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## The Amazon-Future Deal and the Competition Commission of India

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*From the November of 2019 till date, the Amazon-Future Legal Battle is always in news. With both the parties approaching all the necessary Legal Provisions available. The emergence of the deal between Future and Reliance has indeed become the sole reason for the ongoing tussle to enter the Indian Retail Market. With the Competition Commission of India nullifying the prior approval it had granted regarding the Amazon-Future Deal the Case has now taken Complicated Turns. The Paper is an attempt to analyze the developments regarding the Amazon-Future and CCI Saga.*

**Keywords:** *arbitration, logistics, emergency arbitrator.*

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### INTRODUCTION

The Amazon-Future Deal has been in the News for Quite Some Time, but it recently made it to the Highlights because the Competition Commission of India (CCI) has recently nullified its Prior approval of the Amazon-Future Deal. The Deal first came into existence back in November 2019. In the recent order, the Competition Commission of India also imposed a Penalty of INR 200-crores on Amazon and also a deadline of 60 Days to comply with the Payment. But the move of the CCI is Iconic as it is the first time that the approval awarded by

the CCI has been revoked and also the Penalty amount imposed is the biggest till date as Amazon failed to notify the CCI of its actual intentions while investing in the Future Group. The CCI however has briefly approved the Reliance-Future Combination in November 2020. The interesting and peculiar fact is that all these approvals and revocations were decided by the body consisting of the same members.

The CCI has stated that the major reason for the revocation of the approval granted in 2019 was that it had come to the notice that Amazon knowingly misled the CCI with an ulterior motive of acquiring Future Retail once the Foreign Investment Laws (FCL)<sup>1</sup> were Relaxed. Amazon had earlier stated that the motive of its engagement with Future Coupon Retail Ltd. (FCPL) was its interest in working with Future Retail. But now it has come to the Notice of the CCI that the actual motive was with the Intention to set its Foot into the Indian Retail Sector. The CCI said Amazon's plan was to acquire stakes in Future Retail in a timeline of 3-10years. Amazon however is confident in winning a stay regarding the acquisition of Future Retail by Reliance Industries Ltd. (RIL) in the Singapore International Arbitration Centre (SIAC). The CCI through the exchange of Several Internal Emails has determined that Amazon was on the watch out to acquire Future Retail once the Foreign Investment Laws were relaxed. Amazon had planned that when the Foreign Investment laws are relaxed and the acquisition of stakes was permitted to the Foreign Brands it would set foot into the Future Retail slowly expanding itself into the vast Indian Retail Market. But in order to understand the Amazon-Future-Reliance tussle, the timeline from 2019 is required.

## THE START

Back in 2019, the E-Commerce Giant Amazon decided to invest an amount of INR 1500 Crores in exchange for 49% Stakes in Future Groups which is almost nearly half of the Stakes. Amazon bought stakes in Future Groups because Future Groups control almost 7.3% of Equity in Future Retail through Convertible Warrants. The deal also gave Amazon the Option of buying into Future Retail after a time period of 3-10years. But things turned sour when Future

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<sup>1</sup> 'Foreign Investment: Report of the Steering Group on Foreign Direct Investment' (Niti.Gov.in) <[https://niti.gov.in/planningcommission.gov.in/docs/aboutus/committee/strgrp/stgp\\_fdi.pdf](https://niti.gov.in/planningcommission.gov.in/docs/aboutus/committee/strgrp/stgp_fdi.pdf)> accessed 06 January 2022

Group signed an agreement with Reliance Retail. With the new agreement Reliance Retail gained control of the Retail, Logistics, Warehouses, and Wholesale business. The Future Group has several units under its Umbrella which include Big Bazar, Brand Factory, Food world to name a few.

## LEGAL BATTLE

Once the Pandemic hit India, Future Group suffered in Sales and Business, the only way out for the Future Group was to get into the agreement with RIL as the Future Group was suffering to manage its debt. The nationwide lockdown added immense stress to the financial health of Future Group, many of the lenders including the State Bank of India (**SBI**). The deal with RIL was estimated to be worth around INR 24,713 Crores. Amazon then decided to sue Future Group at Singapore International Arbitration Centre (SIAC) in relation to the deal with Reliance. The SIAC after reviewing the case ruled in Amazon's Favor and imposed a stay on the Future-Reliance Deal. The Singapore Arbitration also stated that the deal cannot go through until the matter is decided by it.

Moreover, Future Retail was also barred from moving forward in any way to dispose or impede its assets or insuring any securities to secure funding from restricted parties. This Judgement put Future Group in a fix they could not agree and proceed with the deal with Reliance or any other party who is restricted. This clause was the one that was signed by Amazon and Future Group: “a non-compete clause”<sup>2</sup>. This now caused turmoil for the Future Group, they moved to the Delhi High Court and accused Amazon to be an American Entity that was getting involved in a deal between two entities of Domestic Origin. Meanwhile, the CCI approved the Deal between Reliance Retail and Future Retail.

The Delhi HC in its Judgement approved of the Reliance-Future Deal and upheld the Future Boards' intent to sell its stakes to Reliance Retail, but gave Amazon Group the option to approach the regulators. The court also ruled that the Future Groups' claim of Amazon's interference was valid. The SIAC constituted a panel to look into the case and pass the final

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<sup>2</sup> Indian Contract Act, 1872

verdict. Amazon approached the Delhi HC again challenging its earlier order and asked the HC to consider the enforcement of the Singapore Emergency Arbitrator (EA) Award.

The award had barred Future from proceeding with Reliance. The Securities and Exchange Board of India (SEBI) gave its approval to the Reliance-Future Deal but expressed its view that the Future-Reliance Deal must be dealt with the outcome of Court decisions only. The Delhi HC in its new decision ruled in favor of the American E-Commerce Giant stating that the EA's award was very much valid and enforceable. But this Judgement, however, did not last long as the Division Bench of Delhi HC decided to give Future Retail Relief from EA's award. EA's award or Emergency Arbitrators award is used to seek urgent relief from an arbitral institution rather than the court. EA's award is given by many renowned arbitral institutions such as SIAC, the International Chamber of Commerce (ICC), and the London Court of International Arbitration (LCIA). The Emergency Arbitrator is appointed by the formal constitution of the arbitral tribunal by the arbitral institution. Amazon aggrieved by this decided to move to the Supreme Court of India (SC).

The two Companies had also approached the National Company Law Tribunal (NCLT). The Future Group had notified SEBI that Future Retail along with 6 of its other companies would conduct a trust vote to finalize the Future-Reliance Deal. Permission for the same was granted by NCLT, however, it was later revoked after Amazon approached the SC. But the NCLT approved the meeting of the Reliance Group. When the NCLT approved the meeting of the shareholders of the Future Group, Amazon moved to the Supreme Court challenging NCLT's decision to approve the Future Groups Shareholders meeting. The plea filed was fresh and challenged NCLT's approval. The SC however agreed to allow Future Group to approach the NCLT to get its approval for the Future Retail-Reliance Retail Deal. Amazon however approached the Supreme Court of India to deal with the validity of the Future-Reliance Deal.

A single bench of the Delhi HC passed the order stating that the SIAC order needed to be compiled with direct assets from the Future Promoter Director Kishore Biyani. But after a time period of almost a month, the order stayed. As many big and mediocre businesses succumbed, the giants in the market both Domestic and International wanted to envisage new and more prospective business markets. The Supreme Court of India decided to hear the case concerning

the ongoing legal battle between Future and Amazon. In *Amazon.Com NV Investment Holdings LLC v Future Retail Limited & Ors*<sup>3</sup>. The SC upheld the EA's Award and the Judgment by the single-Judge bench of the Delhi HC, which was a setback to the Future Group.

With the growing financial stress and debt re-payment businesses in the country were trying to substantiate overcome the debt situation. The deal struck between Reliance Retail-Future Retail involved several amalgamation steps which include a merger between the entities of Future Group to carry out the required business target into the Future Enterprise Ltd. (FEL). Transfer of FEL will indeed cause concern to sub-units of Reliance Retail which include Reliance Retail Ventures Ltd. (RRVL) and Reliance Retail and Fashion Lifestyle Ltd. (RRVL WOS). The CCI observed the deal among Future Group, RRVL WOS, RRVL exhibited horizontal overlap at a broad level of the retail/B2C sector. The CCI analyzed and assessed that when it comes to the Retail Sector or B2C sector the combination of the shareholder must not exceed 10% which is mentioned under the Competition Act 2002<sup>4</sup> The CCI also noted that there is tough and strong competition in this sector. The combined market share of the parties in this deal was around 0-5%; hence the CCI agreed that this deal would not make any adverse effect on the competition.

However, on 17<sup>th</sup> December, when the CCI revoked the approval of the Future-Amazon Deal and imposed a heavy penalty, this came as a blow to the American Entity. The CCI's argument is that Amazon falsely submitted material facts and also maliciously failed to notify its shareholding in Future Retail. This move of Amazon was a violation of Combination Regulation 2011 especially Regulations 9(4)<sup>5</sup> and 9(5)<sup>6</sup>. The Penalty of INR 200 crores was imposed for the violation under Section 43A of the Competition Act<sup>7</sup> and also a fine of INR 1/- crore for the violation of Section 44 and Section 45<sup>8</sup>.

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<sup>3</sup> *Amazon.Com NV Investment Holdings LLC v Future Retail Limited & Ors* [2021] SCC OnLine Del 1279

<sup>4</sup> Competition Act, 2002

<sup>5</sup> Combination Regulation, 2011, r 9(4)

<sup>6</sup> Combination Regulation, 2011, r 9(5)

<sup>7</sup> Competition Act, 2002, s 43A

<sup>8</sup> Competition Act, 2002, s 44, 45

## **THE FUTURE OF THE “FUTURE GROUP”: DARK? BRIGHT? OR STAGNANT?**

With over 1700 stores across the country, the Future Group is one of the major players in the Retail Industry. Many experts have expressed their view that the Future Group would approach the SIAC, NCLT, and even the Supreme Court of India for that matter. There could also be the possibility of the Future Group asking the courts to dismiss all the cases pending regarding the Reliance-Future Deal. “That is the only Logical Option left for the Future,” says legal experts as the retail company is now stuck in a mess. The Legal Solution for the Future is to base its claims on the Outcome of the CCIs order, when the Amazon-Future Deal has been revoked by the CCI itself, Future can always use this to make its argument stand and ask the court to terminate all the other cases involved in this tangle. But the Question of Consideration, however, is always up to the Courts to decide. But what might seem to be very simple is indeed not, as the CCI has given a period of 60 Days to Amazon to reapply to the required authorities.

Amazon is expected to return with a new and much more detailed version of the application regarding its investment in Future Coupons. Future is expected to follow Amazon's footsteps by writing to the various regulatory authorities like Amazon had done prior. It is expected that the Future Group would write to regulators like the Securities Exchange Board (SEBI), CCI, and NCLT and also notify the stock exchange which is regulated by SEBI regarding its concern of the SIACs emergency stay order. However, the very recent judgment of the Delhi High Court has proved to be a huge setback for the Future Group as the HC refused to terminate its plea over ending the arbitration process with Amazon being held under the SIAC. Future argued that as the CCI approval was suspended, the whole arrangement involving the arbitration is invalid. Amazon reverted back claiming that the arbitration and the underlying contract were two different things and cannot be used as a single entity. Amazon has also argued that its legal options like appeals are always available against the order of the CCI. Delhi HC after reviewing all the developments refused to terminate the arbitration process under the SIAC. The case will be heard shortly by the Supreme Court of India.

The legal battle, however, has very much at stake as the situation is that of “Winner” takes all. Amazon and Reliance are vouching for the chances to target the huge retail sector in India,

whereas Future Group is looking for a sigh of relief. The case has been making rounds in the Delhi HC, Supreme Court, NCLT, and the CCI. The CCI order, in particular, holds immense importance, and the question of its relevance to the arbitration process happening before the SIAC is always there. With the recent developments taking place, the “Future” of the Future Group and that of the Future-Reliance Deal seems turbulent and unsure. The path ahead for the Group and Deal is not the brightest, but not completely dark either, but remains stagnant and variable. The chance and possibility of Amazon re-applying are very large. Hence, the Future of the deal remains very unsure and risky considering the various legal procedures and clauses. The retailing industry in India is now currently valued at US\$ 600 Billion, India being one of the top five retailers in the world. Many legal experts are of the view that the Arbitration process conducted by the SIAC however is sustainable to determine the outcome of this case. But there lies this big question of the Implication of the EAs Award taking into Consideration the Indian Legal Framework. SIAC had appointed an Emergency Arbitrator to deal with the respective case, but according to the Arbitration and Conciliation Act, 1996<sup>9</sup>. The order passed by an emergency arbitrator is not recognized to be legitimate. But it’s upon the discretion of the Indian Courts to decide and view the EAs Award. The Supreme Court of India has held that the award of the EA is enforceable under section 17(1) of the Indian Arbitration Act<sup>10</sup> and is enforceable under section 17(2)<sup>11</sup>. The recent decision of the Delhi High Court has not agreed to terminate the arbitration process under the SIAC.

## CONCLUSION

What may be the result of the ongoing dispute is still in the dark and so is the very fact that upon whom it is to decide the same keeping in mind the parties involved and the legal entities. Will the SIAC decision be binding on all parties or will it not? The future of course remains uncertain for the Future Group, but the case has certainly brought into limelight the various issues involved under the broad topic of Arbitration. But the Process of Dispute Resolution through the Arbitration Mode adopted by these Big Giants is indeed a progressive legal development.

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<sup>9</sup> Arbitration and Conciliation Act, 1996

<sup>10</sup> Arbitration and Conciliation Act, 1996, s 17(1)

<sup>11</sup> Arbitration and Conciliation Act, 1996, s 17(2)