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ANALYSIS OF JOINT VENTURE BREACH BY FOREIGN COMPANIES IN INDIA

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Abstract: In India, joint ventures are a typical way to conduct business. As strategic partnerships between local and foreign organizations, joint ventures are essential to promoting global integration, technology interchange, and economic progress. Nonetheless, there are more and more joint venture violations occurring, which can result in legal problems and make it harder to maintain profitable collaborations. In order to look at the underlying causes, trends, and effects of joint venture breaches, this research takes a multidisciplinary approach that combines legal, economic, and managerial viewpoints. It looks at the laws and procedures that control joint ventures in India, emphasizing important clauses and procedures for handling infractions and disagreements. Joint venture breaches have substantial financial consequences for the Indian market and its stakeholders, with elements including employment, investments, and technology transfer being taken into consideration. Ultimately, the main objective of this research is to present a thorough understanding of the violations of joint venture agreements committed by international businesses operating in India. The research also examines case studies of significant joint venture breaches, finding recurring patterns and unique elements that lead to these breaches. In order to improve the efficacy of regulatory frameworks, dispute resolution procedures, and general management strategies for joint ventures in the Indian context, the research aims to provide important knowledge by analysing the nuances and complexity surrounding joint venture breaches.

Index terms- Joint venture, Foreign direct investment, Breach

I. INTRODUCTION:

In the ever-changing world of international trade, joint ventures have become a crucial tactic for foreign businesses looking to expand into new markets. These cooperative endeavours promise mutual growth and success by fusing the advantages of global experience with local knowledge. India, a thriving economy known for its potential and diversity, is the place where this phenomenon is most noticeable. Nevertheless, despite all of the hope and promise, there is a sobering truth: joint ventures are not impervious to disagreements and breaches, despite their enormous potential.

This study sets out to investigate a crucial aspect of the Indian economic landscape: violations in joint ventures with international corporations. In this context, a breach is demarcated as a deviation from the conditions, requirements, or contractual duties specified in the joint venture agreement. These breaches can take many different shapes, from conflicts in operational execution to disagreements over strategic direction.

Comprehending the nuances and consequences of these violations is not solely a scholarly undertaking. For international businesses entering the Indian market, it has substantial implications that could influence their success and future paths. Strategic alliances are the cornerstone of growth in today's globalized market, so it is critical to have a thorough understanding of the problems and solutions related to joint venture breaches.

Examining the root reasons, regulatory environments, economic effects, and tactical solutions to violations in foreign company joint ventures in India is the goal of this research. By means of empirical analysis, case

studies, and a comprehensive investigation of regulatory environments, it aims to provide perspectives that will enhance scholarly conversations and provide useful direction for companies negotiating the complex terrain of joint ventures in India.

We recognize that understanding the difficulties associated with joint venture breaches would enable foreign businesses to enter the Indian market with resilience, agility, and foresight. By doing this, we support the development of an atmosphere that encourages cooperative endeavours, promoting economic advancement and international integration.

RESEARCH QUESTIONS:

1. What legislative and regulatory frameworks do Indian authorities use to handle violations in joint ventures with outside businesses?
2. What effects might joint venture violations have on the finances and day-to-day operations of international businesses doing business in India?
3. How does the breach of a joint venture agreement affect the perception of India as a destination for foreign investment?
4. What are the consequences faced by Indian companies as result of such breach?

RESEARCH METHODOLOGY:

The researcher has adopted an analytical research method. The researcher has undertaken to analyse the data available as Parliament Bills, Committee reports, FAQs to understand the evolution of the law and the gaps it was intended to fill. Further a doctrinal method was used to study the existing provision of law which fails to cover the research gap. Thus, both quantitative and qualitative approach has been adopted for the analysis of scope of law thereby inferring the gap in law.

II. FOREIGN ENTRY:

Foreign capital in India is governed by the Foreign Exchange Management Act, 1999 and rules and regulations made by RBI. Since opening the doors to foreign countries and international markets in 1991 through economic liberalization, Indian economy has come a long way in improving the investment climate.

'FDI' or 'Foreign Direct Investment' means investment through capital instruments by a person resident outside India in an unlisted Indian company; or in ten per cent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.[1]

The government of India established three FDI entrance modes—the Automatic route, the Government route, and a combination of both—in order to entice foreign direct investment into the Indian economy. This enables foreign businesses to enter new markets in India by functioning as either an Indian business (wholly owned subsidiary or joint ventures with Indian partners) or as a foreign business (liaison, branch, or project office).

'Automatic route' means the entry route through which investment by a person resident outside India does not require the prior approval of the Reserve Bank of India or the Central Government.[2]

'Government Route' means the entry route through which investment by a person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.[3]

This study focuses on joint venture mode wherein foreign companies collaborate with domestic Indian companies.

FDI being a non-debt financial resource has served well in India's economic development of India and at the same time, it helped foreign companies take advantage of lower wages in domestic markets, income tax benefits, quick licenses and approvals etc.

[1] Consolidated FDI Policy Circular of 2020, Section 2.1.16.
[2] *Id.*, section 2.1.4.
[3] Supra note 1, section 2.1.24.

Joint Venture:

In order to run its business in India, a foreign corporation will choose a local partner with whom to form a joint venture. The foreign entity and the local partner sign a Memorandum of Understanding (MOU) or Letter of Intent outlining the terms of their joint venture agreement. All of the commercial terms are outlined in the joint venture agreement, which needs to abide by both local and international law.

FORMS:

- **Incorporated and Unincorporated Joint Venture:** Under the Companies Act of 2013 and the Limited Liability Partnership Act of 2008, respectively, an incorporated joint venture (JV) may be established as a limited liability company or a limited liability partnership (LLP). A strategic alliance or a straightforward partnership firm might be formed out of an unincorporated JV. Partner firms are not required to register.
- **Contractual or Based on Equity:** By creating a distinct company entity, the parties to an equity-based JV share joint ownership. A contractual JV is an agreement to work together without establishing a jointly owned business entity.
- **Public-Private Joint Venture**. When the central or state governments work with private organizations—whether domestic or foreign—and grant concessions for the creation, advancement, and management of the projects—public sector undertakings—special joint ventures (JVs) are created.
- **Project Joint Venture:** It is the most predominant type of joint venture. Among other things, it could be utilized to construct a commercial building or a toll road. The primary characteristic is that the goal is defined and limited to carrying out a certain project in accordance with the venture agreement. The Joint Venture ends when the assignment is completed.
- **Functional Joint Venture:** In this paradigm, all parties work together because they are proficient in one or more commercial assignments, create a synergistic ecosystem for one another, and take use of the synergies that arise. For example, if one company possesses a transportation network and the other has excess warehouse space, both can help each other with inventory management and stock taking while sparing each other the expense of maintaining individual cars or warehouses and using them when empty.
- **Vertical Joint Venture:** Within the equivalent supply network, there are two commercial entities, including this joint venture. This is made possible when one of the companies produces a certain kind of good that needs a particular kind of raw material. In order to mitigate the risk posed by the insufficiency of this main raw material, it can collaborate with the vendor to develop and maintain the potential of such manufacture. In this case, the manufacturing company may want to maintain a certain level of anonymity, or it may only need a small amount of raw materials but need a large quantity of finished goods.
- **Horizontal Joint Venture:** Similar to that, this kind of joint venture unites two companies that provide similar goods or services. The benefit of this is that it makes it possible for one of the businesses to engage in international trade. The foreign collaborator can gain from economies of scale, while the domestic collaborator has access to localized knowledge and an established supply chain. Additionally, regulations frequently call for the existence of a domestic company; as a result, one option to access these economies is through a joint venture.

ADVANTAGES:

- **Statutory protection**: For international investors who are interested in conducting business in India, an incorporated joint venture is the recommended type of corporate structure. The Limited Liability Partnership Act of 2008 and the Companies Act of 2013 govern corporate JVs. In both cases, the shareholders' responsibility is restricted. The investors and shareholders are given various rights including the right to-appoint directors, take legal action against directors in default, appoint auditors, inspect registers and books, call meetings, vote and wind up the company.
  Additionally, these two Acts offer a governance framework with rigorous checks and balances to protect investors' interests even in the absence of contractually stipulated safeguards. The Companies Act of 2013 provides statutory protection for minority owners, including safeguards against majority shareholder mismanagement and oppression. Public businesses are required to abide by a number of laws in order to safeguard stakeholders and maintain just corporate governance.

- **Tax incentives.** Subject to meeting certain requirements and paying relevant taxes, a joint venture's profits and dividends on capital investment are freely repatriable inside India. Joint ventures (JVs) may also be eligible for various tax benefits and incentive programs under the Foreign Trade Policy 2021–2026 and the Special Economic Zone Policy, if applicable. Incentives for SEZs to enhance exports from and promote FDI in, India include:[4]

I. Duty free import/domestic procurement of goods for development, operation, and maintenance of SEZ units.
II. 100 percent income tax exemption on export income for SEZ units under Section 10AA of the Income Tax Act for first five years, 50 percent for the next five years, and 50 percent of the ploughed back export profit for the next five years. (Sunset Clause for Units will become effective from April 1, 2020.)
III. Tax holiday for SEZ developers.
IV. Tax exemption for offshore banking units in SEZ.
V. Exemption from Central Sales Tax, Service Tax, and State Sales Tax. These have now been subsumed into the Goods and Services Tax (GST) and supplies to SEZs are zero rated under the IGST Act, 2017.
VI. Single window clearance for Central and State level approvals.
VII. Exemption from minimum alternate tax (MAT).
VIII. Exemption from capital gains tax – the exemption is available, if within one year before or three years after such transfer

- **FDI.** The Foreign Direct Investment (FDI) policy regime has undergone notable modifications. Notably, a number of sectors now permit 100% FDI, hence granting foreign investors entry into the Indian market through joint venture formation in India.
- **Government initiative**: To increase international cooperation in promoting foreign direct investment (FDI) and to make doing business easier in the nation, investment outreach initiatives are being carried out. Through Phased Manufacturing Programmes (PMPs), public procurement directives, and several ministries' Production Linked Incentives Schemes, the Indian government has also encouraged local manufacturing of goods. Additionally, on June 3, 2020, the Union Cabinet approved the creation of an Empowered Group of Secretaries (EGoS) and Project Development Cells (PDCs) in all relevant Ministries and Departments in order to support, facilitate, and provide an investor-friendly ecosystem to investors investing in India. This will expedite investments in coordination between the Central and State Governments, expanding the pipeline of investible projects in India and boosting both domestic and foreign direct investment (FDI) inflow.
- An Indian company may issue “employees’ stock option” and/or “sweat equity shares” to its employees/directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries who are resident outside India[5]

III. PROMINENT JOINT VENTURE BREACHES

MARUTI SUZUKI:

In 1982, Suzuki Motor Corporation and Maruti Udyog Limited signed a Joint Venture Agreement (JVA). In the Indian car market, the joint venture almost achieved monopoly status. The joint venture caused Suzuki's equity to rise from 26% to 40% in 1987. From 1992 to 2013, the equity climbed to 56.21%. Previously, the equity had increased to 50%. It is noteworthy that Suzuki, despite owning almost 56% of the company, never altered the Maruti brand name. They saw the significance of the close bonds Indian customers had with their vehicles. Additionally, "Maruti" was a corporation that laid the groundwork for the automobile industry in our nation.

[4] Incentives/Facilities to Special Economic Zones, 2014, Ministry of Commerce & Industry, https://pib.gov.in/newsite/PrintRelease.aspx?relid=106479.
[5] https://static.investindia.gov.in/s3fs-public/2020-09/FDI%20Policy%202020%20revised_18%20Sept%202020.pdf

BHARATI-WALMART

With the cancellation of their joint venture in India, Bharti Enterprises Ltd. and Wal-Mart Stores Inc. have put an end to the tumultuous five-year history of the business that operates Best Price Modern Wholesale, an Indian chain of wholesale (or cash-and-carry) stores. Together, the two businesses constructed 20 superstores. With this agreement with Bharti, Walmart aimed to achieve market liberalization in India. The relationship with Bharti was no longer appealing as this hope was not realized. Allegations of mismanagement, timing issues, and violations of Indian investment regulations have plagued Bharti and Wal-Mart's cooperation.

FIAT- TATA:

Fiat and Tata Motors inked a joint venture agreement in July 2006. Fiat joined the cooperation as a result of the commercial prospects in the Indian market. Increasing the brand's visibility in the Indian market without making significant financial investments was one of these opportunities. In fact, the partnership stipulated that Tata Motors would increase Fiat's brand reach by stocking some of its products in its expansive care shops. The majority of Fiat's troubles are related to the problems—a weak distribution network and a scarcity of reasonably priced replacement parts—that drew it to the Tata joint venture.

HERO- HONDA

On December 16, 2010, India-based ***Hero Group (Hero)*** and ***Japan-based Honda Motor Co. (Honda)*** signed an agreement to dissolve their partnership, thus putting an end to one of the most successful joint ventures in the Indian automobile industry. Subsequently Honda started directly competing with Hero Honda and Hero felt that this joint venture restrained it from growing internationally and they dissolved joint venture entered between them.

McDONALD- CONNAUGHT

Following a settlement with erstwhile partner Vikram Bakshi, McDonald's Corp.'s Indian division now owns all of their joint venture, Connaught Plaza Restaurants Ltd (CPRL). In May 2019, McDonald's and Bakshi came to an out-of-court agreement to resolve their legal fight over CPRL. In exchange, the US Company agreed to pay an undisclosed sum for Bakshi's stake in the joint venture that ran McDonald's restaurants in North and East India. McDonald's India will keep holding its 50% voting stake in CPRL.

Undoubtedly, the failures can be attributed to business factors such as strategy, teamwork, and resources, and occasionally, misaligned values like dishonesty, fraud, and impropriety. By means of an Indian collaboration company working with international corporations, they pool their specialized knowledge to offer superior products and services globally. Along with a few unsuccessful joint ventures like Tata DoCoMo, a joint venture between Tata Teleservices and Japan's NTT DoCoMo, which was unable to turn a sufficient profit, the number of successful joint ventures in India is growing daily. However, Joint Venture in India (joint venture instances in India) helps to strengthen the country's standing as a significant industrial power and economic force. International and Indian companies have collaborated extensively. In order to market their products across the country, companies collaborate with foreign companies in India, meaning they enter into a joint venture agreement where they see an easy way to market the product with each other's sources. However, not all of these joint ventures are successful; in fact, most of these mergers end up as failed joint ventures in India. And these joint venture failures in India come crashing down like a tsunami. Because the primary cause of joint venture failures in India is that the two businesses have different business models, and the models they have landed on are not customer-friendly in terms of things like pricing and packaging. One of the main reasons joint ventures in India fail is that there is always a conflict of interest between the two companies.

IV. LEGISLATION:

Consolidated FDI Policy 2020: [6]

- Sale proceeds of shares and securities and their remittance is 'remittance of asset' governed by The Foreign Exchange Management (Remittance of Assets) Regulations, 2000 under FEMA
- Dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time
- However, in cases where the NR investor, including an NRI, acquires shares on the stock exchanges under the FDI scheme, the investee company would have to file form FC-TRS with the AD Category-I bank
- If a person violates/contravenes any FDI Regulations, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contraventions where such amount is quantifiable, or up to two lakh Rupees where the amount is not quantifiable, and where such contraventions is a continuing one, further penalty which may extend to five thousand Rupees for every day after the first day during which the contraventions continues.

Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 [7]

Section 7 of the act states that A person resident outside India and having investment in an Indian company may make investment in equity instruments (other than share warrants) issued by such company as a rights issue or a bonus issue, provided that such issue shall not result in a breach of the sectoral cap which means the maximum investment including both foreign investment on a repatriation basis by persons resident outside India in equity instruments of a company or the capital of a LLP, as the case may be, and indirect foreign investment, unless provided otherwise applicable to the company

V. IMPLICATION:

The impression of India as a location for international investment may be negatively impacted in a number of ways by a joint venture agreement violation. The following are some possible ramifications: Foreign investors favour consistency, predictability, and honouring agreements made in writing. A joint venture agreement violation might damage people's perceptions of India as a trustworthy location for overseas investment.

India's standing as a country welcoming to investments could be damaged. This might affect its position in international indices that evaluate investor protection and ease of doing business.

A breach can cause investors to decide to move their money to other nations where they believe the investment environment is more stable and secure. This would result in a decrease in FDI inflows.

If foreign investors believe that investing in India carries more risk, they can demand larger profits in order to offset that perceived risk. This may result in higher capital costs for companies doing business in India.

India should place a high priority on creating a predictable, open, and investor-friendly economic climate in order to reduce these risks. This entails preserving the sanctity of contracts, guaranteeing effective dispute resolution procedures, and bolstering legal protections for investors.

[6] Remittance, Reporting and Violation, Consolidated FDI policy 2020, https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_1.pdf

[7] FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) RULES, 2019, dated 17-10-2019.

Impact on Domestic Companies:

When a foreign company breaches a joint venture agreement with a domestic company, it can have various impacts on the domestic company. The extent of these impacts will depend on the specifics of the joint venture, the nature of the breach, and the terms of the agreement. Here are some potential impacts:

Loss of Investment: If there is a breach, the domestic firm, which may have invested a large amount of capital in the joint venture, may suffer financial damages.

Diminished Revenue: If the joint venture was profitable, the domestic company's income may have decreased as a result of its interruption or termination.

Business Disruption: The continuous operations, supply chain, and production processes of the domestic company may be affected by a joint venture breach. For instance in Maruti Suzuki split up the business activity of Maruti was disrupted which was India biggest automobile manufacturer and now Suzuki (which is a Japanese company) runs the company in name of Maruti Suzuki which gained consumer influence on its brand name Maruti.

Loss of Expertise: Information and technology sharing are common in joint ventures. The loss of access to this knowledge could result from a breach.

Public Perception: The reputation of the domestic company may be damaged by a well-publicized joint venture breach, which could have an impact on its connections with stakeholders, partners, and customers.

Relationship Damage: A breach in a joint venture may cause tensions in the relationships between the foreign and domestic enterprises, which may have an impact on prospects for future business. For instance in joint venture between Hero and Honda, Honda become the competitor of Hero India and restrained Hero from growing internationally.

Future Projects: Taking into consideration the lessons acquired from the breach, the local company may need to re-evaluate its approach for upcoming partnerships and overseas projects.

Realignment: In the event that the joint venture constituted a substantial portion of the domestic company's business plan, its breach may require reorganizing the company's activities or looking for new business ventures.

Termination: The domestic firm may need to think about exit plans, such as selling its part in the venture, depending on the breach and the terms of the joint venture agreement.

Employment Security: Because of modifications to the business arrangement, employees engaged in the joint venture may experience employment instability.

Knowledge Loss: Loss of employees with specialized knowledge gained from the joint venture can impact the domestic company.

VI. CONCLUSION

Indian courts recognize and acknowledge that a foreign company's choice of controlling law in an agreement between the parties determines the remedy available for breach. Foreign laws are frequently applied to international commercial contracts, including joint venture agreements, involving foreign parties and Indian entities. Usually, the law of a neutral jurisdiction or the jurisdiction of the foreign party is selected. Decision-making can come to a total halt due to an impasse.

A put option is typically negotiated in a joint venture (JV) when the promoter is well-identified. With a put option, the right holder can sell their shares to a third party and require the third party to buy the offered shares outright. In the event that the enterprise or investment proves to be unprofitable, the foreign investor or non-Indian resident may withdraw, subject to a minimum one-year lock-in term or in accordance with the FEMA 20(R) clause. Try to settle the conflict through mediation or negotiation. This may be a less confrontational and more economical method of reaching an agreement. A mediator or other impartial third

party can help to guide the conversation. There is a clause in many international joint venture agreements that outline the dispute settlement procedure. Arbitration may be used in this; it might be quicker and more private than going to court. Lately, the automobile joint venture between Renault and Mahindra & Mahindra separated their ways. Furthermore, it has been rumoured that Godrej and Hershey may part ways from their food business after just four years. Consider equity holding—the most important requirement for shared ownership. No industry permitted 100 percent foreign direct investment (FDI) in 1991. There are at least 22 now, with some significant ones as financial services, automotive, pharmaceutical, and Fast Moving Consumer Goods. Agreements must include fairly specific procedures for resolving disputes and, in the case that disagreements cannot be resolved, the exit strategy to be used to end the joint venture.

Joint venture agreement fixes arbitration as mode of settlement. The foreign companies which invest in India through Foreign Direct Investment subjecting itself to compliance under FEMA enjoying tax concession in Indian regime during their joint entire period and leave as per their agreement is unfair. If we look on Hero Honda joint venture split up its apparent that Honda which entered into joint venture turned out to be competitor for Hero by gaining added advantage of consumer attention and expertise knowledge of Hero limited. The joint venture breach to be seriously viewed and must be considered as FDI violation. Effective remedy to be given to the domestic companies affected by such breach and mere giving back the share amount is not suffice when they enjoy all government subsidies and tax incentives in name of supporting domestic companies.

Joint venture breach lead to merger of domestic company by foreign companies who enter into India as investor. It happens that domestic companies are unable to stand independently after such breach and end up dissolving itself or surrendering themselves to their foreign partner. Leaving exit strategy in hands of parties might turn unfair when entry route have regulation to be complied with. Stricter laws for exit strategies to be laid down along with remedial measures that can be granted to protect domestic companies are to be made.

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