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The Foreign Exchange Management Act, 1999- A Statute to Be More Proactive To the Growth of The Country.

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ABSTRACT: *The author of this article is trying to unfold the issues involved in the regulatory frame work which created a lot of hassles to NRIs in the utilisation of their hard earned money. Some of the regulations are justifiable on macro basis but it is not possible to minimise the grievances even at micro levels without adversely affecting the general sentiments of economy. A new approach is inevitable other than the conventional views on the current issues which are to be generated in the Indian economy.*

I. INTRODUCTION:

The Foreign Exchange Management Act, 1999 came into force with the main object of managing the flow of Foreign Currency in such a way as to maintain a positive balance of payment and also to retain a comfortable level of foreign exchange reserve in our country. Generally an NRI who is working outside India can remit his earnings in India to NRE A/c, NRO A/c and FCNR A/c. A recent study revealed that the remittance from overseas exceeds 50,000/- Crs in a year. The volume of remittance demands a proper utilisation of this amount for various productive activities or else this will directly create inflation in the country. Let us evaluate the regulatory issues involved in the utilisation of the remittances in the country.

II. LOAN FROM NRIs:

Loan from NRI's are controlled by RBI regulations to minimise its foreign liabilities. Before proceeding further let us consider the regulatory frame work in the following lines (Notification no FEMA 4/2000-RB dt 3rd May 2000-RBI Central office Mumbai):

Borrowing in rupees by persons other than companies in India[100]:Prohibition on borrowing and lending in rupees:

a. Save as otherwise provided in the Act, rules or regulations made thereunder, no person resident in India shall borrow in rupees from, or lend in rupees to, a person resident outside India.
b. Provided that the Reserve Bank may, for sufficient reasons, permit a person resident in India to borrow in rupees from, or lend in rupees to, a person resident outside India.

For the removal of doubt, it is clarified that use of Credit Card in India by a person resident outside Inda shall not be deemed as borrowing or lending in rupees.

Borrowing in rupees by persons other than companies in India:-

A person resident in India, not being a company incorporated in India, may borrow in rupees on non-repatriation basis from a non-resident Indian or a person of Indian origin resident outside India, subject to the following conditions:

(i) the amount of loan shall be received by way of inward remittance from outside India or out of Non-resident External (NRE)/Non-resident Ordinary (NRO)/Foreign Currency Non-resident (FCNR)/Non-resident Non-repatriable (NRNR)/Non-resident Special Rupee (NRSR) account of the lender maintained with an authorised dealer or an authorised bank in India,

[1] the period of loan shall not exceed three years;
[2] the rate of interest on the loan shall not exceed two percentage points over the Bank rate prevailing on the date of availment of loan;
[3] where the loan is made out of funds held in Non-resident Special Rupee (NRSR) account of the lender, payment of interest and repayment of loan shall be made by credit to that account; and in other cases, payment of interest and repayment of loan shall be made by credit to the lender's Non-resident Ordinary (NRO) or Non-resident Special Rupee (NRSR) account as desired by the lender; and
[4] (the amount borrowed shall not be allowed to be repatriated outside India.

Borrowing in rupees by Indian companies:-According to FEMA regulations NRI can invest his money in Indian Company by way of equity investment / External Commercial borrowing (ECB). The equity invest can be made as per FDI regulations envisaged by FEMA. ECB can be availed based on the eligibly of lending and borrowing only and its end use are also restricted. For instance the said ECB cannot be utilised for Woking capital requirement and only for specific foreign exchange requirement As stated above investment in the equity is possible subject to FDI regulations whereas an NRI cannot grant a loan to his Company wherein he is a director or part of management unless routed through ECB regulations and for which a lot of restrictions are there in the utilisation of fund.

Subject to the provisions of sub-regulations (2) and (3), a company incorporated in India may borrow in rupees on repatriation or non- repatriation basis, from a non-resident Indian or a person of Indian origin resident outside India or an overseas corporate body (OCB), by way of investment in Non-convertible Debentures (NCDs) subject to the following conditions;

a. the issue of Non-convertible Debentures (NCDs) is made by public offer;
b. the rate of interest on such Non-convertible Debentures (NCDs) does not exceed the prime lending rate of the State Bank of India as on the date on which the resolution approving the issue is passed in the borrowing company's General Body Meeting, plus 300 basis points,
c. the period for redemption of such Non-convertible Debentures (NCDs) is not be less than three years;
d. the borrowing company files with the nearest office of the Reserve Bank, not later than 30 days from the date - (A) of receipt of remittance for investment in Non-convertible Debentures (NCDs), full details of the remittances received, namely; (a) a list containing names and addresses of Non-resident Indians (NRIs)/Overseas Corporate Bodies (OCBs) who have remitted funds for investment in Non-convertible Debentures (NCDs) on repatriation and/or non-repatriation basis, (b) amount and date of receipt of remittance and its rupee equivalent; and (c) names and addresses of authorised dealers through whom the remittance has been received;

(B) The issue of Non-convertible Debentures (NCDs), full details of the investment, namely; (a) a list containing names and addresses of Non-resident Indians (NRIs)/Overseas Corporate Bodies (OCBs) and number of Non-convertible Debentures (NCDs) issued to each of them on repatriation and/or non-repatriation basis and (b) a certificate from the Company Secretary of the borrowing company that all provisions of the Act, rules and regulations in regard to issue of Non-convertible Debentures (NCDs) have been duly complied with.
(2) The borrowing by issue of non-convertible debentures on repatriation basis shall be subject to the following additional conditions, namely:

(a) the percentage of Non-convertible Debentures (NCDs) issued to Non-resident Indians (NRIs)/Overseas Corporate Bodies (OCBs) to the total paid-up value of each series of Non-convertible Debentures (NCDs) issued shall not exceed the ceiling prescribed for issue of equity shares/ convertible debentures for foreign direct investment in India as specified by the Reserve Bank from time to time, under the relevant regulations, and

(b) the amount of investment is received by remittance from outside India through normal banking channels or by transfer of funds held in the investor's Non-resident External (NRE)/Foreign Currency Non-resident (FCNR) account maintained with an authorised dealer or an authorised bank in India;

(3) The borrowing by issue of non-convertible debentures (NCDs) on non-repatriation basis shall be subject to the following additional conditions, namely:
a) The amount of investment is received either by remittance from outside India through normal banking channels or by transfer of funds held in the investor's Non-resident External (NRE)/Non-resident Ordinary (NRO)/Foreign Currency Non-resident (FCNR)/Non-resident Non-repatriable(NRNR)/Non-resident Special Rupee (NRSR) account maintained with an authorised dealer or an authorised bank in India ,

b) Here the investment is made out of funds held in Non-resident Special Rupee (NRSR) account, the interest on such Non-convertible Debentures (NCDs) shall also not be repatriable outside India; and the maturity proceeds and interest on such debentures are credited only to the Non-resident Special Rupee (NRSR) account of the investor.

Restriction on use of borrowed funds:-

No person resident in India who has borrowed in rupees from a person resident outside India,-

[1] shall use such borrowed funds for any purpose except in his own business other than -

a. the business of chit fund, or
b. as Nidhi Company , or
c. Agricultural or plantation activities or real estate business; or construction of farm houses or
d. Trading in Transferable Development Rights (TDRs).

[2] shall use such borrowed funds for any investment, whether by way of capital or otherwise, in any company or partnership firm or proprietorship concern or any entity, whether incorporated or not, or for relending.

Explanation: For the purpose of sub-clause (iii) of clause (1), real estate business shall not include development of townships, construction of residential/ commercial premises, roads or bridges. When we analyse this particular regulation we can observe that an NRI is not obtaining adequate flexibility in using his fund credited in the NRI account. This is creating a big inconvenience to them as they can make investment in equity capital only which is considered as an anomaly in the FEMA regulations. Any company will require short term financial arrangement which is not fully met with the bankers as they have their criteria for lending.

This restriction is creating a wide range of inconvenience to the NRI Business people. The following issues are involved in this matter:

LACK OF FLEXIBILITY IN THE INVESTMENT

Investment flexibility is the prime requirement normally desired by any investor. When RBI puts a restriction not to allow loan from NRI/NRO accounts to an interested company it is limiting the investment freedom of an investor on his savings. This is not prohibited but to be routed as External Commercial Borrowing (ECB). As stated elsewhere in case of External Commercial Borrowing, there are a lot of restrictions with respect to the end use, Interest rate, eligibility of the lender and borrower etc. which again prevents the freedom of investor.

REDUCTION OF BUSINESS RISK:

If an NRI is prevented from lending his money to a company where he has stake he will be constrained to keep his money only in equity shares which is more risky than a loan as regards an investment is concerned. The requirement of a bridge loan arrangement is a continuous necessity in any business organisation.

BUSINESS REQUIREMENTS:

A corporate enterprise requires constant assistance from its promoter in various ways. Providing an unsecured loan is a very common way of extending credit which is restricted by RBI to an NRI. This is an uncomfortable element in the freedom of an investor especially in the utilisation of his own hard earned money.

NO FURTHER COMPLIANCE REQUIRED

To meet an immediate fund requirement, an NRI should be able to do the same as routing through ECB will consume more time and its regulations again restricts its purpose also.

NO BYPASS TO BANKING SECTOR/ECB

When a genuine investor is using his savings as a loan to his company wherein he has controlling stake it is not bypassing of the affairs of a Banking sector. He is using his savings only and at least this has to be allowed on non-repatriable basis. This restriction has no logic as this an unwarranted one and infringing the fundamental rights of individual freedom.Till 1991 there was license raj in India. There were a lot of unwanted restrictions which adversely affected the growth of the country. Factors hampering the growth engine have to be identified and corrected to ensure the smooth sailing of project execution throughout the country. With the introduction of liberalisation many of such restrictions have been done away with and massive modifications were introduced in the Companies Act and FEMA. These changes saved the country from big economic troubles otherwise it would have been an historical blunder. It was a terrible memory that in 1991, just before commencing the scheme of liberalisation; the foreign exchange reserve was just sufficient for the requirement of two weeks. In a country like India with 120 Crore stakeholders a situation mentioned above is very much alarming. We are all aware that the value of our currency is fastly going down against the international currency especially US Dollars. The main reason for this situation is the slowdown happened in the FDI. Our policy measures have not been effective to bring more FDI in various sectors due to these political interventions. For instance FDI in retail sector. The decision of the Govt.to allows FDI in retail sector could have been come to the country years back and stabilised our economy..

The issues involved have been evaluated with a structured questionnaire collecting the response from 30 companies. All these companies are liable to meet the requirements of FEMA regulations. The study has been initiated through a sample survey and the result has been analysed by using correlation analysis to ascertain the inter factor relations also. The statistical results have further tested by using "t" test and the same has been analysed accordingly. Evaluation of Chart and diagram are furnished below:

Item Statistics

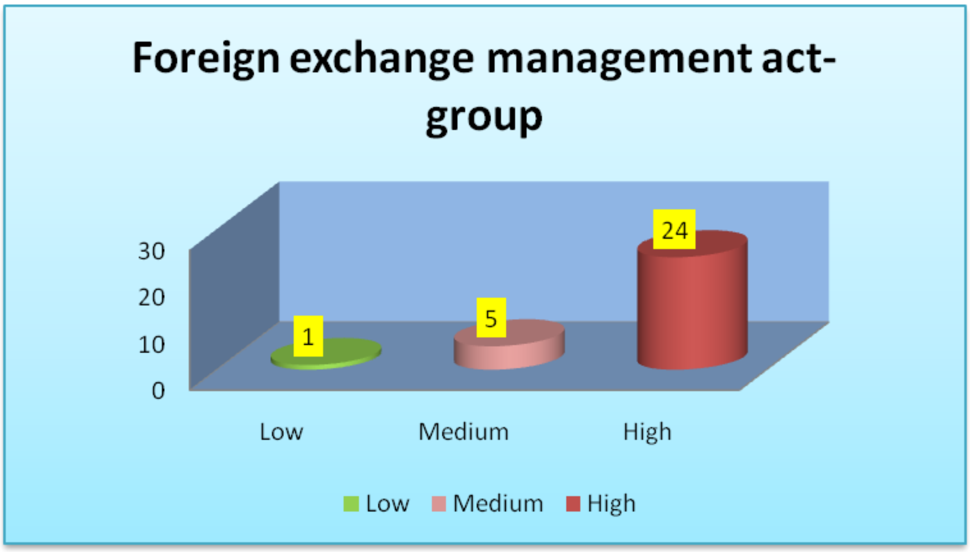
	Mean	Std. Deviation	Mean % score	Rank
Q_45	3.90	1.09	78.00%	12
Q_46	3.73	0.78	74.67%	15
Q_47	3.43	1.19	68.67%	17
Q_48	3.63	1.13	72.67%	16
Q_49	4.07	0.94	81.33%	9
Q_50	3.30	1.21	66.00%	18
Q_51	4.00	0.87	80.00%	11
Q_52	4.23	0.82	84.67%	5
Q_53	4.10	0.92	82.00%	8
Q_54	3.87	0.90	77.33%	13
Q_55	4.27	0.64	85.33%	4
Q_56	4.03	0.89	80.67%	10
Q_57	4.33	0.55	86.67%	3
Q_58	4.27	0.64	85.33%	4
Q_59	3.83	1.02	76.67%	14
Q_60	4.17	1.02	83.33%	7
Q_61	4.37	0.76	87.33%	2
Q_62	4.20	0.66	84.00%	6
Q_63	4.53	0.51	90.67%	1

Table-1

On scrutiny of the above table it is clear that the response is very overwhelming and strongly support that the issue pointed out is very relevant for this study as the subject is very uncomfortable to the respondents. When companies are not allowed to avail loan facilities from the NRI/NRO accounts the matter is very crucial to the Investors.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Low	1	3.3	3.3	3.3
	Medium	5	16.7	16.7	20.0
	High	24	80.0	80.0	100.0
	Total	30	100.0	100.0	

Table-2



SUB VARIABLES OF FEMA

Descriptive Statistics

	Mean	Std. Deviation	Maximum	Mean % Score	t	df	P vslue
Flexibility in the investment	41.30	6.45	50.00	82.60%	3.224	29	0.002
The business risk	33.93	4.93	40.00	84.83%	4.373	29	<0.001
The business requirements	28.10	5.25	35.00	80.29%	1.931	29	0.032
Compliance requirements	20.97	3.34	25.00	83.87%	3.638	29	0.001
Dependence on the banks	39.80	6.28	50.00	79.60%	2.005	29	0.027
Cost of capital	24.40	3.81	30.00	81.33%	2.731	29	0.005
Unwarranted restrictions	29.17	4.59	35.00	83.33%	3.483	29	0.001
Interchanging cost ...	24.70	3.58	30.00	82.33%	3.363	29	0.001

Table -3(Diagram)

FEMA

	Mean	Std. Deviation	Mean % Score	t	df	P vslue
Total	76.27	11.46	80.28%	2.399	29	0.012

Table-4

From the above table the mean % score of FEMA among the respondents 80.28% which shows that level of agreement regarding the FEMA among the respondents is high. To test whether the sample information that we observe in the above tables holds for the population or really the level of agreement regarding the FEMA among the respondents are very high, we formulate the following Hypothesis.

H_0 The mean score of the level of agreement regarding the FEMA among the respondents is 71.25 (75% of 95) is put to test against the alternative Hypothesis
H_1 The mean score of the level of agreement regarding the FEMA among the respondents is greater than 71.25.

To test the above Hypothesis we use one sample t test and the result is exhibited in the above table. From the table the calculated value of 't' is 2.399 which is found to be greater than the tabulated value of 1.699, so the test is significant.

Hence we can conclude that the mean percentage score of the
level of agreement regarding FEMA among the respondents are greater than 75% or the level of agreement regarding the FEMA among the respondents is very high.

From the above table the mean % score of the all the sub variables FEMA among the respondents is above 80% which shows that level of agreement regarding the FEMA factors among the respondents is high. To test whether the sample information that we observe in the above tables holds for the population or really the level of agreement regarding the FEMA factors among the respondents are very high, we formulate the following Hypothesis.
H_0 The mean score of the level of agreement regarding the FEMA factors among the respondents is 75% of the maximum score is put to test against the alternative Hypothesis.
H_1 The mean score of the level of agreement regarding the FEMA factors among the respondents is greater than 75% of the maximum score.

From the table the calculated value of't' is found to be greater than the tabulated value of 1.699 for all the FEMA factors, so the test is significant. Hence we can conclude that the mean percentage score of the level of agreement regarding FEMA factors among the respondents are greater than 75% or the level of agreement regarding the FEMA factors among the respondents is very high.

Findings:

1. The sample issue selected in FEMA 1999 was selected was the problems involved in providing Loan facility to companies by NRIs.This is an acute problem being faced by NRIs as they are not able to support their company in a flexible manner.
   The mean score in this regard is 80.28 % which is the largest mean score obtained in the study indicating that the issue is very serious to them and urgent attention is required to resolve this matter.

2. Response toward the FEMA issues was also very high indicating that the restriction for providing loan to Companies from the NRI/NRO Accounts of NRIs is creating hassles to them. More than 75% of the respondents indicated that the issues pointed out in the questionnaire are true and correct and a revisit is required by the RBI in this regard.

Suggestions:

Unwarranted and out-dated restrictions created hurdles in the development of the country many times in the history of the nation. But in most of the situations, establishment is not ready to come forward and point out the unwarranted regulations in the legal system with the fear that they lose their authorities. The licence raj era culminated to a situation of lowest Foreign Exchange Reserve and the situation was improved once the era of liberalisation came into existence. The process has to be continued to streamline the out-dated things and also to avoid the same for accelerating the growth of the country.

III. CONCLUSION:

There is no dispute that the foreign exchange flaw has to be regulated for maintaining a positive balance of payment. While regulating the foreign Exchange transactions there should be flexibility in the investment. Anyhow FEMA has been changed a lot from FERA. Accordingly some more bold steps are required to make this law more transparent and investor friendly and above all innovative in its approach over and above the classical and conventional methods.

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