

NATIONAL LAW UNIVERSITY JODHPUR

End Term Examination August-December – 2023

Semester – UG Semester – VII (Business Laws Hons.)

Subject: Investment Law

Time: 3 hours**Marks: 100 marks****Instructions:**

- i. All the questions carry equal marks
- ii. The students are required to attempt Five questions only.
- iii. Please substantiate your statement(s)/argument(s) with relevant case laws, whenever necessary.

Q.1.) Omega Communications Ltd., a foreign telecom company based in United States America decided to expand its presence into the Indian telecom sector. It identified TechConnect Pvt. Ltd., an Indian telecom startup that specialized in providing innovative digital communication solutions. The parties negotiated an investment agreement where Omega Communications Ltd. would acquire a 26% equity stake in TechConnect Pvt. Ltd., aiming to support the startup's expansion of its network infrastructure and digital services across India. TechConnect, at the time of negotiation with Omega, already had carried out prior funding activities, from few other Foreign VCs and companies (all of whom were unconnected entities). The investments totalled to an amount of USD 300 million, amounting to approximately 40%. There were also few NRIs and OCIs, who collectively held 9.2% shares in the Company (although these were family members and Related Parties of the Founders of the Company). The remaining shares were held by the resident shareholders.

Omega Communications Ltd. and TechConnect Pvt. Ltd., proposed to enter into a Share Subscription Agreement (SSA) under which Omega Communications Ltd. committed to invest INR 170 crores @ INR 170/share, in TechConnect Pvt. Ltd. for a 26% equity stake. The valuation of the shares was carried out by a registered valuer. Although, the valuation report, suggested that the pricing of Shares should be INR 130, however TechConnect's executives believed that, given the cutting-edge technology, was a sufficient reason to go for a higher valuation of the Shares. Hence, it was decided that shares would be issued at INR 170.

During the negotiation process, Omega Communications Ltd. and TechConnect Pvt. Ltd. agreed on a price per share that was higher than the fair market value determined by an independent valuer, as per the valuation report conducted in accordance with Indian law. In the report released to the Shareholders of TechConnect, for the internal approval procedure, TechConnect Pvt. Ltd., justified this higher price by highlighting its strategic assets, intellectual property, and projected growth potential in the highly competitive telecom market. Upon the due approval by the Shareholders, both the Parties believed that, approaching the Regulatory authorities, prior to the commencement of transaction was a better approach. Accordingly, they filed the relevant documents of the aforementioned transaction with the RBI seeking its advise concerning the proposed transaction.

Kindly draft a reasoned response from the RBI's, concerning the feasibility of the transaction. (Word Limit: 1000 words) (Marks 20)

Q.2.) In the context of the contemporary economic situations, please provide a detailed account of the relevance of BIT in the economic development of the developing countries? (Word Limit: 1000 words) (Marks 20)

Q.3.) Mr. Rajesh Sharma, a 42-year-old resident individual in Jaipur, India, is a successful entrepreneur who owns a chain of luxury hotels across India. He has recently been exploring international markets to diversify his business portfolio. After extensive research and networking, he has identified an exciting opportunity to invest in a foreign entity, Star Properties Ltd., based in Singapore. Star Properties Ltd. is a renowned real estate developer specializing in luxury residential and commercial projects. They have an ambitious expansion plan, which includes developing a series of high-end shopping complexes and residential communities in both Singapore and India. To finance this expansion, Star Properties Ltd. is seeking investment from international partners.

Mr. Sharma is particularly interested in this opportunity because Star Properties Ltd. has a robust track record of successful projects and is well-regarded in the real estate sector. He plans to invest \$5 million, which will secure him a 25% stake in the company and a seat on its board of directors. This strategic move is expected to provide him with significant influence over the company's future projects. The investment structure proposed by Star Properties Ltd. includes creating three layers of subsidiaries to optimize operational efficiency and tax benefits. The primary entity, Star Properties Ltd., will fully own a subsidiary in the UAE, Star ME Holdings, which will oversee the Middle Eastern operations. Star ME Holdings will then establish a subsidiary in India, Star India Realty Pvt. Ltd., to manage the local development projects.

At the same time, Mr. Sharma is deeply involved in philanthropy through the Sharma Educational Trust, a registered charitable trust in India. The trust aims to enhance educational opportunities and promote cultural exchange. The trust is considering a \$1 million investment in Global Learnings Inc., an educational institution based in the UK, known for its innovative programs and strong emphasis on cultural education. This investment is intended to support the development of new courses that promote Indian heritage and education. Mr. Sharma is currently assessing the viability and regulatory requirements of these investments. He seeks detailed advice on the following:

- i. Can Mr. Sharma proceed with his proposed investment in Star Properties Ltd. given his objectives and the regulatory environment?
 - ii. How would the regulatory landscape and required approvals change if the investment were made through the Sharma Educational Trust instead of directly by Mr. Sharma?
 - iii. Are there any additional risks or restrictions associated with the layered subsidiary structure proposed by Star Properties Ltd. that Mr. Sharma should be aware of?
- If Mr. Sharma and Star India Realty Pvt. Ltd. plan to repatriate profits to India, what are the potential tax implications and reporting obligations?

Q.4.) An Indian company (publicly listed) operating in a private banking sector, having a permissible FDI limit of 49% (under automatic route) is entering into an agreement to transfer equity shares to a foreign investor (a non-resident). The agreement proposes the following:

- Total Investment Amount: INR 500 crores (Equity Shares amounting to 400 crores amounting to 36% (which are to be transferred from Members of the Promoter Group) and the remaining 100 crores are to be issued as OFCDs (which upon conversion would amount to 10% equity shares. The OFCDs are to mature in 2030).

- Payment of up to 25% of the total consideration on a deferred basis within 18 months from the date of the transfer agreement,
- The deferred amount to be held either in an escrow account or indemnified by the seller for a maximum of 18 months,
- Compliance with SEBI (ICDR) Regulations, to decide the prices of Shares.

What are the key regulatory requirements under Rule 9 of the NDI Rules that the parties must adhere to regarding:

- a) The need for prior government approval given the sectoral restrictions and foreign investor status? **(Marks 15)**
- b) Reporting and regulatory compliance with the Reserve Bank of India and other authorities? **(Marks 05)**

Provide detailed guidance on legal and procedural steps to ensure full compliance with Rule 9 of the NDI Rules, focusing on deferred consideration and approval processes.

Q.5.) A listed Indian company in the financial services sector is seeing increasing foreign interest in its shares. In FY 2025-26, the company notes that several Foreign Portfolio Investors (FPIs) have acquired its equity shares on the stock exchange. The company's board wishes to understand its obligations and options with respect to FPI investment limits under the latest regulatory framework.

- As of April 1, 2020, the aggregate FPI investment in the company is 24% of paid-up capital, with the board and shareholders having fixed this as the cap under the NDI Rules.
- The company is considering raising the aggregate FPI investment limit to the full sectoral cap (49%) but is concerned about compliance and procedural issues.
- Some FPIs are seeking to invest in other eligible securities such as listed non-convertible debentures and units of mutual funds or Alternative Investment Funds (AIFs).

Advise the company regarding:

- a) How can the company validly increase the aggregate FPI investment cap from 24% to 49% (or the sectoral cap/statutory ceiling)? **(Marks 10)**
- b) What happens if FPI investment inadvertently exceeds the notified cap due to secondary market trades? What are the divestment timelines and regulatory consequences? **(Marks 05)**
- c) What reporting and disclosure requirements must be complied with by the company and the FPIs on crossing relevant thresholds and for other transactions? **(Marks 05)**

Q.6.) Write Short Notes on the following:

- (a) Enforcement Conundrum vis-à-vis International Investment arbitral awards within the Indian BIT framework. **(Marks 15)**
- (b) Understanding of the notion of 'Fair & Equitable Treatment' as covered within the Indian Model BIT, 2016. **(Marks 05)**