



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi-110001

Present
Md. Shakir Hasan
Assistant General Manager

Date: July 9, 2019
CA No. NDL 411/2019

In the matter of
Devesh Srivastava
Flat 4a, Pragati Building, 6/2 Gurusaday Road, Kolkata-700019
(Applicant)

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 has filed the compounding application dated March 18, 2019 (received at Reserve Bank of India, New Delhi on March 20, 2019) for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contravention sought to be compounded is that of delay in refund of excess money received for transfer of shares, in terms of paragraph 2(3) of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 notified vide Notification No. FEMA 20(R)/2017-RB dated November 7, 2017 (hereinafter referred to as FEMA 20(R)/2017-RB), as amended from time to time.

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

(a) The applicant, a resident individual, on August 2, 2018, had transferred 5,17,900 equity shares of M/s Comac India Private Limited, a company engaged in the



business of manufacture of other special-purpose machinery n.e.c., to M/s Comac SPA, Italy, a non-resident company.

(b) The applicant had received ₹53,56,683/- (Rupees Fifty Three Lakh Fifty Six Thousand Six Hundred and Eighty Three only) on July 17, 2018 from the transferee for purchase of shares, however, the applicant transferred shares worth ₹51,79,000/- (Rupees Fifty One Lakh and Seventy Nine Thousand only). The applicant, thus, received excess money amounting to ₹1,77,683/- (Rupees One Lakh Seventy Seven Thousand Six Hundred and Eighty Three only), for which approval for refund was sought on December 14, 2018. Approval was granted on January 8, 2019 and the said excess money was refunded on January 16, 2019, in contravention of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as amended from time to time. Whereas, in terms of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, where capital instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance through banking channels or by credit to his NRE/ FCNR(B) accounts, as the case may be, within fifteen days from the date of completion of sixty days.

(c) Thus, there is a contravention of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as amended from time to time.

3. The applicant was given an opportunity for personal hearing for further submission in person and/ or by producing documents, if any, in support of the application. Shri Lokesh Gupta, Chartered Accountant, appeared for personal hearing on July 9, 2019 on behalf of the applicant. The representative of the applicant admitted the contravention committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that contravention was without any *malafide* or wilful intention but was mainly due to lack of knowledge with regard to the stipulated time for refund and delay in receipt of bank details from the transferee. He requested for a lenient view in the matter. The application for compounding is, therefore, being considered on the basis of averments made in the application as well as other documents and submissions made during the personal hearing.



4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, on account of delay in refund of excess money received for transfer of shares as detailed in paragraph 2(b) above. The contravention relates to an amount of ₹1,77,683/- (Rupees One Lakh Seventy Seven Thousand Six Hundred and Eighty Three only) and the period of delay is 3 months and 17 days.

5. It has been declared in the compounding application dated March 18, 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 also been declared in the declaration 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 it, thereafter. It has further been declared that the applicant has not filed any appeal under Section 17 or Section 19 of FEMA. 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.

6. In terms of Section 13 of 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 compound the contraventions, in line with the Guidance Note on Computation Matrix prescribed as part of Master Direction – Compounding of Contraventions, framed in accordance with the Foreign Exchange (Compounding Proceedings) Rules 2000. Accordingly, it stands to reason that payment of an amount of **₹50,888/- (Rupees Fifty Thousand Eight Hundred and Eighty Eight only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contravention of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as amended from time to time, by the



applicant based on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹50,888/- (Rupees Fifty Thousand Eight Hundred and Eighty Eight only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi-110001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at New 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 3, 2000 shall apply.

The application is disposed accordingly.

Dated this the 9th day of July 2019.

Sd/-
(Md. Shakir Hasan)
Assistant General Manager