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F.No. 9-46/2009/FIU-IND
Government of India
Ministry of Finance
Department of Revenue
Financial Intelligence Unit-India

6th Floor, Hotel Samrat
Kautilya Marg, Chanakyapuri
New Delhi-110 021

ORDER-IN ORIGINAL NO. 2/DIR/FIU-IND/2013

Name & Address of the Reporting Entity	M/s Allahabad Bank Ltd., 2, Netaji Subhash Road, Kolkata – 700 001
Show Cause Notice No. & Date	F.No. 9-46/2009/FIU-IND Dated 10 th May, 2013
Section under which order passed	Section 13 of PMLA, 2002
Date of Order	31 st December, 2013
Authority passing the order	Director, FIU-IND

An appeal against this order shall lie 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 reporting entity and the appeal should be in the form and manner prescribed. (refer sub-section (3) of section 26 of the Prevention of Money Laundering Act, 2002).

ORDER

1. Allahabad Bank Limited (hereinafter referred to as 'ABL') is a banking company as defined under Section 2(e) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the 'Act').

2. 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, impose obligations on banking companies to maintain records and report to Director, Financial Intelligence Unit – India (hereinafter referred to as 'Director, FIU-IND') prescribed information relating to specific cash transactions, suspicious transactions, counterfeit currency transactions and non-profit organization transaction reports.
3. Rule 3 of the Rules specifies the transactions, the records of which are to be maintained; Rules 7 & 8 of the Rules prescribe the procedure, manner and time of 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 of banking companies to comply with the provisions of Section 12 of the Act and the Rules thereunder and to levy a fine in case of such failure to comply.
5. Vide letter No.9-46/2011/FIU-IND dated 18th May, 2011 ABL was asked to explain the issuance on 13th April, 2011 of two demand drafts of Rs. 8 lakhs and 2 lakhs respectively against cash deposit of Rs.10,04,964/- together with reasons for not examining and reporting these integrally connected transactions for filing CTR or STR.
6. Vide letter No.HO/DEV/KYC & AML/115 dated 7th June, 2011, ABL submitted that RBI's circular dated 01.07.2010 requires that transactions in internal accounts of the Bank are not required to be reported; and that as the deposit of cash for purchase of demand drafts was made directly in the internal account of the Bank, the same was not reported. ABL further submitted that since the transactions were on behalf of an existing account holder, they appeared genuine and hence were not reported as suspicious.
7. Vide letter No.9-46/2011-FIU-IND dated 30th June, 2011 ABL was informed that the reasons for not reporting cash transactions were not satisfactory, that the mechanism evolved by the bank for filing of CTRs was not proper, and despite a fine already imposed on 25th October, 2010 for failure to comply with the provisions of Section 12 of the Act, ABL had failed to put in place a system for submission of correct and complete information to FIU-IND.

8. Vide letter No.HO/AML & KYC/ 231 dated 21st July, 2011, ABL stated that as the sum total of two transactions was not more than Rs.10 lakhs, the transactions in question were not required to be reported. ABL stated that the transactions had been examined and appeared to be genuine and not suspicious.
9. Not finding the replies of ABL satisfactory, ABL was issued a show-cause notice (SCN) on 10th May, 2013, asking ABL to show cause why penal action under section 13 of the Act should not be taken for ABL's failure to comply with:
- (a) Section 12 of the Act read with Rule 7(2) and Rule 8(1) of the Rules that require ABL to furnish to the Director by the 15th day of succeeding month information about all series of cash transactions integrally connected to each other which have been valued below Rs. 10 lakh where such series of transactions have taken place within a month.
 - (b) Section 12 of the Act read with Rule 7(3) of the Rules require ABL to evolve an internal mechanism for furnishing information in such form and at such intervals as may be directed by its Regulator.
10. In their reply to the SCN, ABL vide their letter Ref. No. HO/KYC & AML/2013-14/08-06 dated 13th June 2013 contested the SCN, broadly on the following grounds:
- 10.1 *Allegations in the SCN were old & beyond jurisdiction; the notice issued after 2 years was not tenable under law*
 - 10.2 *The allegations in the SCN related to the issuance of two bank drafts of Rs. 8 lakhs and 2 lakhs against cash within the prescribed limit and that the SCN ignored the fact that its reporting was statutorily dependent on "reason to believe" (objective satisfactory) of only the "Principal Officer" designated under PMLA and not the noticee bank.*
 - 10.3 *The SCN did not relate how and in what manner Sec 12 of the PMLA and the rules could be said to be infringed, as the demand drafts were issued after satisfying the identity of person, genuineness of transaction, taking PAN.*
 - 10.4 *The SCN deserved to be withdrawn as RBI, the competent designated authority under PMLA (Maintenance of Records) Rules 2005 had accepted the explanation of the bank.*

10.5 *It was in the discretion of Principal Officer to conclude whether particular transactions are integrally connected or not.*

11. In the personal hearing granted on ABL's request on 5th August 2013 which was attended by Mr. Parthadab Datta, General Manager, Zonal Office, New Delhi, Mr. B Kumar Douse, AGM (KYC Cell) HO, Kolkata & Mr. Shiv Om Sharma, Sr. Manager (Law), it was pointed out that ABL's submission questioning the legality of the SCN, the authority of Director, FIU-IND and the need for filing the CTR were frivolous, baseless and not tenable in view of the fact that Section 12 of the Act lays down specific obligations for the reporting entities that had to be discharged in accordance with the Rules framed under the Act, and the guidelines framed under the Rules by the Regulator; Section 13 of the Act empowered Director, FIU-IND to conduct enquiry and impose sanctions on the reporting entities for failure to discharge their obligations under section 12 of the Act; and that section 50 of the Act vested in the Director the powers of a civil court for the purpose of section 13. Admitting that their earlier reply had not taken into account these aspects, ABL requested to file a revised submission, which was granted.

12. At the ABL's request another personal hearing was granted on 26th August, 2013 at 15.00 hrs which was attended by Mr. P Datta, GM, Zonal Office, New Delhi & Mr. Shiv Om Sharma, Sr. Manager (Law) of ABL. A revised reply dated 22nd August, 2013 was filed during the hearing which was taken on record.

13. In their revised submissions dated 22nd August, 2013 ABL admitted having accepted cash for the issuance of two demand drafts of Rs. 8 lakhs & Rs. 2 lakhs each on 13th April, 2011 and submitted that Rs. 4964/- in cash collected from the purchaser on account of Exchange + Service tax over & above rupees ten lakhs should not be included in the integrally connected transactions of DD amount as the fee for service rendered is credited in the Bank's revenue account and does not form a part of the draft issued transaction.

14. I have gone through the facts and circumstances of the case and ABL's replies dated 13th June, 2013 and 22nd August, 2013 to the SCN and the submissions made during the personal hearings on 05th August, 2013 and 26th August, 2013. While ABL's

reply of 13th June, 2013 portrayed a grossly misconceived interpretations of its statutory obligations, my findings on ABL's replies, as revised through its submissions of 13th June, 2013 and 22nd August, 2013 are as follows:

- (i) ABL's plea that the proceedings are barred by limitation is not acceptable as the PMLA does not stipulate a time limit for initiation of proceedings for non-compliance. On the other hand, the first correspondence on the matter was taken up with ABL on 18th May, 2011, soon after the date of the impugned transactions viz., on 13th April, 2011.
- (ii) ABL's plea that reporting of the transactions is statutorily dependent on "reasons to be believe" of only the Principal Officer is wrong and misleading. Cash Transaction Report (CTR) is a threshold-based report, which does not depend on anybody's "reasons to believe" for submission.
- (iii) Receipt of cash by a bank for making demand draft falls under the definition of 'transaction' under rule 2(1)(h) of the Rules which is reportable as CTR if it exceeds the threshold of Rs 10 lakhs either as a single transaction or as series of cash transactions integrally connected to each other taking place within a month. The statutory obligation for filing CTR by the bank cannot be presumed to have been discharged by claiming that identity and genuineness of the transaction had been verified.
- (iv) ABL's argument that section 13 of the PMLA, as amended, empowers the Director to impose a range of penalties, and not only monetary penalty is not acceptable as the amended section 13 was not in force on the date of the impugned transactions. Moreover, the nature and quantum of penalty have to be determined by the competent authority commensurate with the nature of failure.
- (v) ABL's plea that the fee received by the bank for making the demand draft may not be treated as part of transaction is not acceptable as the requirement under the Act and the Rules is to report all series of cash transactions integrally connected to each other which have been valued below rupees ten lakh where such series of transactions have taken place within a month without distinguishing as to under which accounting head a cash transaction would be classified. In the present case, both the transactions took place through two consecutive application forms no. 036193/06 and 036194/05 both dated 13th April, 2011 for amounts of Rs. 8,03,971 and Rs. 2,00,993 respectively, adding

upto Rs. 10,04,964. Being integrally connected, as the applicants of both the drafts were same and the drafts were also made for the same beneficiaries, the transactions were reportable under Section 12 of the Act read with Rule 3(1)(B) of the Rules as CTR but were not reported. The failure to report these two transactions would constitute two failures in terms of Section 13 of the Act.

- (vi) The word failure in section 13(2) of the PMLA has been qualified by the word 'each'. It makes it categorically clear that the legislature intended to provide that for each failure of furnishing information of prescribed cash transactions fine has to be imposed. If each failure is not penalized then it will encourage non-compliance or partial compliance, and will defeat the purpose and intent of the legislature. In the instant case, there were two transactions which taken together exceeded Rs 10 lakhs, which is the threshold for filing CTR. Both these transactions were reportable in the CTR, being integrally connected to each other but were not reported. For this reason failure to report these two transactions have been taken as two failures in terms of Section 13 of the Act.
- (vii) ABL's contention that the SCN deserved to be withdrawn as the RBI, the competent designated authority under PMLA (Maintenance of Records) Rules, had accepted the explanation of the bank, is rejected as misconceived and incorrect. The PMLA and the Rules framed thereunder provide clear distinction between the functions required to be performed by the RBI as Regulator and the Director, FIU-IND. While RBI has been empowered to issue guidelines under the Rules framed under the PMLA, it is the Director, FIU who is the sole authority to conduct inquiry and impose sanctions under section 13 of PMLA and for this purpose Director, FIU has been vested with the powers of a civil court under section 50 of PMLA. Imposition of fine by the Director, FIU-IND under section 13 is a quasi-judicial function and cannot be discharged by the Regulator.
- (viii) It is also clear that the two demand drafts were issued by the Branch Manager of the Main Branch, Kolkata by splitting the amount of Rs. 10,04,964 into two i.e. Rs. 2,00,993 and Rs. 8,03,971, as the beneficiary of both drafts was the same, as was the person who applied for the drafts. The fact that the transactions were not reported clearly shows that ABL had repeatedly failed to evolve internal mechanism to maintain and furnish such information in terms of Rule 5(2) and Rule 7(3) of the Rules, despite the fact that a fine of Rs. 7 lakh had been imposed on ABL on 25th October, 2010 for failure to evolve a mechanism for

furnishing such information over the period November, 2006 – February, 2008. The fact that ABL could not detect and furnish information in respect of the two transactions that took place on 13th April, 2011, shows that ABL had still not evolved the appropriate mechanism during the period February, 2008 to April, 2011 i.e. 61 months for furnishing information required under the Act and the Rules.

15. Considering all the points mentioned above, I conclude that ABL had failed to comply with Section 12 of PMLA and the Rules made thereunder by not filing CTR in respect of the two transactions, mentioned in the show cause notice dated 10th May, 2013, that took place on 13th April, 2013, and also failed to put in place a mechanism for furnishing information referred to in Rule 7(3) of PML (Maintenance of Records) Rules, 2005. Accordingly, in exercise of the powers conferred on me under Section 13 of the Act, I impose on ABL a fine of Rs. 2,00,000 (Two lakhs) for not filing Cash Transaction Report in respect of the two transactions mentioned in Paragraph 5 above. Further, I also impose a fine of Rs. 1,00,000 (One lakh) for failure to have in place internal mechanism to furnish information in respect of these two cash transactions during the month of April, 2011.

(Praveen Kumar Tiwari)
Director
Financial Intelligence Unit – India

To

M/s Allahabad Bank Ltd.,
2, Netaji Subhash Road,
Kolkata – 700 001

Through:

Ms. Subhalakshmi Panse,
Chairman & Managing Director