BETWEEN PROFIT AND PRINCIPLES: DELINEATING ‘CONFLICTING INTERESTS’ AND ‘CIVIL CONSPIRACIES’ IN PRIVATE EQUITY

Abstract

This paper aims to explore the discrepancies in Manti Holdings, LLC v. Carlyle Group, Inc., where the Delaware Court of Chancery allowed minority investor claims against a private equity firm and its directors for allegedly rushing to sell a company for less than its fair market value in order to secure a return on their preferred shares for its investors. As a potential substitute to veil-piercing, whether to augment a shareholder's responsibility to its periphery or grant private equity creditors access to the company's holdings. It emphasizes that the conspiracy's potential reach makes it a particularly strong instrument for achieving these objectives. A practical implementation of the civil conspiracy culpability to businesses and their bigwigs would jeopardize the shareholder's regulatory independence and the benefits of incorporation. In light of this, the application of the business judgement rule and vicarious liability principles in general are subject to the policy discussions that influence veil-piercing decisions. So, a thorough understanding of how these regulations are implemented is required for the descriptive scales of culpability in a dynamic environment. In light of these issues, the following discussion will examine the unique challenges that arise when the delict law is tailored to cross - functional and cross-group activities. It is evident that, from the initial portion of 2023 would not transmit the impetus witnessed in early 2022 in the Equity Transactions. Yet, one faction maintains guarded optimism. Furthermore, it should be highlighted that the issue of malfeasance in the private equity industry is complex and multifaceted, requiring careful consideration and preventive measures.

The underlying reality, however, is that transaction intrusion decreased with each passing quarter as values plummeted, corporate stock tranches got less appealing, and debt financing grew more prohibitively priced and a hard grab.

I. Introduction

The term "private equity" refers to the kind of investment that is often made by institutional investors as well as high net worth individuals in privately owned businesses. This investment is being made with the intention of achieving significant profits via the subsequent purchase, reorganization, and sale of the firm in which it is invested. India and the United States are two of the most prominent markets for private equity investments. Private equity has developed as a significant force in the global economy, and these two countries have significantly outgrown the most prominent markets for private equity investments.

The Private Equity and Venture Capital Industry in India is governed by the Securities and Exchange Board of India (SEBI),[1] which also provides standards for the appropriate behaviors of fund managers. The Securities and Exchange Board of India (SEBI) mandates that managers of private equity funds disclose any potential conflicts of interest and guarantee that investment choices are made with the investors' best interests in mind. Private equity has seen significant expansion over the last decade, particularly in India; now, India is home to a robust private equity business. Municipal reserves also play a major part in the Indian private equity sector, which is dominated by funds from the United States and Europe. The government of India has implemented a number of measures, one of which was the establishment of the Alternative Investment Fund (AIF) regime in the year 2012. These measures were designed to stimulate private equity investments in the nation. The AIF system establishes a regulatory environment within which private equity funds may operate in India. This has been one factor that has contributed to an increase in the number of foreign investments received by the nation. Technology, healthcare, and financial services are examples of some of the most important industries in India that are receiving investments from private equity firms.

Throughout the course of the last several decades in the United States, private equity has been an important factor in both the expansion of the economy and the creation of new jobs. The Private Equity business in the United States is regulated by the Securities and Exchange Commission (SEC), which also has the authority to launch civil proceedings against fund managers who violate their fiduciary duties to their investors. The Securities and Exchange Commission has the authority to levy penalties, demand that investors be compensated, and exclude persons from working as investment advisers. Investors have the ability to take legal action against fund managers who break their fiduciary obligation, in addition to the regulatory

[1] Securities and Exchange Board of India Act, 1992.

actions that may be taken. The nation is home to the private equity industry that is both the biggest and most developed in the world. Investors have access to a diverse selection of funds and strategies in this market. Often, the primary emphasis of private equity firms in the United States is on big, well-established businesses that have solid cash flows and a demonstrated track record of success. They make use of their financial resources and industry knowledge to assist these businesses in expanding, enhancing their operational efficacy, and, as a result, generating increased returns for their investors. There are certain underlying characteristics that are driving development in both the Indian and American private equity sectors, despite the fact that the two markets are quite different from one another. One of the most important developments is the growing interest in impact investing, which refers to the practice of making financial investments with the intention of having a beneficial social or environmental effect in addition to financial rewards. The use of technology and data analytics as a means of locating and assessing potential investment possibilities, as well as enhancing the operational efficiency and performance of portfolio firms, is another trend that has emerged recently. The breach of an investor's fiduciary obligation may have severe repercussions for the shareholder, including the possibility that the investor would lose their invested liquid assets. In addition, violations of fiduciary responsibility may have a negative impact on the overall image of the private equity business. This can result in a loss of investor trust as well as a reduction in the amount of cash that is available for future investments.

There are legal remedies available to investors in the event that a fund management violates their fiduciary obligation. One example of these legal remedies is the entire fairness test. The entire fairness test is a procedural criterion that is used in the process of determining whether or not a transaction was fair to the shareholders of a particular entity. Typically, it is used in circumstances where there is a conflict of interest or when there is a doubt as to whether or not a transaction was undertaken in the best interests of the shareholders. In order to assess whether or not a transaction was fair, a court will use the full fairness test, which requires the court to consider both the price and the process of the transaction. In order for the transaction to pass the entire fairness test, it is necessary for it to be in compliance with both the procedural and the substantive fairness standards. In order for a transaction to be considered procedurally fair, it must have been carried out in a way that is fair and unbiased, and the persons involved must not have had any conflicts of interest or engaged in any self-dealing. This indicates that the transaction ought to have been examined by a committee of the board of directors that is independent of the other committees, with no participation from any party that would have a

possible conflict of interest. In addition, the shareholders should have been provided with access to any and all pertinent information, which would have enabled them to make an unbiased opinion. For there to be justice in the transaction on a substantive level, the price must have been realistic. This indicates that the price that is paid for the transaction ought to be just and reasonable, based on an objective evaluation of the worth of the firm that is being transacted. While determining the appropriateness of the price, the court could consider a number of factors, such as the evidence of an expert, similar transactions, or discounted cash flow analysis. If a transaction does not pass all aspects of the fairness test, the court may either force the parties to reverse the transaction or award damages to the shareholders. Both of these outcomes are possible. In addition, institutional investors who violate their fiduciary duties may be subject to a variety of penalties, including civil fines, the revocation of their certificate of incorporation, and even face felony prosecution.

Going ahead in our paper we argue, private equity is an important kind of investment that is subject to stringent regulatory monitoring as well as fiduciary duties. In the event that a fund management violates their fiduciary duty, investors have access to a variety of legal remedies, including the entire fairness test. For a transaction to pass this criterion, it must be carried out in a manner that is both procedurally and substantively fair, with the primary goal of preserving the rights and interests of the company's shareholders.

II. Identification And Quantification Of Fiduciary Duty Standards Owed By The Private Equity Firms Towards The Shareholders

Private equity companies are mandatorily required to manage the investments made on behalf of their clients with the utmost diligence, devotion, and good faith. They have a number of special fiduciary duties, such as:

1. **Duty of Loyalty:** Private equity companies must put their investors' interests ahead of their own and steer clear of conflicts of interest. They shall not engage in personal affairs or use the confidential information for their self-benefit.
2. **Duty of Care:** Private equity companies around the world have a responsibility to do complete due diligence, analyse possible risks and rewards, and make wise investment decisions for their clients and other people involved in the transaction. Non-compliance shall result in triggering a breach of the fiduciary duty.

3. **Disclosure Obligation:** Private equity companies have an obligation to promptly and accurately tell their investors about the performance, investment strategy, and any possible conflicts of interest. There are a number of other disclosures which are provided in the relevant acts which shall be made by such firms in order to avoid any conflict in the future.

4. **Duty to Manage:** Private equity firms have a duty to monitor the management teams of portfolio businesses as part of managing the investments made on behalf of their investors. This is the fundamental duty which is expected to be undertaken by a firm involving in private equity.

Private equity businesses seek to produce appealing returns for their investors while also avoiding risks and assuring moral conduct by upholding these fiduciary obligations. However, it is pertinent to note that even a subtle negligence on their part or non-compliance of any of the duty mentioned above can lead to grave consequences.

Depending on the jurisdiction and the facts and scenarios of a specific transaction, several criteria and tests are used to identify fiduciary obligation violations in private equity deals. In general, courts around the globe use one of two basic tests to determine a breach:

1. **The entire fairness test** – It is a test under which directors must demonstrate that a transaction is fair to the firm and its shareholders in terms of both the price and the transaction's structure.[2] When a director has a conflict of interest or takes a position on both sides of a transaction, this test is applicable and shall mean a breach of such director's fiduciary duty.[3]

2. **The business judgement rule** – It is a legal rule established in various judgements that assumes corporate directors acted in the best interests of the firm after making an informed decision, in good faith, and with due diligence. The rule is founded on the idea that, unless they go outside the bounds of their power, have conflicts of interest, or

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[2] 'Tips for Determining Damages for Breach of Fiduciary Duty' <https://www.americanbar.org/groups/litigation/committees/business-torts-unfair-competition/practice/2018/tips-for-determining-damages-for-breach-of-fiduciary-duty/> accessed 10 March 2023.

[3] 'Everything You Should Know About Breach of Fiduciary Duty' <https://www.chicagobusinesstriallawyers.com/insights/what-is-a-breach-of-fiduciary-duty-definition-and-examples> accessed 10 March 2023.

commit fraud or bad faith, directors are in the best position to make decisions regarding the corporation and should be shown respect by courts.[4]

The laws of the jurisdiction of different countries and the specifics of the transaction usually determines the remedies and repercussions for fiduciary responsibility violations in private equity deals. However, there are primarily two categories of remedies available:

1. **Personal remedies**, which seek to return profits earned by defendants or pay the plaintiff for damages. This results in a monetary transaction. Damages (such as lost earnings or out-of-pocket costs), contract revocation, injunctions (orders to cease or do something), or accounting(disclosure of profits) are a few such examples.
2. **Proprietary remedies**, which seek to return plaintiffs' property rights or interests.[5] They include equitable liens, which secure a claim against property owned by defendants, constructive trusts, which impose a trust over that property, and tracing (following property that has been transferred or mixed with other property).[6]

III. Accredited 'Experienced' Investors: Subsidizing The Entire Fairness Test In The Manti Holdings, LLC. *v.* Carlyle Group Saga

An 'Entire Fairness Test' is a two-step method used to determine if a transaction is fair in terms of both the 'process' and the 'price'.[7] This rule is widely appreciated and has been applied in various judgements around the world. A fair process, in the context of this rule, is one in which the interests of minority shareholders are protected during the process of initiating, structuring, negotiating, disclosing, and approving the transaction.[8] For the 'price', the transaction must represent the economic and financial worth of what minority shareholders are legally entitled to receive in order to be considered fair.[9]

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[4] Matthew Conaglen, 'Proprietary Remedies For Breach Of Fiduciary Duty' (2014) 73 The Cambridge Law Journal 490.

[5] 'Everything You Should Know About Breach of Fiduciary Duty' <https://www.chicagobusinesstriallawyers.com/insights/what-is-a-breach-of-fiduciary-duty-definition-and-examples> accessed 10 March 2023.

[6] Sukhninder Panesar, 'Breach of Fiduciary Duty, Equitable Wrongs and Proprietary Remedies: Implications for Commercial Agents' <https://wlv.openrepository.com/bitstream/handle/2436/620332/Breach%20of%20Fiduciary%20Duty%20and%20Proprietary%20Remedies.pdf?sequence=9> accessed 10 March 2023.

[7] 'Entire Fairness' <https://h2o.law.harvard.edu/playlists/3799> accessed 10 March 2023.

[8] 'Financially Distressed Businesses: Revisiting the Business Judgment Rule and the Entire Fairness Doctrine' (*The National Law Review*) <https://www.natlawreview.com/article/financially-distressed-businesses-revisiting-business-judgment-rule-and-entire> accessed 10 March 2023.

[9] Shant H. Chalian, 'The Business Judgment Rule and the Entire Fairness Doctrine' < https://www.rc.com/documents/Primer%20on%20Business%20Judgment%20Rule.pdf> accessed 10 March 2023.

Entire fairness test is usually applied in cases where directors or controlling shareholders who have a fiduciary obligation to behave in good faith and loyalty towards the corporation and its shareholders engage in self-dealing or have a conflict of interest.

In such cases, it is the responsibility of the defendants to prove that they acted honestly and did not take advantage of others by abusing their position or influence.

However, in rare circumstances, defendants might be able to transfer the burden of evidence to the plaintiffs by demonstrating that they had consent from either a majority of disinterested shareholders who were fully informed about the transaction or a special committee of independent directors. This just transfers the onus of proof regarding who must demonstrate the transaction's fairness or unfairness; it does not automatically verify the transaction.

The entire fairness test, which mandates that the transaction be fair in both method and price, was recently applied by the Delaware Court in case of Manti Holdings, LLC v. Carlyle Group Inc. This test relates to the case, as Blue Water Energy, a private equity entity connected to Carlyle Group Inc. that owned preferred shares and common shares of Authentix Acquisition Company, Inc., was accused of purchasing Authentix at an unreasonable price.[10] Minority shareholders of Authentix's common shares, the plaintiffs said that Carlyle was a majority stakeholder and that this conflicted with its desire to promptly exit its investment and transfer the rewards to its own investors.[11] Due to Carlyle's effective influence over Authentix's board of directors and management, as well as the fact that two of Authentix's directors had ties to Carlyle, the court dismissed Carlyle's petition to dismiss and concluded that the whole fairness test applied.[12] The court also determined that Carlyle did not transfer the burden of evidence to the plaintiffs by receiving permission from a special committee or a majority of shareholders who were not interested in the outcome since it was unclear if such approvals were fully informed and impartial.

Hence, it will be up to Carlyle and its connected directors to demonstrate that their sale of Authentix to Blue Water Energy was conducted honestly both in terms of price and

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[10] 'Manti v. Carlyle: Allegations of Rushed Private Equity Exit Trigger Entire Fairness Sale Scrutiny - Hogan Lovells Engage' <https://www.engage.hoganlovells.com/knowledgeservices/news/manti-v-carlyle-allegations-of-rushed-private-equity-exit-trigger-entire-fairness-sale-scrutiny> accessed 10 March 2023.

[11] 'Sale of Portfolio Company Is Subjected to Entire Fairness Review' <https://corpgov.law.harvard.edu/2022/08/02/sale-of-portfolio-company-is-subjected-to-entire-fairness-review/> accessed 10 March 2023.

[12] Francis Pileggi, 'Chancery Says Controller Carlyle and Affiliated Directors Must Pass Entire Fairness Test in Authentix Sale' (*Delaware Corporate & Commercial Litigation Blog*, 14 June 2022) <https://www.delawarelitigation.com/2022/06/articles/chancery-court-updates/chancery-says-controller-carlyle-and-affiliated-directors-must-pass-entire-fairness-test-in-authentix-sale/> accessed 10 March 2023.

procedure.[13] This specific case becomes very important for this issue as the consequences of this decision include the possibility of increased scrutiny when private equity firms and their linked directors sell their portfolio businesses, particularly if they have a conflict of interest or an exit strategy in mind.[14] If there are questions over whether the special committee's or the majority of disinterested shareholders' approvals were fully informed and impartial, they could also have trouble shifting the burden of evidence to the plaintiffs.[15] Hence, when selling their portfolio companies, private equity firms and the directors who work for them should take care to do so in a fair and transparent manner.[16]

IV. Identification, Injunction and Adjudication: Business Judgement Rule And Its Application To The Entire Fairness Doctrine

The cases involving the private equity companies, violations of fiduciary responsibility, and overall fairness test are not new. They have been observed and adjudged upon in various jurisdictions around the world. The following are a few cases from the UK and the US that could be comparable to Manti Holdings, LLC v. Carlyle Group in terms of the issues discussed above.

1. In **re Nine Systems Corporation Shareholders Litigation,** for instance, a Delaware court determined that a private equity firm and its affiliated directors had violated their fiduciary duty to minority shareholders by issuing themselves inexpensive stock options prior to selling the business at a high price. The plaintiffs received damages after the court used the complete fairness test. [17]
2. In **re Trados Incorporated Shareholder Litigation,** a Delaware court ruled that a private equity firm and its affiliated directors had violated their fiduciary duty to the company's common shareholders by approving a merger that gave the latter nothing while granting the preferred shareholders access to their liquidation preference. The

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[13] 'Manti Holdings, LLC v. The Carlyle Group Inc., C.A. No. 2020-0657-SG (Del. Ch. February 14, 2022) (Glasscock, V.C.)' <https://www.potteranderson.com/delawarecase-Manti-Holdings-v-Carlyle-Group.html> accessed 10 March 2023.

[14] 'Manti Holdings, LLC v. The Carlyle Group Inc. | Delaware Law Weekly' <https://www.law.com/delawarelawweekly/almID/1646018785DED69727/> accessed 10 March 2023.

[15] 'Manti v. Carlyle: Allegations of Rushed Private Equity Exit Trigger Entire Fairness Sale Scrutiny - Lexology' <https://www.lexology.com/library/detail.aspx?g=c72c3511-45d0-42a5-a672-5f087887bbb0> accessed 10 March 2023.

[16] 'Chancery Court Applies Onerous Entire Fairness Standard in First SPAC-Related Decision' (*Perkins Coie*) <https://www.perkinscoie.com/en/news-insights/chancery-court-applies-onerous-entire-fairness-standard-in-first-spac-related-decision.html> accessed 10 March 2023.

[17] *In re Nine Sys. Corp., Consol.* [2014] C.A. No. 3940-VCN.

common stock had no value prior to the merger, thus the court used the complete fairness test and ruled that the merger was fair.[18]

3. In a case of **Carlyle Group International Ltd. v. Conway and Ors.,** in the United Kingdom, a private equity firm was charged with selling a portfolio business to another private equity firm for less than it was worth. The selling corporation was deemed to have violated its fiduciary obligation by neglecting to properly value the business before selling it, according to the court.[19]

V. State Of Affairs On Fiduciary Duties Around the World: A Global Comparative Analysis And Understanding The Potential Pitfalls

There are some discrepancies or contradictory perspectives on fiduciary duties in private equity deals between US, UK and Indian courts.

1. **In the USA**, Fiduciary duty differs according to state law and is primarily founded on common law principles in American courts. Usually, in the transactions involving private equity firms and their linked directors, Delaware courts prefer applying a severe entire fairness requirement unless there is an effective independent committee or a majority-of-the-minority vote. However, a more liberal business judgement rule or a modified overall fairness test may be used in other states.

   When examining transactions involving dominant shareholders or related directors, as in the Authentix and Trados cases discussed above, courts typically use the entire fairness test.[20]

   But, if the transaction is approved by a majority of disinterested shareholders or an impartial and fully informed special committee, the burden of evidence may shift to the plaintiff. The business judgement rule, which provides respect to the board of directors' decision, will thereafter be used by the court.

2. **In the UK**, Fiduciary duty is primarily developed from legislative requirements and case laws. Directors are required under the UK Companies Act of 2006 to act in the best interests of the business overall, taking into consideration all of its

[18] *In re Trados Inc. Shareholder Litig.* [2013] 73 A.3d 17.
[19] *Carlyle Group International Ltd. v Conway and Ors.* [2013] 2 Lloyd's Rep. 179.
[20] 'PRI | Fiduciary Duty' (*PRI*) <https://www.unpri.org/policy/fiduciary-duty> accessed 10 March 2023.

stakeholders, including its employees, shareholders, creditors, and the environment. This is similar to the law in India.[21] When it comes to transactions involving conflicts of interest or unlawful purposes among directors, the UK courts also employ a fairness test similar to the Delaware Courts' entire fairness standard. Moreover, the courts have been more inclined to rule that a transaction was unjustly performed or that the directors violated their fiduciary duties, as was the case in Carlyle Group International Ltd. v. Conway discussed in the previous section.[22]

3. **In India,** Fiduciary duty is inspired by both common law and civil law traditions. The Companies Act,2013 requires directors to operate in the best interests of all parties involved, including members, workers, shareholders, the community, and the environment. [23]

Although courts in the USA, UK, and India have acknowledged the possibility of conflicts of interest when private equity firms sell their portfolio companies, there are some differences in the importance given to the entire fairness test, the business judgement rule, and fiduciary duties, as well as the function of regulatory agencies like the SEBI.

In addition, while there could be some changes in the way Indian courts evaluate issues involving conflicts of interest and sales of portfolio companies by private equity firms, the fundamental legal concepts are usually the same as those in the US and UK. Courts generally examine transactions with conflicts of interest to make sure they are performed fairly and openly. Thereby, directors have a fiduciary duty to act in the company's and its shareholders' best interests.

VI. Overhaul Of Civil Conspiracy: Can Hot-tubbing Serve As A Potential Panacea For The Indian Corporate Governance Regime?

The first statute to define "conspirator" and the first statute to codify common law was called the Definition of Conspirators. This statute stated that "conspirators be they that do confider or

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[21] 'Directors' Fiduciary Duties to the Company: A Comparative Study of the UK and Indian Companies Act | Trusts & Trustees | Oxford Academic' <https://academic.oup.com/tandt/article-abstract/27/1-2/132/6104503> accessed 10 March 2023.

[22] 'SEC Clarifies Fiduciary Duty of Private Equity Fund Managers - Lexology' <https://www.lexology.com/library/detail.aspx?g=681a61b9-7e44-45fb-9a87-86a1353b9a07> accessed 10 March 2023.

[23] Fiduciary Duty in India: The Special Case of the Hindu Undivided Family by Vikramaditya S. Khanna :: SSRN' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3439780> accessed 10 March 2023.

bind themselves by Oath, Covenant, or other Alliance, that every of them shall aid and support the Enterprise of each other falsely and maliciously to indite, or cause to be indited or falsely to acquit people, or falsely to move or maintain Pleas."[24]

The civil conspiracy comes in a well-presented but very restricted package that is only applicable in a small number of scenarios and is subject to a large number of constraints. This article argues that the idea of civil conspiracy is rather ineffective because it applies to so few instances that are not handled by other conceptions of shared culpability or by legislative enactments aimed to address what legislators have chosen to be the most in need of relief, including antitrust. According to 300-year-old judicial decisions, the idea of civil conspiracy is restricted.

This research attempts to demonstrate that the concept requires both extra and reinvigorated energy for a variety of reasons. A separate legal claim for civil conspiracy should be examined as a way of disciplining and deterring deviant acts that are not sufficiently handled by existing substantive causes of action or regulatory systems. Other substantive grounds of action or legislative frameworks do not effectively address the problem. This argument includes some fictitious applications which are provided here as many distinct ways in which civil conspiracy might play a part in the collude of private equity. Some probable circumstances are:

1. **Collusion among competitors:** Private equity companies may collude with one another in order to lessen the amount of competition in a given industry and take control of that market. For instance, they could come to an agreement to partition areas or to abstain from competing with each other for particular business ventures. This may be considered a breach of antitrust laws, which might lead to civil conspiracy charges being brought against those involved.
2. **Fraudulent behaviour:** Private equity companies may collude with one another to do fraudulent activity, such as exaggerating the worth of a business in order to artificially raise its stock price or withholding information from potential investors. If it can be shown that the persons involved collaborated to conduct the fraud, then this may also result in civil conspiracy charges being brought against them.
3. **Contravention of fiduciary duty:** Private equity companies have a responsibility to their investors in the form of a fiduciary duty, which requires them to behave in the investors' best interests. It is possible to file a civil conspiracy complaint against a

[24] James Wallace Bryan, '*The Development Of The English Law Of Conspiracy'* [1909].

private equity company, as well as any of its executives or directors, if they collude to violate this responsibility. For instance, they could connive to make choices that are profitable for the private equity company but unfavourable to the investors in order to gain a competitive advantage.

In a recent decision, the Court of Appeal for the Province of Ontario recognized that liability for civil conspiracy may emerge from the "constructive intent" of a defendant to do injury even if the defendant is not in direct contact with the plaintiff during the period at issue in the case.

The plaintiff in Mughal v. Bama Inc.,[25] was a security guard in Mississauga. The case was heard at the Ontario Court of Appeal. In the year 2014, he got in touch with an old acquaintance from their time spent together attending university in Pakistan during the 1980s. The plaintiff was given the option to invest his retirement savings in the firm by his friend Qureshi, who was a director of an electrical supply company known as "Bama". The plaintiff took advantage of this opportunity and invested his money in the company. The plaintiff, who had been pleased with the first profits, proceeded to invest a total of 210,000 $, a portion of which was backed by a line of credit against his property.[26] After a few short months of making his last investment, all of his money evanesced.

It was discovered that the Plaintiff's assets had not been invested in Bama but rather in another firm referred to as ET Zone Supplies, where Qureshi worked as a Business Development manager. It turned out that Bama was nothing more than a front firm, and ET Zone was placed into receivership.

Civil conspiracy cases normally involve the presence of three components:

1. An agreement between two or more people,
2. An explicit act in support of the agreement, and
3. Damages caused by the misleading or deceptive conduct.

A civil conspiracy must first have an agreement between two or more people in order to be considered valid. This agreement might be verbally stated or it can be inferred from the conduct of the people who are engaged. The agreement has to be made with the intention of carrying out an act that is against the law or an act that is not authorized by the law. The second component is an obvious action taken in order to carry out the terms of the agreement. This act

[25] *Mughal v Bama Inc.* [2020] ONCA 704.
[26] *Kuwait Oil Tanker Co SAK v Al Bader* [2000] 2 All ER (Comm) 271.

may be any activity that is performed to carry out the erroneous conduct or to bring it to fulfilment. Alternatively, it might be the wrongful act itself. The third component is the damages that were brought about by the unlawful behaviors. The plaintiff is required to provide evidence that they have been damaged in some way as a direct consequence of the conspiracy.

There have been a number of important instances in which the legal theory of civil conspiracy has been employed. The case Monsanto Company v. Spray-Rite Service Corp.[27] is an example of this kind. In this particular instance, a group of pesticide applicators plotted to steal trade secrets from Monsanto, and the latter company subsequently launched a civil conspiracy action against the applicators.[28] The court determined that there was sufficient evidence of an agreement between the applicators to steal Monsanto's trade secrets, and that the overt acts taken in furtherance of the agreement caused damages to Monsanto. The court also found that the overt acts taken in furtherance of the agreement caused damages to Monsanto. In India, civil conspiracy in private equity is a legal concept that is primarily governed by the Indian Contract Act, 1872. When two or more people collude or agree to perform an unlawful or illegal act that causes injury or damage to another, a civil conspiracy abounds.

Civil conspiracy may develop in the context of private equity when two or more investors or private equity firms combine to damage the interests of other investors or corporations. For instance, civil conspiracy might exist if a group of private equity investors conspired to manipulate the price of a company's shares in order to acquire an unfair advantage over other investors.

To establish a civil conspiracy suit in India, the following components must be shown by the plaintiff:

1. An understanding or agreement between two or more people to do an illicit or criminal conduct.
2. An act undertaken openly in support of the plot.
3. The conduct caused the plaintiff injury or damage.

Civil conspiracy allegations are often difficult to establish, since they need proof of an express agreement between the parties. In instances when there is proof of collusion or other

[27] *Monsanto Co. v Spray-Rite Svc. Corp.* [1984] 465 U.S. 752.
[28] *Digicel (St Lucia) Ltd v Cable & Wireless Plc* [2010] EWHC 774 (Ch).

wrongdoing, civil conspiracy lawsuits may be brought to hold the parties responsible for their acts.

In Sunil Bharti Mittal & Ors. v. Rohit Tandon & Ors., the Delhi High Court ruled that evidence of an overt conduct undertaken in furtherance of a civil conspiracy is required. The court determined that the plaintiff lacked adequate proof of the alleged deed, and consequently rejected the civil conspiracy claim.

In additament, the Bombay High Court ruled in the Hemendra H. Shah v. Union of India & Others case that civil conspiracy claims must be backed by proof of an overt act undertaken in furtherance of the conspiracy. The court determined that the plaintiff had supplied sufficient proof of the alleged conduct, and so permitted the civil conspiracy claim to continue.

In the context of corporate governance, civil conspiracy may develop out of situations including fraud, violation of fiduciary responsibility, or other types of misbehavior. For instance, if a group of corporate officers conspire to engage in insider trading,[29] the company may be held liable for civil conspiracy if it can be shown that the officers conspired to engage in the illegal activity. If it can also be shown that the officers conspired to engage in insider trading, the company may also be held liable for criminal conspiracy. If a group of directors engages in self-dealing or other breaches of their fiduciary duty, the company may be held liable for civil conspiracy if it can be shown that the directors acted in concert to engage in the wrongful conduct.[30] In a similar vein, if it can be shown that the directors acted in concert to engage in the wrongful conduct, the company may be held liable for criminal conspiracy.[31]

VII. Landscape Of India's Private Equity Regulations: Is The Changing Framework Robust?

When viewed from a long-term perspective, such cases have an extremely positive impact on the private equity industry. The following are a few consequences of such cases:

1. **Greater scrutiny:** Due to their fiduciary duties to their investors, private equity firms are subject to enhanced scrutiny and attention from investors, regulators, and other stakeholders in situations involving conflicts of interest. This increased attention may lead to regulatory inquiries, legal action, and unfavourable press. Investors may become

[29] *R v McDonnell* [1966] 50 Cr App R 5.
[30] The Companies Act 2006, s 31(1); Corporations Act 2001, s 124.
[31] *Town of Hooksett Sch. Dist. v W.R. Grace & Co*. [1984] 617 F. Supp. 126, 135.

more wary of investing in companies with a history of conflicts of interest, harming the reputation of private equity firms.

2. **Modifications to industry standards:** To eliminate conflicts of interest and guarantee that transactions are performed fairly and openly, private equity firms may need to put new rules and processes into place. This can entail creating special committees to examine and approve deals or obtaining consent from the majority of shareholders who aren't involved in the transaction. Private equity firms might also need to think about how these developments would affect their current legal commitments and interactions with portfolio companies.
3. **Reputational harm:** Private equity firms depend on their reputation to draw in and keep portfolio companies and investors. Conflicts of interest cases can harm a company's reputation, which can result in a loss of clients and employees. Legal action or regulatory consequences may also be imposed on private equity businesses, which might further harm their reputation and cause them to lose money.
4. **Effects on transaction flow:** If investors are reluctant to engage in a company with a history of conflicts of interest, private equity firms may have trouble locating funds and appealing investment possibilities. This may result in a drop-in deal activity or a change in the kinds of transactions that private equity companies target. Conflicts of interest can lead to uncertainty and instability inside private equity firms' current portfolio companies; thus these companies may also need to be taken into account.
5. **Possible impact on portfolio company valuation:** When private equity firms are charged with selling portfolio companies at an inflated price, the valuation of those companies may be questioned. Investors may become more sceptical of valuations and demand more openness and responsibility from private equity companies as a result, which may have an impact on the whole private equity sector. Furthermore, disagreements about value may result in drawn-out legal proceedings, which might be expensive and time-consuming for all parties.

When viewed objectively, these impacts might seem a bit harsh on the private equity firms, however, it shall be noted that such effects are in the interests of public in general. Thereby, when analysed on a macro level, such impacts are extremely necessary and beneficial for the growth of the private equity market in general. It not only forces the private equity companies to take extra effort to ensure that their values are fair and transparent in order to prevent

potential legal and reputational problems, but also generates trust among the people dealing with such firms.

VIII. Conclusion: The Future Ahead

For private equity businesses and their stakeholders, the problem of conflicts of interest in the sector has substantial legal, financial, and reputational ramifications. As cases like Manti Holdings, LLC v. Carlyle Group Inc. highlighted the potential dangers linked to conflicts of interest in the private equity business, this topic has drawn more attention.

Conflicts of interest can have serious financial ramifications for private equity companies and their stakeholders in addition to legal problems. Portfolio company sales that are conducted unfairly may have a detrimental effect on valuations and transaction flow. Investors may grow increasingly hesitant to engage in private equity and expect more openness and responsibility from the businesses. This may cause transaction activity to slow down, which might harm the financial performance of private equity firms and the portfolio companies they manage.

Conflicts of interest may also affect the reputation of private equity businesses, to sum up. Cases like Manti Holdings, LLC v. Carlyle Group Inc. can harm a private equity firm's and the sector's reputation. Private equity firms may come under more public and regulatory scrutiny, and investors may grow less confident about making such investments. In order to keep the trust and confidence of its investors and stakeholders, private equity companies must be attentive in resolving any conflicts of interest and putting rules and processes into place to guarantee that transactions are performed fairly and honestly.

Moreover, it shall be noted that the problem of conflicts of interest in the private equity sector is a complicated and diverse one that calls for serious thought and preventative action. In order to minimise potential legal, financial, and reputational concerns, private equity companies must continue to be cautious in resolving any conflicts of interest and putting rules and processes in place to make sure that transactions are performed fairly and honestly. Private equity companies may continue to foster development and innovation in the sector and uphold the faith of their stakeholders and investors by doing such practices, leading to an overall growth.