Highlights

- Cabinet clears way for setting up coal regulator.
- RBI revises reporting requirements under Form FC-GPR.
- FDI policy on MSMEs revised.
- Govt. allows FII, NRI investment in insurance sector under 26% FDI cap.
- Schedule VII of Companies Act, 2013 amended and notified.
- SC: Deposit of compensation in treasury does not amount to compensation actually paid.
- Importers issuing cenvatable invoices now require compulsory registration under Central Excise Act, 1944.

Corporate Brief

➲ *Cabinet clears way for setting up coal regulator.*

The Cabinet Committee on Economic Affairs has approved, through an executive order, the establishment of a coal regulator that would largely have recommendatory powers. Once established, the regulator will be empowered to specify the principles and methodology for determination of price of raw coal and washed coal and any other by-product generated during washing. The regulator will also regulate methods for testing for declaration of grades or quality of coal, specify procedure for automatic coal sampling and adjudicate upon disputes between the parties besides monitoring closure of mines and approval of mining plans, among other things. The move by the Cabinet Committee on Economic Affairs comes at a time when the Coal Regulatory Authority Bill, 2013 is pending in the Lok Sabha.

However, the regulator will not have the power to decide prices of coal in the domestic market and state-owned Coal India Ltd will continue to enjoy freedom in setting prices. Further, the regulator will have no say in the allocation of coal acreages. The pricing power too was taken away from the regulator based on the argument that coal prices were decontrolled in stages between 1996 and 2000 and de-nationalization of the sector is not envisaged by the Government at this stage. It is expected that the establishment of the regulator will help to infuse transparency and efficiency in the coal sector. The move is also expected to revive investment in the coal sector, provide for a competitive level playing field, and thereby refuel economic growth.

➲ *RBI revises reporting requirements under Form FC-GPR.*

Indian companies are required to report the details of the amount of foreign contributions received for issuing of shares and convertible debentures and the details of the shares or convertible debentures issued to foreign entities or persons to the Reserve Bank in Form FC-GPR within 30 days from the issue of such shares/ debentures. The Reserve Bank has recently revised the Form FC-GPR in order to capture further details of the foreign direct investments in brownfield/ greenfield projects, and the date of incorporation of the foreign investee company. These details have now been sought in the Form FC-GPR and the same are required to be provided by the Indian companies filing the said Form FC-GPR. Consequently a revised Form FC-GPR has been issued and is available at the Reserve Bank's website.

[See A.P. (DIR Series) Circular No. 102 dated 11.02.2014.]

➲ *FDI policy on MSMEs revised.*

The Reserve Bank of India has recently revised its policy regarding foreign direct investment in small scale industrial units, and in a company that has de-registered its small scale industry status and which is not engaged in manufacture of items reserved for the small scale sector. In terms of the revised policy, a company that is reckoned as being a micro and small enterprise (under the Micro, Small and Medium Enterprises Development Act, 2006) and which is not engaged in any restricted sector has been allowed to issue shares or convertible debentures to a person resident outside India, subject to certain limitations imposed by the Reserve Bank and the Ministry of Commerce and Industry from time to time.

An industrial undertaking that is not a micro and small enterprise, having an industrial license (under the provisions of the Industries (Development and Regulation) Act, 1951) for manufacture of items reserved for micro and small enterprise sector has been allowed to issue shares in excess of 24% of its paid up capital with prior approval of the Foreign Investment Promotion Board of the Government of India.

A micro enterprise means where the investment in plant and machinery does not exceed INR 25,00,000/-; a small enterprise means where the investment in plant and machinery is more than INR 25,00,000/- but does not exceed INR 5,00,00,000/-.

[See A.P. (DIR Series) Circular No. 107 dated 20.02.2014.]

➲ *Govt. allows FII, NRI investment in insurance sector under 26% FDI cap.*

The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, has revised policy on foreign direct investment in the insurance sector. In terms of the revised policy, the holdings of portfolio investors such as foreign institutional investors (FIIs) and non-resident Indians (NRIs) will be subsumed in the 26% foreign investment cap for investments in the insurance sector. Such investments may be made in (i) insurance companies, (ii) insurance brokers, (iii) third party administrators, (iv) surveyors and loss assessors.

The foreign direct investment in the insurance sector is allowed under the automatic route, and is subject to the companies bringing in the investment obtaining the necessary license from the Insurance Regulatory and Development Authority for undertaking insurance activities. In respect of bank promoted insurance companies, applications for foreign direct investment in private banks having joint venture/ subsidiary in insurance sector is to be addressed to the Reserve Bank for consideration in consultation with the Insurance Regulatory and Development Authority in order to ensure that the 26% limit on foreign shareholding applicable for the insurance sector is not being breached.

[See Press Note No. 2 (2014 Series) dated 47.02.2014.]

➲ *Schedule VII of Companies Act, 2013 amended and notified.*

The Ministry of Corporate Affairs has amended Schedule VII of the Companies Act, 2013 ("Act") to provide for the activities that will constitute as CSR activities in respect of the obligation of companies under Section 135 of the Act.

The items that can now form a part of a company CSR activities are those related to (i) Eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water; (ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently-abled and livelihood enhancement projects; (iii) promoting gender equality, empowering women, setting up homes and hostels for woman and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups; (iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro-forestry, conservation of natural resources and maintaining quality of soil, air and water; (v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts; (vi) measures for the benefit of armed forces veterans, war widows and their dependents; (vii) training to promote rural sports, nationally recognised sports, Paralympics sports and Olympic sports; (viii) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Casts, the Scheduled tribes, other backward classes, minorities and women; (ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government; (x) rural development projects.

Additionally, the Ministry of Corporate Affairs has also notified the Companies (Corporate Social Responsibility Policy) Rules, 2014 in respect of rules applicable to CSR activities required to be conducted by companies under the Act.

Litigation Brief

➲ *SC: Deposit of compensation in treasury does not amount to compensation actually paid.*

In *Pune Municipal Corporation & Another v. Harakchand Misirimal Solanki & Others*, the Supreme Court has held that if compensation for land acquired under The Land Acquisition Act, 1894 ("Act") has not been paid to the landowners or has not been deposited with a competent court and is simply retained in the treasury, in that case the acquisition will be deemed to have lapsed and would be covered under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, ("2013 Act") entitling the land owners to larger compensation. The only prerequisite is that such an award of compensation should be at least five years prior to the enactment of which was notified on 1st January, 2014. The Judgment is significant not just because it is the very first verdict by the Supreme Court on the subject but also for its implications regarding landowners seeking justice against arbitrary acquisitions carried out by the Government. Furthermore, the judgment interprets and construes the retrospective clause in the interests of those aggrieved by arbitrary acquisition mechanisms and does not resort to artificial limitations to deprive the landowners of the benefits intended by the lawmakers.

The three-judge bench held that the deposit of compensation amount in the government treasury serves no purpose and cannot be equated to compensation actually paid to the landowners. The bench further laid down that under Section 24(2) of the 2013 Act land acquisition proceedings initiated under the 1894 Act are held to have lapsed, by legal fiction, where the Award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. It does not deduct the period of litigation from the total amount of time that has lapsed nor does it allow the Government to claim satisfaction by merely depositing the money in the treasury.

Taxation Brief

➲ *Importers issuing cenvatable invoices now require compulsory registration under Central Excise Act, 1944.*

Rule 9 of the Central Excise Rules, 2002 ("Rules") requires certain persons to obtain registration under the Central Excise Act, 1944 ("Act"). Recently the Central Board of Excise and Customs has issued notifications amending the Rules whereby importers issuing an invoice on which Cenvat Credit can be taken are now required to obtain registration under the Act. Furthermore, such importers are also required to file quarterly returns in the prescribed form to the Superintendent of Central Excise. The new Return Forms has already been prescribed by the Central Board of Excise and Customs, and Central excise Registration Form (Form A-1) has also been amended to reflect the inclusion of importers in the list of entities required to obtain registration under the Act.
[See Notification Nos. 08, 09, 10, 11/ 2014 dated 28.02.2014.]