

F.No. 25-1/2013/FIU-IND/Pt XII
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.9/DIR/FIU-IND/2015

Name & Address of the Reporting Entity: **Development Credit Bank Ltd.**
(now DCB Bank Ltd.),
6th Floor, Tower A,
Peninsula Business Park,
Senapati Bapat Marg,
Lower Parel, Mumbai-400013

Show Cause Notice No. & Date: F.No. 25-1/2013/FIU-IND dt 27th Jan, 2014

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

Date of Order: 7th August, 2015

Authority passing the order: Director, Financial Intelligence Unit-India

An appeal against this order may be made with the Appellate Tribunal under PMLA, 2002, 4th Floor, Lok Nayak Bhavan, Khan,Market, New Delhi within a period of forty five days from the date on which this order is received by the Development Credit Bank. The appeal should be in the form and manner prescribed (refer to sub-section (3) of section 26 of the Prevention of Money Laundering Act, 2002, hereinafter also referred to as PMLA or the Act).

1. DCB Bank Ltd (the 'Bank') is a banking company as defined under Section 2(e) of the Act.

2. Section 12 of the Act and the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter also referred to as the 'Rules'), framed under the Act, impose obligations on banking companies to inter alia verify the identity of the clients, maintain records of specified transactions and furnish to Director, Financial Intelligence Unit – India (hereinafter also referred to as 'Director, FIU-IND') information relating to such transactions, including reports on cash transactions, suspicious transactions and counterfeit currency transactions.
3. Rule 3 of the Rules specifies the transactions, the records of which are to be maintained; these include suspicious transactions whether or not made in cash. Rules 5, 7 & 8 of the Rules prescribe the procedure, manner and time of maintaining and furnishing information about the transactions. Rule 9 of the Rules prescribes the procedure and manner of verification of records of identity of clients. The definition of suspicious transactions (Rule 2) includes an attempted transaction. The attempted transaction has not been defined separately. Rule 7(3) requires that all reporting entities shall evolve an internal mechanism having regard to any guidelines issued by Regulator for detecting the transaction referred to in Rule 3 and for furnishing information about such transaction in such form as may be directed by its Regulator.
4. As per the definition of STR in Rule 2(1)(g) of PML (Maintenance of Records) Rules, STR means a transaction referred to in clause (h) including an attempted transaction.
5. Section 13 of the Act confers on the Director, FIU-IND powers to enquire into cases of failure to comply with the provisions of Section 12 of the Act and the Rules and to levy a fine for each such failure.
6. Following media reports of a sting operation by the website Cobrapost alleging violation of AML/CFT measures in the Preet Vihar (Delhi) branch of the Bank, the Bank was asked whether any STR was reported for the attempted transactions relating to the incident involving the Cobrapost. The

Bank in its reply dated August 5, 2013 confirmed that no STR had been filed for attempted transactions as regards the Cobrapost incidents. The Bank also apprised that the Branch manager of the Preet Vihar Branch was suspended and eventually his services were terminated.

7. As it prima facie appeared that there was a failure in the Bank's internal mechanism for filing suspicious transactions reports in respect of above, the Bank was called upon vide letter dated 27th January 2014 to show cause why action should not be taken against it for violation of Section 12 (1)(b) of the PMLA.
8. Vide letter dated February 28, 2014, the Bank submitted its reply to the show-cause notice and denied the allegation. The Bank stated that:

"In respect of the attempted transactions figuring in the Cobrapost sting operation at the Bank's Preet Vihar Branch no STR was filed by the Bank as during the internal investigation conducted by the Disciplinary Action Committee (DAC) of the Bank it was concluded that the conversation between the Branch manager of Preet Vihar Branch and the Cobrapost representative was in the nature of casual banter with no follow up by the prospective customer for attempting any transactions. As no further attempt was made to open an account with the Bank nor any attempt having been made to effect any transaction, no STR was filed with the reasoning "Attempted Suspicious Transaction" in this matter."

9. A personal hearing was granted to the Bank on 01/04/2014 which was attended by Sh. Murali M. Natrajan (MD and CEO) and Sh. Sachin Patange, Chief Compliance Officer and Principal Officer - AML. During the personal hearing the Bank admitted that no alerts were raised by the branch in this case. The Bank informed that the services of one of the employees had been terminated for violation of Bank's code. The Bank requested time to file a written reply.

10. The Bank vide letter dated April 07, 2014 further submitted that:

- a) It had issued emails advising branches and Business/Functional Units to be vigilant on the KYC/AML/CFT front, with specific directions in terms of DOs and DON'ts including reporting of suspicious activity to Corporate Office. A soft copy of the emails were forwarded to FIU-INDIA on April 02, 2014.
- b) The Bank also requested to treat the Cobrapost sting operation at the Bank's Preet Vihar branch as an aberration.
- c) The Bank informed that it had institutionalized the system of mystery shopping at branches; that it had been periodically reviewing the training programmes on KYC/AML/CFT for its staff members on the basis of the findings of the mystery shopping exercise and other experiential learning.
- d) The Bank also informed that it had conducted an independent assessment of the KYC AML CFT mechanism by M/s E and Y.

FINDINGS AND DISCUSSION

11. The position that emerges from a perusal of the records of conversations/discussions between the Cobrapost reporter and the Bank employees and the findings and actions taken by the Disciplinary Action Committee (about which FIU-IND was informed) and the submissions made by the Bank during the personal hearing and thereafter, is that two employees of the Preet Vihar branch of the Bank were involved in the conversation with the Cobrapost reporter. The transcripts of the conversation / discussion between the Bank employees and the Cobrapost reporter clearly show that the reporter made explicit conversation about laundering through the Bank large amount of black money belonging to a politician. The genuineness of the conversation between the Coprapost reporter and the employees of the bank has not been denied by the Bank.

12. The transcript of the conversation indicates the reporter approaching the Bank's Branch Manager with a proposition that a politician of stature wanted

to make a big investment in the names of the reporter, his wife and the politician's wife. The Branch manager assures that the money will be converted into white, that he would provide lockers for safekeeping Rs. 5-7 crores cash that would be coming subsequently in March and that he would help in sending money to England for the use of the minister's wife.

13. The conversations between the Bank Manager and the reporter show that the Manager was in control and willing to work around the system to help the reporter (posing as a potential customer) to convert black money into white.

14. The conversations/ discussions between the Bank Manager and the Cobrapost reporter, as briefly indicated above, cannot be taken as normal, bona fide business conversations/ discussions. They are such as to have alerted any law abiding person, not to speak of staff of a bank- a reporting entity- entrusted with the responsibility under the PMLA of reporting suspicious transactions pertaining to the suspected proceeds of crime. The conversations/ discussions had several features, which should have led to generation of behavioral alerts as per IBA guidelines, as well as the AML/KYC policy of the Bank. The Bank's policy, procedures and guidelines on KYC/AML/CFT assign responsibility on staff at the Branches and Units and officials of the AML Cell to be vigilant and monitor all transactions from the anti-money laundering angle, with particular emphasis on transactions of "Suspicious Nature". It is mentioned in the guidelines that:

"...The test of reasonable grounds to suspect a transaction should be done objectively by the dealing staff taking into consideration, all the available facts and, without turning a blind eye to the reasonably obvious, or neglecting to take any significant factor into account."

15. In view of the provisions of the PMLA, the policy and procedural guidelines of the Bank on KYC norms, AML and CFT standards, it can be easily inferred that the conversation between the Cobrapost reporter and the employees of the Bank had several features which should have led to generation of behavioral

alerts as per IBA guidelines (circulated to the Bank in March 2012, to be implemented by November 2012) and even as per the AML Policy of the Bank, such as—

- (a) Customer left without opening an account.
- (b) Customer did not complete transaction.
- (c) Customer acting on behalf of third party.
- (d) Customer could not explain source of funds.

16. Despite ample indications in the conversations/discussions that the funds being discussed were of suspicious nature, no alerts were generated by the branch officials. On the contrary, the content, tone and tenor of the conversations/ discussions with the Cobrapost reporter do not indicate any sense of alarm, which a prudent banker, entrusted with the legal responsibility of reporting suspicious transactions and combating money laundering or financing of terrorism, would be expected to display in such circumstances. The Bank will not be able to fulfill its reporting obligations under the PMLA unless there is a free flow of information from its branches to the Principal Officer (MLRO), who is responsible to fulfill the reporting obligations. Further, there was no visible application of mind at the Branch level to determine whether the conversations/discussions would fall in the category of attempted transactions. Evidently, the Bank Manager was either oblivious of his duties or cared little for compliance with his legal obligations under the PMLA. It is for the Bank to look deeper into the causes with a view to establish accountability and take remedial measures. PMLA aims at prevention of laundering of the proceeds of crime. That even attempted transactions are required to be reported points to the high level of expectation the law has from the banks. It is not enough for the Bank to lay down a policy; it is equally important to implement it.

17. In light of the above, I conclude that in the branch reported by Cobrapost, there was a failure in the DCB Bank's internal mechanism for detecting and reporting attempted suspicious transactions, in terms of Section 12 of PMLA read with Rules 2, 3, 5 and 7 of the PML Rules. Accordingly, in exercise of the powers conferred on me under Section 13 (2) of the PMLA, 2002, I hereby impose on DCB Bank a fine of Rs. 1,00,000 (Rupees One Lakh) for 1 instance of failure in its Preet Vihar, Delhi branch to comply with its obligations as laid down in Section 12 of the PMLA read with Rules 2, 3, 5 and 7 of the PML Rules framed thereunder.

(Praveen Kumar Tiwari)
Director
Financial Intelligence Unit-India

To,
Development Credit Bank Limited
(now DCB Bank Ltd.),
6th Floor, Tower A,
Peninsula Business Park,
Senapati Bapat Marg,
Lower Parel, Mumbai-400013

Through: Managing Director & CEO