Think before you marry:
The fluid law of Joint Ventures

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Isn't it paradoxical that while life is getting more and more personalized, dependence on relationships is, in fact, increasing? There is ever-increasing inter-dependence – hence, there is an illusion of increasing significance of relationships. However, if one scratches the surface, one notices that relationships are, in fact, diminishing. The author has made a point elsewhere[1] that the way our society is moving, relationships are getting replaced by transactions. Transactions mean *coming* together; relations mean *staying together*. The world is moving more and more towards transactions, and moving away from relationships. This is true everywhere – in business and in life.

In business, the good old way of doing business together with combined resources or strengths was partnership. Partnerships are quite old fashioned now – except in case of family businesses, partnerships are quickly getting replaced by joint ventures. The idea of a joint venture signifies doing a venture – a business, a transaction, a deal, with combined resources, with the understanding that this coming together of resources is limited to the venture in hand. There is no pre-supposition of continuity.

Hence, a joint venture (JV) is a contractual agreement or a business relationship between two or more persons for the purpose of executing a particular business undertaking or contract. The parties, commonly called joint venturers, or *JV partners* agree to bring defined resources, defined capital, and share in the profits and losses of the enterprise in an agreed manner. They agree to manage the joint venture in accordance with the terms and conditions as agreed upon by the partners in the JV agreement. The nature of JV agreement and the extent of detailing required therein will depend on the form, the tenure and the scale of the JV.

There are numerous reasons why business world is increasingly going for JVs. It is trite to say that in the age of scalar economies and specialization, it makes good sense for entities to combine their strengths, However, there are certain sectors of business where getting into JVs has almost become commonplace:

[1] Vinod Kothari: *Securitization: The Financial Instrument of the Future*

- In bidding for contracts, parties enter into JVs to post combined turnover, experience and capital. This is commonplace for construction contracts or government contracts.
- In bidding for consulting assignments, particularly for multilateral agencies, it is quite a common practice for several entities to pool their experience and therefore bid under a JV.
- JVs are the most convenient way of entering cross border markets.

Forms of Joint Ventures:

Most joint ventures, being temporary in nature, may remain just unincorporated associations. As the purpose and tenure of the JV is limited, it may unnecessary to create a new entity. These unincorporated associations may be called *associations of persons (AOPs)*. Most JVs take the form of AOPs. The association is not a legal personality – it is just a collective name for the JV partners.

However, if the business is to be carried over a long-term, parties may think of creating a separate entity. The entity commonly takes the form of a *joint venture company*. In the generic sense of pooling of resources, all companies are joint ventures, but the meaning of a joint venture company is that the company is nothing but a joint venture between the JV partners, and therefore, the ownership and management of the company will be driven by joint venture principles.

International Accounting Standard 31 provides three broad types of joint ventures: jointly controlled operations, jointly controlled assets and jointly controlled entities.

- In the first type of JVs, the operation involves the use of the assets and other resources of the venturers individually rather than the establishment of a separate entity or joint ownership of assets. Only the pooling of interests takes place.
- In JVs where assets are jointly controlled, there is a joint ownership of resources but no separate entity is formed. The venturers have joint ownership on the assets acquired for the JV.
- In jointly controlled form of JVs, a separate entity is incorporated and the contractual arrangement between the venturers establishes joint control over the economic activities of the entity formed.

JV Agreement:

If the JV in question is a simple coming-together for an ad hoc, temporary opportunity, parties may define their role and responsibilities in a simple joint venture agreement.

However, if parties are forming a joint venture company, the joint venture agreement takes the form of a *shareholders' agreement*, commonly known as SHA. In case of joint venture companies, the SHA becomes important because shares in companies are, by definition, transferable. Hence, JV partners may like to control, besides how the business in joint venture is to be run, important issues like maintenance of shareholding, transfer of shares, tag-along and drag-along rights, etc. In short, the SHA becomes a far more critical document than a simple JV agreement (JVA).

Key Indicators of existence of JV:

The concept of 'joint venture' involves several essential elements such as:

- contribution by the parties of money, effort, knowledge and other assets to common undertaking;
- joint property interests in the subject matter of the venture;
- right of mutual control of management of the enterprise;
- expectation of profit;
- right to participate in the profits; and
- limitation of the objective to a single undertaking.

It may be summarised that an informal partnership between two or more persons to take up a common enterprise on one time basis is a 'joint venture'.

In *New Horizons Ltd vs Union Of India* (1995 SCC (1) 478), dealing with the question whether a particular company is a joint venture or not, the Supreme Court where an Indian group of companies and the foreign company have pooled together their resources and all the constituents of the company have thus contributed to its resources which shows that the Indian Company and the foreign based company is an association of companies jointly undertaking a commercial enterprise wherein they will all contribute assets and will share risks and have a community of interest, is a joint venture company. As evident, in this ruling, sharing of risks, community of interests, contribution to assets and the intent to jointly run and undertaking were taken as indicators of a joint venture.

Joint venture and partnership:

A question quite often arises – is a joint venture nothing but an ad-hoc or temporal partnership? This question assumes huge significance because most countries have legislations defining rights/obligations of partners in a partnership; however, there do not exist laws dealing with joint ventures. Is a JV nothing but a temporal partnership, that is, a transactionalised relationship?

A partnership is a contractual arrangement between the partners mutually agreeing to undertake a business venture as co-owners with intent to make profit. JVs may be seen as analogous to general partnerships formed for executing a single business activity combining the money, skill, knowledge and property of the partners. Section 8 of Partnership Act, 1932 provides for a limited period partnership. The section says;

> *"A person may become a partner with another person in particular adventures or undertakings."*

The Act provides for a particular partnership valid for a particular assignment or business. JVs are formed on the same concept of "Particular Partnership". The rights, duties and liabilities between the

parties to the JV are quite similar to that of partners of a partnership and depend on the terms of the JV agreement.

JVs and the partnerships have the some common characteristics: pooling of resources and common management. However, the key distinction between a joint venture and a partnership concern is that while a partnership concerns ongoing business in all regards, a joint venture only concerns a single project or a related series of transactions. JVs generally terminate on completion of the project for which it was formed. But a partnership is generally a continuing relationship and comes to an end either on the death of any partner or with mutual decision to revoke. Partnership is governed by the Partnership Act; JVs do not have any specific act applicable to them, but in several cases in India and abroad, partnership principles have been applied to JVs. Partnerships are not separate legal entities; however, in the eyes of the commercial world, a partnership is seen as a continuing business relationship and it is common for partners to distinguish themselves from the partnership. Hence, it is common for partners to give loans to the partnership, charge interest on the loans, draw remuneration from the partnership, and so on. If partnership was the same as the partners, the question of any remuneration, loans or interest would not arise. In case of joint ventures, the separation of personality, even in commercial sense, does not exist – hence, in case of a JV, the JV partners are not entitled to any remuneration for the service provided unless specifically provided by the JV agreement. (*Rohda v. Boen,* 45 Wn.2d 553 (Wash. 1954)

As held in *Asia Foundation & Construction Ltd.*'s case (AIR 1986 Guj 185): "the Courts do not treat a joint adventure as identical with a partnership though it is so similar in nature and in the contractual ,relationship created by such adventures that the rights as between them are governed practically by the rules that govern the partnership. This relationship has been defined to be a combination of persons undertaking jointly some specific adventure for profit without any actual partnership. It is also described as a commercial or a maritime enterprise under taken by several persons jointly: a limited partnership not limited in the statutory sense as to the liabilities of partners but as to its scope and duration. Generally speaking the distinction between a joint adventure and a partnership is that former relates to a single transaction 'though it may comprehend a business to be continued over several years' while the latter relates to a joint business of a particular kind."

The rights, duties and liabilities of joint ventures are similar or analogous to those which govern the corresponding rights, duties and liabilities of the partners. As in the case of partners, joint ventures may be jointly and severally liable to third parties for the debts of the venture. (American Jurisprudence, Second Ed. Vol. 46)

The definition of 'joint venture' occurring in **American Jurisprudence** [2nd Edition, Vol.46 pages 19, 22 and 23] clearly describes some of the basic features of a joint venture, but these features are also the well-known features of partnerships, except, of course, the continuity of relationship;

> "A joint venture is frequently defined as an association of two or more persons formed to carry out a single business enterprise for profit. More specifically, it is in association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business

venture for joint profit, for which purpose such persons combine their property, money, effects, skill, and knowledge, without creating a partnership, a corporation or other business entity, pursuant to an agreement that there shall be a community of interest among the parties as to the purpose of the undertaking, and that each joint venturer must stand in the relation of principal, as well as agent, as to each of the other co-venturers within the general scope of the enterprise.

"Joint ventures are, in general, governed by the same rules as partnerships. The relations of the parties to a joint venture and the nature of their association are so similar and closely akin to a partnership that their rights, duties, and liabilities are generally tested by rules which are closely analogous to and substantially the same, if not exactly the same as those which govern partnerships. Since the legal consequences of a joint venture are equivalent to those of a partnership, the courts freely apply partnership law to joint ventures when appropriate. In fact, it has been said that the trend in the law has been to blur the distinctions between a partnership and a joint venture, very little law being found applicable to one that does not apply to the other. Thus, the liability for torts of parties to a joint venture agreement is governed by the law applicable to partnerships."

In *Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. & Anr* [(2008) 10 SCC 345)], the Supreme Court cited the above passage from American Jurisprudence, and also extracts from Corpus Juris Secundum and Black's Law Dictionary. The Apex court went into the question whether a JV existed in the case of a builder's construction contract with the land-owner. A clause in the development agreement stated that the agreement shall not be deemed to create a partnership between the parties. The land –owner was specifically excluded from the management of the construction contract. Since the land-owner was completely absent from the management of the construction contract, the SC held that the contract in question was not a joint venture. From this significant ruling, the existence of common management, and the near-partnership relation between the JV partners may be said to be the test for existence of a JV. In other words, if a so-called JV partner is merely bringing resources such as land, or capital, it cannot be said to bring into existence a JV,

Joint venture and collaboration/ strategic alliances:

Strategic alliance is an agreement between two or more independent entities who work together for a common objective using each other's resources and skills. Unlike JVs, in case of a strategic alliance, generally, a new entity is not formed and the parties collaborate for the achievement of the goal remaining apart and distinct. Strategic partnerships are quite common for developing and promoting software products as the product may exist but needs market channels through an established vendor in the new market. The collaboration/strategic alliance is more wider term and may take any form including contractual arrangements (such as license agreements, marketing agreements, and development agreements), minority equity investments, and joint ventures that are operated as separate legal entities.

"Collaboration" in layman's terms means the coming together of two or more parties for the purpose of brainstorming and sharing of expertise.

Joint venture principles:

Fiduciary duties:

Joint venturers share more than a mere contractual relationship. The relationship between them is fiduciary in nature for the matters covered by the JV agreement. They have a duty to share full and honest disclosure of everything affecting the business relationship. (*Wah Chang Smelting & Ref. Co. of Am. v. Cleveland Tungsten*, 1996 Del. Ch. LEXIS 102 (Del. Ch. Aug. 19, 1996).

In *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007), HCA 22, (81 ALJR 1107), the High Court of Australia held that the parties were in a fiduciary relationship even though the relationship had been agreed as a joint venture and not as a partnership.

Mr. Jacobson J in *Australian Securities and Investments Commission v Citigroup Global Markets Australia Pty Ltd* [2007] FCA 963 concluded that the entire relationship between the two contracting parties is based on the contract between them and if the contract specifically excludes the application of fiduciary duties, the parties may not owe the fiduciary obligation to another.

As stated in Law Commission Consultation Paper at 3.3.13 and Report 236 (1995) at (2.11)(7.3) of Law Commission U.K, Fiduciary Duties and Regulatory Rules, "a fiduciary cannot exclude liability for fraud but beyond that there appears to be no restriction in the law to prevent a fiduciary from contracting out of, or modifying, his or her fiduciary duties, particularly where no prior fiduciary relationship existed and the contract defines the rights and duties of the parties". The Consultation Paper also at 3.3.12 says that it is open to the parties to a contract to exclude or modify the operation of fiduciary duties. These views are also supported by both Australian and English authority. (*Chan v Zacharia* (1984) 154 CLR 178;; *Woolworths Limited v Kelly* (1991) 22 NSWLR 189; *Kelly v Cooper* [1993] AC 205; *Henderson v Merrett Syndicates Limited* [1995] 2 AC 145)

Gummow J in *Breen v Williams* (1996) 186 CLR 71 observed that the contractual and fiduciary relationship may co-exist, however, the fiduciary relationship must confirm to the terms of the contract. He also pointed out that contractual term may be so precise in its regulation of what a party may do that there is no scope for the creation of a fiduciary duty.

William D. Duncan in his book **Joint Venture law in Australia** at pg 295 (para 6.3.1) has stated, "Because of the nature of a joint venture agreement as having a dual existence in contract and in equity, the latter, depending upon the form of the joint venture and the content of the obligations, the relationship between the parties may assume a fiduciary character. [*United Dominions Corporation Ltd v. Brian Pty Ltd* (1985) 157 CLR 1)]. In more recent times in Australia, in the absence of finding the existence of a fiduciary relationship, it has been argued that in particular classes of commercial contracts, there may be an implied term of good faith and reasonableness in the performance of the contracting parties' obligation. Of course, the joint venture may specifically state this requirement and the extent of the

obligation would be a matter of the construction. (*Noranda Australia Ltd v. Lachlan Resources NL* (1988) 14 NSWLR)**.** However, it is proposed to examine, in this context, the possibility of an implied term evidencing a duty to co-operate within these times may be characterized as unreasonable delay"

It cannot be assumed that a joint venture will necessarily be treated different from that of a partnership and the JV partners may also be found to owe one another the fiduciary duties depending upon the terms of the JV agreement. In order to avoid the fiduciary relationship, the agreement should specifically exclude the joint and several liabilities of the partners and the ability one partner to bind all the other partners.

Law of Agency:

The principle of a JV is also based on the law of agency by virtue of which every JV partner is a principal for himself and an agent for the other partners for achieving the common objective of a JV. (*County of Monroe v. Raytheon Co.,* 156 Misc. 2d 445 (N.Y. Sup. Ct. 1991) However, different from partnership, when one joint venturer commits an intentional fraud against third parties without the knowledge of other joint venturers, the other joint venturers need not indemnify the party committing the fraud when the third parties recover damages.

Constructive trust:

An offshoot of the existence of fiduciary relation between the JV partners is the position of a constructive trust, that is, one JV partner acting as a constructive trustee for the others. This would be particularly so if one JV partner comes to acquire any property which, as per terms of the JV agreement, is to belong to the JV. In *Yeoman's Row Management Ltd v. Cobbe*, 2008 UKHL 55, the court held: "If two or more persons agree to embark on a joint venture which involves the acquisition of an identified piece of land and a subsequent exploitation of, or dealing with, the land for the purposes of the joint venture, and one of the joint venturers, with the agreement of the others who believe him to be acting for their joint purposes, makes the acquisition in his own name but subsequently seeks to retain the land for his own benefit, the court will regard him as holding the land on trust for the joint venturers. This would be either an implied trust or a constructive trust arising from the circumstances and if, as would be likely from the facts as described, the joint venturers have not agreed and cannot agree about what is to be done with the land, the land would have to be re-sold and, after discharging the expenses of its purchase and any other necessary expenses of the abortive joint venture, the net proceeds of sale divided equally between the joint venturers."

Ownership and Control of JV properties:

A complicated question quite often arises, in case of unincorporated JVs – are the JV partners joint owners of the property or assets of the joint venture? The answer to the question should appreciably come from the JV agreement. If the JV agreement is silent, then whether a joint venture leads to joint ownership of assets, particularly in case of assets acquired out of the profits or proceeds of the venture, would depend on the purpose for which the question is being answered.

Section 45 of Transfer of Property Act, 1882 with regard to joint transfer of property says:

> "Where immoveable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced."

> "In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property"

The above principle is applicable to immovable properties but in general, the analogous rule may also be applied to other properties.

The JV partners share profits from the property owned by a JV and it do not make the venturers joint owner of the property brought by the venture partners individually for the JV. The title in the property will be governed by the JV agreement. Applying the above principle of TP Act, if the property is purchased with the funds of the joint venture or with profits derived from those funds, the property belongs to all the joint venturers for the purposes of the enterprise so long as it exists and has the ownership control in the ratio as determined by the SHA or in case nothing is mentioned in the SHA, in the profit sharing ratio. When the title of the property is in the name of a joint venturer and the property is under the ownership of the joint venture, the rights of other venturers will not be impaired. The title holder will act as a trustee of the property.

The Supreme Court while discussing co-ownership in a partnership in *Addanki Narayanappa v. Bhaskara Krishnappa*, AIR [1966] SC 1300, , laid down:

> "The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership."

In other words, the property acquired out of a joint venture would make the JV partners co-owners of the property. The meaning of co-owner is that each co-owner becomes pari-passu or infinitesimal owner of the property. None of them are clear owners of a part of the property. Co-ownership is also discussed in sec. 44 of the Transfer of Property Act. However, the issue whether a joint venture results into creation of joint ownership still needs more clarity.

Key points for JV partners to agree:

As it is a transaction and not a relation, it is important that the JV partners have clarity on their understanding. Most litigation, particularly in case of JV companies, arises because of lack of clarity on significant principles of mutuality, or loose language in the drafting of the JVA or the SHA.

Here is an attempt to list out the significant points in a JVA/ SHA:

- Basis of the association:
  - This may not be so much be a part of the legal documentation, but rather may be the fulcrum of the JV itself. Both parties may need to understand and convince themselves as to the basis of the JV itself – why are we coming together, what is it that each party is bringing to the table, and so on.
  - The role and responsibility of either party may be listed out clearly in the JVA – it is impossible to list out all that parties would do; nor does it do a good to the spirit of the JV to earmark isolated lists of what either JV partner would do. The spirit of JV is in mutuality. However indicative areas for either party may be listed.
- Capital contribution and maintenance of control:
  - The single most important point for every JV is the maintenance of common control. This is particularly important in case of JV companies, as corporate shares are transferable instrument. Prima facie, a company form is not ideal for a joint venture, because the essence of the company form is transferability of shares, whereas the essence of a JV is mutuality. In case of companies, the ownership and management of the company are distinct – in case of JVs, the JV partners are owners as well as managers. Hence, drafting constitutional documents in case of JV companies is quite intricate – it is important to ensure that though the constitution of the JV is in form of a company, it is, in fact, an incorporated partnership. Hence, partnership principles have to be superimposed on the company form. Some of the key points for attention are:
    - It is important to incorporate the provisions of the SHA in the constitutional documents (for example, articles of the company. In absence of an express provision in the articles, the SHA is simply an agreement between the JV partners and does not bind the company at all. The articles, on the other hand, are an agreement between the company and the members, and members inter se and will be binding on the company. In case of any conflict between the Articles and the SHA, the former will always prevail. (*Union of India v. Kishori Lal Gupta* (AIR 1959 SC 1363)*, V.B. Rangaraj vs V.B. Gopalakrishnan And Others* (AIR 1992 SC 453) Hence, in order to bind the company with the restrictive clauses of SHA, the articles must be amended or drafted with reference to the SHA)

- Some important provisions to incorporate in the SHA regarding maintenance of control are:

  - That voting power in the JV company shall always be held in the proportion decided in the JV agreement, and that no action, whether by issue of capital, or by issue of any other contingent capital instrument, the balance of voting power in the JV company will be disturbed.

  - It is common for companies to issue further capital. First of all, it is appropriate to mention that any resolution for increase of capital (or issue of any contingent capital instrument such as share warrant, convertible debenture, option instrument, preference shares, etc) will have to have positive asset of each of the JV partners. Thus, having resolved to increase capital, if one JV partner subscribes to the additional capital, and the other one does not, then the non-defaulting JV partner may put capital originally intended for the defaulting JV partner, and the SHA may provide that this shall be treated as a financial accommodation of the defaulting JV partner by the non-defaulting one, which may be rectified within a certain time by the defaulting partner repaying the money (with interest) to the non-defaulting JV partner.

- The balance of voting power also gets disturbed with one of the JV partners wants to transfer his shareholding. In this regard, there are several significant points:

  - Usually, there is a lock-in period during which neither party can transfer his shareholding.

  - After the lock-in period, if one of the JV partners wants to transfer holdings, it is logical to provide a right of pre-emption to the existing partners. This obviously leads to the question of valuation. There is no uniform rule on valuation and the JV partners have to frame their own view on this. No matter what is the method of valuation, the JV agreement must provide that the transfer of shares in the JV company by a partner to an outsider must not be on terms more beneficial than at what such shares are offered to the existing JV partners, and the incumbent would anyway sign a deed of adherence to adhere to the JV agreement with the existing JV partners.

  - It is commonplace to put tag-along and drag along rights. Tag along means if one of the JV partners wants to transfer his holdings to a third party, the other JV partner(s) may also mandatorily require his holdings to be tagged along, that is, transferred along with the holdings of the transferring JV partner. Likewise, if one JV partner wants to transfer his holdings, he may also force other JV partners to transfer their holdings along with those of the transferring JV

partner. Tag along and drag along rights are intended to serve specific purpose and must be put only with due discretion.

- Next question is balance of management control. If it is a company, an important provision is to ensure equality of board control in the joint venture company. Significant points in this regard are:
  - The proportion of board members. It would be important to give power of nomination to a JV partner and to provide that such a nominee will be appointed and removed at the discretion of the JV partner.
  - Corporate law may have provisions whereby the office of a director may fall vacant, or a director may be removed from office. As far as removal is concerned, there may be an entrenchment provision whereby a director nominated by a JV partner may not be removed at all by any member(s) of the company. On automatic statutory vacation of office, being a statutory provision, the same would remain valid – however, right to fill a vacancy may be given to JV partner in question.
  - Board meetings usually have a casting vote of the Chairman. In JV companies, the casting vote is not advisable.
- List of reserved matters:
  - Since corporate decisions may be taken using the methodology prescribed in corporate laws, it is important to ensure that certain matters that may have an impact on the interests of JV partners are not decided either at board meetings or at general meetings without the consent of each JV partner. Partners must be very careful about this list, as it is quite possible that at a particular board meeting, one of JV partners may not be present, and something that seriously affects the business interests of that JV partner gets transacted. Likewise, in the general meetings also, companies are run on the principle of majority – hence, taking advantage of the absence of a JV partner, matters which are contrary to the interests of one of the parties may be decided.
  - The list of reserved matters must be carefully drawn – it should be not too restrictive so that the business of the JV may be deadlocked on petty issues; at the same time, it must fully entrench the nature of the JV company as a partnership.
- Exit clauses:
  - It is important to lay down clear provisions on exit. We have made some discussion earlier. Exit may also happen at the time of a public offer.
  - Careful consideration must be given to the term of the JV agreement – as to whether the agreement shall be binding only as long as the parties continue to hold their shares

in a particular ratio, or there would be parts of the agreement that would continue to prevail even after the change of the shareholding ratio.

- Operational issues like:

    a. bank account operation
    b. Keeping of statutory records – in practice, we have noted that parties give lot of stress on the physical keeping of documents, and somehow, there is a feeling that the one who has statutory records has upper hand. There is no reason for this to be so, but at times, access to statutory records does give negotiating advantage.

- Borrowings - Modes and terms of funds to be raised, if required, particularly borrowings from related parties.

- Dispute resolution and arbitration clause – this is a significant clause since corporate litigation may be very costly and it may be helpful to seek alternative dispute resolution devices.

Cross border JVs:

If it is a JV with a cross border joint venturer, then there are foreign exchange control issues also involved.

For example, if an Indian entity collaborates with a foreign entity for a joint venture in India, the contribution of capital by the overseas entity is governed by FDI norms. Likewise, if an Indian entity wants to enter into a JV with an overseas entity, the same is governed by ODI norms.