OCTOBER 2016

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WHITE COLLAR JOURNAL

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AB InBev to pay $6 million to SEC for violating FCPA and whistleblower protection laws

Anheuser-Busch InBev SA ("AB InBev"), the world's largest brewing company has agreed to pay US $ 6 million to settle charges for violation of the US Foreign Corrupt Practices Act ("FCPA") and Dodd-Frank Wall Street Reform and Consumer Protection Act. The investigation by US Securities and Exchange Commission ("SEC") revealed AB InBev's violations of the books and records and internal controls provisions of FCPA, at its Indian wholly owned subsidiary, Crown Beers India Private Limited ("Crown").

The SEC found that AB InBev's Indian joint venture entity, InBev India International Private Limited ("IIIPL") had used third-party sales promoters to make improper payments to Indian government officials to boost sales and production of Crown. IIIPL managed the marketing, distribution and sale of beer brewed by Crown and AB InBev held 49% interest in IIIPL, prior to its dissolution in early 2015. From 2009 to 2012, IIIPL made improper payments to government officials through third-party sales promoters for marketing and selling Crown's beer. IIIPL issued invoices against such improper payments to Crown as reimbursements for marketing costs. Crown, in return, recorded some of these costs in its books as legitimate promotional costs. The SEC also stated that during this period, Crown had inadequate internal accounting controls to detect and prevent the improper payments and IIPL failed to ensure that transactions involving the promoters were recorded properly in its books and records.

Furthermore, in 2010 and 2011, a Crown employee informed AB InBev personnel about IIIPL's alleged use of third-party sales promoters to facilitate improper payments to government officials. However, in 2012, the Crown employee was terminated and AB InBev also entered into a separation agreement with the departing employee, containing language that prohibited the employee from communicating with the SEC about potential security law violations.

The SEC has ordered AB InBev to pay US $ 2,712,955 in disgorgement plus interest of US $ 292,381 and a civil penalty of US $ 3,002,955. Additionally, for a two-year period, AB InBev must cooperate with the SEC and report its FCPA compliance efforts while making reasonable efforts to notify certain former employees that AB InBev does not prohibit employees from contacting the SEC about possible legal violations.

Update on Antrix– Devas deal

The Special Court set up by the Central Bureau of Investigation ("CBI Court") at New Delhi has granted an extension to the Central Bureau of Investigation ("CBI") to obtain appropriate sanctions from the concerned authorities for the prosecution of the former chairman of the Indian Space Research Organisation ("ISRO"), the former executive direc-

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tors of Antrix Corporation ("Antrix") and Devas Multismedia Private Limited ("Devas") as well as other senior officials involved in a corruption case concerning the Antrix- Devas deal. The Antrix- Devas deal was entered into in January, 2005. As per the deal, Antrix, the commercial arm of the ISRO had signed an Agreement with Devas, a private company formed by former ISRO employees and venture capitalists from USA for lease of S-Band transponders on two ISRO satellites (GSAT 6 and GSAT 6A). However, in early 2011, the Agreement was annulled by the Indian Government citing "force majeure" due to which it would not be able to provide the orbit slot in S-Band to Antrix for commercial purposes, in view of strategic requirements.

The CBI had filed a charge sheet in the Antrix- Devas deal alleging that former executives and officials at Antrix and ISRO colluded with executives at Devas and US-based Forge Advisors LLC ("Forge") to defraud the Government, resulting in a loss of INR 5.78 billion (approx. US $ 89 million). The CBI alleged that Devas incorporated an overseas subsidiary in the United States, remitting a substantial portion of the wrongfully-gained funds to this subsidiary, under the guise of salary payments among other things. The CBI had also alleged that a portion of these funds remitted was paid to the public servants at Antrix and ISRO who were involved in the scam. The Enforcement Directorate is also probing certain cross-border financial transactions as well.

Devas, on its part, has approached international courts challenging the cancellation of the Antrix-Devas deal by the Indian government. In this respect, a tribunal of the International Chamber of Commerce ("ICC") in Paris had ruled that the Antrix's annulation of the Antrix- Devas Agreement was unlawful and awarded Devas damages and pre-award interest of approximately US $ 672 million, plus post-award annual interest accruing at 18 per cent until the award is paid in full. In another arbitration, the US investors in Devas moved a case against Antrix, in respect of which the Permanent Court of Arbitration ("PCA") tribunal at the Hague held that the Indian Government's actions "amounted to expropriation" and that it had "breached treaty commitments to accord equitable treatment to Devas' foreign investors".

Former Kingfisher CFO awarded imprisonment in cheque dishonour cases

On September 22, 2016, a Special Court at Hyderabad sentenced the former Chief Financial Officer (CFO) of Kingfisher Airlines Limited ("Kingfisher Airlines"), Mr. A Raghuathan to 18 months in prison, on account of two cases of dishonour of cheques filed against himself and Mr. Vijay Mallya by GMR Hyderabad International Airport Limited ("GHIAL"). The court also imposed a nominal monetary penalty in each of the cases. These cases were filed by GHIAL, the company that manages and operates the Rajiv Gandhi International Airport at Hyderabad on account of two cheques of INR 5 million (approx. US $ 77 thousand) issued against payment of dues and airport utilisation charges having bounced due to insufficient funds. The Court has also convicted Mr. Mallya in the case and deferred his sentencing due to his absence from the proceedings.

Earlier, court proceedings were delayed because Mr. Mallya had left the country and Mr. A Raghunathan chose not to appear before the court until recently. Appeal proceedings are still possible.

DRDO seeks clarifications from Embraer over 2008 aircraft deal

The Defence Research Development Organisation ("DRDO") has sought certain clarifications from the Brazilian aircraft manufacturer, Embraer SA ("Embraer") over alleged payment of kickbacks to the extent of US $ 208 billion to government officials for the purpose of securing a defence procurement contract. In 2008, a joint committee set up by the DRDO and the Indian Air Force for the purpose of facilitating procurement and sourcing of defence products had shortlisted the company for this purpose.

Subsequently, Embraer entered into definitive agreements with DRDO for the supply of three aircraft equipped with indigenous radars for airborne early warning and control systems. It is understood that these events have led to a comprehensive investigation by the United States Department of Justice over allegations of kickbacks paid by Embraer to government officials in different countries around the world with the aim of a number of obtaining a number of defence contracts around the world. The investigations centre around the involvement of a United Kingdom based middleman who is alleged to have assisted the company to conclude deals in India and Saudi Arabia.

Earlier this year, the Ministry of Defence had requested for an investigation to be initiated by the Enforcement Directorate and the Central Bureau of Investigation ("CBI"). Pursuant to this, a preliminary investigation has been initiated by the CBI to determine if further investigations are required in this matter. As part of its investigation, the CBI is expected to examine a number of witnesses and requisition documents relating to the deal from the Ministry of Defence.

Cognizant to probe improper payments in India

United States based tech giant Cognizant Technology Solution Corporation ("Cognizant") is conducting an internal investigation to determine whether the company has made any improper payments related to its Indian subsidiary in possible violation of the US Foreign Corrupt Practices Act (hereinafter "FCPA") and other applicable laws. The investigation is being conducted under the oversight of the audit committee, with the assistance of external counsel. The company voluntarily notified the United States Department of Justice ("DOJ") and United States Securities and Exchange Commission ("SEC") about the internal bribery investigations and is cooperating fully with both agencies.

Furthermore, in a parallel development, the Cognizant's Global President has also quit and the CEO of IT services has been appointed as the new President.

In a recent development, it was learnt that the Rosen Law Firm, a global investor rights law firm based in U.S. has filed a class-action lawsuit on behalf of the purchasers of Cognizant securities. The lawsuit filed by Rosen Law Firm alleges that: (i) Cognizant made improper payments for gaining building licenses for some of its 12 facilities in India; (ii) Cognizant lacked effective internal control over financial reporting; and (iii) Cognizant's statements about its business, operations and prospects were materially false and misleading. The lawsuit seeks to recover damages caused by Cognizant's violations of U.S. Securities Exchange Act of 1934.

US extends FATCA Deadline

The deadline for self-certification under the Foreign Account Tax Compliance Act ("FATCA") has been extended. Earlier, on August 31, 2015, the United States of America and India had entered into an inter-governmental agreement for the application of FATCA in order to facilitate sharing of financial information between India and US. As per the agreement, all accounts held by US resident individuals and entities in India require self-certification to be submitted to the bank or financial institution. This agreement notified August 31, 2016 as the deadline before which all accounts held by individuals and entities would have to be self-certified. Failing this, banks and other financial institutions in which such accounts are held would initiate closure of uncertified accounts.

The change in deadline arises from requests of several banks and financial institutions stating that the initially decided deadline was difficult to comply with. A revised deadline has not yet been announced.

Rajya Sabha Select Committee submits report on the Prevention of Corruption Bill

The Prevention of Corruption Act, 1988 ("Act") is the prime legislation in India to combat corruption in government agencies and public sector businesses. To bring the domestic anti-corruption legal framework in conformity with current international practices laid down by the United Nations Convention Against Corruption ("UNCAC"), the Prevention of Corruption (Amendment) Bill ("Bill") was introduced in the Upper House of Parliament, the Rajya Sabha in the year 2013. The Bill proposed certain amendments to the Act. The Bill was referred to various regulatory and executive bodies which presented its report on the Bill to the Parliament. In the light of the recommendations made in all the reports, the Government proposed official amendments to the Bill in 2015, which were substantive in nature and had far reaching impact on the Bill.

Subsequently, a Select Committee of Rajya Sabha was constituted in December, 2015, to examine the Bill and the amendments proposed by the Government and the Members of Parliament. The Select Committee recently submitted its report to the Rajya Sabha. The committee, while examining the Bill has made the following recommendations:

- The Bill penalises current public servants as well as those who are "expecting to be public servants" for accepting gratification. The Committee has recommended that those who are "expecting to be public servants" should be excluded from the ambit of the Act. The Committee reasoned that since one cannot be a public servant before his selection, persons who are yet to enter public office may be unfairly affected;

- The Act and the Bill penalises a public servant even if he "agrees to receives" a gratification. The Committee has recommended that mere "agreeing to receive" a gratification should not to be penalised as mere intention does not constitute a crime. Similarly, the Committee has also suggested that mere "offer or promise" to bribe another person should not to be penalised and should therefore be excluded from the ambit of the Act;

- The Committee recommended that the Bill should carve out a distinction between a person who is coerced into giving a bribe ("coercive bribe giving") and a person who colludes with the person collecting bribe and gives the bribe ("collusive bribe giving"). The Committee has recommended that "coercive bribe giver" should not be treated on equal footing with "collusive bribe giver" and has thus proposed that if the bribe giver within seven days of giving bribe to the public servant reports the matter to the law enforcing agency, then he may be given immunity from criminal prosecution;

- The Act only covered bribe giving with respect to "business transactions". Thus, the Bill had proposed that commercial organisations, including charitable organisations, are to be held guilty of giving a bribe to a public official if it offers any gratification in return of obtaining or retaining any advantage in business. The Committee, however, has recommended that penalising of commercial organisations should not extend to charitable organisations as this would cause them unnecessary harassment;

- The Act did not per se penalise bribe giver and penalised them only for abetment. The Bill for the first time brought "bribe giver" under the ambit of the Act and proposed that a person giving bribe shall be punishable with imprisonment between 3 to 7 years and a fine. The Committee, however, recommended that the minimum term of punishment for a person giving bribe should not be specified and it should be left at the discretion of the court to decide the minimum punishment on the basis of gravity nature of offence in terms of imprisonment or fine or both;

- The Bill stated that the agency undertaking probe must obtain prior approval from the relevant state authority before it can investigate into an offence alleged to have been committed by a public servant. The Committee has recommended that the sanctioning authority for a public servant must be the relevant government that has appointed him. Further, in the case of any other person, the sanctioning authority must be the one who has the competence to remove him from office.

CBI registers case against former MD of United Bank of India

The Central Bureau of Investigation ("CBI") has registered a case of alleged corruption against the former Chairman cum Managing Director ("MD") of United Bank of India ("UBI") and two private firms based in New Delhi and Kolkata. It is alleged that the MD of UBI, who also held the position of Executive Director of Canara Bank earlier, had abused her official position and had obtained certain favours for herself and her family, from the companies to whom credit facilities were granted by the banks. The CBI has recovered cash, jewellery and investment details to the tune of over INR 100 million (approx. US $ 1.5 million) during the searches conducted at the residential premises of accused persons in Delhi, Noida, Mumbai and Kolkata.

The alleged was appointed as MD of the UBI in April, 2013, with a tenure till February, 2015. Significantly, she had opted for voluntary retirement within ten months of her appointment. During her tenure as MD in UBI, the bank saw increasing losses and depletion in the capital adequacy.