

Here's why Cash on Delivery is not illegal in India

On a simplistic level, Cash on Delivery by e-commerce players operates on the same footing as a third party delivery person collecting payment on behalf of your neighbourhood grocery store

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Several sections of media reported this week that the 'Cash on Delivery' model made popular by e-commerce players in India is illegal. They did so on the basis of the Reserve Bank of India's (RBI) reply to a Right to Information (RTI) application filed by Mr. Dharmendra Kumar of India FDI Watch.



But a close analysis of the RBI's RTI reply and the relevant legal provisions reveals that the Cash on Delivery model is not illegal, and that the RBI has not said so either.

It's true that the Payment and Settlement Systems Act, 2007 (PSS Act) requires RBI authorisation for certain classes of activities, but it also provides an important exception which is relevant in the Cash on Delivery context.

No authorisation is required for "any person acting as the duly appointed agent of another person to whom the payment is due". One can see where this leads.

E-commerce marketplaces take authorisation from sellers to collect payments on their behalf. They may collect these payments either online or offline. In both cases, the exception above applies and they are not required to be licensed under the PSS Act.

However, when they collect payments online, a 2009 circular of the RBI (the Intermediaries Direction, issued under the PSS Act) provides instructions to banks on how to process these transactions.

Unless the settlement with the merchant is done immediately - in other words, if there is Delivery versus Payment (DvP) - the Intermediaries Direction designates the marketplaces as 'intermediaries', or "entities that collect monies received from customers for payment to

merchants using any electronic/online payment mode” (emphasis added).

The consequence is that when banks open accounts for them which are used for the collection of customer funds (to be passed on to merchants), banks need to ensure that these are internal accounts of the bank with designated credits and debits.

Note that this is a responsibility of the bank and there is still no separate registration required for the e-commerce marketplaces in this connection.

The RBI’s reply is in line with this. It has stated it has “not issued any specific instruction” in connection with Cash on Delivery, but has quoted the Intermediaries Direction to suggest that as far as online payments are concerned, the Intermediaries Direction applies.

All of this leads to the position that e-commerce marketplaces collecting electronic payments on the behalf of merchants are indirectly regulated to an extent by the Intermediaries Direction, but when they collect payments offline (such as in the Cash on Delivery model), they operate on a purely contractual basis. They act according to their contracts with the merchant and the customer.

So the ominous-sounding statement of the RBI, that “Aggregators / Payment intermediaries like Amazon / Flipkart are not authorised” under the PSS Act, is harmless, because there is no authorisation to take in the first place. This does not make the model illegal, and it is still regulated by other applicable laws such as contract law and consumer protection law.

On a simplistic level, Cash on Delivery by e-commerce players operates on the same footing as a third party delivery person collecting payment on behalf of your neighbourhood grocery store. (It is another matter that the scale of the e-commerce Cash on Delivery model today far exceeds these ad hoc arrangements.)

To close, it’s important to understand that not being ‘authorised’ by a regulator does not make a model ‘illegal’, if there is no requirement for authorisation in the first place.

A similar misunderstanding arose some time ago when the RBI had previously stated that it had “not given any licence / authorisation to any entity / company” dealing with Bitcoins and other virtual currencies. This was mistaken for some time to mean that such entities were operating illegally.

On the same lines, when the Finance Minister stated that virtual currencies / crypto-assets were not “legal tender”, many sections of the media incorrectly reported that they were illegal.

The reality was that no specific license or authorisation applied to crypto-asset trading activity, and that not being “legal tender” only meant that the value of crypto-assets was not guaranteed by the government.

In all other respects, the activity – like Cash on Delivery – had the status of a perfectly legal,

commercial activity governed by otherwise applicable law.

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