

## Swiggy tried to address a FEMA problem by compromising governance. It failed.



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Swiggy Limited's current predicament is one that most startups with low promoter holdings and high foreign investment are likely to encounter sooner or later. Indian foreign exchange law (- its Foreign Exchange Management Act or FEMA) requires a company to satisfy two conditions to qualify as Indian Owned and Controlled (IOCC). The first is an ownership test: more than 50% of equity must be held by resident Indian citizens. The second is a control test: control - defined as the right to appoint a majority of directors or to direct management and policy decisions, must vest in resident Indians. At some point, most startups with low promoter-high foreign holdings are likely to run into a FEMA problem that Swiggy Limited is attempting to address. Indian foreign exchange law mandates that to qualify as Indian Owned and Controlled (IOCC), a company must satisfy two conditions.

Both conditions must be satisfied at the same time. Where an entity falls short, the consequences are significant: it loses the ability to invest downstream as a domestic entity, and its investments are reclassified as indirect foreign investment. Its subsidiaries are then treated on par with foreign entities — attracting the same FDI restrictions that apply in sectors like retail trading and inventory-based e-commerce.

## Swiggy's board problem

Swiggy has no identifiable Indian promoter group that holds a substantial stake or representation on the board. As of 31 March 2026, its shareholding is widely dispersed, with public institutional investors holding approximately 40% and non-institutional public shareholders holding 60%. Its board comprises seven members, two of whom are nominee directors of MIH India Food Holdings (Prosus).

### Exhibit 1: Top Public shareholders on 31 March 2026

No.	Name of the shareholder	Shares held in (million)	Voting rights as % of total
1	MIH India Food Holdings BV	581.35	21.06
2	SVF II Songbird (de) LLC	172.91	6.26
3	Sriharsha Majety #	126.11	4.57
4	ICICI Prudential Multi-Asset Fund	89.93	3.26
5	Kotak Midcap Fund	79.19	2.87
6	Accel India IV (Mauritius) Limited	76.51	2.77
7	Mirae Asset Large & Midcap Fund	62.27	2.26
8	Nippon Life India Trustee Ltd	61.69	2.24
9	Invesco India Flexi Cap Fund	56.87	2.06
10	Tencent Cloud Europe BV	54.34	1.97
11	SBI equity Hybrid Fund	53.60	1.94
12	Government Pension Fund Global	39.62	1.44
13	Elevation Capital V Limited	37.30	1.35
14	Norwest Venture Partners VII-a-Mauritius	36.73	1.33
15	Aditya Birla Sun Life Trustee Private Limited	35.10	1.27
16	SBI Life Insurance Co. Ltd	33.59	1.22
17	HDFC Trustee Company Ltd	33.02	1.20
<b>Total</b>		<b>1630.13</b>	<b>59.07</b>

Source: Capitaline database

# Sriharsha Majety is the MD and CEO of the company

### Exhibit 2: Board Composition on 26 April 2026

S No	Name	Occupation	Type
1	Sriharsha Majety	MD and CEO	ED
2	Ashutosh Sharma	Nominee of MIH Internet India Private Limited	NED
3	Renan Pinto	Nominee of MIH India Food Holdings BV	NED
4	Anand Kripalu (C)	Operating Partner, Kedaaraa Capital	ID
5	Ms. Suparna Mitra	MD & CEO, TeamLease Services Ltd	ID
6	Shailesh Haribhakti	Chairperson, Shailesh Haribhakti & Associates	ID
7	Faraz Khalid	CEO, noon	ID

Source: Annual report, [Company website](#), BSE

ED: Executive Director, ID: Independent Director, NED: Non-executive Non-independent director, (C): Chairperson

## Swiggy's proposed fix

To address this, the company proposed altering its Articles of Association (AoA) to create a new "governance architecture" linked to its founders, ultimately intended to achieve IOCC status.

The plan included granting CEO Sriharsha Majety the right to nominate himself and one additional person from the senior management to the board. It also proposed a new personal board nomination right for Chief Growth Officer and Co-Founder Phani Kishan Addepalli.

The objective was perhaps to ensure the founders could appoint a majority of the non-independent directors, thereby guaranteeing a resident Indian majority on the board regardless of foreign nominee choices.

But institutional investors did not back this governance fix to its FEMA problem. The resolution needed 75% to pass as a special resolution. It got 72.36%.

### Voting Outcome

Exhibit 3: Voting outcome for Resolution 1 of the 2026 Postal Ballot: To Approve the alteration of Articles of Association of the Company

Promoter/Public	No. of shares held	No. of votes polled	% of votes polled	No. of votes in favour	No. of votes against	% of votes in favour	% of votes against
Promoter Group	-	-	-	-	-	-	-
Institutional Holders	1,109,677,542	1,035,738,151	93.3	423,167,390	612,626,143	40.9	59.1
Others	1,650,636,013	1,212,501,048	73.5	1,203,595,621	8,905,427	99.3	0.7
<b>Total</b>	<b>2,760,313,555</b>	<b>2,248,294,581</b>	<b>81.5</b>	<b>1,626,763,011</b>	<b>62,15,31,570</b>	<b>72.4</b>	<b>27.6</b>

Source: IiASADrian; BSE Datafeed

### Three governance concerns

At that outset, the IOCC argument surfaced after we initially flagged governance concerns with the AoA proposals. It should've been part of the shareholder notice to begin with.

### Bundling

Grouping the deletion of lapsed rights of existing investors (like Accel and SoftBank) with the granting of fresh, expanded rights to the founders was poor design. A shareholder who had no objection to the housekeeping but opposed the new rights had no mechanism to separate the two. We believe shareholders should have been given the opportunity to vote on each change independently.

### The proposal tied significant board influence to a low shareholding threshold

Sriharsha Majety's right to nominate an additional director was anchored to holding 67.7 million shares- about 2.45% of the company as of 31 March 2026 - or remaining in a senior management role. Share ownership must have a bearing on board nomination rights, and that threshold is a thin equity basis on which to anchor two board nominations in a widely held, promoter-free company.

## **Swiggy proposed granting nomination rights to Phani Addepalli basis vested ESOPs and not share ownership**

Phani Addepalli's board seat was tied to continued employment, a minimum shareholding, and holding vested ESOPs or shares - or a combination - equivalent to at least 2.9 million shares, or 0.11% of the company as of 31 March 2026.

As of April 1, 2026, he held around 276,000 shares and 7.3 million vested but unexercised stock options - above the threshold, but almost entirely in options rather than actual equity.

Vested options remain susceptible to lapse or forfeiture due to employment terms or termination for cause, making them a fragile and unusual basis for a permanent board seat.

The nomination rights of Accel and SoftBank were deleted on the grounds that their shareholding had fallen below the required threshold. Granting Addepalli a nomination right without a comparable shareholding threshold is internally inconsistent with that logic.

## **Was this governance choice the only fix?**

Swiggy itself acknowledged that restructuring board nomination rights alone may not solve its IOCC problem. In its 13 May stock exchange filing, the company stated that the proposed amendments form part of a broader endeavour to become an IOCC "as and when the domestic shareholding in the company increases beyond 50% with necessary regulatory and shareholder approvals."

The amendments, in other words, were designed to address only the control limb - the ownership limb remains unresolved and would require a separate process.

Swiggy is not unique to have this problem. Eternal, formerly Zomato, addressed it via capping its foreign shareholding. By limiting foreign ownership to 49.5%, a company satisfies the ownership limb of the IOCC test more directly than it does through complex board rights.

Further, a company can demonstrate "control" simply by ensuring its board is naturally composed of resident Indians through ordinary appointment mechanisms, provided no foreign shareholder has override rights.

Board nomination rights should remain linked to a meaningful equity shareholding rather than unexercised stock options. Swiggy must find more suitable ways to address IOCC requirements that do not compromise governance structures or prejudice the interests of minority shareholders.

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