

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

6<sup>th</sup> Floor, Hotel samrat  
 Kautilya Marg, Chanakyapuri  
 New Delhi -110021

**ORDER-IN ORIGINAL NO. 2/DIR/FIU-IND/2015**

**Name & Address of the Reporting Entity:** ICICI Bank Limited,  
 ICICI Bank Towers,  
 Bandra – Kurla Complex,  
 Mumbai - 400051

**Show Cause Notice No. & Date:** F.No. 25-1/2013/FIU-IND dt 5<sup>th</sup> Dec, 2013

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

**Date of Order:** 20 February, 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 ICICI 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. ICICI Bank Ltd (hereinafter referred to as 'bank') is a banking company as defined under Section 2(e) of the Prevention of Money laundering Act, 2002 (hereinafter referred to as the 'Act').
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 imposes 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; these include suspicious transactions whether or not made in cash. Rules 5, 7 & 8 of the Rules prescribe the procedure, manner and time of maintaining and furnishing information about the transactions. Rule 9 of the Rules prescribes the procedure and manner of verification of records of identity of clients. The definition of suspicious transactions (Rule 2) includes an attempted transaction. The attempted transaction has not been defined separately. Rules 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.

4. 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. The Cobrapost incidents apparently fall in the category of 'attempted suspicious transactions' Therefore, all fourteen branches of the bank (names mentioned below) visited by Cobrapost reporter should have filed STRs for attempted suspicious transactions but no STRs was filed by the bank in respect of these attempted transactions. This is in contravention of provisions of sec 12(1)(b) of Prevention of Money Laundering Act, 2002 read with Rules 2(g), 3(D), 7(3) and 8(3) of PML (Maintenance of Records) Rules.

5. 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.

6. Following media reports in TV channel of a sting operation by the website Cobrapost alleging violation of AML/CFT measures in 14 branches of the ICICI Bank, the Bank was asked to explain the position. Vide letter dated April 4<sup>th</sup> 2013 the Bank submitted an interim enquiry report of a senior level committee constituted by the Bank to ascertain the allegations made by Cobrapost. Some of the findings of the report were as follows:

a) These incidents should have raised a wider alert in the RLG team and some of these incidents should have been reported under RAS tool. The mechanism thus needs to be strengthened further.

b) Some of the Regional and Zonal heads said that due diligence in some branches may be in letter not in spirit. A specific need for enhanced training was felt.

7. Vide letter dated May 8<sup>th</sup>, 2013, the Bank was asked whether any STR was reported for attempted transactions reported by the Cobrapost. The Bank in its reply dated May 28, 2013 confirmed that no STR was filed for attempted transactions as regards the Cobrapost incidents.

8. As it prima facie appeared that there was a failure in the Bank's internal mechanism for filing suspicious transactions reports in respect of above, as borne out by the findings of the internal enquiry report of the Bank, the Bank was called upon vide letter dated 5<sup>th</sup> December, 2013 to show cause why action should not be taken against it for violation of Section 12 of the PMLA.

9. Vide letter CGA2014-001 dated January 10, 2014, the Bank submitted its reply to the show-cause notice and denied the allegation. The Bank stated that:

(a) The bank places reliance on RBI guidelines (Master Circular dated July 1, 2012), which in para 2.22(B)(ii) state that transactions abandoned/aborted by customers on being asked to give some details or provide documents should be reported as attempted transactions in

STRs even if not completed by customers, irrespective of the amount of the transaction. The Bank stated that the aforesaid guidelines also form part of the Report by the Working Group comprising FIU-IND, RBI, Indian Bank's Association (IBA) and select banks, which was issued by IBA in May 2011 and RBI in December 2011;

(b) The aforesaid transactions did not contain the two prerequisites to be considered for STR filling i.e. specific transactions request was not received by the Bank and no identification data or documents were available of the individual involved and the discussions remained purely in the nature of roving inquiries.

(c) The incidents were only in the nature of inquiries and no specific transaction requests for opening of accounts or undertaking financial transactions were received during the sting operation.

(d) These incidents did not amount to 'attempted transactions' and accordingly were not required to be treated / reported as suspicious transaction.

10. On the request of the Bank a personal hearing was granted on 10.03.2014. It was attended by Mr. N.S. Kannan (ED), Dr. Sanjay Chougule, Mr. Shanker P, Ms. Supritha Shetty, (all Sr.GMs), Mr. Rajesh Nair (Jt. GM) and Mr. Praveen Dayal (MLRO). During the personal hearing the Bank admitted that:

(a) The conversations reported by Cobrapost did take place, but were not escalated to the Principal Officer.

(b) The Bank had issued comprehensive instructions, including a Report a Suspicion (RAS) tool for reporting suspicious behavior in 2008, further updated by IBA guidelines.

(c) Meaningful information should be present/ available for reporting STR; attempted transactions should be evaluated on the touch-stone of (i) intent (ii) preparation, and (iii) commission, akin to a criminal act.

(d) The judicial pronouncements on sting operations should be kept in mind while deciding the treatment to be given to such operations.

11. Vide letter no. CGO013 March 2014 dated March 14, 2014 the Bank made further submissions stating that-

(a) The Bank had in place strong AML / KYC systems. Consequent to the media allegations the Bank undertook a review by Internal Enquiry Committee supported by an independent external consultant and did not find any instance of money laundering.

(b) The Bank gave details of its proactive reporting framework, action taken on concerned officials and its view on attempted transactions. The bank believed that the matter relating to sting operations did not qualify as attempted transactions as no specific transaction request were received; no identification data or documents were available of the individuals; and the discussion remained in the nature of roving enquiries.

(c) The bank also held the view that neither PMLA nor PML (Maintenance of Record) Rules define the term attempted transaction. As the rules only define a transaction, an attempted transaction would translate to active steps taken to perform a transaction as defined under rule 2 (h) of the rules. In the instant case mere conversation has taken place and no documents have been sought or handed over.

12. The Bank vide letter no.CGLAML005 June 14, dated June 11, 2014 provided a copy of the extract of the interim report dated April 03, 2013 of the Enquiry Committee constituted by the Bank, and drew attention to Para 5.3.4.1, stating that all the 18 employees had confirmed the genuineness of the conversation as appearing in the videos; that the videos were edited and did not capture the entire communication; the employees accepted that they had erred in talking to the Cobrapost representative in the manner depicted in the videos.

### Findings and Discussion

13. The position that emerges from a perusal of the records of conversations/ discussions between the Cobrapost reporter and the Bank employees, report of the internal inquiry conducted by the Bank and made available to FIU-IND, submissions made by the Bank during the personal hearing and thereafter is that 18 employees and 31 supervisors in 14 branches at 9 locations (New Delhi, Noida, Gurgaon, Faridabad, Chandigarh, Jaipur, Aligarh, Hyderabad, Chennai) were involved in these conversations. The transcripts of the conversation / discussion between the bank employees and the Cobrapost reporters clearly show that the reporter made explicit conversation in all the 14 branches that he was attempting to launder through the Bank huge amount of black money belonging to a politician. The Bank's internal inquiry committee, based on the interviews with all 18 employees, confirmed the genuineness of the conversations. Based on the transcripts, the Bank's inquiry committee listed 14 scenarios pertaining to account opening, investment in gold and life insurance, cash deposition and allotment of lockers. These 14 scenarios are as follows:

1. Allot large lockers for safekeeping of cash
2. Provide service of collection of cash
3. Routing customer funds in cash through other accounts
4. Facilitating remittance transactions on behalf of customer through other than legal channels.
5. Cash deposit of < Rs.10 lacs in a day to evade thresholds
6. Cash Deposit into account followed by creation of pay order / demand draft for investment in insurance
7. Suggest cash deposit in gramin banks / get DDs made against cash for the client from other Banks
8. Open accounts without PAN
9. Advising on explanation to be provided for source of funds
10. Advising not to open accounts at same address

11. Open account to route cash less than Rs.50,000 and then deposit up to Rs.10 lacs in installments for investment in gold / insurance
12. Open multiple accounts for depositing Cash; open multiple accounts in name of parents and servants. Post which make investments.
13. Open NRI account and deposit cash and subsequent outward remittance
14. Cash deposit in NRI a/c, from sale of property. To spilt deposit into tranches of Rs.10 lacs.

14. The scenarios emerging from the conversations/ discussions between the Bank employees and 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:

- (i) Customer left without opening an account
- (ii) Customer did not complete transaction.
- (iii) Customer acting on behalf of third party.
- (iv) Customer could not explain source of funds.
- (v) Customer did not give full /proper information –like name, source of funds etc.

But in none of the branches any alert was generated and/or escalated to the AML cell.

15. 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. It has

rather been confirmed by many employees, in the internal enquiry conducted by the Bank, a copy of which was furnished as a part of these proceedings, that they were attracted by the prospect of a genuine large value customer. 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 concerned found this a sufficient basis for raising an alert.

16. The Bank has also stated that it could not have reported the transactions as specific transaction requests were not received by the Bank; no identification data or documents were available of individuals involved; and the discussions remained purely in the nature of roving inquiries. The question of how the transactions could be reported would come only if it reached the Principal Officer who has the reporting responsibility. The Bank's Group Anti Money Laundering and Combating the Financing of Terrorism Policy (paragraph 4.4) describes a suspicious transaction as one that is inconsistent with customer's known, legitimate activities or with the normal business for that type of account. It says that the suspicious transactions may include attempted transactions, even if not completed by the customers, irrespective of the transaction value. According to the submissions made by the Bank, it has a centralised monitoring system for STRs that works on rule based triggers. Recognising that the employee participation is paramount in the success of the AML/CFT program, the Bank has supplemented this system by devising another system called Report a Suspicion (RAS), which enables all employees to report a suspicion (attempted as well as completed) transactions through a link placed on the "Universe". The employee is expected to report a suspicion by clicking the link on the "Universe", which feeds into the Bank's AML software (AMLOCK) to generate alerts. These alerts would flow to the AML Compliance Officers (AMLCOs) in case the report is for a customer, and directly to the MLRO in case of a non-customer. It is thus clear that the Bank has established a comprehensive system of generating and reporting suspicious transactions both in respect of customers and non-customers. However, this system did not function in the reported 14 branches. It is noted from Annexure 2 of the Bank's internal inquiry report that employees of some other branches had exchanged emails referring to similar



incidents, giving details (name, telephone number of the prospective customer) and advising caution due to his suspicious interactions. These exchanges indicate that the person had left some name and contact details. They were flagged as suspicious but not reported to the MLRO through the RAS tool.

17. The Bank has cited some case laws on the definition of attempt, taking the view that the conversations/ discussions would not fall under the definition of an attempt. The cases are as under:-

1) Ram Kripal Vs State of Madhya Pradesh (2007) 11 SCC 265 Supreme Court of India

“9.[...] An attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence.”

2) Nathulal vs. State of Madhya Pradesh (AIR 1966 SC 43) – Supreme Court of India

“What constitutes an attempt is a mixed question of law and fact, depending largely on the circumstances of the particular case.—Attempt begins when preparation ends.” The judgment also describes three stages of a crime-intention to commit the crime, preparation and overt steps to commit the crime.

3) Aman Kumar & Another vs. State of Haryana (Cr. Appeal 1106 of 1997) – Supreme Court of India.

“The word attempt is not itself defined and must therefore be taken in its ordinary meaning. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its

commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence.”

18. 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. The Bank’s guidelines to its employees on attempted transactions do not expect an employee to carry out a detailed and legal analysis of whether an attempt was made. 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. The PMLA does not place a completed suspicious transaction on a different footing from an attempted suspicious transaction. 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.

19. The Bank has also cited the High Court judgment (**Court on its own motion vs. State (W.P) (Crl) no.796/2007 – Delhi High Court**) to make the point that a sting operation cannot be initiated to entrap an innocent person to commit a crime. A perusal of the Hon. Court’s order reveals that in para 48, the court says that:

“We are not really concerned with journalistic norms or how the mass media ‘behaves’ in a given situation. This is really a matter that falls within the domain of journalists and broadcasters and their disciplinary bodies. The Courts come into the picture only if there is

an allegation of transgression of the law by the media. Similarly, if there is an allegation of defamation by the media against an individual, he has a right to approach the Courts to redress his grievances. The Courts are not and cannot be expected to deal with subjective issues of bias, attitude, behavior etc. in reporting events”.

20. In this case the court ruled against the advocate Mr. R K Anand who had challenged the sting operation. In paragraph 102 of the order the Hon. High Court held that:

“while the sting operation conducted on Mr. Anand and Mr. Khan maybe criticized on ethical grounds and as violating their privacy and may have left them with a sense of having been deceived by Mr. Kulkarni, to say that they were trapped into indiscretions would certainly not be correct because the tenor of the conversations that they had with Mr. Kulkarni does not suggest that they were being led up the garden path. The conversations were by and large and in the circumstance, quite normal and showed that Mr. Anand and Mr. Khan were in control of the conversations, moreover, both Mr. Anand and Mr. Khan are seasoned lawyers with a tremendously long stint at the Bar and I is difficult to imagine that they would not have suspected anything amiss had the conversations with Mr. Kulkarni been anything but normal. The tragedy really lies not in the alleged and trapping or cheating of Mr. Anand and Mr. Khan but in their willingness to meet and converse with Mr. Kulkarni, when they, as seasoned lawyers, ought to have known better.”

21. The above order was upheld and strengthened by the Hon. Supreme Court of India. I find that much of what has been said in this para (102) applies to the situation of the ICICI Bank’s staff two. The conversations between the Bank employees and the reporter show that the employees were in control and even willing to work around the system to help the reporter (posing as a potential customer) to convert black money into white. They even suggested using gramian banks and rickshawala accounts and made statements like: “kya ghummana hai kaise ghummana hai bata

doonga main." One does not expect such statements from bankers who have statutory responsibility to report suspicious transactions.

22. The Bank's circular of 8<sup>th</sup> July 2008 on reporting suspicious transactions, refers to the RBI guidelines for reporting suspicious transactions including attempted suspicious transactions. As noted above, the Bank has made available to its employees the Report a Suspicion (RAS) tool. However, in none of the 14 branches in question, any alert was generated through the RAS tool or in any other manner; in some other branches, although advisories for caution were raised by the employees, the RAS was not used for reporting the incidents to the MLRO. Therefore, the system put in place that incidents relating to non-customers should be raised to the MLRO through the RAS tool did not work in any of the 14 branches.

23. The Bank will not be able to fulfil its obligations under the PMLA to report attempted suspicious transactions unless there is a free flow of information from its branches to the Principal Officer (MLRO), who has the responsibility for the reporting obligations. Though this arrangement is clearly established in the Bank's policy, it was lacking in implementation. The central office where the alerts should be sent and where the final determination whether an STR should be filed has to be made, was not even aware of the incidents, as admitted.

24. The PMLA aims at prevention of laundering of the proceeds of crime. Under the PMLA, the banks have 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 ICICI Bank, the policy was laid down but not followed by the named employees in all the 14 branches reported by Cobrapost. The Internal Inquiry report of the Bank has taken cognizance of this fact and categorized 10 of the employees in High category of accountability indicating that the employees have indulged in such a manner of engagements and given suggestions which are not in line with the Code of Conduct of the Bank on several counts and caused damage to the reputation of the Bank. It is difficult to believe that the employees have given suggestions that are not in accordance with the

Code of Conduct and yet the matter would not be viewed as suspicious. The reported indiscretions of the concerned employees have cost the Bank dearly in terms of reputation and public perception about the Bank's ability to combat money laundering, a fact well recognized by the Bank's internal enquiry report. It indicates that despite having designed an exemplary system which makes it possible for all employees to raise an alert in a seamless manner, the Bank has implementation challenges in its internal mechanism which leaves the Bank vulnerable. It is for the ICICI Bank to look deeper into the causes with a view to establish accountability and take remedial measures.

25. In light of the above, I conclude that in all the 14 branches reported by Cobrapost, there was a failure in the ICICI 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 ICICI Bank a fine of Rs.14 lakhs for 14 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,  
ICICI Bank Limited,  
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Through: The Chairman and Managing Director