

PREVENTION OF MONEY LAUNDERING ACT, 2002: INTERPLAY WITH CORPORATE CRIMES

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ABSTRACT

As India is moving rapidly in its race of development the increasing pace it gives birth to new kinds of criminal activity. This has led to an immense increase in financial crimes also. Whenever any of the body corporates are involved in any illegal activity such as offenses under IPC these are considered as Corporate Crimes. Corporate crimes affect the economy as a whole. This can't be said that the laws are not changing with the dynamic growth in India, but the pace of technological enhancement is very fast which creates an opportunity at the hand of individuals to take advantage of these lacunae in the Legal system. One of the financial crimes which we are going to discuss in this paper also is Money Laundering. Whenever any person tries to conceal the source of illegitimate money and portray them as legally earned money this process of concealment is known as Money laundering. Money laundering has a very bad impact on the hard-earned money by the public.

In this paper we will discuss in depth about the Prevention of money laundering Act, 2002, which is Anti money laundering Act in India, and its applicability to Companies to consider it under the purview of Corporate crimes.

INTRODUCTION

The corporate crime is just like scams done by corporate individuals. This has been prevailing in India for a very long time. In India the first scam that was highlighted was of Harshad Mehta after which many laws were made to make it stricter but due to the fast development of industries, some companies take advantage of loopholes existing in the present law and conclude such offenses

amounting to corporate crimes. Money laundering can be understood by its literal meaning also that is washing away the money here the washing away is inferred to clean the dirty source of earning that money through illegal activity and further down the process this money gets mixed in the market with the legitimate and legal money. This mixing of money further affects the hard-earned money of the common man.

The "Money Launderers" get to escape the clutches of law because of the shortcoming in the legal mechanism. Countries with strong regulatory capabilities and resources can take effective measures to deal with such crime. Countries with less stringent laws face compliance issues allowing the money launderers to take advantage of such loopholes and shortcomings in the legislative framework.

Types of Corporate crimes

There are numerous categories of Corporate crime as this can be either just limited to monetary matters or can also involve physical injuries to the workers or to the general public. Here for the sake of brevity we will discuss just the economic corporate crimes below:

1. Insider trading

Whenever a person is having internal sensitive information regarding the security market and that person decides to share this information with any outsider who has no access to this information this malpractice is known as Insider Trading. This practice is very harmful for the securities market as it hinders with fair trading of securities.

2. Manipulating Accounting Books

Few companies hide their liabilities in order to fool the stakeholders by using deceptive accounting methods; this practice leads to various accounting scams. They deliberately change the accounting records so as to portray a manipulated accounting record.

3. Deception of security markets

This malpractice is used by Corporate Individuals to manipulate few securities to attract new investors or the existing investors of the securities market with an intention to gain unfair profits.

4. Unethical use of others Trade secrets

Trade secrets are called secrets for a very basic reason that these are the strategies adopted by a company for running its business and responsible for its growth. These trade secrets are crucial to a company's existence and hence are very confidential but if some other party hacks into it and uses those for their own profit or discloses it, it is a serious offence against the company owning those trade secrets.

5. Corruption

Sometimes states also become party to this practice. Whenever any company is inclined towards holding a deal with the state itself, they can go to any extent to make it possible and hence get involved in bribery. This offence affects a very large community and is harmful to the development of the Country itself.

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Money laundering: meaning

As per Section 2(p) of the "PML Act", the expression "money laundering" has the meaning which is assigned to it u/s 3 of the PML Act. The term "money laundering" is exclusively defined u/s 3 of the PML Act.¹ This section is, therefore, the fulcrum around which all other provisions under the Act revolve. In brief the essential ingredients of "money laundering" are as follows:

- a. First and foremost, essential is that there should be commission of a "scheduled offence" which can be alternatively called as the "predicate offence".
- b. Secondly, there should be "proceeds of crime" which has been derived or obtained by

¹ See Bare Act: "Whosoever directly or indirectly attempts or indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of the offence of money laundering."

an accused as a result of criminal activity relating to such a scheduled offence.

c. Thirdly, the accused should project such “proceeds of crime” as an untainted property.

The term “proceeds of crime” is defined u/s 2(1)(u) of the PML Act. This term has been defined to mean any property whether movable or immovable which is derived or obtained either directly or indirectly by any person as a result or consequence of a criminal activity relating to a scheduled offence which is annexed with the Act, such proceeds of crime may be parked in property which can be movable or immovable. There should be clear nexus between the criminal activity relating to a scheduled offence and the proceeds thereof in order to bring the person/accused to book. The term “scheduled offence” is defined u/s 2(1)(y) of the PML Act. The term has been defined to mean offences specified in Part A and Part B of the Act. In regard to the offences which are mentioned under Part A there is no monetary limit whereas in regard to the offences mentioned under Part B of the Schedule there is a monetary limit of Rs. 1 Crore. Hon’ble High Court of Madras in the case of **M. Shobana V. ED**² has held that “In nutshell the existence of scheduled offence and surfacing of proceeds of crime there from is a precondition for the offence of money laundering.”

Though the offence of “money laundering” which is defined u/s 3 of the PML Act is different from the scheduled offence however the offence u/s 3 and 4 is dependent upon the offences which have been declared as scheduled offences.

For eg. if we see Section 121 of the IPC³, waging or attempting to wage war against the Indian Government has been stipulated as an offence. This particular offence is included in Part A of the scheduled offences under the PML Act. So therefore, if a person commits the aforesaid offence and in lieu of that receives compensation and thereafter projects such compensation i.e. “proceeds of crime” as untainted property, then as per Section 3 and 4 of the PML Act he has committed the offence of “money laundering”.

² MANU/TN/1994/2012

³ The Indian Penal Code, 1860

Steps involved in Money Laundering

Steps involved in the process of money laundering are as follows:

1. “Placement” – This is regarded as the first stage in the cycle of money laundering. It involves cleaning and channelizing the money derived from illegal activities into a more portable and less suspicious form. Hon’ble Apex Court in the case of **Binoy Viswam V. UOI**⁴ observed that “to check money laundering various measures can be taken. If one of the measures is the introduction of Aadhar into the tax regime, it cannot be denounced only for the reason that the purpose will not be achieved fully.”
2. “Layering” – This is the second stage. It basically helps to hide the audit trail and provides anonymity. For eg. under-invoicing and over-invoicing.⁵
3. “Integration” – It is the last stage at which the black money is reintroduced in the legitimate economy of a country. At this stage the offender may choose to invest in properties, money market or capital market etc.

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Mechanism of Money laundering act, 2002

1. Punishment for Money Laundering

Section 4 of the PML Act provides punishment for the offence of “money laundering”. According to Section 4, if a person is convicted for the offence of “money laundering” then such a person is liable to be punished with rigorous imprisonment for a term which shall certainly be not less “three years” but which may extend to “seven years”.

Apart from this the person who is convicted for the offence of “money laundering” shall also be liable to pay fine which may extend to Rs. Five lakhs. However, where the offence is related to those specified in Paragraph 2 of Part A of the Schedule to the Act, a higher punishment

⁴ (2017) 7 SCC 59

⁵ Dr. M.C. Mehanathan, Law of Prevention of Money Laundering in India, pp. 21

which may extend to ten years can be awarded.

2. Important tools of investigation

Following are the important tools of investigation which are envisaged under the PML Act: -

1. Power of Survey – Section 16 of the PML Act provides for the Power of Survey in the hands of appropriate authority established under the Act. The authority established under the Act is empowered to enter any place within the assigned territorial limit to find out whether an offence u/s 3 is made out or not. The aforesaid power can be exercised in vacuum. This power cannot be exercised in a whimsical manner by any authority. The “power of survey” does not include the power to impound the documents. The primary objective of the survey is to ascertain the “nature and contents” of the “documents and valuables” which are kept at a place of survey. Further the authority can obtain information from all those persons who are present at the time of survey. In the case of **United Chemicals V. R.K. Singh**⁶, it was held that “impounding of documents during a survey would be without the authority of law”. The Hon’ble Supreme Court in the case of **Jagir Singh V. Ranbir Singh**⁷ held that “an authority cannot be allowed to evade a law by shift or contrivance”. The person authorized under this section is entitled to require any owner, employee or any other person who is available at such place to offer him the facility to inspect the records and offer him an opportunity to verify the “proceeds of crime”.
2. Search & Seizure- According to Section 17 of the Act, the power of “search & seizure” is vested with the person who is to be authorized by the Director to exercise the same. This power cannot be exercised capriciously or vindictively. The aforesaid action must be triggered on the basis of some material in the possession. In **CIT V. Raman & Co.**,⁸ it was held that “the term information means instruction or knowledge which is obtained from an external source concerning facts and particulars.” Therefore, there cannot be any limitation as to the source of information in the possession of the director.

⁶ 97 ITR 14, See also: Maruti Mills Pvt. Ltd. V. Union of India (2002) 123 Taxman 737

⁷ AIR 1979 SC 381

⁸ (1968) 67 ITR 11 (SC)

3. Power of Arrest– As per Section 19 of the Act before power of arrest can be exercised, authorization for the Central Government is necessary. The person who is authorized with the power of arrest must have “some material in his possession” and in furtherance of that the authorized person should also have “reasons to believe” which necessarily be recorded in writing. This section requires that the arrested person should be told why he has been arrested and moreover the arrested person should be produced before the magistrate within twenty-four hours of his arrest.
4. Powers of Civil Court – As per section 12 of the Act, the authority which is competent for adjudication under the Act shall have with itself all those powers which are enjoyed by a civil court under CPC⁹ while trying a suit. This power is usually vested with almost all the quasi-judicial authorities established under different statutes. It also important to note that the proceedings which are conducted u/s 12 would amount to “judicial proceedings” within the meaning of section 193 & 228 of IPC.¹⁰
5. Overseas Investigation – Section 56 of the Act is an enabling provision according to which the Government of India is competent and empowered to enter into an agreement with the government of any foreign country in order to exchange information with respect to preventing the offence of “money laundering”. Bilateral agreement can be entered into to curb the menace spread by “money laundering”. What follows next is section 57 of the Act which if we see appears to be a logical sequence of section 56. It seeks to empower the investigative authorities to approach the special court for issuance of LOR¹¹ to the contracting state for seeking evidence or other material with respect to any particular case. Section 58 of the Act encompasses a reciprocal provision by the Indian Government in connection with investigation into any offence or proceedings from a contracting state requesting Government of India to investigate an offence under the Act.

3. Obligation to maintain records

Section 12 of the PML Act basically deals with a banking company, intermediary or a financial

⁹ The Code of Civil Procedure, 1908

¹⁰ The Indian Penal Code, 1860

¹¹ Letter of request

institution to comply with certain requirements in regard to maintaining records of the nature and value as may be prescribed, furnishing of details of those transactions within such time as be prescribed and checking and maintaining records of the identity of all its clients in such a manner as may be prescribed by the rules.

The intent behind this section is to keep a tract of certain transactions through which the money generated out of crime included within the scope of the Act may not be laundered. Sub-section (2) imposes an obligation on the part of the “reporting entity” to maintain records prescribed in this regard for a period of ten years from the date of cessation of transaction between the clients and banking company or financial institution as the case may be.¹²

It is also provided in this section that the principal officer of a banking company is obliged to provide the information of those transactions which he has “reasons to believe” are deliberately undervalued so as to keep it less than the threshold limit that is provided by the Government. By this provision the obligations on the aforesaid entities has increased tremendously.

The expression “principle office” used in this section has not been defined in the Act anywhere. However, this expression has definite connotation and is invariably defined in many corporate legislations. In the case of individual stockbrokers, it would obviously mean the proprietor or the partner as the case may be or any other officer to whom powers to manage have been entrusted with. However, it would have been better if the Act had defined the expression “principle officer” even with reference to non-corporate entities who may fall within the scope and ambit of the term “Intermediaries”.

4. Protection in certain cases

¹³Section 14 of the Act gives a statutory protection of the aforesaid entities against any liability arising out of any civil or criminal proceedings. Being a statutory obligation under the Act, this

¹² Dr. M.C. Mehanathan, Law of Prevention of Money Laundering in India, pp. 178

¹³ S. Kannan, Proceeds of Crime: Prevention of Money Laundering Act, 2002, pp. 189

section provides necessary corollary of statutory protection needed in that regard. Section 15 of the Act enables the Central Government to prescribe such a procedure which can be followed by the reporting entities for furnishing information u/s 12 of the Act.

Interplay of money laundering and Corporate crimes.

Applicability of PMLA to Corporate Individuals

Prevention of Money Laundering Act 2000 is very well applicable to the corporate individuals as there is no exhaustive application provided in the Act. There have been numerous cases in India itself where the Company is held liable for the offence of Money laundering. One such case is the case of City Limousines (India) Ltd, where the company was held responsible for the money laundering practices in which it was involved.

Criticism of money laundering act, 2002

Since “money-laundering” is considered to be a very heinous crime, therefore it should not be taken lightly like other offences. India has been partly successful since it has taken numerous measures to curb the menace spread as a result of “money-laundering”, but still the offenders have figured out the loopholes and lacunas to defeat the purpose of the Act. Some of the problems w.r.t. to achieving the aims and objectives of the PML, Act are as follows:

1. Lack of Awareness: It is very apparent that the process of “money laundering” is growing at an impeccable speed and in view of that lack of awareness among the common man is a major reason to worry. Since people lack awareness there exists a problem w.r.t. enforcement of “money laundering” laws.
2. Advancement of Technology: With the growth of technology at a rapid pace, offenders have started to explore such new technologies and methods with which they can easily get away with. The enforcement agencies are not well equipped to match up with the speed of such technology.
3. Non-compliance of KYC norms: Reserve Bank of India has issued various directions and circulars relating to KYC norms keeping in mind to prevent banks and other institutions from being used by criminals to facilitate “money laundering”. Non-compliance of KYC norms needs to be

checked and regulated properly.

4. Lack of Coordination: There must be proper coordination between various agencies to effectively deal with the problem of “money laundering”.

India has been successful to some extent since it has taken substantial measures to deal with the issue of “money-laundering”. It can be said that the manpower has been increased by three folds as there is an Enforcement Directorate which handles all the money laundering cases and investigations related to it.

There is also a Financial Intelligence Unit which cracks down and analyses the potential risk of money laundering through the agencies reporting to it and there is time to time up gradation of the laws relating to ‘money-laundering’ through Amendments. However, there is still a further scope to improve the enforcement of the laws and take more strict actions against the persons violating them. India is a rapidly growing economy based on a formal and informal financial system. What has been done by India till date is obviously not adequate to combat “money laundering”.

Suggestions

Following are the suggestions which can be adopted to overcome the loopholes and other difficulties present in the PML Act: -

1. With respect to “money laundering” – Money laundering is an independent offence in theory but in practice it goes hand in hand with the scheduled offence and thus it can be seen that both are complementary and supplementary to each other. Therefore` a suitable amendment must be brought so that the offence of “money laundering” can stand on its own legs.
2. With respect to “ECIR” – ECIR is not defined anywhere in the Act and it is registered on basis of incriminating material which prima facie exists. It is proximate to FIR u/s 154 of CrPC. The Suggestion w.r.t to ECIR is that its copy should be given forthwith and free of cost to the person against whom ECIR is registered.
3. With respect to “investigation” – Though the term investigation is of inclusive nature, yet it cannot override any other provision of the Act where limitations are placed upon the authorities in discharge or their functions. If the Act gives a particular protection to

a person accused under the Act, the said protection cannot be flouted by taking recourse to the definition of investigation.

4. With respect to “statement” under the Act – It is a settled law that officers of ED are not police officers and thus statements recorded by them are not hit by section 25 of the Evidence Act. The way statement recorded u/s 164 of CrPC is provided to the maker of the statement the same logic should also apply for the statement recorded u/s 50 of the PML Act as they both are *pari materia* provisions.

