

IN THE NEWS

June 2010

1. Supreme Court Decision on the Establishment of a National Company Law Tribunal

On May 11, 2010, the Supreme Court ruled in *Union of India v. Madras Bar Association* that a separate tribunal to settle disputes over company law may be established by the legislature, but the legislature must change the relevant provisions of the Companies Act, 2002 ("**Act**") before establishing such a tribunal. This ruling was in response to a challenge to the constitutional validity of amendments to Chapters 1B and 1C of the Act which created a National Company Law Tribunal ("**NCLT**") with jurisdiction over disputes limited to company law. The Supreme Court summed up the argument in favor of establishing a separate NCLT by pointing out the efficiency achievable by a special tribunal in comparison to the general court system, which was bound by more restrictive procedural rules that caused undue delays in disputes limited to company law.

This judgment establishes that current company law disputes shall for now continue to be settled by the general Indian court system. However, in the future, the legislature will likely revise their initial attempt to create the NCLT in order to come into compliance with this judgment, and thereafter matters currently handled by the Company Law Board, the Board for Industrial & Financial Reconstruction the Appellate Authority for Industrial & Financial Reconstruction and all other company law matters would be transferred to the NCLT. The implementation of a tribunal such as the NCLT would allow companies to settle disputes in their entirety at one centralized forum, rather than going through multiple agencies with limited jurisdictions.

2. Service Tax Widened Ambit

Several changes in the General Service Tax ("**GST**") will come into effect on July 1, 2010 including an expansion of the scope of taxable services and an exemption from service tax for other services. This has been established by notifications numbered 24/2010 through 35/2010, all of which are dated June 22, 2010 and issued by the Central Board of Direct Taxes to modify the Finance Act, 2010 ("**Act**"). Of particular note in the business community are exemptions from the tax for: (A) the repair of ships, boats and other vessels belonging to the Government of India¹ (B) entities authorized to distribute power under the Electricity Act, 2003² and (C) persons employed by the aircraft operators whose employment requires their presence on the aircraft itself.³

Application of service tax to the renting out of properties has not been decided with finality by the courts. In *Home Solutions Retails Ltd. v. UOI*, the Delhi High Court examined a precedent ruling which established that no service tax could be levied against a lessor of commercial property unless some additional service beyond the bare rental of real property, such

1 Notification No. 31/2010

2 Notification No. 32/2010

3 Notification No. 25/2010 (ii)

as providing air conditioning, was part of the rental agreement. However, after this decision, the legislature amended Section 65 (105)(zzzz) of the Act to say that renting commercial property is itself a service liable to service taxation.⁴ While not a final decision, this order found the lessor of rental property would only be exempt from a service tax under the amended Act if his writ petition challenging the validity of the aforementioned amendment to the Act is granted and the amendment is removed.

The notifications have also amended the Finance Act, 2010 to make more services subject to the GST. These include health related services such as the storage of medical records, promotion and marketing of medical goods and services, as well as a tax on hospitals for checkups and on insured persons whose treatment is paid for directly by their insurer. Other service industries which have been added to the list of those subject to the GST include gambling ventures, brand promotion, services provided by electricity exchanges and the copyrighting of films and sound recordings.⁵

3. 3G Airwaves Auctioned for 670 billion Rupees

India's economy has remained stable throughout the worldwide recession. Evidence of this abounds. The economic growth rate stemmed largely from investment in fixed assets such as elevated roads and, perhaps more significantly, the long-awaited auctioning of 3G airwaves, in which mobile-telephone service providers bid over 670 billion rupees. A second auction for wireless broadband internet is expected to bring in another 300 billion rupees.⁶

4. New Rupee Symbol Implemented

The Indian legislature has decided to implement a new and unique rupee symbol at the end of June. On June 25 it declared it will pick one of the five finalists that came from a design contest, and will consist of the hindi letter "R" with two slashes through it, much as the United States' dollar sign (\$) consists of a letter "S" with two lines (sometimes abbreviated to one line) through it. This symbol allows the Indian rupee to join the ranks of the American Dollar, Chinese Yen, English Pound and European Union's Euro of countries with recognizable and unique symbols for their currency. Consequences of this change are largely symbolic, involving worldwide respect and recognition. However, it will also have some more direct effects, such as the addition of the symbol to computer keyboards.

⁴ The language substituted in the section above was "by renting of immovable property *or any other service* in relation to such renting"

⁵ The copyrighting of literary, dramatic, musical music and visual art will remain outside of the scope of the service tax

⁶ *The Economist* "India's Cantilevered Economy: A Strong, Well-Balanced Recovery" June 2010