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Tryst and Split of Walmart-Bharti

An analysis of the strategies behind the joint venture of Walmart Bharti

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Abstract

Joint Ventures are the means by which an entity can expand its area or business and can enter a new market or a foreign market and Walmart-Bharti Joint Venture is one of the biggest examples of it. This article tends to analyze firstly, what are the reasons behind a joint venture agreement of Walmart-Bharti. Secondly, this article will discuss the design and considerations in the Joint Venture of Walmart-Bharti. Lastly this article will present the critique and suggestions regarding the Joint Venture of Walmart-Bharti.

Keywords: *JV (joint venture), strategies Walmart-Bharti, design and considerations*

CONTENTS

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I. INTRODUCTION

Joint Ventures ("JV") are the subset of the mergers and acquisitions. JV is a very effective and efficient tool of mergers and acquisitions used by the companies to enter into a particular market in the economy. The term "joint" suggests it to be some kind of partnership but it would be wrong to call it a partnership. In case of partnership both the parties or all the parties share the profits and losses equally or according to the share that they decided. Whereas, in the case of a joint venture, equality does not prevail and it always or in a majority of the cases win-lose situation exists. There are no or very minimal number of cases where there existed a win-win situation for both the parties.

A joint venture is not only a good tool for investment within the country but also outside the country. JVs act as tools for prospective investors to strategize a JV and enter either into new areas of the market or to enter a foreign market. JV is an excellent tool to enter a foreign market with the objective of expanding one's business all over the globe. Walmart one of the giants in the international retail industry tried to hover and expand its retail market in India by strategizing a joint venture with Indian conglomerate Bharti Enterprises. However, Walmart-Bharti JV was for the purpose of wholesale multi-product stores in India, but Walmart tried to enter the retail market from the back door.

Foreign Direct Investment ("FDI") policies have been very strict in India regarding the investment in the retail sector especially to protect domestic retailers from the big multi-brand foreign retailers entering the Indian market. As a result, of the barriers, Walmart tried a backdoor entry to first set the base in the wholesale market in India and then gradually expand in the retail sector as well.

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This article focuses on design, consideration, and the reasons for the failure of the joint venture between Walmart and Bharti Enterprises.

What is a joint venture?

A JV embodies a blend of compartments of assets contributed by two or more business entities for an explicit business purpose and limited duration. Joint venture participants continue to exist as a different firm with a JVbecoming a symbol of a lately made business venture[1].According to Accounting Standard 31defines "joint venture" as follows:

> *"A joint venture is a contractual arrangement whereby two or more parties undertake an economic activity that is subject to joint control."*[2]

Further Ind AS 31 defines joint control as follows:

> *"Joint control is the contractually agreed sharing of control over an economic activity, and exists only when the strategic financial and operating decisions relating to the activity require the unanimous consent of the parties sharing control (the venturers)."*[3]

Rationale Behind Setting Up A Joint Venture

Berg, Duncan, and Friedman (1982) identified three primary incentives for joint venture participation: (1) risk avoidance; (2) knowledge acquisition; and (3) market power. However, majorly following are some of the major and the most common reasons behind JV agreements :

1. ***Entry strategy into a new area or a foreign market:***JV is a great way to enter the market, with a view, to attain independence at the later stages. In this case the parties joint hand to test the market because JVs involve less risk than starting up a new venture by oneself. Moreover, it may be the case that the laws and regulations of a particular market may not

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[1]J. Fred Weston , Mark L. Mitchell, J. Harold Mulherin and Prashant Salwan, **TAKEOVERS, RESTRUCTURING AND CORPORATE GOVERNANCE**, Pearson Education, fourth edition, ISBN: 013140736, pg. 367.

[2] Indian Accounting Standard (Ind AS) 31

[3]*Id*. Note 2

allow 100% FDI in particular sectors of the market, hence to enter these markets entities enter JVs to expand their market share in the global market.

2. ***Increased revenue a market share:*** JV provides a larger platform for the parties to expand their business both in the national and the international market, as the case may be. JVs allow the parties to network with each other and further help each other in expanding their businesses.
3. ***Diversification of risk:*** JVs are one of the several tools which allow the parties to the JV agreement to share the risks and losses and hence, the sharing of burden helps to safeguard both the investors and the consumers.
4. ***Combining to deliver scale, synergy, and intellectual property:*** When two or more entities enter into a JV, they bring in with them their strengths as well as weaknesses. Hence, the parties try to complement and supplement each other in the areas of need and scope and this ensures better performance of both the parties to the agreement. [4]

II. THE WALMART-BHARTI JOINT VENTURE

Walmart is a very famous worldwide retailer that was established in 1962, having headquarters in Arkansas U.S.A. Currently Walmart has 11, 735 retail stores worldwide including 4761 stores in Walmart U.S, 597 in Sam's club the U.S., and 6377 in Walmart International. Walmart had 20 retail stores as a result of the joint venture with the Indian giant Bharti Enterprises under the brand name Best Modern Price Wholesale. Walmart had hit $473 billion in the fiscal year 2014 as its net sales from the joint venture.

On the other hand, Bharti Enterprises is an Indian multi-industry companyheadquartered in New Delhi, India. Bharti Enterprises was established in the year 1976 by Mr. Sunil Bharti Mittal. Being a giant Indian Conglomerate Bharti Enterprises is engaged in a variety of industries like telecommunications, agribusiness, manufacturing, and financial services. Bharti Enterprises has a number of subsidiaries both national and international. Its national subsidiaries include Bharti Airtel, Bharti Infratel, Indus Towers under telecom and telecom infrastructure; Bharti AXA Life

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[4] Ashish Patil, **MERGERS AND ACQUISITIONS: THE ART OF SCIENCE**, SAAA Captal Pte. Ltd, 2016, pg. 315-316.

Insurance and Bharti AXA General Insuranceunder insurance; Bharti Reality under Real Estate; Feildfresh Foods and Gourmet Investments under hospitality and food; Centum Learning under training and skill development; Hike Messenger under mobile internet, etc. and it has around 220 retail stores under the name Easyday both national and international.[5]

Walmart and Bharti Enterprises shook hands for a consideration of $100 million where Walmart bought 50% of the stake in the earlier Bharti Walmart Pvt. Ltd. and together they had run about 20 cash and carry retail stores under the brand name Best Price Branded Stores.[6]

Indian Retail Market

According to the recent report by MRRSIndia.co and ASSOCHAM, the Indian retail market is likely to reach as high as US$1.1 trillion by 2020 from the current level of US$ 680 billion. According to the report, the fast-moving consumer goods market and the retail sector in India is growing at the rate of 20% per annum and is expected to reach from the current level of US$ 49 billion to US$ 103.7 by 2020[7]. This shows that the Indian retail market is profitable with respect to investments especially attracting foreign investors to come and invest in India like Marks & Spencers, Carrefour, etc.

FDI policies in India were strict at the time this JV took place and at that time 100% FDI was not allowed in the retail investors. The JV Agreement between Walmart and Bharti Enterprises was posed with a number of legal issues related to FDI policies in India and other investment barriers but agreement finally was geared up on November 27, 2006. This joint venture is the 50:50 kind of joint venture. The JV between the two resulted in the formation of Bharti Walmart Pvt. Ltd. which had the business to manage andoperate the retail stores under the name Best Price Modern Stores. Both parties had certain strengths and weaknesses. Walmart is a strong player in the

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[5] For more information please visit https://www.bharti.com/our-company-india.html, last viewed on May 17, 2020, at 14:29 IST.

[6] Bailay, Rasul and Sagar Malviya (2014), *Walmart Stores spent $334 mn to end its deal with Bharti Enterprises, resulting in a net loss of $151 mn*, The Economic Times. April 28, 2014, 06.57AM IST, http://articles.economictimes.indiatimes.com/2014-04-28/news/49464676_1_bharti-retail-easydaybharti-walmart-pvt-ltd, last visited May 17, 2020, at 23:39 IST.

[7] For more information please visit http://www.assocham.org/newsdetail.php?id=6587, last viewed on May 17, 2020, at 14:58 IST.

market having a globally well-established brand name, and the proficiency it had retail management internationally. Additionally, Walmart had well-recognized expertise in the areas of just-in-time inventory, retail information, and retail transportation management. On the other hand, Bharti Enterprises had the requisite consumer base in India along with the requisite experience in the diaspora of the Indian culture and economy. [8]

Terms of the JV

The key areas that need to be defined and negotiated at the time of the JV Agreement for a successful joint venture. Firstly, the nature and the purpose of the JV shall be clearly defined including the aspects of equity considerations, technology royalty, alliance, local market expertise, and legal necessity (e.g. insurance). Secondly, the structure shall be defined in the agreement as to whether the venture is equal, majority-minority, majority-minority at the shareholding level but equal at the board level or majority with minority protection. Lastly, key aspects like valuation of the JV and induction of the partner, control and management, the appointment of the key managerial personnel, resource contribution, equity infusion, royalty, etc. shall be clearly defined in the agreement. Clearly, defining all these terms helps both parties to efficiently conduct the business in a manner that will be profitable for both the entities. Also, all these disclosures will help either of the parties to decide and divide the areas of work according to the area of expertise.[9]

In the Walmart-Bharti case Walmart invested the sum of $100 million. The ownership right was given to the Bharti Enterprises under the Franchise Agreement between the two in return of which Bharti Enterprises had to pay consideration for royalty to Walmart along with other kinds of fees like franchises, software license, administration, design, technical training, documentation, etc. On the other hand, Walmart had the job of maintaining and managing Bharti Enterprises' stores under the brand name EasyDay (multi rand retail convenience stores). This venture had the object to provide a platform to sell a wide range of products from grocery to apparels etc. The Foreign Direct Investment laws in India at that time allowed the retail industry

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[8] Narendra C. Bhandari, Walmart-Bharti Joint Venture: Formation, Breakup, & Strategies, Academy of Strategic Management Journal, Volume 16, Number 1, 2017

[9] *Id.* Note 4, pg. 317.

only where the population was more than a million. The limitation of the population posed by the Indian FDI policies led to the emergence of the difference in size and range of products that the stores had between India and other countries.[10]

Structure

JVs can be bifurcated into two categories i.e. incorporated JVs and unincorporated. Incorporated JVs are the ones that result in the formation of either a company (through a corporate vehicle) or a limited liability partnership. While,unincorporated JVs are the onesthat result in the formation of either an unincorporated entity like a partnership, etc. or strategic alliances or cooperation agreements. Walmart-Bharti JV resulted in the formation of a company hence it falls under the category of incorporated JV, whereby a company was formed under the Companies Act, 2013. There are a number of advantages for using a corporate vehicle for the purpose of JV such as;it gives separate and universal legal identity to the JV;better management and employee structure; flexibility in raising funds; and perpetuity of the JV company despite the change in ownership of the company. Moreover, the most common ways that the JV companies can be formed is (a) parties subscribe to the shares on agreed terms; (b) transfer of technology or business by one party and share subscription by the other; and (c) collaboration with promoters of an existing company. [11]

III. ANALYSIS AND CONSIDERATIONS

On October 9, 2012, the Walmart-Bharti had announced the split of the JV and following are some of the reasons why the split happened:

1. ***Choice of Partner:***The choice of a partner is a key consideration to achieve a successful alliance. Taking a partner who can provide complementary skill sets is essential for the success of the JV. JV such as that of Maruti-Suzuki, where the government-aided to provide the infrastructure while Suzuki brought in the required expertise. Another

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[10]*Id. Note 8*

[11] Joint Ventures in India, Nishith Desai and Associates, November 24, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Joint%20Ventures%20in%20India.pdf, last visited May 17, 2020, at 00:57 IST.

example is that if Hero-Honda, wherein Hero provided the local expertise and the Honda used its technology and brand name to increase productivity. Again, in the case of DSP-Merrill Lynch, DSP provided local expertise while Merrill brought in the foreign expertise to the Indian market.

JVs having unequal partners improved success rate as they have the possibility to attain a win-win situation due to the complementary nature of the partners, whereas JVs between unequal partners has been a failure in the majority of the cases. In the Walmart-Bharti case a major reason for the failure of the JV is the 50:50 stake that each of the parties to the JV Agreement. In the case of 50:50 ventures although the returns are even,, the resource commitments are skewed between the partners, and hence, they are more likely to fail.[12] One of the biggest examples of failure is the Mc Donald's Case where the JV between McDonald's and Cannaught Plaza Restaurants Ltd. failed because both felt the need for control. In a 50:50 JV, both the entities want equal control over the operation of the business. The foreign company might be apprehensive about giving its brand name and technological know-how while the India company might be vexed concerning the investments that it has made into the business. [13]

2. ***Regulatory issues (Corruption and Politics):***there are a number of reasons as to why the FDI policies are weak in India. FDI policies in India are not only loosely fabricated but also are vague and uncertain. The implementation of laws is poor due to various political factors like corruption, bureaucracy, etc.

3. ***Industry Issues:***the FDI policy in India makes it mandatory for all the industries who engage in FDI in the wholesale or multi-brand retail industry in India, to source 30% of the products from the local SMEs (small and medium enterprises). It is pivotal to consider the fact that it might be easy to source textiles or like products such as handicrafts from SMEs but not technology-driven products such as electronics. Some

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[12]*Id,* Note 4, pg. 316.

[13]Sumeet Anand, *Inherent Challenges To Joint Ventures In India*, Live Mint , Aug 31 2017. 01 12 PM IST,https://www.livemint.com/Companies/QOey1fl0mFssTks4BHjtOP/The-inherent-challenges-of-joint-ventures-in-India.html, last accessed May 17, 2020, 15:38 IST.

products in the market cannot be sourced by the SMEs for the simple reason that they might not be skilled at producing a good quality product, which in turn will affect the availability of the quality products at the multi-product retail outlet. It discourages FDI in India because the Indian investors do not have to comply with such requirements and hence the foreign players have to face uneven competition in the market.

4. ***Corrupt practices by Walmart:*** an investment of $100 million was alleged to have been made by Walmart in compulsory convertible debentures of Cedar Support Services in 2010. Cedar Support Services is the parent company of Bharti Enterprises, which also loos at the management of the Bharti's front-end retail stores. The move of Walmart of such an investment amounted to Bharti Enterprises' giving the powers of control and manage to Walmart. [14]

   Further, there have been allegations against the lobbying practices carried out by Walmart in India against which the investigations were also carried out by the Indian authorities. Moreover there have been situations like suspension of five of the top executive of the Bharti-Walmart Company in 2013, subsequently, the event that the then CEO Mr. Raj Jain also had to resign and was succeeded by Ramnik Narsey. Further the incident that Mr. Mitch Slape, then COO of Bharti-Walmart company, was sent back to Walmart USA. However, the allegations against these people were no proved and there were no investigations for the same.[15]

5. ***Protest by small shop owners:*** Entry of the multi-product stores in the markets clearly affects the sales of the small shop owners. In addition to the effect on sales these stores also result in unemployment in the SME retail stores sector.[16]

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[14]*Id. Note 8.*

[15]*Walmart, Bharti Deal: Diary of a Troubled Marriage*, Hindustan Times, October 10, 2013, https://www.hindustantimes.com/business/wal-mart-bharti-deal-diary-of-a-troubled-marriage/story-aoJ5whc6oDnGn4u94rVrEP.html, last visited on May 18, 2020, at 20:53 IST.

[16] Neumark, David, Junfu Zhang & Stephen Ciccarella (2005), *The Effects of Wal-Mart on Local Labor Markets*,NBER Working Paper No. 11782. Issued in November 2005, https://ideas.repec.org/p/iza/izadps/dp2545.html, last visited on May 18, 2020, at 23:43 IST.

6. ***Disguised retailing:*** The Indian legal provisions regarding the foreign Direct Investment in the wholesale sector are allowed to sell only to retailers like shopkeepers, hawkers, offices, vendors, etc. But there have been instances where these wholesalers were found selling their deals to individuals as well, which is a naked violation of the FDI policies in India. Provisions such as customers need a valid ID to enter a multi-brand outlet, additionally, a customer would have to buy a minimum amount, etc. are some of the limitations so ofthe multi-brand retail stores that have to be complied with by them. These policies have been introduced to protect the small retailers against the big giants like the case of Carrefour.[17]

IV. CONCLUSION AND SUGGESTIONS

There can be a number of reasons behind entering into a joint venture and one of the reasons is to join hands with the other entity is to enter a difficult market like that of India. FDI policies in India are too strict for foreign retailers to enter the Indian market. At the time when the venture subsisted and at the time when it terminated, the FDI policies of India did not allow 100% in the retail sector. Hence, Walmart tried to enter through the wholesale market by joining hands with Bharti Enterprises so that it could enter the wholesale market and then gradually enter the retail market too. But this venture failed.

Competition is not always bad for the market. Moreover, parties like Walmart are one of the big giants which can support the Indian economy in different ways. Hence, the government shall endeavour to make the FDI policies flexible to the extent that it induces healthy competition in the Indian market especially in the retail sector as well as facilitate the requisite inflow of FDI in the country.

In addition, it was observed that most of the JVs fail due to both parties having a 50: 50 share in the venture. This hypothesis is not true entirely. It is well settled that both the entities long for exercising their control over the business in case of a 50:50 JV, but on the same page both have

[17] Rajendran M, *Wal-Mart, Metro Cash flouting FDI norms, selling to retail buyers*, Hindustan Times, Updated: Nov 20, 2014 05:01 IST, https://www.hindustantimes.com/business/wal-mart-metro-cash-flouting-fdi-norms-selling-to-retail-buyers/story-IzFOIAY94QL5SyLd2PBymO.html, last visited May 18, 2020, at 22:58 IST.

the same kind of financial backing as well as requisite resources to fulfill the purpose of JV, which makes them complementary to each other. Moreover, there can be division in areas of control so that no one party gets room to infringe upon the rights or powers of the other.

Also, when there are situations of corrupt practices that any one of the entities is alleged to be involved in either before or at the time of entering into the JV Agreement, then, the other party shall not excuse itself from conducting a proper and efficient due diligence. Due Diligence is one of the main steps that have to be followed before entering into an agreement with the other party for the purpose of Joint Ventures and hence, ensure that the other party has followed all the compliances and compliance procedures thereby or not.