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**NMA**

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October 2007

# NEWS ROOM

## **Moser Baer to raise \$ 100 m via Private Equity**

Optical storage media maker Moser Baer has announced that it would raise \$100 million (Rs 400 crore) for its photovoltaic subsidiary through investments from private equity investors including IDFC and GIC Special Investments. The move would position the photovoltaic subsidiary for a potential IPO on an international exchange, the company said in a statement issued on Friday. "The investment will be made by a consortium of investors led by IDFC Private Equity, GIC Special Investments, UK's CDC Group Plc and Infrastructure Development Finance Company (IDFC)," the release added.

## **Himalaya Drug Company expanding retail presence**

The Rs 500-crore Himalaya Drug Company will expand its retail presence in the next two years and focus on launching "differentiated products that will marry science with cosmetics," says Mr Saket Gore, Business Head, Consumer Products Division, Himalaya.

## **Mahindra to enter retail biz, set up lifestyle stores**

The \$4.5 billion Mahindra Group is foraying into retail business. Mahindra Retail is planning to roll out a multi-format specialty chain in the premium lifestyle space, primarily in soft goods. It has also tied up with certain international brands. "The Mahindra group has a reasonably large trading business housed in one of its companies, Mahindra Intertrade. The group believes that this is the opportune time to enter and extend its distribution business into direct retailing when the organised retail market is expanding in India.

## **HSBC plans \$ 600 mio Indian realty fund**

London-headquartered financial services major HSBC is set to be the first foreign financial institution to raise an India-focused real estate fund. The banking major is planning to raise \$500-600 million for the realty fund, with fund-raising likely to begin in the next few weeks, sources close to the development said. "The bank is keen on getting a slice of the real estate market in India. However, the mandate of the realty fund would be such that a small portion of the corpus would also be invested in other sectors," said an industry source.

## **Citigroup to buy rest of Nikko in \$ 4.6 billion deal**

Citigroup said it would buy out minority shareholders in scandal-hit Japanese brokerage Nikko Cordial for \$4.6 billion, as part of the financial giant's push into the world's second-largest economy. Citigroup spent about \$8 billion to buy a 68% stake in Japan's third-largest securities firm earlier this year, its biggest-ever Asian acquisition. Since then, the US bank has been increasing its presence in Japan and looking to repair its image after it fell foul of Japanese regulators. Citigroup, the largest US bank by market value, said it would offer its own shares to buy the remaining 32% it does not own in Nikko

## **MRF sales breach Rs. 5,000 Crore mark**

MRF Ltd on Friday claimed that it has become the first tyre company in the country to cross the Rs 5,000-crore mark turnover. For the financial year ended September 30, 2007, the company expects its turnover to cross the Rs 5,000-crore mark as against Rs 4,260 crore it clocked last year. Due to volatility in rubber prices and high interest rates, the profit margin is expected to be around 3% of the turnover (1.8% in last fiscal), said KM Mammen, chairman and managing director, MRF.

## **Vodafone to spend \$2bn. To expand network in India**

Vodafone, which pledged a \$10million investment for setting up a charitable organisation in India, on Monday decided to spend \$2 billion a year for expanding and strengthening its network in India. Stating that Vodafone is also keen on sharing infrastructure with its competitors instead of creating them on its own, Vodafone Chief Executive Officer Arun Sarin said that since the company's entry into India, its capital expenditure had doubled. "We are now spending \$2 billion a year. We plan to cover 90 per cent of the market from 50 per cent now by bundling affordable handsets to reach out to the masses, particularly in small towns and villages," he said while talking to reporters.

## **Vijay Mallya bets big on sports**

Here's Vijay Mallya in a new light. The 52-year-old debonair chairman of the \$2-billion UB group has pulled out all the stops to ensure his brands have a ball, both on and off the field. The Kingfisher beer and airline brand is increasingly making its presence felt across an array of sports, and so is the McDowell's range of spirits from the UB stable.

# VALUE CREATION

## BASICS OF "SETTING UP IN INDIA"

With a strong knowledge base, ease of technology implementation and availability of comparatively cheap skilled labour, India provides tremendous opportunities to overseas investors intending to expand their operations in Asia.

We examine below, various entry strategies available to foreign companies (in the manufacturing and trading sectors) in India from a practical point of view.

### MODES OF ENTRY INTO INDIA

The important modes of entry available to overseas investors are as under

#### 1. As a foreign company:

Liaison Office/Representative Office, Project Office, Branch Office, Technical Collaboration, Direct Sale

#### 2. As an Indian company:

Joint Venture, Wholly Owned Subsidiary

### AS A FOREIGN COMPANY

Foreign Company is one, which has been incorporated outside India and conducts business in India. These companies are required to comply with the provisions of the Companies Act, 1956. Foreign Company can set up a Liaison, Project or Branch Office in India. Apart from limited sectoral requirements under FEMA for approval, such companies also have to register themselves with Registrar of Companies (ROC) within 30 days of setting up a place of business in India. Various forms of entry have been briefly discussed below for ease of understanding:

#### **Liaison Office/Representative Office**

The Companies which want to first study the Indian markets and obtain relevant information before they expand their operations in India establish a liaison office in India. Some foreign companies also establish liaison offices as an intermediate step before entering into a joint venture.

A liaison office is not allowed to undertake any business activity in India and cannot therefore, earn any income in India. It is allowed only to carry out specific activities. The role of such office is, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers. The opening of liaison offices is governed by the FEM (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000. Approval from the Reserve Bank of India (RBI) is required for opening such offices. There are certain standard conditions imposed for operations of such offices. Some such conditions have been laid out as under:

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(a) Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office abroad.

(b) Such offices should not charge any commission or receive other income from Indian customers for providing liaison services.

(c) Liaison/representative offices also have to file an annual activity certificate etc. from a Chartered Accountant to RBI.

(d) Such Liaison office should not acquire title to any immovable property in India

Permission to set up such offices is initially granted for a period of 3 years and this may be extended from time to time.

#### **Project Office**

A project office is required to be established when a foreign company secures a contract to execute a project of an Indian company. Site office is a sub-office of the project office which is established at the site of a project. But, in either case, it will not include liaison office. The establishment of the project office/site office is also governed by FEM (Establishment in India of Branch or office or other place of Business) Regulations, 2000. According to these Regulations, specific approval from the RBI is required for setting up a project office. The following conditions shall be associated with such a project which the foreign company has secured:

(i) the project is funded directly by inward remittance or by a bilateral or multilateral International financing agency like World Bank or IMF or similar other body or

(ii) the project has been approved / cleared by an appropriate authority; or

(iii) the contract awarding Indian company has been granted Term Loan by a Public Financial Institution or bank for the project.

#### **Branch Office**

In certain circumstances, a foreign company may not desire to enter into either a joint venture or collaboration in India. In such a case, it has an option to establish a branch in India.

The opening of branches of foreign companies is regulated by FEM (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000. According to these Regulations, RBI has permitted foreign companies engaged in manufacturing and trading activities abroad to open branch offices in India for undertaking specified activities only.

A Branch Office is not allowed to carry out manufacturing, processing activities directly/indirectly. Branch Office will have to submit activities certificate from a Chartered Accountant on an annual basis to Reserve Bank of India. For annual remittance of profit, Branch Office may submit required documents to authorised Bank. Permission for setting up Branch Offices is granted by the Reserve Bank of India on a case to case basis. RBI normally considers the operating history of the applicant company worldwide and its proposed activities in India for granting the approval.

# VALUE CREATION

## BASICS OF "SETTING UP IN INDIA" (CONTD...)

### Technical Collaboration

For the foreign company which does not intend to take the risk of Capital investments in an Indian company. In such a situation, it can enter into a technical collaboration only with an Indian company. Under this alternative, the foreign company transfers only the technology to the Indian company and is entitled to the technology payments. For this arrangement no separate entity is required unlike a joint venture.

As per Press Note No.9 (2000 Series) dt. 8.9.2000 by SIA (FC Division). Department of Industrial Policy & Promotion, wholly-owned subsidiaries of foreign companies can now pay royalty to their off shore parent companies through the automatic route, sans any restrictions on the duration of royalty payments.

The technology payments are subject to deduction of tax at source 20% (in case of agreements made on or after 1.6.1997) of the payments. This is normally reduced to 15-20% under a tax treaty.

### Direct Sale

This is probably the easiest way of expanding operations in any country. However, in terms of the visibility, this provides the least presence in India.

A foreign company can directly sell its goods to a final customer in India. For this purpose, no legal entity is required to be formed in India.

There are no tax implications of direct sale by a foreign company in India since no income accrues or arises in India to the foreign company provided due precautions are taken to see that the title to the goods passes on outside India. The only important implication of the direct sale is the payment of appropriate import duty by the importer of goods.

### AS AN INDIAN COMPANY

A foreign company can commence operations in India through incorporation of a company under the provisions of the Indian Companies Act, 1956. Foreign equity in such Indian companies can be up to 100% depending on the business plan of the foreign investor, prevailing investment policies of the Government and receipt of requisite approvals.

For registration as an Indian company and its incorporation, an application has to be filed with Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian company, it will be subject to same Indian laws and regulations as applicable to other domestic Indian companies.

### Joint Venture/WOS

This is the most commonly used mode by foreign corporations and non-residents for their investments in India, as this mode provides maximum visibility and presence in the country. Setting up of operations through a joint venture may entail the following advantages for a foreign investor.

- (i) established distribution/marketing set up of the Indian partners.
- (ii) available financial resource of the Indian partner.
- (iii) established contacts of the Indian partner which help smoothen the process of setting up of operations.

Joint venture is generally financial as well as technical collaboration, although a pure financial collaboration is also now possible. Joint ventures could be either in the form of Greenfield projects, Takeovers or Strategic alliances with existing Indian companies.

#### *Greenfield Projects*

A Greenfield project is set up with new manufacturing facilities and new plant and machinery. For this purpose, an Indian joint venture company is to be formed with normally 51 % equity held by a foreign company. The balance 49% can be held by an Indian partner and/or financial institutions or allotted to public by way of a public offer in India.

#### *Takeover and Strategic Alliances*

Usually the joint ventures are in the form of takeovers or strategic alliances with the existing reputed companies with a niche market. In addition, foreign companies expanding their operations are increasingly using India for sourcing labour and establishing base for Asia Pacific region. The availability and supply of abundant raw materials acts as an additional advantage.

# CORPORATE WATCH

## UNITECH INDIA LIMITED

Unitech India has been playing a major role in the development of India's Real Estate industry since 1974. From Homes to Offices to shopping malls to hotels & clubs, Unitech Builders widened their field of work to power plants, transmission lines, classrooms, roads and theme parks in India. In fact, Unitech Projects have been appreciated in India as well as abroad. Thus, the company has not only made its name in India but its projects abroad are getting great reviews for undertaking excellent Property management. The Real Estate aspirations of Unitech India have covered all the major cities of India like Delhi, Mumbai, Kolkata, Chennai, Bangalore, Hyderabad, Lucknow, Agra, Kochi, Varanasi, Gurgaon, Greater Noida and Ghaziabad and boast of exquisite residential complexes. The excellent commercial projects of Unitech India in Kolkata, Delhi and Gurgaon have won accolades.

Chairman of the Company	Ramesh Chandra
Face Value of the Share	2.00
52 week High	368.00
52 week Low	93.55

*Amount in Rs. (Crores)*

Particulars	Mar 05	Mar 06	Mar 07
Net Sales	509.76	653.13	2503.97
Other Income	17.42	21.62	95.67
Total Income	527.18	674.75	2599.64
Total Expenses	463.91	531.00	1091.51
<b>Operating profit</b>	<b>45.85</b>	<b>122.13</b>	<b>1412.46</b>
Interest	17.76	32.52	158.76
PBDT	45.51	111.23	1349.37
Depreciation	2.14	3.10	4.54
PBT	43.37	108.13	1344.83
Tax	13.46	38.48	361.27
Net Profit	29.91	69.65	<b>983.56</b>
Earnings Per Share	4.79	11.15	12.12
Equity	12.49	12.49	162.34
Face Value	2.00	2.00	2.00

# CORPORATE WATCH

DETAILS AS ON 22TH OCTOBER 2007

## Top 3 Shareholdings in the Company

Total Promoters	74.47
Total Non promoter Corporate Holding	9.26
Total Public and others	9.35

## Top 3 Mutual Fund Holding

Scheme Name	No. of Shares
ICICI Pru Blended Plan – A (G)	480,602
ICICI Pru Equity & Derivative Fund – Income Optimiser(Retail Option) (G)	426,773
ICICI Pru Equity & Derivative Fund – Income Optimiser (Inst. Option) (G)	398,174

## Comparative Data of Unitech India Limited with its Peer Companies

*(in Rs. Crore)*

Company Name	Last Traded Price	EPS (TTM)	PE Ratio	Face Value of Share	Market Capitalisation
IVRCL Infrastructure	432.35	12.26	35.70	2.00	5,675.32
Jai Prakash Associates	1071.95	21.12	50.98	10.00	23,644.91
Nagarjuna Construction	270.10	8.16	33.58	2.00	6,268.28
Unitech India Limited	306.20	7.75	39.51	2.00	49,707.74

# NOTIFICATIONS AND PRONOUNCEMENTS

## CASE LAWS

### Business Expenditure

**I.T.O. Vs. Sureshchand Jain 31/08/2005 (2006) 284 ITR (AT) 160**

#### **Decision:**

Held by the Hon`ble Bench that as turnover charges levied by the SEBI are not one time license fees, it is to be paid every year on the basis of percentage of turnover, thus it is in the nature of expenditure covered by the provision of section 43B of Income-tax Act, 1961

### Section 69A

**Avinash Gupta Vs. C.I.T. 10/07/2007 [2007] 294 ITR 168 (P&H)**

#### **Decision:**

Held by the Hon`ble Court that, it was recorded that some of the relatives even not aware of the deposits having been made by the assessee in the accounts opened in their names, and accounts had been operated by assessee himself. Therefore deposits in the name of relatives and benami found during search operations is undisclosed income.

### Allowability of incentive bonus

**C.I.T. Vs. Raza Textiles Ltd. 09/05/2005 (2005) 148 Taxman 305( ALL.)**

#### **Decision:**

Held by Hon'ble court that since the incentive bonus was paid to the employees wholly and exclusively for business purposes such bonus was allowable as deduction u/s 37(1).

### Admissibility of Business Expenditure

**Jiwanram Sheoduttrai Vs. C.I.T 02/08/2005 (2005) 279 ITR 512 (Cal)**

#### **Decision:**

Held by Hon'ble court that under mercantile system of accounting assessee is entitled to deduction of loss/ expenditure in the year in which such entry is made in books of account. Hence, A.O. is not justified in disallowing deduction for amount payable under terms of contract on ground that such sum was not paid actually.

### Section 80 IA

**C.I.T Vs. Oracle Software India Ltd. 09/05/2007 [2007] 293 ITR 535 (Delhi)**

#### **Decision:**

Held by the Hon`ble Court that, in the absence of any definition of the word manufacture one should appreciate the meaning as commonly understood by a reasonable person, from this point of view conversion of blank disc to a software loaded disc is clearly amounts to manufacture and deduction of section 80-IA is allowable.

### Section 37

**C.I.T. Vs. Relaxo Footwears Ltd. 25/04/2007 [2007] 293 ITR 231 (Delhi)**

#### **Decision:**

Held by the Hon`ble Court that, the new unit was a part of the existing business moreover unity of control and inter-lacing of the units is also there. Therefore expenses incurred regarding setting up of the new unit which was part of the existing business is allowed as revenue expenditure.

### Bad Debts

**Autometers Ltd. Vs. C.I.T. 02/03/2007 [2007] 292 ITR 345 (Delhi)**

#### **Decision:**

Held by the Hon`ble Court that, it is not necessary to establish that debt had become bad only to write it off as irrecoverable in its accounts is enough to claim deduction u/s 36(1)(vii).

### Section 32

**Southern Petrochemical Industries corporation Ltd Vs. C.I.T. 29/01/2007 [2007] 292 ITR 362 (Mad)**

#### **Decision:**

Held by the Hon`ble Court that, any `forced illness` of the machinery cannot disentitle to the assessee to claim the depreciation allowance, from the director report it is clear that the assessee was prevented from using the machinery because of the frequent labour unrest. Therefore assessee is entitled to depreciation on stand-by spare parts even though they were not taken for use during the year.

# DUE DATES

Due Date	Assessee Covered	Obligation / Event
<b>PROVIDENT FUND AND ESI</b>		
25th October	PF Applicable Units	EPF Monthly Return.
20th November	PF Applicable Units	EPF Deposit for October 2007
21st November	ESI Applicable Units	ESI Deposits for October 2007
<b>INDIRECT TAX</b>		
25 <sup>th</sup> October	Service Tax Assessee	Half yearly return of service tax
28th October	DVAT Assessee	Electronic return for those who have been prescribed to file monthly returns under DVAT
5th November	Service Tax Assesses	In respect of payment received towards the value of taxable services in August for corporate assesses
<b>DIRECT TAX</b>		
31 <sup>st</sup> October	Income Tax Assesses liable to audit u/s 44AB	Due date of filing return of Income
31 <sup>st</sup> October	Income Tax Assesses	Issue TDS certificate for tax deduction in previous month
7th November	Income Tax Assesses	Deposit of TDS/TCS deducted during the month of October 2007.
<b>COMPANIES ACT</b>		
29th November	Companies which held their AGM on 30th September	Due date of filing Annual Return with the Registrar of Companies

# BUSINESS GAGS

## How to Make a Telemarketer Go Away

- 1. If they want to loan you money, tell them you just filed for bankruptcy and you could sure use some money. Ask, "How long can I keep it? Do I have to ever pay it back, or is it like the other money I borrowed before my bankruptcy?"*
- 2. If you get one of those pushy people who won't shut up, just listen to their sales pitch. When they try to close the sale, tell them that you'll need to go get your credit card. Then, just set the phone down and go do laundry, shopping or whatever. See how long that commission based scum waits for you to get your credit card.*
- 3. If they start out with, "How are you today?" say, "Why do you want to know?" Or you can say, "I'm so glad you asked, because no one seems to care these days and I have all these problems, my sciatica is acting up, my eyelashes are sore, my dog just died...." When they try to get back to the sales process, just continue on with telling about your problems.*
- 4. If the person says he's Joe Doe from the ABC Company, ask him to spell his name, then ask him to spell the company name, then ask where it is located. Continue asking personal questions or questions about the company for as long as necessary.*
- 5. This one works better if you are male: Telemarketer: "Hi, my name is Julie and I'm with Dodger & Peck Services.... You: "Hang on a second." (few seconds pause) "Okay, (in a really husky voice) what are you wearing?"*
- 6. Crying out, in well-simulated tones of pleasure and surprise, "Julie!! Is this really you? I can't believe it! Julie, how have you BEEN?" Hopefully, this will give Julie a few brief moments of terror as she tries to figure out where the heck she could know you from.*
- 7. Say, "No," over and over. Be sure to vary the sound of each no, and keep an even tempo even as they're trying to speak. This is the most fun if you can keep going until they hang up.*
- 8. If MCI calls trying to get you to sign up with their Family and Friends plan, reply, in as sinister a voice as you can muster, "I don't have any friends...would you be my friend?"*
- 9. If they clean rugs: "Can you get blood out, you can? Well, how about goat blood or HUMAN blood - chicken blood too?"*
- 10. Let the person go through their spiel, providing minimal but necessary feedback in the form of an occasional "Uh-huh, really, or, "That's fascinating." Finally, when they ask you to buy, ask them to marry you. They get all flustered, but just tell them you couldn't give your credit card number to someone who's a complete stranger.*
- 12. Tell the Telemarketer you are busy and if they will give you their phone number you will call them back. If they say they are not allowed to give out their number, then ask them for their home number and tell them you will call them at home (this is usually the most effective method of getting rid of Telemarketers). If the person says, "Well, I don't really want to get a call at home," say, "Ya! Now you know how I feel." (smiling, of course...)*



*“You are never given a dream, without being given the power to fulfill it”*

*Anonymous*

Queries/Feedback/Suggestions on this newsletter may be addressed to:  
Nayyar Maniar & Associates, Chartered Accountants, B-9, LGF, Green Park  
(Main), New Delhi – 110016, India. Ph: + 91-11-46021550-52.

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