal shareholders’ agreement with Sical Logistics Ltd and L&T Infrastructure Development Projects Ltd for setting up a permanent iron ore loading terminal project at Ennore Port in Chennai.

The consortium would pool resources and skills for setting up theproject. MMTC will hold equity 26 per cent stake in Sical Iron Ore Terminals Ltd (SIOT), the special purpose vehicle (SPV) building the 12 million tonnes per annum iron ore terminal and Sical will hold 63 per cent stake. The balance will be held by L&T Infrastructure.

The shareholders’ agreement was signed on behalf of the respective companies by the Chairman of Sical , Mr Ashwin C Muthiah, MMTC’s Director (Marketing), Mr Sunir Khurana and L&T IDPL’s Head – Legal & Secretarial, Mr R. Chandrasekaran.

The terminal is expected to be operational in a phased manner by early 2010, with a throughput of 6 million MTPA in phase 1. SIOT and MMTC have signed the offtake agreement for 3 million MTPA of iron ore for the first phase, which will be enhanced postcapacity addition in Phase 2 of operations. The company will execute the second phase within two years of commencement of operations of Phase I.

NEW PROJECTS

SHANTHA BIOTECHNICS TO SET UP NEW VACCINE FACILITY

Shantha Biotechnics Ltd will be setting up a new modern vaccine manufacturing complex at Muppireddypally village in Ranga Reddy district of Andhra Pradesh. A release from the company said the facility will be used to manufacture next-generation vaccines and the vaccines to be manufactured will be from the enteric vaccine portfolio like Cholera and Rotavirus vaccines.

Shantha Biotechnics will have the capacity to manufacture more than 100 million doses of vaccines a year and the company has plans to initially invest Rs 50 crore, with future investments going up to Rs 100 crore. The company has been allotted 40 acres in the industrial park. The new facility is part of Shantha Biotechnics strategic expansion plans focused on servicing the growing market demands for its range of vaccine. The new vaccine complex will address the capacity constraints of existing facilities to manufacture a range of enteric vaccines and the new generation pneumococcal vaccines which are under development.

GLOBAL TALENT TRACK TO EXPAND OPERATIONS

Four months into inking a pact with the Pune University to introduce its training modules in colleges in Maharashtra, manpower training company Global Talent Track plans to expand to Rajasthan, Gujarat, Punjab as well as China and Malaysia during this fiscal. The company is aiming to provide employment and vocational management skills to 500,000 young professionals and touch a turnover of Rs 500 crore in the next five years and plans to set up 500 centres of their own over next three years.

GTT’s first centre is to come up in Pune in a month’s time followed by one in Jaipur. The expansion into other States will be in association with universities, she said. The company also has a tie-up with Maharashtra Knowledge Centres Ltd to launch selected programmes in some of its 4,500 centres.

ARSHIYA TO SET UP RS 530-CR FREE TRADE WAREHOUSING ZONE

Logistics and supply chain solutions provider Arshiya International plans to establish a Rs 530-crore Free Trade Warehousing Zone in Mumbai by January 2010. The company also awaits the formal approval for another FTWZ project at Khurja, near Noida, which should come when the next Board of Approvals’ meeting takes place. The debt equity ratio would be 2:1, and the company was in the process of finalising the debt component with bankers.

Though the equity portion had been raised some time ago, debt part could not be tied up in December as planned.

ADITYA BIRLA NUVO TO REALIGN CAPEX PLANS

Aditya Birla Nuvo Ltd has said that it will re-align its capital expenditure plans with the outlook in the various segments it operates in. The company has spent Rs 347 crore this year on projects, modernisation and maintenance, and on its subsidiaries and plans to spend another Rs 230 crore during the fourth quarter of the year. It has outlined a capital expenditure programme of about Rs 400 crore for 2009-10, but actual expenditure would depend on the market conditions.

TATAS IN TALKS WITH TAIWAN TO SET UP TAJ HOTEL IN TAIPEI

The Tata Group is in talks with the Taiwanese Government to open a Taj group hotel in the capital city Taipei and to source electronic goods for its Croma stores. A trade team from Taiwan led by Ambassador Mr Wenchyi Ong had a meeting with top executives of Tata group, including Mr Alan Rolsing, Executive Director of Tata Sons. Due to frequent visits of Indian visitors to Taiwan,setting up a five-star hotel in Taipei holds good prospects.

ARANI POWER SETS UP RS 60-CR STEAM TURBINE UNIT

Arani Power Systems announced the inauguration of an Rs 60-crore steam turbine manufacturing facility located at Cheriyal village in Medak district of the Andhra Pradesh. The factory set up to manufacture 8 MW to 45 MW steam turbinesis likely to cater to specific requirements of co-generation plants, independent power producers (IPPs) in the sugar, steel, cement, paper and biomass based power plants

CORPORATE HURDLES & CORPORATE FRAUD

BOOKS OF EDUCOMP, SIX PSUS COME UNDER GOVT LENS

On the heels of the Satyam fraud, a number of companies both from the public and private sectors have come under the Ministry for Corporate Affairs scanner. Apart from education company Educomp Solutions Ltd, which has been in the public eye in the recent past following allegations that its accounts were fudged, there are six public sector undertakings against whom inspections have been ordered. The six public sector undertakings were Bharat Coking Coal Ltd, Hindustan Copper Ltd, Central Coalfields Ltd, Bihar Rajya Pul Nirman, Bihar State Tourism Development Corporation Ltd, Bengal Chemicals and Pharmaceuticals Ltd.

Sources indicated that inspections are being considered against more companies across sectors, and a number of them may be sent to the Serious Fraud Investigations Office. Sources, however, declined to disclose the names of these companies.

MCA NOTIFICATION

COMPETITION COMMISSION OF INDIA (SALARY, ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF CHAIRPERSON AND OTHER MEMBERS) AMENDMENT RULE, 2009

Notification No. G.S.R. No. 136(E) February 27, 2009.These rules shall come into force with effect from the date of their publication in the Official Gazette.

i) The Chairperson shall be paid a consolidated monthly salary of rupees three lakh and every Member shall be paid a consolidated monthly salary of rupees two lakh fifty thousand. They shall not be entitled to house and car.

ii) rule 5 shall be omitted.

iii) In rule 7 for the words "as are applicable to officers holding Group 'A' post of the Central Government drawing an equivalent pay" the following shall be substituted, namely;-"as applicable to officers of the Central Government in Apex Grade (rupees eighty thousand-fixed) in the case of Chairperson and Grade Pay of rupees twelve thousand in the Pay Band-4 (rupees 37400-67000) in the case of Members.

iv) In rule 8 for the words "as are applicable to officers holding Group 'A' post of the Central Government drawing an equivalent pay" the following shall be substituted, namely:- as applicable to officers of the Central Government in Apex Grade (rupees eighty thousand-fixed) in the case of Chairperson and Grade Pay of rupees twelve thousand in the Pay Band-4 (rupees 37400-67000) in the case of Members.

v) In rule 9 for the words, "as may be applicable to officers holding Group 'A' post of the Central Government drawing an equivalent pay" the following shall be substituted, namely:- as applicable to officers of the Central Government in Apex Grade (rupees eighty thousand-fixed) in the case of Chairperson and Grade Pay of rupees twelve thousand in the Pay Band-4 (rupees 37400-67000) in the case of Members.

vi) Rule 10 shall be omitted.

SEBI NOTIFICATION

FORMATS FOR DISCLOSURES UNDER REGULATION 8A(1), 8A(2), 8A(3) AND 8A(4) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997.

The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 has been amended vide Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009 on 28.01.2009.

The said amendment mandates disclosures regarding pledge of shares by the promoter and persons forming part of the promoter group to the company and by the company to the stock exchanges where shares of the company are listed.

AMENDMENTS TO EQUITY LISTING AGREEMENT

Amendment to Clause 35

The format for reporting the shareholding pattern contains six parts. The first two parts viz. Part I(a) and I(b) contains disclosures of shareholding of promoter and promoters group. Part I(a) and I(b) of the format are required to be amended to include details of shares pledged by promoters and promoter group entities.

Amendments to Clause 41

The format for submitting the quarterly financial result of the company, is required to be modified to include details of promoters and promoter group shareholding including the details of pledged shares.

The revision in the formats under clause 35 and 41 of Equity Listing Agreement shall start from the quarter ending March 31, 2009.

The report for quarter ending March 2009, June 2009, September 2009 and December 2009 under Clause 41, may not contain details of pledged shares for the corresponding quarter of the previous year.

REVIEW OF ANNUAL ISSUERS' CHARGES

Annual Issuers' charge has been revised with effect from April 01, 2009. Accordingly, the Depositories may levy and collect the charges towards custody from the issuers, on a per folio (ISIN position) basis as at the end of the financial year, as per the details given below:

Issuers to pay @ Rs.8.00 (*) per folio (ISIN position) in the respective depositories, subject to a minimum as mentioned below:

Nominal value of admitted securities (Rs.)	*Annual Custodial Fee payable by a Issuer to each Depository (Rs.) (*)*
Upto 5 crore	6,000
Above 5 crore and upto 10 crore	15,000
Above 10 crore and upto 20 crore	30,000
Above 20 crore	50,000

**** Plus service tax as applicable***

SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) (SECOND AMENDMENT) REGULATIONS, 2009

(i) in regulation 25, after sub-regulation (2A) the following sub-regulation shall be inserted, namely: -

"(2B) No public announcement for a competitive bid shall be made after an acquirer has already made the public announcement pursuant to relaxation granted by the Board in terms of regulation 29A."

(ii) after regulation 29, following regulation shall be inserted, namely:-

“Relaxation from the strict compliance of provisions of Chapter III in certain cases.

29A. The Board may, on an application made by a target company, relax any or more of the provisions of this Chapter, subject to such conditions as it may deem fit, if it is satisfied that –

(a) the Central Government or State Government or any other regulatory authority has removed the board of directors of the target company and has appointed other persons to hold office as directors thereof under any law for the time being in force for orderly conduct of the affairs of the target company;

(b) such directors have devised a plan which provides for transparent, open, and competitive process for continued operation of the target company in the interests of all stakeholders in the target company and such plan does not further the interests of any particular acquirer;

(c) the conditions and requirements of the competitive process are reasonable and fair;

(d) the process provides for details including the time when the public offer would be made, completed and the manner in which the change in control would be effected;

(e) the provisions of this Chapter are likely to act as impediment to implementation of the plan of the target company and relaxation from one or more of such provisions is in public interest, the interest of investors and the securities market.”

AMENDMENTS TO SEBI (DISCLOSURE AND INVESTOR PROTECTION) GUIDELINES, 2000

Enhancing the validity period of observations.

(a) The validity period of the observations issued by SEBI has been enhanced from the existing period of three months to twelve months. The benefit of extended validity period would be available in respect of all the observation letters whose validity period has not expired on December 4, 2008.

(b) Before opening of the issue, every issuer shall be required to file an updated offer document with SEBI, highlighting all changes made in the document.

(c) Where updation include significant changes in the offer document, such an updated Red herring prospectus/ prospectus or letter of offer shall be filed with SEBI at least one month before filing the same with Registrar of Companies or with Designated Stock Exchange as the case may be. The procedure for submitting such updated documents including what will constitute “significant changes”, “additional fees” etc will be specified by SEBI shortly.

Reduction in timelines for completion of bonus issues.

The DIP Guidelines have been amended to reduce the timeline for completion of bonus issues. Accordingly, where no shareholders’ approval is required as per the Articles of Association of the issuer, the bonus issue shall be completed within fifteen days from the date of the approval by the board of directors of the issuer in this regard.

However, where shareholders’ approval is required for capitalization of profits or reserves as per the Articles of Association of the issuer, the bonus issue shall be completed within sixty days from the date of the meeting of board of directors where-in bonus was announced subject to shareholders’ approval.

Announcement of price band.

The amended DIP Guidelines permit the issuer making an initial public offer to announce the floor price or price band after the date of registration of the Red Herring Prospectus with the Registrar of Companies, atleast two working days before the issue opening date.

Further, where the floor price or price band is announced after the date of registration of the Red Herring Prospectus with the Registrar of Companies, every issuer making a public issue, whether initial public offer or further public offer, shall ensure wide dissemination of the floor price or price band through various means, including newspaper advertisement. While announcing the floor price or price band, the issuer shall also disclose details of the relevant financial ratios used for justification of the floor price or price band. In case of a price band, such financial ratios shall be calculated for both upper and lower end of the price band.

Amendments in provisions pertaining to Preferential Allotment.

Preferential allotment of warrants.

It has now been decided to enhance the upfront amount payable from 10% to 25%. Certain clarifications regarding lock-in requirements of instruments allotted on preferential basis have been made in clause 13.3.1(c) and (d) of the DIP Guidelines.

Non-applicability of certain provisions of Chapter XIII of the SEBI (DIP) Guidelines.

It has been decided that an issuer, which has been granted relaxation by the Board in terms of regulation 29A of the SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 1997, shall be exempted from certain provisions of Chapter XIII of DIP Guidelines, subject to the condition that in the explanatory statement to the notice for the general meeting of the shareholders, the issuer gives adequate disclosures about the details of the plan including the process proposed to be followed by it for identification of the allottees in addition to the disclosures required in other applicable laws.

POLICY ON RELAXATION FROM STRICT ENFORCEMENT OF RULE 19(2)(B) OF THE SECURITIES CONTRACTS (REGULATION) RULES, 1957 (SCRR).

At present the SEBI (DIP) Guidelines provides for the policy regarding considering the requests for relaxation of the strict enforcement of requirements of rule 19(2)(b) of the SCRR where an unlisted Company intends to list its shares issued to the shareholders of a listed company pursuant to a scheme of arrangement approved by a High Court, without making an initial public offer.

The DIP Guidelines have now been amended to provide for the policy for considering relaxation from strict enforcement of requirements of rule 19(2)(b) of SCRR in case of proposal for listing of following Securities by a listed issuer:-

Equity shares with differential rights as to dividend, voting or otherwise, offered through rights or bonus issue.

Warrants issued along with Non Convertible Debentures through Qualified Institutions Placement.

MINISTRY OF FINANCE NOTIFICATION

INTEREST RATES ON EXPORT CREDIT IN FOREIGN CURRENCY

It has been decided in consultation with Government of India to raise the ceiling rate on export credit in foreign currency by banks to LIBOR plus 350 basis points from the present ceiling rate of LIBOR plus 100 basis points with immediate effect, subject to the express condition that the banks will not levy any other charges viz. service charge, management charge etc except for recovery towards out of pocket expenses incurred. Similar changes may be effected in interest rates in cases where EURO LIBOR/EURIBOR has been used as the benchmark.

The revision in the rates of interest would be applicable only to fresh advances.

Further,the ceiling interest rate on the lines of credit with overseas banks has also been increased from six months LIBOR/EURO LIBOR/EURIBOR plus 75 basis points to six months LIBOR /EURO LIBOR/EURIBOR plus 150 basis points with immediate effect.

RATINGS OF NBFCS

As per the instructions issued vide Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, in the event of downgrading / upgrading of the credit rating of an NBFC to any level from the level previously held by the NBFC, it shall, within fifteen working days of its being so rated inform, in writing, of such upgrading / downgrading to RBI.

NBFCs also issue financial products like Commercial Paper, Debentures etc. to which rating is assigned by rating agencies. The ratings assigned to such products may undergo changes for various reasons ascribed to by the rating agencies.

It has therefore been decided that all NBFCs (both deposit taking and non-deposit taking) with asset size of Rs 100 crore and above shall furnish the information about downgrading / upgrading of assigned rating of any financial product issued by them, within fifteen days of such a change in rating, to the Regional Office of the Bank under whose jurisdiction their registered office is functioning.

RESERVE BANK OF INDIA (NON-BANKING FINANCIAL COMPANIES) SPECIFICATIONS 2009

It has been decided to amend the Directions relating to Non Banking Financial Companies, so as to allow of investments in fixed deposits of SIDBI and NABARD for meeting the requirements of Section 45IB of Reserve Bank of India Act.

After amendment, paragraphs (1) and (2) of the Directions shall read as under

"every non-banking financial company, other than a residuary non-banking company governed by the provisions of Residuary Non-Banking Companies (Reserve Bank) Directions, 1987, contained in Notification No.DFC.55/DG(O)-87, dated 15th May, 1987, shall invest and continue to invest in India in unencumbered approved securities valued at the price not exceeding the current market price of such securities an amount which shall, at the close of business on any day
On and from February 13, 2009 be not less than 15 per cent of the public deposit as defined under paragraph 2(1)(xii) of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, outstanding at the close of business on the last working day of the second preceding quarter, and

all other provisions of section 45-IB shall mutatis mutandis be applicable to the above requirement as if the expression" public deposit" is the same as the expression "deposit" as contemplated under the said provision.

Provided howsoever that such Non-Banking Financial Companies shall be entitled to invest an amount equal to or in excess of ten percent of public deposits, in unencumbered approved securities and the remaining in unencumbered (a) term deposits in any scheduled commercial bank, Small Industries Bank (SIDBI) or National Bank for Agriculture and Rural Development (NABARD) or (b) bonds issued by SIDBI or NABARD.

Provided further that, the aggregate of the amount invested in unencumbered approved securities, term deposits and the bonds as aforesaid shall not be less than 15 percent of public deposits."

REDUCTION IN SERVICE TAX RATE

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts all the taxable services specified in sub-section 105 of section 65 of the Finance Act from so much of service tax leviable there on under section 66 of the Finance Act, as is in excess of the rate of ten per cent of the value of taxable Service.

LEVY OF CESS ON SUGAR MANUFACTURED OUT OF CESS PAID RAW MATERIAL/ INPUT-REGARDING

The Sugar Cess Act, 1982 provides that "There shall be levied and collected as a cess, for the purposes of the Sugar Development Fund Act, 1982, a duty of excise on all sugar produced by any sugar factory in India" for the development of sugar industry. References have been received from some field formations that some manufacturers purchase sugar, on which central excise duty and sugar cess is paid by sugar manufacturers. Such manufacturers use the duty paid sugar to manufacture products like Pharmaceutical grade sugar and Bura sugar. All the products, namely sugar, pharmaceutical sugar and Bura sugar fall under the same tariff classification. The manufacturers have represented that both the raw material and final product fall under the same tariff heading, and as cess has been paid on raw material viz., sugar, they are not required to pay sugar cess on products as it amounts to double taxation.

The matter has been examined in consultation with the Ministry of Public Distribution and Consumer Affairs. The Ministry of Public Distribution and Consumer Affairs has now **exempted the levy of cess on sugar, collected as a duty of excise, under subsection (1) of the Section 3 of Sugar Cess Act, 1982, on any sugar "manufactured from such other sugar" on which cess, leviable under sub section (1) of Section 3 of the said Act has been paid already.**However, the said exemption is available for clearances made after the date of issue of notification and past cases, if any, are required to be decided based upon the law as in force during relevant time.

FOREIGN EXCHANGE REGULATION ACT, 1973

IN THE MATTER OF MONOTOSH SAHA vs. SPECIAL DIRECTOR, ENFORCEMENT DIRECTORATE

BACKGROUND

The Directorate of enforcement issued a Memorandum on the Appellant alleging contravention of t he provisions of section8 (1) of Foreign Exchange Regulation Act, 1973, thereby rendering the appellant liable to be proceeded under section 50 of the FERA. An order imposing penalty of Rs. 25 Lakhs on the appellant was passed. On submission of appeal to Appellate Tribunal, the tribunal passed an order directing deposit of 60% of penalty amount for purpose of entertaining appeal. The appellant further filed an appeal in the High court which was dismissed. The appellant further filed the appeal with the Supreme Court.

DECISION

The Supreme Court allowed the appeal.

REASONS

The petitions of stay should not disposed of as a matter of routine without keeping in mind the consequences of the order requiring assessee to deposit full or part of the demand. It is important to take into consideration the facts of the case without applying rule of universal application. Where the denial of interim relief can lead to irreparable private injury it is advisable to give interim relief. However while dealing with the appeal, both the expressions used in provision, undue hardship to such person and safeguard the realization of penalty should be considered. Therefore it was held that tribunal while dealing with the application has to consider materials to be placed by the assessee relating to undue hardship and also to stipulate condition as required to safeguard the realization of the penalty.

COMPANIES ACT 1956

IN THE MATTER OF NORTHERN PROJECTS LTD. vs. BLUE COAST HOTELS AND RESORTS LTD.

BACKGROUND

The total paid up, issued and subscribed share capital of the respondent company was Rs.88,05,28,000 which included 65,52,800 equity shares of Rs. 10 each and 81,50,000 preference shares of Rs. 100 each. Now the Appellant company which was holding 14.8 % of equity capital filed a petition under section 397 for mismanagement and oppression .However the respondent company raised a objection on the contention of the appellant company saying that the appellant company at no time held more than 2.08% in the share capital of the company and at no time held more than 1/10th of share capital of the company .The company law board dismissed the petition of the appellant, on the ground that issued share capital includes both equity and preference capital, and not only issued equity capital .The appellant further filed an appeal with the Supreme court.

DECISION

The Supreme Court dismissed the appeal.

REASONS

The Issued share capital of the company consists of both equity and preference share capital and not just the equity share capital. Therefore the appellant in order to be eligible to file petition under section 397 is required to hold 1/10th of the total issued share capital at the time of filing of petition or on the date of becoming member of the company. Therefore the case was rightly dismissed by the High court.

INCOME TAX ACT, 1961

IN THE MATTER OF COMMISSIONER OF INCOME TAX vs. BHARTI CELLULAR LTD.

BACKGROUND

The assessee company was engaged in the business of providing cellular telephone facilities to the subscribers. The MTNL/BSNL which granted the licences to them, stipulated that they would continue to operate in the service areas in which licenses have been issued. When the calls were made by the subscribers to another networks it was routed through MTNL/BSNL. According to the agreement between the assessee and MTNL/BSNL, the interconnection between two networks was to be provided by MTNL/BSNL on which assessee was required to pay inter connection charges. Acc. to the revenue the charges pad as inter connection charges were for technical services and should be eligible for tax deduction at source. But the Tribunal held that the services do not fall within nature of technical services so are not liable for TDS. The matter then came upto High court.

DECISION

The High court dismissed the appeal.

REASONS

In the section 9(1)(vii) the word technical is used along with managerial and consultancy and derives its meaning from the word managerial consultancy, technical being a ambiguous term.The words managerial consultancy involves a touch of human element and are provided by humans.Therefore the word technical should also have a human element.

But the inter connection access is devoid of any sort of human element and is automatically provided by the machines. Since these services do not involve any human interface they cannot be called technical services and as such cannot be held liable for tax deduction at source.

Natco Pharma Limited-SEBI (Informal Guidance) Scheme, 2003

Natco Pharma Limited had granted 6,00,000 stock options to its employees in 2004 at Rs.10/- per share, when the ruling market price was Rs.140/- per share. The options were to be vested in 4 equal installments during the years 2006, 2007, 2008 and 2009, the last installment aggregating to 1,08,175 options being due for exercise in January 2009.

In view of the general meltdown of the stock markets, the share price has dwindled and is presently being traded at around Rs.56/- on the NSE and BSE. Mostly of the employees of the company have indicated that they would like to forgo their entitlement of options and would Instead prefer to receive equivalent cash. If this proposal is acceded to, the company proposes paying cash at or more than the market value prevailing on the date due for exercise of the options. Thus, the proposal would not be detrimental to the interests of the employees.

The provisions of the SEBI (ESOS & ESPS) Guidelines, 1999 and the resolutions passed adopted by the Compensation Committee, the Board of Directors and the shareholders are silent as to whether cash can be paid if an employee forgoes his right to exercise the options.

1 To ascertain and obtain consents from each of the employees as to their preference for cash or stock options;

2 In respect of such of those employees who choose not to exercise the options granted to them, to pay cash equivalent to or more than the market rate on the date the options became exercisable;

3 To allot shares to such of those employees who would like to exercise their options;

4 To cancel options which are not exercised within the due time?

Comments given by SEBI:

1 As per sub-clause (3) of clause 2.1, an “employee stock option scheme (ESOS)” means a scheme under which a company grants employee stock option.”

2 Further, as per sub-clause (2A) of clause 2.1, an “employee stock option” means the option given to the whole-time Directors, Officers or employees of a company which gives such Directors, Officers or employees, the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a predetermined price.”

3 Furthermore, as per sub-clause (5) of clause 2.1, "exercise" means making of an application by the employee to the company for issue of shares against option vested in him in pursuance of the ESOS.”

4 A reading of the aforementioned clauses shows that ESOS essentially envisages allotment of shares to eligible employees by a listed company against exercise of employee stock options vested in such employees in terms of the ESOS.

5 In view of the above, Natco Pharma Limited cannot pay cash equivalent to its employees under the SEBI (ESOS & ESPS) Guidelines.

This position is based on the representation made to the Department by the company in their letter under reference. Different facts or conditions might require a different result.

Disclaimer

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