



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: July 11, 2019
CA No 4869 / 2019

In the matter of

Bhairav Kothari
1301 Sparkle, Citi of Joy, J.S.D.Road,
Mulund West, Mumbai 400080
(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 January 11, 2019 (received at the Reserve Bank on January 14, 2019) 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 are (i) Non-submission of documentary evidence of investment within the stipulated time period and (ii) Disinvestment with write off without arriving at the fair value. The above amount to the contravention of Regulations 15(i) and 16(1)(iii) 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 SGD 1800 (Rs 91,972) during October 2013 towards setting up of an overseas wholly owned subsidiary (WOS) in Singapore. The overseas WOS, SuperCFO Services Pvt.Ltd was incorporated in October 2013. The resident individual had received share certificates for the remitted amount on October 01, 2013 which is within the time frame of six-months as prescribed by the Reserve Bank of India as required under Regulation 15(i) of the Notification ibid. Though the applicant has applied for compounding the contravention of the aforesaid regulation, it is observed that it is not a contravention of the Regulation ibid and hence it does not require to be compounded. Further, since the business was not successful, the WOS was wound up with write off without arriving at the valuation as required under Regulation 16(1) (iii) of the Notification ibid. The applicant submitted the valuation report on August 27, 2018, which was taken on record by RBI.

3. (i) 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.....

(ii) Further in terms of Regulation 16(1) (iii) An Indian Party may transfer, by way of sale to another Indian Party which complies with the provisions of Regulation 6 above, or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions:

(i).....

(ii).....

(iii) if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV/WOS

4. The applicant was given an opportunity for personal hearing vide letter No. FED.CO.CEFA/6891/15.20.67/2018-19 dated May 23, 2019 for further



submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on June 13, 2019. It was attended by Shri Bhairav Kothari, Managing Director, SuperCFO Services Private Limited. The representative of the applicant submitted that he 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 16(1)(iii) Notification No.FEMA.120/2004-RB. The total amount of contravention is Rs. 91,972/- and period of contravention is four years and two months approximately.

6. It has been declared in the compounding application dated January 11, 2019, 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 January 11, 2019, 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. 38,322/- (Rupees thirty eight thousand three hundred and twenty two 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 16(1)(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 38,322/- (Rupees thirty eight thousand three hundred and twenty two 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 11th of July, 2019

Sd/-
(S Arumugam)
Assistant General Manager