



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.89 /2019

In the matter of

Mr. Chandan Kumar Mishra

1901 Halford Avenue, APT 211

California, USA 95051

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. Chandan Kumar Mishra, has filed an application dated October 12, 2018 (received in RBI on October 26, 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 acquisition of immovable property (agricultural land) in India by a NRI without RBI permission, in contravention of the provisions under Regulation 8 of Notification No. FEMA.21 /2000-RB dated May 03, 2000, as amended from time to time. (hereinafter referred to as FEMA 21 *ibid.*).



2. The relevant facts of the case are as follows:
- a. The applicant, Mr. Chandan Kumar Mishra is an NRI, presently residing in California, USA. His Indian residence is in Jamshedpur, East Singbhum, Jharkhand, India. The applicant has purchased immovable property viz. 8 acres of agricultural land in Survey No. 349, Alandurai village, Perur Taluk, District - Coimbatore, India on December 21, 2016, without obtaining prior permission from the Reserve Bank of India
- b. The details of the immovable property under reference are given below :

Revenue & other Details	Area	Amount	
8 Acres of agricultural land of Patta No. 1278, S.F. No. 349, Alandurai Village, Perur Taluk, Coimbatore District. Land is classified as Dry Maanvari Type-III	8 Acres	Cost of Acquisition - Rs.97,60,000/-	Cost of immovable property at the time of transfer(as per valuation report)- Rs 98,00, 000/-

The immovable property was acquired for total consideration of ₹. Rs.97,60,000.00/- (Rupees Ninety Seven Lakh Sixty Thousand Only).

- c. The total consideration of Rs.97,60,000.00/-(Ninety Seven Lakh Sixty Thousand Only) has been paid to Mr. Albert Selvam (Power Agent cum Vendor) towards the purchase of above mentioned agricultural land. The part payment amounting to Rs 96,92,003/- was made by way of RTGS/ NEFT through SBI, on different dates, and the remaining balance of Rs.67,997/-(Sixty Seven Thousand Nine Hundred Ninety Seven) was paid in cash.
- d. All transactions have been originated from the account of Smt. Renu Devi, maintained with SBI, Salem Branch, Tamil Nadu and credited to the account of Mr. S.S. Albert Selvam, maintained with Axis Bank, Karumathampatti Branch, Tamil Nadu.



- e. No trace of foreign inward remittance had been noticed from the account statement of Smt. Renu Devi, hence, matter was sent to the Directorate of Enforcement, Chennai for further investigation vide our letter FED.CO.ND (IP).212/10.51.000/2017-18 dated September 5, 2017.
- f. Directorate of Enforcement, Chennai, vide letter No. T3/CEZO/ZII/34/2018(RN) dated July 9, 2018, in reply to our letter dated September 05, 2017, submitted that as mentioned in Para 8.3 of “Master Circular No. 09/2015-16 on Compounding under FEMA 1999” no money laundering angle, national security concern and / or serious infringements of the regulatory framework have been detected in the transactions of Mr. Chandan Kumar Mishra. Hence, DoE has no objection to his compounding application.
- g. The aforesaid acquisition of immovable property i.e. agricultural land in Tamil Nadu by Mr. Chandan Kumar Mishra, NRI without Reserve Bank’s permission, is in contravention of Regulation 8 of Notification No. FEMA 21/2000-RB dated May 03, 2000, which states that save as otherwise provided in the Act or Regulations, no person resident outside India shall transfer any immovable property in India.
Provided that the Reserve Bank may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.
- h. In view of the above, he was advised vide RBI letter No. FED.CO.ND(IP) 94/10.51.000/2017-18 dated August 8, 2018 to sell the immovable property to a person resident citizen of India within six months from the date of the letter and not to repatriate sale proceeds of the property without prior approval of the RBI subject to compounding of contravention. However, the applicant has already transferred the property under reference by way of gift to Mrs. Shanti Mishra, a resident citizen of India vide settlement deed executed on March 22, 2018.
- i. As per the valuation report dated August 14, 2018 submitted by applicant the value of land has been appreciated to ₹98,00,000/- (Rupees Ninety eight Lakh only) since 2016, by virtue of which the applicant has earned ₹ 40,000/- (₹ Rs 98, 00, 000- ₹ 97,60,000/-) as undue gain.



- j. The contravention has been regularized vide our letter No. FED.CO.ND(IP) 94/10.51.000/2017-18 dated August 8, 2018 subject to Compounding of contravention.
- k. The purchase price of the Immovable Property under reference i.e. ₹ 97,60,000/- (Rupees Ninety Seven Lakh Sixty Thousand Only) has been considered as the amount of contravention. Further, the cost of land has been appreciated to ₹98,00,000/- (Rupees Ninety eight Lakh only). Hence, the difference i.e. ₹ 40,000/- (Rupees Forty thousand only) has been considered as the undue gain.
- l. The purchase and transfer transaction took place on December 21, 2016 and March 22, 2018 respectively. The period of contravention, therefore, may be considered with effect from December 21, 2016 to March 22, 2018 i.e. 1 year 03 months and 01 day.
- m. The amount and period of contravention is as follows:
- Amount:** ₹97,60,000/- (Rupees Ninety Seven Lakh Sixty Thousand Only)
- Undue Gain:** ₹ 40,000/- (Rupees Forty thousand only)
- Period:** 1 year 03 months and 01 day i.e. from December 21, 2016 to March 22, 2018.

3. The applicant has contravened the Regulation 8 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 notified vide Notification No. FEMA.21/2000-RB dated May 03, 2000 as amended from time to time. Regulation 8 of FEMA 21 ibid. states that save as otherwise provided in the Act or Regulations, no person resident outside India shall transfer any immovable property in India. Provided that the Reserve Bank may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.

In the instant case, the applicant being a NRI has purchased 8 Acres of agricultural land in India without prior approval of Reserve Bank. The aforementioned contravention has been regularized by RBI letter No. FED.CO.ND(IP) 94/10.51.000/2017-18 dated August 8, 2018 subject to compounding of contravention.



4. The applicant was given an opportunity for personal hearing vide email dated February 4, 2019 for further submission in person and /or producing documents, if any, in support of the application. Applicant vide email dated February 4, 2019 has stated that he will not be able to attend hearing in person and has no objection if the proceeding is completed in his absence. He has further stated that he will accept and follow the verdict of RBI.

5. It has been declared in the compounding application dated October 12, 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 is being compounded in this Order is 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.

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 8 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 *notified vide* Notification No. FEMA.21/2000-RB dated May 03, 2000 as amended from time to time. The contravention amount i.e. the purchase price of the Immovable Property under reference comes to ₹97,60,000/- (Rupees Ninety Seven Lakh Sixty Thousand Only) and the undue gain comes to ₹ 40,000/- (Rupees Forty thousand only) and the period of contravention stands at 1 year 03 months and 01 day from December 21, 2016 to March 22, 2018. i.e. from the date of acquisition of property to the date of transfer of property.



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 ₹1,43,680/- (Rupees One lakh forty three thousand six hundred and eighty 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 8 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 *notified vide* Notification No. FEMA.21/2000-RB dated 3rd May 2000, as amended from time to time, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹1,43,680/- (Rupees One lakh forty three thousand six hundred and eighty 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