



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
P M Road
Mumbai - 400 001

Present
Sharmila Thakur
General Manager

Date: October 11, 2019
CA No 4951 / 2019

In the matter of
Deepesh Tayal
A 2/13, Mianwali Nagar
New Delhi - 110087

(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 May 24, 2019 (received in the Reserve Bank on May 27, 2019), for compounding of contravention 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 delay in submission of share certificate or other evidence of investment within six months, delayed submission of Annual Performance Reports (APRs) and delayed reporting of remittance made towards overseas direct investment. The above are in contravention of Para D.3 of Schedule V read with Regulations 15 (i) and 15(iii) and Para D.1 of Schedule V of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 7, 2004, as amended from time to time (hereinafter referred to as Notification No FEMA 120-RB 2004).



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

The applicant is a Resident Individual who remitted USD 117,000 to Mr Kasim Bamba (a non resident) on December 1, 2015 overseas, representing 15% investment in JV Greenwich Industries Ltd in Ghana. According to the applicant, he was unaware of the regulations requiring resident individuals to submit Form ODI-I at the time of making overseas direct investment. On learning of the regulations, he submitted Form ODI-I to his AD bank in May 2016 which was however returned due to non submission of supporting documents. Finally, the acceptable set of documents were submitted to the AD bank in May 2018 and UIN was allotted in November 2018. The APRs were filed thereafter with delay for the years 2015, 2016 and 2017 in January 2019. The share certificate was submitted in June 2016 which was delayed beyond six months of remittance.

3.(a) Regulation 15(i) of Notification No FEMA 120-RB, 2004, obliges an Indian Party, which has acquired foreign security in terms of the Regulations to receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months. In terms of Para D.3 of Schedule V *ibid*, this regulation is made applicable to Resident Individuals, also.

(b) According to paragraph 15(iii) *ibid*, an Indian Party, which has acquired foreign security in terms of the Regulations in Part- I, shall “submit to the Reserve Bank every year within 60 days from the date of expiry of the statutory period as prescribed by the respective laws of the host country for finalisation of the audited accounts of the Joint Venture/Wholly Owned Subsidiary outside India or such further period as may be allowed by Reserve Bank, an annual performance report in form APR ...”. In terms of Para D.3 of Schedule V *ibid*, this regulation is made applicable to Resident Individuals.

(c) According to Para D.1 of Schedule V of Notification No FEMA 120-RB 2004 as amended from time to time, the resident individual, making overseas direct investments under the provisions of the Schedule, shall submit Part I of the Form ODI, duly completed, to the designated authorised dealer, within 30 days of making the remittance.



4. Shri Deepesh Tayal was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/1292/15.20.67/2018-19 dated September 6, 2019. The meeting was held on September 16, 2019 in which the applicant appeared in person. The contraventions occurred due to the lack of knowledge of the relevant regulations, as this was the applicant's first overseas investment.

5. I have carefully considered the facts and submissions made by the applicant in his application and during the personal hearing. Accordingly, I hold that the applicant has contravened Para D.3 of Schedule V read with Regulations 15 (i) and 15(iii) and Para D.1 of Schedule V of Notification No FEMA 120-RB 2004. The amount and period of contravention is as follows: three APRs for 2015 to 2017 were submitted with delay. The share certificate was submitted after the due date and the delay was less than a year. The Form ODI – I for the remittance of USD 117,000 (equivalent to INR 78,39,000) was submitted with a delay of approximately two and half years which is rounded to three years for the purpose of calculation of penalty.

6. In terms of provisions of Section 13 of FEMA, any person contravening any provision of the Act shall be liable to pay up to three times the sum involved in the contravention upon adjudication. However, taking into account the relevant facts and circumstance of the case as stated in the foregoing paragraphs, I am persuaded to take a lenient view on the amount for which the contraventions are to be compounded and I consider that an amount of Rs.71,000/- (Rupees Seventy One Thousand only) will meet the ends of justice.

7. It has been declared in the compounding application dated May 24 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 been declared in the Annex III of the Compounding Application dated May 24 2019, 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.



8. Accordingly, I compound the admitted contraventions namely, the contravention of Para D.3 of Schedule V read with Regulations 15 (i) and 15(iii) and Para D.1 of Schedule V of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 4, 2004, as amended from time to time, by the applicant, based on the facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs.71,000/- (Rupees Seventy One Thousand only) which shall be deposited by the applicant with the Reserve Bank of India, 5th Floor, RBI, Amar Building, P M Road , Mumbai-400001 by a Demand Draft drawn in favour of “Reserve Bank of India” and payable at “ Mumbai” within a period of 15 days from the date of the 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 shall apply.

The application is disposed accordingly.

Dated this Eleventh day of October 2019.

Sd/-

(Sharmila Thakur)
General Manager