LEGAL EYE

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VOLUME VIII- JANUARY 2003 ISSUE 1

Dear Readers ,

We wish you all a new year filled with happiness and joy.

Starting with this edition of the Legal Eye, as we progress into this new year, it is our endeavor to streamline the content of the Legal Eye by focusing mainly on the firm's main areas of practice. It is with this in mind, that the editorial team of the Legal Eye has chosen to focus the first edition of this year on the infrastructure sector.

The current edition of the Legal Eye gives you a flavour of some of the important issues faced by this sector, in particular, the recent skirmishes between various service providers, and the tariff issue in the power sector. This edition also gives a broad outline of the restructuring and privatization exercise that has been initiated by the Indian Government over the past few areas in respect of ports in India.

As always, the snapshot section is intended to give a quick over view of the recent development in the legal arena. This section has been immensely popular amongst our readers since they find it of great use and

Restructuring and Privatisation of Ports in India

Legal Analysis of Power Tariff Fixation and Implementation

WLL Limited Mobility

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manage to get a quick update.

We look forward to your continued support and response.

Rajesh N. Begur, Editor-in Chief, Legal Eye

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Restructuring and Privatisation of Ports in India

Introduction

India has nearly 5560 kms long coastline over which are spread 12 major ports (of which 11 are operational and the 12th is under construction at Ennore in Madras) and 148 minor ports. An increase in the demand for cargo handling to 650 million tonnes by 2005-06 is expected, which clearly exceeds the current capacity. Clearly, new facilities need to be introduced and existing facilities upgraded for the projected growth in cargo demand.

The government has proposed to implement new Schemes in Major Ports for the addition of 122 MT of capacity. The funds required for this are estimated to be around Rs. 25,000 crore. In contrast, the total plan allocation for the sector was only Rs. 4,240 crore between 1990-97. Since Government funding will clearly not be sufficient for the creation of port infrastructure, private investment will be required to bridge the gap.

The Need for Privatisation

Indian ports are severely inefficient leading to low productivity. The major

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causes for these are: handling traffic in excess of their capacity (115%), average vessel turn around time for Indian ports varies from 3.3 days to 8.3 days, (1998-99) as compared to 15 to 35 hours in major European ports and less than a day in Singapore (1998-99), low equipment utilization and obsolete equipment, inadequate dredging and container handling facilities, large manning costs, overstaffing, inability of the ports to adjust to the categories of cargo which grew the most, procedural difficulties, lack of inter and intra port competition etc.

The consequences of these various shortcomings are severe. Indian container cargo is transhipped to Colombo, Dubai or Singapore, resulting in additional costs as few large liner ships are willing to call on Indian ports as they cannot afford to accept the long waiting times. Indian exporters are, therefore, operating on the basis of substantial buffer stocks, which also makes them less competitive. These costs have ultimately to borne by the end user, raising the costs of India's exports in international markets and the prices of imports for the Indian economy. All these grounds strongly lead to the demand for privatisation.

Governing Legislation: *Regulatory framework*

Major ports are placed under Item 27, List I of the Constitution, and are administered under the Indian Ports Act, 1908 ("IPA") and the Major Port Trust Act, 1963 ("MPT") by the Central Government. Under the MPT, each major port is governed by a Board of Trustees appointed by the Central Government. The powers of the trustees are limited and they are bound by directions on policy matters and orders from the government. The IPA lays down rules for safety of shipping and conservation of ports. It regulates matters pertaining to the administration of port dues, pilotage fees and other charges.

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Minor ports are placed in Item 31, List III of the Constitution and are administered under the IPA. The Act defines the jurisdiction of both the Central and State Governments over ports.

At the State level, the department in charge of ports or the State Maritime board (created through State legislation, as in case of Gujarat), is responsible for formulation of water front development policies and plans, regulating and overseeing the management of state ports, attracting private investment in the development of state ports, enforcing environmental protection standards etc.

Port Restructuring in India

The Government of India has decided to adopt the concept of landlord ports, among the various other port operating structures, and gradually secure private participation in the provision of port services. Accordingly, in October 1996 policy guidelines were issued which provided for private sector participation/investment in leasing out existing assets of the port, construction/creation of additional assets; leasing of equipment for port handling and leasing of floating crafts from the private sector, pilotage and captive facilities for port based industries.

In furtherance of this initiative, the procedure for inviting private participation and the criteria for evaluation were prescribed; additionally, model tender documents and concession agreements were also formulated. Policy guidelines were also issued in 1997 to enable the major ports to set up joint ventures with foreign ports, minor ports or private companies. The MPT and IPA were amended by the Port Laws (Amendment) Act, 1997 to give effect to the guidelines issued in 1996 and 1997. One of the major amendments carried out was the setting up of an

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independent tariff-regulating agency, Tariff Authority for Major Ports (TAMP), discussed in the next section.

The salient features of the guidelines issued by the government were as follows: -

a. Ports will continue to discharge their regulatory role under Major Port Trusts Act, 1963 and will continue to fix the ceiling of tariffs until an independent Regulatory Authority to fix and revise Port tariffs is established. Ports will also take steps to frame regulations consistent with the guidelines.
b. In identified projects to be cut out on tender on BOT basis, the feasibility report will be made at the expense of the port, the cost of which will be subsequently recovered from the successful tenderer.
c. BOT model will be generally used for private sector participation with the assets reverting free to the port after the concession period.
d. Generally a concession period of 30 years will be permitted. However, in exceptional cases where investments are very large, the concession period may be up to 50 years.
e. The tariff will be revised by 20-25% once every three years on the basis of rise in wages, operational cost, inflation etc.
f. Private sector participation will be on the basis of open competitive bidding.
g. The criteria for evaluation in taking on lease equipments/port crafts by Port Trusts and for pilotage will be the least cost to the ports.
h. There will be no adverse effect on port labour. No retrenchment will be done without the concurrence of labour and only in accordance with Industrial Disputes Act and relevant labour laws.

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i. There will be total transparency in inviting bids following the two-cover system.

Moreover, as part of the 1996 policy guidelines, the government substantially increased the financial and other powers of the Port Trusts. It was also decided that all new ports will be set up as companies under the Indian Companies Act and that the existing Port Trusts will also be gradually corporatized and set up as companies. The 12th new major port, which is under construction at Ennore near Madras, has been set up as a company under the Companies Act, with the conservancy functions being exercised by the Madras Port Trust. Action has also been initiated to corporatize the Jawaharlal Nehru Port Trust (JNPT) and the Haldia port, which are among the newer of the major ports. By virtue of the said guidelines, foreign ports/companies may implement the scheme by promoting an Indian company in the form of a Special Purpose Vehicle (SPV), without any equity contribution from the Major Port Trust.

Tariff Authority for Major Ports (TAMP)

By virtue of the amendment carried out in MPT by the Port Laws Amendment Act, 1997 a new chapter (VA) was inserted called the “Tariff Authority for Major Ports” and this authority was set up in March 1997. It is an independent regulator to set port tariffs in order to ensure that there is no unfair competition between the private competitors and the Port Trust as also to counter the fear that where services are provided only by one agency, involvement of the private sector could result in public monopolies being converted into private monopolies. All powers for fixing tariffs in major port lies with TAMP, but it has no jurisdiction over minor ports or private ports. It has the three major functions: frame a scale of rates for the use of any property in possession of the Board for specified purposes; frame a

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scale of rates for different classes of goods and vessels; and fix fees for pilotage, port dues and other services to vessels. But, this amendment to the Act also enabled the GOI and the Major Ports Trust to establish their own rates in certain cases, like – the board may exempt any vessel or goods form payment of charges and GOI may direct TAMP to cancel or modify any rates in force etc.

It may be noted that TAMP has no other regulatory functions or powers. All the conservancy powers in ports and all other regulatory function in regard to safety etc. are vested in the Port Trust themselves. TAMP has also not been specifically mandated to improve efficiencies or lay down quality of service standards in port operations. However, the MPT in section 48 provides that while fixing tariffs the conditions under which the service to be rendered can be prescribed. Using this as a mechanism, TAMP is now seeking to relate tariff to efficient functioning.

Minor Ports

As stated earlier, the IPA governs the minor ports. The amendment carried out in the IPA by virtue of the Port Laws Amendment Act, clearly demarcates the jurisdiction of the central and state governments in major and minor ports. Under Chapter V of the IPA, port dues, fees and other charges may be fixed by the state government with respect to minor ports, and for the same a body of persons may be appointed. The various forms of port development carried out by the state governments is possible under the IPA and the State Governments have an advantage in that they are not fixed in by the existing structure of the MPT.

Looking Ahead

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In spite of the steps carried out by the government, there is still a lot left to be desired. To get the maximum mileage out of privatisation, certain more steps need to be initiated. All that has happened is that new investments by way of some berths or container handling facilities have been made by the private sector in the existing major ports, with the Port Trusts themselves continuing to handle the other berths and facilities. It has therefore resulted in a conflict of interest between the Port Trusts, who continue to be port regulators and providers of commercial services, and the private sector. Some other reforms that need to be carried out are:

Inter port and Intra Port competition

Because of the poor interface of the ports with other transport networks and the long distances between them, inter port competition is non-existent leaving the users with few choices. Integration of ports with the transport system is necessary to increase inter-port competition.

To increase intra port competition, new facilities should be concessioned to multiple providers. The concession agreement should therefore be designed such that there are no restrictions in the agreement on developing competing facilities. Moreover, investments in the future should be left in private hands completely.

Labour reforms

The large overstaffing at ports is a major deterrent for private investment in port facilities. Dock Workers Act 1948 which governs port workers provides a remarkable degree of protection to Dock workers and has led to various malpractices such as speed money, over manning, low productivity, idle time, etc. There are other problems relating unionised

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labour and labour intensive methods of bulk handling of sensitive commodities like thermal coal.

In order to ensure that the privatisation goes ahead smoothly without any hitches on this front, the following steps have to be taken by the Government:

Ø Make labour reforms mandatory at all major ports.

Ø Provide incentives for improving productivity.

Ø Set targets for the retraining and redeployment of labour.

Ø Raise productivity benchmarks and incentives simultaneously.

Ø Allow private operators to employ labour on less restrictive terms.

Ø Develop supporting infrastructure at new ports.

Ø An appropriate voluntary retirement scheme should be designed so as to reduce excess staff.

As far as the minor ports are concerned the state governments have had the opportunity to start almost from scratch and develop ports without being inhibited by existing institutional arrangements, labour or other vested interests.

Tariff regulations

The tariff structures at different ports vary widely and are extremely complex. Port tariff should be fair, simple and transparent based on broad

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banding and scientific clustering of cargo categories. Tariff in major ports is now regulated by TAMP. But TAMP should foster competition and eventually withdraw from market as it develops. TAMP should endeavour to use each tariff revision as an opportunity to increase port efficiencies.

TAMP has not been given powers to function as a quasi-judicial body to ensure compliance of its orders. It has not also been granted necessary financial autonomy. Besides, the orders of TAMP are not final as government has retained powers to order remissions from the rates approved by TAMP.

If the government is seriously trying to foster FDI and private investment in this sector, it needs to take a series of concrete steps to cleanse the system of its inefficiencies. Merely increasing FDI limit to 100% is not the solution to foster private participation in the sector.

Rajesh N. Begur & Jayne Kuriakose

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Legal Analysis of Power Tariff Fixation and Implementation

The power sector in India is essentially regulated by the Indian Electricity Act, 1910, the Electricity Supply Act, 1948 ("ESA") and the rules and regulations made thereunder. Over the years, the precarious financial position of the various State Electricity Boards ("SEBs") coupled with the insistence of the potential investors in the sector have influenced many State Governments to pass legislations amending the laws regarding

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generation, transmission and distribution of power in their respective States (the "Reform Acts"). The enthusiasm shown by the State Governments in initiating reforms has also been further encouraged by the tabling of the Electricity Bill, 2001 (the "Bill") which seeks to consolidate the legislations governing the sector and to take measures conducive to the development of electricity industry.

One of the major causes for the financial unviability of the power sector has been identified as the tariff structure, which has not been revised periodically to keep pace with the rising cost of generation and power supply. Hence a carefully drafted tariff fixation and implementation strategy is seen as the crux of the reforms process. In light of the above, this article seeks to explore the concept and legal aspects of tariff fixation and implementation under the various legislations governing the power sector in India.

Concept of Tariff

Tariff is the amount of money that has to be paid per unit of power consumed. The determination of tariff, under the ESA, has been the prerogative of the SEBs, who had to follow the financial principles enshrined in the Sixth Schedule to the ESA for the fixation of the same. These principles included adjustment of the charges so that the clear profit in a year does not exceed the reasonable return. Various Reform Acts have now taken away the power of tariff fixation from the SEBs and vested the same in the Regulatory Commissions, who while doing so are again bound by the financial parameters of the Sixth Schedule to the ESA. However, the Bill differs from the earlier legislations and in particular the Reform Acts in terms of initiating a policy discussion where it requires the Central Government to prepare a national electricity policy and tariff policy

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in consultation with the State Governments.

Legal Issues in Tariff Fixation

Deviation from financial principles of Schedule VI

The Regulatory Commissions of various States felt that in order to provide certainty to the Licensees and to facilitate long term planning by the licensee to aggressively deal with loss reduction and otherwise achieve efficiency, it is necessary to enunciate long term tariff principles on specific aspects such as loss reduction, efficiency gain, incentives and dis-incentives and such other aspects as the Commissions may consider appropriate. In the light of introduction of these long term tariff principles ("LTTP"), concerns have been raised regarding potential deviation from the application of the Sixth Schedule of ESA, in tariff setting by the Commission. While some of the Reforms Acts do permit the Commission to depart from the factors specified in Sixth Schedule, while determining the licensees' revenues and tariffs, they stipulate that reasons shall be recorded for such deviation in writing. Hence the legislative intent clearly is that the Commission, though in normal events, is bound by the financial principles of Schedule VI, can, for reasons recorded in writing, deviate from the same.

Differential Tariff

Another issue is whether implementation of differential tariff for different distribution companies would be permitted. On the unbundling of the SEBs into generation, transmission and distribution companies and consequent demarcation of territories of each distribution company, it was realized that some of the distribution companies, which have an advantage over others

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in terms of consumer mix etc., could afford to supply power at better rates than others. Many Reform Acts stipulate that any tariff implemented shall not show undue preference to any consumer of electricity. However, in some Reform Acts this section is further qualified to the effect that tariff differentiation is possible according to: (i) consumer's load factor or power factor; (ii) the consumer's total consumption of energy during any specified period or at the time at which supply is required; (iii) paying capacity of category of consumers and need for cross subsidization. Hence it appears that tariff differentiation is possible if justified under any of the above heads and if it is just and reasonable in order to promote economic efficiency in the supply and consumption of electricity.

However, the challenge to any differential tariff may not be raised under the provisions of the Reforms Act, but on grounds of constitutionality. In other words, once differential tariff for each of the distribution company is implemented, there is a possibility that one class of consumers under a particular distribution company may challenge the differential and beneficial tariff fixed for the same class of consumers in other distribution company's areas. This challenge can be on the basis of Article 14 of the Constitution of India, under which, similarly placed consumers and citizens treated differently may allege arbitrariness in the procedure and fixation of tariff.

Multi Year Tariff (MYT)

Present tariff methodology involves an annual review of licensee's costs and revenues. The licensee is required to file at least three months before the ensuing financial year full details of its revenue calculations and tariff proposals. The Commission is thereafter required to consider the tariff proposals and revenue calculations of the licensee and notify the licensee

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of its acceptance of the same with or without modification or propose any alternative calculation, which the licensee is required to accept. Introduction of MYT, which involves using a set of well defined long term tariff principles to design and notify the tariff structure for the licensees for pre-determined control period may not be in agreement with the prevailing enactments in the electricity business. However, the provisions of the Bill clearly indicates that the future tariff fixation structures may be on MYT basis based on Incentive Based Returns mechanism.

Powers of Government vs. Commission

The State Government has powers under the Reform Acts to issue policy directions on matters concerning electricity in the state including the over all planning and coordination. However, any such policy direction should not adversely affect or interfere with the functions of the Commission including the determination of the structure of the tariffs for the supply of electricity for the various classes of consumers. The State Government has to consult the Commission in relation to any proposed rules or legislation concerning any policy direction and shall have to take into account the recommendations of the Commission. Disputes may arise in the future as to the role, powers and functions of Government and the Commission with respect to tariff.

Litigation on tariff

An important issue that requires consideration is the finality of the tariff orders and the fixation of tariff by the Commission. Neither the Reform Acts, nor the ESA enshrines that the orders of the Commission are binding and final and therefore, it is open to any person or group with vested interests to proceed against the tariff orders published or passed

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by the Commission on frivolous and baseless grounds. The Reform Acts specify that the person aggrieved with the order of the Commission may file an appeal in the High Court *on questions of law* arising out of such order. Hence, the High Court would not sit on judgement on the facts of the grievances. However, these petitioners will have a ground to challenge the orders of the Commission stating that the Commission, is an instrumentality of State under Article 12 of the Constitution of India, 1950, and has violated their fundamental rights in terms of Articles 14, 19(1) and 21 read with Article 51 of the Constitution of India, 1950 thereby seeking either the High Courts or the Supreme Court to interfere and remedy such violation leading to protracted litigation hindering the reform process.

However, the trend with respect to fixation of tariff cases has been positive with the same being treated as a legislative action and the courts hesitating from interfering in such policy decisions. The Courts have in general taken a view that in cases of policy they will not interfere with the decision of the executive and would not sit in judgment over the executive wisdom of the authority delivering or administering a policy. However, the courts still retain powers to strike down the tariff orders and may interfere in cases of inequality, arbitrariness and violation of the principles of natural justice.

Dhanya Menon & C K Nandakumar

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WLL Limited Mobility

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The terms and conditions of the Governments decision to allow Fixed Service Providers (“FSPs”) to offer Wireless in Local Loop (“WLL”) with limited mobility has created an environment of discomfort in the Telecom Industry. This has given rise to disputes among the FSPs and Cellular Mobile Service Providers (“CMSPs”), regarding issues relating to interconnectivity and blocking.

These differences between the FSPs and the CMSPs arose as a result of the Government guidelines issued on 25 January 2001 by which FSPs were allowed to provide limited mobility to its subscribers with Wireless Access Systems within the local area i.e. Short Distance Charging Area. These guidelines were issued based on Telecom Regulatory Authority of India’s (“TRAI”) recommendations on WLL with limited mobility dated 8 January 2001, which were even accepted by the Telecom Commission. The Telecom Disputes Settlement & Appellate Tribunal (TDSAT) in a petition filed by the CMSPs came to the conclusion that the decision to offer WLL with limited mobility is a *policy decision of the government, which the government was free to take and as such a policy decision cannot be assailed either by the cellular operators nor the tribunal can interfere with the same*. The CMSPs filed a petition to the Supreme Court against the said order of the TDSAT. The Supreme Court ruled that *Section 14 of the TRAI Act, 1997 is wide enough and empowers the TDSAT to adjudicate any dispute between the licensor and a licensee including the dispute in relation to a decision taken by the government. However, due weight has to be attached both to the recommendations of the TRAI and the Group on Telecom & IT (‘ GOT-IT’)*. To the best of our knowledge the matter is pending with the TDSAT and that the TDSAT on the request of TRAI has deferred the matter for hearing to 24 February 2003.

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The TDSAT would have to consider the reports of GOT-IT, recommendations of TRAI, and the representations of both CMSPs and FSPs and satisfactorily address the concern on level playing field in arriving at any decision.

The two major concerns of the CMSPs that were and still continue to remain are:

1. Whether the New Telecom Policy 1999 *('NTP-99')* permits "Limited Mobility" service to be offered by Fixed Service Providers?

2. If it is permitted under NTP-99, how it can be introduced to be consistent with the principle of "*Level Playing Field*" among different categories of operators with the objective of assured services to the customers at cheapest rates?

The Group on Telecom & IT Convergence on Limited Mobility in their report dated 26 April 2001 dealt with both of the above issues. Their response on the above issues is as under:

<u>NTP-99</u> The existing license agreement with FSPs specifies in clause 1.7.2.2(v) that for subscriber loop, optical fibre and wireless were to be the preferred technologies. The NTP-99 enabled the use of WLL access system by the FSPs and also recognized that "convergence now allows operators to use their facilities to deliver some services reserved for other operators, necessitating a re-look into the existing policy framework".

Level playing field that the GOT-IT advised was that: (i) the ratio of revenue sharing with the long distance carriers by the FSPs providing WLL should be changed; (ii) obligation should be cast on the FSPs to cover

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proportionately rural and semi-urban areas; (iii) the decision as regards levy of any additional fees should be left to the exclusive domain of TRAI; (iv) FSPs must give undertakings as well as performance guarantees for their existing licenses for fulfilling of the balance of roll out obligation within a defined time frame.

Present Scenario

The CMSPs continue to oppose WLL. Tata Tele recently complained to the TRAI that Bharti had been blocking calls originating from Tata Tele's service network even when they are routed through MTNL and BSNL, with which the CMSPs have interconnect agreements. In response to this complaint the TRAI issued a directive asking cellular operators not to block calls originating from WLL networks when routed via BSNL and MTNL. Additionally, the TRAI has issued a show cause notice for levy of penalty to CMSPs for not obeying the order to interconnect with limited mobility operators. The CMSPs are not willing to allow interconnections to the WLL service providers unless a level playing field is created.

In a recent meeting of the Information Technology Minister with the CMSPs and FSPs, the Minister conveyed that TRAI would work out a interconnect usage charge with retrospective effect. Based on this assurance, the CMSPs appear to have agreed to provide interconnections to FSPs including for WLL service providers. It appears that the TRAI might determine an amount of nearby Rs.0.40 per minute as the termination charge; in which case the operators receiving the maximum number of incoming calls would benefit from this decision.

Narendra Joshi

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Legal Snapshots

SEBI Orders Share Audit for all Companies

The Securities and Exchange Board of India (SEBI) has asked all listed companies to submit themselves to a secretarial audit by a qualified chartered accountant to reconcile that the total shares held in dematerialise and physical form tally with the admitted, issued and listed capital and to detect any excess issue of shares. This was done so as to protect the interests of the investors as SEBI has found that there have been several instances in which issuing companies have dematerialised shares in excess of admitted capital or without obtaining ‘in-principle’ approval from the stock exchanges where the shares are listed.

SEBI to get T+2 settlement by April 1st

The Securities and Exchange Board of India (SEBI) has stated taking steps to meet the April 1 deadline for introduction of T+2 rolling settlement in the stock exchanges. SEBI is planning to issue administrative instructions to market participant, intermediaries and exchanges to smoothen transition into T+2 settlement from the current T+3 settlement cycle, which settle trades on fourth day of transaction. SEBI is also taking other steps such as widening the scope of Straight through Process, electronic fund transfer facility and electronic contract notes, to facilitate shorter settlement cycle.

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SEBIs move towards improving Corporate Governance

The Securities and Exchange Board of India (SEBI) may restrict number of company directorships a person could hold as part of its initiative to improve corporate governance. SEBI is also undertaking various other steps to improve corporate governance, such as having a system for rating of corporate governance to help stakeholders in assessing the corporate.

Foreign Airlines may be kept out of Airport Bidding

The civil aviation ministry has proposed that foreign airlines should be barred from bidding for management of four international airports that are to be hived off from the Airport Authority of India (AAI) through the joint venture route. The joint venture route, which has been floated for bringing in private investment in the four international airports would keep away subsidiaries and sister concerns of international airlines. Foreign airlines or their group companies may be allowed to function as junior partners in the joint ventures with minority stake. AAI would have a token stake of 5% in the joint ventures that would manage the airports. Separate joint ventures are proposed to be floated for each airport.

Red Signal to Chinese FDI

The government has put on hold foreign direct investment proposals of Chinese nationals and companies till a comprehensive policy on FDI from China is drawn up. The Foreign Investment Promotion Board (FIPB) deferred clearance to a Hong-Kong based Chinese company that wanted to raise its stake in an Indian company, after the Ministries of External Affairs and Finance conveyed this to FIPB. This proposed policy is at present being studied by a committee of secretaries (CoS), set up for this

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purpose by the Cabinet Committee on Security.

Restricted powers for the Serious Frauds Office

The Union Cabinet has defined the powers of the Serious Frauds Office, set up with the aim of being a major deterrent to corporate crime. However, it will neither have any power to prosecute or search and seizure. It cannot even initiate investigations on its own, and the Department of Company (DCA) affairs will direct it on these matters. It is therefore to be set up as a cell within the DCA under the charge of a joint secretary or an additional secretary. The dozen experts that will constitute the cell will be drawn from various backgrounds including forensic science, IT, accounting, financial markets, taxation and law. There would be four investigation teams and each would be entrusted with about two cases in a year.

Mauritius backs the Double Tax Avoidance Treaty with India

The Prime Minister of Mauritius has stressed on forging further strategic alliances with India and said that the DTAT with India is beneficial to both countries and there was no evidence of money laundering in Mauritius. The statement comes in the light of apprehension that some Indian companies and brokers are using Mauritius as a safe haven to launder money. The capital market regulator of both the companies also signed an agreement to share information on securities dealings.

Dual citizenship for NRI’s

Dual citizenship is now being offered to Indians in UK, USA, Canada, Australia, New Zealand, Singapore and several European countries. But

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NRI's from countries like Seychelles, FIJI, Mauritius and some Gulf delegates are not pleased at their exclusion. They complain of marked bias by the government in favour of the rich and more developed nations. It was felt that the government had not been very transparent in deciding who could be offered the choice of dual nationality. The feeling was particularly strong among some of the Gulf delegates because historically the Gulf Indians have sent the maximum remittance. The necessary legislation for the same is likely to be introduced during the budget session.

Union Cabinet okays revival of package from paging companies

The Union Cabinet has approved a revival package for sick radio paging service industry. The package includes shifting the operations to the system of revenue sharing from the existing license fee and waiving off license fee from third year of commencement of services for city paging operators. For radio paging operators providing services in circles, the license fee will be waived from the second year of operation. Under the revenue sharing regime, operators will be required to pay 5% revenue per year to the government. This is inclusive of universal service obligation .The operators will not be required to pay interest as per the license agreement In order to migrate to a revenue sharing regime, the operators will be required to pay the outstanding dues within one month of the issue of the letter of demand. The period of license fee will be 20 years starting from the existing date of existing license.

Supreme Court ruling on carry forward of unabsorbed depreciation and loss when income is assessed under minimum alternative tax provisions.

The Apex Court in the case of *Karnataka Small Scale Industries Development Corporation v/s CIT (258 ITR 770)* has recently delivered a significant ruling concerning carry forward of unabsorbed depreciation and

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unabsorbed business losses when income is assessed under Section 115J of the Income Tax Act 1961 on a deemed income basis. Section 115J was in operation from Assessment Year 1988-89 to 1990-91, however this ruling of the Supreme Court is quite significant as Minimum Alternate Tax provisions have a wide application even today. In view of the ruling the assessees will have to take cognizance of the ratio laid down by the Supreme Court in quantifying the amount of unabsorbed depreciation and unabsorbed business losses for carrying forward the same to the subsequent assessment years for set off.

Center thumbs down JNPT's grand plans for expansion

The Union Government has rejected the proposals by Navi Mumbai Jawaharlal Nehru Port Trust (JNPT) authorities for expansion and development of their facilities. The coastal management authorities has asked JNPT to submit a more realistic plan with a more reasonable time-frame guided by the perspective of coastal zone management principals. It has been asked to recast its proposal to work.

DCA to relax ceiling on independent directors pay

The Department of Company Affairs (DCA) is set to relax the cap on remuneration paid to independent directors, with an objective to enable corporate India to attract high quality professionals to join the board of companies. The move gains importance in light of the recommendations made by the Naresh Chandra committee on corporate governance. According to the panel at least 50% of the directors should be independent. The panel has also suggested that management be granted more flexibility while fixing the compensation for independent directors and ideally the compensation package should be settled between the

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management and the shareholders.

Amfi lays down stricter norms for distribution

Stringent norms have been set for empanelment of individual and corporate distributors of mutual funds. According to a circular issued by the Association of Mutual Funds in India (Amfi), corporate distributors are required to have at least 100 investors who are non-associates in a year or other wise they should generate a minimum business of Rs 1 crore from non-associate clients in a year. The new norms seek to enforce SEBIi's ban on mutual fund distributors passing on commission to clients. Asset management companies will be required to monitor compliance of certain criteria's on an annual basis and all distributors empanelled with mutual funds will have to compulsorily get Amfi certification by March 31, 03.

Export council for EOUs, SEZ units set up

A new export promotion council (EPC) has been set up to cater to the needs of 2300 export-oriented units (EOUs) as well as units located in special economic zones (SEZs). These units contribute around 13% of India's exports, which cover major industrial sectors namely textile, garments & yarn, food & agro products, electronics and software, chemicals, engineering, minerals and granite.

Regulatory framework for corporate debt on anvil

The SEBI Secondary Market Advisory Committee headed by R H Patil has recommended a regulatory framework for issuance and trading of all corporate debt securities including those issued through the private placement route. Some of the recommendations include disclosure norms

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as applicable for a public issue, appointing debenture trustees, steps to promote listing of debt securities on the stock exchange and a fresh listing agreement for debt securities. A separate listing agreement may be devised for listing all debt securities. The committee stated that a listed company issuing debt securities, either on private placement basis or through the public issue route, should have the same exhaustive disclosure requirements as for equity. This would include making full disclosures on the websites of the company; the stock exchanges and SEBI, provided such securities are issued and traded in standard denominations of Rs 10 lakhs. The committee has also recommended that companies issuing debt securities appoint debenture trustees for all such issuances.

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Meet the A.R.A. LAW Team:

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Ravi Kumar graduated from the National Law School of India University, Bangalore. At law school, he specialized in Business and Commercial Laws, and has presented papers on "Corporate Finance", "Corporate Governance", "Law and Accountancy", "International Taxation" and "Anti-dumping" among others. While in law school, he has had fairly exhaustive internship stints with leading law firms in Chennai, New Delhi and Bombay. His areas of professional interest include Securities Laws, Mergers and Acquisitions, Takeovers, Corporate Structuring, Corporate Finance and Banking Laws. While at college, he has extensively participated in various University sports and various literary and debating activities.

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"Working at A.R.A LAW has been a very pleasant and fulfilling experience, because of the independence given to every person of the A.R.A. LAW team to pursue their areas of professional interest. The senior members of the A.R.A. LAW team are easily accessible and are happy to help out the rookies, with all their problems, real as well as imaginary. Lest anyone should think otherwise, this independence goes hand-in-hand with responsibility. I have been given hands-on training in dealing with clients, participating in negotiations with other parties, as well as working on my drafting skills, all this the hard way - doing it myself, which undoubtedly will stand me in good stead in my career!

Perhaps the best part of this fascinating experience has been the support given to me by all the members of the A.R.A. in this brief albeit fulfilling journey into the legal world."

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