

202

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

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. 21/DIR/FIU-IND/2015

Name & Address of the Reporting Entity:

State Bank of India,
Central Office,
P.B. No. 12, Nariman Point
Mumbai-400004
Maharashtra.

Show Cause Notice No. & Date: F.No. 25-1/2013/FIU-IND dt 04th February, 2014

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

Date of Order: 27th October, 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 State Bank of India. 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. State Bank of India (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 suspicious transaction in Rule 2(1)(g) of the Rules, suspicious transaction 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 on media reports of a sting operation carried out by website Cobrapost, alleging violation of AML/CFT measures in five branches of State Bank of India, viz. two branches in Noida and one each in Aligarh, Panchkula and Gurgaon, clarifications were sought from the Bank vide letter dated

10/07/2013. The Bank vide letter dated 10/08/2013 admitted that it had not filed any STR under the "Attempted Suspicious Transactions" pertaining to the above mentioned sting operation as the conversations were only in the form of eliciting information/clarification and filing of STRs was not found warranted.

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 4th February, 2014 to show cause 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 its reply dated 04.03.2014, the Bank denied the allegations, and submitted that certain enquiries/discussions with certain officials of the Bank were made whereby possibility of opening certain deposit account was explored by the Cobrapost representative; that no actual attempt was made or steps were taken to open any deposit account other than alleged discussion/enquiry. The Bank also submitted that the communication between the Cobrapost reporter and the Bank officials was in the nature of routine and usual inquiries eliciting information, seeking clarification/details on the procedures to be followed for opening of deposit accounts, opening of locker facility etc; and that its branches receive such routine enquiries regularly and were not recording or maintaining details of any such discussions or queries made by general public to the branch officials in respect of opening of accounts or locker facility. The Bank also submitted that the un-amended Section 12 of the Act which was in force during the time of incident did not provide for maintenance of records for attempted transaction though attempted transaction finds mention in the definition of suspicious transaction in Rule 2 (1) (g) of the Rules; and that the enquiry/discussion with the Cobrapost reporter do not fall within the scope of attempted transaction. The Bank further relied upon the judgment of the Hon'ble Supreme Court in State of Maharashtra vs. Mohd. Yakub and others (1980) 3 SCC 57 and contended that in order to constitute attempt there must

205

be an intention to commit the act of a transaction and some activity must be done towards the commission of the transaction and that activity must be proximate to the intended result. The Bank further stated that there had been no deliberate overt steps on the part of the alleged sting operator in the direction of commission of any transaction covered under Section 12 of the Act.

9. On request of the Bank, a personal hearing was granted to it on 05/05/2014, which was attended by S/Sh. R.K. Agarwal, G M (Compliance), R. Mohan, G M (Law), T.R.K. Rao, DGM (AML/CFT) and V.B. Prabhu, AGM (BOD). During the personal hearing the Bank stated that on the date of incidents reported by Cobrapost, specific instructions were not in place for the branch level officials to raise alerts in such cases to the Head Office. However, subsequently detailed instructions had been issued and the internal mechanism strengthened. The Bank requested to make a revised submission which was allowed.
10. Vide its revised submissions dated 19.05.2014, the Bank placed on record the internal circulars relating to KYC/ AML guidelines of the Bank. The Bank further submitted that it follows an objective, unbiased, transparent and well documented standard operating procedure approved by the competent authority for scrutiny and analysis of transactions or attempted transactions of suspicious nature and for filing the Suspicious Transaction Reports (STRs) with FIU-IND in such forms and at such intervals as per Rule 7(3) of the Rules. It was also submitted by the Bank that the reporting of suspicious transactions including the attempted ones by branches/offices was further strengthened by the Bank in March 2013 by enabling branches/departments to report suspicious transactions (including the attempted transactions) directly to the Bank's AML/CFT cell, Jaipur through a dedicated e-mail as an advance copy/information for the scrutiny and analysis by the concerned authorities/department in the Bank, for their eventual filing as STRs with FIU-IND.

236

FINDINGS AND DISCUSSION

11. A perusal of the records of conversations/ discussions between the Cobrapost reporter and the Bank employees and the submissions made by the Bank from time to time, including during the personal hearing, confirm that the employees of the five branches of the Bank were involved in the conversation with the Cobrapost reporter. The transcripts of the conversation/discussion 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 it does not show the entire verbatim reproduction of the alleged conversation between the sting operator and the Bank's officers and there is suppression of full text of the conversation.
12. The transcripts contain explicit conversations between the reporter and the Bank employees about laundering of cash through the Bank. The Bank employees have spoken openly about flouting the system, e.g., opening account to route the cash into the Bank's spread of products such as mutual funds, SBI Life, insurance, allotment of lockers for safekeeping of the cash and providing machines for counting cash, opening multiple dummy accounts, splitting of transactions and assuring secrecy of deal. 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. The employees 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, which is a reporting entity entrusted with the responsibility under the PMLA of reporting

207

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, Annexure C of the AML guidelines of the Bank provides an indicative list of Suspicious Transactions. The Annexure to Circular number NBG/BOD-KYC/117/2012-13 dated March 26, 2013 of the Bank provides for indicative alert indicators for identification of suspicious transactions which also forms part of the IBA's indicative checklist of alerts. None of this, however, appears to have been followed by the branch level officers who were involved in the conversations with the reporter.

14. As regards the Bank's argument that no attempt was made by the reporter to make a transaction, relying on judicial pronouncements on the element of "attempt", it must be remembered that in the instant cases, we are not debating the culpability of the Cobrapost reporter, whether he committed or attempted to commit an offence. The point in question is whether the Bank or its concerned employees fulfilled their obligations to report an attempted suspicious transaction. The Bank's guidelines to its employees on attempted transactions do not expect an employee to carry out a detailed and legal analysis of whether an attempt was made. Nor there is any evidence of such an analysis being applied in any of the branches in question. Reporting a suspicion is not the same as determining culpability. It is a red flag that must be raised by the gatekeeper for competent authorities to investigate. That the theft did not occur or the trespasser did not have the intention to steal is no justification for the guards to be negligent or asleep. As far as the reporter is concerned, he had made known his intention to launder black money. He had selected beforehand the branches of the Bank that he visited, had conceived of a similar theme to ascertain the possibility of laundering money and the ways to do so. He went to various branches and discussed about the laundering in detail. This was the

208

penultimate act before initiating a transaction. Thus it had all the ingredients of an attempt to do a transaction. In this scenario, the case law relied upon by the Bank is not applicable and does not help the Bank in its case.

15. The Bank's contention that un-amended Section 12 that was in force during the time of incident, as referred to in para 8 of this order, did not refer to attempted suspicious transactions is flawed. Section 12 of the Act has to be read along with Rule 2(1) (g) of the Rules, which clearly laid down that suspicious transaction (which had to reported under the obligation created by Section 12) included attempted transaction and, further, Rule 3(1) (D) creates an obligation for the Bank to maintain record of all suspicious transactions which need to be reported under Section 12 (1) (b) of the Act. The effect of amendment in Section 12 (1) (b) was to clarify in the Act itself that transaction included both attempted and executed transaction, a position that had been provided in the Rules. The amendment did not create a new obligation that did not already exist. The obligation to report an attempted transaction already existed in the Rules in force during the pre-amendment period. The Bank's argument therefore is without merit; the Bank cannot escape from its legal responsibility. The conclusion, therefore, is inescapable that there was failure of internal mechanism of the Bank to detect and report attempted suspicious transactions in the five branches covered in the sting operation.
16. Despite clear indications in the conversations/discussions that the funds being discussed were of suspicious nature and the purpose of the intended transactions was unlawful, 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 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

209

Principal Officer (MLRO), who is responsible to fulfill the reporting 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. Evidently, the employees of the Bank were either oblivious of their duties or cared little for compliance with their legal obligations under the Act. 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.

17. In light of the above, I conclude that in the five branches of the Bank appearing in the Cobrapost sting operation, there was a failure in State Bank of India'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 State Bank of India a fine of Rs. 5,00,000 (Rupees Five Lakhs) for 5 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,
State Bank of India,
Central Office,
P.B.No.12, Nariman Point
Mumbai-400004
Maharashtra.
Through: Chairman