
VIJAY MALLYA AND CONSORTIUM OF BANKS: A DETAILED STUDY

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ABSTRACT

After his father passed away in 1983, Mallya took over as chairperson of United Breweries Group at the tender age of 28.¹ When he took over, he merged all the enterprises under one name, “UB Group,” sold off the unprofitable subsidiaries, and refocused on the burgeoning alcoholic beverage industry. Over half of India’s beer market is dominated by United’s Kingfisher brand.² The beer is the most exported Indian beer in 52 countries outside India. United Spirits Ltd. sold ten crore cases during Vijay Mallya’s management, making it the world’s second-largest spirits corporation by volume.

Mallya, formerly known as the “King of Good Times” for his lavish lifestyle, has been at the Centre of fraud cases and scandals since 2012.³ Mallya departed India on March 2, 2016, claiming he wanted to relocate to the United Kingdom so he could be near his kids. A consortium of seventeen Indian banks is attempting to recoup around 90 billion in loans that Mallya is accused of using to acquire full or partial control of forty businesses in different parts of the globe.⁴ The Attorney General has said that Mallya’s abroad assets are “far in excess to loans taken by him,” and the IT Department and the CBI are investigating potential financial crimes and money laundering on his behalf.⁵

After the Indian government gave the impression that Mallya had already left the country, the 17 banks filed a combined lawsuit with the Supreme Court of India in March 2016 to attempt to stop him from leaving. He was charged with money laundering in March 2016 after the Indian government’s Financial Intelligence Unit (FIU) said he had laundered more than 9 billion of loaned money from his airline.⁶ This paper discusses the case of Vijay Mallya and the SBI-led Consortium of Banks’ perspective.

Keywords: Bankruptcy, Corporate Law.

¹ Vaishnav Shukla, "Bank Frauds," *Supremo Amicus* 7 (2018): 323-334

² *ibid.*

³ Vaishnav Shukla, "Bank Frauds," *Supremo Amicus* 7 (2018): 323-334

⁴ Vivek Malhotra; Rohan Aniraj, "Corporate Governance Failures in India," *International Journal of Law Management & Humanities* 4 (2021): 4176-4193

⁵ “Who Is Vijay Mallya, Vijay Mallya Case, Vijay Mallya Money Laundering Case, Vijay Mallya News,” *Business Standard*, <https://www.business-standard.com/about/who-is-vijay-mallya>, last accessed October 29, 2022,

⁶ *Supra* Note 3.

Loans provided by various banks to Vijay Mallya

BANK	AMOUNT (in Crores)
SBI	1,600
PNB	800
IDBI	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 and Sind Bank	60
Axis Bank	50

Total of 14 Banks	6,360
Other 3 Banks	603
Total of 17 Banks	6,963

Source: Indian Express, March 14, 2016

State Bank of India

SBI, Vijaya Mallya's largest lender, had an agreement between them. If Kingfisher Airlines defaults on its obligations, the hypothecation document agreed between the SBI and Kingfisher Airlines in 2010 would transfer ownership of all trademarks and goodwill to SBI.⁷ SBI is having trouble selling Kingfisher's trademarks, which were worth 4111 crores in 2009, according to a report by global consultant company Grant & Thornton.⁸

Indian Overseas Bank

In 2008, IOB extended a loan of Rs 100 crore to the airline industry on the collateral of two helicopters. The Eurocopter is said to be in non-flying condition, making it impossible for the bank to sell them to recoup its outstanding debts.⁹ Even more financial institutions are having trouble getting back their loans from Kingfisher Airlines. These include PNB, Axis Bank, Corporation Bank, and Punjab & Sind Bank.

Bank of India

The Kingfisher Airline has received a loan from the Bank of India for Rs 308.8 crore, secured by the airline's current assets. One is likely to wonder why a financial institution would risk lending so much money on flimsy collateral like air conditioners, tractors, and folding chairs.

⁷ Sweety Gupta and Shiv Gupta, "Case Study From Riches to Rags: The Story of Vijay Mallya," *Pacific Business Review International* 9, no. 7 (January 2017): pp. 205-209, https://doi.org/http://www.pbr.co.in/2017/2017_month/Jan/22.pdf, last accessed October 28, 2022.

⁸ Jaysree P Upadhyay and P R Sanjai, "Kingfisher Airlines Brand Valuer Grant Thornton Now in Dock," *mint*, March 15, 2016, <https://www.livemint.com/Companies/ha3FlmyHooYZLVRDoIic8O/Kingfisher-Airlines-brand-valuer-Grant-Thornton-now-in-dock.html>, last accessed October 28, 2022.

⁹ *Supra* Note 7.

As a result of pleading for office supplies like travel passes, printers, and foldable chairs, the bank eventually granted over Rs 300 crore.¹⁰

What are the transactions between Vijay Mallya and his Children

In 2016, Diagio Plc transferred \$40 million to an undisclosed bank account at Switzerland's Edmund de Rothschild Suisse Bank.¹¹ The USD 40 million were then gifted to Mallya's three children through gift deeds that established trusts in their names.¹² The trusts are no longer under Mallya's control, so his attorneys contended; thus, the money is no longer his.

The Supreme Court has ruled that Mallya's trusts for his three children, Sidhartha, Leena, and Teena, as well as the corresponding transaction in which the money was received, were null and invalid.¹³ The three kids have been labelled "beneficiaries" of the illicit transaction and told to pay back the money to the loan recovery officer of the consortium.¹⁴

NAME OF PARTY	AMOUNT
Siddhartha Mallya	US\$13,333,331.33
Leena Mallya	US\$13,333,331.33
Tanya Mallya	US\$13,333,331.33
TOTAL	US\$ 39,999,993.99

¹⁰ *ibid.*

¹¹ "Supreme Court Asks Vijay Mallya's Children to Repay \$40 Mn 'Gift Deeds'. but It Has Legal Hurdles," India Today (India Today, July 12, 2022), <https://www.indiatoday.in/law/story/supreme-court-asks-vijay-mallya-s-children-to-repay-40-mn-gift-deeds-but-it-has-legal-hurdles-1974884-2022-07-12>, last accessed October 16, 2022.

¹² *ibid.*

¹³ *ibid.*

¹⁴ *ibid.*

Source: State Bank of India and Ors. vs. Vijay Mallya, MANU/SC/0842/2022.

Question of Law: In its ruling, the Supreme Court highlighted that Vijay Mallya's three adult children are not Indian but American citizens. Vijay Mallya has no access to the money since it was gifted to them via a gift deed and placed in a trust. Gifts made by deed in India to close relatives are often irreversible.¹⁵

In addition, if a borrower passes away while owing money, his or her legal successors are not responsible for repaying the debt under the Hindu Succession Act unless they get any portion of the borrower's inheritance. The term "gift" is used in the context of the Transfer of Property Act, which states that a transaction is not gratuitous if consideration is exchanged for the transfer of property.¹⁶

Citizenship Argument

Sidhartha, Teena, and Leena Mallya were all determined by the court to be American citizens who do not have the right to stay in India. But if they do not repay the money as ordered by the Supreme Court, the government of India might seize their property. It may be difficult to serve them with the necessary notices or orders or ensure their appearance in Court throughout the recovery process if they are no longer Indian citizens.

However, may a parent's children be held liable for the parent's debt? The Hindu Succession Act of India lays forth the circumstances under which a minor or adult child is held liable for their parent's debts.¹⁷ No one else, not the borrower's kids, will be on the hook for the debt as long as the parent who took it out is still around to pay it back.¹⁸

According to the Transfer of Property Act, if a borrower fails to repay a loan secured by either moveable (gold, cash, car) or immovable (building, land) property, the lender has the "right" to sell the collateral and collect the proceeds.¹⁹ In such an instance, the borrower must repay the debt before selling or transferring the property.

¹⁵ Rishabh Shroff, "Gifts Deeds Are Not Reversible, so the Giver Can't Get Back the Rights," *mint*, March 3, 2020, <https://www.livemint.com/money/personal-finance/gifts-deeds-are-not-reversible-so-the-giver-can-t-get-back-the-rights-11583220828729.html>, last accessed October 28, 2022

¹⁶ Section 122, The Transfer of Property Act, 1882.

¹⁷ legal Service India, "Family Law Sons Pious Obligation," *Legal Service India*, https://www.legalserviceindia.com/articles/sons_p.htm, last accessed October 29, 2022

¹⁸ *ibid.*

¹⁹ The Transfer of Property Act, 1882.

The Court in the Mallya case based its decision on this principle: because the creditor banks had a prior claim on the proceeds from the sale of the property, any transfer of those monies to Mallya's children was void.²⁰

Opinion: Liabilities and the need to repay debts cannot be inherited but are connected to the dead parent's estate. The Hindu Succession Act of 2005 removes any moral obligation for a child to return a debt, a provision that had been in existence before.²¹ Once a parent passes away, their "estate" is often used to settle any outstanding debts or obligations. A parent's assets, monetary or tangible, would be considered part of their "estate."

A kid inherits no debts or loans from their parents if there is no "estate" to inherit. It is also noted that many people, including businesspeople, take advantage of this legal loophole by making gifts of money and property to their children or other members of their immediate families to avoid having any assets subject to attachment in the event of an Income Tax or Debt Recovery proceeding.²²

So, it's clear that even if the Supreme Court has handed a decision demonstrating its anger at Mallya for failing to appear in Court or refund the debts, the complicated intricacies of the law can make it hard to follow the court order.

Vijay Mallya and the Supreme Court

Supreme court in the case of State Bank of India and Ors. Vs Dr Vijay Mallya gave its judgement on July 11, 2022.

Supreme Court in 2017

What Happened? The Bench of A.K. Goel and U.U. Lalit, JJ., found Mallya guilty of contempt of Court and ordered him to appear before the Court on 10.07.2017 so that he could be heard, and the severity of his sentence could be determined.²³ The Court found that Vijay Mallya had violated its orders by failing to provide "complete particulars of the assets."

²⁰ *Supra* Note 11.

²¹ Section 3, The Hindu Succession (Amendment) Act, 2005.

²² legal Service India, "Family Law Sons Pious Obligation," Legal Service India, accessed October 29, 2022, https://www.legalserviceindia.com/articles/sons_p.htm, last accessed October 28, 2022

²³ State Bank of India and Ors. vs. Vijay Mallya, MANU/SC/0842/2022

Since Vijay Mallya, who owes over Rs. 9000 crores to the banks, transferred a huge sum of money (about \$40 million)²⁴ to his children instead of paying off his obligations, a group of banks sought relief from the Court. The banks claimed that the transfer was an effort to obstruct justice since it was made in defiance of the Karnataka High Court's orders, and the money was moved to an offshore account where it could not be recovered.²⁵

An interim injunction issued by the High Court of Karnataka prohibiting the Mallya from transferring, alienating, disposing of, or establishing third-party interests in respect of moveable and immovable possessions.²⁶ Thus, the Court found Vijay Mallya guilty of breaking the clear Orders of Restraint imposed by the High Court of Karnataka in light of the transfer of substantial money to his children. The Court has directed Vijay Mallya to answer to the Contempt Petition and appear in court on July 10 in order to hear his opinions on the suggested penalty.

Analysis

Court declined to reconsider 2017 ruling finding Mallya guilty of contempt of Court after a consortium of banks sought relief after Vijay Mallya, who owes more than Rs. 9000 crores to the banks, transferred a large sum of \$40 million to his children.

Banks argued Mallya's move was an effort to obstruct justice by transferring cash to protect himself from recovery actions, and in 2017, the Court ruled Mallya is guilty of defying the Orders given by the Supreme Court in not providing complete particulars of the assets.²⁷

In an interim judgement, the High Court of Karnataka prohibited Mallya from selling, assigning, transferring, alienating, disposing of, or establishing third-party interests in any personal property. Thus, the Court found Vijay Mallya guilty of breaking the clear Orders of Restraint imposed by the High Court of Karnataka in light of the transfer of substantial money to his children.

²⁴ *Supra* Note 7.

²⁵ State Bank of India and Ors. vs. Kingfisher Airlines Ltd. and Ors., MANU/SC/0589/2017.

²⁶ *ibid.*

²⁷ Prachi Bhardwaj et al., "SC Refuses to Review It's 2017 Verdict Holding Vijay Mallya Guilty for Contempt of Court," SCC Blog, August 31, 2020, <https://www.sconline.com/blog/post/2020/08/31/sc-refuses-to-review-its-2017-verdict-holding-vijay-mallya-guilty-for-contempt-of-court/>, last accessed October 27, 2022

After a four-month trial, the Supreme Court found fugitive billionaire Vijay Mallya guilty of contempt of court for his participation in a bank loan default case involving more than 9,000 crores and his bankrupt airline, Kingfisher Airlines.

What Happened? Vijay Mallya was sentenced to four months in jail and fined Rs. 2,000/- for contempt of Court by a three-judge bench.²⁸ The judges noted that Mallya “*never showed any remorse nor tendered any apology for his conduct*”²⁹ as instead of paying off his debt, he gifted a massive amount to his children estimated at US\$40 million.

This Court found the Contemnor guilty of contempt on May 9, 2017, after he disbursed \$40 million in violation of a High Court of Karnataka judgement.³⁰ The Supreme Court opted not to hear an appeal in the case State Bank of India and Ors. vs. Kingfisher Airlines Ltd. and Ors. MANU/SC/0589.³¹

In the present judgement, the Court said that, in addition to punishing Mallya for his conduct, the Court could be required by the majesty of the law to make appropriate instructions so that any gain received as a result of such contumacious behaviour is fully nullified.

In the words of the Court, “*the approach may compel the court to provide directions either for reversal of the transactions in question by declaring such transactions to be unlawful or granting suitable instructions to the pertinent authorities to ensure that the contumacious behaviour on the part of the contemnor does not continue to endure to the profit of the contemnor or anyone claiming under him.*”³²

Accordingly, the Court sentenced Vijay Mallya to four months in prison and a fine of Rs.2,000/- to preserve the dignity of the law. Mallya has been given four weeks to pay the fee, after which he will serve an additional two months in jail. To ensure he serves out his sentence of incarceration, the Court has ordered the Ministry of Home Affairs to bring him in.³³ The Supreme Court Registry also requires a Compliance Report.

²⁸ State Bank of India and Ors. vs. Vijay Mallya, MANU/SC/0842/2022

²⁹ Prachi Bhardwaj et al., “SC Refuses to Review It's 2017 Verdict Holding Vijay Mallya Guilty for Contempt of Court,” SCC Blog, August 31, 2020, <https://www.scconline.com/blog/post/2020/08/31/sc-refuses-to-review-its-2017-verdict-holding-vijay-mallya-guilty-for-contempt-of-court/>, last accessed October 27, 2022

³⁰ Vijay Mallya vs. State Bank of India and Ors., MANU/SC/0659/2020.

³¹ *Supra* Note 27.

³² State Bank of India and Ors. vs. Vijay Mallya, MANU/SC/0842/2022

³³ Livelaw News Network, “Supreme Court Sentences Vijay Mallya to 4 Months Imprisonment for Contempt of Court; Asks Him to Deposit 40 Million US Dollars,” Live Law (Live Law, July 12, 2022),

Following are the Court's directives on the distribution of funds to the beneficiaries:³⁴

1. The transactions described in the Judgment and Order of 09.05.2017, under which US\$40 million was paid out to the beneficiaries, are declared null and invalid;
2. Within four weeks of receiving the funds, Mallya and the beneficiaries must deposit the funds, plus interest at the rate of 8% per year, with the relevant Recovery Officer.
3. If the funds are not deposited as required, the recovery officer may seek legal recourse to get them back; the Indian government and other relevant agencies will helpfully. Any necessary action, such as hiring a forensic auditor, is permitted.

Contentions of SBI-led Consortium of lenders

SBI contentions before Supreme Court were:³⁵

1. Vijay Mallya was found guilty of contempt of Court by the Court. Following instructions from Edmond de Rothschild (Suisse), M.A. transferred the funds into three trusts, of which the only beneficiaries were Mallyas' son and two daughters.³⁶ Using the same act of contempt, the above-mentioned money was moved in defiance of a court order, which he used to their advantage.
2. They argued that this Hon'ble Court might provide helpful guidance for undoing the deals above by ruling them null and invalid.
3. This contempt case originated with Banks' attempts to reclaim the money. The State Bank of India's legal representative claims that a Recovery Officer has been appointed to perform the judgement against Mallya in the recovery mentioned above proceedings. If the Court sees proper, it may instruct the Recovery Officer to find out where the money make sure it is used to carry out the order.

<https://www.livewlaw.in/top-stories/supreme-court-sentences-vijay-mallya-to-4-months-imprisonment-for-contempt-of-court-asks-him-to-deposit-40-million-us-dollars-203407>, last accessed October 29, 2022.

³⁴ *Supra* Note 30.

³⁵ State Bank of India and Ors. vs. Vijay Mallya, MANU/SC/0842/2022.

³⁶ Prachi Bhardwaj, "Four Months in Prison; Rs. 2000 Fine for Vijay Mallya for Contempt; US\$40 Million to Be Deposited by Him and Beneficiaries at 8% Interest per Annum," SCC Online Blog, July 12, 2022, <https://www.sconline.com/blog/post/2022/07/12/vijay-mallya-four-months-imprisonment-2000-fine-transferred-money-deposit-with-8-percent-interest-per-annum-supreme-court-contempt-legal-updates-news-research/>, last accessed October 26, 2022.

4. The assets of Vijay Mallya in India and abroad may be sequestered if the sum mentioned earlier is deemed insufficient to expunge the contempt above.
5. Also, it may be able to get information on the Mallyas' assets with the help of the Banks and/or the Union of India.
6. Furthermore, the final contention was to hire a forensic auditor to conduct this inspection on your behalf.

Analysis

Earlier in the hearing, the apex court made the observation that Mallya behaves in the United Kingdom like “a free person” and that no information about any judicial proceedings involving Mallya is being made public. Mallya was found guilty on two counts: neglecting to report assets and breaching limitation orders imposed by the Karnataka High Court, as stated by senior lawyer and amicus curiae Jaideep Gupta.³⁷

If Mallya does not appear in person or via counsel within the next two weeks, the Supreme Court will proceed with the natural conclusion of the contempt case against him, which was filed on February 10.³⁸

Solicitor General Tushar Mehta, representing India's Ministry of External Affairs, emphasised that “*it is not India's position that something confidential is happening in the case in the United Kingdom;*” rather, it is what the United Kingdom has informed the government of India about the case that cannot be shared.³⁹

The bench had earlier reacted to Mehta's submission of an extradition document from the Ministry of External Affairs' Deputy Secretary (Extradition), stating that Mallya's extradition to India from the United Kingdom had achieved a conclusion. However, that particular “*confidential proceedings*” are still pending in the United Kingdom, the details of which are unknown. According to the Center, Mallya has no further legal options in the UK.

³⁷ Vijay Mallya vs. State Bank of India and Ors., MANU/SC/0659/2020.

³⁸ India News, “Vijay Mallya Gets 4-Month Jail Term in Contempt Case,” Hindustan Times, July 12, 2022, <https://www.hindustantimes.com/india-news/vijay-mallya-gets-4-month-jail-term-in-contempt-case-101657564177736.html>, last accessed October 26, 2022.

³⁹ “Supreme Court Sentences Vijay Mallya to 4 Months Jail in Contempt Case,” The Economic Times, July 11, 2022, <https://economictimes.indiatimes.com/news/india/supreme-court-sentences-vijay-mallya-to-4-months-jail/articleshow/92795651.cms>, last accessed October 26, 2022.

The government of India is exerting every possible effort to have fugitive Mallya deported, despite the fact that the Center has informed the Supreme Court that legal issues in the United Kingdom are obstructing the extradition.

The Supreme Court had already denied Mallya's request to appeal the May 2017 ruling finding him guilty of contempt. Mallya is now in the United Kingdom, facing charges in a bank loan default case involving his now-defunct Kingfisher Airlines.⁴⁰

Following a petition filed by a group of banks headed by the State Bank of India (SBI) alleging that he had transferred USD 40 million obtained from the British corporation Diageo to his children in a "flagrant breach" of numerous court rulings, the Supreme Court delivered its judgement on May 9, 2017.⁴¹

The apex court already probed Mallya on the "truthfulness" of his asset declaration and the transfer of assets to his children. The Supreme Court was petitioned by the lending banks who wanted Mallya to pay back the \$40 million he had made from his offshore firm Diageo via contempt proceedings. The banks stated that Mallya disregarded the Karnataka High Court's directives by hiding the money and giving it to his children.

Why did banks continue to give loans to Vijay Mallya?

It took the banks three years to realise Mallya was playing a fast one on them. The board of SBI, which led the Consortium, justified it with these reasons:

1. There were many banks involved in the loan of just ₹9,000 crores, and none were willing to mark Mallya's loans as wrong until it was too late.
2. He continued to make regular interest payments.
3. His empire had a tremendous value for SBI and getting it at a discounted price would be worth the risk.
4. Banks were not aware of the financial or legal implications of Mallya's hotel and airline business.

⁴⁰ *Supra* Note 40.

⁴¹ State Bank of India and Ors. vs. Kingfisher Airlines Ltd. and Ors., MANU/SC/0589/2017.

5. Banks are worried they will be seen as culpable if they decide to go after Mallya's assets before he has defrauded anyone in India.

UK Courts and Vijay Mallya

Vijay Mallya was taken into custody in London, England, in April 2017 at India's request.⁴² India has taken the first step towards extraditing the suspect. He posted bail and was freed on £6,50,000 bond; his next court date was May 17.⁴³

The necessary paperwork was exchanged in both New Delhi and London. While the actual extradition depends on the courts in the United Kingdom, sources have indicated that there is a political will to assist with the procedure.

A relevant fact: "No one had been extradited for 23 years after the India-U.K. Extradition Treaty of 1993."⁴⁴

Mr Mallya has many options under Article 9 of the extradition treaty to challenge India's request for his detention.⁴⁵ The CBI is sending a team to London to work with the Indian embassy on the extradition request. Union Home Ministry officials have instructed the CBI and the ED to compile all paperwork required to be submitted under the terms of the 1993 treaty.⁴⁶

According to an affidavit filed by the Enforcement Directorate, his second arrest in London came in October of 2017.⁴⁷

The judge presiding over the extradition case of liquor baron Vijay Mallya said in a March 2018 hearing at London's Westminster Magistrates' Court that it was "blindingly evident" that

⁴² Times Of India, "Vijay Mallya Arrested in London in Money Laundering Case, Gets Bail: India News - Times of India," The Times of India (Times of India, October 3, 2017), <https://timesofindia.indiatimes.com/india/vijay-mallya-arrested-in-london-in-money-laundering-case/articleshow/60925479.cms>, last accessed October 29, 2022.

⁴³ *ibid.*

⁴⁴ Shardul Amarchand Mangaldas & Co, "India's Recent Successes in Extraditing Fugitives from the United Kingdom - Human Rights - India," India's Recent Successes In Extraditing Fugitives From The United Kingdom - Human Rights - India (Shardul Amarchand Mangaldas & Co, June 8, 2020), <https://www.mondaq.com/india/human-rights/948934/india39s-recent-successes-in-extraditing-fugitives-from-the-united-kingdom>, last accessed October 28, 2022.

⁴⁵ Indian Extradition Act, 1962.

⁴⁶ *ibid.*

⁴⁷ Kritti Bhalla, "Jail Time Awaits Vijay Mallya Even as He Tries His Best to Stall Extradition - a Timeline of His Downfall," Business Insider, July 11, 2022, <https://www.businessinsider.in/business/corporates/news/vijay-mallya-was-once-the-king-of-good-times-here-is-the-timeline-of-his-fall/articleshow/92800884.cms>, last accessed October 29, 2022.

Indian banks had violated rules by authorising some of the loans to the defunct Kingfisher Airlines.⁴⁸

She said that there are “obvious indicators that the banks appear to have gone outside their standards,” suggesting that the Indian government provide an explanation for the charges brought against certain bank executives in relation to this case.⁴⁹

The contention of Banks: In its closing arguments, the Crown Prosecution Service (CPS) for the Indian government questioned the validity of some of the evidence presented by the defence.⁵⁰ CPS attorney Mark Summers dismissed the defence’s arguments based on the evidence, pointing out that Mallya had decided not to testify in the case.

The Indian government has also presented other abundant evidence to establish a prima facie case of fraud. On behalf of the Indian Government, the CPS has claimed that the businessman’s dishonesty has been shown and that he should be extradited from the United Kingdom to face Indian courts.⁵¹ In a ruling issued in Mallya’s favour by the Court in May 2018, the Court upheld the banks’ injunction to freeze their assets globally after an earlier decision from an Indian court.⁵²

After much delay, the Court ordered the sale of six of Mallya’s high-end vehicles in October and November 2018 to recoup debts.⁵³ A UK court granted a favourable decision allowing 13 Indian banks (SBI-led Consortium of lenders) to utilise evidence given in Court as part of a global freezing order against Vijay Mallya related to the sale of a luxury superyacht that was thought to be his before he abandoned it in earlier.

Vijay Mallya’s tweet on December 5, 2018, offering to pay back the principal loan amount marked a turning point, and it was not the first time he had made such an offer.⁵⁴ Vijay Mallya

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ “Multiple Errors in Extradition Order for Vijay Mallya, UK High Court Told,” The Economic Times, February 11, 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/multiple-errors-in-extradition-order-for-vijay-mallya-uk-high-court-told/articleshow/74085679.cms?from=mdr>, last accessed October 29, 2022.

⁵¹ “UK Judge Critical of Indian Banks in Providing Loans to Vijay Mallya,” The Economic Times, December 11, 2018, <https://economictimes.indiatimes.com/news/politics-and-nation/uk-judge-critical-of-indian-banks-in-providing-loans-to-vijay-mallya/articleshow/67045891.cms?from=mdr>, last accessed October 28, 2022.

⁵² *Supra* Note 50.

⁵³ Bruce Zagaris, “Extradition,” International Enforcement Law Reporter 36, no. 5 (May 2020): 181-182

⁵⁴ Republic World, “Bank Loan Fraud, Escape to UK, Bankruptcy: Timeline of Vijay Mallya's Grand Downfall,” Republic World (Republic World, January 19, 2022), <https://www.republicworld.com/india-news/general-news/bank-loan-fraud-escape-to-uk-bankruptcy-timeline-of-vijay-mallyas-grand-downfall-articleshow.html>, last accessed October 16, 2022

was extradited from the United Kingdom after a judge ordered his return there five days later. Emma Arbuthnot called Mallya “this attractive, flamboyant, famous, bejewelled, bodyguarded, reportedly affluent playboy who lured and cajoled these bankers into forsaking their common sense,” there seems to be a case against Mallya for fraud, conspiracy, and money laundering.⁵⁵

The Court disagreed with Mallya’s contention that he had been the victim of political intrigue. In February 2019, Sajid Javid, then the UK home secretary, issued an extradition order to have Mallya sent to India.⁵⁶

In April 2020, Vijay Mallya will file an appeal to the Royal Courts of Justice in London on rejecting an extradition order to India in 2018.⁵⁷

At the same time, in 2021, the Chief Insolvencies and Companies Court (ICC) issued a bankruptcy judgement against Vijay Mallya, allowing a group of Indian banks headed by the State Bank of India (SBI) to seek a global freezing order to recoup debts due by the defunct Kingfisher Airlines.⁵⁸

The Indian banks, with help from TLT LLP and attorney Marcia Shekerdeman, filed for bankruptcy protection.⁵⁹ The Court denied the petitioners’ demands, finding “insufficient proof” that the debt would be repaid in full within a reasonable time frame. He also applied for leave to challenge the bankruptcy decision, but Judge Briggs denied it because there was no “*actual chance of success.*”⁶⁰

A group of Indian financial institutions led by the State Bank of India (SBI) filed for bankruptcy protection in the United Kingdom (UK) due to a judgement debt of more than GBP 1 billion. These institutions include “the Bank of Baroda, Corporation Bank, Federal Bank Ltd, IDBI Bank, Indian Overseas Bank, Jammu & Kashmir Bank, Punjab & Sind Bank, Punjab National Bank, State Bank of Mysore, UCO Bank, United Bank of India, and JM Financial Asset Reconstruction.”⁶¹

⁵⁵ State Bank Of India Vs. Dr Vijay Mallya, [2020] EWHC 96 (Ch).

⁵⁶ *ibid.*

⁵⁷ Vijay Mallya v. Government of India, [2020] EWHC 924 (Admin), High Court of Justice, Queen's Bench Div., Divisional Court, Case No: CO/650/2019, Apr. 20, 2020

⁵⁸ Aditi Khanna, “Vijay Mallya Declared Bankrupt by UK High Court for Indian Banks to Realise Debt,” *mint*, July 26, 2021, <https://www.livemint.com/news/india/vijay-mallya-declared-bankrupt-by-uk-high-court-for-indian-banks-to-realise-debt-11627313627714.html>, last accessed October 29, 2022.

⁵⁹ *ibid.*

⁶⁰ *ibid.*

⁶¹ *Supra* Note 58.

What is the present situation?

Vijay Mallya has not paid the \$40 million (Rs. 318 crores) that he secretly sent to his children in July, when he was sentenced to four months in jail in a contempt case.⁶² The debt collection officer from the Bengaluru-based debt tribunal told the Court that “Mallya had not complied with the order to deposit the \$40 million with the recovery officer after four weeks had gone after the Supreme Court’s July 11 judgement ordering him to do so.”

Neither Mallya nor his beneficiaries (his children) had paid the needed cash, as reported by the collection officer for the Bengaluru-based debt recovery tribunal to the court registry on August 18.⁶³ Since Mallya still hadn’t paid the Centre’s second-highest law officer, Tushar Mehta, notified the Court that the situation hadn’t changed.

Mallya is now residing in the United Kingdom, where he is fighting extradition to India. There are rumors that he has finally given up and applied for asylum in the UK. The judgement from July 11 held Mallya’s children liable for the same \$40 million amount, in addition to Mallya himself. After the 2012 bankruptcy of his Kingfisher Airlines, Mallya faced allegations of bank debt default of more than 9,000 crores, which he allegedly ignored before escaping to the United Kingdom in 2016.⁶⁴

Mallya is a non-resident Indian (NRI), yet his children and former wife are all American citizens.

After a group of creditors led by the State Bank of India requested repayment of loans committed to Mallya and his Kingfisher Airlines, the debt collection tribunal in Bengaluru appointed the recovery officer. The banks first went to a debt collection tribunal, where Vijay Mallya was ordered not to sell or otherwise dispose of any of his property.

The Court, joined by senior attorney and amicus curiae Jaideep Gupta, ordered Mallya to pay a fine of 2,000 or face two extra months in jail time.

How much has SBI Consortium recovered till now?

⁶² Harshita Yadav, "An Analysis of Recent Corporate Frauds in India and USA and Their Nexus with Corporate Governance," *International Journal of Law Management & Humanities* 5 (2022): 337-[xxxv]

⁶³ “Vijay Mallya Hasn't Deposited \$40million Ordered by Court, Supreme Court Told,” *Hindustan Times*, September 5, 2022, <https://www.hindustantimes.com/india-news/vijay-mallya-hasn-t-deposited-40million-ordered-by-court-supreme-court-told-101662395012191.html>, last accessed October 29, 2022

⁶⁴ *Supra* Note 63.

The Debt Recovery Tribunal (DRT), acting on behalf of a consortium of banks headed by the SBI, sold Vijay Mallya shares with a market value of Rs 792.12 crore that had been confiscated by the Enforcement Directorate (ED) in a money laundering investigation.⁶⁵ Proceeds from the Consortium's previous share sales of Mallya were Rs 5,824.50 crore and Rs 1,357 crore. After negotiating with Mallya, the bank was able to receive Rs 8,900 crore or 81% of their total claim.⁶⁶

Is SBI responsible for the entire problem?

State Bank of India (SBI) personnel are being investigated for their involvement in granting loans to businessperson Vijay Mallya by the CBI.

According to ET's sources, the CBI investigates several high-level bank employees, including former SBI chairperson OP Bhatt.⁶⁷ Between 2006 and 2011, Bhatt served as the company's chairperson. Many more held positions at SBI offices in Bengaluru and Mumbai, including "Deputy manager, group executive, assistant general manager, credit analyst, and relationship manager."⁶⁸

One of the people above added that doubts had been aroused since the Consortium of banks did not conduct a "forensic audit" despite knowing about the "poor financial condition" of Mallya's firms.⁶⁹ It proves that Mallya used "promises" and "imaginary claims" to get loans approved, he added.

Emails between Mallya and three high-ranking Kingfisher Airlines employees and the former joint secretary of banking, Amitabh Verma, are allegedly referenced in the agency's charge sheet.⁷⁰ The majority of the agency's contacts were made public when it filed a charge sheet

⁶⁵ Times Of India, "Vijay Mallya News: SBI Led Consortium Recovered Rs 792 Crore More by Selling Vijay Mallya's Shares: India Business News - Times of India," The Times of India (Times of India, July 16, 2021), <https://timesofindia.indiatimes.com/business/india-business/sbi-led-consortium-recovered-rs-792-crore-more-by-selling-vijay-mallyas-shares/articleshow/84472295.cms#:~:text=SBI%20led%20consortium%20recovered%20Rs%20792%20crore%20more%20by%20selling%20Vijay%20Mallya's%20shares,-Business%20%2F%20Vijay%20V>, last accessed October 29, 2022

⁶⁶ *ibid.*

⁶⁷ Raghav Ohri, "Business News," The Economic Times, October 12, 2018, https://m.economictimes.com/banking/op-bhatt-other-sbi-staff-under-cbi-lens-for-loans-to-vijaymallya/amp_articleshow/66172610.cms, last accessed October 30, 2022.

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ "Emails Reveal That Mallya Hobnobbed with UPA Govt Official for Loans," India Today (India Today, February 2, 2017), <https://www.indiatoday.in/india/story/vijay-mallya-upa-government-kingfisher-airlines-loan-p-chidambaram-958677-2017-02-02>, last accessed October 29, 2022.

against Mallya and others in the IDBI case. As reported before, one of the sources said that they demonstrated Mallya's "confidence" that "pressure" would be exerted to ensure the delivery of the loans.⁷¹

The three individuals are: "United Breweries Group CEO - Ravi Nedungadi, United Breweries Holdings Ltd MD - Harish Bhat, and Kingfisher Airlines CFO - A Raghunathan."

Conclusion

This is yet another example of bankers complicit in a bankrupt businessman's financial meltdown. This time it is Vijay Mallya, the flamboyant owner of Kingfisher Airlines, who ran into serious trouble securing loans from some Indian banks. He took loans on his personal guarantee and used the money on buying luxury aircrafts and properties for his personal use. However, as with many cases like Mallya, this should not come as a surprise to anyone; this is just another case of a "too big to fail" bank lending recklessly to an unqualified borrower with questionable creditworthiness. Vijay Mallya is, in fact, a failed businessperson and nothing else.

SBI is not responsible for any wrongdoing. However, the bank should have conducted a forensic audit to determine whether Mallya was up to some foul play. The bank could have also taken precautionary measures and suspended the loan release when Mallya sent emails to Verma. Vijay Mallya is still at large, evading arrest and justice, which is an embarrassment for India. In light of the above, it is clear that Mallya is a daring criminal who has managed to evade the authorities for long enough. The top brass of SBI may be involved in the whole matter. Still, getting Mallya back to India seems hopeless without an extradition treaty between the two countries.

Researchers' Note

This project is a complete analysis of the infamous case of Vijay Mallya and the proceedings against him by SBI-led Consortium of lenders. My contribution in the above case has been about the proceedings in the Supreme Court of India and all other court in the UK. This project covers the detailed explanation of the entire timeline of the proceedings and their outcome. This project has helped me in understanding Banking laws, Recovery proceedings and Extradition policies together. This case also helped me in establishing a unique link between Family law

⁷¹ *ibid.*

and recovery proceedings. This case is a very good example in understanding how power and politics may be used to change the rules in one's favour.