

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

Name & Address of the Reporting Entity: HDFC Bank Limited,
HDFC Bank House,
Senapati Bapat Marg,
Lower Parel (West),
Mumbai-400013

Show Cause Notice No. & Date: F.No. 25-1/2013/FIU-IND dated 17 December 2013

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

Date of Order: 15th January, 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 HDFC 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).

HDFC Bank Ltd. India (hereinafter referred to as 'HDFC Bank') is a banking company as defined under Section 2(e) of the PMLA.

2. Section 12 of the Act and the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter referred to as the 'Rules'), framed under the Act, impose obligations on banking companies to maintain records and furnish to Director, Financial Intelligence Unit – India (hereinafter referred to as 'Director, FIU-IND') prescribed reports relating to

specific cash transactions (CTR), suspicious transactions (STR), counterfeit currency transactions (CCR) and non-profit organization transactions (NTR) .

3. Rule 3 of the Rules specifies the transactions, the records of which are to be maintained; Rules 7 & 8 of the Rules prescribe the procedure, manner and time of furnishing such information; 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 in case of such failure to comply.

5. Rule 2 (g) of PML (Maintenance of Records) Rules states that a "suspicious transaction" means a transaction referred to in clause (h), including an attempted transaction, whether or not made in cash, which to a person acting in good faith-

- (a) gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved; or
- (b) appears to be made in circumstances of unusual or unjustified complexity; or
- (c) appears to have no economic rationale or bona fide purpose; or
- (d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism.

6. Following the widespread reporting in media in March, 2013 that a sting operation by the Cobrapost website had revealed violation of AML/CFT norms by a number of financial institutions including the HDFC Bank, the Bank was asked vide letter dated May 8th 2013, whether it had reported any STR for attempted transaction for the incidents reported by the Cobrapost. The Bank in its reply dated May 31st 2013 confirmed that no STR for attempted transactions had been filed by it for the incidents reported by the Cobrapost involving the HDFC Bank or its employees. The Bank also provided other information, while answering specific questions asked by FIU-IND in its letter of 8th May 2013, stating broadly that:

- a. It had a comprehensive KYC/AML Policy, framed in 2004, and revised from time to time, the latest being on 18th April 2012;

- b. It had communicated to the branches all 27 indicative branch level alerts contained in the IBA circular of 18th May 2011, and that the process for raising alerts and reporting STRs was in place;
- c. The Bank had a training cell for conducting regular training for its employees on AML and KYC issues/ updates, and 78% of the staff working in the 26 branches covered by Cobrapost had attended programs covering aspects relating to branch alerts and identification of suspicious transactions;
- d. The Bank had suspended the employees featuring in the Cobrapost videos and take appropriate action after an enquiry set up for the purpose was completed;
- e. The Bank had in place a system of reporting attempted suspicious transactions, but the Cobrapost reporter was merely inquiring through verbal conversations with the Bank employees about opening of Bank accounts, investment in insurance products etc., without actually undertaking such transactions and the identity of the person opening the account or making the investment was not clear from the conversation.
- f. The Bank had created a dedicated email id, accessed by the Central AML Cell, to enable the front desk/ branch level staff to report any incidence of suspicious/ attempted suspicious transactions.
- g. The Bank had filed 79 STRs on the ground of attempted suspicious transactions.

7. A perusal of the Bank's reply dated 31 May 2013 (discussed in the preceding paragraph) and the Cobrapost transcripts relating to the sting operation indicated failure of the internal mechanism of the Bank for reporting STRs, as it was seen that no alerts had been generated for attempted suspicious transactions by any of the 26 branches of the Bank covered in the Cobrapost operation. A show cause notice dated 17th December, 2013 was issued to HDFC Bank for not filing STRs for attempted transactions in respect of 26 of its branches visited by the Cobrapost and for contravening the provisions of Section 12 1 (b) of the PMLA read with Rules 2(g), 3 (D), 7(3), and 8(3) of the PML Rules. The Bank filed its reply vide letter dated 24th January, 2014.

8. On request of the HDFC Bank a personal hearing was granted on 24th February, 2014, which was attended by Mr. Varesh Suktankar, Deputy Managing Director; Mr. V. Chakrapani, Head of audit; Manoj Nadkarni, Principal Officer (AML) along with three advocates namely Ruchi Agnihotri,

Ayush Sharma and Aarti Joshi. During the personal hearing, HDFC Bank made written submission, which was taken on record.

9. Vide letter dated 5th March, 2014, HDFC Bank made further submissions and reiterated the stand taken in its reply dated 24th January, 2014 and the arguments advanced therein. Various case laws were cited to show that the conversations made by the Cobrapost reporter did not come under the category of 'an attempt'.

10. The copies of the transcripts of the discussions/ conversations between the Cobrapost reporters and the Bank employees relating to the case were provided to HDFC Bank on 17th April, 2014.

11. Vide letter dated 6th May, 2014, HDFC Bank stated that the copies of transcripts provided by FIU-IND on 17th April 2014 could not be taken to constitute a conclusive reflection of the actual conversation which the Cobrapost reporter had with Bank officials for the following reasons:

- a) *Both the transcripts as well as the videos uploaded by Cobra Post were edited and appeared to be sliced and diced versions of the conversation between the Cobra Post reporter and the bank officials.*
- b) *The transcripts only seemed to reflect a part of the conversation the reporter had with the respective bank officials.*
- c) *The video and the written transcript on the Cobra Post's website did not match with each other in their entirety and there were inconsistencies.*
- d) *The veracity of the transcripts was also questionable since there was no corroboration or proof to establish the conversation as recorded in the transcripts even took place between the officials and the Cobra Post reporter.*

12. The following is a summary of the points made by the Bank in its written and verbal submissions:

- a) The Cobrapost reporter had only made general and roving, verbal inquiries and had neither attempted / disclosed the identity of any person nor given any firm intention to carry out any transaction.
- b) Neither any transaction took place nor was any attempt to complete the transaction made.

- c) Attempted transactions are those which have been formally initiated and are abandoned / aborted and should have a firm imprint on the banking system which was not the case. The obligation to furnish information to FIU will arise only in respect of transactions which the Bank is obliged to record.
- d) The question of filing STR did not arise as no transactions went through nor was there any attempt by the reporter to actually initiate or attempt to complete the transaction.
- e) The Bank became aware of the sting operation and the interaction of Cobrapost with its employees only after the public announcement by Cobrapost on March 14, 2013. Had the reporter attempted to invest, the investment would have been routed through the accounts and reviewed for suspicious transaction reporting.
- f) The format provided by FIU for filing the STRs requires to fill up the details of identity of the person concerned, date of attempted transactions, details of transactions, amount of transaction, the currency of transaction etc., which were not available.
- g) The conversations and discussions did not satisfy the definition of transaction under the Rules nor would they amount to an attempt to conduct a transaction. The conversations, absent an overt act, were only indicative of an intention to commit the offense and not an attempt by itself.
- h) The Bank had a system in place to file an attempted transaction reports and the STRs filed by the Bank included 79 STRs for attempted suspicious transactions.
- i) The Cobrapost reporter's visit had not been perceived as an attempted transaction by any of the Bank branches.

Discussion and findings

13. A perusal of the transcripts of the conversations recorded between the Cobrapost reporter and the employees of the Bank shows that the reporter posing as the representative of a potential customer had approached the 26 branches with a similar proposition: that he wanted to invest large sums of black money on behalf of a politician and how the Bank could help in the

process; whether the Bank could provide him a locker to stash 5-7 crores of rupees in cash; and whether the black money could be sent abroad for the use of the politician's wife, etc.

14. The Cobrapost sting operation was conducted over the period **September 2012 to February 2013**, when the April 2012 version of the Bank's Anti-Money Laundering and Know Your Customer Policy was already in force. Paragraph 6.2.2.1 of the Policy recognizes the "High Risk" status of the accounts of politically exposed persons, requiring enhanced due diligence. The transcripts of the conversations/ discussions between the Bank employees and the Cobrapost reporters clearly show that the Cobrapost reporter made explicit conversations in all the 26 branches of the Bank that he wanted to launder through the Bank large amounts of cash belonging to a politician. The conversations/ discussions revolved around the following issues-

- a. Black money to be put in the banking channel
- b. Heavy cash deposits to be made
- c. Structuring of deposits in multiple accounts to avoid trail
- d. Involvement of Politically Exposed Person (PEPs) and relatives
- e. Requirement of locker room for keeping large amounts of cash
- f. Transferring abroad large amounts of cash deposited
- g. Avoiding PAN and Law Enforcing Agencies
- h. Black money from the sale of property and transfer of the same abroad
- i. Bank employees advising investment of the large sums of cash in Insurance policies through demand drafts
- j. Bank employees advising the reporter to use the Bank's account for making demand drafts against cash
- k. Bank employees advising the reporter to use a cooperative bank for making demand draft against cash.

16. The conversations/ discussions with the Cobrapost reporter, as briefly indicated above, cannot be taken as normal, bona fide business conversations/ discussions. They are such as to have alerted any law abiding person, not to speak of staff of a bank- a reporting entity- who are entrusted with the responsibility under the PMLA of reporting suspicious transactions pertaining to the suspected proceeds of crime. The conversations/ discussions had several features, which should have led to generation of behavioral alerts as per IBA guidelines as well as the AML/KYC policy of the Bank, which contain alerts 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.
- e. Customer did not give full /proper information –like name, source of funds etc.

However, in none of the branches any alert was generated or reported to the Principal Officer, who has the statutory responsibility under Rule 7 (2) of the Rules to file STRs. On the contrary, an impression was given that the Bank officials were willing to go out of the way to help the potential customer get around the legal or regulatory provisions to escape the reporting requirements. In one case, a remark like “HDFC baitha hi hua hai black money khane ke liye” was made. This is a clear indication that the Bank staff was either oblivious of the Bank’s statutory responsibility of reporting attempted suspicious transactions or cared little for compliance with this responsibility. It is also clear that many of the steps stated to have been taken by the Bank (as described in paragraph 6 above), had little or no effect on the concerned staff of the 26 branches covered by Cobrapost.

17. The Bank has stated that some parts of the conversation in the Cobrapost transcripts where the Bank officials have insisted on submission of KYC documents have been sliced/ edited. The queries made by the reporter in the said discussions have however not been disputed; these have rather been confirmed by the employees in an independent enquiry conducted by the Deloitte at the behest of the Bank, and a copy of which was furnished as a part of these proceedings. These queries were explicit and made no secret of the fact that the reporter posing as customer was talking about black money. However, none of the staff found this a sufficient basis for raising an alert. The Bank has admitted that it became aware of the matter only after it was reported in the media. It is obvious that the Bank (its Principal Officer) would not be in a position to file a STR if it was unaware of the underlying transaction or an attempted transaction.

18. The Bank has also argued that it could not report the transactions through the forms prescribed for STRs. This argument cannot be accepted. The question of **how** the transactions could be reported to FIU would arise only after the transaction has been brought to the attention of the Principal Officer, who has the statutory responsibility to file reports with FIU-IND. In

the instant cases the Bank has admitted that it came to know of the matter only after it was reported in the media. The Bank cannot fulfill its obligations of filing STRs for attempted transactions if the alerts are not raised by the branches to the Central AML Cell. Once the alerts have been raised, and examined in the AML Cell for being reported as STR, and the Bank wanted to report attempted STRs, it could have contacted FIU through any means of communication e.g., by fax or email. The Bank has not shown any evidence that it made any attempt to report. The new TRN (transaction) reporting format of FINnet, which is FIU's online reporting system, allows filing reports for attempted transactions 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.

19. Various case laws have been cited by the Bank to show what could be called an 'attempt' and how the instant cases are not 'attempted suspicious transactions'. The gist of the case laws is as under:-

(a) Ram Kripal son of Shri Shyam Lal Charmakar Vs State of Madhya Pradesh (2007) 11 SCC 265 Supreme Court of India

The word "attempt" is not itself defined, and must, therefore, be taken in its ordinary meaning----. The moment one commences to do an act with the necessary intention, he commences his attempt to commit the offence

(b) State of Maharashtra Vs Mohd. Yakub, reported as AIR1980SC1111

The term attempt is wide enough to take in its fold any one or series of acts committed beyond the stage of preparation – such act or acts being reasonably proximate to the completion of unlawful activities.

(c) Abhayanand Mishra v The State of Bihar (1961 Cri LJ822)

Hon. Supreme Court held the appellant liable for the offence of attempt to cheating, holding that the preparation was complete when he prepared the application for submission to the University. The moment he dispatched it, he entered the realm of attempting to commit the offence. He did succeed in receiving the university admission card. He failed to sit in the examination as forgery came to light before he could succeed. The moment one commences to do an act with necessary intention, he commences his attempt to commit the offence.

(d) Rasila Mehta vs Custodian-2011 6SCC 220

In paragraph 47 the Hon. court stated that the statutes must be construed in a manner which will suppress the mischief and advance the object the legislature had in view. A narrow construction which tends to stultify the law must not be taken.

There is nothing in the above pronouncements that would seem to support the contention of the Bank that the Cobrapost incidents do not fall in the category of 'attempted suspicious transactions'

20. The object of the PMLA is to prevent the menace of money laundering. If this object is taken as the guiding factor in discharge of the statutory obligations like filing STRs, then it would be difficult to believe why a reporting entity should not get alarmed or alerted when a customer explicitly discusses black money and the ways to launder it across its branches. In the instant cases, the reporter had made known his intention to launder black money. He had selected beforehand the branches of the Bank that he visited, had prepared in advance, and conceived of a similar theme to ascertain the possibility of laundering money and the ways to do so. He took the risk of going to various branches and discussing about 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. There is no evidence that any of the branches doubted his intention or story at the material time and this should be an important consideration in judging the Bank's or its employees' response to the reported incidents.

21. As stated above, the Bank had revised its KYC/AML Policy in 2012. Paragraph 7.5 of the Bank's KYC/AML policy 2012 states that:

"7.5. There are certain types of transactions which can be identified at the branch / operation departments themselves. Details are as follows:

- (a) *The staff at the Branches may at the time of processing at the transaction or otherwise come across certain transactions not in line with profile of the customer.*
- (b) *Suspicious behavior displayed by the customer during his interaction with branch staff (emphasis added). Also there could be instances of 'attempted' transactions, where the transaction is abandoned / aborted by customers on being asked to give some details or provided document.*
- (c) *.....*
- (d) *.....*
- (e) *.....*

- (f)
- (g)
- (h)
- (i)

The Branch in order to fulfill its obligations under the PMLA 2002 have to report these suspicious transactions. To enable seamless reporting and at the same time not to burden the staff with additional requirement of investigating the case and establishing suspicion, a designated email ID or portal may be made available to the staff at the branches to log in the details of the suspicion identified / attempted transactions."

This Policy does not state the nuanced view of "attempted transactions" which the Bank is taking now in its submissions to the FIU-IND. Whether a STR should be filed is a decision to be made by the Principal Officer, and not in the field office/ branches, which, as the Policy states, are only expected to report the "suspicious behavior displayed by the customer during his interaction with the branch staff".

22. As discussed in the foregoing paragraphs, 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 such as to have alerted any prudent person. That no alerts were generated by the branch officials, despite an elaborate system established by the Bank including a dedicated email id for reporting suspicious behavior or transactions, was a clear violation of paragraph 7.5 of the AML Policy quoted above. The Bank has admitted in its submission of January 24, 2014 that as an organization it became aware of the incidents only after being reported in the media on March 14, 2013. This establishes that the Bank was unaware of the matter not only while it was happening, but also afterwards, which proves that the Bank's internal mechanism failed to respond to these incidents of suspicious behavior in all the 26 branches. Evidently, the Bank will not be able to fulfil its reporting obligations under the PMLA unless there is a flow of information from branches to the Principal Office. Though this arrangement is clearly established in the KYC / AML Policy (2012) of the Bank, it was lacking in implementation. The Bank's submission that the conversations/discussions would not fit in the category of an attempted transaction is not germane to the issue; what is relevant is that the Bank's own Policy that the branches should report suspicions behavior was not followed. There is no evidence of any application of mind at the Branch level to determine whether the conversations/discussions would fall in the category of attempted transactions or whether they should be raised to the Principal Officer, who, as admitted, was not even

aware of the incidents. Therefore, the argument of the Bank would appear to be an afterthought.

23. The PMLA aims at prevention of laundering of the proceeds of crime. Under the PMLA, the banks have been entrusted with the responsibility of reporting all suspicious transactions, including attempted transactions. 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 HDFC Bank, the policy was laid down but not followed in all the 26 branches reported by Cobrapost. It is for the HDFC Bank to look deeper into the causes with a view to establish accountability and take remedial measures.

24. In light of the above, I conclude that in all the 26 cases reported by Cobrapost, there was a failure in the HDFC 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 HDFC Bank a fine of Rs. 26 lakh for 26 instances of failure in compliance with its obligations as 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,
HDFC Bank Limited,
HDFC Bank House
Senapati Bapat Marg,
Lower Parel (West), Mumbai-400013

Through: The Chairman and Managing Director