



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
5th floor, Amar Building  
Fort, Mumbai - 400 001

Present

**Meenakshi Ganju**  
**Deputy General Manager**

Date: February 8, 2019  
C.A. 4765/2018

In the matter of

**Ms. Vasumati Pande**  
**R/O C-5/1, Safdarjung Development Area**  
**New Delhi-110 016**

**(Applicant)**

In exercise of the powers conferred 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 has filed the application dated August 13, 2018 (received in the Reserve Bank of India 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 contraventions sought to be compounded relate to setting up of WOS prior to August 5, 2013 in contravention of Regulation 5(1) read with FEMA 2(k) of FEMA 120/RB-2004 dated July 7, 2004 as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB). The applicant had remitted AED 12,850 on July 23, 2014 and AED 49,500 on May 14, 2015 and Form ODI Part I for these transactions was submitted to the designated AD bank on August 16, 2017, with a delay, which was not in line with Para D (2) of Schedule V read with Regulation 20A of Notification No. FEMA 120/2004-RB. Further, the applicant did not capitalize the remittance of AED 12,850 sent on May 15, 2015 and it was reversed (money was repatriated back) on July 2, 2018. The share certificate for remittance of AED 49,500 was issued by overseas



entity on February 29, 2016, which was reported to the AD bank on August 11, 2017. Repatriation of the amount remitted/ submission of proof of investment beyond the period of six months, is in contravention of Regulation 15(i) of Notification No. FEMA 120/2004-RB. The applicant effected all three remittances through HDFC Bank while the designated AD bank for the overseas WOS was Andhra Bank, thus contravening Regulation 6(2)(v) of Notification No. FEMA 120/2004-RB. The applicant also reported APRs for the years 2013 to 2015 with delay resulting in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB.

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

2.1 The applicant, a resident individual had sent USD 3270.35 as pre-operative expenses for setting up of overseas WOS viz., Om Exports FZC in UAE on February 28, 2013. These pre-operative expenses were not capitalised and were refunded by overseas WOS on April 20, 2018. Resident individuals were permitted to undertake ODI vide FEMA Notification No.263, w.e.f. August 5, 2013. As the applicant had remitted funds towards setting up of WOS prior to August 5, 2013, it resulted in contravention of Regulation 5(1) read with FEMA 2(k) of FEMA 120/RB-2004.

2.2 The applicant made subsequent ODI remittances of AED 12, 850 on July 23, 2014 and AED 49, 500 on May 14, 2015 and Form ODI Part I for these transactions were reported on August 16, 2017 with a delay, in contravention of Para D (2) of Schedule V read with Regulation 20A of Notification No. FEMA 120/2004-RB.

2.3 Further, the applicant did not capitalize the remittance of AED 12,850 sent on May 15, 2015 and it was reversed (money was repatriated back) on July 2, 2018. The share certificate for remittance of AED 49,500 was issued by overseas entity on February 29, 2016, which was reported to the AD bank on August 11, 2017. Repatriation of the amount remitted/ submission of proof of investment beyond the period of six months, is in contravention of Regulation 15(i) of Notification No. FEMA 120/2004-RB.

2.4 The applicant effected all three remittances through HDFC Bank while the designated AD bank for the overseas WOS was Andhra Bank, thus contravening Regulation 6(2)(v) of Notification No. FEMA 120/2004-RB.



2.5 The applicant also reported APRs for the years 2013 to 2015 with delay, resulting in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB.

3. The following are the observed contraventions:

3.1 Whereas resident individuals were not permitted to make overseas direct investment prior to August 5, 2013. Resident individuals were permitted to undertake ODI vide FEMA Notification No.263, w.e.f. August 5, 2013.

3.2 Whereas para D (2) of Schedule V read with Regulation 20A of Notification No. FEMA 120/2004-RB states that the investment, as made by a resident individual, shall be reported by the designated authorised dealer to the Reserve Bank in Form ODI Part I and II, as prescribed by the Reserve Bank from time to time, within 30 days of making the remittance.

3.3 Whereas Regulation 15(i) of FEMA 120/2004, states that an Indian Party, which has acquired foreign security in terms of the Regulations 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, or such further period as Reserve Bank may permit.

3.4 Whereas Regulation 6(2)(v) of Notification No. FEMA 120/2004-RB states that an Indian Party routes all transactions relating to the investment in a Joint Venture / Wholly Owned Subsidiary through only one branch of an authorised dealer to be designated by it.

3.5 Whereas Regulation 15(iii) of Notification No. FEMA 120/2004-RB an Indian Party, which has acquired foreign security in terms of the Regulations in Part- I, shall submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before a specified date, an Annual Performance Report (APR) in Part III of Form ODI, as prescribed by the Reserve Bank from time to time, in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time.

4. The applicant was given an opportunity for personal hearing vide letter No.FE.CO.CEFA.No./4139/15.20.67/2018-19 dated January 11, 2019 for further



submission in person and/ or producing documents, if any, in support of the application. Shri Shantanu Pande, Partner, Om Exports FZC represented the applicant during the personal hearing held on January 18, 2019. The representative of the applicant submitted that the contraventions on the part of the applicant were unintentional and arose out of

lack of knowledge about the legal requirements associated with the transaction, which the applicant had entered with an intention of setting up business abroad. The representative of the applicant also requested for a lenient view on the contraventions, in view of the fact, that she had approached the transaction only from a technical background and could not understand the 'legal complexities' of the matter. The application for compounding was considered based on the averments made in the application as well as other documents and submissions made in this context by the applicant.

5. I have given my careful consideration to the documents on record and submissions made by the representatives of the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant contravened the following Regulations of Notification No. FEMA120/2004-RB dated July 7, 2004:

(i) Regulation 5(1) read with FEMA 2(k)- The amount of contravention in INR, as declared by the applicant is ₹1,80,000/- approximately and the period of contravention taken is five years and two months, from the date of such remittance to the date of repatriation.

(ii) Para D (2) of Schedule V read with Regulation 20A- The amount of contravention in INR, as declared by the applicant is ₹8,96,445/- approximately and the period of contravention taken is two years and three months, from the date of such remittance to the date of submission of Form ODI to the AD bank.

(iii) Regulation 15(i) - The amount of contravention in INR, as declared by the applicant is ₹2,20,120/- and ₹8,96,445/- approximately and the period of contravention taken ranges between one year six months to three years and two months, from the date of such remittance, to the date of repatriation of the amount remitted/ submission of proof of investment, to the AD bank.



(iv) Regulation 6(2)(v) – The amount of contravention in INR as declared by the applicant is ₹12,96,565/- approximately and the period of contravention is taken as five years and

nine months, from the date of remittance to the date of issuance of compounding memo to the applicant.

(v) Regulation 15(iii)- The amount of contravention in INR, as declared by the applicant is ₹12,96,565/- approximately and the period of contravention taken ranges from nine months to two years eight months.

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 her knowledge and belief. It has been declared in the declaration dated August 13, 2018, 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/him/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.

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. However, taking into account the relevant facts and circumstances of the case as stated in the foregoing paragraphs, I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and I consider that payment of an amount of ₹2,33,574/- (Rupees Two Lakh Thirty Three Thousand Five Hundred and Seventy Four only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulations 5(1) read with 2(k), Para D(2) of Schedule V read with 20A, 6(2)(v), 15(i) and 15(iii) of Notification No. FEMA 120/2004-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on



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payment of an amount of ₹2,33,574/- (Rupees Two Lakh Thirty Three Thousand Five Hundred and Seventy Four only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai – 400 001 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 day the eighth day of February 2019

**Sd/-**

**(Meenakshi Ganju)**

**Deputy General Manager**