



JSA Newsletter

Anti-Corruption, White Collar Crimes & Investigations Practice



July 2024

The second 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 with respect to the Prevention of Money Laundering Act, 2002 (“PMLA”).

The following newsletter sets out the key trends, enforcements, and developments within the anti-corruption, white-collar crime and corporate internal investigations landscape for the second quarter of 2024 i.e., (April – June 2024).

Enforcements Landscape

ED conducts search operations in online forex trading case

The ED in April 2024, conducted searches across Mumbai, Chennai, Kolkata, and Delhi as part of an ongoing investigation under the provisions of the PMLA involving the OctaFx Trading App and website (“OctaFx”), allegedly accused of defrauding investors to the tune of INR 500,00,000 (Indian Rupees five hundred crore). As per publicly available sources, the ED froze INR 2,70,00,000 (Indian Rupees two crore seventy lakh) in funds and seized documents and digital devices related to the international forex scam involving brokers and traders. Total confiscations and seizures of assets amounting to INR 35,00,00,000 (Indian Rupees thirty five crore), including cryptocurrencies, bank funds, and gold coins, have been reported so far. The probe was initiated pursuant to the First Information Report (“FIR”) filed at Shivaji Nagar Police Station, Pune, alleging that OctaFx manipulated trade activities on its platform, causing losses to investors. The illegal forex operations are alleged to have been conducted without approval of the Reserve Bank of India and the funds were managed and diverted to shell companies associated with OctaFx entities in Spain, Russia, Georgia, and Dubai.

CBI arrests the assistant director of Food Safety and Standards Authority of India in bribery case

The CBI in May 2024 had reportedly arrested an Assistant Director (“AD”) of Food Safety and Standards Authority of India (“FSSAI”) and 3(three) private sector employees for demanding and accepting bribes amounting to INR 1,20,000 (Indian Rupees one lakh twenty thousand) for the purpose of clearing pending bills of a private company. A case was registered by CBI under the Prevention of Corruption Act, 1988 (“PC Act”) against the AD, FSSAI, who was involved in illegal and corrupt practices of demanding and accepting bribes for dishonest discharge of public duty in his capacity as a public servant. As per publicly available sources, searches were conducted at the office and residential premises of the accused which led to the recovery of INR 1,80,00,000 (Indian Rupees one crore eighty lakh) (approx.) cash, about 45 (forty-five) grams of gold and other incriminating documents. The arrested individuals have been remanded to police custody as the investigation continues.

CBI files final chargesheet in 'Land-For-Job-Scam'

In June 2024, CBI had filed the final charge-sheet in connection with 'Land-For-Job Scam' allegedly involving former Union Minister of Railways, Lalu Prasad. A total of 78 (seventy-eight) accused individuals (comprising of the former Union Railway Minister Lalu Prasad Yadav, his family members, high-ranking public officials and other private individuals) have been charged under the provisions of the Indian Penal Code, 1860 ("**IPC**") and the PC Act.

Jal Jeevan Mission scam

In another significant development related to the alleged Jal Jeevan Mission ("**JJM**") scam, the ED in June 2024 has arrested Public Health and Engineering Department ("**PHED**") contractor - during a raid in Jaipur. The contractor's name was also included in the case registered by Anti-Corruption Bureau, Jaipur. However, he could not be arrested previously as he was absconding for about 9 (nine) months. As per the media reports, this brings the total number of arrests in the case to 3 (three). Previously, the ED had made some arrests of people allegedly involved in securing tenders pertaining to JJM works based on purported fake and fabricated work completion by bribing senior PHED officials.

Former Indian Administrative Service officer arrested in Chhattisgarh liquor scam probe

The ED has uncovered an alleged liquor scam in Chhattisgarh, implicating a former Indian Administrative Service ("**IAS**") officer as the 'kingpin' of the liquor syndicate operating in Chhattisgarh. The investigation revealed that between 2019 and 2022, bribes were paid through the distillers, off-the-books sales of kacha liquor, cartel formation, and commissions from foreign liquor license holders. These corrupt practices led to proceeds estimated at over INR 2,100 crore (Indian Rupees two thousand one hundred crore). As per media sources, ED has asserted evidence of INR 14,41,00,000 (Indian Rupees fourteen crore forty-one lakh) receipts by the former IAS officer. Subsequent to these revelations, the former IAS officer was arrested.

Cybercrimes in India

7 (seven) new cybercrime police stations in Telangana to combat rising cybercrimes

In response to rising cybercrimes, the Telangana government has established exclusive cybercrime police stations ("**CCPS**"), operational from April 2, 2024. These stations will handle cases involving losses of INR 1,00,000 (Indian Rupees one lakh) and above, while smaller cases will be addressed by local police. Each CCPS will be led by a Deputy Superintendent of Police cadre Officer and staffed with sub-inspectors and constables. The Telangana State Cyber Security Bureau will manage high-impact cases involving national security and critical infrastructure, aiming to enhance cybersecurity across the State.

CBI undertakes nationwide search operation against fraudulent app based investment scheme

The CBI in May 2024 undertook nationwide searches ranging across 30 (thirty) locations in 10 (ten) States/Union Territories as part of an ongoing investigation into an app-based fraudulent investment scheme linked to the HPZ Token App. The HPZ is an app-based token which promises users high returns through investment in mining machines for Bitcoin and other crypto currencies. Previously, CBI had registered a case under various provisions of the IPC, and the Information Technology Act, 2000 ("**IT Act**") against 2(two) private companies and their directors.

A surge in cybercrime in India

India is grappling with a significant surge in cybercrime, registering an average of over 7,000 (seven thousand) complaints per day up to May 2024. Major cyber fraudsters targeting India are believed to operate from Southeast Asian countries, including Cambodia, Laos and Myanmar. As per media sources, this marks a continued upward trend, with a 113.7% increase in cybercrime complaints from 2021 to 2022, and 60.9% from 2022 to 2023. Further, between January and April 2024, the Indian Cybercrime Coordination Centre received 4,599 (four thousand five hundred and ninety-nine) digital fraud complaints amounting to INR 1,203.06 crore (Indian Rupees one thousand two hundred and three point zero six crore), alongside trading scams worth INR 14,204.83 crore (Indian Rupees fourteen thousand two hundred and four point eight three crore), investment scams totaling to INR 2,225.82 crore (Indian Rupees two thousand two hundred and twenty-five point eight two crore), and dating scams worth Rs 132,31,00,000 (Indian Rupees one hundred and thirty-two crore thirty-one lakh), resulting in approximately 10,000 (ten thousand) FIRs being filed. Additionally, the World Cyber Crime Index (“WCI”), which highlights the substantial contribution of each nation state to global cybercrime, has placed India in the 10th position. WCI has been developed as a partnership between the University of Oxford and UNSW Canberra which ranks countries based on their contribution to global cybercrime. With Russia placed at the top with the world cybercrime index score of 58.39 (fifty-eight point three nine), followed by Ukraine and China, India ranks 10th with a WCI score of 6.13 (six point one three).

Legislative/Regulatory Developments

Public Examinations (Prevention of Unfair Means) Act, 2024

The Public Examinations (Prevention of Unfair Means) Act, 2024 (“**the Public Examination Act**”), enacted by Parliament in February 2024 was officially implemented on June 21, 2024, following its publication in the Official Gazette. The Public Examination Act seeks to prevent use of unfair means in public examinations and prohibits collusion or conspiracy to facilitate indulgence in any unfair means. This significant development coincides with ongoing concerns over alleged misconduct during examinations such as National Eligibility cum Entrance Test (NEET) and University Grants Commission National Eligibility Test (UGC NET) which thus questions the integrity in public examinations.

Judicial Discourse

1. The Supreme Court of India (“**Supreme Court**”) in *Najmunisha vs. State of Gujarat*¹ has held that search and seizure powers of officers under Section 41(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“**NDPS Act**”) do not violate the fundamental right of an accused against self-incrimination under Article 20(3) of the Constitution of India. The Supreme Court observed that the provision stands regulated by reasonable restrictions within the provision itself.
2. The Supreme Court in *IBBI vs. Satyanarayan Bankatlal Malu*² held that a sessions judge acting as a Special Court under the Companies Act, 2013 has the power to issue process for criminal offences under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) punishable by less than 2 (two) years of imprisonment. The Supreme court rejected the contention of the accused that a Magistrate would be the appropriate court on the reasoning that Section 236 of the IBC had ‘incorporated by legislation’ Section 435 of the Companies Act, 2013 as it stood in 2016, which provision gave sessions judge such jurisdiction.
3. The Supreme Court in *Tarsem Lal vs. Enforcement Directorate*³ has held that the ED is powerless to arrest an accused once the Special PMLA Court has taken cognizance of the ED’s complaint if the ED has not arrested such accused till such taking of cognizance. The Supreme Court also held that if an accused appears before the Special Court pursuant to a summons, he need not apply for bail, since he is not to be treated as if he is in custody. The

¹ 2024 SCC OnLine SC 520

² 2024 SCC OnLine SC 560

³ 2024 SCC OnLine SC 971

court deprecated the practice of Special Courts requiring the accused to seek bail after cognizance has been taken and the accused has appeared upon being summoned by the court.

4. The Supreme Court in ***Prabir Purkayastha vs. State (NCT of Delhi)***⁴ invalidated the arrest of NewsClick editor Mr. Purkayastha on the ground that he was not informed of the grounds of his arrest at the time of arrest or remand. The Supreme Court held that its decision in *Pankaj Bansal vs. Union of India*⁵, which mandated intimation of grounds of arrest to the accused in the context of the PMLA, equally applied to the Unlawful Activities (Prevention) Act, 1967. The Supreme Court further distinguished between ‘reasons for arrest’ and ‘grounds for arrest’, observing that an arrest memo with pre-typed ‘reasons for arrest’ is not *per se* intimation of grounds of arrest. ‘Grounds of arrest’ would be personal to the accused and furnish to him the basic facts which may allow him an opportunity to defend himself or seek bail.
5. The Delhi High Court in ***Arvind Kejriwal vs. Enforcement Directorate***⁶ has held that political parties are within the scope of Section 70 of the PMLA, which makes every person in charge of and responsible to such a party liable for the offence of money laundering. The court reasoned that Section 70 of the PMLA includes an association of individuals such as a political party registered under the Representation of the People Act, 1951. The observation was made while upholding the legality of arrest of Delhi Chief Minister Mr. Kejriwal. The decision is important since it opens up new jurisprudence by extending vicarious liability, a concept known typically in corporate criminal law, to political parties.
6. A Full Bench of the Bombay High Court has held in ***Awadhesh Kumar Parasnath Pathak vs. State of Maharashtra***⁷ that despite the IT Act being special legislation having overriding effect, offences under the IPC may still be attracted if ingredients of the IPC offences are not otherwise covered. In particular, it observed that Sections 43 read with 66 of the IT Act may not cover the ingredient of ‘deceiving’ present only in the offence of cheating under Section 415 of the IPC. Similarly, Section 72 of the IT Act that punishes breach of confidentiality or privacy may not cover the ingredients of securing access dishonestly or for personal gain that are present in the IPC offences of misappropriation and breach of trust.
7. The Karnataka High Court in ***Dhanashree Ravindra Pandit vs. Income Tax Department***⁸ quashed the offence under Section 50 of the Black Money Act, 2015 on the ground that the Act came into force in 2015 and would not retrospectively apply to the offence of non-disclosure of income / assets held outside India that took place prior to 2015.

International Developments

Department of Justice, Criminal Division announces self-disclosure pilot program for individuals

On April 15, 2024, the Department of Justice (“DOJ”), Criminal Division introduced a pilot program on voluntary self-disclosure (“VSD”) for individuals, setting stringent criteria for individuals to qualify for a Non-Prosecution Agreement (“NPA”). To be eligible, individuals must voluntarily report a covered offense, such as violations under the Foreign Corrupt Practices Act (“FCPA”) or the Foreign Extortion Prevention Act (“FEPA”), provide complete and original information previously unknown to the DOJ, repay all proceeds of the offense, and offer full cooperation with the DOJ’s investigation. Additionally, the individual must not be the leader of the misconduct, an executive-level manager, or a domestic government official.

⁴ 2024 SCC OnLine SC 934

⁵ 2023 SCC OnLine SC 1244

⁶ 2024 SCC OnLine Del 2685

⁷ 2024 SCC OnLine Bom 1074

⁸ 2024 SCC OnLine Kar 58

New European Union Regulations to combat money laundering adopted

On April 24, 2024, the European Parliament adopted a comprehensive anti-money laundering legislative package aimed at bolstering the European Union's ("EU") efforts to combat money laundering and terrorist financing. This package includes the establishment of a new central supervisory authority, the Anti-Money Laundering and Terrorist Financing Authority ("AMLA"). Key aspects include extended access to beneficial ownership data, stricter due diligence obligations for entities such as banks, asset managers, and crypto asset service providers, and a new EUR 10,000 (Euro ten thousand) limit on cash payments. Professional football clubs will also be subject to these regulations from 2029. AMLA, based in Frankfurt, will oversee high-risk financial companies and coordinate national supervisory authorities. The formal adoption by EU Council is pending, after which the regulations will be published in the EU official journal.

Australia's attorney general's department publishes draft guidance on newly enacted 'Failure to Prevent' Bribery Law

On April 29, 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 (Combating Foreign Bribery) Bill 2023. Adopted by parliament in February 2024, this law mandates that the government provide guidance on what constitutes 'adequate procedures' to prevent foreign bribery, which companies can use as a defense against charges. The draft guidance covers 6 (six) key areas including proportional and effective bribery-prevention controls, senior management responsibilities, risk assessments, due diligence, communication, training and reporting. It emphasises that the 'adequacy' of a company's procedures will be judged on a case-by-case basis by the courts, rather than being assessed strictly as a checklist.

First declination under new corporate enforcement policy: DOJ demonstrates willingness to reward self-disclosing and cooperative companies in export control violations

On May 22, 2024, **DOJ** made a groundbreaking announcement by declining to prosecute MilliporeSigma, a biochemical company, for an employee's export control violation, due to the company's VSD and cooperation under the new National Security Division Enforcement Policy ("**NSD Policy**"). The case involved 2 (two) individuals, who fraudulently obtained and exported discounted products to China. MilliporeSigma's swift actions led to the guilty pleas of the perpetrators and the disruption of the illegal activities. Deputy Attorney General Lisa Monaco emphasized this case as a clear message that businesses uncovering and reporting internal wrongdoing can avoid prosecution, reinforcing the DOJ's prioritisation of sanctions and export control enforcement. The revised NSD Policy mainly modifies and broadens the DOJ's VSD programs, incorporating extra safeguards specifically for mergers and acquisitions. This marks the first declination under the NSD Policy, which encourages companies to self-disclose, cooperate fully, and remediate promptly, unless aggravating factors exist.

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.

This Newsletter has been prepared by:



Rupinder Malik
Partner









Kumar Kislay
Partner



Vibhor Jain
Senior Associate



Archit Sehgal
Associate

		
<p>18 Practices and 25 Ranked Lawyers</p>	<p>14 Practices and 38 Ranked Lawyers</p>	<p>Recognised in World's 100 best competition practices of 2024</p>
		
<p>19 Practices and 19 Ranked Lawyers</p>	<p>12 Practices and 42 Ranked Partners IFLR1000 APAC Rankings 2023 ----- Banking & Finance Team of the Year ----- Fintech Team of the Year ----- Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 11 Ranked Practices ----- 11 winning Deals in IBLJ Deals of the Year ----- 12 A List Lawyers in IBLJ Top 100 Lawyer List</p>
		
<p>Employer of Choice 2024 ----- Energy and Resources Law Firm of the Year 2024 ----- Litigation Law Firm of the Year 2024 -----</p>	<p>7 Ranked Practices, 16 Ranked Lawyers ----- Elite – Band 1 - Corporate/ M&A Practice ----- 3 Band 1 Practices -----</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022 ----- Top 10 Best Law Firms for Women in 2022</p>
<p>Innovative Technologies Law Firm of the Year 2023 -----</p>	<p>4 Band 1 Lawyers, 1 Eminent Practitioner</p>	
<p>Banking & Financial Services Law Firm of the Year 2022</p>		<p>7 Practices and 3 Ranked Lawyers</p>

For more details, please contact km@jsalaw.com

www.jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This newsletter is not an advertisement or any form of solicitation and should not be construed as such. This newsletter has been prepared for general information purposes only. Nothing in this newsletter constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this newsletter disclaim all and any liability to any person who takes any decision based on this publication.