

Ex-Gem Co. Exec Fights Subpoena In Owner's \$2B Fraud Row

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Law360 (October 24, 2018, 9:00 PM EDT) -- A former executive at U.S. diamond companies owned by Nirav Modi — who's been accused of orchestrating a \$2 billion fraud scheme in India — told a Manhattan bankruptcy court Tuesday he shouldn't have to give any further explanation or documents to a bank that accused him of stonewalling, saying it would chip away at his Fifth Amendment rights.

Mihir Bhansali, who stepped down from his roles at U.S. corporations tied to Modi shortly after shepherding them into Chapter 11 proceedings earlier this year, has been arguing for months with Punjab National Bank, which was badly burned by Modi's alleged fraud scheme, over what papers and testimony he is required to produce. PNB said Bhansali is pushing the bounds of the Fifth Amendment's "act of production" privilege, but he said on Tuesday the law is on his side.

"PNB is effectively asking Mr. Bhansali to provide confirmatory testimony that certain responsive documents exist, are authentic and are in his possession," his lawyers argued. "The Fifth Amendment prevents PNB from compelling Mr. Bhansali to produce documents under those circumstances."

However the subpoena dispute is decided, Bhansali already faces a mountain of legal trouble. He is wanted for money laundering by Indian authorities, according to a notice on Interpol's website, and a court-appointed examiner issued a thick report earlier this year that [implicated](#) Bhansali and the U.S. debtor companies — Firestar Diamond Inc., Fantasy Inc. and A. Jaffe Inc. — in the alleged multibillion-dollar fraud.

Indian authorities say [the alleged fraud](#) was orchestrated by Modi, who they say worked with rogue PNB employees to obtain fraudulent guarantees that were later used to obtain loans from abroad. According to multiple media reports, the bank issued a statement putting the total value of the known fraudulent guarantees at more than \$2 billion.

According to PNB, the information they are seeking from Bhansali would help the bank determine whether it has claims against the U.S. debtor companies that the examiner implicated in the fraud. The bank said in its motion that although U.S. Bankruptcy Judge Sean Lane rejected Bhansali's effort to quash its subpoenas in August, he still hasn't given up what the bank wants after more than a month of back-and-forth communications.

Punjab National, which is majority owned by the Indian government, told Judge Lane earlier this month that Bhansali responded to its subpoena with a boilerplate argument about his right not to incriminate himself. The bank said Bhansali can't use that argument for documents he is required by law to maintain, such as those to his foreign bank

accounts and certain New York real estate holdings, but he refuses to produce or acknowledge the existence of such documents.

Bhansali, who is being sought by Indian authorities on a money-laundering charge, said PNB's arguments fall short. The Supreme Court's 2000 decision in U.S. v. Hubbell and the Southern District of New York's 2015 decision in SEC v. Forster cut against the notion that he must be more cooperative, like compiling a "privilege log" that would admit the existence of documents that could implicate him, his lawyers wrote.

The former executive added that he can't be made to produce documents in his capacity as a custodian of records for any of the debtor entities because he is no longer affiliated with them. He said his alleged capacities with Modi-linked companies weren't even mentioned in the PNB subpoena or in the bank's court papers.