Highlights

- Introduction of composite caps for simplification of FDI Policy
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Corporate Brief

Introduction of composite caps for simplification of FDI Policy

DIPP has amended the extant FDI Policy introducing composite caps for simplification of the FDI Policy. Highlights of the amendments are: (a) Sectoral cap of the FDI Policy will be composite and will include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1 (FDI), Schedule 2 (FII), Schedule 2A (FPI), Schedule 3 (NRI), Schedule 6 (FVCI), Schedule 8 (QFI), Schedule 9 (LLPs) and Schedule 10 (DRs) of Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations. (b) Foreign investment in sectors under Government approval route resulting in transfer of ownership and/or control, of Indian entities from resident Indian citizens to non-resident entities will be subject to Government approval. Foreign investment in sectors under automatic route but with conditionalities, resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities, will be subject to compliance of such conditionalities. The sectors which are already under 100 percent automatic route and are without conditionalities would not be affected. However, portfolio investment, upto aggregate foreign investment level of 49 percent, will not be subject to either government approval or compliance of sectoral conditions as the case may be, if such investment does not result in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities. *[See DIPP Press Note No. 8 (2015 Series) dated July 30, 2015]*

MCA clarifies with regard to circulation and filing of financial statement

MCA has clarified that a company holding a general meeting after giving shorter notice as provided under section 101 of the Companies Act, 2013 ('The Act') may also circulate financial statements, under section 136 of the Act, at such shorter notice. Further MCA has clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of incorporation and which does not get such accounts audited, the holding/parent Indian may place/file such unaudited accounts to comply with the requirements of Section 136(1) and 137(1) of the Act as applicable. Such accounts need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiary should be in accordance with requirements under the Companies Act, 2013. In case it is not possible, a statement should be attached with such accounts indicating the reasons for deviation. *[See MCA General Circular No. 10/2015 dated July 13, 2015]*

Issue of ESOP/sweat equity shares to persons resident outside India

RBI has reviewed Regulation 8 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 pertaining to issue of shares under Employee Stock Options Scheme (ESOP) to persons resident outside India. Now an Indian company can issue shares under ESOP and/or sweat equity shares to its employees/directors or to employees/directors of its holding company, joint venture company or wholly owned overseas subsidiary(ies), who are resident outside India, provided the following conditions are met: (a) The scheme has been drawn in terms of the regulations issued under SEBI Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 under the Companies Act, 2013, as the case may be; (b) The issue is in compliance with the applicable sectoral cap; (c) If the issue of shares is in a company where foreign investment is under approval route, prior approval of Foreign Investment Promotion Board (FIPB) has been obtained; (d) Issue to an employee who is a citizen of Bangladesh/Pakistan would require FIPB approval. Further issuing company shall furnish to the RBI, within 30 days from the date of issue of shares under ESOP/sweat equity shares, a return as per the Form-ESOP. *[See RBI A.P. (DIR Series) Circular No. 4 dated July 16, 2015]*

RBI clarifies on FDI in companies engaged in tobacco related activities

RBI has clarified that the prohibition in FDI, under Schedule I of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, in manufacturing of cigars, cheroots, cigarillos and cigarettes of tobacco or of tobacco substitutes applies only to 'manufacturing' of the products. FDI in other activities relating to these products including wholesale cash and carry, retail trading etc. shall be governed by the sectoral

restrictions laid down in the FDI Policy and in the Schedule I of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 amended from time to time. *[RBI A.P. (DIR Series) Circular No. 2 dated July 03, 2015]*

RBI clarifies on foreign portfolio investment in Security Receipts

RBI has clarified that the restriction on investment by a Foreign Portfolio Investor to invest in corporate bonds having residual maturity of less than three years shall not be applicable in security receipts issued by Asset Reconstruction Companies. However, investment in security receipts shall be within the overall limit prescribed for corporate debt from time to time. *[See A.P.(DIR Series) Circular No. 6 dated July 16, 2015]*

Urban Development Ministry approves Transit Oriented Development Policy for Delhi

Minister of Urban Development has approved Transit Oriented Development (TOD) Policy for Delhi for development within Influence Zone (extending up to 500 metres on both sides of Mass Rapid Transport System (MRTS) corridors), so that maximum number of people can live, work and find means of recreation within walking/cycling distance of the MRTS corridors/ stations. TOD zone will comprise approximately 20% of Delhi's overall area. Highlights of TOD Policy are: (a) Higher FAR of 400 on the entire amalgamated plot shall be provided in the development/redevelopment in TOD zone for plots of area of 1 Ha or more. Additional FAR may be availed only through Transferable Development Rights, for schemes larger than 1 Ha; (b) Development within an approved scheme area in TOD zone can be taken up in phases for minimum plot size of 3000 meter square at a time; (c) It will be mandatory to use a minimum of 30% of overall FAR for residential use, a minimum of 10% of FAR for commercial use, a minimum of 10% of FAR for commercial use and a minimum of 10% of FAR for community facilities. Utilization of remaining 50% FAR shall be as per the land use category designated in the Zonal Plan; (d) The mandatory residential component covering 30% FAR shall wholly comprise of units of 65 meter square area or less. Out of these half of the FAR, i.e. 15% of the total FAR, has to be used for units of size ranging between 32-40 meter square. Over and above this, an additional mandatory FAR of 15%, FAR of 60% has to be utilized for Economically Weaker Sections; (e) 20% of the land shall be used for roads/circulation areas, 20% area for green open space shall be kept open for general public use at all time. Further 10% area of green area may be for exclusive use; (f) Computerized single window clearances system shall be adopted for approval of TOD projects. *[See Press Information Bureau, Government of India, Ministry of Urban Development, Print Release dated July 14, 2015]*

SEBI reviews minimum contract size in equity derivatives segment

SEBI has increased the minimum contract size in equity derivatives from Rs. 2 lakhs to Rs. 5 lakhs. The lot size for derivatives contracts in equity derivatives segment will be fixed in such a manner that the contract value of the derivative on the day of review is within Rs. 5 lakhs and Rs. 10 lakhs. The change will be effective from the next trading day after expiry of October 2015 contracts. *[See SEBI Circular CIR/MRD/DP/14/2015 dated July 13, 2015]*

SEBI prescribes mechanism for annulment of trades undertaken on stock exchanges

SEBI has issued a Policy prescribing mechanism for annulment of trades resulting from material mistake or erroneous orders. Highlights of the mechanism are as follows: (a) Examination of trades for annulment may be taken up either *suomoto* or upon receipt of request from a stock broker. However, stock exchanges have to define suitable criteria so as to discourage frivolous trade annulment requests from the stock brokers; (b) Stock exchanges may prescribe the procedure for submission of requests by stock brokers, including mechanism to submit requests in electronic form; (c) Stock exchanges shall undertake annulment or price reset only in exceptional cases, after recording reasons in writing, in the interest of the investors, market integrity, and maintaining sanctity of price discovery mechanism; (d) Stock exchange shall convey its reasoned decision on annulment of trade or price reset to all counterparties to the trade under consideration and publish details of such decision on its website; (e) A mechanism to request a review of the stock exchange decision shall be provided and such review request shall be referred to stock exchanges's independent oversight committee on 'Trading and Surveillance function' constituted under regulation 29(1) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012. *[See SEBI Circular CIR/MRD/DP/15/2015 dated July 16, 2015]*

Litigation Brief

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➲ UOI Vs. Shri Hanuman Industries

In 1997, a scheme named 'SPINE' was launched by Ministry of Development of North East Region, North Eastern Council, Shillong to provide subsidy to newly setup industries. Applications were submitted for setting up industries. Subsequently government decided to discontinue the scheme due to irregularities. A set of applicants approached the court and obtained relief in terms of subsidy but present respondents waited till said relief was affirmed by Supreme Court and only three months thereafter approached the High Court for similar relief. Single Judge of the High Court disallowed their claim on ground of delay, the Division Bench of High Court by impugned order allowed their claim for similar relief. Hence, the present appeals.

Is it just to apply the doctrine of Promissory Estoppel even if it would be inequitable to compel the promisor to comply?

It was held, the doctrine of promissory estoppels is an equitable doctrine that yields when equity so requires. The same had been evolved to avoid injustice where it is demonstrated that a party acting on the words or conduct of another, amounting to clear and unequivocal promise and intended to create legal relations to arise in the future and had altered his position, then the promise would be binding on the promisor and he would not be permitted to renege therefrom unless it would be inequitable to compel him to do so.

The doctrine would be displaced in such a case where equity would not required that the promisor should be held bound by the promise made by it. Thus promissory estoppel which is a principle based on equity will stand withdrawn if the circumstances so require.

Furthermore, delay has to be explained by cogent and persuasive explanation to justify condonation. If not, it would be iniquitous and repugnant to entertain the belated claim on the basis of doctrine of promissory estoppel.

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