

Sensex ↓ (-0.41%) 76893.88	Nifty ↓ (-0.28%) 23501.10	Nifty Midcap ↓ (-0.08%) 55429.15	Nifty Smallcap ↓ (-0.10%) 8533.50	Nif 516	Heatmap
-316.02	-65.90	-44.65	-8.20		

Home / Markets / News / SoftBank signs indemnity clause over Unicommerce 'promoter' tag

SoftBank signs indemnity clause over Unicommerce 'promoter' tag

Founders Kunal Bahl, Rohit Bansal enter into agreement to limit liabilities of Softbank



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This report has been updated

SoftBank has entered into an indemnity agreement with Snapdeal founders --- Kunal Bahl and Rohit Bansal --- after the Japanese investment major was classified as the “promoter” of IPO-bound Unicommerce eSolutions.

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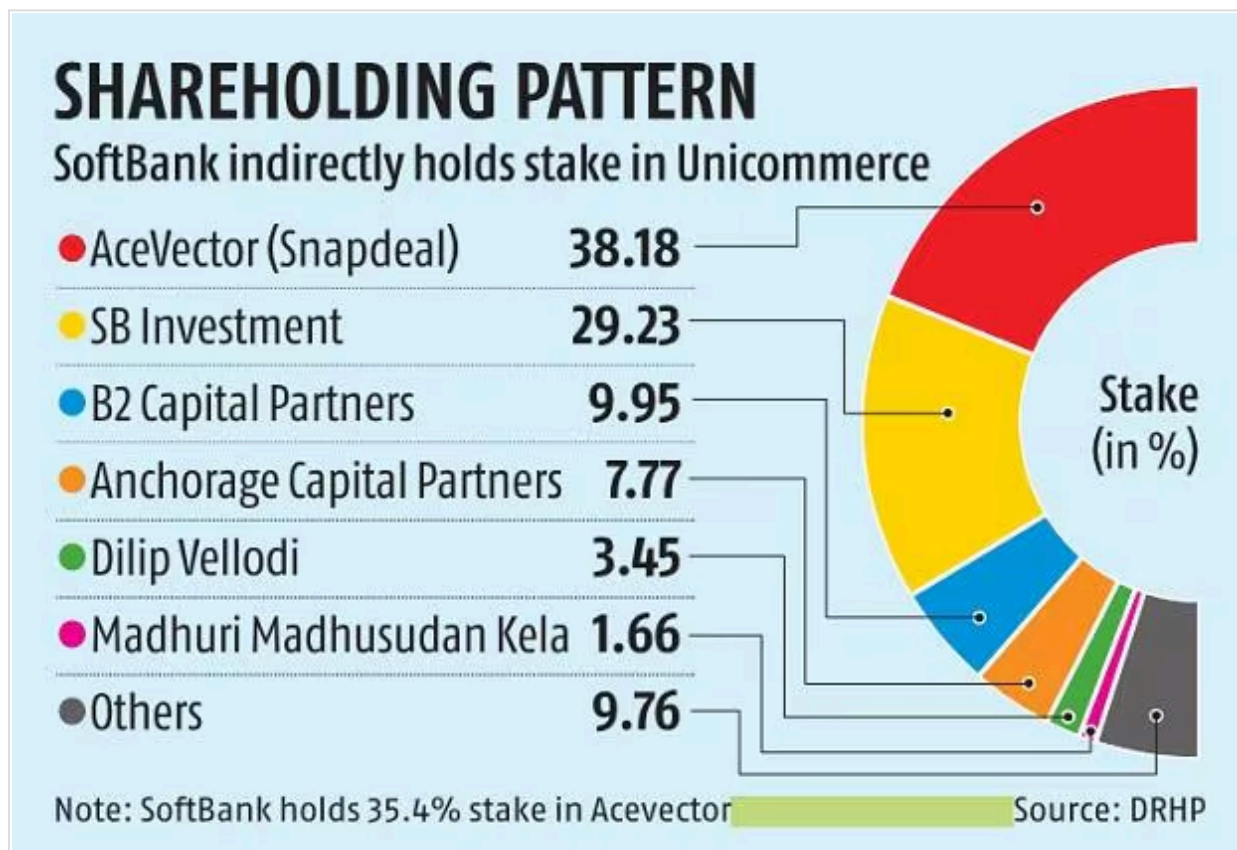
The move by SoftBank is aimed at protecting its executives from future liabilities arising out of the responsibilities of being deemed a promoter of Unicommerce, a Snapdeal-backed software-as-a-service company

At the time of filing of its draft red herring prospectus (DRHP) in January, Unicommerce only identified Snapdeal (now known as AceVector) as its promoter.

Unicommerce said its board of directors on May 29 also decided to identify Starfish (a SoftBank entity), Bahl, and Bansal as the promoters of the company.

On May 17, SoftBank entered into an indemnity agreement with Bahl, Bansal and AceVector.

“The indemnity agreement was executed for indemnifying Starfish (SoftBank entity) against any claim or loss, in its capacity as one of the corporate promoters of our company, by the individual promoters and AceVector,” said an addendum filed with Sebi earlier this month.



“In the event of a loss has arisen out of or on account of a claim against Starfish, its affiliates, on account of Starfish being classified and named as a promoter of our company, the responsible promoters will be required to indemnify, defend, and hold harmless Starfish indemnified persons,” the addendum added.

Interestingly, Starfish does not hold any direct shares in Unicommerce. However, it is the largest shareholder of AceVector with a 35.4 per cent stake.

At the time of filing of the DRHP, Sebi has been insisting that significant shareholders, even if they are private equity (PE) players, identify themselves as ‘promoters’.

“Foreign PEs typically being in the nature of financial investors are sceptical about being classified as ‘promoters’ of a listed company. Recently, Sebi has been holistically looking at the rights package of shareholders to ascertain whether such shareholders should be classified as promoters. In such instances to mitigate financial risks arising from any misstatements in the offer documents or the associated ancillary documents, PE players prefer to execute such indemnity agreements with the existing promoters of such companies,” said Anirudh Arjun, a member of M&A and PE practice at Nishith Desai Associates.

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Legal experts say it remains to be seen how Sebi views the practices of indemnity agreements.



“The effectiveness of regulations can be undermined by indemnity agreements or side agreements among promoters. Such agreements, where only select promoters bear liability for disclosures in offer documents, negate the intent of the SEBI ICDR Regulations. Despite being categorised as promoters, their obligations would equate to those of non-promoter shareholders,” said Supreme Waskar, a corporate lawyer.

“It is expected that Sebi will scrutinise these practices where responsibility among promoters is diluted through such indemnity agreements or side letters,” he added.

Recently, companies like Valiant Laboratories, Updater Services, and Samhi Hotels had to broaden their list of promoter entities on Sebi’s insistence.

(With inputs from Khushboo Tiwari)

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