Foreign Direct Investment’s in Retails Sector and the Dynamics of Constitutional Sprit - Some Reflections

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Abstract

The ongoing winter session of parliament is agog with the bill on foreign Direct Investment in retail sector. The sessions of Parliament his seeing number of adjournments over the issue. The parties are penchantly divided whether to pass the bill on Foreign Direct Investments in Retails Sector or not as it is affecting not only the big and small scale traders but also the common man on the road.

Keywords: Foreign direct investment, Retail Sector.

Introduction

Foreign Direct Investment has recently become increasingly significant in terms of capital inflow and capital formation which contribute largely to a development of any country. All most majority of the countries in the world have embarked on the road to economic development had to depend upon the foreign direct investments. India since its independence to till 1990 did not allowed liberally foreign direct investments to our country as it harms our economy. Due to signing of General Agreement on Trade and Tariff and balance of payment crisis at that time and resulted us to allow foreign direct investment.

Because of coming into of Foreign Direct Investments in retail sector it would certainly affect small retailers.

Retail Sector in India

Retailing in India: is one of the pillars of its economy and accounts for 14 to 15 percent of its Gross Domestic Power. The Indian retail market is estimated to be US$ 450 billion and one of the top five retail markets in the world. India is one of the fastest growing retail in the world, with 1.2 billion people 1.

Our country’s retailing industry is essentially owner manned having small shops. In 2010, larger format convenience stores and supermarkets accounted for about 4 percent of the industry, and these were present only in large urban centers. India’s retails and logistics industry employs about 40 million Indians which account for around 3.3% of Indian population.

Entry of Foreign Direct Investments in India

Until 2011, Indian central government denied foreign direct investment (FDI) in multi-brand retail, forbidding foreign groups form any ownership in supermarkets, convenience stores or any retail outlets.
Even single-brand retails were limited to 51% ownership and a bureaucratic process.

As per the international obligations the Government of India in November 2011, announced retail reforms for both multi-brand stores and single-brand stores. These market reforms paved the way for retail innovation and competition with multi-brand retailers such as Walmart, Carrefour and Tesco, as well single brand majors such as IKEA, Nike, Apple. The announcement sparked intense debate and criticism both in opposition and in support of the reforms. In December 2011, under pressure from the opposition parties as the present the United Front Government is admixture of various fronts, placed the retail reforms on hold till it reaches a consensus. Again all of sudden the Government of India has announced in month of September 2012, the opening of FDI in multi-brand retail, subject to approvals by individual states. This decision has been welcomed by economists and the markets, however has caused protests and an upheaval in India’s central government’s political coalition structure.

On 20 September 2012, the Government of India formally notified the FDI reforms for single and multi brand retail, thereby making it effective under Indian low. The government decision to allow FDI in retail sector does have cascading effect on the small and unorganized traders who scattered around the country. Their main stay depends upon in retail businesses.

**Clash with Constitutional Mandate**

The legal regimes that controls Foreign Direct Investment in our country and to that extent FDI in retailing includes Press Notes by Department of Industrial Policy and Promotion, the Foreign Exchange Management Act (FEMA) 1999, Guidelines of Reserve Bank of India (RBI), the Competition Law of India, 2000 and the Security and Exchange Board of India (SEBI), and also the Constitution of India.

The Preamble of the Constitution resolves to constitute India into a Sovereign, Socialist, Democratic, Republic and to secure to all its citizens JUSTICE, social, economic and political ....EQUALITY of status and opportunity. The entry of the Foreign Direct Investors in retails sector clearly transgressing achievement of sovereign and socialist principles of the constitution. The main aim of the constitution to attain the egalitarian society where equal should be treated equally. The principles of equality are very much a fundamental right which is enshrined in the Article 14, 15 and 16 of the Constitution. By allowing entry of super powerful multinational companies in retail sector is nothing but bringing powerful to crush the un powerful traders which is clearly transgressing the scared constitutional principles.

By allowing the entry of multinational giants in to the unprotected retail sector also contravening the fundamental right of freedom which is enshrined in the article 19 of the Constitution. The article 19 of the constitution allows citizen of India have the fundamental right to carry of any trade or commerce as the entry does certainly result into shutting down of small and pretty business and trade house across India. The entry of foreign direct investors in retail sector also infringing the fundamental right of life and personal liberty as guaranteed in Article 21 of the constitution. The entry of them certainly leads to severe strain upon life of small and pretty shop keepers. Though the aforementioned fundamental rights are to be guaranteed by the states though the state is nor directly infringing the fundamental rights but action of rights but action of the state in allowing foreign players into the retail sectors certainly affecting the fundamental rights of citizens who are in this kind of business activities.

The Constitution of Indian under part IV enshrines the Directive Principles of State Policy these principles also exhorts the state to establish just, equitable and fair order. Article 39(c) states hat the state should ensure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The allowing of foreign direct investments in the retail sector certainly leads to violation of these principles. Though these Directive
Principles of State Policy features are not enforceable in the Court of Law but the Apex Curt of the land in cases of Kesavananda Bharti v. State of Kerala and Minerva Mills v. Union of India laid down that State has to take initiate to fulfill the obligations enshrined in the part IV [1-4].

Conclusions and Suggestions
The allowing of foreign investments in retail sector may bring some cheer to economic development of the country but simultaneously cascading effect on our economy as it is affect on small and pretty traders. The rulers of India should see take special measures and enact special laws for protection of small traders, pretty business while wanted to implement foreign direct investments in retail sector in India. It is high time that we should bring special legislations which should accommodate that entry of FDIs in retail sector causing any unbearable burden or closing down of small trade business workers and owners those establishments must be accommodated in those sectors only. It is apparently transgressing on constitutional spirit. As the world is changing fast we too adopt the current changes but we should accommodate those changes without damaging the spirit of the Constitution. The Parliament members while debating the issue of direct foreign investments in retail sector must realize that they should not cause any damage to constitutional spirit and they have to behold at any point of time.

References
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