

232

F.No. 25-1/2013/FIU-IND/Pt XXII
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. 01/DIR/FIU-IND/2016

Name & Address of the Reporting Entity: YES Bank Limited,
YES Bank Towers,
Nehru Centre, 9th Floor,
Dr. A.B. Road, Worli,
Mumbai - 400018

Show Cause Notice No. & Date: F.No. 25-1/2013/FIU-IND dt 21st February, 2014

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

Date of Order: 11th January, 2016

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 YES 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 also referred to as PMLA or the Act].

1. YES Bank Limited (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 three branches of Yes Bank, viz. one each in Gurgaon, Delhi and Jaipur, clarifications were sought from the Bank vide letter dated 10/07/2013. The Bank vide letter dated September 20th, 2013 admitted that it had not filed any STR under the "Attempted Suspicious Transactions" pertaining to the above mentioned sting operation. The Bank informed that it had engaged the services of KPMG to conduct a forensic investigation of the allegations raised by Cobrapost and raised doubt over the contents of the Cobrapost video terming it to be substantially edited.
 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, a show

cause notice under section 13 of the PMLA was issued to the Bank on 21-02-2014 for contravention of provisions of section 12 of the Act read with the Rules.

8. Vide its reply dated March 27, 2014, the Bank denied the allegations, and submitted that mere general enquiries by the Cobrapost reporter, even if they were a possible precursor to actually initiating a particular transaction(s), would still not amount to an attempted transaction; that an attempted transaction would necessarily involve concrete measures to be taken by the customer to effectuate such a transaction through the Bank thereby leaving some kind of imprint in the Bank's system; that no actual transaction or deposit, withdrawal, exchange or transfer of funds took place by virtue of the interactions between the officials of the Bank and the Cobrapost reporter conducting the sting operation. The Bank also relied upon paragraph 2.21 of the RBI Master Circular of July 1, 2013, submitting that the Master Circular does not define the term 'attempted transactions', and that the contents of para B (ii) of para 2.21 of the Master Circular makes it clear that there must at least be an initiation of the transaction which may later be aborted/abandoned, so as to constitute an attempted transaction. The Bank submitted that the Cobrapost reporter did not fill up any form to open account or to apply for insurance policy or abandon any transaction for want of KYC documents that he was unable to provide. The Bank further submitted that mere verbal conversations between the Cobrapost reporter and employees of the Bank would not amount to abandoned or aborted transactions.
9. On request of the Bank, a personal hearing was granted on 06/05/2014, which was attended by S/Sh. Devamalya Dey, Group President- Audit and Compliance, Ashok Khandelwal, Vice President-Compliance, Pralay Mondal, Senior Group President-Retail and Business Banking, Deodutta Kurane, Group President-Human Capital Management, Kapil Juneja, Sr. President-Retail Operations and Service Delivery, Rajnish Datta, Sr. President-Human Capital Management and Sanjay Nambiar, Group President and General Counsel. During the personal hearing the Bank stated that it had, on the date of Cobrapost incidents, policies in place to report suspicious transactions in accordance with PMLA and PML

Rules. The Bank was asked to furnish a copy and also clarify if this policy explicitly included the obligation to file STR in case of attempted transactions. The Bank further stated that the incidents in question were not escalated within the organization, nor to the Principal Officer who did not have the occasion to decide if STR was to be filed. This was viewed as violation of Bank's Code of Conduct, for which action had been taken against the employees. The Bank also stated that further action had been taken to strengthen the AML/CFT reporting obligations under the law. The Bank requested to give additional submissions which was granted.

10. Vide its revised submissions dated May 27, 2014, the Bank placed on record its KYC/ AML Policy, October 2012. The Bank further submitted that at the time of the occurrence of the Cobrapost sting operation at the three branches of the Bank, it had adequate policies in place to report suspicious transactions in accordance with the Act and Rules framed thereunder. The Bank also submitted that according to para 10.5.3 (ii) of the KYC/AML Policy it is guided by the definition of suspicious transaction as in the Rules, which were appended to the policy as Annexure 6. Since the definition of 'suspicious transaction' in Rule 2(1) (g) of the Rules included "attempted transaction", such transactions were included in the purview of the October 2012 KYC/AML Policy of the Bank, in force during the occurrence of the Cobrapost sting operation. Therefore, the KYC/AML policy also included the obligation to file STRs in case of attempted transactions. The Bank reiterated its doubts over the authenticity of the Cobrapost video.

FINDINGS AND DISCUSSIONS

11. A perusal of the transcript 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 three branches of the Bank were involved in conversation with the Cobrapost reporter, who made explicit conversation, that he was attempting to launder through the Bank huge amount of black money belonging to a "minister". The

genuineness of the transcripts has not been disputed except that it does not show the entire verbatim re-production of the alleged conversation between the sting operator and the Bank's officers.

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 routing the cash through products such as one time investment plan of Bajaj Allianz, insurance, declaring the black money as proceeds of sale of property, routing through demand drafts, showing the money as agricultural income and depositing the cash in smaller amounts over a month, allotment of lockers for safekeeping of the cash, remittance of cash abroad through Hawala, obtaining a certificate from a CA and using NRI account etc., and assuring secrecy of deal. 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 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. For instance, Annexure 7 of the AML policy of the Bank provides an indicative list of Suspicious Transactions. These guidelines were not followed by the branch level officers who were involved in the conversations with the reporter.
14. The Bank's argument that no attempt was made by the reporter to make a transaction, is not germane as we are not debating the culpability of the reporter, whether he committed or attempted to commit an offence. The point in question is whether the Bank or its 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 in the manner the Bank has described in its arguments in response to this show-cause notice (please refer to para 8 above). There is also no evidence of such an analysis being applied in any of the branches in question. Reporting a suspicion does not mean determining culpability of a customer. This argument of the Bank would appear to be a post facto rationalizations. It is a red flag that must be raised by the gatekeeper to enable the 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 penultimate act before initiating a transaction. Thus it had all the ingredients of an attempt to do a transaction. The conclusion, therefore, is inescapable that there was failure of internal mechanism of the Bank to detect and report attempted suspicious transactions in the three branches covered in the sting operation.

15. 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 Principal Officer (MLRO), who is responsible for the reporting obligations under the PMLA. 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.

16. In light of the above, I conclude that in the three branches of the Bank appearing in the Cobrapost sting operation, there was a failure in YES Bank'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 YES Bank Limited a fine of Rs. 3,00,000 (Rupees Three Lakhs) for 3 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,
YES Bank Limited,
YES Bank Towers,
Nehru Centre, 9th Floor,
Dr. A.B. Road, Worli,
Mumbai – 400018
Through: Chairman cum Managing Director