



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



January 2024

This edition of the Anti-Corruption, White Collar Crimes and Investigations newsletter sets out the key developments in India's enforcement, legislative and judicial landscape for the period October - December 2023.

Introduction

The first three quarters of 2023 have witnessed significant enforcement actions and regulatory developments. In addition to multiple arrests, raids, and investigations undertaken by the Central Bureau of Investigation ("CBI") and the Enforcement Directorate ("ED"), the year has seen several steps taken with respect to key amendments to the Prevention of Money Laundering Act, 2002 ("PMLA"), and the overhaul of the existing Indian criminal law framework. The following newsletter sets out the key trends, enforcements, and developments within the white-collar crime and corporate internal investigations landscape for the last quarter of 2023.

Enforcements Landscape

1. The Delhi Police in October 2023 arrested the founder and editor-in chief of an online news portal 'Newslick' in connection with irregularities in portal's cashbooks, accounts, and the presence of foreign investments for allegedly promoting Chinese propaganda. Foreign investments were alleged to have been received by Newslick from suspicious sources, and a case was also registered by the Economic Offences Wing of the Delhi Police and the ED under the Indian Penal Code, 1860 ("IPC") and the PMLA. Recently, the ED issued summons to a Chinese-based American millionaire Neville Roy Singham in November 2023 requesting him to join investigation in relation to the case.
2. In October 2023, the ED arrested 4 (four) executives of Vivo Mobiles India, including Hari Om Rai, founder of Lava International, in connection with the ongoing money laundering probe. The ED had alleged that proceeds worth INR 62,476 crore (Indian Rupees sixty-two thousand four hundred and seventy six crore) were transferred by the company (through multiple incorporated entities) to China in order to avoid payment of taxes in India. The Ministry of Corporate Affairs as part of its original complaint had alleged that the company and its shareholders used "forged" identification documents and "falsified" addresses at the time of incorporation of the company in December 2014 based upon which the ED had launched its probe.
3. The ED in November 2023 attached assets worth INR 230.4 crore (Indian Rupees two hundred and thirty-point four crore) of the People's group of Bhopal. The actions of the ED were based on allegations of money laundering, misappropriation of funds received through foreign investments in 3 (three) companies of People's group. The probe had further revealed that these funds were subsequently siphoned off by the director of People's group in the form of interest-free loans and deposits owing to which the shareholders had suffered huge losses.

- In December 2023, the CBI undertook raids across the 13 (thirteen) locations in the country and registered an FIR in connection with suspicious IMPS transactions worth approximately INR 820 crore (Indian rupees eight hundred twenty crore) in UCO Bank. Further, as part of the raids CBI recovered electronic evidence such as mobile phones, debit / credit cards, laptops and it was alleged that IMPS transactions from account holders of multiple private banks were directed to the account holders within UCO Bank. UCO Bank had undertaken multiple measures to block the IMPS transactions and was able to successfully recover INR 649 crore (Indian Rupees six hundred and forty-nine crore) of such suspicious payments.

Cybercrimes in India

The CBI, under Operation Chakra-II, searched 76 (seventy-six) locations across the nation in relation to allegations of cyber-fraud. The CBI stated that the searches were conducted as part of intelligence received by the Financial Intelligence Unit of India ("FIU"), and that certain cryptocurrency-based financial frauds were also being investigated as part of the ongoing investigations. Further, as part of the operation, 9 (nine) call centres were searched. Operation Chakra's first phase was undertaken in 2022, as a nationwide mechanism to tackle the organised cyber - enabled financial crimes in India. Chakra-II represents the second leg of the operation, undertaken in the latter half of 2023.

The FIU in December 2023, issued show-cause notices to 9 (nine) offshore cryptocurrency platforms (comprising of Binance, KuCoin, Huobi, Kraken, Gate.io, Bittrex, Bitstamp, MEXC Global and Bitfinex) for operating illegally and failing to comply with the provisions of Section 12 of PMLA. The FIU has also written to the Ministry of Electronics and Information Technology to block the URL of these cryptocurrency exchanges.

As per the official press release by the Ministry of Finance (dated February 6, 2023), ED has attached proceeds of crime worth nearly INR 936 crores (Indian Rupees nine hundred and thirty-six crore) (~USD 113 million (US Dollars one hundred and thirteen million)) related to cryptocurrency, under the PMLA as on January 31, 2023.

Legislative Developments

In August 2023, the central government introduced (a) Bhartiya Nyaya Sanhita Bill, 2023 ("BNS"); (b) Bharatiya Nagarik Suraksha Sanhita, 2023; and (c) the Bharatiya Sakshya Bill, 2023 in the Lok Sabha, to replace the existing Indian Penal Code 1860 ("IPC"), Code of Criminal Procedure 1973 (CrPC), and Indian Evidence Act 1872 (IEA), respectively. On December 25, 2023, these bills received the President's assent and became the law. However, their effective date of implementation is yet to be notified by the central government.

The BNS retains several parts of the IPC, however, some of the key changes include introduction of organised crime and terrorism offences, increasing penalties for certain existing offences, and introducing community service as a punishment for certain petty offences.

Judicial Discourse

The Supreme Court of India ("Supreme Court") in *Pavana Dibbur v. The Directorate of Enforcement*¹ held that Section 120 - B of IPC (criminal conspiracy) is per se not a scheduled offence under the PMLA. An offence under 120B will become a scheduled offence only if the alleged conspiracy is for committing a scheduled offence. Further, a person against whom a complaint under Section 3 of PMLA is filed need not be shown as an accused in the scheduled offence.

The Supreme Court in *Pankaj Bansal v. Union of India & Ors.*², while interpreting Section 19 of the PMLA, held that arrested person has a constitutional and statutory right to be 'informed' of the grounds of arrest, which are

¹ 2023 SCC OnLine SC 1586

² 2023 SCC OnLine SC 1244

compulsorily recorded in writing by the authorized officer. Compliance under Section 19 of the PMLA is essential to protect the fundamental rights of the accused under Article 22(1) of the Constitution of India. Moreover, this also ensures that the accused has a reasonable opportunity to meet the twin conditions for grant of bail. The Courts are duty bound to ensure compliance under Section 19 of the PMLA and non-compliance would vitiate the arrest.

The Supreme Court in ***Ram Kishor Arora v. Directorate of Enforcement***³, while elaborating further on the case of Pankaj Bansal (*ibid*), the Supreme Court has dealt with Section 19 of the PMLA and held that:

1. the expression “as soon as may be” contained in Section 19 of the PMLA is required to be construed as - “as early as possible without avoidable delay” or “within reasonably convenient” or “reasonably requisite” period of time.
2. a duty is cast upon the concerned officer to forward a copy of the order along with the material in his possession to the adjudicating authority immediately after the arrest of the person, and to take the person arrested to the concerned court within 24 (twenty-four) hours of the arrest.
3. as such the reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be within the requisite period of 24 (twenty-four) hours from arrest.
4. the action of informing the person arrested about the grounds of his arrest is a sufficient compliance of Section 19 of the PMLA as also Article 22(1) of the Constitution of India.

The Supreme Court in ***Initiative for Inclusion Foundation & Anr. v. Union of India & Ors***⁴, issued directions to the union government and all state government (including union territories (“UT”)) for the effective implementation of the provisions envisaged under the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”) and rules made thereunder (“**Rules**”):

1. The union government has been directed to consider amending the Rules for the purposes of operationalizing Section 26 of the POSH Act i.e., appointment of a reporting authority and/or fine collection authority.
2. The union government has also been directed to consider amendments to the Rules to identify one department and create a nodal post within such department which would be responsible for coordination and implementation of the POSH Act, ensuring uniformity across the country.
3. The Woman and Child Development Ministry has directed every State and UT to consider identification of a ‘nodal person’ within the department to oversee and coordinate the implementation of the legislation contemplated under the POSH Act.
4. The principal secretary of each State and UT is directed to ensure the appointment of a district officer in each district in compliance with Section 5 of the POSH Act within 4 (four) weeks.
5. The district officers so appointed have been directed to thereafter appoint nodal officers (in each block, taluka and tehsil in rural/tribal area and ward or municipality in urban areas) and constitute a local committee (“**LC**”) under Section 6 and 7 of the POSH Act.
6. The district officer must identify the non-governmental organizations working with women in the district and take actions to create awareness.
7. Annual compliance reports under Section 21 and Section 22 of the POSH Act must be prepared and submitted to the relevant State.
8. The district officers and LCs have been directed to be trained regarding their responsibilities including sensitization to the nature of sexual harassment, gendered interactions that occur in the workplace etc. Further, the state governments have been directed to organize periodic and regular training sessions at the district level.

³ 2023 SCC OnLine SC 1682

⁴ 2023 INSC 927

The Punjab and Haryana High Court in the case of *Pranav Gupta v. Union of India*⁵ held that notwithstanding whether a formal arrest is made, ED officials are duty bound to inform the grounds of arrest to the accused on the day upon which the accused is unlawfully restrained. The court further stated that not communicating the grounds of arrest to the accused, even in the absence of a formal arrest, would be in violation of Section 19 of the PMLA. The court made these observations with regards to the 2 (two) writ petitions filed by Pranav Gupta and Vineet Gupta, directors of a pharmaceutical company and the founders of Ashoka University. The petitioners argued that as they had been unlawfully restrained with a formal arrest memo only being drawn the next day, such arrest fell in violation of Section 19 of the PMLA.

International Developments

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.

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.

⁵ 2023 SCC OnLine P&H 3598

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<p>18 Practices and 25 Ranked Lawyers</p>	<p>13 Practices and 38 Ranked Lawyers</p>	<p>19 Practices and 19 Ranked Lawyers</p>
		
<p>12 Practices and 42 Ranked Partners IFLR1000 APAC Rankings 2023</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>12 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Innovative Technologies Law Firm of the Year 2023</p> <p>-----</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>-----</p> <p>Employer of Choice 2021</p>

		
7 Practices and 2 Ranked Lawyers	Ranked #1 The Vahura Best Law Firms to Work Report, 2022 ----- Top 10 Best Law Firms for Women in 2022	

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