ESTABLISHING A JOINT VENTURE IN INDIA

In view of the pandemic, multinationals those were looking at India for set-ups, have started evaluating joint ventures as a preferential mode of creating a presence in the country. While ensuring that these corporations don't miss the opportunities and doors opened through the revival process, at the same time they are equally vary of the fault lines in supply chain. The restrictions in travel and the mayhem caused due to the pandemic, changed not just the domestic businesses but even the cross-border investments. The joint venture are now the preferred modes of investments in India, cocktail of international cutting-edge technology, resilient Indians and economy, a strong start-up boom and an alternative to China (maybe), no one wants to miss the bus. Long back when India was a closed economy, the joint ventures with Indian partners were guided by 3 major factors (i) dealing with India labour; (ii) dealing with Indian Government; (iii) sectoral restriction under Foreign Direct Investment norms. Joint ventures were supposedly the safest choice, low risk and reduced hassles in managing the vast expanse of India. This has changes drastically over a period of 3 years and due to Covid-19, MNCs being risk tolerant are willing to battle it out. It is a return of colonization culture, if you lose it now, there is no second chance.

Here we look at what you should remember and do to protect yourself in case of JVs in India, which have a 50:50 chance of success, for several reasons, more because of communication, cultural, regulatory then due to commercial. The difference between a smooth separation and a tortuous one is the level of preparation that went into the creation of the JV.

Problems that commonly plague Joint Ventures:

- Communication Gap: Indians are well travelled, they speak the world's language (English, Japanese, German, French, Italian, Chinese), however since the language in only one fourth aspect of the communication and three fourth is understanding, most JVs would struggle that the expectations were not set right. Therefore, no matter how much butter chicken or sushi is on the menu, if the joint venture agreement is faulty, the party is not going to continue for long.

- JV Governance: Multinationals have evolved through decades if not centuries of sculpting and their business approach is focused, sharp and time bound delivery. However, most of the Indian conglomerates and corporations (barring a few) are family owned. The Indian side is looking for generational partnership, whereas the foreign MNCs are looking at 3~5 years of feasibility studies. Historically, JVs that stood longer years impregnated the Indian market, made an impact that is long lasting. Therefore, whenever the parties are sitting with different measuring scales, one would for sure, fall short of required patience.

- Gap in delivery of financial commitments. The Indian partner is keen to impress the foreign partner. However, foreign partner often feels that scaling the venture is vital to capture the market (it is, sometimes), whereas Indian partners is cost conscious and don't want to risk too much too fast. Therefore, usually there are resistance from the Indian side to further injection of funds (even though promised). This may be read as lack of interest by foreign partner. Indians would not talk straight (that they don't have the money, yet) and would offer all the other reasons. The foreign partner would evaluate those reasons and obviously not mind merit in the objections. This is the start of dispute.

- Compromising Controls, bold and underline, inherent weakness in Indian promoters. There is nothing more stressful to an Indian side but insecurity, mainly due to competitive conditions, that promoters would want to be part of every key decision. The foreign multinationals have tested the world market and are governed by a strong corporate governance and business standards, whereas due to unique family owned or closed group culture, the Indian partners are keen to retain as much control, through long negotiations, that many a times the discussions would fall short of signing the papers.

- Weak due diligence on the Indian JV Partners, has been one of the prominent features of failed joint ventures. The advisors are often engaged to do a evaluation of prospective partner, at a point in time. Now time is a relative concept in India and be aware that an Indian promoter is conscious of who is watching, the network is strong. If there are no significant red flags, the foreign partner would discuss the concerns and Indian partner would make representations and make commitments, often not documented. These cosmetic due diligences, at times purely financial and tax and legal often miss the market due diligence, even the difference in the respective vision of JV partners, cultural ethics etc.

- Aim for the moon and if you miss, you would be still amongst the stars, a famous quote but apt to describe the Indian mind-set. Putting aggressive targets, while being convinced within that these are unachievable, would often disturb the plans keeping the targets, margins, sales, etc too high without strong logics and know-how can prove fatal to joint ventures, be realistic.

Therefore, to ensure adequate protection from the issues mentioned above, the following clauses need to be covered:

1. Document – who is In-charge - of operations, of marketing, of customers, of regulatory etc
2. Set clear obligations of each party.
3. Set a periodic appraisal schedule, do not wait for the year-end.
4. Set investment deadlines, timelines of capital injections.
5. Spell in clear terms in what circumstances the agreed shareholding ratios can be breached
6. Introduce a strong corporate governance in the JV company
7. Protect ownership of IPR/technology
8. Be bold and ask while evaluating the performance of the JV, amongst partners
9. Document the exit procedures clearly, it should not be conditional, Indians love interpretations
10. Dispute resolution mechanism, Share valuation methods must be clearly define in JV agreement
11. Legal Jurisdiction should always be a neutral location, preferably not India
12. External Auditors must be appointed by majority shareholder.
13. Appoint an Independent financial outsourcing company in the initial years
14. Define reserved matters, the list can be long or short, depending which side you are on
15. Key Managerial Personnel, Independent Board members, appointed by mutual consent.

The list is long and however as Warren Buffett said - you only have to do a few things right in your life so long as you don't do too many things wrong. The key is to avoid making wrong decisions as much as making the right decisions. To avoid bad decisions, of course, you need to talk to me.

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