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FROM FLAMBOYANT TO FUGITIVE: AN ANALYTICAL CASE COMMENTARY ON THE VIJAY MALLYA SCAM

- *Jhilik Gupta*

In a country where poor people commit suicide over debts of mere thousands, billionaires thrive by defrauding banks of billions, built on the sweat, blood and tears of those very people. Banks give loans to such influential people without any proper security, and later on, when they fail to recover their debts, it is the common man who has to suffer. Nirav Modi, Harshad Mehta, Ketan Parekh, Vijay Mallya - the list goes on. The Vijay Mallya Scam is one of the biggest financial scams of the twenty first century that shook the very foundation of the banking sector in India and led to significant developments in the regulatory landscape governing insolvency and bankruptcy.

Vijay Mallya, once known for his lavish and flamboyant lifestyle, was found in the middle of a huge financial fraud that involved a significant amount of 9,000 Crores INR, borrowed from a total of 17 banks worldwide. The key banks involved in this case were State Bank of India (1600 Crore INR), Punjab National bank (800 crore INR), IDBI (800 crore INR), Bank of India (650 crore INR), Bank of Baroda (550 crore INR), United Bank of India (430 crore INR), Central Bank (410 crore INR), UCO Bank (320 crore INR), Corporation Bank (310 crore INR), State Bank of Mysore (150 crore INR), Indian Overseas bank (140 crore INR), Federal Bank (90 crore INR), Punjab and Sind Bank (60 crore INR), Axis Bank (50 crore INR), and other three banks (603 crore INR). The loans were borrowed to fund the financially struggling Kingfisher Airlines. The Airlines, launched in 2005, as a birthday gift to his son, Siddharth Mallya on his 18th birthday, had to be shut down in 2012, leaving behind unpaid creditors, staff salaries, airport fees and tax liabilities. In 2016,

despite the ongoing legal battle and the issuance of look out notices, Vijay Mallya fled to the UK.

On top of default in repayment of loan, the Enforcement Directorate (ED) accused Vijay Mallya of money laundering, stating that the borrowed funds were diverted to other entities. The Indian banking sector has seen a series of similar financial frauds, which catalyzed the introduction of the Insolvency and Bankruptcy Code in 2016. The IBC, 2016 aimed to safeguard the interests of the financial creditors and streamline the process of bankruptcy in India. These financial frauds are a reminder of the different existing loopholes in the Indian banking system that are often used by these capitalist predators to escape accountability for their actions.

FACTS OF THE CASE :

1. Vijay Mallya, the former Chairman of United Breweries Group and a former Member of Parliament from Karnataka, launched the Kingfisher Airlines on 9th May, 2005.
2. Between 2004 and 2012, Kingfisher Airlines borrowed a significant amount of loan from a consortium of 17 banks, led by the State Bank of India.
3. The company suffered incurable losses and had to be shut down in 2012, and by that time, the company had accrued debts exceeding 9,000 crores INR to the financial creditors, staff and employees, and tax liabilities.
4. In 2013, the financial lenders decided to start the recovery process of the loans given to Kingfisher Airlines.
5. Simultaneously, Kingfisher Airlines' assets were frozen due to non payment of dues.
6. In March 2015, Mallya fled to the UK despite his ongoing legal disputes. Soon after, he transferred around 40 million dollars to his children amidst the financial crisis.
7. The financial creditors, the Enforcement Directorate (ED) and the Central Bureau of Investigation (CBI) initiated legal proceedings against Vijay Mallya under the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act), Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), Prevention of Money Laundering Act, 2002 (PMLA), Fugitive Economic Offenders Act, 2018 (FEOA), Companies Act, 2013, and the Indian Penal Code, 1860 (IPC).

ISSUES INVOLVED :

1. Could the banks recover the debt amount from Mallya even if it was the company, Kingfisher Airlines, who defaulted in the repayment of the loans? Could he be held personally liable for such repayment?
2. Did the default in repayment of the loans to the banks amount to wilful default or fraud?
3. Could the banks attach Mallya's personal assets to recover their loan amount?

DECISIONS OF THE COURT :

ISSUE : Could the banks recover the debt amount from Mallya even if it was the company, Kingfisher Airlines, who defaulted in the repayment of the loans? Could he be held personally liable for such repayment?

DECISION OF COURT : Even though it was the Kingfisher Airlines Limited which was the principal borrower, Vijay Mallya was the personal guarantor. The banks gave loans to the company on the guarantee of Mallya. Under Indian contract law, especially Section 126 of the Indian Contract Act, 1872, when the principal debtor defaults in the repayment of loan, the guarantor (or surety) becomes liable for such default. Moreover, Mallya was actively involved in the financial decisions of the company and in this case, the corporate veil was lifted and the DRT held Mallya personally liable for the repayment of the loan.

ISSUE : Did the default in repayment of the loans to the banks amount to wilful default or fraud?

DECISION OF COURT : As per the Reserve Bank of India Circular, 2015, a wilful defaulter is a person who has the capacity to repay but chooses not to, or diverts the borrowed funds for any other purpose other than the one the loan was given for, or siphons off funds and misrepresents facts. Since Mallya used the borrowed loan amount for non-business or personal expenses and also transferred 40 million dollars to the accounts of his children, he was declared as a wilful defaulter.

ISSUE : Could the banks attach Mallya's personal assets to recover their loan amount?

DECISION OF COURT : After Mallya was declared as a wilful defaulter, the Enforcement Directorate initiated proceedings under the Securitisation and Reconstruction

of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and through the DRT to repay the outstanding debts to the banks. Under Section 13 of SARFAESI, secured creditors of Kingfisher Airlines had the right to enforce the security interest without court intervention. As many of Mallya's assets were also situated outside India, the ED invoked the PMLA (Prevention of Money Laundering Act, 2002) to attach movable and immovable properties, including foreign assets.

ANALYSIS OF THE CASE & CONCLUSION:

The whole case of Vijay Mallya Scam can be divided into four segments:

1. Debt Recovery Tribunal (DRT) : In 2017, the Debt Recovery Tribunal (DRT), Bangalore, ordered the recovery of 6,203 crores INR, along with the interest to be paid to the banks by Vijay Mallya and his companies. Following the order of the Debt Recovery Tribunal, Vijay Mallya's assets including his company shares, properties and other luxury items, were attached and sold to recover the debt amount.
2. Debt Recovery Appellate Tribunal (DRAT) : Unsatisfied with the decision of the Tribunal, Vijay Mallya filed an appeal to the Debt Recovery Appellate Tribunal (DRAT) against the decision of the Debt Recovery Tribunal. The DRAT asked Vijay Mallya to deposit 620 crores INR before the proceedings, which he failed to comply with. Hence, the DRAT refused to proceed with Mallya's appeal, as a result of which, the order of the DRT to attach Mallya's properties and sell his assets stayed in effect.
3. Prevention of Money Laundering Act (PMLA) and State Bank of India Coordination : During the investigation led by the Enforcement Directorate (ED), it was found that the funds borrowed by Kingfisher Airlines, had been misused by Vijay Mallya and diverted towards other shell companies created by him, These funds were also being used to finance his flamboyant, extravagant lifestyle. This led to a violation under the Prevention of Money Laundering Act, 2002. Therefore, the Enforcement Directorate (ED) ordered for the attachment of many of Mallya's assets. Later on, these attached properties and assets were handed over to the consortium of 17 banks, led by the State Bank of India, to recover their loan amounts.
4. Supreme Court of India : The consortium of banks led by the State Bank of India (SBI), filed suit contempt petition at the Supreme Court. The Supreme Court held Mallya guilty

for contempt of court, for failing to disclose his assets and for transferring 40 million dollars to his children against the order of the Court. Mallya was sentenced to four months of imprisonment and was ordered to deposit the said amount with 8% interest.

As per the Finance Minister of India, 14,131 crores INR is said to have been recovered from Vijay Mallya till date. The consortium of 17 banks, the amount of outstanding debts along with the involvement of such a high-profile celebrity makes this scam as one of the biggest financial frauds of the decade. This case also draws attention towards the existing loopholes of the Indian banking system including lax due diligence, inadequate monitoring of fund utilization post-disbursal and delays in enforcement and asset recovery mechanisms. It serves as a cautionary tale for financial institutions and regulatory bodies, emphasizing the need for stronger compliance, accountability, and reform in credit risk management.

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