Tax & Corporate News Bulletin

VAISH ASSOCIATES ADVOCATES
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From the Editor...

Dear Reader,

In its quest to strengthen and refine India's competition laws, the Ministry of Corporate Affairs (MCA) is aiming to come out with the National Competition Policy, which is slated to be the second biggest reform initiative after the 1991 economic reforms. MCA had constituted a Committee for framing of National Competition Policy and related matters for (i) framing of a National Competition Policy (NCP); (ii) strategy for competition advocacy with government and private sector; (iii) changes required in Competition Act for fine tuning it; and (iv) any other matter relation to competition issues. The Committee has submitted version –II of draft National Competition Policy 2011 to the Ministry which is placed at www.mca.gov.in and sought comments from the stakeholders by September 19, 2011.

The NCP is aimed at laying down an overarching policy framework for infusing competition principles in various policies, statutes and regulations and promoting a competitive market structure in the economy, thereby striving to achieve maximum economy efficiency in various spheres, and public welfare. Understandably, the NCP would also lead to making changes in the competition law and encompass norms that government departments need to follow. While the Competition Act is there to enforce, the Policy is for promoting competition in the country.

Moving on, MCA also held consultation meetings with the stakeholders, after which the final draft will be prepared. MCA is hopeful of obtaining the Cabinet approval by the end of this year to pave way for the New Competition Policy next year.

The issue of larger concern would however remain to be education and enforcement of such important policies and laws.

Yours truly,

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Inside...

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INCOME TAX

Income from supply of software not taxable as royalty

The Mumbai Bench of the Income Tax Appellate Tribunal, in case of *TII Team Telecom International Private Limited (ITA no. 3939/MUM/2010),* has held that income from supply of software is not taxable as royalty.

The taxpayer, a tax resident of Israel, entered into an agreement with Reliance Infocomm Ltd. (RIL) for supply of licensed software for RIL's wireless network in India. Under the agreement, the taxpayer granted RIL, a perpetual, irrevocable, non-exclusive license to install, use, copy, etc the software for implementation, operation, management and maintenance of RIL's network in India. The question before the Tribunal was whether the consideration for the same would be taxable as royalty. The Tribunal held as under:

(I) The Special Bench of the Tribunal in *Motorola's case (96 TTJ 1),* appreciated the distinction between "use of copyright" and "use of a copyrighted article". In order to constitute "use of copyright", the transferee must enjoy four rights, viz., (a) the right to make copies of the software for distribution to the public; (b) the right to prepare derivative computer programmes based upon the copyrighted programme; (c) the right to make a public performance of the computer programme; and (d) the right to publicly display the computer programme. Since none of these rights have been transferred, payment for software cannot be treated as payment for use of copyright in software.

(ii) Since the decision in *Motorola's case (supra)* was rendered by the Special Bench, it would prevail over the contrary decision of the Delhi Bench of the Tribunal in case of *Gracemac Corporation: 42 SOT 550,* even though the latter decision was rendered after the decision in Motorola's case;

(iii) The consideration was also not for "use of a process" because what the customer is paying for is not for the "process" but for the "results" achieved by use of the software.

Comments: The distinction between transfer of all or any rights in a 'copyright' and 'sale of copyrighted article', laid down in an earlier decision of the Bangalore Bench of the Tribunal in case of *Lucent Technologies 92 ITD 366* and reinforced by the Special Bench in case of Motorola (supra), has been followed in several later decisions of the Tribunal. In the present case, the Tribunal importantly did not follow the decision in case of *Gracemac Corporation (supra),* as the same was inconsistent with the decision of the Special Bench. The aforesaid decision would be reassuring to the taxpayers as it would impart certainty in respect of taxability of similar transactions. It would, however, be interesting to see as to what view the Delhi Bench of the Tribunal, confronted with a similar issue in future, would take!

Liaison office set up to purchase goods in India held to be taxable

The Authority for Advance Rulings (AAR), in case of *Columbia Sportswear Company (AAR No.862/2009)* has ruled that the liaison office did constitute fixed place Permanent Establishment ('PE') of the taxpayer in India.

The taxpayer, a tax resident of US, established a liaison office in India as part of supply chain management, for undertaking liaison activities in connection with purchase of goods in India. The question before the AAR was whether such liaison office could constitute a PE of the taxpayer in India. The AAR, while holding that the liaison office constituted PE, observed, as follows:

- Activities of the liaison office in India included designing, quality control, ensuring that goods are manufactured by suppliers in India as per the policies of the US buyers. All these activities could not be considered to be confined to 'purchases'.
- The liaison office was not used solely for the purpose of purchasing goods or merchandise or of collecting information for the taxpayer. The liaison office identified competent manufacturer, negotiated a competitive price and helped in choosing the material to be used, etc.
- Accordingly, the liaison office constituted a 'fixed place' from which the business of the taxpayer was being carried on and, therefore, constituted a PE under Article 5(1) of the India-US Treaty.
- The activities of the liaison office could not be said to be 'preparatory' or auxiliary' in nature since it was involved in substantial part of the business of the applicant.

- The AAR also held that exemption provided in Explanation 1(b) to Section 9(1)(i) of the Income Tax Act, 1961 ("the Act"), which states that no income shall be deemed to accrue or arise to the non-resident in India, through or from operations which are confined to purchase of goods in India for the purpose of exports, was not available as the liaison office went much beyond the purchase of goods in India.

Comments: Selecting suppliers, conducting quality controls, negotiating the price, etc. are essential part of buying process. The proposition that exemption granted to the function of buying under Explanation 1(b) to section 9(1)(i) should equally apply to these activities also has been duly considered and accepted in a number of decisions *(N.K. Jain: 206 ITR 692, Mondial Orient Ltd: 129 TTJ 560, IKEA Trading: 308 ITR 422)*. The AAR ruling has thus upset a fairly well settled position.

Cases represented by our Chamber

- **Taxability of turnkey contracts**

The Delhi bench of the Tribunal, in case of *Samsung Heavy Industries Co. Ltd (ITA no. 5237/Del/2010)* has held that project office in India constituted fixed place PE and that income could be taxed to the extent attributable to such PE.

The taxpayer, a Korean company, entered into a contract with ONGC for execution of a project on turnkey basis and opened a project office in India as per the requirement of ONGC/ RBI. The Revenue held that the project office constituted a fixed place PE of the taxpayer in India and income from execution of the contract, including 25% of income from offshore supply of equipment was taxable in India. On appeal by the taxpayer, the Tribunal held as follows:

(i) The contract was a composite contract starting from surveys of pre-engineering, etc. till startup and commissioning of entire facilities and the contract was indivisible;

(ii) The opening of the project office was a condition precedent before the commencement of the activity of the contractor. The scope of the project office was not restricted either by the assessee or by the RBI. Also, the Board resolutions of the assessee showed that the project office was opened for coordination and execution of project. It was clear that all the activities to be carried out in respect of the contract were to be routed through the project office;

(iii) The decision of the Supreme Court in case of *Hyundai Heavy Industries Ltd. (291 ITR 482)* was not applicable because in that case, (a) the project office was to work only as a liaison office and was not authorized to carry on any business activity, and (b) the contract was divisible into two parts and so the argument that the PE does not come into existence till the fabrication work is done was accepted;

(iv) The project office constituted a 'fixed place' from which the business of the taxpayer was being carried on under Article 5(1) of the India-Korea Tax Treaty; in the case of an installation project, a fixed place PE under Article 5(1) may also come into being and it was not necessary that such installation project should meet the threshold test prescribed under Article 5(3) of the Treaty in order for PE to be construed;

(v) Once a PE was formed under Article 5(1), the onus was on the taxpayer to show that Project Office was only carrying out *"preparatory or auxiliary"* activities. The taxpayer could not bring any direct evidence on record to establish that the activities were preparatory or auxiliary in nature;

(vi) The project office was in existence since the commencement of activities relating to the project and was involved in execution of the project. Accordingly, appropriate portion of revenue from activities carried out outside India would be taxable in India as attributable to the project office.

Comments: The interpretation of the Tribunal, that in case of an installation project, a PE can be constituted even if the duration test prescribed in Article 5(3) is not satisfied, appears to be incorrect since such an interpretation could make the duration test prescribed under the said Article redundant. While holding that part of profits of offshore activities would be taxable in India, the Tribunal has not specified as to what role the Indian project office played in carrying out such overseas activities. It seems that the Tribunal was swayed by the fact that the project office was established prior to carrying out offshore activities and in

absence of any bar to the extent of activities it could perform; it must have been engaged in the execution of the contract.

This decision is also inconsistent with the ratio laid down in the recent ruling of the Delhi High Court in case of *LG Cable Ltd. (2011) 197 Taxman 100,* wherein it was held that income from offshore supply of equipment could not be taxed in India merely because it is connected with the satisfactory performance of the installed equipment. The Delhi High Court also held that since taxpayer's PE was not at all involved in the offshore activities, the existence of the PE would be irrelevant for taxing income from offshore activities. This principle should equally apply even if the contract is considered to be 'indivisible'.

✧ **Royalty for use of trademark is revenue expenditure**

The Delhi High Court, in case of *VRV Breweries & Bottling Industries Ltd. (ITA 594/2005)* has held that consideration paid for use of trademark is allowable revenue expenditure. In this case, the Revenue disallowed certain payments made by the taxpayer, for use of brand name/ trademark, primarily on the ground that the same were in the nature of capital expenditure allowable over a period of 15 years under Section 35A of the Act.

The Delhi High Court held that all that the taxpayer acquired was the use of brand names and trademark and did not acquire any right to secret process or formulae or even any right, title and interest in trademarks or brands under which its products were sold. Further, the right to use was co-terminus with the agreement. Accordingly, it was held that the expenditure was revenue in nature. On facts, it was also held that since the provisions of Section 40A(2) of the Act did not apply, the taxpayer was entitled to deduction in full in respect of such expenditure.

✧ **Prior to April 1, 2008, the assessing officer has no power to extend period for submission of Special Audit Report**

The Delhi High Court in the case of *M/s. Bishan Saroop Ram Kishan Agro Pvt. Ltd.* held that amendment in the 'proviso' to Section 142(2C) by the Finance Act, 2008 is prospective in nature and would be applicable from April 1, 2008 onwards. Accordingly, it was held that prior to this date the assessing officer did not have power to *suo motu* extend the period for submission of special audit report by the special auditor.

✧ **'Testing charges' for export of goods not to be considered as fee for technical services**

In the case of *Havells India Ltd. (ITA No. 1300 & 2093/Del./2010),* the assessing officer had made disallowance under Section 40(a)(i) of the Act of expenditure incurred towards testing fee paid to M/s CSA International Chicago Illionos, USA ('CSA') on account of non-deduction of TDS, holding the same to be 'fee for technical services' taxable under Section 9(1)(vii) of the Act.

The Tribunal deleted the disallowance made by the assessing officer observing that as the testing and certification services provided to the assessee by CSA were utilized in relation to assessee's export activity, the exception in Section 9(1)(viii)(b) of the Act which provides that payment for 'fee for technical services' will not be deemed to accrue or arise in India if it is made for earning income from a source outside India, applied and hence the assessee was not required to deduct at source from such payment.

✧ **Penalty barred by Proviso to Section 275(1)(a) of the Act**

The Delhi bench of the Tribunal, in case of *Cosmo Films Ltd. (ITA no. 2192/Del/2010)* has held that Proviso to Section 275(1)(a) of the Act would get attracted in every case where CIT(A) order in the quantum appeal was passed after June 1, 2003; and therefore, assessing officer should levy penalty within 1 year from the end of the financial year in which the order of the CIT(A) was received by the CCIT/CIT, notwithstanding that the appeal against the order of the CIT(A) is pending before the Tribunal.

CUSTOMS & CENTRAL EXCISE

Revision of monetary limits for filing appeals by the Department before CESTAT/ High Courts/ Supreme Court

The Central Board of Excise & Customs has fixed the following monetary limits below which appeal shall not be filed in the Tribunal (CESTAT), High Court and the Supreme Court:

Appellate Forum	Monetary limit
CESTAT	₹ 5,00,000/-
High Courts	₹ 10,00,000/-
Supreme Court	₹ 25,00,000/-

For ascertaining whether a matter would be covered within or without the aforementioned limits, the determinative element would be duty/ tax under dispute. However, where the imposition of penalty is the subject matter of dispute and the said penalty exceeds the limit prescribed, then the matter could be litigated further. Similarly, where the subject matter of dispute is the demand of interest and the amount of interest exceeds the prescribed limit, then the matter may require further litigation.

Adverse judgments relating to the following should be contested irrespective of the amount involved:

a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.

b) Where Notification/ Instruction/ Order/ Circular has been held illegal or ultra vires.

The revised monetary limits come into force from September 1, 2011.

(Source: Notification No. F.No.390/Misc./163/2010-JC dated August 17, 2011)

SERVICE TAX

Mandatory e-filing of service tax return

The Government has framed the Service Tax (Fourth Amendment) Rules, 2011 whereby w.e.f. October 1, 2011, all the assessees are mandatorily required to file their return electronically. Earlier, the assessees who had paid service tax of ₹ 10 Lacs or more (including payment by utilisation of CENVAT Credit) in the previous financial year were required to file service tax return electronically.

(Source: Notification No. 43/2011-ST dated August 25, 2011)

CORPORATE LAWS/ FEMA/ SEBI

Designated AD Category –I banks to approve change in the recognized lender

RBI has delegated powers to the designated Authorised Dealer (AD) Category –I banks to approve the request from ECB borrowers with respect to change in the recognized lender when the original lender is an international bank or a multilateral financial institution (such as IFC, ADB, CDC, etc.) or a regional financial institution or a Government owned development financial institution or an export credit agency or supplier of equipment and the new lender also belongs to any one of the above mentioned categories, subject to the AD ensuring the following conditions:-

i. the new lender is a recognized lender as per the extant ECB norms;

ii. there is no change in the other terms and conditions of the ECB; and

iii. the ECB is in compliance with the extant guidelines.

However, changes in the recognized lender in case of foreign equity holder and foreign collaborator will continue to be examined by the Reserve Bank of India (RBI). Further, the changes in the recognized lender should be promptly reported in Form 83 to the Department of Statistics and Information Management, RBI.

(Source: Notification No. RBI/2011-12/169 A.P. (DIR Series) Circular no. 11 dated September 7, 2011)

Revised Schedule VI may not to be followed by Companies coming out with IPO/FPO in during FY 2011-12

The Ministry of Corporate Affairs (MCA) vide Notification No. S.O. 447(E) dated February 28, 2011 regarding revised Schedule VI which is to take effect for the account closing on March 31, 2012. The companies coming up with Initial Public Offerings (IPOs) or Follow-on Public Offering (FPOs) in Financial Year 2010-11 are expected to prepare accounts as per the new schedule VI format. Further, if the previous years' figures are reclassified in accordance with the new schedule VI, it will be lead to vast administrative work and would also make the comparison with previous year unrealistic.

Considering this, MCA has relaxed such companies from this requirement. It has been clarified that the companies may prepare financial statements as per pre-revised Schedule VI, for the limited purpose of IPO/ FPO during the financial year 2011-12. However, from Financial Year starting from April 1, 2012, the companies are required to prepare the financial statements as per the revised Schedule VI.

(Source: MCA General Circular No. 62/2011 dated September 5, 2011)

Online incorporation of companies within 24 hours revisited

MCA vide General Circular No. 49/2011 dated July 23, 2011 provided for the online incorporation of Companies within 24 hours. The earlier circular stated that, if the e-Forms # 1, 18, 32 and e-form for Memorandum of Association (MOA) and Articles of Association (AOA) have been certified by the practicing professional regarding the correctness of the information and declarations given by the subscribers, then the application shall be processed electronically and the digital Certificate of Incorporation shall be issued immediately online by the Registrar of Companies (ROC).

The matter was revisited and considering the fact that nowadays, the companies are already being incorporated within 24-48 hours, on-line approval of incorporation forms, i.e., STP mode of approval of e-forms # 1, 18 and 32 on the basis of certification and declarations given by the practicing professional is not going to be implemented yet.

(Source: MCA General Circular No. 61/2011 dated September 5, 2011)

Company Law Settlement Scheme, 2011

MCA has introduced Company Law Settlement Scheme, 2011 ("the Scheme") for condonation of delay in filing documents with the ROC, granting immunity from prosecution under the Companies Act, 1956 ("the Companies Act") and the rules made there under.

The Scheme is valid from August 12, 2011 to October 31, 2011. As per the Scheme, a "defaulting company" is permitted to file belated documents, due for filing till June 30, 2011, in accordance with the provisions of the Scheme by paying an additional fee of 25% of the actual additional fee, payable on the date of filing of each belated document. The Scheme shall only apply to Form 20B, 21A, 23AC & 23ACA and 66. Further, the Scheme shall not apply to companies against which action under Section 560(5) of the Companies Act has been initiated by the ROC. Furthermore, MCA has clarified vide General Circular No. 60/2011 dated August 10, 2011 that the Scheme shall also be applicable to foreign companies.

(Source: MCA General Circular No. 59/2011 dated August 5, 2011)

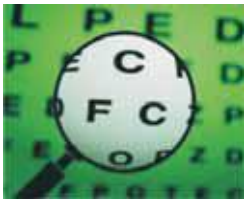
Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode

MCA has extended the date to file the financial statements in XBRL mode by all companies covered in Phase I (excluding exempted companies) without any additional fee till November 30, 2011 (from the earlier date of September 30, 2011) or within 60 days of the adoption of the balance sheet (from the earlier provision of 30 days of the adoption of the balance sheet), whichever is later.

Further, in supersession of Para 2 (i) of Ministry's Circular No. 43/2011 dated July 7, 2011, the verification and certification of the XBRL document of financial statements on the e-forms would continue to be done by authorized signatory of the company as well as professionals like Chartered Accountants or Company Secretaries or Cost Accountants in whole time practice.

(Source: MCA General Circular No. 57/2011 dated July 28, 2011)

All winding up cases to be scrutinized



In order to curb the malpractices of filing winding up petitions by the management(s) after having committed major violations under the Act as well as misappropriation of funds by the company, MCA has laid down the following procedure which may be followed in all cases:

(a) Upon filing of winding up petition before the Court, the Official Liquidator (OL) will obtain a copy of petition and forward the same to the ROC concerned.

(b) The ROC to submit a preliminary report to MCA within a week of inspection and scrutinizing of details/ documents, containing prescribed information for the five years preceding the date of filing of petition.

(c) Upon receipt of preliminary report from the ROC, MCA to take a final view within a period of 15 days thereof. If any inspection under Section 209A and/ or investigation under Section 235/ 237 of the Companies Act is ordered, ROC shall complete and forward the same to the OL within 30 days.

(d) The OL to place the report before the concerned High Court(s) for seeking appropriate order/ action under Section 539 to 544 and other relevant provisions of the Companies Act. Simultaneously, necessary action to be initiated against the directors, ex-directors and key management of the company for any violation of law which shall be monitored in the monthly staff meeting of the Regional Director (RD)

(Source: MCA General Circular No. 55/2011 dated July 26, 2011)

Pro-active action in case of winding up petitions

MCA, in order to speed up the winding up process and to introduce best international practices in the winding up process has laid down the following actions to be taken by the OL:

(a) OLs to post one of the staff members to the Company Court to keep track of all cases where applications have been filed for winding up, but orders for winding up are yet to be issued by the Court.

(b) For all cases pending till date and in future as well, information shall be obtained by OL from "institution register" maintained in the High Court.

(c) OL to file an application praying to the Court to direct the management of the company to submit prescribed information duly verified by a Chartered Accountant/ Company Secretary/ Cost Accountant in whole time practice.

(d) RDs will ensure that in all pending cases, the applications are moved by the OL before the Court before the next date of hearing and in all new cases, these are filed before the Court prior the second hearing of the case.

(Source: MCA General Circular No. 54/2011 dated July 26, 2011)

Guidelines for Regional Director ("RD")/ Registrar of Companies ("ROC") in the matter of Scheme of Arrangement/ Amalgamation under Sections 391-394 of the Companies Act

In order to streamline the process in respect of scheme of arrangement/ amalgamation under Sections 391-394 of the Companies Act, MCA has laid down the below mentioned procedure along with the timelines:

- On receipt of the notice from the court as per section 394A of the Act, the RD shall make an entry in a register or in electronic form;
- Within 3 days of receipt, RD shall send a mail to ROC concerned for the report;
- Within 7 days ROC shall furnish his report online to RD;
- Within 7 days of receipt of notice, RD shall send a letter to local branch of law ministry/ assistant solicitor general appointed for the state by law ministry as the case may be (furnishing copy of the notices received as per 394A) requesting for nomination of an advocate;
- Within 5 days of receipt of notice, RD shall send a letter to the company or its advocate to provide material of valuation report, chairman's report regarding creditors / members meeting and on receipt of the information; the matter should be processed and finalized within a week's time;
- The finalized affidavit shall be sent to designated standing counsel for the particular case for signature and then to law ministry (local branch) for identification. This exercise should not take more than 5 days after which the affidavit should be filed in court registry.
- RD's should ensure that all requisite statutory procedure for supporting the schemes has been complied with as listed in Annexure I and II appended to the circular.

(Source: MCA General Circular No. 53/2011 dated 26th July, 2011)

Simplified procedure for obtaining online approval of Central Government under section 297 of the Companies Act, 1956

MCA has decided to simplify the approval processes under Section 297 of the Companies Act, 1956 and to give approval

online, if the proposed contract has been approved by the shareholders by way of special resolutions in a general meeting. According to new procedure which is likely to come into force w.e.f. September 24, 2011, an application shall be made in a new e-form duly certified by the practicing professional with the prescribed fee along with information like terms of contract and details of Board resolutions and special resolutions etc. The company while seeking approval of the directors and shareholders in their meetings shall specifically take approval to the effect that:

(i) Proposed contract is competitive, at an arm's length, without conflict of interest and is not less advantageous to it as compared to similar contracts with other parties.

(ii) The company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon and has filed its up to date Balance Sheets and Annual Returns with the ROC;

(iii) The proposed contract is falling within the provisions of section 297 of the Act and provisions of Sections 198, 269, 309, 314 and 295 of the Act are not applicable in the proposed contract.

(iv) The company and its Directors have complied with the provisions of Sections 173, 287, 299, 300, 301 and other applicable provisions of the Companies Act, 1956 with regard to the proposed contract.

If any of the information or declaration given by the company or certificate given by the professional in the e-form is found to be wrong, the same shall be liable for penal action under Sections 297 and 628 of the Act in addition to other penal actions.

(Source: MCA General Circular No. 52/2011 dated July 25, 2011)

Simplified procedure for rectification of Register of Charges under Section 141 of the Companies Act, 1956

MCA has notified that a company seeking rectification of Register of Charges would have to obtain a confirmation from the Central Government instead of Company Law Board (CLB) having respective jurisdiction.

Such work shall be delegated to the respective ROC under whose jurisdiction the registered office of the company is situated. The petitions filed with the CLB and pending as on the effective date of notification shall be transferred to respective ROC.

This process is likely to be implemented with effect from September 24, 2011.

(Source: MCA General Circular No. 51/2011 dated July 25, 2011)

Simplified procedure for obtaining confirmation of shifting of registered office from one state to another state under Section 17 of the Companies Act, 1956

MCA has notified that a company seeking to shift its registered office from one State to another State and consequent alteration to Memorandum of Association would have to obtain confirmation from the Central Government instead of the CLB having respective jurisdiction.

Such work shall be delegated to the respective ROC under whose jurisdiction the registered office of the company is situated. The petitions filed with the CLB and pending as on the effective date of notification shall be transferred to respective ROC.

The above process is likely to be implemented with effect from September 24, 2011.

(Source: MCA General Circular No. 50/2011 dated July 25, 2011)

Processing of investor complaints in SEBI Complaints Redress System (SCORES)

In order to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, SEBI has commenced processing of investor complaints in a centralized web based complaints redress system 'SCORES'. The salient features of this system are:

- Centralized database of all complaints.
- Online movement of complaints to the concerned intermediaries
- Online upload of Action Taken Reports (ATRs) by the concerned entities, and
- Online viewing by investors of action on the complaints and its current status.

Accordingly, henceforth all complaints shall be forwarded electronically through SCORES only.

Further, redressal of investor grievances against stock brokers and sub-brokers would be taken up taken up electronically with the concerned stock exchange(s) through SCORES

(https://scores.gov.in/Admin). The stock exchange(s) shall, in turn, take up the matter with the concerned stock brokers/ sub-brokers.

The stock brokers and sub-brokers shall take adequate steps for redressal of grievances within one month from the date of receipt of the complaint and keep the investor/ stock exchange(s) duly informed of the action taken thereon. Failure to comply with the said requirement will render the stock broker liable for penal action.

(Source: SEBI Circular No. CIR/MIRSD/17/2011 dated August 24, 2011 and SEBI Circular No. CIR/MIRSD/18/2011 dated August 25, 2011)

SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011

SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 have been issued, w.e.f. August 16, 2011 thereby amending sub-regulation (2A) and (4A) of the Regulation 13 as under:

(i) any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group, and

(ii) any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation (4A).

(Source: Notification No. LAD-NRO/GN/2011-12/16/26150 dated August 16, 2011)

Infrastructure Finance Companies (IFCs) as eligible issuers for FIIs investment limit in debt instrument for infrastructure

SEBI has amended its earlier circulars of November 26, 2010 and March 31, 2011 and has decided that Non-Banking Financial Companies (NBFCs) categorized as Infrastructure Finance Companies (IFCs) by the Reserve Bank of India (RBI) shall now be considered eligible issuers for the purposes of FII Investment under the corporate debt long term infra category.

(Source: SEBI Circular No. CIR/IMD/FIIC/15/2011 dated August 26, 2011)

VAISH DEAL TRACKER

Delhi High issues notice to CCI over disclosure of confidential documents

CCI during the examination of the investigation report of Director General (DG) in the case *Pankaj Gas Cylinders Ltd vs. Indian Oil Corporation Ltd (IOC)* had observed that the manufacturer of the LPG cylinders have manipulated the bids by quoting the identical rates.

On the findings of the investigation report, CCI on March 9, 2011 took suo moto cognizance under section 2 (11) of the companies Act 2002, and directed the DG to conduct an investigation into the tender for procurement of 14.2 kg LPG cylinders by IOC.

In compliance to the direction of Commission, DG issued notices to the petitioners on March 21, 2011, to furnish certain details. After obtaining all the information from petitioners, commission allowed certain LPG manufacturing companies to inspect the DG report without petitioner's permission.

The Delhi High Court has issued notice to Commission of India (CCI) over a bunch of petitions filed by LPG cylinder manufacturing companies challenging the validity of the CCI to direct the petitioner to furnish confidential information to other LPG manufacturing companies.

Petitioner, Bhiwadi Cylinders has claimed that CCI has failed to maintained confidentiality of the trade and business secrets of petitioner. Petitioners have further alleged that CCI has violated Section 57 of the Competition Act by circulating the investigation report containing all the confidential information/ documents to all the 50 companies accused in the alleged cartel.

Petitioner, Bhiwadi Cylinders was represented by M M Sharma, Head - Competition Law & Policy and Vaibhav Choukse, Associate, Vaish Associates.

Vaish acts as Legal Advisor to the IPO of SRS Limited of ₹ 203 crore

SRS Limited is a diversified company operating in four business verticles viz. cinema exhibition, food and beverages, retail and manufacturing and jewellery retail.

Vaish Associates acted as the legal advisor to the public issue of 3.5 crore equity shares of ₹ 10/- each at a price of ₹ 58/- per equity share (including a premium of ₹ 48/- per share) of SRS limited ("SRS")

aggregating ₹ 203 crores. The said issues, which opened on August 23, 2011 and closed on August 26, 2011 constituted 25.13% of the post-issue share capital of SRS.

Vaish team was led by Partner Mr. Hitender Mehta and included, Senior Associate Mr. Akshay Saxena and Associates Ms. P. Sandhya, Mr. Pavit Singh and Mr. Pratyush Khurana.

Apart from the general issue related advisory, work handled included conducting due diligence and legal vetting of issue related documents, such as Syndicate Agreement, Escrow Agreement and Underwriting Agreement(s).

CSR INITIATIVES

Trust celebrates its scholarship beneficiary Shivi Jain on her becoming a Chartered Accountant

Shivi Jain, has been receiving scholarship for past 7 years, since she was in class 10th, under Scholarship Program of Vaish Associates Public Welfare Trust ("Vaish Trust"). Shivi has been supporting her education financially by tuitions at a very early stage in her life. The Vaish Trust celebrated Shivi's success on her becoming a Chartered Accountant this July 2011 at the Scholarship meet held on July 30 -31, 2011. Shivi has pledged to be a permanent volunteer with the Trust.

Scholarship Meet

At the Scholarship meet held on July 30 -31, 2011, students made posters on save environment, anti-corruption, global warming, women empowerment, national flag, cricket, etc. In all, 263 students from class 6th to college/ engineering/ CA students were given away scholarships.

Health Camp

Dr. Meera Malhautra, Physician, made a routine monthly visit on July 21, 2011, August 3, 2011 and August 25, 2011 at Tarang Pahadi centre, Tarang Farm centre and Tarang Pahadi centre respectively. Over 122 children from Tarang Balwadis and few women form community come for a health checkup. Medicines were also provided for their ailments.

Story telling workshop

On August 8, 2011, a story telling workshop was organized by Mrs. Sulekha Panandikar from Bachpan Society for Children's Literature and Culture, for children of Tarang Balwadi centres at Pahadi and Rampat Farms, Mehrauli, Delhi. Mrs. Panandikar charmed the children by her art of storytelling, keeping children as well as teachers engaged/ spell bounded. It was a great learning experience for the Tarang staff. Mrs. Panandikar used music, colors and drama while narrating stories. She told the staff, that the art of telling stories is very important, as it can help children to learn and understand things faster.

Vaish Trust sponsors printing of the Book "Phir Boli Kahaani" by Bachpan Society for Children's Literature and Culture

Bachpan Society for Children's Literature and Culture organized a book launch of their two new publications named "Boli Kahaani" and "Fir Boli Kahaani", at Pragati Maidan, Delhi, on August 29, 2011. "Phir Boli Kahaani" book printing has been sponsored by Vaish Associates Public Welfare Trust.

VAISH ACCOLADES

- **Ajay Vohra** and **Rupesh** Jain represented the firm in the 65th Congress of International Fiscal Association held at Paris from 12th to 15th September, 2011.
- **Hitender Mehta** was invited-
  - by **Dainik Bhaskar Group** to be a panelist at **MSME Knowledge Forum** held on July 29, 2011 at Jaipur.
  - by the Ludhiana Chapter of ICSI to address on the topic "*Limited Liability Partnerships*" in the seminar on "*Foreign Direct Investment and Limited Liability Partnerships*" held on August 6, 2011 at Ludhiana.
- **Satwinder Singh** acted as the coordinator of ASSOCHAM's National Program on "*Scientific Art of Valuation*" organised jointly with the Institute of Company Secretaries of India (ICSI) -Northern India Regional Council on August 27, 2011 at New Delhi and conducted the proceedings of the first technical session.

Vaish acts as Knowledge Partner in the 7th International SEZ Convention

Vaish Associates acted as Knowledge Partner in the **7th International SEZ Convention** organized by ASSOCHAM at New Delhi on July 27, 2011.

In the convention **Dr. Rahul Khullar,** Secretary, Ministry of Commerce & Industry, Govt. of India released *"Study on Performance of SEZs in India"*. **Hitender Mehta,** Partner, Vaish Associates headed the research team that conducted nationwide survey and prepared the Study.

IMPORTANT DATES WITH REGULATOR (S)

COMPLIANCE CHECKLIST

September-October, 2011

Sr. No	PARTICULARS	Sections/ Rules Clauses, etc	Acts/ Regulations, etc.	Compliance Due Date	To whom to be submitted
A.	**INCOME TAX**				
1	Deposit TDS from Salaries paid for September, 2011	Section 192	Income Tax Act, 1961	October 7, 2011	Income Tax Authorities
2	Deposit TDS from Contractors Bill, Payment of Commission or Brokerage, Professional/Technical Services Bills/ Royalty made in September, 2011	Section 194-H Section 194-I Section 194-C Section 194-J	Income Tax Act, 1961	October 7, 2011	Income Tax Authorities
3	Quarterly Statement of TDS in Form 27Q (Payment to non-residents)	Rule 31A	Income Tax Rules, 1962	October 15, 2011	Income Tax Authorities
4	Quarterly Statement of TDS in Form 24Q (Salaries)	Rule 31A	Income Tax Rules, 1962	October 15, 2011	Income Tax Authorities
5	Quarterly Statement of TDS in Form 26Q (Other than Salaries)	Rule 31A	Income Tax Rules, 1962	October 15, 2011	Income Tax Authorities
B.	**CENTRAL EXCISE & SERVICE TAX**				
6	Pay Service Tax in Form TR-6, collected during September, 2011 by persons other than individuals, proprietors and partnership firms	Rule 6	Service Tax Rules, 1994	October 5, 2011 (October 6, 2011 in case of e-payments)	Service Tax Authorities
7	Submission of half yearly Service Tax return in Form ST-3 or ST-3A along with a copy of Form TR-6 (in triplicate), for the half year ended September 30, 2011	Rule 7	Service Tax Rules, 1994	October 25, 2011	Service Tax Authorities
8	Submission of CENVAT Return for September, 2011	Rule 9(7)	CENVAT Credit Rules, 2004	October 10, 2011	Excise Authorities
9	Pay Central Excise duty on the goods removed from the factory or the warehouse during September, 2011	Rule 8	Central Excise Rules, 2002	October 5, 2011 (October 6, 2011 in case of e-payments)	Excise Authorities
C.	**LABOUR LAWS**				
10	Payment of monthly Employees' Provident Fund (EPF) dues	Para 38	EPF Scheme, 1952	Within 15 days from close of every month	Provident Fund Authorities
11	Monthly return of Provident Fund for the previous month w.r.t. international workers	Para 36	EPF Scheme, 1952	Within 15 days from close of every month	Provident Fund Authorities
12	Monthly return of Provident Fund for the previous month (other than international workers)	Para 38	EPF Scheme, 1952	Within 25 days from close of every month	Provident Fund Authorities

7th International SEZ Convention: (L to R) Mr. R K Sonthalia (Past Chairman, EPCES), Dr. Rahul Khullar (Commerce Secretary, Govt. of India), Mr. Hitender Mehta (Partner, Vaish Associates), Mr. D S Rawat (Secretary General, ASSOCHAM) and Mr. S K Jindal (Chairman, Investment & Investors' Protection Committee, ASSOCHAM). Vaish Associates acted as knowledge partner in the 7th International SEZ Convention organised by ASSOCHAM at New Delhi on July 27, 2011

MSME Knowledge Forum: (L to R) Mr. Shiv Kumar (MD, State Bank of Bikaner & Jaipur), Mr. Rajendra Bhanawat (MD, RIICO), Dr. Jitendra Singh (Cabinet Minister –Power and Higher Education, Govt. of Rajasthan), Mr. Uday Kumar Varma (Secretary, Ministry of MSME, Govt. of India), Dr. Ashok Singhvi (Principal Secretary, Small Scale, Khadi & Village Industries, Govt. of Rajasthan) and Mr. Hitender Mehta (Partner, Vaish Associates) at MSME Knowledge Forum organized by Dainik Bhaskar Group at Jaipur on July 29, 2011.

Disclaimer:

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