

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

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