



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi-110001

Present
V.G. Sekar
Chief General Manager

Date: June 27, 2019
CA No. NDL 440/2019

In the matter of
Vijay Kumar Agarwal
E-58, Greater Kailash, Part-1, Delhi- 110048
(Applicant)

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 applicant has filed the compounding application dated April 23, 2019 (received at Reserve Bank of India, New Delhi on April 26, 2019) for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contravention sought to be compounded is of delay in reporting the transfer of shares in Form FC-TRS beyond the stipulated period, in terms of Regulation 10A(b)(i) read with paragraph 10 of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000 (hereinafter referred to as FEMA 20/2000-RB), as amended from time to time.

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

(a) The applicant, a resident individual, had transferred 12,50,000 equity shares of



M/s Tapp India Private Limited, a company engaged in the business of manufacturing of electrical insulators and insulating fittings of ceramics, to M/s Heinrich Tapp, Gmbh, Germany, a non-resident company, on August 28, 2017 for a consideration of ₹1,25,00,000/- (Rupees One Crore and Twenty Five Lakh only) received on October 16, 2017. The applicant reported the said transfer of shares in Form FC-TRS on March 30, 2018 with a delay of 3 months and 15 days beyond the prescribed period in contravention of Regulation 10(A)(b)(i) read with paragraph 10 of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of Regulation 10A(b)(i) of FEMA 20/2000-RB, a person resident in India who proposes to transfer to a person resident outside India any shares or convertible debentures or warrants of an Indian company under the Foreign Direct Investment Scheme, whose activities fall under Annex B to Schedule 1, shall, subject to sectoral limits specified therein, transfer such shares or convertible debentures or warrants without prior approval of the Reserve Bank if the same is by way of sale, subject to the conditions prescribed therein. Further, in terms of paragraph 10 of Schedule 1 to FEMA 20/2000-RB, in case of transfer of shares or convertible debentures or warrants of an Indian company by way of sale from a person resident in India to a person resident outside India or vice versa, the transferor/ transferee, resident in India, shall submit to the AD bank, a report in the form FC-TRS, as specified by the Reserve Bank from time to time, within 60 days from the date of receipt or payment of the amount of consideration. The onus of submission of the form FC-TRS within the specified time shall be on the transferor/ transferee, resident in India.

(b) Thus, there is contravention of Regulation 10A(b)(i) read with paragraph 10 of Schedule 1 to FEMA 20/2000-RB, as then applicable.

3. The applicant was given an opportunity for personal hearing for further submission in person and/ or by producing documents, if any, in support of the application. Shri Subodh Gupta and Ms Ayushi Singhal, both Chartered Accountant, appeared for personal hearing on June 26, 2019 on behalf of the applicant. The representatives of the applicant admitted the contravention committed by the applicant for which compounding has been sought. During the personal hearing, they submitted that the contravention was without any malafide or wilful intention but was mainly due to technical problem/ continuous errors faced by the applicant while filing the form FC-TRS and resolving the discrepancies as raised by the AD bank. They



requested for a lenient view in the matter. The application for compounding is, therefore, being considered on the basis of averments made in the application as well as other documents and submissions made during the personal hearing.

4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant had contravened the provisions of Regulation 10A(b)(i) read with paragraph 10 of Schedule 1 to FEMA 20/2000-RB. The amount of contravention is ₹1,25,00,000/- (Rupees One Crore and Twenty Five Lakh only) and the period of contravention is 3 months and 15 days.

5. It has been declared in the compounding application dated April 23, 2019 that the particulars given by the applicant in the application are true and correct to the best of his knowledge and belief. It has also been declared in the declaration 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. It has further been declared that the applicant has not filed any appeal under Section 17 or Section 19 of FEMA. 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.

6. In terms of Section 13 of 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 I am persuaded to compound the contravention, in line with the Guidance Note on Computation Matrix prescribed as part of Master Direction – Compounding of Contraventions, framed in accordance with the Foreign Exchange (Compounding Proceedings) Rules, 2000. Accordingly, it stands to reason that payment of an amount of **₹26,500/- (Rupees Twenty Six Thousand and Five Hundred only)** will meet the ends of justice in the



circumstances of this case.

7. Accordingly, I compound the admitted contravention of Regulation 10A(b)(i) read with paragraph 10 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on payment of an amount of **₹26,500/- (Rupees Twenty Six Thousand and Five Hundred only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi - 110001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at New 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 3, 2000 shall apply.

The application is disposed accordingly.

Dated this the 27th day of June 2019.

Sd/-
(V.G. Sekar)
Chief General Manager