



## **JSA Newsletter**

### **Anti-Corruption, White Collar Crimes & Investigations Practice**



October 2024

The third quarter of 2024 has witnessed significant enforcement actions and judicial developments. In addition to multiple arrests, raids, and investigations undertaken by the Central Bureau of Investigation (“CBI”) and the Enforcement Directorate (“ED”), this quarter also witnessed some notable judicial developments surrounding the white collar crimes. The following newsletter sets out the key trends, enforcements, and developments within the white-collar crime and corporate internal investigations landscape for the third quarter of 2024 i.e., (July – September 2024).

### **Enforcements Landscape**

#### **ED attaches IPS officer's husband's assets in INR 263,00,00,000 (Indian Rupees two hundred and sixty-three crore) fraud case**

A senior IPS officer's Mumbai flat and other assets were attached by the ED on July 13, 2024, in relation to INR 263,00,00,000 (Indian Rupees two hundred and sixty-three crore) income tax refund fraud case in Mumbai. The action was taken by ED as it was investigating a case under the provisions the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988.

#### **ED attaches assets worth INR 29,00,00,000 (Indian Rupees twenty-nine crore) in ponzi scheme running Pearlvine International**

In August 2024, ED reportedly attached assets worth more than INR 29,00,00,000 (Indian Rupee twenty-nine crore) as part of its investigation under the Prevention of Money Laundering Act, 2002 (“PMLA”) based on a First Information Report (“FIR”) registered by Meghalaya police, against Pearlvine International on allegations of operating a ponzi scheme across India. As per media sources, Pearlvine International was an unrecognised entity that claimed itself to be US-based and provided several lucrative investment options. It collected a minimum of INR 2,250 (Indian Rupees two thousand two hundred and fifty) as membership fees and ran a ponzi scheme in India during the period 2018 till March 2023.

#### **National Financial Reporting Authority fines audit firm for deficiency/audit lapses**

An auditing firm (along with its auditors) were found guilty of professional misconduct by the National Financial Reporting Authority (“NFRA”), which resulted in significant fines for the firm and the individuals implicated. As per media sources, NFRA has fined the firm INR 10,00,00,000 crore and barred 2 (two) auditors for serious audit failures, citing major lapses and fraudulent fund transfers. A record penalty of INR 10,00,00,000 (Indian Rupees ten crore) (about USD 1,190,000 (US Dollars one million one hundred and ninety thousand) was levied, the highest ever so far.

## Cybercrimes in India

### Cyber frauds cost India Rs 177,00,00,000 (Indian Rupees one hundred and seventy-seven crore) in FY24

India has seen a sharp increase in the financial losses resulting from cyber fraud, from INR 69,68,00,000 (Indian Rupees sixty-nine crore sixty-eight lakh) in FY23 to INR 177,05,00,000 (Indian Rupees one hundred and seventy-seven crore five lakh) in FY 24. Minister of State for Finance, Pankaj Chaudhary said in a written reply to the Lok Sabha (dated August 5, 2024) that during the fiscal year 2023-24, fraud using credit and debit cards as well as online banking resulted in losses of INR 177,00,00,000 (Indian Rupees one hundred and seventy-seven crore). Further, the extent of loss due to frauds reported by banks in FY 22 was INR 80,33,00,000 (Indian Rupees eighty crore thirty-three lakh), in FY21 was INR 50,10,00,000 (Indian Rupees fifty crore ten lakh) and in FY20 was INR 44,22,00,000 (Indian Rupees forty four crore twenty-two lakh).<sup>1</sup>

### CBI busts Gurugram call centre and arrests 43 (forty-three) suspected cyber criminals

On July 26, 2024, the CBI raided a call center in Gurugram and arrested 43 (forty-three) individuals for defrauding foreign nationals by posing as tech support. As part of Operation CHAKRA-III, CBI filed charges against Innocent Technology (OPC) Private Limited and searched its DLF Cyber City office. Launched in 2022, the operation targets global financial crime networks operating through cyberspace. During the raid, CBI seized 130 (one hundred and thirty) hard drives, 65 (sixty-five) cell phones, 5 (five) laptops, bank transaction records, call recordings, victim details, and transcripts used for identifying victims, uncovering the cybercrimes orchestrated from the call center.

### WazirX cryptocurrency platform hacked

In July 2024, Wazir X cryptocurrency exchange suffered a security breach resulting in the theft of over USD 230,000,000 (US Dollars two hundred and thirty million) in cryptocurrency. The attackers exploited a vulnerability in the exchange's multi-signature wallet system. As per media sources, a North Korean cybercrime group was behind the attack, using the proceeds to finance illegal operations.

## Legislative/Regulatory Developments

### Jan Vishwas (Amendment of Provisions Act) comes into effect

The Jan Vishwas (Amendment of Provisions) Act, 2023 has brought certain minor amendments to the schedule of offences (predicate offences) listed out under the Schedule to the PMLA. The primary aim of the amendment is to decriminalise and remove certain offenses in order to reduce the compliance burden on individuals and businesses with the objective of ease of doing business.

In nutshell, the amendment has brought into force a total of 4 (four) amendments (including deletions/omissions) to the existing schedule under PMLA. The changes have been brought in relation to the following offences:

- offences under the Trade Marks Act, 1999 (paragraph 21 of the Schedule under the PMLA) – omitted reference to penalty for falsely representing a trade mark as registered;
- offences under the Information Technology Act, 2000 (paragraph 22 of the Schedule under the PMLA) - omitted reference to penalty for breach of confidentiality and privacy;
- deletion of offences under the Environment Protection Act, 1986 in entirety (paragraph 25 of the Schedule under the PMLA); and

<sup>1</sup> Available at: [https://sansad.in/getFile/loksabhaquestions/annex/182/AU2082\\_3chrQm.pdf?source=pqals](https://sansad.in/getFile/loksabhaquestions/annex/182/AU2082_3chrQm.pdf?source=pqals) (last accessed on October 10, 2024)

- deletion of Offences under the Air (Prevention and Control of Pollution) Act, 1981 in entirety (paragraph 27 of the Schedule under the PMLA).

The Central Government by way of the gazette order have now notified and brought into force these amendments with effect from August 13, 2024.

## Judicial Discourse

- The Supreme Court of India (“**Supreme Court**”) in *Kalvakuntla Kavitha vs. ED*<sup>2</sup> granted bail to an accused in the case of the ED relating to the Delhi Excise Policy Scam, setting aside an order of the Delhi High Court (“**Delhi HC**”).<sup>3</sup> The Supreme Court held that since proviso to Section 45(1) of the PMLA specifically provides for special treatment for a certain category of accused, namely women, hence, while denying such a benefit, the court will be required to give specific reasons for denial of such benefit. It further set aside the interpretation of the Delhi HC that such proviso was only applicable to ‘vulnerable women’. The Supreme Court reiterated the principle that prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.
- The Supreme Court in *Frank Vitus vs. Narcotics Control Bureau*<sup>4</sup> granted bail to an accused in a case registered under the Narcotic Drugs and Psychotropic Substances Act, 1985 (“**NDPS**”), holding that imposition of any bail condition which enables the police/investigating agency to track every movement of the accused by using any technology or otherwise would violate the fundamental right to privacy of the accused guaranteed under Article 21 of the Constitution of India. The bail condition of the accused having to drop a pin on Google Maps was set aside as illegal, and upon hearing Google LLC on technical aspects, such condition was also found to be redundant. The Supreme Court further set aside a bail condition that required the accused (a foreigner) to produce a certificate from the concerned embassy/high commission assuring that the accused will not leave the country and will appear before the trial court. The Supreme Court held that grant of such a certificate is beyond the control of the accused, who should not be denied bail if otherwise entitled, nor can a bail condition be imposed which is impossible for the accused to comply with.
- The Supreme Court in *Nikhil vs. State of Maharashtra*<sup>5</sup> held that for suspending a sentence of an accused pending appeal, courts cannot impose a condition of depositing 50% of the compensation imposed under Section 357 of the Code of Criminal Procedure, 1973 (“**CrPC**”). The compensation had been directed to be paid after such accused was found guilty of criminal breach of trust.
- Various High Courts have held that any fresh proceedings after July 1, 2024 would have to be filed/instituted under the Bharatiya Nagarik Suraksha Sanhita, 2023 (“**BNSS**”) and not the repealed CrPC, in view of Section 531 of BNSS. Only proceedings under the CrPC which were ‘pending’ or ongoing as on July 1, 2024, would continue under the CrPC. In particular, it has been clarified that:
  - even if an FIR was registered under the CrPC prior to July 1, 2024, the petition for quashing of such FIR, if filed after July 1, 2024, must be filed under the BNSS (Punjab & Haryana High Court<sup>6</sup>, Delhi HC,<sup>7</sup> etc.);
  - if an FIR was registered under the CrPC prior to July 1, 2024, then the investigation and trial will be conducted as per the CrPC (Rajasthan High Court<sup>8</sup>);
  - even if an application seeking anticipatory bail under the CrPC has been disposed of, if the subsequent application for anticipatory bail is filed after July 1, 2024, such subsequent application will be filed under the BNSS, and not the CrPC. Further, even though Section 482 of the BNSS no longer provides for an ‘interim order’

<sup>2</sup> 2024 SCC OnLine SC 2269

<sup>3</sup> *Kalvakuntla Kavitha vs. CBI*, 2024 SCC OnLine Del 4459

<sup>4</sup> (2024) 8 SCC 415

<sup>5</sup> SLP(Crl.) No. 10302/2023 decided on July 11, 2024

<sup>6</sup> *Abhishek Jain vs. State (U.T. of Chandigarh)*, 2024 SCC OnLine P&H 9874

<sup>7</sup> *Prince vs. State (NCT of Delhi)*, 2024 SCC OnLine Del 4909

<sup>8</sup> *Krishan Joshi vs. State of Rajasthan*, 2024 SCC OnLine Raj 2042

of anticipatory bail as Section 438 of the CrPC used to, the power to grant such interim relief is inherent in the High Court and Sessions courts (Bombay High Court<sup>9</sup>).

- The Supreme Court in ***Dhanraj Aswani vs. Amar S. Mulchandani and Anr***<sup>10</sup> held that when an accused is in custody in relation to one offence, his arrest or custody may still be sought subsequently for another offence, and therefore, the accused had the right to seek anticipatory bail for such apprehension of subsequent arrest. The clarification is important since multiple investigating agencies seek arrest, custody and interrogation in cases involving the PMLA and other scheduled offences.
- The Supreme Court in ***Abhishek Banerjee and Anr. vs. Directorate of Enforcement***<sup>11</sup> held that summons under Section 50 of the PMLA would not be bound by the procedure and limitations provided for summons under Section 160 of the CrPC, since the PMLA was overriding legislation and Section 160 of the CrPC was inconsistent with Section 50 of the PMLA in several ways.
- The Supreme Court in ***Prem Prakash vs. Union of India through ED***<sup>12</sup> held that even though a statement made by an accused under Section 50 of the PMLA while in the custody of ED officers is admissible in evidence, an incriminating statement made by such accused in relation to a different ED case would be inadmissible. The court reasoned that it cannot be ruled out that such an accused was in an environment of coercion. The bench also applied Section 25 of the Indian Evidence Act, 1872, which bars confessions made to police officers from being read in evidence against the accused, in the limited manner permitted by the court's judgment in *Vijay Madanlal Choudhary and Ors. vs. Union of India and Ors*<sup>13</sup>.
- The Supreme Court in ***V. Senthil Balaji vs. the Deputy Director, ED***<sup>14</sup> has held that stringent twin conditions for bail in statutes such as the PMLA, the NDPS Act and the Unlawful Activities (Prevention) Act, 1967 are inconsistent with inordinate delay in conclusion of the trial. While granting bail to Balaji in the PMLA case, the court observed that the trials for both the scheduled offence and the offence under PMLA could not possibly conclude in a reasonable time.
- The Karnataka High Court in ***Tavaragi Rajashekhar Shiva Prasad vs. State of Karnataka***<sup>15</sup> has held that when the police issue a notice summoning a person to appear (under Section 41-A of the CrPC or Section 35 of the BNSS), it is necessary for such notice to state the crime number, offence alleged, purpose of summoning and such notice should be accompanied by a copy of the FIR. Failing this requirement, the summoned person is not obliged to appear, and no coercive action can be taken for such non-appearance.
- The Allahabad High Court in ***Parthas Textiles vs. State of U.P.***<sup>16</sup> held that when a firm is accused of a criminal offence and its partner is not implicated as an accused, then under Section 63 of the CrPC, summons to such accused firm cannot be executed by way of service to such partner. However, under the expanded provision for summons in Section 65 of the BNSS, such service was valid.
- The Delhi HC in ***Adnan Nisar vs. ED***<sup>17</sup> has held that if an offence committed in a foreign state corresponds to any scheduled offence of the PMLA, and the proceeds of such crime committed in the foreign state have travelled to India, then such offence can be considered a predicate offence, and action initiated under the PMLA. Such action may include arrest, investigation and filing of complaint before the Special Court by the ED, even if the request received from the foreign state under the mutual legal assistance treaty ("MLAT") is only to obtain evidence.

<sup>9</sup> *Chowgule & Co. (P) Ltd. vs. State of Goa*, 2024 SCC OnLine Bom 2501

<sup>10</sup> Criminal Appeal No. 2501/2024 decided on September 9, 2024

<sup>11</sup> Criminal Appeal No. 2221-2222 of 2023 decided on September 9, 2024

<sup>12</sup> SLP (Crl.) No. 5416/2024 decided on August 28, 2024

<sup>13</sup> 2022 SCC OnLine SC 929

<sup>14</sup> Criminal Appeal No. 4011 of 2024 decided on September 26, 2024

<sup>15</sup> 2024 SCC OnLine Kar 67

<sup>16</sup> 2024 SCC OnLine All 4585

<sup>17</sup> Bail Application No. 3056/2023 decided on September 17, 2024

## International Developments

### Financial Conduct Authority fines auditing firm for failing to report fraud

In August 2024, an auditing firm was fined USD 19,500,000 (US Dollars nineteen million five hundred thousand) by the Financial Conduct Authority (“FCA”) for failing to report suspicions of fraud taking place at investment firm at London Capital and Finance Plc. The fine marks the first time the FCA has penalised an auditing firm.

### U.S. Securities and Exchange Commission charges John Deere for violation under Foreign Corrupt Practices Act violations in bribery scheme

John Deere, agreed to pay nearly USD 10,000,000 (US Dollars ten million) to resolve U.S. Securities and Exchange Commission (“SEC”) charges that it violated the Foreign Corrupt Practices Act (“FCPA”) arising out of a bribes paid by its wholly owned subsidiary in Thailand. The Thai subsidiary had bribed Thai government officials (including the Royal Thai Air Force, the Department of Highways, and the Department of Rural Roads) to win multiple government contracts and bribed employees of a private company to win sales to that company. The improper payments were inaccurately recorded as legitimate expenses in Deere’s books and record and violated recordkeeping and internal accounting controls provisions of the FCPA.

### U.S. Department of Justice overhauls its corporate compliance guidance

In September 2024 the U.S. Department of Justice (“DOJ”) updated its Evaluation of Corporate Compliance Programs (“ECCP”). The update aims to provide a clearer framework for companies to ensure their compliance programs are robust and aligned with DOJ expectations. Some of the key highlights/areas of focus include:

- **Risks associated emerging technology:** ECCP now includes criteria for evaluating how companies manage risks related to new technologies, such as artificial intelligence (AI). This includes assessing the impact of these technologies on compliance and implementing policies to mitigate associated risks.
- **Protecting Whistleblowers:** The update emphasises the importance of promoting internal whistleblowing and protecting individuals who report misconduct. Companies are expected to have adequate policies and training to encourage whistleblowing and prevent retaliation. Prosecutors will now assess whether companies engage in practices that discourage whistleblowers or fail to train employees on reporting and whistleblower laws.
- **Access to data for compliance functions:** The DOJ stresses that effective compliance programs must be well-resourced and have access to necessary data and technology. This includes leveraging data analytics to enhance the efficiency/effectiveness of compliance programs and to proactively monitor risks, ensuring the quality and accuracy of the data involved.
- **Including lessons learned:** Compliance programs should evolve based on lessons learned from both the company’s own experiences and issues faced by other companies in similar industries.
- **Post-transaction compliance integration:** The update highlights the importance of involving compliance functions in mergers and acquisitions, particularly in post-transaction integration.

### Danske Bank pays USD 7,000,000 (US Dollars seven million) to settle Estonia money-laundering with French authorities

Danske Bank cooperated with the French authorities and reached a resolution with the French National Financial Prosecutor to settle the ongoing money laundering investigation by agreeing to pay EUR 6,330,000 (Euro six million three hundred and thirty thousand) (approx. USD 7,000,000 (US Dollars seven million)).



The bank became the subject of several investigations after an internal probe in September 2018 uncovered about EUR 200 billion (Euro two hundred billion) of payments made through its now-shuttered Estonian branch between 2007 to 2014, with many payments appearing suspicious. Subsequently, the French authorities had commenced a formal investigation in 2019. Previously, in December 2022, Danske Bank pled guilty and agreed to a USD 2 billion (US Dollars two billion) fine in a case from the DOJ.

### **SEC charges former executives of tech company 'Kubient' with fraud and lying to auditors**

Earlier this month, the SEC brought accounting fraud charges against the former chief executive officer, chief financial officer ("CFO"), and audit committee chair of Kubient for their roles in a scheme where they made false statements and overstated/misrepresented its revenue (amounting to USD 1,300,000 (US Dollars one million three hundred thousand) in connection with 2 (two) public stock offerings. According to the SEC's complaints, Kubient raised approximately USD 33,000,000 (US Dollars thirty-three million) in the 2 (two) stock offerings using offering materials that touted the misrepresentations. This case serves an important signal to gatekeepers like CFOs and audit committee members that the SEC and the investing public expect responsible behavior when critical issues are brought to their attention.

### **Australia's adequate procedures guidelines comes into force**

In August 2024, Australia's attorney general's department released preliminary guidance on compliance procedures for the newly enacted 'failure to prevent' foreign bribery law, introduced through the Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023. The amendment has now come into effect on September 8, 2024, marking a pivotal shift in Australia's corporate liability landscape.

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