NEWSLETTER

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CLASIS LAW

Monthly Bulletin

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CLASIS LAW

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DOING BUSINESS IN INDIA

We are pleased to share our e-book titled

"Doing Business in India"

Please scan the QR code above or Click Here to download the e-book. Alternatively, you may write to us at info@clasislaw.com

The book intends to give the readers an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.

Message from Vineet Aneja, Managing Partner on the occasion of the 15th anniversary of Clasis Law

Cheers to 15 years on September 15, 2025.

It is with immense pride and gratitude that I address you as we celebrate 15 years. Fifteen years ago the firm began with a vision to deliver exceptional service and build trusted partnerships.

Over these years, we've faced challenges, embraced opportunities and achieved milestones that are truly worth celebrating. None of this would have been possible without the dedication, talent and perseverance of our incredible team. Each has played a vital role in shaping who we are today.

To our clients – thank you for trusting us and confiding in our work. Your support has been the foundation of our success, and we look forward to many more years of growing together.

Anniversaries aren't just about looking back; they're also about looking ahead. As we celebrate 15 years of progress, we remain committed to innovation, excellence and the value that brough us here. The future holds even greater promise and together as a firm, I know we will continue to thrive.

So let us honor the past, celebrate the present and embrace the future. Thank you all for being a part of this remarkable journey. Here's to 15 years and to many more to come!

With best wishes
Vineet Aneja
Managing Partner

15TH ANNIVERSARY CELEBRATION

OVERSEAS PORTFOLIO INVESTMENT BY PERSONS RESIDENT IN INDIA

Written By
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INTRODUCTION

In this smart age where digitalization touches everything, it is not wrong to say that globalization is inevitable. The impact of each and every human achievement or disaster spreads beyond the territorial jurisdiction of the homeland and has the power to change the world's economic landscape overnight. Whereas, in this global scenario, people are looking for continuous 24/7 growth with a minimum risk. Accordingly, it becomes necessary to diversify investments not just across different asset classes & industries but also in different geographies & time zones. To regulate effectively and to eliminate ambiguities, the Central Government and the Reserve Bank of India **("RBI")** provided with a definition of Overseas Portfolio Investment **("OPI")** in its new OI regulatory regime *(i.e., OI Regulations, Rules, and Master Directions)* issued on August 22nd 2022.

OVERSEAS PORTFOLIO INVESTMENT

"OPI means overseas investment, in foreign securities, but does not include the following:

(i) Overseas Direct Investment (ODI)[1];

(ii) Investment in any unlisted debt instruments;

(iii) Investment in any security issued by a person resident in India (excluding securities issued by International Financial Services Centre – IFSC[2]);

(iv) Investment in derivatives unless otherwise permitted by RBI;

(v) Investment in any commodities including Bullion Depository Receipts (BDRs)

In other words, OPI includes investments by Indian entity[3] and resident individual in the equity or debt instruments of foreign entities listed on international stock exchanges. The investment involves gaining ownership up to 10% of the equity capital of the Indian entity without any management control.

Further, investments made Indian entity and resident individuals in the units of overseas investment funds *(including those under IFSC)* duly regulated by the regulator for the financial sector in the host jurisdiction, is also considered as OPI.

In this article we will discuss about OPI by persons resident in India.

An Indian entity is permitted to make OPI up to 50 % of its net worth as on the date of its last audited balance sheet.

A **listed Indian company** can make OPI in paid-up equity capital of foreign entity by way of subscription to memorandum or an initial public offer or further public offer, open market purchase or private arrangement, rights/ bonus issue, capitalisation of receivables, swap of securities, under a scheme of merger/ demerger, including by way of reinvestment[4].

An **unlisted Indian entity** can make OPI only by way of subscription to rights/ bonus issue, capitalisation of receivables, swap of securities or under a scheme of merger/ demerger.

Resident individuals can make OPI by way of swap of securities under a scheme of merger/ demerger, subscription to rights/ bonus issue, capitalisation of receivables, gift, inheritance. Further, acquisition of sweat equity shares, qualification shares for management position in a foreign company, under employee stock ownership plan or employee benefits scheme up to 10% of the equity capital is considered as OPI. The OPI by resident individuals is subject to the overall limit under the Liberalised Remittance Scheme i.e. up to USD 250,000 per financial year.

FOOTNOTES:-

*[1] **"ODI"** means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten percent, or more of the paid-up equity capital of a listed foreign entity or investment with control where investment is less than ten percent of the paid-up equity capital of a listed foreign entity*

*[2] **"IFSC"** means an International Financial Services Centre set up, under section 18 of the Special Economic Zones Act, 2005.*

*[3] **"Indian entity"** means–*
(i)a company defined under the Companies Act, 2013;
(ii)a body corporate incorporated by any law for the time being in force;
(iii)a Limited Liability Partnership duly formed and incorporated under the Limited Liability Partnership Act, 2008; and
(iv)a partnership firm registered under the Indian Partnership Act, 1932.

*[4] **"Reinvestment"** means that the OPI proceeds are exempted from repatriation provisions as long as such proceeds are reinvested within 90 days from the date of its receipt.*

THE ARBITRAL TRIBUNAL LACKS THE JURISDICTION TO AMEND OR REWRITE THE TERMS OF AN AGREEMENT

Introduction

In a recent judgment in Bharat Heavy Electricals Limited (BHEL) vs. Xiamen Longking Bulk Material Science & Engineering Co. Ltd.,[1] the Hon'ble Delhi High Court reaffirmed the core principles of natural justice applicable to arbitral proceedings. The Court also thoroughly analysed the permissible limits within which an arbitral tribunal may diverge from contractual provisions.

Facts of the case

Bharat Heavy Electricals Limited (the **Petitioner**) entered into a contract with Xiamen Longking Bulk Material Science & Engineering Co. Ltd. (the **Respondent**), a foreign entity incorporated in China, following the Respondent's participation in a tender issued by the Petitioner on July 17, 2015. During the bidding process, the Respondent submitted a Project Execution Methodology (PEM) on April 25, 2016, in which it committed to establishing a local office in India and opening an Indian bank account to facilitate the execution of the contract. Relying on these assurances, the Petitioner issued three Letters of Award (LoA) on December 1, 2016, which the Respondent duly accepted on December 14, 2016.

However, the Respondent did not fulfil its commitment to establish a local office or provide the requisite bank account and tax registrations as outlined in the PEM. Instead, the Respondent proposed to utilize the bank account of its affiliated Indian company, M/s Longking Engineering India Pvt. Ltd. The Petitioner, however, maintained that strict compliance with the original PEM was mandatory. In reply, the Respondent conveyed on June 3, 2017, that it would be unable to proceed unless it was permitted to use the associated company's bank account, further threatening to withdraw from the project altogether.

Subsequently, on July 17, 2017, the Petitioner invoked the "risk and cost" clause and, by November 30, 2017, notified the Respondent of recoverable expenses amounting to Rs. 2,12,47,107.40 attributable to procurement from an alternative source. In response, the Respondent challenged the contract cancellation through a formal letter and initiated arbitration proceedings against the Petitioner by invoking the arbitration clause. Following the Respondent's objections and the arbitration notice dated October 12, 2018, the dispute was referred to arbitration. In an award issued on July 3, 2020, the arbitrator directed the Petitioner to pay Rs. 13,65,000 towards the cost of preparing 65 drawings, along with applicable interest. The Petitioner, dissatisfied with the award, filed the present petition challenging the arbitral award.

Observations of the Court

While considering the issues at hand, the Hon'ble Court conducted a detailed analysis and found the award to be unsustainable for being contrary to the contractual framework and lacking evidentiary foundation.

The Court observed that Clause 1 of the Project Execution Methodology (PEM), incorporated into the Letters of Award (LoA), unequivocally obligated the Respondent to establish a project office and open an Indian bank account as a prerequisite for performing the Indian segment of the contract. This stipulation was critical to ensure compliance with RBI regulations. Nevertheless, the arbitrator ruled that these requirements could be deferred or replaced by utilizing a third-party bank account, relying in part on email communications to contend that they were not mandatory. The Court held that such a finding effectively amounted to rewriting the contract, which is legally impermissible and contravenes the underlying principles of Indian law.

The Court further observed that the arbitrator's reliance on the Note to Clause 9.6 of the General Conditions of Contract (GCC) to justify payment via a Letter of Credit (LC) was an issue neither pleaded nor contested by either party. As a result, this constituted a breach of the principles of natural justice under Section 18 of the Arbitration and Conciliation Act, as it denied BHEL the opportunity to address this new ground. This reliance effectively introduced an unpleaded issue and altered the payment mechanism mutually agreed upon in the PEM, LoA and GCC.

Regarding the monetary claim, the Court found that the award of ₹13,65,000 for the preparation of 65 drawings was devoid of any proper evidentiary foundation. It was noted that only 18 drawings had been approved, and the amount awarded appeared to be calculated based on aggregated employee salary data without any evidence of exclusive involvement or a demonstrable benefit to BHEL. The Court concluded that such a determination was speculative and inconsistent with fundamental principles of justice.

Accordingly, finding the award to be patently illegal and in conflict with the fundamental policy of Indian law, the Court set aside the arbitral award in its entirety under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996.

Conclusion

While reaffirming that arbitral tribunals serve as the ultimate authorities on factual determinations and contract interpretation, the Court clarified that such deference does not extend to instances where the arbitrator effectively rewrites the contract or adjudicates matters beyond the scope of the pleadings. The arbitrator's conclusion that the obligations to establish a project office and open an Indian bank account were non-essential and could be deferred or substituted was held to constitute a fundamental alteration of the parties' original agreement.

FOOTNOTES:-

[1] O.M.P. (COMM) 529/2020.

1. SEBI Issues Consultation Paper Proposing Major Reforms to Related Party Transaction (RPT) Norms Under LODR

SEBI on August 4, 2025 has issued a consultation paper on amendments to the provisions of related party transactions under SEBI (LODR) Regulations, 2015 and circular thereunder for the purpose of ease of doing business.

(a) Threshold for determining material RPTs undertaken by listed entities.

i. The existing threshold of Rs. 1,000 crore or 10% of consolidated turnover (whichever is lower) is being replaced with scale-based threshold linked to consolidated turnover buckets – means the limits will be vary based on the size of the company, with maximum cap of Rs. 5000 crores

ii. SEBI estimates that applying this threshold would reduce RPTs requiring shareholder approval by about 60% thereby facilitating ease for the listed entities.

(b) Threshold for determining material RPTs undertaken by subsidiaries of a listed entity.

i. For subsidiaries with audited statements, materiality would be the lower of 10% standalone turnover or the threshold for material RPT of listed entity as determined under regulation 23(1) of the LODR.

ii. For newer subsidiaries (without a year of audited records), it would be based on standalone net worth, with net worth certified by a CA. or the scale-based materiality threshold, whichever is lower.

(c) Relaxation in the minimum information to be furnished to the Audit Committee and shareholders for the approval of the RPTs

SEBI proposes relaxing minimum disclosures for smaller RPTs—transactions up to 1% of consolidated turnover or ₹10 crore (whichever is lower) require less detailed information than under current disclosure norms.

(d) Inclusion of Provision in Regulation with respect to validity of omnibus approval for RPTs granted by the shareholders.

SEBI proposes to simplify the validity period for the omnibus approvals:

i. For approvals granted at AGM would be valid upto the date of next AGM for a period not exceeding fifteen months.
ii. For approvals obtained in general meetings other than AGM would be valid for one year.

(e) Clarifications pertaining to the applicability of RPT provision.

2. IBBI Discussion Paper Proposes Reforms to Strengthen CIRP Transparency

The Insolvency and Bankruptcy Board of India (IBBI) released a Discussion Paper on August 6, 2025, proposing measures to enhance the integrity of the Corporate Insolvency Resolution Process (CIRP). Key proposals include mandating the Committee of Creditors

(CoC) to formally record deliberations on resolution applicants' eligibility under section 29A, requiring enhanced beneficial ownership disclosures under section 32A, and introducing exclusive electronic platforms for submission of resolution plans to improve transparency and efficiency.

3. MCA Highlights Impact of C-PACE: Drastically Reduces Company and LLP Closure Timelines

The Ministry of Corporate Affairs on August 11, 2025 issued a notification which stated that, Smt. Nirmala Sitharaman, the Minister of Finance and Minister of Corporate Affairs, informed the Lok Sabha that the Centre for Processing Accelerated Corporate Exit **("C-PACE")** was launched by the Ministry of Corporate Affairs **("MCA")** on May 1, 2023. This initiative, which has been operational since May 2023, aims to streamline the voluntary closure process for companies and Limited Liability Partnerships **("LLPs")**. C-PACE has significantly reduced the processing time for closure applications from over 2 years to less than 2 months, offering faster and more efficient services. By centralizing the process, it ensures consistency and provides real-time updates through the MCA portal. As of July 2025, more than 38,000 companies and 8,300 LLPs have been successfully dissolved under this initiative. C-PACE marks a significant step in improving the ease of doing business in India by simplifying regulatory procedures and offering a faster, more transparent closure process for businesses.

4. IFSCA Introduces Revised Global Access Norms for IFSC Entities

The International Financial Services Centre Authority **("IFSCA")** vide circular dated August 12, 2025 has introduced revised norms for Global Access in IFSC, replacing earlier guidelines. The framework mandates authorization for Global Access Providers (GAPs), sets net worth requirements (USD 500,000 for GAPs; USD 200,000 for proprietary-only), and specifies fit-and-proper criteria. It outlines eligible clients, product restrictions (excluding crypto-assets and certain derivatives), segregation of funds, disclosure and KYC/AML obligations, and agreements with regulated foreign brokers. GAPs must follow reporting, audit, code of conduct, and fee norms, with compliance required by October 31, 2025 for existing entities. The circular also sets out a detailed fee structure, operational responsibilities, and compliance timelines to enhance investor protection and facilitate transparent cross-border market access.

5. Online Gaming Act, 2025 Notified: Bans Real-Money Games, Regulates Legitimate Online Gaming and e-Sports

The Ministry of Law and Justice dated August 22, 2025, has notified the Promotion and Regulation of Online Gaming Act, 2025. The Act prohibits to offer, aid, abet, induce or otherwise indulge or engage in the offering of online money game and online money gaming service. In parallel, the Act seeks to recognize and regulate legitimate online gaming services as a form of competitive sport in India. It also aims to promote and develop e-sports as a structured and recognized domain.

Notable Recognitions & Accolades

LEADING FIRM
Legal500
ASIA PACIFIC
2025

ALB
INDIA
LAW AWARDS
2023
FINALIST
THOMSON REUTERS

INDIA BUSINESS
LAW JOURNAL
AWARD WINNING
LAW FIRM
2024
LAW ASIA

LEXOLOGY
Legal Influencer
Q2 | 2022

AWARDS & HONORS

NOTABLE FIRM
B
BENCHMARK
LITIGATION

asialaw
2023-24
OUTSTANDING
FIRM

Forbes INDIA
Present
LEGAL POWERLIST 2023
in association with
legitquest
Information • Insight • Intelligence
ENLISTED
AS THE
TOP LAW FIRM
(ABOVE 10 YEARS EXP.)