



JSA Newsletter

Anti-Corruption, White Collar Crimes & Investigations Practice



July 2022

This edition of the Anti-Corruption White Collar Crimes and Investigations newsletter provides an overview of notable enforcement trends, judicial decisions, and key overseas developments in the field of anti-corruption and white-collar crimes in the last quarter. The last quarter saw a continued uptick in enforcement actions, while regulatory developments have been slow.

Enforcement Landscape

In April 2022, the Central Bureau of Investigation ("**CBI**") conducted raids at 8 (eight) locations in Mumbai and Pune belonging to 3 (three) prominent builders in connection with the Yes Bank-DHFL scam. The CBI alleged that companies of the builders were used to transfer illicit money and consequently it booked former CMD and director of DHFL among 11 (eleven) others for defrauding a consortium of 17 (seventeen) banks at a value of INR 34,615 crore (Rupees thirty-four thousand six hundred and fifteen crore). The action was initiated on the basis of a complaint from the consortium leader, Union Bank of India. The bank alleged that the accused conspired and committed criminal breach of trust and abused public funds to cheat the consortium by defaulting on loan repayments. The Enforcement Directorate ("**ED**") has reportedly traced part of this amount and identified it as proceeds of crime.

The ED seized assets of Amway India worth INR 757 crore (Rupees seven hundred fifty-seven crore) for alleged money laundering activities. Amway has been accused of running pyramid schemes under the guise of being a multi-level marketing company. Amway has denied the allegations, contending that they do not run a pyramid scheme and clarified that this matter has been under investigation since 2011, for which it has been cooperating with the authorities.

In May 2022, the CBI registered a First Information Report ("**FIR**") against *Amrapali Leisure Valley Developers*, its director, and other individuals in relation to alleged bank loan fraud of INR 230 crore (Rupees two hundred and thirty crore) from Andhra Bank and Bank of Maharashtra. The CBI alleged that both banks had sanctioned credit facilities for an uncompleted project in Greater Noida, and a forensic audit submitted to the Supreme Court reportedly revealed that the developer diverted funds worth INR 5,619 crore (Rupees five thousand six hundred and nineteen crore) to other companies.

In June 2022, media reports indicate that the Press Trust of India accessed official data reportedly showing that the ED has filed more than 5,422 (five thousand four hundred and twenty-two) cases under criminal provisions of the Prevention of Money Laundering Act, 2002 and has attached assets worth INR 1,04,702 crore (Rupees One lakh four thousand seven hundred and two crore) till March 2022. It highlighted, however, that only 25 (twenty-five) people have been convicted of money laundering despite 400 (four hundred) arrests having been made since the institution of the ED in 2005.

The Delhi Police's Economic Offences Wing ("**EOW**") arrested the former chairman and MD of Religare Enterprises in a money laundering case of approximately INR 800 crore (Rupee eight hundred crore). The allegations state that he was involved in a scheme of loan disbursement to companies having no financial standing resulting in non-performing assets, which eventually led to worsening economic conditions for Religare Finvest.

The CBI in June 2022, detained a Joint Drug Controller of the Central Drugs Standard Control Organisation for allegedly taking a bribe from the Director of a Delhi-based private company to waive phase three clinical trials of Insulin Aspart injection, a product of Biocon Biologics Ltd. The company denied the allegations. The CBI court rejected the bail applications of the arrested individuals.

Regulatory Developments

The newly formed government in Punjab has set up an anti-corruption hotline under the state vigilance bureau, along similar lines as the existing hotline in Delhi. The website of the vigilance bureau notes that the Chief Minister will “personally monitor this number” and that “If any government employee asks you for a bribe, don’t say no. Instead, record the conversation and send the audio/video to the Whatsapp number...” The hotline has reportedly received over 2000 (two thousand) calls since it was set up.

Judicial Developments

The Supreme Court (“SC”) in *Sekar Reddy v. Enforcement Directorate* (May 05, 2022) held that courts must consider peruse evidence to confirm whether prima facie a scheduled offence under the Prevention of Money Laundering Act, 2002 (“PMLA”) exists before proceeding with prosecution. Setting aside a High Court order refusing to quash proceedings under the PMLA, the SC held that “even in cases of PMLA, the Court cannot proceed on the basis of preponderance of probabilities.”

The SC in *Serious Fraud Investigation Office v. Sahara Housing Investment Corporation Limited & Ors.* (May 26, 2022) agreed to consider a Special Leave Petition filed by the Serious Fraud Investigation Office against a Delhi High Court order staying all proceedings and lookout notices issued by the Central government against Sahara Housing Investment Corporation Limited and other Sahara companies. The SC ruled that the High Court erred in staying the investigation at the interim stage as it was not appropriate to place the burden of reason till the whole investigation was completed.

Delhi's Rouse Avenue Court, in *Satyendar Jain v. Enforcement Directorate* (June 18, 2022), denied bail to Aam Aadmi Party Health Minister Satyendra Jain in connection with an FIR registered by the CBI in 2017 under the Prevention of Corruption Act, 1988. The FIR alleged that the minister had acquired assets that did not correspond with his known sources of income. Consequently, the ED attached assets worth INR 4.81 crore (Rupees four crore eighty-one lakh) belonging to 5 (five) companies and others in connection to the alleged disproportionate assets case against Jain and others.

In *Subash Mohapatra & Ors. v. State of Odisha & Anr.*, (June 20, 2022), the Orissa High Court held that the State Vigilance Department could not be exempted from the Right to Information Act, 2005 (“RTI Act”) and struck down a notification issued by the Information and Public Relations Department of the Government of Odisha which provided that nothing contained in the RTI Act would apply to the State Vigilance Department of the Government of Odisha. Moreover, it directed that all information related to human rights violations and allegations of corruption, which are not confidential, should be disclosed under the RTI Act.

International Developments

The budget of the U.S. Government for fiscal year 2023, has set aside \$37.65 billion (thirty-seven billion six hundred and fifty million dollars) for the Department of Justice (“DOJ”) which is a \$2.63 billion (two billion six hundred and thirty million dollars) increase from fiscal year 2022. The budget emphasizes efforts to ramp up enforcement for certain areas of non-violent crime including cybercrime and cyber threats, corporate fraud, and pandemic-related fraud. The US Government US has indicated that investigations and prosecutions in these areas will increase.

On June 22, 2022, Pakistan passed the National Accountability (Amendment) Act, 2022 to amend its anti-corruption law, which, among other things, seeks to punish any person who is responsible for initiating false cases and requires misuse of authority to be proven through material evidence.

Conclusion

The enforcement agencies in India, and in particular the ED, appear to be cracking down hard on various financial crimes. All major wings of the agencies – the CBI, ED, and EOW have been ramping up action. Some governments have expanded their efforts by setting up state machinery for encouraging the reporting of corruption related issues. Overseas developments are a more mixed bag – while the DOJ’s increased budget will likely fuel many more

investigations outside the US, the amendment in Pakistan's laws might suppress legitimate cases of corruption. As we head into the second half of 2022, interesting developments in this space likely lie ahead.

Anti-Corruption, White Collar Crimes & Investigations Practice

To effectively and comprehensively augment its full-service legal offerings, JSA has a well-established and extensive White-Collar Crimes and Investigations practice. We assist domestic and multinational corporates with internal investigations and fact-finding exercise along with advice on white collar crimes such as corruption, bribery, misgovernance, fraud, misconduct, money laundering, cybercrime, embezzlement and all other economic offences. We also advice on ancillary matters such as employment issues and data privacy concerns. JSA's white-collar practice provides comprehensive and end-to-end assistance and advice, from internal governance concerns to litigation, for global and domestic corporations alike.

We also assist in compliance diligence as part of M&A and PE transactions and vet corporate entities for compliance with anti-corruption laws and best practices. We conduct internal investigations into claims of misconduct, fraud and other such matters. Having worked on diverse matters related to compliance investigations under the (Indian) Companies Act, 2013, India leg of FCPA and UKBA matters, whistle blower investigations and advisory solutions to implement a comprehensive ethics framework, we have both an in-depth understanding of the sector as well as the skills required to deliver effective and regulation specific legal counsel. JSA also conducts training programs and sessions on anti-corruption laws and whistle-blower policies, code of conduct and ethics, internal controls for the board of directors, key managerial personnel, executives, managers, employees, agents, and other appropriate third parties, in diverse formats such as one-on-one training, seminars, workshops, and off-sites.

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14 Practices and
23 Ranked Lawyers



15 Practices and
18 Ranked Lawyers



7 Practices and
2 Ranked Lawyers

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Energy Law Firm of the Year 2021

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