

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

Name & Address of the Reporting Entity:

ING Vysya Bank Limited,
ING Vysya House,
22, M.G. Road,
Bangaluru- 560001,
Karnataka

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

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

Date of Order: 4th September, 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 ING Vysya Bank Limited. 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 ING Vysya 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 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; 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 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(1)(g) of PML (Maintenance of Records) Rules, STR means a transaction referred to in clause (h) including an attempted transaction.
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 made thereunder and to levy a fine for each such failure.
6. Following media reports of a sting operation by the website Cobrapost alleging violation of Anti-Money Laundering measures in three branches of the ING Vysya Bank viz. Banjara Hills Branch, Hyderabad, Chandigarh

branch and Rash Behari Avenue Branch, Kolkata, clarifications were sought from the Bank vide letter dated 10/07/2013. The Bank while clarifying its position vide letter dated 05/08/2013, admitted that it had not filed any STR for "Attempted Suspicious Transactions" in respect of the Cobrapost incidents.

7. The Bank also informed that it had got the tapes of the sting operation examined by its vigilance department as well as by an external Forensic Expert "Truth Labs" whose opinion was that the video was not manipulated and the transcripts broadly tallied with the utterances by the speakers in the video. The Bank further informed that the Branch Head of Banjara Hills Branch and CCM of Chandigarh Branch had been suspended.
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, the Bank was called upon vide notice dated 27th January 2014 to show cause as to why action should not be taken against it for violation of Section 12 (1) (b) of the PMLA read with Rules 2(1) (g), 3(D), 7(3) and 8(3) of the Rules.
9. Vide its reply dated February 26, 2014, the Bank denied the allegations, and submitted that periodic training was provided to the Bank's staff apart from the regular e-mails from MD and CEO reiterating lack of tolerance for anyone resorting to unethical practices or compromising on the statutory, regulatory requirements and ethical standards. The Bank also claimed that its staff had significant experience to comply with all the requirements under the Act. The Bank claimed that the video of the sting operation was pre-edited, and there was no need for suspicion in the minds of its staff, as there was no transaction attempted by the Cobrapost representative.
10. On request of the bank, a personal hearing was granted on 15/04/2014 which was attended by S/Sh. B. Ashok Rao (Chief Auditor), Naresh Sankaran (Head-Financial Economic Crime), N. Mahadevan (Vigilance Department), Ms. Stuthi Shetty (Head-Legal) and Padmaja B. (Head-

Compliance & MLRO). During the hearing the Bank requested to file a written reply covering the following questions that were asked:

- I) If the Bank had in place, on the date(s) of the incidents reported, guidelines in place for staff to report attempted suspicious transactions.
- II) Whether these guidelines guided the staff to distinguish between an attempted transactions and mere 'enquiry', a distinction sought to be made by the Bank during the hearing.
- III) Whether any alerts had been raised by the staff regarding these incidents to the higher levels, including to the P.O.
- IV) Whether the Bank's employees had admitted to the conversations recorded in the Cobrapost CDs.
- V) Whether the Bank's internal inquiries had found any violations by the concerned staff.

11. The Bank submitted a detailed reply to all the above mentioned questions vide letter dated 28th April 2014. It was submitted that the Bank had issued several guidelines for its officials with regard to reporting attempted suspicious transactions and directions to refuse execution of any suspicious transaction.

FINDINGS AND DISCUSSION

12. The position that emerges from a perusal of the records of conversations/ discussions between the Cobrapost reporter and the Bank employees and the reports furnished by the Bank on its findings and actions taken is that the employees of the three branches of the Bank were involved in the conversation with the Cobrapost reporter. The transcripts of the conversations / discussions between the Bank employees and the Cobrapost reporter clearly show that the reporter made explicit conversations that he was attempting to launder through the Bank large amounts of black money belonging to a 'minister'. The genuineness of the transcript of the conversation between the Cobrapost reporter and

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the employees of the Bank have not been disputed except that the Bank claims it to be pre-edited.

13. The transcripts indicate that the conversation revolved around using the Bank for laundering huge amount of money through tax exempted insurance schemes, opening of account through cheque and then depositing cash in the account so that it can't be traced, making available small and medium sized lockers, conversion of money into larger denomination, remittance of huge amount of money to accounts outside India without any details of the account holder etc. The conversations show that 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.
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 the staff of a bank- a reporting entity- who are entrusted with the responsibility under the Act 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 Anti-Money Laundering Manual of Instructions of the Bank and various circulars issued by the Bank in this regard. For instance, the circular no. 349 dated 14th December 2006 of the Bank to all its branches and offices mandates branch managers to satisfy on the bona fide nature of the transactions. The circular further requires the employees of the Bank to report (attempts of) suspicious transactions to the Branch Manager. Secondly, the MLRO Governance Manual of 2010 of the Bank mandates reporting of all suspicious transactions or activities, including attempted transaction, by the officials if they suspect or have reasonable grounds to suspect any such transaction. It further says that the employees have an obligation to report to the MLRO any knowledge or suspicions of money laundering, including when there are reasonable grounds to suspect,

regardless of the amounts involved or the funds or assets to be laundered. The said Manual also enlists examples of red flags, which the officials of the Bank have to be aware of and it includes instances where large cash payments are made by a customer or a customer is unwilling to explain the purpose of a transaction or refuses to provide information requested without reasonable explanation. The Bank's Anti- Money Laundering Manual of Instructions also enlists examples of suspicious transactions. In addition to this the Bank had the IBA's indicative checklist of alerts which are to be scrutinized by the branches for effective control/ monitoring and reporting of Suspicious Transaction Reports. The conversation had several features which should have led to generation of behavioral alerts as per IBA guidelines (dated 30th March 2012) and also as per the Anti- Money Laundering Manual of Instructions 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.

Despite this, there was a failure at the branch level to raise a red flag and report the attempted suspicious transaction to the MLRO evidencing failure of the Bank's internal mechanism to detect and report attempted suspicious transactions.

15. 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 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 Act unless there is a free flow of information from its branches to the Principal Officer (MLRO), who is responsible for the reporting obligations. 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. Evidently, 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 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.

16. In light of the above, I conclude that in all the 3 branches reported by Cobrapost, there was a failure in the ING Vysya Bank's internal mechanism for detecting and reporting attempted suspicious transactions, in terms of section 12 of the Act read with Rules 2, 3, 5 and 7 of the Rules. Accordingly, in exercise of the powers conferred on me under section 13 (2) of the Prevention of Money Laundering Act, 2002, I hereby impose on ING Vysya Bank a fine of Rs. 3,00,000 (Rupees Three Lakhs) for three (3) instances of failure in compliance with its obligations as laid down in Section 12 of the Act read with Rules 2, 3, 5 and 7 of the Prevention of Money Laundering (Maintenance of Records) Rules framed thereunder.

(Praveen Kumar Tiwari)
Director
Financial Intelligence Unit-India

To,
ING Vysya Bank Limited,
ING Vysya House,
22, M.G. Road,
Bangaluru- 560001,
Karnataka
Through: Managing Director