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F.No. 25-1/2013/FIU-IND/Pt VIII

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. 4/DIR/FIU-IND/2015

Name & Address of the Reporting Entity: Oriental Bank of Commerce,
Plot No.5, Sector-32,
Institutional Area,
Gurgaon - 122001

Show Cause Notice No. & Date: F.No. 25-1/2013/FIU-IND dt. 17th Dec, 2013

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

Date of Order: 27 May, 2015

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

An appeal against this order may be made with the Appellate Tribunal established under PMLA, 2002, and situated at 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 Oriental Bank of Commerce. 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. Oriental Bank of Commerce (hereinafter also referred to as the 'Bank') is a banking company as defined under Section 2(e) of the Prevention of Money Laundering Act, 2002 (hereinafter also referred to as 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 verify the identity of the clients, maintain records of specified transactions and report to Director, Financial Intelligence Unit – India (hereinafter also

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; Rules 5, 7 & 8 of the Rules prescribe the procedure, manner and time of maintaining and furnishing such information; and Rule 9 of the Rules prescribes the procedure and manner of verification of records of identity of clients.

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 thereunder and to levy a fine for each such failure.

5. In March 2013 there was widespread reporting in the media about a sting operation carried out by the website Cobrapost that allegedly exposed deficiencies in the anti-money laundering preventive measures applied by the banks and other financial institutions including the Oriental Bank of Commerce. The sting operation involved the Cobrapost reporter visiting the branches of the financial institutions with a similar story: that a minister in government wanted to invest/ safe-keep substantial amounts of illicit or unaccounted cash and that some of this money also needed to be sent abroad for the expenses of the minister's wife. The website had videotaped the conversations with the officials/ employees of the financial institutions that were played out in the media suggesting widespread violations of statutory obligations under the PMLA. Following the sting operation by Cobrapost, the Bank was asked vide letter dated 10-07-2013, whether any alerts in respect of the sting operation were generated in its branch at South Extension Part-II, which was covered in the sting operation, and whether any STR was reported for attempted transactions for the incident reported by the Cobrapost. The Bank in its reply dated 10-08-2013 confirmed that no STR was filed for attempted transactions in the branch concerned. The Bank also stated that no alerts had been generated by the branch for the reported incidents.

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 STR for attempted transactions had not been filed for the branch of the Bank visited by Cobrapost, a show cause notice was issued on 17th December 2013 for contravention of provisions of Section 12(1) (b) of the Act, read with Rules 2(g), 3 (1) (D), 7(3) and 8(3) of the Rules.

7. The Bank in its reply dated February 11, 2014, argued that the incident reported by the Cobrapost would not qualify for reporting as STR. The Bank carried investigation immediately after the media reports and suspended the

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concerned officer on 06-05-2013. However, the investigation report found that allegations against the concerned official were not substantiated and the officer was reinstated with advisory to be more cautious while marketing Bank's Business. The incident of sting operation was not treated as suspicious for reporting as attempted Suspicious Transaction Report (STR).

8. On the request of the Bank a personal hearing was held on 07-03-2014 which was attended by Mr. Suresh N Patel, Executive Director, Mr Novleen Kundla, General Manager and Mr. Rajbir Singh, Assistant General Manager. During the hearing the Bank admitted that it had issued instructions for raising red flags in cases similar to those reported by Cobrapost, but the concerned employee did not report the attempted transaction in question to the higher authorities.

9. In their additional submissions vide letter HO/INC/KYC-AML/2014-15/139 dated 07-06-2014, the Bank stated that: the branch official in ordinary course of business informed the customer about the confidentiality of the customer's information maintained in the bank; on the specific query that a politician wanted to invest a handsome amount of money in his wife's name and that there should be no TDS the officer suggested opening accounts and accepting deposits in the name of family members, husband, son, wife, mother etc. in ordinary course of bank's business; the officer did not intend to suggest opening of any benami account and insisted for KYC compliance related requirements; the officer was categorical that any amount of cash can be deposited in the account if PAN details are provided; the officer informed the Cobrapost reporter that if more than one locker was needed, it had to be taken in different names and the customer was free to keep any item in the locker; the query regarding handling of huge cash and transfer through hawala was replied by the official concerned in the negative.

Discussion and Findings

10. While Section 12 of the Act lays down the general obligations of the banks to file suspicious transaction reports, the PML Rules, which further elaborate these obligations, require the banks to maintain the record of all transactions whether or not made in cash (Rule 3 of the PML Rules). The definition of suspicious transactions in 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 transaction in such form as may be directed by its Regulator.

11. A perusal of the transcript of the Cobra Post sting operation shows that the Cobra Post reporter posing as a customer visited the South Extension II, New Delhi branch of the Bank and enquired about investing Rs. 60-70 lakhs belonging to a politician, in his wife's name demanding that there should be no TDS. The reporter also stated that Rs.5-7 crore more cash was expected in the near future, that he needed a locker to keep the cash, that he needed a plan to convert black money into white and that Rs.30-40 lakh needed to be sent to England through Hawala. In her response to the enquiries of the reporter, the Bank official categorically refused Bank's involvement in hawala. However, in response to other queries, the official sounds cooperative bordering on collaboration. For example, when the reporter asks her to provide lockers to keep Rs.5-7 crore in cash, she suggested taking several lockers in different names, advising not to bring too much cash in one go, and mix the transactions in cash with cheque transactions such that they should look genuine to her. If her responses are viewed in the overall context of placing large amounts of cash (black money) to make it legitimate, and the legal responsibility of all bank employees to report any suspicious transactions (including attempted transactions), then the response of the employee would sound alarming from the compliance perspective.

12. The Bank issued its updated KYC and AML Policy on 25th June, 2012, for scrupulous implementation and compliance by all staff. Para 15 (b) of the policy says that:

“(i) “While determining suspicious transactions, bank should be guided by definition of suspicious transaction as contained in PMLA Rules as amended from time to time”.

(ii) It is likely that in some cases transactions are abandoned/aborted by customers on being asked to give some details or to provide documents. It is clarified that bank should report all such attempted transactions in STRs, even if not completed by customers, irrespective of the amount of the transactions”.

(iii) In the context of creating KYC/AML awareness among the staff and for generating alert for suspicious transactions, bank may consider the indicative list of suspicious activities contained in Annex E of the IBA's Guidance Note for Banks 2009.”

Paragraphs 5 of the Bank's circular no.HO/INC/KYC-AML/52/2012-13/783 dated 12-02-2013, specifically mentions that:

“IBA has formulated 88 scenarios to generate alerts out of which 61 are online scenarios being implemented at HO level and 27 are offline which are behavioral/subjective in nature and can be observed at Branch level.”

The circular appends the list of 27 alert indicators and instructs that STR be submitted immediately, if matching incidents take place in the branch. Some of these alerts are relevant for the Cobra post situation, as shown in the following table:

Sl.No.	Alert Indicator	Indicative Rule / Scenario
1.	E11.1 – Customer did not complete transaction.	Customer did not complete transaction after queries such source of funds etc.
2.	E13.1 – Customer acting on behalf of a third party	Customer has vague knowledge about amount of money involved in the transaction. Customer taking instructions for conducting transactions. Customer is accompanied by unrelated individuals.
3.	E14.3 – Customer wants to avoid reporting	Customer makes inquiries or tries to convince staff to avoid reporting.
4.	E14.4 – Customer could not explain source of funds.	Customer could not explain source of funds satisfactorily.
5.	E15.2 Transaction has no economic rationale.	The amounts or frequency or the stated reason of the transaction does not make sense for the particular customer.
6.	E15.3– Transaction inconsistent with business.	Transaction involving movement of which is inconsistent with the customer’s business.

13. It is evident from the contents of the transcripts, which have not been denied by the Bank, that the Cobrapost reporter made explicit conversation about investing through the Bank large amounts of cash of unexplained origin. The discussion involved the following themes -

- (a) A politician wanting to invest handsome amount of cash (Rs.60-70 lakh) in in insurance and FDs in his wife’s name;
- (b) There should be no TDS;
- (c) Opening of more than one account in various names to structure the money;
- (d) Immediate investment of Rs.60 -70 lacs, more (Rs.4-7 crore), in cash expected soon;

- (e) Converting black money into white;
- (f) Demand for locker where Rs.5 to 7 crore cash could be kept;
- (g) Transfer of Rs.30 to 40 lacs black money to England through hawala.

14. These queries were explicit and made no secret of the fact that the reporter posing as customer was talking about black money. The conversation had several features which should have led to generation of behavioral alerts as per IBA guidelines mentioned above and as per the AML Policy of the Bank. However, in the concerned branch no alert was generated or escalated to the Principal Officer, as admitted by the Bank. The content, tone and tenor of the conversations/ discussions with the Cobrapost reporter do not indicate any sense of alarm, which a prudent banker, entrusted with the legal responsibility of reporting and preventing money laundering, would be expected to display in such circumstances. The Bank will not be able to fulfill its reporting obligations under the PMLA unless there is a free flow of information from its branches to the Principal Officer, who is responsible to fulfill the reporting obligations. Evidently, the concerned employee of the Bank was either oblivious of her duties or cared little for compliance with her legal obligations under the PMLA. 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. This indicates that the Bank's argument that the incident would not fall in the category of attempted transaction is only a post facto rationalization as the Bank's Head Office was not even aware of the matter until it was out in the media. Rather than looking deeper into the causes with a view to establish accountability and take remedial measures, the Bank has tried to justify the actions / responses of the employee without appreciating the context and seriousness of the matter.

15. 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. In the instant case there were all the ingredients which would make a transaction 'an attempted transaction'. It is not enough for the Bank to lay down a policy; it is equally important to implement it. In the case of Oriental Bank of Commerce, the policy was not followed in the concerned one bank branch covered by the Cobrapost. In light of the above, I conclude that there was a failure in the 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 Oriental Bank

of Commerce a fine of Rs One Lakh for 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

Oriental Bank of Commerce,
Plot No.5, Sector - 32,
Institutional Area,
Gurgaon – 122001.

Through: The Chairman and Managing Director