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FDI IN ACTIC REGION RAMPING UP

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INTRODUCTION

The Arctic is a polar region located at the northernmost part of earth. It is geographically and economically rich area which has a future in huge investments and major development opportunities. It is surrounded by six countries- Canada, the United States, Kingdom of Denmark (with Greenland), Iceland, Norway and Russia. The Arctic Ocean is rich in hydrocarbon, mineral and vast unexploited deposits and an extensive portion of the world's unexploited resources like deposits of iron, diamond, oil and natural gas have been far off in this region [1]. The Arctic's resources are estimated worth billions of dollars, approximately \$290 billion a year. 70 percent of this area falls within Exclusive Economic Zones (EEZs) of Border States [2].

In this new era for the Arctic, is the legal and regulatory environment capable to deal with significant new FDI and at the same time protect it? It can be answered to only an extent [3].

Few reports take stock of current FDI patterns at the transactional level with a particular focus on Chinese activity. It explored details like china's strategy and its past FDI with other countries, comparison of FDI laws of six main Border States which might have a moral obligation for Arctic's environmental status [3].

The reports which were conducted relating to FDI in the Arctic suggested a few approaches in order to ensure and promote proper regulation and surveillance of the same. Set of FDI review criteria were, the Arctic development code along with its formation and functions were established. These approaches made an effort to minimize the potential that one state could, by setting lower standards and norms, disobey the environmental and labour guidelines related with resource extraction. The Arctic Development Bank would furnish private engineers with admittance to nearby funding to back framework and asset or resource extraction ventures [3].

There are some major trends helping this region with future developments; climatic changes, accessibility of potential resources, possible sea routes for transportation, technology and innovation [3]. Extractive industries when considered these trends, led to another significant Arctic trend, investment.

New technologies and innovations might put pressure on investors in Canada, US, Iceland and Norway and drive them to provide greater safety and efficiency eventually protecting the Arctic's environment. In a wider sense, it is not just responsibility of the above mentioned six states but the world as a whole can build regional cooperative mechanisms to insure proper development and regulated FDI with suitable infrastructure and enhanced disaster response capabilities. Socio-economic risks are often involved with instant growth and development and might affect underdeveloped countries. To avoid this situation, uncommon consideration should be taken to guarantee that advancement happens in a dependable way and guarantees that the states or countries that are the beneficiaries of the Foreign Direct Investment (FDI) are fit for checking it, controlling the basic actions, instituting shields if a venture fails and the foreign proprietors cannot be considered monetarily meaningful [3].

This circumstance marks new opportunities for innovations as well as point towards alarming situation with urgent need to cope up with foreseeable disasters. Some of the evident climatic changes were coastal erosion, thawing permafrost, unstable ice and changing migration patterns [4]. The accessibility of resources can be used as ice free routes as a way to bring oil safety south. The same, if not carried out with greater safety, can lead to missteps taken by the Royal Dutch Shell during their operation. It resulted in high risks and comparatively no developments.

The brisk development of this region is being compromised with its own natural disadvantage. The climatic changes in the Arctic environment are increasing the risk of exploitation of resources resulting in alteration of accessibility rates as the ice recedes.

Secretary of Defense, James Mattis's response to a questionnaire from Senator Dan Sullivan (R-AK) was, "The Arctic is key strategic terrain. Russia is taking aggressive steps to increase its presence there. I will prioritize the development of an integrated strategy for the Arctic [5]." Non-military security issues and various risks due to outside investment in real estate in Arctic's six bordering countries will be examined in this paper.

As a result of restricted infrastructure, the assets in that region will require greater investments to be extracted. In order to meet the possible high working costs even the best operators and investors will need to merge together. The governance of the Arctic is overseen through nonbinding agreements expedited inside the Arctic Council. These agreements plot methodology for reaction to vessels in trouble, environmental accidents and not submit nations to a lawful strategy or make assets accessible. There is additionally no system for remunerations between states for costs from any kind of accidents like natural disasters and climatic changes [6].

RISK ASSESSMENT

Rules for the Arctic Marine Risk Assessment

The guidelines contains best guiding techniques and information hotspots for leading local and territory wide risk assessments worried about boat traffic activities in the Arctic. The guideline engages the Arctic partners to concur on the best practice techniques and information sources, and make these promptly accessible. It also aims to better comprehend and communicate specific arctic risk influencing factors (ARIFs) into the risk assessment measures.

This guideline applies the risk management process as characterized in ISO 31000:2018. The guideline utilizes the stages of risk management process with some customization to fit the goal of capturing the arctic risk influencing factors [7].

EPPR (Emergency, Prevention, Preparedness and Response) had distinguished a current requirement for a typical way to deal with the marine risk assessments in Arctic locale, and dependent on a checking workshop in 2017, Norway built up a task suggestion that was affirmed in June 2018. The Risk Assessment activity is a development to the Arctic Council Framework Plan for Oil Pollution Prevention (FPOPP, 2015) [8].

Instances of various risks in the Arctic region

China's set of experiences of ecological harm, work misuse and political hardball with advancements in Africa and South America ought to be deciphered as recorded alert to the Arctic countries. There is a route forward where the arctic climate can be adequately secured while its assets are removed; however taking that way will require participation and coordination between the Arctic countries ahead of time and asset improvement [3].

Environmental degradation also has potential social and cultural impacts on the Arctic. The greater part of the high Arctic populace is made out of ancestral gatherings which depend vigorously on the Arctic for the social, cultural and economic traditions. The Arctic which is changing quickly because of the environmental change is getting, questionable for these gatherings. Natural corruption on the top of environmental change impacts could have critical implications for the wellbeing, monetary security and culture of Arctic people groups [3].

In Russia, for instance Greenpeace and others recorded that the Russian oil industries have spilled over 30 million barrels of oil ashore every year; a lot of that near the Komi Republic which is close to the Arctic circle. A portion of this is detected yet suppressed and some is still undetected as a result of huge locales included. Greenpeace likewise gauges that like, 2.6 million barrels advance into the Arctic Ocean through the Pechora River [3].

The political ramifications of the Komi Republic oil contamination, which has generally been underreported because of the Russian control, is a window into what can happen if the asset extraction ventures are begun without legitimate innovation and oversight. As recorded in Greenpeace report the spills have uprooted various indigenous individuals who depend upon reindeer, groundwater, fish and different assets that have been defiled, demolished, or driven from their ranges due to oil contamination [3].

It additionally makes the issue for the district when the oil arrives at the immaculate Arctic Ocean and damages the fisheries possibly producing political grinding among the Arctic forces. As noted, in different places in this report there is a restricted clean up capacity in the Arctic; particularly to remediate the impact of the earthbound leakage into a huge waterway that exhausts into the ocean, checking the degree of the issue is troublesome, on the grounds that the drainage is happening inside Russian regional waters and Russia is reluctant to be straightforward about the degree of the Komi oil disaster [3].

CONCLUSION

It is therefore the investigators contend that the Arctic council needs to accept a more conspicuous in advancing a blended natural guidelines and examinations, particularly as respects the activity of the oil rigs. Other standards that the Arctic Council could support include standards for FDI to ensure that projects are sufficiently well-capitalized to afford self-funded remediation should something go wrong.

“Operating in arctic waters includes risks unlike other regions in the world, such as sea ice, rapidly changing weather conditions and vast distances to emergency response resources. “EPPR recognized the requirement for a typical way to deal with marine risk assessments in the arctic subsequent to screening existing techniques utilized when all is said in done marine risk assessments. We inferred that the systems, instruments and information spread an assortment of necessities and purposes; however that particular arctic risk impacting factors were seldom tended to”, said Jens Peter Holst-Andersen, chair of EPPR [9].

ANALYSIS

Did McDonald’s India on its own try to provoke Vikram Bakshi to avoid any chances of any kind of settlement?

A very obvious move by McDonalds points towards the same. In 2008, the partnership between McDonald’s and Vikram Bakshi, turned sour for the first time after McDonald’s tried to buy out Vikram Bakshi’s 50 per cent share in CPRL. Apart from the operating outlets in eastern and northern regions of India, McDonald’s operation in southern and western India was headed by Amit Jatia’s Hardcastle Restaurants. In 2013, the local business of Domino’s Pizza left McDonald’s behind. This instigated MIPL even more. This feud between the two cost

McDonald's, their expansion plans, as per Bloomberg's report shows. In 2017, the case which reached NCLT earlier was decided in favor of Vikram Bakshi and he was reinstated as MD again following the event of barring McDonald's from interfering in the Connaught Plaza's operations. [2]

The overpricing strategy of McDonald's cost it a fortune.

For a fact, 80 per cent of McDonald's outlets are run under such model including overpricing strategy. The strategy of licensing out "high-valued" brand name in return for a fee to the local entities is preferred by McDonalds. It is know that McDonalds charges royalties from its partners over and above the fee. It is aimed to agree with business opportunities and agreements which eventually turn out to be hassle-free and substantially low on risk; targeting specific areas for its operation. This win-win model ensures high profits for McDonalds. [2]

McDonalds tries to switch sides.

As mentioned earlier in this paper, around 2008, McDonalds India Private Limited offered Vikram Bakshi, an estimate of \$5 million- \$7 million in the process to buy him out of CPRL. Vikram Bakshi refused the said proposal as he enlisted Grand Thornton to value the joint venture. It turns out that the actual value after the valuation stood at \$331 million, what are the odds? This could precisely be the first step to remove Vikram Bakshi out of the picture. The next step can be none other than buying in Jatia, by selling off MIPL's shares in Hardcastle. This is exactly what happened in mid-2010. Things suddenly changed, on one hand, McDonalds was selling off its shares in Hardcastle in Jatia's favor and on the other hand, McDonalds tried to buy Vikram Bakshi out by offering him to exchange his 50 per cent stake at a shockingly low rate. There must be no doubts as to why Vikram Bakshi believed McDonald to be an unfaithful partner. [2]

Uncertainty and absence of a valid justification implied the guilt of being unable to secure the efficient function and handling the fast-food chain.

In 2019, after 6 long years of fight between Vikram Bakshi and MIPL, and after having informed the NCLAT about the possible shot at out of court settlement between the two, including withdrawal of LCIA case and all the other cases against each other, the US fast-food chain, CPRL, was declared in a statement to be wholly owned by MIPL along with its affiliate McDonalds Global Markets Llc and was said to be headed by Robert Hunghanfoo as the agreement between Bakshi and MIPL was not an exclusive one. [Economic Times] And unlike others in the market, McDonalds India did not disclose the financial details of the transaction and instead, in an interview,

it was claimed by Barry Sum, the director of corporate relations for Asia at McDonalds that it will be reviewing over 160 of its outlets in north and east India. To prove its authenticity, he added that for such period of supervision and reviewing, the outlets would remain closed till May. Referring to issues of retrenchment in near future, it was made clear that there will not be any immediate organization restructuring that could supplement any drastic outcomes as a posing as a result of this transaction. MIPL intended to circulate the idea and express its unwillingness to work with Vikram Bakshi as Managing Director by producing following statement to comment upon the expansion plans, “McDonald’s intends to facilitate future growth by continuing to actively progress finding the right development license (DL) for the region” and announced that for such period until the company has secured the potential DL partners for the business, CPRL to be owned by MIPL and its affiliate. Some of the foreseeable partnerships for replaceable possible stake in the joint venture which once existed between McDonald’s and Bakshi were known to be with Kolkata-based RP-Sanjiv Goenka Group and Moon Beverages-Coca-Cola’s largest bottling partner in India. The whereabouts of details as to when a new license would be named were however unknown.

Can the boundaries of Section 397 be redefined after this case?

Vikram Bakshi approached NCLT on the grounds that he was not re-elected as the Managing Director which constitutes to oppression by McDonalds as per section 397 of the Companies Act, 1956. His contention was legally valid, as a result of which the NCLT decided the matter in favor of Vikram Bakshi. This decision by NCLT has broadened the scope for application of the provision on oppression. In the case of SP Jain Vs. Kalinga Tubes¹, the Supreme Court that it is only possible to declare an act oppressive and to invoke the remedies against oppression, when, there is a lack of probity and fair dealing with a member, who is a shareholder and suffers violation of proprietary rights. This determines the capacity of the petitioner to file his complaint implying that the act complained of must affect the petitioner in his capacity as a member or a shareholder and not in any other capacity such as a director or a creditor.

1. ET Online, “Vikram Bakshi is finally out and McDonald’s India is loving it”, Economic Times (May. 14, 2019) <https://m.economictimes.com/industry/services/hotels/-restaurants/vikram-bakshi-is-finally-out-and-mcdonalds-india-is-lovin-it/articleshow/69309704.cms>.
2. Harveen Ahluwalia, “Inside the McDonald’s- Vikram Bakshi Controversy”, Live Mint (December. 29, 2017) <https://www.livemint.com/Companies/Jxj8A0RLE0CkpWOoobaJ6J/Inside-the-McDonalds-Vikram-Bakshi-controversy.html>.

4. AIR 1965 SC 1535.

LITERATURE REVIEWS

1. The article “Warm Arctic, cool continents”, collected facts state the types of potential and valuable deposits that are found in the Arctic Ocean. The main subheads under this are the names of six countries surrounding the Arctic Ocean, types of deposits found in Arctic Ocean. The fact that Arctic has potential to increase the probability and attract Foreign Direct Investments in future makes it relevant to this project.
2. “Economic value of ecosystem services, minerals and oil in a melting Arctic: A preliminary assessment”, mentions the estimated present value of resources. The main subheads under this are value of deposits located and unexploited in the Arctic and the area of the Arctic which comes under the Exclusive Economic Zones (EEZs).
3. From the third paper, “Unconstrained Foreign Direct Investment: An emerging challenge to Arctic Security”, the information related to the reports conducted and reviewed are mentioned. It states details in relation to Foreign Direct Investments in Arctic at transactional level. Approaches made to avoid setting lower standards and norms, disobey the environmental and labour guidelines related with resource extraction are described which makes this a relevant and useful information.
4. The fourth paper, “US Arctic officials don’t expect big policy changes with Trump presidency”, provides statements related to the impact of climate changes in the Arctic. These are stated as undeniable and were mentioned by a former US Coast Guard Commandant and State Department representatives to the Arctic. The urgent need to cope up with the foreseeable disasters in the Arctic region and evident climatic changes are mentioned and thus relates to Arctic FDI potential.
5. From the fifth paper, “Trump’s Defense Secretary Cites Climatic Change as National Security Challenge”, a testimony of James Mattis is stated. It was recorded before a Senate panel recognizing a threat which others in the administration tend to minimise or reject. Here, this content is related and much needed as evidence that some aggressive steps are being taken by Russia to make connections with the Arctic development are provided here.
6. From the sixth paper, “Addressing the Gaps in the Arctic Governance”, the information about absence of basic required guidelines are assembled. These are in relation to the compensation of the costs incurred from responding to accidents or damages caused due to environmental mishap. Ways to reduce high working costs are being mentioned here. The governance of Arctic overseen by nonbinding agreement and its methodologies are mentioned which contribute to the efficient legal process in future FDI.
7. From the seventh paper, “Guidelines for Arctic Marine Risk Assessment”, the guidelines mentioning the Rules for the Arctic Risk Assessment and the objectives are mentioned. These guidelines apply the risk management process as characterized in ISO 31000:2018 and communicate ARIFs, i.e. risk influencing factors into the risk assessment measures which solves the main issue of risk in Arctic region.
8. From the eighth paper, “Risk Assessment Methods and Metadata”, the reason for common need of important approaches to Marine Risk Assessment are stated under this. EPPR recognises the need for

Marine Risk Assessment which is the main objective of this research topic. The Risk Assessment activity is a development to the Arctic Council Framework Plan for Oil Pollution Prevention.

9. From the ninth paper, “Guideline for Marine Arctic Risk Assessment from the Arctic Council”, the statements said by Jens Peter Holst-Andersen, chair of EPPR, regarding the recognition of requirement of risk assessment techniques which contribute and relate to risk assessment process are gathered. Geographical risks and climatic conditions which make operations in Arctic different than other regions are mentioned.

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