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## Introduction

In a recent three-judge Bench decision in *State of Himachal Pradesh v. M/s OASYS Cybernatics Private Limited* (“**Oasys Cybernatics**”)<sup>1</sup>, the Supreme Court of India held that a letter of intent (“**LOI**”) is ordinarily a precursor to a contract and not a contract in itself, and therefore does not, by its mere issuance, create binding contractual obligations. This foundational principle is not new. However, the frequency with which courts are called upon to examine LOIs raises an important question: if the law is well settled, why does it continue to be revisited so often?

The answer lies in a persistent misconception among contracting parties that issuing an LOI, by itself, results in a binding contract. Courts are therefore repeatedly required to distinguish between an intention to contract and the actual formation of a contract, and to determine when an LOI crosses the line and gives rise to legally enforceable commitments.

In this article, we set out the settled legal position on LOIs and examine the fine distinction between an LOI that is merely indicative of future commercial intent and one that crystallises into enforceable contractual obligations.

## Legal Position on LOIs

Indian courts have consistently held that an LOI, in the ordinary course, only records an intention to enter into a contract in the future and is not, by itself, a concluded contract. It is often described as a “promise in embryo”- a preliminary document signaling the parties’ intention to enter into a formal agreement, without creating vested contractual rights at that stage.

This principle was clearly articulated by the Supreme Court in *Rajasthan Co-operative Dairy Federation Ltd v. Maha Laxmi Mingrate Marketing Service (P) Ltd.*<sup>2</sup> The Rajasthan Co-operative Dairy Federation Ltd (the “**Federation**”) issued an LOI appointing the respondent as a selling agent for dairy products, subject to the respondent executing a formal agreement and furnishing an irrevocable bank guarantee. When the respondent failed to furnish the guarantee or execute the formal agreement, the Federation

<sup>1</sup> *State of Himachal Pradesh v. M/s OASYS Cybernatics Private Limited*, 2025 SCC OnLine 2536.

<sup>2</sup> *Rajasthan Co-operative Dairy Federation Ltd v Maha Laxmi Mingrate Marketing Service (P) Ltd.* (1996) 10 SCC 405

cancelled the LOI. Upholding the cancellation, the Supreme Court held that the LOI “*merely expressed an intention to enter into a contract*” and did not create any binding legal relationship.<sup>3</sup> This decision laid the foundation for subsequent cases.

In *Dresser Rand S.A. v. Bindal Agro Chem Ltd.* (“**Dresser Rand**”)<sup>4</sup>, the Supreme Court held that a tender and the accompanying “General Conditions of Purchase” constitute an invitation to offer. It further held that a letter of intent ordinarily evidences an intention to enter into a contract in the future and not a concluded contract, unless the terms of the LOI clearly and unequivocally amount to final acceptance of the offer.

Similarly, in *South Eastern Coalfields Ltd v. S Kumar's Associates AKM (JV)*<sup>5</sup>, the LOI required the furnishing of performance security, execution of an integrity pact, and issuance of a formal work order as preconditions to commencement. None of these steps were completed. The Supreme Court held that these were conditions precedent to contract formation and, in their absence, no concluded contract had come into existence.

### Ruling in Oasys Cybernatics

The Supreme Court recently reaffirmed this position in *Oasys Cybernatics*. The dispute arose from an LOI issued by the State of Himachal Pradesh (the “**State**”) to Oasys Cybernatics Pvt. Ltd. (“**Oasys**”) for the supply, installation and maintenance of electronic devices at fair price shops. The LOI was expressly conditional: Oasys was required to conduct compatibility testing, provide a live demonstration to specified government departments, and satisfy other preliminary prerequisites. The LOI further stated that a service agreement would be executed only upon successful completion of these conditions.

Before any agreement could be formalised, the State terminated the LOI on the ground that Oasys had failed to meet the stipulated preconditions. Oasys challenged the termination in a writ petition before the High Court of Himachal Pradesh (“**HP High Court**”).<sup>6</sup> The HP High Court allowed the writ petition and held the termination of the LOI to be illegal.<sup>7</sup> The State then appealed to the Supreme Court.

The Supreme Court held that an LOI is ordinarily not a concluded contract and does not create enforceable rights unless the intention to that effect is clear and unambiguous. Reiterating its earlier ruling in *Dresser Rand*, the Court observed that an LOI “*merely indicates a party's intention to enter into a contract in future*” and does not, by itself, amount to an acceptance culminating in a binding agreement.<sup>8</sup> The Court emphasised that until the preconditions set out in the LOI are fulfilled and the offer is unconditionally accepted, no binding legal relationship arises. In other words, “*an LOI creates no vested right until it passes the threshold of final and unconditional acceptance*”.<sup>9</sup>

At the same time, recognising that Oasys had expended money and effort at the

<sup>3</sup> Id, at para 7.

<sup>4</sup> *Dresser Rand S.A. v Bindal Agro Chem Ltd.*, (2006) 1 SCC 751.

<sup>5</sup> *South Eastern Coalfields Ltd v S Kumar's Associates AKM (JV)*, 2021 SCC OnLine SC 486.

<sup>6</sup> Oasys Cybernatics, at para 5.18.

<sup>7</sup> Judgement dated May 30, 2024, passed by the High Court of Himachal Pradesh in CWP No. 4081 of 2023.

<sup>8</sup> Oasys Cybernatics, at para 14.

<sup>9</sup> Oasys Cybernatics, at para 15.

demonstration stage, the Supreme Court directed the State to compensate Oasys on the basis of quantum meruit for work that had been appropriated and retained by the State. The Court carefully distinguished this reimbursement from any claim for damages that would arise upon termination of a binding contract, underscoring that no such contract had come into existence.

### Exception to the Norm - LOI can be binding

While the general rule is that LOIs are non-binding, Indian courts have recognised specific situations in which an LOI has been found to create binding obligations.

- ▶ Intention of the parties to make the LOI binding
  - ▷ In *Dresser Rand*, the Supreme Court held that although an LOI ordinarily only indicates an intention to contract, *“it is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms”*.<sup>10</sup>
  - ▷ The Court clarified that liability can arise from an LOI where its terms indicate acceptance of the offer and direct the contractor to commence work, coupled with a stipulation that a detailed contract will be drawn up subsequently.<sup>11</sup> The intention to treat the LOI as a binding contract must be evident from its terms and must be clear and unambiguous.
  - ▷ In such situations, an LOI – though described as a “letter of intent” – will in substance amount to a concluded contract binding on the parties. Courts therefore look for language such as “this contract will come into force upon receipt of this letter of intent”, references to the LOI as “this order” or “this contract”, or clear directions to “commence work”, to assess whether the LOI was intended to be binding.<sup>12</sup>
- ▶ Receiver acts in reliance upon the LOI
  - ▷ Courts also consider whether the recipient of an LOI has acted on it over a significant period or incurred substantial expenditure in reliance on it.<sup>13</sup>
  - ▷ An instructive decision in this regard is that of the Bombay High Court in *K.P. Power Private Limited v. State of Maharashtra* (“**KP Power**”).<sup>14</sup> The Government of Maharashtra issued an LOI to a German company, GNEE, to undertake a feasibility assessment for development of a wind power project in India. The LOI was expressly limited to an “assessment period” of six months and stated that, if at the end of that period either the Government or the company elected not to pursue development of any project, neither party would have any further obligation under the LOI.
  - ▷ Relying on the LOI, the respondent undertook several steps, including entering into an MoU with a landowner and incorporating another company (K.P. Power) to implement the project. Despite this, the Government elected not to proceed, whereupon K.P. Power filed a writ petition. The Bombay High Court noted that the Government had continued negotiations with GNEE and had tacitly consented to

<sup>10</sup> *Dresser Rand*, at para 40.

<sup>11</sup> *Dresser Rand*, at para 40.

<sup>12</sup> *Dresser Rand*, at para 41.

<sup>13</sup> *Dresser Rand*, at para 40.

<sup>14</sup> *K.P. Power Private Limited v. State of Maharashtra*, 2018 SCC OnLine Bom 6687.

commissioning the project, and held that the LOI had not lapsed but continued to subsist. Applying the doctrine of promissory estoppel, the Court held that the State, by its conduct, had induced K.P. Power to make substantial investments and was estopped from resiling from its promise.

- ▶ LOI contemplates payment by the recipient
  - ▷ Where an LOI expressly directs the recipient to make payments (for example, to deposit specified amounts or make advance payments) or contemplates significant capital expenditure by the recipient, this may indicate that the parties intended the LOI to be binding.
  - ▷ The rationale is that, if the issuer were free to terminate the LOI at will, it would be unconscionable to collect payments from the recipient and then walk away from the transaction. In *Delhi Development Authority v. York Tech Pvt. Ltd.*, 2023 SCC OnLine Del 3796, the Delhi High Court noted that an LOI requiring the recipient to pay a “second stage EMD” (earnest money deposit) could indicate the binding nature of the LOI, and held that the DDA could not thereafter cancel the process arbitrarily by invoking a general right to reject bids.<sup>15</sup>

## Conclusion

The decisions discussed above, including the Supreme Court's recent ruling in *Oasys Cybernatics*, call for a nuanced approach by both courts and contracting parties. The core legal principle is straightforward: an LOI, by itself, typically evidences only an intention to contract and does not result in a binding contract. However, the gap between a non-binding LOI and a contract that creates enforceable rights is ultimately bridged by the specific terms of the LOI and the conduct of the parties.

In the M&A context, whether an LOI is ultimately treated as binding or non-binding turns on a combination of its express language and the overall structure and mechanics of the document:

- ▶ Parties should state clearly at the outset whether the LOI (or specified sections of it) is intended to be legally non-binding, often carving out certain provisions (such as confidentiality, exclusivity/no-shop, costs, break fees, governing law, dispute resolution and process covenants) as binding even where the commercial deal terms remain non-binding;
- ▶ Use “subject to contract”, “subject to due diligence” and “subject to definitive documentation” qualifiers consistently, and avoid language of present commitment (e.g., “shall acquire”, “agrees to complete”) in non-binding sections, instead describing the deal in conditional or indicative terms (e.g., “the parties contemplate that”, “the parties intend to negotiate”);
- ▶ Make clear that no obligation arises to consummate the transaction unless and until a definitive share purchase agreement, business transfer agreement or other final M&A document is executed, and expressly disclaim any duty to negotiate in good faith beyond what the parties are comfortable with (bearing in mind that some jurisdictions may nevertheless imply good-faith obligations);
- ▶ Avoid requiring significant pre-signing performance, payments, or integration steps under the LOI itself (such as equity injections, transfer of employees, or operational

<sup>15</sup> *Development Authority v. York Tech Pvt. Ltd.*, 2023 SCC OnLine Del 3796, at para 8.

handover), which may be viewed as evidence of an intention to be bound, and ensure any permitted preparatory actions are framed as at the recipient's own risk and expense;

- ▶ Define a clear expiry or long-stop date for the LOI and the exclusivity period, and specify the consequences of expiry or termination (including return or destruction of information and survival of binding provisions); and
- ▶ Align the LOI with the wider transaction documents and communications (board minutes, emails, term sheets) so that the parties' conduct and surrounding record consistently support the stated intention that the LOI is, or is not, intended to have binding contractual effect.

Parties should, thus, not assume that the label "letter of intent" is determinative of the legal character of the document. Those seeking either to defend against or to assert rights under an LOI must closely examine its terms to see whether they signify acceptance of an offer by the counterparty. Equally important is the parties' conduct under the LOI, including performance, reliance, and payments, which may tilt the balance in determining whether the LOI operates as a binding contract.

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0301–2026