



WELCOME TO OUR
**Monthly Newsletter of
December 2023**



This newsletter edition covers the groundbreaking Zee-Sony merger, offering a detailed analysis of the legal facets and governance issues involved. Additionally, it highlights a pivotal appellate court judgment on the PayPal case, emphasizing the significance of entity identification under the Prevention of Money Laundering Act, 2002, along with a focused exploration of trade secrets' vital role in intellectual property rights. Stay informed and engaged with these impactful legal insights.

Disclaimer: The information provided in this newsletter is for general informational purposes only. It does not constitute professional advice. While we strive to ensure accuracy, we make no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, or suitability of the content. Use the information at your own risk.

TRADE SECRETS & ITS IMPORTANCE FOR THE COMPANY'S SUCCESS



In today's competitive world where on a daily basis new competitive companies are emerging. It has become more important for a company to protect its trade secrets. Trade Secrets give companies a competitive advantage over other companies while dealing with the same category of products.

WHAT IS TRADE SECRET

A trade secret can be anything including practice, process, formula, research, algorithm, etc. which is not available to the public or kept private by the company. To protect a trade secret, the company have to make reasonable efforts so the secrets are not revealed or leaked in the public. A trade secret is considered to be the part of the company's intellectual property but it is not publicly available/known like other intellectual property.

Another important thing related to the trade secret is that it must have an economic value which therefore means that any harm or effect on the trade secret will further result in the economic loss for the company.

According to TRIPS agreement, trade secret means :

“Any information that is secret in the sense that it is not generally known or readily accessible to persons within the circles that usually deal with the kind of information in question has commercial value because it is secret and has been subjected to reasonable step by the person lawfully in control of the information, to keep it secret.”

A Trade Secret has various forms which are not available to others and helps a business to take advantage over its competitors. The definition of trade secret varies according to their jurisdictions but a trade secret must have some common characteristics which are stated as below: -

- A trade secret is not available to public.
- Any trade secret shall provide economic benefit to the company.
- The company is taking reasonable care and caution to protect the secret.

It is important to note that if a company fails to protect its trade secret & it is then available to the general public; then the secret becomes a general knowledge and lose its protection. Hence, it is necessary for every company to execute a non-compete or non-disclosure agreement with its employees, clients and business partners in order to protect its trade secret.

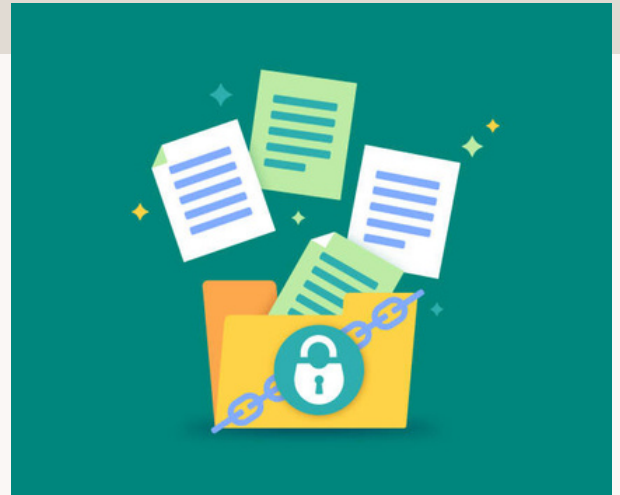


LAWS RELATED TO TRADE SECRETS

Till 1985 there was no codified law protecting the trade secrets all over the world. But in 1985 United States of America became the first country in the world to provide legal protection to Trade Secret by introducing the United Trade Secrets Act which protects the data exclusivity and trade secrets of the companies.

In India till date there is no specific law which governs or protects the Trade secrets or confidential information of the company. There are various provisions and laws of different states which protects trade Secrets. For example, Section 27 of the Indian Contract Act, 1872[1] states that the agreement which is in restraint of trade protection or against securing the trade secret shall be void upto that extent.

These secrets can also be protected by the Principle of equity and common law by suing for breach of confidence or fiduciary duty. Other than that, the trade secrets can also be protected by copyright law and by claiming ownership over the original expression of the information.



CONCLUSION

The Hon'ble Courts of India from time to time have recognized the importance of Trade secrets by giving landmark judgements and protecting the interest of the companies. The Delhi High court in the case of John Richard Brady & Ors. vs Chemical Process Equipment P Ltd & Anr. held that "the law on the subject does not depend on any implied contract. It depends on the principle of equity that who has received information in confidence shall not take unfair advantage of it."

However, India does not have any uniform law to protect trade secret but it is a signatory of Trade Related Intellectual Property Rights (TRIPS) Agreement which is an international law which protects trade secrets. Article 39 (2) of the TRIPS Agreement allows its members / signatory to makes laws that prevents the unauthorized utilization of the certain confidential information.

Trade secrets are one of the most important intellectual property rights which any company needs to be protect. The trade secrets not only give competitive advantage to the company but also provide economic benefit and uniqueness to the product. As stated, India at present does not have any specific legislation to protect Trade Secrets but there exist some provisions in different statues which talk about confidentiality and protection of this information. Various countries already have laws to protect Trade secrets. Now, India needs a regulation in order to protect the illegal transfer of information which might result in huge losses to the companies. At present, the best example of protecting its Trade secret is by Coca Cola which gives the company a competitive edge over other companies and its competitors. Hence, it is important for the companies to protect their trade secrets and take reasonable care to protect their confidential information.

NAVIGATING LEGAL COMPLEXITIES : A DIVE INTO ZEE-SONY MERGER & OBJECTOR'S GRIEVANCES

INTRODUCTION

The Zee-Sony Merger, authorized by the National Company Law Tribunal (NCLT) on August 10, 2023, stands as a significant milestone in the corporate landscape of India. This strategic amalgamation between Zee Entertainment Enterprises Limited ("Zee") and Culver Max Entertainment Private Limited (formerly Sony Pictures Networks India, "Sony") has not only drawn considerable attention from financial and legal circles but has also given rise to a legal discourse surrounding governance issues within the Zee group.

The merger proceedings unfolded against the backdrop of Intervention Applications filed by various objectors, including prominent entities like Axis Finance Limited, IDBI Trusteeship Services Limited, IMAX Corporation, IDBI Bank Limited, and JC Flowers Asset Reconstruction Private Limited. These entities, collectively termed as objectors, voiced their concerns and objections to the proposed merger, prompting a comprehensive response from the Zee Group, spearheaded by its promoters, Mr. Subhash Chandra and Mr. Punit Goenka.

The significance of the objectors' grievances was underscored by an interim order from the Securities and Exchange Board of India (SEBI), which restrained Mr. Subhash Chandra and Mr. Punit Goenka from holding key managerial roles in listed companies or subsidiaries. This added a layer of complexity to the legal proceedings, questioning the legitimacy of key appointments within the Zee Group.



Case Analysis: It may be noted that the case of Zee-Sony merger below is analyzed as per the Personal views of the Author and does not reflect the firm's opinion or dissection of the Court's Judgment. This newsletter / firm completely disclaims any views / opinions readers may infer post reading this article; reader's discretion advised.

CRITICAL ASPECTS

Central to the legal discourse was the examination of the merger scheme itself. The intricate merger involved Zee Entertainment Enterprises Ltd., Bangla Entertainment Pvt. Ltd. (the transferor companies), and Culver Max Entertainment Pvt. Ltd. (the transferee company). Zee, being a publicly listed company on both NSE and BSE, presented a shareholding structure with Dr. Subhash Chandra's family holding a minority share, while the majority (96.01%) was in the hands of public shareholders and other entities.

The proposed merger received overwhelming support, with an astounding 99.997% approval from Zee Entertainment shareholders.

Additionally, secured creditors and major stock exchanges, including BSE and NSE, provided their No Objection Certificates (NOCs), endorsing the scheme's approval. The projected net worth of the merged entity, amounting to Rs. 44,000 crores, significantly surpassed Zee's existing valuation, emphasizing the potential financial benefits of the merger.

However, the harmony of approval was disrupted by specific objections raised by the aforementioned entities, primarily focusing on two key grievances.

Firstly, the objectors contested a non-compete fee of INR 11,01,30,91,800/- payable by SPE Mauritius Investment Limited (a Sony group entity) to Essel Mauritius. The objectors alleged fraudulent mechanisms, arguing that this fee, if not allocated to promoters, could have been utilized for the recovery of dues owed to Zee Entertainment Enterprises Limited shareholders. Secondly, the objectors contested the appointment of Mr. Punit Goenka as Managing Director and CEO for a five-year term. SEBI's interim order on June 12, 2023, restricted both Mr. Subhash Chandra and Mr. Punit Goenka from key managerial roles, raised questions about the validity of Mr. Goenka's appointment.

LEGAL STAND POINT

The legal battleground witnessed a rigorous citation of various case laws by the Zee Group, asserting the scope, jurisdiction, and locus of the objectors in opposing the scheme before the NCLT. The crux of their argument rested on Section 230(4) of the Companies Act, 2013, which mandates that objections to any arrangement must be raised by individuals or entities holding a minimum of 10% of the shareholding or having outstanding debt constituting at least 5% of the total outstanding debt of the company.

In essence, the Zee Group argued that the objectors lacked the specified criteria necessary to challenge the merger. The legal discourse delved into the intricacies of corporate law, emphasizing the need for objectors to meet specific thresholds to substantiate their objections.

NCLT'S VERDICT

In a decisive ruling, the NCLT dismissed all objections raised by the Intervention Applications. The tribunal's central observation was that the objectors aimed to recover dues from various entities within the Zee Group, not directly from Zee Entertainment itself—the company subject to the merger. This lack of privity of contract between the objectors and Zee Entertainment became a pivotal factor, leading the NCLT to assert that these objectors/creditors lacked the standing to oppose the merger.

CONCLUSION

The Zee-Sony Merger, while marking a significant corporate development, also serves as a case study in navigating the legal complexities inherent in such endeavours. The legal battles, grounded in corporate governance issues, highlight the delicate balance between shareholder interests, regulatory compliance, and the intricacies of merger schemes.



As corporate landscapes evolve, the NCLT's ruling establishes a precedent, emphasizing the stringent criteria that objectors must meet to challenge such significant corporate maneuvers. The Zee-Sony Merger not only reshapes the corporate structure of the involved entities but also leaves a lasting imprint on the legal understanding of objections and standing in corporate amalgamations.

IS PAYPAL A REPORT ENTITY: AN EXAMINATION



"The Court holds that PayPal is liable to be viewed as a 'payment system operator' and consequently obliged to comply with reporting entity obligations as placed under the PMLA. The imposition of penalty in terms of the impugned order dated 17 December 2020, however and for the aforementioned reasons, quashed the court ordered."

CASE ANALYSIS

It may be noted that the case of PayPal below is analyzed as per the Personal views of the Author and does not reflect firm's opinion or dissection of the Court's Judgment. This newsletter / firm completely disclaims any views / opinions readers may infer post reading this article; reader's discretion advised.

INTRODUCTION

The High Court of Delhi ('the Court') in case of PayPal Payments Private Limited v. Financial Intelligence Unit India held that payment platform PayPal is included in the definition of 'payment system operator' under the Prevention of Money Laundering Act, 2002 ('PMLA') and is therefore liable to comply with the reporting obligations as per rule 3 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 ('the Rules').

However, the Court held that imposition of penalty was not justified as PayPal was under a bona-fide belief of not having been covered by the provisions of PMLA.

The Delhi High Court rejected the penalty imposed upon PayPal, saying it was "clearly unjustified" as PayPal was under the bona fide belief that its operations did not fall within the ambit of the PMLA.

BACKGROUND

The FIU had claimed PayPal was a 'Payment Service Operator' (PSO) under the section 2(1)(rb) of the PMLA, an entity that enables payments between remitters and beneficiaries, including clearing, payment or settlement. By extension, PayPal was instructed to register as a 'reporting entity' under the PMLA. Reporting entities are usually financial institutions (including PSOs), dealers in precious metals real estate agents, or other designated businesses or professions. As a reporting entity, PayPal would have a laundry list of know your customer (KYC) and anti-money laundering (AML) compliances under the PMLA, including a mandate to periodically report large or suspicious transactions.

The same were rejected by PayPal saying that as an OPGSP, PayPal operated as a mere technology layer over financial transactions and was not involved in the actual handling of funds. They functioned similarly to Amazon Pay or Google Pay, which were not considered to be PSOs. Since PSOs shared identical definitions under the PMLA and PSS Act, PayPal argued that a contrary reading by the FIU was legally unsupported.

The same arguments were rejected by FIU and further issued a show cause notice for such non-compliance and finally imposed a penalty of INR. 96,00,000/- on PayPal.

The same was appealed in the High Court of Delhi by PayPal. In the appeal, PayPal has challenged the single Judge's Judgment, asserting that the verdict employed an arbitrary and impractical interpretation of 'Payment System'.

The single Judge had partly allowed PayPal's petition to the extent of quashing the fine imposed. However, the finding that PayPal is a reporting entity under the PMLA was upheld by the single Judge.

COURT'S DECISION

Financial Intelligence Unit (FIU)-India is an organization under the Department of Revenue, Government of India which collects financial intelligence about the offences under the Prevention of Money Laundering Act, 2002. It receives, processes, analyses and disseminates information relating to suspect financial transactions to enforcement agencies and foreign FIUs. And hence under the law, the reporting entity has to report to the authorities any foreign exchange transaction which occurs on the system.

All such elements regarding the transactions were noted by the Court that may fall under the scope of "payment system" under the Act and the technology on which the platform enabling the transaction of money between the parties at different ends.

In this case, the court has apparently ruled that even though online payment gateway systems are not explicitly covered under the PSS Act, they may still fall under the purview of the PMLA if the legislative intent and objectives of the PMLA support such an interpretation. The court emphasized that interpretations should align with the spirit and goals of the PMLA and should not be substituted with interpretations from a different act.

This interpretation highlights the importance of considering the legislative intent and purpose of a law when making determinations about its scope and application. It also underscores the principle of "pari materia" interpretation, which means that related statutes or laws should be interpreted in harmony to achieve a consistent legal framework.

On PayPal's status under the PMLA, the Court held that a payment system is one which 'enables' payment between payer and beneficiary and that the legislative intent was to regulate a wide spectrum of activities under the PMLA. Reliance was placed on the case of *Rasila S. Mehta v. Custodian, Nariman Bhavan*, holding that special statutes are to be interpreted in a manner that results in highest fulfilment of their objects.

The Court dismissed the penalty imposed by the FIU, in recognition of the good faith on PayPal's end.

The Court observed that PayPal genuinely thought that the FIU's actions were erroneous under law. Despite this, PayPal maintained open lines of communications with the FIU and proposed alternate models of information sharing, signaling their intent to cooperate with the authorities. This has been received positively by the industry as it allows them to take more interpretation-based calls, given the current ambiguities in the payment sector.

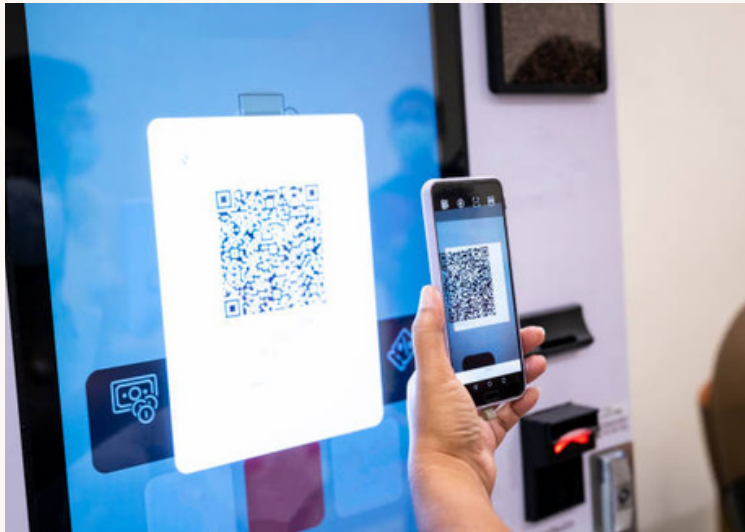
COMPLIANCE BURDEN

The requirements for reporting entities under the Prevention of Money Laundering Act (PMLA) and raises concerns about the potential burden of duplicative disclosures, particularly with regard to authorized dealer banks and entities like PayPal.

PMLA and Disclosure Requirements: The PMLA mandates that reporting entities must make certain disclosures, as prescribed in section 12 of the Act.

Concerns about Duplication: The concern about the possibility of duplication of efforts if certain entities, like PayPal, are included as reporting entities under the PMLA. The argument is that including such entities may lead to repetitive disclosures of the same data, which could be burdensome.

Infrastructure and Data Processing: Another concern raised is whether the state has the necessary infrastructure and capacity to process a large volume of data resulting from these duplicative disclosures. Processing such a significant amount of data could strain the state machinery responsible for enforcement and regulatory oversight.



CONCLUSION

The fintech sector in India is growing at a rapid pace and such growth calls for regulation of fintech companies. The judgment by the Court is one such attempt to include a fintech company i.e. PayPal under the ambit of a reporting entity under the PMLA. This move has caused a lot of uncertainty for other payment gateways and aggregators.

The decision of the Court is instrumental in India's fight against money-laundering and would also help increase the country's ranking in the Financial Action Task Force ('FATF') ratings. It will have huge implications for all the players in the fin-tech sector. The court emphasized that interpretations should align with the spirit and goals of the PMLA and should not be substituted with interpretations from a different act. Indeed, the Court has followed a balanced approach by disallowing the penalty imposed on PayPal for lack of mala-fide intention.