



JSA Newsletter

Anti-Corruption, White Collar Crimes & Investigations Practice



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In this edition of the Anti-Corruption, White Collar Crimes and Investigations quarterly newsletter, we note prominent international actions in light of India-centric developments, including the US Foreign Corrupt Practices Act ("FCPA") settlement. An e-commerce giant's alleged internal bribery issues threaten to spiral into a much larger investigation, both domestically and overseas. On the domestic front, enforcement authorities continue to act against errant individuals and corporates alike and the Central Vigilance Commission ("CVC") has released their annual statistics report which shows that the crime of corruption also continues unabated.

Recent Enforcement Trends

In June 2021, the CVC published its annual report for 2020 with the following notable statistics:

- Received approximately 3,393 cases (including 953 cases carried forward from 2019) and tendered its advice in 2,717 cases in 2020.
- 939 cases for sanction were handled by the CVC in 2020, out of which 512 sanctions were accorded and 135 were declined by the competent authorities concerned. 292 cases were pending at the end of the year.

In August 2021, the CVC reconstituted its advisory board for Banking and Financial Frauds ("Advisory Board") and now requires that all public sector banks and public financial institutions must refer matters of fraud involving sums of money above INR 50 crore to the Advisory Board, prior to instituting criminal investigation(s) / action under Section 17A of the Prevention of Corruption Act, 1988 ("POCA"). Further, the CVC in September 2021, directed all government departments to observe a 'Vigilance Awareness Week' between October 26 – November 1, 2021 by conducting various activities to sensitise personnel against corruption.

In October 2021, the Central Bureau of Investigation ("CBI") registered an FIR against a leading IT infrastructure company and its directors for allegedly defrauding the State Bank of India and seven other consortium banks to the tune of over INR 860 crore between 2009 and 2017. The CBI also conducted searches/raids at nine office and residential premises in Mumbai and other parts of Maharashtra.

In a separate matter, the CBI, on October 11, 2021, conducted searches at the premises of a former Maharashtra home minister in connection with the leak of confidential documents related to the preliminary enquiry against him on allegations of corruption.

In September 2021, the Enforcement Directorate ("ED") arrested an accused individual in the 'AgustaWestland' scam in a bank fraud case and separately made arrests in a money laundering case of INR 915 crore instituted against a Mumbai based agro-firm based on an FIR filed by the CBI against the Managing Director and other officials of the firm. On October 6, 2021, the ED attached assets worth approximately INR 26 crore of a leading financial services company in connection with an alleged Ponzi scam. The probe was being carried out by ED based on the cases registered by the West Bengal police against the group, its chairman and others.

On October 12, 2021, the Reserve Bank of India ("RBI") barred Haribhakti & Co LLP, Chartered Accountants, from undertaking any type of audit assignment for any entities regulated by the RBI, for a period of two years with effect from April 1, 2022.

Regulatory Update

Vide a notice issued in August 2021, market regulator, Securities and Exchange Board of India ("SEBI") empanelled 16 entities including BDO India, Ernst & Young and Deloitte Touche Tohmatsu India, for conducting forensic audits of listed companies. In May 2021, SEBI had invited applications from eligible Chartered Accountant ("CA") firms *"for empanelment to take up assignments relating to forensic audit of financial statements of listed companies"*.

Judicial Developments

The Karnataka High Court ("Karnataka HC") in *G. Krishnegowda v. Karnataka* (July 15, 2021) held that the offences under the POCA can be invoked not only against the public servant but also against a person who by virtue of his office has been discharging a public duty. The court dismissed a petition to squash an FIR filed under POCA against the petitioner, who was a project manager in a society registered under the Karnataka Societies Registration Act, 1960. In doing so the Karnataka HC also took into consideration the decision of the SC in *Gujarat v. Mansukhbhai Kanjibhai Shah* which held that the definition of "public duty" and "public servant" should not be interpreted in a limited ambit.

In an August 2021 amicus curiae report submitted to the Supreme Court ("SC") in a Public Interest Litigation seeking fast-tracking of criminal cases instituted and pending against legislators, it was noted that criminal cases pending against current and former lawmakers have increased in the last two years, with 122 cases under the Prevention of Money Laundering Act, 2002 being investigated by the ED while 121 cases on other matters are pending with the CBI.

The Delhi High Court ("Delhi HC"), in *Ravina and Associates Pvt. Ltd. v. CBI* (September 02, 2021) held that while imposing fines under the Prevention of Corruption Act, 1988 courts must provide due consideration to the value of the property obtained through the crime committed. In the present matter, overseas accounts of the accused petitioner were frozen by the order of the CBI Special Court and the Delhi HC deliberated on whether the entirety of the frozen amount could be considered proceeds of crime and therefore be liable for confiscation upon conviction. The Delhi HC held that any amount in an account attached under criminal proceedings such as POCA is liable to be confiscated only up to the extent of amount involved in the criminal proceeding.

In *CBI v. Thommandru Hannah Vijayalakshmi* (October 8, 2021), the SC held that conducting a preliminary enquiry was not mandatory for the CBI for filing FIRs in corruption cases. The present appeal arose from an order of the Telangana High Court ("Telangana HC") which quashed an FIR in a disproportionate asset case, holding that the CBI should have conducted a preliminary enquiry before it could register an FIR as mandated by the CBI Manual of 2005. Considering precedents, the SC set aside the Telangana HC judgement and held that the FIR would not be vitiated because of the CBI not conducting its preliminary enquiry and the accused could not ask for a preliminary enquiry as a matter of right.

International Developments

The United States Securities and Exchange Commission ("SEC") on August 27, 2021 issued collective whistleblower awards of over USD 1 million to three whistleblowers for providing the SEC original information that led to successful enforcement actions. Interestingly, all three whistleblowers held compliance roles at their respective organisations at the time of reporting misconduct to the SEC leading to an enforcement action. The SEC whistleblower awards are paid out of the monetary sanctions collected or to be collected pursuant to a successful action.

The SEC, in September 2021, announced that UK based WPP, said to be the world's largest advertising company, has agreed to pay over USD 19 million to resolve charges that it violated the anti-bribery, books and records, and internal accounting controls provisions of the FCPA in connection with bribes paid in India, along with internal accounting control deficiencies related to WPP's subsidiaries in China, Brazil, and Peru. The SEC in its press release thanked SEBI for its assistance in the investigation.

According to a media report citing an unnamed whistleblower, Amazon has reportedly initiated an investigation into its legal representatives in India for allegedly bribing Indian government officials. Acting on this report, the Confederation of All India Traders sent a memorandum to the Chairman of the SEC on September 23, 2021, requesting an immediate SEC inquiry into this matter, citing extraterritorial jurisdiction of the FCPA.

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