



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

Central Office Cell, 1st floor

6, Sansad Marg

New Delhi - 110 001

Present

R.K. Moolchandani

Chief General Manager

Date: January 10, 2020

C.A. No.106 /2019

In the matter of

New Zealand Tourism Board

2nd Floor, 3 North Avenue

Maker Maxity, Bandra Kurla Complex

Bandra East

Mumbai - 400051

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 M/s New Zealand Tourism Board, has filed an application dated June 30, 2019 (received in RBI on July 24, 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 relates to direct payment to third parties by the Head Office, non-submission of AACs and continuation of activities of Liaison Office without obtaining extension from Reserve



Bank /AD Bank, in contravention of Regulation 2(e), 5 (iii) of Notification No.FEMA 22 /2000-RB dated May 03, 2000 (as amended from time to time) and Regulation 2(e), 4(l), 4(d)(l) of Notification No. FEMA 22(R)/ 2016-RB dated March 31, 2016 (as amended from time to time).

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

- (i) New Zealand Tourism Board (NZN) is a company incorporated under the laws of the New Zealand.
- (ii) In the year 2003 for exploring the Indian market for tourism of New Zealand and for developing relationship with Indian customers, NZN approached RBI for establishment of Liaison Office (LO) in India.
- (iii) Reserve Bank of India vide letter Ref.No.EC.CO.FID(l)/10-1-05-02/5803(Activity)/2002-03 dated January 14, 2003 granted permission to NZN to establish LO in India under Regulation 5 of FEMA Notification 22/2000-RB dated May 03, 2000.
- (iv) The permission was granted for an initial period of three years for undertaking solely liaison activities subject to one of the condition that the office in India will furnish a certificate on a yearly basis to RBI Regional Office (Mumbai Regional Office in this case) from the auditor that the LO has complied with the terms and conditions stipulated in the letter of approval issued by the RBI and that all the expenses are met by way of inward remittances.
- (v) In accordance with the permission granted NZN established its LO in Mumbai. The validity of LO was further extended by RBI till January 13, 2009.
- (vi) In 2012 when LO approached RBI for further extension for 3 years, RBI advised the LO that the approval was valid up to 2009 and sought following clarification (a) Reasons for not applying for extension immediately after expiry of permission (b) Explanation for continuing to operate Liaison Office after January 13, 2009 without valid permission



- (c) Annual Activity Certificate for period ended March 31, 2008 to 2009 along with reasons for not submitting the same.
- (vii) At that time it came to notice that the company was having an approval letter dated March 5, 2009 granting extension upto January 13, 2012, which was never issued by RBI. NZT, thereafter, realized that the 2009 approval letter was void. It was observed that transactions amounting to ₹ 26,64,34,885/- (total of credits and debits) were carried out in the account of the LO between January 16, 2009 and January 20, 2012.
- (viii) As per the letter purportedly issued by RBI, validity of the LO was extended upto January 13, 2012. Hence, the NZT was informed by HSBC Bank vide letter dated November 2, 2011 that an application seeking an extension of validity of the LO may be submitted to the Bank. It was also informed by the bank that in case the LO is not renewed by January 13, 2012, the transaction in the account will be blocked w.e.f. January 14, 2012 until the LO is renewed further. Accordingly, the LO account was frozen by HSBC, Mumbai in year 2012. After the closure of the account by the HSBC Bank, the expenditure of the Liaison office amounting to ₹109,08,25,745/- (Rupees one hundred nine crore eight lakh twenty-five thousand seven hundred forty five only) were directly incurred by the parent company in contravention of Regulation 2(e) of FEMA 22 ibid read with Para B (b.1) of FED Master Circular no. 7/2012-13 dated July 02, 2012 and Regulation 2(e) of FEMA 22(R) ibid read with Para 3(i) of FED Master Direction no. 10 dated January 01, 2016 as updated from time to time.
- (ix) The LO continued its activities without seeking extension for the period from January 14, 2009 to May 28, 2019, in contravention of Regulation 5 (iii) of FEMA 22 ibid read with Para 2(i) of Part III of Master Circular no. 02/2008-09 dated July 01, 2008 and Regulation 4 (d)(I) of FEMA 22(R) ibid read with Para 5(i) of Master Direction no. 10 dated January 01, 2016 as updated from time to time. Despite the advice received from HSBC bank vide letter dated November 2, 2011 and freezing of its



account by the bank, the LO continued its activity in India without extension and deliberately funds were transferred directly from Head Office to third parties. The LO had continued to contravene the aforesaid Regulation and hence the contravention has been treated as continuing contravention w.e.f. January 14, 2012 in terms of Section 13(1) of FEMA, 1999.

- (x) Further, the LO also defaulted in submission of the audited financials and AAC with the Mumbai Regional Office/ AD bank (HSBC Bank, Mumbai) / DGIT (International Taxation) for the period from 2008-09 to 2017-18. The same have been submitted by the LO in 2018, thus contravening Regulation 5 (iii) of FEMA 22 ibid read with Para 2 (ii) of Part III of Master Circular no. 02/2008-09 dated July 01, 2008 and Regulation 4(l) of FEMA 22(R) ibid read with Para 4(i) of Master Direction no. 10 dated January 01, 2016 as updated from time to time.
- (xi) The above-mentioned contraventions were regularized vide RBI letter No. FE.CO.FID/908/10.01.001/2018-19 dated May 28, 2019 and the applicant was granted post facto approval subject to the compounding of contravention.
- (xii) The total amount involved in the transactions i.e. ₹ 135,72,60,630/- (total debit and credits in account from January 16, 2009 and January 20, 2012 and expenditure of the Liaison office incurred directly by head office) has been considered as the amount of contravention.
- (xiii) The LO has validity upto January 13, 2009 and the contravention was regularized on May 28, 2019. Hence, the period of contravention has been treated from January 14, 2009 to May 28, 2019 i.e. 10 years 4 months and 15 days.
- (xiv) The amount and period of contravention is as follows:

Amount: ₹ 135,72,60,630/- (Rupees one hundred thirty five crore seventy-two lakh sixty thousand six hundred thirty only)

Period: 10 years 4 months and 15 days i.e. from January 14, 2009 to May 28, 2019.



Contravention:

3. The applicant has contravened Regulation 2(e), 5 (iii) of FEMA 22 ibid and Regulation 2(e), 4(l), 4(d)(l) of FEMA 22(R) ibid.

Regulation 2(e) of Notification No. FEMA 22 ibid and FEMA 22(R) ibid states that 'Liaison Office' means a place of business to act as a channel of communication between the Principal place of business or Head Office by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

Regulation 5(iii) of Notification No. FEMA 22 ibid states that the Reserve Bank may grant permission to open branch or liaison or project office subject to such terms and conditions as may be considered necessary

Regulation 4(l) of Notification No. FEMA 22(R) ibid states that the branch office/liaison office may submit the Annual Activity Certificate (Annex D) as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year. In case the annual accounts of the office are finalized with reference to a date other than March 31, the AAC along with the audited financial statements may be submitted within six months from the due date of the Balance Sheets to the Authorised Dealer Category-bank and the Director General of Income Tax (International Taxation), Drum Shape Building, I.P. Estate, New Delhi 110002. AAC from a Chartered Accountant showing the project status and certifying that the accounts of the project office have been audited and the activities undertaken are in conformity with the general/ specific permission given by the Reserve Bank may be submitted by the project office to the designated Authorised Dealer Category-I bank.

Regulation 4(d)(l) of Notification No. FEMA 22(R) ibid states that a person resident outside India may establish in India under these Regulations a liaison office for a period of three years subject to the provisions of Regulation 4 d (III). The non-resident entity may apply to the Authorised Dealer Category-I bank concerned for extension of the validity period of approval, and upon receipt of such an application, the Authorised Dealer Category-I bank concerned may extend the validity period of approval for a



period of three years from the date of expiry of the original approval / extension granted, subject to such directions issued by the Reserve Bank in this regard.

The above contraventions were regularized vide RBI letter No. FE.CO.FID/908/10.01.001/2018-19 dated May 28, 2019.

4. The applicant was given an opportunity for personal hearing vide email dated January 8, 2020 for further submission in person and /or producing documents, if any, in support of the application. Applicant's representative Shri. Atul Mittal appeared representing the applicant, for the personal hearing on January 10, 2020. The representatives of the applicant admitted the contravention committed by the applicant for which they have sought compounding and requested to take a lenient view.

5. It has been declared in the compounding application that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has also been declared in the undertaking furnished with the compounding application that the applicant is 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 thereafter. It has further been declared that the applicant has not filed any appeal under section 17 or section 19 of FEMA, 1999. 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. 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 Shri. Atul Mittal, representative, during the personal hearing.

6. I have given my careful consideration to the documents on record and submission made by the applicant. Accordingly, I hold that the applicant has contravened Regulation 2(e), 5 (iii) of Notification No. FEMA 22 /2000-RB dated May 03, 2000 (as amended from time to time) and Regulation 2(e), 4(l), 4(d)(l) of Notification No. FEMA 22(R)/ 2016-RB dated March 31, 2016 (as amended from time



to time). The contravention amount i.e. total amount involved in the transactions comes to ₹ 135,72,60,630/- (total debit and credits in account from January 16, 2009 and January 20, 2012 and expenditure of the Liaison office incurred directly by head office) and the period of contravention stands at 10 years 4 months and 15 days i.e. from January 14, 2009 to May 28, 2019.

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 applicant and the entire facts and circumstances of the case, I consider that payment of an amount of ₹ 2,41,14,455/- (Rupees Two Crore forty one lakh fourteen thousand four hundred fifty five 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 2(e), 5 (iii) of Notification No.FEMA 22 /2000-RB dated May 03, 2000 (as amended from time to time) and Regulation 2(e), 4(l), 4(d)(l) of Notification No. FEMA 22(R)/ 2016-RB dated March 31, 2016 (as amended from time to time), in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹ 2,41,14,455/- (Rupees Two Crore forty one lakh fourteen thousand four hundred fifty five only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Office Cell, 1st Floor, 6, Sansad Marg, New Delhi – 110 001 by a demand draft drawn in favor 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 stipulated time, 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 10th January 2020.

R.K. Moolchandani
Chief General Manager