

Newsletter

POC Connect



Updates

April 2012, Edition

CORPORATE NEWS

[From 1st to 31st March 2012]

SEBI may move SC on MCX-SX ruling

SEBI is expected to move the Supreme Court soon, challenging the Bombay High Court verdict in the MCX Stock Exchange (MCX-SX) matter as on Bombay High Court order directing SEBI to consider afresh the application filed by MCX-SX for functioning as a full-fledged equity bourse.

Reliance Retail to raise Rs 4,500 cr from RIL

Reliance Retail plans to raise up to Rs 4,500 crore or \$900 million from its parent company, Reliance Industries, to accelerate store openings and grow aggressively in select formats, even as some of its rivals look to shutter outlets and curtail expansion in the cash guzzling retail business.

Unitech demands \$150 million from Telenor to exit joint venture

Realty firm Unitech has sought about \$150 million from Norway's Telenor to sell its 32.7% stake in their telecom joint venture as proposed to the Company Law Board, after it had asked the realty firm to decide by March 19 if it wanted to buy out the 67.25% stake held by Norway's Telenor or exit their joint venture.

Mahindra Satyam, Tech Mahindra merge to create \$2.4-billion Company

The erstwhile Satyam Computer Services and Tech Mahindra announced details of their planned merger, where merger ratio, shall be fixed at 17 shares of Mahindra Satyam for two Tech Mahindra shares, was along expected lines, valuing the former Satyam at \$1.8 billion (Rs 9,000 crore).

Anil Ambani-owned Reliance Communications files for \$1-billion IPO in Singapore for undersea cable business

Reliance Communications has filed the listing document for its undersea cable assets with the Singapore Stock Exchange, and plans to raise over \$1 billion from the IPO. Reliance Communications will be listing only its undersea cables as a trust, rather than as a company. Regulations for the trust require the company to divest 51-75%.

ONGC gives 30% dividend; govt. nets over Rs.880 cr

ONGC declared the second interim dividend of 30 per cent, which will net the government over Rs 888 crore. The government had asked profit-making public sector firms to pay additional dividend to bridge budgetary deficit as it had got over Rs 12,600 crore earlier this month from selling a 5 per cent equity stake in ONGC.

TAX NEWS

[From 1st to 31st March 2012]

Haryana govt announces 1pc VAT reduction on CSD goods

Haryana Chief Minister Bhupinder Singh Hooda today announced reduction in VAT on Canteen Stores Department (CSD) goods by one per cent, from 5.25 per cent to 4.25 per cent.

RBI bars partnership of Muthoot Fincorp from accepting public deposits

Muthoot Estate Investments, in which the promoters of gold loan company Muthoot Fincorp are partners, will not be allowed to collect public deposits said the Reserve Bank of India. It had also directed Muthoot Fincorp Ltd to stop allowing the use of its premises, branches or officials, in any manner by Muthoot Estate Investments for accepting deposits from public.

TDS slips to be must for registering property from October

After imposing a 1% tax deduction at source on property transactions if the value of the property is more than 50 lakh in metro areas and more than 20 lakh in other places. It is planned

to make it mandatory for people to show proof of this tax payment to get their properties registered.

JNPT to raise R5,000-crore tax-free bonds

Giving a push to investments for development of major ports in the country, the government has decided to allow Jawaharlal Nehru Port Trust (JNPT) to raise tax-free bonds worth Rs.5,000 cr announced for the port sector in the Budget.

Direct taxes code will be implemented fully from April next year

The Finance Ministry on Monday assured India Inc that the proposed new direct taxes code (DTC) would be implemented in full from April 1, 2013. Some elements of the code, such as the General Anti Avoidance Rules and Advance Pricing Agreement, have already been incorporated in the Finance Bill 2012.

Budget 2012 Impact: EXL service files for advance tax ruling for past buyouts

The Union Budget 2012-13 is likely to impact overseas buyouts in India's \$100-billion IT-BPO industry. As a precaution, Noida-based BPO, EXL Service, has appealed for advance tax rulings, besides setting aside money which may be asked by tax authorities for deals done in the past.

CIRCULARS, NOTIFICATIONS AND PRESS RELAESES

[From 1st to 31st March 2012]

COMPANIES ACT, 1956

General Circular No. 4/2012 dated 09.03.2012

Allotment of Director's Identification Number (DIN) under Companies Act, 1956

Time for filing form DIN-4 by DIN holders for furnishing PAN and to update PAN details has been extended upto 30.04.2012.

General circular No.2/2012 Dated 01/03/2012.

Section 34 of the Companies Act,1956,-Effect of registration-

Registration of Companies or LLPs which have one of their objects is to carry on the business of banking, Insurance or to profession of Chartered accountant ,cost Accountant, Company Secretary, Architect etc ,the concerned Registrar of Companies shall incorporate the same only on the production of in-principle approval/NOC from the concerned regulator/professional Institutes.

INCOME TAX

Notification No.5(4)-B(PD)/2011, dated 13-3-2012

Special Deposit Scheme for Non-Government Provident, Superannuation and Gratuity Funds - Notified rate of interest on such deposits

Under the Special Deposit Scheme for Non-Government Provident, Superannuation and Gratuity Funds, announced in the Ministry of Finance (Department of Economic Affairs) Notification No. F. 16(1)-PD/75, dated 30th June, 1975, shall with effect from 1st December, 2011 and until further orders, bear interest at 8.6% per annum.

SERVICE TAX

Notification No.6/2012 - Service Tax dated 17.03.2012

- ❖ The Central Government exempts the taxable service specified in clause (zzzo) of sub-section (105) of section 65 of the Finance Act from so much of the service tax leviable thereon under section 66 of the Finance Act, as is in excess of the service tax calculated on a value which is equivalent to forty per cent. of the value of the taxable service by such service provider for providing the said taxable service
- ❖ Provided that this notification shall not apply in cases where the CENVAT credit of duty on inputs or capital goods, used

for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004.

- ❖ This notification shall come into force on the 1st day of April, 2012.

RBI

RBI/2011-12/452A.P. (DIR SERIES) CIRCULAR NO.93
dated 19.03.2012

Investment in Indian Venture Capital Undertakings and /or domestic Venture Capital Funds by SEBI registered Foreign Venture Capital Investors

- FVCIs are allowed to invest in the eligible securities (equity, equity linked instruments, debt, debt instruments, debentures of an IVCU or VCF, units of schemes / funds set up by a VCF) by way of private arrangement / purchase from a third party also, subject to terms and conditions as stipulated in Schedule 6 of Notification No. FEMA 20 / 2000 -RB dated May 3, 2000 as amended from time to time.
- SEBI registered FVCIs would also be allowed to invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000, as amended from time to time, as well as the terms and conditions stipulated therein.

CORPORATE CASE LAWS

[From 1st to 31st March 2012]

THE STATESMAN LIMITED V. PAPER TRADE & INDUSTRIES (P.)LIMITED [*High Court of Calcutta [2012]112 SC 265/19*]

Applicable Section: Section 433 of the Companies Act, 1956

BRIEF FACTS:

The petitioner company was engaged in its arranging finance of purchase of newsprints. It financed and purchased goods on behalf of Respondent Company. However, Respondent Company failed in making payments against the dues of Petitioner Company. Petitioner Company filed Winding up Application against the Respondent Company. The respondent Company contended that the petitioner have overcharged them, without placing any material on record. On the other hand, the Petitioner contended that purchase order was placed on an agreed price as per terms of contract. Further it was submitted by the respondent that it has filed a suit in court against petitioner of Rs.1.4 Crore, and stated that claim by the petitioner was *bona fide* disputed & therefore winding up application by the petitioner was an abuse of the process of the court.

HELD:

The Winding up Application by the petitioner was admitted by the court.

CONCLUSION:

Mere filing of the suit by the respondent is not enough to say that there is *bona fide* dispute as regards to the claim of the petitioner or winding up application by petitioner is an abuse of the process of the court. There is no scope to claim any alleged overcharging by the respondent as the contractual terms already agreed upon are very specific. Therefore it was directed that respondent is indebted to pay the sum claimed by the petitioner.

TAX CASE LAWS

[From 1st to 31st March 2012]

AREVA T&D INDIA LTD VS. DCIT (Delhi High Court) ITA No.315/2010

BREIF FACTS:-

The assessee, vide slump sale agreement, acquired a transmission and distribution business as a going concern for a lump sum consideration of Rs.44.7 crores. The net tangible assets were valued at Rs.28.11 crores and the balance Rs. 16.58 crores was allocated by the transferee towards acquisition of bundle of “business and commercial rights” being business information; business records; contracts; employees etc, compendiously termed as “goodwill”. The assessee claimed that the said “business and commercial rights” were an “intangible asset” and eligible for depreciation u/s 32(1)(ii). The assessee’s claim was rejected by the AO, CIT(A) & Tribunal on the ground that depreciation was not allowable on “goodwill”. The appeal was moved by the assessee,

HELD:

The appeal was decided in favour of assessee

REASON:-

S. 32(1)(ii) allows depreciation on “intangible assets” which are defined to mean “know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature”. Applying the principle of ejusdem generis, the

expression “business or commercial rights of similar nature” need not answer the description of “knowhow, patents, trademarks, licenses or franchises” but must be of similar nature as the specified assets. The specified intangible assets are not of the same kind and are clearly distinct from one another. The nature of “business or commercial rights” cannot be restricted to only the aforesaid six categories of assets but can be of the same genus in which all the aforesaid six assets fall and form part of the tool of trade of an assessee facilitating smooth carrying on of the business. The intangible assets, viz., business claims; business information; business records; contracts; employees; and knowhow, are all assets, which are invaluable and result in carrying on the transmission and distribution business by the assessee without any interruption. These intangible assets are comparable to a license to carry out the existing transmission and distribution business of the transferor. In the absence of the aforesaid intangible assets, the assessee would have had to commence business from scratch and go through the gestation period whereas by acquiring the aforesaid business rights along with the tangible assets, the assessee got an up and running business. Accordingly, the intangible assets acquired under slump sale agreement were in the nature of “business or commercial rights of similar nature” and eligible for depreciation u/s 32(1)(ii)

TATA TOYO RADIATORS PVT. LTD. VS. UOI [Bombay High Court Writ Petition no.2401/2408 of 2012]

BREIF FACTS:-

The AO passed an assessment order raising a demand of Rs.5.76 Crores. The assessee filed a stay application stating that the CIT (A) had heard the appeal and stay of demand be granted till the order on the appeal. The AO rejected the stay application and directed that the demand be paid without giving any reasons. The assessee approached the Addl. CIT who noted that as the AO had already started recovery proceedings, there was no point before him to consider. The assessee's bank accounts were attached u/s 226(3). The assessee filed a Writ Petition.

HELD:-

Writ petition was allowed

REASON:-

In several judgments of this Court, the parameters for the exercise of jurisdiction u/s 220(6) of the Act have been spelt out. In KEC International Ltd. v. B.R. Balakrishnan 251 ITR 158, the importance of reasoned orders being passed on the stay applications was emphasized. The AOs consistently refused to follow the law laid down in the judgment of this Court. The AO & the appellate authorities are duty bound to act in accordance with binding precedent and there is no reason or justification to act in the manner in which the applications for stay have been disposed of in this case.

*Thank
you*

For any suggestions & Queries

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