

## MANAPPURAM INSIDER TRADING CASE: HOW TO AVOID SUCCESSOR LIABILITY

### 1. INTRODUCTION

In Manappuram Finance Insider Trading Case, 2013, the Securities and Exchange Board of India (SEBI) has sent show-cause notices to various fund houses for trading securities on the basis of certain insider information. One of the fund houses has argued that trades in question, happened under the previous owner before the fund house was acquired by the current owner.

### 2. The Issue

- 2.1 The issue related to the doctrine of successor liability is not new and many deals have been cancelled on the issues arising out of pre-deal civil and criminal liabilities for violation of contractual and statutory obligations. There is no unified law to deal with successor liability and lawyers engaged in M&A practice find it difficult to negotiate the question of successor liability.
- 2.2 While all liabilities arising after a successful merger or acquisition is the responsibility of the new owner, pre-deal liabilities must be negotiated in such a manner that they are in consonance with the law of the land and in the best interest of all parties to the deal.
- 2.3 Product Liability, Income Tax Dues and Environmental Laws are some of the areas where the doctrine of successor liability is usually applied. It must be kept in mind that a transfer of asset is different from a transfer of business. In the former, there is no transfer of liability unless provided for under the law.

### 3. How to avoid successor liability

- 3.1 Legal due diligence is vital to address these issues. Proper legal due diligence can bring out any omission, on part of the owner of the target company and save acquirer from any legal risk in the future. It can also provide an opportunity to both parties to negotiate and adjust their liabilities.
- 3.2 An acquirer must check if it would be liable under any statutory provisions. There are several statutes like Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Income Tax Act, 1961 which makes acquirers liable for pre-deal non-compliance of certain provisions.
- 3.3 In such cases, it would be advisable to incorporate specific indemnity clauses in the M&A agreement. Under an indemnity clause, the previous owners would be liable to compensate new owners in case of any financial loss arising due to their actions. In case there is no statutory obligation, an acquirer can also incorporate specific clauses in the M&A agreement, making the previous owner liable for all pre-deal statutory or contractual obligations.

### 4. Conclusion

It would be interesting if SEBI accepts the argument of the fund house placing the liability on the previous owner.

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