



AN APPRAISAL OF INDIA'S FDI POLICY DURING COVID 19 PANDEMIC

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Abstract: Many global economies are on a defending mode by bringing changes to their FDI policy to protect their companies from opportunistic takeovers, following acute slow down witnessed during Covid 19 pandemic. Almost all countries hit by Covid 19 pandemic, followed the same policies at the individual, societal and the macro level with subtle differences. This article highlights the FDI policy changes initiated by India and many other global economies. Many countries felt that they are vulnerable to opportunistic takeovers by China. Opportunistic takeovers by host countries may be considered as predatory takeovers by home country as these takeovers are made when the economies were in shambles. This article also examines why many global economies fear China when it comes to takeovers.

Key Words: FDI Policy, Automatic Approval, Government Approval, Opportunistic Takeovers, Predatory Takeovers.

I.INTRODUCTION:

The FDI policy in India has undergone considerable changes since independence. FDI policy was quite restrictive till 1990 and since 1991 certain relaxations were made adopting structural economic reforms in almost all the sectors of the economy. The FDI Policy in India has been amended time and again to comply with the requirements of WTO as India is a member of GATT/WTO since its inception.

Though Covid 19 pandemic has come into existence in 2019, except China, the global economies felt its impact only in the first quarter of 2020. No country could foresee the devastating affect that Covid 19 pandemic could make on their economies, not even the so called developed economies, to be more precise they were the worst hit. Covid 19 pandemic as shown tremendous impact on the world socially, economically, politically and technologically. The world is witnessing glaring changes in its PEST environment.

One such change that threatened the global economies was their vulnerability to takeover moves, by the companies of other developed / developing countries. Though Covid 19 was evolved in China and played havoc on Chinese economy in the last quarter of 2019, China could minimize the devastating effects of Covid 19 pandemic on its economy, and other global economies could not follow suit. China was also blamed by many global economies of not educating them of the devastating effects of Covid 19 pandemic on Individual, Society and Economy.

Among various changes brought by countries is the change in FDI policy. Many global economies have brought FDI policy changes in their countries to steer clear of any threat that they would encounter from economies that make opportunistic moves related to takeovers in light of weakening of economies in terms of falling stock markets, hence falling share prices that has brought down the asset value of companies making them more vulnerable to takeovers.

India is an attractive foreign investment destination because of its huge population, increased per capita income, skilled labour, low labour cost and stable political environment.

On 22 April 2020, India's Department for Promotion of Industry and Internal Trade has notified changes to the Foreign Direct Investment (FDI) policy of India that has brought into effect the requirement of government approval for investments from countries with which India shares its land border. The policy not only brings new investments into its ambit but also the existing investments where transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in beneficial ownership requires government approval. The move has come in light of the weakening economy and businesses due to Covid 19 pandemic¹.

Some of the global economies feared opportunistic takeovers to take place in general and some economies feared takeovers by China in particular. India shares a border with Bangladesh, Pakistan, China, Nepal, Bhutan and Myanmar. FDI from Bangladesh and Pakistan were already subjected to government approval. Now, China and other border nations of India are added and are required to take government approval for FDI in new investments and for already existing investment. In the current scenario, though India is not very much concerned about its other border sharing nations, it is in particular concerned about China due to its economic prowess and the growing tensions between India and China with regard to border issues².

Coincidentally, it was only China among India's border countries that was unhappy with India's new measures to FDI policy, probably

China wanted to bank upon the opportunities open to it during this crisis. It threatened to lodge a complaint against India with WTO, calling it discriminatory. India is of the opinion that FDI from border nations would be subjected to government approval to protect nation's interest. As WTO has provisioned in favour of crisis, it may not violate any provisions of WTO. Prior to this India subjected FDI from Pakistan and Bangladesh to government approval. China may not succeed as many countries have amended their respective FDI policies to protect their own nation interests, which was very much acceptable under WTO³.

II. FACTORS THAT PROMPTED INDIA TO BRING CHANGES TO ITS FDI POLICY:

1. Coronavirus (COVID-19) hit global economies and global markets badly:

The global economy was thrown into recession following Covid 19 pandemic. Global economy started shrinking and may even witness negative growth. The IMF estimated that the global economy may grow at -3 per cent in 2020, an outcome "far worse" than the 2009 global financial crisis⁴. The current slowdown is considered to be the steepest since the Great Depression of the 1930s. During Great Depression only the western economies were hit as the world didn't emerge as a global village. As the world became a global village, a virus that evolved in Wuhan, China could have its impact globally on PEST environments.

2. Any business is an easy target for creditors and opportunistic buyers keeping in view the long run prospects of the business:

The fall in global economy was first manifested with the drastic fall of stock markets all over the world. Global stock exchanges witnessed short selling and circuit breaking multiple times in a day of trading. Global stock exchanges have changed trading rules to protect their markets from intense volatility and speculative trading as the Covid 19 pandemic started devastating the global economy. Many markets have shortened trading hours and tightened short selling rules. Countries like Philippines, India, Thailand, South Korea, Indonesia, Austria, Greece, Italy, Spain, France, Turkey, United Arab Emirates among others have changed trading rules to protect their markets from intense volatility as Covid 19 pandemic threatened the world economy⁵.

The massive economic slowdown has weakened many businesses of the world, making them attractive targets for creditors and opportunistic takeovers. As businesses become weak, they create opportunity to other businesses and countries for takeovers. In business sense, it may be apt for the businesses intending takeovers. But it is a predicament for the home countries when their businesses were taken over in the hour of crisis especially by host countries. For instance, Housing Development Finance Corporation (HDFC) is India's premier housing finance company in the private sector. Due to Covid 19 pandemic, within a month the stock prices of HDFC fell over 25 per cent. This was considered to be the most opportunistic time for China, as its central bank, the People's Bank of China has taken up 1.01 per cent stake in the lending major HDFC. The central bank of China has acquired nearly 1.75 crore shares in HDFC. The development alarmed and has drawn the attention of the Indian government which prompted it to bring changes in its FDI policy during Covid 19 crisis⁶.

3. New opportunities in the world markets especially in pharma and health , research:

The Covid-19 pandemic apart from weakening economies and businesses has brought in new opportunities in the healthcare and critical infrastructure sectors from an FDI perspective. In mid-March 2020, CureVac AG, a German vaccine firm which was working on a vaccine for Covid 19 was in news over an attempted takeover bid by the U.S.

Due to the mayhem on the Indian stock markets following Covid 19 pandemic Indian pharmaceutical companies were trading at their lowest valuations in the past 8-10 years signaling their vulnerability to takeovers. In tandem with the Indian stock markets, the rupee started falling against the US Dollar. A falling rupee against dollar makes Indian exports more price competitive. For instance, Covid 19 pandemic has brought in opportunities to the Indian health care sector⁷. There was huge demand for India's anti-malaria drug hydroxychloroquine (HCQ) and paracetamol, as these drugs are used for corona virus treatment. India accounts for 70 percent of world's hydroxychloroquine. India exported hydroxychloroquine drug to 97 countries during Covid 19 pandemic⁸.

India has been using imported testing kits for corona virus testing. Many states of India are not satisfied with the quality of the testing kits with respect to their accuracy in testing⁹. Domestic industry started gearing up to cater to the requirements of quality test kits in India. MylabDiscovery Solutions along with Serum Institute of India (SII) Ltd has increased its manufacturing capacity from 20,000 corona virus disease (Covid-19) tests a day in early April to 200,000 tests later. Some more local companies got approval from Central Drugs Standard Control Organisation (CDSCO) to manufacture test kits complying with Indian Council of Medical Research's (ICMR) benchmark¹⁰.

In India, 100% FDI is allowed in pharmaceuticals and medical devices through the automatic route. With Covid-19 pandemic creating new opportunities in the health care sector, and with private sector playing the major role, it became necessary for India to bring in changes to its FDI policy to protect them from opportunistic takeovers¹¹.

4. Many Global Economies brought changes to their FDI rules due to the economic devastation brought by Covid 19 pandemic:

So, every economy affected by Covid 19 pandemic, apart from bringing changes at the individual and society level, started initiating changes at the macro level to protect the economy and national interests from falling a prey to predatory moves by other countries.

As Covid 19 pandemic weakened economies and businesses across the globe, businesses became vulnerable to takeovers, countries were on a defending mode by bringing changes in their fdi policy to protect their companies from opportunistic takeovers.

United States has brought in some changes prior to and during Covid 19 pandemic. CFIUS (Committee on Foreign Investment in the USA) is authorised to review any transaction that could result in foreign control of a U.S. business, as well as certain non-controlling investments in U.S. businesses that afford a foreign person access to information, rights or involvement in specified U.S. technology, infrastructure or data¹².

In light of Covid 19 pandemic, the European Commission on 25th March 2020 has called upon member states to set up a full-fledged FDI screening mechanism and to address proposed acquisition of businesses that would risk security or public order in EU.

The UK government has enhanced power to scrutinise investments in any sector and consider the risks that can arise from hostile parties acquiring ownership of, or control over, businesses or other entities and assets that have national security implications.

On March 29, 2020 Australia also amended its FDI regime, proposing all foreign investments subject to the Foreign Acquisitions and Takeover Act 1975 now requiring prior regulatory approval, regardless of value or the nature of foreign investor in national interest¹³.

On 1st April 2020, Spain has introduced a requirement for prior governmental authorisation for Non-EU investors to acquire 10 percent or more of, or acquire management rights in or control of, Spanish companies engaged in various sectors that are of vital importance to the country¹⁴.

In mid April Italy, has also expanded the list of sectors in which FDI will require prior governmental review. Under the "Golden Power" rules, the government has reserved the power to intervene in vetoing or imposing conditions on fdi transactions, concerning the relevant sectors, that may constitute a threat of serious prejudice to fundamental interests of national defense or security and public interest¹⁵.

On April 18, 2020 Canada also tightened its foreign investment rules. The rules are intended to monitor direct investments and investments by state-owned companies or by investors with close ties to foreign governments in Canadian companies related to public health or critical supply chains to safe guard national security, including the health and safety of Canadians¹⁶.

On April 8, Germany's government tightened rules to protect domestic firms from unwanted takeovers by investors from non-European Union countries¹⁷.

III. WHY GLOBAL ECONOMIES FEAR CHINA ?

1. China is the world's second largest economic power in another 10 years it may become the world's largest economic power:

China manifested phenomenal growth in the last forty years in terms of growth, manufacturing, investment and trade. China took to economic reforms in 1978 and has transformed itself into a 70-year old economic superpower in 2019 with a GDP of \$14.4 trillion. China overtook Japan as the world's second-largest economy in 2010, only next to America and may surpass America's economy by 2030. In addition to its dominance in trade, it is considered to be a low cost manufacturing hub of the world. It is considered to be second-largest source of outbound foreign direct investment and the second-largest recipient of inbound investment of the world.¹⁸ Many countries view China as a threat as it is emerging as an economic power. India definitely views China as a threat due to border issues and its close ties with Pakistan.

2. China is perceived not to be playing gentleman's game:

The nineties was the time when many western multinationals moved to China to take advantage of its cheap labor, low infrastructure costs, tax breaks and lax environmental conditions. In 2000s many small and medium-sized firms from the OECD followed suit. China emerged as a low cost manufacturing hub. Many MNCs have invested in China because of China's huge population, rising per capita income and a new middle class. Hence, China was considered as an economic ally by many global economies especially USA. As China emerged as an economic power it was criticized for ramping up its espionage activities in USA, Australia, Europe and Asia¹⁹.

3. US revoked Chinese takeovers in the USA that were not in the nation's interest:

CFIUS is a voluntary filing regime under which the U.S. government can review any foreign acquisition based on its potential impact on national security, including critical national infrastructure and critical technologies. In March 2020, President Donald Trump ordered Beijing Shiji Information Technology to disinvest its holdings in StayNTouch, a hotel property management system company, as the acquisition was alleged to threaten the national security of US. Similarly, in 2012 President Barack Obama, blocked a Chinese nationals -owned US wind farm firm Ralls Corporation from acquiring a US energy company near a defence facility²⁰.

4. China's One Belt One Road Project is considered by many countries as a push for global dominance by China:

In 2013 China initiated One Belt One Road (OBOR) project, later referred to as Belt and Road Initiative (BRI or B&R) in 2016, is a global development strategy adopted by the Chinese government involving infrastructure development and investments in nearly 70 countries and international organizations with a completion target date of 2049. BRI is intended to enhance regional connectivity.

There is a concern that these projects may fall into the hands of the Chinese themselves if developing nations governments find themselves unable to repay the loans. For instance, Sri Lanka's Hambantota Port, whose debt could not be repaid, has been signed over to the Chinese, giving China access to a strategic commercial and military waterway. Even India objected to China's Belt and Road Initiative as India believes the "China-Pakistan Economic Corridor" (CPEC) project ignores essential concerns on sovereignty and territorial integrity. In future, Pakistan may also follow the Sri Lanka way, which may threaten the security concerns of India.

China's practice of debt trap diplomacy to fund the initiative's infrastructure projects is viewed with suspicion by some global economies as China could gain control of global infrastructure²¹.

IV.CONCLUSION:

To conclude, security concerns and national interests are paramount to any economy. Prior to GATT, many countries were closed economies and have adopted protectionist policies that hampered world trade. GATT/WTO aimed at promoting world trade and investments, member countries were implementing the same. Countries like US and UK have already changed their FDI policy in order to protect their national interests and security concerns prior to Covid 19 pandemic itself. India has already had FDI policy provisions requiring government approval in case of Bangladesh and Pakistan, now it has added border sharing nations with a particular focus on China. Many global economies have also brought changes to the FDI policy, making it restrictive in light of Covid 19 pandemic.

Now the question arises should a country be following WTO provisions in true letter and spirit or should it work in the best interests of the nation in the time of crisis. As such WTO provisions provide member countries to work in the nation's interest when confronted with

negative balance of payments or in the process of economic development. Even WTO has provisioned member countries not to demand for reciprocation and to provide special treatment to least developed countries. One should not forget the fact that David Cameron, Prime Minister of United Kingdom had to resign following a referendum on Brexit that he had lost in 2016. Countries should act in the best interests of the nation, if not acted, may invite a political crisis.

Covid 19 pandemic has weakened economies and businesses across the globe and has paved the way to opportunistic takeovers, countries all over the globe are not in a position to welcome such moves as they consider them to be predatory takeovers, in a way exploiting them at the time of crisis.

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