

F.No. 25-1/2013/FIU-IND/Pt XVI
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.18/DIR/FIU-IND/2015

Name & Address of the Reporting Entity:	Bank of Baroda, Baroda Corporate Centre Plot No. C-26, 'G' block, Bandra Kurla Complex, Mumbai-400051.
Show Cause Notice No. & Date:	F.No. 25-1/2013/FIU-IND dt 04 th Feb, 2014
Section under which order passed:	Section 13 of PMLA, 2002
Date of Order:	1 st 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 the Bank of Baroda. 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. Bank of Baroda (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 transaction referred to in Rule 3 and for furnishing information about such transaction in such form as may be directed by its Regulator.
4. As per the definition of STR in Rule 2(1)(g) of PML (Maintenance of Records) Rules, STR 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. Subsequent to media reports of a sting operation carried out by website Cobrapost during March 2013 alleging violation of AML/CFT measures in three branches of Bank of Baroda at Delhi viz. Vasant Lok branch, Defence Colony branch and the Parliament Street branch, clarifications were sought from the Bank vide letter dated 10/07/2013. The Bank while clarifying its position in its letter dated 10/09/2013, admitted that as far as the incident pertaining to above mentioned sting operation was concerned it had not filed any STR under the "Attempted Suspicious Transactions" for the incidents pertaining to the sting operation. The Bank also confirmed that during the period 01-04-2012 to 28-02-2013, it did not receive from the branches in which the sting operation took place any report 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.

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 04th February, 2014 to show cause for contravention of provisions of section 12 of the Act, read with the relevant rules of the PML (Maintenance of Records) Rules, 2005.
8. Vide reply dated 01.03.2014 to the show cause notice, the Bank admitted having not filed STR for the sting operation which was reported in the media and inter- alia stated that :
- a.) In their opinion, it was not an attempted suspicious transaction. Thus the STR was not filed by the Bank. The Bank had filed STRs in respect of the Cobrapost sting operation later on.

- b.) The incident of cobrapost was a sting operation and not by any proposed/ existing customer and hence, the Bank thought that it did not qualify in any of the definitions of the suspicious transactions as per rule 2(g) and (h) of PML Rules, 2005. Therefore, no STR as filed.
- c.) As an abundant precaution, the Bank got investigated all the three branches from KYC/AML angle and nothing adverse was found.
9. On request of the Bank, a personal hearing was granted on 03/04/2014, which was attended by S/Sh. D.D. Singla, G.M. (Principal Officer) and J.P. Singh, AGM (KYC-AML). During the personal hearing the Principal Officer could not satisfactorily explain the statement made in the reply of 01.03.2014 that "we were of the opinion that it was not an attempted transaction" and yet "now STRs have been filed". A time of one week was sought by the Bank to file a revised reply which was granted. Further the Principal Officer, during the course of hearing, informed that instructions were in place on the date of incident to file attempted suspicious transactions but the branches concerned did not raise any alert. The Principal Officer was also asked to place on record the said instructions of the Bank.
10. The Bank made additional submissions vide its letter dated 09.04.2014 through which it raised the issue of the concept of the stages of crime, viz. intention, preparation and attempt. The Bank further stated that it had filed the STR's after receiving a letter from FIU-IND dated 04/02/2014 as a matter of abundant precaution. The Bank further informed about the various training programmes conducted by it to create awareness for AML Team and Trainers. The Bank also placed on record vide its submissions dated 09.04.2014 its circular dated 21st September 2011 bearing number HO:BR:103:196 to all branches/offices in India which provides for the IBA's 27 indicative alert indicators for suspicious transactions. The Bank also submitted that the allegations of Cobrapost did not

proceed beyond the realm of conceiving i.e., the stage of "intention", as there was not even preparation to implement, hence the allegation of "attempted transaction" as alleged in the show cause notice was misconceived on facts and untenable in law.

11. Another opportunity was given to the Bank to place on record any further final submissions and the Bank vide letter dated 17.06.2014 made further submissions. It informed about the various preventive measures taken after the incident of sting operation by Cobrapost. It was also submitted that the questions raised by visitors to the Bank (the Cobrapost Reporter) were quite hypothetical in nature to which the Bank's officials had merely given a reply.

FINDINGS AND DISCUSSION

12. A perusal of the records of conversations/ discussions between the Cobrapost reporter and the Bank employees and the submissions made by the Bank shows that the employees of the three Branches of the Bank were indeed involved in the conversation with the Cobrapost reporter; the transcripts of these conversation/discussions clearly show that the reporter made explicit conversation about his intention to launder through the Bank huge amount of black money belonging to a "minister". The genuineness of the transcripts of the conversation between the Cobrapost reporter and the employees of the Bank is not disputed. The discussions revolve around laundering of money through investment in insurance schemes, routing through different accounts, opening of accounts in name of persons who do not file income tax return, holding of such accounts in joint name, showing of black money as agricultural income and putting it in the regular banking system, depositing cash in smaller chunks so as to not get detected, provision of small and big lockers to keep cash, etc.

13. The conversations/discussions between the Bank employees and the Cobrapost reporter, 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- a reporting entity with legal 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 which was available with all the branches of the Bank. None of this, however, appears to have percolated down to the branch level who appeared impervious to the guidelines in the matter.

14. Although there were enough indications in the conversations/discussions between the Bank officials and the Cobrapost reporter 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 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 to fulfill the reporting obligations. 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.

15. In light of the above, I conclude that in the three branches i.e. Vasant Lok, Defence Colony and the Parliament Street, Delhi branches of the Bank reported by Cobrapost, there was a failure in the Bank of Baroda'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 Bank of Baroda a fine of Rs. 3,00,000 (Rupees three Lakh) for three instances of failure in its Vasant Lok, Defence Colony and the Parliament Street, Delhi branches 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,
Bank of Baroda,
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Through: Chairman and Managing Director