India Update: July – August, 2011

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Boeing sees $150-bn market in India

Company expects India will order 1,320 aircraft over next two decades

India will order 1,320 aircraft, worth $150 billion, over the next two decades, American aircraft manufacturer Boeing has said in its latest market outlook.

Globally, Boeing forecasts a market for 33,500 new passenger airplanes and freighters over the next 20 years, worth $4 trillion, of which India's share will increase to 3.75% from less than 1% five years ago.

Robust economic growth, rising disposable incomes and growing airport infrastructure will stimulate demand for a variety of aircraft for short and long-haul distances. India had 53.6 million domestic passengers and 13.1 million international passengers during the fiscal year ended March 31, 2011. As the Indian market is growing at the rate of 15% annually, about 42 aircraft should be delivered to the country per year to keep pace with the demand.

According to the company, 81% of these 1,320 jets will be single-aisle aircraft like B-737s (used by low-cost carriers) and 16% twin-aisles like the B-777s, B-787s and A-350s. Growth will come mainly from the low-cost carrier or LCC segment. Two out of every three Indians are opting to fly with these carriers, according to Boeing's forecast.

The observation holds significance especially in the backdrop of carriers such as IndiGo, SpiceJet and GoAir having placed big aircraft orders over the past few months. At the last Paris Air Show, Asian budget airlines placed record orders worth $42 billion, of which, the share of Indian airlines was $23-billion. IndiGo finalised an order for 180 and GoAir placed an order for 72 Airbus jets.

Meanwhile, SpiceJet too had ordered 30 B-737s worth $2.7 billion last November. According to Boeing, the Indian aviation market is looking for a mid-market product for international flights with 250-300 seats and the B-787 or the Dreamliner will fill that gap.

Facebook plans to hire public policy expert in India

Would tackle regulatory hurdles, misinterpreted features and lack of awareness among government departments

Amid growing privacy concerns across the world, including India, Facebook plans to hire a public policy expert in India.

With nearly 25 million active users in India, Facebook lags behind Google, which counts nearly 60 million users in the country. As these Internet giants seek to expand their base in India's lucrative Internet market, they face challenges of regulatory hurdles, misinterpreted features and lack of awareness among government departments. Earlier this year, Bangalore asked Google to stop collecting images for its Street View service on security concerns.
Companies are realising that they have to liaise with the government to ensure that their perspectives are reaching the right ears. Corporates are endeavouring to influence policy development as it happens and also want to sensitise the government to potential requirements that the sector demands that directly affect companies like Facebook. In a job posting, Facebook said the new head of public policy to be based in Delhi, will "actively promote of the uses of Facebook with policymakers and influencers in both electoral and governing bodies."

The need for internet companies to engage with the government comes in wake of the amendment of the Indian IT act of 2008 — a tool with which the government regulates content on the internet. Companies in possession of third party data have come under the scanner as the government has drafted regulations for companies dealing, handling or processing sensitive personal data on April 11, 2011.

The practice of having a public policy head is not new. Google has had a policy team in place since 2006 which has ties with the government to influence policy making. Like governments across the globe, the Indian government too is increasingly scrutinising data and information put out by Internet firms such as Google.

Google's latest transparency report released for India states that there were 282 item removal requests of which 199 were for YouTube alone where 100 items were for defamation and 53 were for privacy and security. Google either partially or fully complied with 22% of the requests filed in 2010.

Trade unions warn of labour unrest

The central coordination committee of the central trade unions has decided to intensify the agitation which they had been spearheading on a common platform led by the Indian National Trade Union Congress (INTUC), the union affiliated to the ruling Congress party.

The unions have found many issues of agreement. These include issues such as price rise, black money, contractualisation of labour and neglect of the unorganised sector workers' fund.

The Bharatiya Mazdoor Sangh (BMS), which had stayed away from the programmes of the united platform last year, has made a return to the fold.

The left unions are stung by the indifference of the government to their protests since 2009 and want to pull out all stops to draw its attention to the five key issues on which they had come together. Last September, the trade unions held a nation-wide strike.

In spite of the agitation, the trade unions are yet to get an audience with the prime minister, while movements led by Anna Hazare and Baba Ramdev had seen a more prompt response. Several union leaders are today ready to take drastic steps to be heard.

Exit norms for not-for-profit companies set to be relaxed

To be eligible, company should not have started operation or stopped it for over three years, or not received any donation

The government is planning to relax exit norms for not-for-profit companies to allow them to deregister without having to follow cumbersome regulations.

The ministry has been receiving representation from various stakeholders to develop a procedure for strike off name under section 560 of the Companies Act, 1956 of companies (non-profit companies) which have been granted licence under section 25 of the Companies Act, 1956. Section 25 companies are those which normally receive contribution in the form of donations and contributions for charitable activities.

According to the proposed guidelines, a company should have passed a resolution in a general meeting to apply to the Registrar of Companies to strike off name and the same should have been approved by all its members/shareholders. Further, for being eligible, the company should not have commenced any activity or operation since its incorporation or should have stopped activities for more than three years, or not received any donation, grants or contribution from anyone other than its members. In case a company has obtained any special status from any authority such as Income Tax, Commissioner of Charity or any organisation or Department of Central Government, State Government, Municipal Body or any recognised authority, then a "No Objection Certificate" has to be obtained from the concerned authority. Besides the existing assets, if any new asset has to be transferred to a similar company before applying to the RoC for striking off the name, the company should have filed its all up to date balance sheets and annual returns, and latest balance sheet should not have any assets or liabilities.

The directors have to file an affidavit and indemnity as required under present exit guidelines and confirming above compliances, a certificate from practising chartered accountants or company secretary or cost accountant certifying the above compliances by the company, the proposal said.

The government has invited comments on the proposed guidelines.

Bombay High Court sweetener for small Cadbury shareholders

Cadbury India's minority shareholders are expecting a jump of at least 25 per cent over the chocolate maker's last buyback offer of Rs 1,900 per share, after the Bombay High Court asked for revaluation of the company's shares based on the discounted cash flow (DCF) method.

In this method, a valuer uses future free cash flow projections of a company and discounts these to arrive at the present value.

"As per our valuations based on DCF, Cadbury India's shares are worth at least Rs 2,400-2,500 a share," said Hinesh Doshi, vice-president of the Investors' Grievances Forum (IGF), which is fighting the case on behalf of minority shareholders. "Minority shareholders are also expecting that the company will pay 15 per cent interest on the amount for the period from September 30, 2009, till it makes the final payment. They are also demanding at least 20 per cent exit premium on the buyback price."

The matter has seen a legal tussle since late 2009, when Cadbury Plc, the parent of Cadbury India, decided to buy back the 2.4 per cent of company shares with minority shareholders. The latter have consistently refused to settle at the level proposed by Cadbury, which began at Rs 1,340 per share and had approached the High Court, which had appointed Ernst & Young (E&Y) to revalue Cadbury India's shares.

E&Y had recommended Rs 1,743 per share for Cadbury India's buyback offer in May 2010, based on a comparable companies' multiples (CCM) method. This method involves evaluating the value of a company using the metrics of other businesses of similar size in the same industry.

In January this year, Cadbury India had sweetened its buyback offer and had agreed to pay Rs 1,900 per share to the 8,000-odd minority shareholders. However, the latter were not happy and demanded the DCF valuation.

In its valuation report to the court, E&Y had said it had not considered DCF as financial projections were not provided to it by the company. The court has asked Cadbury India to provide this data to E&Y.

IOC is India's first Fortune 100 company, 7 others on 500 list

Eight Indian companies have made the cut in the list of world's 500 largest companies compiled by Fortune magazine, with Indian Oil finding a place in the top 100 and Reliance Industries in 134th spot.
Out of the eight, five are state-run entities. Indian Oil is ranked 98th, up from 125th place last year.

Other Indian companies in the list are Bharat Petroleum (271), State Bank of India (291), Hindustan Petroleum (335), Tata Motors (358), ONGC (360) and Tata Steel (369).

According to the latest rankings, Indian Oil had annual revenues of $68,837 million while that of Reliance Industries stood at $58,900 million. Bharat Petroleum had revenues of $34,102 million, while State Bank of India netted $32,450 million in revenues. The revenues of Hindustan Petroleum's stood at $28,593 million, Tata Motors ($ 27,046 million), Oil and Natural Gas Corporation ($26,945 million) and Tata Steel ($26,065 million).

Indian firms invest $10.5 bn abroad in first quarter

Fears of a slowdown in the global economy are weighing heavy on foreign investment sentiments of Indian companies in the current financial year.

Direct overseas investment by Indian companies stood at $10.5 billion in the quarter ended June, lower by 42 per cent compared to the year-ago period, according to data released by the Reserve Bank of India.

In the quarter ended June, Indian firms issued financial guarantees worth $5 billion, loans worth $4.1 billion and invested $1.4 billion in equities.

Overseas investments dropped by 55 per cent to $ 5.4 billion in June, compared to the same period last year. The guarantees issued stood at $1.1 billion, the loans were worth $3.1 billion and investment in equities stood at $731 million in June. Mundra Port and Bharti Airtel were the major investors abroad.

In lobbying check, officials may meet only trade bodies

It could soon be the end of the road for corporate lobbyists, with the government considering a significant change in the way industry interacts with regulators, allowing only trade and industry associations to represent industry concerns.

Call it the "Niira Radia-effect", the government is actively exploring the idea of fencing off corporate lobbyists like Ms Radia striving to sway lawmakers' decisions to suit a clutch of private firms. An innovative framework being looked into by the government's think tank, the Planning Commission, is to prevent private firms from directly tapping decision-makers for favourable decisions. The aim of such a proposal is to be fair to even smaller business because otherwise it is the big corporates with deep pockets who get all the lobbying help. It is proposed that business associations that collectively represent all members' interests and give an equal voice to smaller firms' concerns should engage with government.

A group within the Planning Commission is working to create a regulatory framework for businesses, including a transparent mechanism for industry-government interactions. The group's recommendations could be factored into the twelfth five-year plan that begins in April 2012.

Although lobbying by corporate houses to influence government policies is commonplace, it is characterised by secrecy, with no rules governing the activity. Leaked tapes of conversations between public relations specialist Niira Radia and her network of politician, bureaucrat and journalist contacts sparked public anger about the cloak-and-dagger methods involved in influencing policy-making.

While the Planning Commission is scrutinising the best international practices to bring lobbying above board, they have also asked trade associations like the Confederation of Indian Industry and the Federation of Indian Chambers of Commerce and Industry to suggest a framework for a transparent lobbying regime.

Because it will be difficult for government officials to meet too many industry associations, the trade groups will be ranked based on how transparently they represent all members and be given preference.

The Planning Commission is closely examining the model followed in Germany, where associations coordinate their activities and often function as a single entity. This is unlike in the United States, where companies can individually lobby for their demands.

Multi-level marketing firms under scanner

The Ministry of Corporate Affairs (MCA) has initiated a probe into the activities of all multi-level marketing (MLM) companies registered abroad but with business operations in India.

A preliminary report on such MLM companies and others has been given to the MCA by the Registrar of Companies (RoC), Delhi. The list includes Singapore-based SpeakAsia, though the company claimed it was not engaged in MLM activities.

The ministry has ordered a closer scrutiny into the affairs of six companies that were covered in the report. The RoC is expected to give its second report on the firms soon.

MLM companies registered abroad will be scrutinised for possible violation of the provisions under section 591 of the Companies Act, 1956. Section 591 prescribes a list of mandatory procedures that needs to be followed by the representatives and agents of companies that are registered outside the country, but with operations in India.

The RoC will investigate if requisite documents have been submitted by the companies within a month of starting business operations in India. This includes certified copy of the charter, statues, memorandum and articles of the company. Address of the Indian offices, details of company directors, nature and details of the business are all required to be furnished to the RoC.

Companies may no longer need government approval to purchase aircraft

Civil aviation ministry considering doing away with the rule

The civil aviation ministry is considering doing away with the government approval needed for aircraft purchases, a move experts which may help airlines speed-up fleet expansion in a market growing at 20% a year.

India's aviation sector was opened to private players several years ago, but aircraft procurement still needs government clearance. An airline planning to buy aircraft can enter into a memorandum of understanding (MoU) with a manufacturer, but it must take the aviation ministry's in-principle approval before placing the order.

The issue of in-principle approval surfaced with reference to recent reports that low-cost airline GoAir's aircraft order had hit regulatory hurdles, as it was placed without the ministry's approval.

Doing away with the required approval would give a fillip to the Indian airline industry, which is forecast to need 1,500 aircraft over the next two decades. Airlines have to pay a signing amount for the MoU and the balance payment is made at the time of aircraft delivery.

Joint venture or misadventure?

Recent scandals have led to corporates conducting stricter integrity checks on their potential partners

Over the last five years, the number of new joint ventures in the country has increased from 10 in 2005 to 72 in 2009, according to Bloomberg. Infrastructure, defense, insurance and retail are examples of some of the sectors where joint venture route has been the preferred mode of entry for global companies.

As the headline suggests, joint ventures can, at times, become risky adventures, and this calls for careful review and precautions at every step of the process, i.e., partner selection, setting up and operations. While there is a rise in the number of joint ventures, so also is the trend of increasing number of call-offs, termination and separation. This may result in business and reputation loss for the company and affect shareholder confidence.
The 40:60 joint venture between one of India's largest conglomerates and a US multinational corporation formed in the 1990s was called off in the 21st century. The grounds for the split were lack of synergy between the two partners and tiff between the promoters over cultural integration and professional differences. As per market perception, nearly 70% of the investors back away from deals in emerging markets after conducting an enhanced integrity check on a partner company.

To quote another example, in a particular case of a large potential investment in the infrastructure sector, the joint venture was called off due to a late-stage detection of legacy regulatory non-compliances and sugar-coated portrayal of facts. Recently, it has been observed that in order to tackle such an eventuality, more investors are getting an enhanced integrity check on the target company. A pure-vanilla due diligence will not help, as the issues are not lying on the surface and a deep dive is required to get the intelligence out.

The drafting of the joint-venture contract can also be a cause for long drawn legal battles. Typically in the oil and gas sector, the joint operator agreement plays a major role throughout the tenure of the production-sharing contract. Recently, it has been noticed that there is a rise in the number of disputes both in India and across the globe especially around sharing of cost and profit petroleum.

The recent telecom scandal in the country has resulted in a scare among foreign joint venture partners over their business prospects in India considering the allegations of regulatory non-compliances and bribing by an Indian partner.

Also, on analysing other reported cases, it has been observed that breach of terms and conditions were ongoing since the beginning of the joint venture, but due to the lack of a monitoring mechanism, it was never detected. In another case, it was observed that the partner was involved in manipulation of revenue-sharing agreements and was overcharging shared costs to the joint venture.

New-economy sectors are more vulnerable to breach of IPR risks, as the dependence on knowledge, innovative techniques, technology and other forms of IP is significantly high. A joint-venture partner can divert the IP to its own set of firms and gain mileage from the same. Take the case of a joint venture between a French food products manufacturer, which owns about 25% stake in one of India's largest cookie manufacturer. It is alleged by the Indian company that the French manufacturer registered a cookie brand in several countries without its knowledge, and the same is not permitted as per the existing agreement between the two.

A joint venture can also become a sham device for siphoning off funds where a partner swindles the venture of its profits or misappropriates funds or assets. This has been clearly established in a case where a state-run industrial infrastructure corporation has accused its partner, Gulf region's largest land and real estate developer, of defrauding the state. In another case that was widely reported, partners in a joint venture were involved in asset misappropriation schemes such as diversion of funds, irregular related-party transactions, fraudulent disbursements, larceny, misuse of factory premises, purchase of assets for external ventures, etc. Thus, such eventualities not only cause harm to the company from the financial and regulatory compliance perspective but also have a significant impact on its reputation. Reviews from forensic accountants have uncovered potential risks in the books of account, for example, undisclosed related-party transactions, undisclosed liabilities, fudged revenues, under-reported costs or liabilities, diversion of funds, personal profiteering, etc.

It has been observed that more and more corporations in India have started following the global best practice of conducting enhanced integrity check on the potential partner before entering into a joint venture. Also, after setting up the venture, detective checks such as contract compliance reviews and end-use monitoring are also increasingly being undertaken.

Highway projects to open up Rs 42k-cr infrastructure business

NHAI to award 7,994-km highway projects in the current financial year; steel, cement and bitumen companies to benefit most

Consumption of cement, steel, and bitumen is to get a boost of Rs 42,000 crore[1], as the National Highways Authority of India (NHAI) has announced to award 7,994 km of highway projects in the current financial year.

In road building, 70 per cent is used in buying raw material, around 20 per cent goes in labour cost and the rest goes into machines. This is also bound to increase the country's import bill because cement and bitumen are imported from countries like Bangladesh and Iran.

In the current financial year, NHAI has announced to award 59 projects with a total project cost of around Rs 60,000 crore. Though the demand from projects awarded this year will be spread over the period of construction, which is normally three years, the current demand also comes from the ongoing projects.

India is the world's second-largest producer of cement. It has also outpaced the growth rates of other prominent industries on the back of factors such as rising demand from the housing sector, increased activity in infrastructure, and construction recovery. The cement industry sustained its growth rate even during the economic slowdown. It is anticipated that the annual cement output in the coming years will grow at around 12 per cent during 2011-14 to reach 303 million tonnes (mt). Cement consumption over the years has grown by more than nine per cent and is expected to take the growth rate in double digits.

With vast road development and maintenance happening across the country, bitumen consumption is also seeing huge growth.

This huge demand has led to a demand-supply mismatch, leading to increased import.

The economic impact of roads is the highest, as roads not only boost consumption in terms of raw material but also provide connectivity to the far-flung areas. Good connectivity through roads develop a city. Pune's development as an industrial township actually accelerated after it got the expressway connectivity from Mumbai.

US brand Abercrombie & Fitch heading east

Ohio-based casual luxury brand, Abercrombie & Fitch (A&F), is exploring opportunities to enter the India market.

While Abercrombie operates 1,069 stores across four brands, the A&F brand has 325 outlets in the US, four in Canada, one each in London, Milan, Tokyo, Copenhagen and Paris. Other international cities to house A&F stores this year are Madrid, Brussels and Dublin.

Japan is the only Asian country to have an A&F brand outlet, which was till recently known for its 'near luxury' clothing. Now, the A&F has been redefined as 'casual luxury' brand.

India has only 30 per cent of the world's leading 500 global luxury brands, compared to China's 70 per cent, according to industry estimates. Luxury brands in India include Louis Vuitton, Hermes, Giorgio Armani, Ferragamo, Zegna, Jimmy Choo,

[1] *1 crore = 10,000,000*

Cartier, Tod's, Dior, Fendi, Burberry and Hugo Boss among others.

India also accounts for less than one per cent of the global luxury market, while China has 10 per cent of the market.

India regaining status as trading powerhouse

10th largest exporter of services, among top 20 in goods exports in 2010: WTO

India broke into the club of top 20 exporters of goods and reclaimed its position among top 10 services exporters in 2010, moving up two notches in both categories from 2009 in a display of resilience to the economic downturn that continues to cast its shadow on the US and the EU.

The 'World Trade Report 2011' of the WTO said that trade in goods rebounded to grow by 14.5% in volume terms in 2010 after shrinking 12% in 2009. However, it projected the growth to moderate to 6.5% in 2011.

India's goods exports rose at a much sharper 31% in 2010, helping the country not only improve its world ranking to 20 from 22 in 2009 but also expand its market share to 1.4% from 1.2% a year ago.

Interestingly, while exports shrunk by 20% in 2009 owing to contraction in demand, India's share in world trade increased from 1.1% in 2008 and ranking improved from 26 the year before.

The robust growth is attributed to a change in the composition of exports and addition of new markets. India's basket has shifted from raw materials to manufactured goods, such as processed agri commodities and engineering items. Exports have become relatively wide based in manufacturing.

Engineering and petroleum exports now account for 42% of exports as compared to 14% in 2000. The high export growth indicates that diversification to other destinations has taken place apart from changes in the composition of goods.

The government's attempt to help exporters diversify markets beyond traditional regions like the EU and the US has stood India in good stead. Various free trade agreements (FTAs) and consolidation of special economic zones (SEZs) have also contributed to the rise in exports.

The Middle East, Asia and other emerging markets are the big growth areas now. In service exports, India ranked 10th after dropping three notches to 12 in 2009 from the ninth position in 2008. Its share in world exports expanded to 3% from 2.6% in 2009 and 2.8% the year before. The decline in services exports in 2009 was because of the sharp fall in demand for software, business and financial services following the global financial crisis.

India's share in world goods imports, too, rose to 2.1% in 2010 from 1.9% in 2009 with its ranking rising two notches to 13th from the year before.

Imports of services also rose with the country's global share going up to 3.3% in 2010 from 2.4% in 2009, and its position rising to 7th in 2010 from 12th the year before.

Manufacturing to be re-defined for FDI and test marketing purposes

Foreign companies looking to sell their products in India even for test-marketing will have to set up production facilities and cannot outsource production, according to a stricter definition of manufacturing being debated in the government to boost capital flows. This definition would affect direct sellers the most as they currently access the Indian market at a fraction of what it would cost them if they were to set up their own manufacturing unit. There is no single definition of manufacturing in India, allowing foreign companies to get around mandatory manufacturing clauses imposed on them. The Department of Industrial Policy and Promotion (DIPP) is now proposing to clearly define 'manufacturing' in the foreign direct investment policy itself, a move that will ultimately help meet the government's aim to boost the real sector's share in GDP to 25% from the current 15% by 2022.

The DIPP definition, circulated to various department and ministries for their views, has been borrowed from the Income tax Act, 1961. DIPP has defined manufacturing as a process that changes a "non-living physical object or article or thing" into a new and distinct object. The process would also include bringing into existence a new and distinct object or article or thing with a different chemical composition or integral structure.

While FDI in manufacturing and retailing of manufactured products is permitted under the automatic route, it is prohibited in retail trading and prescribes conditions for wholesale trading. A definition of manufacturing will help foreign investors ascertain with clarity which bracket they fall in. This clarity will also help in situations where the government has allowed FDI in test marketing with a condition to set up manufacturing facilities in two years as there is lack of clarity whether toll manufacturing or contract manufacturing would deem to comply with the commitment.

Though FDI in test marketing is allowed with a pre-condition that the direct seller will set up a manufacturing facility in two years, most foreign investors get around the rule by sourcing products from local manufacturers. According to the new definition, the act of outsourcing will not be considered manufacturing, forcing foreign investors that are allowed permission on the condition that they will set up production companies in India to meet the clause in its right spirit.

Foreigners can hedge risks for rupee-invoiced foreign trade

In an effort to aid hedging of currency risks for non-resident exporters and importers, the Reserve Bank of India (RBI) has issued norms allowing them to either use overseas banks or those in the country to settle foreign trade transactions invoiced in the Indian Rupee. It had made an announcement to this effect in annual monetary and credit policy for 2011-12.

A non-resident exporter or importer can approach his banker overseas with appropriate documents with a request to hedge the rupee exposure arising from a confirmed import or export order. The overseas bank will approach its correspondent bank in India for a price to hedge the exposure of its customer along with documentation.

The same underlying exposure can't be hedged with any other bank in India. If the underlying exposure is cancelled, the customer will have to cancel the hedge contract immediately, RBI said in a communication to banks.

On using banks in India for hedging risks, it said, exporters and importers could also deal directly with banks in India. They can approach the bank in India with a request for forward cover for underlying transaction.

Unregistered, but stamped, arbitration pact valid: Supreme Court

The Supreme Court has ruled that unregistered arbitration agreements are valid and can be enforced for the purpose of the resolution of the dispute between the parties. The apex court overruled a Guwahati High Court order which had said that the arbitration proceedings cannot be initiated on the basis of an unregistered agreement.

The court, however, said that if such deed is not duly stamped, it is not valid and cannot be acted upon by the arbitrator.

"Having regard to the proviso to section 49 of Registration Act read with Section 16(1)(a) of the Act (Arbitration & Conciliation Act, 1996), an arbitration agreement in an unregistered but compulsorily registrable document can be acted upon and enforced for the purpose of dispute resolution by arbitration," said a bench comprising Justice RV Raveendran and Justice AK Patnaik.

The court said: "An arbitration agreement does not require registration under the Registration Act. Even if it is found as one of the clauses in a contract or instrument, it is an independent agreement to refer the disputes to arbitration, which is independent of the main contract or instrument." The bench allowed the appeal of SMS Tea Estates. It had come to the apex court seeking order to appoint an arbitrator to sort out its dispute with the Chandmari Tea Co pertaining to the lease of two tea estates. It was opposed by the Chandmari Tea Co on the ground that the lease deed signed between the two was unregistered and therefore invalid. It had further said that such deed was also not duly stamped and therefore was invalid, unenforceable and not binding. The high court had held that as the lease deed was not registered, no term of it can be relied upon for reference to arbitration.

Aggrieved, the appellant had come to the apex court, which set aside the high court order. The apex court asked the high court to decide the issue of stamp duty, and if the document is duly stamped, then appoint an arbitrator in accordance with the law.

MNC captive units back in favour

Between January 2008 and December 2010, 37 new captives were set up and 21 announced significant expansion, whereas 13 were divested

Multinational companies (MNCs) with captive units in India seem less interested than they earlier were in selling these off; instead, they seem to want to set up more.

According to a study done by the Everest Group, the number of captive set-ups in India has gone up. Between January 2008 and December 2010, 37 new captives were set up and 21 announced significant expansion, whereas 13 were divested.

In 2010 alone, 23 captive units were set up. Similarly, divestment in captives went down from five in 2008 to two in 2010. In 2000, there were 44 captives of Fortune 2000 firms, which had grown to 225 captives in 2008.

WELCOME TURNAROUND

GROWTH OF CAPTIVE ADOPTION IN INDIA	
Pre 1990 to 1998	Pioneered by hi-tech engineering and research firms
1998 to 2005	By IT and BPO industry and BFSI vertical
2005 to 2008	Verticals like manufacturing, retail and consumer products led the adoption

SOME BIG TICKET DIVESTMENTS

Company	Captive acquired	Value
TCS	Citi Global Services	$505 mn
WNS	Aviva captive unit	$228 mn
Wipro	Citi Technology Services	$127 mn
Capita	AXA's Sun Life	NA
MphasiS	AIG captive unit	NA

Captive units were set up as research and development centres initially by companies such as Texas Instruments and GE. Many also set up such offshore centres in India for their information technology (IT) work.

According to data from Nasscom, the industry body representing the IT services industry, there are a little over 750 MNC captive units in India. Their combined revenue was $11.1 billion in 2010, contributing 22 per cent to the export revenue of the Indian IT-BPO industry. While the period from 2007 saw a spike in the sell-off of captive units, many are also realising their strategic importance. Among the big-ticket acquisitions were Tata Consultancy Services' of Citi's BPO unit for $505 million and WNS' of Aviva's captive unit for $228 mn.

Many large MNCs have a captive set-up in India. The sell-offs that happened in 2008 onwards were not because the captive model failed, but because some of the firms were open to cashing out a strategic asset. Captives are now thriving and scaling up, according to Everest India.

Single KYC Form Soon

The finance ministry has proposed replacing the separate 'know your customer' (KYC) checks run by banks and financial institutions with a single, more stringent one.

The proposal, being examined by all financial sector regulators, was discussed at a recent meeting of the Financial Stability Development Council (FSDC).

KYC is the due diligence done by banks and financial institutions to identify and locate an entity or individual to ensure that financial transactions are not a part of money laundering or terrorist financing. A single KYC would mean a more rigorous scrutiny of the entity involved. The sub-committee of FSDC, chaired by Reserve Bank of India governor D Subbarao, has representatives of all financial sector regulators and senior officials from the finance ministry.

India has also beefed up its KYC norms in line with the requirements of Financial Action Task Force (FATF). Compliance with FATF standards, which are benchmark regulatory policies to check money laundering and terrorism financing, is essential for international relations of financial institutions and governments.

The uniform KYC will not dilute the basic tenets; rather make them more stringent, as concerns over black money deepen in the country.

The Securities and Exchange Board of India (Sebi) has already decided on a single KYC for all stock-market transactions.

Sebi will discuss how to use the UIDAI's (Unique Identification Authority of India) Aadhaar for the

KYC requirements. The markets watchdog has constituted a committee to examine the idea and take the views of various departments.

There are at least six separate sets of KYC norms that an investor must comply with to participate in capital market transactions, though all are regulated by a single entity.

Sebi had experimented with the idea through a Market Participation Identification Number, or MAPIN, that was mandatory for transactions of over Rs 1 lakh[2]. It was scrapped in 2007.

India slips to 14th spot in global FDI inflows

India slipped six notches to the spot in global rankings of countries that attracted highest foreign direct investment, says a United Nations report.

FDI inflow dropped from $36billion to $25billion over the period, according to the UNCTAD's World Investment Report, 2011. This drop may be on account of negative sentiments created by the tax mess that Vodafone got into after coming to India in 2007 and the overturn of land-related deals.

India attracted less than one-fourth the FDI of China in 2010. China attracted higher FDI in 2010 compared to $95 billion a year ago. It also retained the second position after the United States, which attracted $228 billion in 2010 compared to $153 dollars in 2009.

Despite slowing of labour-intensive manufacturing, China drew high FDI in high-technology industries and services. Half of the top 20 host economies for FDI were developing and transition economies.

FDI outflows saw India make it to the top 20 investors list in 2010, compared to 21st position in 2009. The outflow increased from $15bn in 2009 to $16bn in 2010. The report, however, suggested that India should focus on non-equity mode (NEM) of foreign investment as well.

In terms of outflow through this route, India's Piramal Healthcare figures among the top five players in contract manufacturing of services outsourcing in 2009, and Jubilant Life sciences appears in the top 10 list. Among IT-BPO, Tata Consultancy Services is at the 11th position and Wipro at 13th.

L Capital picks up 15% more in Genesis Luxury

PE fund to invest Rs. 60-100 crore more in Indian company for expansion

L Capital Asia, the private equity arm of the world's largest luxury conglomerate LVMH Group and Groupe Arnault, is betting big on India. Soon after it announced its acquisition of a 25.5% stake in Genesis Luxury Fashion, it is in talks to pick up an additional 14.5% stake in the company. As per negotiations between the entities, the second tranche of investment is expected to close over the next 12-36 months, and the PE fund plans to infuse Rs. 60-100 crore to facilitate the company's expansion plans. The funds will be deployed towards expansion of current business and development of new brands and concepts.

Established in 2008, Genesis Luxury is the group company of the privately-held Genesis Colors, bringing together a diverse range of brands from top-end men's wear to travel accessories and bags, among others. It has leading luxury brands, including Satya Paul, Canali, Paul Smith, Just Cavalli and Jimmy Choo, among others. "We will be using funds raised to increase the distribution network, increase the retail network and bring new brands into our portfolio and are speaking to several brands," said Sanjay Kapoor, MD at Genesis Luxury.

While LVMH focuses exclusively on high-end luxury goods such as Louis Vuitton and Dior in its portfolio, L Capital has been investing in aspirational and luxury goods makers all over the world. The fund, which has a corpus of $640 million, plans to invest across segments in India, including lifestyle retail, consumer brands, beauty & wellness and hospitality. It is the fourth fund from L Capital and has already invested in a few companies in Asia.

The investment in Genesis Luxury Fashion will help the private equity fund tap the country's luxury and designer wear segment, pegged at about Rs. 1,000 crore and growing at 30% a year. With rising consumerism in the country, the designer and luxury fashion wear segment is increasingly attracting investor interest in the country. Recently, Franklin Templeton Private Equity Strategy acquired a 20% stake Kimaya Fashions for about

[2] *1 lakh – 100,000*

Rs. 60 crore, valuing the designer wear retailer at Rs. 300 crore.

In 2008, Genesis Colors had raised Rs. 110 crore from three investors — Sequoia Capital Fund, Mayfield Fund and Silicon Valley Bank — for an undisclosed stake. The fashion house, established in 2001, owns labels like Satya Paul, Deepika Gehani and designer store Samsaara. Other PE deals in fashion retail include Future Capital Holdings' investment in Biba Apparels and Wolfensohn infusion into Fab India Overseas. With Europe and America facing anaemic growth, private equity players investing in retail are looking for the opportunity they need in Asia.

Duty-free entry for Indian textiles, spices into Japan

Indian professionals and producers of textiles, pharmaceuticals and a number of other goods are set to make strong gains as India and Japan begin to implement a Comprehensive Economic Partnership Agreement (CEPA). The pact seeks to abolish import duties on most products, increase access for Indian professionals and contractual service suppliers to the Japanese market and liberalise investment rules. The CEPA will bring immediate gains to exporters of textiles, seafood and spices to Japan as duties on these products would be eliminated from the first day, according to an official release. It would ultimately result in removal of duties on almost 90% of products traded between the two countries.

Other sectors that would gain from the CEPA through lower duties include agricultural products such as mangoes, citrus fruit, spices, instant tea, most spirits, petrochemical & chemical products, cement and jewellery.

The CEPA signed in February this year is expected to boost trade to $25 billion by 2014 from $10.36 billion in 2009-10.

While the Indian automobile and automobile parts industry have been largely shielded from tariff cuts by their inclusion in the negative list of items, India has agreed to reduce tariffs on auto parts made of steel, which is a major gain for the Japanese industry, a Japanese government official said. Japan will also be able to export consumer durables, such as electronics cheaper, to India, but tariff reduction by India will happen in phases over 10 years. The Indian textile industry is a major gainer as Japan has tariffs as high as 15% on the item compared to its average import tariff of below 5%.

Indian textile exporters can now sell to Japan at 0% duty, gaining an edge over other competing countries. The pharmaceutical industry, too, is expected to make tangible gains as Japan has agreed to extend it national treatment which would result in a major drop in the time required for registration.

Benefits would, however, be much bigger for the services sector with Japan agreeing to liberalise temporary movement of yoga instructors, classical music and dance exponents, English language teachers and Indian cuisine masters.

Contractual service suppliers (CSS), independent professionals, such as accountants, R&D service providers, tourist guides, market researchers and management consulting firms, now can provide services in Japan. The Japanese side has also agreed to consider opening the market for nurses and caregivers for India. Japan's major gain is in investments, as India has agreed to give national treatment to both pre and post-investment from that country, a benefit extended only to Singapore so far.

Travel companies get ready to acquire foreign assets

Travel firms in India are preparing their war chests in anticipation of growing business out of the Indian market. While Cox & Kings has announced it is acquiring UK-based adventure and camping firm Holiday-Break for Rs. 2,300 crore, several other firms, including Indian arms of international travel firms, are scouting for possible acquisition targets.

In a market that is largely fragmented, inorganic growth strategy will help companies grab a bigger market share and expand faster. As per industry estimates, nearly 85% of the Indian travel market is still controlled by small, unorganised or regional players.

Kuoni India, which owns travel companies SOTC and HRG Sita, is in active talks to acquire travel companies in India and it plans to close the deals in the next few months. The company is learnt to be doing due diligence on three companies. Kuoni is keen to acquire a mid-scale company that specialises in meetings, incentives and conference travel, individual travellers and outbound travel.

Le Passage to India, in which European firm TUI is a joint venture partner, has been looking for acquisitions for some time.

Others players like the Bangalore-based Travel Tours Group have been successful in acquisitions within the country. It acquired Goa-based Splendour Holidays, a charter and inbound tour operator besides adventure tourism firm Get off Your Ass and is open to more acquisitions.

Stricter law on money laundering

Investigating agencies may soon get more powers to attach and confiscate properties in cases of money laundering. The Prevention of Money Laundering (Amendment) Bill, 2011, is likely to propose sweeping changes in the procedures relating to attachment and confiscation of property. It may also bring in more reporting entities and a new category of offences with cross-border implications.

The changes are in line with recommendations of the global Financial Action Task Force (FATF), an inter-governmental policy making body, with a mandate to establish international standards for combating money laundering and terror financing. The Bill is slated to be tabled in the next session of Parliament. The finance ministry has already concluded inter-ministerial consultations on the proposed Bill. It is now sorting out some legal issues and the Bill will soon go for Cabinet approval.

The Bill may provide for reporting obligations on Know-Your-Customer norms for various new entities and sectors such as gems and jewellery, shares, insurance and property. Under the existing Act, it is obligatory for only banking companies, financial institutions and intermediaries of stock markets to verify and maintain the records of all transactions and the identity of clients.
Earlier amendments to PMLA had significantly widened the scope of money laundering investigations. The provisions allow for attachment of tainted proceeds located abroad by requesting foreign administrations. The amendments may increase the scope of such powers. India became a member of FATF in June 2010. It gave an action plan in June 2010 and followed with an Action Taken Report in October 2010 and February 2011.

During the second meeting of the FATF Plenary in Paris this February, India reiterated its commitments to adopt, enforce and contribute to international best practices in anti-money laundering and counter terrorist financing.

As the government faces heat over corruption and black money, it is planning to table The Benami Transactions (Prohibition) Bill, 2011, in the current Parliament session to prevent misuse of benami transactions, a key source of illicit funds.

Under this, a benami property shall be liable for confiscation by the adjudicating authority after the person concerned has been given an opportunity of being heard.

Multi-brand retail FDI terms eased

Cabinet note soon as Committee of Secretaries irons out issues raised by some ministries

Foreign direct investment in multi-brand retail has moved a step closer to reality, with the Committee of Secretaries (CoS) agreeing to withdraw some of the conditions found onerous by some ministries as well as industry.

The CoS had earlier given its in-principle nod to FDI in multi-brand retail, but diluted some of the stiff conditions. The final decision of the secretaries will be the basis for drafting a cabinet note by the Department of Industrial Policy and Promotion (DIPP).

One of the key conditions was multi-brand retail outlets be opened only in states that agreed with the new policy. That has been dropped after the ministry of commerce and trade and some other ministry representatives It was also felt that states, in any case, had powers under the Constitution to regulate "trade and commerce" within their territory and a rider was not needed at all.

The secretaries have also dropped the clause that at least 30 per cent of the turnover of these ventures be from sales to small traders through a wholesale cash and carry set-up. Most CoS members were of the view it would be difficult to monitor. The Department of Economic Affairs also contended the clause could lead to harassment through continuous inspection.

The DIPP felt the condition would also not be compliant with India's commitment under the agreement on Trade Related Investment Measures. It was agreed in the meeting that in order to protect the interests of certain sectors — agriculture, food processing, electronics, small and medium units, etc — the DIPP would consider special provisions.

Another rider decided in the earlier meeting — reservation of a minimum percentage of jobs for rural youth — has been scrapped as the consensus was it would be difficult to impose. A suggestion by the labour ministry to ask companies to make an assessment of the number of jobs to be created or lost before seeking approval was also not accepted.

The CoS has also simplified procedures on some other key riders, one of which says 50 per cent FDI should be in back-end infrastructure. It has now been decided it will be accepted on the basis of self-certification by the company so that there is no harassment during monitoring. It was also agreed companies would be asked to maintain accounts certified by a chartered accountant. Also, FDI in multi-brand retailing up to 51 per cent would cover the sale of unbranded products, such as agricultural products.

To avoid ambiguities, it was decided the DIPP would come out with a clear definition of "back-end infrastructure." A clause has been added that the government would urge states to expedite reforms in the Agricultural Produce Marketing Committee Acts so that agricultural commodities can reap the full benefit of FDI in multi-brand retail. Though the micro, small and medium enterprises ministry and the department of consumer affairs preferred 49 per cent FDI to begin with, the finance ministry, the department of commerce, the DIPP and the statistics and programme implementation ministry pushed the 51 per cent cap through.

CoS also arrived at a consensus on allowing FDI in multi-brand retail in cities with more than one million population, though there was an alternative suggestion to include all Tier-II cities. However, as there are 51 cities with a population of more than one million, based on the 2011 census, it was decided to go ahead with the policy. There was also a consensus that considering investors might not find enough land in city limits, an area of 10 km around the municipal or urban agglomeration limits of cities be accepted as a permissible location for retail stores.

Big companies to be spared food caps

Essential Commodities Act may not apply to companies such as ITC, Britannia, Godrej, Cadbury & Parle

The government could exempt big companies from commodity stocking restrictions imposed during shortages, taking another step to dispel the notion of policy inertia.

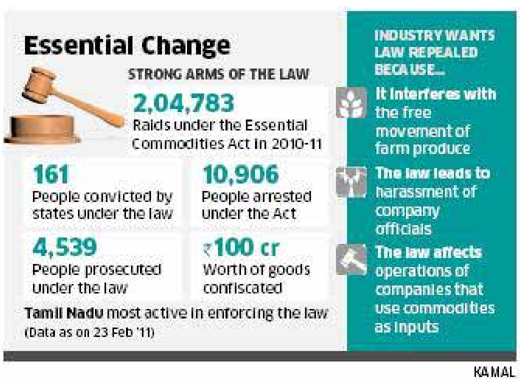
Following a request from India Inc, the government is considering keeping private companies out of the purview of the Essential Commodities Act, allowing them to hold commodities such as wheat, rice, edible oil and sugar in bulk even when the stock limit rule is in force. The finance ministry has begun discussions with the departments and ministries concerned on the issue after India Inc. demanded exemption from the rule during a recent interaction called by finance minister Pranab Mukherjee.

The industry had raised the issue earlier as well but this time around the ministry wants to push it as part of its overall policy reform package to dispel notion of any paralysis in government functioning. Recently, the ministry implemented a suggestion made by India Inc. to allow qualified foreign investors to invest up to $3 billion in debt-based mutual funds that invest in bonds issued by infrastructure companies.

Industry chamber CII has repeatedly called for a repeal of the ECA, arguing that it interferes with free movement of agri-products. The Act aims to ensure availability of essential commodities to consumers and protect them from exploitation by unscrupulous traders. Administered by the ministry of consumer affairs, the law gives the government powers to control production, supply, and distribution of essential commodities for ensuring their equitable distribution and availability at fair prices.

Both the Centre and state governments can issue an order declaring a commodity essential, allowing them to regulate its production, distribution, pricing and trading.
The enforcement of the Act, however, lies with the state governments. States have the power to detain anyone who is believed to interfere with maintenance of supplies of commodities essential to the community. Sugar, wheat, pulses, edible oils, onions have all at some point come under the ambit of this Act.

Since the law is usually invoked without warning, big producers have difficulty in complying with the provision. Foodstuffs, including edible oilseeds and oils, drugs, petroleum and petroleum products, raw jute and jute textiles, seeds of food crops, vegetables and fruit and cattle fodder can be declared as essential commodity under the Act. The Punjab recently declared sand as an essential commodity following large-scale mining.



Important to document terms of secondment for tax purposes

With the growing culture of MNCs operating in and out of India, "secondment of people" has become commonplace. The term is generally associated with international mobility of human resources and has gained importance from the tax viewpoint, especially after the Supreme Court's judgment in the case of Morgan Stanley and Co Inc (292 ITR 416, 162 Taxman 165).

There are several tax issues that often arise not only for the individual who is seconded but equally for both the overseas as well as the Indian entity concerned. It is important to document the terms of secondment of an employee from an overseas group entity to its Indian entity. Among other things, the document should capture the roles and responsibilities of the employee in relation to the Indian and overseas entities, the terms of remuneration, as well as clearly define the reporting lines, etc.

The significance of proper documentation of secondment arrangement can be emphasised when one considers the judgments pronounced in recent times on the issue, where such agreements and their content became vital evidence and tools for understanding the facts and circumstances of a particular assignee's mobility and its related tax consequences.

To begin with, the focus should be on proper documentation of the '3 Rs' (roles, responsibilities and reporting lines). International mobility of individuals between group entities could create an exposure of permanent establishment (PE) for the overseas entity in India. The Supreme Court in the case of Morgan Stanley has observed that if the activities of an MNC enterprise entails it being responsible for the work of the employees deputed and such employees continue to be on the payroll of the MNC enterprise or they continue to have a lien on their jobs with the MNC enterprise, in that case, a service PE can be created for the overseas entity in India.

Hence, a clear demarcation of the '3 Rs' of the seconded individual is important to determine whether during the period of secondment, that individual was working for the Indian entity or for the overseas entity.

As regards the payroll, many a times, it is seen that the seconded employee may prefer to continue on the payroll of the overseas entity while on secondment, for such reasons as continuity of social security benefits in the home country. Normally, it is observed that the remuneration in such case gets recharged to the Indian entity. Here, the need for proper documentation arises, so as to determine whether the recharge of cost by the overseas entity is by way of service charge, for providing services through the seconded employee, or as salary cost paid on behalf of the Indian entity, so as to make the Indian entity the economic employer of the employee.

The documentation in this regard is decisive, as it determines whether such recharge of cost then takes the independent character of 'fees for technical services' for the overseas entity and thus becomes taxable in India. This is what was held recently by the Indian Authority for Advance Rulings in the case of Verizon Data Services India Private Limited (TS-236-AAR-2011).

As far as taxability of the individual is concerned, the law is clear that if the individual is rendering services in India, then the employee would be subject to tax in India. However, the question arises as to who is the employer of such an individual during the period of secondment – is it the overseas entity or the India entity, who is responsible for the employer-related compliances in India for such individual? The answer lies in the documentation, which would define and support the secondment arrangement itself.

One other aspect that needs to be considered is the Indian social security regulations i.e., applicability of Indian provident fund (PF) to such individuals in India. These foreign nationals are considered as 'international workers' under the Indian PF regulations, if they work for an establishment to which the PF regulations are applicable. Here again, the secondment documents would be decisive in determining whether the individual is working for the Indian entity or working on behalf of the overseas entity. The applicability of PF regulations would be determined accordingly.

Last but not the least, one must remember that while adequate documentation of the secondment arrangement can provide an adequate defence, it may not eliminate tax litigation.

Chicco nursing products to be made in India

Italian health and wellness products company Artsana SPA will manufacture toiletries and nursing products for its baby care brand Chicco in India to serve both domestic and global markets. The company has formed a team to scout for a local partner to jointly set up a factory for making toiletries and nursing products, India has a huge growth potential as 19% of the world's % babies are born here. Local production will help the premium baby care brand reduce prices in the country in the long term.

Toiletries and nursing products contribute more than half of Chicco's business in India, with the balance coming from apparels, shoes, baby furniture, toys and travel systems. The brand caters to children in the age group of 0-3 years and sources toiletries and nursing products from Italy. Now, India will become a manufacturing hub for these products. The huge labour pool and the country's vast abundance of raw material and technical capabilities provide opportunities for growth.

Japan's Takeda eyes Lupin, Cipla pharma business

Takeda, Japan's largest pharmaceutical firm, has begun talks with two of India's biggest companies for purchasing either of their pharma businesses. The Osaka-headquartered Takeda, which unlike rival Daiichi Sankyo, does not have a large presence in the country, has approached Cipla, India's second-largest drug firm by market share, and Lupin, the fifth-biggest by market share for talks.

Talks with the Mumbai-based Lupin have progressed beyond the initial stage. Takeda is interested in buying the domestic formulations business, along with Lupin's research facility. But the promoters are unwilling to part with the research facility and are insisting on a price that values the company at 17 times its revenue, one of the persons close to the negotiations added. Lupin's FY11 revenue was $1.5 billion. Preliminary negotiations have also been held with Cipla. Although Takeda is keen on a large buyout in the country, but there is no certainty that the talks will lead to a conclusive deal.

India's domestic market is one of the fastest-growing markets in the world and McKinsey & Co. expects it to grow to $55 billion by 2020 from about $12 billion now. Takeda entered India late and is eager to catch up with rival Daiichi Sankyo and other global pharma giants, some of whom have done big-ticket acquisitions. Last year, US-based Abbott bought Piramal Healthcare's formulations business for about Rs. 17,000 crore to become the country's biggest pharma firm by market share. In 2009, Daiichi Sankyo purchased Ranbaxy for $3.5-4 billion to become India's largest pharma player by revenue.

Buying out either Cipla or Lupin's formulations business would be extremely productive for Takeda. Cipla is the second-largest generic maker in the country by market share, while Lupin is the fifth largest player. Both have strong brands and wide distribution networks that touch all major cities and towns.

Thriving used-products market to hit e-waste recycling plan

Companies may have to hike product prices by 5-10% to meet waste recycling requirement

A thriving second-hand market will restrict implementation of compulsory recycling of old televisions, refrigerators, washing machines, air-conditioners, computers and mobile phones from May next year, say manufacturers.

Home appliances and electronics makers such as LG, Panasonic and Lenovo say that they may have to increase product prices by 5-10% because the environment ministry has made manufacturers accountable for implementing the policy, which will put Indian on par with developed countries.

The government notification makes the manufacturer accountable for successful implementation of electronic product recycling and companies may need to make significant investment. The government notification, 'E-waste (Management and Handling) Rules, 2011', issued in May, makes it mandatory for the manufacturer to collect old products and recycle them. The companies have to set up collection centres for old products either individually or collectively, where consumers can go and deposit their old products. They have to also ensure that no hazardous materials are used for manufacturing. The initiative will cover products like computers, laptops, printers, copiers, cell phones, televisions including CRT, LCD and LED, refrigerator, washing machine and air-conditioners.

Companies and analysts think it's an extremely tough task with some even considering it unnecessary. One big challenge is that Indian consumers look for value even in old products, they say. Also, several dealers and retailers offer exchange schemes to push sales of new products.

It may be a challenge to make Indian consumers submit their products for recycling without getting any value from companies.

Analysts feel the challenge will be more since companies will have to invest in non-core areas such as build a network of collection centres and incur logistic costs to transfer old products to recyclers.

Electronic product recycling in India has been a poor show, despite the companies rolling out such initiative voluntarily over the last one year. The companies say they get a handful of products for such recycling. Electronic waste is currently estimated to be eight lakh tonnes in India. The companies are now tying up with professional re-cycling companies who have set shop in India over the last couple of years. It is either the highly educated or the high-income consumers who give their old electronic products for recycling in India. But to make it a success, the brands need to provide some incentives to the consumers instead of charging them. But companies say awareness is increasing in India.

Nokia, which has collected 15 lakh old cell phones and accessories weighing over 70 tonnes for recycling in India since 2009, is offering some incentives to consumers such as shopping vouchers and cash refunds. The company has set up 1,400 collection centres across the country.

SC pulls plug on mining in two Karnataka districts

The Supreme Court has suspended iron ore mining in the Tumkur and Chitradurga districts of Karnataka. It asked for suggestions from the Attorney General and others to submit a formula to release 25 million tonnes of iron ore available for immediate use by the steel industry.

The "forest bench" headed by Chief Justice S H Kapadia has asked Attorney General G E Vahanvati and senior counsel Shyam Divan to study the inputs provided by the mining lessees and prepare a plan for the release of iron ore and the modalities related to transactions such as sale and transportation. The association of iron and steel industries had expressed its concern over the shortage of iron ore following the closure of mines in Bellary recently. Following a report of the centrally empowered committee of the court, the restrictions have been extended to two more districts.

The court further directed a joint team to carry out a survey and demarcate the boundaries of the leases, as was ordered in the case of Bellary district earlier. The empowered committee will name the agency in charge of keeping the accounts of sales and royalty payable at the rate of 10 per cent of the market price.

The Chief Justice said that the fundamental right to life, which includes a clean environment, was above the right to trade in the Constitution. He stressed that economic development should be balanced by environmental considerations. He asked the industries to work out a rehabilitation plan and a scientific method to excavate the mines.

The order followed a report of the empowered committee, which stated reckless mining in an unsustainable manner for short-term gains had affected the region's ecology.

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About Chadha & Co.

Chadha & Co. is a law firm based in New Delhi, India, with a strong Corporate and Commercial practice. The Firm has a specialized inbound practice in advising domestic and foreign corporations doing business in India on all Indian laws and regulations that are relevant to their business.

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