

Corpsec Hotline

June 13, 2003

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

As per the provisions of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 and Press Note No. 18 issued by the Government of India 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 permission from the Foreign Investment Promotion Board ("FIPB") and a no-objection certificate ("NOC") from the first Indian company. This requirement was only relaxed in the case of companies in the Information Technology ("IT") sector.

However, recently, in the case of Kennametal, the FIPB seems to have relaxed its stand on this issue. Kennametal had an existing joint venture with the Yash Birla group named as Birla Kennametal. Kennametal was also seeking to increase its stake in Widia India vide an open offer as part of its global acquisition of the promoter company of Widia India. Kennametal was unable to proceed with its open offer for the shares of Widia India due to refusal on the part of the Yash Birla group to issue an NOC for the same, which was required for such increase. The FIPB has however, on the recommendation of the Securities and Exchange Board of India ("SEBI"), permitted Kennametal to go ahead with its acquisition of Widia India, even in the absence of an NOC from the Yash Birla Group giving precedence to the interests of the shareholders of Widia India who will benefit as a result of the open offer. The decision of the FIPB has been submitted to the Finance Minister for formal approval.

This decision of the FIPB seems to indicate that they may consider granting an exemption from the requirement to obtain an NOC from the existing Indian company if a foreign collaborator is proposing a new venture in India, on a case by case basis.

Source: The Economic Times, Mumbai. June 12, 2003.

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