THE FDI POLICY AMENDMENT AND ITS REPERCUSSIONS

with spl. Reference to China

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The world is on a halt and the majority of it functions through Work from Home, a concept that is not alien to any of us anymore. While technology has made it possible for almost every domain to work within territorial limits inclusive of limited movement of people, it is the Economy that despite all of this is seen stooping down to unimaginable levels, that no one had ever anticipated of. The global economy is about to witness its worst recession since the Great Depression and this fact stands to prove itself, every other day when countries come up with policies to safeguard their economy amidst this pandemic.

The COVID-19 Outbreak and the Great Depression

The Great Depression that took place in 1929 and lasted till the late 1930s is considered the longest, deepest, and most widespread of the Economic Depression Globally that crumpled down almost all the economies down to dust. This term connotes the fact that the Global Economy also has the power to decline dangerously, affecting all the countries collectively. It took years of perseverance and efforts by economists, government officials across all countries to be able to bring back the economies to life and until this year, everything seemed to have paid off.

The COVID-19 Pandemic which originated in the Wuhan District of China was never perceived to be a threat to any of the economies because the repercussions of this virus were unknown to all. The sooner it spread to all countries and the countries initiated a lockdown to fight it, the quicker it was for it to have already created an impact on economies. As of now, people are laid-off, professionals are given unpaid holidays and those who aren't laid off are expected to work from home until all of this ends.

A few countries have their cash reserves at stake, a few have their employment rate decrease to a depressing level, while a few countries already struggling before the Pandemic Outbreak are only depreciating in an unimaginable rate. A common solution that rests within each of the countries is to undertake a few policy changes that come in the forefront to guard the economy and its citizens.

India's stance on safeguarding its economy

India has not suffered as massive as the losses in the Economy than that of the U.S, however, as a precautionary measure, a minute change in the Foreign Direct Investment Policy was made by issuing a Press Note No.3 (2020 Series) dated April 17, 2020. The FDI Policy was reviewed for curbing opportunistic takeovers of Indian Companies due to the current Pandemic and an amendment was done concerning the same.

The Press Note provides that the revised policy now states that all non-resident entities sharing the borders with India can invest in India except for prohibited sectors, only through the Government approval and not otherwise. It further provides that any subsequent change in the beneficial ownership of the entities and/or citizens of the aforesaid border-sharing countries would also require Government approval. Without taking this route, no investments would be permitted. This revised policy now includes China, Myanmar, Nepal, Bhutan, Afghanistan along with Pakistan and Bangladesh.

The aim of this amended policy is simply to put regulations amidst this Pandemic where an account could be made on every investment that comes from countries through entities/citizens of those sharing the borders with India.

Before this amend, this rule was only applicable to Pakistan and Bangladesh while every other country could invest in India via automatic route. This meant that these countries need not go through the rigorous government process that required to comply with a lot of rules and formalities to invest. However, with economies shaking on their foundation in this Pandemic, it is deemed to be an important step in this time to contain not only the virus but also the economy.

This amendment includes every type of investment, whether greenfield or brownfield, listed or unlisted, and does not attempt to distinguish between any. It is presumed that the listed or private companies might find themselves under financial stress as an acquisition in such companies can only occur between buyers and sellers.

This exercise attempts to keep a check on those foreign investments who have access to funds so that they do not take advantage of the economic damage that been created by this Pandemic due to lockdown. The idea of this amendment is to give a boost to the domestic companies so the economic damage created by the COVID-19 Outbreak does not adversely have an impact on them on a larger level. This has been an amendment that is beneficial for India, however, is detrimental to the neighboring investments that now shall have to follow a government procedure to enter the country, and will be on a strict watch.

China's stance on India's FDI Policy Amendment

The Press Note that carries the amendment has raised various speculations about how this revamped policy could have an adverse impact on China, a country that majorly invests in India, with about Rs. 14,846 Crore of investments being made from April 2000 till December 2019 as recorded by the DPIIT data. The other neighboring countries' investments are nowhere close to that of China and it is presumed that this amendment would put estoppel on this figure since government regulations on this would bring down the pace of investment coming especially from China.

This amendment is regarded as a discriminatory practice by China who claims that India has gone against the consensus at the G20 of initiating a free and fair, non-discriminatory environment for investment. It is also claimed that these additional barriers imposed by India, through this amendment also goes against the spirit of the WTO's principle of non-discrimination and has a contrary stance on liberalization and facilitation of trade and investment, the terms which were expected to be followed by a country that boasts of a developing economy.

It is an undeniable fact that India's development is partly driven due to Chinese investments in sectors of electrical appliances, mobile phones, infrastructure, and automobile and it has boosted employment, thus becoming beneficial to India, overall.

Looking at Chinese investments in the past, it is important to note that Chinese tech investors have put an estimated $4 Billion into Indian Start-ups. 18 of India's 30 unicorns are now funded by China and Chinese Mobile Phone brands like Oppo and Xiaomi are in the forefront, leading the Indian market with an estimated share of 72%. The report by Gateway House that claims all of this figures and statistics attempt to show us a transparent picture of how deep-rooted China has been in the Indian markets, that at every corner, there is a Chinese brand that offers a lot more than any of the other foreign investors in India.

Possible implications on China arising due to the policy

China has maintained cordial relations with India and as a result of which, massive investments in the past have been made. The most recent investment decision was that of the People's Bank of China decided to up its stake in HDFC Bank to over one percent.

If anything at all, this is better for India at the moment because the Pandemic has anyway effected economies including India. The smaller domestic units are struggling to make ends meet and if at all there is no regulation made at this point, there is a chance that the foreign investments could consume whatever little has been left in the economy, not leaving anything for the domestic markets to feed on.

If the intentions of the investor are clear and free of malice, then the route of investment in India is immaterial. Approval through the Government Route does not hold any implications on the previous investments, nor does it put estoppel to any future investments.

The Government Route has been mandated as a precautionary measure to keep a check on the activities that take place in the country. If the proposition of the upcoming investment even by China for this matter holds clarity in the government's eyes, the investment will anyway be approved. Considering how every country has its duty to its citizens and its land first, no harm has been created by amending the policy and there are no clear-cut implications that arise.

India's investment fate in the long-run

The analysis of the mandatory government route holds no serious implications for India considering the Pandemic. However, once the Pandemic ends, there is a high chance for prices to surge because of a lack of financial aid from the outside. Considering China's contribution in strengthening India's market, it is needless to say that this market will face pricing issues, demand and supply curve might get hampered. However, every market will shiver before starting to function at a constant pace because every economy is at suffrage due to the Pandemic.

Making government approval necessary for acquisitions in private companies by Chinese investors will only reduce the number of potential investors available for a prospective seller and drive down the valuation. These are investments where Chinese investors bring fresh capital to establish new factories and generate employment in India. With the government route, this will get hampered and there might be a void created in terms of employment and bankruptcy.

While this whole juncture is beneficial in terms of the present situation, this very policy will reciprocate rather adversely in the long run. There is no dearth of investment options for Chinese investors since there are other countries who would be in dire need of investments to boost their economy. However, as of now, the decision of the Ministry seems just in the quest to protect the domestic market and companies whilst protecting their citizens from the Pandemic.