



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
Central Office Cell, 2nd Floor
6, Sansad Marg
New Delhi - 110 001

Present

Devika Gowrishankar
Deputy General Manager

Date: March 8, 2019

C.A. No.87 /2019

In the matter of

Mr. Sha Mathew

Chouriamakkel TMC/11/17

Muthalakodam P.O, Thodupuzha, Idukki District,

Kerala - 685605

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 applicant, Mr. Sha Mathew, has filed an application dated December 26, 2018 (received in RBI on December 28, 2018) for compounding of contraventions 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 an NRI 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 relevant facts of the case are as follows:

- a. Mr. Sha Mathew, NRI has been working in Mexico since 2007 in a floating production, storage and offloading vessel located in Mexican offshore waters. Since then he was in Mexico for more than 182 days in most of the financial years. In 2011-12 and 2012-13, he had been in Mexico for 195 and 177 days respectively.
- b. Mr. Sha Mathew, being an NRI has acquired two agricultural properties in Kerala in the year 2012 without obtaining prior permission from the Reserve Bank of India. The details of the immovable properties under reference are given below:

Revenue & other Details	Area	Amount	
1. 67.57 Ares of agricultural land of Block No. 16 of Muttom Panchayat, Thodupuzha, Sub-district Arakulam, District- Idukki, Kerela.	67.57 Ares + 94.30 Ares i.e. a total of 1 Hector 61 Ares and 87 square meters.	Cost of Acquisition - Rs.6,75, 700/- + Rs. 9,63,000/- i.e. Rs16,38,700/-	Cost of immovable property at the time of transfer(as per valuation report)- Rs. 40,30, 000/-
2. 94.30 Ares of agricultural land of Block No. 16 of Muttom Panchayat, Thodupuzha, Sub-district Arakulam, District- Idukki, Kerela.			

The immovable properties were acquired for total consideration of ₹16,38,700/- (Rupees Sixteen lakh thirty eight thousand seven hundred only).

- c. Regulation 8 of Notification No. FEMA-21/2000-RB dated May 03, 2000 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. Hence, the



aforesaid immovable property in Kerala was acquired by Mr. Sha Mathew, NRI without Reserve Bank's permission, in contravention of Regulation 8 of Notification No. FEMA 21/2000-RB dated May 03, 2000, as amended from time to time.

- d. In view of the above, he was advised to sell the immovable property vide RBI letter No. FED.CO.ND(IP) 374/10.51.000/2017-18 dated November 28, 2017, to a person resident citizen of 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 contraventions.
- e. Subsequently, the applicant vide letter dated December 19, 2017 requested us to grant permission to transfer the immovable property to his son and the permission for the same was conveyed vide RBI letter No. FED.CO.ND(IP)712/10.51.000/2017-18 dated April 10, 2018.
- f. The properties under reference has been transferred to Mr. Kevin Sha a resident citizen of India vide settlement deed executed on May 17, 2018
- g. As per the valuation report dated December 24, 2018 submitted by applicant the value of land has been appreciated to ₹40,30,000/- (Rupees Forty Lakh thirty thousand only) since 2012, by virtue of which the applicant has earned ₹ 23,91,300/- (₹ 40,30,000 - ₹ 16,38,700) as undue gain.
- h. The contravention has been regularized vide our letter No. FED.CO.ND(IP) 374/10.51.000/2017-18 dated November 28, 2017 subject to compounding of contravention.
- i. The purchase price of the Immovable Properties under reference i.e. ₹16,38,700/-(Rupees Sixteen lakh thirty eight thousand seven hundred only) has been considered as the amount of contravention. Further, the cost of properties has been appreciated to ₹40, 30,000/- (Rupees Forty Lakh thirty thousand only) hence the difference i.e. ₹ 23,91,300/- (Rupees Twenty three lakh ninety one thousand three hundred only) has been considered as the undue gain.



- j. The purchase transactions took place on July 13, 2012 and September 20, 2012 and sale transaction took place on May 17, 2018. The period of contravention, therefore, may be considered with effect from July 13, 2012 to May 17, 2018 i.e. 05 years 10 months 04 days.
- k. The amount and period of contravention is as follows:
- Amount:** ₹16, 38,700/- (Rupees Sixteen lakh thirty eight thousand seven hundred only)
- Undue Gain:** ₹ 23, 91,300/- (Rupees Twenty three lakh ninety one thousand three hundred only)
- Period:** 05 years 10 months 04 days i.e. from July 13, 2012 to May 17, 2018.

3. The applicant has contravened the 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 3rd May 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 applicant being a NRI has purchased two agricultural properties in India without prior approval of Reserve Bank. The aforementioned contraventions have been regularized by RBI letter No. FED.CO.ND(IP) 374/10.51.000/2017-18 dated November 28, 2017 subject to compounding of contraventions.

4. The applicant was given an opportunity for personal hearing vide email dated February 21, 2019 for further submission in person and /or producing documents, if any, in support of the application. The applicant for the personal hearing on March 1, 2019. The applicant admitted the contraventions committed by him 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 26, 2018 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 undertaking 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. 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. 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 Mr. Sha Mathew 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 8 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 *notified vide* Notification No. FEMA.21/2000-RB dated 3rd May 2000 as amended from time to time. The contravention amount i.e. the purchase price of the Immovable Properties under reference comes to ₹16,38,700/- (Rupees Sixteen lakh thirty eight thousand seven hundred only) and the undue gain comes to ₹ 23,91,300/- (Rupees Twenty three lakh ninety one thousand three hundred only) and the period of contravention stands at 05 years 10 months 04 days from July 13, 2012 (the date of acquisition of first property) to May 17, 2018 (the date of transfer of properties).

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 am persuaded to take a lenient view on the amount for which the contraventions are to be compounded and I consider that payment of an amount of ₹ 24,53,590/- (Rupees Twenty four lakh



fifty three thousand five hundred and ninety only) will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound the admitted contraventions 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 3rd May 2000, as amended from time to time, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹24,53,590/- (Rupees Twenty four lakh fifty three thousand five hundred and ninety only) which shall be deposited by the applicant 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 eighth day of March, 2019. .

Devika Gowrishankar
Deputy General Manager