



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
Central Office Cell, 1st Floor
6, Sansad Marg
New Delhi - 110 001

Present

K.K. Vazirani
Assistant General Manager

Date: October 28, 2019

C.A. No.103 /2019

In the matter of

Mrs Jill Roberts

60, Montague Road
Leverett, Massachusetts
MA 01054, USA

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, Mrs Jill Roberts has filed an application dated February 19, 2019 (received in RBI on May 28, 2019) for compounding of contravention of the provisions of Foreign Exchange Management Act, 1999 (the FEMA) and the Regulations issued thereunder. The contravention sought to be compounded relate to acquisition of immovable property in India by a foreign national of non – Indian origin and resident outside India, without RBI permission, in contravention of the provisions under Regulation 8 of Notification No. FEMA.21 /2000-RB dated May 03, 2000, as amended



from time to time, read with Regulation 3(a) of Notification No. FEMA.21 /2000-RB dated May 03, 2000. (hereinafter referred to as FEMA 21 *ibid.*).

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

- a. Mr Richard Piviroto has been granted permission to acquire immovable property under reference vide RBI letter bearing No. CO.FID(III)/ 952/10.03.04/P-1713/99-2000 dated December 2, 1999. However, Mr Richard Piviroto acquired the property in joint name with his wife Mrs. Jill Roberts, the applicant.
- b. Mrs. Jill Roberts, being a foreign national not resident in India has acquired the residential flat in Chennai in the year 2004 without obtaining prior permission from the Reserve Bank of India. The details of the immovable properties under reference are given below:

Revenue & other Details	Area	Amount	
1. Flat No. 3, "Madura" S.No. 80/IE & 80IF Plot No. 9, Manapakkam Road, Manapakkam, Chennai 600016.	924 sq. ft.	Total cost of Acquisition of property - ₹ 8,96,700/- i.e. ₹1,02,000/- (cost of land) + ₹ 7,94,700/- (cost of construction of flat)	Total cost of immovable property at the time of transfer - ₹ 22,35,150/-

The immovable property was acquired for total consideration of ₹ 8,96,700/- (Rupees Eight lakh ninety six thousand seven hundred only).

- c. Regulation 8 of Notification No. FEMA-21/2000-RB dated May 03, 2000 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. Hence, the aforesaid immovable property was acquired by Mrs. Jill Roberts, US National non-resident in India, without Reserve Bank's permission, in contravention of Regulation 8 of Notification No. FEMA 21/2000-RB dated May 03, 2000, as amended from time to time.

- d. In view of the above, the applicant was advised to transfer the immovable property vide letter No. FED.CO.ND(IP).85/10.51.000/2017-18 dated August 6, 2018 to a person resident in India who is a citizen of India within six months from the date of such letter and not to repatriate sale proceeds of the property without prior approval of the RBI subject to compounding of contravention.
- e. The property under reference has been transferred to Mr. N. Mohan vide sale deed executed on June 1, 2018. The property was purchased for the total amount of ₹ 8,96,700/- (Rupees Eight lakh ninety six thousand seven hundred only) and was sold for a total consideration of ₹ 22,35,150/-. (Rupees Twenty two lakh thirty five thousand one hundred fifty only)
- f. The contravention has been regularized vide RBI letter No. FED.CO.ND(IP).85/10.51.000/2017-18 dated August 6, 2018 subject to Compounding of contravention.
- g. As the applicant was co-owner of the immovable property under reference, 50% of the purchase price of the immovable property under reference i.e. ₹4,48,350/- (Rupees Four lakh forty eight thousand three hundred fifty only) has been considered as the amount of contravention. Further, the value of the property has been appreciated to ₹ 22,35,150/- (Rupees Twenty two lakh thirty five thousand one hundred fifty only), out of which the applicant's part is 50% i.e. ₹ 11,17,575/-. Since the applicant cannot earn by way of appreciation, the difference between 50% of sale price and 50% of purchase price i.e. ₹ 6,69,225/- (Rupees Six lakh sixty nine thousand two hundred twenty five only) has been considered as the undue gain.
- h. The purchase transaction took place on January 20, 2004 and sale transaction took place on June 1, 2018. The period of contravention, therefore, considered



with effect from January 20, 2004 to June 1, 2018 i.e. 14 years 04 months 12 days.

i. The amount and period of contravention are as follows:

Amount: ₹4,48,350/- (Rupees Four lakh forty eight thousand three hundred fifty only)

Undue Gain: ₹ 6,69,225/- (Rupees Six lakh sixty nine thousand two hundred twenty five only)

Period: 14 years 04 months 12 days i.e from January 20, 2004 to June 1, 2018.

3. The applicant has contravened the 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 03, 2000, as amended from time to time. Regulation 8 of FEMA 21 ibid 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 a foreign national of non-Indian origin and not resident in India has purchased immovable property in India without prior approval of Reserve Bank. The aforementioned contravention has been regularized by RBI letter No. FED.CO.ND(IP).85/10.51.000/2017-18 dated August 6, 2018 subject to compounding of contravention.

4. The applicant was given an opportunity for personal hearing vide email/letter dated September 25, 2019 for further submission in person and /or producing documents, if any, in support of the application. Applicant's representatives Mrs. Nandini Mohan appeared representing the applicant, for the personal hearing on October 17, 2019. The representatives of the applicant admitted the contravention committed by the applicant for which she 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 February 19, 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 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 him thereafter. 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. 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 the representatives of the applicant 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 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 50% cost of acquisition of immovable property, comes to ₹ : ₹4,48,350/- (Rupees Four lakh forty eight thousand three hundred fifty only) and the period of contravention stands at 14 years 04 months 12 days i.e from January 20, 2004 (the date of purchase) to June 1, 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 ₹ 7,22,588/- (Rupees Seven lakh twenty two thousand five hundred eighty eight only) will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound the admitted contravention namely the contravention of 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 ₹ 7,22,588/-



(Rupees Seven lakh twenty two thousand five hundred eighty eight only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Office Cell, 1st 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 28th day of October 2019.

K.K. Vazirani

Assistant General Manager