



JSA Newsletter

Anti-Corruption, White Collar Crimes & Investigations Practice



July 2023

This quarterly edition of the Anti-Corruption, White Collar Crimes and Investigations newsletter sets out key developments in India's enforcement, regulatory and judicial landscape. These developments include notable enforcement actions, and relevant details of the recent meeting of the G20 Anti-Corruption Working Group in India. It also delves into significant amendments made to the Prevention of Money Laundering Act 2002 ("**PMLA**") and various judicial decisions shaping the white-collar crimes space, including a judgement expanding the scope of the Prevention of Corruption Act, 1988 ("**PCA**") which will now be taken up by the Supreme Court for review.

Regulatory Developments

The PMLA underwent key amendments over the first half of 2023. On May 3, 2023, the Ministry of Finance *via* a notification broadened the scope of the term "*Reporting Entity*" under the PMLA to include certain corporate professionals, namely chartered accountants, company secretaries and cost and works accountants, when such professionals are undertaking certain financial transactions on behalf of their clients, including transactions of immovable property, managing securities and assets, and operating and managing companies. On May 9, 2023, in another such notification, the central government notified additional activities that would bring any individual performing them under the ambit of the PMLA as Reporting Entities. These activities include acting as a formation agent or acting / arranging for a director / secretary / partner, trustee or a nominee shareholder. It also includes providing a registered office, business address or accommodation, correspondence, or administrative address, with some limited exceptions.

This development places greater obligations and liabilities upon such professionals, including more stringent norms for identity verification, due diligence, and the maintenance of detailed records over the course of transactions. There is also an obligation to report certain spurious or fraudulent transactions that result in money laundering.

In March 2023, the Prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2023 were issued by the Ministry of Finance, which made certain key changes including introducing the definition of the term "group" to include entities belonging to a multinational enterprise group or a group required to prepare consolidated financial statements under any law or regulation, in-line with the existing definition under the Income Tax Act, 1961, as well as introducing a definition for the term "Politically Exposed Persons". The threshold of beneficial ownership for the purposes of the PMLA has been amended to mean ownership of 10% or more shares, capital, or profits of the entity in question, down from the earlier threshold of 25%.

Every banking company or financial institution or intermediary, as the case may be, is now required to register the details of a client, in case of client being a non-profit organisation, on the DARPAN Portal of NITI Aayog, if not already registered, and maintain such registration records for a period of 5 (five) years after the business relationship between a client and a reporting entity has ended or the account has been closed, whichever is later. Further, entities dealing in virtual digital assets (VDAs) such as crypto currencies are also considered Reporting Entities under the PMLA now.

In another salient regulatory development, the G20 Anti-Corruption Working Group held its second meeting in India in May 2023, with Italy as a co-chair. The Group's overarching objective is to foster international economic cooperation, of which anti-corruption is a focal aspect. With attendance by delegations from across the world, the Working Group's second meeting centred its efforts upon goals such as asset recovery, fugitive economic offenders, and institutional efforts to fight against corruption. A third meeting is scheduled to be held in August 2023.

Enforcement Landscape

The Enforcement Directorate ("ED") in May 2023 arrested a Jharkhand-based IAS officer for land fraud. During a 2 (two) year term as Deputy Commissioner of Ranchi, Chhavi Ranjan facilitated the purchase and sale of land illegally, including of land belonging to the Indian Armed Forces through the use of forged papers. At the time of his arrest, Ranjan served as a Director of Social Welfare.

The ED, during an investigation into the IREO Group and the M3M Group made arrests alleging evidence of bribes paid by the promoters and senior executives of both companies to a Haryana judicial officer. The ED arrested a promoter of the M3M real estate group, along with his son in connection with the bribes. The judicial officer in question served as a Central Bureau of Investigation ("CBI") and ED judge in Panchkula, and allegedly accepted bribes in exchange for favourable outcomes. The ED also previously made arrests following an investigation into similar allegations of corruption and money laundering by the IREO Group.

Notable Enforcement Actions:

1. In June 2023, the ED raided 14 (fourteen) premises in Mumbai and surrounding areas in connection with an alleged scam in the Brihanmumbai Municipal Corporation's Jumbo Covid Care Facility Centres.
2. The ED in May 2023 arrested Satyendra Jain, former health minister of Delhi, over charges of laundering money through the mechanism of 4 (four) shell companies. The alleged money laundering took place over the course of his duty as a public servant.
3. In June 2023, the ED arrested Senthil Balaji, former Electricity Minister of Tamil Nadu, in an alleged 'cash-for-jobs' scam that took place over the pendency of his duty as Transport Minister.
4. In June 2023, a CBI court in Hyderabad sentenced two former Bank of India employees to 5 (five) years of rigorous imprisonment along with a fine in a bank fraud case. The two employees had helped facilitate housing loans on the basis of false documentation and without conducting adequate verifications. The loans were then utilized for purposes other than their stated use, prompting the CBI to conduct an investigation and arrest the involved parties.

Judicial Developments

5. A 3 (three) judge bench of the Supreme Court in *Enforcement Directorate, Government Of India vs. Kapil Wadhawan & Anr*¹. (March 27, 2023) held that the stipulated 60 (sixty)/90 (ninety) days remand period under Section 167 of the Code of Criminal Procedure, 1973² ("CrPC") ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period will extend beyond the permitted 60(sixty)/90 (ninety) days' period, resulting in unauthorized detention beyond the period envisaged under Section 167 of the CrPC. Therefore, the moment the stipulated period of 60(sixty)/90 (ninety) days remand expires, the accused accrues an indefeasible right to default bail.
6. The Jharkhand High Court in *Sanjay Kumar Agarwal vs. Central Bureau of Investigation*³ held that Resolution Professional will be considered a public servant under the PCA. The accused allegedly demanded bribes from the

¹ Criminal Appeal Nos. 701 – 702 of 2020.

² Section 167 – Procedure when investigation cannot be completed in 24 (twenty four) hours.

³ Cr. M.P. No. 1048 of 2021

corporate debtors for showing leniency in the insolvency resolution process and for obtaining favourable forensic audit/valuation reports. The court held that the office of the resolution professional entails performance of functions that are in the nature of public duty and therefore will come within the meaning of public servant both under sections 2 (c) (v) & (viii) of the PCA. In June 2023, the Supreme Court issued notice in a special leave petition challenging the judgement which contends that the resolution professional neither performs a 'public duty' nor holds an office by virtue of which he is authorised/required to perform a public duty.

7. The Supreme Court in *Anoop Bartaria & Etc. v. Dy. Director of Enforcement Directorate & Anr.*⁴ (April 21, 2023), held that the knowledge of an accused that he was dealing with the proceeds of crime would not be required to be proven by the prosecution in order to lodge a complaint under the PMLA. It further held that all offences under the PMLA are cognizable and non-bailable offences, notwithstanding any provision to the contrary contained in the CrPC. The officers authorized under the PMLA are empowered to arrest an accused without any warrant, subject to fulfilment of the conditions under Section 19 of the PMLA⁵.
8. The Supreme Court in *Directorate of Enforcement v. Aditya Tripathi*⁶ (May 12, 2023) held that an investigation by the ED into scheduled offences under the Prevention of Money Laundering (Amendment) Act, 2005, is distinct from an investigation conducted with respect to a predicated offence by the CBI. Merely because the chargesheet has been filed as a predicated offence, it cannot serve as grounds to release the accused on bail in connection with scheduled offences under the PMLA. It further held that when an enquiry/investigation is underway for money-laundering related offences, the rigours of Section 45 of the PMLA⁷ must be considered.
9. The Supreme Court in *Y. Balaji v. Karthik Desari*⁸ (May 16, 2023), compared the offence of corruption and the generation of the proceeds of crime to 'Siamese twins' and held that mere registration of a First Information Report for a predicate offense, along with the generation of proceeds of crime, is sufficient to bring about money laundering charges. It further rejected the plea to refer the *Vijay Madanlal Choudhary*⁹ judgment to a larger bench, as any such reference would bring the pending investigations in money laundering cases to a grinding halt. In the *Vijay Madanlal* judgement, the Supreme Court clubbed a batch of special leave petitions, writ petitions, and upheld the constitutional validity of the PMLA and powers of the ED.

Conclusion

While enforcement actions continue to hold steady, the regulatory wing of the government has been active in amending laws, particularly the PMLA to crack down on financial crimes and introduce more accountability to the system. Whether bringing in individuals providing professional services into the ambit of the PMLA will be an effective manner of doing so remains to be seen. Parallely, various judicial developments have expanded written law through interpretive jurisprudence, the impact of which will continue to shape the landscape of white-collar law enforcement in the years to come.

⁴ 2023 SCC Online SC 477.

⁵ Section 19 – Power to arrest.

⁶ Criminal Appeal Nos. 1401 – 1402 of 2023.

⁷ Section 45 – Offences to be cognizable and non-bailable.

Section 45 of the PMLA prescribes twin conditions for grant of bail to the accused – *first*, the Public Prosecutor is given an opportunity to oppose the application for bail; and *second*, where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds to believe that the accused is not guilty of the offence and is not likely to commit any offence while on bail.

⁸ 2023 SCC OnLine SC 645.

⁹ *Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929.

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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17 Practices and
24 Ranked Lawyers



16 Practices and
11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



11 Practices and
39 Ranked Partners
**IFLR1000 APAC
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Banking & Finance Team
of the Year

Fintech Team of the Year

Restructuring & Insolvency
Team of the Year



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9 Ranked Practices

11 winning Deals in
IBLJ Deals of the Year

10 A List Lawyers in
IBLJ Top 100 Lawyer List



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Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

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