

F. No. 26-7/2013/FIU-IND
Government of India
Ministry of Finance
Department of Revenue
Financial Intelligence Unit - India

6th Floor, LIC Building, Tower - 2,
Connaught Place, New Delhi - 110001

ORDER-IN ORIGINAL NO. 12/DIR/FIU-IND/2020

Name & Address of the Reporting Entity: PayPal Payments Private Limited
2nd Floor, B Quadrant
The IL&FS Financial Centre
Plot No. C 22 G Block
Bandra Kurla Complex
Bandra (East)
Mumbai – 400 051

Show Cause Notice No. & Date: F.No. 26-7/2013/FIU-IND
Dated: September 17, 2019

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

Date of Order: 17th December, 2020

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, New Delhi within a period of forty five days from the date on which this Order is received by PayPal Payments Private Limited. The appeal should be in the form and manner prescribed under sub-section (3) of Section 26 of the Act.

1. In terms of section 2(1)(wa) of the PMLA, 2002, a “*reporting entity*”, *inter alia*, includes a financial institution. Further, section 2(1)(l) of the Act, 2002 defines a "*financial institution*" to mean a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of

India Act, 1934 (2 of 1934) and includes, *inter alia*, a payment system operator. As per section 2(1)(rb) of the Act “*payment system*” means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. The explanation to the definition of “*payment system*” clarifies that for the purposes of this clause, “payment system” includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations. In terms of section 2(1)(rc) of the Act “*payment system operator*” means a person who operates a payment system and such person includes his overseas principal as well.

2. PayPal Payments Private Limited (hereinafter referred to as ‘PayPal’) is an unlisted private limited company registered under the Companies Act, 2013, carrying out its activities as a financial institution and a payment system operator.
3. Section 12 of the Act and the Prevention of Money Laundering (Maintenance of Records) Rules 2005 (hereinafter referred to as the ‘PML Rules, 2005’), framed under the Act impose obligations on all reporting entities to *inter alia*, maintain records of specified transactions and report to the Director, Financial Intelligence Unit — India (hereinafter referred to as ‘the Director, FIU-IND’) information relating to such transactions. These records include reports on cross border wire transactions, cash transactions, suspicious transactions and counterfeit currency transactions etc.
4. Rule 3 of the PML Rules, 2005 specifies the transactions, the records of which are to be maintained; Rules 5, 7 and 8 of the PML Rules, 2005 prescribe the procedure, manner and time of maintaining and furnishing such information. Rule 7(1) of the PML Rules, 2005 requires that every reporting entity shall communicate to the Director, FIU-IND, the name, designation and address of the Designated Director and the Principal Officer. As per rule 7(2) of the PML Rules, 2005, the Principal Officer shall furnish the information referred to in rule 3(1) to the Director, FIU-IND on the basis of information available with the reporting entity. Rule 7(3) requires that all reporting entities shall evolve an internal mechanism having regard to any guidelines issued by its 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.
5. Section 13 of the Act confers on the Director, FIU-IND powers to enquire into cases of

failure to comply with the provision of Section 12 of the Act and the Rules thereunder and to:

- (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.

6. In pursuance of the above, a show cause notice dated September 17, 2019 was issued to PayPal under section 13 of the Act show causing why action be not taken against PayPal for its failure to carry out obligations under the Act despite being a reporting entity by virtue of the activities being carried out by it as a financial institution and payment system operator. Vide the afore-mentioned show cause notice, PayPal was specifically asked to show cause for non-compliances with its obligations enumerated under section 12 of the Act read with rule 7 of the PML Rules, 2005 for its:

- (a) failure to register itself as a reporting entity with FIU-IND;
- (b) failure to communicate to the Director, FIU-IND, the name, designation and address of the Designated Director and the Principal Officer for the purposes of further compliances of rules 3,5,7,8 and 9 of the PML Rules, 2005.

7. Vide the above-mentioned show cause notice PayPal was advised to submit its reply within a period of 15 days from the receipt of the said show cause notice, failing which it shall be presumed that it has nothing to say in this matter. PayPal was also asked to indicate whether it desires to be personally heard in this case.

8. PayPal replied to the said show cause notice vide its letter number PayPal-India/FIU/20191011 dated October 11, 2019 submitting *inter alia*, its para-wise contentions which are summarised as below:

- (a) PayPal is not licensed as a *‘payment system operator’* under the Payment and Settlement Systems Act, 2007 (the “PSS Act”) and is not treated as a payment system operator by the Reserve Bank of India (the “RBI”).
- (b) As set out in previous letters to the FIU-IND dated April 17, 2018 and August 08, 2019 (since then there has been no change in the business activity being conducted by PayPal), PayPal conducts the following businesses in India:
- i. Operates and provides domestic payment gateway services in partnership with Scheduled Commercial Banks with nodal and card acquiring bank arrangements in accordance with the “Directions for Opening and Operation of Accounts and Settlement of Payments for Electronic Payment Transactions involving Intermediaries” dated November 24, 2009 with reference number RBI/2009-10/231 DPSS.CO.PD No. 1102/02.14.08/2009-10 (“**Payment Intermediary Circular**”) issued by the RBI.
 - ii. Operates under the regulatory framework set out in the circulars issued by the RBI applicable to Online Payment Gateway Service Providers (“**OPGSP**”) and processes export related receipts from exporters in arrangement with an AD Category – 1 Schedule Commercial Bank.
- (c) PayPal is classified as a *payment intermediary* and not a *‘payment system operator’* under the rules and regulations issued by RBI in this respect. A payment system intermediary, such as PayPal, is required to comply with the Payment Intermediary Circular, which provides for a separate regime regulating the functioning of the payment system intermediaries.
- (d) PayPal’s business in India of providing payment processing services and facilitation of processing and settlement of import and export related payments is governed under the framework prescribed by the RBI – “Processing and settlement of import and export related payments facilitated by Online Payment Gateway Service Providers”. While providing such services, PayPal operates as an OPGSP and is compliant with the applicable RBI regulatory framework.

(e) It is submitted that the RBI does not consider or regulate PayPal as an operator of a “payment system” under the PSS Act by virtue of PayPal providing payment intermediary services.

(f) The RBI in its “Statement on Developmental and Regulatory Policies” dated 07 February 2019 (the “**RBI Statement 2019**”) and the “Payment & Settlement Systems in India: Vision-2021” dated May 15, 2019 (the “**RBI’s Vision-2021**”) has acknowledged that services such as those being provided by PayPal are not regulated under the extant regulatory framework. The RBI Statement 2019 (at Paragraph 11) and the RBI’s Vision-2021 (at Paragraph 5.4.9) read with the “Discussion Paper on Guidelines for Payment Gateways and Payment Aggregators” released by the RBI on 17 September 2019 note that RBI is presently contemplating regulation of payment intermediaries, such as PayPal. This reiterates the position that the extant legal framework does not require payment intermediaries, such as PayPal, to obtain a license as a ‘payment system operator’ under the PSS Act.

(g) In view of the foregoing, payment intermediaries, such as PayPal, are not covered within the definition of a ‘payment system operator’ or ‘financial institution’ and in turn, are not covered under the definition of a ‘reporting entity’ under the PMLA. Therefore, at this time, payment intermediaries, such as PayPal, are not required to register as such with FIU-IND.

(h) It is further submitted that unless the PMLA and / or the applicable rules are amended in order to specifically include payment intermediaries, such as PayPal, within the definition of a ‘payment system operator’, it is requested that FIU-IND not consider PayPal as a ‘reporting entity’ required to register with the FIU-IND.

(i) PayPal also requested to be personally heard in the instant matter.

9. In view of the foregoing and in compliance with the principles of natural justice, PayPal was granted an opportunity of personal hearing before me through its duly authorized

representatives on December 09, 2019 and the same was communicated to the Bank vide another letter dated November 21, 2019. The authorized representatives of PayPal, Shri Nath Parameshwaran and Shri Liam Murray, Director(s) along with Shri Samik Mukerjee, Head of Legal and Shri Rajul Jain, Senior Manager appeared before me and reiterated the written submissions filed by PayPal vide its earlier letter dated October 11, 2019. The said authorised representatives of PayPal requested for 2 (two) weeks' time from the date of the personal hearing to make further written submissions in the instant matter.

10. Accordingly, vide letter number PayPal-India/FIU/20191220 dated December 20, 2019, PayPal made further written submissions, a brief of which is as follows:

(a) PayPal operates in India as an Online Payment Gateway Service Provider (“OPSGP”) and Payment Intermediary under the extant Reserve Bank of India (“RBI”) regulations. It has been advised by external counsel that PayPal’s business in India does not come within the ambit of reporting entity as defined under the PMLA.

(b) Under section 2(1) (wa) of the PMLA, the term reporting entity covers only the following: a banking company; financial institution; intermediary regulated and licensed by RBI, SEBI, IRDAI and other regulators; or a person carrying on a designated business or profession.

(c) In relation to the definition of reporting entity, PayPal is not a banking company or financial institution in India, nor is it licensed by RBI. While the definition of financial institution does include a payment system operator, PayPal is not a payment system operator as it does not run a payment system in India. The fact that PayPal does not run a payment system in India has been clarified by the RBI in court filings and RTI responses. Also, it is requested to note that PayPal is not listed as a payment system provider on RBI’s website.

(d) While the definition of payment system under the PMLA and the Payment and Settlement Systems Act, 2007 (“PSS Act”) is the same, PayPal is not required to register with the RBI as an operator of a payment system under the PSS Act. The same interpretation should apply across both the PSS Act and PMLA, and it is respectfully submitted that accordingly, PayPal does not operate a payment system under the PMLA.

- (e) Further, OPGSPs and Payment Intermediaries have also not, by process of notification, been designated as reporting entities the PMLA.
- (f) FIU's own website does not categorized OPGSPs and payment intermediaries as reporting entities under the PMLA. Under the PMLA, PML Rules, 2005 and other rules and regulations made under the PMLA, all reporting entities are required to *inter alia* maintain records of transactions, carry out customer verification processes, and report certain transactions to the FIU-IND. Section 2(1) (wa) of the PMLA defines a reporting entity to mean "*a banking company, financial institution, intermediary or a person carrying on a designated business or profession.*" PayPal ought not to be considered a reporting entity under the PMLA and the rules made thereunder as PayPal is engaged in the business of providing payment processing services and acts as a payment intermediary and is not a banking company.
- (g) PayPal ought not to be considered a reporting entity under the PMLA and the rules made thereunder as PayPal does not carry out as its business or as a part, any of the activities of a financial institution and therefore, should not be considered a financial institution as defined in clause (c) of Section 45-I of the RBI Act.
- (h) Further, PayPal ought not to be considered a reporting entity under the PMLA and the rules made thereunder as even though the definition of 'payment system' under the PMLA and the PSS Act is the same, PayPal is not required to register with the RBI as an operator of a payment system under the PSS Act.
- (i) According to PayPal, for an entity to be covered under the definition of a 'payment system' under the PMLA, it has to carry out "*clearing, payment or settlement service*" activities. Payment intermediaries and/or OPGSPs, such as PayPal, do not provide clearing, payment or settlement services. Instead, these activities are carried out by authorized dealer banks using the NEFT and other payment systems authorized by RBI. It is pertinent to point out that PayPal (as a payment intermediary and as an OPGSP) does not take part in clearing, payment or settlement service activities. In PayPal's case, all clearing, payment or service are carried out through the AD Category – I Scheduled Commercial Banks.

- (j) Further, classification and/or treatment of payment intermediaries, such as PayPal, by the FIU-IND as an operator or payment system shall be inconsistent with the RBI's stance that payment intermediaries, such as PayPal, do not operate or participate in a payment system.
- (k) As a payment intermediary, PayPal is required to comply with the Payment Intermediary Circular without requiring any RBI registration. Therefore, the same interpretation should also be applied in case of the definition of a 'payment system' under the PMLA, and PayPal should not be considered payment system operator for the purpose of the PMLA.
- (l) Further, PayPal is not a chit fund company, a housing finance institution, an authorised person under the Foreign Exchange Management Act, 1999, or a non-banking financial company i.e. a financial institution that is a company. Consequently, PayPal is not a financial institution, as defined under the PMLA.
- (m) Finally, PayPal is not a person carrying on designated business or profession under the PMLA i.e. carrying on activities for playing games of chance for cash or kind, real estate agent (as notified by the Government of India), dealer in precious metals (as notified by the Government of India) etc.
- (n) In view of the foregoing, PayPal has submitted that FIU-IND ought not to consider 'payment intermediaries', such as PayPal, to be covered within the definition of a 'payment system operator or a financial institution'. Consequently, such payment intermediaries should not be included under the definition of a reporting entity pursuant to Section 2(1)(wa) of the PMLA.
- (o) In addition, all reporting entities with the FIU-IND are entities directly licensed by the RBI, the Insurance Regulatory and Development Authority (IRDAI) and other agencies. Non-licensed non-regulated entities, such as payment intermediaries and/or the OPGSPs, are not treated as reporting entities under the PMLA.
- (p) As per PayPal, the present regulations do not prescribe registration of payment intermediaries and OPGSPs, such as PayPal, with the FIU-IND. Further, even the FIU-

IND's own online system does not allow non- registered entities, such as PayPal, to register.

(q) PayPal has contended that unless the PMLA and/or the applicable rules are amended in order to specifically include payment intermediaries and/or OPGSPs, such as PayPal, under the existing regulatory framework, FIU-IND should not consider PayPal as a reporting entity that is required to register with the FIU-IND.

11. It is also relevant to mention that on issuance of Circular No. RBI/DPSS/2019-20/174^[L]_[SEP]DPSS.CO.PD.No.1810/02.14.008/2019-20 dated March 17, 2020 by the Reserve Bank of India, vide letter dated June 10, 2020, FIU-IND once again advised PayPal to register itself as a reporting entity in terms of the provisions of the PMLA, 2002. PayPal, in its response vide letter number PayPal-India/FIU/20200821 dated August 21, 2020 reiterated its earlier submissions, as summarised above and further submitted its decision to cease domestic payment aggregator (PA) business in India. It was further submitted by PayPal that its cessation of its domestic payment aggregator business will occur before June 2021, being the last date to apply for domestic payment aggregator license in India as per the Reserve Bank of India's said Circular dated March 17, 2020. This decision is taken by PayPal based on the review of several prevailing factors relevant for its business and operations in India, including commercial considerations such as market outlook and revenue flows associated with the domestic payment aggregator business. Accordingly, PayPal will not make an application to the Reserve Bank of India seeking authorisation as a payment aggregator under the Payment and Settlement Systems Act, 2007 in accordance with the Circular dated March 17, 2020 issued by the Reserve Bank of India. PayPal also submitted to have informed the Reserve Bank of India about its cessation of domestic payment aggregator business in India.

12. As per PayPal, upon cessation of its domestic payment aggregator business in India, it will only undertake operations as online payment gateway service provider (OPGSP) in accordance with the Reserve Bank of India's framework governing operations OPGSPs in India in terms of Circular No. 16 dated September 24, 2015 read with all the preceding circulars issued by the Reserve Bank of India on '*Processing and settlement of import and export related payments facilitated by Online Payment Gateway Service Providers*'.

13. According to PayPal, the Circular dated March 17, 2020 issued by the Reserve Bank of India does not seek to regulate the entities that solely operate as OPGSPs. The said Circular dated March 17, 2020 does not mandate OPGSPs to obtain authorisation from the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 to facilitate online import and export transactions. OPGSPs are governed by the Reserve Bank of India under a separate set of directions under the Foreign Exchange Management Act, 1999 wherein, under these separate set of directions, pooling and settlement to merchants is directly controlled and executed by AD Category-I Scheduled Bank.

FINDINGS AND DISCUSSION:

14. I have gone through the facts and circumstances of the case, charges levied in the show cause notice dated September 17, 2019, written submissions made by PayPal vide its letter dated October 11, 2019, additional written submissions vide its letter dated December 20, 2019 and oral arguments of its authorised representatives during the personal hearing held before me on December 09, 2019.

15. Before dealing with the submissions of PayPal, I find it worthwhile to briefly mention the background and object of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the 'PMLA' or the 'Act'), the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter referred to as the 'PML Rules' or the 'Rules'), and establishment of FIU-IND that can be traced back to the recommendations of the Financial Action Task Force (FATF) and is summarized herein below:

(a) The FATF was formed by the 1989 G7 Summit in Paris to combat the growing problem of money laundering. The task force was charged with studying money laundering trends, monitoring legislative, financial and law enforcement activities taken at the national and international level, reporting on compliance, and issuing recommendations and standards to combat money laundering.

(b) In its first year, FATF issued a report containing forty recommendations to more effectively fight money laundering. These standards were revised in 2003 to reflect evolving patterns and techniques in money laundering. The mandate of the organisation was expanded to include terrorist financing following the September 11 terror attacks 2001.

- (c) FATF's primary policies issued are the Forty Recommendations on money laundering from 1990. After the 2001 terrorist attacks in the United States of America (September 11 attacks) 9 Special Recommendations (SR), mainly relating to and Combating Financing of Terrorism (CFT) were added. Further, these recommendations were revised in 2012 by subsuming "40+9" Recommendations into 40 International Standards on Anti-Money Laundering and Combating Financing of Terrorism and proliferation. These standards set out the principles for action and allow countries a measure of flexibility in implementing these principles according to their particular circumstances and constitutional frameworks.
- (d) Recommendation 29 of the FATF Recommendation warrants that countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and financing of terrorism, and for the dissemination of the results of that analysis. The FIU should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to undertake its functions properly.
- (e) FATF Interpretive Note to Recommendation 29 states that the FIU is part of, and plays a central role in, a country's Anti-Money Laundering / Combating the Financing of Terrorism (AML/CFT) operational network, and provides support to the work of other competent authorities. The major functions of FIU as envisaged by the said interpretive note can be categorised as receipt, analysis and dissemination of relevant information. The FIU serves as the central agency for the receipt of disclosures filed by reporting entities.
- (f) The Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June 1998 called upon the Member States to adopt money-laundering legislation and programme.
- (g) Towards this objective and international obligation a comprehensive legislation, *inter alia*, preventing money-laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for co-ordinating measure for

combating money laundering, etc. the Prevention of Money-Laundering Bill, 1998 was introduced by the Government of India in the Lok Sabha in August, 1998.

- (h) After considering some of the recommendations of the Standing Committee on Finance, the Prevention of Money-Laundering Bill came to be enacted the Prevention of Money-Laundering Act, 2002 (15 of 2003) and came into effect on July 01, 2005.
- (i) Financial Intelligence Unit – India (FIU-IND) was set up by the Government of India as the central national agency responsible for receiving, processing, analysing and disseminating information to the relevant institutions/law enforcement agencies of the Government. 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. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.
- (j) Section 12(1)(b) of the Act, obligates every reporting entity (viz., a banking company, financial institution, intermediary or a person carrying on a designated business or profession) to maintain a record of all transactions in such a manner as to enable it to reconstruct individual transactions; to furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed; to verify the identity of its clients in such manner and subject to such conditions, as may be prescribed; to identify the beneficial owner, if any, of such of its clients, as may be prescribed and to maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.
- (k) Section 73 of the Act empowers the Central Government to enact rules, *inter alia*, with regard to the nature and value of transactions and the time within which the information of transactions under section 12(1)(b) of the Act shall be furnished; the manner and the conditions in which identity of clients shall be verified by the reporting entities under section 12(1)(c) of the Act; the manner of identifying beneficial owner, if any, from the clients by the reporting entities under section 12(1)(d) of the Act; the period of interval in which the reports are sent by the

reporting entities or any of its employees under section 13(2)(c) of the Act; the procedure and the manner of maintaining and furnishing information under section 12(1) as required under section 15 of the Act.

- (l) Towards this end, the Central Government in consultation with the Reserve bank of India has notified the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 (the PML Rules) 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 by the reporting entities.

16. Having enumerated the background of the Act and the PML Rules, 2005, I will now deal with the submissions of PayPal with regard to the non-compliances alleged in the show cause notice dated September 17, 2019.

17. The fundamental charge against PayPal is its failure to register itself as a reporting entity with FIU-IND. From the perusal of the material on record, I note that PayPal considers itself as a *'payment intermediary'* and an *'online payment gateway service provider'* (hereinafter referred to as 'OPGSP') under the extant regulatory framework of the Reserve Bank of India. PayPal maintains, it operates and provides domestic payment gateway services in partnership with Scheduled Commercial Banks with nodal and card acquiring bank arrangements as per the *'Directions for Opening and Operation of Accounts and Settlement of Payments for Electronic Payment Transactions Involving Intermediaries'* dated November 24, 2009 bearing reference no. RBI/2009-10/231/DPSS.CO.PD.No.1102/02.14.08/2009-10 (hereinafter referred to as 'Payment Intermediary Circular dated November 24, 2009') issued by the Reserve Bank of India. PayPal further contends that it operates under the regulatory framework set out in the circulars issued by the Reserve Bank of India applicable to OPGSP and processes export related receipts from exporters in arrangement with an AD Category-I Schedule Commercial Bank. Thus, according to PayPal, apart from facilitating cross border transactions, it also provides domestic payment gateway services in India as per the standing arrangements with AD Category-I Schedule Commercial Bank in terms of the extant regulatory framework of the Reserve Bank of India. These assertions by PayPal call for a detailed analysis of the payment system structure as governed by the Reserve Bank of India vis-à-vis the reporting regime of payment system operators and

financial institutions under the PMLA, 2002. The following issues emerge in the instant case:

Issue 1: Whether PayPal is a payment system operator as per the provisions of PMLA, 2002?

18. A *'payment system operator'* under section 2(1)(rc) of the Act means a person who operates a *payment system* and such person includes his overseas principal. *'Payment system'* is further defined under section 2(1)(rb) of the Act to mean a system that *enables* payment to be effected between a payer and a beneficiary involving clearing, payment or settlement service or all of them. The explanation to the definition of *'payment system'* clarifies that for the purposes of this clause, *'payment system'* includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations. Thus, payment systems would include all systems carrying out either clearing or settlement or payment operations or all of them. The entities enabling/operating such systems would be called payment system operators. The said definition also extends to all such entities that operate money transfer operations or credit card or debit card or similar operations. It is pertinent to note that the concept of payment system under the Act does not put any restriction on the types of payment systems/services an entity can provide.

PayPal as payment intermediary

19. PayPal contends that it is a *'payment intermediary'* and not a *'payment system operator'*. An intermediary is defined under section 2(1)(n) of the Act. However, the concept of intermediary under the PMLA, 2002 is irrelevant in the instant case, as PayPal is show caused for its alleged failure to register itself as a reporting entity by virtue of it being a *'payment system operator'* and therefore, a financial institution under the provisions of the Act.
20. An intermediary in the literal sense means someone who moves back and forth between two sides and acts as link between them. A payment intermediary in an Internet based financial transaction would thus, mean someone who acts as a link between the payer, the beneficiary and the issuing/acquiring banks by facilitating payment and settlement between them.

21. On perusal of the submissions made by PayPal, I note that it has repeatedly argued that it operates in accordance with the Payment Intermediary Circular dated November 24, 2009 issued by the Reserve Bank of India. On perusing the above-mentioned circular, I note that the Reserve Bank of India considered it necessary to safeguard the interests of the customers by ensuring that payments made by them using Electronic/Online Payment modes are duly accounted for by the intermediaries receiving such payments and remitted to the accounts of the merchants who have supplied the goods and services without undue delay. The Reserve Bank of India in the said Payment Intermediary Circular dated November 24, 2009 further, acknowledged that the increased facilitation by banks and prepaid payment instrument issuers of the use of electronic modes by customers for payments to merchants generally involves the use of ‘intermediaries’ like ‘aggregators’ and ‘payment gateway service providers’. The term ‘intermediaries’ has been defined in the said Circular to include all those entities that collect monies received from customers for payment to merchants using any electronic/online payment mode, for goods and services availed by them and subsequently facilitate the transfer of these monies to the merchants in final settlement of the obligations of the paying customers. Thus, the said definition of ‘intermediaries’ as per the Payment Intermediary Circular dated November 24, 2009 is an inclusive definition that governs not only those entities that provide payment services to the merchants using electronic/online mode, but also those entities that facilitate transfer of such payment for final settlement.
22. Going by the definition of the ‘intermediaries’ as provided by the Reserve Bank of India in the said Payment Intermediary Circular dated November 24 2009, it is clear that ‘intermediaries’ such as ‘payment aggregators’ and ‘payment gateway service providers’ are participants in a payment system that are involved in transferring money and ensuring final settlement between the customer and the merchant. The explanation to the definition of ‘intermediaries’ seeks to exclude all those intermediaries who facilitate delivery of goods/services immediately/simultaneously (eg. travel tickets/movie tickets etc.) on completion of payment by the customer. Such transactions that are akin to Delivery versus Payment (DvP) arrangement continue to be facilitated as per the contracts between the merchants and the intermediaries, and the banks are made incumbent to satisfy themselves that such intermediaries do not fall within the definition of the ‘intermediaries’ when they open accounts other than internal accounts.

23. PayPal Holdings Inc., the parent company of PayPal Payments Private Limited operates a worldwide payments system by enabling digital and mobile payments on behalf of consumers and merchants by creating ways to manage and move money. PayPal Payments Private Limited (PayPal), its Indian subsidiary, on the other hand, denies to operate any payment system in India. It claims that it operates as a 'payment intermediary' and an OPGSP under the extant regulatory framework of the Reserve Bank of India. This, however, is found not to be true.
24. PayPal in its letter dated October 11, 2019 submitted that the business activities carried out by it in India are two fold: (i) it not only operates but also provides domestic payment gateway services in partnership with Scheduled Commercial Banks in accordance with the Payment Intermediary Circular dated November 24, 2009 and (ii) it processes export related receipts from exporters in arrangement with an AD Category-I Scheduled Bank, under the regulatory framework set out in circulars issued by the Reserve Bank of India.
25. Online search revealed that PayPal enables Internet based payments between a payer and a beneficiary and acts as such by providing a platform to its users via PayPal Mobile Application/Web Application. PayPal further, enables its users to transfer money by way of various payment instruments such as credit card, debit card, e-money or similar instruments. A transaction on the PayPal Mobile Application/ Web Application can be initiated by opening either a personal/individual account or a merchant/business account. The said PayPal accounts enable its users to receive or send money by way of various payment instruments like credit card, debit card or e- money. Not only this, PayPal can also review, hold, limit or decline a payment on its digital platform in various scenarios mentioned therein. For instance, a merchant having ties with PayPal may request it to hold a payment temporarily for the goods/services sold on the merchant's website. This business model clearly indicates that, for its domestic operations, PayPal is involved in handling of funds.
26. The exception to the definition of 'intermediaries' as per the Payment Intermediary Circular dated November 24, 2009 seeks to exclude those entities that facilitate instant delivery of goods/services on the completion of payment by the customer [Delivery versus Payment (DvP) arrangement]. Such entities are required to enter into contracts with banks that, in turn, are required to ensure veracity of such entities while opening accounts other

than internal accounts with the banks. PayPal however, does not restrict itself to the DvP arrangement. The business model of PayPal is such that it undertakes payment and settlement between a customer and the merchant irrespective whether there is instant delivery of goods/services. In other words, in carrying out its domestic operations in partnership with banks, PayPal undertakes payment and settlement of a transaction irrespective of the client or business base. Thus, the business model offered by PayPal, clearly indicates that it not only acts as an intermediary, but actively undertakes money transfer operations irrespective of the business activities excluded in the said Payment Intermediary Circular dated November 24, 2009. Further, PayPal undertakes to settle an online transaction by moving money from the customer's account (issuing bank) to the merchant account, which ultimately transmits funds to the merchant's bank account (acquiring bank) when the transaction is finalized. PayPal thus, not only acts as an intermediary, but also operates a payment system by providing payment and settlement services to its users.

PayPal as online payment gateway service provider (OPGSP)

27. PayPal further contends that it is an OPGSP and not a payment system operator, as alleged in the show cause notice. Typically, a payment gateway is a technology that secures an online transaction by encrypting transaction details and routes payment in a highly secured manner between users and the concerned bank . Thus, an online payment gateway service provider (OPGSP) is a merchant service that provides technology infrastructure by authorizing credit card or direct payments processing.
28. The Reserve Bank of India in its Circular No. RBI/DPSS/2019-20/174 DPSS.CO.PD.No.1810/02.14.008/2019-20 dated March 17, 2020 has defined 'payment gateways' as entities that provide technology infrastructure to route and facilitate processing of an online payment transaction without any involvement in handling of funds.
29. According to PayPal, its business in India is that of providing 'payment processing services' and facilitation of 'processing and settlement of import and export related payments' under the framework of the Reserve Bank of India's circular on "Processing and settlement of import and export related payments facilitated by OPGSPs" dated September 24, 2015. The above-mentioned Circular dated September 24, 2015 issued by the Reserve Bank of is preceded by circulars dated November 16, 2010 and June 11, 2013 issued in this regard.

These are, *inter alia*, set of guidelines issued to Authorised Dealer Category-I Banks to cover services provided by OPGSPs to facilitate cross border transactions. However, facilitating or processing cross border transactions by entering into arrangements with Authorised Dealer Category-I Banks is only part of the business activities of PayPal. As detailed in paras 26 and 27 above, the business activities undertaken by PayPal are not confined to providing technological platform to enable an Internet based financial transaction whether, domestic or export based transaction, but are also extended to operate a system by way of which payment and receipts of its customers and merchants are managed and moved through its payment platform.

30. The Reserve Bank of India's Circular bearing reference no. RBI/DPSS/2019-20/174^[1]_[SEP]DPSS.CO.PD.No.1810/02.14.008/2019-20 dated March 17, 2020 makes a distinction between an entity providing payment gateway services i.e OPGSP and payment aggregator (PA). According to Reserve Bank of India, PAs are those entities that facilitate e-commerce sites and merchants to accept various payment instruments from the customers for completion of their payment obligations without the need for merchants to create a separate payment integration system of their own. PAs facilitate merchants to connect with acquirers. In the process, they receive payments from customers, pool and transfer them on to the merchants after a time period. On the other hand, payment gateways are entities that provide technology infrastructure to route and facilitate processing of an online payment transaction without any involvement in handling of funds.
31. It is pertinent to mention that the domestic business model of PayPal as described in paras 26 and 27 above, is akin to a payment aggregator (PA). PayPal, through its Mobile/Web Application not only facilitates e-commerce websites to accept various payment instruments from customers but also, facilitates settlement of transactions by transferring funds to the merchant account and subsequently to the acquiring bank's account.
32. As far as PayPal's business of facilitating cross border transactions as per the standing arrangement with AD Category-I Schedule Commercial Bank is concerned, I observe that the Reserve Bank of India's Circular dated September 24, 2015 and its preceding Circulars dated June 11, 2013 and November 16, 2010 only permit repatriation of export related remittances through OPGSP. Vide Circular dated September 24, 2015, both import and export cross border transactions were permitted. In this kind of a set up, an OPGSP collects

and aggregates money (overseas in case of exports and domestic for imports), transfers money across the border on behalf of the exporter/importer, receives money to/from exporter/importer in the country and transmits export/import transaction information to the AD Category-I Schedule Commercial Bank. Clearly, it is the non-bank OPGSP that operates the cross border transaction payment and settlement system by enabling e-commerce transactions between the exporters/importers through AD Category-I bank.

33. While, it is true that the Reserve Bank of India's Circular dated March 17, 2020 does not mandate a non-bank OPGSP to obtain authorization to provide technology infrastructure, Clause 6 of the said Circular is categorical in mandating applicability of provisions of the Prevention of Money Laundering Act, 2002 and Rules framed thereunder, as amended from time to time to all entities whether, payment aggregators or payment gateways, that facilitate payment and settlement in the online domain.
34. PayPal, by not getting itself registered as a reporting entity under the provisions of the PMLA, 2002 is not only in contravention of the PMLA, 2002 but is also non-compliant with the mandate of the Reserve Bank of India, thereby posing enhanced risk to the financial system of India.

Nature of business activities of PayPal

35. The User Agreement (w.e.f July 31, 2020) Section of the Mobile/Web Application of PayPal makes an admission that it is a 'payment services provider' in India with an offering of the following services in India:
- Export Payment Services which allows its users to receive payments from buyers for the export of goods and services outside India.
 - Domestic Payment Services which allows its users to receive or make payments for goods and services within India.
36. On perusal of response from PayPal during the course of this matter, I observe that PayPal claims to be in the business of 'providing payment service' and not 'operating payment system' in India. It is pertinent to mention that neither the provisions of the Payment and Settlement Systems Act, 2007 nor the PMLA, 2002 create any distinction between 'payment systems' and 'payment services'. The concept of '*payment systems*' under the PMLA, 2002 is similar to the concept defined under the Payment and Settlement of

Systems Act, 2007. Similarly, the definition of ‘*payment system operator*’ under the PMLA, 2002 is similar to the definition of ‘system provider’ under the Payment and Settlement of Systems Act, 2007. On perusing all the definitions under the PMLA, 2002 as well as the Payment and Settlement of Systems Act, 2007, it is clear that the digital payment and settlement system includes not only different payment systems, platforms, payment products but also different payment services. PayPal, by virtue of it providing online payment gateway services and/or domestic payment processing services, is a deemed payment system operator and therefore, a deemed reporting under the provisions of the Act.

Last but not the least, PayPal’s contention that it does not run a payment system in India has been clarified by RBI in court filings and RTI responses cannot be accepted because PayPal has not cited any specific court filing or RTI response in the absence of which its contention is at best a general presumption which cannot be replied to.

Issue 2: Whether PayPal is a reporting entity in terms of the provisions of the PMLA, 2002?

37. Reporting entity as per section 2(1)(wa) of the PMLA, 2002 means a banking company, financial institution, intermediary or a person carrying on a designated business or profession. Section 2(1)(l) of the Act defines a financial institution to mean a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India. A payment system operator is, in turn defined under section 2(1)(rc) of the Act.

38. PayPal in its written submissions has denied being covered under the definition of a reporting entity. I agree that PayPal is neither a banking company, nor an intermediary nor a person carrying on a designated business or profession. PayPal is also not a financial institution as per clause (c) of section 45-I of the Reserve Bank of India Act. However, it is a financial institution in terms of the provisions of the PMLA, 2002 that is comprehensive enough to include all those entities that operate payment systems in India and are therefore, reporting entities under section 2(1)(wa) of the Act.

39. It is evident that the activities undertaken by PayPal and similar other entities are covered under the purview of section 2(1)(wa) read with clauses (l) and (rb) of section 2(1) of the Act. By enabling payment and settlement systems for Internet based transaction by way of various payment instruments, PayPal is in possession of sensitive transaction information. This is especially true in the case of cross border transactions that PayPal facilitates as per its arrangement with the AD Category-I Schedule Bank. PayPal has argued that it is the AD Category-I Schedule Bank that is involved in the clearing and settlement of monies to merchants. However, end-to-end transaction details and information pertaining to payment and settlement transaction that is gathered/transmitted/processed as part of a payment message/instruction is in the possession of PayPal that processes payment transaction as a part of its payment system.
40. Transaction information especially in cases of suspicious transactions and cross border wire transactions facilitated over PayPal's platform, is crucial in enabling FIU-IND to process, analyse and disseminate such information to the relevant institutions/law enforcement agencies of the Government. By not getting itself registered as a reporting entity with FIU-IND, PayPal is not only concealing suspect financial transactions but is also abetting in the disintegration of India's financial system.
41. It is also relevant to mention here that PayPal's parent company, PayPal Inc. not only reports suspect financial transaction to the Financial Crimes Enforcement Network at its home jurisdiction but also reports to counterpart FIU's in Australia (AUSTRAC), National Crime Agency in the United Kingdom etc. By defying the mandate of registering itself as a reporting entity with FIU-IND, PayPal has contravened the provisions of section 12 of the PMLA, 2002 read with rule 7 of the PML Rules, 2005.

Issue 3: Whether non-registration of PayPal under the Payment and Settlement Systems Act, 2007 absolves it from non-compliances under PMLA, 2002?

42. PayPal in its written submissions vide letters dated October 11, 2019 and December 20, 2019 has repeatedly argued that since, it is not licensed as a '*payment system operator*' under the Payment and Settlement Systems Act, 2007, it should not be treated as such under the provisions of the PMLA, 2002. As per PayPal's submissions, the definition of '*payment*

system operator' under the Payment and Settlement Systems Act, 2007 and the PMLA, 2002 are same. It averred that the Reserve Bank of India neither considers nor regulates PayPal as an operator of a payment system under the Payment and Settlement Systems Act, 2007 by virtue of PayPal providing payment intermediary services. According to PayPal, for an entity to get itself registered under the PMLA, 2002, it needs to be directly licensed by the Reserve Bank of India, the Insurance Regulatory and Development Authority (IRDAI) and other such agencies. Since, PayPal is not listed as a payment service provider in the Reserve Bank of India's website; non-licensed, non-regulated entities such as PayPal should not be treated as reporting entities in India.

43. I have gone through the various circulars and discussion papers of the Reserve Bank of India (as stated in paragraphs above) that PayPal has drawn reference to. It is imperative to note that such circulars, notifications are issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007. The object of the Payment and Settlement Systems Act, 2007 is to provide for the regulation and supervision of payment systems in India. Towards this object, the Payment and Settlement Systems Act, 2007 requires that a payment system cannot operate without authorisation. However, for the purposes of the PMLA, 2002, a '*payment system operator*' under section 2(1)(rc) of the PMLA, 2002 does not hinge on the requirement of authorization/licensing from the Reserve Bank of India explicitly. The definitions of '*payment system*' and '*payment system operator*' under the PMLA, 2002 are broad enough to also include such institutions that enable payment and settlement over the Internet by way of various payment instruments.

44. A plain reading of section 2(1)(l) and section 2(1)(rc) of the PMLA, 2002 stipulate that a '*financial institution*' also includes a '*payment system operator*'. The concept of a '*payment system operator*' under the PMLA, 2002 is not de-limited to that of '*financial institution*' under section 45-I of the Reserve Bank of India Act, 1934 and is therefore, distinctly defined by the Legislature under section 2(1)(rc) of the Act. Had the intent of the Legislature been that the PMLA, 2002 would only mandate for those entities that are registered/licensed by the Reserve Bank of India to become reporting entities with FIU-IND, as is argued by PayPal; in that case, the requirement to distinctly define a '*payment system operator*' under the PMLA, 2002 would become redundant as, section 45-I of the Reserve Bank of India Act, 1934 would suffice to cover such institutions. In other words, since, the Prevention of Money Laundering Act, 2002 has distinctly defined a '*payment system operator*' without there being

any requirement for it to get registered, or become licensed, or even be regulated by the Reserve Bank of India; the contention of PayPal that it should not be asked to become a reporting entity with FIU-IND because the Reserve Bank of India does not regulate it has no merit. The mandate of registration as a reporting entity by a *'payment system operator'* under the provisions of the PMLA, 2002 is comprehensive in comparison to the requirement of registration under the provisions of the Payment and Settlement Systems Act, 2007. If the contention of PayPal that because it is not a financial institution under section 45-I of the Reserve Bank of India Act, 1934 and therefore, should not be considered for registration as a reporting entity under the PMLA, 2002 is accepted, this would render the objective of preventing money laundering under the Act as redundant.

45. This also brings me to the point where I find it imperative to discuss as to why registration as a reporting entity is of paramount importance under the PMLA, 2002. The reporting obligations of reporting entities flow from section 12 (1)(a) and section 12(1)(b) of the PMLA, 2002 read with rule 3, 7 and 8 of the PML Rules, 2005. Registration with FIU-IND as reporting entities, is *sine qua non* for compliance with these obligations under the PMLA, 2002. PayPal's argument that it is not registered, licensed, or regulated by the Reserve Bank of India and therefore, should not be made a reporting entity under the PMLA, 2002, is based on the presumption that money laundering and financial terrorism risk flows only from such entities that are registered, licensed or regulated by the Reserve Bank of India. This presumption that money laundering and financial terrorism risk would only flow from entities that are regulated/registered/licensed by the Reserve Bank of India or for that matter, any Regulator in India is fallacious, unreasonable and therefore, cannot be accepted. By virtue of enabling payment system for its users by way of credit card, debit card, money transfer operations; PayPal is functioning as a *'payment system operator'* and is therefore, deemed to be a reporting entity for the purpose of the PMLA, 2002.

46. It is also relevant to note that there has been a recent spurt in non-banking entities entering into the online financial services domain by deploying new forms of technology wherein, large volume of transactions are being enabled through such non-banking entities. This makes it all the more imperative that such entities detect and report specified transactions to FIU-IND, which is in turn, contingent upon these entities registering themselves as reporting entities with FIU-IND. However, from the various submissions made by PayPal, it appears that it is more concerned about interpreting the laws in a manner that would give

it a reason to avoid being regulated or furnishing any reports rather than serving the public interest.

47. Prevention of Money Laundering Act, 2002 is a central legislation dealing with prevention of money laundering, a subject that involves significant public interest and which requires proactive measures by the reporting entities including reporting on suspicious and cross border wire transactions to FIU-IND in order to facilitate preventive action against money laundering. It, thus, becomes imperative that those entities that facilitate electronic transactions, including cross border wire transactions through various payment instruments are brought within the reporting ambit and scope of the Prevention of Money Laundering Act, 2002. These entities by way of facilitating electronic transactions through web based business models and different payment instruments are in possession of sensitive transaction information. Understanding such relevance of their involvement in a web based financial transaction, two such entities in India having similar business operations as that of PayPal, much later, got themselves registered as reporting entities and are thus, complying with the reporting obligations under the PMLA, 2002. This is also proof that FIU-IND's online system for registration of Reporting Entities did not bar PayPal from registering as a Reporting Entity just because PayPal was not registered as a payment system operator with RBI as has been contended by PayPal.

48. I must also point out that before issuance of show cause notice, PayPal was first asked to get itself registered with FIU-IND vide FIU-IND's letter dated March 16, 2018. Thereafter, on various other occasions, PayPal was accorded several opportunities where it could have undertaken registration formalities with FIU-IND. However, on all such occasions PayPal chose to avoid getting registered with FIU-IND and presented fallacious and meritless arguments before me. By not getting itself registered as a reporting entity, PayPal is contravening not only the provisions of the PMLA, 2002 but is also defeating and frustrating the very purpose of the PMLA, 2002 thereby, also frustrating the tenets of public interest in India. This non-cooperation coupled with clear understanding of the vulnerability and risks involved in its operations, clearly proves PayPal's repeated violations of the PMLA obligations.

49. In view of the discussions held hereinabove, I hold that PayPal Payments Private Limited, wilfully avoided its obligations as a reporting entity under the PMLA, 2002 and will be

deemed as a reporting entity for the purpose of PMLA, 2002 and the rules framed thereunder. If that were not so, every reporting entity will find some reason to technically escape being categorized as one, and frustrate the very purpose and object of the PMLA, 2002.

50. Thus, there is ample evidence of the willful violation of the law and, therefore, PayPal cannot be let off with a penalty that should normally be imposed for minor violations. In summary, I find that PayPal is guilty of contravening several obligations under the Act and the Rules, as alleged in the show cause notice and as further elucidated below:

(a) PayPal failed to get itself registered thereby, avoiding its obligations to maintain and report various records under section 12(1)(a) and section 12(1)(b) of the PMLA, 2002 read with rule 3 and 8 of the PML Rules, 2005;

(b) PayPal failed to appoint a Designated Director, as required under rule 7(1) of the PML Rules, 2005 for further compliance of provisions of section 12 of the Act read with rules 3, 5, 8 and 9 of the PML Rules, 2005.

(c) PayPal also failed to appoint a Principal Officer, as required under rule 7(1) of the PML Rules, 2005 for further compliance of provisions of section 12 of the Act read with rules 3, 5, 8 and 9 of the PML Rules, 2005.

51. In view of the foregoing, and after taking into considering that these failures of PayPal were deliberate and willful as well as keeping in mind that the penalties have to be effective, proportionate and dissuasive, I hereby impose a fine of Rs. 32,00,000/- for each failure, as detailed below in the table:

| Sl. No. | Non-compliance of PMLA, 2002 by PayPal | Penalty | Amount |
|----------------|--|--|---------------|
| 1. | Willfully avoiding its obligations under section 12 of the Act by not registering itself as a reporting entity | Rs. 1,00,000/- for each month of violation during the 32-month period from March 16, 2018 when PayPal was first asked to register itself with FIU-IND. | 32,00,000/- |

| | | | |
|--------------|---|---|--------------------|
| 2. | Failure to register its Principal Officer and communicate to the Director, FIU-IND, name and address of the Principal Officer – violation of rule 7(1) of the PML Rules, 2005 | Rs.1,00,000/- for each month of violation during the 32-month period from March 16, 2018 when PayPal was first asked to register its Principal Officer and communicate name and address of the Principal Officer to FIU-IND. | 32,00,000/- |
| 3. | Failure to register its Designated Director and communicate to the Director, FIU-IND, name and address of the Designated Director – violation of rule 7(1) of the PML Rules, 2005 | Rs. 1,00,000/- for each month of violation during the 32-month period from March 16, 2018 when PayPal was first asked to register its Designated Director and communicate name and address of the Designated Director to FIU-IND. | 32,00,000/- |
| Total | | | 96,00,000/- |

52. In view of the above, I, in exercise of the powers conferred upon me under Section 13(2)(d) of the Prevention of Money Laundering Act, 2002 impose a total fine of Rs. 96,00,000/- (Rupees Ninety Six lakhs only) on PayPal Payments Private Limited which will be commensurate with the violations committed by it. PayPal Payments Private Limited shall pay the said amount of fine within 45 days of receipt of this Order by way of Demand Draft in favour of “Pay & Account Officer, Department of Revenue” failing which the provisions of Section 69 of the Act shall apply.

53. Further, by virtue of powers conferred upon me under Section 13(2)(b) of the Prevention of Money Laundering Act, 2002, I, find it expedient to direct PayPal Payments Private Limited to:

- (a) register itself as a reporting entity with FIU-IND within 15 days of the receipt of this

Order;

- (b) appoint the Principal Officer and communicate the name, designation and address thereof within 15 days of the receipt of this order; and
- (c) appoint the Designated Director and communicate the name, designation and address thereof within 15 days of the receipt of this order.

54. I also deem it necessary to state that the fines imposed by this Order are without any prejudice to any further action under section 13 of the Prevention of Money Laundering Act, 2002 that may be taken against the directors, senior management or officers of PayPal Payments Private Limited.

The show cause notice dated September 17, 2019 against PayPal Payments Private Limited, is accordingly, disposed of.

-Sd-

(Pankaj Kumar Mishra)
Director
Financial intelligence Unit – India

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