

# Dispute Resolution Hotline

July 19, 2011

## CORPORATE CRIMINAL LIABILITY

### INTRODUCTION

In the recent judgment of C.B.I. ("Appellant") vs. M/s. Blue –Sky Tie-up Limited & Ors. ("Respondent")<sup>1</sup>, the Supreme Court reiterating the position of law held that companies are liable for prosecution of criminal offences and fines may be imposed on the companies.

The present appeal arose from criminal applications quashed by the Calcutta High Court ("Calcutta HC"). The Appellant filed criminal applications against the Respondents for committing criminal offences under the provisions of the Indian Penal Code and under Section 13(2) read with 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. Pursuant to that, the Respondents filed applications under Section 482 of the Criminal Procedure Code for quashing of the said proceedings.

The Calcutta HC quashed the proceedings against the Respondent No. 1 on the false premise that the company being a body corporate cannot be prosecuted. The Supreme Court relying on the *Standard Chartered Bank vs. Directorate of Enforcement*<sup>2</sup> has held that offences committed by the Respondent No. 1 being grave in nature, fines may be imposed upon them and set aside the quashing of the proceedings.

### ANALYSIS

In our April 20, 2011 hotline titled, "*Corporations no longer immune from criminal prosecution*" we discussed the landmark decision in *Iridium India Telecom Limited –Vs- Motorola Incorporated & Others*,<sup>3</sup> ("*Motorola Judgment*") where the Supreme Court of India ("Supreme Court") held that the corporations can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary *mens rea* for the commission of criminal offences.

In the Motorola Judgment it was held by the Hon'ble Supreme Court that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring *mens rea*. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs and relied on the ratio in *Standard Chartered Bank Case (Supra)*.

The Motorola Judgment delivered by the Supreme Court settled all doubts that corporations are liable to be prosecuted for offences under IPC. The Courts earlier had rescinded from imposing criminal liability on corporate, on grounds of inability of a corporate to possess *mens rea* and the impossibility of a corporate to be subject to mandatory imprisonment. In the Motorola Judgment relying on the *Standard Chartered Bank Case (Supra)*, the Supreme Court settled the law by making corporate bodies amenable to criminal prosecution.

It is now established law that since companies cannot be imprisoned, fines should be imposed. If that was not the case, companies would go scot free for grave offences as mandatory custodial sentences are prescribed as punishment. Further, companies would be prosecuted only for minor offences as fines are the prescribed punishment. The legislative intent has never been to let corporate bodies go free for such grave offences.

### - International Disputes Team

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<sup>1</sup> CrI. Appeal No(s). 950 of 2004

<sup>2</sup> (2005) 4 SCC 530

<sup>3</sup> (2011) 1 SCC 74

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