

FUTURE RETAIL



07th November, 2021

To,

Dept. of Corporate Services (CRD)

BSE Limited

Phiroze Jeejeebhoy Towers,

Dalal Street,

Mumbai - 400 001

Scrip Code: 540064

Scrip Code of Debt: 958809, 958810 & 959518

Listing Department

National Stock Exchange of India Limited

Bandra Kurla Complex,

Bandra East,

Mumbai - 400 051

Symbol: FRETAIL

Dear Sir / Madam,

Ref : Disclosure under Regulation 30 and other applicable regulations of the SEBI (Listing and other Disclosure Requirements) Regulations, 2015

Sub : Copy of letter written by Independent Directors

Please find copy of letter dated 07th November, 2021 submitted by Independent Directors of our Company to Chairman of Competition Commission of India for your reference and record.

The above is for your information and record please. This may be treated as disclosure under applicable provisions of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

Thanking you,

Yours faithfully,

For Future Retail Limited



C. P. Toshniwal

Chief Financial Officer

CC: **Singapore Exchange Securities Trading Limited**
2, Shenton Way, #02-02, SGX Centre 1.
Singapore -068 804

On behalf of Independent Directors of Future Retail Limited

7 November 2021

To,
Shri Ashok Kumar Gupta
Chairman,
Competition Commission of India,
9th Floor, Office Block – Tower 1
Kidwai Nagar (East),
Opposite Ring Road,
New Delhi – 110 023
Email : cci-chairman@nic.in

Dear Sir,

Sub: Order under Section 31(1) of the Competition Act, 2002 (Combination Registration No. C-2019/09/688 dated 28-11-2019) approving the investment by Amazon.com NV Investment Holdings LLC ("**Amazon**") in Future Coupons Private Limited ("**FCPL**") ("**Combination**")

Ref.: FCPL's request dated 25-03-2021 for initiation of action against Amazon under Sections 44 and 45 of the Competition Act, 2002 ("**Competition Act**") read with paragraph 16 of the Order dated 28-11-2019 in Combination Registration No. C-2019/09/688, for making false statements before the Commission ("**FCPL Letter**")

- (1) We, the Independent Directors of Future Retail Limited ("**FRL**"/"**Company**"), a listed company are concerned in the above matter. As Independent directors of the Company we wish to reiterate that our duty is towards the Company and not the promoters per se. We are proud to serve on the board of FRL, a truly Indian story of innovation and growth that has democratised consumption in India.
- (2) The brief facts leading to the above FCPL Letter are as follows:
 - (a) FRL, FCPL and Kishore Biyani companies (Promoter entities) entered into a shareholders' agreement on 12-08-2019 under which FRL was required to obtain the prior consent of FCPL for certain key matters including disposal of FRL's retail business and assets to any third party and particularly to certain restricted persons including Reliance group ("**FRL SHA**").
 - (b) On 22-08-2019, FCPL, Amazon and Promoter entities entered into a subscription agreement ("**FCPL SSA**") and shareholders' agreement ("**FCPL SHA**") in terms of which Amazon agreed to invest Rs. 1,431 crore in FCPL. Under the FCPL SHA, FCPL was required to obtain the prior consent of Amazon before FCPL gave its consent to FRL for the key matters under the FRL SHA.
- (3) Amazon filed a notification to the Commission seeking its approval for the above Combination. The notification for approval stated as follows:
 - (a) In 5.1.2 of the notification, the following three interconnected steps / transactions were notified for approval:
 - (i) Proposed Transaction I – Issue of Class 'A' voting shares of FCPL to Future Corporate Resources Private Limited (FCRPL);
 - (ii) Proposed Transaction II – Transfer of about 2.52% shares of FRL by FCRPL to FCPL; and

- (iii) Proposed Transaction III – Acquisition of 49% shares in FCPL by Amazon.
- (b) That the FRL SHA has been executed between FCPL and FRL was mentioned by way of a footnote in the notification and the reason given was that the FRL SHA was entered into pursuant to the warrants issued by FRL to FCPL. FRL SHA was enclosed as an attachment to the notification.
- (c) It is important to note that **Amazon has not notified for approval of the Commission:**
 - (i) the FRL SHA as one of the interconnected steps / transactions in the combination;
 - (ii) the rights of Amazon (through FCPL SHA) over key matters of FRL were strategic in nature;
 - (iii) that the investment in FCPL was made only for the purpose of obtaining the strategic rights in FRL; and
 - (iv) the commercial agreements between Amazon India and FRL (“BCAs”).
- (4) The Commission, in order to properly assess the scope of the combination and assessment framework to be adopted, asked Amazon to explain the rationale for Amazon obtaining the rights over FRL i.e. whether the rationale was economic or strategic.
- (5) The answer given by Amazon to the above query was as follows:
 - (a) The investment made by Amazon in FCPL is only due to the unique business model of gift and loyalty cards business of FCPL and its strong growth potential. FCPL was investing in FRL only for adding credibility to its financial position in the short term.
 - (b) The rights over FRL were only investment protection rights in the above context.
 - (c) Amazon specifically replied that these rights over FRL would not be exercised by Amazon directly and would only be exercised by FCPL as a shareholder of FRL to protect the investment made in FCPL by Amazon and Kishore Biyani companies.
 - (d) The rights over FRL have been negotiated between FCPL, FRL and Kishore Biyani companies independent of the investment by Amazon in FCPL and with a view to unlock value for FCPL.
- (6) The Commission relying on the above representations of Amazon made its assessment of the Combination comprising the following interconnected steps / transactions vide its Order dated 28-11-2019:
 - (a) Proposed Transaction I – Issue of Class ‘A’ voting shares of FCPL to FCRPL;
 - (b) Proposed Transaction II – Transfer of about 2.52% shares of FRL by FCRPL to FCPL; and
 - (c) Proposed Transaction III – Acquisition of 49% shares in FCPL by Amazon.
- (7) In complete contrast and contradiction, Amazon has represented before courts and arbitral tribunals the following:
 - (a) The purpose of the transaction / combination was only to obtain the special and material strategic rights over FRL’s business and retail assets. FRL’s assets and business represented a significant and irreplaceable asset to Amazon.
 - (b) The FRL SHA, FCPL SSA and FCPL SHA are a ‘single integrated transaction’. The FRL SHA formed a core basis of the FCPL SHA and the two agreements constitute a single integrated bargain.

- (c) The special, material and strategic rights over FRL in the FCPL SHA were contractually agreed, promised and provided to Amazon as a material consideration for the investment in FCPL.
 - (d) The FRL SHA was executed only at the behest of and for the benefit of Amazon.
 - (e) Promoters have to vote only in the manner directed by Amazon on all key matters of FRL over which FCPL has consent rights including sale of retail assets and business of FRL.
 - (f) Amazon has direct enforceable rights over FRL.
- (8) The above assertions of Amazon which it has claimed with success in the arbitral tribunal (the arbitral tribunal has made FRL a party to the arbitration proceedings) means the following:
- (a) Amazon has significant strategic rights over FRL superior to all the shareholders of FRL, superior to the rights of lenders and creditors of FRL. In effect, Amazon has usurped the rights of shareholders of FRL without holding even a single share in FRL.
 - (b) The above, combined with the fact that the promoters of FRL are contractually bound to vote as per the directions of Amazon, clearly means Amazon and the Promoters of FRL are 'persons acting in concert' in exercising control over FRL.
 - (c) This triggers an obligation on Amazon to make an open offer to the public shareholders of FRL to acquire 26% of FRL, at the share prices prevailing at the time of the execution of the FCPL SHA, namely Rs. 500 per share.
 - (d) Amazon's acquisition of these strategic rights will be in violation of FEMA FDI Rules since any acquisition of shares or rights as a shareholder by a foreign entity in FRL (multi-brand retail company) requires prior approval of Government.
- (9) Amazon has deliberately concealed the assertions it is now making (set out in paragraph 7 above) only for the following reason:
- (a) Had the above assertions and claims been disclosed, the Commission would have referred the matter to SEBI to check whether the transaction is in compliance with SEBI laws and regulations.
 - (b) Further, the Commission would have also referred the matter to the Department of Economic Affairs (DEA) and the Enforcement Directorate (ED) to ensure compliance of the transaction of FEMA FDI laws.
 - (c) Had the above references been made by the Commission, SEBI would have responded that the transaction triggers an open offer by Amazon, which if not done will make the transaction illegal (**Justice Mukta Gupta, Delhi High Court has held in the order dated 21-12-2020, that the strategic rights claimed to have been acquired by Amazon by the integrated nature of the FRL SHA and the FCPL SHA transgresses to 'control' by Amazon over FRL – acquisition of control by Amazon triggers an open offer**).
 - (d) DEA and ED would have responded that Amazon, being a foreign entity, would require prior approval of Central Government before effecting the transaction, without such approval, the transaction would have been illegal and invalid (**Justice Mukta Gupta, Delhi High Court has held in the order dated 21-12-2020, that the strategic rights claimed to have been acquired by Amazon by the integrated nature of the FRL SHA and the FCPL SHA transgresses to 'control' by Amazon over FRL requiring approval of the Government under FEMA FDI laws and hence violative of FEMA FDI laws**).
 - (e) The Central Government would have never approved acquisition of strategic rights in a multi-brand retail company by a foreign entity.
 - (f) In effect, Amazon would not have been able to complete the transaction.
- (10) Further, we understand from the documents filed before the Supreme Court that Amazon initially was to invest directly in FRL as a 'foreign portfolio investor'. However, Government

notified press note 2 (PN 2) which prohibited Amazon from selling the goods of FRL on its e-commerce platform, amazon.in, if Amazon became a shareholder of FRL. The transaction was then modified to the present structure where Amazon would invest 49% in FCPL and FCPL would invest in FRL.

“That a twin-company structure was adopted to by-pass the PN2 restrictions is brought out in the email dated 19-07-2019 from Mr. Rakesh Bakshi, Head, Legal & Associate General Counsel, Amazon India to Mr. Jeff Bezos, CEO of Amazon.

Quote

“Summary of Key Terms Structure:

Due to the recent PN2 restrictions under Indian foreign investment laws, we will use a “twin-entity investment” structure to invest in Future Retail. Amazon will acquire 49% of Future Coupons, with the other 51% being owned by the promoters of Future Coupons (who are also promoters and single largest shareholders of Future Retail, the “Promoters”). Our shareholding in Future Coupons will be divided into voting equity share capital (25.1%), and non-voting equity share capital (23.9%), though we will have all the statutory rights available to a 49% shareholder. You may recall this structure and voting/non-voting split is also how we resolved PN2 for Project Brigade, our acquisition of a 49% interest in More Retail Limited (which is also engaged in retail of food and grocery in India).”

Amazon thus, cleverly achieved both the objectives namely:

- (a) Bypassing the restrictions under PN 2 which will enable products of FRL to be sold on its e-commerce platform without any restriction; and
- (b) At the same time acquiring all strategic rights over FRL transgressing to control over FRL (in the words of Justice Mukta Gupta, Delhi High Court) through this arrangement.

It is clear that had CCI referred the matter to DEA and ED, the authorities would have become aware of this modus operandi of Amazon and would not have allowed the transaction to proceed.

- (11) It is important to point out that the Board of FRL consisting of majority of independent directors:
 - (a) were not aware that strategic rights over FRL were being acquired by Amazon through the FCPL SHA.
 - (b) has not approved the FCPL SHA.

Further, the FRL SHA has not been incorporated in the articles of association of FRL.

- (12) Further, had Amazon given true disclosures (as in paragraph 7 above), from a competition assessment point of view, the Commission would have:
 - (a) Considered FRL SHA as one of the interconnected steps / transactions in the combination;
 - (b) Considered the commercial agreements also as one of the interconnected steps / transactions in the combination; and
 - (c) the commercial agreements would have also been assessed after taking into account the strategic interest of Amazon over FRL, for example, whether any preferential

treatment would be given to FRL's products in the Amazon platform to the detriment of other sellers, etc.

- (13) Amazon has not disclosed its strategic interest over FRL to the Commission only to:
 - (a) Prevent the Commission from referring the transaction to other Governmental agencies as set out in paragraph 9, in which case, the other Government agencies would have responded that the transaction is illegal and hence Amazon could not have proceeded with the transaction.
 - (b) Avoid reporting and assessment by the Commission of the actual transaction effected by Amazon including that of the commercial agreements.
- (14) It is clear from the above that Amazon has concealed facts, made misrepresentations and false representations to the Commission. Amazon sought and obtained the approval of the Commission on the basis that it was investing in the business of FCPL and not on the basis that it was acquiring strategic, material and special rights over FRL in preference to all the shareholders of FRL, which it has claimed with success in the arbitral tribunal now.
- (15) It is clear that the transaction approved by the Commission (that is a simple investment by Amazon in FCPL, with only investment protection rights) is not the one which is now claimed by Amazon. The transaction as per Amazon is investment in FCPL for the only purpose of getting strategic, special and material rights over FRL enabling Amazon to prevent the independent directors from discharging their fiduciary duties. Certainly, the Commission has not granted its approval to this transaction.
- (16) The approval given by the Commission does not hold good due to the concealment and misrepresentation and false representations made by Amazon.
- (17) As a matter of fact, Paragraph 16 of the Commission's order dated 28-11-2019 (where approval was granted to Amazon for its investment in FCPL) states that the approval given by the Commission to the Combination stands revoked if, at any time, the information provided by the Acquirer is found to be incorrect. In the present case, it is not a question of mere incorrect, it is a question of concealment, false representation and misrepresentation.
- (18) It is not possible to hold that Amazon has not committed concealment, false representation and misrepresentation.
- (19) FRL is on the brink of bankruptcy, putting to risk (a) over Rs. 30,000 crore of loans extended by public sector banks to FRL and other group companies; (b) employment of 50,000 employees of Future group; (c) repayment of Rs. 10,000 crore to over 6,000 SMEs, who would otherwise become insolvent.
- (20) The Commission should act to stop Amazon from perpetuating its evil non-desirable designs to (a) make FRL bankrupt; (b) make the Indian public sector banks write off Rs. 30,000 crore loans; (c) render 6,000 SMEs insolvent; (d) make 50,000 employees and their families jobless, for the purpose of eliminating competition.
- (21) The Commission should immediately confirm the revocation of the approval granted to Amazon for its investment in FCPL. Time is of the essence and the Commission should act immediately. Any delay would result in severe repercussions namely, (i) livelihood of 50,000 employees and their families, who would otherwise become jobless; (ii) jeopardising Rs. 30,000 crore of debt extended by public sector banks to Future group; (iii) 6,000 SMEs would

become insolvent; (iv) destroying the value of investment made by lakhs of public shareholders in the Future group companies.

- (22) The confirmation from the Commission will enable the Independent Directors to discharge their fiduciary duties towards lakhs of small public shareholders of FRL, lenders and creditors of FRL and to protect public interest.

Thanking You,
Yours faithfully,
for & on behalf of Independent Directors of
Future Retail Limited



Ravindra Dhariwal
(Independent Director)

Cc:

- (a) Future Retail Limited, with a request to upload on their website and disclose it to the stock exchanges
- (b) Shri Sh. S. Ghosh Dastidar, Secretary, Competition Commission of India – secy@cci.gov.in
- (c) Shri Manish Mohan Govil, Advisor, Combination, Competition Commission of India – manish.govil@cci.gov.in
- (d) Shri Narendra Modi, Hon'ble Prime Minister of India
- (e) Smt. Nirmala Sitharaman, Hon'ble Finance Minister
- (f) Shri Ajay Tyagi, Chairman, SEBI