

Highlights:-

- DIPP revises FDI Policy on certain sectors
- RBI permits Indian Startups to open foreign currency account with a bank outside India
- Constitution of NCLT and NCLAT
- The Model Shops and Establishment (Regulation of Employment and Conditions of Service) Bill, 2016 considered by the Union Cabinet
- Ministry of HUPA came out with the draft Real Estate Rules
- MCA revises the Companies (Acceptance of Deposits) Rules, 2014
- MCA revises the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014
- *State Of Rajasthan V/S Gotan Lime Stone Khanij Udyog Private Limited*

Corporate Brief

⇒ **DIPP revises FDI Policy on various sectors**

DIPP has reviewed the extant FDI Policy on various sectors and made certain amendments on the same. Highlights of the amendments are: (a) Civil Aviation: 100% FDI has been permitted under the automatic route in brownfield projects of airports. Earlier, in brownfield projects of airports, 74% FDI was permitted under the automatic route and beyond 74% under government approval was required; (b) Single Brand Retail Trading: Sourcing norms have been relaxed for a period of up to three years from the commencement of the business i.e. opening of the first store for entities undertaking single brand retail trading of products having "state-of-art" and "cutting-edge" technology, the relaxation is for another period of five years; (c) Food Processing: 100% FDI is permitted under government approval route for trading (including through e-commerce) of food products manufactured or produced in India; (d) Defence: 100% FDI is permitted in Defence sector wherein FDI upto 49% is allowed under automatic route and FDI beyond 49% is allowed under government route, when it is likely to result in access to modern technology or for other reasons to be recorded; (e) Broadcasting Carriage Services: 100% FDI is permitted under the automatic route in Teleports, Direct to Home, Cable Networks, Mobile TV, Headend-in-the Sky Broadcasting Services; (f) Private Security Agencies: FDI upto 74% is permitted under this sector, wherein FDI upto 49% is allowed under automatic route and FDI beyond 49% and up to 74% is allowed under government route; (g) Pharmaceuticals: 100% FDI is permitted under brownfield projects of pharmaceuticals wherein FDI upto 74% is allowed under automatic route and FDI beyond 74% is allowed under government route. [See DIPP Press Note No. 5 (2016 Series) dated June 24th, 2016]

⇒ **RBI permits Indian Startups to open foreign currency account with a bank outside India**

RBI has permitted Indian startups, having an overseas subsidiary, to open a foreign currency account with a bank outside India for the purpose of crediting to the account the foreign exchange earnings out of exports / sales made by the said startup or its overseas subsidiary. The balances held in such accounts which represent exports from India shall be repatriated to India within the prescribed period in Foreign Exchange Management (Export of Goods and Services) Regulations, 2015. For this purpose 'startup' will mean an entity which complies with the conditions laid down in Notification No. GSR 180 (E) dated February 17, 2016 issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India. [See A.P. (DIR Series) Circular No.77 dated June 23, 2016]

⇒ **Constitution of NCLT and NCLAT**

Central Government has constituted National Company Law Tribunal ('NCLT') and appointed 01st day of June, 2016 as the date on which all

matters or proceedings or cases pending before the Board of Company Law Administration (Company Law Board) shall stand transferred to NCLT. Central Government has also constituted National Company Law Appellate Tribunal ('NCLAT') for hearing appeals against the orders of NCLT with effect from 01st day of June, 2016. [See RBI Notification F. No. A-45011/14/2016 and Notification F. No. 1/30/CLB/2013/CL-V]-Ad. IV] dated June 01, 2016]

⇒ **The Model Shops and Establishment (Regulation of Employment and Conditions of Service) Bill, 2016 considered by the Union Cabinet**

Union Cabinet has finalized the Model Shops and Establishment (Regulation of Employment and Conditions of Service) Bill, 2016 ('The Bill'). The Bill will now be sent to States / UTs to enable them to modify their individual Acts. Highlights of the Bill are: (a) The Bill covers only establishments employing ten or more workers except manufacturing units. (b) The Bill provides for freedom to operate 365 days in a year and opening/closing time of establishment. (c) No discrimination against women in the matter of recruitment, training, transfer or promotions. (d) Powers of Government to make rules regarding adequate measures to be taken by the employer for the safety and health of workers. [See Print Release, Press Information Bureau, Government of India, Cabinet dated June 29, 2016]

⇒ **Ministry of HUPA came out with the draft Real Estate Rules**

Minister of Housing and & Urban Poverty Alleviation has formulated the draft Union Territories of Chandigarh, Andaman and Nicobar Islands, Daman and Diu, Dadra and Nagar Haveli, Lakshadweep' Real Estate (Regulation and Development) Rules, 2016 ('Draft Rules') for seeking suggestions and objections from public. The Draft Rules *inter alia* provide for payments to be made for registration of projects and real estate agents with the Regulatory Authority, documents and information to be furnished by developers, procedures to be followed for registration, extension and renewal of registration, procedures for filing and hearing of complaints and appeals, appointment and service conditions of the Chairpersons and Members of Real Estate Regulatory Authorities and Appellate Tribunals and their powers etc. Highlights of the Draft Rules are: (a) Promoters are required to submit a declaration stating that the promoter shall not discriminate against any allottee at the time of allotment of any apartment, plot or building. (b) The promoter will be required to upload updates on the webpage of the project, within seven days from the expiry of each quarter, regarding number and types of apartments or plots booked, garages booked, status of construction of each floor with photographs, status of approvals, modifications if any issued by the competent authority with regard to any license, permit or approval for the project etc. (c) Promoters are required to pay registration fee at the time of application for registration by way of demand draft drawn on any scheduled bank for a sum of Rs. 10 per sq.mt if the area for development does not exceed 1,000 sq.mt and Rs. 20 if the area for development is more than that for residential projects and Rs. 50 and Rs. 100 per sq.mt for commercial projects. (d) Upon the notification of sub-section (1) of section 3, promoters of all ongoing projects which have not received completion certificates shall apply for registration of projects within three months and disclose all relevant information including the size of the apartment based on carpet area. (e) The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India Prime Lending Rate plus two percent.

⇒ **MCA revises the Companies (Acceptance of Deposits) Rules, 2014**

MCA has revised the Companies (Acceptance of Deposits) Rules, 2014. Highlights of the amendments are: (a) Bonds or debentures compulsorily convertible into shares of the company within ten years are included in the

definition of 'Deposit'. Earlier compulsorily convertible bonds or debentures convertible into shares of the company within five years were included in the definition of 'deposit'. (b) Any amount raised by issue of non-convertible debenture not constituting charge on the assets of the company and listed on a recognized stock exchange will not be included under the ambit of 'deposit'. (c) Under sub-clause (xi), any non-interest bearing amount received or held in trust. The word 'or' has been replaced with 'and'. (d) The limit for accepting or renewing any deposit, which is repayable on demand or upon receiving a notice within a period of less than six months, for the purpose of meeting any short term requirement of funds, has been increased from 25% to 30% of the aggregate of paid-up share capital and free reserves of the company. [See MCA Notification F.No. 1/8/2013-CL-V dated June 29th 2016]

➔ MCA revises the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

MCA has revised the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. Highlights of the amendments are: (a) The requirement of filing of return of appointment of a Chief Executive Officer, Company Secretary and Chief Financial Officer has been omitted. (b) Rule 5 specifies some disclosures to be made by listed companies in their Board's Report. The amendment has omitted some of the disclosures such as: (i) explanation of the relationship between average increase in remuneration and company performance. (ii) comparison of the remuneration of the Key Managerial Personnel against the performance of the Company. (iii) key parameters for any variable component of remuneration availed by the director. [See MCA Notification F.No.1/5/2013 CL-V dated June 30th, 2016]

Litigation Brief

➔ State Of Rajasthan V/S Gotan Lime Stone Khanij Udyog Private Limited

FACTS:

- ➔ M/s Gotan Limestone Khanij Udyog (GKLU), a partnership firm, held a mining lease for mining limestone at Village Dhaappa, Tehsil Merta, District Nagpur in an area of 10 sq. km. at a fixed rental for which a third renewal was granted for a period of 30 years w.e.f. April 1994.
- ➔ The lessee applied to the State Government for transfer of mining lease to a private limited company, the Respondent Company herein, which was mere change of form of its own business by converting itself from a partnership firm into a private company. The permission for transfer of mining lease was granted by the State Government on the sole criteria that the management would remain the same i.e. the partners of the partnership firm will be the Directors of the private company.
- ➔ After converting into private limited company, the Respondent Company, instead of operating the mining lease itself, sold its entire shareholdings to another company allegedly for Rs.160 crores. Moreover, the management of the company were also replaced with the new ones.
- ➔ On 25.04.2012, the State Government cancelled the renewal of the mining lease as the Respondent Company sold the mining lease rights by transferring entire shareholding and management to Ultra Tech Cement Co. Ltd (UTCL) and the private limited company was listed as a subsidiary of UTCL with the Bombay Stock Exchange. The said cancellation of renewal was challenged by the Respondent before the Hon'ble High Court of Rajasthan.

PROCEEDINGS:

- ➔ Both Single Judge and Divisional Bench quashed and set aside the Order relating to cancellation of mining lease and held that a company has a separate legal entity. Assets, whether movable, immovable or intangible, all belong to the company and not to the shareholders.
- ➔ The Appeal went to the Hon'ble Supreme Court of India, where it was held that:
 - ❖ the mining rights are vested in the State;
 - ❖ if there is any violation of law by the device of a corporate entity or if the public interest so requires, then the Court has the power to lift the corporate veil to reveal the realities behind the veil;
 - ❖ the transfer of shareholding and change of management was nothing but a means to cover up the real transaction which is sale of mining lease to a third party for consideration without any statutory consent by terming it as two separate transactions – the first of transforming a partnership into a company and the second of sale of entire shareholding to another company;
 - ❖ such a transfer led to violation of Rule 15, which was void under Rule 72 of the Rajasthan Minor Mineral Concession Rules, 1986.

Thus, this Appeal was allowed and the judgment passed by the Hon'ble High Court of Rajasthan was set aside.



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