

# **THE IBA'S SIXTH BIENNIAL CONFERENCE ON PROJECT FINANCE**

**Washington D.C.  
April 27, 2007**



**Mohit Saraf  
Partner**

# INDIA: STRENGTH & POTENTIAL

**Fourth largest  
Economy (PPP)**

**Most Preferred  
location for business  
in the world: AT  
Kearney**

**Highest returns on  
investment; India 19.33%,  
China 14.25%, Thailand  
13.3%**

**Largest economy in  
the world by 2050  
Goldman Sachs  
BRICS Report**

**Second Largest  
Emerging Market**

**Investment Grade rating  
from S&P (Sovereign  
Credit); Moody's (Foreign  
Currency debt) and Fitch  
(Long term foreign and  
domestic debt)**

**ForEx Reserves  
crossed \$ 200  
billion; more than  
16 times the short  
term debt**

**Liberal & transparent  
investment policies-FDI  
\$ 8 billion p.a.**

# INDIA: GROWTH TARGETS

SECTOR	OPPORTUNITIES
<i>Power</i>	Additional 100,000 MW by 2012
<i>Roads</i>	NHDP (III to VII)- more than 37,500 k.m.
<i>Telecom</i>	5 million new subscribers/month 150% CAGR for next five years
<i>Airports &amp; Aviation</i>	Passenger Traffic Growth @ 35.5% p.a. Greenfield Projects; 35 non-metro airports; Open Sky policy; Augmentation of fleet by airlines
<i>Ports</i>	13.6% p.a. growth in cargo handling (2000-2006); Containerized cargo to grow @ 15.5% p.a.
<i>Real Estate</i>	Market growing @ 30% p.a. Demand for 4-6 billion sq. ft. of new residential housing by 2015

# INDIA: INVESTMENT REQUIREMENTS

SECTOR	REQUIREMENTS (5-7 yr horizon)
<i>Power</i>	\$ 200 billion (\$ 680 billion by 2030)
<i>Railways</i>	\$ 65 billion
<i>Roads</i>	\$ 60 billion
<i>Oil &amp; Gas</i>	Supply deficit of 44 bcm by 2030
<i>Telecom</i>	\$ 22 billion
<i>Airports</i>	\$ 9 billion
<i>Ports</i>	\$ 18 Billion
<i>Real Estate</i>	\$ 60 billion by 2010
<i>McKinsey &amp; Co</i> estimates that India needs \$ 250 billion in infrastructure in the next decade	

# PPP: WHAT WENT WRONG EARLIER?

- **Focus on awarding of contracts & immediate benefits as opposed to viability (tariff)**
- **Piecemeal & ad-hoc reform approach (Focus on Generation- 1<sup>st</sup> Phase)**
- **Financial Issues**
  - Lack of adequate payment security and credit enhancement
  - Bankability of Project Documents –lopsided risk sharing mechanism
  - Lenders' rights not well protected
- **Utility risk v. Market risk**

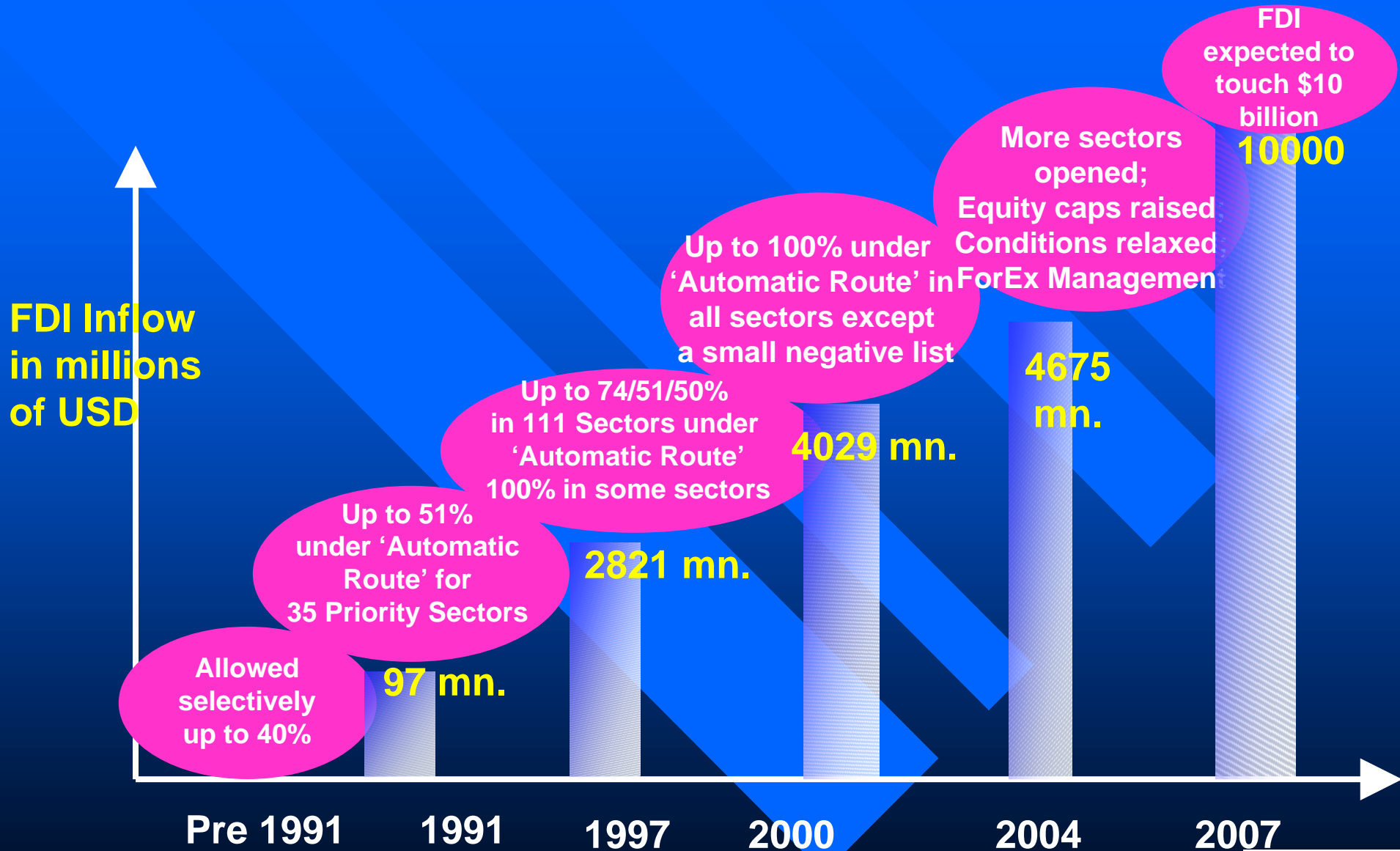
# STATE OF AFFAIRS: TILL 2003

- Contractors are becoming Developers- Changing definition of “Project Finance”
- Corporate Finance replacing project finance
- Classical Developers are unable to take imbalanced risk allocation
- Foreign lenders/foreign equity players have virtually disappeared
- Certain key Indian banks/institutions are funding key projects because of Govt directives
- Can achieve only fraction of infrastructure development
- Most economists believe that India can have secular growth rate of 8% + if infrastructure development can keep pace.

# **POLITICAL & ECONOMIC DEVELOPMENTS**

- **Consensus on growth: Importance of Foreign Investment recognised by all**
  - FDI to be actively encouraged and sought (CMP)
  - Foreign investment sought by WB government
  - Establishment of Committee on Infrastructure and Investment Commission
- **Rise of regional parties and coalition but stable government at centre**
- **Instead of privatization of Government companies we have followed privatization of sectors**

# PROGRESSIVE LIBERALISATION OF FDI



# FDI IN INFRASTRUCTURE

SECTOR	FDI
<i>Power</i>	100% FDI under automatic Route in generation, transmission and distribution except nuclear power projects
<i>Roads</i>	100% FDI in construction and maintenance, toll road
<i>Oil &amp; Gas</i>	100% under automatic route in most cases
<i>Telecom</i>	74% under automatic route
<i>Airports &amp; Aviation</i>	100% FDI for existing Airports
<i>Ports</i>	100% FDI under automatic route

# DEVELOPMENT OF INSTITUTIONAL FRAMEWORK

- **Independent judiciary**
- **Common law based framework with well developed property rights**
- **Rise of Independent Regulators with appellate bodies**
  - **TRAI, ERCs, Competition commission**
  - **State is an interested party**

# POLICY INITIATIVES

- **Stress on competition and viability**
  - **Delicensing**
  - **Shift from single buyer to multiple buyer model**
  - **Open Access (pipelines, power, set top boxes)**
  - **Rationalisation of duties and revenue share**
- **News reports indicate that the RBI may tighten ECB regime**
- **Policies and Guidelines: National Telecom Policy, NELP, Pipeline policy, National Maritime Policy**



# LEGAL AND CONTRACTUAL INITIATIVES

- **Movement towards Model Concession Agreements**
- **Improvement in Security package**
  - Tripartite agreements: step in rights
  - Pledge and other security over property
- **Effective legal remedies for Lenders**
  - Securitisation Act
  - DRT Act
  - Improvement in insolvency regime: Companies Amendment Act, 2002

# SECTORAL INITIATIVES

- **Aviation: Better Traffic Rights and Air Services Agreements**
- **Airports privatized in spite of serious resistance - demonstrating Government's ability to take tough decisions**
- **Oil & Gas: New Exploration Licensing Policy VI (38 blocks)**
- **Telecom: Technology neutral Unified Licensing Regime; Permission for Inter-Circle & Intra-Circle mergers; Increase in FDI Limit**
- **Real Estate: Press Note 2; VCF route**

# POWER

- **Electricity Act, 2003**
  - **Delicensing of generation**
  - **TransCo not allowed to engage in trading of electricity**
  - **No surcharge payable for the sale of power to Discoms**
  - **Obligations to eliminate cross subsidy**
  - **Introduction of competition in the procurement of electricity**

# THE PATH AHEAD

- **Accountability and Transparency**
  - **Ultra Mega Power Projects: Why did most international developers pull out?**
  - **Risk Allocation and Risk Sharing should be in line with international trends**
  - **Harsher penalties on developers for failing to develop projects**
  
- **Coherent and well thought out policies**
  - **Airport Privatization and Commercial Development**
  
- **No roll backs on policies: Policy on SEZs**

# Ras Gas- PLL

- **1<sup>st</sup> LNG project in India- constructed, developed and commissioned by PLL in 2004 at Dahej**
- **Came in the backdrop of Govt failing to honour commitments in Dabhol**
- **Credit rating of Indian was below investment level at the time**
- **Financing largely by consortium comprising Indian and foreign lenders (ICICI, ADB etc.)**
- **Equity – ownership – offtakers (IOC, BPCL, GAIL)**
- **Total payment obligations approx. \$ 30 billion**
  - **Security Structure: Charge over project assets, receivables, FPTRA**
  - **Financing of upstream supply of gas- Security (hypothecation of PLL rights under GSPA with offtakers.**
- **Project Finance & Infrastructure Super Deal of Year Award- 2005**

# Thank you



## Luthra & Luthra Law Offices

New Delhi Mumbai Bangalore

**Tel: (91) 11 4121 5100**

**Fax: (91) 11 23723909**

**E-mail: [msaraf@luthra.com](mailto:msaraf@luthra.com)**

**Website: [www.luthra.com](http://www.luthra.com)**