F. No. 9-28/BOB/FIU-IND/2015

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. / /DIR/FIU-IND/2018

Name & Address of the Reporting Entity:	Bank of Baroda Baroda Corporate Centre, C – 26, G – Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.
Show Cause Notice No. & Date:	**F. No. 9-28/BOB/FIU-IND/2015** Dated January 24, 2017
Section under which order passed:	Section 13 of the Prevention of Money Laundering Act, 2002
Date of Order:	March 27, 2018
Authority passing the order:	Director, Financial Intelligence Unit – India

This Order has been passed under section 13 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the PMLA" or "the Act"). An appeal against this Order shall lie before the Appellate Tribunal, Prevention of Money Laundering Act at New Delhi within a period of forty five days from the date on which this Order is received by Bank of Baroda. The appeal should be in the form and manner prescribed under sub-section (3) of Section 26 of the Act.

1. Bank of Baroda (the 'Bank') is a Banking company as defined under Section 2(1)(e) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'Act') and as such is a reporting entity in terms of Section 2(1)(wa) 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 the banking companies to, *inter alia*, verify the identity of its clients, maintain records of specified transactions and report to the Director, Financial Intelligence Unit – India (hereinafter referred to as 'Director, FIU-IND') information relating to such transactions. These reports, *inter alia*, include reports on cash transactions, suspicious transactions, cross border wire transfers and counterfeit currency transactions.

3. Rule 3 of the Rules specifies the transactions, the records of which are to be maintained. These include all cash transactions of the value of more than ten lakh rupees or its equivalent in foreign currency, all series of cash transactions integrally connected to each other which have been individually valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of ten lakh rupees or its equivalent in foreign currency, all suspicious transactions whether or not made in cash and all cross border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency whether either the origin or destination of funds is in India. Rules 5, 7 and 8 of the Rules prescribe the procedure, manner and time of maintaining and furnishing information about the transactions. 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. Rule 9 of the Rules prescribes the procedure and manner of verification of records of identity of clients.

4. Section 13 of the Act confers powers on the Director, FIU-IND to enquire into cases of failure with regard to obligation of a reporting entity to comply with the provisions of Section 12 of the Act and the Rules thereunder and, *inter alia*, to levy a fine for each such failure.

5. Before I delve into the facts of the instant case, it becomes necessary to clarify and state that since the instant order is a quasi-judicial order, is appealable and shall be in the public domain, it shall be my endeavour, as far as possible, to not mention the full details of the accounts, wherever pertinent, in this order considering the confidentiality obligations of the reporting entity in terms of Section 12(2) of the Act or under the provisions of any other applicable law. Therefore, wherever more clarity with regard to the details of the accounts are required reference may be had to the show cause notice dated January 24, 2017 that is being adjudicated vide this order.

6. From perusal of records it is noted that the Bank had filed STRs in 59 current accounts maintained at their Ashok Vihar/ Shalimar Bagh, Rampura branch at Delhi, tagged as trade based money laundering (TBML) cases. Out of 59 STRs relating to these accounts, 1 STR was filed in November 2014, 1 STR filed on August 2015, and 1 STR filed on 30th September, 2015 and remaining 56 STRs filed from 9th to 13th October 2015. From preliminary examination of these STRs, it was noted that large value of cash credit besides several EFT/RTGS/Inward credit transactions had taken place in these accounts and huge funds were remitted abroad to Hong Kong and the UAE as advance remittance against imports.

7. Some of the findings of the Interim Report of the Bank (dated October 10, 2015) in this regard, as shared by the Bank with FIU-IND, are as under:

   (a) These 59 current accounts were opened during the period between May 13, 2014 and June 20, 2015.
   (b) Out of these 59 accounts, 58 accounts pertained to Ashok Vihar Branch and one pertained to Shalimar Bagh.
   (c) KYC in these accounts appeared to be inconclusive/deficient at the time of opening as observed at the commencement of investigation.
   (d) There have been heavy/frequent cash deposits in 33 accounts. In the remaining 26 accounts, there were no cash deposits. In these 33 accounts, regular cash transaction reports (CTRs) were generated and mailed to FIU-IND. As per records, during the said period 79 CTRs were generated pertaining to these accounts.
   (e) Besides, cash transactions, there were large number of remittance from other banks through RTGS/NEFT for large amounts received in these accounts. For example, in one such case, an entity having two accounts with the Bank, viz., "071xxxxxxx1279" and "202 xxxxxxx0224" received large amount remittances in one of its accounts via 106 RTGSs from 11 banks namely, Standard Chartered Bank, ICICI Bank, Canara Bank, Axis Bank, PNB, SBBJ, HDFC Bank, Citizen Cooperative Bank, Central Bank of India, Citi Urban Union Bank and Tamilnadu Mercantile Bank Ltd.
   (f) During this period, i.e., May 13, 2014 to August, 2015, total of 5853 number of outward foreign remittances transactions aggregating to USD 546.10 million (Rs. 3500 crores approx.) for the purpose as "Advance remittances for imports" and for other purposes were remitted through 38 current accounts out of 59 accounts to various overseas parties numbering about 400, mainly based in Hong Kong and one in UAE.
   (g) Out of the above 5853 outward remittances, 414 remittances involving approx. USD 50 million with various purposes of "Non import nature" were made through

these current accounts.

(h) Forex officer did not adhere to FEMA Guidelines while remitting huge amount of foreign exchange to the parties whose credit reports were either not obtained or obtained but were not found satisfactory. Apparently, the transaction amounts were kept/split below threshold limit of USD 100,000 in majority of cases to circumvent the guidelines for submission of Bill of Entry (BoE).

(i) Various Office/customer accounts were misused for passing entries to facilitate transactions mentioned above such that they would not get detected and also to accommodate select clients out of above 59 account holders.

(j) Branch is supposed to report each individual Forex remittance transactions separately to Treasury. The Branch has not followed the proper procedure of reporting, i.e., each sale or purchase transaction to be reported individually for rates. Instead the branch clubbed multiple entries of different customers and made a single reporting. This resulted in mismatching of entries in Nostro reconciliation.

(k) Bill of entries (documentary proof of import made) have not been obtained by the branch for the import remittances made. Further, no follow up for the same found on record. Although these were not mandated in the normal course, considering the number and volume of transactions emanating from the same/same set of accounts, the branch should have insisted for evidence of imports.

(l) Branch overlooked the exceptional transaction reports.

(m) Apart from the abovementioned various commission/omission at the branch level, following deficiencies were observed at other levels:

Level	Deficiency
Regional office	1. Huge cash transactions in newly opened accounts should have attracted the attention. 2. Despite large number of CTRs, none of these converted to STRs (Suspicious Transaction Reports)
Treasury	1. Sudden spurt in number of forex transactions from a particular branch should have been flagged to RO/ZO. 2. Nostro reconciliation department should have noticed the bulk reporting of transactions and resulting mismatches. This information should have been shared with the Front office.

8. Vide letter dated November 09, 2015, FIU-IND sought the following information from the Bank:

(a) How many alerts were generated during the period July 01, 2014 to August 31, 2015 on account of the various indicators in respect of accounts involved in 59 cases of TBML?

(b) How these alerts were disposed of and how many STRs along with CTR were reported in these cases?

(c) Had the Bank analysed transactions and the branches involved in these 59 cases to ascertain how such a large transfers in various accounts took place and have these transactions been analyzed from AML /CFT point of view?

(d) What was the system in place to check/verify opening of new accounts to avoid submissions of wrong details by the account holders during KYC?

(e) Was there any system whereby employees at the front desk/at branch level could report suspicious transactions and attempted suspicious transactions to the AML cell /senior management?

(f) Had the Bank reported any STR where overseas remittance and telegraphic transfer of large values appeared suspicious during July 2014 to August 2015? Details thereof.

(g) Whether the KYC guidelines had been followed in respect of these 59 accounts? Copies of all the KYC documents in this regard.

(h) Whether any further due diligence had been carried out in respect of these 59 accounts? If yes, details thereof.

9. The Bank, vide its letter bearing no. HO:KYC-AML:107/742 and dated November 17, 2015, *inter alia*, informed that:

(a) In 59 accounts, total 8408 alerts were generated.

(b) The Bank has a centralized AML software i.e. Financial Crime Manager which generates daily AML alerts on the basis of 90 transactions based alert definitions and 27 behavioral based alerts definition, (entered by branches through Menu "AMLALERT" in CBS). These alerts are automatically assigned to the identified Assistant Money Laundering Reporting Officers (AMLROs) located at Regions for scrutiny/examination from money laundering and terrorist financing angle.

(c) The AMLROs have been assigned the duty to scrutinize /examine the alerts and to report suspicious transactions to head office Baroda for onward filing of suspicious transactions reports (STRs) with FIU-IND and to investigate/examine/close the alerts.

(d) The Deputy Regional Managers of the Regions have been designated as the Money Laundering Reporting Officers (MLRO) for monitoring the functioning of the AMLROs and to audit closed alerts on random basis to ensure that the alerts are closed properly after due scrutiny.

(e) For the period August 2014 to August 2015, total 79 CTRs were filed in respect of these 59 accounts. And 13 STRs where overseas remittances and telegraphic transfers of large values appeared suspicious during July 2014 to August 2015 were also filed.

10. Vide letter dated December 09, 2015, FIU-IND sought further information from the Bank with regard to disposal of all the 8408 alerts which were generated in 59 cases.

during the period July 01, 2014 to August 31, 2015 along with Branch comments with regard to *bona fide* of transaction and comments of the Principal Officer as to whether satisfactory confirmation received. The Bank was advised to submit the aforesaid information in the format specified in by the said letter in this regard.

11. Vide its separate letters dated January 08, 2016, January 16, 2016, January 18, 2016, January 21, 2016, January 28, 2016, February 06, 2016, February 15, 2016, February 19, 2016, February 22, 2016, February 23, 2016, the Bank provided the disposal details of alerts. In these aforesaid letters, the Bank, *inter alia*, also stated as under:
    (a) As per the branch's comments with regard to *bona fide* of the transaction, the alerts were closed at the branch level as not suspicious.
    (b) As per the existing policy, the AML alerts were directly assigned to concerned Assistant Money Laundering Reporting Officers (AMLRO) for scrutiny/examination from money laundering angle and closed thereafter using their judgment and discretion. The AMLROs were to escalate the suspicious transactions to the Principal Officer (hereinafter "PO") for filing STR with FIU-IND. The PO would scrutinize such escalated suspicious transactions and file STRs to FIU-IND under his signature. The PO would also monitor the position of outstanding alerts and also report to the MD & CEO on monthly basis and to the Bank's Board on quarterly basis.
    (c) In the instant case, the AML team of the Delhi Metro Region – I had examined and closed the alerts using their judgment and discretion. Wherever they had found any transaction as "*suspicious*", they had escalated the same to the PO and PO filed STRs with FIU-IND.

12. Vide letter dated February 15, 2016, FIU-IND sought the following information/clarification from the Bank:

    (a) Copies of Bank's Policy /guidelines for closure of alerts specifically indicating provisions of *post facto* approval of the PO with regard to the *bona fide* of the transactions and also copies of instructions /guidelines issued to the AMLROs and MLROs and POs in this regard so far.
    (b) Copies of guidelines/instructions for MLRO's for scrutiny/monitoring of functioning of AMLRO's along with details of scrutiny, monitoring and audit, if any, done at MLRO's level in respect of these 8408 alerts and the information regarding criteria adopted for random test check, if any, done at each level viz. MLRO and PO in Bank of Baroda.

13. Vide letter dated February 24, 2016, the Bank reiterated its stand with regard to disposal of alerts and *inter alia* stated that:

(1) The PO monitors the position of outstanding alerts and follows up with the AML team of Regions for scrutiny and closure of alerts in time. The following procedure is adopted to obtain confirmation from the regions on scrutiny of alerts by AMLRO and random audit by MLRO:

a) Weekly report is sought from the regions on alerts audited by MLRO's.

b) Quarterly compliance certificate is obtained from the Regions with regard to scrutiny/examination of alerts by AMLRO and random audit by MLRO.

(2) The AMLRO closed all the 8408 alerts as not suspicious but simultaneously also escalated STRs in 2 accounts to the PO for scrutinizing the same from STR angle. PO got the same scrutinized and filed the STRs to FIU-IND.

14. Vide the abovesaid letter, the Bank, *inter alia*, also submitted:

(1) Copies of 10 circular letters containing guidelines issued to AMLRO and MLRO for scrutiny /examination and closure /audit of alerts are provided.

(2) The details of audit carried out in respect of 8408 alerts by the MLRO are not maintained separately by Delhi Metro Region 1 of the Bank.

(3) The details of STRs filed in 5 accounts which were later found to be involved in the illegal foreign remittances.

15. Vide letter dated March 01, 2016 the Bank provided the details of CTRs and EFTs relating to these 59 accounts without providing the specific details of Batch IDs relating to these transactions and concerned reports. Also the Bank provided the last batch of remaining 132 alerts out of 8408 alerts in the 59 bank accounts. From perusal of the said letter and the details annexed thereto it was observed that the Bank had provided details of CTRs and EFT reports filed during the period July 2014 to August 2015 in 59 accounts without providing specific details of the EFTs filed or Batch Id thereof related to these accounts.

16. Vide letter dated May 02, 2016 FIU-IND advised the Bank to provide snapshots of few selected transactions as details of alerts provided by the Bank seemed to be not the actual alerts generated in the material time, but were seemed to be compiled after collating the data. Vide letter dated May 06, 2016 the Bank provided the snapshots and clarified. Further, vide letter dated May 05, 2016 FIU-IND also advised the Bank to provide KYC details and account statements of 62 additional linked accounts noticed in the said 59 STRs. The Bank, vide letter dated May 12, 2016 provided the account statements of 63 accounts.

17. During analysis of the details provided by the Bank and the database of FIU-IND, 47 more accounts were seen which appeared to be related to the present case proceedings. Accordingly, vide letter dated June 08, 2016 the Bank was requested to provide details

of filing of STR/CTR/EFT and KYC documents in respect of these 47 accounts.

18. The Bank, vide letter dated July 08, 2016, provided a list of 45 accounts in which accounts at serial no. 9 and 10 of the list stated to be the same and account at serial no. 35 stated to be not found in the system of the Bank. Further, the Bank could not provide account opening form and KYC documents in respect of two accounts, namely, "019xxxxxxx0172" and "003xxxxxxx0327". The information/details provided by the Bank vide its various communications discussed above was analyzed and scrutinized keeping in view the data maintained in FIU-IND. From the scrutiny of the information/details provide by the Bank the following irregularities came to light:

A. Failure of the Bank to have system in place for disposal of alerts and improper internal mechanism for detecting and reporting suspicious transactions-

(1) During the period under examination, 8408 alerts were generated for 59 accounts but were closed in a routine manner on the basis of comments of the branch with regard to *bona fide* of transactions 'closed not suspicious'.

(2) In all the documents provided by the Bank, the column of PO's comments as to whether satisfactory confirmation received was found blank.

(3) The Branch did not assign any reason of it being not suspicious before closing the alert.

(4) These alerts were not escalated to the PO, who was responsible to take a suitable view before disposal of these alerts in terms of Rule 8 of the PML Rules, 2005.

(5) In the instant case, all these alerts were disposed of at the Delhi Metro Region 1 level of the Bank. The PO of the Bank had absolutely no information with regard to the generation and disposal of these alerts either at that point in time when the transactions took place or till the time the matter was raised by FIU-IND.

(6) In the instant case, the AML team of Delhi Metro Region 1 had examined and closed the alerts using their judgment and discretion without escalation of these alerts to the PO.

(7) The Bank failed to provide specific details with regard to the audit conducted on these closed alerts though in support of its contention it provided copies of weekly alert copies reports of weeks ending on July 18, 2014, August 09, 2014, September 03, 2014, October 26, 2014, December 12, 2014, December 26, 2014, January 09, 2015, February 06, 2015, March 13, 2015, April 03, 2015, May 08, 2015 and July 10, 2015 and also provided copies of the

compliance certificates dated October 15, 2014, January 23, 2015, October 09, 2015 and January 05, 2016.

(8) The Bank failed to provide any document/ records in support of its contention as to what scrutiny from the PMLA angle was carried out and what was the finding in respect of each disposed off alert.

(9) The Bank's own Interim Report dated October 10, 2015 pointed out serious irregularities related to forex transactions and mentioned that the concerned branch of the Bank overlooked exceptional transaction reports.

B. Failure of the Bank to carry out client due diligence and deficient KYC /Account opening.

(1) During the analyses of details provided by the Bank in respect of the 59 current accounts and the database of FIU-IND, in addition to the said 59 current accounts, 47 more bank accounts were seen that appeared to be linked/related to the present case proceedings.

(2) The Bank was advised to provide the information with regard to filing of STR/CTR/EFT and KYC documents in respect of these 47 bank accounts that appeared to be linked/related to the present case proceedings.

(3) In response to the above, vide letter dated July 08, 2016, the Bank provided information with regard to filing of STR/CTR/EFT and KYC documents in respect of only 45 bank accounts. In respect of the account no(s) of the account holders listed at serial no(s) 9 and 10 of the list forwarded by FIU-IND vide the aforesaid letter, the Bank stated that these bank accounts are same, meaning thereby that the account holders listed at serial no. 9 and 10 of the said list are one and the same entity. As regards the bank account at serial no. 35 of the list forwarded by FIU-IND, the Bank submitted that the said account could not be found in the system of the Bank.

(4) Further, the Bank could not provide account opening form and KYC documents in respect of two bank accounts, viz., "019xxxxxxx0172" and "003xxxxxxx0327".

(5) It can, therefore, be inferred that out of the said 47 bank accounts referred to the Bank by FIU-IND, the Bank admitted to having 46 bank accounts and provided KYC details in respect of 44 accounts.

(6) Thus, the total number of bank accounts which are under the examination by FIU-IND is 106 (i.e., 59+47) whereas as per the Bank the number of accounts under examination is 104 (i.e., 59+45).

(7) The Bank provided copies Account Opening Forms (AOF)/KYC details in respect of 104 accounts which are under consideration for the instant proceedings.

(8) From perusal of these documents, it was observed that all these accounts were opened on the basis of PAN card and proof of premises of business. Other details, viz., identity of clients, verification of identity, information on the purpose and intended nature of business relationship and to determine whether a client is acting on behalf of a beneficial owner and identify the beneficial owner and take all steps to verify the identity of beneficial owner, etc. which are required at the time of commencement of account based relationship were either incomplete or not given.

(9) As per Rule 9(4) of the PML Rules, 2005, where the client is an individual, he shall for the purpose of Rule 9(1) of the Rules, submit to the RE one certified copy of an officially valid document containing details of his identity and his address and one photograph and such other documents including in respect of the nature of business and financial status of the client as may be required by the RE. The certified copies of these documents are required to be submitted to the RE. Thus, the provisions of Rule 9(4) of the PML Rules, 2005 have not been complied with in all these cases.

(10) Similarly, where the client is a partnership firm, certified copies of the documents, namely Registration certificate, Partnership deed and an officially valid document including import export codes certificates in respect of the person holding an attorney to transact on its behalf are required to be submitted to the RE. Thus, the provisions of 9(7) of the PML Rules, 2005 have also not been complied with by the Bank.

(11) Further, Rule 9(12)(i) of the PML Rules, 2005 requires every RE to exercise ongoing due diligence with respect to the business relationship with every client and closely examine the transactions to ensure that they are consistent with their knowledge of the client, his business and risk profile and where necessary the source of funds.

(12) From perusal of AoF/ KYC documents provided by the Bank, documents were found to be deficient in respect of 73 bank accounts where the Bank failed to carry out due diligence while opening the accounts as envisaged under the provisions of Rule 9 of the PML Rules, 2005.

(13) In the following cases, same account opening form appears to have been used to open multiple accounts which were opened on different dates:

Sl. No.	Account no.(s)
1.	(a) 713xxxxxxx1368 (b) 713xxxxxxx1370
2.	(a) 713xxxxxxx1258 (b) 713xxxxxxx1278

3.	(a) 713xxxxxxx1315 (b) 713xxxxxxx0383
4.	(a) 713xxxxxxx1277 (b) 713xxxxxxx0382

KYC in these accounts appeared to be inconclusive/deficient at the time of opening of the bank accounts.

C. Delayed filing of Electronic Fund Transfer (EFT) reports.

(1) The Bank provided details of filing of EFT reports in the 59 accounts on monthly basis for the period July 2014 to August 2015.

(2) Vide its letter dated February 24, 2016, the Bank stated that it had filed 210 EFT reports in 180 batches and it could not co-relate each transaction with the Batch ID as each Batch ID, comprising of 1500-2000 accounts, is generated on submission of EFTs on the monthly basis in the FinNet gateway.

(3) Further, vide letter dated March 01, 2016, the Bank initially provided details of dates of submission of EFT reports from the period July 2014 to August 2015 and stated that it had filed 6,272 EFT reports and 212 accounts of EFTs. Subsequently, vide its letter dated May 10, 2016, the Bank provided details of 6,290 EFT reports.

(4) From the analysis of the data provided by the Bank, it was, *inter alia*, observed that:

(a) All payments were made in US dollars.

(b) The combined number of transactions of EFT, i.e., remittances from India and payment to entities abroad, were 12,361. It is observed that there are two records of data for every EFT transaction in the data provided by the Bank – one detailing the sender details while the other details of the recipient. So, in effect there are details of 6181 EFTs. Out of these 12,361 transactions, in one case, viz., A/c No. "0713xxxxxx1277" (**at Sl. No. 12361 of Annexure 3 to SCN)**, has only one record of EFT transaction containing sender details in respect of the said account while the recipient details have inadvertently been not mentioned. Considering this, the exact number of transactions relating to EFT comprising of remittances from India that was required to be reported to FIU-IND were 6,181. These 6181 reports were filed by the Bank after considerable delay and the period of delay varies from 4 to 15 months in each case as enumerated in Annexure – 3 to the SCN. The cumulative period of delay in filing 6181 EFT reports comes to 114 months as explained below:

Sl. No.	Delay in months	No. of transaction reports
1.	15	19
2.	14	97
3.	13	220
4.	12	234
5.	11	361
6.	10	671
7.	9	647
8.	8	974
9.	7	941
10.	6	777
11.	5	1028
12.	4	212
Total	**114**	**6181**

(c) The Bank did not file two EFT Reports in respect of two accounts, viz., A/C nos. "071xxxxxxx1256" and "071xxxxxxx1294".

(d) Accounts statement of A/C no. "071xxxxxxx1256" revealed that one EFT transaction for the month of April 2015 was not filed by the Bank, as stated by its letter dated February 24, 2016.

(e) In the case of A/c No. "071xxxxxxx1294", one remittance of more than 40 lakhs was made but the Bank did not report the transaction to FIU-IND.

(5) Additionally, vide its letter dated July 08, 2016, the Bank provided details of filing of EFTs in respect of 47 accounts during the period July 2014 to August 2015. From perusal of this information it was observed that:

(a) All payments were made in US dollars.

(b) As per the FIU-IND database, the Bank had filed 2041 EFTs reports with considerable delay from the actual date of transactions.

(c) The period of delay varied from 2 to 16 months. The cumulative period of delay in filing 2041 EFT reports comes to 133 months as explained below:

Sl. No.	Delay in months	No. of transaction reports
1.	16	99
2.	15	79
3.	14	89
4.	13	64
5.	12	57
6.	11	62
7.	10	104
8.	9	172
9.	8	217
10.	7	339
11.	6	263

12.	5	307
13.	4	118
14.	3	71
Total	**133**	**2041**

(6) Thus, a total of 16443 (12361 and 4082) transactions pertaining to the period from July 2014 to August 2015 were reported in 8222 (6181+2041) EFT reports filed in November and December 2015.

(7) Cumulative delay of 114 and 133 months was noted in respect of filing EFT reports for 12361 and 4082 transactions, respectively.

(8) Additionally, the Bank failed to file two EFT Reports in respect of two accounts, viz., A/C nos. "071xxxxxxx1256" and "071xxxxxxx1294".

D. Non-filing/late filing of CTR:

From the scrutiny of 47 accounts statements provided by the Bank vide its letter dated July 08, 2016 it was observed that in the following four accounts, 9 CTRs should have been filed relating to 63 transactions during the period August 2008 to July 2016, wherein debit and credit transactions exceeded threshold limit of reporting of CTR in terms of Rule 3(1)(B) of the PML Rules, 2005.

Sl. No.	Account No.
1.	212xxxxxxx1156
2.	274xxxxxxx0744
3.	418xxxxxxx0182
4.	015xxxxxxx0358

However, CTRs in these cases were not filed by the Bank till December 2016 indicating a delay of 5 to 45 months.

E. Improper and delayed filing of Suspicious Transaction Report (STR)

(1) Between November 2014 and October 2015, the Bank had filed 59 STRs in respect of the said 59 bank accounts maintained at their Ashok Vihar/ Shalimar Bagh, Rampura branch, Delhi. These STRs were tagged as TBML cases. The filing dates/period of these 59 STRs is mentioned below:

Sl. No.	Month of filing STRs	No. of STRs filed
1.	November 2014	1
2.	August 2015	1
3.	September 30th, 2015	1
4.	9 to 13 October 2015	56

(2) The accounts related to these cases were operational between May 2014 and August 2015.

(3) From perusal of these STRs it was, *inter alia*, observed that:

(a) There was very large value cash credit in these accounts besides several EFT/RTGS /Inward credit transactions had taken place.

(b) Huge funds were remitted to Hong Kong and UAE as advance remittance against imports. But the STRs in all cases were not filed in the material time.

(c) The Bank had filed STRs with incomplete and inaccurate details. Some of such STRs are as mentioned hereunder:

(i) In the STR filed in respect of A/C No "071xxxxxxx1278", the entity name mentioned in ground of suspicion (GOS), account no. "071xxxxxxx1277" was shown pertaining to one particular entity whereas as per the FIU-IND database, the said account belonged to another entity. In the STR filed in respect of A/c No. "071xxxxxxx1277" also the Bank again mentioned the name of the entity as mentioned in the GoS to the STR filed in respect of A/C No. "071xxxxxxx1278" and also mentioned another A/c No. "212xxxxxxx1156" pertaining to the said entity.

(ii) When this discrepancy was brought to the notice of the Bank, vide its letter dated July 08, 2016, the Bank confirmed that the said account belonged to another entity as mentioned in the FIU-IND database.

(iii) In the STR filed in respect of A/c No. "713xxxxxx1237", the Bank mentioned in the GoS that the account no. "071xxxxxxx1277" belonged to yet another entity.

(iv) In the STR filed in respect of A/c No. "071xxxxxxx1310", the Bank mentioned in the GoS that A/c No. "071xxxxxxx1314" belonged to a particular entity. The A/c No. "071xxxxxxx1314" was not found in the FIU-IND database and the said discrepancy was pointed to the Bank. The Bank vide its letter dated July 08, 2016 clarified that A/c No. "071xxxxxxx1314" pertained to another entity.

(v) Similarly, A/c No. "713xxxxxxx816" was mentioned to be pertaining to a particular entity which was not found in FIU-IND database. However, the same entity named with another A/c No. "274xxxxxxx0816" was found in FIU-IND database. After this inaccuracy was pointed out to the Bank by FIU-IND, the Bank vide its letter dated July 08, 2016 stated that A/c No. "713xxxxxxx816" pertained to another entity.

(vi) To summarise, the separate GoS filed in the STRs filed in respect of A/c no.(s) "071xxxxxxx1278", "071xxxxxxx1277", "713xxxxxx1237" and "071xxxxxxx1310" contained incorrect account details of A/c No. (s) "071xxxxxxx1277", "071xxxxxxx1314" and "713xxxxxxx816". This fact was brought to the notice of the Bank which clarified the account details of these accounts vide its letter dated July 08, 2016.

19. Beside the abovementioned 59 bank accounts, FIU-IND had noticed transactions of huge volume in another set of four bank accounts and accordingly sought further details from the Bank. In this regard, various communications were exchanged between the FIU-IND and the Bank, the details of which are as under:

(a) Vide letter dated February 05, 2015, FIU-IND had sought details from the Bank in respect of the transactions in the following four accounts:

Sl. No.	Account no.
1.	276xxxxxxx5745
2.	276xxxxxxx3050
3.	276xxxxxxx6406
4.	276xxxxxxx3136

(b) Vide its letter dated March 04, 2015, the Bank, *inter alia*, submitted that:

(i) STRs have not been filed in the said 4 bank accounts;

(ii)CTRs had been filed for the month of October 2012 and July 2014 for transactions in respect of one of these four bank accounts;

(iii) Transaction based alerts of the following nature had been generated in the said accounts:

- High turnover with minimal balance (individuals);
- High aggregated account transfers on individual accounts;
- High aggregated RTGS transfers on individual accounts;
- Individual account with high aggregated non cash withdrawal in a month – activity above Rs. 1,00,000;
- Cash withdrawal – Individual accounts – high aggregated cash above Rs. 9,00,000.

(c) Vide letter dated May 30, 2015, FIU-IND sought the account statements of the said 4 bank accounts from the period April 01, 2013 to March 31, 2015 alongwith the details of alerts raised on various transactions and reasons for closure.

(d) Vide its letter dated June 22, 2015, the Bank submitted the statements of accounts

in respect of the said four bank accounts.

(e) Vide letter dated July 07, 2015, FIU-IND once again sought the details of alerts raised on various transactions and reasons for closure in respect of the said four bank accounts.

(f) Vide its letter dated August 03, 2015, the Bank, *inter alia*, stated that-

(i) Five categories of transaction alerts were raised in respect of the said four bank accounts (as mentioned in the Bank's letter dated March 04, 2015);

(ii) The alerts in respect of these four bank accounts were examined by the concerned AMLRO for STR purpose and thereafter closed as "not suspicious"/ "Not investigated";

(iii) A total of 284 alerts were raised in respect of the said four bank accounts of which 258 alerts were closed as "not suspicious" and the remaining 26 alerts were closed as "not investigated";

(iv) On the basis of system generated alerts, one STR was filed on March 21, 2015 in one of the said four bank accounts wherein its transactions with the remaining three bank accounts was mentioned.

(g) As regards the FIU-IND query regarding not having the PO's comments as to whether satisfactory confirmation was received with regard to closure of alerts, the Bank vide letter dated November 09, 2015 informed that *'The Regional AML team had investigated enclosed alerts as per their judgment/ satisfaction and had submitted STR which had been filed under the signature of PO incorporating transaction in linked accounts'*.

20. From perusal of these documents, it was, *inter alia*, observed that:

(a) The Bank had opened 4 accounts, belonging to one family, which remained operational for the period June 13, 2009 to July 09, 2015.

(b) High value transactions took place in these accounts.

(c) During the period from April 2013 to March 2015, in all these accounts more than Rs. 57 crores were transacted.

(d) 284 alerts raised in respect of these four accounts were closed as either *'closed not investigated'* or *'closed not suspicious'*. These alerts were closed on the comments of the branch that *'To the best of our knowledge the transaction appears to be genuine'*.

(e) STR was filed in respect of one of these bank accounts linking its transactions with the remaining three bank accounts only when the matter was taken up for inquiry by FIU-IND.

21. Considering the above, a show cause notice (SCN) dated January 24, 2017 was issued to the Bank, calling upon it to show cause as to why fine under section 13 of the Act should not be levied on it for its failure to comply with the provisions of section 12 of the Act read with Rules 3, 5, 7, 8 and 9 of the Rules for the alleged violations as

discussed above and more specifically for the following:

(i) For not having effective internal system in place for disposal of 8,692 (8408+284) alerts and for detecting and reporting suspicious transactions.

(ii) For not carrying out due diligence in terms of Rule 9 of the PML (Maintenance of Record) Rules, 2005 in respect of 73 accounts.

(iii) Delayed filing of 8,221 Electronic Fund Transfer (EFT) reports.

(iv) Non-filing of 63 integrally connected Cash transactions in seven accounts.

(v) Huge cash transactions in 4 newly opened accounts should have attracted the attention. Despite large number of CTRs, none of these were converted into STRs at the material time.

(vi) Improper filing of STRs in four cases and delayed filing in all 59 cases.

22. The SCN granted 30 days' time to the Bank to file its reply and, in the interest of principle of natural justice, an opportunity of personal hearing, if it so desired.

23. Vide its reply dated March 30th, 2017, the Bank replied to the SCN dated January 24, 2017. The reply of the Bank is summarized, *inter alia*, as under:

(1) It is due to the vigilant eye and effective internal system in place in the Bank that the information regarding spurt in the advance remittances of foreign exchange by different clients at the Ashok Vihar branch of the Bank was detected and reported to CBI and the Enforcement Directorate.

(2) The Bank had detected, reported and prevented further remittances in foreign exchange is a relevant consideration and the instant proceedings deserve to be dropped on this short ground.

(3) The allegations in the SCN are misconceived on facts and untenable in law. The SCN is based on mistaken interpretation of provision of the PML Act and its rules, ignoring the obligations of a reporting entity as laid under the PML Act and the Rules.

(4) The allegations in SCN are vague, roll-over, based on self-derived assumptions, and beyond the powers of Ld. Director FIU-IND and thus void *ab initio*.

(5) Under section 12 of the PMLA, a Banking Company is obliged to maintain, record of transactions; furnish to Director information relating to such transaction with nature and value in the manner, as prescribed and to verify the identity of its client in prescribed manner; identify the beneficial owner of clients,

as may be prescribed and maintain record of documents evidencing identity of its clients.

(6) The obligations of the banking company as stipulated under Section 12 of the PMLA are required to be complied with in the manner as prescribed under the Rules, 2005 formulated by the Central Government in consultation with RBI, the concerned Regulator.

(7) If the Banking Company has discharged its obligations under Section 12 in the prescribed manner, the Director, FIU-IND should not use their power under Section 13 of the PMLA to prescribe a different or any other manner and thereafter to proceed against the Banking Company that the discharge of obligation ought to have been in a different manner, as is sought to be done in this SCN.

(8) The impugned SCN does not allege default of any specific obligation by the Bank under Chapter IV of the PMLA but alleges infraction of obligations not imposed by Rules but assumed by FIU-IND as obligations on account of appropriateness or propriety or moral rightness.

(9) The allegations in the SCN being not pivoted to obligations under Section 12 of PMLA and the Rules framed there-under, the instant proceedings are void *ab initio* and allegations deserve to be dropped on this short ground.

(10) The allegation in SCN should be specific as to which obligation under Section 12 (a) to (d) of the PMLA is infracted. The SCN does not even refer or even allege violation of any specific obligations under Section 12 of the PMLA excepting by way of a sweeping, omnibus vague and rollover allegation that the Bank had failed to comply with provisions of Section 12 and rules 3, 6,7,8,9 of the Rules.

(11) In the absence of definite and crystallized allegations, the SCN is bad in law and proceedings deserve to be dropped on this short ground. The Hon'ble Supreme Court in the case of *Commissioner of Central Excise Vs. Brindavan Beverages (P) Ltd.* – 2007 (5) SCC 388 has held as under:

"...13. We find that in the show-cause notice there was nothing specific as to role of the respondents, if any. The arrangements are alleged have not been shown to be within the knowledge or at the behest or with the connivance of the respondents. Independent arrangements were entered into by the respondents with the franchise-holder (sic franchiser). On a perusal of the show-cause notice the stand of the respondents clearly gets established.

14. There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show-cause notice is the foundation on which the Department has to build up its case. If the allegations in the show-cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show-cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by CEGAT cannot be faulted..."

(12) The PO is a link between the Bank and FIU-IND as mentioned in the Rules, 2005 and there is nothing to show that the alerts are to be put to the principal officer. What is to be submitted by the Bank to the FIU-IND is decided by the PO but what is to be put before the PO is a matter of internal management of the Bank.

(13) It is the RBI who is to specify the form and manner and intervals for reporting. The Banking Company is duty bound to observe the procedure and manner of maintaining such specific information as to compliance of obligations under the Rules.

(14) The AML Solution implemented by the Bank generates AML Alerts on the basis of -90-alert definitions based on transactions in the customer's account and assigns the alerts automatically to the AMLROs (Assistant Money Laundering Reporting Officers)/ MLROs (Money Laundering Reporting Officers) and thereafter in the following manner:

Assistant Money Laundering Reporting Officers (AMLRO)

|

|

Money Laundering Reporting Officers (MLRO)

|

|

Money Laundering Compliance Officers (MLCO)

|

|

Principal Officer (PO)/Alt Principal Officer (APO)

|

|

Designated Director (DD)

(15) Each functionary has been assigned a specific role. The above organization structure has been incorporated in Bank's KYC-AML-CFT Policy which was first approved by the Board of the Bank in 2009 subsequently revised in 2015 and 2016.

(16) The Bank has followed the structure as recommended by the Financial Action Task Force (FATF).

(17) The allegation of not having "Effective System" in place with the Bank is factually incorrect, in as much as, in the SCN does not even allege that the Bank had not maintained the record, furnished or verified the identity etc., as required under Section 12(1)(a) to (d) of the PMLA in accordance with the procedure and manner as is specified by RBI from time to time, as per the Rules, 2005.

(18) It is the Bank which had detected, reported and prevented the remittances of foreign exchange in 59 accounts for suspected violation of the Foreign Exchange Management Act, 1999 (the FEMA, 1999). In view of this fact, it cannot be alleged that our Bank did not have effective system in place to detect and report EFT/suspicious transaction.

(19) The Bank had maintained the information in respect of transactions of its clients in accordance with Rule 5(1) read with Rule 3 of the Rules, 2005.

(20) Rule 5(2) stipulates that every reporting entity shall evolve an internal mechanism for maintain such information, in such form and manner and at such intervals as may be specified by the Regulator from time to time. Since RBI has never pointed out that the Bank had no system in place to detect Suspicious Transactions, it is not the case in the SCN that the Bank acted contrary to what has been specified by RBI.

(21) The allegation that alerts generated in 59 accounts were closed in a routine manner is an unsubstantiated "opinion" of FIU-IND. There is no allegation that the Bank did not follow the mechanism as specified by RBI. Hence, there can be no allegation that internal mechanism is not evolved, notwithstanding the fact that such allegation is beyond the powers of the Director FIU-IND.

(22) The Bank has installed the system as is ordained by RBI, the consequences accruing on account of any deficiency in the manner provided is to be notified by the Regulator. Any deficiency cannot be inviting fine on the reporting entity at the hands of the Director FIU-IND and do not constitute failure in complying with the obligation as laid in Chapter IV of the PMLA.

(23) The allegation of violation of Rule 8 of the Rules, 2005 is again a self-innovated infraction, in as much as, it is nowhere provided in Rule 8 of the Rules, 2005 that alerts escalated are to be put to the PO.

(24) The allegation in the SCN that alerts were dealt in a routine manner, or that column of the PO was found blank or that the PO was to take suitable view or that the PO had no information or that the Bank was not able to provide as to what scrutiny had been conducted by them for the said 8408 alerts generated in 59 accounts; and that sudden spurt in the number of foreign exchange transactions from a particular branch should have been examined and flagged to the PO the report of the FIU-IND are, in fact, self-innovated inferences of FIU-IND clothed as obligations on the Banking Company.

(25) The suspicious transactions as defined in Rule 3(1)(D) of the Rules, 2005 neither specifies the amount nor in Rule 2(g) pertaining to suspicious transactions lays any monetary threshold for the transactions to qualify as suspicious transactions. Therefore, these transactions are subject to determinations by using guidelines of RBI on the individual's own judgment and prudence.

(26) These -8692- alerts scrutinized by the AMLROs by applying their individual best judgment and prudence, taking in the account of guidelines of RBI as these alerts were found not suspicious by the concerned AMLROs and as such the alerts were closed.

(27) Subsequently, on closure of these reports the same was audited by the MLRO on random basis. However, these transactions were not doubted as suspicious transactions *inter alia* on the understanding that:

(a) These all 59 accounts were opened as trading account for companies after making KYC Compliance. As these accounts were for purposes of trading therefore frequent transaction are allowed and remittance to foreign is allowed as advances for imports as per the FEMA regulations issued by RBI.

(b) In these -59-accounts only around 15% of the funds have been deposited in cash in our Bank, remaining accounts had been remitted into these accounts through RTGS from other Banks.

(c) These remitted amounts to the Bank can only be checked by remitting Bank by determining the source of these amounts deposited in the account at their end and by strict KYC compliances in these accounts. Unless there is any doubtful facts in the cognizance of the Bank it is understood that the

remitted amount was verified by the remitting bank wherein KYC has been duly complied with at the time of opening the account.

(d) Cash deposits have been only in the -4-accounts. Out of these -4-accounts, STRs have been filed in -2- accounts and other -2- accounts have been mentioned as linked accounts in these STRs.

(e) The foreign remittance in these accounts was as per the FEMA Guidelines and there were no apparent violations of RBI guideline on foreign remittance.

(28) As regards the allegation that out of the total of 99 Account Opening Forms/KYC documents provided, documents were found deficient in 73 cases:

(i) Ongoing due diligence, as the word goes is an "ongoing process" depending upon the best judgment of the banker.

(ii) Ongoing, however, being a continuous process is dependent on materiality and risk or as may be directed by the Regulator. In the absence of any specific direction from RBI, it works on *bona fide* best judgment.

(iii) It is not the case of the FIU-IND that any account was anonymous or fictitious, or under undisclosed identity. In the absence of any specific default as per Rules, the vague allegations of not carrying out due diligence in respect of the 73 cases is misconceived.

(iv) Any dispute, however, as to interpretation is required to be referred in to Central Govt. under Rule-11, therefore, FIU-IND cannot seek to interpret the rules without referring the matter to Central Government and seek its decision.

(v) The Bank had submitted 59 accounts whereas the FIU-IND treated 47 more accounts to be related to matter of 59 report accounts on the basis of some undisclosed and uncomforted FIU-IND data. FIU-IND has not shown as to how and in what manner the other 47 accounts appear to be related to the present proceedings.

(vi) The allegations in the SCN that the account was opened on PAN card and proof of premises of business is sufficient compliance of Rule 9 at the time of commencement of an account.

(vii) The allegation is absolutely vague in as much as Rule 9 has 13 sub-rule, and it is not known as to which sub-rules of Rule 9 is assumed to have been infracted and how and in respect of which account, rendering the allegations vague and roll over.

(viii) The database of FIU-IND is relied but not disclosed or supplied.

(ix) The analysis based on the said database has also not been found correct.

(29) In respect of the alleged delay in filing of 8,221, the SCN does not refer to any rule, alleged to have been violated. No PML Rules has been cited to provide any period for submitting EFT transaction reports to FIU-IND. Hence, the allegation of delay is misconceived and untenable.

(30) The Reporting Entities were required to file EFT Reports through online portal of FIU-IND as per Notification no. 12 of 2013 dated the 27th August 2013. FIU-IND itself had not developed the reporting format in time for reporting Cross Border Wire Transfer Reports (EFTs) as is evident from FIU-IND email dated **December 19, 2013** read with email dated **December 11, 2014**.

(31) As per the FIU-IND email dated December 11, 2014, the Bank had submitted sample data and filed CBWT Reports with effect from January 2015 and sent Report Upload Certificates (RUCs) vide separate letters.

(32) Thereafter, the Bank had uploaded CBWT reports (EFT Reports) regularly within stipulated time in the FINnet gateway and also filed EFTs retrospectively with effect from August 2013 in time as per instructions of FIU-IND.

(33) At a later date FIU-IND checked the reports and advised Bank to re-upload rectified reports. FIU-IND delayed in checking the reports and in advising the Bank to re-upload the same. The Bank has been prompt and timely in its response to its advice of FIU-IND of the Bank for re-uploading the EFTs, cannot be alleged.

(34) Some of the transactions in the -59-accounts have taken place during the year 2014, during which FIU-IND itself was in the process of developing and testing the module.

(35) It is the Bank, which had un-earthed/triggered the entire process of Advance foreign remittance of foreign exchange under the cover of the FEMA regulations, as a whistle blower wherein several other banks were being used as tools for such remittances, and thereafter account wise information had been provided by the Bank to the FIU-IND as and when sought. Therefore, the allegation that the Bank delayed in filing 8221 EFTs is not correct.

(36) Even these remaining transactions were not apparent to be suspicious at earlier stages. It was found out only by the Bank during the internal audits. The Bank promptly acted in the matter and the PO commenced a detailed enquiry into the matter on the basis of the Audit report without any undue delay in the matter.

(37) The entire transactions in the accounts were pragmatically verified and scrutinized and on confirmation of these transactions as suspicious the same were reported to the Director of FIU-IND within the stipulated time as under Rule 8(2) of the Rules.

(38) As regards the allegation of non-filing of 63 integrally connected cash transactions in -7- accounts:

(a) These allegations relate to -8- long years which renders the allegation old and state.

(b) It is admitted that the Bank Baroda maintained its records properly as per Rule 3(1)(b) of the Rules but did not allegedly report in its wisdom in terms of Rule 7(2) of the Rules.

(c) The allegation is based on becoming wise after the event, which is neither contemplated nor obligated by the Act, hence the allegation is misconceived.

(39) As regards the allegation that huge cash transactions in newly opened account should have attracted the attention and despite large number of CTRs, none of these converted to STRs at the material time:

(a) The Bank filed STRs in 59 accounts maintained at Ashok Vihar/Shalimar Bagh. These STRs were tagged as trade based money-laundering cases and out of the STR generated one as STRs filed in November 2014, 1 STR filed in August 2015, and 1 STR filed on 30th September, 2015 and remaining 56 STRs filed from 9 to 13 October 2015.

(b) The SCN merely expresses regret that transactions in 59 accounts ought to have aroused suspicion but that would not make such transactions a "suspicious transaction", inasmuch as, before a transaction is reported to FIU-IND as suspicious, it has to fulfill the requirement of the definition of "suspicious transaction" as laid down in the rules and the SCN does not specify any of the grounds from Rule 3(D) (i) to (v) of such alleged "suspicious transaction" in regard to these accounts due to which the said transaction could have been said to be a "suspicious transaction".

(c) As far as the maintenance of records is concerned, it is not disputed that the Bank has maintained the specified records.

(d) Making advance remittances of foreign exchange is permitted by RBI and is a matter under the FEMA, 1999 which is not a "scheduled offence" under the PMLA.

(e) It is only on detection of unusual and unjustified circumstances that the STR were found and filed. There is no circumstance shown by which it could be said that there is a "suspicious transaction".

24. Vide its aforesaid reply the Bank also requested for an opportunity of personal hearing in the matter. Accordingly, an opportunity of personal hearing was granted to the Bank on August 10, 2017 when Mr. G. B. Panda, General Manager, Mr. Sanjay K. Verma, Assistant General Manager and Mr. Karan Kakkar, Chief Manager appeared as the authorized representative of the Bank when the allegations in the SCN against the Bank was explained to the authorized representatives. The authorized representatives of the Bank sought 15 days' time to make specific response to the SCN. Accordingly, another opportunity of personal hearing was granted to the Bank on August 28, 2017 when Ms. Papia Sengupta, Executive Director, Mr. G. B. Panda, General Manager, Mr. Sanjay K. Verma, Assistant General Manager and Mr. Karan Kakkar, Chief Manager appeared as the authorized representative of the Bank and made, *inter alia*, the following additional submissions:

(a) The deficiencies were found by the internal audit team of the Bank and accordingly the Bank took action.
(b) Bank has since then created a Central Transaction monitoring unit to comply with the requirements of reporting under the PMLA.
(c) RBI has imposed penalty on the Bank earlier.
(d) The compliance unit of the Bank is now acting centrally and all compliances required under the PMLA are being done.
(e) The above factors may also be taken into consideration by FIU-IND while deciding the matter.

25. The Bank also filed a short written submission in the matter reiterating its earlier submissions and stating, *inter alia*, as under:

A. Delay and Improper filing of STRs

(a) **Prior to establishment of Centralized Transaction Monitoring Unit (CTMU)**

- Bank has a centralized AML software with -90- transaction based and -27- behavior based definitions in the basis of -63- scenarios recommended by IBA Working Group.
- PO is not involved directly in scrutiny and examination of AML alerts.
- An STR should be filed within -7- days of arriving at the conclusion that the transaction is suspicious.

(b) **Present system: After establishment of CTMU**

- Bank has established the Centralized Transaction Monitoring Unit at Head Office Baroda, which is working full-fledged since August 24, 2016.

- In the instant cases, interim report dated October 10, 2015 of the Bank's Internal Audit pointed out the serious irregularities in the -59- accounts and the Bank has filed -56- STRs within the stipulated period of -7-days (three STRs have been filed earlier in November 2014, August 2015 and September 2015).

B. Delay in filing of Electronic Fund Transfer (EFT) Reports

(a) Vide our letter No. HO:KYC-AML: 107/47 dated January 19, 2015, the Bank had sought guidance from FIU-IND to complete the UAT and to submit CBWT reports at the earliest.

(b) Vide letter No. HO:KYC-AML: 107/123 dated March 11, 2015, the Bank had submitted Report Upload Confirmation Certificates (RUCs) having uploaded EFTs for January 2015.

(c) Thereafter, the Bank had uploaded EFTs for the months of February 2015, March 2015, March 2015 April 2015 and submitted the RUCs vide letters dated March 23, 2015, April 21, 2015 and May 11, 2015 respectively.

(d) Further, the Bank had filed EFTs for May 2015 onwards regularly and simultaneously for the back log from August 2013. The Bank had completed filing of EFTs for the back log from August 2013 to December 2013 within the deadline of December 31, 2015 given by FIU-IND.

(e) Some of the transactions in the said -59- accounts have taken place during the years 2014 and 2015, during which FIU-IND itself was in the process of developing and testing the reporting format.

C. OTHER POINTS:

(a) Bank of Baroda detected and reported the unusual transactions in Ashok Vihar & other branches as a whistleblower.

(b) On the basis of interim report dated October 10, 2015, mentioned by FIU-IND in the SCN at page No. 8 point (v), FIU-IND started inquiry.

(c) The inquiry started only after the Bank filed STRs within stipulated -7- days of interim report, i.e., the date on which the Bank arrived at the conclusion that the transactions are suspicious.

(d) RBI has already **imposed a penalty of Rs. 50 million** for the following deficiencies:

(i) Customer Identification Procedure, Incomplete filling of AOF

(ii) Non-verification of address through positive confirmation.
(iii) Non-monitoring of large remittances in newly opened accounts.
(iv) Non-filing of STRs in time in several accounts.
(v) Not flagging of the Alerts to higher authorities by the Regional Offices.
(vi) Closure of Alerts in a routine manner.
(vii) Weakness and failures in the internal control mechanism.

FINDINGS AND DISCUSSIONS:

26. I have gone through the facts and circumstances of the case, charges levied in the SCN and the submissions made by the Bank vide its letter dated March 30, 2017 and the additional submissions during the personal hearing. Before dealing with reply of the Bank on specific charges, I deem it necessary and pertinent to deal with the preliminary objections raised by the Bank.

27. I note that in its reply to the SCN and the specific charges laid out therein, the Bank has constantly harped that the charges laid out are omnibus, vague and roll over. The Bank has also maintained that the relevant provisions of the PMLA and the Rules, 2005 have not been mentioned while alleging contravention by the Bank. I note that the SCN contains detailed enumeration of the allegation, the bases of each allegation, the documents relied upon for making such allegations and the relevant provisions of the PMLA and the Rules. Without prejudice to the foregoing, the Hon'ble Supreme Court has held in the case of *Fortune Impex Vs. Commissioner* - 2004 (167) ELT A 134 (SC), wherein that "*non-mentioning of particular Section of Customs Act 1962 would not vitiate the proceedings when allegations and charges against all the appellants were mentioned in clear terms in the show cause notice.*" This position has been reiterated by the Hon'ble Supreme Court in several cases. In view of the above settled proposition of law, even the non-mentioning of the provisions of law in the SCN would not vitiate the present proceedings. I reiterate that in the instant case the SCN contains detailed charges against the Bank. I, therefore, do not find any merit in the contention of the Bank that charges laid out in the SCN are omnibus, vague and roll over. Having dealt this issue here, I choose not to elsewhere deal with the contention of the Bank regarding non-mentioning of specific provisions of relevant provisions of the PMLA and the Rules, 2005 while alleging contravention by the Bank, and unnecessarily burden this order any further.

28. I observe that the Bank has prayed for providing "deficient documents" and has requested for opportunity to cross-examine the officials of the FIU-IND who have analysed the database. It may be noted that the present proceedings are quasi-judicial in nature and have been initiated by way of an SCN. The documents relied upon in the

SCN have been obtained from the Bank and have also been provided to the Bank by way of annexure to the SCN. Thus, by constantly harping on "deficient documents" without having satisfactory reasons for the same, the Bank is only trying to digress from the main issue of non-compliances by it. In fact, during the personal hearing, the authorized representatives of the Bank never sought the "deficient documents". Further, the request for cross-examination of the officials of FIU-IND cannot be acceded to as all the allegations in the SCN are backed by the documents that have been provided to the Bank as annexures to the SCN. I, therefore, reject the request of the Bank for providing "deficient documents" as there are no such "deficient documents", and for cross-examination of the officials of FIU-IND.

29. I note that the Bank has disputed the authority/ power of the Director, FIU-IND in respect of the allegations made against it vide the impugned SCN. The Bank has also contended that the PMLA and the Rules, 2005 envisage compliance with the guidelines, etc. issued by its regulator, i.e., RBI and that it had complied with such guidelines issued by RBI from time to time. In order to deal with this contention of the Bank I find it desirable and pertinent to discuss the object of the PMLA and the rules framed thereunder. The PMLA has been enacted as a social defense legislation, *inter alia*, to prevent money-laundering, to provide for confiscation of property derived from, or involved in, money-laundering and for matters therewith or incidental thereto. The Rules, 2005 has been framed by the Central Government, in exercise of the power conferred upon by section 73(1) read with clauses (h), (i), (j) and (k) of section 73(2) of the PMLA, in consultation with RBI for maintenance of records of the nature and value of transactions, the procedure and manner of maintaining, and time for furnishing of information and verification of records of the identity of the clients of the banking companies, financial institutions, and intermediaries. The Rules, 2005 deal with the various compliance obligations on the reporting entities. These compliance obligations are in addition to the sector specific compliance requirements prescribed by the relevant regulator. Thus, the compliance requirements on the Bank is in addition to the compliance requirements envisaged by RBI under the relevant act and not in subrogation of the same and vice versa. Similarly, the guidelines issued by the respective regulator for maintaining and furnishing records, client due diligence, etc. are symbiotic and in furtherance of the object of the Act and the rules framed thereunder and not dichotomous as is being delineated by the Bank in its contentions.

30. Having said that I reiterate that FIU-IND was set up by the Government of India as the central national agency responsible for receiving cash/suspicious transaction reports, analysing them and, as appropriate, disseminating valuable financial information to intelligence/law enforcement agencies and regulatory authorities. FIU-IND is also responsible for coordinating and strengthening efforts of national and

international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes. Thus, the Act and the Rules thereunder envisage a participative role for the reporting entities to curtail and counter the scourge of money laundering. If the reporting entities fail in their obligations, enumerated and envisaged under the Act and the rules thereunder, a potential money laundering matter can slip through the grasp of a law enforcement agency. There are enough examples in public domain to conclude that such failure may have very wide ramifications on the security and integrity of the nation. It is, therefore, not only a legal obligation of the reporting entities to comply with the requirements of the Act and the rules thereunder but also an expectation from an entity of ordinary prudence so as to effectively deal with the malaise of money laundering. In view of the foregoing, I reject the contention of the Bank challenging the authority of the Director, FIU-IND and requirement of separate compliance with the provisions of the PMLA and the rules thereunder.

31. Though it is trite to reiterate the power of the Director, FIU-IND here, considering the objections raised by the Bank, I deem it relevant to discuss in brief the powers of the Director, FIU-IND under the scheme of the PMLA. As per notification number 5/2005 dated 1st July, 2005, in exercise of the powers conferred by section 49(1) of the PMLA, the Central Government has appointed the Director, Financial Intelligence Unit, India, under the Ministry of Finance, Department of Revenue, as the Director to exercise the exclusive powers conferred under section 12(1)(b) and its proviso, section 13, section 26(2) and section 50(1) of the said Act and the concurrent powers conferred by section 26(3) and (5), sections 39, 40, 41, 42, 48, 49(2), 66 and 69 of the Act. In furtherance of the obligations of the reporting entities under section 12(1)(b) of the Act, the Central Government, in exercise of powers conferred under section 73 of the Act, has also framed the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 for maintenance of records of the nature and value of transactions, the procedure and manner of maintaining and time for furnishing of such information and verification of records of the identity of the clients of the reporting entities including banks. Thus, in terms of section 12(1)(b) of the Act read with the PML Rules, the reporting entities are obligated to furnish information to the Director, FIU-IND. In terms of section 13(2) of the Act, if the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under Chapter IV of the Act, then without prejudice to any other action that may be taken under any other provision of the Act, he may take recourse to any of the actions enumerated under section 13(2) of the Act. Considering the above, the contention of the Bank regarding the powers of the Director, FIU-IND does not carry any merit and deserves to be rejected summarily.

32. Having dealt with the preliminary contentions of the Bank, for the purposes of clarity, I now proceed to dwell upon and summarize hereinbelow certain facts with regard to the number of accounts, etc. for proceeding with the enquiry into the alleged non-compliance by the Bank:

(a) In 59 bank accounts 8408 alerts were generated that were closed by the Bank in routine manner.

(b) 47 more bank accounts were seen to be related/linked to the present proceedings whose details were shared by FIU-IND with the Bank thereby taking the number of accounts related to the present proceedings to 106 (59+47). These 106 account numbers alongwith the name of account holders was given to the Bank as Annexure 1 to the SCN.

(c) Out of these 47 bank accounts, the Bank stated that two entries (mentioned at serial no. 9 and 10 of the list furnished by the Bank vide its letter dated July 08, 2016) are the same, thereby taking the number of accounts related to the present proceedings to 105 (59+46).

(d) Of these 105 accounts, in case of 73 bank accounts, the AoF/KYC documents furnished by the Bank were allegedly deficient. These 73 account numbers alongwith the name of account holders was given to the Bank as Annexure 2 to the SCN.

(e) Of these 73 bank accounts, in respect of 4 entities same account opening form was used to open multiple bank accounts (viz., entity 1 - "713xxxxxxx1368" and "713xxxxxxx1370", entity 2- "713xxxxxxx1258" and "713xxxxxxx1278", entity 3 - "713xxxxxxx1315" and "713xxxxxxx0383", and entity 4 - "713xxxxxxx1277" and "713xxxxxxx0382") on different dates;

(f) From the scrutiny of accounts statements of 47 linked bank accounts provided by the Bank it was observed that in four accounts, 9 CTRs should have been filed relating to 63 transactions during the period August 2008 to July 2016;

(g) In another case, the Bank had opened 4 accounts, belonging to one family, which remained operational for the period June 13, 2009 to July 09, 2015. High value transactions took place in these accounts resulting in 284 alerts that were closed by the Bank as "not suspicious". The Bank filed STR in one of these four accounts and linked the remaining accounts with that on March 21, 2015. (Documents no. 7, 8 and 9 of the RUDs of the SCN)

33. Having delineated some of the basic facts of the case, as above, I now proceed to deal with the reply of the Bank on merit on the various allegations against it. I note that the first allegation pertains to the Bank's failure to have effective internal system in place for disposal of 8692 alerts (8408+284) alerts and for detecting and reporting suspicious transactions. The Bank is alleged to have failed in having effective internal system in place for disposal of 8692 alerts and for detecting and reporting suspicious

transactions. Of these 8692 alerts, 8408 alerts were generated in respect of the 59 bank accounts but were closed in a routine manner on the basis of comments of the concerned branch with regard to the *bona fide* of the transactions. As regards the remaining 284 alerts pertaining to 4 accounts belonging to members of the same family where no STRs were filed by the Bank, 26 alerts were closed with comments '*closed not investigated*' and the remaining 258 alerts were closed with the comment '*to the best of our knowledge the transaction appears to be genuine*'. However, none of these 284 cases/alerts contained any comment of the PO.

34. In its reply to these allegations the Bank has contended that the aforesaid 8692 alerts were scrutinized by the AMLRO's by applying their individual best judgment and prudence. Further, "Suspicious transaction" as defined in the Rules does not specify any monetary threshold for the transactions to qualify as suspicious transactions and nowhere in Rule 8 of the PML Rules it is provided that alerts escalated are to be put to the PO. The Bank has also contended that the system installed in the Bank is ordained by its Regulator (RBI) and that any deficiency cannot constitute failure in complying with the obligation as laid out in chapter IV of the PMLA and invite fine on the reporting entity at the hands of the Director, FIU-IND. The Bank has further submitted that spurt in advance remittances of foreign exchange and suspected violation of the FEMA, 1999 was detected and reported to the FEMA authorities and CBI for action. The Bank has also contended that its regulator, RBI has never pointed out any such absence of system for detecting suspicious transactions.

35. I note that it is an admitted fact that 8692 alerts were generated out of which 8408 alerts were generated for 59 accounts and the remaining 284 alerts were generated in 4 accounts of the members belonging to the same family. It has also been admitted by the Bank that these 8408 alerts were closed in a routine manner at the Branch level by the concerned AMLRO. Further, admittedly, out of these remaining 284 alerts, 26 alerts were closed with comments '*closed not investigated*' and the remaining 258 alerts were closed with the comment '*to the best of our knowledge the transaction appears to be genuine*'. None of these 8692 cases/alerts contained any comment of the PO. In fact, the Bank filed STR in one of these four accounts and linked the remaining accounts with that on March 21, 2015 only when the matter was taken up for investigation by FIU-IND. This clearly explains the insouciant attitude of the Bank towards compliance of the PMLA and the Rules thereunder.

36. I note that in terms of the provisions of the Act and the Rules, 2005, reporting entities (REs) are required to follow certain customer identification procedure while undertaking a transaction either by establishing an account based relationship or otherwise and monitor their transactions. In this regard, RBI has issued master circular

consolidating all the instructions/guidelines issued by RBI on Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/Combating Financing of Terrorism (CFT)/Obligations of banks under the PMLA, 2002. The master circular dated July 01, 2013 issued in this regard, *inter alia*, outlines the role of PO of a bank as well. As per the said master circular, the PO shall be responsible for monitoring and reporting of all transactions and sharing of information as required under the law. Thus, it is ordained that the PO shall personally monitor such transactions. The Bank will not be able to effectively fulfil its reporting obligations unless there is a free flow of information from its branches to the PO who is responsible to fulfil the reporting obligations under the PMLA. However, in the instant case, none of the aforementioned alerts were escalated to the PO. If an alert is not escalated to the PO in the first place, how can it be effectively monitored by him? I also note that vide its letter dated February 24, 2016, the Bank has admitted that the AMLRO had closed all the alerts (8408 in 59 accounts) as not suspicious but simultaneously had escalated STRs in 2 accounts to the PO for scrutinizing the same from STR angle. This implies that the similar transaction against alerts were forwarded to FIU-IND in form of STR while others were closed as not suspicious. Suspicious transaction, as defined under the PML Rules, means a transaction which, to **a person acting in good faith,** *inter alia* gives rise to reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved or appears to be made in circumstances of unusual or unjustified complexity or appears to have no economic rationale or *bona fide* purpose. It is trite to state that the word "good faith" means *bona fide*, goodness, honest effort, probity, rectitude, sanctity, uprightness. In the instant case, can the Bank justify that it acted in good faith while implementing the provisions of the PMLA and still never got suspicious despite Rs. 3800 crore or so being remitted through a set of bank accounts, having dubious/incomplete KYC details, in just two branches of the Bank in a short span of time as advance foreign remittance of foreign exchange. If this kind of transaction was normal and not at all suspicious, why did the internal audit of the Bank raise objections to it? And more pertinent is the question as to why the management of the Bank referred the case to CBI for criminal investigation if the Bank and its concerned officials had acted in "good faith" as has been claimed by the Bank. This very basic contention reflects either total lack of knowledge about money laundering on part of the Bank and its concerned officials or a total lackadaisical attitude. Be that as it may, had there been an effective system in place such inconsistency in dealing with the alerts could not have taken place. In view of these facts, I find that 8692 alerts were closed by the Bank without effective monitoring by the PO.

37. Without prejudice to the above, even if it were to be accepted that the MLROs monitored the functioning of the AMLROs and audited closed alerts on random basis

as a part of mechanism, the Bank has time and again failed to provide specific details with regard to such audit conducted on these closed alerts or support its contention as to what scrutiny from the PMLA angle was carried out and what was the finding in respect of each disposed of alerts. The Bank is free to devise its AML policy. However, the intent of the policy has to be to ensure compliance with the requirement of the PMLA and the Rules thereunder in letter and in spirit, and ensure overall integrity of the financial system to prevent its vulnerability to exploitation for money laundering and terror financing. These are global standards. The question that the Bank should ask itself is - does the policy and procedure adopted by the Bank ensure effective compliance with the requirements of the provisions of the Act and the Rules thereunder? Does it ensure integrity of the financial system in the face of growing malaise of money laundering? Does it have the ability to timely detect and thwart transactions that have potential of money laundering and terror financing? The answer to all these questions is no. In fact, the Bank's own Interim Report dated October 10, 2015 pointed out serious irregularities related to forex transaction and that the concerned branch of the Bank had overlooked exception transaction report. Thus, even the Interim Report dated October 10, 2015 of the Bank corroborates that the Bank has failed to have an effective system in place for disposal of alerts. As per the Black Law Dictionary (4th Edition) *"Suspicion" is weaker than "belief," since suspicion requires no real foundation for its existence while "belief" is necessarily based on at least assumed facts.* Thus, there has to be objectivity regarding evaluation of suspicious transaction. For the purposes of reporting a transaction as suspicious to FIU-IND, evaluation of suspicion need not be subjective. In view of these facts and circumstances, I find that contention of the Bank with regard to the aforesaid 8692 alerts does not merit any consideration and hence liable to be rejected. I, therefore, conclude that the Bank has failed to have effective internal system in place for disposal of 8692 alerts and for detecting and reporting suspicious transactions.

38. The second allegation against the Bank is that it had failed to carry out due diligence in terms of Rule 9 of the PML Rules, 2005 in respect of 73 accounts. It has also been alleged that all these 73 accounts were opened on the basis of PAN card and proof of premises of business. Other details which are required at the time of commencement of account base relationship were either incomplete or not given. Further, in none of these cases officially valid documents were obtained by the Bank.

39. The Bank in its reply has stated that the database relied upon by the FIU-IND had not been disclosed or supplied to the Bank and that non-compliance of Rule 9(4) of the Rules, 2005 has been alleged in the SCN without stipulating cases in which requirements have not been complied with. As regards the requirement of "ongoing due diligence", the Bank has contended that the word "ongoing" has not been defined

in the PMLA or the Rules and ongoing due diligence is an ongoing process depending upon the best judgment of the banker. The Bank has also contended that PAN card and proof of premises of business is sufficient compliance of Rule 9 at the time of commencement of an account.

40. Before dealing with the reply of the Bank regarding the specific charge of the Bank's failure to carry out due diligence in terms of Rule 9 of the PML Rules, 2005 in respect of 73 accounts, it becomes incumbent upon me to deal with the Bank's contention regarding non-disclosure of database relied upon by FIU-IND to the Bank. In this regard, I find it necessary to mention that the Bank vide its letter no HO: KYC-AML: 108/0 dated July 08, 2016 had provided a list of 45 accounts which were scrutinized and various discrepancies were observed. These observations in detail had been conveyed to the Bank through the SCN. Some of the discrepancies are to the extent that in 4 cases same account opening form was used to open multiple accounts which were opened on different dates. It was once again clarified to the authorized representative of the Bank during the personal hearing held on August 10, 2017 that the database that have been relied upon by FIU-IND are part of the "relied upon documents" of the SCN and annexures annexed thereto. I, therefore, reject this contention of the Bank outrightly.

41. As regards the contention of the Bank regarding 'ongoing due diligence' it is to be noted that the requirement of 'ongoing due diligence' is enumerated under Rule 9(12)(i) of the Rules. Thus, due diligence is not a one-time affair as is sought to be made by the Bank through its submissions. It is also to be noted that one of the dictionary meaning of the word "*ongoing*" is "*continuous*". The word "*continuous*" as defined in the Black Law Dictionary (4th Edition) means "*Uninterrupted; unbroken; not intermittent or occasional; so persistently repeated at short intervals as to constitute virtually an unbroken series.*" For the effective client due diligence, it is necessary that the due diligence process begin with the moment the client approaches the RE and continues till it continues to be the client of the RE. Even if it were to be assumed that the Bank had complied with other due diligence norms, it does not absolve the Bank from its obligations to comply with the requirements of the Rule 9(12)(i) of the Rules. In the instant case, has the Bank undertaken the risk based approach towards client due diligence as enunciated under Rule 9(12) of the Rules and more specifically to its clauses (i) and (ii)? The answer is a clear no.

42. I also note that Rule 9(4) of the PML Rules, 2005 obligates an RE to obtain one certified copy of an 'officially valid document' containing details of identity of the individual and his address, one recent photograph and such other documents including in respect of the nature of business and financial status of the client as may be required

by the RE. Similarly, in case of partnership firms Rule 9(7) of the Rules obligates an RE to obtain one certified copy of the registration certificate, partnership deed and an officially valid document in respect of the person holding an attorney to transact business on behalf of the firm. Thus, there are separate requirement for each category of entities as far as the documents for client due diligence is required. It is to be noted that KYC/ Client Due Diligence is the heart and soul of an effective AML policy. If the Bank has not adhered to/complied with the KYC/ CDD policy as enunciated under the PML Rules how it can claim to have an effective AML policy. In view of the foregoing, the contention of the Bank that PAN card and proof of premises of business is sufficient compliance of Rule 9 in respect of the said 73 bank account does not hold good and deserves to be rejected. I, therefore, find that the Bank has failed to carry out due diligence in terms of Rule 9 of the PML Rules, 2005 in respect of the 73 bank accounts.

43. The third allegation against the Bank pertains to delayed filing of 8221 Electronic Fund Transfer (EFT) reports. In this regard, the Bank has contended that no specific rule has been cited to provide any period for submitted EFT transaction reports, to FIU-IND and hence the allegation of delay is misconceived and untenable while they reserve their right to further submit their reply on receipt of relevant provision of law and regulations. The Bank has also contended that FIU-IND delayed in checking the reports and in advising the Bank to re-upload the same. The Bank has also claimed to have un-earthed /triggered the entire process of advance foreign remittance of foreign exchange under the cover of the FEMA regulations as a whistle blower. The Bank has contended that it promptly acted in the matter and the PO, without any undue delay in the matter, commenced a detailed enquiry into the matter on the Audit report when the entire transactions in the accounts were verified and scrutinized and on confirmation of these transactions as suspicious in the same were reported to the Director, FIU-IND within the stipulated time.

44. I note that in the instant case, the allegation is regarding delayed reporting of the 8221 EFTs. From perusal of the SCN and Annexures 3 and 4 thereto, it is observed that a total of 16443 instances of transactions (12361 – Annexure 3 and 4082 – Annexure 4) is one of the subject matters of instant adjudication. Before proceeding any further, I consider it worthwhile to explain here that annexures 3 and 4 to the SCN have 12361 and 4082 records of transactions respectively but it is seen that there are two records of every EFT transaction – one detailing the sender details and the other detailing the recipient details. So, in effect Annexure 4 to the SCN has details of 2041 EFTs and Annexure 3 has details 6181 of EFTs. It is noted that Annexure 3 has only one record of EFT transaction containing sender details in respect of A/c No. "0713xxxxxx1277" maintained with the Bank (mentioned at Sl. No. 12361 of

Annexure 3 to the SCN), the recipient details have inadvertently not been mentioned in the said Annexure. It is also noted from the said annexure that the Bank had filed 6181 EFT reports in respect of these 12361 instances of transaction and 2041 EFT reports in respect of 4082 instances of transaction with considerable delay as explained above and quantum of delay as detailed in the said annexures. Considering the fact that the Bank was provided all the details of 12361 EFTs in Annexure - 3 to the SCN and as such the Bank was afforded the opportunity to explain its stand on the reportable EFTs and that the Bank has chosen not to controvert the number of instances of transactions whether enumerated in Annexure -3 or 4 of the SCN, I am inclined to examine reply of the Bank with regard to filing of 8222 EFT reports in respect of 16443 instances of transactions with considerable delay and its failure to file two EFT Reports in respect of two accounts, viz., A/C nos. "071xxxxxxx1256" and "071xxxxxxx1294".

45. As per Rule 3(E) read with Rule 8(1) of the Rules, the PO is required to report all cross border wire transfers of the value of more than five lakh rupee or its equivalent in foreign currency where either the origin or destination of fund is in India every month to the Director by the 15th of the succeeding month. The emails from Helpdesk, FIU-IND relied upon by the Bank only deal with the reporting formats. In fact, vide email dated December 11, 2014, FIU-IND had informed the REs that the reports are not being filed in the correct format and as such they are of little intelligence value. Vide the said email, the REs were also advised to file the report in correct formats. It may be observed that the delay in filing reports and filing in incorrect format of report are two different species of non-compliances. Without prejudice to the above, even if it were to be assumed that there were certain ambiguities regarding the format of reporting, there was no ambiguity regarding requirement of compliance of Rule 3(E) read with Rule 8(1) of the Rules, i.e., timely filing of reports. Further, as is evident from FIU-IND email dated December 11, 2014, various other REs had filed the relevant reports during the material time, though some of them had not filed in the correct format. Considering the foregoing, the explanation forwarded by the Bank regarding its failure to comply with the aforesaid Rules does not appear to be plausible and as such is liable to be rejected. In view of the above, I find that the Bank has filed 8222 reports with delay and, as explained above, the cumulative period of delay in respect of 6181 EFT reports is 114 months and in respect of the remaining 2041 EFT reports is 133 months. I also find that the Bank had failed to file two EFT Reports in respect of A/C no. "071xxxxxxx1256" where one EFT transaction for the month of April 2015 was not filed by the Bank (as admitted by its letter dated February 24, 2016), and in respect of A/C no. "071xxxxxxx1294" where one remittance of more than 40 lakhs was not reported by the Bank to FIU-IND.

46. The fourth allegation against the Bank pertains to non-filing of 63 integrally connected

cash transactions in seven accounts. In this regard, the Bank has submitted that these allegations related to 8 long years which renders it old and stale. The Bank claims to have maintained its records properly as per the Rules but did not allegedly report in its wisdom. I note that the Bank has not challenged the allegation on tangible grounds and rather resorted only to rhetoric. It is trite to say that the filing of CTRs in terms of section 12 of the Act read with the relevant provisions of the PML Rules, 2005 is a threshold based report. In terms of Rule 3(1)(B) read with Rule 8(1) of the Rules, 2005, the Bank was obligated to file CTRs for every month to the Director, FIU-IND by the 15th of the succeeding month. In the instant case too, the Bank was obligated to file CTRs relating to 63 transactions during the period August 2008 to July 2016 and which were not filed till December 2016 resulting in delay of 5 to 45 months. It is also pertinent to reiterate here the findings of the Hon'ble Appellate Tribunal in the matter of *Muthoot Finance Ltd. Vs Director, FIU-IND* as under:

> *"The word "failure" in section 13(2) of the Act has been qualified by the word "each". There is no ambiguity that for each failure to provide information of cash transactions of the value of more than Rs. 10 lakhs, fine can be imposed. When the statute is categorically clear, question of interpreting it so as to restrict or enlarge will not arise. This Tribunal cannot read anything into a statutory provision which is plain and unambiguous.*
>
> .....
>
> .....
>
> *The plea of the Appellant that under Rule 8 of the Rules, it is required to file cash transaction report only once a month and so the penalty has to be imposed on the basis of failure to file the report cannot be accepted. The obligation of the appellant has to be viewed in light of appellant's primary obligation set out in Section 12 of the Act. Rule 8 cannot be read in isolation. It has to be read together with Section 12 of the Act and Rule 3 of the PML Rules. Section 12(1) (b) of the PML Act and Rules 3 and 8 of the PML Rules make it obligatory for a reporting entity to report all transactions of above Rs. 10 lakh (the threshold limits have been prescribed under Rule 3 of the PML Rules) and the same are to be reported by 15th/7th of the succeeding month (Rule 8 of the PML Rules). As long as there is even a single transaction that was reportable but was not reported, there would be a "failure", even if that entity had filed a monthly cash transaction report. Such cash transaction report will be incomplete, if it does not include all reportable transactions. In the circumstances, it is inevitable to infer that non reporting of each of 2697 transactions, which were above the prescribed threshold, should have been reported as per Section 12(1)(b) of PMLA and each of them will constitute a separate failure as per Section 13(2) of PMLA."*

47. In view of the above discussions, I find that the Bank has failed to file 63 integrally connected Cash transactions in seven accounts and, thus, failed to comply with the obligations enumerated under Rule 3(1)(B) read with Rule 8(1) of the Rules, 2005.

48. The fifth and sixth allegations against the Bank have certain commonalities. The fifth allegation against the Bank is that huge cash transactions in newly opened 4 bank accounts, all belonging to members of the same family, should have attracted the attention of the Bank and that despite large number of CTRs, none of these were converted into STRs at the material time. The sixth allegation against the Bank pertains to improper filing of Suspicious Transaction Report (STR) in respect of 4 out of 59 bank accounts and delayed filing of STRs in respect of all these 59 bank accounts. Considering these commonalities in the allegations, I am inclined to deal with these two allegations and the reply of the Bank at one place.

49. I note that the Bank in its reply has stated that making advance remittances of foreign exchange is permitted by RBI and is a matter under the FEMA, 1999 which is not a "scheduled offences" under the PMLA. The Bank has also submitted that the SCN merely expresses regret that transactions in 59 accounts ought to have aroused suspicion but that would not make such transaction as "suspicious transaction", inasmuch as, before a transaction is reported to FIU-IND as suspicious, it has to fulfill the requirement of the definition of "Suspicious transaction" as laid down in the rules and SCN does not specify any of the grounds from Rule 3(D) (i) to (v) of such alleged "suspicious transaction" in regard to these accounts.

50. I note from the records that huge cash transactions were observed in newly opened four bank accounts, all belonging to members of the same family. It was observed that money was rotated between these accounts and during the period April 2013 to March 2015 more than Rs. 57 crore were transacted. Admittedly, 284 alerts were generated in these accounts but closed by the Bank as not suspicious and STRs were filed by the Bank in one of the bank accounts while linking the remaining bank accounts only when the matter was taken up for investigation by FIU-IND. Thus, despite large numbers of CTRs in these accounts none of these were converted into STRs at the material time. The Interim Report of the Bank also confirms this finding.

51. I note from perusal of the record that the Bank had filed STRs in 59 accounts which were tagged as TBML cases. The accounts related to these cases were in operation between May 2014 and August 2015 while maximum STRs were filed from 9 to 13 October 2015. Further, huge funds were remitted abroad using the Bank's channel to Hong Kong and UAE as advance remittances against imports. The STRs in all cases were not filed in the material time. Several instances of late/ wrong filing of STRs have been elaborated in the SCN. Some STRs were filed only when the matter was taken up for investigation by FIU-IND. At this juncture, I find it necessary to dwell upon the definition of "suspicious transactions" as enumerated under the PML Rules, 2005. As discussed above, suspicious transaction, as defined under the PML Rules, means a transaction which, to **a person acting in good faith,** *inter alia* gives rise to reasonable

ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved; or appears to be made in circumstances of unusual or unjustified complexity; or appears to have no economic rationale or *bona fide* purpose; or gives rise to reasonable ground of suspicions that it may involve financing of the activities relating to terrorism. Thus, it is not that STRs need to be filed only in respect of "scheduled offences" or "financing of the activities relating to terrorism". There is not an iota of doubt whatsoever in my mind that the instant transactions appear to have been made in circumstances of unusual or unjustified complexity or appear to have no economic rationale or *bona fide* purpose. This view is also justified by the several alerts raised by the Bank's system in respect of these transactions and which were closed by the Bank without their effective examination. To any person acting in good faith, transactions made in such unusual or unjustified complexity or having no economic rationale or *bona fide* are to be reported to FIU-IND in the form of STRs. Thus, the transactions in the instant case are covered under the definition of "suspicious transaction" as defined under rule 2(1)(g) of the PML Rules, 2005. The gravity of this violation is further buttressed by the fact that as per the available records, between May 13, 2014 (i.e., date of opening of the first of 59 accounts in Bank of Baroda) and September 30, 2015 several other reporting entities had filed a substantial number of STRs in respect of the transactions by the entities whose transactions in the said 59 Bank of Baroda bank accounts are subject matter of these proceedings and/or the beneficial owners of such entities whereas Bank of Baroda had filed only 4 STRs in such cases. In fact, as per the available records, the Bank had filed some STRs in respect of the said accounts only when the matter became public, various law enforcement agencies started investigating the matter and pursuant to the Interim Report of the Bank dated October 10, 2015. Thus, to put it succinctly, it is too axiomatic to state that the Bank had failed to file the STRs at the material time in respect of the transactions in the aforementioned accounts.

52. It is trite to state that the requirement of compliance under the PMLA and the Rules thereunder is on a standalone basis and does not depend upon the compliances with other laws and failure to have a robust system to detect such transaction is a well-defined omission in the PMLA and section 13 of the Act empowers the Director, FIU-IND to impose fine for such lapses. Whether matters of advance remittances under the FEMA, 1999 are "scheduled offence" under the PMLA or not is immaterial and peripheral to the requirements of the PMLA and the Rules made thereunder. Further, the PML Rules do not restrict filing of STRs in respect of only "scheduled offences". I, therefore, reject the contentions of the Bank in this regard and find that the Bank has:

(a) failed to file the STRs at the material time in respect of the 4 newly opened bank accounts belonging to members of the same family;

(b) filed STRs with considerable delay in respect of 59 bank accounts and in respect

four bank out of these 59 bank accounts filed STRs with inaccurate details.

53. It is relevant to draw the attention to the Statement of Objects and Reasons to the Act which states that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat include the formulation of the Basel Statement of Principles, enunciated in 1989, outlining basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money laundering, the extract of which is reproduced hereinbelow:

"Statement of Principles

I. Purpose

Banks and other financial institutions may unwittingly be used as intermediaries for the transfer or deposit of money derived from criminal activity. The intention behind such transactions is often to hide the beneficial ownership of funds. The use of the financial system in this way is of direct concern to police and other law enforcement agencies; it is also a matter of concern to banking supervisors and banks' managements, since public confidence in banks may be undermined through their association with criminals. This Statement of Principles is intended to outline some basic policies and procedures that banks' managements should ensure are in place within their institutions with a view to assisting in the suppression of money-laundering through the banking system, national and international. The Statement thus sets out to reinforce existing best practices among banks and, specifically, to encourage vigilance against criminal use of the payments system, implementation by banks of effective preventive safeguards, and cooperation with law enforcement agencies.

II. Customer identification

With a view to ensuring that the financial system is not used as a channel for criminal funds, banks should make reasonable efforts to determine the true identity of all customers requesting the institution's services. Particular care should be taken to identify the ownership of all accounts and those using safe-custody facilities. All banks should institute effective procedures for obtaining identification from new customers. It should be an explicit policy that significant business transactions will not be conducted with customers who fail to provide evidence of their identity.

III. Compliance with laws

Banks' management should ensure that business is conducted in conformity with high ethical standards and that laws and regulations pertaining to financial transactions are adhered to. As regards transactions executed on behalf of customers, it is accepted that banks may have no

means of knowing whether the transaction stems from or forms part of criminal activity. Similarly, in an international context it may be difficult to ensure that cross-border transactions on behalf of customers are in compliance with the regulations of another country. Nevertheless, banks should not set out to offer services or provide active assistance in transactions which they have good reason to suppose are associated with money-laundering activities.

IV. Cooperation with law enforcement authorities

Banks should cooperate fully with national law enforcement authorities to the extent permitted by specific local regulations relating to customer confidentiality. Care should be taken to avoid providing support or assistance to customers seeking to deceive law enforcement agencies through the provision of altered, incomplete or misleading information. Where banks become aware of facts which lead to the reasonable presumption that money held on deposit derives from criminal activity or that transactions entered into are themselves criminal in purpose, appropriate measures, consistent with the law, should be taken, for example, to deny assistance, sever relations with the customer and close or freeze accounts."

(Emphasis supplied)

54. Admittedly there is no ambiguity regarding the statutory requirements with regard to filing of reports as mandated under the Act and the PML Rules. The REs are the eyes and ears of the FIU-IND. It is trite to state that timely submission of reports is crucial for effectively combating menace of money laundering, terrorist financing, tax evasion, security threats and other grave crimes. As time is of essence in such cases, delayed submission of reports or submission of inaccurate reports is also a violation of law as much as the non-submission of reports. If the REs do not furnish the reports/information which they are otherwise obligated to under the statute in time or with complete and accurate details, the FIU-IND cannot perform its functions of analysing the reports and, as appropriate, disseminating the valuable financial information to intelligence/enforcement agencies and regulatory authorities for necessary action, if any, on their part effectively. This can have grievous impact on investigations by other associated law enforcement agencies.

55. Having dealt with the preliminary contentions of the Bank as well as its submissions on merit, I now proceed to deal with the contention of the Bank regarding imposition of fine. The Bank has contended that imposition of fine is not automatic. It is worthwhile to mention here that the instant adjudicatory proceedings are civil in nature and the fine is leviable under section 13(2)(d) of the PMLA, 2002 in cases of default or failure of statutory obligation or in other words breach of civil obligation. In fact, in the matter of *Muthoot Finance Limited vs the Director, FIU-IND*, the Hon'ble Appellate Tribunal vide its order dated July 09, 2015 has also held as under:

".....The Act contemplates that sanctions deemed appropriate can be imposed by the respondent as (a) issue a warning, or (b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or (c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking and or (d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure. ***From the perusal of the scheme of the Act, it cannot be inferred that before imposing penalty other sanctions have to be resorted to by the respondent. If the discretion has been given to the respondent to impose certain sanctions, the same cannot be restricted in a manner as has been alleged by the appellant, unless imposition of sanction is tainted by malafide or is a colorable exercise of power by the respondent. All the pleas and contentions of the appellant have been considered. The Appellant cannot contend successfully that before imposing penalty, the respondent should have resorted to other sanctions as given in the amended sections of the Act which will not be applicable to the appellant....."***

(Emphasis supplied)

56. There are catena of judgments that not only clarify the power of a quasi-judicial authority to impose fine but also elucidate the manner in which such power may be exercised by the Competent Authority. As discussed in the above quoted judgment, before the imposition of fine, it is not necessary that other options as enumerated under section 13(2) (a) to (c) of the PMLA are to be exhausted. If the adjudicating authority, after considering the pleas and contentions of the RE, finds that the failures by the RE attract penalty in terms of section 13(2)(d) of the PMLA, he can impose penalty by recording reasons therefor. Considering the gravity of defaults/non-compliances by the Bank in the instant case, I find this to be a fit case for imposition of fine.

57. Having dealt with the power of the Director to impose fine on a delinquent RE for its failure to comply with statutory obligations, I now proceed to deal with the submission of the Bank regarding imposition of fine by RBI. The Bank has submitted that RBI had imposed a penalty of Rs. 50 million on it for similar violations. In this regard, I wish to draw the attention of the Bank to the judgment of the Hon'ble Supreme Court in the matter of *Maqbool Hussain v. State of Bombay, AIR 1953 SC 325,* as reproduced hereinbelow:

"7. The fundamental right which is guaranteed in Art. 20(2) enunciates the principle of "autrefois convict" or "double jeopardy". The roots of that principle are to be found in the well established

rule of the common law of England "that where a person has been convicted of an offence by a Court of competent jurisdiction the conviction is a bar to all further criminal proceedings for the same offence". [Per Charles J. in Reg. v. Miles (1890) 24 Q. B.D. 423(A). To the same effect is the ancient maxim "Nimo Bis Debet Puniri Pro Uno Delicto", that is to say that no one ought to be twice punished for one offence or as it is sometimes written "Pro Eadem Causa" that is for the same cause.

8. This is the principle on which the party pursued has available to him the plea of "autrefois convict" or "autrefois acquit". "The plea of `auterfois convict' or `autrefois acquit' avers that the defendant has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned.... The question for the jury on the issue is whether the defendant has previously been in jeopardy in respect of the charge on which he is arraigned, for the rule of law is that a person must not be put in peril twice for the same offence. The test is whether the former offence and the offence now charged have the same ingredients in the sense that the facts constituting the one are sufficient to justify a conviction of the other, not that the facts relied on by the Crown are the same in the two trials. A plea of "autrefois acquit" is not proved unless it is shown that the verdict of acquittal of the previous charge necessarily involves an acquittal of the latter". (Vide Halsbury's Laws of England-Hailsham Edition- Vol. 9, Pages 152 and 153, Para 212.)

9. This principle found recognition in Section 26 of the General Clauses Act, 1897-
"Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence",

and also in S. 403 (1), Criminal P.C., 1898-
"A person who has been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under S. 236, or for which he might have been convicted under S.237".

10. The Fifth Amendment of the American Constitution enunciated this principle in the manner following:

"..... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be witness against himself..... Willis in his Constitutional Law, at page 528 observes that the phrase " `jeopardy of life or limb' indicates that the immunity is restricted to crimes of the highest grade and this is the way Blackstone states the rule. Yet, by a gradual process of liberal construction the Courts have extended the scope of the clause to make it applicable to all indictable offences, including misdemeanors"..... "Under the United States rule, to be put in jeopardy there must be a valid indictment or information duly

presented to a Court of competent jurisdiction, there must be an arraignment and plea, and a lawful jury must be impaneled and sworn. It is not necessary to have a verdict. The protection is not against a second punishment but against the peril in which he is placed by the jeopardy mentioned".

11. These were the material which formed the background of the guarantee of fundamental right given in Art. 20 (2). It incorporated within its scope the plea of "autrefois convict" as known to the British jurisprudence or the plea of double jeopardy as known to the American Constitution but circumscribed it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence.

12. The words "before a Court of law or judicial tribunal" are not to be found in Art. 20(2). But if regard be had to the whole background indicated above it is clear that in order that the protection of Art. 20(2) be invoked by a citizen there must have been a prosecution and punishment in respect of the same offence before a Court of law or a tribunal, required by law to decide the matter in controversy judicially on evidence on oath which it must be authorised by law to administer and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute but not required to proceed on legal evidence given on oath. The very wording of Art. 20 and the words used therein..... "convicted", "commission of act charged as an offence", "be subjected to a penalty", "commission of the offence", "prosecuted and punished", "accused of any offence", would indicate that the proceedings therein contemplated are of the nature of criminal proceedings before a Court of law or a judicial tribunal and the prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a Court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure.

xx xx xx

17. We are of the opinion that the Sea Customs Authorities are not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act do not constitute a judgment or order of a court or judicial tribunal necessary for the purpose of supporting a plea of double jeopardy.

18. It therefore follows that when the Customs Authorities confiscated the gold in question neither the proceedings taken before the Sea Customs Authorities constituted a prosecution of the appellant nor did the order of confiscated constitutes a punishment inflicted by a Court or judicial tribunal on the appellant. The appellant could not be said by reason of these proceedings before the Sea Customs Authorities to have been "prosecuted and punished" for the same offence with which he was charged before the Chief Presidency Magistrate, Bombay in the complaint which was filed against him under S. 23, Foreign Exchange Regulation Act."

58. Thus, in terms of the aforesaid judgment, the very wording of Article 20 of the

Constitution of India and the words used therein..... "convicted", "commission of act charged as an offence", "be subjected to a penalty", "commission of the offence", "prosecuted and punished", "accused of any offence", would indicate that the proceedings therein contemplated are of the nature of criminal proceedings before a Court of law or a judicial tribunal and the prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a Court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure. As can be seen, neither the proceedings before RBI nor before me are of the same nature as contemplated under Article 20 of the Constitution.

59. In view of the above discussions, I find that the imposition of fine on the Bank by RBI is entirely separate and does not impact, in any manner whatsoever, the jurisdiction or power of the Director, FIU-IND to impose fine on the Bank for its abovestated non-compliances. The fact that RBI had imposed a penalty on the Bank for similar violations only reinforces findings of my enquiry that the Bank had failed in its statutory obligations and that too abysmally. This finding and the gravity of the Bank's non-compliances is further agglomerated and nuanced by the fact some of the transactions in consideration for the instant proceedings are subject matter of investigation by various other law enforcement agencies, some at the behest of the Bank itself. In view of the foregoing discussions, I find that the failure of the Bank to comply with the statutory obligations as laid down in the PMLA, 2002 read with the Rules warrants imposition of fine, in terms of section 13(2)(d) of the PMLA, 2002, as was applicable on the date of the aforesaid violation. For the purposes of easy reference, the said provision is reproduced hereunder:

> *"(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may –*
>
> (a) *issue a warning in writing; or*
>
> (b) *direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or*
>
> (c) *direct such reporting or its designated director on the Board or any of its employees, to send reports at such intervals as may be prescribed on the measures it is taking; or*
>
> (d) *by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure."*

60. Before proceeding as to what quantum of fine be imposed on the Bank, it would be worthwhile to state that Bank of Baroda is a public sector enterprise that has responsibility to the nation and as such its sole motive cannot be merely profit earning. By permitting such unethical and illegal activities of some of its customers under its watch, as in the instant case, and not bringing it to the attention of the authorities at the relevant and material time, the Bank has not only failed to comply with its statutory obligations but has also failed in its task as a public sector enterprise to act as a torchbearer of the AML compliance in the country. Given the fact that the Bank is at the forefront of banking operations in India, the Bank does not have any dearth of resources or capacity for statutory compliances in respect of AML. In short, the Bank should have set an example of AML compliance for other banks to follow. At this stage, I find it prudent to summarize once again the violations by the Bank. I find that the Bank is guilty of failing in several obligations under the Act and the Rules, as indicated in the Show Cause Notice dated January 24, 2017 and as further elucidated below:

(a) failure to have effective internal system in place for disposal of 8692 (8408+284) alerts and for detecting and reporting suspicious transactions – violation of section 12(1) (b) of the Act read with Rule 8(1) of the Rules;

(b) failure in carrying out due diligence in respect of 73 accounts – violation of sub-rules (4), (7), and (12) of Rule 9 of the Rules;

(c) delayed filing of 8222 EFT reports and failure to file EFT Reports in respect of transactions in two separate accounts – violation of Rule 3(1)(E) read with Rule 8(1) of the Rules;

(d) non-filing of 63 integrally connected Cash transactions in seven accounts – violation of Rule 3(1)(B) read with Rule 8(1) of the Rules, 2005;

(e) despite large number of CTRs in respect of the 4 newly opened bank accounts, all belonging one family, none of these were converted into STR at the material time – violation of section 12(1)(b) of the Act read with Rules 3(1)(B), 7 and 8(1) of the Rules, 2005; and

(f) improper filing of STRs in respect of 4 accounts and delayed filing in respect of all 59 accounts – violation of section 12(1)(b) of the Act read with Rules 3(1)(B), 7 and 8(1) of the Rules, 2005.

61. Considering that these failures were deliberate and wilful and keeping in mind that the interdiction for the said failures and non-compliances has to be effective, proportionate and dissuasive, I, in exercise of the powers conferred upon me under section 13(2)(d) of the Prevention of Money Laundering Act, 2002, hereby impose monetary penalty on the Bank in the manner as detailed below in the table:

Sl. No.	Failure	Penalty	Amount (Rs.)
1.	Failure to have effective internal system in place for disposal of 8692 (8408+284) alerts and for detecting and reporting suspicious transactions – violation of Section 12(1)(b) of the Act read with Rule 8(1) of the Rules.	Rs. One lakh for failure to have an effective internal system for disposal of alerts	1,00,000/-
2.	Failure in carrying out effective customer due diligence in respect of 73 bank accounts – violation of sub-rules (4), (7), and (12) of Rule 9 of the Rules.	Rs. 10,000/- for each of the 73 such bank accounts.	7,30,000/-
3.	(a) Delayed filing of 8222 Electronic Fund Transfer (EFT) reports; (b) Failure to file EFT Reports in respect of transactions in two separate accounts. – violation of Rule 3(1)(E) read with Rule 8(1) of the Rules.	(a) Rs. 10,000/- for each of the delayed filing of 8222 EFTs. (b) Rs. 10,000/- for each of the non-filing of two EFTs.	(a) 8,22,20,000/- (b) Rs. 20,000/-
4.	Non-filing of 63 integrally connected CTRs in seven bank accounts – violation of Rule 3(1)(B) read with Rule 8(1) of the Rules, 2005	Rs. 10,000/- for non-filing of each 63 integrally connected CTRs.	6,30,000/-
5.	(a) Despite large number of CTRs, in four newly opened bank accounts belonging to one family, none of these were converted into STRs at the material time (wherein 284 alerts were generated); and (b) improper filing of STR in four of the 59 cases and delayed filing in all 59 cases wherein 8408 alerts were generated;	(a) Rs. 1,00,000/- for each instance of delayed filing of STRs in four bank accounts belonging to one family. (b) Rs. 1,00,000/- each for improper filing of STRs in four of the 59 bank accounts and delayed filing in 59 bank	(a) 4,00,000/- (b) 59,00,000/-

	– violation of section 12(1)(b) read with Rules 3(1)(B), 7 and 8(1) of the Rules, 2005.	accounts.	
		Total	9,00,00,000/-

62. I deem it worthwhile to clarify here that the maximum penalty of rupees one lakh for per failure to report STRs (Sl. No. 5 above) has been imposed since reporting STRs is the principle and most effective mechanism to prevent, detect and fight the scourge of money laundering. The purpose of STR is to get useful financial information concerning money laundering from the REs, to analyse such information, to and, as appropriate, disseminating the valuable information to other intelligence/law enforcement agencies and regulatory authorities for necessary action, if any, on their part. Similarly, a penalty of rupees one lakh has been imposed on the Bank for not having effective internal system in place for disposal of alerts and for detecting and reporting suspicious transactions (Sl. No. 1 above) as having having an effective internal system in place is the essence of an effective AML policy and requisite to maintain confidence in REs and the overall financial system of the country. For all other violations listed above, the minimum penalty of rupees ten thousand per failure has been imposed.

63. After taking into consideration all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under section 13(2) of the Prevention of Money Laundering Act, 2002 impose a total fine of Rs. 9,00,00,000/- (Rs. Nine Crore only) on Bank of Baroda which will be commensurate with the violations committed by the Bank. The Bank shall pay the said amount of fine within 21 days of receipt of this Order by way of Demand Draft in favour of in favour of "*Pay & Account Officer, Department of Revenue*" failing which provisions of section 69 of the Act shall apply. I also find it expedient to advise the Bank to be observant in future regarding the accuracy of data/information being furnished by it to FIU-IND while discharging its obligations under the Prevention of Money Laundering Act, 2002 and the Rules made thereunder.

(Pankaj Kumar Mishra)
Director
Financial Intelligence Unit - India

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