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INDIVIDUAL PROSECUTIONS

“A Slap on the Wrist”: Former Cognizant COO Settles SEC Bribery Charges for \$50,000

By Helen Kim, *Anti-Corruption Report*

The former chief operating officer (COO) of Cognizant Technology Solutions Corporation (Cognizant), Sridhar Thiruvengadam, has settled his FCPA case with the SEC for a \$50,000 fine and promises of continuing cooperation. The settlement’s relatively soft terms suggest that the government may be looking to make Thiruvengadam one of its primary witnesses in its cases against former Cognizant executives Gordon Coburn and Steven Schwartz, who face criminal and civil charges. The settlement demonstrates the SEC’s commitment to pursuing individuals in its FCPA enforcement regime.

See [“Successor Liability in the Spotlight With Mondelēz’s \\$13M FCPA Settlement After Purchase of Cadbury India”](#) (Feb. 1, 2017).

The Cognizant Settlement

In February 2019, information technology company Cognizant, based in Teaneck, New Jersey, agreed to pay \$25 million to settle SEC charges that the company paid bribes to obtain permit approval for the construction of a 2.7 million-square-foot facility in Chennai, India. In the same month, the DOJ issued a declination letter to the company.

Cognizant was able to avoid indictment and imposition of an outside monitor and the penalty it paid was significantly lower than the amount of disgorgement. However, the SEC and DOJ filed civil and criminal FCPA charges against former president Coburn and former chief legal counsel Schwartz; the charges are still pending in the District of New Jersey.

The plot thickened with the SEC’s September 2019 announcement that a third executive, Thiruvengadam, settled charges that he participated in the bribery scheme. According to the SEC’s [order](#) (Order), Thiruvengadam, Coburn, Schwartz and one other executive met by videoconference to authorize the bribe and devise a scheme to cover it up. Thiruvengadam later helped conceal the payment by signing false subcertifications to the management representation letters that the company provided its independent auditor. Without admitting or denying the findings, Thiruvengadam agreed to pay a civil penalty of \$50,000 and to cooperate fully with the Commission in all investigations and proceedings relating to the findings, including testifying at trial.

See [“Cognizant Settles With the SEC and Receives a DOJ Declination, but Top Executives Face Charges”](#) (March 6, 2019).

Four Executives and a Videoconference

Cognizant began construction in 2011 on its largest owned facility in India, a 2.7 million-square-foot campus with capacity for 17,500 employees. In 2014, an employee named in the September Order as “Real Estate Officer-1” was informed that an Indian government official was demanding a bribe of \$2 million as a condition for issuing the planning permit. Although a planning permit is required prior to the start of construction, it is common practice in India to apply for approval after construction begins. The real estate officer allegedly passed the information on to his supervisor, chief operating officer Thiruvengadam and, in April 2014, the two employees allegedly discussed the bribe in a videoconference call with Coburn and Schwartz. According to the Order, the real estate officer described the bribe and suggested that the firm contracted to build the facility could be reimbursed for the bribe payment through false change order requests.

The bribe was not a facilitation payment, exempted under the FCPA, because the company did not follow standard procedure to receive the permit and the payment was made to a government official who exercised discretion in influencing the agency to issue the permit, rather than the government agency. The amount of the bribe also exceeded any routine fee.

The Order states that Coburn directed his subordinates to withhold future payments to the contractor if it did not pay the bribe. The contractor allegedly did pay in late May or early June 2014 and received a \$500,000 commission for paying it. Cognizant received the planning permit in November of that year.

The real estate officer then allegedly selected change order requests from the contractor’s invoices and retroactively accepted them, adjusting the costs so that they totaled \$2.5 million. The falsified invoices were forwarded to Coburn for approval, with copies provided to Thiruvengadam. Coburn allegedly approved payments in February and March 2015.

Thiruvengadam allegedly signed false management representation subcertifications denying that he was aware of any fraud involving senior management, which were given to an outside auditor in connection with the company’s 2014 through 2016 audits.

See [“Beam Suntory Is the Latest Victim of the Beverages Industry in India”](#) (Jul. 25, 2018).

A Great Outcome for the COO

The SEC charged Thiruvengadam with books-and-records and internal controls violations because he allegedly participated in the video conferences where the bribe was authorized and signed false subcertifications to the company’s management representation letters.

The settlement was “a great outcome” for Thiruvengadam, according to Megan Cunniff Church, a partner at MoloLamken. “It resolved the SEC matter for a \$50,000 fine, which is a slap on the wrist for someone directly involved with planning and executing a multi-million dollar scheme to bribe a foreign official,” she explained.

M. Scott Peeler, a partner at Arent Fox, agreed. “A \$50,000 fine with continuing obligations to cooperate is indeed a good outcome for Thiruvengadam, given the allegations of the

role he played in the bribe and subsequent cover-up,” he said. “In my view, the government is interested in supporting the cases against . . . Coburn and . . . Schwartz and wanted to secure cooperation from Thiruvengadam.”

The Fourth Co-Conspirator: Another Cooperator?

The real estate officer described in the Order as the fourth participant in the videoconference where the bribes were allegedly authorized has not yet been identified or charged. “In the SEC’s view, Real Estate Officer-1 has both civil and criminal culpability based on his/her conduct,” Church explained. “It is not clear whether Real Estate Officer-1 is cooperating with the government’s investigation or if there are any mitigating circumstances that would counsel against civil or criminal charges.”

The real estate officer is likely “the other unnamed co-conspirator in the DOJ indictment against Coburn and Schwartz,” Ryan Rohlfen, a partner at Ropes & Gray, told the Anti-Corruption Report. “I suspect he is cooperating as well, otherwise he would have almost certainly been charged given the evidence alleged in the DOJ indictment.”

Accounting for the Space Between the Corporate and Individual Settlements

“It’s interesting that Thiruvengadam has a civil resolution over half a year after the Coburn and Schwartz criminal matters came out,” Rohlfen said. “Often when DOJ publicly announces charges against individuals allegedly involved in conspiratorial conduct, they do it all at once. Potential co-conspirators who are

referenced but not named or charged, such as Thiruvengadam, suggest that the person is cooperating.” He added the settlement “reinforces that he is likely in communication with the DOJ; if he had gone dark on DOJ, he likely would have done the same with the SEC.” He views Thiruvengadam’s settlement as proof of his cooperation with the government. “Given his resolution with the SEC, it is very likely he will be a witness against Coburn and Schwartz,” Rohlfen said.

Church agreed and added that the cooperation may have been ongoing at the time of the indictment which could account for the lag. “The minor settlement suggests that he may be cooperating with the government and available to testify against Coburn and Schwartz in both criminal and civil proceedings,” she posited.

Church outlined some other possible reasons for the time period between this settlement and the February 2019 indictments and corporate settlement. “First, the investigation of Coburn and Schwartz took priority,” she said. Their indictment by the DOJ and the U.S. Attorney’s Office for the District of New Jersey “indicates their culpability was significantly greater than Thiruvengadam’s.” Further, she said, “the SEC and federal prosecutors are less likely to include a relatively minor settlement alongside the criminal prosecution of more culpable individuals so as not to detract from the import of the criminal prosecution.”

It is also possible that Thiruvengadam’s settlement may not have been finalized at the time of the indictment, and there was no reason to delay the criminal prosecution for this settlement, she suggested. Finally, she said, “geography may have played a role in the delay, as Thiruvengadam is an Indian national and resident, which would present logistical hurdles

if he needed to travel to the United States to meet with the SEC and federal prosecutors to resolve the matter.”

Benefits of Cooperation

As with the company’s settlement in February, Thiruvengadam seems to have benefitted from his cooperation with the Commission. He agreed to produce documents and other materials on an ongoing basis, provide testimony and respond to any inquiries related to the matters described in the Order. This is in contrast with the hard line that Coburn and Schwartz have taken toward their charges. In February 2019, for example, Roberto Finzi, a partner at Paul Weiss, who represents Schwartz, stated that his client was “totally innocent and did nothing wrong. He will fight these false and unfair charges.”

Peeler pointed to the value of cooperating with the government in avoiding harsher penalties. “I believe the way this case is being handled is designed to show the value of self-disclosure and cooperation in the modern era,” he said. “The government decided not to pursue a criminal FCPA case against Cognizant after it self-disclosed the violation, agreed to a civil penalty of \$25 million with the SEC, and demonstrated the strength of its compliance program. Meanwhile, the government filed criminal charges against former executives involved in the bribe, while allowing Thiruvengadam this relatively graceful exit in exchange for his ongoing cooperation.”

See [“Sentencing in Micronesian Bribery Case Highlights DOJ’s Commitment to Individual Prosecutions”](#) (Jun. 26, 2019).

Ramifications for Coburn and Schwartz Cases

While the terms of Thiruvengadam’s settlement suggest that the former COO will be a key part of the government’s cases against Coburn and Schwartz, Church cautioned against jumping to conclusions. “It is not entirely clear what Thiruvengadam’s settlement means for the civil and criminal charges pending against Coburn and Schwartz other than it does not appear that Thiruvengadam will be criminally prosecuted alongside them,” she said.

Thiruvengadam may not be criminally prosecuted with his former fellow executives, but, Rohlfen pointed out, “we do not know if Thiruvengadam also has a plea deal or a nonprosecution agreement with DOJ that is under seal. I suspect he does, to encourage his full cooperation through trial with Coburn and Schwartz, if necessary.”

Attorneys for Coburn and Schwartz did not respond to requests for comment. “The fact that [Coburn and Schwartz] are both U.S. citizens and fighting the charges suggests to me that they believe that they have viable defenses and will likely go to trial,” Rohlfen said. “Otherwise they almost certainly would have settled by now.”

Recent SEC Focus on Individuals

Both the SEC and DOJ “are looking hard at charging individuals in addition to companies,” Rohlfen said. “There has been an uptick in the past two to three years in SEC charges against individuals.” While the SEC’s burden of proof is much lighter than DOJ’s, with correspondingly

lighter penalties against individuals, “the SEC is increasingly looking to hold individuals accountable as well,” he said.

Thiruvengadam’s charges and settlement “show the reach of the SEC into foreign jurisdictions and over foreign individuals in matters affecting companies trading on U.S. exchanges,” Church explained. She advised businesses to be “vigilant in their anti-corruption efforts. While Cognizant paid \$25 million to settle charges that it violated the FCPA, the SEC’s charges against Coburn, Schwartz and Thiruvengadam demonstrate the SEC’s ongoing commitment to pursuing and holding accountable individuals for their corrupt practices.”

See “[DOJ Pursuit of Individuals for Corruption in Venezuela Highlights Risk of Doing Business There](#)” (Sep. 18, 2019).