

F.No. 25-1/2013/FIU-IND/Pt. XI
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. 11/DIR/FIU-IND/2015

Name & Address of the Reporting Entity:

Indian Bank
Corporate Office: 254-260,
Avvai Shanmugam Salai,
Royapettah,
Chennai - 60014.

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

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

Date of Order: 3rd September, 2015

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

An appeal against this order may be made with the Appellate Tribunal under Prevention of Money Laundering Act, 2002, 4th Floor, Lok Nayak Bhavan, Khan Market, New Delhi within forty five days from the date on which this order is received by the Indian 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 referred to as PMLA or the Act).

1. Indian Bank (hereinafter referred to as 'bank') is a banking company as defined under Section 2 (c) of the Act.
2. Section 12 of the Act and Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter 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, suspicious transactions and counterfeit currency transactions.

3. Rule 3 of the Rules specifies the transactions, the records of which are to be maintained; Rules 5,7 & 8 of the Rules prescribe the procedure and manner of verification of records of identity of clients.

4. Section 13 of the Act confers on the Director, FIU-IND powers to enquire into cases of failure to comply with the provisions of Section 12 of the Act and the rules thereunder and to levy a fine for each such failure.

5. In May 2013, there was widespread reporting in the media about a sting operation carried out by the website Cobrapost that allegedly exposed deficiencies in the anti-money laundering preventive measures applied by the banks and other financial institutions including the Indian Bank. The sting operation involved the Cobrapost reporter visiting the branch of the financial institutions with a story: that he wanted to invest/ safekeep substantial amounts of illicit or unaccounted cash. The website had videotaped the conversations with the officials/employees of the financial institutions that were played out in the media suggesting widespread violations of statutory obligations under the PMLA. Following the sting operation by Cobrapost, the Bank was asked vide letter dated 10-07-2013, whether any alerts in respect of the sting operation were generated in its branch at Mehrauli Institutional area, which was covered in the sting operation, and whether any STR was reported for attempted transactions for the incident reported by the Cobrapost. The Bank in its reply dated 06-08-2013 confirmed that no STR was filed for attempted transactions in the branch concerned. The Bank also stated that no alerts had been generated by the branch for the reported incidents, in respect of following indicators:

CV 1.1 - Customer left without opening an account.

E 11.1 - Customer did not complete transaction.

E 13.1 - Customer acting on behalf or third party.

E 14.4 - Customer could explain source of fund.

6. As per the definition of STR in Rule 2(g) of the Rules, STR means a transaction referred to in clause (h) including an attempted transaction. As STR for attempted transactions had not been filed for the branch of the Bank visited by Cobrapost, a show cause notice was issued on 21st January 2014 for contravention of provisions of Section 12 of the Act, read with the relevant Rules of the PML (Maintenance of Records) Rules 2005.

7. The Bank in its reply dated 20-02-2014 stated that:

(a.) Cobrapost incident was revealed in electronic media on 14-05-2013 following which the Branch Manager was placed under suspension.

(b.) The sting operation did not result in any attempted transactions violating the KYC/AML/CFT guidelines.

(c.) Special audit showed that there was no behavioural or transactional attempt by an existing or prospective or walk-in customer as per section 12 of PMLA,2002 read with Rule 2(g) (h) of PML (Maintenance of records) Rules. Therefore no suspicious transaction report was filed.

(d.) The Bank filed STR in respect of the sting operation subsequent to the show cause notice.

8. On the request of the Bank, a personal hearing was held in 01-04-2014 which was attended by Mr. K Uday Bhaskara Ready, General Manager and Mr. MS Murli Dharan, Chief Manager. During the hearing, the Bank was asked to confirm if instructions were in place at the time of the incident to report attempted suspicious transactions. The Bank confirmed that no alerts were generated from the concerned branch and hence no STR was filed at that time. However, an STR was filed subsequently on 21-02-2014. The Bank requested 3 days' time for filing a reply which was granted.

9. In their additional submissions dated 02-04-2014, the Bank drew attention to paragraph 7.4.4 of their KYC/AML/CFT policy for the year 2013-14 which stated that **"while determining suspicious transactions branches should be guided by definition of suspicious transactions contained in PMLA Rules as amended from time to time: It is likely that in some cases transactions are abandoned/aborted by customers on being asked to give some details are to provide documents. It is clarified that the branches should report all such attempted transactions even if not completed by customers, irrespective of transaction amount"**.

Discussions and Findings

10. While Section 12 of the Act lays down the general obligations of the banks to file suspicious transaction reports, the PML Rules, which further elaborate these obligations, require the banks to maintain the record of all transactions whether or not made in cash (Rule 3 of the PML Rules). The definition of suspicious transactions in Rule 2 (g) 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 Regulators 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.

11. A perusal of the transcript of the Cobrapost sting operation shows that the Cobrapost reporter posing as a customer visited Mehrauli Institutional Area branch of

the Bank and told the Branch Manager that he wanted to invest Rs. One crore in cash on behalf of a minister and more money was due in March 1st week. The investment had to be done in the name of his wife and the politician's wife. The source of the fund was not disclosed. The branch manager not only suggested different investment options including gold, insurance policies, and multiple deposit accounts which would be used to structure the deposits but also suggested not to provide PAN numbers to avoid detection. The Branch Manager also introduced him to other persons allegedly dealing in real estate and Hawala. The meeting took place in Ashok Hotel, Delhi.

12. The Bank's KYC/AML and Combating Financing of Terrorism policy for the year 2013-14 was approved by its board on 16-03-2013. Para 7.5 of the policy deals with the alert indicators at branch level: broad categories of reason of suspicion and examples of the suspicious transactions based primarily on Customer behaviour include the following:

S.No.	Alert Indicator	Indicative rules/Scenario
1	Customer Verification (CV) CV1.1 -Customer left without opening account	Customer did not open account after being informed about KYC requirements.
11	Employee Initiated (EI) EI1.1 -Customer did not complete transaction	Customer did not completed transaction after queries such source of funds, etc.
15	E13.1 – customer taking on behalf of a third party	Customer has vague knowledge about amt of money involved in the transaction. Customer taking instructions for conducting transactions. Customer is accompanied by unrelated individuals.
19	E14.3 - Customer wants to avoid reporting	Customer makes inquiries or tries to convince staff to avoid reporting.
20	E14.4 - Customer could not explain source of funds	Customer could not explain source of funds Satisfactorily
21	E15.1 - Transaction is unnecessarily complex	Transaction is unnecessarily complex for its stated purpose.
22	E15.2 - Transaction has no economic rationale	The amounts or frequency or the stated reason of the transaction does not make sense for the particular customer.

13. It is evident from the contents of the transcripts, which have not been denied by the Bank, that the Cobrapost reporter made explicit conversation about investing through the Bank large amounts of cash of unexplained origin. The discussion involved the following themes –

- (a) Immediate investment of Rs. 1 crore, more cash expected in March;
- (b) Investment in gold and insurance;
- (c) Converting black money into white;
- (d) Demand for locker where cash/gold could be kept;
- (e) Sending money abroad through Conduit/ Hawala;

14. The queries were explicit and made no secret of the fact that the reporter posing as customer was talking about black money. The conversation had several features which should have led to generation of behavioural alerts as per IBA guidelines and as per the AML policy of the Bank. However, in the concerned branch no alert was generated or escalated to the Principal Officer, as admitted by the Bank. The content, tone and tenor of the conversations/ discussions with the Cobrapost reporter indicate an alarming absence of any respect for the law in a banker, who is entrusted with the legal responsibility of reporting and preventing money laundering. Evidently, the Bank will not be able to fulfil its reporting obligations under the PMLA unless it is in a position to inculcate a sense of compliance in its branches. The utterances of the concerned employee of the Bank indicate that he cared little for compliance with his legal obligations under the PMLA and was over – enthusiastic in helping the ‘customer’ launder large amounts of unaccounted money. The Bank’s argument that the incident would not fall in the category of attempted transaction is only a post facto rationalization; the Bank’s Head Office was not even aware of the matter until it was out in the media. Rather than looking deeper into the causes with a view to establish accountability and take remedial measures, the Bank has tried to justify the actions/ responses of the branch manager without appreciating the context and seriousness of the matter. The Bank stated during the personal hearing that even though there was a clear- cut policy for filing STR in the case of attempted transactions, it was not followed by the concerned employee.

15. 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. In the instant case there were all the ingredients which would make a transaction ‘an attempted transaction’. It is not enough for the Bank to lay down a policy; it is equally important to implement it. In the case of Indian Bank, the policy was not followed in the concerned bank branch covered by the Cobrapost. In light of the above, I conclude that there was a failure in the Bank’s internal mechanism for detecting and reporting attempted suspicious transactions, in terms of Section 12 of PMLA read with Rules 2, 3, 7 and 8 of the PML

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Rules. Accordingly, in exercise of the powers conferred on me under Section 13 (2) of the PMLA, 2002, I hereby impose on Indian Bank a fine of Rs. One Lakh for failure in compliance with its obligations laid down in Section 12 of the PMLA read with Rules 2, 3, 7 and 8 of the PML Rules framed thereunder.

(Praveen Kumar Tiwari)
Director
Financial Intelligence Unit-India

To
Indian Bank
Corporate Office: 254-260,
Avvai Shanmugam Salai,
Royapettah,
Chennai - 60014.

Through: Executive Director