

F. No. 25-5/2013/FIU-IND
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. 1/DIR/FIU-IND/2017

Name & Address of the Reporting Entity: Ramgarhia Co-operative Bank Ltd.
1/4 Desh Bandhu Gupta Road,
Paharganj, New Delhi- 110055

Show Cause Notice No. & Date: F. No. 25-5/2013/FIU - IND
dated 8th September, 2014

Section under which order passed: Section 13 of the Prevention of
Money Laundering Act, 2002

Date of Order: October 4, 2017

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 Ramgarhia Co-operative Bank Ltd. The appeal should be in the form and manner prescribed under sub-section (3) of section 26 of the Act.

1. Ramgarhia Co-operative Bank Ltd (hereinafter referred as the ‘Bank’) is a Reporting Entity as defined under Section 2 of the Act.

Section 12 of the Act and the Prevention of Money Laundering (Maintenance of

Records) Rules, 2005 (hereinafter referred to as the 'Rules'), framed under the Act, imposes obligations on reporting entities to maintain records and report to the Director, Financial Intelligence Unit – India (hereinafter referred to as 'Director, FIU-IND') prescribed information relating to specific cash transactions, suspicious transactions, counterfeit currency transactions.

3. Rule 3 of the Rules specifies the transactions, the records of which are to be maintained. Rules 5, 7 and 8 of the Rules prescribe the procedure, manner and time of maintaining and furnishing such information. 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 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 fine in case of each such failure to comply.
5. On August 30, 2013, the onsite review of the Bank was conducted by FIU-IND that, *inter alia*, revealed as under:
 - (1) The Bank did not file any Suspicious Transaction Report (STR) till July 2013.
 - (2) The Bank had only two of the scenarios prescribed by Indian Banks Association (IBA) for generation of STR alerts and their processing. These scenarios were as follows:
 - (a) sudden deposit/ remittance in dormant accounts; and
 - (b) high value transactions in newly opened accounts.
 - (3) The Bank neither had AML software nor any Red Flag Indicator for the purpose of detection of STR.
 - (4) The Bank did not file any Cash Transaction Report (CTR) during the financial years 2006-07, 2007-08 and 2008-09.
 - (5) In the year 2009-10, the Bank had filed 12 CTRs, including 5 supplementary CTRs; in the Year 2010-11, it filed 12 CTRs, including 1 supplementary; and it filed 12 CTRs each in 2011-12 and 2012-13.
 - (6) The Bank was not aware of the obligation of filing Counterfeit Currency Report (CCR) and Non-Profit Organization Transaction Report (NTR).
6. Considering the above, a show cause notice (SCN) dated 8th September, 2014 was issued to the Bank, calling upon it show cause as to why penal action under section 13 of the Act should not be taken against it for its failure to comply with the provisions of section 12(1)(b) of the Act read with rules 3(A), 3(B), 3(BA), 3(C), 3(D), 5(2), 7(3), 8(1), 8(2) and 8(3) of the Rules for:

- (a) Delay in furnishing of information relating to 10,736 cash transactions in 649 accounts, pertaining to the period April 2007 to March 2009. These transactions were required to be furnished before 15th day of the month following the month in which the transaction took place, but were furnished on September 17, 2013 post onsite review. This was in contravention of section 12(b) of the Act read with rule 3(A), 3(B), 5(2), 7(3) and 8(1) of the PML Rules.
 - (b) Failure to establish mechanism to detect, capture and report suspicious transactions (section 12(b) of the Act read with Rules 3(D), 5(2), 7(3) and 8(3) of the Rules).
 - (c) Failure to establish mechanism to detect, capture and report counterfeit currency transactions and Non-Profit Organization transactions (section 12(b) of the Act read with Rules 3(BA), 3(C), 5(2), 7(3), 8(1) and 8(2) of the Rules).
7. 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.
8. In its reply, dated 10th October 2014, to the SCN, the Bank admitted to its failure to furnish the Cash Transaction Reports (CTR) for the period April 2007 to March 2009 as the Bank was shifting its system to CBS and due to technical problems CTRs were prepared manually resulting in delay in filing. It further submitted that information relating to STR, CCR and NTR for the period under examination was nil. Further, the Bank waived its right for a personal hearing and requested that a lenient view may be taken.
9. After considering various submissions made by the Bank vide letters dated August 30, 2013, October 10, 2013, October 24, 2013, April 29, 2014, May 26, 2014, February 09, 2015 and March 11, 2015, vide letter dated April 11, 2016, the Bank was granted last opportunity for making any further submissions in the matter and for indicating if it required a personal hearing in the matter.
10. The Bank, vide letter dated April 21, 2016, re-iterated its stand taken in its reply to the SCN submitted vide letter dated October 10, 2014 and pleaded that the Bank suffered losses to the tune of Rs. 284 lakhs approximately as on March 31, 2015 and that the Bank was evaluated with 'C' Rating by RBI in its inspection held on March 31, 2015. The Bank also requested for an opportunity of personal hearing in the matter.
11. A personal hearing was granted to the Bank on March 27, 2017 which was attended by its authorized representatives, namely, S/Shri Inderjeet Singh Chairman, B.S.

Sokhi Professional Director, Sunil Bhatia General Manager, J.S. Kainth, Senior Manager and A.S Chawla, Advisor to the Bank. During the personal hearing it was, *inter alia*, submitted by the authorized representatives of the Bank that:

- (a) CTRs for the period April 2007 to March 2009 comprising of 10,736 transactions in 649 accounts were not filed as the Bank was too small and lacked awareness as well as capacity to file CTRs for this period.
- (b) The Bank was in the process to acquire a software for generating alerts.
- (c) A lenient approach may be taken in view of the following:
 - (i) it has only about 32,000 account holders and has a deposit base of only Rs. 170 crore;
 - (ii) it has been suffered losses during preceding Financial years, viz. 2014-15, 2015-16 on account of N.P.As, fall in interest rates in their investment whereas the Bank continues to pay higher interest on the deposits. (A copy of annual report for the Financial Year 2015-16 was also produced by the Bank in support of its claims.)
 - (iii) it did not have any *mala fide* intention or intended to protect any customer;
 - (iv) the default was only on account of ignorance.

12. The Bank also pleaded for some more time to make additional submissions. Accordingly, the Bank was advised to file its submissions latest by April 17, 2017. Vide letter reference No. FIU/2017-18/8 dated April 17, 2017, the Bank filed its additional submissions and requested for another opportunity for personal hearing. Vide these submissions, the Bank admitted the delay in filing the CTRs pertaining to the period April 2007 to March 2009 and, *inter alia*, pleaded that:

- (a) During the said period, all working of the Bank was more or less manual.
- (b) During the said period, transactions of the customers were entered into computer system on the software known as, "WINBANKER" developed by the software vendor in January, 2006 and it took about two years to stabilize the system as correction/modification/amendments in the data were made by the staff continuously. The staff was not having working knowledge of computer and were totally dependent on the employees of the software vendor.
- (c) The Bank could draw only statement of accounts of the customer from the WINBANKER software but all other reports were prepared manually by the

staff.

- (d) In the year 2009, the Bank had asked the software vendor Virmati to develop Core Bank Solution (CBS). The Bank placed the order in July, 2010 on the vendor to transfer all data in new CBS system. Since there were lot of technical problems, the Bank was not able to extract required reports from the computer system and thus, made to prepare the reports manually.
 - (e) The Bank had no *mala fide* intention to conceal any facts or detail and the delay in submitting of return were on account of the reasons mentioned above.
 - (f) Except for the period mentioned in the SCN, the Bank had been submitting the return thereafter and without any delay. The Bank had promptly filed the desired report on September 17, 2013 after these were pointed out by FIU-IND on August 30, 2013.
 - (g) It is a very small cooperative bank set up for Ramgarhia community of Punjab. It had only one branch at Paharganj, Delhi at the relevant time. The Bank caters to Lohar community (ironsmith), tiny industries of petty material and carpenters.
 - (h) During the period 2007, 2008 and 2009, the Bank had only one branch. The Bank suffered losses in 2014-15 and 2015-16 and before that the Bank had incurred very meagre profit running into a few lakhs between Rs. 6 lakh to Rs. 90 lakhs. In the year 2011-12, the Bank suffered a loss of Rs. 48 lakhs.
 - (i) If a penalty of Rs.10.73 crores is levied, the Bank would close down, the 62 employees presently working with it would be asked to resign and the obligation to the depositors would not be fulfilled.
 - (j) Further, it would cause business and financial loss to approximately 32,000 customers, most of whom are from the weaker sections of the society.
13. Vide the aforesaid letter, the Bank also sought one more opportunity of personal hearing in the matter before any order is passed. Accordingly, one more opportunity of personal hearing was granted to the Bank on May 29, 2017 which was attended by its authorized representatives, namely, S/Shri Inderjit Singh Chairman, A.S. Chawla, B.S. Sokhi Professional Director, Sunil Bhatia General Manger and J.S. Kainth Senior Manager of the Bank.
14. During the personal hearing held on May 29, 2017, the authorized representatives

of the Bank admitted that there had been delay in filing of reports by the Bank for transactions relating to two financial years, viz., 2007-2008 and 2008-2009. The authorized representatives also submitted, *inter alia*, as under:

- (a) It was due to ignorance of the legal provisions and there was no *mala fide* intent or deliberate non-compliance.
 - (b) The Bank was running in losses and had cumulative loss of about Rs. 5 crores which had wiped out the profits earned by the Bank of earlier years and also the share capital.
 - (c) If heavy fine was levied, the Bank will go into insolvency and the depositors, who are essentially from weaker sections of the society, would be at loss.
 - (d) Considering the financial position of the Bank a lenient view may be taken and provision of amended section 13 of the PMLA may be considered for levying minimal fine, if any.
 - (e) There was no intention to give undue benefit to any depositor.
 - (f) All account holders are members of the co-operative bank and are identifiable.
 - (g) The Bank employs people from the Ramgarhia community.
 - (h) It is a well settled principle of law that imposition of penalty/fine is not automatic and the levy of penalty/fine is discretionary and such discretion is to be exercised by the Ld. Director keeping in view the relevant factors. In this regard, reliance has been placed by the Bank on the Hon'ble Supreme Court judgment in the matter of *Hindustan Steel Limited vs State of Orissa AIR 1970 SC 253*.
 - (i) It is well settled that fine/penalty is a result of a quasi-criminal proceeding and penalty/fine will not be ordinarily imposed unless the party obliquely either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligations. In this regard, the Bank has chosen to base its arguments on the Hon'ble Supreme Court judgment in the matter of *Dilip N. Shroff v. Joint CIT (2007) 6 SCC 329*.
15. Vide letter dated September 13, 2017, the Bank also submitted a copy of RBI Inspection Report for the year ended March 31, 2006 and March 31, 2008.

FINDINGS AND DISCUSSIONS:

16. I have gone through the facts and circumstances of the case, charges levied in the SCN and the submissions made by the Bank in response to the SCN dated 8th September, 2014. The Bank has admitted that it did not fulfil its obligations as per section 12(1)(b) of the PMLA, 2002 read with the PML Rules. It failed to file CTRs for the period April 2007 to March 2009 within the prescribed time. The Bank filed

the CTRs in September 2013, only after the matter was pointed out during the onsite inspection of the Bank on August 30, 2013. It also failed to establish internal mechanism to maintain and furnish such information as prescribed in rule 5(2) and 7(3) of the Rules.

17. Though the Bank claimed to have initiated the process for putting in place mechanism as required under the PMLA, 2002 including collection of information for CTRs and STRs as early as in month of April 2006, it is evident that they did not take steps in right earnest in that direction. The manner in which reports for the period from April, 2007 to March 2009 were submitted to FIU-IND indicates lackadaisical approach of the Bank for implementation of system for collection of information for reporting transactions under the PMLA, 2002.
18. It is an admitted fact that reports in respect of 10,736 cash transactions pertaining to the period between from April, 2007 to March 2009 were filed by the Bank on September 17, 2013, i.e., after a delay of 77 months. The contention of the Bank that the said transactions were not reported as the branches were not on CBS lacks merit and does not deserve any consideration. The obligation of a Reporting Entity, including the Bank herein, under the PMLA, 2002 to report transactions is absolute and is not dependent on whether a branch of a bank was fully or partially computerized on the date when the obligation arose.
19. It is trite to say that the filing of CTRs in terms of section 12 of the PMLA, 2002 read with the relevant provisions of the PML (Maintenance of Records) Rules, 2005 is a threshold based report. Further, in terms of rule 8 of the Rules the requisite information in respect of cash transaction is to be filed every month to the Director, FIU-IND by the fifteenth day of the succeeding month.
20. In view of the above, I conclude that the Bank had failed to evolve an internal mechanism for detecting and reporting 10,736 cash transactions in 649 accounts during the period April 2007 to September 2013. The Bank had filed the CTRs in respect of aforesaid transactions on September 17, 2013, i.e., after a delay of 77 months.
21. As regards, its failure to file any STR, CCR and NTR during the relevant period, the Bank has submitted that information relating to STR, CCR and NTR for the said period was Nil and as such was not reported. In view of this submission of the Bank, I do not find the conduct of the Bank blameworthy as far as the allegation of failure to file any STR, CCR and NTR during the relevant period is concerned.

22. Having concluded that the Bank had failed to evolve internal mechanism for detecting and reporting cash transactions, I now proceed to deal with the contention of the bank regarding imposition of fine. The Bank has contended that penalty/fine is not automatic and the levy of penalty/fine is discretionary. In this regard, the Bank has relied upon the ratio of judgment of the Hon'ble Supreme Court in the matter of *Hindustan Steel Limited vs State of Orissa (supra)*. It is worthwhile to mention here that the instant adjudicatory proceedings are civil in nature and the fine is leviable under section 13(2) of the PMLA, 2002 in cases of default or failure of statutory obligation or in other words breach of civil obligation. In this regard, the following observations of the Hon'ble Supreme Court in the matter of *SEBI vs. Cabot International Capital Corporation, (2005) 123 Comp. Cases 841* are worth mentioning:

"Thus, the following extracted principles are summarised:

(A) Mens rea is an essential or sine qua non for criminal offence.

(B) Strait jacket formula of mens rea cannot be blindly followed in each and every case.

Scheme of particular statute may be diluted in a given case.

(C) If, from the scheme, object and words used in the statute, it appears that the proceedings for imposition of the penalty are adjudicatory in nature, in contra-distinction to criminal or quasi criminal proceedings, the determination is of the breach of the civil obligation by the offender. The word "penalty" by itself will not be determinative to conclude the nature of proceedings being criminal or quasi-criminal. The relevant considerations being the nature of the functions being discharged by the authority and the determination of the liability of the contravenor and the delinquency.

(D) Mens rea is not essential element for imposing penalty for breach of civil obligations or liabilities....

(E) There can be two distinct liabilities, civil and criminal under the same Act."

23. I also note that in a catena of decisions, the Hon'ble Supreme Court has held that *mens rea* is not an essential element for imposing penalty for breach of civil obligations. The Hon'ble Supreme Court has also relied upon the above judgment and has observed in the matter of *Chairman, SEBI v. Shriram Mutual Fund and Anr. (2006 (5) SCC 361)* as under:

"However, we are not in agreement with the appellate authority in respect of the reasoning given in regard to the necessity of mens rea being essential

for imposing the penalty. According to us, mens rea is not essential for imposing civil penalties under the SEBI Act and Regulations."

The Tribunal has erroneously relied on the judgment in the case of Hindustan Steel Ltd. Vs. State of Orissa, AIR 1970 SC 253 which pertained to criminal/quasi-criminal proceeding. That Section 25 of the Orissa Sales Tax Act which was in question in the said case imposed a punishment of imprisonment up to six months and fine for the offences under the Act. The said case has no application in the present case which relates to imposition of civil liabilities under the SEBI Act and Regulations and is not a criminal/quasi-criminal proceeding.

In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15(D)(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow. In our view, the impugned judgment of the Securities appellate Tribunal has set a serious wrong precedent and the powers of the SEBI to impose penalty under Chapter VIA are severely curtailed against the plain language of the statute which mandatorily imposes penalties on the contravention of the Act/Regulations without any requirement of the contravention having been deliberated or contumacious....."

24. As regards the applicability of ratio in Dilip Shroff's case (*supra*) to the instant proceedings, it is noted that while deciding the questions of law regarding imposition of fine/penalty in case of civil breach, the Hon'ble Supreme Court observed in the matter of *Union Of India & Ors vs M/S. Dharamendra Textile & Ors.* as under:

"Dilip Shroff's case (supra) was not correctly decided but Chairman, SEBI's case (supra) has analysed the legal position in the correct perspectives. The

reference is answered."

25. In view of the above discussion, 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) 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 banking company, financial institution or intermediary or any of its officers has failed to comply with the provisions of contained in section 12, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure."

26. In terms of the said provision the minimum fine that can be levied on the Bank for its failure to report 10,736 cash transactions in 649 accounts is Rs. 10.736 crore. However, in this case, several mitigating facts and circumstances as submitted by the Bank and noted above are relevant. I note from the submissions that it is a very small cooperative bank set up for Ramgarhia community of Punjab. From perusal of its balance sheet for the years 2014-15 and 2015-16, it is noted that the Bank had suffered losses in 2014-15 and 2015-16 and before that the Bank had incurred very meagre profit running into a few lakhs between Rs. 6 lakh to Rs. 90 lakhs. In the year 2011-12, the Bank had suffered a loss of Rs. 48 lakhs. It is also noted from its submission that the Bank is running into losses and had cumulative loss of about Rs. 5 crores which had wiped out the profits earned by the Bank of earlier years and also its share capital. Considering the impecuniosity of the Bank, as its business had incurred heavy losses, I feel if heavy fine is levied on the Bank it would cause too much hardship and may be disproportionate to its financial capabilities. In these facts and circumstances, I would like to draw upon the observation of the Hon'ble Supreme Court on the doctrine of proportionality in the matter of *Excel Crop Care Limited vs Competition Commission of India & Anr.* (Civil Appeal No. 2480 of 2014) and reproduced hereunder:

"At the same time, the penalty cannot be disproportionate and it should not lead to shocking results. That is the implication of the doctrine of proportionality which is based on equity and rationality. It is, in fact, a constitutionally protected right which can be traced to Article 14 as well as Article 21 of the Constitution. The doctrine of proportionality is aimed at

bringing out 'proportional result or proportionality stricto sensu'. It is a result oriented test as it examines the result of the law in fact the proportionality achieves balancing between two competing interests: harm caused to the society by the infringer which gives justification for penalising the infringer on the one hand and the right of the infringer in not suffering the punishment which may be disproportionate to the seriousness of the Act.

No doubt, the aim of the penal provision is also to ensure that it acts as deterrent for others. At the same time, such a position cannot be countenanced which would deviate from 'teaching a lesson' to the violators and lead to the 'death of the entity' itself."

27. Similarly, the Hon'ble Supreme Court, in pronouncements dealing with compensation under the Criminal Procedure Code, has held that the means of the accused has also to be considered if a workable order is to be passed. [(1978) 4 SCC 111, *Sarwan Singh v. Punjab*; and (1988) 4 SCC 551, *Hari Singh v. Sukhbir Singh*]. I note that the aforesaid two judgments relate to trials with respect to criminal offences or statutes whereas the nature of proceedings in the instant case, as under the Competition Act, 2002, are civil. Having regard to the peculiar facts and circumstances of the instant case, in my opinion, the principle laid down by the Hon'ble Supreme Court with regard to the ability or means of the appellant to pay a penalty in monetary terms, can be a guiding factor for imposition of fine in the instant case as well.
28. As discussed above, in the instant case, the reports in respect of 10,736 cash transactions pertaining to the period between from April, 2007 to March 2009 were filed by the Bank on September 17, 2013, i.e., after a delay of 77 months. It is also noted that the Bank had been filing CTRs regularly from Financial Year 2009-10 onwards, apparently after the issue of non-filing of CTRs, etc. were brought to the notice of the Bank by RBI during its inspection. While the Bank had taken corrective measures and started filing CTRs after RBI inspection, it failed to file pending CTRs, for earlier period, i.e., Financial Year 2007-08 and 2008-09 until they were specifically called for by FIU-IND on August 30, 2013. Thereafter, the Bank claims to have taken various measures to fulfil its obligations as a reporting entity under the provisions of the Act.
29. This being the position, the submissions of the Bank as discussed above in para 11 to 14 above and the peculiar facts and circumstances of this case, I am inclined to take a lenient view in the matter. I, therefore, in exercise of the powers conferred upon me under section 13(2) of the Prevention of Money Laundering Act, 2002,

hereby impose a fine of Rs. 77,00,000/- (Rupees Seventy Seven Lakh) on Ramgarhia Cooperative Bank Ltd. for its failure to comply with its obligations to report, as required under the provisions of section 12 of the Act, 2002 read with rules 2, 3, 5, 7 and 8 of the Rules, 2005, cash transactions numbering 10,736 in 649 accounts for 77 months, as described in para 20 above, at the rate of Rs. 1,00,000/- (Rupees One Lakh) for each month of default.

(Pankaj Kumar Mishra)

Director

Financial Intelligence Unit - India

To,
Ramgarhia Co-operative Bank Ltd.
1/4, Desh Bandhu Gupta Road,
Paharganj,
New Delhi.

Through: Chief Executive Director