

Corpsec Hotline

June 29, 2003

ENCORE! FOREIGN COMPANIES MAY NOT NEED NOC TO SET UP SUBSEQUENT VENTURES IN INDIA

As per the provisions of Press Note 18 dated December 14, 1998 a foreign collaborator, which had or has an existing investment in / joint venture or tie-up with an Indian company and is now seeking to make an investment in another Indian company, which is in the same or allied business as the first Indian company, is required to obtain a No-Objection Certificate ("NOC") from the first Indian company. However, while clearing a recent application of the Saudi Arabia based Amiantit Group, the Foreign Investment Promotion Board of the Ministry of Commerce and Industry of the Government of India ("FIPB"), has made it quite evident that the Indian companies may not be able to take shelter of the said Press Note and such cases will be evaluated on a case-to-case basis.

The Amiantit Group, whose entry into India was being challenged by Graphite India on the basis of an earlier technology agreement, contended that there is no technical collaboration with Granite India currently in force and the joint venture agreement expired in 1997, as the same was not renewed. Further, as the initial 14.3% holding of the Amiantit Group in Graphite India was down to 0.85% as of the time of the application, the FIPB viewed it as merely a tie-up and not a financial collaboration, and cleared the proposal even in absence of the NOC from Graphite India.

In this context, it would be interesting to recapitulate the recent decision of the FIPB in the case of Kennametal where its proposal to acquire the shares of Widia India through an open offer was cleared in the absence of the NOC from the Yash Birla Group its erstwhile partner, since the open offer was considered to be in the interests of the shareholders of Widia India.

In the light of these decisions, it appears that the FIPB has begun to evaluate the requirement of NOC's on a case-to-case basis and Indian partners may no longer be able to arm twist foreign companies by refusing to give them NOCs.

Source: The Economic Times, Mumbai, July 29, 2003

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Taxing Offshore Indirect Transfers in India

February 28, 2025

Unlocking Corporate Philanthropy

February 27, 2025

Digital Health in India

February 26, 2025

Research Articles

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business

March 19, 2025

