F.No. 25-1/2013/FIU-IND/Pt XIX
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.16/DIR/FIU-IND/2015

Name & Address of the Reporting Entity: **Punjab National Bank**
7, Africa Avenue,
Bikaji Cama Place,
Safdarjung Enclave,
New Delhi- 110066.

Show Cause Notice No &Date: F.No.25-1/2013/FIU-IND dt 24thFebruary, 2014

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

Date of Order: 01st 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 Punjab National 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. Punjab National 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. Rules 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 Punjab National Bank. The sting operation involved the Cobrapost reporter visiting the branches of the financial institutions with a story that he wanted to invest/safe-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. Following the sting operation, the Bank was asked vide letter dated 30-07-2013, whether any alerts in respect of the sting operation were

generated in its branches at Noida Sector 18; Kalkaji, Delhi; and VSC Alaknanda, Delhi which were covered in the sting operation, and whether any STR was reported for attempted transaction for the incident reported by the Cobrapost. The Bank in its reply dated 02-08-2013, informed that 27 branch level alerts indicators based on behavioural pattern of the visiting customers had been incorporated in the policy/guidelines dated 28-02-2013 for implementing at the branches. In its reply dated 18-10-2013, the Bank confirmed that no STR had been filed for attempted transactions in the Noida Sector 18, Kalkaji, Delhi and VSC Alaknanda, Delhi branches. The Bank also stated that no alerts had been generated by these three branches for the reported incident 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 Noida Sector 18, Kalkaji, Delhi and VSC Alaknanda, Delhi branches of the Bank. As STR for attempted transactions had not been filed for any of the branches of the Bank visited by Cobrapost, a show cause notice was issued on 24th February, 2014 for contravention of provisions of Section 12 of the Act, read with the Rules.

7. Vide its reply dated March 21, 2014 to the show cause notice the Bank admitted that the cobrapost reporter without giving his identity had approached their branches as a prospective depositor and discussed about various deposits schemes for investments of about Rs. 50-60 lakhs as long term investment/scheme where TDS was not deductible; that the reporter proposed investment/deposit with the Bank in different names i.e. wife of minister, he himself and his wife, for which a meeting could be arranged next day with the minister at his residence; that in his communication the reporter neither disclosed his identity nor uttered any name, address or telephone no.

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of the minister, his wife or himself. The Bank submitted that the KYC/AML policy of the Bank provided that if any transaction was abandoned /aborted by customer on being asked to give some details or to provide documents, the Bank would report all such attempted transactions even if not completed by customers, irrespective of the amount of transaction. The Bank submitted that since the details of prospective depositors were unavailable with the concerned branches STRs for attempted transactions could not be filed by the Bank.

8. On the request of the Bank, a personal hearing was granted on 07/05/2014 which was attended by S/Sh. Avinash Chander Chugh (General Manager), V.K. Bhan (A.G.M), and A.K. Gupta (Senior Manager). During the personal hearing, the Bank stated that they had in place a policy to report attempted suspicious transactions including a set of indicators to facilitate Bank's staff to spot attempted suspicious transactions. It was also stated that while some of these indicators might be applicable to the incidents reported by Cobrapost, there was not sufficient ground for the branch officials to escalate them to the Principal Officer. Therefore, no alerts were raised to the PO.

9. In their additional submissions dated 14-06-2014, the Bank stated that the discussions in the transcript were general in nature and there was not a conspicuous/definite attempt to execute any transaction in cash or in any form as referred in PMLA; that the entire conversation was more in the nature of business queries leaving little scope for suspicion; that it was difficult to guess the nature of transaction where a customer raised certain questions/queries and left the branch premises on the promise to come back; that the nature of queries being general and in absence of details no alerts for suspicious transactions were escalated to the Principal Officer and, therefore, no STR was filed.

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 visited Noida Sector 18, Kalkaji, Delhi and VSC Alaknanda, Delhi branches of the Bank as customer 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 openly declared that the money was unaccounted (black) and belonged to a politician. The reporter asked for a big locker to keep the money. The reporter also discussed transferring of some funds out of the country. There were open discussions about converting the black money into white.

12. The conversation between the Cobrapost reporter and the Bank Managers had several features which should have led to generation of behaviour alerts as per IBA guidelines as well as the 2012-13 policy of the Bank on KYC/AML/CFT/Obligations (Page 42-44 of Annexure B) and instructions issued by the Bank. However, despite ample indications 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 reporter do not indicate any sense of alarm, which a prudent banker, entrusted with the legal responsibility of reporting suspicious transactions and combating money laundering or financing of terrorism, would be expected to display in such circumstances. The matter was not even reported to the Principal Officer of the Bank. The Bank will not be able to fulfil its reporting obligations under the PMLA unless there is a free flow of information from its branches to the Principal Officer (MLRO), who is responsible to fulfil the reporting obligations. Evidently, the Bank managers were either oblivious of their duties or cared little for compliance with their legal obligations under the PMLA. 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. The Bank's contention that the discussion was general in nature and was more in the nature of business queries, leaving little scope for suspicion, is a weak attempt to cover up its systemic failure to report cases where the illicit nature of funds had been openly declared.

13. In light of the above, I conclude that in the Noida Sector 18 branch, Noida, Kalkaji branch, Delhi and VSC Alaknanda branch, Delhi reported by Cobrapost, there was a failure in the Punjab National 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 Punjab National Bank a fine of Rs. 3,00,000 (Rupees three Lakh) for three instances of failure in its branches at Noida Sector 18, Noida, Kalkaji, Delhi and VSC Alaknanda, Delhi 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,
Punjab National Bank
7, Africa Avenue
Bikaji Cama Place,
Safdarganj enclave
New Delhi- 110066

Through: Chairman & Managing Director