



JSA Newsletter

Anti-Corruption, White Collar Crimes & Investigations Practice

October 2023

This edition of the Anti-Corruption, White Collar Crimes and Investigations newsletter sets out the key developments in India's enforcement, regulatory and judicial landscape for the period July-September 2023. These developments include notable enforcement actions, and updates on the G20 New Delhi Summit and G20 Anti-Corruption Ministerial Meeting held in India. This issue also sets out legislative developments such as amendments to the Goods and Services Tax ("GST"), Prevention of Money Laundering Act 2002 ("PMLA") as well judicial pronouncements in the white-collar crimes practice.

Regulatory Developments

India hosted the G20 summit on September 9th and 10th of 2023 at the end of which the "G20 New Delhi Leaders' Declaration" ("**Delhi Declaration**") was released. The Delhi Declaration unequivocally recognized fighting corruption and money laundering as one of the main priorities of G20 nations. The declaration underscored the commitment of the member states to FATF and global standards for transparency and asset recovery, while endorsing various G20 High Level Principles related to international cooperation and preventing corruption.

The third and final G20 Anti-Corruption Ministerial Meeting was held in Kolkata on August 12, 2023, which saw the endorsement of multiple G20 High Level Principles against corruption and money laundering, adoption of the G20 ACWG Accountability Report on Mutual Legal Assistance and detailed discussions on gendered dimensions of corruption.

Enforcement Landscape

The Enforcement Directorate ("**ED**") in July 2023 arrested a Chhattisgarh cadre IAS officer in connection with a coal levy and mining revenue case pursuant to raids across 18 (eighteen) locations. The officer who is currently the director of the state's agriculture department previously served as the collector of coal-rich districts where the alleged offences took place.

September was a particularly active month for the authorities, with some key enforcement actions:

1. The ED arrested Jet Airways founder Naresh Goyal on September 1, 2023 after questioning. Goyal is accused of defrauding Canara Bank of approximately INR 540,00,00,000 (Indian Rupees five hundred and forty crores). A money laundering case against Goyal was filed on the basis of a previous Central Bureau of Investigation ("**CBI**") case filed against him in May 2023.
2. The CBI arrested the executive director and a chief general manager of Gas Authority of India Ltd of Gas Authority of India Ltd along with 3 (three) private persons in an alleged bribery case of INR 50,00,000 (Indian Rupees fifty lakh).

3. The owner and director of M/s Met Technologies Pvt Ltd was arrested by the ED for allegedly operating an illegal call center from Kolkata's Salt Lake area engaged in targeting people by offering them bogus tech support, sham loan offers and deceptive sales *via* counterfeit mobile apps domestically and internationally.
4. The ED filed a chargesheet under the PMLA against Akshaya Gold Farms and Villas India and its promoter-directors accused of running a Ponzi Scheme defrauding lakhs of investors of hundreds of crores. The ED initiated probe on basis of an FIR against the firm for cheating people and working without a permit from the RBI and SEBI.

Legislative Developments

1. The Centre issued a notification dated July 7, 2023, to bring Goods and Services Tax Network ("GSTN") under PMLA. The order aims to plug tax evasion by facilitating sharing of information or materials in possession of ED and GSTN and enabling them to check any violation of GST provisions such as fake input tax credit, fake invoices etc.
2. Centre issued a notification dated September 4, 2023, amending the Prevention of Money Laundering (Maintenance of Records) Rules, 2005. Key changes brought in by the amendment are:
 - a) Only an officer at the management level can now be appointed as the 'Principal Officer';
 - b) The threshold for beneficial ownership of a company has been reduced from 15% to 10%. The amended rule provides that partners with a 10% stake in a firm will be considered as beneficial owners;
 - c) To broaden the scope of beneficial owners, a person 'who exercises control through other means' would also be considered a beneficial owner provided "control" includes the 'right to control the management or policy decision';
 - d) In case of a trust, the reporting entity shall ensure that trustees disclose their status at the time of commencement of an account-based relationship or when carrying out specified transactions.
3. The Center issued a notification dated October 17, 2023, further amending the Prevention of Money Laundering (Maintenance of Records) Rules, 2005. Key changes brought are:
 - a) Every reporting entity that is a part of a group shall implement group wide programs against money laundering and terror financing. This includes group wide policies for information sharing as well as implementation of obligations under Chapter IV of PMLA;
 - b) On satisfaction of the principal officer of a reporting entity that a transaction is suspicious, he may furnish such information in writing by fax or email to the Director of ED; and
 - c) The amendment creates an obligation on the Directors, Officers and employees of reporting entities to ensure that maintenance of records and furnishing of information to the Director is kept confidential.
4. On August 12, 2023, the Central Government published the Jan Vishwas (Amendment of Provisions) Act, 2023 ("**Jan Vishwas Act**"). The Jan Vishwas Act will come into force on such date as the Central Government may appoint by notification in the Official Gazette. The Jan Vishwas Act decriminalizes 180 (one hundred and eighty) offences across various laws including the PMLA. The Jan Vishwas Act seeks to introduce changes to Part A of the schedule under the PMLA that lists offences and its penalties under various acts. All scheduled offences under Environment Protection Act, 1986, Air (Prevention and Control of Pollution) Act, 1981 have been removed from the Schedule to the PMLA by virtue of the amendment. Some specific offences such as penalty for falsely representing a trademark as registered and penalty for breach of confidentiality and privacy (under the IT Act, 2000) have also been removed.

Judicial Developments

1. *V. Senthil Balaji v. State represented by Deputy Directors and Ors.*¹

The Supreme Court of India (“**Supreme Court**”), while relying on *Vijay Madanlal Choudhary v. Union of India & Ors.* opined on various aspects of the PMLA:

- a) Writ of habeas corpus will not be maintainable in cases of detention by ED in cases under PMLA. The legislature has, in its wisdom, created the necessary safeguards in PMLA for an arrestee, keeping in mind his liberty, and need for external approval and supervision. Therefore, such writ will only be maintainable when there is a non-compliance of the mandatory provisions along with a total non-application of mind.
- b) Compliance of Section 41A of the Code of Criminal Procedure, 1973 (“**CrPC**”) is not mandatory in PMLA cases so long as procedure laid down under Section 19 of PMLA is adhered to.
- c) The maximum period of 15 (fifteen) days police custody under section 167 of CrPC is to be applied to the entire period of investigation – 60 (sixty) or 90 (ninety) days, as a whole. The word 'custody' used in Section 167(2) of CrPC would include not only police custody but also custody of other investigating agencies including the ED.
- d) It is the bounden duty of the authorized officer to record the reasons for his belief that a person is guilty and needs to be arrested.
- e) Section 167(3) of CrPC warrants a magistrate to record reasons by speaking and reasoned order while granting remand. When a Magistrate remands an accused to an authority under the PMLA, the safeguards under Section 19 of PMLA have to be followed.
- f) The Court has referred the issue as to whether police custody or remand under Section 167(2) of CrPC can be restricted to 15 (fifteen) days to a larger bench for re-consideration.

2. *Ameena Begum v. State of Telangana & Ors.*²

The Supreme Court reiterated the principles applicable while deciding the constitutionality of orders of preventive detention and laid down the following criteria to test the legality of such orders:

- a) There has to be satisfaction of the detaining authority upon which validity of exercise of power of preventive detention is predicated;
- b) The detaining authority has to apply its mind to all relevant circumstances and is required to not base its satisfaction on extraneous material. The satisfaction is required to be based on rationally probative material and statutory mandate;
- c) The detaining authority has to apply its mind independently and exercise power for a proper purpose;
- d) Non-application of mind by the detaining authority;
- e) The satisfaction has to be arrived at bearing in mind existence of a live and proximate link and past conduct and the need to detain the detenu; and
- f) Timelines under the law are required to be adhered to.

3. *Central Bureau of Investigation v. R.R. Kishore & Ors.*³

In this case, the issue before the Supreme Court was whether Section 6A of the Delhi Special Police Establishment Act, 1946 (“**DSPE Act**”) being held unconstitutional would have a retrospective effect. Relying on Article 13 of the Constitution of India, the Court held that once an act is held unconstitutional, it is required to have retrospective effect. Therefore, the judgment in the case of *Subramanian Swamy v. Central Bureau of Investigation* (“**CBI**”) was held to apply retrospectively.

¹ 2023 SCC OnLine SC 934

² 2023 SCC OnLine SC 1106

³ 2023 SCC OnLine SC 1146

For a detailed analysis, please refer to the [JSA Prism of October 13, 2023](#).

4. ***P. Sarangapani v. State Of Andhra Pradesh***⁴

The Supreme Court held that once undue advantage i.e., any gratification whatever, other than the legal remuneration is proved to have been accepted by a public servant, the Court is entitled to raise the presumption under Section 20 of the Prevention of Corruption Act, 1988 (“POCA”) that he accepted the undue advantage as a motive or reward under Section 7 of POCA for performing or to cause the performance of a public duty improperly or dishonestly.

5. ***Pankaj Bansal v. Union of India & Ors.***⁵

The Supreme Court, while relying on *Vijay Madanlal Choudhary v. Union of India & Ors.* and *V. Senthil Balaji v. State* represented by Deputy Directors and Ors. held as follows:

- g) In terms of Section 19(3) of PMLA, Section 167 of CrPC would necessarily have to be complied with once an arrest is made under Section 19 of PMLA.
- h) Court issuing the remand has a duty to verify and ensure that the conditions in Section 19 of PMLA are duly satisfied and the arrest is valid and lawful.
- i) Accused person will need to be apprised of the grounds of arrest and the reasons to believe his guilt under PMLA. However, it is not mandatory for the accused to be supplied with all the material that is forwarded to the Adjudicating Authority under Section 19(2) of PMLA.

6. ***Ambuj Hotels & Real Estate Pvt. Ltd. v. Central Bureau of Investigation***⁶

The Delhi High Court has said that in an offence involving private persons as well as public servants, mere lack of sanction to prosecute a public servant under Prevention of Corruption Act would not defeat proceedings otherwise maintainable against private persons.

7. *Manthena Srinivasa Raju v. Directorate of Enforcement*, 2023 SCC OnLine TS 2822

The Telangana High Court held that to constitute an offence of money laundering, the Enforcement Directorate must prove a reasonable basis to believe that the offence has been committed and generation of direct or indirect crime proceeds as a result of criminal activity which can be related to the offence. The Court interpreted the phrase ‘reason to believe’ enshrined in PMLA to not merely mean suspicion, gossip or humour. It was held that there must be some material to suggest the formation of conclusion. The reasons to believe must be founded on sufficient material and it is not on basis of suspicion, but on basis of some evidence.

Other Developments

Former Cognizant President Gordon Coburn and former Chief Legal Officer Steven Schwartz have been charged with violating the US Foreign Corrupt Practices Act (FCPA) over an alleged bribe of \$2.5 million paid to government officials in Chennai for construction of Cognizant's campus.

In September, the Albemarle Corporation agreed to pay more than \$ 218,000,000 (US Dollars two hundred and eighteen million) to resolve investigations by the United States Department of Justice and SEC. Albemarle, admitted to engaging in paying bribes to government officials in Vietnam, Indonesia, and India between 2009 and 2017 aimed to secure and maintain chemical catalyst contracts with state-owned oil refineries.

⁴ 2023 SCC OnLine SC 1200

⁵ 2023 SCC OnLine SC 1244

⁶ (2023) 3 HCC (Del 242)

Anti-Corruption, White Collar Crimes & Investigations Practice

JSA has a well-established and extensive White-Collar Crimes and Investigations practice which assists domestic and multinational corporates with internal investigations and fact-finding exercises 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 assistance and advice, from internal governance concerns to litigation, supported by trainings on white-collar crime laws and internal frameworks including internal policies and controls for senior executives, employees, and appropriate third parties.

Our experienced white-collar teams undertake complex risk assessments and anti-corruption compliance diligences as part of M&A and PE transactions, vetting target entities for compliance with white-collar crime laws and best practices. We have extensive experience in investigating internal issues arising out of misconduct, fraud, corruption, money laundering and other such matters with implications under various Indian laws. We have an in-depth understanding of the legal framework as well as the real-life nuances of operating a business in a high-risk jurisdiction, which we leverage to our clients' benefit while assisting on diverse matters. We specialise in investigations which include compliance investigations arising out of FCPA and UKBA matters in India, whistle blower complaints, HR / employee misconduct and breach of company policies.

Our white-collar crimes litigation team routinely represent clients from across industries and sectors in different fora including all courts, tribunals and judicial bodies in India, along with arbitrations and other forms of dispute resolution.

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<p>17 Practices and 24 Ranked Lawyers</p>	<p>16 Practices and 11 Ranked Lawyers</p>	<p>19 Practices and 19 Ranked Lawyers</p>
		
<p>11 Practices and 39 Ranked Partners IFLR1000 APAC Rankings 2022</p> <p>-----</p> <p>Banking & Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p> <p>Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices</p> <p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>10 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Banking & Financial Services Law Firm of the Year 2022</p> <p>-----</p> <p>Dispute Resolution Law Firm of the Year 2022</p> <p>-----</p> <p>Equity Market Deal of the Year (Premium) 2022</p> <p>-----</p> <p>Energy Law Firm of the Year 2021</p>
		
<p>7 Practices and 2 Ranked Lawyers</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022</p> <p>-----</p> <p>Top 10 Best Law Firms for Women in 2022</p>	

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