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KINGFISHER: A CASE ANALYSIS OF THE FALLEN KINGDOM- Bobbala Jyothirmai¹**1. INTRODUCTION**

The once-grand empire KINGFISHER AIRLINES derives its name from the place that it was based on, Bengaluru. Established in 2003, it was not until 2005 that a flight in its name flew into the sky. The airlines in its initial days focused on flights on one of the world's busiest routes i.e. between Mumbai and Delhi. Since the day of its incorporation, the airline kept expanding its fleet continuously overtime. On paper, the airline was doing everything right. But contrary to what is expected, throughout its short career the airlines never turned a profit. Though this is something that can be thought of to be pretty conventional, the debt began growing deeper with time with neither its CEO at that point of time, Vijay Mallya, a multi-billionaire once upon a time nor his team doing anything to get things back to any right. Despite all this, the actual turning point came into existence when Kingfisher bought out failing Air Deccan. The reason they did so was not only to obtain the vast domestic network of Deccan but also to get around the Indian law that no airline in life is permitted to operate internationally for less than five years. Mallya could bypass this rule by integrating with Air Deccan, and introduce faster London flights. Despite 2008 taking with it a worldwide financial crisis, Kingfisher's stuff just got bad. Payments to employees and creditors stopped making their way and Mallya had to himself start pumping in money. Since there was no way available for rescue, he drew a blank. Eventually, it happened in 2012 that the DGCA suspended the airline's license. Soon, it limped into a state of bankruptcy. This seeming to be a clear case of an invitation to a large spectrum of legal consequences indeed is one. A case study of this once legend Kingfisher can help us understand the reason behind Vijay Mallya

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being an inviter to legal consequences so faced by him. After all, there's a reason people say 'you reap what you sow'.

2. RESEARCH OBJECTIVE

The main purpose of the research is to conduct a case study on the chronicle of the kingfisher airlines to identify the breaches committed to the company in various respects including the contractual breaches. It is also aimed at providing certain suggestions as to preventing such breaches as there occurred many other such cases after the present one. The paper beginning with the birth of the company moves on to its rise and fall, various reasons for the fall, and also the legal aspects of the said subject, all to give a detailed analysis to the reader.

3. RESEARCH METHODOLOGY

Types of research can be classified into many types. For the present article, the author has used a doctrinal type of research method .the said method has been adopted to dig deeper into the story of the origin of the empire to know its obligations, the growth it saw in the industry, how it became a leader and how it fell resulting to become a fallen kingdom and other aspects to the subject.

4. LITERATURE REVIEW

No To Kingfisher Bailout²–

Civil Aviation remarks by the finance ministers appear to indicate the Govt to civil aviation and infrastructure. For India, Mallya, owner for Kingfisher Airlines, is on the brink of succumbing to the terrifying strategies. The government seems likely to convince banks to provide him with yet another bailout to support a company that has run up about Rs 7,000 crore in losses so far, largely funded by loans. Because much of the funding has been borrowed by government-capitalized, nationalized, and public-sector institutions, that will essentially mean that this profligate business company will be bailed out of public funds. A strong opposition is articulated to the flamboyant billionaire's further bailout which would only encourage him to continue to mismanage the airline.

²Aruna Roy, No To Kingfisher Bailout, 47 Econ. Political Wkly. 4, 4-5 (2012) (discussing the reasons as to why Vijay Mallya should not be bailed out).

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“Could” Breach Of Contract Be Immoral?³ –

Many scholars support the ban of monetary harm payments under contract statute on the basis that contravention of the contract is not morally false in itself. Two solutions are given in this post. Second, one of Steven Shavell's dominant claims in favor of this opinion is debunked. Shavell claims that statutory violation is not unethical in such situations where the regulatory system would grant obligation penalties as the negotiating partners would not have wanted to demand compliance if they had deliberated directly over the conditions of the violation. His reasoning for refusing to support this hypothetical-contract method may be dismissed, and in either case for failure to correctly implement the methodology. Second, I offer some reasons for the general understanding by default because, unless expressly delineated differently, a commitment to executing morally means a commitment to executing rather than a commitment to conduct or pay.

Breach Of Contract⁴–

Non-performance A deal can be excused on two separate grounds. One category of factors is unpredictable external circumstances outside of the non-performing party's influence. In other terms, force majeure for a criminal prosecutor, and the traditional lawyer's principles of unreasonable success and annoyance. However, it is necessary to remember that although English textbook authors have historically viewed anger as an occurrence that terminates contracts, the Rules view force majeure as a reason for the inability to comply. Termination could proceed but this will be attributable to the other party's decision. Of note, as Nicholas points out several years earlier, English law has in general also expressly acknowledged that there are circumstances where unforeseen occurrences justify non-performance but may not put an end to the deal.' Non-performance can even be excused regardless of the other party's actions. The first of these is the other party's actions. An important illustration offered during the topic is that of the vendor who can not supply products to the customer since the consumer will not open his warehouse to accept the product at the time decided. Perhaps most structures will conclude that the consumer can't object, although for various purposes

³Seana Shiffrin, "Could" Breach of Contract Be Immoral?, 107 Mich. L. Rev. 1551, 1551-51 (2009) (discusses the cases of considering breach of contract to be immoral and vice versa).

⁴M.P. Furmston, Breach of Contract, 40 Oxf. J. 671, 671-672 (1992) (discusses the concept of breach of contract).

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they might achieve this conclusion. A typical counsel may address the procedure by value tender laws but not all civil law frameworks will find the bidder to be under a statutory duty to recognize success in such a situation.

5. BEGINNING OF A CRISIS: A BAD TIME

There was a period when Kingfisher airlines were one of the best-ranked airlines in India and received success in gaining customer loyalty, but it struggled to maintain it for a long period⁵.

With the economic slowdown in 2008 and the increasing fuel prices, as well as the mandatory obligation of the KFA to provide services on non-profitable routes, the path ahead was full of problems. Kingfisher's cash-constrained airlines are stuck in a fragile network and burdened by massive debt owed to workers for airport expenses, fuel, and salaries, repayment of loans to different banks, and service tax.”

Sanjay Agarwal, ex-CEO of SpiceJet, entered Kingfisher Airlines in Sept 2010, and Vijay Mallya took on the position of MD and Chairman of Kingfisher Airlines. Kingfisher airlines planned to leave Kingfisher Red in September 2011, to get along with the cash shortage, which was its low-cost division, but the survival slogan was very late for the ailing airlines.

According to Kingfisher Airline's annual report for the year 2011, reasonable questions were raised regarding the carrier's sustainability and it was found out that the government money has not been deposited by the carriers, which is deducted as TDS and provident fund donation, highlighting the scruffy financial feasibility of the business. Over time the condition of the company has deteriorated, culminating in the cessation of foreign flights and the cancellation of domestic airlines, which continues unabated. On 25 April 2012, the languishing shares hit an all-time low of 13⁶.”

The corporation recorded losses of more than Rs. 7,000 crores during 2012, with around half of its aircraft grounded and most of its workers going on strike. As most of its operations were suspended, the carrier grounded to a rest. In the wake of these predicaments, Vijay

⁵Kingfisher default bill: This is how much defunct airline owes to banks; largest dues to SBI - The Financial Express 4

⁶ “Kingfisher Airlines: Too big to fail, too big to save”, The Economic Times, 21 November 2011.

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Mallya pleaded with the government for a loan but was denied the same. DGCA revoked its flying license on 20 December 2012, and the carrier had to shut down its operations.

6. REASONS FOR FAILURE AND BREACH OF CONTRACTS

3.1.Reasons for failure

3.1.1.Frequent change on focus

Kingfisher first introduced an all-economy class with a food and entertainment program, later changed the focus on their aircraft into a premium business class, tons of air travelers loved hospitality, aircraft-quality, and the environment, while Kingfisher focused on premium.

After buying the Air Deccan, they unexpectedly shifted the emphasis to low-cost air travel, frequent changes in hospitality and aircraft climate caused travelers to lose trust in the group, they did not concentrate on highly profitable domestic routes, and Air Deccan aircraft (Kingfisher Lite) acquired the ability to fly at the same time as Kingfisher airlines⁷.

Mr. Gopinath, who is Air Deccan's former chairman, shared his opinion that Kingfisher airlines viewed Air Deccan as a stepchild and never syndicated successful operations.

3.1.2.Acquisition for expansion

For the sake of expansion, to obtain an international route license, Kingfisher airlines acquired the Air Deccan as per international airline policy, any airline should have at least five years' domestic experience in its respective area, for the sake of the international route license Kingfisher acquired the Air Deccan. They have never attempted to combine these two companies into earning more.

After stabilizing in the domestic sector to know the ground-reality of the airline industry, Kingfisher jumped into the international routes where the competition relative to domestic airways was quite high when planning on the international routes that they barely had three years of operation, acquisition, and development.

3.1.3.Economic slowdown

The possible trigger for the Kingfisher began its foreign route from Bangalore to London in 2008, the same year the recession struck the entire world, thereby impacting the occupation

⁷Reasons For The Downfall Of Kingfisher Airlines, An Overview ! NOVEMBER 21, 2014, siddaiiahTirupati.

of air travel on international routes due to the recession, higher aircraft fuel costs, very costly airport landing charges, all these external factors led the kingfisher airlines to crash.

3.1.4.Lack of management

There was no single CEO going on at Kingfisher airlines for a year, there was a continuous change in top-level management, Mr. Vijay Mallya never took any substantial interest in day-to-day activities, Kingfisher was his father's gift to SiddarthMallya(son of Vijay Mallya) on his birthday, where SiddarthMallya did not have the maturity age to run the airlines' business.

The company did not even consider making Mr. Gopinath (Ex-Chairman of Air Deccan) as CEO of Kingfisher airlines to transform the enterprise into a competitive business, lack of appropriate expertise and experience in the airline industry, lack of management caused the Kingfisher airlines downfall.

3.1.5.High Operational Cost

Similar to every market, the operating costs of the airline industry are very small, enterprises have to buy travel licenses, firms must invest in aircraft maintenance, workers' salaries are very small⁸.

Airports pay landing and parking fees, aircraft fuel switches regularly as with foreign crude oil prices, the government requests large taxes from the airline firms, there is a lot of rivalry between airline companies, all those high operational costs without a reasonable profit margin forced the Kingfisher to crash.

7. A PAUSE TO THE CHAOS

Due to this flamboyant lifestyle, analysts had expected that Vijay Mallya would flounder her money abroad. But Mallya has helped to grow it many times over. The liquor business was thriving under Mallya 's leadership and his group had also diversified into a large conglomerate. Forbes' estimate that his net worth was more than a billion-dollar was one of the many laurels in his cap.

Nevertheless, the success feeling was fast to disintegrate. Today the Kingfisher and United Spirits businesses owned by Vijay Mallya are in ruins. Creditors at the doors are lining up to

⁸Reasons For The Downfall Of Kingfisher Airlines, An Overview ! NOVEMBER 21, 2014, siddaiahTirupati.

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obtain their payments so they can't. Workers did not pay wages for several months. Most of them committed suicide owing to Vijay Mallya's financial duress.

Vijay Mallya was also convicted by the high court in India of all that went wrong. He added fuel to the flames of his flamboyant appearance as it associated his reputation with recklessness. Today banks are petitioning the Supreme Court for Vijay Mallya to get a visa issued.

Yet the problem arising is that all of these banks are simply victims in the Kingfisher saga. If so, the mechanism contains no checks and balances that prevent abuse of it by people like Mr. Vijay Mallya.

8. A DISCUSSION ON THE LEGAL ASPECTS OF THE CHRONICLE

Next, there is tremendous outrage about the fact that Vijay Mallya still has lavish parties and own yachts while still owes the profits of the borrower. Recently the indignation became all the more evident when he donated three kilograms of gold to a shrine.

Nevertheless, the outrage is strictly social. It has no substantive ramifications. That is since the law in India and elsewhere places strict liability on companies. It means that Vijay Mallya and Kingfisher are two different people in the light of the court. Hence, if Kingfisher owes money to people, Vijay Mallya can not be made accountable for it. The liability is restricted to the sum of capital that he has invested in the company.

It seems odd that Mallya needs the average man to split the income with all the other creditors yet to take care of the losses alone! Dr. Mallya is the promoter and shareholder of the company as well. His duty is applied exclusively to valuing his portfolio and profits. Its capital gained in the operation of certain companies can not be lawfully added to the Kingfisher job duties

5.1. Bankers' Fault

5.1.1. Poor Collateral

Banks who loaned their money out to Kingfisher took the worst kinds of leverage against the loans they made. Grant Thornton, for example, priced the Kingfisher brand at more than 3500 crores, and a public-sector bank mortgaged the company and borrowed capital towards

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an intangible commodity! Which, to say the least, is mind-boggling. Banks who loaned their money out to Kingfisher took the worst kinds of leverage against the loans they made.

For example, priced the Kingfisher brand at more than 3500 crores, and a public-sector bank mortgaged the company and borrowed capital towards an intangible commodity! Which, to say the least, is mind-boggling. This operating resource includes a stationary desk, folding chairs, and scanners for the boarding passes! It is highly strange when banks have lent capital out of debt that has little interest. Now they're seeking to steal the leftover properties and get their dues paid. There's still little, however, that they're able to retrieve from the bag of useless garbage they brought as protection.

In yet another scenario, Vijay Mallya reportedly offered two helicopters to secure a large loan. The bank that made the loan, though, still fails to recoup its dues. That is because the choppers have become obsolete and are have little use. The bank is now seeking to market these choppers ' replacement parts and to bring out everything it can!

Previously, Vijay Mallya had promised Kingfisher airline promoter shares rather than a loan. The valuation of the stock, however, dropped from 2400 crore to a mere six crore leaving the bank with a big debt that can not be recovered!

And banks aren't completely innocent of all this uproar. For Vijay Mallya, they were shockingly inept at worst, and probably hand in the hat. How else should they have lined the due diligence process completely side by side and give out loans against garbage dumps!

5.2. Enforcement Directorate

Under section 3 and section 4 of the Prevention of Money Laundering Act (PMLA), the ED has charged Mallya. The organization has claimed that at least Rs 3,547 crore was diverted from the loan it obtained from the now-extinct Kingfisher Airlines.

The complaint from the ED described five instances of alleged amortization of loan funds provided by lenders to Kingfisher Airlines: (i) amortization of Rs 3,432.40 crore by "over-invoicing" aircraft leases between April 2008 and March 2012; (ii) amortization of Rs 45,42 crore for payment of the rental lease of a corporate jet used exclusively by Mallya; (iii) diverting Rs 50.90 from Kingfisher Airlines to Force India Formula One squad operated by

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Mallya; (iv) diverting Rs 15.90 from Kingfisher Airlines to Mallya operated by the Indian Premier League cricket team Royal Challengers Bangalore; and (v) diverting Rs 2.80 crore to ICICI Bank as reimbursement of an earlier loan to Kingfisher Airlines.

The ED accused Kingfisher Airlines and Mallya of hiding, maintaining, obtaining, and using illegal proceeds. This has also accused United Breweries Holdings Ltd of assisting Mallya in money laundering by refusing to uphold a corporate guarantee offered by the company to banks, which was to be exercised in the case of Kingfisher Airlines defaulting on loans.

Both the ED and the CBI also claimed that when the debts of Kingfisher Airline were restructured in December 2010, Mallya refused to properly declare its assets when negotiating a lender's guarantee deal. The agencies recorded finding that Mallya had acquired huge assets outside India, especially in the United Kingdom, the United States, France, and Africa, and that he had some interest in various companies that are established/incorporated outside of India.

5.3.CBI

The CBI charged Mallya under section 120B of the Indian Penal Code (criminal conspiracy) and section 420⁹(cheating), and section 13(1)(d) and section 13(2) of the Prevention of Corruption Act¹⁰.

The CBI accused Kingfisher Airlines, its corporate guarantor, United Breweries Holdings, and personal guarantor Mallya of giving many obvious misrepresentations and misinformation to lenders. It claimed it had collected oral and written proof to justify the bank's intention to cheat Mallya.

5.4.SEBI

The capital markets regulator, Sebi, prohibited Mallya from entering the securities exchange until January 2021 for alleged misappropriation of funds caused through false and illegal financial statements/projections or fabricated account documents in a public business.

5.5.Fugitive Economic Offender

⁹ The Indian Penal Code, s. 420.

¹⁰Prevention of Corruption Act, 1988, No. 49, Acts of Parliament, 1988 (India).

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In January, a special court in Mumbai declared Mallya a fugitive economic offender, the first such designation under the Fugitive Economic Offenders (FEO) Act, 2018¹¹. The Act describes a fugitive economic offender as

:"any person against whom a warrant for arrest in connection with a scheduled crime has been given by any court in India which (i)has fled India to escape criminal prosecution; or (ii) has declined to return to India for criminal prosecution."A "Scheduled Offence" is "defined in the schedule where the cumulative amount of any offense or crime is one hundred or more crore rupees."

5.6.The present standing of the case

Understandably, India needs Mallya to face punitive prosecution on debts from its late Kingfisher Airlines, and Indian officials seek to reclaim over \$1.3 billion that Kingfisher owes to them.

Five days before the announcement on December 5, 2018, of Mallya's extradition case, he further appeals to banks to consider his compensation bid and also promises to pay 100 percent of the principal loan amount that he owes them. 10 December 2018: The Westminster Magistrates' Court in London on Monday demanded that United Breweries chairman Vijay Mallya be extradited to India. Indian finance minister Arun Jaitley has acknowledged the decision of the Mallya trial.

9. CONCLUSION (INCLUDING SUGGESTIONS)

Managing too many separate businesses at once is not easy, and ensuring they are all that. Mallya took other bets and made new ventures which his father had never made. An in-depth case study reveals that much of Mallya's investments were created for its financial benefits and not for the greater good of its staff, creditors, and customers. Mallya committed financial fraud and most significantly ethical breaches by violating the confidence of the citizens who not only relied on his business but who also looked up to him as a role model. Mallya describes himself through his messages, living in a faraway place, and connecting via the internet and other outlets. Rather than behaving in this pathetically dishonest way, he would return India and consent to justice like a decent citizen should do in court. Another dimension

¹¹The Fugitive Economic Offenders Act, 2018, No. 17, Acts of Parliament, 2018 (India).

of this scenario, most people seem to forget is the Indian Banks error. This is their responsibility to perform adequate credit reviews before sanctioning one entity with loans of these significant sums. This is their responsibility to perform adequate credit reviews before sanctioning one entity with loans of these significant sums. Perhaps some protocols and mechanisms for awarding loans to Kingfisher Airlines have been overlooked. The re-elected Narendra Modi government will take notice of this high-profile case and bring efforts into the future to discourage such behavior. A change in existing laws or the introduction of a new law seems appropriate. Once again, the Indian government appears to struggle to track tycoons' immoral and unlawful actions, as the latest fraud by famed businessman and jeweler Nirav Modi¹² has rattled the nation once again.

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