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## Fraudulent Financial Practices - A Case Study of Vijay Mallya

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**Abstract:** Indian economy is progressing at about 8% growth rate and has become a destination for most of the countries and investors. The business is growing with its 120 crore population among which 65% are below 25 age group. There is enormous potential for growth trajectory. Of late some evolving Indian MNCs are involved in Financial Frauds like money laundering and fraudulent accounting Practices in Business which results in defaming the economy and business practices of the country. Satyam, Sahara India, Ketan Parekh, Deccan Chronicle, King Fisher are some examples. Kingfisher Airlines, established in 2005, was a major business venture launched by Vijay Mallya. It eventually became insolvent and had to be closed down. As of October 2013, it had not paid salaries to its employees for 15 months, had lost its license to operate as an airline, and owed more than US\$1 billion in bank loans. By November 2015 the amount owed to the banks had grown to at least \$1.35 billion, and there were other debts owed for taxes and to numerous small creditors. As part of the Kingfisher collapse, Mallyawas named a "willful defaulter" under Indian law, including accusations of money laundering, misappropriation, etc

**Key Words:** Will full Defaulter, Money Laundering, Financial Fraud, King Fisher.

### Introduction

Indian economy is progressing at about 8% growth rate and has become a destination for most of the countries and investors. The business is growing with its 120 crore population among which 65% are below 25 age group. There is enormous potential for growth trajectory. After globalization in the last two decades, MNCs are growing exponentially. The occurrence of frauds have also been on the increase. Fraud impacts organisations in several areas including financial, marketing and operational. While the economic loss due to fraud is noteworthy, the full bang of frauds on an organization can be astounding. The loss of status, goodwill and client relation can be upsetting. As fraud can be committed by any employee within an organization or from the outside, it is significant to have an effective fraud management strategy in place to safeguard the organization's assets and reputation. In the world's most ethical companies list of 2014, of the 144 listed across the globe, only One Indian Company, Tata Power has found its place.

This paper tries to analyse Vijay Mallya's Business journey until he was named a willful defaulter.

### Objectives of the Study:

1. To understand Fraudulent Practices in Business.
2. To Study the Case of Vijaya Mallya as a Business man.
3. To Analyse reasons for the default.

### Methodology:

The paper mostly uses descriptive methodology based on secondary data collected from news papers, journals, and websites only.

### Financial Crimes: Definition

Financial crimes are crimes against property, involving the unlawful conversion of the ownership of property (belonging to one person) to one's own personal use and benefit. Financial crimes may involve fraud (Cheque fraud, Credit Card fraud, Mortgage fraud, Medical fraud, Corporate fraud, Securities fraud (including insider trading), Bank fraud, Market manipulation, Payment (point of sale)

fraud, Health Care fraud); Theft; Scams or Confidence tricks; Tax Evasion; Bribery; Embezzlement; Identity theft; Money laundering; Forgery and Counter feiting including the production of Counterfeit money and consumer goods.

Financial crimes may involve additional criminal acts, such as computer crime, elder abuse, burglary, armed robbery, and even violent crime such as robbery or murder. Financial crimes may be carried out by individuals, corporations, or by organized crime groups. Victims may include individuals, corporations, governments, and entire economies.

### Financial Fraud: Definition

Financial fraud can be broadly defined as an intentional act of deception involving financial transactions for purpose of personal gain. Fraud is a crime, and is also a civil law violation. Many fraud cases involve complicated financial transactions conducted by 'white collar criminals' such as business professionals with specialized knowledge and criminal intent.

Fraudsters can contact their potential victims through many methods, which include face-to-face interaction, by post, phone calls, sms and/or emails. The difficulty of checking identities and legitimacy of individuals and companies, the ease with which fraudsters can divert visitors to dummy sites and steal personal financial information, the international dimensions of the web and ease with which fraudsters can hide their true location, all contribute to making internet fraud the fastest growing area of fraud.

### Concept of Money Laundering:

For most countries, money laundering and terrorist financing raise significant issues with regard to prevention, detection and prosecution. Sophisticated techniques used to launder money and finance terrorism add to the complexity of these issues. Such sophisticated techniques may involve different types of financial institutions; multiple financial transactions; the use of intermediaries, such as financial advisers, accountants, shell corporations and other service providers; transfers to, through, and from different countries;

and the use of different financial instruments and other kinds of value-storing assets.

Money laundering is, however, a fundamentally simple concept. It is the process by which proceeds from a criminal activity are disguised to conceal their true origin. Basically, money laundering involves the proceeds of criminally derived property rather than the property itself. Money laundering can be defined in a number of ways, most countries subscribe to the definition adopted by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention) and the United Nations Convention Against Transnational Organized Crime (2000) (Palermo Convention):

- i. The conversion or transfer of property, knowing that such property is derived from any (drug trafficking) offense or offenses or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offense or offenses to evade the legal consequences of his actions;
- ii. The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offense or offenses or from an act of participation in such an offense or offenses, and;
- iii. The acquisition, possession or use of property, knowing at the time of receipt that such property was derived from an offense or offenses or from an act of Participation in such offense or offenses.

The Financial Action Task Force on Money Laundering (FATF), which is recognized as the international standard setter for Anti-money Laundering (AML) efforts, defines the term "money laundering" briefly as "the processing of criminal proceeds to disguise their illegal origin" in order to "legitimize" the ill-gotten gains of crime. Recently Vijay Mallya of King Fisher group is being investigated for financial fraud and Money laundering by Indian government. A brief description of the case is discussed below.

### **VijayMallya - A Brief Introduction**

Vijay Mallya is an Indian businessman and politician. VijayMallya was born on 18 December 1955, the son of VittalMallya, a Goud Saraswat Brahmin from Bantwal, Karnataka and Lalitha Ramaiah. Vittal Mallya was the Chairman of United Breweries Group. He is the ex-chairman of United Spirits Ltd, the largest spirits company in India and continues to serve as Chairman of UB Group, an Indian conglomerate with interests in beverage alcohol, aviation infrastructure, real estate and fertiliser among others. He has been the Chairman of Sanofi India (previously Hoechst AG and Aventis) as well as the Chairman of Bayer Crop Science in India for over 20 years, in addition to being the Chairman of several other companies. He recently announced that he shall retire from the chairmanship of Sanofi India.

Mallya also co-owns the Formula One team Sahara Force India. His companies own Indian Premier League team Royal Challengers Bangalore, the I-League teams Mohun Bagan AC and East Bengal FC. He is also a member of the World Motor Sport Council representing India in the FIA. He is also known for having launched Kingfisher Airlines, an airline

established as a major business venture in 2005 that later became insolvent and was shut down in 2012. Mallya also served in the Rajya Sabha, the upper house of the Parliament of India, for his home state Karnataka.

### **Vijay Mallya in Business**

Mallya became the Chairman of United Breweries Group in 1983 at the age of 28, following his father's death. Since then, the group has grown into a multi-national conglomerate of over 60 companies, with an annual turnover which increased by 64% over 15 years to US\$11 billion in 1998–1999. He consolidated the various companies under an umbrella group called the "UB Group", spun off non-core and loss-making businesses and focused on the core business of alcoholic beverages. Over the years, he has diversified and acquired Berger Paints, Best and Crompton in 1988; Mangalore Chemicals and Fertilizers in 1990; *The Asian Age* newspaper and the publisher of film magazine, and *Cine Blitz*, a Bollywood magazine in 2001. United's Kingfisher beer has more than a 50% market share in India's beer market. The beer is available in 52 countries outside India and leads among Indian beers in the international market.

United Spirits Ltd, the flagship company of the UB Group, achieved the historic milestone of selling 10 crore (100 million) cases, becoming the second-largest spirits company in the world by volume under Vijay Mallya's chairmanship. In 2012, Mallya ceded management control of United Spirits Limited to global spirits giant Diageo, although he retained a minority stake in the business. In February 2015 Mallya was forced to resign as Chairman of United Spirits, and he contracted to receive a \$75 million severance payment as part of that deal, but the courts in India have blocked that payment.

Kingfisher Airlines, established in 2005, was a major business venture launched by Mallya. It eventually became insolvent and had to be closed down. As of October 2013, it had not paid salaries to its employees for 15 months, had lost its license to operate as an airline, and owed more than US\$1 billion in bank loans. By November 2015 the amount owed to the banks had grown to at least \$1.35 billion, and there were other debts owed for taxes and to numerous small creditors. As part of the Kingfisher collapse, Vijay Mallya is named a "willful defaulter" under Indian law, including accusations of money laundering, misappropriation, etc.

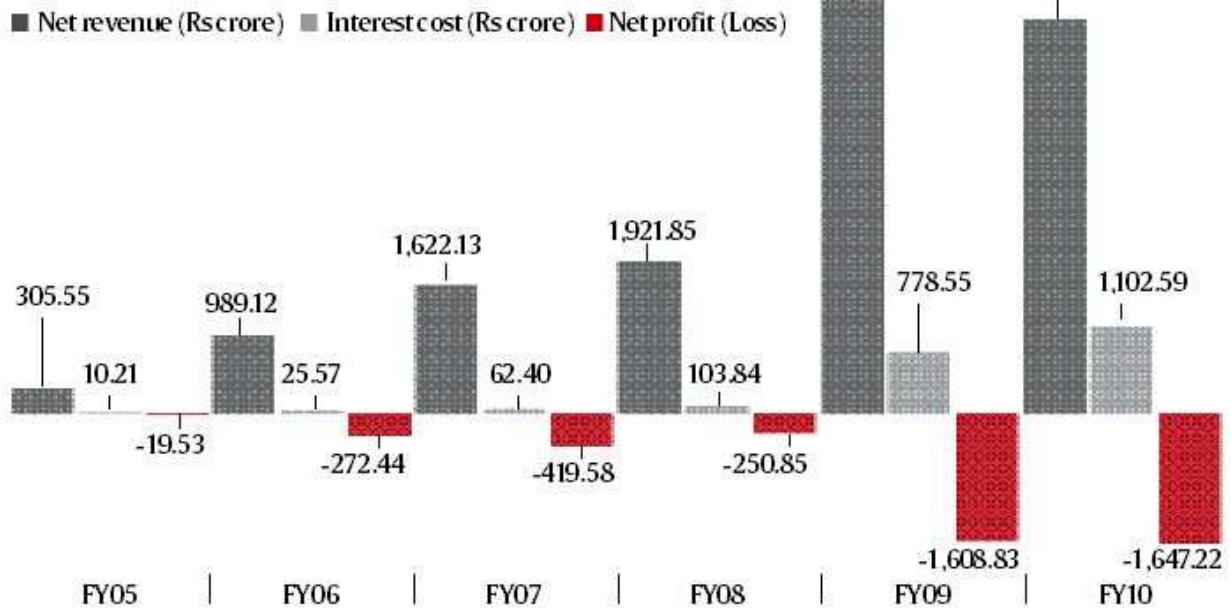
In March 2016, a consortium of banks approached the Supreme Court of India to stop Mallya from going abroad due to the pending money his companies owed them. As per media reports, he had already left India. On March 13, 2016 a court in Hyderabad issued a non-bailable warrant for Mallya's arrest, but it appears he is remaining at his country estate near London, England, while his lawyer contests the warrant with a higher court. On 18 April 2016, a special court in Mumbai also issued an undated non-bailable Arrest warrant against the businessman. This was issued in response to a plea by the Enforcement Directorate on April 15 before the special court hearing cases under the Prevention of Money Laundering Act, 2002. There were allegations on him that he transferred Rs. 4,000 crore (US\$590 million) crore Indian rupees to tax havens.

On 11 June 2016, the Enforcement Directorate reported it had "provisionally attached" Rs. 1,411 crore (US\$210 million) rupees worth of Vijay Mallya's Indian assets and properties against unpaid loans totaling Rs. 807

crore (US\$120 million). SEBI also referred the alleged fund diversion to SFIO (Serious Fraud Investigation Office) under

the corporate ministry.

### THE FINANCES



Ref: The Times of India 6<sup>th</sup> July, 2016

#### Reasons for Downfall

The following are some of the reasons that could be attributed for the downfall of King Fisher.

1. Even before Kingfisher could be launched, the aviation industry had started bleeding. Crude oil prices were high, with fuel costs often making up half the operating costs of airlines. But Vijay Mallya announced his would be a premium, world-class airline. He personally hired his airhostesses and Yana Gupta, a Bollywood actor, performed in a video that showed safety instructions before take-off. The service standards and comfort provided by the airline in the initial years attracted many passengers, marking it out from other full-service airlines in the business then.
2. Mallya, by now unstoppable, moved to acquire a bleeding Air Deccan in 2007 (the deal was completed in 2008), with the group's cash cow and holding company, United Breweries Limited, paying Rs 550 crore to buy a 26 per cent stake in the low-cost carrier promoted by Captain G R Gopinath. Many say it was this decision that led to the grounding of Kingfisher Airline years later.
3. At its peak, Kingfisher Airlines was the second largest airline in India in terms of the number of passengers it carried. The Deccan acquisition was ostensibly to allow the airline to fly internationally (airline rules in India say carriers can go abroad only after they complete five years of operation and have 20 aircraft). In September 2008, three years after Kingfisher first took to the skies, the airline launched its Bengaluru-London flight.
4. But as oil prices started to climb (an average of \$72.68 a dollar between 2005 and 2010) and the company struggled to run a business that included a full-service airline and a low-cost carrier, its finances floundered and its debt burden and losses surged. By the end of March 2008, Kingfisher's debt had mounted to Rs 934 crore. A

year later, it had multiplied to Rs 5,665 crore. Its net losses widened from Rs 188 crore in 2007-08 to Rs 1,608 crore the following financial year.

5. That acquisition of Air Deccan marked the end of Kingfisher Airlines. At that time, there was excess capacity (more supply of seats than demand) in the aviation sector and Air Deccan was lowering ticket prices to Re 1, Rs 400 and so on, and that was not viable. Besides, fuel prices and sales tax and other levies had dragged down all aviation companies in the country.
6. Kingfisher was not alone to ride the rough skies. As crude prices soared towards \$140 a barrel, the global aviation industry too was facing a crisis. In 2008, the International Air Transport Association (IATA), the global aviation industry body, estimated losses of \$5.2 billion. For airlines in India, the hit was much harsher with taxes and levies topping oil prices. If that wasn't bad enough, the global financial crisis struck, growth started sliding and the aviation script went haywire.
7. By 2009-10, Kingfisher Airlines had accumulated a debt of over Rs 7,000 crore. It continued to pile up losses and had already turned net-worth negative the previous financial year. That was also the year Kingfisher Airlines turned into a non-performing asset or a bad loan for banks. In November 2010, banks for the first time restructured Kingfisher's debt. The consortium of lenders led by State Bank of India converted Rs 1,355 crore of debt into equity at a 61.6 per cent premium to the market price of the Kingfisher Airlines stock. Besides, the bankers stretched the period of repayment of loans to nine years with a two-year moratorium, cut the interest rates, and sanctioned a fresh loan.

However, a breather on loan repayment wasn't enough to revive Kingfisher Airlines, which continued to bleed with every passing year.

<b>WHAT KINGFISHER OWES BANKS</b>	
<b>Bank</b>	<b>Rs crore</b>
SBI	1,600
IDBI Bank	800
PNB	800
Bank of India	650
Bank of Baroda	550
United Bank of India	430
Central Bank	410
UCO Bank	320
Corporation Bank	310
State Bank of Mysore	150
Indian Overseas Bank	140
Federal Bank	90
Punjab & Sind Bank	60
Axis Bank	50
3 other banks	603
<b>Total</b>	<b>6,963</b>

Ref: The Times of India 6<sup>th</sup> July, 2016

### Proclaimed Willful Defaulter

United Bank of India was the first lender to declare Kingfisher and Mallya a 'willful defaulter' in May 2014. The same year, the SBI too issued a notice to tag Kingfisher Airlines, Mallya and United Breweries Holdings as 'willful defaulters'. The SBI notice of August 19 has alleged diversion of funds by Kingfisher Airlines to UB Group of companies and other firms. Mallya has challenged the decision of United Bank and the SBI in various courts. In February, Punjab National Bank, another lender, declared Mallya and Kingfisher a willful defaulter..

Mallya is currently fighting at least 27 cases in various courts. Of these, at least 22 are related to loan default by Kingfisher Airlines — an amount that stood at Rs 9,091.40 crore at the end of November 2015. Besides, the CBI is investigating Kingfisher for defaulting on the Rs 900 crore loan that IDBI Bank gave Kingfisher Airlines in 2009. The Enforcement Directorate also registered a money laundering case against Mallya and a few IDBI Bank officials.

### Conclusions

"The Kingfisher case is an example of collective failure of the system. The banks should have declared it an NPA much earlier. Why did the RBI even clear the restructuring of Kingfisher? Even now, the way banks are going after Mallya, they will not be able to recover any money. A criminal case or money laundering investigation will only focus on prosecution, not on recovery of money. Do you think Mallya will not contest the case? So in all this, how will banks recover their money? Instead, banks should look at one-time settlement of dues," says K C Chakravarty, former deputy governor of the Reserve Bank of India.

To mitigate fraudulent practices the basic requirements are

1. corporate government structure needs to be strengthened.
2. strong regulatory and anti fraud collaborations are to be formed.
3. Controlling measures to deter fraud such as, whistle blower policy
4. Strong ethical code of conduct and proactive fraud management program meet care to be taken up by the world's largest companies,

It is high time to inculcate Ethics in Professions and individuals, without which will lead to national Disasters.

Failure of Banking System and regulatory mechanism will give negative signs to the common investor and can be taken as example to some more fraudulent practices.

Greed and non ethical practices Political lobbying, corrupt practices, Fraudsters entering into politics and are being elected as Rajya Sabha members and MPs cannot make banks function according to norms. KYC norms are for common people who seldom default their loans. Thousands of crores of rupees are Streaming into big businesses and Banks NPAs are increasing leading to Poor performance of banks. In this aspect who is to be blamed but the entire system. For long people who read news papers are predicting one day VijayMallya will be identified like this. But everybody responsible in system kept quite and the Day has come but still lot of inaction from the concerned departments and officials. The failure can be attributed to the system, legal mechanism, political leaders.

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