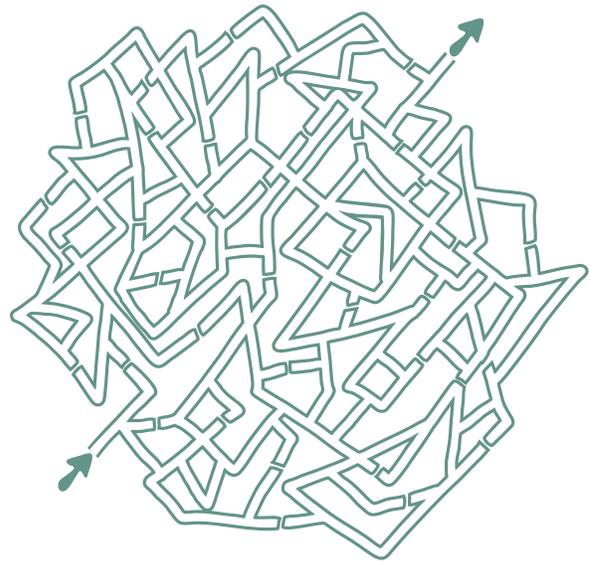


#SIMPLIFIED



THE PRIME FUTURE OF INDIAN RETAIL

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THE PRIME FUTURE OF INDIAN RETAIL

WHY CCI SUSPENDED THE AMAZON-FUTURE DEAL?

SHACHI GAMBHIR & VINAMRA KOTHARI



GETTING A PERSPECTIVE

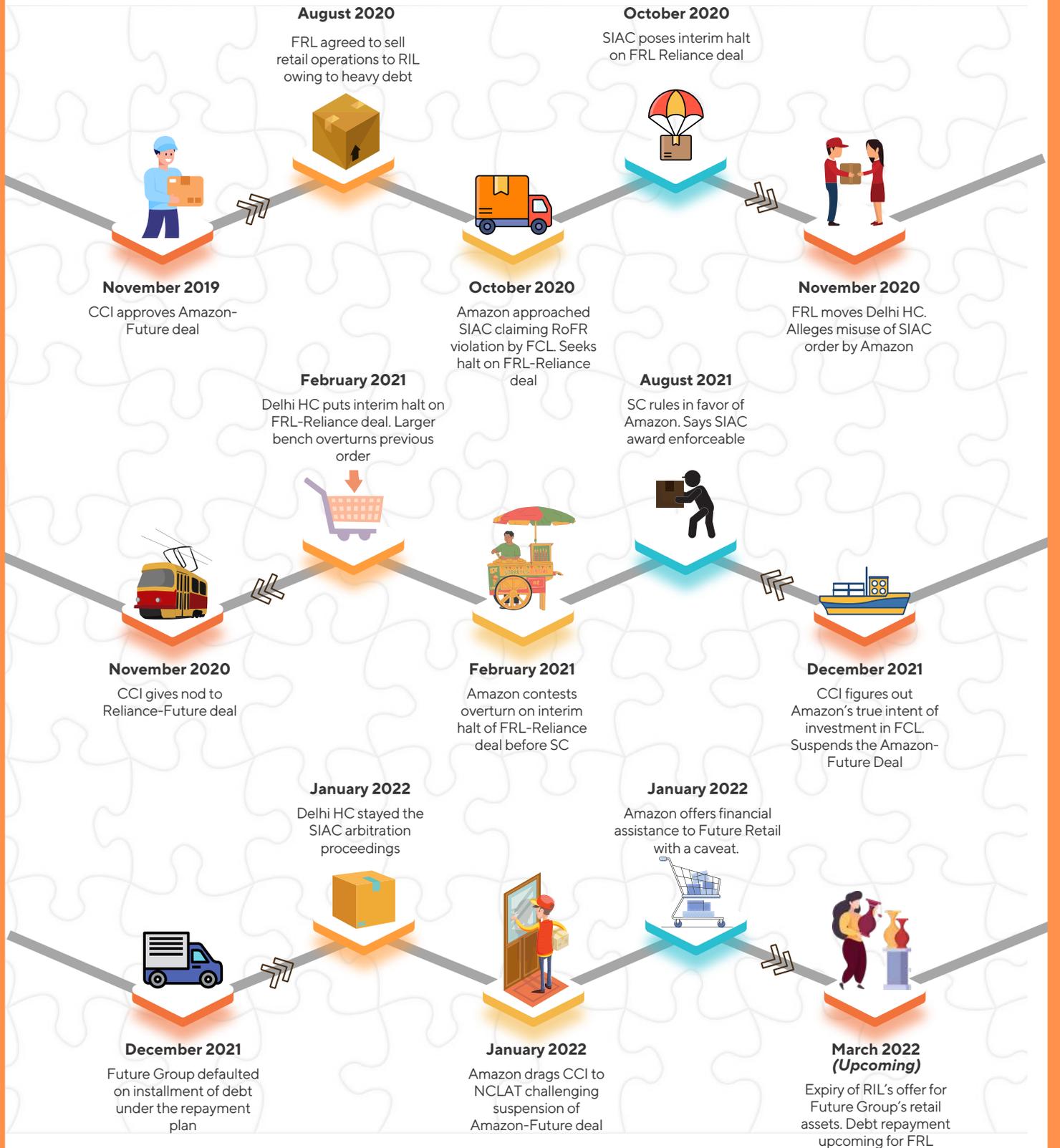
Have you ever chased after coupons to strike a smart deal? If not, read the story of how Amazon NV Investment Holdings LLC ("**Amazon**") scored a smart deal chasing after some coupons. For context, Amazon, which is the world's largest online retailer, wants to dominate the Indian retail sector as well. At the same time, it recognizes that India has been cautious in allowing Foreign Direct Investment ("**FDI**") in multi-brand retailing.

Owing to a wicked sense of economic nationalism, foreign investment in retail trade was previously prohibited, and the sector has only gradually begun to open up. The government now allows up to 51% FDI in multi-brand retail trade ("**MBRT**") businesses, albeit under certain conditions. These include a minimum investment of \$100 million, 50% of which must be used for backend infrastructure, mandatory local sourcing of goods, no permission to conduct retail trading via e-commerce, and multi-brand retailing only in states that permit it.

As a result, Amazon did indirectly what it couldn't do directly and devised a strategy to enter the Indian MBRT sector by piggybacking on the struggling business of the Future Group. After all, at stake was the control of India's retail sector, projected to be worth over \$1.3 trillion by 2025.

INFOGRAPHIC

THE PRIME FUTURE OF INDIAN RETAIL - A TIMELINE



DEAL BEHIND THE DISPUTE

In 2019, the Competition Commission of India (“**CCI**”) approved a deal between Amazon and Future Coupons Private Limited (“**Future Coupons** or **FCL**”). Amazon acquired a 49% stake in the Kishore Biyani-promoted FCL and in turn, got an indirect holding of 4.81% in Biyani’s flagship Future Retail Limited (“**Future Retail** or **FRL**”) which owns the likes of Big Bazaar and EasyDay.

The shareholders’ agreement (“**SHA**”) between the companies accorded Amazon with a Right of First Refusal (“**RoFR**”). In other words, Amazon was given the first hand in acquiring all or a part of FRL’s shareholding in the future. At the risk of oversimplification, Amazon attempted to gain control of the FRL, which was then valued at over Rs. 30,000 crores with a paltry investment of Rs. 1,400 crores in FCL. The deal also had a non-compete clause barring Future from dealing with potential competitors of Amazon, like Reliance, Walmart, Paytm, Alibaba, etc.

Fast forward to 2020. When retail businesses were affected by the pandemic, FRL was no exception. Desperate for financial stability, FRL struck a deal with Reliance Industries Limited (“**RIL**”) which owns India’s largest organised retailer. Being India’s second-largest retailer itself, with over 1700 retail stores, FRL agreed to sell its retail operations to RIL for close to Rs. 27,000 crores. For Reliance, a deal with Future Retail would have further cushioned its pole position with the added advantage of physical presence in smaller cities and towns across India.

Soon after the public announcement of the FRL-RIL deal, Amazon cried foul and alleged that the Future Group had denied Amazon the RoFR. It approached the Singapore International Arbitration Center (“**SIAC**”) for breach of contract and pled for the cancellation of the FRL-RIL deal, alleging foul play. In its emergency arbitral award, the SIAC put an interim stay on the FRL-RIL deal and since then, it has also rejected Future’s application to lift the interim stay on the deal.

In response, FRL petitioned before the CCI, accusing Amazon of misrepresenting its investments in FCL to indirectly tap into the Indian retail market. Hold onto this bit as it becomes more interesting ahead.

PRIME FULFILLED DELIVERY OF JUSTICE?

Today, there exists a complex web of litigation and counter litigation between all involved parties before various legal forums, with no end to the dispute in sight. The Supreme Court has asked all courts, statutory authorities, and stakeholders to hold their hand until it delivers its final verdict on the dispute. All this, while SAIC is yet to come out with its final decision in the matter,

To make things more interesting, very recently, India's anti-trust regulator (CCI) suspended the original 2019 investment deal between Amazon and FCL, while also slapping Amazon with a Rs. 202 crores fine. It held that Amazon had misled the commission through false statements and material omissions about its true intentions behind the investment. The suspension has put a question mark on the very contract that Amazon was trying to enforce against the Future Group.

Unsurprisingly, this led FCL to approach the SIAC, asking for a termination of the main arbitral proceeding since the very foundation of Amazon's arguments was made redundant by the CCI's order. The SIAC doesn't seem to agree and has decided to go ahead with the hearings of the main case. However, when Future approached the Delhi HC, it stayed SIAC's hearings till February 1. Amazon has now approached the National Company Law Appellate Tribunal ("**NCLAT**") against CCI's order and the NCLAT will hear their appeal in February

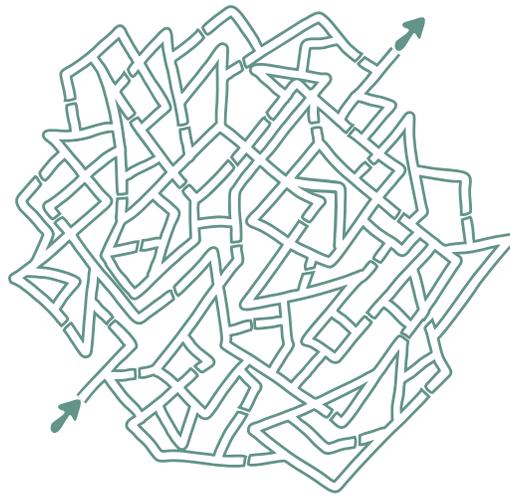
THE FUTURE OF FUTURE GROUP

This long-drawn saga demonstrates how a run-of-the-mill commercial dispute between the world's largest e-commerce player and a bankrupt Indian retailer can quickly become a handbook of Do's and Don'ts for foreign investors looking to enter and do business in India.

Tall claims from the government highlight their efforts in increasing the ease of doing business in the country. However, once we move beyond the rankings, new and potential investors might be greeted with an abyss of legal, bureaucratic, and enforcement-related issues. On another note, the respect that the Indian judicial system has for international arbitral awards to enforce Indian contracts is also on test and display in this dispute.

Biyani's Future Retail is on the clock for setting its house in order but currently finds itself in a terrible financial position. Very recently, it defaulted on a repayment to a lender bank. On top of this, RIL's offer to acquire the Future Group's retail assets is set to expire in March 2022. Across the board, Amazon in its last ditch effort, has offered financial assistance to the Future Group wherein their assets would be acquired by an entity led by Samara Capital. However, the offer comes with a rider that FRL cannot proceed with an asset sale to any other party.

The independent directors of the Future Group, to whom this offer was made, have squarely rejected this offer. The company doesn't have too long to get itself a deal either from Reliance or Amazon, and may even risk going down under if the dispute isn't settled soon.



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