

F.No. 9-69/2010/FIU-IND
Government of India
Ministry of Finance
Department of Revenue
Financial Intelligence Unit-India

6th Floor, Hotel Samrat
Kautilya Marg,
Chanakyapuri
New Delhi-110 021

Passed by: Mr. Praveen Kumar Tiwari, Director

Order- in-Original No.1/ Dir/ FIU-IND/2013, Dated: 14 February, 2013

Order in Original

- (i) This order has been passed under the provisions of the Prevention of Money Laundering Act, 2002 (PMLA, 2002).
- (ii) An Appeal against this order shall lie 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 served (refer sub-section (3) of Section 26 of the Prevention of Money Laundering Act, 2002).
- ((iii) An appeal to the Appellate Tribunal under PMLA, 2002 should be in the form and manner prescribed.

Name and address of the Noticee M/s. Muthoot Finance Limited,
2nd Floor, Muthoot Chambers,
*Opp. Saitha Theatre,
Banerjee Road,
Kochi-682 018

SCN No. & Date: F.No. 9-69/2010/FIU-IND
Dated 13th June, 2011

1. M/s. Muthoot Finance Limited (hereinafter referred to as 'Muthoot') is a Non-Banking Financial Company (NBFC) engaged in the business of money

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lending and financing, and is a "financial institution" covered by the provision of Section 2 of the Prevention of Money Laundering Act, 2002 (hereafter referred to as the "Act") and the Rules made thereunder.

2. Section 2(l) of the Act defines 'financial institution' as under:

"(l) "financial institution" means a financial institution as defined in clause (C) of section 45-I of the Reserve Bank of India Act, 1934 and includes a Chit fund company, a Co-operative bank, a housing finance institution, an Authorized person, a Payment system operator and a Non-banking financial company."

Rules 3,4, 7,8 & 9 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter referred to as the 'Rules'), read with Section 12 of the Act impose obligations on "financial institutions", to maintain records and furnish to Director, Financial Intelligence Unit-India (hereinafter referred to as 'Director, FIU-IND'), information relating to Cash transactions, Suspicious transactions and Counterfeit currency transactions, as prescribed. Rule 3 of the Rules specifies the transactions in respect of which the information should be furnished to Director, FIU-IND and Rules 7 & 8 prescribe the procedure and manner of furnishing such information.

3. It having come to the notice of FIU-IND that Muthoot had been transacting in cash but no Cash Transaction Reports (CTRs) as prescribed were being filed, Muthoot was asked vide FIU-IND letter No.9-69/2010-FIU-IND dated 14th September, 2010 to furnish details of Cash transactions of Rs.10 lakh and above during the period 1st April, 2009 to 30th June, 2010. Vide letter dated 21st September, 2010, Muthoot admitted their failure to submit the required CTRs and requested for condonation. Muthoot also sought some more time for submission of information called by FIU-IND.

4. Vide letter dated 14th October, 2010, Muthoot, submitted details of about

1063 transactions of loans disbursed in excess of Rs.10 lakh in cash during the period 1st April, 2009 to 30th June, 2010. Muthoot was informed vide FIU's letter F.No.9-69/2010-FIU-IND dated 2nd November, 2010 that CTRs in respect of aforesaid transactions had not been filed by Muthoot.

5. Vide their letter dated 13th November, 2010, Muthoot filed certain details of cash transactions for the period 1.07.2009 to 30.09.2010, describing it as a Cash Transaction Report. Subsequently, vide their letters dated 15th November, 2010, 20th November, 2010 and 6th December, 2010 Muthoot provided further information in respect of cash transactions in excess of Rs.10 lakh that took place during 1.4.2006 to 31.3.2009. On 5th January 2011 Muthoot furnished to FIU-IND electronic data of cash transactions for the period 1.4.2006 to 30.11.2010 on a Compact Disc, which was analysed in FIU-IND.

6. It became evident from the analysis in FIU-IND of the information furnished by Muthoot on 5th January, 2011 [an inquiry caused under Sec.13 of the Act] that Muthoot had failed to file Cash Transaction Reports in respect of 2697 cash transactions as required under Section 12 of the Act, the Rules made thereunder, and Para 5 of the RBI Master Circular No.DNBS (PD)CC No.152/03.10.42/2009-10 dated 1st July, 2009 Annex-9, which prescribes the requirement of filing of CTRs and the format for filing of such CTRs. Muthoot was accordingly required to show cause vide Notice dated 13.6.2011 as to why penalty should not be levied on them under Section 13 of the Act for failure to comply with provisions of Section 12 of the Act read with Rules 3, 7 & 8 of the Rules in failing to report CTRs to Director, FIU-IND in respect of 2697 transactions in excess of Rs. Ten lakhs that took place over the period 1.4.2006 to 30.11.2010.

7. In their reply dated 7th July, 2011, Muthoot apologized for the delay in filing the CTRs and requested for condoning the delay, stating it to be an unintentional and bona-fide mistake. An opportunity for personal hearing to

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Muthoot was granted vide letter No. 9-69/2010-FIU-IND dated 8th February, 2012. The hearing took place on 28th February, 2012 at 3.00 PM and was attended by Shri K.R. Bijimon, Chief General Manager, authorized by the noticee along with Shri Rakesh Mehra, AGM and Shri P.K. Gopan, SFM.

8. During hearing on 28 February, 2012, Muthoot filed written submission admitting the failure to file Cash Transaction Reports (CTRs), and requested for condonation of the mistake, stating it to be unintentional and inadvertent. They further stated that the information on CTRs was being received by their Head Office from the branches but was not being filed with FIU-IND due to personal failure of the Principal Officer and that CTRs were being filed in respect of other two firms of the Group, namely, Muthoot Vehicle and Asset Finance Limited and Muthoot Exchange Company Pvt. Ltd. It was submitted that after receipt of the notice from FIU-IND in June, 2011, the CTRs were being filed regularly from July, 2011 onwards.

Muthoot admitted that their internal review system failed to detect non-filing of CTRs, and submitted a copy of their letter dated 13th July, 2011, whereby CTRs had been filed for the period from April 2004 to June, 2011.

9. It was pointed out to Muthoot during the hearing on 28th February 2012 that as per information given by Muthoot on 5th Jan., 2011, 2697 Cash transactions in excess of Rs.10 lakh had taken place between 1.4.2006 and 30.11.2010 (which was the basis for the show-cause notice dated 13.06.2011, Annexure-10 of the notice), but as per their letter dated 13th July, 2011, there appeared to be 8,494 cash transactions in excess of Rs.10 lakh during the same period. Muthoot explained that the information submitted on 5th January, 2011 did not incorporate integrally connected transactions adding up to in excess of Rs.10 lakh, as Muthoot were not aware of the reporting requirement for integrally connected cash transactions, whereas the information furnished vide their letter dated 13th July, 2011 included all transactions, including integrally connected

transactions. Accordingly, the actual number of instances of failure works out to be 8,494. Muthoot requested for a time of 15 days for filing further written submissions, which was allowed.

10. Subsequent to the hearing on 28th February 2012 on Muthoot's request received on 12.03.2012, their Managing Director Mr. George Alexander Muthoot was allowed to personally file written submissions on 23rd March, 2012. The submission, in essence, stated the following points:

- (a) PMLA being a new legislation, it took some time for Muthoot to put in place the required systems.
- (b) The fact of non-compliance was admitted, stating further that reports were being filed regularly from March 2011 onwards.
- (c) There was no intention of non-compliance.
- (d) Due to lack of understanding regarding the type of transactions to be reported, the integrally connected transactions meeting the stipulated threshold of Rs.10 lakh during the period 1.4.2006 to 30.11.2010 were not reported but the position was rectified in later submissions.

Proposed Action

11. Having considered the issues raised in the show-cause notice dated 13th June, 2011 and the replies in defense by Muthoot in written submissions as well as during personal hearing, the matter to be decided was:

- (i) Whether Muthoot failed to comply with Section 12 of the Act requiring furnishing of prescribed information to Director, FIU-IND and, if so,
- (ii) the quantum of fine to be levied under Section 13 of the Act for each failure to comply with obligations as per Section 12 of the Act.

As regards the first issue the failure had been established by the inquiry in FIU-IND and also admitted by Muthoot in their submissions. So far as the

second issue is concerned, Section 13 of the Act prescribes the amount of fine to be Rs. 10,000 to Rs. 1 lakh for each failure. Considering the facts & circumstances of the case and the various submissions made by Muthoot during personal hearing and in written submissions, it was proposed to impose the minimum prescribed fine under Sec.13 of the Act viz, Rs 10,000/- for each failure. The total fine thus comes to Rs.2,69,70,000/- (Rupees Two crore Sixty Nine lakh, Seventy thousand only) for 2,697 cash transactions. A draft copy of the order proposing the fine was sent to Muthoot on 23.11.2012 giving 15 days time to submit written submissions, if any, on the proposed order.

12. Muthoot submitted their written submissions dated 24th November, 2012, broadly reiterating their earlier position that the non-compliance occurred because PMLA was a relatively new legislation and there was lack of proper understanding regarding the type of transactions required to be reported.

Stating that they had no intention to defy the law and deliberately act in its breach, Muthoot pleaded for not imposing the fine. Muthoot also raised certain legal questions including inter alia that:

- (i) there was absence of principles governing the levy of a fine or penalty such as intent, any blatant disregard of law, wanton negligence or lack of due diligence and reasonable cause;
- (ii) rule of limitation applies as proceedings had been taken up beyond reasonable time;
- (iii) quantum of penalty @ Rs.10,000/- for each transaction was unreasonable, as Section 13 of the Act refers to fine 'for each failure' which should be related to Muthoot's obligation to file monthly CTR returns;
- (iv) in the absence of available precedence u/s. 13(2) of the Act for determining the quantum of fine, the general law regarding penalties,

as applied in fiscal and economic legislation such as the IT Act, the SEBI Act and RBI Act and other allied legislations as pronounced by the Apex Court and other judicial authority should be followed;

- (v) in view of proposed amendments in the Act, fine should be imposed as a last resort after exhausting remedies being provided therein.

Muthoot also cited the following judgments in support of their argument:

- (1) Hindustan Steels Ltd. vs. State of Orissa (1969) 2 SCC 627.
- (2) Addl. CIT vs. Kalyanmal Mills Tent Factory (1979) 116 ITR 881 (MP)
- (3) Hindustan Lever Ltd. vs. DG (Investigation & Registration), (2001) 2 SCC 474.
- (4) Omec Engineer vs. Commissioner of Income Tax (2007) 294 ITR 599 (Jharkhand).
- (5) Union Bank of India vs. ACIT (2012) 26 Tax Mann.com 347 (Agra-Treb).
- (6) CIT vs. Dy. Housing Commissioner 260 ITR 641 (Raj.)
- (7) Escorts Mutual Fund vs. Adjudicating Officer, Securities & Exchange Board of India Appeal No.38/2001 under SEBI Act.
- (8) Directorate of Enforcement vs. MCTM Corporation.
- (9) Chairman, SEBI vs. Shriram Mutual Fund JT 2006 (11) SC 164.
- (10) P.H.I. Seeds India Ltd. ITA No.793/2006 & 805/2006 (Delhi).
- (11) Superintendent & Remembrance of Legal Affairs to Govt. of West Bengal (Supra) (Supreme Court of India).

13. Muthoot reiterated the points made in the above mentioned written submissions dated 24.11.2012, again in a personal hearing on 17.12.2012, granted on their request, and attended by Mr. Abhijit Roy of M/s. Virmani, Roy & Kutty, Chartered Accountants, 709-710, Ansal Chamber III, 6, Bhikaji Cama

Place, New Delhi-110 066, under a power of attorney from Muthoot. Mr. Roy also handed over a write-up containing point-wise summary of submissions made on 24.11.2012.

Findings & Discussion

14. I have gone through the facts and circumstances of the case and Muthoot's reply dated 7.07.2011 to the show cause notice, written submissions made during personal hearing on 28.02.2012, written submissions dated 23-03.2012 filed by Mr. George Alexander Muthoot, and further written submissions dated 24.11.2012.

15. After considering all aspects of the case the following position emerges:

- By its own admission, Muthoot has failed to comply with its obligations to file CTRs under Section 12 of the PMLA and Rules made thereunder. Ignorance of law, lack of resources and negligence of employees etc., as cited by Muthoot, are not valid reasons for non-compliance.
- PMLA and the Rules made thereunder have prescribed time limit for reporting transactions i.e. Cash Transaction Reports (CTRs), Suspicious Transaction Reports (STRs) and Counterfeit Currency Reports (CCRs). Timely submission of reports is crucial for effectively combating money laundering, terrorist financing, tax evasion, security threats and other grave crimes. As time is of essence in such cases, late submission of reports is also a violation of law as much as the non-submission.
- While it is a fact that the Rules prescribe submission of CTRs monthly, the primary obligation is to furnish the report (CTR) in respect of each transaction that falls within the purview of Section of 12 of the PMLA read with Rule 8 of the Rules. Thus, the "failure" in terms of Section 13 of the PMLA relates to failure to file a report in respect of each transaction, and not the failure to file one monthly CTR.

- The culpability of Muthoot is evident in view of Muthoot's admission that CTRs were being filed for other group companies and the fact that the CTRs in respect of the noticee company viz., Muthoot Finance Ltd. were filed only after the failure was pointed out by FIU-IND.
- Muthoot never voluntarily filed the reports, before the failures were pointed out by the FIU-IND.
- The argument of the Muthoot that the use of term 'may' and not "shall" with regard to the Director, FIU-IND's authority to levy a fine under section 13(2) of PMLA indicates that it is not mandatory, is not acceptable. The word 'may' is capable of meaning 'must' or 'shall' in light of the context; where discretion is conferred upon a public authority, coupled with an obligation, the word 'may' denoting discretion should be construed to mean command. (AIR 1963 SC 1618 Textile Commission vs. Sagar Textile Mills, AIR 1977 sc 1516, 1517).
- Muthoot's argument that fine can be imposed under Section 13 (2) (d) as a last resort after exhausting other available persuasive remedies proposed in clauses (a) to (c) of the amended section 13(2) of PMLA, is not acceptable as the non-compliance and the associated sanctions have to be adjudicated under the law in force at the time of adjudication.
- Muthoot's plea that the proceedings are barred by limitation is not tenable as the PMLA does not stipulate a time-limit for initiation of proceedings for non-compliance. On the other hand, sufficient time and opportunity has been given to Muthoot at every stage of the adjudication proceedings to present its defense in accordance with the principles of natural justice.
- The case laws cited by Muthoot are not applicable or germane to the current case, as this adjudication is being made after full consideration given to the facts and circumstances of the case, after following the principles of natural justice and giving full opportunity to Muthoot (the notice) to present its defense.

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16. Considering all the points mentioned above, I determine that Muthoot has failed to comply with Section 12 of the PMLA and the Rules made thereunder by not filing CTRs in respect of 2,697 cash transactions mentioned in the show cause notice dated 13.6.2011 that took place over the period 1 April, 2006 to 30 November, 2010. However, considering the fact that some part of this period falls in the early stage of the implementation of the Act and the fact that the failure has been admitted, I take a lenient view and impose the minimum prescribed fine under Section 13 of the PMLA viz., Rs. 10,000 for each failure. The total amount of fine for not filing CTRs in respect of 2697 cash transactions comes to Rs.2,69,70,000. Accordingly, in exercise of the powers conferred on me under Section 13 of the PMLA, I impose on Muthoot a fine of Rs. 2,69,70,000 (Rupees two crore sixty nine lakh and seventy thousand). Muthoot is accordingly ordered to pay the fine of Rs 2,69,70,000. This order is without prejudice to any other proceedings that may be initiated in respect of the other transactions, for which the required reports under the Act and the Rules may not have been filed by Muthoot.

(Praveen Kumar Tiwari)
Director, FIU-IND

M/s Muthoot Finance Limited,
2nd Floor, Muthoot Chambers,
Opp. Saitha Theatre,
Kochi-682 018 (Kerala)

Through: Shri M.G. George Muthoot, Chairman