

**Special points of interest:**

- Operation Clean Money unearths large amounts of unaccounted funds
- CDBT notifies changes to India- Israel tax treaty
- Update on Kingfisher cases
- First conviction under anti-money laundering law recorded
- Update on Cognizant's internal investigation
- Update on Embraer's internal investigation
- Election Commission proposes to make bribery during elections a cognizable offence
- ED arrests director of Hong Kong based firm in connection with allegations of money laundering
- Supreme Court orders attachment of Sahara's Amby Valley project



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## WHITE COLLAR JOURNAL

### Operation Clean Money unearths large amounts of unaccounted funds

The Indian Government has launched a massive drive against undisclosed money. Through this, it has identified around 1.8 million persons and legal entities who deposited amounts of INR 500 thousand (US \$ 7,700) or more in the period between November 9, 2016 and December 30, 2016 and whose income profiles did not match the amounts deposited. In many cases, the Income tax department also sought clarifications regarding the source of the income from the depositors. This follows the November 8 announcement of demonetization of INR 500 and INR 1000 currency notes across the country.

In a related development, the Central Board of Direct Taxes announced the Pradhan Mantri Garib Kalyan Yojana ("PMGKY"), an amnesty scheme under which persons who have failed to pay tax, may come clean by paying 30% of the total undisclosed amount as tax along with 10% of the total sum as penalty and an additional cess of 33% calculated on the tax payable,

all of which amounts to around 49.9% of the undisclosed amount. Additionally, the depositor will be required to deposit 25% of the total sum in a zero-interest scheme for a minimum period of four years.

A Special Investigation Team on Black (unaccounted) Money appointed by the Supreme Court of India has estimated that approximately INR 700 billion (US \$ 10.7 billion) has been brought into the system through various schemes of the government. Additionally, the Government claims that approximately INR 162 billion (US \$ 2.5 billion) in 'black' money has been detected following various investigations of claims made by global data leaks about Indians stashing funds abroad.

In a parallel development, the Lok Sabha, the lower house of the Indian Parliament has approved the Specified Bank Notes (Cessation of Liabilities) Bill that makes holding, transferring or receiving the demonetized INR 500 and INR 1000 currency notes a criminal offence, punishable under law.

### CDBT notifies changes to India- Israel tax treaty

The Central Board of Direct Taxes ("CDBT") has notified certain amendments to the Convention and Protocol between the Government of the Republic of India and the Gov-

ernment of the State of Israel for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on

*(Continued on page 2)*

Capital signed in New Delhi on January 29, 1996. The amendments were made with a number of objectives including checking flow of undisclosed income, in and out of India and will take effect on April 1, 2017.

The amended treaty provides for levy of capital

gains tax on sale of shares or interest in a partnership, trust or other entity in India if it derives more than 50 per cent of the value directly or indirectly from immovable property situated within the country at the time of the sale, any time during preceding 12 months. The treaty also provides for exchange of information between the two countries.

### Update on Kingfisher cases

India has urged the United Kingdom to expedite the process of extraditing Vijay Mallya, the former head of the defunct Kingfisher Airlines Limited (“Kingfisher Airlines”). A formal request was submitted by the Indian Government to the British High Commission in New Delhi in pursuance of the Mutual Legal Assistance Treaty between the two countries. Subsequently, it has been reported that a delegation of diplomats and representatives of the UK Government met officials of India's Foreign Ministry, Home Ministry and investigative agencies to discuss India's request. It is reported that the UK Government has acted by forwarding the request to the Westminster District Court. The UK Government has reportedly sought the arrest of Mr. Mallya and his subsequent extradition to India.

The move came just about a fortnight after the Central Bureau of Investigation filed a charge-sheet against Mr. Mallya in a Mumbai court, accusing him of committing fraud and hatching a criminal conspiracy to secure a loan of around INR 9 billion (approx. US \$ 138 million) against security in the nature of intellectual property rights and a personal guarantee

of Mr. Mallya, despite Kingfisher Airlines having a negative credit rating and being severely cash strapped.

The former liquor baron is also being probed for default in the repayment of loans amounting to INR 90 billion (approx. US \$ 1.38 billion) from a consortium of banks and has failed to cooperate with investigative agencies such as the Enforcement Directorate and the Central Bureau of Investigation. Further, the Minister of State for Finance stated that the loan of INR 80 billion (US \$ 1.23 billion) issued to the industrialist was declared a non-performing asset (NPA) in 2009 and was restructured in 2010.

In a subsequent development, a magisterial court in Mumbai issued a non-bailable arrest warrant and an extradition order against Mr. Mallya in a service tax default case. The Service Tax department had issued a notice to Kingfisher Airlines for dues amounting to INR 875 million (US \$ 13.5 million) that were incurred between 2011 and 2012. The airline collected service tax from its passengers but did not deposit the tax payable with the department.

### First conviction under anti-money laundering law recorded

In the first instance of a money laundering conviction in the country, a special court in Ranchi, Jharkhand has convicted a former Jharkhand Minister to seven years of rigorous imprisonment and a fine of INR 500 thousand (US\$ 7,700) under the provisions of the Prevention of Money Laundering Act, 1988. The accused, who was a former minister, was convicted of laundering funds to the tune of over INR 37 million (US \$ 570 thousand). A number of arrests were made and assets worth millions of rupees have been attached.

In the order of conviction, the Enforcement Directorate stated that in the period between 2005 and

2008, the minister convicted had assisted in laundering illegal income through purchase and acquisition of various assets by misappropriation of public money and using these funds for his personal benefits. Several ministers including those who were part of the cabinet during this period including the Chief Minister are being probed for their alleged involvement.

This is a historic judgement as it becomes the first conviction in the country under the PMLA since it was enacted in 2002, and subsequently implemented in 2005 with the objective of checking undisclosed income and serious financial crimes.

## Update on Cognizant's internal investigation

The US technology giant, Cognizant Technology Solution Corporation ("Cognizant") has been conducting an internal investigation to probe the alleged improper payments relating to its Indian subsidiary which could be in violation of the US Foreign Corrupt Practices Act ("FCPA") and other laws. Earlier, upon discovery of such payments, the company had voluntarily notified the United States Department of Justice and the Securities and Exchange Commission about its internal bribery investigations.

In October, 2016, Cognizant announced that the ongoing internal probe has had identified improper payments of approximately US \$ 5 million relating

to its facilities in India. The company has since announced that the total improper payments are estimated to amount to US \$ 6 million.

In a related development, Cognizant announced that it has incurred an expense of US \$ 27 million on conducting investigations as well as on related lawsuits in 2016. It also stated that based on the results of the investigation to date, certain members of senior management who may have participated in or been aware of the alleged improper payments and failed to take action to prevent such payments were either no longer in a senior managerial position at the company or were no longer employees of company.

## Update on Embraer's internal investigation

The Central Bureau of Investigation ("CBI") has recorded the statement of a non-resident Indian defence consultant and alleged middleman in connection with its probe in the case of payment of alleged commission by the aircraft manufacturer, Embraer to clinch a US \$ 208 million defence procurement deal in India. The CBI is probing the alleged payment of US \$ 5.76 million for facilitating an agreement between Embraer and Defence Research Development Organisation ("DRDO"). As per the defence procurement rules of India, middlemen are strictly barred from participating in defence deals.

The CBI registered a case against DRDO and its unknown officials, a private person, a company based in Singapore and others under provisions of the Prevention of Corruption Act, 1988 relating to the procurement of three modified Embraer aircrafts. Earlier, based on a complaint received from the DRDO, a preliminary enquiry was initiated against Embraer regarding the allegations of the

company having engaged an agent to pay kick-backs to various government officials in order to obtain contracts for the supply of three Embraer aircrafts equipped with indigenous radars for airborne early warning and control systems. During the enquiry, it was found that the Brazilian company had engaged a non-resident Indian based in the United Kingdom to act as a middleman. It was further alleged that as a result of mediation by said middleman, the officials of DRDO moved a proposal for purchase of three aircrafts from the Brazilian company on a single vendor basis.

The United States Department of Justice department had confirmed with CBI that Embraer had paid money in India, South Africa and other countries to obtain defence contracts. Some of the documents the CBI got from the US department clearly showed the money trail, giving a significant push towards identifying the perpetrators involved.

## Election Commission proposes to make bribery during elections a cognizable offence

The Chief Election Commissioner has reportedly written to the Union Home Minister, reiterating the commission's long-time demand to classify electoral bribery a cognizable offence under the Code of Criminal Procedure ("CrPC"). A cognizable offence is one for which the police has the authority

to make an arrest without requiring a warrant. Currently, bribing voters in cash or kind, is a non-cognizable offence under sections 171B and 171E of the Indian Penal Code which attracts imprisonment up to one-year or fine, or both as punishment.

*(Continued on page 4)*

The Election Commission first demanded an amendment to the CrPC in 2012. It is reported that the Ministry of Home Affairs has drawn up a draft amendment Bill in consultation with the Ministry of Law and Justice, but it has not yet been sent for Cabinet approval. Since a number of elections have

been cancelled in India in the past owing to evidence of workers in political parties bribing individuals to cast votes in their favour, such measures may serve as a deterrent to electoral corruption.

### **ED arrests director of Hong Kong based firm in connection with allegations of money laundering**

The Enforcement Directorate arrested a director of a Hong Kong-based firm in connection with its money laundering probe into a diamond firm in Mumbai, involving INR 148 billion (US \$ 2.27 billion) in funds and over 500 alleged shell company accounts. The individual was taken into custody and detained at the agency's office in Mumbai, under the provisions of the Prevention of Money Laundering Act (PMLA).

The agency reportedly found that the individual con

trolled a company named International Rising Limited, incorporated under the laws of Hong Kong by virtue of holding 99.99 per cent of the shares in this company. This case follows the agency's crackdown on a diamond trader based in Mumbai, for allegedly opening bank accounts in the name of fake companies for effecting illegal transactions following demonetization, and subsequently indulging in alleged illegal import of diamonds using a maze of bank accounts and layering.

### **Supreme Court orders attachment of Sahara's Amby Valley project**

The Supreme Court of India has ordered the attachment of the Sahara Group's flagship Amby Valley project. The project, estimated to be worth approximately INR 390 billion (US \$ 6 billion) is located near Lonavala in the State of Maharashtra. This order is pursuant to its long-standing legal battle with the Indian capital market regulator, the Securities Exchange Board of India ("SEBI") over the refund of approximately INR 240 billion (US \$ 3.7 billion) to investors, of which INR 148 billion (US \$ 2.27 billion) is said to be due from Sahara towards the principal.

Earlier, the Supreme Court ordered Sahara to provide a list of properties that could be auctioned to recover the outstanding amount, before February 20, 2017. The erstwhile chairman of the Sahara Group was first arrested in March, 2014, after the group failed to refund deposits to investors and has been in prison since.

Following the Supreme Court's directive, SEBI has put on block several properties to recover the amount. These properties are spread across the country and comprise mostly of land parcels.

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