



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
Fort, Mumbai - 400 001

Present

Manmohan
Deputy General Manager
Date: August 20, 2019
C.A. 4898/2019

In the matter of

Mulchand R Shah Jewellers Pvt. Ltd.
Registered Office: 33/A, Laram Shopping Centre, S V Road, Andheri West,
Mumbai-400 058

(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 February 19, 2019 (received in the Reserve Bank of India on February 22, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded relates to (i) delayed reporting of remittance (ii) delayed submission of Annual Performance Reports (APR) (iii) disinvestment under automatic route without obtaining fair valuation certificate and (iv) disinvestment without submission of the APRs. This amounts to contravention of Regulations 6(2) (vii) of Notification No. FEMA 19/2000-RB dated May 03, 2000, 15(iii), 16(i) (iii) and 16(1) (v) of Notification No. FEMA 120/2004-RB dated July 07, 2004 as amended from time to time.



2. The relevant facts of the case are as follows:

2.1 The applicant, a private limited company incorporated as Jay Gold Jewellery Exim Private Limited under the Companies Act, 1956, on August 16, 1991 and its name was changed to Mulchand R Shah Jewellers Pvt. Ltd. on September 18, 1998. The applicant company is engaged in the business of goldsmiths, silversmiths, jewellers, gems and diamond merchants and dealing in jewellery etc.

2.2. The applicant had set up an overseas WOS viz., Sneh International Limited in Mauritius by remitting USD 5000 as equity in November, 1999. The applicant had also remitted USD 70000 in March 2001 towards investment in redeemable preference shares of overseas WOS.

2.3 Though the applicant has applied for compounding stating there was a delay in submission of Form ODA to the AD bank for the afore said remittance, as required under Regulation 6(2) (vii) of Notification No FEMA19/2000-RB dated May 03, 2000, it was observed from the records that the Indian Party (IP) has submitted relevant Form ODA as prescribed under the aforesaid Regulation and hence it was not compounded as no contravention was observed. The applicant delayed the submission of APR for the year 2004-05 (submitted to the AD bank on February 28, 2017) in contravention of Regulation 15 (iii) of Notification No.FEMA 120/2004-RB dated July 07, 2004. Further the applicant disinvested from the WOS on July 22, 2005 under automatic route without obtaining fair valuation certificate in contravention of Regulation 16(1) (iii) of Notification *ibid*. The valuation certificate was submitted to the AD bank on February 28, 2017. Also, the disinvestment was done without the submission of APR in contravention to Regulation 16(i) (v) of the Notification *ibid*.

3. The following are the observed contraventions:

3.1 Whereas Regulation 15(iii) of FEMA 120/2004-RB, dated July 07, 2004 states that an Indian Party, which has acquired foreign security in terms of the Regulations in Part- I, shall -submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before a specified date, an Annual Performance Report (APR) in Part III of Form ODI, as prescribed by the Reserve Bank from time to time, in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time. The APR, so required to be submitted, has to be based on the audited



annual accounts of the JV / WOS for the preceding year, unless specifically exempted by the Reserve Bank.

3.2 Whereas Regulation 16(1)(iii) of the notification *ibid*, states that an Indian Party may transfer, by way of sale to another Indian Party any share or security held by it in a JV or WOS outside India subject to the condition that if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS.

3.3 Whereas Regulation 16(1) (v) of the notification *ibid*, states that an Indian Party may transfer, by way of sale to another Indian Party any share or security held by it in a JV or WOS outside India subject to the condition that the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;

4. The applicant was given an opportunity for personal hearing vide letter No.FE.CO.CEFA.No./891/15.20.67/2019-20 dated August 16, 2019 for further submission in person and / or producing documents, if any, in support of the application. Shri Minesh Shah, Director and Shri Nirav Panchmia, CA, represented the applicant company during the personal hearing held on August 19, 2019. The representatives of the applicant submitted that the contraventions on the part of the applicant company were unintentional and arose out of lack of knowledge about the legal requirements associated with the transaction, which the applicant entered with an intention of expanding its business abroad. The representative of the applicant company also requested for a lenient view on the contraventions, in view of the fact that the promoters had approached the transaction only from a technical background and could not understand the 'legal complexities' of the matter. The application for compounding was considered based on the averments made in the application as well as other documents and submissions made in this context by the applicant.

5. I have given my careful consideration to the documents on record and submissions made by the representative of the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant contravened the following Regulation of Notification No. FEMA120/2004-RB dated July 7, 2004:



(i) Regulation 15(iii) -The APR for the year 2004-2005 were submitted with delay beyond the prescribed period thereby contravening the said FEMA regulation.

(ii) Regulation 16(1)(iii) -The amount of contravention in INR, as declared by the applicant is ₹34,69,450/- approximately and the period of contravention is taken as about 12 years i.e. from July 22, 2005 – date of disinvestment to August 28, 2017- date of submission of valuation certificate to the AD bank.

(iii) Regulation 16(1)(v) -The amount of contravention in INR, as declared by the applicant is ₹34,69,450/-approximately and the period of contravention is taken as about 12 years i.e. from July 22, 2005 – date of disinvestment to February 28, 2017- date of submission of APR to the AD bank.

6. It has been declared in the compounding application dated February 19, 2019 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been declared in the declaration dated February 19, 2019 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 it/him/her thereafter. Accordingly, the above contraventions 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.

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 payment of an amount of **₹1, 62,042/- (Rupees One lakh sixty two thousand and forty two only)** will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulations 15(iii), 16(1) (iii) and 16 (1) (v) of Notification No. FEMA 120/2004-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of **₹1,62,042/- (Rupees One lakh**



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sixty two thousand and forty two only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai – 400 001 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 day the 20th day of August 2019

Sd/-

(Manmohan)
Deputy General Manager