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Ms. Aarsee Singh, *legal researcher with Indian law firm, Brus Chambers, studies the immediate as well as far reaching effects of allowing Foreign Direct Investments in the Multi Brand Retail in India, the changes brought forth in the FDI Policy of 2013, while analysing the current FDI scenario in the country..*

Strategising an entry into a foreign market, Foreign Direct Investment (FDI) is an advanced strategy for companies that wish to operate on a global basis with an entrenched footprint. It refers to investment to acquire a lasting interest in an enterprise operating in an economy other than that of the investor. Entry through FDI for corporate results in footprint which gives a degree of influence/control over the management of the enterprise relative to the structure created. It usually involves transfer of management skills, technology, systems, processes and expertise. For a country it is a sturdy and till date desirable source of capital inflows as opposed to FII flows which include 'hot money'. FDI being a feature of capital control are generally applicable in countries professing capital control and the regulation varies from country to country.

Foreign Investment in India is governed by sub-section (3) of section 6 of the Foreign exchange Management Act,1999 read with notification No. FEMA 20/2000- RB dated May 3, 2000. The Ministry of Commerce and Industry, Government of India is the nodal agency for monitoring and reviewing the FDI policy on continued basis and prevails in its sectoral investment policy/ sectoral equity cap. The FDI policy is notified through Press Notes by the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion (DIPP).The foreign investors are free to invest in India, except few sectors/activities, where prior approval from the RBI or Foreign Investment Promotion Board ('FIPB') would be required.

The Department of Industrial Policy & Promotion, Ministry of Commerce and Industry, Government of India has released the Consolidated Foreign Direct Investment Policy, 2013 ("FDI Policy, 2013") , which is the sixth edition of the consolidated foreign direct investment policy and has been effective from April 05, 2013. The FDI Policy, 2013, incorporates the changes made in the foreign investment policy over the last year. The changes include investments in sectors like single and multi-brand retail, power exchanges; asset reconstruction companies (ARCs), broadcasting, civil aviation, and non-banking financial companies. Herein as the recent earlier policy

FDI can come into India in two ways:

a. Direct route/Automatic route: It does not require prior approval either of Reserve Bank of India (RBI) or government.

b. Government route: Government route means that investment in the capital of resident entities by nonresident entities can be made only with the prior approval from Foreign Investment Promotion Board (FIPB).

Key changes made in the Consolidated FDI Policy, 2013, are as under:

•Allows Pakistan citizens, nationals and companies to invest in India under the Government route, in sectors/activities other than defense, space and atomic energy.
•Allows up to 51% inflow of foreign direct investment (FDI) in multi-brand retail sector.
•Allows 49% stake by a foreign airline in the capital of Indian companies, operating scheduled and non-scheduled air transport services,
•Raises FDI cap in various broadcasting services to 74%.
•Permits up to 49% foreign investment in the power trading exchanges.
•Increases foreign investment ceiling in ARCs to 74%, up from 49%.
•A new paragraph has been added with regards to the issue price of shares to person resident outside India. It says that where non-residents (including NRIs) are making investments in Indian company in compliance with the provisions of the Companies Act, 1956, by way of subscription to its Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.

The passage of 51% Foreign Direct Investment in Multi-Brand Retail trading in India (MBRT)

Understanding of what retail means is imperative to appreciate the subject under discussion. It is defined as “all activities involved in selling goods or services directly to the final consumer for their personal, non-business use via shops, market, door to door selling, or mail order”. In 2004, the High Court of Delhi defined the term ‘retail’ as a sale for final consumption in contrast to a sale for further sale or processing (i.e. wholesale).

In India, retail sector is expected to grow at significant rate in coming few years. The overall Indian retail sector is expected to grow 9 per cent in 2012-16, with organized retail growing at 24 per cent or three times the pace of traditional retail (which is expected to expand at 8 per cent), according to the report by Booz & Co and RAI. The Indian retail industry has expanded by 10.6 per cent between 2010 and 2012 and is expected to increase to US$ 750-850 billion by 2015, according to a report by Deloitte. India is the second most attractive destination for retail among thirty emerging nations, making it the fifth most desired retail destination in the World.

In today’s world Multi Brand Retail Trade (MBRT) has become a mainstay of retail business. MBRT means marketing of similar and competing products by the same outlet under different and unrelated brands. It implies that a retail store with foreign investment can sell multiple brands, under one roof, as opposed to a single brand retailing in which a single brand is sold across all outlets. Say for example Nike, Reebok stores.

The present day evolution of norms for retail in India may be reads as:

1995-World Trade Organization’s General Agreement on Trade in Services, which includes both wholesale and retailing services, came into effect.
1997-FDI in cash and carry (wholesale) with 100% rights allowed under government approval route.
2006-FDI in cash and carry (wholesale) brought under the automatic route. Up to 51% investment in a single brand retail permitted, subject to Press Note 3 (2006 Series).
2011-100% FDI in single brand retail permitted.
2012-51% FDI in multi-brand retail permitted.

The government has currently approved 100% FDI in Single Brand Retail under the Government approval route subject to certain conditions.

It is said that India is a land of Retail democracy. The Indian retail industry is generally divided into two major segments – organised retailing and unorganised retailing . Given the demographics, rate of GDP growth, consumer spending for many, India is an inevitable destination for entities having global footprint. According to the 2013 A.T. Kearney Global Retail Development Index (GRDI) report, which is an annual study that ranks the top 30 developing countries for retail expansion worldwide, ranks six Asian Countries including India on the GRDI 2013 report. India ranks 14th on the GRDI 2013 report. The report says that consumer spending growth, continued adoption of modern retail and solid economic fundamentals keep Asian markets attractive to global retailers.

The Indian retail market is estimated to exceed US$ 750 billion by 2015, according to the India Retail Report 2013 (IRIS Research), presenting a strong potential for foreign retailers planning to enter India.

For the mandate to permit FDI in MBRT and with the furor entire nation as well as the political parties did not expect the Indian Government to permit 51% FDI by foreign multi brand retailers. India however, took safer and slower steps towards FDI. It permitted 51% FDI in Multi-brand retail trading. With caveats, they are as follows:

1. There should be a minimum investment of US $ 100 million by the foreign investor.
2. 50% investment is to be in backend infrastructure development. Backend infrastructure includes activities like processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, warehousing etc.
3. 30% of all raw materials have to be procured from India’s small and medium industries, which have a total investment in plant & machinery not exceeding US $ 1.00 million
4. The permission to set up malls should be given to only those cities with a minimum population of 10 lakhs.

5. The government has the first right to procure material from farmers.
6. Products should be sold under same brand internationally.
7. Foreign investors should be the owner of the goods? (Just check it should be brands).
8. The above policy is an enabling policy only and the State Governments/Union Territories would be free to take their own decisions in regard to implementation of the policy.

Post the release of 2013 circular 1the Department of Industrial Policy and Promotion (DIPP) has brought out certain clarifications on FDI policy into MBRT .

On the issue relating to sourcing, the government has clarified that sourcing pertains only to manufactured and processed goods and that it applies only in relation to front-end stores. Further, the term 'small industry' has been explained.

As regards back end infrastructure, it is clear that acquisition is not an option and the retail entity would necessarily have to invest into green-field assets. Similarly, front-end stores would need to be additional units and acquisition of existing stores is not permitted.

Back-end infrastructure in non-FDI permitting States would also be counted as compliance with the conditions for FDI in MBRT under the FDI Policy Circular. Additionally, existing investments by investors into infrastructure or service companies will not be accumulated or be counted towards investment in back-end infrastructure.

The wholesaling entity and the retailing entity should be different units. The entity carrying on 'cash and carry business' will not be allowed to enter into retailing even where all conditions for FDI are satisfied. No franchising would be allowed. All front end stores would have to be MBRT company owned and company operated only.

Clarification in relation to State Policy

Any amendment in the FDI policy itself would fall under the domain of the Central Government. However, the investor would be required to comply with State laws/ regulations. One would think such a clarification should give foreign investors some relief.

However, immediately thereafter another clarification provides that FDI policy in MBRT is subject to the applicable State/Union Territory laws/ regulations. The State Governments have the prerogative of imposing additional conditions accordingly. Which is nebulous, What is the framework within which State/ Union Territory Governments can impose additional conditions? Do the States have unfettered discretion in imposing conditions? The clarifications would seem to suggest so.
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One of the most important aspects on which clarity is awaited and has not yet been provided is 'sourcing restrictions among group companies'. The term 'group companies' has been defined by Press Note 2 of 2013 issued by DIPP on June 3, 2013.

The other clarifications that are pending are in relation to:

•Requirement of 50% investment in 'backend infrastructure' within three years of the first tranche of FDI; and
•Requirement of 30% sourcing from 'small industry'. Whether sourcing from such 'small industry' can be allowed towards fulfillment of this conditionality, if it outgrows, and if so, till what period?

Controversies that are feared to emerge with the introduction of FDI in MBRT:

Issue 1: FDI will lead to closing down of small retail stores, leading to unemployment
Retail is a growing sector, there is no empirical data to suggest that small retail stores would collapse, the entry of pure Indian operatives did not create such a scenario, neither has such scenario been seen in evolved markets as France, the policy conditions of Thailand and South Africa are different from that of India. Organised retail will need more workers and may be an employment generator and would be in larger cities. Further it is mandatory in the FDI policy 2013, that 50% of any investment over a $100 million would be in the backend infrastructure which India lacks would create further jobs as well as infrastructure for developing country like India. It is important to note here that in many European countries and Japan, which are densely populated with high real estate costs, the small retail stores has thrived and flourished even in the face of big retail outlets.

Issue 2: The global players like Wal-Mart, Tesco will have a monopoly over the Indian retail market
Wal-Mart and Tesco will not be a threat to India. As per the FDI policy 2013, Wal-mart and other such stores can come in cities in India with a minimum population of 10 lakhs. In India there are only 53 cities with a minimum population of 10 lakhs. Another mandatory rule is that more than 30% of the raw materials will have to be procured from India's small and medium industry which is a boon to local farmers and suppliers. This may eliminate middlemen who cheat government by not paying tax and create layering which results in a huge differential on price from the farm gate to the retail store.

Issue 3: India doesn't need foreign retailers'; traditional markets and companies exist
This is an argument of erstwhile 'Bombay group' for their vested interest and avoids competition; this has only facilitated the middlemen. With the growing population of India, its economy is comparatively smaller, added with the disadvantage of the limited capital that is available. FDI will not only provide adequate capital for a developing

country like India, it will also introduce new technology.

Issue 4: Only foreigners will benefit from FDI
Another misconception, that has propped up with the introduction of FDI is that Indians will work for foreign retail companies and all the benefit will go to them. But with only 51% limit in multi brand retail sector, most of the profit will remain in India which is another advantage to our economy. Further if FDI is permitted in other arena MBRT cannot be carved out.

Issue 5: Comparing foreign retail companies with East India Company
Another strange controversy that has come with FDI is that as East India Company came as a trader and then captured India, foreign Retail Companies will follow the same policy. It is interesting to note here that South East Asia has long been a focal point for FDI by OECD (organization for economic cooperation and development) based firms. They even attracted investments from rest of the OECD, particularly of United States and Europe. As a result, in the 1990s South East Asia was collectively among the world's largest recipients of FDI. So, South Eastern tigers evolved with FDI, so has upcoming powers as China, it emerged in 1990 as a magnet for FDI with its large and dynamic market and low cost of production. It can be further said that with Current account deficit and looming India's credit rating, FDI inflows are a preferred route of foreign investments to hot monies.

SWOT Analysis of FDI in Retail Sector

1. Strength:

•Major contribution to GDP: The Indian Retail sector accounts for 22% of the country's GDP. India continues to be among the most attractive investment propositions for global retailers.
•High Employment Generator: The retail sector employs 7% of work force in India, which is right now limited to the unorganised sector only. Once the reforms get implemented this percentage is likely to increase substantially.
•Benefits to farmers: In the retailing sector, in most of the cases, the middlemen/intermediaries dominate the interface between the manufacturers or producers and the consumers. Hence the manufacturers/farmers don't get their actual share of profit and it goes in the hands of the middlemen. FDI will resolve this problem as the big companies will buy directly from local farmers and this will benefit the farm sector. The Supreme Court while allowing 51% FDI in multi brand retail also said that " the policy is aimed at throwing out the middlemen, who are curse to the Indian Economy"
•Better Storage Facilities: India has a shortage of godowns due to which every year tons of crops are wasted. Due to the terms and conditions of FDI investments, like the minimum limit of USD 100 million and 50 percent to be ploughed into backend infrastructure, the Indian supply chain is likely to benefit. Sophisticated foreign technology will considerably boost the domestic supply chain through efficient storage and transportation facilities, resulting in minimizing wastage.
•Improved Economic Relation between India & Pakistan: Allowing FDI from Pakistan will strengthen the bilateral economic relations between the two countries. The decision will also facilitate the economic integration in the South Asian region.

2. Weakness:

•Shortage of Talented Professionals: The small retail trade business in India is not considered as reputed profession and is mostly carried out by the family members (self-employment and captive business). Such people are not academically and professionally qualified.
•Highly Unorganised: The unorganised portion of retail sector is as high as 97% as compared to the USA, which is only 20%.

3. Opportunities (benefits):

•Increased employment options: Organised retail will need more workers thus create employment.
•Healthy Competition and check on inflation: Retail giants such as Wal-Mart, Carrefour, and Tesco, already have operations elsewhere and until now, they have not become monopolies. They have rather managed to keep a check on the food inflation through their healthy competitive practices.
•Exclusion of middlemen: Intermediaries and middlemen will be evicted, hence directly benefiting the farmers, etc. The prices of commodities will automatically be checked.
•Reducing Wastage: As per new FDI policy 2013, subsequent creation of back-end infrastructure would reduce wastage in perishable food items like fruits and vegetables.
•Increased Capital: Heavy flow of capital will help in building up the infrastructure for the growing population. India is already operating in budgetary deficit. Neither the Government of India nor domestic investors are capable of satisfying the growing needs (school, hospitals, transport, etc.) of the ever increasing Indian population. Hence foreign capital inflow will enable us to create a larger capital base.
•Efficient: Foreign retail majors have gained decades of experience, technologies and management practices which will ensure supply chain efficiencies.
•It will decrease unorganised labor sector and bring them under organised labor. This will be easier to enforce labour laws and also check its implementation.

4. Threats:

•As per the FDI Policy (Circular 1 of 2013), there are many ambiguities on the conditions given for multi-brand retail sector.

•The United Progressive Alliance government had in September opened up the multi brand retail sector, braving political opposition from inside and outside the coalition and even staked its survival. However, the stiff entry conditions and the fact that only 11 states and union territories have agreed to allow foreign-funded stores have proved to be a big deterrent. Indian retailers feel that the condition in new FDI policy 2013, requiring mandatory fresh investment in back-end infrastructure, will only create hurdles and neither encourage neither foreign players nor domestic firms. Kumar Rajagopalan, CEO of Retailers Association of India also said that these conditions relating to back-end infrastructure will take a lot of time and create hurdles for the foreign companies to enter the Indian Market.

After doing the SWOT analysis of FDI in multi brand retail sector, we can see that there are more opportunities than the threats. Hence, I feel that FDI in retail will help boost the Indian economy in the long run and will protect a positive image of India regarding its liberalization policies. Once these multi-chain retailers establish themselves, they will create infrastructure facilities, and this will help in the reduction of wastage in distribution and storage. FDI will also transform the way perishable agricultural produce is acquired, stored, preserved, and marketed, and thus help control India's persistent food inflation. FDI is an important tool in the economic development of the Indian nation. I feel that FDI can be a powerful tool to improve productivity of Indian Retail Sector. It will positively impact the retail and ancillary industries like supply chain, manufacturing and agriculture and will also integrate the Indian retails sector with the global retail market. So in my view FDI in multi-brand retail sector should be welcomed by all the states as there will be more inflow of money which will boost India's economical condition and the new techniques used by these market players will help local competitors as well as farmers to increase their productivity and efficiency.

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