

Ref. no.106/R-56/9112

March 21, 2011

To,
Shri R. P. Singh, I.A.S.,
Secretary,
Department of Industrial Policy & Promotion
Ministry of Commerce & Industry, GOI
Room No.-157, Udyog Bhawan, New Delhi-110011.

Sub.: Representation regarding foreign/technical collaborations in case of existing JVs.

Sir,

We have come across news report published in Business Standard of March 16th 2011 reporting that Government is likely to liberalize FDI Rules for entry of foreign companies that have existing JV/Collaboration in India. As per the news report, the revised version of FDI Policy, which is scheduled to be released on March 31st, is expected to do away with requirement of NOC from existing JV partner as is required in terms of Press Note 1 of 2005.

In this regard, we convey serious concern expressed by many of our constituents on the proposed move as reported in the news paper. Doing away with requirement of NOC from existing Indian JV partner would be highly detrimental to the interest of existing Indian JV partners and, therefore, to domestic industry. We firmly believe that if the foreign investor wants to be partner or technology provider to a new venture in the same line of activity, he must first be asked to exit from existing JV to avoid conflict of interest and to safeguard interest of existing Indian JV partner.

We have another suggestion to make to safeguard country's interest in promoting foreign direct investment in India.

Prior to issuance of Press Note 1 (2005 Series), automatic route for FDI and/or technology collaboration was not available to those who have/had previous JV/Collaboration Agreement in the 'same' or 'allied' field in India. By said Press Note 1, the requirement was narrowed down and restricted to 'same field'. The 'same field' was defined as 4 digits NIC 1987 Code, which covers a much wider range of products.

We feel that the restriction linked to 4 digits NIC Code, which is based on National Industrial Classification, should be scrapped and should be replaced by ITC HS Code of 6 digit, which is the internationally accepted classification of goods. By diluting the scope to ITC HS 6 digit Code, the concern of the domestic industry would be duly addressed and it would be fair to foreign investor also. It would obviate the problem given as an example in the Discussion Paper issued by DIPP on the subject regarding activity of 'manufacturing of seat belts' and 'manufacturing of car steering' falling under the same 4 digit NIC Code. If 6 digits ITC HS Code is applied 'manufacturing of seat belts' would fall under ITC HS Code 870821 and 'manufacturing of car steering' would fall under ITC HS Code 870894.

Thus, in the given example, a foreign investor who has an existing JV/collaboration for 'manufacturing of seat belts' would not be required to take NOC from Indian JV partner if he wishes to enter into new JV/collaboration for 'manufacturing of car steering'; however, in case the new proposed JV/collaboration is also for the 'manufacturing of seat belts' then he will have to take a NOC from existing Indian JV partner.

Replacing the restriction from 4 digits NIC Code to 6 digits ITC HS Code would not only be better understood by international community, it would also be fair both to the foreign investor as well as domestic industry.

We would expect the Government to keep in mind interest of the Indian partners in existing JVs while changing the FDI regulations to facilitate foreign direct investment in India.

Thanking you,

Yours Truly,

D. S. Verma
(Executive Director)

COPY TO:-

1. **Shri Rahul Khullar, IAS, Secretary**, Department of Commerce, Ministry of Commerce & Industry, GOI, Udyog Bhavan, New Delhi-110 011.
2. **Shri G. Gopalan, IAS, Secretary**, Department of Economic Affairs, Ministry of Finance, GOI, North Block, New Delhi-110 001.
3. **Shri D.R. Meena, IAS, Secretary**, Deptt. of Legal Affairs, Ministry of Law & Justice, GOI, A-Wing, Shastri Bhavan Rajendra Prasad Road, New Delhi-110 001.
4. **Shri D. K. Mittal, IAS, Secretary**, Ministry of Corporate Affairs, GOI, A-Wing, Shastri Bhavan, Rajendra Prasad Road, New Delhi-110 001.
5. **Shri B.S. Meena, IAS, Secretary**, Deptt. of Heavy Industries, Ministry of Heavy Industries and Public Enterprises, GOI, Udyog Bhavan, New Delhi-110001

D. S. Verma