

**APPELLATE TRIBUNAL, PREVENTION OF MONEY LAUNDERING ACT  
AT NEW DELHI**

Date of Decision: 18.08.2015

**FPA-PMLA/621/DLI/2014**

Star Union Dai-Ichi Life Insurance Co. Ltd. ... Appellant

Versus

FIU- New Delhi ... Respondent

**Advocates/Authorized Representatives who appeared**

For the appellant : Shri Sandeep Srivastava, Advocate

For the respondent : Shri Satish Agarwal, Advocate  
Shri Anshuman, Consultant

**CORAM**

**SHRI ARUN KUMAR AGARWAL : ACTING CHAIRPERSON**  
**Dr. RABI NARAYAN DASH : MEMBER**

**JUDGMENT**

**ARUN KUMAR AGARWAL**

**FPA-PMLA/621/DLI/2014**

This is an appeal challenging the order dated 2<sup>nd</sup> July, 2014 passed by the Director, Financial Intelligence Unit (FIU) India imposing a fine of Rs. 1 Lakh for failing to have an internal mechanism in place for not reporting 31 integrally connected cash transactions in the month of August, 2009.

2. The counsel for appellant submitted that the appellant started its business operations on 9<sup>th</sup> February, 2009 after receipt of approval from Insurance Regulatory and Development Authority (in short IRDA) through

over 5000 branches of public sector banks i.e. Bank of India and Union Bank of India who were also registered as corporate agents. It was submitted that initially the monitoring of AML transactions was being carried out manually as the automated system were yet to be set up; all receipt of money was done through banks who would accept cash without any limit or any number of transactions; the appellant company recognized this limitation where there was no automated monitoring of limits of cash received during a months and hence, initiated a project for implementation of system for AML monitoring and also issued directions to its employees on limit for acceptance of cash. Upon implementation of remedial measures, data for past transactions was extracted to view violation if any, and the transactions which were required to be reported to respondent were voluntarily reported in March, 2010 which shows the appellant's will to ensure compliance with the AML regulations.

3. He submitted that during the internal review by appellant, certain transactions which took place between the periods April, 2009 to March, 2010 and were above the threshold limit specified by IRDA i.e. where cash was accepted beyond Rs. 50,000/- were voluntary submitted vide letter dated 11<sup>th</sup> March, 2010 to the respondent and IRDA.

4. The counsel submitted that out of the identified transactions the appellant undertook further inquiries into profiles and pattern of the transactions effected by certain individuals and arrived at a conclusion that certain transactions fall under the category of suspicious in nature and voluntarily reported the same to respondent vide letter dated 26<sup>th</sup> April, 2010 as Suspicious Transactions Report



5. He submitted that the appellant received a show cause notice F.No-9-31/2014/FIU-IND dated 21<sup>st</sup> February, 2014 for non-compliance with provisions of section 12 of Prevention of Money Laundering Act 2002 (in short PMLA) asking why the panel action under section 13 of PMLA should not be taken for appellant's failure to comply with the provision of section 12 of PMLA for failure to file CTR in respect of, 31 integrally connected cash transactions and failure to establish mechanism to detect, capture and report such transactions to the respondent. He submitted that in response to the show cause notice, a detail response vide letter dated 3<sup>rd</sup> April, 2014 was filed before the respondent and at the time of personal hearing before Director FIU-India on 7<sup>th</sup> May, 2014, oral submissions were made explaining various initiative taken by the appellant in strengthening the internal controls in core operating systems and processes and also demonstrated the commitment of the appellant to put Anti-Money laundering measures at the heart of corporate compliance.

6. The counsel submitted that it is wrong to allege that the appellant has not fulfilled its entire obligation as per section 12 of PMLA read with The Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (in short Rules). He stated that it is an admitted fact that the appellant has not filed Cash Transaction Report within the prescribed time and in the prescribed format. However, the appellant voluntarily submitted the detail of these transactions vide letter dated 11<sup>th</sup> March, 2010 and also filed Suspicious Transactions Report vide letter dated 26<sup>th</sup> April, 2010 giving detail of 31 integrally connected transactions as well as disclosing that all transaction are in cash. Thus all the ingredients of information for Cash Transaction Report was practically submitted



voluntarily in the Suspicious Transaction Report. He submitted that the respondent did not take any action after filing of these details vide above letters in March and April, 2010. In February, 2014, the appellant was served with a show cause notice for failure to comply with the provisions of section 12 of PMLA. The counsel argued that unless the appellant had voluntarily furnished the details of these transactions vide letter dated 11<sup>th</sup> March, 2010 and letter dated 26<sup>th</sup> April, 2010, the respondent could not have even come to know about these transactions. The voluntary filling of details of transactions shows appellant's sincere approach towards compliance of provisions of PMLA and other regulations governing appellant's business in letter and spirit.

7. The counsel submitted that the appellant started its business only in February, 2009 and these transactions took place in the month of August, 2009 when the appellant was at a very nascent stage and was in the process of setting up systems and processes. At that point of time, as the work was being carried out manually and the deposit of cash in the banks was direct, the appellant could not take timely action to file the Cash Transactions Report within the time limit prescribed under the Rules. He submitted that learning from its initial experience, appellant has taken various remedial steps and after that there has not been a single instance of lapse since then.

8. The counsel for appellant submitted that IRDA who is a Regulatory Authority had also issued a show cause notice vide letter dated 12<sup>th</sup> November, 2010 and after considering the representation of the appellant and after considering the corrective steps taken by the appellant bringing about changes in the system and processes in compliance with the



stipulation on cash acceptance threshold on premium laid down under AML/CFT guidelines the non-compliance/violations committed by the appellant during the period upto 9<sup>th</sup> March, 2010 have been condoned. The counsel submitted that as the IRDA who is a Regulatory Authority under PMLA to laid down the AML and CFT guidelines has condoned the non-compliance during the period upto 9<sup>th</sup> March, 2010, the respondent should have also condoned the non-compliance and dropped the show cause notice.

9. The counsel for appellant prayed that the matter may be re-visited and considering the efforts made by the appellant in becoming compliant with the regulations governing its business in letter and spirit, the delay in reporting cash transactions may be condoned and the proceedings be dropped against the Appellant.

10. Mr. Satish Agarwal, Advocate learned counsel for the respondent vehemently opposed the pleas and contentions raised by the counsel for appellant. He submitted that there is no infirmity in the order passed by the Director FIU-India. The notice was issued for failure to comply with the provisions of section 12 of PMLA read with rule 3(1)(B) and 8(1) of the Rules to file cash transaction report in respect of 13 integrally connected transactions in the name of Chifta Devi wherein cash amounting to Rs. 99,000/- each totaling to Rs. 12,87,000/- had been deposited in August, 2009 and 18 integrally connected transactions in the name of Kalawati Devi Paswan for a total sum of Rs. 15 Lakh in cash deposited in August, 2009 and for failure to establish mechanism to detect, capture and reports such transactions. He submitted that in response to show cause notice the appellant had admitted its failure to file Cash Transactions Report in



respect of above 13 & 18 integrally connected transactions. He submitted that filing of suspicious transactions reports is altogether a different obligation under PMLA for compliance by the appellant and filing of that report would not be a compliance of filing of Cash Transaction Report.

11. He submitted that obligations under section 12 of PMLA is to report transactions to Director FIU-India as prescribed in the Rules and rule 3(1) (B) of Rules prescribe that integrally connected cash transactions should be reported as per Cash Transaction Report after aggregation in relevant months within the time prescribed. In the present case 18 integrally connected cash transactions of Kalawati Devi Paswan and 13 integrally connected cash transaction of Chinta Devi aggregating to more than Rs. 10 Lakh and, therefore, these transactions were reportable to Director FIU-India as per Cash Transaction Report but were admittedly not reported. Therefore, the appellant was liable for penalty for non-reporting of 31 integrally connected cash transaction.

12. The counsel submitted that the Director FIU-India after considering the submissions of the appellant that it was newly established and had not been able to establish automated system to detect and report integrally connected cash transactions and other facts as stated in the reply dated 3<sup>rd</sup> April, 2014 and oral submissions made before the Director, took a lenient view and penalty of Rs.1 Lakh was imposed for failure of appellant in not having internal mechanism in place for 31 integrally connected cash transactions.

13. As regards contention of the appellant that show cause notice was issued in the year 2014 whereas the failure took place in 2009 and the

intimation of these transaction was sent in 2010, the counsel submitted that a notice can be issued only after the failure comes to the knowledge of the Director and in the present case the failure was confirmed only on 15<sup>th</sup> September, 2013 after the relevant information furnished by the appellant in a CD was analyzed in the office of respondent. He contended that there is no time limit under the provisions of PMLA for issuance of a show cause notice within a specified period from the date of the transaction.

14. The counsel submitted that the IRDA is not an authority empowered to enforce the provision of PMLA nor the order passed by the IRDA is under the provisions of PMLA. The proceedings under PMLA are separate and independent from the proceedings by the regulator i.e. IRDA, therefore, the order passed by the IRDA condoning non-compliance/ violations committed by the appellant during the period upto 9<sup>th</sup> March, 2010 is of no consequences for the present proceeding under PMLA. The counsel submitted that non-reporting of integrally connected transactions cannot be condoned and the proceedings initiated cannot be dropped. It was argued on behalf of the respondent that Director FIU India after considering all facts and circumstances and submissions of Appellant took a lenient view and imposed a nominal fine of Rs. 1 Lakh and there is no infirmity in the order prayed that the appeal may be dismissed

15. We have heard the arguments on behalf of the parties and carefully considered the pleadings and documents placed on record. Section 12 of the PMLA lays down the obligations of the appellant reads as follows :



“12. (1) Every banking company, financial institution and intermediary shall-

(a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;

(b) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;

(c) verify and maintain the records of the identity of all its clients, in such a manner as may be prescribed.

Provided that where the principal officer of a banking company or financial institution or intermediary, as the case may be has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed limit so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

(2) (a) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intermediary, as the case may be.

(b) the records referred to in clause (c) of sub-section (1) shall be maintained for a period of ten years from the date of cessation of transactions between the clients and banking company or financial institution or intermediary, as the case may be.”

16. Rule 3 of The Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter referred to as Rules) prescribe nature and value of transactions record of which are to be maintained in compliance to section 12(1)(a) which reads as follows :

“3. Maintenance of records of transaction (nature and value) -

(1) Every banking company or financial institution or intermediary, as the case may be, shall maintain a record of :-

(A) all cash transaction of the value of more than rupees ten Lakhs or its equivalent in foreign currency;





(B) all series of cash transactions integrally connected to each other which have been valued below rupees ten Lakh or its equivalent in foreign currency where such series of transactions have taken place within a month;

(C) all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine and where any forgery of a valuable security has taken place facilitating the transactions;

(D) all suspicious transactions, whether or not made in cash and by way of:

.....”

17. Rule 7 prescribes that the Principal Officer of the banking company shall furnish the information referred to in rule 3 to the respondent i.e. Director FIU India on the basis of information available with the banking company. Rule 7 is adverted to as follows :

“7. Procedure and manner of furnishing information - (1) Every banking company, financial institution and intermediary, as the case may be, shall communicate the name, designation and address of the Principal Officer to the Director.

The Principal Officer shall furnish the information referred to in rule 3 to the Director on the basis of information available with the banking company, financial institution and intermediary, as the case may be. A copy of such information shall be retained by the Principal Officer for the purposes of official record.

(3) Every banking company, financial institution and intermediary may evolve an internal mechanism for furnishing information referred to in rule 3 in such form and at such intervals as may be directed by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority, as may be.

(4) It shall be the duty of every banking company, financial institution and intermediary to observe the procedure and the manner of furnishing information referred to in rule 3 as specified by Reserve Bank of India, the Securities Exchange Board of India and the Insurance Regulatory and Development Authority under sub-rule (3), as the case may be.”



18. Rule 8 prescribes the procedure to be followed furnishing the information in respect of transactions referred to in rule 3 which reads as follows :

“8. Furnishing of information to the Director –

(1) The Principal Officer of a banking company, a financial institution and an intermediary, as the case may be, shall furnish the information in respect of transactions referred to in clauses (A) and (B) of sub-rule (1) of Rule 3 every month to the Director by the 15<sup>th</sup> day of the succeeding month

(2) The Principal Officer of a banking company, a financial institution and an intermediary, as the case may be, shall furnish the information promptly in writing or by fax or by electronic mail to the Director in respect of transactions referred to in clause (C) of sub-rule (1) of Rule 3 not later than seven working days from the date of occurrence of such transaction.

(3) Principal Officer of a banking company, a financial institution and an intermediary, as the case may be, shall furnish the information promptly in writing or by fax or by electronic mail to the Director in respect of transactions referred to in clause (D) of sub-rule (1) of Rule 3 not later than seven working days on being satisfied that the transaction is suspicious.”

19. Admittedly the appellant has not filed Cash Transaction Report in respect of 31 integrally connected cash transactions which took place in the month of August 2009 which was required to be filed in the month of September, 2009 as per sub-rule (1) of Rule 8. The appellant has also admitted that initially automated\* systems were not in place and upon implementation, data for past transactions was captured to view violations and consequently violations were voluntarily reported vide letter dated 11.3.2010. The appellant except pleading that details of transactions were communicated to Respondent voluntarily, Suspicious Transaction Report was filed, appellant was in its initial phase of business commencement, remedial steps have been taken by appellant

and IRDA has condoned the non compliance, has not been able to show any infirmity or illegality in the impugned order. All these points were also pleaded by the appellant during proceedings before the respondent who had after due consideration of the same took a lenient view and imposed a nominal fine of Rs. 1,00,000/- for failing to have an internal mechanism in place for not reporting 31 integrally connected cash transactions in the month of August 2009. The act of filing Suspicious Transaction Report (STR) will not absolve the appellant of its compliance liability of filing Cash Transaction Report (CTR).

20. In view of the above facts and circumstances we do not find any infirmity in the impugned order. Consequently the appeal is without any merit and is therefore dismissed. There is no order as to cost.

  
CERTIFIED TRUE COPY  
BY ORDER

REGISTRAR  
Appellate Tribunal (PMLA)

  
(Arun Kumar Agarwal)  
Acting Chairperson

  
(Rabi Narayan Dash)  
Member

New Delhi,  
18<sup>th</sup> August, 2015.