



In the

RESERVE BANK OF INDIA

Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Manmohan

Deputy General Manager

Date: November 14, 2019

C.A. 4952 / 2019

In the matter of

Shri Ashok Choudhary (Proprietor M/s Coropex)

F 871(A), Road No. 14, V.K.I Area Jaipur - 302013

(Applicant)

In exercise of the powers conferred under section 15 (1) of the Foreign Exchange Management Act, 1999 and the Regulations/Rules/Notifications/Orders made there under, I pass the following

Order

The applicant has filed a compounding application dated May 21, 2019 (received in the Reserve Bank on May 27, 2019) for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded relate to inability of the applicant in making exports within one year of receipt of advance against export order, in contravention of Regulation 16 (1) of Foreign Exchange Management (Exports of



Goods and Services) Regulations, 2000 notified vide Notification No. FEMA 23/2000-RB dated 3rd May 2000 (hereinafter referred to as Notification No. FEMA 23/2000-RB).

2. The relevant facts of the case are as follows: M/s Coropex is a proprietary concern of Shri Ashok Choudhary, engaged in manufacturing of corrugated boxes and bins at its Jaipur factory.

2.1 The captioned company had sent sample of goods to overseas buyer AIH General Merchandise, Nigeria and received export advance of Euro 16154.52 (Rs.11,93,382/-) on October 15, 2015. While goods were ready to dispatch, company received 2nd remittance of Euro 16154.52 (Rs.11,76,097/-) on December 10, 2015. However, the export could not be made as overseas importer was unable to submit mandatory Form M for importing goods into Nigeria to the applicant and thereafter the buyer demanded refund of advance. The applicant claimed inability to refund the advance payment as the same was utilized in manufacturing the goods on order. As the goods were specifically designed for the overseas buyer it has only scrap value for the exporter and thus could not be returned. Thus the applicant was unable to export goods within the prescribed period of one year from the date of receipt of advance against export order.

2.2 The applicant did not fulfil the export obligation within the stipulated time period i.e. one year from the date of receipt of advance payment, in contravention of Regulation 16 (1) of Notification No. 23/2000-RB. The above transaction is reported to RBI vide the compounding application dated May 21, 2019 which was received in RBI on May 27, 2019 and the transaction is taken on record on May 27, 2019 by FED Central Office, RBI.

3. The applicant committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 23/2000-RB, as then applicable:-

3.1 In terms of Regulation 16 (1) of Notification No. FEMA 23/2000-RB, *“Where an exporter receives advance payment (with or without interest), from a buyer outside India, the exporter shall be under an obligation to ensure that – (i) the shipment of goods is made within one year from the date of receipt of advance payment; (ii) the rate*



of interest, if any, payable on the advance payment does not exceed London Inter-Bank Offered Rate (LIBOR) + 100 basis points, and (iii) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received; Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilised portion of advance payment or towards payment of interest, shall be made after the expiry of the said period of one year, without the prior approval of the Reserve Bank.”

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FED.CO.CEFA.No./1293/15.20.67/2019-20 dated September 06, 2019 for further submission in person and/or producing documents, if any, in support of the application. The applicant vide email dated October 24, 2019 submitted that they did not wish to attend the personal hearing and that the case be disposed ex-parte on the basis of the documents submitted. The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as other documents and submissions submitted along with the application.

5. I have given my careful consideration to the documents on record and thereafter. Accordingly, I hold that the applicant has contravened the Regulation 16 (1) of FEMA 23/2000-RB as amended from time to time. **The contravention relates to total amount of Rs.23,69,479/- and the period of contravention ranges from October 15, 2016 to May 27, 2019 i.e. two years seven months (approx.) for 1st installment of Rs.11,93,382/- received on October 15, 2015 and from December 12, 2016 to May 27,2019 i.e. two years and five months (approx.) for 2nd installment of Rs.11,76,097/- received on December 12, 2015.**

6. It has been declared in the compounding application dated May 21, 2019 that the particulars given by the applicant in the application are true and correct to the best of his knowledge and belief. It has been declared in the declaration furnished along with the compounding application that the applicant was under enquiry by the Directorate of



Enforcement (DoE), in connection with the same transaction and that all the details required by DoE at the time had been furnished by the applicant.

RBI, vide its letter reference No. FED.CO.CEFA/7144/15.20.67/2018-19 dated June 03, 2019 and FED.CO.CEFA/85/15.20.67/2019-20 dated July 04, 2019 had sought a No Objection Certificate (NOC) from DoE to proceed with the compounding process. DoE, vide its letter ref. No. RBI/SDE/WR/B-247/2019/030 dated July 04, 2019, conveyed their no objection to compounding of the abovementioned contraventions.

Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made/undertaking furnished by the applicant and this order is without prejudice to any other action which may be taken by any authority under the extant laws if the said declarations/undertakings are subsequently discovered to be false and/or incorrect. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced, and submissions made during the personal hearing.

7. In terms of Section 13 of the FEMA, any person contravening any provision of the Act shall be liable to a penalty up to thrice the sum involved in such contravention upon adjudication. However, taking into account the relevant facts and circumstances of the case as stated in the foregoing paragraphs, I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and I consider that an amount of **Rs.64,217/- (Rupees sixty four thousand two hundred and seventeen only)** will meet the ends of justice in the circumstances of the case.

8. Accordingly, I compound the admitted contraventions namely, the contravention of Regulation 16 (1) of Notification No. FEMA 23/2000-RB amended from time to time by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of **Rs.64,217/- (Rupees sixty four thousand two hundred and seventeen only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai 400001 by a demand draft drawn in



favour of the "Reserve Bank of India" and payable at "Mumbai" within a period of 15 days from the date of this order. In case of failure to deposit the compounded amount within the above mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 dated May 3, 2000 shall apply.

The application is disposed of accordingly.

Dated this the 14th day of November, 2019

Sd/-

Manmohan

Deputy General Manager