



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

Central Office Cell, 2nd Floor

6, Sansad Marg

New Delhi - 110 001

Present

R.K. Moolchandani

Chief General Manager

Date: June 27, 2019

C.A. No.97/2019

In the matter of

Mr Raiomand Billimoria and Mrs Anita Nirody

C/o Anoma Legal, 3rd Floor EMCA House

Shahid Bhagat Singh Road

Fort - Mumbai

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 applicants, Mr Raiomand Billimoria and Mrs Anita Nirody have filed an application dated December 19, 2018 (received in RBI on January 4, 2019) 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 PIOs 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 brief facts of the case are as follows:

a. The applicants, Mr. Raiomand Billimoria and Mrs. Anita Nirody, are Person(s) of Indian Origin ("PIOs") and are citizens of United States of America. The applicants are persons resident outside India within the meaning of section 2 (w) of the Foreign Exchange Management Act, 1999.

b. The Applicants have purchased an immovable property (agricultural land) situated at Aldona, Bardez-Goa, bearing House No. 288, Survey No. 51/36 from Mr. Anil Rambhai Mistry & Mrs. Serafina Mistry by way of a Sale Deed dated January 20, 2015.

c. The details of the property are as follows:

Revenue & other Details	Area	Amount	
1. Plot of land situated at Aldona, along with a residential house no. 288 bearing survey No. 51/36 having a build up area of about 247 sq. mtrs plus 42 sq. mtr. Varandah and a well, within the limit of village panchayat of Aldona, Bardez - Goa	Plot of land admeasuring 875 mts sq. and build up area of about 247 sq. mtrs plus 42 sq. mtr. Varandah	Cost of Acquisition ₹1,20,00,000/-	Cost of immovable property at the time of transfer – ₹ 1,60,00,000/-

d. The aforesaid immovable property in Gujarat was acquired by the applicants for a total consideration of ₹ 1,20,00,000/- (Rupees One crore and twenty Lakhs only) which was made from an NRE account bearing number 04841060000036 maintained with HDFC Bank, Hauz Khas. The said NRE account is in the joint name of the applicants.

e. A cheque dated January 20, 2015 bearing number 190695 for an amount of ₹ 92,88,000/- (Rupees Ninety-two lakh eighty-eight thousand only) was drawn in favour



of Mr. Anil Rambhai Mistry & Mrs. Serafina Mistry as consideration for the said property. Further, an amount of ₹27,12,000/- (Rupees Twenty-seven lakh twelve thousand only) was disbursed to Mr. Jovial Monteiro, the accountant of Mr. Anil Mistry, by way of a NEFT transfer for TDS payments to be made on behalf of the applicants

f. The transaction was closed on January 20, 2015 and the applicants started renovations to the House Property. The applicants approached for approval for renovation from Town and Country Planning and Aldona Panchayat. The Applicants were advised that the property is considered as agricultural land in the state of Goa, and that a Sanad (permissions) is required to be procured from the Deputy Collector, Bardez. As such, the Applicants proceeded to make an application for Sanad with the Deputy Collector. The Deputy Collector informed the applicants that RBI permission was required to purchase the property.

g. The applicants being PIOs were not eligible to acquire agricultural property in India and hence the aforesaid acquisition of the immovable property without RBI permission results in contravention of Regulation 8 of erstwhile Notification No. FEMA.21/2000-RB dated May 3, 2000

h. Regulation 8 of Notification No. FEMA-21/2000-RB *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.

i. The contravention has been regularized by Panaji office vide RBI letter No. PNJ.FED.318/02.05.002/2017-18 dated December 12, 2017 and the applicants were advised to transfer the immovable property to a person resident in 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.

j. The property under reference has since been transferred to Mr. Virat Mehta, a resident Indian vide sale deed executed on June 11, 2018 at Mapusa, Bardez – Goa for a total consideration of ₹ 1,60,00,000/- (Rupees one crore sixty lakh only) out of which ₹ 1,21,72,800 (Rupees one crore twenty one lakh seventy two thousand eight hundred only) was paid to the applicants vide cheque No. 000350 dated June 11,



2018 drawn on Bank of Baroda and the remaining amount i.e. ₹ 38,27,200/-(Rupees Thirty eight lakh twenty seven thousand and two hundred only) was deposited by the purchaser as TDS in compliance of the provisions of Section 195 of the income tax act, 1961.

k. The purchase price of the Immovable Property under reference i.e. ₹1,20,00,000/- (Rupees One crore and twenty lakh only) has been considered as the amount of contravention. Further, in the course of time, value of the property appreciated by ₹40,00,000/-(Rupees forty lakh only). However, the applicants have also paid TDS amounting to ₹38,27,200/- (Rupees Thirty eight lakh twenty seven thousand and two hundred only).

l. Since the applicants cannot earn by means of appreciation in the value of the property, difference in the value appreciated and the TDS paid (₹40,00,000 – ₹ 38,27,200 = ₹1,72,800/-) has been considered as undue gain.

m. The purchase transaction took place on January 20, 2015 and the property was transferred on June 11, 2018. The period of contravention, therefore, has been considered with effect from January 20, 2015 to June 11, 2018 i.e. 03 years 04 months and 22 days.

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

Amount: ₹ 1,20,00,000/- (Rupees One crore and twenty lakh only)

Undue Gain: ₹ 1,72,800/- (Rupees One lakh seventy two thousand and eight hundred only)

Period: 03 years 04 months and 22 days. i.e. from January 20, 2015 to June 11, 2018.

3. 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 May 3, 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 applicants being PIOs have purchased agricultural property in India without prior approval of Reserve Bank. The aforementioned contravention has been regularized by RBI letter No. PNJ.FED.318/02.05.002/2017-18 dated December 12, 2017 subject to compounding of contravention.

4. The applicants were given an opportunity for personal hearing vide email/letter dated June 25, 2019 for further submission in person and /or producing documents, if any, in support of the application. Applicants' representatives Mr. Krishna Venkat and Mr. Arjun Menon appeared representing the applicants, for the personal hearing on June 27, 2019. The representatives of the applicants explained that owing to certain expenditure incurred by them on the said property, they have actually incurred the loss. However, they have admitted the contravention committed by the applicants 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 December 19, 2018 that the particulars given by the applicants 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 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 them thereafter. Accordingly, the above contravention which are being compounded in this Order are 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 the authorized representatives 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 May 3, 2000 as amended from time to time. The contravention amount i.e the purchase price of the Immovable Property under reference comes to ₹ 1,20,00,000/- (Rupees One crore and twenty lakh only) and the undue gain comes to ₹ 1,72,800/- (Rupees One lakh seventy two thousand and eight hundred only) and the period of contravention stands at 03 years 04 months and 22 days. i.e. from January 20, 2015(the date of acquisition of the property) to June 11, 2018 (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 applicants and the entire facts and circumstances of the case, I consider that payment of an amount of ₹3,00,800/- (Rupees Three lakh eight hundred 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 May 3, 2000, as amended from time to time, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹ 3,00,800/- (Rupees Three lakh and eight hundred 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 27th day of June 2019.

R.K. Moolchandani
Chief General Manager