Course Name – B.A.LL.B 6th Sem / LL.B 3rd Sem

Subject – Competition Law

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Concept Covered – UNIT-IV

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Background

Introduction:

The Foreign Exchange Regulation Act of 1973 (FERA) in India was repealed on 1st June, 2000. It was replaced by the Foreign Exchange Management Act (FEMA), which was passed in the winter session of Parliament in 1999. FERA had a controversial 27 years during which many bosses of the Indian Corporate world found themselves at the mercy of the Enforcement Directorate (E.D.). Any offense under FERA was a criminal offense liable to imprisonment, whereas FEMA seeks to make offenses relating to foreign exchange civil offenses.

FEMA, which has replaced FERA, had become incompatible with the pro-liberalization policies of the Government of India. FEMA has brought a new management regime of Foreign Exchange consistent with the emerging frame work of the World Trade Organization (WTO). It is another matter that enactment of FEMA also brought with it Prevention of Money Laundering Act, 2002 which came into effect recently from 1st July, 2005 and the heat of which is yet to be felt as "Enforcement Directorate" would be investigating the cases under PMLA too.

Unlike other laws where everything is permitted unless specifically prohibited, under FERA nothing was permitted unless specifically permitted. Hence the tenor and tone of the Act was very drastic. It provided for imprisonment of even a very minor offence. Under FERA, a person was presumed guilty unless he proved himself innocent whereas under other laws, a person is presumed innocent unless he is proven guilty.

The Foreign Exchange Management Act, 1999 (FEMA) has been in force from 2000, thus replacing the old Foreign Exchange Regulation Act (FERA) 1973.

FEMA deals in foreign exchange. **Foreign exchange means 'foreign currency'** ***and includes deposits, credits and balances payable in any foreign currency and***

secondly drafts, travelers, cheaques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency.

Purpose of the Act

The preamble to FEMA lays down the purpose of the Act is to consolidate and amend the law relating to foreign exchange with the **objective of facilitating external trade and payments and for promoting the orderly development and maintenance** of foreign exchange market in India. After Independence, India was left with little foreign exchange reserves and during the oil Crisis of seventies ballooning oil import bills further drained foreign exchange reserves.

Broadly, the objectives of FEMA are to facilitate external trade and payments and to promote the orderly development and maintenance of foreign exchange market. The Act has assigned an important role to the Reserve Bank of India (RBI) in the administration of FEMA.

The rules, regulations and norms pertaining to several sections of the Act are laid down by the Reserve Bank of India, in consultation with the Central Government.

The Act requires the Central Government to appoint as many officers of the Central Government as Adjudicating Authorities for holding inquiries pertaining to contravention of the Act.

There is also a provision for appointing one or more Special Directors (Appeals) to hear appeals against the order of the Adjudicating authorities.

The Central Government also establishes an Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and the Special Director (Appeals). T

he FEMA provides for the establishment, by the Central Government, of a Director of Enforcement with a Director and such other officers or class of officers as it thinks fit for taking up for investigation of the contraventions under this Act.

Benefits of the Act

FERA was to control everything that was specified, relating to foreign exchange whereas FEMA lay down that ‘everything other than what is expressly covered is not controlled'. The overriding objective of FERA was to regulate and minimize dealings in foreign exchange and foreign securities while FEMA on the other hand aims to aid in creation of a liberal foreign exchange market in India.

This difference in terminology reflects seriousness of government towards deregulation of foreign exchange and promotion of free flow of international trade.

To facilitate external trade is concerned; section 5 of the Act removes restrictions on withdrawal of foreign exchange for the purpose of current account transactions. As external trade i.e. imports / export of goods & services involve transactions on current account, there is no need for seeking RBI permissions in connection with remittances involving external trade.

<u>The difference between the titles, FERA AND FEMA of legislation</u>

In view of this change, the title of the legislation has rightly been changed from ‘Foreign Exchange Regulation Act' to ‘Foreign Exchange Management Act'

The main change that has been brought is that FEMA is a civil law, whereas the FERA was a criminal law. In simple word, for contravention of provisions under the FEMA arrest and imprisonment would not be resorted whereas it was the norm under the previous act. Drastic character of FERA can be measure from the fact that it provided for imprisonment for violation of even very minor offenses.

FEMA is applicable to all parts of India. The act is also applicable to all branches, offices and agencies outside India owned or controlled by a person who is a resident of India.

The FEMA head-office, also known as Enforcement Directorate is situated in New Delhi and is headed by a Director. Foreign Exchange Act is very important for India for it to be a proper trading and keeps a healthy relation with the outside world as well.

<u>Conclusion</u>

FEMA permits only authorized person to deal in foreign exchange or foreign security. Such an authorized person, under the Act, means authorized dealer, money changer, off-shore banking unit or any other person for the time being authorized by Reserve Bank. The Act thus prohibits any person who deal in or transfer any foreign exchange or foreign security to any person not being an authorized person. Make any payment to or for the credit of any person resident outside India in any manner. Receive otherwise through an authorized person, any payment by order or on behalf of any person resident outside India in any manner.

Enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person is resident in India which acquires, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India