



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
11th floor, Central Office Building  
Shahid Bhagat Singh Road  
Mumbai - 400 001

Present

**Ajay Kumar Misra**  
**Chief General Manager**

Date: January 2, 2019  
C.A. 4767/2018

In the matter of

**K. Shanmugam**  
**No. 12, Sixth Street, Gopalapuram**  
**Chennai – 600 086, Tamil Nadu**

**(Applicant)**

In exercise of the powers conferred under section 15 (1) of the Foreign Exchange Management Act, 1999 and the Regulations/Rules/Notifications/Orders made there under, I pass the following

**Order**

The applicant has filed a compounding application dated August 13, 2018 (received at 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 compounding is sought for contravention of Section 42(1) of FEMA, 1999 which stipulates that *'Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly'*. The



applicant was the Managing Director of South Asia FM Limited (SAFL) when the company contravened the provisions contained in paragraphs 9(1)(A), 9(1)(B) of Schedule I and Regulation 10A(b)(ii) of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated 3rd May 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB) relating to delay in reporting foreign inward remittances, delay in reporting allotment of shares after receipt of funds and contravention of pricing guidelines under the prevailing Foreign Direct Investment (FDI) policy for issue of CCPS.

2. The relevant facts of the case are as follows: The applicant, is a resident individual who was the Managing Director of SAFL which was incorporated on November 09, 2005, under the Companies Act, 1956 (CIN U92131TN2005PLC057987). SAFL is engaged in the business of operating FM Radio Stations. SAFL received foreign inward remittances from a foreign investor, South Asia Multimedia Technologies Limited, Mauritius in several tranches from February, 2008 to August, 2010. SAFL delayed in reporting the foreign inward remittance to RBI within the stipulated period of 30 days as below:

<b>Sr.No.</b>	<b>Amount (in Rs.)</b>	<b>Date of receipt</b>	<b>Date of reporting to RBI</b>
1.	1,92,28,539.95	02.03.2009	15.05.2009

The above inward remittance was reported with a delay of three months approximately. Whereas, in terms of paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report foreign inward remittances to the Reserve Bank of India as per the prescribed procedure not later than 30 days from the date of receipt of the amount of consideration.



2. a Further, there was delay in filing form FC-GPR subsequent to allotment of shares to the overseas entity as below:

Sr. No.	Amount for which shares were issued (Rs.)	Date of Allotment	Date of filing FCGPR	Nature of Allotment
	14,92,36,150	28.02.2008	31.03.2008	Equity
	1,92,28,540	22.06.2009	04.11.2009	Equity
	19,38,91,980	23.07.2009	04.11.2009	Equity
	43,90,01,360	03.08.2009	04.11.2009	Equity
	2,80,00,000	20.12.2010	01.02.2011	Compulsorily Convertible Preference Shares (CCPS)
<b>Total</b>	<b>82,93,58,030</b>			

Whereas in terms of paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to Reserve Bank a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident outside India. The applicant delayed the filing of Form FC-GPRs, with the period of delay ranging between 2 days and 4 months approximately.

2. b SAFL issued CCPS to the non-resident investor without determining the price or the conversion formula upfront as per the prevailing FDI Policy, which was in violation of the pricing guidelines for convertible capital instruments. This was in contravention of Regulation 10A(b)(ii) of Notification No. FEMA 20/2000-RB. Whereas in terms of Regulation 10A(b)(ii) of Notification No. FEMA 20/2000- RB, “a person resident in India who proposes to transfer to a person resident outside India...any shares or convertible debentures of an Indian company, whose activities fall under Annex B to Schedule I, shall, subject to sectoral limits specified therein, transfer such shares or convertible debentures....subject to the following:



- (a) where the transfer of shares or convertible debentures requires the prior approval of the Foreign Investment Promotion Board (FIPB) as per the extant Foreign Direct Investment (FDI) policy;
- (b) the transfer of shares or convertible debentures adheres with the pricing guidelines and documentation, reporting requirements as stipulated by the Reserve Bank from time to time”.

The above investments were carried out under the Approval Route in terms of FIPB approval received vide letters FC II.247(2007)/256(2007) dated December 05, 2007 and FC II.247(2007)/256(2007)- Amend dated April 28, 2009. SAFL received Reserve Bank of India (RBI) post facto approval for the above transaction vide letter Che FED.FID/2722/24.19.333/2015-16 dated November 16, 2015.

3. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter Ref. No. FE.CO.CEFA/3100/15.20.67/2018-19 dated November 27, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on December 12, 2018 where Ms. Swetha Subramanian represented the applicant. The representative of the applicant submitted that the applicant and SAFL had inadvertently failed to comply with the FEMA regulations, when the applicant was the Managing Director. The applicant requested that a lenient view may be taken in the matter.

It has also 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 his knowledge and belief. It has also been informed in the declaration furnished along with the compounding application that the applicant was under investigation by the Directorate of Enforcement (DoE). Accordingly, the compounding of above contraventions is subject to the veracity of the above declarations made by the applicant and this Compounding 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 considered on the basis of the averments made in the application as well as other documents and submissions made along with the application.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing and thereafter. A compounding application was made by SAFL on December 21, 2015 for compounding of the contraventions stated above and in the Compounding Order CA No. MCO3870 dated June 07, 2016 it was held that SAFL has contravened the FEMA provisions issued in terms of Paragraphs 9(1)(A), 9(1)(B) of Schedule I and Regulation 10A(b)(ii) to Notification No. FEMA 20/2000-RB as per the details given in paragraphs 2 and 3 above. The contraventions relate to the following amount:

(i) Paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB – Amount of contravention is Rs.1,92,28,539.95 and period of contravention is 3 months approximately.

(ii) Paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB – Amount of contravention is Rs.82,93,58,030/- and period of contravention ranges between 2 days to 4 months approximately.

(iii) Regulation 10A(b)(ii) of Notification No. FEMA 20/2000-RB - Amount of contravention is Rs.2,80,00,000/- and period of contravention is five years approximately.

6. The applicant is in receipt of a Show Cause Notice F.No. T-4/2-D/2013 dated January 7, 2013 from the DoE. In response to RBI's letter FE.CO.CEFA./1180/15.20.67/2018-19 dated August 30, 2018 and subsequent reminder letter FE.CO.CEFA./1875/15.20.67/2018-19 dated October 4, 2018, DoE vide letter F.No. T-4/2-D/2013 dated December 10, 2018 conveyed its 'no



objection' to the compounding proceedings in the matter. This order is issued without any prejudice to any action that may be taken by DoE against the applicant on the issues not covered under this order.

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 contraventions are to be compounded and I consider that an amount of Rs.36,300/- (Rupees thirty six thousand three hundred only) will meet the ends of justice in the circumstances of the case.

8. Accordingly, I compound the admitted contraventions namely, the contraventions of Section 42(1) of FEMA, 1999 read with Paragraphs 9(1)(A) and 9(1)(B) of Schedule I and Regulation 10A(b)(ii) of Notification No. FEMA-20/2000-RB, on payment of an amount of Rs.36,300/- (Rupees thirty six thousand three hundred 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 of accordingly.

Dated this the second day of January, 2019.

Sd/-

**(Ajay Kumar Misra)**  
**Chief General Manager**