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Fear of anti-bribery laws slows down M&A deals in India

By *Maulik Vyas*, ET Bureau | 31 Aug, 2013, 01.00AM IST

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MUMBAI: It was a Rs 400-crore deal that fell flat at the last stage. Sameer Tapia, senior partner of ALMT Legal, advised a PE fund into the final stages of an investment in an Indian company, when due diligence unearthed several undisclosed cash transactions, not part of normal business activities, in the books of a subsidiary.

Frequency of breakdowns are increasing as investors are afraid of ending up on the wrong side of anti-bribery laws in the US and UK that punish companies.

"These transactions were falling under anti-bribery laws of the UK," says Tapia. "The PE fund dropped the deal."

Frequency of such breakdowns are increasing as investors are afraid of ending up on the wrong side of anti-bribery laws in the US and UK that punish companies for any bribes paid by global subsidiaries. This may be at least one part of the reason why M&A deals in India have shrunk 38% to $15.43 billion in the first seven months of 2013.

"We have seen private equity as well as strategic partners call off many deals in the retail, agrobusiness, green energy and business services sectors owing to issues relating to the Foreign Corrupt Practices Act," says Sanjeev Krishan, executive director at PWC. The UK Bribery Act is even more stringent.

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Roma Khan, an independent international forensic investigator, outlines another deal that failed to clear the FCPA hurdle. She was representing a US-based investor who was in talks with an Indian agro-business company.

"However, in the course of due-diligence we found out that the person who was advising the deal had some kind of understanding with the Indian promoter to close the transaction in lieu of some favour," she says.

"The deal didn't materialise as under the FCPA guidelines, such transactions are illegal." It's not just foreign firms, Indian companies too are raising their guards. "Given the current environment, due diligence and anti-corruption and anti-money laundering audits have assumed greater importance in deal making," says Abhijit Joshi, senior partner and CEO of AZB & Partners.

"At times, these can become impediments in concluding the deal."

'Due diligence' includes investigation, assessment or audit of a potential investment or a target company.

"International investors, both strategic and private equity, are showing an increased focus on integrity related due diligence, more so in view of the US FCPA and the UK Briberies Act," said Nihar Mody, co-founder and managing partner of Platinum Partners.

"These investors have zero tolerance towards corruption. If they are not satisfied that the business will be conducted without any corrupt practices, they will not hesitate to walk away from the transaction." Platinum Partners, the Mumbai and Delhi-based boutique M&A firm, advised Diageo in its acquisition of Vijay Mallya-controlled United Spirit (USL) for around $1 billion.

A major real estate deal, that Delhi-based firm Lall Lahiri & Salhotra (LLS) worked on, is now being renegotiated after due diligence uncovered a small but significant regulatory obligation had not been complied with.

"If the same had been overlooked, the risks to the client could have been manifold and jeopardised future operations," says Rahul Chaudhry, partner, LLS.

The Indian subsidiary of an US fast moving consumer goods major almost consummated a deal to acquire a Mumbai-based firm, but walked away when due diligence revealed that 25% of the distributors were no longer associated with the company. In another case, an

East Asian company pulled out of negotiations to buy out a listed Indian chemical company, when it discovered environmental violations.

"The agreed price for the deal was Rs 40 per share. However, we suggest that the cost of cleaning up and correcting measure would be much and suggested less then half price. This which was not agreeable to the company and the deal didn't work out," says Harish HV, partner, India Leadership Team at audit and advisory firm Grant Thornton, which helped with the deal.