From Hunted to the Hunter

July 24, 2016

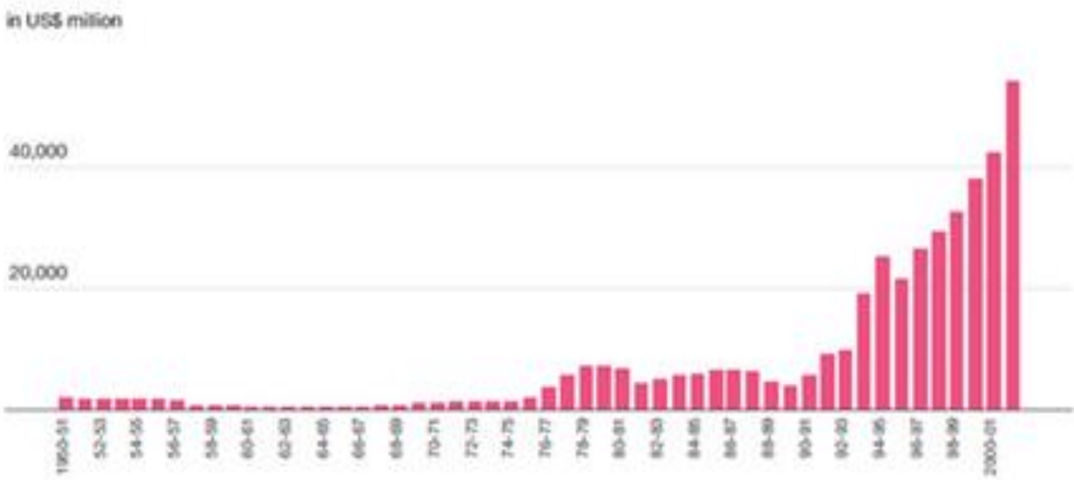
Prior to 1991, the outlook of Indian Government towards foreign investments was restrictive and selective with foreign investments being permitted only in a few designated sectors that to subject to various conditions regarding local sourcing requirements, domestic equity participation, export obligation and local research and development promotion. Further, as a result of strong emphasis on import substitution, practice of license raj, State intervention at the micro level in all businesses, India’s forex reserves started depleting and exports slowed to a trickle pushing the country to face a Balance of Payments problems since 1985. By the end of 1990, India was looking at a serious economic crisis, and with forex reserves sufficient to last only for a fortnight, India had to pledge 20 tonnes of gold to Union Bank of Switzerland and 47 tonnes to Bank of England as part of a bailout deal with the International Monetary Fund to protect the nation from defaulting on its international debt obligations. The Balance of Payment crisis proved to be a turning point, nudging the P.V. Narasimha Rao led government under the aegis of the then Finance Minister Mr. Manmohan Singh to introduce a slew of economic reforms which paved the way for a liberalized Foreign Direct Investment ("***FDI***") policy.

India is now wide-awake

In order to attract foreign investment in high priority industries that needed large investments and advanced technology, the Government of India on July 24, 1991 announced the Statement on Industrial Policy, 1991. Pursuant to the Policy, the Government decided to bless foreign direct investment up to 51% in select sectors under the automatic route and also abolished industrial licensing, dropped tax rates, and abolished public sector monopolies and the requirement to get clearance from the Monopolies Restrictive Trade

Practices Commission for the purpose of expansion by large companies. Technology import was also put under the automatic route subject to conditions relating to payment of lump sum technical fees and royalty. The Policy also allowed export trading firms, hotels and tourism businesses to receive foreign investments up to 51%. The economic reforms introduced in 1991 provided the platform that India **needed** for its growth and progress. To further augment the liberalization policy, the Foreign Investment Promotion Board ("***FIPB***"), an inter-ministerial body, was set up to vet proposals for foreign direct investment in India thus providing a single window clearance to proposals of FDI in India.

The year 1991-1992 saw a total foreign investment of only US $165 million[1]. Since then the investments steadily increased ending the Balance of Payment crisis by the end of March 1994. The Country received an aggregate amount of US $16,698 million till March 2000[2].



India's Forex Reserves [1950-2002] [3]

In the years following the first economic reforms, the Government of India further instituted a series of ongoing economic reforms and further enhanced the sectoral caps and opened up several new sectors to encourage FDI into the Country.

1. http://dipp.nic.in/English/Archive/FDI_STATS/india_fdi_nov05.pdf
2. http://dipp.nic.in/English/Archive/FDI_STATS/india_fdi_November2008.pdf
3. Economic Survey of India 2013-14

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End of the 'draconian' FERA era

The year 1999 marked the enactment of the Foreign Exchange Management Act, 1999 ("***FEMA***") replacing the erstwhile Foreign Exchange Regulation Act, 1973 ("***FERA***"). FERA was introduced much before the economic liberalization era and under which Government approval was required for any transaction having a direct or indirect impact on foreign exchange. Not only was the FERA draconian in nature but the stringent provisions made it incompatible over the years with the changing global economic climate. To overcome such inadequacies of FERA that hindered India's economic progress, FEMA brought about a sea of changes shifting focus from regulation to effective management of transactions in foreign exchange. In order to facilitate external trade and attract greater FDI, FEMA removed the restrictions on withdrawal of foreign exchange for the purpose of current account transactions, except for reasonable restrictions retained on the ground of public interest. The enactment of FEMA was followed by several regulations namely the Foreign Exchange (Transfer or Issue of Security by a Person Resident outside India) Regulations, Foreign Exchange (Transfer or Issue of any Foreign Security) Regulations, Foreign Exchange Management (Export of Goods and Services) Regulations, Foreign Exchange Management (Current Account Transactions) Rule, 2000, Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. These have been progressively liberalized over the years. With the objective of expediting disposal of FDI proposals, the Government of India further reduced the timeline available to FIPB for considering such proposals to just thirty days. The year saw increase in the FDI limit in construction of highways, toll roads and ports raised from 74 % to 100%. The enactment of FEMA successfully provided the much needed framework for orderly development and maintenance of foreign exchange market in the pro-liberalisation era. It is pertinent to note that the introduction of FEMA and the Government's strong resolution towards making India an 'investor friendly destination' led the Government to effect a major overhaul in the FDI policy by adopting a negative list approach *i.e.* allowing FDI in nearly all industries barring a few covered under the prohibited list. This was a paradigm shift from FDI in sectors under the permitted list to FDI in all sectors, other than those in the prohibited list.

Commercial Borrowings by corporate entities

While on one hand, the Government opened the doors for equity investment (under the FDI Policy), on the other hand, the Government soon thereafter also opened the door for foreign currency loans, allowing corporates to avail a mix of foreign equity and/or foreign debt. Development of regulatory policies in relation to borrowings of foreign funds and overseas investments have also played an important role in the economic development of India. The trail of the External Commercial Borrowings (ECB) can be seen right from the 1970s. During the period 1947-1980, the external capital flows in India were restricted to bilateral and multilateral concessional finance. The ECBs did not have any official policy, but were regulated through an approval procedure. Participation in Sumarai market, Deutsche Mark and Swiss Franc public bond encouraged overseas borrowing. The Balance of Payment (BoP) crisis of 1991 demanded an urgent external debt management policy issued under Section 73(3) of the Foreign Exchange Regulation Act, 1973. For the first time, Corporate and Institutions were permitted to raise ECB up to US $3 million under automatic route.

The escalating ECBs between 1991 and 2008 attracted larger borrowings to part-finance import of capital goods and industrial growth (with relatively lower rate of borrowing). In 1999, corporate borrowers were allowed to raise ECBs upto US $20 million under automatic route. This led to the development of the infrastructure sectors such as integrated townships, NBFCs, development of special economic zones, etc. By 2011, RBI further liberalized the ECB limits. Corporate borrowers in real sector-industrial sector-infrastructure can now raise EBCs upto US $750 million under the automatic route and corporate borrowers in service sectors could raise EBC upto US $200 million under automatic route and upto US $500 million or equivalent for remaining entities. ECBs now not only cover the traditional bank loans, but also securitized instruments (e.g. FRNs, FRBs, NCDs, OCPS, etc.), buyers' credit, suppliers' credit, FCCBs, FCEBs.

Expansion of Business Territories

The first policy in relation to Overseas Direct Investment ("ODI") was issued by the Government of India in the 1969 under approval route. The Government of India soon after the liberalization realized the urgency to catch up with the global competition and with the view to have global presence, in the year 1992 the Indian Government for the first time allowed overseas investment under the automatic route. Later, under the 1995 policy on ODI the regulatory compliance in relation to ODI was transferred from Ministry of Commerce to RBI.

Today, an Indian Party can invest up to 400% of the net worth as per the last audited balance sheet and where such investments exceed US $1 (one) billion (or its equivalent) in a financial year prior approval of the RBI will be required to be obtained.

Ready and raring to go

The year 2015 witnessed India emerging as the most preferred FDI destination surpassing China and US[4], when the Narendra Modi government introduced initiatives like 'Make in India', 'Digital India' and 'Start-up India Stand-up India' in order to attract higher foreign investment. With the world's focus now on India, significant amendments were brought about in the FDI policy in 2016 all aimed at attracting investments and have been easing doing business in India. From June 07, 2016 onwards no FIPB approval will be required to be obtained by companies which have previously obtained approval, for additional foreign investment beyond the approved investment limits subject to the condition that the approved foreign equity percentage is maintained and also in case of mergers and acquisitions taking place in sectors under automatic route. Further, clarity has been provided in FDI in the manufacturing sector will now be permitted under the automatic route and manufactures are allowed to sell products through wholesale and/or retail, including through e-commerce platforms, without any government approval. Other key changes includes allowing 100% FDI in sectors like defence, broadcasting carriage services, airport transport services, brownfield airport projects, duty free shops; and the easing of local sourcing norms for FDI in single brand retail trade.

4. http://timesofindia.indiatimes.com/india/India-pips-US-China-as-No-1-foreign-direct-investment-destination/articleshow/49160838.cms

The impact of the economic reforms introduced since 1991 can be gauged from the fact that FDI in India has increased from US $165 million in 1991-1992 to US $40,001million in 2015-16[5] India is now being touted as one of safest and profitable investment bet. It is now necessary to maintain the momentum generated by these reforms to truly translate India in to a world superpower.

India's journey in the last 25 years began with Indian companies being acquired by foreign investors as a result of liberal FDI Policy has over the period translated to Indians expanding their business and acquiring companies abroad due to various reforms of the Government vis-à-vis economic commercial borrowing and overseas direct investment thus taking India from being hunted to becoming the hunter.

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5. http://dipp.gov.in/English/Publications/FDI_Statistics/2016/FDI_FactSheet_JanuaryFebruaryMarch2016.pdf

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