

Genpact India Pvt. Ltd. v. Directorate of Enforcement

Round-tripping and Indian foreign exchange law risks in cross-border transactions

Majmudar & Partners

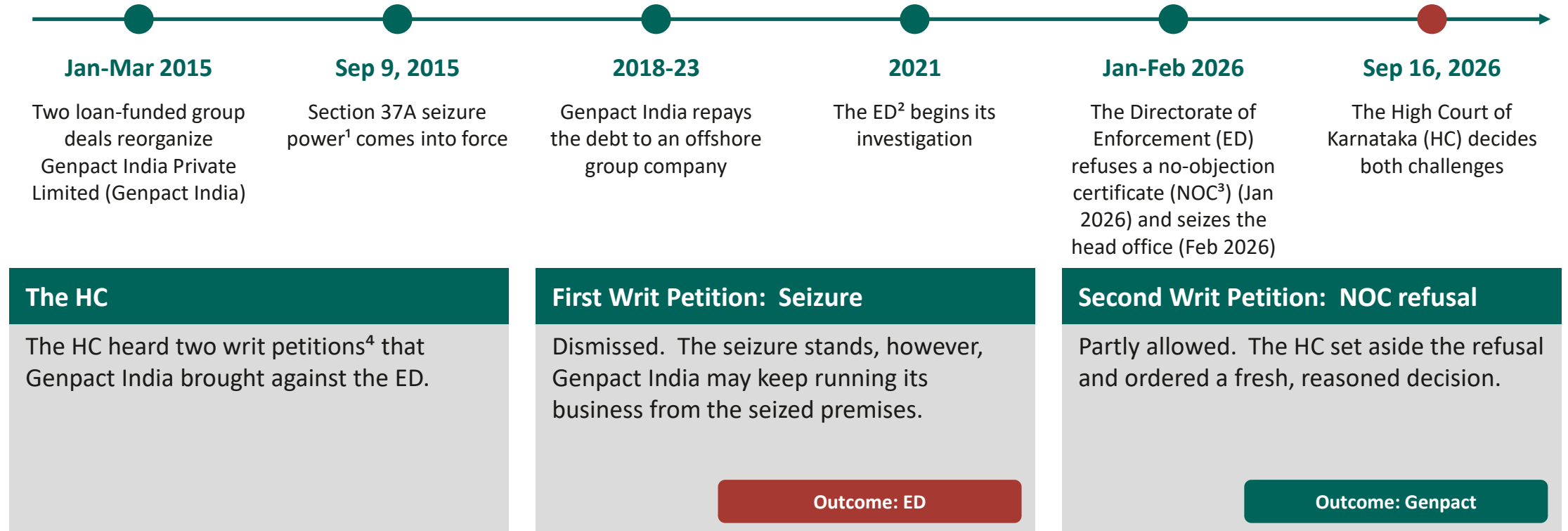
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The case at a glance

Timeline and outcome



¹ Section 37A of the Foreign Exchange Management Act, 1999 (FEMA), India's foreign exchange law, lets the ED seize Indian property equal in value to foreign assets it suspects are held unlawfully, before any final finding.

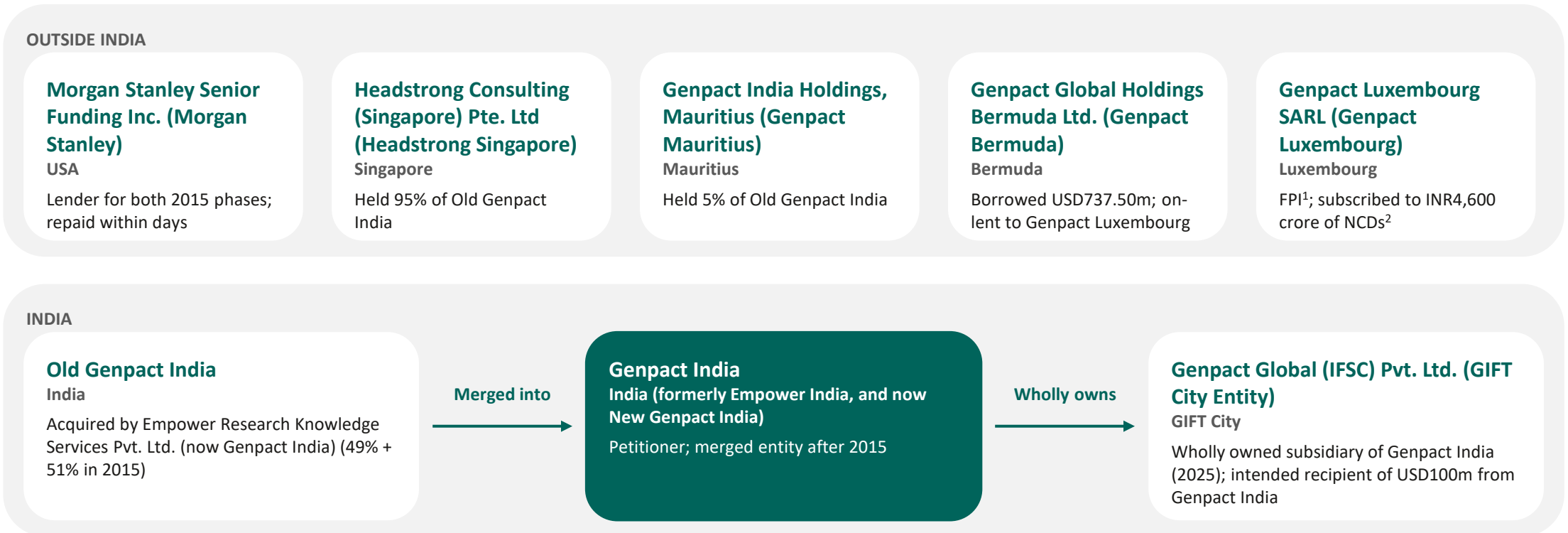
² The Directorate of Enforcement (ED) is the Indian agency that enforces FEMA.

³ A no-objection certificate (NOC) is the investigating agency's approval that an entity under investigation needs before it invests outside India (Rule 10, FEMA (Overseas Investment) Rules, 2022).

⁴ A writ petition requests a High Court to review government action (Article 226, Constitution of India).

Case overview: The parties and entities

Entities involved in the transactions



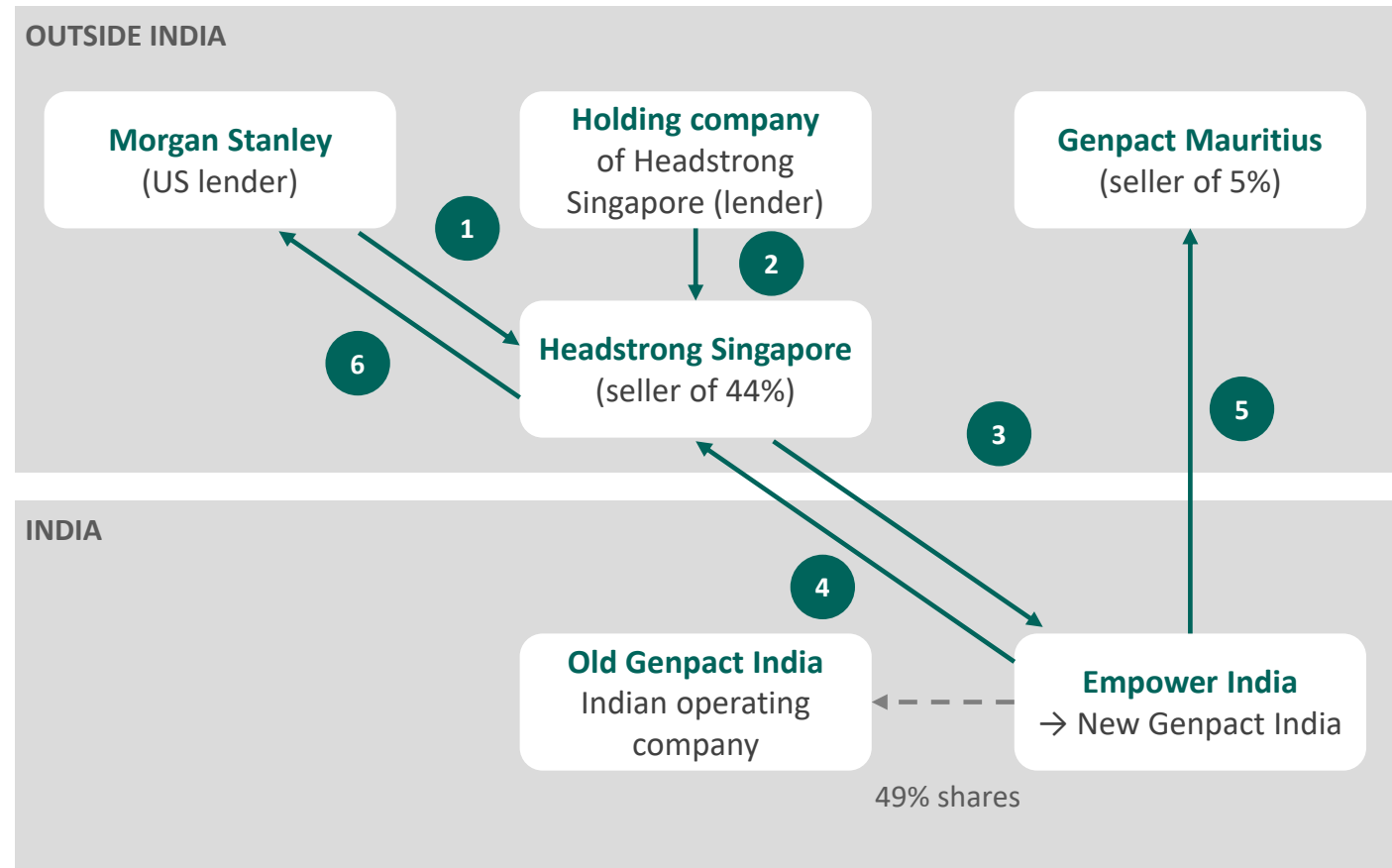
! The ED's concern: Sending money out of India and bringing it back through related entities, often to disguise its source or to obtain a commercial or business benefit, i.e., round-tripping.

¹FPI: A registered foreign portfolio investor allowed to invest in listed Indian securities.

²NCDs: Non-convertible debentures, i.e., bond-like debt that bears interest and cannot be converted into shares.

Flow of funds

Phase 1 structure chart



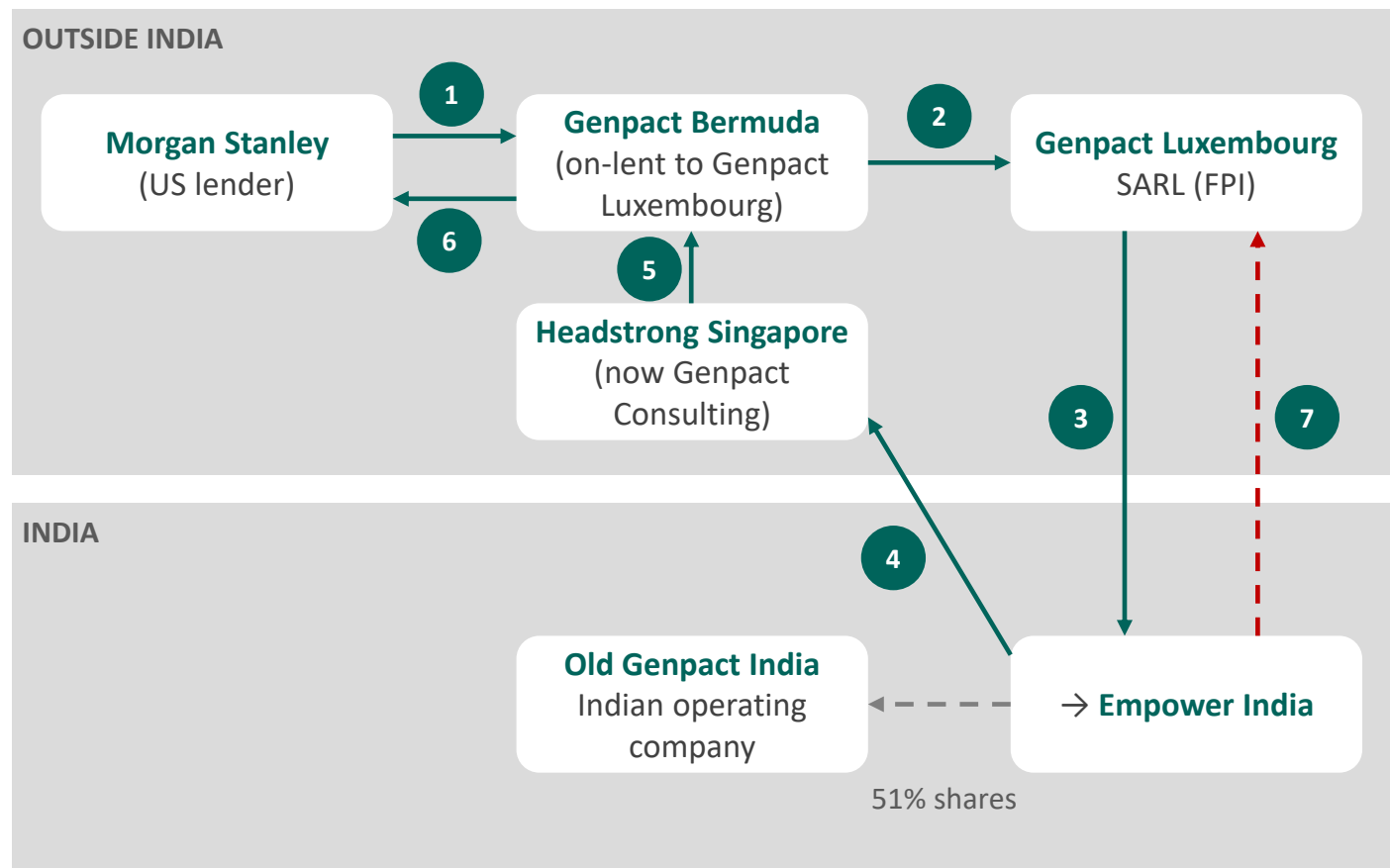
Teal solid line: flow of funds. Grey dashed line: share acquisition. Total Phase 1 consideration: USD737.50 million for 49% of Old Genpact India.

Phase 1 Sequence

- January 27, 2015:** Morgan Stanley lent approximately USD660 million to Headstrong Singapore.
- January 27, 2015:** The holding company of Headstrong Singapore lent USD77.50 million to Headstrong Singapore.
- January 2015:** Headstrong Singapore infused the funds into Empower India by share subscription under the automatic route.
- January 2015:** Empower India paid USD660 million to Headstrong Singapore for part of the 49% stake in Old Genpact India.
- January 2015:** Empower India paid USD77.50 million to Genpact Mauritius for its 5% stake.
- January 30, 2015:** Headstrong Singapore repaid Morgan Stanley out of the share-sale proceeds.

Flow of funds

Phase 2 structure chart



Red dashed line: outflow from free reserves after amalgamation. Grey dashed line: share acquisition.

Phase 2 Sequence

- March 23, 2015:** Morgan Stanley lent USD737.50 million to Genpact Bermuda
- Genpact Bermuda on-lent the funds to Genpact Luxembourg** (later settled by share issue).
- March 25, 2015:** Genpact Luxembourg subscribed to 4,600 NCDs of Empower India (INR4,600 crore, in rupees).
- Same day:** Empower India paid INR4,600 crore to Headstrong Singapore for 51% of Old Genpact India.
- March 26, 2015:** Headstrong Singapore transferred the proceeds to Genpact Bermuda.
- March 26, 2015:** Genpact Bermuda repaid Morgan Stanley; loop closed in approximately two (2) days.
- 2018-23:** Genpact India (the merged entity) paid approximately INR7,800 crore (principal and interest) to Genpact Luxembourg.

What each side argued

Genpact India v. the ED

Issue	Genpact India argued	The ED argued
Timing	Section 37A of FEMA began on Sep 9, 2015, after both deals closed. It cannot apply retroactively.	FEMA has always banned unlawful foreign assets under Section 4 ³ of FEMA. The INR7,800 crore was paid in 2018-23, after Section 37A began.
Nature of the deals	Two completed transactions. Later repayments are only consequences, not new acts.	One pre-planned chain. Money circled back to Morgan Stanley in about two days.
Money leaving India	The NCDs were in rupees, listed in India and paid from an Indian bank account.	Empower India, worth about INR40 crore, took on reserves of INR8,000 crore, later paid abroad.
Other regulators	The RBI ¹ and SEBI ² reviewed the NCDs, and tax appeals went in Genpact India's favor.	Disclosures were inconsistent: "general corporate purposes" to the RBI, a one-day loan in a US filing.
NOC refusal	No reasons given. Approval was deemed granted after 60 days without objection as per the FEMA rules.	The petitions were premature. The GIFT City ⁴ investment repeated the 2015 pattern.

¹ The Reserve Bank of India (RBI) is India's central bank.

² The Securities and Exchange Board of India (SEBI) is India's securities regulator.

³ Section 4 of FEMA prohibits Indian residents from acquiring, holding, owning or transferring foreign currency, foreign securities or property abroad, except as provided under FEMA.

⁴ GIFT City is India's international financial services centre, regulated by the International Financial Services Centres Authority (IFSCA).

The HC's decision

Key questions and the result

Question	HC's answer	In favour of
Can Genpact India approach the HC under a Writ Petition?	Yes, but the seizure challenge covers only the ED's power and process.	Mixed
Can Section 37A be applied retrospectively?	It will not just have to be applied to the 2015 deals alone, but to the 2018-23 (NCD) payments as well.	Mixed
Enough basis to suspect a FEMA breach?	Yes, on the combined facts. This is not a final finding.	ED
Do RBI, SEBI and tax approvals bar the ED?	No. However, the reviewing authority must weigh them.	ED
Was the NOC refusal valid?	No. An investigation alone is not enough. However, there was no deemed approval.	Genpact India

HC order's effect	
1	Genpact India's head office stays seized. Business continues, but no encumbrance.
2	Genpact India files supporting material within 10 days.
3	The Competent Authority ¹ gives a reasoned NOC decision within 10 days.
4	If granted, Genpact India may invest within 10 days.
Merits open: no ruling on FEMA breach.	

¹ Competent Authority: the FEMA official who reviews an ED seizure under FEMA and will also weigh delay, cooperation, tax rulings and regulatory history. No costs were awarded.

Key takeaway

What foreign investors should note

Round-tripping is judged by its effect. Money need not leave India first. The question is whether the funds complete a circuit back to their source with an India link.

Warning signs the ED looks for



Back-to-back transfers that have an India link



Bridge loans repaid on completion



Offshore loan funding with no economic substance



Group companies as both buyer and seller



Connected transactions under a common arrangement



Inconsistent disclosures to regulators

No time limit

The law sets no minimum holding period or time window for round-tripping.

Time is no defence

Payments 8 years later also formed part of the same arrangement. In the present case, Genpact India argued that the NCDs carried a fixed coupon rate and had a tenure of 8 years.

Delay cuts both ways

Delay did not remove the ED's power, but affects whether a seizure continues.

Thank you

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