



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: February 8, 2019
CA No 4766 / 2018

In the matter of

Shantanu Pande
R/o 28, Shyamala Hills
Bhopal 462002
(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 August 13, 2018 (received at the Reserve Bank on August 16, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The applicant has submitted an addendum to the aforesaid compounding application vide letter dated January 29, 2019. The contraventions sought to be compounded are (i) Setting of an overseas entity by resident individual before August 05, 2013 (ii) Delay in submission of Form ODI within the stipulated time period and (iii) Non-submission of documentary evidence of investment within the stipulated time period. The



above amount to the contravention of Regulations 5(1) read with 2(k), 6 (2)(vi) and 15(i) 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, a resident individual, remitted USD 3,253 (Rs. 1,79,426/-) on February 23, 2013 towards setting up of an overseas wholly owned subsidiary (WOS). The overseas WOS, OM Exports (FZC) was incorporated on November 14, 2012 as a general marketing company in Sharjah Free Zone, United Arab Emirates (UAE). The remittance was sent when the applicant was not permitted to undertake overseas direct investment. Overseas Direct Investment by resident individuals was permitted vide Notification No. FEMA.263/RB-2013 dated March 5, 2013, effective from August 5, 2013 (date of notification in the Gazette), which was an amendment to Notification No. FEMA 120/2004-RB. The investment was thus in contravention of regulation 5(1) of FEMA 120/2004-RB. The remittance was not capitalized and was repatriated on June 01, 2018. The applicant made subsequent remittance of USD 4000 (Rs. 2,51,200/-) on February 08, 2014 towards investment in the WOS. The remittance was reported under Form ODI with a delay on June 12, 2015. This was not in line with para D (2) of schedule V read with Regulation 6(2) (vi) of Notification. No. FEMA.120/2004-RB. The applicant did not capitalize the remittance (USD 4000) and the same was repatriated on May 11, 2018 which is beyond the stipulated time period, in contravention to Regulation 15(i) of Notification.No.FEMA.120/RB-2004.

3. (i) In terms of Regulation 5(1) read with 2(k) of the Notification *ibid* save as otherwise provided in the Act, Rules or Regulations made or directions issued there under, or with prior approval of the Reserve Bank (1) no person resident in India shall make any direct investment outside India.

(ii) In terms of Regulation 6(2)(vi) of Notification *ibid* , 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”.



(iii) Further, in terms of Regulation 15(i) An Indian Party which has acquired foreign security in terms of the Regulation in Part I, shall 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.....

4. The applicant was given an opportunity for personal hearing vide letter No. FED.CO.CEFA/4140/15.20.67/2018-19 dated January 11, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on January 18, 2019. 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 5(1) read with 2(k), 6(2) (vi) and 15(i) Notification No.FEMA.120/2004-RB. The total amount and period of contravention is as under:

i. Regulation 5(1) read with 2(k) of Notification No.FEMA.120/2004-RB: Amount of contravention: Rs. 1,79,426/- and period of contravention: 5 years 4 months approximately

ii. Regulation 6(2)(vi) of Notification No.FEMA.120/2004-RB: Amount of contravention: Rs. 2,51,200/- and period of contravention: 1 year 5 months approximately

iii. Regulation 15(i) of Notification No.FEMA.120/2004-RB: Amount of contravention: Rs. 2,51,200/- and period of contravention: 3 years and 9 months approximately

6. It has been declared in the compounding application dated August 13, 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 Annexure of the Compounding Application dated August 13, 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.1,42,728/-- (Rupees One lakh forty two thousand seven hundred and twenty eight 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 5(1) read with 2(k), 6(2) (vi) and 15(i) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 1,42,728/- (Rupees One lakh forty two thousand seven hundred and twenty eight 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 eighth day of February, 2019

Sd/-

(S Arumugam)
Assistant General Manager