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Bar Council No: G/1584/2008

Legal Opinion

From	Hiral Trivedi
To	IMOBSTUDIO PVT LTD (Fantasy Sport Game)
Date	12/03/2025
Subject	Legal Opinion related to the legitimacy of the game

1. FACTUAL BACKGROUND

- 1.1 IMOBSTUDIO PVT LTD ("Company") is a company duly registered under Companies Act, 2013, and Fantasy Sport Game ("Game") is a flagship project undertaken by the company.
- 1.2 The Game through its platform offers its users the opportunity to participate in skill-based fantasy sports contests, create virtual teams based on real-life sporting events, compete against other users, and win rewards based on the performance of their selected players.

2. QUERIES

- 2.1 Whether the game is constructed as a 'game of skill' or 'game of chance' in terms of the present Indian laws and judicial decisions that regulate online gaming.
- 2.2 Fantasy Sport Game has sought our legal opinion regarding the legality of its online fantasy gaming platform in India. The company had applied to Cashfree for UPI payment services, but Cashfree has declined the request, stating that a legal opinion is required to assess the legitimacy of the platform before enabling such services. Accordingly, we have been engaged to analyze the legal framework applicable to fantasy gaming and determine whether the platform is compliant with relevant laws.
- 2.3 In rendering our opinion, we will examine the following legal and regulatory provisions including the Public Gambling Act, 1867; Information Technology Act, 2000; Constitution of India; State-Specific Gaming Laws; Judicial Precedents; Consumer Protection Act, 2019; Payment and Settlement Systems Act, 2007; and Foreign Exchange Management Act, 1999.

3. DOCUMENTS REFERRED

- 3.1 We have referred to the Companies Privacy Policy and Terms and Conditions. Moreover we have referred TRAI's Direction dated 28/10/2024. We have further referred to the screen shots provided to our by the company. These screen shots are mainly about cashfree's rejection, MSG91 Template text approval.
- 3.2 Hence we have relied upon these documents to prepare our legal opinion.



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4. LEGAL AND REGULATORY FRAMEWORK

Overview of Public Gambling legislations in India

- 4.1. Pursuant to India's federal structure of governance, the Constitution of India ("Indian Constitution") divides the legislative powers between centre and state. Before coming into force of Indian Constitution, 'gambling' in India was governed through Public Gambling Act, 1867 ("Public Gambling Act") which was enacted by erstwhile British rulers, and which was applicable to certain specified provinces as existed prior to Indian independence. With adoption of the Indian Constitution in the year 1949, the respective states have been given the power to legislate on "betting and gambling" pursuant to Entry 34 of List II of Schedule VII of the Indian Constitution.
- 4.2. Thus, with states being conferred with powers to legislate on 'betting and gambling', as indicated above, the Public Gambling Act ceased to be a central legislation. However, most of the states such as Madhya Pradesh, Punjab, Uttar Pradesh etc. have passed enactments adopting the Public Gambling Act, either as-it-is or with certain amendments. Whereas certain other states such as Assam, Goa, Orissa etc. have enacted their own 'gambling' legislation.
- 4.3. Section 12 of the Public Gambling Act provides an exemption to 'games of mere skill' from the application of penal provisions of the law. Most state legislations also distinguish games of mere skill from games of chance and carve out an exception for games of skill from the application of the penal provisions of the law. Further, nearly all state legislations prohibit and penalise 'gambling'. While there is common definition/explanation to the term 'gambling' under the state legislations, it has generally been explained to include all forms of 'wagering or 'betting'. In the context of games that involves 'wagering' or 'betting' (herein after referred as "Betting Game(s)"), in most of the states, Betting Games when identified as 'game of chance' are treated as 'gambling' and accordingly penalized.
- 4.4. As per our analysis of the state legislations, in terms of exemption to games of skill, the states can be classified into 3 categories - (i) games of skill permitted without license; (ii) games of skill prohibited; and (iii) games of skill permitted with license.
- I Games of skill permitted without license
Andaman & Nicobar Islands, Bihar, Chandigarh, Chhattisgarh, Dadar & Nagar Haveli, Daman & Diu, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Ladakh, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Puducherry, Punjab, Tripura, Uttarakhand, Uttar Pradesh, Tamil Nadu, Rajasthan.



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II Games of skill prohibited

Andhra Pradesh, Arunachal Pradesh, Assam, Orissa and Telangana

III Games of skill permitted with license

Meghalaya, Nagaland, Sikkim, West Bengal

4.5. The Supreme Court in *Dr. K.R. Lakshmanan v. State Of Tamil Nadu* [1968 SCR (2) 387] ("Lakshmanan Case") outlined the scope of gambling and defined it to mean, 'the payment of price for a chance to win a prize. Hence, for an activity to be construed as gambling, it would have to necessarily satisfy 3 essential elements as laid down in Lakshmanan Case, which are - (a) staking of an amount i.e., consideration; (b) an element of uncertainty i.e., chance; and (c) a reward which is usually higher than the amount staked.

4.6. In order to play a game, every user is required to deposit certain amount in the wallet which is stored in the form of electronic coins (and not real cash) which is used to play games on the Platform. Further, upon winning a game, the amount gets credited into user's 'winning wallet'. Therefore, Online Games would involve consideration in the form of coins and also envisage a reward in monetary terms for players. As encapsulated under paragraph 3.5 above, the two elements i.e consideration and reward shall be satisfied in the case of Online Games.

4.7. Accordingly, the determination of whether not such Online Games may be construed as gambling and thereby subject to prohibition and penalty as stipulated in several in state legislations, shall depend whether the element of skill predominates the element of chance vice versa. In this regard, it is important to analyse the jurisprudence differentiating 'games of skill' from 'games of chance', and such analysis has accordingly been undertaken in subsequent para(s) of this memorandum.

Games of skill v Games of chance

4.8. The contours of what constitutes 'game of mere skill' and/or what differentiates 'game of skill' and 'game of chance' has over the years come up for deliberations at various courts of law in India and thereby the guidance on these terms is obtained largely from various judicial pronouncements.

4.9. In order to distinguish a game of skill from game of chance, the courts have largely relied on the 'dominant factor test' or 'test of preponderance' i.e, whether the outcome of the game is substantially dependent upon the skill of the player rather than mere chance. Applying the principle of the dominant factor test or test of preponderance, the Supreme Court of India ("SC") while settling the position on the game(s) of rummy in the case of *State Of Andhra Pradesh v. K. Satyanarayana & Ors.* [1996 SCC (2) 226] ("*Satyanarayana Case*") specifically held that the game of rummy is not a game of entire chance; it is mainly and preponderantly a game of skill. The SC went on to hold that:



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"Rummy... requires certain amount of skill because the fall of the cards has to be memorized and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact, in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it."

- 4.10. The test of preponderance was reinforced and applied in the Lakshmanan Case where the SC while interpreting the term 'mere skill' re-iterated that the game of rummy is considered to be a game of skill. Further, 'mere skill' was interpreted to mean 'substantial degree or preponderance of skill'. Further, the SC also distinguished between the game of skill and game of chance to describe 'game of skill' as one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player and game of chance, on the other hand, is one in which the element of chance predominates over the element of skill
- 4.11. Therefore, the parameters as stipulated by the SC in Satyanarayana in paragraph 3.9 & 3.10 to distinguish a game of skill and chance and Lakshmanan Case follows:
- (i) Outcome of the game is substantially dependent upon the skill of the player rather than mere chance (dominant factor test' or 'test of preponderance")
 - (ii) Mere skill to be interpreted as substantial degree or preponderance of skill".
 - (iii) 'Game of skill' can be construed as one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player.

5. Overview of Information Technologies legislations in India

- 5.1. The Information Technology Act, 2000 ("IT Act") is the primary legislation governing electronic transactions, cybersecurity, data protection, and intermediary liabilities in India. Since online gaming platforms operate in a digital environment, compliance with the IT Act and its associated rules is imperative to ensure the legality and integrity of the platform.
- 5.2. "Under Section 2(1)(w) of the IT Act, online gaming platforms qualify as intermediaries, as they enable the users to interact and transact through an electronic medium. As an intermediary, the platform is governed by the provisions of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("Intermediary Guidelines"), which lay down compliance requirements for intermediaries hosting user-generated content."



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- 5.3. *"Section 79 of the IT Act provides a "safe harbor" protection to intermediaries, exempting them from liability for third-party content if they merely provide access to the platform and do not actively initiate, select, or modify the content."*
- 5.4. The gaming platform, acting as an intermediary, ensures that it complies with the Intermediary Guidelines by publishing its terms of service, privacy policy, and user agreement, which prohibits unlawful activities, including gambling or wagering in jurisdictions where such activities are prohibited.
- 5.5. *"Section 67 of the IT Act penalizes the publication or transmission of obscene or unlawful content in electronic form. However, games of skill are not categorized as "betting or gambling" under various state legislations, as discussed in Section 3 above."*
- 5.6. To ensure compliance, the gaming platform must implement a robust Know Your Customer (KYC) and Anti-Money Laundering (AML) framework, in line with RBI guidelines and the Prevention of Money Laundering Act, 2002 ("PMLA").

6. Overview of Data Protection and Privacy legislations in India:

- 6.1. The IT Act and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 ("SPDI Rules") mandate strict data protection measures for platforms collecting user data. The platform must ensure that it adopts secure encryption mechanisms, protects user financial data, and provides users with access to their stored data, in compliance with the Digital Personal Data Protection Act, 2023 ("DPDP Act").

7. Overview of Data Protection Legislations in India

- 7.1. The regulation of data protection and privacy in India is primarily governed by the Digital Personal Data Protection Act, 2023 ("DPDP Act"), which was enacted to provide a legal framework for the processing of digital personal data in India. The DPDP Act governs the manner in which personal data of individuals ("Data Principals") is collected, processed, stored, and transferred by entities ("Data Fiduciaries"). The provisions of the DPDP Act apply to the processing of digital personal data within India and, in certain cases, to processing conducted outside India if it involves offering goods or services to Data Principals in India.
- 7.2. *"Section 2(t) of DPDP Act defines "personal data" as any data about an individual who is identifiable by or in relation to such data. Given that the Client's platform, Fantasy Sport Game, collects and processes user data, including names, contact details, financial information, and gaming history, the Client qualifies as a Data Fiduciary and is required to comply with the obligations prescribed under the DPDP Act."*



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- 7.3. *"Section 4 of the DPDP Act mandates that personal data must be processed in a lawful, fair, and transparent manner."*
- 7.4. *"Section 6 requires the explicit and informed consent of the Data Principal before collecting and processing personal data, except in certain specified circumstances such as compliance with legal obligations."*
- 7.5. *"Section 8 places an obligation on Data Fiduciaries to ensure that personal data is collected for a lawful purpose and is limited to what is necessary for processing."*
- 7.6. *"Section 9 mandates Data Fiduciaries to implement reasonable security measures to prevent unauthorized access or misuse of personal data."*
- 7.7. *"Section 11 of the DPDP Act requires that a Data Fiduciary must notify Data Principals of the purpose of financial data collection and provide mechanisms for grievance redressal."*
- 7.8. *"Section 12 grants Data Principals the right to request correction, completion, updation and erasure of their Personal Data, provided they had previously given consent for its processing. Data Fiduciaries must comply with such requests unless retention is necessary for a specified purpose or legal compliance."*
- 7.9. Given that Fantasy Sport Game involves monetary transactions, the collection and processing of users' financial data (such as UPI details, bank account information, and wallet transactions) must adhere to the Reserve Bank of India's (RBI) data localization and security requirements.
8. **Overview of RBI Regulations on Payment Aggregators, Digital Transactions, and Online Gaming in India**
- 8.1. The Payment and Settlement Systems Act, 2007 ("PSS Act") empowers the Reserve Bank of India (RBI) to regulate and supervise payment systems, ensuring transparency, security, and compliance with anti-money laundering norms.
- 8.1.1. *"Section 4: Prohibits merchants from using payment aggregator services for transactions classified as illegal gambling or betting."*
- 8.1.2. *"Section 10: Mandates KYC compliance for merchants integrating with Payment Aggregators (PAs) in accordance with RBI's KYC Master Directions."*
- 8.1.3. *"Section 23: Mandates that funds collected from customers must be settled in an escrow account with a scheduled commercial bank."*



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8.2. While the responsibility for obtaining RBI approval as a Payment Aggregator (PA) lies with Cashfree, Fantasy Games, as a merchant, must comply with RBI's KYC, AML, and transaction settlement regulations. Failure to meet these obligations may result in restrictions on transactions or termination of payment services by Cashfree."

8.2. **RBI Master Directions on Know Your Customer (KYC), 2016 (Updated 2023)**

8.3. Since Fantasy Sport Game involves real-money transactions, it is compliant with RBI's KYC Guidelines to prevent financial fraud and money laundering.

8.3.1. **Chapter VI Clause 16** outlines the Customer Due Diligence (CDD) Procedure, requiring business to identify using reliable, independent source documents, data or information prior to establishing an account based relationship or executing any transaction for the customer."

Although Cashfree, as the Payment Aggregator, is responsible for ensuring overall compliance with RBI's Customer Due Diligence (CDD) procedures under Clause 16, Chapter VI of the KYC Master Directions, 2016, Fantasy Games must verify customer identities using reliable and independent source documents before allowing transactions on its platform. Failure to adhere to these KYC and CDD procedures may lead to transaction restrictions or enhanced due diligence by Cashfree.

8.3.2. **"Clause 38** stipulates that KYC updates should occur at least once every two years for High Risk Customers, once every Eight Years for Medium Risk Customers and Once every Ten years for Low Risk Customers, calculated from the date of account opening or the date of account opening or the last KYC update."

As per Clause 38 of RBI's KYC Master Directions, Cashfree, as the Payment Aggregator, is responsible for periodic KYC updates of PPI holders based on their risk classification. However, Fantasy Games must ensure that users on its platform comply with KYC renewal timelines: every two years for high-risk customers, every eight years for medium-risk customers, and every ten years for low-risk customers. Non-compliance may result in account restrictions or transaction denials by Cashfree."

8.4. **RBI's Data Localization and Storage Guidelines (2018, updated 2021)**

8.5. RBI mandates that all payment-related data must be stored within India.

8.5.1. **"Clause 2 of RBI Data Localization Guidelines:** Requires that entire transaction details, customer information, and payment credentials be stored only on servers located in India."



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8.5.2 *"Clause 6: all payment-related data for Indian transactions must be stored only in India. If any transaction data is processed abroad, it must be deleted from foreign servers within the prescribed timeline, ensuring that the primary copy remains stored in India."*

9. Conclusion

- 9.1. Based on the facts and documents given orally to us by the client we have applied laws and judicial precedents, and we are of the opinion that the gaming platform Fantasy Sport Game can be considered as a "Game of Skill" rather than a "Game of Chance", and accordingly, it does not fall within the prohibitions of gambling laws in most Indian states. However, certain states such as Andhra Pradesh, Telangana, Assam, and Odisha prohibit online skill-based gaming, and the Company ensures compliance with state-specific gaming laws before operating in such jurisdictions.
- 9.2. From a data protection perspective, Fantasy Sport Game qualifies as a Data Fiduciary under the Digital Personal Data Protection Act, 2023, and ensures full compliance with consent requirements, security obligations, and data localization norms. Any cross-border data transfer should be evaluated under government-notified restrictions.
- 9.3. In terms of financial and payment compliance, the Company adheres to RBI's Payment Aggregator Guidelines, KYC/AML requirements, and Data Localization mandates. Any deviation from these guidelines may lead to restrictions on payment processing services. To facilitate UPI transactions, it is recommended that Fantasy Sport Game works with an RBI-approved Payment Aggregator that complies with all prescribed regulatory norms.
- 9.5. Based on the legal position analyzed, Fantasy Sport Game is a legally compliant fantasy gaming platform, provided that it operates in accordance with jurisdictional gaming laws, ensures data protection compliance, and secures RBI regulatory approvals for payment processing.

10. Assumptions & Qualifications

- (i) This opinion is based on the current legal framework in India, including applicable state laws, judicial precedents, and RBI regulations. Any future amendments to gaming laws, data protection laws, or financial regulations may impact this assessment.
- (ii) Our review is limited to the laws expressly mentioned and does not extend to other potential liabilities such as taxation, contractual obligations, or international legal exposure.



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- (iii) This opinion is based on the documents and information provided by the client. We assume that all representations made by the client regarding its gaming platform, financial transactions, and data handling practices are accurate and complete.
- (iv) While we have outlined compliance recommendations, we cannot guarantee that regulatory authorities (such as Cashfree, RBI, or state gaming commissions) will approve or accept Fantasy Sport Game compliance submissions.
- (v) The legality of Fantasy Sport Game as a Game of Skill is based on existing Supreme Court and High Court precedents. However, state gaming authorities or courts may interpret the law differently, which could impact the platform's operations.
- (vi) This opinion is based on our review of the documents provided to us by the client, and it is understood that the Fantasy Sport Game is yet to be launched. Please note that any changes or modifications made to the game post – submission of this opinion may affect its validity. This opinion is therefore limited to the current state of the game as presented to us, and we assume no responsibility for any subsequent changes or development.



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