



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

S. Arumugam
Assistant General Manager

Date: July 09, 2019
CA No 4887 / 2019

In the matter of

Krishna Super Specialty Optical Clinics Pvt Ltd
I-58. Lower Ground Floor, Lajpat Nagar- II
New Delhi 110024
(Applicant)

In exercise of the powers conferred under section 15 (1) of Foreign Exchange Management Act, 1999 and the Regulations/Rules/Notifications/Orders made there under, I pass the following

Order

The applicant has filed the application dated February 04, 2019 (received at the Reserve Bank on February 07, 2019), and an addendum vide email dated June 11, 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 are (i) Delay in submission of APRs within the stipulated time period (ii) Delay in submission of ODI Form Part I and (iii) Method of Funding of ODI through debit card, which is not a permitted method of funding under the extant Regulations. The above



amount to the contravention of Regulations 15(iii), 6(2) (vi) and 6(3) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB dated July 7, 2004 as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB).

2. The relevant facts are as under: The applicant Krishna Super Specialty Optical Clinics Private Limited is a Company incorporated in the year 2009, in India under the Companies Act, 1956 (CIN: U52500DL2009PTC190885). The applicant is engaged in the business of Optical trading, e-commerce etc. The applicant set-up a wholly owned subsidiary (WOS), Krishna Corporation limited, a newly incorporated company located at Unit 706, 7/F., South Seas Centre, Tower 2, 75 Mody Road, Tsimshatsui, Kowloon, Hong Kong in the year 2014. The official of the applicant who was in Hong Kong deposited HKD 10,000 towards the issue of shares to the applicant company on July 14, 2014. The applicant reported Form ODI part I for the transaction, with delay in March 28, 2018 which is not in compliance with the Regulation 6(2) (vi) of Notification No. FEMA 120/RB-2004 dated July, 2004 as amended from time to time. Further, the abovementioned ODI was made by way of direct deposit to the bank account from his debit card which is not a permitted method of funding and hence not in compliance with Regulation 6 (3) of the Notification *ibid*. While the amount of foreign exchange carried abroad by the official of the applicant company for a business trip was within the permissible limit in this case, direct payment from his debit card in foreign exchange was not a permissible mode of remittance for making remittance overseas direct investment (ODI). The transaction was taken on record on 20.07.2017.

The applicant had reported Annual Performance Reports (APRs) for the period 2015 and 2016 with delay on March 08, 2018, contravening Regulation 15 (iii) of Notification *ibid*.

3. In terms of Regulation 6(2)(vi) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, Overseas Direct Investment is permitted in certain cases provided “ the Indian Party submits Part I of the Form ODI, duly completed, to the designated branch of an authorized dealer”.



Further, in terms of Regulation 6(3) of Notification ibid “Investment under this Regulation may be funded out of one or more of the following sources, namely:

- (i) Out of the balance held in Exchange Earners’ Foreign Currency account of the Indian Party maintained with an authorized dealer in accordance with Regulation 4 of Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2000;
- (ii) drawal of foreign exchange from an authorized dealer in India shall not exceed 100% or as decided by the Reserve Bank from time to time, of the networth of the Indian Party as on the date of last audited balance sheet.....

Further, Regulation 15 (iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, states that, “An Indian Party which has acquired foreign security in terms of the Regulation in Part I shall submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before a specified date, an Annual performance Report (APR) in Part III of Form ODI in respect of each JV or WOS outside India.....”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA.No./6895/15.20.67/2018-19 dated May 23, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on June 11, 2019 during which Mr Sudhanshu Bhasin, Director of Krishna Super Specialty Optical Clinics private Limited represented the applicant. The representative, of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations and was unintentional. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulations 6(2) (vi), 6 (3), and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amounts and periods of contravention are as under:



Sl.No	Nature of Contravention	Regulation	Amt in INR	Period of contravention
1	Delay in submission of APRs	Regulation 15(iii) of Notification.No.FEMA. 120/RB-2004 dated July 07, 2004	86,000	Delayed submission for 3 years
2	Delay in Submission of Form ODI	Regulation 6(2)(vi) of Notification.No.FEMA. 120/RB-2004 dated July 07, 2004	86,000	45 months
3	Method of Funding	Regulation 6(3) of Notification.No.FEMA. 120/RB-2004 dated July 07, 2004	86,000	36 months

6. It has been declared in the compounding application dated February 04, 2018, 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 Annex III of the Compounding Application dated February 04, 2018, that the applicant was not under any enquiry/investigation/adjudication by any agency as on the date of the application. 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. 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 it stands to reason that payment of an amount of Rs. 62,317/- (Rupees sixty two thousand three hundred and seventeen only), will meet the ends of justice in the circumstances of this case.



8. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulations 6(2)(vi), 6(3), 15(i) and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 62,317/- (Rupees sixty two thousand three hundred and seventeen only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai 400001 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 the 9th of July, 2019

Sd/-
(S Arumugam)
Assistant General Manager