

# 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 The Courts earlier had rescinded from imposing criminal liability on corporate, on grounds of inability of a corporate to possess *mens rea* and the impossibility of a corporate to be subject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

(Payel Chatterjee, Vyapak Desai & Vivek Kathpalia)

1 CrI. Appeal No(s). 950 of 2004

2 (2005) 4 SCC 530

3 (2011) 1 SCC 74

### DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

## Research Papers

### M&A In The Indian Technology Sector

February 19, 2025

### Unlocking Capital

February 11, 2025

### Fintech

January 28, 2025

## Research Articles

### Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

### INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

### Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

## Audio

### Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

### Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

### Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

## NDA Connect

Connect with us at events, conferences and seminars.

## NDA Hotline

Click here to view Hotline archives.

## Video

### Arbitration Amendment Bill 2024: A Few Suggestions | Legally Speaking With Tarun Nangia | NewsX

February 12, 2025

**What India's Transition to New Data  
Protection Law Means for Global  
Businesses**

January 23, 2025

**India 2025: The Emerging  
Powerhouse for Private Equity and  
M&A Deals**

January 16, 2025

---