



LexUpdate

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SC: FDI up to 51% in Multi Brand Retail, not unconstitutional

If you have questions or would like additional information on the material covered in this Newsletter, please contact the authors:

By: Alishan Naqvee, Partner
(anaqvee@lexcounsel.in)

Swagateeka Patel, Associate,
(spatel@lexcounsel.in)

LexCounsel, Law Offices C-10,
Gulmohar Park New Delhi 110 049,
INDIA. Tel.:+91.11.4166.2861
Fax:+91.11.4166.2862

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On Wednesday, May 1, 2013 the Supreme Court of India ("SC"), reportedly dismissed a public interest litigation ("PIL") filed by one Manohar Lal Sharma ("Petitioner"), providing a much awaited breather to the Government of India ("GoI"). The PIL was filed to challenge the notification of the GoI, permitting Foreign Direct Investment ("FDI") up to 51% in multi brand retail in India ("Policy").

The SC, whilst upholding the Policy, observed that there are enough examples of countries where small unorganized retailers have continued to co-exist with organized multinational retailers even after implementation of FDI and that the Policy will enlarge choices to consumers and do away with middlemen.

The Petitioner had argued that the Policy was in violation of the provisions of the Foreign Exchange Management Act, 1999 ("Act"), which prohibited FDI in multi brand retail. It was further contended in the PIL that the Act had force of law and thus the GoI cannot implement the Policy by issuing just a press release. After admitting the PIL, SC had granted two weeks time to the GoI to bring necessary amendments in the Act, so as to make the Policy consistent with the Act. Accordingly, the GoI have made necessary amendments in the Act.

The three judges bench of the SC, headed by Justice R.M. Lodha, further, stated that the powers of the SC vis-à-vis policy matters of the GoI are limited, and that SC will not interfere in the policy matter unless the policy is unconstitutional, contrary to statutory provisions or arbitrary or irrational or there is total abuse of powers. The SC reasoned that the Policy is only an 'enabling policy' and the States will be free to implement the same or not.

Feedback

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