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EDITORIAL

INDIAN ECONOMY TOWARDS TAKE-OFF

CA VINOD JAIN*

The worse in the Indian economy seems to be over. The recessionary tendencies and negative sentiments have been arrested and a positive stimulating economic sentiment is growing. The growth in the industrial and service sectors is likely to improve substantially during 2009-10. The growth in the agricultural sector still depends on next few weeks down-pore. The capital market sentiments have substantially revived and the response to public issue and private placements through QIB route has revived fairly. It is expected to gain momentum in next 3 to 6 months and by the end of 2009 or in the 1st quarter of 2010, the capital market shall be expected to get geared up in double digit growth.

The new projects and investments in select sectors including power sector, infrastructure and roads are taking shape very fast. A large number of mega investment projects are also gaining ground towards implementation. The saving rates in Indian economy continue to be around 35%. As the investment sentiment further improves; the money supply (M3) growth will stimulate financial activity and credit off-take.

Interest rates have not come down as expected in spite of negative inflation as per WPI. The consumer price index is yet to recede. The confidence on the banking and financial system had been impacted due to slow-down during last one year and 72% of the banks liability is in one year deposit, restraining banks to take longer commitments on the credit off-take side. The banks are saddled with huge funds, currently being invested by them in securities. The commercial lending growth has just commenced and is likely to gain substantial momentum in next 2 or 3 quarters. The apprehension of large government borrowings from commercial banks may suck money from the system. At the same time budgetary expenditure of one million crores by the Union Government during the current financial year will definitely stimulate money supply and economic activities.

The professionals and entrepreneurs need to gear up and take necessary action for planning growth and diversification of their business to take full advantages at the time of economic revival. The international sentiment in the US economy and the European economy has also comparatively improved. The US and European economy are expected to have positive growth in the year 2009-10. This will have positive impact on the sluggish export market.

The major concern still remains on the agricultural side due to lack of irrigation and poor monsoon. The government needs to initiate a massive agricultural infrastructure. Dr. Manmohan Singh can now initiate linking of various rivers and the Indira Gandhi Canal Project mega phase should be given momentum on a national basis.Like Rs. 2 lakh crores have been committed towards growth in next 2 years in the road sector, a similar budgetary plan for river linkage and canal networking across the country would pave the way for next green revolution and will provide sustained growth in Indian economy. Empowering agriculturists by incentivising storage capacity and providing financial power through better value addition to agricultural products can provide the biggest stimulus to poverty eradication and growth of Indian economy.

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LATEST IN FINANCE

1.0 INTEREST SUBSIDY FOR EXPORTERS EXTENDED

Battling the demand recession in western economies, The Reserve Bank of India (RBI) has extended the interest subsidy of 2% on export credit to exportersby six months till March, 2010. **Unlisted companies to enter repo market**

The Reserve Bank of India (RBI) has allowed unlisted companies, to which the government has issued special securities, to enter into ready forward contracts. This facility will help the unlisted entities use special securities as collateral to get funds from the repo market. Fertilizer companies are most likely to benefit from this decision. These entities will be allowed to trade in the market repo and not repos with RBI under the liquidity adjustment facility. This will ease the temporary liquidity concerns of the unlisted entities.

2.0 ELIGIBILITY FOR READY FORWARD CONTRACTS

The following categories of entities are eligible to enter into ready forward contracts (market repos and **not** repos with the Reserve Bank of India (RBI) under the Liquidity Adjustment Facility) in the Government securities:

(a) persons or entities maintaining a Subsidiary General Ledger (SGL) account with the RBI, Mumbai, and

(b) the following categories of entities which do not maintain SGL accounts with the RBI but maintain gilt accounts with a bank or any other entity (i.e. the custodian) permitted by the RBI to maintain Constituent Subsidiary General Ledger Account with its Public Debt Office, Mumbai :

- i. Any scheduled bank;
- ii. Any Primary Dealer
- iii. Any non-banking financial company (other than Government companies)
- iv. Any mutual fund
- v. Any housing finance company
- vi. Any insurance company
- vii. Any non-scheduled Urban Co-operative bank.
- viii. Any listed company, having a gilt account with a scheduled commercial bank; and
- ix. Any unlisted company which has been issued special securities by the Government of India and having gilt account with a scheduled commercial bank.

(c) In addition to the conditions and restrictions stipulated in circular dated May 11, 2005, the following restrictions will also be applicable to the eligible unlisted companies for entering into ready forward contracts:

(i) The eligible unlisted companies can enter into ready forward transactions as the borrower of funds in the first leg of the repo contract only against the collateral of the special securities issued to them by the Government of India; and

(ii) The counterparty to the eligible unlisted companies for repo transactions should be either a bank or a Primary Dealer maintaining SGL account with the Reserve Bank.

RBI/2009-10/102/IDMD. DOD.No.334/11.08.36/2009-10/dtd. 20.07.09

3.0 EMERGENCE OF NEFT SYSTEM

National Electronic Funds Transfer (NEFT) system was operationalised during November 2005 and 57,263 branches of 91 banks spread across the length and breadth of the country have participated in the NEFT system as on date. During the month of June 2009 alone, around 4.5 million transactions were processed through the system. The NEFT system has thus emerged as a system-wide important payment system.

RBI/2009-10/108/DPSS (CO) EPPD No.192 / 04.03.02 /dtd. 29.07..09

4.0 FINE FOR TARDY ATM REVERSAL

Banks will now have to pay accountholders a compensation of Rs. 100 per day for every day of delay in reversing a failed ATM transaction. The RBI has come out with stringent penalties for banks that fail to reverse in 12 days a transaction in which cash is not dispensed by the ATM but money is debited from the customer's account.

5.0 SHELTER TO SMALL HOUSING SECTOR TILL 2012

- Extension of section 801B(10) of the I-T Act to housing projects approved before March 2008 & to be completed before 2012.
- Home buyers will get interest subsidy of 1% on loan up to Rs. 10 lakh for Rs. 20 lakh homes.

- Developers exempt from tax on income from sale of houses of 1,000 sqft built-up areas within 25 kms of municipal limits of cities and 1,500 sqft in other places.
- To boost housing in tier-II and tier-III cities.
- Return of more home buyers

6.0 BANKS TO ISSUE ZERO-COUPON BONDS

The government has permitted scheduled banks, including the state-owned banks, to issue zero-coupon bonds to meet long-term capital requirements. At present, only authorized infrastructure capital companies/funds or public sector companies were allowed to issue zero-coupon bonds under Section 2(48) of the Income Tax Act. According to the finance ministry, tax would not be deducted at source for bondholders. And for banks, the implied interest rate on these bonds would be allowed as business expenditure on a "pro-rata basis". Thus it would be attractive for bondholders and banks to subscribe and sell zero-coupon bonds. In terms of changes in the I-T Act, Section 238 would be amended to include banks in the definition of who can issue zero-coupon bonds. Zero-coupon bonds are issued at a discount to the face value. No interest is paid to bondholders. At the time of maturity, bondholders will receive the face value of the bond. For example, a bond with a face value of Rs. 100 may be issued at Rs. 85 for duration of two years. At the end of two year, the bondholders will get Rs. 100, implying an interest income of Rs. 15.

7.0 WITHDRAW CASH AT SHOPS

The Reserve Bank of India (RBI) has allowed withdrawal of cash from point-of-sale (PoS) terminals, where customers swipe their credit or debit cards to pay for purchases. Noting that use of debit cards has been steadily increasing, Withdrawal of cash up to Rs. 1,000 per day through debit cards issued in India has been permitted.

8.0 PROPERTY MARKET FIRMING UP

The commercial property market, which had seen one of the biggest falls till May, is slowly reviving as higher government incomes and an improving economy are prompting customers to invest in asset classes. Developers, who had slashed prices of their commercial projects by 4-50% due to slow demand, are now receiving more enquiries from retail investor, while institutional buyers have closed some deals.

9.0 PROPERTY FUNDING – LEASE RENTAL DISCOUNTING‘

- Many prominent developers are going for lease rent discounting, which not only helps them raise liquidity but also helps developers sell the property at a later stage for better valuation.
- Under lease rent discounting, developers will borrow from financial institutions on the basis of an agreement between the owner and the tenant. The rent from the tenant will then be directly deposited with the lender and not with the owner.
- DLF and Unitech are known to; favour such a model. Both these companies have started work on stalled projects using lease rent discounting system.

10.0 VALID LICENCE NEEDED FOR INSURANCE PAYOUT

The Supreme Court has reiterated that insurance money would not be payable if the motor vehicle involved in an accident was driven by a person without valid licence.

11.0 RBI WARNS AGAINST FICTITIOUS FUND OFFERS

Cautioning public against fictitious offers of large funds from unknown entities, the Reserve bank of India has advised them again to not get carried away by such offers. Restrictions are also applicable on remittances for participation in lottery-like schemes functioning under different names. The warning comes in the wake of many people falling prey to such tempting offers and losing money in the recent past.

12.0 DEBT TRIBUNAL CAN STOP SALE BY CREDITOR

The Supreme Court has ruled that the debt recovery tribunal has the powers to undo the takeover and sale of assets of a debtor firm by a secured creditor. The court stated so while dismissing an appeal by the Indian overseas bank against the judgment of the madras high court in the case involving Ashok Saw Mills and another firm. The latter could not return the loan and therefore, the bank sold some properties of the firm invoking the securitization Act. When the firms challenged it in the tribunal, the bank argued that the tribunal had no power to interfere in the recovery action as the Securitization Act has barred it. The Supreme Court rejected its

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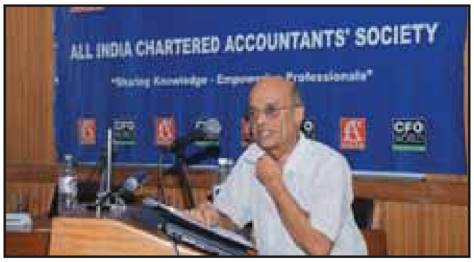

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Delegates

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LECTURE MEETING ON BUDGET - 2009

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contention and stated that the tribunal could stop the takeover and sale, and even restore the property to the debtor in such cases.

13.0 RULES FOR IDR OPRATIONALISED

A. Investment by Persons resident in India / FIIs / NRIs.

- The FEMA Regulations shall not be applicable to persons resident in India as defined under section 2(v) of FEMA, 1999, for investing in IDRs and subsequent transfer arising out of transaction on a recognized Stock Exchange in India.
- Foreign Institutional Investors (FIIs) including SEBI approved sub-accounts of the FIIs, registered with SEBI and Non-Resident Indians (NRIs) may also invest, purchase, hold and transfer IDRs of eligible companies resident outside India and issued in the Indian capital market, subject to FEMA
- NRIs are allowed to invest in the IDRs out of funds held in their NRE / FCNR(B) account
- Automatic fungibility of IDRs is not permitted.
- IDRs shall not be redeemable into underlying equity shares before the expiry of one year period from the date of issue of the IDRs.

B. Procedure for transfer and redemption.

At the time of redemption / conversion of IDRs into underlying shares, the Indian holders (persons resident in India) of IDRs shall comply with the provisions of FEMA

- Listed Indian companies and Indian Mutual Fund may sell or continue to hold the underlying shares subject to FEMA regulations.
- Other persons resident in India including resident individuals are allowed to hold the underlying shares only for the purpose of sale within a period of 30 days from the date of conversion of the IDRs into underlying shares.
- The FEMA provisions shall not apply to the holding of the underlying shares, on redemption of IDRs by the FIIs including SEBI approved sub-accounts of the FIIs and NRIs.

C. Others Guidelines

- The proceeds of the issue of IDRs shall immediately be repatriated outside India by the eligible companies issuing such IDRs.
- The IDRs issued shall be denominated in Indian Rupees.

14.0 ONLY ONE-TIME STAKE INCREASE OF 5% ALLOWED FOR PROMOTERS

SEBI has clarified that promoters and persons acting in concert (who can hike their stake in a company to 75 per cent through the creeping acquisition route) are only allowed a one-time stake hike of 5 per cent. The Stake increase permitted is not an annual or quarterly 5 per cent. However, the one time stake increase of 5 per cent may be done in one or more tranches. Last October SEBI had increased the stake limit for open offer requirement to 75 percent from 55 percent earlier. At that time there was a misconception in some Quarters that the promoters could hike their stake in their companies by 5% percent periodically, allowing them to go upto 75 percent.

15.0 FINANCE BILL AMENDED

- To provide stimulus to the infrastructure sector, the sunset clause for industrial parks has been extended for the next two years till march 31, 2011.The Tax breaks would be offered to all food processing units, especially perishable items like meat and dairy products.
- A tax holiday has been extended for commercial production of natural gas in blocks licensed under the fourth round of bidding for exploration of coal-bed methane. Amendments to sub-section (9) of Section 80-IB of the Income Tax Act announced.
- An amendment to the provisions of the Section 80E of the Income Tax Act, which allows deduction in interest paid on education loans for persuing higher studies has been announced. The Deduction would now be available to the legal guardian of the student. For persons with severe Disability, the Tax deduction rate has been increased from Rs. 75000 to Rs. 1 Lakh.
- The Finance Minister exempted repairs and maintenance of roads from service with immediate effect.
- The service tax on new services proposed in Budget would come into effect from 1st September 2009.

TAXATION

1.0 CAPITAL GAINS TAX ON SALE OF SOFT DRINKS BOTTLES

The Supreme Court held that profits on sale of bottles and crates purchased by soft drink companies before 31.3.1995 were not taxable as 'balancing charge' as they did not form part of the block of assets either under Section 41(1) or under Section 50 of the Income Tax Act. In respect of such sales after 1.4.1995, on account of deletion of proviso to Section 31(1)(ii) (vide Finance Act, 1995) such bottles and crates formed part of block of assets and consequently such assets became eligible to capital gains tax under Section 50. Thus, the court has allowed appeals by bottling firms in the case, Nectar Beverages Ltd. Vs. Deputy Commissioner.

2.0 EXPENDITURE ON REPLACEMENT OF MACHINERY - CAPITAL EXPENDITURE

The Supreme Court has set aside the judgment of the Madras high court which had declared that the expenditure on replacement of machinery was revenue in nature and thus allowable as deduction under the Income Tax Act. The textile mill in the case, Commissioner of Income Tax vs. Sri Mangayarkarasi Mill Ltd., had claimed deduction on replacement of spare parts in the spinning unit, maintaining that it amounted to revenue expenditure. The assessing officer had rejected the claim of the textile mill and held the expenditure to be of a capital nature. The high court, however, accepted the mills' argument. The revenue department's appeal was allowed by the Supreme Court.

3.0 TRANSFER PRICING ANALYSIS TO BE ON PRE- DEPRECIATION PROFITS

TRANSFER pricing analysis should be based on pre-depreciation profits in cases where the company can demonstrate that higher depreciation has affected its profitability, The ITAT gave this order in the case of Delhi based Schefenacker Motherson, a joint venture between Motherson Sumi Systems India and Schefenacker International, Germany.

4.0 INDIA IN TALKS TO TWEAK TAX TREATY WITH MAURITIUS

India has initiated discussions with Mauritius to tweak the provisions of their tax treaty. More than 43% of foreign investment inflows into India are routed through the island nation to take advantage of the tax benefits provided in the treaty. Finance Ministry may attempt to restrict such benefits. Restrictions could be on the lines of the India-Singapore double tax avoidance agreement (DTAA), wherein the benefits of the treaty are linked to certain conditions to ensure that only genuine investors gain from it. Such a condition is called limitation of benefit clause.

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6.0 SEPARATION FEE TAXABLE: TRIBUNAL

Money received by an employee of a foreign company while leaving the firm, even if it is given as non-complete fee, will be taxable in India, In the case of a former Chief Executive Officer of Netherlands-based HCL Deluxe NV (HDX), the Delhi Bench of the Income Tax Appellate Tribunal ruled recently that $1 million received by him on his termination by the firm would be taxed as salary.

7.0 FOREIGN DATA PROVIDERS' INCOME NOT TAXABLE

Foreign data service providers' earnings through subscription fees from an Indian company will not be taxable in India. However, the AAR has held that providing access to compact information through data retrieval software could be treated as service of a 'technical nature and such payments shall be taxable. Data service providers, which have databases outside India but subscribers in India, are likely to gain from this ruling. The AAR has given the ruling in the case of US-based financial data analysis firm Fact Set Research Systems, which provides financial and economic information to Indian customers by entering into licence agreements with them, granting them the right to use its database and software tools.

CAPITAL MARKET

1.0 NSE TO LAUNCH RE-E FUTURES

Indian firms can hedge their currency exposure in Europe in the market from early next year when the country's largest exchange, the National Stock Exchange (NSE), launches futures trading in the rupee-euro currency pair. At present, India allows currency futures only between the rupee and dollar. The product is in the developing mode and mock trading will begin within 4-5 months.

2.0 CIVIL COURTS CAN NOW TRY DERIVATIVES CASES

The Supreme Court has cleared the way for civil courts to decide cases related to derivative instruments sold by banks to exporters and others. A supreme Court Bench headed by Justice SB Sinha has set aside the Punjab and Haryana High Court judgment that transferred Ludhiana-based exporter Nahar Industrial Enterprises' plea on derivatives pending before a Ludhiana Civil court to the Debt Recovery Tribunal (DRT), Mumbai. While allowing civil courts to decide the legality of such contracts, the apex court said these courts were competent to try issues like fraud and misrepresentation, as alleged by exporters. However, the Bench also allowed the banks to continue their debt recovery suits in tribunals.

3.0 SEBI INTRODUCES NEW RISK NORMS FOR CASH SEGMENT

Reducing the margin burden on stock brokers, SEBI has clarified that in case of a buy transaction in the cash market, value at risk (VaR) margins, extreme loss margins and mark to market losses together will not exceed the purchase value of the transaction.

4.0 SEBI TO ABOLISH NO-DELIVERY PERIOD FROM AUG

SEBI has decided to abolish the no-delivery period for all types of corporate actions in respect of scrips, which are traded in the compulsory dematerialised mode. The circular will come into effect from August 1, 2009 and will apply to all corporate actions for which the record date or book closure falls on or after August 10, 2009.

5.0 REPORTING OF INTER-SCHEME TRANSFERS BY MUTUAL FUNDS

It has been decided that, the Mutual Funds, while reporting their trades in corporate bonds shall also report their inter-scheme transfers on the SEBI Authorized Trade Reporting Platforms at NSE/ BSE/ FIMMDA.The Mutual funds, or the brokers/ intermediaries acting on their behalf shall ensure that inter-scheme transfers are indicated separately while reporting the same.

6.0 AMENDMENTS TO SEBI (DISCLOSURE AND INVESTOR PROTECTION) GUIDELINES, 2000

- **Compulsory listing of IPO on at least one stock exchange with nationwide trading terminals**

  An unlisted company making an IPO shall list the securities being issued through the IPO on at least one stock exchange having nationwide trading terminals.

- **Equity shares considered eligible for offer for sale**

  (a) At present, in terms of the SEBI (DIP) Guidelines, a shareholder can make an offer for sale of the equity shares if such equity shares have been held for a period of at least one year as on the date of filing the draft offer document with SEBI.

  (b) It has been decided to amend clause 4.14.2 of the SEBI (DIP) Guidelines to provide that in case equity shares which are received on conversion of fully paid compulsorily convertible securities, including depository receipts, are being offered for sale, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of the eligibility period.

- **Introduction of concept of Anchor Investor in public issues through book building route**

  (a) SEBI (DIP) Guidelines to introduce a concept of Anchor Investor in public issues through book building. Details of this concept are in the amendments to the SEBI (DIP) Guidelines.

  (b) Allocation to Anchor Investor in the public issue shall be subject to specified conditions.

SEBI/CFD/DIL/DIP/36/2009/09/07/dtd. 9.07.09

7.0 BROKER TO RETURN IDLE CASH EVERY MONTH-END

- SEBI has proposed that stock brokers must settle their balance funds/securities lying in the trading accounts of clients on the last day of every month.

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- Broker must also send monthly statement to client, and in case of a dispute, client will have to bring it to the notice of brokers within 7 working days.
- Under a practice called "running account authorization', Client give brokers the right to retain funds and securities-to be used to meet settlement/ margin obligations for later trades-continually. However, the funds and securities of the client lying with the broker are prone to several risks.
- If the client request for return of the securities/fund any time during the interim period, the broker will have to transfer it within one working day from the date of receiving the request.
- Some client may be having outstanding transaction/ position in cash /derivative segment on the running account settlement date. In such cases, the broker may make due adjustment by retaining requisite securities/fund from the running account towards such obligations of client and may also retain the funds expected to be required to meet margin obligations for the next 5 working days.

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)
3 Month LIBOR	0.45	0.50
3 Month MIBOR	4.54	4.84
Inflation (WPI) **	-1.58	-1.55
SENSEX	15020	13504
NIFTY	4458	4004
Gold (per 10 gm)	14640	14485
Silver (per kg)	23076	21710
Crude (USD/bbl)	68.94	59.89
Rs. vs USD	48.35	48.69
Rs. vs Euro	68.33	68.00

* as on 12th August, 2009.
** for the week ended July 25 & June 27, 2009 resp.

(Sources: Bloomberg, NSE, MCX)

SERVICE TAX

1.0 SERVICE TAX ON COMMISSION PAID TO MANAGING DIRECTOR / DIRECTORS BY THE COMPANY

The payments made by Companies to Directors cannot be termed as payments for providing management consultancy service. Therefore, it is clarified that the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category 'Management Consultancy service'. In case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax.

Circular No. 115/09/2009 – STDy. No. 324/Comm (ST)/2008/31st July 2009

INSURANCE

1.0 IRDA CORP. GOVERNANCE NORMS FOR INSURERS.

IRDA has issued the final guidelines on corporate governance for the insurance sector, focusing on key areas such as control functions, board of directors, governance structures and disclosures.

CONGRATULATIONS!

CA Pramod Jain
Advisor to Direct Taxes Committee and Accounting Standards Committee, AICAS
for authoring and release of a new book
"TAXATION ASPECTS OF LIMITED LIABILITY PARTNERSHIP"
We thank him for sharing his pristine professional talent and wish him all the success.
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