



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

Central Office Cell, 2nd floor

6, Sansad Marg

New Delhi - 110 001

Present

Shri R.K.Moolchandani

Chief General Manager

Date: February 26, 2019

C.A. No.90 /2019

In the matter of

Mr Joel Queirel and Mrs Benedicte Pascale Mireille Caille

VP 1 UA 49, Belcyka Villa, Harbour Road, Vizhinjam,

Thiruvananthapuram - 695521

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.

Order

The applicants Mr Joel Queirel and Mrs Benedicte Pascale Mireille Caille, have filed an application dated August 28, 2018 (received in RBI on September 03, 2018) for compounding of contraventions 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 by non-resident foreign national in India 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 applicants Mr. Joel Queirel and Mrs Benedicte Pascale Mireille Caille are non-resident French citizens of non-Indian origin. They have acquired a plot (by way of purchase) in joint names, without Reserve Bank permission on May 16, 2005 having area of 13.63 ares (approximately 1373 square meters), located at Vizhinjam Village, Neyyatinkara Taluk, District – Thiruvananthapuram, Kerala and subsequently built a 550 sq.mt. residential building on the same plot contravening thereby Regulation 8 of Notification No. FEMA.21 /2000-RB dated May 03, 2000, as amended from time to time.
- b. As per information furnished by the applicants, the source of fund to make payment for purchase of land under reference, was brought from France through A/c no. 11615 maintained in joint names of Mr. Joel Queirel and Mrs Benedicte Pascale Mireille Caille with Central Bank of India, Kovalam Branch, Kerala. The applicants have submitted the FIRC's issued by Central Bank of India dated December 26, 2017 for ₹1,37,28,234/- received in between March 16, 2005 and December 14, 2007.
- c. The applicants were non-resident foreign citizens of non-Indian origin at the time of acquisition of the property. As such they were not eligible to purchase any immovable property in India.
- d. The details of the immovable property including residential building under reference are given below :

Details of the IP	Area	Cost of acquisition/construction
a) A plot under Survey No. 370/2-B Resurvey No. 47/14-2 and 47/14. and built up area of 550	13.63 ares land + 550 sq. mt. building	₹. 1,00,00,000/- (Rupees one crore only) - ₹.15,00,000/- (cost of land) and ₹. 85, 00,000/-



sq.mt. residential building on the same plot at Vizhinjam Village, Neyyatinkara Taluk, District – Thiruvananthapuram, Kerala	(construction cost)
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- e. The applicants were advised by RBI, Kochi vide letter no. KOC.FED.NRFAD /1125/65.27.015/2016-17 dated October 5, 2016 to sell the property under reference to a person resident in India within six months.
- f. As informed, the property under reference has been sold on April 19, 2017 for a total consideration of ₹.75,00,000/- to Magi Resort Pvt Ltd, a company incorporated in India.
- g. The contravention has been regularized subject to selling the IP under reference by the applicants to a person resident in India and Compounding of contravention vide RBI letter no. FED.CO.ND (IP). 325 /10.51.000 /2016-17 dated September 19, 2016.
- h. Though the applicants have submitted the valuation report prepared by Er. J.K. Nair dated July 9, 2018 wherein the land and Building has been valued at ₹ 84,91,000/- (Rupees Eighty four lakh ninety one thousand only), RBI has independently obtained the valuation report prepared by V. Sankaranarayanan, wherein the land and building is valued at ₹ 1,28,75,000/- (Rupees One crore twenty eight lakh seventy five thousand only).
- i. The purchase price of the Immovable property under reference i.e. ₹. 15,00,000/- (Rupees Fifteen lakh only) and construction cost of building i.e ₹85,00,000/- (Rupees Eighty five lakh only) aggregating to ₹ 1,00,00,000/- (Rupees One crore only) has been considered as the amount of



contravention. Further, it can be concluded from the independent valuation report obtained by RBI, that the property was not transferred at its fair market value. Considering the facts & circumstances of the case, the appreciation in the value of the land and building based upon the independent valuation report as obtained by RBI, is the undue gain that is deemed to accrue from the contravention committed by the applicants. Therefore, the difference amount i.e ₹28,75,000/- (Rupees Twenty eight lakh seventy five thousand only) between the acquisition cost of land and building i.e ₹ 1,00,00,000/- (Rupees one crore only) and the value of the land and building as per the independent valuation report at ₹1,28,75,000 (Rupees One crore twenty eight lakh seventy five thousand only) has been considered as the undue gain.

- j. The purchase and sale transactions took place on May 16, 2005 and April 19, 2017 respectively. The period of contravention is, therefore, considered with effect from May 16, 2005 to April 19, 2017 that is 11 years 11 months 03 days.
- k. The amount and period of contravention is as follows:
Amount: ₹. 1,00,00,000/- (Rupees one crore only)
Undue Gain: ₹28,75,000/- (Rupees Twenty eight lakh seventy five thousand only)
Period: 11 years 11 months 03 days i.e from May 16, 2005 to April 19, 2017.

3. The company 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. Regulation 8 of the above notification 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 applicants being foreign national and non-resident in India have purchased immovable property in India without prior approval of Reserve Bank. The aforementioned contravention has been regularized by RBI, New Delhi letter No. FED.CO.ND (IP). 325 /10.51.000 /2016-17 dated September 19, 2016 addressed to Kochi office subject to compounding of contravention.

4. The applicants were given an opportunity for personal hearing vide email dated February 21, 2019 for further submission in person and /or producing documents, if any, in support of the application. Applicants' representative Shri Pankajakshan.C.G, senior partner, Verma and Verma, Chartered accountants, Trivandrum appeared representing the applicants, for the personal hearing on February 26, 2019. The representative/s of the applicants admitted the contravention committed by the applicants for which they have 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 August 28, 2018 that the particulars given by the applicants in the application are true and correct to the best of their/his/her knowledge and belief. It has been declared in the undertaking furnished with the compounding application that the applicants were 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 it/him/her thereafter. It has further been declared that the applicants have not filed any appeal under section 17 or section 19 of FEMA, 1999. Accordingly, the above contravention which is being compounded in this Order is subject to the veracity of the above declarations made by the applicants 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 Shri Pankajakshan.C.G, senior partner, Verma and Verma, Chartered accountants, Trivandrum during the personal hearing.



6. I have given my careful consideration to the documents on record and submission made by the applicants. Accordingly, I hold that the applicants have 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 3rd May 2000 as amended from time to time. The contravention amount [i.e the cost of land and building, therefore, comes to ₹1,00,00,000/- (Rupees one crore only) and the undue gain comes to ₹28,75,000/- (Rupees Twenty eight lakh seventy five thousand only) and the period of contravention stands at 11 years 11 months 03 days (i.e., from the date of purchasing to the date of selling the immovable 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 applicants and the entire facts and circumstances of the case, I consider that payment of an amount of ₹30,00,000/- (Rupees Thirty lakh 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 ₹30,00,000/- (Rupees Thirty lakh only) which shall be deposited by the applicants 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 26th day of February, 2019 .

R.K. Moolchandani
Chief General Manager