FOREIGN DIRECT INVESTMENT IN RETAIL SECTOR

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Abstract: **Foreign Direct Investment (FDI) is becoming more and more debated topic over the country. There is much of talk going around in all circles regarding FDI. Politicians, for obvious reasons, speak a language of their town, driven by ulterior motives. Most of the times, they are not even knowledgeable to understand the long term consequences of the populist measures and policies they adopt. It would be in the fitness of things if the whole thing is explained in simple and elementary terms. The need for FDI is justified only in two situations: the first is when DDI is not adequate or the second when foreign exchange is needed by the country. Incidentally, in marketing, there is nothing like technology. It is all about consumption, where the sole elements are Brand and Supply Chain management, again nothing basic or infrastructural or technology enhancing. Further, the question arises – why FDI? Will FDI in retail, single brand, banking or insurance enhance our Foreign exchange earnings capacity? Do they really bring employment? Do they bring new technologies into the country? A BIG NO. Hence, FDI in 'consumption' sectors deserves to be out rightly rejected. If it is not, it would simply mean the Government is not working in the interest of the economy, but it is unscrupulously catering to vested interests.**

Introduction
India being a signatory to World Trade Organization's General Agreement on Trade in Services, had to open up the retail trade or issue of security sector to foreign investment. There were initial objections towards opening up of retail sector arising from fear of job losses, procurement from international market, competition and loss of entrepreneurial opportunities. However, the government in a series of moves has opened up the retail sector slowly to Foreign Direct Investment ("FDI"). In 1997, FDI in cash and carry (wholesale) with 100 percent ownership was allowed under the Government approval route. It was brought under the automatic route in 2006. 51 percent investment in a single brand retail outlet was also permitted in 2006. FDI in Multi-Brand retailing is prohibited in India.

Definition of Retail Trade
In 2004, The High Court of Delhi, Association of Traders of Maharashtra v. Union of India, 2005 (79) DRJ 426 defined the term 'retail' as a sale for final consumption in contrast to a sale for further sale or processing (i.e. wholesale). Thus, retailing can be said to be the interface between the producer and the individual consumer buying for personal consumption. This excludes direct interface between the manufacturer and institutional buyers such as the government and other bulk customers retailing is the last link that connects the individual consumer with the manufacturing and distribution chain. A retailer is involved in the act of selling goods to the individual consumer.

Organised and Unorganised Retailing
The retail industry is mainly divided into:
1) Organised and 2) Unorganised Retailing

Organised retailing refers to trading activities undertaken by licensed retailers, that is, those who are registered for sales tax, income tax, etc. These include the corporate- backed hypermarkets and retail chains, and also the privately owned large retail businesses.

Unorganised retailing, on the other hand, refers to the traditional formats of low-cost retailing, for example, the local kirana shops, owner manned general stores, paan/ beedi shops, convenience stores, hand cart and pavement vendors, etc. The Indian retail sector is highly fragmented with97 percent of its business being run by the unorganized retailers. The organized retail, however, is at a very nascent stage. The sector is the largest source of employment after agriculture, and has deep penetration into rural India generating more than 10 per cent of India's GDP. India's Retail Sector (Dec 21, 2010).

FDI Policy in India
FDI as defined in Dictionary of Economics (Graham Bannock et.al) is investment in a foreign country through the acquisition of a local company or the establishment there of an operation on a new (Greenfield) site. To put in simple words, FDI refers to capital inflows from abroad that is invested in or to enhance the production capacity of the economy.Foreign Investment in India is governed by the FDI policy announced by the Government of India and the provision of the Foreign Exchange Management Act (FEMA) 1999. The Reserve Bank of India ('RBI') in this regard had issued a notification which contains the Foreign Exchange Management (Transfer by a person resident outside India) Regulations, 2000. This notification has been amended from time to time.

The Ministry of Commerce and Industry, Government of India is the nodal agency for motoring and reviewing the FDI policy on continued basis and changes in sectoral policy and 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.

FDI Policy with Regard to Retailing in India
It will be prudent to look into Press Note 4 of 2006 issued by DIPP and consolidated FDI Policy issued in October 2010 which provides the sector specific guidelines for FDI with regard to the conduct of trading activities.

FDI up to 100% for cash and carry wholesale trading and export trading allowed under the automatic route.
FDI up to 51 % with prior Government approval (i.e.
FIPB) for retail trade of 'Single Brand' products, subject to Press Note 3 (2006 Series)
FDI is not permitted in Multi Brand Retailing in India.

FDI in Single Brand Retail
The Government has not categorically defined the meaning of "Single Brand" anywhere neither in any of its circulars nor in any notifications.

In single-brand retail, FDI up to 51 per cent is allowed, subject to Foreign Investment Promotion Board (FIPB) approval and subject to the conditions mentioned in Press Note 3 that
(a) Only single brand products would be sold (i.e., retail of goods of multi-brand even if produced by the same manufacturer would not be allowed),
(b) Products should be sold under the same brand internationally,
(c) single-brand product retail would only cover products which are branded during manufacturing and
(d) Any addition to product categories to be sold under
"single-brand" would require fresh approval from the government.

While the phrase 'single brand' has not been defined, it implies that foreign companies would be allowed to sell goods sold internationally under a 'single brand', viz., Reebok, Nokia, and Adidas. Retailing of goods of multiple brands, even if such products were produced by the same manufacturer, would not be allowed.

Going a step further, we examine the concept of 'single brand' and the associated conditions
FDI in 'Single brand' retail implies that a retail store with foreign investment can only sell one brand. For example, if Adidas were to obtain permission to retail its flagship brand in India, those retail outlets could only sell products under the Adidas brand and not the Reebok brand, for which separate permission is required. If granted permission, Adidas could sell products under the Reebok brand in separate outlets.

But, what is a 'brand'?
Brands could be classified as products and multiple products, or could be manufacturer brands and own-label brands. Assume that a company owns two leading international brands in the footwear industry – say 'A' and
'R'. If the corporate were to obtain permission to retail its brand in India with a local partner, it would need to specify which of the brands it would sell. A reading of the government release indicates that A and R would need separate approvals, separate legal entities, and may be even separate stores in which to operate in India. However, it should be noted that the retailers would be able to sell multiple products under the same brand, e.g., a product range under brand 'A' Further, it appears that the same joint venture partners could operate various brands, but under separate legal entities. Now, taking an example of a large departmental grocery chain, prima facie it appears that it would not be able to enter India. These chains would, typically, source products and, thereafter, brand it under their private labels. Since the regulations require the products to be branded at the manufacturing stage, this model may not work. The regulations appear to discourage own-label products and appear to be tilted heavily towards the foreign manufacturer brands.

There is ambiguity in the interpretation of the term 'single brand'. The existing policy does not clearly codify whether retailing of goods with sub-brands bunched under a major parent brand can be considered as single-brand retailing and, accordingly, eligible for 51 per cent FDI. Additionally, the question on whether co-branded goods (specifically branded as such at the time of manufacturing) would qualify as single brand retail trading remains unanswered.

FDI in Multi Brand Retail
The government has also not defined the term Multi Brand. FDI in Multi Brand retail implies that a retail store with a foreign investment can sell multiple brands under one roof.

In July 2010, Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce circulated a discussion paper on FDI in Multi Brand Retail Trading, on allowing FDI in multi-brand retail. The paper doesn't suggest any upper limit on FDI in multi-brand retail. If implemented, it would open the doors for global retail giants to enter and establish their footprints on the retail landscape of India. Opening up FDI in multi-brand retail will mean that global retailers including Wal-Mart, Carrefour and Tesco can open stores offering a range of household items and grocery directly to consumers in the same way as the ubiquitous 'kirana' store.

Foreign Investor's Concern Regarding FDI Policy in India For those brands which adopt the franchising route as a matter of policy, the current FDI Policy will not make any difference. They would have preferred that the overnment liberalize rules for maximizing their royalty and franchise fees. They must still rely on innovative structuring of franchise arrangements to maximize their returns. Consumer durable majors such as LG and Samsung, which have exclusive franchisee owned stores, are unlikely to shift from the preferred route right away.

For those companies which choose to adopt the route of 51% partnership, they must tie up with a local partner. The key is finding a partner which is reliable and who can also teach a trick or two about the domestic market and the Indian consumer. Currently, the organized retail sector is dominated by the likes of large business groups which decided to diversify into retail to cash in on the boom in the sector – corporates such as Tata through its brand Westside, RPG Group through Food world, Pantaloon of the Raheja Group and Shopper's Stop. Do foreign investors look to tie up with an existing retailer or look to others not necessarily in the business but looking to diversify, as many business groups are doing?

An arrangement in the short to medium term may work wonders but what happens if the Government decides to further liberalize the regulations as it is currently contemplating? Will the foreign investor terminate the agreement with Indian partner and trade in market without him? Either way, the foreign investor must negotiate its joint venture agreements carefully, with an option for a buy-out of the Indian partner's share if and when regulations so permit. They must also be aware of the regulation which states that once a foreign company enters into a technical or financial collaboration with an Indian partner, it cannot enter into another joint venture with another Indian company or set up its own subsidiary in the 'same' field' without the first partner's consent if the joint venture agreement does not provide for a 'conflict of interest' clause. In effect, it means that foreign brand owners must be extremely careful whom they choose as partners and the brand they introduce in India. The first brand could also be their last if they do not negotiate the strategic arrangement diligently.

Concerns for the Government for only Partially Allowing FDI in Retail Sector

A number of concerns were expressed with regard to partial opening of the retail sector for FDI. Parliamentary Standing Committee on Commerce, in its 90th Report, on 'Foreign and Domestic Investment in Retail Sector', laid in the Lok Sabha and the Rajya Sabha on 8 June, 2009, had made an in-depth study on the subject and identified a number of issues related to FDI in the retail sector.

It would lead to unfair competition and ultimately result in large-scale exit of domestic retailers. Further, as the manufacturing sector has not been growing fast enough, the persons displaced from the retail sector would not be absorbed there.

Anotherconcern is that the Indian retail sector, particularly organized retail, is still under-developed and in a nascent stage. Therefore, it is important that the domestic retail sector is allowed to grow and consolidate first, before opening this sector to foreign investors.

Antagonists of FDI in retail sector oppose the same on various grounds, like,
That the entry of large global retailers such as Wal-Mart would kill local shops and millions of jobs, since the unorganized retail sector employs an enormous percentage of Indian population after the agriculture sector.
Theglobal retailers would conspire and exercise monopolistic power to raise prices and monopolistic (big buying) power to reduce the prices received by the suppliers;
It would lead to asymmetrical growth in cities, causing discontent and social tension elsewhere.

Hence, both the consumers and the suppliers would lose, while the profit margins of such retail chains would go up.

Conclusion

FDI in retail has a great impact as expectations are also very high. The retail market in India offers an opportunity for large player to operate in retail business across various sectors. FDI in retail will have a far-reaching impact on various aspects of the economy. It should be rolled out in phases and with proper checks and balances, it will give a boost to the economy. Customers will get a wide assortment of quality goods at reasonable prices. They will be able to buy the best brands across various categories. Huge in vestments in infrastructure improves the farm productivity, manufacturing and food processing as well as cold storage facilities. This would reduce the wastage and enhances the level of employment, exports and GDP of the economy. Exports can be doubled in three years. The introduction of technology and good management practices will improve product availability, reduce wastage and improve quality and customer satisfaction. China is an example of successful execution of FDI in retail in a phased manner. The number of small retailers has doubled. Also, exports and GDP growth has continued unabated in that country. China continues to dominate global trade through large-scale FDI investment in the country. So it can be concluded that FDI is a double edged sword which if not handled well can harm the Indian economy and if handled well can act as a cure for economy.

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