

# RECENT DEVELOPMENTS AT SWIGGY: DID INVESTORS BLOCK A *BONA FIDE* PUSH TO EASE FEMA COMPLIANCE OR THWART AN OPPORTUNISTIC MOVE TO CONSOLIDATE POWER?

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# What happened?

- **April 9, 2026:** Swiggy received letters of resignation effective April 10, 2026 from two of its directors:
  - ✓ Roger Rabalais, a nominee director representing MIH India Food Holdings B.V. (**MIH**); and
  - ✓ Lakshmi Nandan Reddy Obul, a whole-time director, who was also the Co-founder and Head of Innovation at Swiggy until his resignation.
- **April 10, 2026:** Swiggy's board of directors held a meeting and approved resolutions, *inter alia*, to:
  - ✓ take on record the resignations received from Roger and Nandan;
  - ✓ alter Swiggy's articles of association (**AoA**) and grant special rights to identified shareholders;
  - ✓ subject to shareholder approval, appoint Renan De Castro Alves Pinto, the MIH nominee, as an additional director with effect from April 11, 2026; and
  - ✓ subject to shareholder approval, appoint Phani Kishan, Co-Founder and Chief Growth Officer, and Rahul Bothra, Group Chief Financial Officer, as additional directors with effect from June 1, 2026.

# What happened?

- **April 10, 2026:** Swiggy issued a postal ballot notice seeking shareholder approval for:
  - ✓ alteration of AoA and grant of special rights to identified shareholders by way of a special resolution; and
  - ✓ appointment of Renan as a nominee director of MIH by way of an ordinary resolution.
- **April 21, 2026:** Remote e-voting window opened.
- **May 13, 2026:** Swiggy issued a disclosure to the exchanges clarifying that the proposed alterations to the AoA and board nomination framework form a part of Swiggy's broader endeavour to become an Indian owned and controlled company (**IOCC**) under Indian foreign exchange regulations (**FEMA**).
- **May 20, 2026:** Remote e-voting window closed.
- **May 21, 2026:** Swiggy intimated the stock exchanges that while the resolution to appoint Renan had been approved, the resolution proposing alterations to the AoA fell short of the required threshold of a special resolution by 2.65%. It also clarified that given the voting results it would not be proceeding with the appointments of Phani and Rahul to its board.

# Key AoA Alterations

Article(s)	Existing Provisions	Proposed Alterations
103B and 103C	Subject to holding at least 5% equity shares in Swiggy, each of Accel and SoftBank had a right to nominate 1 director	Deletion of these nomination rights. Accel's shareholding had reduced to 2.77%. SoftBank held over 5% but had consented to deletion.
103E(i)	Subject to holding 67,704,848 equity shares or a senior management position, Sriharsha Majety (Co-Founder, MD and Group CEO) had a right to nominate himself as a director	Expansion of this nomination right to allow Sriharsha to nominate, in addition to himself, another member of Swiggy's senior management as a director
103E(ii)	Subject to holding 16,872,943 equity shares and remaining a permanent full-time employee, Nandan had a right to nominate himself as a director	Replacement of Nandan's nomination right with a nomination right for Phani subject to: <ul style="list-style-type: none"> <li>(i) remaining a shareholder and permanent full-time employee; and</li> <li>(ii) holding vested ESOPs and equity shares, together aggregating to the equivalent of 2,934,194 equity shares.</li> </ul>

# Why did Swiggy propose the AoA alternations?

- **Initial Explanation**

- ✓ In the explanatory statement to its postal ballot notice, Swiggy stated the overall objective as deletion of legacy nomination rights which are inoperative or have been contractually surrendered.
- ✓ On grant of additional rights to Sriharsha, the board highlighted its recognition of his role in charting Swiggy's long-term growth vision, strategic roadmap and capital allocation strategies.
- ✓ On grant of nomination rights to Phani, the board acknowledged his invaluable contribution, unwavering dedication and commitment, and continuing pivotal role in shaping Swiggy's strategic direction.

- **May 13 Clarification:** In response to queries from institutional investors, Swiggy reiterated the original objectives. However, it also cited its endeavour to become an IOCC under FEMA as an additional objective.

- **May 27 Clarification:** Swiggy issued another clarification on May 27, 2026 reiterating that the AoA amendments were a preparatory step towards qualifying as an IOCC. It expressly clarified that the move was not aimed at concentrating power and that it will continue to constructively engage with stakeholders.

# Evaluating Swiggy's IOCC argument

- **Downstream Investment**

- ✓ As on March 31, 2026, foreign investment in Swiggy was at 52.19%. Also, non-residents held the right to appoint a majority of Swiggy's directors. Swiggy is, therefore, foreign owned and controlled.
- ✓ Downstream investment is an investment by an Indian entity, which is owned or controlled by non-residents (in this case, Swiggy), in another Indian entity (in this case, Swiggy's quick commerce subsidiary, Instamart).
- ✓ Under FEMA, the entity receiving downstream investment is treated the same as an entity receiving direct foreign investment. Therefore, Instamart is subject to the FEMA rules for the e-commerce sector.

- **E-Commerce Rules - Marketplace Model**

- ✓ Marketplace model of e-commerce is when the e-commerce entity acts as a facilitator between buyers and sellers. Not permitted to own the goods sold on its platform. FEMA permits 100% FDI in this model.
- ✓ As Instamart is subject to FEMA restrictions, Instamart operates on the marketplace model.

# Evaluating Swiggy's IOCC argument

- **E-Commerce Rules - Inventory-based Model**

- ✓ Inventory-based model of e-commerce is when the inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly. FDI is not permitted in this model of e-commerce.
- ✓ In 2025, Instamart's competitor, Blinkit, capped foreign ownership at 49.5 and became an IOCC to pave the way for an inventory-based model. It adopted the new model on September 1, 2025.

- **Advantages of the Inventory-based Model**

- ✓ Direct inventory purchases and sales remove significant complexity around GST and FSSAI requirements.
- ✓ Direct purchases from brands improves margins and margin predictability.
- ✓ Model allows more control over stock management, supply chain, product availability, quality control and pricing.

# Why did the IOCC argument fail?

- **Partial Fix:** Proposed AoA alterations can help solve the control limb. However, Swiggy remains foreign owned. Therefore, the AoA changes do not lead to Swiggy automatically becoming an IOCC.
- **Significant Dilution of Nomination Thresholds**
  - ✓ Nomination rights of Swiggy's existing investors are linked to minimum shareholding of 5%. MIH's right to appoint a second director is subject to minimum shareholding of 15%. This is in line with market practice
  - ✓ Expansion of Sriharsha's rights was being proposed despite him holding approx. 5.57%. Phani's rights were being linked to vested options (not shares) and a significantly lower quantitative threshold.
- **Inconsistent Communication**
  - ✓ In the absence of a direct route to becoming an IOCC and deviation from market and company practice on nomination rights, clear communication with investors was key.
  - ✓ Initial postal ballot notice made no mention of the IOCC argument. Although the vote fell short by 2.65%, just over 59% of domestic institutional investors voted against the resolution.

# Key takeaways

- **Market Practice on Nomination Rights:** Nomination rights linked to low shareholding thresholds is not common practice in India and can spook institutional investors who rely on standard practices or recommendations from proxy advisors.
- **Clear Shareholder Communication is Key:** Regardless of Swiggy's intent, its communication to shareholders was inconsistent and unclear. Events show that key corporate actions should be preceded by clear and coherent communication with shareholders. Especially crucial for entities having no promoter holdings and high public/ institutional holding.
- **Organization of Corporate Actions:** Clubbing multiple corporate actions and amendments under a single omnibus resolution was a procedural error. Uncertainty on grant of nomination rights also resulted in rejection of ordinary course amendments such as deletion of nomination rights of Accel, SoftBank and Nandan.

**Thank You**

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