Technology Transfer through Joint Venture

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Lecture – 04

Regulatory Issues

Welcome to forth lecture on technology transfer through strategic alliance. Now I will mainly concentrate on regulatory issues.

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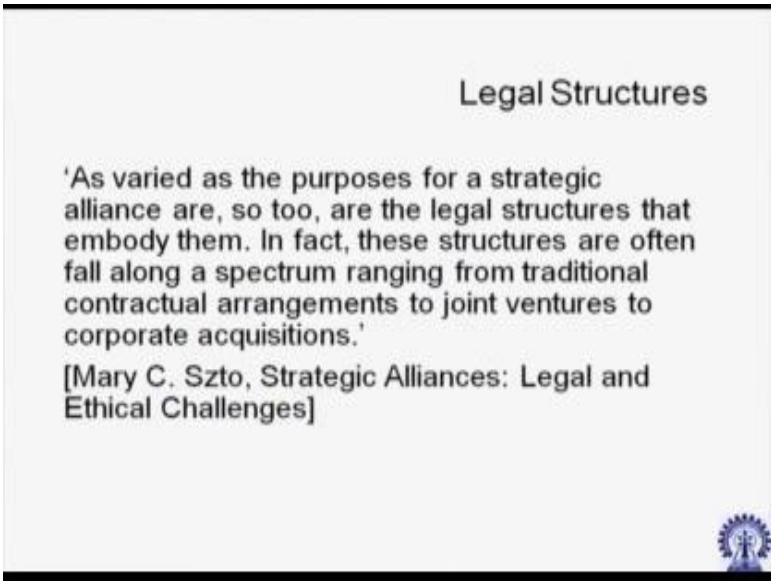

If you heard my previous lecture, I have referred these particular regulatory issues in several time and I say that regulatory issues may force a difficulty for a strategic alliance, and one need to be very careful about these particular regulatory issues. So, I read a court from Mary again, and she said that as varied as the purpose of the strategic alliance are so too are the legal structures that embody them. In fact, these structures are often fall along a spectrum, ranging from the traditional contractual arrangements to the joint ventures, to the corporate acquisitions. So, she is talking here about the forms which the strategic alliance might take, after the parties to the strategic alliance enter into an agreement.

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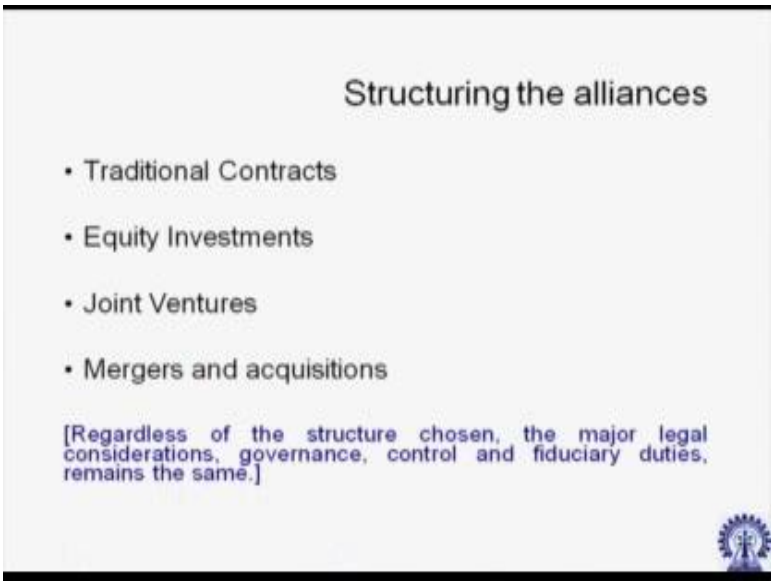

See in generally if you look into the form of a strategic alliance, which are also told in my previous lecture. It might be a simple contract or hard contract, or it might be very loose associations between the parties which may come through the process of memorandum of association and article of the association. So, what I place it here as a traditional contracts, or call it here as a traditional contract. In the traditional contract generally, it do not create a new business organisation or new business form, or rather it do not take any business form.

So, what the parties of these strategic alliance do, they divide the work between themselves, and they mutually carry out this particular work, either in terms of a production, or in terms of accessing the market, or in terms of you know further development into a particular market or even for the product. Like many of time will find the strategic, the partner in the strategic alliance do import, the goods into a particular market, or I should say unfinished good into a particular market, then they assemble that particular product and then they sell into a market.

Like you know if you are importing a particular product into market, then possible they are might be higher regulated taxes, or they are might be higher regulatory compliance cost. So, if you are just bringing that raw material and you assembling into the domestic market, then in that case the cost will be lesser. So, in this case what basically happening, your partner is only assembling that particular goods which you are manufacture in, component of the goods which you have manufacture in some other places, and they are bringing that particular raw material or the manufacture components, and they are bringing into a particular country or India, and they are creating a finished product.

Now a there is a several example of these type of you know process, you will find when this you know luxury came into the India. They started doing, they started assembling their product in India, and they use to take the help of the local manufacturing in doing so. So, similarly you will find, you know in case of I T I T, and I T C product. Like, you know few companies in India nowadays, manufacturing these or assembling these phones, mobile phones at cellular phones.

Similarly few companies who are assembling these televisions, and they are branding in India. Even some company will find the basically brings the drugs molecule from other country and then they assemble it or they package it in India, and then they sell in Indian market. So, there is a several kind of arrangement you will find. So, whenever we are talking about the traditional contract we are basically talking about these particular system where, basically people do divide the responsibility among themselves, and the partners do help mutually to each other, and they really do not do jointly, a manufacturing jointly.

Now, the second category is called a equity investment. Now in case of the equity investment it might so happen that partners it not only transferring the technology to you, but they are also making an investment into the equity of your company. Now when we are talking about the equity, it means they are making an investment in the company's capital, either in form of capital investment, or in form of a date investment. It depends on what kind of a investment your partners is bringing in your organisation or in your company, depending on the regulated regime, because most of the time you know the market regulatory specify that one what kind of investment you can bring into your partners organisations.

Now, the equity is a generic term. So, even if it is a capital investment, or the investment in capital nature, or investment in date, if both the cases if people call it equity. Now, when people are making an equity investment they also try to have some control within your organisation, or they want to have some kind of a managerial control within the organisation. Now, I am going to elaborate this particular process may be little later, when I will talk within joint venture, but never the less let me tell you sometimes even do people try to have their negative control over the management.

Negative control in the sense like if you are bringing a date investment, or making the investment to the date investment, you do not have a control over the management, but what people do while they are developing the investment agreement, they do put the clause where in they said that where if there is an major decision the company wanted to take relating to this issue, then in that case they need to concern back to their partners.

So, the equity investment is quite common, and now a days you will find more and more equity investments are coming in the process of the strategic alliance, because the company who is transferring the technology into a market, they also wanted to have some kind of a control about the product which will coming out of that particular technology transfer, and when those particular product is being marketed into the different restrictions. So, equity investment is getting pretty common.

Now, joint ventures are almost order of a day, and you will find where ever there is a very high and sophisticated or capital intensive technology transfer, people are going more and more joint venture. like yesterday in my lecture I have referred about the difference production, and there in a said that people are now making an investment in India to produce a difference equipment, difference, you know difference vehicle or may be some kind of a tanks, or may be the fighter jets or may be so much and so forth, in those particular case it is not only the technology intensive, but it is also capital intensive.

So, the company who is bringing the technology or the whenever the local partners is choosing their outside partner or foreign partner who is bringing this particular technology, they are also interested that they should make an investment through the joint venture too, and this is also quite important for the foreign partner to do, to come through this particular joint venture, because you know through this particular joint venture they might have a better control over the product which they are going to manufacture through this particular technology transfer. and even some times the regulatory common insist for the joint ventures into that particular product itself, because you know they insist that you know if there is a joint ventures I mean strategic alliance outcome is a joint venture, then in those particular circumstances, the company may purchase some of the assured quantity from this particular joint venture.

So, what they insist on that you know you create a joint ventures, because the moment you are creating a joint venture, you are basically putting of a new organisation, you are creating some kind of a market, you are also observing the local labours, you are also using the local capital, you are also using the local infrastructure, you are also using the local resources or the raw material for producing your particular product.

So, it actually helps even the garment, to garment to get an economic development of that particular agent. So, garment many of the time insist that the company should come through the joint ventures. now a the next one is a mergers and acquisitions, and you will find this is also getting quite common in Indian market, and I believe once we have open our market, these merger and acquisition is became order of the day. Now it is not only the inbound merger, but there is also outbound merger and acquisition is happening. Inbound merger in the sense; that means, the foreign companies are merging with the Indian companies, and you know they are also aggressively acquiring the stake in Indian companies. At the same time you will also find those Indian companies going out and acquiring the different company into the different market, and at the same time they are merging with a different market.

Importantly, you will find there is a dedicated section now in the company's act 2013, which talks about the foreign merger. Previously there is a no as such you know dedicated provisions, but it used to be handled under the usual amalgamation and usual process of the arrangement, but now you will find that there is a specialised provision has been created for this particular process.

Now merger and the acquisitions give a lot of flexibility to the companies to go for a expansion, to go for acquiring the new market, to go for getting the new businesses. Some people even wanted to go for merger or acquisition, because they want to have a new learning into their organisation, because they are also having the business in the same segment. They wanted to acquire that particular company, because the company they are targeting they have a lot of knowledge base of the product, which they do produce in other market.

So, they can transfer some of the technology out of this particular process. Like you know if you look into the auto mobile sector in India, then you will find these particular practise quite common like you know, Tata one to acquire this Jaguar and land Rover. Then you will find Mandra went and acquire some of the Korean company, who are the best in SUV. So, you know there is a lot of example you will find not only in case of auto mobile sector. Even you can find the similar example in pharmaceutical, you will also find similar example in case of other service providing so much so forth.

So, there are several examples you will find into this particular thing. Now the important thing over these particular issues is, the matter relating to the governance, then control fiduciary duty and all this particular issues. Let me try to explain these you know issues that you know what should be the governance structure in your, you know strategic alliance, because you know as I have told you that, you know strategic alliance formation depend on type of the mark type of market where you wanted to do the business, or at the same time the type of the business which you wanted to pursue.

So, the governance structure also depend on those particular type, particular market where you wanted to do the business. So, one should be careful that what should be the adequate governance structure, or the control which we wanted to exercise, over the over the organisation or the relationship which you wanted to bring through this particular strategic alliance.

Similarly there might be some kind of major legal considerations which you need to do, because the local government or the local institutions wanted to get the protections, protection in their business. Many of the time you will find there is a kind of restrictions for the foreign partners to enter into the local market, even with a local partner too. They might not be even allow to have a higher stake into the market, they wanted to have a minimal stake into the market, or at the same time whenever the foreign entity wanted to enters into the market, they want to have some kind of say into the management of this particular company. So, they try to ensure these particular things to the different mails.

Now, another issues which you should keep in the mind is relating to the matter of computation which I have referred for as a fear regulators, fear market regulator, because now computational law is in place in India, and before you go for any strategic alliance or you go for equity investment, joint ventures, or even merger and acquisition, you might need to go back to computation commission of India, to get their permission before you start these particular process, because your strategic alliance should not create a concentration in the market, or should not create a adverse impact over this particular market, and if it create adverse impact of over the market, then in that case you will not be allowed to enter into this particular strategic alliance, or any of form which might come out of this particular strategic alliance. So, you need to go back to C C I, which is popularly known as Computation Commission of India, and you need to take the permission under the concept called combination.

Combination should not create a market polarization, should not create a market polarization and if it is create a market polarization then you need to go back and ask the permission into this particular process. Now a the fiduciary duties is becoming more and more important in case of India; like we are try started talking India about the arms dealings and we are talking about the parties, who are connected and dealings with each other. So, you know those particular processes now very strongly scrutinized by the market regulators. May be it might be you might you know come under the scanner of SEBI because of this particular thing, or it might be a very you know closed dealings, which might create a sort of a scrutiny for different regulatory agency including taxes.

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So, a let me take you the other issues, which you might find in case of your strategic alliance. It might be relating to the specific taxes issues, which may come because of type of alliance you are chosen, because I have told you that you know strategic alliance may be take a several forms. So, the tax implication will depend on which kind of a form you have chosen for the purpose of your business. Then you know it might be relating to the intellectual property ownership rights.

You know if it is simply the contractual relationship, or traditional contractual relationship, or hard contractual relationship, or you know informal contractual relationship, the ownership of intellectual property which might you know develop during the process of this particular strategic alliance may differs, because intellectual property law spell out very clearly who is going to have a ownership over the intellectual property which is developed during a particular type of alliances.

Now if it is a joint ventures then the ownership of intellectual property will be different, than if is a merger or even if it is a simply a partnership, which people as enter upon at the time of you know strategic alliance. So, you should be very careful about this particular thing, and if you find that there is a no as search legal regulated frame is available for you, then in that case you should develop that particular, a regulated if that particular frame through your contractual process, so that you know when you decided to part from each other it is not create a problem for you.

I have already talked about this computation issues which is also known as antitrust issues, and you need to be careful that you know by your essay is not going to hit the provisions of the computation act, and I should be careful that it is not going to be accommodation into the market, or your alliance should not create a kind of a dominants into the market, or a dominants precise not a bad, but if somebody you know said that because of your dominance you are abusing the market, then in that case it is going to go against you, or you should not it should not create a kind of appreciable adverse effect into the market, one need to be a careful about this particular scenario.

Now, the next issues is regulatory environmental regulations, and you will find the environmental regulations became a more and more complex over the years, because in case of India, main focus is on anti pollution for pollution then that of a environmental governance, and because of that particular thing you will find there is a multiple legislation in form of federal legislation, in form of a Biolose, in form of a regulation as being developed, and you need to compile all those particular regulation. And some people say if that even to create an environmental clearance you require a more time then to process the business into a market, like you know sometimes even it might take two years three years depend on the particular government policies. Sometimes we will find government is very strict into the environment compliance matter.

An at the same time, you are all relating to the environment compliance matter also coat if quite vigilant, you know people, code keeps are very strong structure if people can proof, that well these particular alliance might going to create some kind of a environment impact to their production into a particular region, and that particular region is somewhere ecologically vulnerable.

So, you should be careful about these environmental region, and there is a several loose is there, rather I should say it is become more and more complex this particular environmental compliance, and many of the time it is very difficult to get through these particular environmental regulators, in the different stage, in the different stage of your business. Now apart from that there will be other sectorial regulatory issues. It is depending on which sectors you are doing the business, like if you are some sector, like a, you know power generation. If you are in the sector like the financial product, if you are in the sector like you know some kind of manufacture, like you know difference equipment, or some other equipment or, even if are pharmaceutical manufacturer and all the same.

Apart from all other business regulation you need to look into what are the regulatory frames for that particular sector itself. And these sectorial regulators mandates varies from each other; some of them are very you know complex, and very complex to compile also, and it is also very costly to do the compliance into this particular sectorial regulation. So, you should map it a properly, you should know that what are the regulation you need to comply with, many of the time you will find, if you are mixed out or if you are fail some of this particular compliance, it might trouble in your business or when you are started the business process, it might be stop, because you have not compare this particular process.

Then last one is relating to the cross border issues. Now cross border issues may arises because of the several reasons. It might be relating to the foreign investment law, it might be relating to some kind of a protection, relating to the dumping. There might be provision relating to the (Refer Time: 24:41) dumping, there might be some kind of a provision of national equipment so much so forth, through which basically going to be govern by the bilateral entities, which might be governed by some of the international understanding, which might be governed by some of this, you know local laws relating to these particular effect.

Please remember India is not a monist country; that means, you know what about the international law India assign or international (Refer Time: 25:12) India assign, it is not automatically implemented in case of India, but it has to go through these domestic framing of the laws. So, you know it is a quite complex in case of the cross border transaction, and you should be aware about these nuances which might go to affect your strategic alliance.

Thank you very much.