



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
Central Office Cell, 2nd Floor
6, Sansad Marg
New Delhi - 110 001

Present

Rahul Sinha

General Manager

Date: March 18, 2019

C.A. No. 85 /2019

In the matter of

Mr Thakorbhai Dahyabhai Patel

1100, Bell Road, Antioch

Tennessee (TN) – 37013, USA

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

Order

The applicant Mr Thakorbhai Dahyabhai Patel, has filed an application dated September 19, 2018 (received in RBI on September 25, 2018) for compounding of contravention of the provisions of Foreign Exchange Management Act, 1999 (the FEMA) and the Regulations issued thereunder. The contravention sought to be compounded relate to transfer of funds from NRE account to ordinary savings account, in contravention of the provisions under Regulation 4(C) of Schedule 1 to Notification No. FEMA.5/2000-RB dated May 3, 2000, as amended from time to time. (hereinafter referred to as FEMA 5 *ibid.*).



The brief facts of the case are as follows:

- a. The applicant, Mr. Thakorbhai Dahyabhai Patel is an OCI and a person non-resident in India in terms of Section 2(w) of Foreign Exchange Management Act, 1999. The applicant has opened and maintained ordinary saving bank account with ICICI Bank Ltd. and Prime Co-operative Bank Limited. Being a non-resident he is not eligible to open and maintain an ordinary saving account as per extant FEMA guidelines.
- b. The applicant has granted a loan of ₹ 1,39,01,100/- to his friend Mr. Narendra V Solanki, a person resident in India in 5 stances starting from 04.01.2013 to 04.09.2014, from his ordinary savings account maintained with ICICI Bank, the amount represented either transfer of funds from his NRE Account maintained with HDFC Bank or amount received from LIC on his father's death.
- c. For this purpose the applicant has transferred ₹ 85,01,100/- from his NRE Account maintained with HDFC Bank to his ordinary savings account maintained with ICICI Bank thereby contravening Regulation 4(C) of Schedule 1 to Notification No. FEMA.5/2000-RB dated 3rd May 2000. He also charged 6% interest per annum and earned a total interest of ₹ 35,94,988/-
- d. Regulation 4(C) of Schedule 1 to Notification No. FEMA.5/2000-RB dated 3rd May 2000 states that permissible debit of NRE account is transfer to NRE / FCNR (B) accounts of the account holder or any other person eligible to maintain such account.
- e. Further, the loan transaction failed to comply with Regulation 4(i) and (ii) of Notification No. FEMA.4/2000-RB dated 3rd May 2000 as updated upto 20.09.2013, making regulations relating to borrowing and lending in rupees between a person resident in India and a person resident outside India.
- f. The applicant has received the loan repayment of an amount of ₹ 1,69,30,072/- from the borrower, Mr. Narendra V Solanki starting from 29.02.2016 to 23.11.2017 as credit of an amount of ₹ 1,25,000/- to his Savings Bank Account with ICICI Bank on 29.02.2016 and as credit of an amount of ₹ 1,68,05,072/- to his NRO Account maintained with HDFC Bank in two instalments i.e ₹ 5,00,000/- on 30.10.2017 and ₹ 1,63,05,072/- on 23.11.2017.



g. The matter was regularized and the applicant was advised about the compounding proceedings vide RBI, New Delhi letter FED.CO.ND.NRFAD/109/22.13.035/2018-19 dated August 10, 2018

h. The applicant has transferred ₹ 85,01,100/- from his NRE Account maintained with HDFC Bank to his ordinary savings account maintained with ICICI Bank and hence, ₹ 85,01,100/- (Rupees Eighty five lakh one thousand and one hundred only) has been considered as the amount of contravention.

i. The funds were transferred from NRE account to saving account on January 4, 2013, April 25, 2013 and September 3, 2014. The period of contravention, therefore, may be considered with effect from January 4, 2013 – date of first transfer to August 10, 2018 – date of regularization i.e. 5 years 7 months and 6 days.

i. The amount and period of contravention is as follows:

Amount: ₹ 85,01,100/- (Rupees Eighty five lakh one thousand and one hundred only)

Period: 5 years 7 months and 6 days from January 4, 2013 – date of first transfer to August 10, 2018 – date of regularization

3. The applicant has contravened the Regulation 4(C) of Schedule 1 to Foreign Exchange Management (Deposit) Regulations, 2000 notified vide Notification No. FEMA.5/2000-RB dated May 03, 2000, as amended from time to time. Regulation 4(C) of Schedule 1 to Notification No. FEMA.5/2000-RB ibid. states that permissible debit of NRE account is transfer to NRE / FCNR (B) accounts of the account holder or any other person eligible to maintain such account.

In the instant case, the applicant has transferred ₹ 85,01,100/- from his NRE Account maintained with HDFC Bank to his ordinary savings account maintained with ICICI Bank. The aforementioned contravention has been regularized by RBI letter No. FED.CO.ND.NRFAD/109/22.13.035/2018-19 dated August 10, 2018 subject to compounding of contravention.

4. The applicant was given an opportunity for personal hearing vide email/letter dated February 5, 2019 for further submission in person and /or producing documents,



if any, in support of the application. Applicant's representative Mr. Mayur Nayak appeared representing the applicant, for the personal hearing on February 22, 2019. The representative of the applicant admitted the contravention committed by the applicant for which he has sought compounding and submitted that the contravention was not intentional and requested to take a lenient view.

5. It has been declared in the compounding application dated September 19, 2018 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 undertaking furnished with the compounding application that the applicant was not under any enquiry/investigation/adjudication by any agency as on the date of the application and has, in this regard, not informed of initiation of any such enquiry/investigation/adjudication proceedings against him thereafter. Accordingly, the above contravention which are being compounded in this Order are subject to the veracity of the above declarations made 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 are subsequently discovered to be false and/or incorrect. The application for compounding is, therefore, being decided on the basis of the averments/submission made in the application as well as other documents and also submissions made in this context by Mr. Mayur Nayak during the personal hearing.

6. I have given my careful consideration to the documents on record and submission made by the applicant. Accordingly, I hold that the applicant has contravened Regulation 4(C) of Schedule 1 to Foreign Exchange Management (Deposit) Regulations, 2000 *notified vide* Notification No. FEMA.5/2000-RB dated May 03, 2000, as amended from time to time. The contravention amount i.e the funds transferred from NRE to saving account, comes to ₹ 85,01,100/- (Rupees Eighty five lakh one thousand and one hundred only) and the period of contravention stands at 5 years 7 months and 6 days from January 4, 2013 – date of first transfer to August 10, 2018 – date of regularization.

7. In terms of Section 13 of the FEMA, 1999, 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, after considering the submissions made by



the applicant and the entire facts and circumstances of the case, I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and I consider that payment of an amount of ₹ 1,13,758/- (Rupees One lakh thirteen thousand seven hundred and fifty eight only) will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound the admitted contravention namely the contravention of Regulation 4(C) of Schedule 1 to Foreign Exchange Management (Deposit) Regulations, 2000 *notified vide* Notification No. FEMA.5/2000-RB dated May 03, 2000, as amended from time to time, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹ 1,13,758/- (Rupees One lakh thirteen thousand seven hundred and fifty eight only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Office Cell, 2nd Floor, 6, Sansad Marg, New Delhi – 110 001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Delhi 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 03, 2000, as amended from time to time, shall apply.

The application is disposed accordingly.

Dated this the eighteenth day of March 2019.

Rahul Sinha
General Manager