

F.No. 25-1/2013/FIU-IND/Pt III
Government of India
Ministry of Finance
Department of Revenue
Financial Intelligence Unit-India

6th Floor, Hotel samrat
Kautilya Marg, Chanakyapuri
New Delhi - 110021

ORDER-IN ORIGINAL NO. 3/DIR/FIU-IND/2015

Name & Address of the Reporting Entity: Axis Bank,
Axis House, C- 2,
Pandurang Budhkar Marg
Worli, Mumbai - 400025

Show Cause Notice No. & Date: F.No. 25-1/2013/FIU-IND dt. 17th
Dec, 2013

Section under which order passed: Section 13 of PMLA, 2002

Date of Order: March 23, 2015

Authority passing the order: Director, Financial Intelligence Unit-India

An appeal against this order may be made with the Appellate Tribunal under PMLA, 2002, 4th Floor, Lok Nayak Bhavan, Khan Market, New Delhi within a period of forty five days from the date on which this order is received by the Axis Bank. The appeal should be in the form and manner prescribed in sub-section (3) of section 26 of the Prevention of Money Laundering Act, 2002, hereinafter also referred to as PMLA or the Act.

1. Axis Bank (hereinafter referred to as the 'Bank') is a banking company as defined under Section 2(e) of the Prevention of Money Laundering Act, 2002.

2. Section 12 of the Act and the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter also referred to as the 'Rules'), framed under the Act, impose obligations on banking companies to inter alia verify the identity of the clients, maintain records of specified transactions and report to Director, Financial Intelligence Unit – India (hereinafter referred to as 'Director, FIU-IND') information relating to such transactions. These reports include reports on cash transactions, suspicious transactions and counterfeit currency transactions.

3. Rule 3 of the Rules specifies the transactions, the records of which are to be maintained; Rules 5, 7 & 8 of the Rules prescribe the procedure, manner and time of maintaining and furnishing such information; and Rule 9 of the Rules prescribes the procedure and manner of verification of records of identity of clients.

4. Section 13 of the Act confers on the Director, FIU-IND powers to enquire into cases of failure to comply with the provisions of Section 12 of the Act and the Rules thereunder and to levy a fine for each such failure.

5. In March 2013 there was widespread reporting in the media about a sting operation carried out by the website Cobrapost that allegedly exposed deficiencies in the anti-money laundering preventive measures applied by the banks and other financial institutions including the Axis Bank. The sting operation involved the Cobrapost reporter (s) visiting the branches of the financial institutions with a similar story: that a minister in government wanted to invest/ safe-keep substantial amounts of illicit or ill-gotten cash and that some of this money also needed to be sent abroad for the expenses of the minister's wife. The website had videotaped the conversations with the officials/ employees of the financial institutions that were played out in the media suggesting widespread violations of statutory obligations in preventing money laundering. Following the sting operation by Cobrapost that also covered the Axis Bank, the Bank was asked vide letter dated May 8th, 2013, whether any alerts in respect of the sting operation were generated in the branches involved in the sting operation and whether any STR was reported for attempted transactions for the incidents reported by the Cobrapost. The Bank in its reply dated May 24, 2013 confirmed that no STR was filed for attempted transactions in the branches concerned. The Bank also stated that no alerts had also been generated by any of the branches for the reported incidents. The list of branches appearing in the sting operation is given below:

S.No.	Branch
1.	Ashoka Niketan Branch, Delhi
2.	Priority Banking, Kolkata
3.	Noida, Sector 18 branch
4.	Mansa Devi Complex, Sector 5, Panchkhula
5.	Sec 5, Salt Lake, Kolkata
6.	Vasundhara, Ghaziabad
7.	Noida, Sec 16
8.	Rajnagar, Ghaziabad
9.	Saket
10.	Circle Office, Sector-20, Panchkula
11.	Dilsukh Nagar, Hyderabad
12.	Chandanagar, Hyderabad
13.	Banjara Hills, Hyderabad

6. As per the definition of STR in Rule 2(g) of PML (Maintenance of Records) Rules, STR means a transaction referred to in clause (h) including an attempted transaction. As STRs for attempted transactions had not been filed for any of the 13 (thirteen) branches of the Bank visited by Cobrapost, a show cause notice was issued on 13th December 2013 for contravention of provisions of Section 12(1) (b) of the Act, read with Rules 2(g), 3 (1) (D), 7(3) and 8(3) of the Rules.

7. The Bank in its reply to show cause notice, furnished vide letter no. Axis B/FCM /AML/320/2013-14 dated January 24, 2014, argued that the incidents reported by the Cobrapost in the 13 branches visited would not qualify for reporting as STR on the following grounds:-

- (i) In none of the instances did the person carrying out the sting operation submit any proof of identity, address or even contact number. Mere inquiry by person unknown to the bank would not constitute attempted transaction.
- (ii) In terms of definitions of suspicious transaction [Rule 2 (1) (g) of the PML Rules] and transaction [Rule 2 (1) (h) of the PML Rules] no transaction was attempted in any of the 13 branches and only enquiries took place.
- (iii) Investigation by KPMG done at the behest of the Bank suggested that the conversations the sting operators had with employees of the Bank were in the nature of preliminary discussion perhaps aimed at eliciting certain responses.

8. On the request of the Bank a personal hearing in the matter was held

on 25-03-2014 which was attended by Mr. Somnath Sen Gupta, ED, Mr Tarunava Sarkar, Chief Compliance Officer, Mr. JR Mohandas, MLRO, Mr. TS Ashokraj, SVP (Law), and Mr. A. Baburaj, BVP. During the hearing the Bank submitted additional documents (vide letter AXISB/CPL/263/2013-14 dated 24th March, 2014), including documents relating to the Bank's subsequent efforts to strengthen the AML/ CFT reporting regime, which were taken on record. The copies of the transcripts were delivered to the Bank's MLRO during the Personal Hearing on 25-03-2014.

9. In the additional submission the Bank reiterated the points stated in its reply dated January 24, 2014; detailed the Bank's AML Policy for reporting suspicious transactions in force at the time of the sting operation; and expressed that no STR was required to be generated for the sting operation.

10. The Bank also referred to the following case laws in support of their contention:-

- (a) Ramkripal s/o Shyamlal Charmakar vs. state of Madhya Pradesh (reported in (2007) 11 SCC265).
- (b) R.V. Mohammed Ilyas (reported in (1984) 78 Cr.App.R.17).

11. With regards to the transcripts of the Cobrapost conversations, the Bank was asked vide FIU-IND letter F.No.25-1/2013-FIU-IND/Pt. III dated 28th May, 2014 to offer additional submissions, if any. The Bank vide letter no. AXISB/RMM/FCM/103/2014-15 dated 10th June, 2014 stated that the transcripts were summarized version of the conversation in the video recordings carried out by the sting operators; the Bank had also prepared a transcript and found that the two transcripts were generally aligned although some of the key conversation were not found reflected. More specifically, the Bank held that both the transcripts were aligned on 14 points and not aligned on 19 points. The Bank observed that:-

- (a) There was no mention of any events/details having taken place between the reporter and the staff.
- (b) There is specific mention of the product of Max Life. But the conversation was in connection to certain investment plan.
- (c) The transcript of video recording does not indicate suggestion to invest in tax free government bonds. Other investments plans are mentioned.
- (d) The key word and relevant statement was mentioned in the narrative but not in the conversation.

Discussion and findings

12. While Section 12 of the Act lays down the general obligations of the banks to file suspicious transaction reports, the PML Rules, which further elaborate these obligations, require the banks to maintain the record of all transactions including all suspicious transactions whether or not made in cash (Rule 3 of the PML Rules). The definition of suspicious transactions in Rule 2 includes an attempted transaction. The attempted transaction has not been defined separately. Rule 7(3) requires that all reporting entities shall evolve an internal mechanism having regard to any guidelines issued by Regulator for detecting the transaction referred to in Rule 3 and for furnishing information about such transaction in such form as may be directed by its Regulator.

13. The Cobra Post reporter posing as a customer visited the 13 branches of the Bank and enquired about investing Rs. 60-70 lakhs belonging to a politician, stating that Rs 5-7 crore more was expected in the near future, that he needed a locker to keep the cash, that the politician was set to get about 40 crore from a murky deal, which would need to be invested, and that some money needed to be sent abroad to take care of the expenses of the politician's wife visiting there. The conversations with the Bank employees revolved around how to deal with this evidently large but seemingly ill-gotten money.

14. The Bank, according to its submissions, has had its KYC Policy in place since 2003. Para 20.D (iv) of the Policy is about Employee Initiated (EI) identification of suspicious transactions by branches/departments. –In paragraph 21.2, the Bank has defined various scenarios including attempted suspicious transactions. The Policy states that in case of suspicious transaction, discreet enquires should be made about the customer's occupation / business, confirm the communication address, reason for such conduct and immediately report to the MLRO. The Bank has provided a format to be filled by the branch and sent to MLRO. In Annexure 8 of the AML Policy, indicative alert indicators for branches / departments are given. The Policy also refers to the parameters laid down by the Indian Banks Association (IBA) for identification of suspicious accounts/ transactions.

15. The report of KPMG forwarded by the Bank vide letter dated July 30, 2013, pointed out the following things:-

- (a) Employees confirmed having appeared in the Cobrapost video.

- (b) The employees stated that transcripts were not complete.
- (c) Some employees found the reporter's behavior suspicious. They gave different explanations for engaging in conversations e.g., involvement of a minister, keenness to get a potentially big account etc.
- (d) One employee (Dilsukh Nagar Branch) contacted the reporter after taking the phone number.
- (e) Sample check revealed that CTRs (in 7 cases) and STRs (in 10 cases) had not been filed.
- (f) Lockers had been offered for keeping large amounts of cash in some cases.

16. The transcripts of the conversations / discussions clearly show that the Cobrapost reporter made explicit conversation in all the 13 branches of the Bank that he wanted to launder large amounts of money through the Bank. The discussion involved following issues-

- (a) Opening Accounts without following KYC norms.
- (b) Opening multiple accounts for depositing cash and close them subsequently.
- (c) Accepting Form 60 to open accounts and deposit large sums of illegitimate cash.
- (d) Using Non Residents External ('NRE') / Non Residents Ordinary ('NRO') accounts to transfer black money abroad.
- (e) Using Travel Currency Debit Card mode for conversation of black money.
- (f) Transferring funds overseas through Travel Currency Denominated Cards and inward remittance into bank accounts of Non-Government Organizations ('NGO').
- (g) Accepting huge amounts of cash for investments in insurance products and gold.
- (h) Investment in plans escaping the purview of Income Tax.
- (i) Allotting lockers for safekeeping of illegitimate cash.

17. Though the Bank has observed that some parts of the conversation where the Bank officials insisted on submission of KYC documents had been sliced/ edited, the main theme (large amounts of illicit or unaccounted money) and the related queries made by the reporter in the said discussions have not been disputed; these have rather been confirmed by the employees in the KPMG report mentioned above. These queries were explicit and made no secret of the fact that the reporter posing as customer was talking about black money. The conversation had several features which should have led to generation of behavioral alerts as per IBA

guidelines (circulated to the Bank in March 2012, which were to be implemented by November 2012) and as per the AML Policy of the Bank, such as—

- (a) Customer left without opening an account
- (b) Customer did not complete transaction.
- (c) Customer acting on behalf of third party.
- (d) Customer could not explain source of funds.

However, in none of the branches any alert was generated and/or escalated to the MLRO, as admitted by the Bank in its letter dated 24 may 2013 referred to above.

18. The Bank informed that it also has a Whistleblower Policy in force since 2005, which is prominently positioned on the Bank’s intranet, and which guarantees confidentiality and even entertains anonymous complaints. The Bank states that this Policy has proven to be a significant enabler in the process of detection and reporting of suspicious transactions. However, there is no evidence that in any of the 13 branches involved in the Cobrapost operation this mechanism was used to raise any alert.

19. The Bank has also stated that various details are necessary for filing the STRs and the STR form does not contemplate mere enquiries and requires some actual steps taken towards the transaction. This is not acceptable as the reporting format provided by FIU-IND in FINnet allows filing STR where several fields such as account number etc are not mandatory. The Bank has the flexibility to describe an attempted transaction in the space provided for grounds of suspicion. The question of **how** the transactions could be reported would come only after it reached the Principal Officer. In the cases under discussion there is no indication that the branches raised any alert to the Principal Officer.

20. Case laws have been cited by the Bank to show what could be called ‘an attempt’ and how in the instant case the conversations/discussions are not ‘attempted suspicious transactions’. As mentioned above, reference has been made to Ram Kripal son of Shri Shyam Lal Charmakar Vs State of Madhya Pradesh (2007) 11 SCC 265 Supreme Court of India and R.V. Mohammad Ilyas 78 Cr. App. R.17 to drive home the point that there was no overt act of attempting to initiate the process of deposit, withdrawal, exchange or transfer of funds.

21. A careful reading of the above mentioned case laws shows that the contention of the Bank is not acceptable. In the instant cases, we are not debating the culpability of the Cobrapost reporter whether he committed or

attempted to commit an offence. The point in question is whether the Bank or its concerned employees fulfilled their obligations to report an attempted suspicious transaction. Unlike completed transaction, the records of which are available centrally for the MLRO and his team to analyse for any suspicious transactions, based on red flag indicators, the filing of suspicious transactions reports for attempted transactions depends heavily on the alerts generated by the branch staff, known as Employees Initiated (EI) alerts. As mentioned earlier, paragraph 20.D (iv) of the Bank's Policy covers the EI alerts. The Bank's guidelines to its employees on attempted transactions do not expect an employee to carry out a detailed legal analysis of whether an attempt was made, which the Bank has sought to do in its various submissions. Nor there is any evidence of such an analysis being applied in any of the branches in question. Reporting a suspicion is not the same as determining culpability. It is a red flag that must be raised by the gatekeeper for competent authorities to investigate. That the theft did not occur or the trespasser did not have the intention to steal is no justification for the guards to be asleep. As far as the reporter is concerned, he had made known his intention to launder black money. He had selected beforehand the branches of the Bank that he visited, had conceived of a similar theme to ascertain the possibility of laundering money and the ways to do so. He went to various branches and discussed about the laundering in detail. This was the penultimate act before initiating a transaction. Thus it had all the ingredients of an attempt to do a transaction.

22. Although there were enough indications in the conversations/discussions between the Bank officials and the Cobrapost reporter that the funds being discussed were of suspicious nature, no alerts were generated by the branch officials. On the contrary, the content, tone and tenor of the conversations/ discussions with the Cobrapost do not indicate any sense of alarm, which a prudent banker, entrusted with the legal responsibility of reporting alerts and preventing money laundering or financing of terrorism, would be expected to display in such circumstances. The Bank will not be able to fulfill its reporting obligations under the PMLA unless there is a free flow of information from its branches to the Principal Officer (MLRO), who is responsible to fulfill the reporting obligations. Evidently, the employees of the Bank were either oblivious of their duties or cared little for compliance with their legal obligations under the PMLA, as it seen that alerts for attempted suspicious transactions were neither generated nor escalated to the Principal Officer. It is for the Bank to look deeper into the causes with a view to establish accountability and take remedial measures.

23. PMLA aims at prevention of laundering of the proceeds of crime. That even attempted transactions are required to be reported points to the high level of expectation the law has from the banks. It is not enough for the Bank to lay down a policy; it is equally important to implement it. In the case of Axis Bank, the policy was not followed in all the 13 branches covered by the Cobrapost and to which these proceedings relate. In light of the above, I conclude that there was a failure in the Axis Bank's internal mechanism for detecting and reporting attempted suspicious transactions, in terms of section 12 of PMLA read with Rules 2, 3, 5 and 7 of the PML Rules. Accordingly, in exercise of the powers conferred on me under section 13 (2) of the PMLA, 2002, I hereby impose on Axis Bank a fine of Rs.13 lakhs for 13 instances of failure in compliance with its obligations laid down in Section 12 of the PMLA read with Rules 2, 3, 5 and 7 of the PML Rules framed thereunder.

(Praveen Kumar Tiwari)
Director
Financial Intelligence Unit-India

To,
Axis Bank,
Axis House, C- 2,
Wadia International Centre,
Pandurang Budhkar Marg
Worli, Mumbai - 400025

Through: The Chairman and Managing Director, Axis Bank