



# 2ND NLU MEGHALAYA

## NATIONAL MOOT COURT COMPETITION

2025-26

## MOOT COURT PROPOSITION

**Flash Retail Pvt. Ltd. vs. Union of Sindhupradesh & Ors.**

BROUGHT TO YOU BY



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## Flash Retail Pvt. Ltd. vs. Union of Sindhupradesh & Ors.

### Background

#### Quick Commerce Industry in Sindhupradesh

Sindhupradesh's **quick commerce** sector – the business of delivering groceries and everyday essentials at lightning speeds (often within 10–15 minutes) – has exploded in recent years. Pioneered by startups leveraging dense networks of “dark stores” (small neighbourhood warehouses) and gig-economy delivery riders, the industry grew from a valuation of a mere \$200 million in 2021 to projections of **\$30+ billion by 2030**. Consumers, especially in urban areas, have embraced the convenience of ordering everything from milk to fresh produce via mobile apps and receiving them almost instantly at their doorstep. Major players include **Flash Retail Pvt. Ltd. (FlashRetail)** – the appellant in this case – along with competitors like **ZipMart** and **TurantDelivery**, all vying for market share through ultra-fast delivery guarantees and steep discounts.

This boom, however, has **unsettled traditional retailers and regulators**. Small brick-and-mortar shopkeepers complain of unfair competition, citing deep discounts and exclusive product offerings on quick commerce platforms that **lure customers away from local markets**. Consumer advocates are raising alarms about **“dark patterns” in apps and personalized pricing/discounting**, where algorithms might subtly push consumers to spend more or present different prices/discounts to different users. Additionally, the **safety and welfare of gig delivery workers** have sparked public debate – the pressure to meet 10-minute delivery promises has raised **road safety concerns** and highlighted the lack of social security for the thousands of riders zipping through traffic to fulfill orders. Policymakers find themselves walking a tightrope between encouraging digital innovation and safeguarding competition, consumer rights, and equity.

### Parties

**Flash Retail Pvt. Ltd. (FlashRetail)** is Sindhupradesh's fastest-growing quick commerce company, founded in 2020. Headquartered in Tumbai, FlashRetail operates a popular 10-minute grocery delivery app called **“FlashKart.”** The company's meteoric rise has been fueled by significant **foreign venture capital and private equity funding** – its parent entity, Flash Retail Holdings Ltd., is incorporated in Jingsapore, and over 75% of the operating funds in

FlashRetail's Sindhupradesh business originates from foreign direct investment (FDI). FlashRetail's business model, as stated, is a **"marketplace platform"**: it claims to simply connect customers with independent third-party sellers who stock products in micro-warehouses that FlashRetail manages. In practice, FlashRetail maintains a tight grip on operations – it **leases storefront warehouses, manages inventory systems, and uses proprietary algorithms to forecast demand and set optimal pricing** for products sold on its platform. A significant portion of the stock in each dark store is supplied by two major "preferred sellers" that work almost exclusively with FlashRetail. While legally distinct, these seller entities have been alleged to be **controlled or influenced by FlashRetail**, leading to accusations that the company is operating as an **inventory-based retailer in disguise**.

The respondents in this consolidated appeal include various arms of the Union and others:

- The **Union of Sindhupradesh** represents the central government's departments and regulators that have acted against FlashRetail. Notably, the **Department for Promotion of Industry and Internal Trade (DPIIT)**, which frames Sindhupradesh's FDI policy, and the **Enforcement Directorate (ED)**, responsible for enforcing foreign exchange laws, are key players from the Union's side.
- The **Competition Commission of Sindhupradesh (CCS)** is the antitrust regulator that initiated investigations into FlashRetail's business practices.
- The **Central Consumer Protection Authority (CCPA)**, a regulatory body under the Consumer Protection Act of 2019, is concerned with unfair trade practices and consumer rights on e-commerce platforms.
- Other parties include the **All Sindhupradesh Retail Traders and Wholesalers Association (ASRTWA)** – a nationwide trade body representing small retailers and distributors, and a **Consumer Rights Forum**, both of which have intervened or filed original petitions in some of the matters leading up to this appeal.

### **Legal Disputes at the High Court Level**

Over the past two years, **FlashRetail and related parties found themselves entangled in several high-profile legal battles** in different High Courts across Sindhupradesh. These cases, though initiated separately, all stem from the growing pains of the quick commerce sector and raise interconnected issues. Below is an overview of the key disputes and the outcomes at the High Court stage:

## 1. FDI Compliance and Corporate Law Challenge

**Jurisdiction:** Wheli High Court (W.P. (C) No. \_\_\_\_\_ of 2024, *Flash Retail Pvt. Ltd. vs. Union of Sindhupradesh & Ors.*)

**Background:** Acting on complaints by ASRTWA and local trader unions, the Enforcement Directorate (ED) in mid-2023 served FlashRetail with a **show-cause notice alleging violations of FEMA and the FDI Policy**. The notice outlined that FlashRetail's operational model was effectively **"inventory-based"**: it highlighted that over 60% of the products sold on FlashKart were sourced through two preferred wholesale sellers who operated almost exclusively for FlashRetail. Furthermore, internal communications (obtained during an ED raid on FlashRetail's offices) showed pricing strategies and inventory decisions being directed by FlashRetail's management, rather than independently by the nominal seller entities. The ED's case was that FlashRetail had **"effective control" over inventory** and was **influencing prices** by funding discounts, thus breaching Para 5.2 of the Consolidated FDI Policy (2017-2020) which prohibits FDI-funded e-commerce platforms from owning inventory or impacting pricing. These actions, ED claimed, amounted to contraventions of FEMA Regulations (specifically, the Foreign Exchange Management (Non-debt Instruments) Rules, 2019) because FlashRetail's FDI inflows were used for a purpose not permitted (retail trading). The ED's notice cited transactions from 2020-2022, when FlashRetail raised successive rounds of foreign capital and allegedly diverted funds to build its warehouse stock and subsidize consumer prices, thus violating conditions under which approval was granted.

**High Court Proceedings:** FlashRetail pre-emptively moved the Wheli High Court by way of a writ petition, challenging the ED's proceedings *as well as* the underlying FDI policy restrictions. FlashRetail's arguments were twofold: First, they argued **no violation of law on facts**, asserting that they remain a pure marketplace – the seller companies (**LeanBasket Traders** and QuickSupply OPC Ltd.) are independently owned (by Sindhupradeshn citizens, one being a childhood friend of FlashRetail's founder, and the other a former executive – a point the ED found suspicious) and that any price discounts are merely **"promotional rebates"** offered as a marketing expense, which is not the same as influencing the sale price by the seller. FlashRetail contended that the 25% vendor cap was not breached deliberately – while one vendor did account for about 30% of sales in 2022, they claimed this was a temporary anomaly during the pandemic supply chain disruption. The petition also challenged the **constitutionality of the FDI policy itself**, arguing that the blanket ban on inventory-based model for



foreign-funded companies is **arbitrary and protectionist**, thus violative of Article 14 and 19(1)(g). FlashRetail pointed out that domestic companies with no FDI can do the same business (holding inventory for e-commerce) freely, which creates an *unequal playing field solely based on source of investment*. They also argued the policy was counter-productive in an era of “Make in Sindhupradesh” and digital economy growth.

The Union of Sindhupradesh opposed the petition, primarily arguing that **FlashRetail must exhaust the alternative remedy** under FEMA: i.e., respond to the ED’s notice, contest facts in the adjudication before the Special Director (Adjudicating Authority) under FEMA, and then if aggrieved, appeal to the Appellate Tribunal, rather than bypassing straight to the High Court. They cited the established principle that High Courts should be slow to intervene in show-cause notices unless there’s a clear abuse of process. On merits, the government defended the FDI policy as a **reasonable restriction in public interest** – aiming to protect small retailers from extinction due to capital-dumping by big foreign players. The policy, they argued, ensures **fair competition** and was the result of extensive deliberation. They also highlighted that FlashRetail entered the market knowing these rules and even structured itself to appear compliant; having taken the benefit of FDI, it cannot now claim the rules are unconstitutional.

**Outcome:** The Wheli High Court **dismissed FlashRetail’s writ petition** on jurisdictional/ procedural grounds. It held that FlashRetail should first reply to the ED notice and contest the factual findings there; the mere issuance of notice does not warrant writ interference. The court noted that if the adjudication goes against FlashRetail, they have a statutory appellate remedy, and only after exhausting that could a court possibly look into questions of law. On the constitutional arguments, the High Court was **reluctant to engage**, given the premature stage. However, in passing, the judgment observed that **Sindhupradesh’s FDI policy choices are a matter of executive economic policy** and have been upheld in past instances; it cited that **treating foreign-funded companies differently from domestically-funded ones may have a rational nexus with the goal of preventing adverse effects of unrestricted foreign capital in retail**. The court did not make a definitive ruling on constitutionality, leaving that question open, but its tone suggested skepticism of FlashRetail’s claims. The petition was dismissed in January 2024, with liberty for FlashRetail to raise its contentions in appropriate proceedings. (FlashRetail, in compliance, did file its response before the ED adjudicating authority, which is currently on-going – but the *broader legal questions* have now been carried to the Supreme Court appeal in a different form, as described later.)

## 2. Constitutional Challenge to Regulatory Restrictions

**Jurisdiction:** Nataka High Court (W.P. (C) No. \_\_\_\_ of 2024, *Quick Commerce Entrepreneurs Association vs. Union of Sindhupradesh*)

**Background:** In a separate but related development, an industry association comprised of several quick commerce companies (including FlashRetail as a leading member) filed a writ petition challenging certain **new rules and guidelines that the Government proposed for online retail**. Specifically, in late 2023, the Department of Consumer Affairs had floated draft **E-commerce (Flash Delivery) Guidelines** as an amendment to the Consumer Protection (E-Commerce) Rules, 2020. These draft rules, influenced by concerns from road safety authorities and small businesses, proposed to **prohibit “express 10-minute delivery guarantees”** as a marketing tactic (citing safety of delivery workers and public), and to impose a **minimum baseline price** for essential commodities sold online (to prevent below-cost dumping). While still at draft stage, some state governments, notably Nataka, issued circulars signaling local restrictions in line with these ideas – for example, Bolur’s city police, in an advisory, warned quick commerce platforms against “publicly promising impracticable delivery speeds that may endanger traffic safety,” effectively discouraging the 10-minute claim. The petitioners (Quick Commerce Entrepreneurs Association) argued that such **restrictive policies on quick commerce violate their constitutional rights**.

**Arguments:** The petitioners contended that banning or restricting ultra-fast delivery services and price-setting **violates Article 19(1)(g)** – their right to carry on business. They argued these measures are not “reasonable restrictions” since less drastic measures (like better enforcement of traffic rules or requiring safety training for drivers) could address the safety issue without stifling an innovative service that clearly resonates with consumer needs. They also argued an **Article 14 breach**, claiming the rules irrationally target only the quick commerce segment: for instance, imposing minimum online prices for essentials only on e-commerce players (under the guise of predatory pricing concerns) while no similar pricing restriction exists for large brick-and-mortar supermarket chains that also discount heavily. This, they say, amounts to **unequal treatment**, born out of lobbying pressure rather than principle. The Union of Sindhupradesh responded that these measures are in the **public interest** – ensuring **safety, consumer protection, and livelihood of small traders** – which are valid grounds to impose some limits on the manner of doing business. The state of Nataka, defending its advisory, argued it did not ban quick deliveries altogether but was an appeal to public

safety, well within the state's policing powers and not a direct restriction on trade.

**Outcome:** The Nataka High Court delivered a nuanced judgment. It recognized that **the right to trade is not absolute** and that innovative businesses can be subject to regulations ensuring they operate safely and fairly. However, it also noted that any such regulation must be evidence-based and proportionate. The court struck a middle ground: it **urged the central government to reconsider the blanket nature of the proposed rules** – especially the outright prohibition on advertising delivery times – suggesting that a **more calibrated regulation** (like requiring a disclaimer about expected variability in delivery time, or mandating insurance for drivers) could achieve the goals without completely muzzling a competitive feature. As for the pricing floor proposal, the court was more critical, observing that **price competition per se is not illegal** and that preventing low pricing could harm consumers; predatory pricing should be dealt with by the competition regulator on a case-by-case basis rather than through across-the-board price controls. The High Court did not formally strike down any law (as the central guidelines were still draft and the state's actions were informal advisories), but it gave a clear **opinion in favor of the quick commerce companies' position**. It directed that **no coercive action** be taken against any quick commerce platform on the basis of the draft rules or the impugned state advisory, effectively maintaining status quo. The judgment (delivered in February 2024) highlighted that **innovation in business models deserves regulatory support, not unwarranted suppression**, while also acknowledging the state's role in ensuring **public welfare**. Both sides claimed partial victory, and the matter has now found its way to the Supreme Court in the form of cross-appeals – the Union of Sindhupradesh seeking to overturn what it perceives as judicial interference in policy, and the companies seeking final clarity and protection of their rights.

### **3. Competition Commission Investigation and Antitrust Allegations**

**Jurisdiction:** Tumbai High Court (W.P. No. \_\_\_\_\_ of 2024, *Flash Retail Pvt. Ltd. vs. Competition Commission of Sindhupradesh*), and proceedings before CCS/NCLAT

**Background:** In late 2024, the **All Sindhupradesh Retail Traders and Wholesalers Association (ASRTWA)** filed a detailed information with the CCS accusing FlashRetail of anti-competitive conduct. The complaint echoed many concerns that had been raised against big e-commerce firms in the past, but tailored to the quick commerce model:

- **Predatory Pricing & Deep Discounts:** ASRTWA provided data comparing prices of 100 common grocery items on FlashRetail's app versus local kirana stores and supermarkets. In many instances, FlashRetail's prices (after applying ubiquitous promo codes) were 10–20% lower than wholesale procurement cost, implying FlashRetail was incurring significant losses per sale. Internal industry sources (and leaked emails from investors) suggested FlashRetail was intentionally burning capital to Flashly acquire customers, with a strategy to **"bleed out the competition,"** anticipating that once smaller competitors and many traditional retailers exit, FlashRetail could dominate and then adjust prices upwards.
- **Exclusive Tie-ups:** The complaint also highlighted that FlashRetail had **exclusive partnerships with certain popular brands** – for example, a particular premium dairy brand and a gourmet snacks line were available only on FlashKart (and not in other stores or apps) in certain cities, pursuant to agreements that those brands would not supply to competing platforms. Such **vertical arrangements** could violate Section 3(4) of the Competition Act if they cause an appreciable adverse effect on competition.
- **Algorithmic Price Discrimination:** ASRTWA raised a novel issue: FlashRetail's algorithm not only dynamically adjusted prices based on supply–demand but also potentially **showed different prices/discounts to different users** based on their purchasing profile (a form of personalized pricing). It argued this could be viewed as a discriminatory practice that might **reinforce FlashRetail's market power** by extracting more revenue from less price-sensitive consumers while undercutting more price-sensitive ones to block their shift to competitors.
- **Market Dominance:** By Q3 2024, FlashRetail had captured nearly **45% of the quick commerce market in metro cities** (according to a market research report, making it the single largest player in that segment), with the next competitor at 25%. ASRTWA contended that this made FlashRetail a **dominant enterprise in the relevant market of "ultrafast online grocery delivery"** in those geographies. They alleged FlashRetail abused this dominance by predatory pricing (Section 4(2)(a)(ii) – selling goods below cost to drive out competition) and by leveraging its dominance in quick delivery to push its house-brand products over others (Section 4(2)(e)).



**CCS's Action:** The CCS found the information had merit and in December 2024 **ordered a Director General (DG) investigation** into FlashRetail's practices under Sections 3 and 4 of the Act. This was a significant escalation, as it marked one of the first major competition investigations specifically targeting a quick commerce player.

FlashRetail reacted by filing a writ petition in the Tumbai High Court, seeking to **quash the CCS's investigation order**. FlashRetail's grounds were that the CCS had overstepped because:

- The company argued that **below-cost pricing alone is not illegal** unless done by a dominant firm with the intent to recoup losses later, and that FlashRetail, though growing, faced "fierce competition" from at least four other well-funded rivals (it cited that the overall grocery retail market is huge and quick commerce is still a small portion, thus they cannot be "dominant" in the relevant market which includes traditional retail).
- On exclusive deals, FlashRetail claimed these were pro-competitive "**exclusive distribution arrangements**" that helped new brands reach consumers via its network, and that competitors also have their own tie-ups – in other words, a normal feature of business, not something that appreciably restricted competition.
- FlashRetail also challenged the very definition of the relevant market, urging that they compete broadly with all grocery retail (online and offline, instant and scheduled delivery alike), in which their share would be minuscule, thus negating any dominance claim.
- Procedurally, they contended the CCS initiated the probe without sufficient prima facie evidence, and pointed to a **2020 interim** stay that a High Court (Nataka HC in a different case) had granted in an earlier CCS investigation involving e-commerce discounting (in the *Blipmart/Panazon* context), suggesting CCS was out to make policy through enforcement.

**High Court's Decision:** The Tumbai High Court, however, **refused to interfere with the CCS's investigation order**. Citing the Supreme Court's rulings that courts should not readily stop investigations by expert regulators unless jurisdiction is plainly absent, the High Court in March 2025 allowed the CCS probe to proceed. It observed that the issues **raised – predatory pricing in the digital market context – are complex and fact-intensive**, and CCS should be allowed to gather evidence and analyze market data. The bench did note FlashRetail's arguments about market definition and competition

from offline players, but held that those were matters for the CCS/DG to evaluate in the first instance. In essence, the court said an investigation is not a punishment, and FlashRetail would have ample opportunity to present its defense before the CCS. The writ was disposed of, with the High Court adding a gentle remark that new-age tech markets present novel competition issues and it would be premature for the judiciary to chart the path before the expert body does. Subsequently, FlashRetail has been cooperating with the DG's investigation (submitting data on pricing algorithms, internal communications with investors about pricing strategy, etc.), but at the same time, **FlashRetail filed an appeal (SLP) to the Supreme Court** against the High Court's order, to raise legal questions about how competition law should treat algorithm-driven pricing and the relevant market definition for quick commerce – issues of immense significance beyond this case alone.

#### 4. Consumer Protection – Dark Patterns and Misleading Ads

**Jurisdiction:** Taladas High Court (W.P. No. \_\_\_\_\_ of 2025, *Consumer Rights Forum vs. Flash Retail Pvt. Ltd. & CCPA*)

**Background:** A coalition of consumer rights activists and concerned citizens (organized as the “Consumer Rights Forum”) filed a public interest litigation (PIL) in the Taladas High Court in early 2025, targeting **alleged unfair trade practices by FlashRetail and similar platforms**. The PIL was triggered by numerous consumer complaints and an investigation report by the CCPA. Notably, in November 2024, the **Central Consumer Protection Authority (CCPA)** had issued a **Notice to FlashRetail** under Section 18 of the Consumer Protection Act, 2019, inquiring into possible violations of consumer rights through the company's app design and advertising. The issues highlighted included:

- Use of Dark Patterns: The CCPA's notice (and the PIL) alleged that FlashRetail's app incorporated several banned dark patterns as per the new 2023 Guidelines. For example, the app allegedly had a **“nagging” pattern** – repeatedly prompting users to join its DeluxFast membership with pop-ups at checkout, with a de-emphasized skip option. It also had instances of **“basket sneaking”**, where optional items (like an order insurance or a low-value add-on product) would be pre-ticked or auto-added in the cart requiring the consumer to remove them if not wanted. Another complaint was that unsubscribing from marketing emails or deleting one's account was deliberately made cumbersome (a **“roach motel”** pattern).

- **Misleading “10-minute delivery” Claim:** The PIL pointed out that the slogan “10-minute guaranteed delivery” is a **misrepresentation**, as evidenced by many user experiences where orders took 20-30 minutes. While FlashRetail often added an asterisk stating “avg. 10 min; T&C apply”, the fine print was not clearly visible. The petitioners argued this amounts to a misleading advertisement under Section 2(28) of the Act and an unfair trade practice, since the guarantee is not actually honored uniformly. Furthermore, they raised a public policy concern: that this claim effectively pressures delivery personnel to rush, leading to accidents – thus harming consumer interest in a broader sense (both the consumers who are on the road and the gig workers).
- **Personalized and Surge Pricing Tactics:** The consumer group also alleged that FlashRetail engaged in opaque pricing. Some frequent users noticed that prices of certain items were higher for them than when checked through a new account, suggesting a form of personalized pricing. Similarly, during peak demand times, FlashRetail introduced a **“surge fee”** (an extra delivery charge) without clearly explaining the basis, reminiscent of ride-hailing apps. The lack of transparency in these practices was claimed to violate the consumer’s right to be informed and to make an informed choice.

FlashRetail’s defense in court and to the CCPA was that **they are in compliance with all consumer protection laws**, and that the CCPA’s guidelines on dark patterns, being recent, were still being interpreted. They argued that **user interface design is subjective** – what the regulator calls a dark pattern might simply be effective marketing. For example, prompting a membership upsell is common in many apps and not illegal per se. They also submitted that they had updated their app in January 2025 to make disclosures clearer (the delivery time claim now says “10-minutes (where feasible) or ₹50 cashback if late” as a goodwill gesture, and options like tips/insurance are now opt-in). On personalized pricing, they carefully argued that prices “may vary based on real-time supply conditions and promotions” but **denied any illegal discrimination**, insisting any differential was dynamically determined and not based on personal identity factors. They also raised a jurisdictional point: that since the CCPA was already seized of the matter (the notice), the PIL was premature or parallel, and that FlashRetail should be allowed to respond to the CCPA in the statutory process.

**Outcome:** The Taladas High Court, recognizing the importance of consumer rights in new digital markets, admitted the PIL and in April 2025 passed an interim order with certain directions. The court directed FlashRetail to **suspend its 10-minute guarantee advertising until the matter was decided**, noting prima facie that if indeed many deliveries were exceeding that time, the word “guarantee” was misleading. It also directed the CCPA to conclude its inquiry into FlashRetail within a specified timeline and submit a report. Importantly, the court observed that **if proven, the use of dark patterns would be a clear violation of the Consumer Protection Act’s provisions against unfair trade practices**, and it lauded the CCPA for proactively issuing the guidelines to keep pace with evolving market tactics. The case in the High Court is still pending final adjudication on the PIL (and the CCPA’s own proceedings are ongoing as well). FlashRetail, while complying with the interim directives (it changed its tagline to **“Lightning-fast delivery”** without the explicit time promise, for now), has **appealed to the Supreme Court** arguing that some of these directives are unjustified and harm its business reputation, and that there needs to be a balance so as not to chill digital innovation and marketing. On the other hand, the Consumer Rights Forum has also directly approached the Supreme Court to transfer and club this matter, given overlapping questions about how law should treat practices like personalized pricing and dark patterns – issues that transcend just this one company.

## **5. Data Privacy and AI – Compliance with DPDP Act**

**Jurisdiction:** Wheli High Court (W.P.(C) No. \_\_\_\_\_ of 2025, *Digital Rights Foundation vs. FlashRetail & Ors.*)

**Background:** The **Digital Rights Foundation (DRF)**, an NGO focusing on privacy and digital liberties, filed a petition in Wheli High Court in early 2025 concerning the data practices of quick commerce platforms, with FlashRetail as the lead respondent. This came on the heels of the enactment of the **Digital Personal Data Protection Act, 2023**, which became effective in late 2024. DRF’s petition raised alarm that FlashRetail’s **AI-driven profiling and data sharing practices** were not in line with the new law and were infringing users’ fundamental right to privacy. They alleged:

- FlashRetail’s app collected excessive data (beyond what is necessary for a grocery delivery service) – such as constant location tracking even when the app is not in use, access to the user’s contacts and messages (ostensibly for referral programs or wallet top-ups, but DRF argued these permissions were not truly needed).



- The **consent mechanism** in the app was flawed – the privacy policy and consent checkbox were bundled with general terms of service, not giving users a clear, granular choice as required by the DPDP Act (which mandates consent to be free, specific, informed, and unambiguous). Users were effectively forced to consent to broad data usage to use the service.
- There were reports of a data breach in December 2024 where hackers on a forum claimed to have **leaked FlashRetail's user database** (including names, phone numbers, addresses, and order histories of millions of users). DRF alleged that FlashRetail failed to notify users of this breach or take adequate security measures, as would be expected under emerging data protection norms.
- DRF also challenged the **lack of transparency in AI profiling** – noting that FlashRetail's algorithmic recommendations and differential pricing could significantly affect consumer interests, they argued that users have a right to know when decisions are purely algorithmic and have the right to opt-out or seek human review (concepts reflected in global laws like the EU's GDPR, though not explicitly in Sindhupradesh law yet). They urged the court to direct **regulatory guidelines for AI use in consumer services** in line with privacy rights.

FlashRetail, in response, maintained that it is **committed to user privacy** and that it was among the first startups to appoint a Data Protection Officer and begin compliance efforts for the DPDP Act. It claimed that location tracking is only **with consent for improving delivery accuracy** and that users can disable it (though DRF countered that disabling it severely degrades the app's functionality). As for the breach, FlashRetail neither confirmed nor denied it in public, but in a sealed submission to the court, it provided an audit report of its systems and insisted that if a breach occurred, it was working with cybersecurity experts and would comply with breach notification requirements once the Data Protection Board (the envisaged regulatory body under the DPDP Act) is operational. On the legal front, FlashRetail argued that since the DPDP Act provides a mechanism (complaints to the Data Protection Board and appellate tribunal), a writ petition may not be the correct course; however, given the infancy of the law and the board not being fully functional yet, the High Court proceeded to hear the matter in the public interest.

**Outcome:** The Wheli High Court, in March 2025, passed a detailed interim order. It noted that the issues raised were serious and that **user data privacy is now a fundamental expectation** under Article 21. While not making any final determinations on breaches, the court directed FlashRetail to **submit an**

**affidavit detailing its data processing practices**, types of personal data collected, purposes, third-party sharing, and safeguards in place. The court also ordered FlashRetail to disclose its algorithms for inspection by court appointed expert. It also directed the Union (Ministry of Electronics and IT) to expedite the establishment of the **Data Protection Board** and related rules under the DPDP Act, observing that enforcement of the new law must keep pace with the mounting privacy concerns. The High Court hinted that companies **flouting consent norms could be subject to significant penalties under the DPDP Act** and even tortious liability under the right to privacy. Importantly for this moot, the court decided to **refer certain broad questions of law to the Supreme Court**, given that multiple High Courts were grappling with similar issues around data and AI (the court was aware of at least one other petition in Tumbai on ride-hailing apps' data). Thus, the Wheli HC stayed further proceedings in the case and granted a certificate for appeal on questions such as the extent of algorithmic transparency required by fundamental rights and how the DPDP Act's framework intersects with constitutional claims. This is how the matter is now before the Supreme Court, merged with the other pending appeals.

### **Appeal Before the Supreme Court**

By mid-2025, it became evident that the challenges posed by the rapid digital transformation of commerce had resulted in **fragmented litigation across various courts**, each looking at a piece of the puzzle: foreign investment regulations, fundamental rights of businesses, competition law, consumer protection, and privacy. The Supreme Court of Sindhupradesh has now **clubbed a series of appeals and petitions** under the lead matter titled *Flash Retail Pvt. Ltd. vs. Union of Sindhupradesh & Others*. These include:

- FlashRetail's appeals against the Wheli HC order (FDI/FEMA issue) and the Taladas HC interim order (consumer protection issue),
- The Union of Sindhupradesh's appeal against the Nataka HC judgment (constitutional challenge by the industry),
- FlashRetail's appeal (SLP) against the Tumbai HC decision (allowing the CCS investigation),
- The referred questions from the Wheli HC (data privacy case),
- And petitions by stakeholders like ASRTWA and Consumer Rights Forum to be heard in the matter.

The Supreme Court recognized that **all these issues, though arising in different contexts, are interrelated and have nationwide significance**. It admitted the cases for final hearing, noting that the judgment will have

consequences for Sindhupradesh's regulatory approach to e-commerce and quick commerce. The stage is set for a **comprehensive examination of the legal questions** that have emerged from this techno-legal saga.

### **The issue before the Supreme Court**

**Issue 1:** Whether FastRetail's business model violates Sindhupradesh's FDI policy by effectively running an inventory-based model instead of a marketplace model.

**Issue 2:** Whether government proposals restricting ultra-fast delivery claims (like "10-minute guarantees") and imposing minimum pricing on essential goods sold online violate constitutional rights under Articles 14 (equality) and 19(1)(g) (freedom to trade).

**Issue 3:** Whether FastRetail engaged in predatory pricing by selling below cost to eliminate competition, entered anti-competitive exclusive supply agreements, or used algorithmic pricing strategies that could amount to tacit collusion or abuse of market dominance.

**Issue 4:** Whether FastRetail's app design practices ("dark patterns"), misleading "10-minute delivery" advertisements, and personalized pricing and discounting strategies constitute unfair trade practices under the Consumer Protection Act, 2019.

**Issue 5:** Whether FastRetail users have the right to transparency in algorithmic decision-making, having access to the relevant algorithms for review, and whether FlashRetail's practices infringe on privacy rights under Article 21.

**For the purposes of this moot court proposition, all laws, regulations, and constitutional provisions referenced shall be interpreted as identical to those applicable in the Republic of India**

## ABOUT THE FIRM



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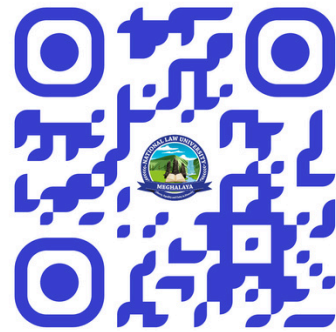
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