



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

R.K. Moolchandani
Chief General Manager

Date: November 05, 2019
CA No 4940/ 2019

In the matter of

Azoy Bansal
E – 67, Gems & Jewellery Zone, EPIP, Sitapura
Jaipur - 302022

(Applicant)

In exercise of the powers conferred 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 has filed the application dated May 09, 2019 (received in the Reserve Bank on May 10, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder, by the company where he was a director. The compounding is sought in terms of Section 42(1) of FEMA, 1999 which stipulates that 'Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the



business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly'. The above-mentioned applicant was one of the directors of H F Metal Art Private Ltd., during the relevant period when the company had contravened certain provisions of FEMA 1999, namely, (i) failure to export the goods within a period of one year from the date of receipt of advance and (ii) failure to realize export proceeds within stipulated time period. This amounts to violation of Regulation 16 and Regulation 9 of FEMA Notification 23/2000- RB dated May 03, 2000 of Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 notified vide Notification No. FEMA 23/2000-RB dated May 03, 2000 as amended from time to time (hereinafter referred to as FEMA 23) and Regulation 9 of FEMA Notification 23R/2015-RB dated January 12, 2016 of Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, (hereinafter referred to as FEMA 23R).

2. The relevant facts are as under:

The abovementioned applicant was a Director of an Indian company viz. H F Metal Art Private Limited during the relevant period, when the company had received certain export advances during January 2008 to July 2011 amounting to Rs 6,30,79,984/-, but was unable to make exports within the prescribed time limit. However, the company has adjusted the export advances against exports made during August 2013 to June 2014 and as on date no advances are outstanding. The failure to export goods within one year from the date of receipt of advance payment resulted in contravention of Regulation 16 of FEMA 23.

Also, the company could not realize export proceeds against certain exports amounting to Rs 10,58,50,346/-, within the prescribed time period (nine months) during 2014-2018. This was a contravention of Regulation 9 of FEMA 23 (for transactions up to January 11, 2016 and Regulation 9 of FEMA 23R, (for transactions post January 11, 2016).

3. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/1822/15.20.67/2019-20 dated October 10, 2019 for further submission in person and/or producing documents, if any, in support of the application. A personal hearing was held on October 22, 2019 which was



attended by the applicant and it was submitted that the contraventions committed by the company were inadvertent and it was also requested that a lenient view may be taken in the matter.

4. It has been declared in the compounding application dated May 09, 2019, that the particulars given by the applicant in the application were true and correct to the best of the applicant's 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 trade related transactions of the company 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/6924/15.20.67/2018-19 dated 24.05.2019 had sought No Objection Certificate (NOC) from DoE to proceed with the compounding process. DoE, vide its letter ref. No. T-4/3/FEMA/JPZO/2017-ADE/1492, dated 21.06.2019, conveyed their 'no objection' to compounding of the abovementioned contraventions.

The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the meeting with the Compounding Authority. Therefore, compounding of the above contraventions in this Order is subject to the veracity of the above declarations made by the applicant and is also based on the NOC received from DoE. This Order is without prejudice to any action which may be taken by DoE or any other authority under FEMA, 1999 and/or any other extant laws.

5. I have given my careful consideration to the documents on record and submissions made during the personal hearing. It was observed that the applicant has contravened the provisions of Section 42(1) of FEMA, 1999, in respect of contraventions committed by the company where he was a Director. The amount of contravention (committed by the company) is Rs 16,89,30,330/- (Rs 6,30,79,984/- with respect to Regulation 16 of FEMA 23+ Rs 10,58,50,346/- with respect to Regulation 9 of FEMA 23/23R)



Period of contravention ranges from 11 months to 4.6 years approximately for Regulation 16 of FEMA 23 and for Regulation 9 of FEMA23/23R it ranges from one day to seven months approximately.

6. 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. After considering the submissions made by the applicant and the entire facts and circumstances of the case, it stands to reason that payment of an amount of Rs.1,03,300/- (Rupees One lakh three thousand and three hundred only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, the admitted contraventions committed by the company, in respect of which the applicant has applied for compounding of contraventions under Section 42(1) of FEMA, 1999, on payment of a sum of Rs.1,03,300/- (Rupees One lakh three thousand and three hundred only) which shall be deposited by the applicant with the "The Chief General Manager – In - Charge, 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 accordingly.

Dated this the 5th day of November, 2019

Sd/-
(R.K. Moolchandani)
Chief General Manager