

# Payment gateways face regulatory shake-up

**HERALDING CHANGE.** How a recent decision of the Delhi HC can impact the working of online payment gateway service providers

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While hearing a petition filed by PayPal, the Delhi High Court recently held that an OPGSP like PayPal can be classified as a payment system operator (PSO) under the rules of Prevention of Money Laundering Act (PMLA). As a result of falling under the category of PSO, the High Court opined that PayPal would be mandated to adhere to the obligations falling upon a reporting entity under the PMLA act.

PayPal was challenging an order of the Financial Intelligence Unit, India, (FIU-Ind) holding PayPal to be a reporting entity and consequently imposing penalties of ₹96 lakh for violations of PMLA rules. PayPal argued that it was not a PSO and would not qualify as a reporting entity. It argued that it was an OPGSP and only provided a technological interface to facilitate funds

transfer. They relied upon the definition of a payment system under the Payments and Settlements System Act (PSS Act), which excludes OPGSPs from being categorised as PSOs.

It was further explained that OPGSPs are regulated by an RBI notification of September 2015, and operate by engaging in standing arrangements with banks classified as an authorised dealer of category-I schedule commercial banks (Dealer Banks), who are involved in receiving payments, clearing funds and performing settlement activities.

FIU-Ind counter-argued saying the definition of PSO ought to be read with the scope and objectives of PMLA. The FIU-Ind also opined that OPGSPs like PayPal had access to information about the overseas payer or buyer, but dealer banks were not. Hence, there was “impaired visibility” on transactions. Later, a committee was formed with members from the Ministry of Finance and RBI, that said entities like PayPal are very much covered un-



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der the definition of PSO under PMLA.

The Court opined that the resemblance of definitions would not have any implications since the fundamental objectives of PMLA and PSS Act were different. It further held that the definition must be construed in a manner that ensures the effective implementation of PMLA and prevents offenders from

escaping legal scrutiny.

The Court then stressed upon the scope and objective of PMLA and opined that the law was formulated to prevent money laundering. This entails a comprehensive analysis of all data points generated during a transaction. The court also noted that information about the remitter was not disclosed to the dealer bank; PayPal was, therefore, a

gatekeeper who had details of the remitter, collected while onboarding the customer. However, the court quashed the penalty holding that PayPal genuinely believed it was not covered by the legislation.

## THEN WHAT ABOUT UPI?

An interesting question arose in the matter was whether the business model of Unified Payment Interface (UPI) service providers like GooglePay, Amazon Pay and Paytm could be compared with PayPal, and whether UPI service providers would also be covered under the definition of PSO. The High Court noted that unlike UPI service providers, PayPal actively onboarded foreign parties within the OPGSP framework. In contrast, UPI service providers operate with a different approach as their transactions are executed end-to-end directly from the transacting parties' bank accounts, and the relevant details are already registered with the dealer banks.

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