

Keynote address
India FDI Forum, Singapore
May 14, 2010
--K K Sharma¹

Good Morning, Ladies and Gentlemen,

1. At the outset I want to thank International Financial Law Review for organizing this inaugural India Foreign Direct Investment Forum in Singapore. My personal thanks to Stephen and his team for organizing this event, representing a vast cross section of the decision making legal fraternity-whether in the board rooms or in the consulting chambers- and also for making all efforts to ensure the presence of Competition Commission of India in this inaugural India FDI Forum. At a time when the investors are looking for safe and good places of investment and India partnership in its growth story, it is very timely.

2. The backgrounder for this event mentions that India's Minister for Commerce and Industry has outlined his vision for the country to emerge as world's workshop. It further goes on to state that his bullishness can be partly explained by some impressive statistics. Yes, correct. Only partly. I would like to speak of the rest. He is bullish because he understands the inherent strength of India's economy. The less impact on the Indian economy of the recent economic meltdown is being attributed to a responsible-sometimes called conservative-regulatory systems existing in India. Many a times, a conservative approach is better than a brazen approach. In this brief introduction of the subject, I would like to travel beyond these figures.

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3. When it comes to flow of investment in the form of foreign direct investment (FDI), India, is among the top league but not on the top. The issue arises whether the actual flow of FDI into India is anywhere near her real potential or even the high sounding figures of FDI into India are still a trickle in comparison to the real potential of the country.

4. The FDI, in my view, is a partnership for progress and prosperity. I mean progress for the investment destination and prosperity for the investor. However, no partnership is possible unless the partners know each other well. Before going in for mergers and acquisitions also you do 'due diligence'. If after well informed 'due diligence', a partnership is struck, it is 'win-win' situation for both. One partner reaches a stage of development where it would have reached ten years hence, and the other partner laughs all the way to the bank.

5. The question is whether the process of 'due diligence' about India as an investment decision is fair and well informed. Or is the 'real' India getting lost in the jungle of statistics. When we are on the issue of FDI, comparisons are inevitable. Almost every day you would be seeing the comparisons on FDI front with our worthy neighbor. It is a fact that the FDI inflows to India are not the highest. The reason is contained in an age old management principle: important tasks lose out to urgent tasks if we are not coolheaded. However, I am sure that as top decision makers, or advisors, you should be cool headed, if you aim at long term results.

6. The dilemma of many of your class was very well summed in an article written by a financial analyst about a month ago. It spoke about various problems relating to lack of uniform principles in

decision making and many other serious flaws in the system of governance when you deal with a particular country high on the agenda of investors. What took the cake was the sentence **“the only thing worse than dealing with that country is not to deal with it.”**

7. This is what I call getting lost in statistics while making investment decisions. What are the parameters which decide the hotness of an investment destination? These, in my view, broadly are:

- Return on Investment
- Infrastructure or a lack of it
- Stability or its expectation or certainty about the maverick nature of the system
- Equality before law and rule of law
- Ease of entry and exit

8. When it comes to infrastructure, without doubt, India is behind some other destinations vying for the attention of the investors. No doubt, it causes strain to do business with a country which confronts you with the day to day irritants caused by sub-normal infrastructure. However, we must remember that the developed world was not created in a day. What is important is that there is a realization in the governing political apparatus of the bottlenecks and a will to resolve them. Despite changes in the political complexion, the consensus on economic issues, in India, has never wavered. Those who are keeping a watch on India or are from India would appreciate that there have been numerous occasions when a new political party came to power, took forward the development agenda of previous government, and claimed credit for

it. In these circumstances, it depends on the long term vision of the investor whether it sees infrastructure as a hindrance or an opportunity. It also means a huge market up for grabs in Power, Civil construction, Health, Education and so on and so forth. Pioneers gaze into the future hard and don't look at the path. Christopher Columbus never drove on motorable roads in the territory of his discovery. Nor Alexander, the great, had the luxury of modern gadgets when he set out to conquer the world. Still we remember them today for their vision, grit and determination.

9. What is India? I would like to follow the terminology used in school atlas which all of you would have certainly read. I would like to deal with this question in two parts. What is political India? and What is economic India?

10. What is political India? India is following a political system which has seen more than six decades of functioning without interruption or upheavals unlike political systems, in other countries in the region, of the same vintage.

11. On account of being an inclusive polity, the pace of decision making may be slow but it is steady, certain and has ensured political and social stability. This is in stark contrast to many other alternative destinations. In those destinations, the stability may or may not be there but the political systems may not always follow the canons of freedom – whether of speech or action. There may be a vast majority of citizens whose voices are just not heard. In some circumstances, these may even be crushed. Please don't be tempted with velvet glove but be always mindful of the iron hand inside. When you could join the ranks of those whose voices are not heard is not known.

12. The economics only understands figures and not sentiments. Or we can say that if there are sentiments – economist would try to evaluate and convert them into numbers so that comparisons are on stronger footing. After numbers are in place, the capital flows in the direction of the highest return. My worry is that, perhaps, the conversion factors being applied by the decision makers need some course correction. If it is done, it will be obvious that India is the first choice of investment.

13. Coming back to what is political India. The rule of law, equality and certainty before law, the freedom of speech are the principles deeply cherished in India. On sipping our hard earned freedom, sometimes, we are on a new high as in the case with wine. India is a land where the advocate, paid by the state exchequer to defend a mass murderer, Ajmal Kasab, who killed hundreds in full public view, could say outside the court room, on the day of sentence that his client is innocent and is being framed and comfortably walk away to his office without being lynched. The country, having caught the butcher alive, considered it fit to spend more than \$ 1,000 million on his upkeep and safety so that a fair trial can be ensured over a period of 17 months. The judge who acquitted two of his local accomplices for poor quality of evidence is being hailed as an icon of judicial independence. It is also a country where, you could make wild allegations of corruption against a sitting prime minister and be greeted with a dignified silence and nothing more. There are examples and examples of such nature. This is India.

14. The competition law enforcement has also not escaped from the excess of freedom. The law was enacted in Jan 2003 and amended in 2007. The Commission could be duly constituted on March 1, 2009 and the part enforcement of the competition law

could only commence on May 20, 2009. Thanks to many –a part of inclusive polity- who wanted to be heard in courts.

15. Thus it took nearly 6-1/2 years for even part enforcement of the competition law to commence. In comparison, other countries enacted law much later and are up and running- Singapore being one such example. However the matters before the Commission speak volumes about freedom of expression and action. There are cases of private parties against private parties, cases against the public sector undertakings, cases against the government departments, and cases against the Government /Government policies. This is India.

16. As far as the heady effects of freedom, like all tipsy behavior, are concerned, these are only aberrations and short lived. These can only delay the judicial process but the law does prevail in the end. This rule of law has got its flip side too. The individuals sometime take the freedom to extremes. The result of such extremist behavior of taking freedom a bit too far also includes delays in infrastructure projects. However, this may be short-lived. The democracy has its price. Or I can say, as in the article I referred to, the only thing worse than having a democracy is not having it. This is political India.

17. Now, let us focus what is economic India. During a conference of International Bar Association, on February 21-22, 2010, in Mumbai, an Indian entrepreneur was asked to give his impressions about India today and tomorrow. He spoke about the atmosphere in 1970s where everything foreign was attractive to Indians and they did not have much self-respect for themselves and their products. They used to run after anything having a foreign tag. He stated that while his peers went to foreign shores for making a fortune, he stayed back and struck around. By hindsight, it was a good decision. The actual growth possibilities in India today, some 25-30 years, after

that decision, are much more than could have been offered in developed world. Now, many of his peers are coming or planning to come to India.

18. About a month later the same entrepreneur was featured by a newspaper. In this feature, it was stated that if anybody has lent him Rs 1 lakh , or \$2,000/-, 25 years back when he ventured to start his own, fresh out of management school, it would have been worth Rs 300 crores, or \$ 67 million, today- an appreciation by 30,000 times in a span of 25 years, or a growth of 1200% per annum. This made me look into the multiplier effects of other success stories. Mr Dhirubhai Ambani, founder of Reliance, started a textile company, in 1958, with a startup capital of Rs. 58, 000/- , or say \$ 1,000/-. In 2004, the company had a turnover of \$ 16.7 billion. If you had invested \$1 with him in 1958, it would have grown 3.63 million times every year. Mr. Narayan Murthy borrowed Rs. 10,000/-, or say \$ 200/-, from his wife, as startup capital, in 1981, for Infosys. His turnover, in 2010, is \$ 4.7 bn. If you had invested \$1 with him in 1981, it would have grown 16.2 million times every year. You show me a land of such returns and I will recommend it to Indian investors. This is economic India- a land of opportunities, more opportunities and still more opportunities.

19. As a prudent investor, you keep a balance of 'equity' and 'debt'. Both have their advantages and disadvantages. India may not look like 'equity' offering high returns, in the short run, but it is surely a 'debt' offering mindboggling returns in the long run- only if you had patience and vision. If you want to hit the jackpot, you should have the patience of the size of a jack fruit.

20. I have a strong belief that those who give a hard look to their economic conversion factors and decide India as an investment

destination will never regret. The teething problems of infrastructure etc will evaporate soon. I would agree with you that the pace of development of infrastructure would have been much faster but for democracy. However those who have their mathematics correct and give appropriate conversion factor to our vibrant democracy, will never regret and prosper in the long run.

21. However, as in this conference, so for investing into India, there is 'an early bird discount'. Those who want to join the race for these terrific figures of returns will have to decide early and stick for long.

Thank you.