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Corporate Brief

Phasing out of FIPB approved by the Cabinet

Union Cabinet has given its approval for the phasing out of Foreign Investment Promotion Board (FIPB). Henceforth, the work relating to processing of applications for FDI and approval of the Government thereon under the extant FDI Policy and FEMA, will be handled by the concerned Ministries/ Department in consultation with DIPP, Ministry of Commerce. DIPP will issue the Standard Operating Procedure for applications & decisions of the Government. [See, Press Information Bureau, Government of India, Print Release dated 24th May 2017]

Power to grant industrial licence for Defence Manufacturing delegated to DIPP

Ministry of Commerce & Industry has notified that the power to grant licence for defence manufacturing will be delegated to DIPP and henceforth the applications for grant of licence for manufacturing defence items will be processed by DIPP. [See, Ministry of Commerce & Industry, Press Information Bureau, Print Release dated 26th May 2017]

IRDAI notifies Outsourcing Norms for Insurers

IRDAI has notified IRDAI (Outsourcing of activities by Indian Insurers) Regulations, 2017 with a purpose of ensuring that insurers follow careful practices on management of risks arising out of outsourcing with a view to prevent negative systemic impact. The move is also to protect the interests of the policyholders and to ensure sound and responsive management practices for effective oversight and adequate due diligence with regard to outsourcing of activities by Insurers. Highlights of the regulation are: (a) Insurers are prohibited from outsourcing certain activities such as: (i) investment & related functions, (ii) Compliance with AML & KYC, (iii) Fund Management etc.; (b) Insurers are allowed to outsource the activities that support policyholders servicing and collection of premium; (c) The Board of the Insurer will inter alia be responsible for: (i) approving and putting in place an Outsourcing Policy, (ii) Annual Review of the Outsourced activity, (iii) Constitution of an Outsourcing Committee; (d) Outsourcing Committee will be constituted comprising of e-management persons of the Insurers, which will inter alia be responsible for: (i) effective implementation of the Outsourcing activity, (ii) Annual Performance Evaluation of each outsourcing service provider, (iii) Insuring compliance with the Outsourcing Policy, applicable laws and regulations. [See IRDA F.No. IRDAI/Reg/5/142/2017, dated 6th May 2017]

MCA amends Limited Liability Partnership Rules

MCA has amended Limited Liability Partnership Rules, 2009. Highlights of the Rules are: (a) Any LLP which is not in operation or carrying its business for a period of one year will have to file form 8 (statement of account & solvency) and form 11 (annual return) upto the end of financial year alongwith form 24; (b) Form 24 (application to registrar for striking off name) will be enclosed with certain documents inter alia including: (i) statement of accounts disclosing no assets and liabilities certified by a Chartered Accountant, (ii) acknowledgement of latest income tax return filed where the LLP has carried out its business, (iii) copy of the initial LLP agreement, if not filed earlier, where the LLP has not commenced its business. This has come into effect from 20th May 2017. [See MCA Notices & Circular dated 16th May 2017]

MCA exempts Infrastructure Investment Trusts from Acceptance of Deposit Norms

MCA has amended the Companies (Acceptance of Deposits) Rules, 2014. Highlights of the amendments are: (a) Amount received by companies from Infrastructure Investment Trusts are excluded from the definition of Deposits, and hence the deposit norms under the Companies Act, 2013 and the rules will not be applicable on receipt of such amount; (b) The Rules require every company inviting deposits to enter into a contract for providing deposit insurance. However, the exclusion was made to the companies to accept deposit without deposit insurance contract till 31st March 2017, or till the availability of deposit insurance product, whichever was earlier. Now the amendment has extended the date from 31st March 2017 to 31st March 2018. [See MCA Notices & Circulars dated 11.05.17]

Guidelines on Instant Access Facility and use of e-wallet for investment in Mutual Funds issued by SEBI

SEBI has issued guidelines for extending Instant Access Facility and e-wallet facility in order to enhance the reach of Mutual Funds towards retail investors. (a) Instant Access Facility (i) This facility will be allowed through online mechanism and only for resident individual investors, (ii) For this facility the monetary limit will be Rs. 50,000 or 90% of the latest value of investment in the scheme, whichever is lower, this limit will be applicable per day per scheme per investor; (b) E-wallet facility: This facility for the use of e-wallet for investment in mutual funds is

provided with an objective to promote digitalization. Mutual Funds and Asset Management Companies can accept investment through e-wallets i.e Prepaid Payment Instruments (PPIs) subject to certain conditions, inter alia, including the following: (a) enter into an agreement/ arrangement with issuers of PPIs for facilitating payment from e-wallet to mutual fund schemes, (b) ensure that e-wallet issuers shall not offer any incentives such as cashback, vouchers, directly or indirectly for investing in mutual fund schemes, (c) ensure that only amounts loaded into e-wallet through cash or debit card or net banking can be used for subscription to mutual funds schemes. [See SEBI Circular No. SEBI/HO/DF2/CIR/P/2017/39 dated 8th May 2017]

➲ *RBI allows co-operative banks to issue PPIs*

RBI released guidelines permitting Urban Co-operative banks having their own ATM network to introduce semi-closed Prepaid Payment Instruments (PPIs) for payment of utilty bills/ essential services upto limit of Rs. 10,000.
Co-operative banks will now be entitled to issue open-system PPIs as long as they comply with eligibility criteria and other guidelines issued by the Dept of Payment & Settlement Systems and RBI. The guidelines also prescribe additional regulatory requirements for this purpose, inter alia, including: (a) bank should be CBS compliant, (b) non-performing assets (NPAs) should be less than 7%, net NPAs should not be more than 3%, (c) assessed net worth should be more than Rs. 25 crore, (d) the bank should also not have defaulted in the maintenance of CRR or SLR during the current and preceding financial year, (e) it should have made a net profit in the preceding financial year, (f) satisfactory adherence to KYC/ AML/ Combating Financing of Terrorism guidelines issued by RBI from time to time. [See RBI Notification No. RBI/2016-17/311DCBR.CO.LS. (PCB/RCB).Cir.No.5/07.01.000/2016-17, dated 25th May 2017]

➲ *SEBI issues disclosure requirements for Issuance & Listing of Green Debt Securities*

SEBI has issued disclosure requirements for issuance and listing of Green Debt Securities for raising investments in renewable and sustainable energy, clean transportation, sustainable water management, energy efficiency, sustainable land use, biodiversity and other green projects. As per the guidelines, certain disclosures are to be made, inter alia, including: (a) statement on environmental objectives of the issue, (b) brief details of decision making process issuer has followed, (c) procedures to be employed for tracking the deployment of the proceeds of the issue, (d) details of project where the issuer proposes to utilize the proceeds of Green Debt Securities, (e) any appointment of a reviewer/ certifier, (f) annual reports and financial results. The guidelines also prescribe certain continuous requirements as well as responsibility of Green Debt Securities. [See SEBI Circular No. CIR/IMD/DF/51/2017 dated 30th May 2017]

➲ *SEBI issues Consultation Paper on monitoring of ODIs/ PNs being issued by FPI*

SEBI has released consultation paper on streamlining the process of monitoring of Offshore Derivative Instruments (ODIs)/ Participatory Instruments (PNs) being issued by Foreign Portfolio Investors (FPIs) registered with SEBI. ODIs and PNs are the instruments issued overseas by FPIs against securities listed on recognized stock exchange in India. The highlights of the consultation paper are: (a) Levy of Regulatory fee on FPIs issuing ODIs: Regulatory fee of USD 1,000 is proposed to be levied on each ODI issuing FPI for each ODI subscriber, (b) Prohibit ODIs from being issued against derivatives except for those used for hedging: At present ODIs are being issued against derivatives along with equity and debt. The consultation paper proposes ODIs to be prohibited from being issued against derivatives for speculative purposes. taking underlying positions in Indian securities market. [See SEBI Consultation Paper, dated 29th May 2017]

➲ *SEBI introduces online system for Portfolio Managers & Venture Capital Funds*

SEBI has provided an online system for Portfolio Managers & Venture Capital Funds. The system provides facility for all compliances, as specified under SEBI (Portfolio Managers) Regulations, 1993 for Portfolio Managers and SEBI (Venture Capital Funds) Regulations, 1996 for Venture Capital Funds. Existing SEBI registered Portfolio Managers & Venture Capital Funds have been intimated separately by emails and advised to activate their online accounts. [See SEBI, PR No. 29/2017, dated 30th May 2017]

Litigation Brief

➲ *Kinnari Mullick & Ors. Versus Ghanshyam das Damani*

FACTS:

2. The Appellants entered into two developments agreements with the Respondent for the construction of a multi storied building. On completion of the building, the Appellants entered into a further agreement with the Respondent in terms of which the Respondent, for better enjoyment of the property, distributed the owner's allocation. In terms of the said agreement, the Respondent fully sold and transferred his share of the premises to various prospective buyers. According to the Appellants, the Respondent is not in possession of any portion of the suit premises. The said agreement contained an arbitration clause, which reads as:

1.

"21 That all disputes and/ or differences between the parties herein shall be referred to arbitration in terms of the Arbitration and Conciliation Act, 1996."

3. Disputes arose between the Appellants and Respondent pursuant to which the Respondent, through his advocate's letter informed the Appellants about appointment of an advocate as the arbitrator. The Appellants objected to the appointment of the same person and filed an Application under Section 16 challenging the jurisdiction of the arbitrator. The said Application was rejected and the Arbitrator Tribunal passed an award. The said award was challenged by the Appellants under Section 34 before the High Court of Calcutta.

4. The Calcutta High Court set aside the award and sent it back to the Arbitral Tribunal for a fresh hearing in the matter, without any application made by both parties to do the same.

ISSUE INVOLVED:

Whether, Section 34(4) of the Arbitration and Conciliation Act, 1996 empowers the Court to suo-moto relegate parties before the Arbitral Tribunal after having set aside the arbitral award in question?

DECISION:

1. The Supreme Court while allowing the Appeal, held that Section 34(4) of the Arbitration and Conciliation Act 1996, does not empower the court to relegate the parties before the Arbitral Tribunal after having set aside the arbitral award.

2. The Supreme Court further held that the limited discretion available to the court under Section 34(4) can be exercised only upon a written application made in that behalf by a party to the arbitration proceedings and the court cannot exercise this limited power of deferring the proceedings before it suo motu.

3. The Supreme Court held that under Section 34(4) of the Arbitration and Conciliation Act, 1996, power has been given to the Court to defer the hearing of the Application under Section 34 on a written request made by a party to the arbitration proceedings to facilitate the arbitral tribunal by resuming the arbitral proceedings or take such other action as in the opinion of the Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award. However, the quintessence for exercising the power under this provision is that the arbitral award has not been set aside.

4. Further it was observed that the challenge to set aside the award has been set under Section 34 about the deficiencies in the arbitral award which may be curable by allowing the Arbitral Tribunal to take such measures which can eliminate the grounds for setting aside the arbitral award. Thus, no power has been conferred by the Parliament upon the Courts to remand the matter to the arbitral tribunal, except to adjourn the proceedings for the limited purpose mentioned in Section 34(4).

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