

**F.No. 25-1/2013/FIU-IND/Pt XII**  
Government of India  
Ministry of Finance  
Department of Revenue  
Financial Intelligence Unit-India  
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6<sup>th</sup> Floor, Hotel Samrat  
Kautilya Marg, Chanakyapuri  
New Delhi -110021

**ORDER-IN-ORIGINAL NO.17/DIR/FIU-IND/2015**

**Name & Address of the Reporting Entity:** **Indian Overseas Bank**  
Central Office, PB No. 3765,  
763, Anna Salai,  
Chennai-600002

**Show Cause Notice No. & Date:** F.No.25-1/2013/FIU-IND dt 27th January, 2014

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

**Date of Order:** 1<sup>st</sup> October, 2015

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

An appeal against this order may be made with the Appellate Tribunal under Prevention of Money Laundering Act, 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 Indian Overseas 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. Indian Overseas Bank (the 'Bank') is a banking company as defined under Section 2(e) of 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 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; 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. 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.
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 made thereunder and to levy a fine for each such failure.
5. During March to May 2013, there was widespread reporting in the media about sting operations carried out by the website Cobrapost that allegedly exposed deficiencies in the anti-money laundering preventive measures applied by the banks including the Indian Overseas Bank. The sting operation involved the Cobrapost reporter visiting the branches of the financial institutions with a story: that he wanted to invest/save-keep substantial amounts of illicit or unaccounted cash. The website had videotaped the conversations with the officials/employees of the banks that were played out in the media suggesting widespread violations of statutory obligations under the PMLA. On 6<sup>th</sup> May, 2013, Cobrapost released recording of the conversation with the Branch Manager of Moradabad (U.P) branch and Noida



branch of Indian Overseas Bank. Following the sting operation, the Bank was asked vide letter dated 10-07-2013, whether any alerts in respect of the sting operation were generated in its Moradabad (U.P) and Noida branches, which were covered in the sting operation, and whether any STR was reported for attempted transaction for the incidents reported by the Cobrapost. The Bank in its reply dated 01-08-2013 confirmed that no STR had been filed for attempted transactions in the Moradabad (U.P) and Noida branches. The Bank also stated that no alerts had been generated by the Moradabad (U.P) and Noida branches for the reported incidents 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 not explain the source of fund.*

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 per Rule 2(h), transaction includes 'opening of an account'. In the instant case the Cobrapost reporter attempted to open accounts and do illicit transactions through the Moradabad (U.P) and Noida branches of the Bank. As STR for attempted transactions had not been filed for the Moradabad (U.P) and Noida branches of the Bank visited by Cobrapost, a show cause notice was issued on 27<sup>th</sup> January, 2014 for contravention of provisions of Section 12 of the Act, read with the Rules.
7. Vide its reply dated February 21, 2014, to the show-cause notice the Bank reiterated what was stated in its letter dated 01-08-2013 and further stated that no cash/ other transactions was entered into or attempted to enter during the period of sting operation which was reported in media on 06-05-2013 between the impersonated journalist and the Bank; that as per their internal investigation, the Bank found that the records of all the transactions in the branches referred to the sting operation had been maintained meticulously and flawlessly and there had never been procedural violation or lapse in the statutory compliance mandated in the PMLA, 2002; that what was recorded by Cobrapost reporter was edited and doctored videotape; that no

cash/other transaction was entered into or attempted to be entered into, on the date of sting operation as reported on 6 May 2013. The Bank has also drawn attention to the various provisions of the Act and the Rules regarding distinction between a client and non-client, what constitutes a transaction in terms of Rule 3 (D) and appears to have concluded that its reporting obligations apply only to account-based relationship.

8. On the request of the Bank, a personal hearing was granted on 17/04/2014 which was attended by Mr. Atul Agarwal, Executive Director of the Bank. During the personal hearing, it was admitted that on the material date, instructions were not in place for the staff to report to the Principal Officer such incidents indicating attempted suspicious transactions; however, instructions were subsequently put in place. It was also stated that the persons concerned had admitted to the conversation shown in the Cobrapost recordings and disciplinary action had been taken against them. The Bank also requested to submit a revised/ supplementary written statement.
9. In their additional submission dated 30 April 2014, the Bank highlighted the action taken with regard to the implementation of IBA recommended alerts, filing of CTR/STR for DD and deposit for walk-in customers, behavioural alerts, quality of STR, organisational structure of AML cell, periodicity of preparation of alerts and status of UCIC besides action taken against the officials mentioned in Cobrapost sting operation.

#### **DISCUSSION AND FINDINGS**

10. Section 12 of the Act lays down the general obligations of the banks to file suspicious transaction reports. PML Rules further elaborate these obligations. The definition of suspicious transactions in Rule 2 includes an attempted transaction. "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 the 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 Cobrapost sting operation shows that the Cobrapost reporter posing as a customer had declared that his intention was to convert black money into white and discussed with the branch managers options to invest several crores in cash without TDS and expressed desire to convert the money into white. He also discussed that the money belonged to a minister. The reporter asked for big locker to keep the money. The reporter also discussed transferring some funds out of the country.
12. The transcripts indicate that the conversation revolved around using the Bank for converting the black money into white. The Bank 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. Several options were discussed including investment in insurance schemes, structuring of cash deposits and storing cash in lockers, routing the money through some company account, investment in gold etc. At no stage the bank officials appear to have any concern about the intent and purpose of the transactions being discussed.
13. 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 conversation/discussion. This should have alerted any law abiding person, not to speak of the staff of a bank – a reporting entity - who are entrusted with the responsibility under the Act of reporting suspicious transactions including attempted suspicious transactions. The conversations/ discussions had several features, which should have led to the generation of behavioural alerts as per IBA guidelines. No alerts, however, were generated. During the hearing the Bank admitted that on the material date no instructions were in place for the staff to report to the Principal Officer such incidents in the nature of attempted suspicious transactions.
14. The Bank's policy on KYC norms /AML standards / combating of financing of terrorism has been in existence since 2005. Its updated version issued under permanent master/ 32 of 2013-14 dated 08-04-2013 (Section – T, Para 6 II) mentions that "it is likely that in some cases transactions are abandoned/aborted by customers on being asked to give some details or to provide documents. The Bank shall report all such attempted transactions in

STRs even if not completed by customers irrespective of the amount of transaction". It is evident that the employees of the Bank were either oblivious of their duties or cared little for compliance with their legal obligations under the PMLA. It is for the Bank to look deeper into the causes with a view to establish accountability and take remedial measures. The Act aims at prevention of laundering of the proceeds of crime. That even attempted transactions are required to be reported points to 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.

15. It is also necessary here to deal with certain other related points made by the Bank:

- a) The Bank has referred to Rule 3 D (iii) of the Rules that refers to both a client and non-client and stated that "whenever there is a reference in the Act or in the Rules to a client, it means and includes only those clients of the concerned Bank/Financial Institution on which the obligation is imposed and the compliance of which is required." The Bank appears to have misinterpreted. Firstly, the Act or the Rules do not create obligations for the client; they create obligations for the Reporting Entities. Secondly, the obligations regarding STRs cannot be construed without referring to the definition of STR in Rule 2(g), which states that a "suspicious transaction" means a transaction referred to in clause (h), including an attempted transaction, whether or not made in cash. Clause (h) states that a "transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery or the arrangement thereof and includes opening of an account, deposit, withdrawal etc. Any of these transactions, when attempted, would qualify for a "suspicious transaction" if it meets the criteria for suspicious transactions specified in clause (g).
- b) The Bank has also wrongly quoted Rule 9 to suggest that its duty to report would arise only in relation to a person who enters into a contractual relationship with the Bank or has an account-based relationship with the Bank. This is not acceptable. Rule 9 provides for identification and determination of beneficial ownership of a client in cases where the client has an account-based relationship and in cases where a client does not have an account-based relationship i.e. it covers both the situations. To construe the provisions of this Rule to suggest that the reporting



obligations do not apply to a client that does not have an account based relationship is not only erroneous but anti- thetical to the intent and purpose of the Act.

16. In the instant case, the Cobrapost reporter posing as customer specified his intention of opening an account i.e. doing a transaction to launder apparently illicit money. It is not material whether the transaction took place. The fact that an attempt was made to carry out a transaction that was suspicious in nature, is sufficient ground for the system to generate necessary alerts. When viewed in the context of the open declaration of the reporter posing as a customer that he was looking for converting black money into white, the Bank's arguments that the matter pertained to mere trade enquiries or queries related to banking appear to be mere rationalizations and point to the Bank's own lack of appreciation of the gravity of its responsibility in combating money laundering.

17. In light of the above, I conclude that in the Moradabad and Noida branches of the Bank reported by Cobrapost, there was a failure in the Indian Overseas 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 Indian Overseas Bank a fine of Rs. 2,00,000 (Rupees Two Lakh) for two instances of failure in its Moradabad (U.P.) branch and Noida branch to comply 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,

**Indian Overseas Bank**

Central Office, PB No. 3765,

763, Anna Salai,

Chennai-600002

**Through: Chairman & Managing Director**