

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

Name & Address of the Reporting Entity: Indusind Bank Limited,
2401 Gen. Thimmayya Road,
Pune-411001
Maharashtra

Show Cause Notice No. & Date: F.No. 25-1/2013/FIU-IND dt 21st January, 2014

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

Date of Order: September 30, 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 Indusind 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 also referred to as PMLA or the Act].

1. Indusind Bank Limited (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 transactions referred to in Rule 3 and for furnishing information about such transactions in such form as may be directed by its Regulator.
4. As per the definition of STR in Rule 2(1)(g) of the 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 thereunder and to levy a fine for each such failure.
6. Consequent to media reports of a sting operation carried out by website Cobrapost alleging violation of AML/CFT measures in four branches of IndusInd Bank Limited, viz. Greater Kailash-II, Karol Bagh, Miyapur and Madhapur branch, clarifications were sought from the Bank vide letter dated 10/07/2013. The Bank vide e-mail dated 10/08/2013 admitted that, it had not filed any STR

under the "Attempted Suspicious Transactions" pertaining to the above mentioned sting operation.

7. 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 letter dated 21st January, 2014 to show cause as to why action should not be taken against it for violation of Section 12 (b) of the PMLA read with Rules 2(1) (g), 3(d), 7(3) and 8(3) of the Rules.
8. Vide letter dated March 05, 2014, the Bank submitted its reply to the show-cause notice and denied the allegations. The Bank submitted that the Cobrapost representative had made only general inquiries in the four branches; that no attempt was made to open any bank account or hire a locker or undertake any remittance and its staff entertained the representatives of Cobrapost in the normal course of business merely to explore the possibility of any genuine business transactions. It also submitted that when the matter was investigated by the corporate office of the Bank, the branches explained that they did not have full names or particulars of the individuals who approached the branches, therefore, STRs could not have been filed and were not filed at that point of time by the corporate office team. The Bank further submitted that it has a system of filing STRs on attempted transactions and its branches are aware of the requirements of reporting attempted suspicious transactions, and have been reporting these to the corporate office of the Bank. The Bank further submitted that it has various mechanisms in place to capture attempted suspicious transactions and has also set up Risk Containment Units. The Bank further submitted that after the Cobrapost report, it had reiterated the guidelines for reporting both suspicious transactions as also attempted suspicious transactions.
9. On request of the bank, a personal hearing was granted to it on 15/04/2014 which was attended by S/Sh. Anil Rao, Head-Operations, Ms. Anita Verghese, Head General Banking Operations, and Sh. Pramod Khandelwal, Principal

Officer. During the personal hearing the Bank argued that the case in question was only an 'enquiry' and not 'attempted' transaction. The Bank was asked to clarify whether guidelines were in place on the date(s) of incidents for staff to report attempted transactions. The Bank replied in affirmative and stated that the staff had sufficient guidance to spot attempted transactions. The Bank clarified that no alerts were raised to the Principal Officer in the cases under question, but further action had been taken to strengthen the internal mechanism and alerts would be raised if such incidents happen in future. The Bank admitted that the conversations in the Cobrapost video had not been denied by the staff, but there were other portions that were deleted. A copy of the transcripts of conversation between the Bank staff and Cobrapost representative was also provided to the Bank on the date of personal hearing.

10. The Bank made additional submissions vide letter dated 30th April 2014. It placed on record the KYC/ AML policy of the Bank along with specimen presentations given in structured programmes on KYC and Anti Money Laundering guidelines. The Bank further submitted a note covering measures for implementation of various key AML related aspects vide letter dated May 16, 2014.

FINDINGS AND DISCUSSION

11. The position that emerges from a perusal of the records of conversations/ discussions between the Cobrapost reporter and the Bank employees and the submissions made by the Bank during the personal hearing and thereafter is that the employees of the four Branches of the Bank were involved in the conversation with the Cobrapost reporter. The transcripts of the conversation/discussion between the Bank employees and the Cobrapost reporter clearly show that the reporter made explicit conversation in the above mentioned branches that he was attempting to launder through the Bank huge amount of black money belonging to a minister. The genuineness of the

transcript of the conversation between the Cobrapost reporter and the employees of the Bank has not been disputed except that some portions were deleted.

12. The transcripts contain very explicit conversations between the reporter and the Bank employees about laundering of huge amount of cash through the Bank. The Bank employees have spoken openly about flouting the system, e.g., conversion of cash into Demand Draft, opening of various accounts, storing cash in big lockers, providing counting machines to help count cash, keeping the matter confidential, using accounts for transferring funds, investment in insurance policy with handsome returns, no TDS on investments, opening of NRI account to remit money outside India, not disclosing PAN on investments etc. The representative of Cobrapost and Bank employees have exchanged numbers as well. The conversations show that the employees were in control and eager to work around the system to help the reporter (posing as a potential customer) convert black money into white. They repeatedly assured the reporter that there would be no problem.
13. The conversations/ discussions, 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- which is 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 Anti-Money Laundering Policy of the Bank and various internal circulars issued by the Bank in this regard. For instance, the AML policy of the Bank in Annexure V provides a list of Suspicious Transactions. Secondly, Annexure to Circular number BO/95/28/04/2012 dated April 09, 2012 of the Bank provides for indicative alert indicators for identification of suspicious transactions. The Anti- Money Laundering Policy of the Bank also provides an indicative list of suspicious

activities. The IBA's indicative checklist of alerts, which are to be scrutinized by the branches for reporting of Suspicious Transaction Reports had been incorporated in the Anti-Money Laundering Measures of the Bank. None of this, however, appears to have percolated down to the branch level officers appearing in the conversations with the reporter. The conclusion, therefore, is inescapable that there was failure of internal mechanism of the Bank to detect and report attempted suspicious transactions in the four branches covered in the sting operation.

14. Despite enough indications in the conversations/discussions 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 to fulfill the reporting obligations under the PMLA. Further, no credence can be given to the Bank's argument that the case in question was merely an enquiry and not attempted transaction, as 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 Act, and the Bank's argument appears to be a mere post facto rationalization. It is for the Bank to look deeper into the causes with a view to establish accountability and take remedial measures. The 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. It is not enough for the Bank to lay down a policy; it is equally important to implement it.

15. In light of the above, I conclude that in the four branches of the Bank appearing in the Cobrapost sting operation, there was a failure in IndusInd 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 PMLA, 2002 I hereby impose on IndusInd Bank Limited a fine of Rs. 4,00,000 (Rupees Four Lakhs) for 4 instances of failure in compliance with its obligations 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,
Indusind Bank Limited
2401, Gen. Thimmayya Road,
Pune, Maharashtra
411001

Through: Managing Director and CEO.