

F.No. 25-1/2013/FIU-IND/Pt V
 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. 5/DIR/FIU-IND/2015

Name & Address of the Reporting Entity: Corporation Bank,
 Head Office,
 Mangaladevi Temple Road,
 P.B No.88,
 Mangalore - 575001

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: 23rd June, 2015

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

An appeal against this order may be made with the Appellate Tribunal established under PMLA, 2002, and situated at 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 Corporation Bank. The appeal should be in the form and manner prescribed (refer to sub-section (3) of section 26 of the prevention of Money Laundering Act, 2002, hereinafter referred to as PMLA or the Act).

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

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 verify the identity of the clients, maintain records of specified transactions and report to Director, Financial Intelligence Unit – India (hereinafter also

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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 Corporation Bank. The sting operation involved the Cobrapost reporter visiting the branch of the financial institutions with a story: that he wanted to invest/ safe-keep substantial amounts of illicit or unaccounted cash. 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 under the PMLA. Following the sting operation by Cobrapost, the Bank was asked vide letter dated 10-07-2013, whether any alerts in respect of the sting operation were generated in its branch at Sector 31, Gurgaon, which was covered in the sting operation, and whether any STR was reported for attempted transactions for the incident reported by the Cobrapost. The Bank in its reply dated 25-07-2013 confirmed that no STR was filed for attempted transactions in the branch concerned. The Bank also stated that no alerts had been generated by the branch for the reported incidents.

6. As per the definition of STR in Rule 2(g) of the Rules, STR means a transaction referred to in clause (h) including an attempted transaction. As STR for attempted transactions had not been filed for the branch of the Bank visited by Cobrapost, a show cause notice was issued on 17th December 2013 for contravention of provisions of Section 12 of the Act, read with the relevant Rules of the PML (Maintenance of Records) Rules 2005.

7. The Bank in its reply dated 30-12-2013, admitted to the discussions of Cobrapost reporter with the branch official of Gurgaon, Sector 31 branch and stated that: there was no attempted transaction at the branch and the reporter

had had only casual discussion on the various business propositions and the schemes of the Bank; the Bank had suspended the concerned official from the branch on the day Cobrapost had reported in media and suitable disciplinary action was initiated; the Bank had communicated all the 27 branch level red flag indicators to the branches vide their circular dated 12-10-2011, with the instructions to report immediately when such instances were observed in the branches. The bank also replied that during the period 01-04-2012 to 28-02-2013, it did not receive from the branch in which the sting operation took place any report in respect of the following branch level indicators:

CV 1.1- Customer left without opening an account.

E 11.1 – Customer did not complete transaction.

E 13.1 – Customer acting on behalf of third party.

E 14.4 – Customer could explain source of fund.

8. On the request of the Bank a personal hearing was held on 18-03-2014, which was attended by Mr. A.L Daultani, Executive Director and Mr. B.N Shenoy, General Manager. During the hearing the Bank admitted that the conversation recorded between the Cobrapost reporter and the Bank's employee did take place. It was further admitted that the Bank's policy on AML/CFT at the material time did require filing of STR even in case of attempted transactions which evidently was not followed by the concerned employee. The Bank requested that the notice issued under Section 13 may be withdrawn.

9. In their additional submissions vide letter no.O&S:KYC:018:2014-15 dated 06-06-2014, the Bank did not offer detailed comments on the transcript of conversation between the branch manager and the reporter stating that it was not full conversation from beginning to end and contained only extracts of the reported conversation.

Discussion and Findings

10. 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 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 transactions referred to in Rule 3 and for furnishing information about such transactions in such form as may be directed by its Regulator.

11. A perusal of the transcript of the Cobra Post sting operation shows that the Cobra Post reporter posing as a customer visited Sector – 31, Gurgaon branch of the Bank and told the branch manager that he wanted to invest Rs. One crore and more money, about 25-26 crore, was expected in March, on the condition that he did not want to pay TDS and did not wish to show in their books. The Bank official offered fixed deposit plan where there would be no TDS and investment in insurance by LIC and called one LIC official for consultation. The reporter further told that all money was in cash and he needed a locker to safe keep 7-8 crore. The Branch manager agreed to provide a locker and use that money for investment and convert into white. The Bank official suggested to route black money by making a demand draft and depositing it into an account with the Bank to pay LIC official for investment in LIC product. The Branch official would help to count crores of cash by making the counting machine available to the reporter.

12. The Bank’s KYC and AML Policy was approved by its board on 10th January, 2012. Annexure – II (D) of the policy details the suspicious alert indicators for branches. The following alerts at serial no.1, 11, 15, 19, 20, 21 and 22 are relevant in the present case:

S.No	Alert Indicator	Indicative rules/Scenario
1	Customer left without opening account	Customer did not open account after being informed about KYC requirements.
11	Customer did not complete transaction	Customer did not complete transaction after queries such source of funds, etc.
15	Customer acting on behalf of a third party	Customer has vague knowledge about amount of money involved in the transaction.
19	Customer want to avoid reporting	Customer makes inquiries or tries to convince staff to avoid reporting.
20	Customer could not explain source of funds	Customer could not explain source of funds satisfactorily.
21	Transaction is unnecessarily complex	Transaction is unnecessary complex for its stated purpose.
22	Transaction has no economic rationale	The amount or frequency or the stated reason of the transaction does not make sense for the particular customer.

Annexure II(D) mentions that “if any if the above alert indicators are noticed during the transactions in any account, branches shall immediately report the same to KYC and AML Cell, head office immediately”.

13. It is evident from the contents of the transcripts, which have not been denied by the Bank, that the Cobrapost reporter made explicit conversation about investing through the Bank large amounts of cash of unexplained origin. The discussion involved the following themes -

- (a) Immediate investment of Rs.1 crore, more (Rs.25-26 crore) cash expected in March;
- (b) There should be no TDS;
- (c) Converting black money into white;
- (d) Demand for locker where Rs.7-8 crore cash could be kept;

14. 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 mentioned above and as per the AML Policy of the Bank. However, in the concerned branch no alert was generated or escalated to the Principal Officer, as admitted by the Bank. The content, tone and tenor of the conversations/ discussions with the Cobrapost reporter do not indicate any sense of alarm, which a prudent banker, entrusted with the legal responsibility of reporting and preventing money laundering, 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, who is responsible to fulfill the reporting obligations. Evidently, the concerned employee of the Bank was either oblivious of his duties or cared little for compliance with his legal obligations under the PMLA. Further, there was no visible application of mind at the Branch level to determine whether the conversations/discussions would fall in the category of attempted transactions. This indicates that the Bank's argument that the incident would not fall in the category of attempted transaction is only a post facto rationalization; the Bank's Head Office was not even aware of the matter until it was out in the media. Rather than looking deeper into the causes with a view to establish accountability and take remedial measures, the Bank has tried to justify the actions / responses of the employee without appreciating the context and seriousness of the matter. The Bank stated during the personal hearing that even though there was a clear-cut policy for filing STR in the case of attempted transactions, it was not followed by the concerned employee.

15. 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. In the instant case there were all the ingredients which would make a transaction 'an attempted

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transaction'. It is not enough for the Bank to lay down a policy; it is equally important to implement it. In the case of Corporation Bank, the policy was not followed in the concerned bank branch covered by the Cobrapost. In light of the above, I conclude that there was a failure in the Bank's internal mechanism for detecting and reporting attempted suspicious transactions, in terms of Section 12 of PMLA read with Rules 2, 3, 7 and 8 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 Corporation Bank a fine of Rs. One Lakh for failure in compliance with its obligations laid down in Section 12 of the PMLA read with Rules 2, 3, 7 and 8 of the PML Rules framed thereunder.

(Praveen Kumar Tiwari)
Director
Financial Intelligence Unit-India

To

Corporation Bank,
Head Office,
Mangaladevi Temple Road,
P.B No.88,
Mangalore - 575001.
Through: The Chairman and Managing Director