



In the

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

Present

K.K. Vazirani
Assistant General Manager

Date: June 27, 2019

C.A. No.92 /2019

In the matter of

Mr Barry George Tyler

72 Evelyn Road, Otford, Sevenoaks

Kent, TN14 5PU22,

England, United Kingdom

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. Barry George Tyler, has filed an application dated November 21, 2018 (received in RBI on March 8, 2019) 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 the acquisition of immovable property in India by foreign nationals without RBI permission, in contravention of the provisions under Section 31(1) of FERA, 1973 and 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 Barry Tyler, a U.K national along with his wife has purchased House No. A9 Lui Beach apartments, Candolim, Goa for a total consideration of ₹2,46,000/- (Rupees Two lakh forty-six thousand only) vide sale deed dated April 11, 1997.

The details of the immovable property under reference are given below

Revenue & other Details	Area	Amount
1. House No. A9 Lui Beach apartments, bearing Survey No. 110/7 located at, Candolim, Taluka and Registration Sub-district of Bardez, North Goa District and State of Goa.	Property admeasuring 3850 sq. mts and a built up area of 82 square meters.	Cost of Acquisition - ₹ 2,46,000/- (Rupees Two lakh forty-six thousand only)

b. The sale consideration was paid from the foreign exchange and the applicant has submitted a certificate dated April 7, 1999 issued by State Bank of India wherein it is mentioned that a total remittance of ₹ 11,40,422/- was received in three instances from January 3, 1995 to February 10, 1995 in Joint Saving Bank account of Mr Barry Tyler and Mrs. Carol Ann Tyler.

c. The aforesaid acquisition of immovable property without Reserve Bank's permission amounts to the contravention of Section 31(1) of FERA, 1973, also in the FEMA regime the applicant has neither informed nor taken the Reserve Bank's approval for the acquisition and hence contravened the Regulation 8 of Notification No. FEMA.21/2000-RB dated May 3, 2000.

d. In terms of Section 31(1) of FERA, 1973, persons who are not citizens of India (whether resident in India or not) and companies (other than banking companies) which are not incorporated under any law in force in India are required to obtain prior permission of Reserve Bank to acquire, hold, transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situated in India.



e. Regulation 8 of Notification No. FEMA.21/2000-RB dated May 3, 2000, as amended from time to time, 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.

f. In view of the above, the applicant was advised to transfer the immovable property vide letter No. PNJ.FED.No.668/02.05.006/2017-2018 dated May 29, 2018, to a person resident in India who is a citizen of India and eligible under FEMA 1999, 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.

g. The applicant has transferred the immovable property to Mrs. Christline Fernandes and Mr Francis P Fernandes by way of sale vide sale deed dated November 19, 2018 for a total consideration of ₹ 49,00,000/- (Rupees forty-nine lakh only) out of which ₹ 10,19, 200/- (Rupees Ten lakh nineteen thousand two hundred only) has been deducted towards TDS under TAN No. MUMF09525F.

i. The contravention has been regularized vide RBI letter No. PNJ.FED.No.668/02.05.006/2017-2018 dated May 29, 2018 subject to Compounding of contravention.

j. The purchase price of the Immovable Properties under reference i.e. ₹ 2,46,000/- (Rupees Two lakh forty-six thousand only) has been considered as the amount of contravention.

k. The purchase and transfer transaction took place on April 11, 1997 and November 19, 2018 respectively. The period of contravention, therefore, may be considered with effect from April 11, 1997 to November 19, 2018 i.e. 21 year 07 months and 08 days.

l. The amount and period of contravention is as follows:

Amount: ₹ 2,46,000/- (Rupees Two lakh forty-six thousand only)

Period: 21 year 07 months and 08 days i.e from from April 11, 1997 to November 19, 2018.



3. The applicant has contravened the Section 31(1) of FERA, 1973 and 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 May 3, 2000 as amended from time to time. Section 31(1) of FERA, 1973 states that persons who are not citizens of India (whether resident in India or not) and companies (other than banking companies) which are not incorporated under any law in force in India are required to obtain prior permission of Reserve Bank to acquire, hold, transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situated in India. Further, Regulation 8 of Notification No. FEMA.21/2000-RB dated May 3, 2000, as amended from time to time, 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 foreign national has purchased immovable property in India without prior approval of Reserve Bank. The aforementioned contraventions has been regularized by RBI letter No. PNJ.FED.No.668/02.05.006/2017-2018 dated May 29, 2018 subject to compounding of contraventions.

4. The applicant was given an opportunity for personal hearing vide email dated June 10, 2019 for further submission in person and /or producing documents, if any, in support of the application. Applicant's representative Mr. Mukesh Kumar appeared representing the applicant, for the personal hearing on June 17, 2019. The representative of the applicant admitted the contraventions committed by the applicant 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 November 21, 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 her 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. Mukesh Kumar 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 the Section 31(1) of FERA, 1973 and 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 May 3, 2000 as amended from time to time. The contravention amount i.e the cost of acquisition of immovable property, therefore, comes to ₹ 2,46,000/- (Rupees Two lakh forty-six thousand only) and the period of contravention stands at 21 year 07 months and 08 days i.e from April 11, 1997 (the date of purchase) to November 19, 2018 (the date of transfer).

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 and 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 ₹ 7,38,000/- (Rupees Seven Lakh thirty eight thousand only) will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound the admitted contraventions namely the contravention of Section 31(1) of FERA, 1973 and 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 May 3, 2000 as amended from time to time, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹ 7,38,000/- (Rupees Seven Lakh thirty eight thousand 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 27th day of June, 2019.

K.K. Vazirani
Assistant General Manager