
JOINT VENTURES: A COMPARATIVE ANALYSIS OF INDIA AND INTERNATIONAL REGIME

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1. INTRODUCTION:

Joint Ventures are defined as a contractual arrangement between two or more entities that pool their resources to accomplish a specific task wherein they have rights to the net assets of the arrangement. They are based on the perpetual running of the business or the short period of time at the end of which joint ventures ceases to exist. Each participant is responsible for associated profits and costs wherein joint ventures have its own entity which is separate from other existing businesses i.e. parties under joint venture agreement have separate identities. The focus is to attain a single, predetermined goal or project. Herein, the parties decide the purpose, duration and structure of joint ventures. There is no statutory definition of joint ventures but New York has elucidated four elements of Joint Ventures which are as follows:

- a.) An agreement between parties manifesting their intent to associate as Joint Ventures.
- b.) Mutual contribution by parties to joint ventures.
- c.) Some degree of joint control over single enterprise or project.
- d.) A mechanism or provision for sharing of profits or losses.

Joint Ventures provide fast way to influence the complementary resources that are available with other partner, shares each other's skills, access to new market and diversify into new business. Each party to joint ventures have a responsibility to act in good faith in all matters relating to the venture, taking care to uphold the interests of all parties involved and this amounts to legal fiduciary duty.¹

¹ Joint Venture: Creation and Legal liabilities, https://www.legalserviceindia.com/legal/article-7598-joint-venture-creation-and-legal-liabilities.html#google_vignette

1.2 KEY CHARACTERISTICS OF JOINT VENTURES:

1. Creates Synergy:

One company may possess special characteristic which the other company may lack. Similarly, other company has some advantage with other company cannot achieve. When these two companies enter into joint venture, it generates synergies between them that creates greater good. The companies work on the economies of larger scale to give cost advantage.

2. Risks and Rewards can be shared:

When joint venture agreements are done between different countries, there are many diversifications in culture, technologies, geographical advantages and disadvantages, target audience etc. So, risks and rewards pertaining to the activity for which joint venture is agreed can be shared between the parties.

3. No separate laws:

There is no separate governing body that regulates activities of joint ventures. Once they are incorporated into corporate structure, The Ministry of Corporate Affairs in association with the registrar of the companies keep check on the companies.

1.3 ADVANTAGES AND DISADVANTAGES OF JOINT VENTURES:

Through this research paper, I have elucidated the advantages and disadvantages of Joint Ventures which are as follows:

Advantages:

- a.) Joint Ventures help organisations to scale up their limited capacity thereby, it leads to an increase in the economies of scale.²
- b.) It gives access to vast market which has a potential to grow and develop.

² Joint Ventures In India, <https://www.lexology.com/library/detail.aspx?g=10c33cd2-a0e6-4ff8-98c6-6b5d99473f0c>

Eg: If an organisation of USA(United States of America) enters into a Joint Venture with another organisation based at India. USA has an advantage of accessing vast Indian markets. At the same time, The Indian Companies have advantage to access their markets which is geographically scattered and has good paying capacity where quality of product is not compromised.

- c.) It added advantage to upgrading the products and services with respect to technology. International companies have come up with new ideas and technology to reduce cost and provide better quality products.
- d.) The main motive of the joint ventures is to provide products at most efficient price. This can be achieved when cost of production can be reduced or cost of the services can be managed.
- e.) A separate brand name give rise to distinctive look and recognition to brand.

Disadvantages:

- a.) When two distinct corporate cultures come together, the potential of misunderstandings are higher which give rise to cultural and communication differences.
- b.) Every company enters into a joint venture has its own sets of objectives and priorities which leads to the conflicts of interest which further leads to disagreements when tough decisions have to be made regarding resource allocation, profit distribution etc.
- c.) It is uncertain for partners in joint venture to perform at different levels i.e. one company might consistently meet its obligations and expectations while other lags. Such performance disparities can strain relationship leading to emergence of doubts about underperforming partner's commitment or capabilities. Every joint venture should have a clear defined exit strategy. Without a clear exit plan, disagreements can arise on valuation, asset distribution and other key aspects. It strains

relationships and even jeopardize joint venture's operations.³

1.4 TYPES OF JOINT VENTURES:

1. Equity-based Joint Ventures:

Under this type of Joint Ventures, the parties contribute assets to joint ventures and receive equity shares in return. It ensures that parties have a vested interest in joint venture's success. It is regulated by the Companies Act, 2013 as new legal entities are formed which are either public or private sector. The examples are Vistara, Air Asia India, Dhirubhai Ambani Aerospace Park etc.⁴

2. Contractual Joint Ventures:

The collaboration between the parties is established through contracts rather than creation of a new entity. It is suitable for those projects which have clear defined scope and duration. This type of joint ventures are governed by The Partnership Act, 1932 because it is just like a partnership which is binding by legal agreement where no separate legal entity is formed. The examples are: Mahindra-Renault LTD, PNB-Metlife, ICICI -Lombard etc.

1.5 POSITION OF JOINT VENTURES IN INDIA:

According to **OECD** (Organisation For Economic Co-operation And Development), Joint Ventures are a situation wherein the participating firms agree by contract or otherwise to combine, other than mergers, significant productive assets going beyond adhoc cooperation. Joint Ventures have certain anti-competitive effects including peculiar spillover collusion i.e. the coordination of two independent undertakings as they are forced to form Joint Ventures, Collateral Restraints etc.⁵

Single Economic Entity (SEE) Doctrine was introduced wherein certain legal entities are so closely related that they should be treated as a single economic unit. Under Joint Ventures, there is a concept of De Minimis Exemption which is also known as '**Small**

³ Joint Ventures, <https://www.investopedia.com/terms/j/jointventure.asp>

⁴ Joint Venture in India, http://www.nishithdesai.com/fileadmin/user_upload/Research%20Papers/Joint_Ventures_in_India.pdf

⁵ Comprehensive OECD report on Joint Ventures, <http://www.oecd.org/competition/abuse/2379097.pdf>

Target Exemption' which means that there are certain transactions which are excluded from being classified as combination under Competition Act. The enterprises that are parties to a combination where value of the assets acquired should not be more than 4.5 billion and turnover is not more than 12.5 billion.⁶

1.6 JOINT VENTURES UNDER COMPETITION ACT, 2002:

There is no separate laws for joint ventures in India. Joint Ventures are not specifically defined under the Act. Horizontal Joint Ventures are those joint ventures that operate in similar or same line of production and if the parent-partners of the joint ventures are likely to cause an appreciable adverse effect on the competition then it will amount to the contravention of Section 3(3) of the Competition Act, 2002 will be applicable and CCI (Competition Commission Of India) can investigate the anti-competitive effects of joint ventures. Vertical Joint Ventures are those Joint ventures that operate in different levels of production chain and if the parent-partners of the Joint Ventures are likely to cause an appreciable adverse effect on the competition then it will amount to the contravention of Section 3(4) of the Competition Act, 2002 will be applicable and CCI (Competition Commission of India) can investigate the anti-competitive effects of Joint Ventures. Under Section 6 of the Competition Act, 2002⁷— it includes any combination which causes or is likely to cause an appreciable adverse effect on the competition and requires every acquirer to notify CCI (Competition Commission of India) of a combination and seeks its approval for the formation of that particular combination. In the event of existing company being converted into Joint Ventures either through acquisition of shares or through subscription of fresh shares i.e. filling need to be done before CCI (Competition Commission of India) that prescribed thresholds are breached. The Government of India has notified certain thresholds in the case of fresh joint ventures whereby all the transactions of the fresh joint ventures do not meet such thresholds need not be notified to CCI (Competition Commission of India).

There are certain ambiguities or issues pertaining to joint ventures under The Competition Act, 2002 which are as follows:

⁶ Legal Website Samratdu, Joint Venture Agreement, (06.12.2012), <http://www.legalservices.india.com/article/general-format-of-the-joint-venture-agreement-1371-1.html>

⁷ Abir Roy and Jayant Kumar, Competition Law in India, (2nd ed. 2014)

- a.) There is a lack of classification of different types of joint ventures. Every joint venture which qualifies as a combination must be scrutinized by CCI (Competition Commission of India), irrespective of its impact on market.
- b.) There is ambiguity in the definition of “enterprise” under the Act. Joint Venture established by incorporation of a new company may not be qualified as a combination.
- c.) The Act provides no clarity as to whether the approval of joint ventures notified to CCI (Competition Commission of India) under Section 6 of Competition Act, 2002 would effectively shield it from inquiry under Section 3 of the Act. Joint Venture partners are not certain that their investment or collaboration is risk free from adverse action by CCI (Competition Commission of India) or penalties under the Act.

1.7 NOTIFIABILITY OF JOINT VENTURES UNDER COMPETITION COMMISSION OF INDIA:

Competition Commission of India (Procedure in regard to Transaction of Business Relating To Combinations) Regulations, 2011 – it mandates that all acquisitions of shares, assets or control and mergers and amalgamations that cross prescribed thresholds must be notified to Competition Commission of India for prior approval to the completion of joint venture transaction.⁸

There are two categories of joint ventures:

- a.) **Greenfield Joint Ventures:** It includes the new entity that acquires the assets and establishes the business from scratch. In this category, as they do not own assets or generate any revenue, these types of joint ventures are typically not notifiable and do not require prior approval of CCI (Competition Commission of India) under the Competition Act.
- b.) **Brownfield Joint Ventures:** It includes those joint venture entities which are established by the virtue of contribution or transfer of existing assets or business by a parent entity. As the parent company contribute to the existing assets or businesses to

⁸ Establishing a Joint Venture in India(2011), <http://www.india-briefing.com/news/establishing-joint-venture-india-4833.html>

joint ventures, it may be notifiable if the prescribed financial thresholds under the Competition Act are satisfied.

The thresholds applicable in India or Abroad are as follows:

a.) At Enterprise Level:

In India, the assets are valued at more than 25 billion or turnover of more than 75 billion or outside India, the assets are valued more than 1.25 billion or turnover of more than 3.75 billion.

b.) At Group Level:

In India, the assets are valued at more than 100 billion or turnover of more than 300 billion or outside India, the assets are valued more than 5 billion or turnover of more than 15 billion.

1.8 CASE LAWS RELATING TO INDIAN JOINT VENTURES:

A. FICCI – MULTIPLEX ASSOCIATION OF INDIA VS UNITED PRODUCERS/DISTRIBUTORS FORUM⁹ (CASE NO. 01 OF 2009):

The informant i.e. FICCI alleged that the respondent namely United Producers/Distributors Forum (UPDF), The Association of Motion Pictures and T.V Programme Producers were indulged into cartelisation. These companies were producing and distributed at 100% of Hindi Films and thereby exercise almost the complete control over Indian Film Industry. In their notice dated 27.03.2009, they had instructed all producers and distributors including those who are not members of UPDF, not to release any new film to members of informant for the purpose of exhibition at multiplexes. There was a conflict between producers and members of informant on revenue sharing ratio. The informant alleged that members of UPDF who were controlling 100% of the market and fixed prices violated Section 3(3) of the Competition Act and also limiting or controlling supply for refusing to release Hindi films for exhibition in multiplexes to members of the informant thereby

⁹ Case No. 01 OF 2009

violating Section 3(3) b of the Act. UPDF and its members have collectively boycotted Multiplex cinema operators in violation of Section 3(3) c of the Act.

On 30.06.2009- CCI (Competition Commission of India) opined that there exists a prima facie case of infringement provisions of the Act therefore it directed the Director-General to investigate into the matter and submit its report within 45 days of receipt order.

According to Director-General – these enterprises indulged into cartelisation as these associations collectively decide not to release films to multiplex owners during the period from April 4, 2009 to June 12, 2009. The letters were issued to producers and distributors not to supply films to the multiplexes and there were instances of anti-competitive letters issued by associations. The Director-General concluded that these actions were in the nature of cartelization by producers and distributors who were organized under the umbrella of UPDF which were in contravention of Section 3(3) of Competition Act, 2002 and thereby CCI (Competition Commission of India) imposed penalty on the defendants.

B. ANDHRA PRADESH GAS DISTRIBUTION CORPORATION LIMITED, SHELL GAS B.V AND OTHERS ¹⁰

On 26.10.2015, CCI (Competition Commission of India) received a notice under Section 6(2) of the Competition Act which was jointly filed by Andhra Pradesh Gas Distribution Corporation Limited, GDF Suez Energy International Global Developments B.V (Engie), Shell Gas and GAIL(India) Ltd. These parties envisaged the setting up of a project comprising of two joint ventures, namely “Term Co.” and “Trade Co.” (Proposed Combination). Herein, the Term Co. proposed to develop the terminal comprising a floating storage and regasification unit along with infrastructural facilities within Kakinada Port in Andhra Pradesh. Joint Venture agreement was executed between GAIL, Engie and Shell on 25.09.2015. The parties were required to provide information as per Regulation 14 of Combination Regulations vide letter dated 13.11.2015 wherein it was noticed that the response filed was incomplete and there were omission in data. As per CCI

¹⁰ CCI Case No. 2014

(Competition Commission of India), there was a huge demand supply mismatch for natural gas in India especially in Eastern Coast. The proposed combination envisaged the setting up of Greenfield Joint Ventures for creating necessary infrastructure for supplying natural gas in India. Although there was a deficiency in natural gas supply in India but the proposed combination was inherently efficient in terms of creating a new source of natural gas for consumers. CCI (Competition Commission of India) was of the opinion that the proposed combination is not likely to cause an appreciable adverse effect on the competition in India and this order shall stand revoked.

C. RELIANCE AEROSTRUCTURE LIMITED AND THALES INDIA PRIVATE LIMITED ¹¹

On 27.12.2017, CCI (Competition Commission of India) received a notice jointly given by Reliance Aerostructure Limited and Thales India Private Limited under Section 6(2) of the Competition Act, 2002. The notice was filed pursuant to execution of the shareholder's agreement dated 28.11.2017 between Reliance Aerostructure Limited and Thales India Private Limited. Reliance Aerostructure and Thales India Private Limited agreed to constitute joint venture company for the implementation of offset obligations related to inter-governmental agreement between Government of India and Government of France on 23.09.2016 for the purchase of RAFALE (fighter aircraft) in fly-away condition. The proposed combination contemplates the creation of joint ventures wherein Reliance Aerostructure Limited would hold 51% of equity share capital and remaining 49% equity share capital would be held by Thales India Private Limited. CCI (Competition Commission of India) observed that the parties do not produce or provide or any similar or identical products either directly or indirectly. The parties are not engaged in any activity related to production, supply, distribution, storage, sale or provision of services which is at different stages of production chain. CCI (Competition Commission of India) opined that the proposed combination is not likely to cause an appreciable adverse effect on the competition.

¹¹ Combination Regulation No. -C-2017/12/541

1.9 INTERNATIONAL JOINT VENTURES:

It refers to a business agreement wherein the entities from different countries come together to work on a particular project, business activity or a new enterprise. The ambiguities may arise due to the intersection of conflict zones and legal systems from different countries. International Law acts as a guiding light to help resolve such disputes. Laws are not bound by territorial limits and can be appropriately interpreted in an international framework.¹²

According to Section 1 of Sherman Act, it states that joint venture arrangement merely disguise or promotes collusion or cartels affecting prices will be viewed as “per se” price fixing, despite the attempt to portray the activity as a Joint Venture.

Joint Venture of Hulu – In 2008, Joint Venture launched by NBC Universal Television Group, Fox Broadcasting Company and Disney ABC Television Group created an enormous popular video streaming website “Hulu”. The success of Hulu had potential buyers lining up with offers topping \$ 1 billion.

1.10 ADVANTAGES AND DISADVANTAGES OF INTERNATIONAL JOINT VENTURES:

Through this research paper, I have elucidated the advantages and disadvantages of International Joint Ventures which are as follows:

Advantages:

- a. International Joint Ventures can enable entities to diversify their operations and mitigate risks associated with particular market or industry.
- b. Joint Ventures allow companies to share resources and expertise which results in significant cost savings and operational efficiencies.
- c. International Joint Ventures can fuel innovation by combining different skills, knowledge and technologies. They can expedite the research and development for new

¹² Datta, Deepak K., International Joint Ventures: A framework for analysis journal of general management(1988)

products and services.

Disadvantages:

- a.) The differences in management styles and organisational cultures lead to conflicts.
- b.) Unwinding a failed joint venture can be complex and costly and may result in loss of time, resources and money.
- c.) Under International Joint Venture, the control is shared between the entities. This shared control might limit the ability of a company to make unilateral decisions.

Two examples of Failed International Joint Ventures are:

- i.) In early 2000s, Sony and Ericsson formed a Joint Venture to produce mobile phones. However, it ran into trouble when companies disagreed on product development and marketing strategies. It was dissolved in 2012 with Sony buying out Ericsson's stake in the venture.¹³
- ii.) In 2001, Diamond mining company De Beers and Luxury goods conglomerate LVMH formed a Joint Venture to sell diamond jewelry. Joint Ventures failed in parts because companies did not share a common vision for the venture and later it was dissolved in 2012.

1.11 POSITION OF JOINT VENTURES IN CHINA:

Joint Ventures are defined as a business agreement wherein it includes a foreign investor and at least one Chinese company combining for a specific purpose. There are two types of joint ventures i.e. Equity Joint Ventures and Cooperative Joint Ventures. In case of Equity Joint Ventures, the parties contribute assets to joint ventures and receive equity shares in return. It ensures that parties have a vested interest in the joint venture's success, whereas in the case of cooperative joint ventures, both parties can operate as distinct legal entities rather than as a single entity. The examples of the chinese joint ventures are:

¹³ Parkhe, Arvind, International Joint Ventures-Handbook for International Management Research (1996)

1. Kellogg Company entered into a joint venture agreement with Wilmar International Ltd for purpose of selling and distributing cereal and snack foods to consumers in China. Wilmar offers marketing and sales infrastructure in China including an extensive distribution network and supply chain.
2. International Joint Venture allowed Spotify to gain a foothold in the Chinese market while providing Tencent exposure to Spotify's global user base.

1.12 FACTORS DUE TO WHICH CHINESE JOINT VENTURES BECAME SUCCESSFUL:

The factors due to which Chinese Joint Ventures have become successful:

- i.) Most Chinese managers see Joint Ventures as their property and disregard control issues arising from percentage ownership interests. If the Chinese Joint Ventures feel tricked into giving up its rights, it will likely take corrective actions.¹⁴
- ii.) Under Chinese Joint Ventures, the power lies with two persons i.e. Managing / representative director and Company's General Manager. These individuals are able to dictate companies operations and can act and usually do that with little or no supervision from board of directors.
- iii.) It is crucial to point out that there is active participation in day-to-day operations of the company.

1.13 COMMON MISTAKES THAT CHINESE LAWYERS SEE IN FOREIGN COMPANIES:

The common mistakes that Chinese lawyers see in foreign companies are as follows:

- a.) In the contracts of the joint ventures, many companies provide for joint venture agreement disputes to be resolved outside of China. Litigation and arbitration need to take place in China because Chinese courts are not likely to take these decisions to a

¹⁴ Godfrey Yeung and Yi Liu, Hybrid governance of Joint Ventures in transitional economies(2022), <https://doi.org/10.1080/09692290.2022.2062033>

foreign court/ arbitral body in any event.¹⁵

- b.) It states that we should never rely on Chinese partners to handle the legal work, as they have zero initiative to protect the company's interests and without any qualified legal expertise, a Chinese partner could easily cheat you for millions of dollars.
- c.) Joint share ownership is not enough to provide adequate protection. Hiring an attorney/legal counsellor is very important.

1.14 CASE STUDIES WITH RESPECT TO CHINESE JOINT VENTURES:

1. CASE OF WHIRLPOOL:

The firm formed several joint ventures in China in the mid of 1990s. These Joint Ventures proved to be unsuccessful. They needed to report all the information to the headquarters for further arrangements. Each recruitment process detail has been sent to its Hong Kong office for onward transmission to its American headquarters for further approval. This process took almost 3-4 months and their intentions were to safeguard the complete control of headquarters and it impede whirlpool's speed to seek talents in fast-moving markets, such as China. Their group performances dropped by 45% between June and the end of December 1996, with the company incurring losses to the tune of 89.69 million yuan in 1997.¹⁶

Recommendations on Whirlpool's failure in Chinese Market are:

- a. The first and the foremost is to attract the right talent for Whirlpool within a short period. Local sourcing of candidates is considered as a significant step in the talent selection thereby attracting more local talents.
- b. Second is to adopt the traditional approach for matching the position with the employees by observing incumbent workers but in the practical field, it is inefficient and immature approach and difficult to match the right person to right job. In

¹⁵ Kun Jiang, Wolfgang Keller, Larry D.Qiu, William Ridley, International Joint Venture and Internal Technology Transfer Vs External Technology Spillovers: Evidence from China, <http://www.nber.org/papers/w24455>

¹⁶ Yanchu Zhang, Global HRM Practices across cultural and institutional joint ventures: The case analysis of China-Western Joint Ventures, Journal of Humanities, Arts and Social Science (2023), <https://www.hillpublisher.com/journals/jhass/>

practice, human resource management group provides the skills to each candidate, asking them for self-assessment before interviews. During the course of interview, the interviewers should consider candidate's skills based on their performance and self-evaluation report.

- c. Third is that Whirlpool should provide a new incentive plan, being a combination of regular wages along with non-tangible recognition-based awards (Eg, Gift certificates and Individual travels). It would result in positive impact on employee performances.

2. CASE OF STARBUCKS:

Starbucks is an American multinational chain of coffee-houses. Starbucks established its first shop in 1999 over more than 20 years. The Chinese market had become Starbucks's second largest market outside US and in 2018, Company operated 28218 locations worldwide with 12.5 % of stores located in China. Starbucks came with a new program known as **"Starbucks Partners"** which aimed at giving employees a sense of belongingness. This program generated fast growth of its revenue and it stood at \$745 million in 2019. Since, China does not offer knowledge of baking in its compulsory education programs. The local employees lacked coffee knowledge which is the core mission of Starbucks. Starbucks in China provided a program called as **"24 hours of classroom learning"** which included an overview of organizational history and self-guided booklets for beginners. As a result of this method, there was an incredible growth in profits for Starbucks i.e. growing upto \$1,186.4 million in 2017.

3. CASE OF NOKIA BELL:

In 2017, Alcatel-Lucent Shanghai Bell Company had complete integrations with Nokia's operations in China and formed New Nokia Bell Shanghai Company.¹⁷ After the company was established, Nokia and China Huaxin signed a joint venture agreement in which both the parties agreed to integrate Nokia's business in China with Shanghai Bell, still using Equity structure with Nokia owning 50%+1 share and China Huaxin holding 50% Shanghai Nokia Bell and it was the only joint venture among 101

¹⁷ Yiheng Ding, Identifying key success factors of International Joint Ventures-Case Study of Nokia Bell, *Advances in Economics, Business and Management Research* (Vol.186)

central enterprises directly governed under **SASAC**(State Owned Assets Supervision And Administration Commission Of State Council). Nokia reported Double-digit year-over-year growth across several business developments in Nokia Communications, with overall net sales reaching EUR 627 million.

CONCLUSION:

Through this research paper, I would like to conclude by stating that there is no specific legislation for Indian Joint Ventures. Still, it is regarded as a combination under Section 6 of the Competition Act, 2002. In contrast, in case of Chinese Joint Ventures, they are governed by the Chinese government that protects the investment of foreign joint ventures as well as their lawful rights and interests in Joint Ventures. According to a report by **Global Trade Research Initiative (GTRI)**, there is an increasing dependence of India over Chinese Industrial goods such as telecom, machinery, electronics etc. In the near future, if India and the Chinese markets collaborate with each other in a joint venture, then advanced technologies adopted by the Chinese market will yield and boost India's manufacturing sector.