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Should auction portal CEOs be accountable for deals?

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THE arrest of Mr Avanish Bajaj, CEO of Baazee.com, the portal on which a sexually explicit video clip featuring two school students was put on sale, has triggered off a debate within the industry and the legal fraternity.

The issue of whether or to what extent the top brass of an auction portal should be held accountable for the various items sold through it, given the massive volumes and range of products transacted online, has evoked a mixed response.

Some feel that there is no way a CEO can be absolved of his responsibilities in such cases. According to corporate lawyer Mr Ramji Srinivasan, the IT Act deals with two kinds of offences: committed by a person and committed by a company.

"Section 85 deals with offences by companies and says that where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of and was responsible to the company for conduct of business of the company as well as the company, shall be guilty of contravention and shall be liable to be proceeded against and punished accordingly, provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due-diligence to prevent such a contravention," he pointed out.

"The provisions defining who is liable, is similar to other Acts such as the Cable Network Act, the TRAI Act and the Companies Act. The harsh position is to ensure that one does not get away by passing the buck," Mr Srinivasan said, adding that the Act also provides for adequate safeguards whereby the CEO may establish that he was not involved in the actual day-to-day affairs relating to the offence.

On the other hand, there are some who argue that the Information Technology Act, 2000, needs to be amended in line with international jurisprudential trends. In the US, the service provider is given a notice to take objectionable material off the Web site, failing which he can be taken to task, Mr Pavan Duggal, a cyber law expert points out.

"The IT Act needs to be amended to limit the liability of the network service provider (including auction sites) to certain specified categories of Act and not make them liable for all circumstances barring the two currently detailed in Section 79. It should categorically specify the circumstance in which they will be liable and not create open-ended provision. Hence, I feel that the manner of drafting needs to be revisited," he said.

Given the vast expanse of the Internet, Mr Duggal says it may be next to impossible for a head of an organisation to have full knowledge of all the material being put up on the Web site each day.

Mr Vaibhav Parikh of law firm Nishith Desai Associates feels that it is "unreasonable" to expect the CEO of a Web site to have full knowledge of every product being sold through the portal. "Such an action will definitely have an impact on the growth of e-commerce, as sites will now have to be

overcautious," he said.

"There should be a reasonable evidence of knowledge by the CEO or that of gross negligence by him, before an arrest is made," he opines.

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