

# NEWSLETTER

February, 2012

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Dear Reader,

We thank you for your consistent patronage and belief in our firm and capabilities. We appreciate your wonderful response with your valuable feedbacks. With this encouragement we bring you the February Issue (2012) of our Newsletter.

The monthly newsletter is essentially dedicated to make our readers updated on the significant changes/occurrences in the different sectors of Indian legal and regulatory system. This newsletter includes various updates on RBI, FEMA, FDI, Anti-corruption Laws, M&A, etc.. We hope to serve you through this newsletter and trust our endeavor to fortify our bonds together...

Thanks & Regards

OPK Team

## CORPORATE & TRANSACTIONAL



### Un-hedged Foreign Currency

RBI advised all Scheduled Commercial Banks to monitor and review on a monthly basis, through a suitable reporting system, the un-hedged portion of the foreign currency exposures of those corporates whose total foreign currency exposure is relatively large (say, above US\$ 25 million or its equivalent). Further, they were also advised to extend foreign currency loans above US \$ 10 million (or such lower limits as may be deemed appropriate vis-à-vis the banks' portfolios of such exposures) only on the basis of a well laid out policy of their Boards with regard to hedging of such foreign currency loans.

### Guidelines on FCRA, 2010

The Reserve Bank, considering the public interest and in exercise of all the powers enabling it in this behalf, issued the guidelines on Foreign Contribution (Regulation) Act, 2010 and Foreign Contribution (Regulation) Rules, 2011. With the coming into force of the Act, Foreign Contribution (Regulation) Act, 1976 stands repealed. The Act prohibits certain classes of persons from receiving 'foreign contribution'. It also restricts certain classes of persons from accepting foreign hospitality while visiting any country or territory outside India, without the prior permission of the Central Government. The Act stipulates that every person who has been granted a certificate of registration/prior permission as stipulated in the Act shall receive foreign contribution in a single account and only through such branches of a bank as may be specified in his application. The Act mandates that every bank or authorized person in foreign exchange shall report to specified authority, the prescribed amount of foreign remittance, source and manner in which foreign remittance was received and other particulars in such form and manner as may be prescribed. Banks and Financial Institutions are required to strictly adhere to the provisions of the new Act while dealing with the receipt of foreign contributions.

### Loans to Relatives of Director of Banks

The RBI came across an instance, where loans and advances have been sanctioned to the relative of a Director of a bank, at a concessional rate of interest, thereby circumventing the spirit of the restrictions contained under Section 20 of the Banking Regulation Act, 1949. The matter was examined by RBI and it was decided that the restrictions as contained in Section 20 of the Act would apply to grant of loans and advances to spouse and minor/dependent children of the Directors of banks. However, banks may grant loan or advance to or on behalf of spouses of their Directors in cases where the spouse has his/her own independent source of income arising out of his/her employment or profession and the facility so granted is based on standard procedures and norms for assessing the creditworthiness of the borrower. Such facility should be extended on commercial terms. As mentioned in the circular dated March 1, 1996, all credit proposals for Rs. 25 lakhs and above should be sanctioned by the bank's Board of Directors/Management Committee of the Board. The proposals for less than Rs. 25 lakhs may be sanctioned by the appropriate authority in banks in terms of the powers delegated to them.



### Loans to Relatives

- ◆ Loans and advances have been sanctioned to the relative of a Director of a bank, at a concessional rate of interest.
- ◆ Banks may grant loan or advance to or on behalf of spouses of their Directors .
- ◆ All credit proposals for Rs. 25 lakhs and above should be sanctioned by the bank's Board of Directors/Management Committee of the Board.



## Guidelines under FETERS

The RBI gave guidelines for compilation of R>Returns and reporting under the *Foreign Exchange Transactions - Electronic Reporting System (FETERS)*, the following changes shall be effected in reporting of R>Returns from the next financial year (*i.e.*, transactions taking place from April 1, 2012):

- ◆ The purpose codes for classification and reporting of foreign exchange transactions in FETERS should be as per the revised classification. Accordingly, all AD category-I banks are advised to report all foreign exchange transactions as per the revised purpose code list with effect from first fortnight of April 2012
- ◆ AD banks may indicate purpose codes for all

foreign exchange transactions (including receipts under non-export transactions below Rs. 5 lakhs) under FETERS. The present system of reporting of non-export transactions below Rs. 5 lakhs (a) on a consolidated basis in BoP file and (b) submission of purpose-wise distribution of a sample of such small receipt transactions (as part of R-return in the URS file under FETERS), will be discontinued for transactions beyond March 31, 2012.

- ◆ The amount field in all FETERS files will be increased to 15-digit format.
- ◆ 6-digit port code will be used uniformly for reporting under FETERS.

## Submission of SOFTEX

As per the revised procedure, a software exporter, whose annual turnover is at least Rs. 1000 crore or who files at least 600 SOFTEX forms annually, will be eligible to submit a statement in excel format giving all particulars along with quadruplicate set of SOFTEX form to the nearest STPI. STPI will then verify the details and decide on a percentage sample check of the documents in details. Software companies will submit all the documents on demand to STPI within 30 days of their advice or any reasonable/extended time at the discretion of the Director, STPI, at the request from the exporter. STPI will thus certify the statement and SOFTEX forms in bulk on the "Top Sheet" regarding the values etc. and will thereafter forward the first copy of the revised SOFTEX format to the concerned Regional Office of RBI, the duplicate

copy along with bulk statement in excel format to Authorized Dealers for negotiation / collection / settlement, the third copy to the exporter and the last copy will be retained by STPI for its own record. Under the revised procedure, the exporters, however, will have to provide information about all the invoices including the ones lesser than US\$25000, in the bulk statement in excel format. The new procedure will be effective initially in STPI Bangalore, Hyderabad, Chennai, Pune and Mumbai with effect from April 01, 2012. Based on the success in these centers, it would be adopted by all the STPIs and SEZ/ EPZ/ 100% EOU/ EHTP/ DTA units by June 2012.

- ◆ A software exporter, whose annual turnover is at least Rs. 1000 crore or who files at least 600 SOFTEX forms annually, will be eligible to submit a statement in excel format.
- ◆ Four sets of SOFTEX form will be submitted to the nearest STPI.
- ◆ STPI will thus certify the statement and SOFTEX forms. and will then forward the first copy of the revised SOFTEX format to the concerned Regional Office of RBI.

## ECB within National Manufacturing Investment Zones (NMIZ)

Availing of ECB is permissible for the infrastructure sector, which is defined to include (i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, refining and exploration and (ix) cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat. Developers of SEZ were also allowed to provide such infrastructure facilities within the SEZ. Keeping in view the infrastructural needs of the proposed National Manufacturing Investment Zones (NMIZs), it has now been decided to allow developers of NMIZ also to avail of ECB under the "approval route" for providing infrastructure facilities within the NMIZ, as indicated above.



## ECB- Simplification of Procedure

As a measure of simplification of the existing procedures, it has been decided to delegate powers to the designated AD category-I banks to approve the following requests from the ECB borrowers, subject to certain conditions pertaining to:

- ◆ Reduction in amount of ECB: The designated AD Category-I bank may approve requests from ECB borrowers for reduction in loan amount in respect of ECBs availed under the automatic route, subject to ensuring the conditions; (i) the consent of the lender for reduction in loan amount has been obtained; (ii) the average maturity period of the ECB is maintained; (iii) the monthly ECB-2 returns in respect of the LRN have been submitted to the Department of Statistics and Information Management (DSIM); and (iv) there is no change in the other terms and conditions of the ECB.
- ◆ Changes/modifications in the drawdown schedule when original average maturity period is not maintained: It has now been decided that the designated AD Category-I bank may approve requests from ECB borrowers for changes/modifications in the drawdown schedule resulting in the original average maturity period undergoing change in respect of ECBs availed both under the automatic and approval routes, subject to ensuring the following conditions; (i) there are no changes/modifications in the repayment schedule of the ECB; (ii) the average maturity period of the ECB is reduced as against the original average maturity period stated in the Form 83 at the time of obtaining the LRN; (iii) such reduced average maturity period complies with the stipu-

lated minimum average maturity period as per the extant ECB guidelines; (iv) the change in all-in-cost is only due to the change in the average maturity period and the ECB complies with the extant guidelines; and (v) the monthly ECB-2 returns in respect of the LRN have been submitted to DSIM.

- ◆ Reduction in the all-in-cost of ECB: The designated AD Category-I bank may approve requests from ECB borrowers for reduction in all-in-cost, in respect of ECBs availed both under the automatic and approval routes, subject to ensuring the following conditions; (i) the consent of the lender has been obtained and there are no other changes in the terms and conditions of the ECB; and (ii) the monthly ECB-2 returns in respect of the LRN have been submitted to DSIM.

## Filling the Industrial Entrepreneur Memorandum

The DIPP issued a press release on 7<sup>th</sup> February, 2012 where entrepreneurs are required to submit an Industrial Entrepreneurs Memorandum (IEM) in the prescribed form along with the prescribed fee for undertaking the manufacture of any article exempted from the Industrial License. On filing the memorandum with the requisite number of copies, entrepreneurs are given an acknowledgment of

receipt. It has been by various press notes that IEM is intended purely for statistical purposes and that the procedure was not in the nature of any registration involving scrutiny of the memorandum.



### SEBI- OECD Conference

- ◆ The theme of the Conference was Towards a more inclusive and secure financial world.
- ◆ Mr. U K Sinha, Chairman, SEBI said that an effective grievance redressal mechanism should have features like uniformity, predictability and consistency.
- ◆ Mr. Sinha added that there are plans for inclusion of financial education in school curriculum of Central Board of Secondary Education (CBSE).

### SEBI- OECD Conference

The two day SEBI - OECD International Conference on Investor Education concluded in Goa on 4<sup>th</sup> February, 2012. The conference was co-hosted by the Securities and Exchange Board of India (SEBI) and the Organisation for Economic Co-operation and Development (OECD). The theme of the Conference was "Towards a

more inclusive and secure financial world". The Conference was attended by nearly 200 delegates from 45 countries. Emphasizing that investor grievance redressal should be a matter of priority, Mr. U K Sinha, Chairman, SEBI said that an effective grievance redressal mechanism should have features like uniformity, predictability and consistency. Stressing the need for initiating financial education at school level, Mr. Sinha added that the Ministry of Human Resource Development, Government of India is working on the plans along with SEBI and other regulators for inclusion of financial education in school curriculum of Central Board of Secondary Education (CBSE).

### CII wants FDI in cable distribution to be increased

CII has made a plea to increase the Foreign Direct Investment in the cable distribution sector from 49 % to 74%. Broadcast regulator TRAI has accepted this and proposed to the Government. Both

digitize 90 million cable homes in the next three years.

- ◆ Liberalization of conversion of imported capital goods/machinery and pre-operative/pre-incorporation expenses to equity instruments.
- ◆ Introduction of provisions on 'pledging of shares' and opening of non-interest bearing escrow accounts, subject to specified conditions.



houses of the Parliament have already approved the second Amendment Cable TV Regulation Bill to amend Section 4 (A) of the Cable Act 1995 to give effect to Telecom Regulatory Authority of India (TRAI) recommendations on Digital Addressable Cable System (DAS) in India. India's cable TV infrastructure is set for completely digitization by the end of December 2014 and four Indian metros (Delhi, Mumbai, Chennai, Kolkata) by June 30, 2012. An estimated Rs 25,000 crore has to be invested by the cable distribution sector to

## CII suggested to allow foreign airlines to invest in



The Confederation of Indian Industry has called for allowing foreign airlines to invest up to 49% in domestic carriers. "A liberal FDI regime would pave the way for foreign airlines to participate in India's aviation sector and strengthen it. A comprehensive policy direction is needed to address the prevailing crisis and lay a path for future growth," stated

Mr. Chandrajit Banerjee, Director General, CII. Aviation sector in the country is going through a tumultuous phase and the Policy should create an enabling framework for safe, secure, efficient, investor friendly and a viable aviation sector in the country. A liberal FDI regime would also instill confidence among foreign investors, including overseas hedge funds and private equity groups, in the domestic carriers. To increase MRO (maintenance, repair, and overhaul) business in India, CII has suggested rationalization of taxes and customs duties. Servicing an aircraft in India entails service tax of 12.36% as compared to nil tax overseas. Further, importing spares involves customs duties of 25.40%. Deemed export status to MRO business in India and allocation of land for hangers at airports would also promote the sector. CII suggested that the new policy should review bilateral, to allow Indian carriers greater utilization so that the share of Indian airlines in international traffic goes up.

## IRDA trying to go the green way

India is moving towards a paperless kind of insurance industry. "IRDA is working on the repositories and contractual liabilities to suit to the requirements of a paperless insurance industry", said Mr. J.Hari Narayan, Chairman, Insurance Regulatory and Development Authority (IRDA) speaking at the session on Addressing Distribution Challenges at CII on 11<sup>th</sup> February, 2012. Speaking about India's approach towards the insurance sector, in comparison with other countries, Mr. Narayan pointed out that India followed Rules based Regulations vis-à-vis Principle based Regulations, which suits more to the Indian context. Mr. Narayan opined that low cost broking

intermediaries must be taken up to cater to the insurance requirements, especially in the Tier-II & Tier-III cities. Mr. Narayan also pointed out that in insurance, distribution is a challenge. "Insurance depends on Trust and Competence", he said.



## M&A's in India's Hospitality to grow- PWC



India's Hospitality sector is expected to witness high growth over the long-term as per PwC-CII latest survey report on 11<sup>th</sup> February, 2012 titled 'Hospitality insights: From the Indian CEOs' desk'. More than 80% of CEOs interviewed believed that India will not be affected by the economic downturn over the long run. The growth in the sector is largely expected from the domestic travel – business or leisure. With consumers being more demanding and price-conscious, the budget and mid-market segments are the possible

growth areas as per the CEOs. Some of the key findings from the survey include:

- ◆ Domestic travel is expected to be the primary driver of the sector's growth.
- ◆ More than 90% CEOs interviewed believe high disposable income is driving this domestic market growth.
- ◆ Budget and mid-market segments have emerged as the most preferred investment categories.
- ◆ High cost of developing property for hospitality is one of the key hurdles faced by industry leaders.
- ◆ Talent management continues to be a major challenge for the sector with increased competition for talent within the sector and from competing service sectors contributing to the issue

## India to expect a slow down- KPMG's Global M&A Predictor

UK and US 'least worst' global M&A markets in 2012, according to KPMG's Global M&A Predictor, India and Germany expected to see substantial slow down in M&A this year. David Simpson, Head of Global M&A at KPMG and a partner in the UK firm added, "There are big variations between some of the world's major economies with India and Germany showing confidence drops of 19 and 18 percent respectively over the last six months compared with the UK with only a 2 percent drop and the US which remains flat. The US saw a drop of just 3 percent in market capitalization over the last six months, compared with a 10 percent drop globally. It may seem surprising that the reliably solid Germany and high growth market

of India are predicted to slow to such a great extent but this demonstrates just how volatile markets are at the moment. Under the current economic circumstances, the predicted UK and US markets look 'least worst' of the major global M&A markets."



## EXTERNAL AFFAIRS

### Indo- Pak Agreement on Nuclear Weapons



In accordance with Article 8 of the Agreement between the Republic of India and the Islamic Republic of Pakistan on Reducing the Risk from Accidents Relating to Nuclear Weapons of 21 February 2007, both countries have agreed to extend the Agreement for another period of Five years. The existing validity was up to 20 February 2012.

### BRICS Summit in New Delhi

The 4<sup>th</sup> BRICS Summit was hosted in New Delhi on 29 March 2012. The theme of the Summit will be "BRICS Partnership for Global Stability, Security and Prosperity". Formalized at the first meeting of the Foreign Ministers of Brazil, Russia, India and China on the margins of the United Nations General Assembly in New York in September 2006, the Group has come a long way in a relatively short span of time and has evolved mechanisms for consultation and cooperation in a variety of relevant sectors. Three Summits, meetings of the Ministers of Foreign Affairs, Finance, Agriculture and Health and other sectoral meetings have helped further deepening of cooperation between the BRICS countries. The New Delhi BRICS Summit aims to impart further momentum and depth as it takes the BRICS agenda forward in the contemporary context.

## ANTI-CORRUPTION LAWS

### Fraud Risk Management

Bank of India recently set up a Fraud Risk Management Department, which would (i) specialize in fraud monitoring, investigation and follow-up, (ii) identify trained IT personnel in forensic audit and deploy them for investigation of large value fraud (iii) build up a data/information pool of large value fraud to analyze them periodically, which can also act as a knowledge repository for policy. Effective monitoring is possible by having a suitable system/software. In this direction, an online real time fraud monitoring package has been envisaged, which would have a next-generation enterprise wide fraud detection solution that is built on a proven, advanced platform. The benefits of such an online transaction monitoring system would be in the following areas:-

- ◆ taking advantage of all available data.
- ◆ it would incorporate all available data-types, customer, household, merchant, cycle-cut, third-party and issuer-specific data; authorizations; deposits; and non-monetary transactions into

the modeling process. The result is enhanced predictability and reduced false-positive rates in both models and rules.

- ◆ achieve the highest level of fraud detection performance.
- ◆ use of the industry's most advanced analytics to give the Bank a significant advantage in the quest of managing and controlling fraud losses. The solution allows for multiple predictive models supported by a champion/ challenger facility to ensure the best approach every time.



## Notice for Whistle Blowers



The Govt. of India has authorized the Central Vigilance Commission as the Designated Agency to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action under the Public Interest Disclosure & Protection of Informers (PIDPI) Resolu-

tion, 2004. The CVC issued a notice on 13<sup>th</sup> February, 2012 emphasizing the need for creating greater awareness among public for lodging whistle blowers complaint. The CVC suggested all CVOs to give wide publicity to PIDPI Resolution and the guidelines issued by the CVC through their website, journals, publications and also organize seminars/sensitizations etc. to inculcate greater awareness so as to encourage the public especially insiders to come forward and report information of corrupt practices or misuse of office.

## ENVIRONMENTAL LAWS

### BASIC Meeting on Climate Change

The 10<sup>th</sup> BASIC Ministerial Meeting on Climate Change was held in New Delhi on 13<sup>th</sup> – 14<sup>th</sup> February, 2012. BASIC Ministers appreciated the outcome of the Durban Conference and the role played by South Africa as Presidency of COP-17. Ministers recognized that the Durban conference represented a significant step forward and helped operationalize several of the Cancun decisions such as Green Climate Fund (GCF), Adaptation Committee, Technology Executive Committee and the Climate Technology Centre and Networks (CTCN), the Standing

Committee on Finance and the arrangements for transparency. Ministers regretted the announcement by Canada, within a few days after the conclusion of the Durban Conference, withdrawing from the Kyoto Protocol.



As a follow up action regarding implementation of the National Manufacturing Policy, the Ministry has recently taken the certain decisions to expedite the prior environmental clearance for the National Manufacturing and Investment Zones (NIMZ)

### National Manufacturing and Investment Zones (NIMZ)

The Government of India has recently approved the National Manufacturing Policy. As a follow up action regarding implementation of the National Manufacturing Policy pertaining to environmental clearance, the Ministry has taken the following decision to expedite the prior environmental clearance

for National Manufacturing and Investment Zones (NIMZ) units required under the EIA Notification, 2006:

- ◆ The cases pertaining to units under the NIMZ will be considered by granting them the highest inter-se priority.
- ◆ The individual units within the NIMZs would be exempted from public hearings once a public hearing has been conducted for the entire NIMZ, provided these NIMZs are notified as industrial estates by the State Governments concerned.

## COMPETITION LAWS

### CCI amends Combination Rules

The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 as amended up to 23<sup>rd</sup> February, 2012 has notified that the merger of wholly owned subsidiaries with the parent holding company will no longer require the approval of the antitrust body. Also CCI has exempted acquisitions resulting in a cumulative control of up to 25 per cent of shareholding or voting rights from such scrutiny. The current practice sets the limit at 15 per cent. Analysts say the change is in sync with market watchdog SEBI's new takeover code, which raised the open offer trigger from 15 to 25 per cent of the shares acquired. The antitrust regulator has also significantly increased the filing fees for companies that are obliged to inform it of mergers and acquisitions (M&A) activity by law. While the filing fee for form I has been increased to Rs.10 lakh

from Rs.50,000, the fee for form II has been increased to Rs.40 lakh from Rs.10 lakh. While form I is for initial scrutiny, form II requires greater detail in terms of reporting the transaction to CCI and is filed when there's likely to be a greater anti-competitive effect in the market. The amendments made by CCI have brought happiness in the corporate sector with new hopes.



## FROM OUR LAWYER'S DESK

### An Insight on 2G Scam

Spectrum is a range of radio frequency used for transmission of voice, data and images. Telecom operators need spectrum to carry voice and other data among mobile phone users. The Department of Telecommunications (DoT) was headed by Shri A. Raja. It has been alleged that he decided on who should be given the licences much before the bids had received, exploiting loopholes in the first-come-first-serve policy. The licences under review include Uninor, Loop Telecom, Etisalat, Videocoin, Tata Teleservices and Idea Cellular.

#### It all begins

On 24<sup>th</sup> September, 2007, Shri A.K. Srivastava, DDG (AS), DoT prepared

a note mentioning therein that as on that date, 167 applications had been received from 12 companies for 22 service areas and opined that it may be difficult to handle such a large number of applications at any point of time. He suggested that 10<sup>th</sup> October, 2007 may be announced as the cut-off date for receipt of new UAS Licence applications. Shri A. Raja who was, at the relevant time, Minister of C&IT did not agree with the suggestion and ordered that 1<sup>st</sup> October, 2007 be fixed as the cut-off date for receipt of applications for new UAS Licence. Accordingly, press note dated 24<sup>th</sup> September, 2007 was issued by the DoT stating that no new application for UAS Licence will be accepted after 1<sup>st</sup> October, 2007.

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## AN OVERVIEW:

- Founded by Mr. O.P. Khaitan in 1990. Currently being managed by Mr. Gautam Khaitan as its Managing Partner;
- Well established, reputed, skilled and professionally managed full service Law Firm.
- Long associations with many International law firms in different jurisdictions.
- Quality of Legal Services - immaculate, consistent and impeccable.
- Our Members and Associates - Qualified from National and International Universities.
- Firm's Paramount Concept - "Clients' Satisfaction".
- Retained By - Several National and International Clients with Cross-Border Investment Objectives around the Globe.
- Key Focus - Cross-Border Mergers, Joint-ventures & Acquisition.
- 40 Lawyers + Paralegal and Support Staff of more than 40 people.
- The Office of the Firm-based in the prime location of South Delhi and is established in 4 floors totaling to 12,000 sq. fts. office space.
- The Firm is one of the exclusive members of several international networks of law-firms through which we ensure ready access to formal legal advice to our clients in other jurisdictions around the world.

*"What if we can help those things that really matter..."*

## An Insight on 2G Scam

It is borne out from the record that Vodafone Essar Spacetel Ltd. (Respondent No. 12) had made an application for UAS Licence in 2004 and 3 others, namely, Idea Cellular Ltd. (Respondent No. 8), Tata Teleservices Ltd. (Respondent No. 9) and M/s. Aircel Ltd. (Respondent No. 11) had made similar applications in 2006. However, the same were not disposed of by the DoT and they were included in the figure of 167. Between 24<sup>th</sup> September, 2007 and 1<sup>st</sup> October, 2007, over 300 applications were received for grant of UAS Licences. Member (Technology), Telecom Commission and Ex-officio Secretary to Government of India sent a letter dated 26<sup>th</sup> October, 2007 to Secretary, Department of Legal Affairs, Ministry of Law and Justice seeking the opinion of the Attorney General of India/Solicitor General of India on the issue of the mechanism to deal with what he termed as an unprecedented situation created due to receipt of large number of applications for grant of UAS Licence.

The Department decided to continue with the existing policy (first-come-first-served) for processing of applications received up to 25<sup>th</sup> September 2007, i. e. the date when the news-item on announcement of cut-off date appeared in the newspapers. The procedure for processing the remaining applications will be decided at a later date, if any spectrum is left available after processing the applications received up to 25<sup>th</sup> September 2007.

On 10<sup>th</sup> January, 2008, two press releases were issued wherein all the applicants were required to assemble at the departmental headquarters within 45 minutes to collect the Response (s) of the DoT. They were also asked to submit compliance of the terms of LoIs within the prescribed period. The applicant companies who had submitted applications to DOT for grant of UAS licences in various service areas on or before 25<sup>th</sup> September, 2007 were requested to depute their Authorised signatory/Company Secretary/ authorised representative with authority letter to collect Response (s) of DOT. They were requested to bring the company's rubber stamp for receiving these documents to collect letters from DOT in response to their UASL applications. Only one representative of the Company/group Company was allowed.

Similarly, the companies who had applied for usage of dual technology spectrum were also requested to collect the DOT's response.

All the applicants including those who were not even eligible for UAS Licence collected their LoIs on 10<sup>th</sup> January, 2008. The acceptance of 120 applications and compliance with the terms and conditions of the LoIs for 78 applications was also received on the same day. Soon after obtaining the LoIs, 3 of the successful applicants offloaded their stakes for thousands of crore in the name of infusing equity.

### The Verdict

The SC in its judgment on 2<sup>nd</sup> February, 2012 cancelled all the licences granted to the private Respondents on or after 10<sup>th</sup> January, 2008 pursuant to two press releases issued on 10<sup>th</sup> January, 2008 and subsequent allocation of spectrum to the licensees were declared as *illegal* and were quashed. The SC fixed a four month time frame for implementation of the order and TRAI has been given 2 months to make fresh recommendations for the grant of license through auction.

### The aftermath

If the telecom ministry does decide to cancel some or all of the licences, questions will be raised on whether foreign investors can trust Indian government contracts. The telecom ministry is also mulling imposing charges for spectrum it granted to telecom firms in the past and has levied fines on newer firms for not rolling out networks quickly enough. If the spectrum charges are imposed, market leaders Bharti Airtel and Vodafone would have to pay hundreds of millions of dollars in back-charges. For newer entrants, hefty fines could strain their finances and force them to exit.

According to a leading newspaper, banks have lent close to a combined Rs. 26,000 crore to firms that would be affected by the SC ruling. The banks may eventually choose to invoke the legal action of auctioning properties of these companies in case they fail to repay their loans.

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