



JSA Newsletter Anti-Corruption, White Collar Crimes & Investigations Practice



May 2023

This edition of the Anti-Corruption, White Collar Crimes, and Investigations newsletter sets out key developments in the enforcement, regulatory and judicial landscape primarily of India.

Income Tax and Crypto Clampdown

The Minister of State for Finance informed the Lok Sabha on April 03, 2023, that the Income Tax department seized assets worth INR 8,800,00,00,000 crore (Indian Rupees eight thousand eight hundred crore) in the last 8 (eight) years across 5,931 (five thousand nine hundred thirty one) searches.

He also informed that the Enforcement Directorate (“ED”) is investigating several cases related to cryptocurrency/virtual digital currency frauds which include involvement of crypto exchanges, noting that proceeds of crime amounting to INR 936,89,00,000 crore (Indian Rupees nine hundred thirty six crore eighty nine lakh) have been attached or frozen in these cases.

Notable Enforcement Actions

- The ED raided the houses of 13 (thirteen) political leaders in Chhattisgarh as a part of its money laundering investigation into a coal levy scam wherein an illegal levy of INR 25 (Indian Rupees twenty five) was being extorted for every tonne of coal transported in the state by a cartel of senior officials and bureaucrats.
- The Central Bureau of Investigation (“CBI”) launched searches at 30 (thirty) locations in Punjab as a part of its probe into allegations of corruption against Food Corporation of India officials for procuring inferior grains to benefit merchants and rice millers.
- The CBI arrested Manish Sisodia, former Deputy Chief Minister of Delhi, over charges of alleged corruption in the formulation and implementation of the Delhi Excise Policy. He was alleged to be involved in the destruction of evidence, changing the profit margin from 12% to 5% for wholesalers, among other issues.
- The Government suspended leading think-tank Centre for Policy Research’s licence under the Foreign Contribution Regulation Act (“FCRA”) for allegedly violating the provisions of the law. According to a Union home ministry official the suspension was based on prime facie evidence that certain provisions of FCRA were not followed.

Changes to the PMLA

The Department of Revenue under the Ministry of Finance introduced the Prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2023. The Amendment requires entities (such as financial institutions and banking companies) to make disclosures regarding the beneficial owners, the threshold of which has been reduced

to 10% of the company's shares from 25%. The Amendment has defined terms such as 'group', "non-profit organization" and "politically exposed persons".

It also prescribes additional information and documentation requirements entities must provide for the purpose of due diligence such as the names of those in top management positions, partners, beneficiaries, trustees, settlors, and writers. Further, on March 7, 2023, the Ministry of Finance, through a notification, included activities/transactions concerning virtual digital assets ("VDA") under the definition of "person carrying on designated business or profession", bringing VDAs under the ambit of the Prevention of Money Laundering Act, 2002 as Reporting Entities. Reporting Entities are required to undertake additional compliances such as ongoing diligence, KYC verification and maintenance of records.

G20 Anti-Corruption Working Group

The G20 Anti-Corruption Working Group reported 'considerable progress' during its first meeting which concluded in Gurugram in February 2023. The meeting inaugurated on March 1, 2023 by Union Minister of State for Personnel Jitendra Singh was attended by over 90 (ninety) delegates with Italy as the co-chair. It was reported that there were productive deliberations on several key focal areas pertaining to asset recovery, fugitive economic offenders, formal and informal channels of cooperation for information sharing, institutional frameworks for combating corruption and mutual legal assistance, among others.

Judicial Discourse

The Supreme Court in *Rana Ayyub v. Directorate of Enforcement*¹ (February 7, 2023) rejected an argument that the offence of money laundering can be tried only at the place where the alleged proceeds of crime are deposited. It held that in the context of proceeds of crime, (i) the area where it was acquired; or (ii) where it is kept in possession; or (iii) where is concealed; or (iv) the place where it is used, can be considered as the place where the offence of money laundering has occurred.

The Supreme Court in *State of Chhattisgarh v. Aman Kumar*² (March 1, 2023), while deliberating on an appeal regarding disproportionate assets of the former Principal Secretary to the Chief Minister of Chhattisgarh, held that corruption is the main reason for the non-fulfilment of the 'preambular promise' of the Constitution to achieve social justice by ensuring equal distribution of wealth. The Court added that it is desirable that High Courts do not quash FIRs related to corruption cases at the investigation stage.

Overseas Developments

Between March 2-3, 2023, the U.S. Department of Justice ("DOJ") announced several updates to its corporate enforcement policies. The DOJ revised its guidance to federal prosecutors relating to the Evaluation of Corporate Compliance Programs, most notably regarding how companies approach the use of personal devices and different communications platforms as well as corporate compensation systems.

The DOJ has initiated a 'Compensation Incentives and Clawbacks Pilot Program' that mandates companies settling lawsuits to integrate compensation-related criteria in their compliance programs. The program also provides companies with criminal fine reductions if they clawback compensation from individuals who engaged in wrongdoing.

Further, the DOJ updated its 'Evaluation of Corporate Compliance Programs', a set of queries used to evaluate the compliance programs of companies while making charging decisions. The revised version includes additional requirements for monitoring off-system communications and establishing compensation structures that encourage compliance.

¹ 2023 SCC OnLine SC 109

² SLP (CRL.) NOS.1703-1705 OF 2022

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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17 Practices and
24 Ranked Lawyers



16 Practices and
11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



11 Practices and
39 Ranked Partners
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of the Year

Fintech Team of the Year

Restructuring & Insolvency
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10 A List Lawyers in
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