

Research Paper on Necessity of a new Press Note replacing Press Note No.2 of FDI Policy 2016/2018

FDI in e-commerce section of Press Note No.2 of FDI Policy 2016/2018, the stipulations of which foreign entities like Amazon and Flipkart are hell bent on ruthlessly destroying the Indian retail sector with their deep pockets and expansive lobby of legal experts who will stop at nothing before trampling the lives of over 40 crore Indians. It is nothing less than a daylight robbery where expressive prohibitions of Press Note No.2 are grossly and blatantly are being violated by such foreign entities derived with their ulterior motives to implement their hidden agenda to control and dominate not only the e-commerce business but also the retail trade of India in a very clandestine manner. Instead of complying the stipulations of said Press Note both in letter and spirit to respect the law of the land, these foreign entities are deliberately each and every rule of the Press Note No.2 treating India as a banana republic. Under such a grim situation and particularly in the wake of current highly vitiated e-commerce business, a duty is cast upon the Government to protect sanctity of the law, rules and regulations pertaining to FDI in e-commerce and therefore necessity of a new and fresh Press Note replacing Press Note No.2 of the FDI policy is need of the hour.

In continuation to our submissions made at the meeting convened by the DPIIT on 17th March, 2021, we would like to strongly add that issuance of a fresh Press Note clarifying the FDI policy in e-commerce and also notifying the restrictions imposed on marketplace in absolutely unambiguous terms so that these foreign entities are not able to indulge in inventory-based model. The loopholes of the present policy are being exploited by foreign e-commerce giants like Amazon and Flipkart so that these loopholes are properly plugged and the policy is implemented as per its original intent.

The prime reason for these violations by the foreign e-commerce giants is their lust to control multi-brand retail trade through e-commerce platforms, by controlling the sellers on the platform, thereby controlling the prices and nature of goods being sold on their marketplace. Such control allows them **do predatory pricing, deep discounting**, preferential treatment of sellers with **capital dumping through their affiliate sellers at its root**. All this is done to gain the market share and make illegitimate financial gains at the expense of livelihood of **8.5 crores small merchants**, their dependent families and employees.

To circumvent the restriction imposed on the marketplace model of e-commerce, a common practice resorted to by these giant foreign e-commerce entities has been to create affiliate companies as sellers, in such a way that they have full control on their business by the way of **equity and/or economic participation through their parent/group companies without strictly falling within the definition of ‘Group Company’ in FDI policy**.

To plug these loopholes we have following suggestions for issuance of a new Press Note on FDI policy in e-commerce (*a detailed formulation/amendment to various clause of FDI policy is enclosed as Annexure*):-

a. **In order to clearly demarcate the boundary between “market place model” and “inventory based model”, any type of direct/indirect, equity or economic relationship, between “e-commerce marketplace entity” and “seller on its platform” should be prohibited. For this purpose, any type of relationship between “marketplace entity” and “Seller”, whether direct or indirect, equity or economic or otherwise should be strictly prohibited.**

b. **Such prohibited relationship between Marketplace and Seller may include, but not limited to, Group companies, Affiliates, Related Parties, Associate Companies, Beneficial owners or any other person(s) who can exercise such control.**

c. **Marketplace based model of e-commerce would mean provision of an information technology digital platform by an e-commerce entity to act as a facilitator between buyer and seller only.**

d. **Inventory based model of e-commerce would mean an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.**

