

Ref.No.: 3083/1/50

16th November, 2020

Dr. Guruprasad Mohapatra
Secretary,
Department for Promotion of Industry and Internal Trade
Ministry of Commerce & Industry,
Room No 157,
Udyog Bhawan
New Delhi

Sub: Blatant violation of FDI policy/FEMA rules and exploitation of the loopholes by multinational retailing giants, Amazon and Walmart, due to inaction of Government of India

Dear Dr. Guruprasad Mohapatra Ji,

1) We, the Confederation of All India Traders (“CAIT”), are the associations of over 6(six) crore small and medium businesses and individuals. Our association has been requesting your good office to take appropriate steps and investigate, punish and penalize the multinational companies like **Amazon** and **Flipkart** (*owned by foreign multinational company ‘Walmart’, interchangeably used hereinafter*) for the blatant violation and/or by exploitation of the loopholes of the FDI policy and Foreign Exchange Management Act/Rules (“FEMA”).

2) Sir, as you are aware that retail trading is the lifeline of Indian economy and provides employment & livelihood to more than 25% of the Indian population. Therefore, the objective of the present FDI policy and FEMA Rules is to ensure regulation and oversight of the Government of India in Multi-Brand Retail (“MBRT”) sector and inventory-based model of e-commerce that being the electronic version of MBRT.

3) Needless to say that crores of Indians (*from MSME manufacturers of retail goods to the neighborhood ‘kiranans’ that serve the end consumer*), who are member of our association have been heavily impacted by the prevalence of multinational conglomerates like Amazon and Walmart, who have virtually unlimited financial resources and a track record of destroying indigenous businesses in markets where they operate by selling low cost and low quality imported goods and pricing local sellers out of the market. In India also, lacs of people are getting unemployed every month due to the capital dumping and predatory pricing by these multinational companies.

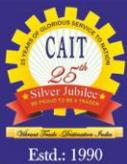


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4) Through the FDI policy, Government regulates the entry of foreign players in MBRT and infact has totally banned foreign investment in inventory-based e-commerce. This is done to address any adverse impact on local industry and to preserve the level playing field. The foreign investors are therefore required to make full disclosure of the proposed investments so that a holistic appreciation of the impact of the FDI can be undertaken by the Government of India. Even while granting consent for entry of a foreign entity into the MBRT sector, the Government issues the requisite directions to protect domestic interests, such as requiring domestic sourcing of certain products/services.

5) In recent past, we have been examining various public statements & documents pertaining to the investments made by both Amazon and Walmart and it has come to light that both these companies have been conducting their activities in **blatant violation** of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (“FEMA Rules”) and completely oblivious of the fact that India is not a banana republic, instead, it is the largest democracy of the world and is governed by rule of law. The relevant provision of FDI policy/FEMA rules are enclosed at **Annexure-1**.

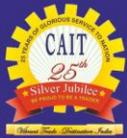
6) Under the FEMA Rules, Foreign Direct Investment (“FDI”) in multi-brand retail is allowed only with prior approval of the Government of India and numerous conditions might have be imposed on the entrant with respect to, inter alia, the sourcing and retailing of goods. We have no doubt that if Amazon or Walmart had complied with law and sought the prior permission of the Government of India to enter in the MBRT sector, such entry even if allowed would have been made subject to numerous restrictions tailored to ensure that they are not permitted to engage in monopolistic or anti-competitive activities and grow their business at the cost of the domestic Indian retail sector. Further, no permission for FDI could have been granted for inventory-based model of e-Commerce being been pursued by both of these companies by the way of indirectly controlling the inventories of most prominent sellers on their e-commerce marketplace platform.

7) The above-mentioned restrictions imposed by FDI policy/FEMA rules are precisely the reason that these foreign companies have sought to mask their entry in India, both in MBRT & inventory based e-commerce, and operate free of any such restrictions by adopting some of the illegal structuring/investments and practices described below:

a. **Amazon controlling Future Retail Limited (“FRL”), a multi-brand retailer:**

- i. FRL is a listed company and related to the Future Group. The Future Group has over 1600 multi-brand stores in the country and runs and promotes various brands.





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- ii. The latest revelation by Amazon during the arbitration proceedings at Singapore (SAIC) clearly shows its control over FRL. Amazon has equivocally claimed that it has absolute control over FRL through the shareholder agreement between Amazon and Future Coupons Private Limited (“FCL”).
- iii. While FCL has only 9.2% equity participation in FRL, but by the way of shareholder agreement between Amazon and FCL, it has full control over FRL. Such control is exercised in following manner: -
 - (a) The control over the affairs of FRL was transferred from other Kishore Biyani entities to FCL.
 - (b) Thus, FCL has key control rights over FRL.
 - (c) These key control rights were taken over by Amazon through FCL SHA.
 - (d) Amazon took a power of attorney from FCL to exercise FCL rights over FRL.
 - (e) Further, the voting on the shares of FRL, held by promoters (other than FCL) had to be exercised in the same manner as exercised by FCL (i.e. Amazon through power of attorney).
 - (f) As per our information, they never disclosed to SEBI or/and other Indian authorities was that all the rights of FCL in the FRL shareholding agreement were handed over to Amazon through the shareholding agreement between Amazon and FCL. Thus, surreptitiously, Amazon acquired control over FRL.
- iv. A copy of detailed letter. by CAIT in this regard is enclosed as **Annexure-2**.

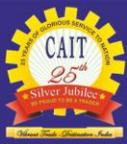
b. **Amazon controlling More Retail Limited (“MRL”), a Multi-brand retailer:**

- i. Amazon indirectly invested around Rs. 4,200 Cr and took over control of More Retail Limited (“MRL”).
- ii. MRL was earlier owned by the Aditya Birla Group. It was was bought by one Witzig Advisory Services Private Limited (“Witzig”) in 2018.
- iii. Amazon has thereafter invested in Witzig, and as a result of certain internal arrangements, Amazon effectively controls MRL.

c. **Walmart(Flipkart) controlling Aditya Birla Fashion & Retail Limited, a Multi-brand Retail company:**

- i. Flipkart (a wholly own subsidiary of Walmart) has invested in Aditya Birla Fashion Retail limited (“ABFRL”), a multi-brand B2C retail company.





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- ii. The statement filed by ABFRL with Stock Exchange shows that Flipkart Group (owned by Walmart) is buying equity in ABFRL. Flipkart Group operates various e-commerce marketplace platform in the name of Flipkart, Myntra etc. In its filing to stock exchange, a clear intent to make ABFRL a preferred seller on the marketplaces owned and operated by Flipkart Group is shown.
- iii. We have already written a letter in this regard seeking your intervention and taking necessary action. (**Annexure- 3**)

d. **Flipkart is directly/indirectly controlling the sellers and/or their inventory on their e-commerce marketplace platform:**

- i. We have, at numerous occasions, brought to the notice of the authorities about the operation of inventory-based model of e-commerce, that is prohibited to foreign companies, by Flipkart.
- ii. Flipkart has been controlling the inventories of the goods and services being sold on its e-Commerce marketplace platform operated by its e-commerce marketplace entity named Flipkart internet services Limited. Such control is exercised through sale of goods and services through its Affiliate companies, such as WS retail, Omnitech retail etc.
- iii. By this way, Flipkart has been in blatant violation of FDI policy and FEMA rules.
- iv. A copy of our previous communication in this regard is enclosed at **Annexure 4.**

e. **Amazon directly/indirectly controlling the sellers and/or their inventory on their e-commerce marketplace platform:**

- i. Amazon also is operating an inventory-based model of e-commerce that is prohibited to them being a foreign company.
- ii. Amazon has been controlling the inventories of the goods and services being sold on the e-Commerce marketplace platform operated by its e-commerce marketplace entity named “Amazon Sellers Private Limited”. Such control is exercised through sale of goods and services by its Affiliate companies, such as Cludtail and Appario Retail, Cludtail pantry, Amazon Pantry etc.
- iii. By this way, Amazon has been in violating the FDI policy and FEMA rules.
- iv. A copy of our previous communication in this regard is enclosed at **Annexure 5.**



f. **Amazon Retail Pantry selling multi-brand food products on its e-commerce marketplace platform:**

- i. Amazon Retail Pantry has been engaged in sale of grocery item under the garb of food products.
 - ii. Section **5.2.5** of the consolidated FDI policy is meant to facilitate the manufacturers/producers to sell their manufactured goods or produced food items through e-commerce.
 - iii. Section 5.2.5 in FDI is dedicated to manufacturing/production and therefore it cannot allow retail trading of multi-brand food products either through physical stores or through e-commerce by any stretch of imagination. As such situation would contravene with the provisions of the especially casted sections of the FDI policy, i.e. **5.2.15.1 to 5.2.15.4**, on Retail trading and e-commerce.
 - iv. A copy of our representation dated xxxx is enclosed at **Annexure-6**.
- 8) As explained hereinabove, Amazon.com through Amazon India has also put in place illegal, pre-determined structures with pre-agreed arrangements with retailers/sellers, as to pricing, exclusive tie-in agreements, offering deep discounts, etc. completely violating the FEMA Regulations / Rules / Press Note 2, which governs e-commerce market-place entities. Amazon has reportedly invested in excess of Rs. 35,000 crores for capturing the e-commerce market and in the process has caused a **death knell for crores of small merchants in India**.

- 9) Amazon's known investments in flagrant and complete violation of FEMA Rules and Regulations are as follows:

D. Amazon India – Rs. 35,000 crores

E. More Retail – Rs. 4,200 crores

F. Future Retail – Rs. 1430 crores

Total – Rs. 40, 630 crores

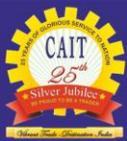
- 10) Similarly, Walmart's known investments in India are as follows:

A. In Flipkart internet services Private Limited- USD 17.2 bn (Appox Rs 1.28 Lakh Crores).

B. ABFRL – Rs. 1500 crores

Total – Rs. 1.295 Lakh crores





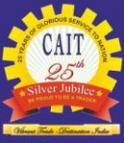
virtually unlimited resources and a proven track record of decimating the local industry in countries where they have gained entry. As a consequence of the violations by Amazon & Flipkart which have gone undetected/unchecked by the Government, the livelihoods of the entire Indian retail supply chain, mostly comprising small and medium traders/ enterprises (*including thousands of members of our association*) have been put at risk and their interests prejudicially affected. **The actions and violations by Amazon/Flipkart are contrary to public interest and the people of India.**

- 12) It is also pertinent to mention that even though the FDI policy expressly state that retail trading, in any form, by means of inventory-based e-commerce, shall not be permissible for companies with foreign investment, both Amazon and Flipkart has been retailing the prominent brands of the companies which they control directly or indirectly either through equity or otherwise, as explained above.
- 13) Therefore, both these companies are in violation of the provisions of the FDI policy and FEMA Rules and *inter alia* attracts imposition of the penalty specified in Section 13 of the Foreign Exchange Management Act, 1999, namely, monetary penalty up to three times the sum involved in the contravention. Additionally, the Enforcement Directorate may direct that “*any currency, security or other money or property in respect of which the contravention has taken place*” shall be confiscated to the Central Government and that the foreign exchange holdings of the person(s) committing the contraventions shall be brought back into India, as the case may be.
- 14) From the facts narrated above, it is evident that both Amazon has not only committed a self-evident violation of the applicable FDI law, but they are flaunting such violation in legal proceedings shielded from the public eye to stop implementation of a scheme that extended a lifeline to thousands of our members and other brethren in the entire MBRT supply chain. Amazon cannot be permitted to reap the benefits of its violation of Indian FDI law, particularly when the cost of these violations is borne by the average Indian citizen.

15) Amazon’s and Walmart’s activities in India raises the following questions:



- i. Will the sovereignty of the nation prevail or multi-nationals like Amazon and Walmart be allowed to trample the laws of the country?
- ii. Will large global corporations who operate to the detriment to the people of India be allowed to go scot free?
- iii. Will Amazon/Walmart be made to realize that no one is above the law of the land?
- iv. Will Amazon/Walmart be made to realize that India is not a **banana republic** and is instead the largest democracy of the world and is governed by rule of law.



16) Our Requests:

- a. In view of the facts and blatant violations set out hereinabove, it is requested that your good office should promptly penalize both Amazon and Flipkart for the various violations and offences under the Foreign Exchange Management Act, 1999 and the rules/regulations framed thereunder.
- b. Applying Section 13 of the Foreign Exchange Management Act, 1999, the monetary penalty at three times the investments that are in contravention, Amazon will be liable for a penalty amounting to over Rs. 1,20,000 crores and Flipkart will be liable for a penalty amounting to over Rs 3.8 Lakh crores.

We shall be happy to provide any further information required by the authorities.

Thanking you. With kind regards

Yours truly

Praveen Khandelwal

National Secretary General

Contact Cell : +91-989105165



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