



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
P M Road
Mumbai - 400 001

Present
Sharmila Thakur
General Manager

Date: November 26, 2019
CA No 4970 / 2019

In the matter of
Maheshwari Foods and Hospitality Pvt Ltd
12/85, Motilal Nagar No.3,
M G Road
Goregaon West
Mumbai - 400062
(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 July 4, 2019 (received in the Reserve Bank on July 9, 2019), for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are non-receipt of share certificate or other evidence of investment, delayed submission of Annual Performance Reports (APRs) and undertaking disinvestment with write-off without obtaining valuation of the overseas company. The above are in contravention of Regulations 15 (i), 15(iii) and 16(1)(iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 respectively, notified vide Notification No 120/2004-RB dated July 7, 2004, as amended from time to time (hereinafter referred to as Notification No FEMA 120-RB 2004).



2. The relevant facts of the case are follows:

The applicant company was incorporated as Maheshwari Foods and Hospitality Pvt Ltd on April 23, 2011 (CIN U55204MH2011PTC16578), and is engaged in the restaurant business.

The applicant made an investment of USD 100,000 (equivalent to INR 65,38,551) in two tranches on July 10 and August 20 of 2015 for acquisition of 50% stake in overseas JV viz., Hetal Inc in USA. The overseas JV was not able to arrange visas for Indian staff and the project had to be abandoned though many expenses had already been incurred. The applicant received a refund of USD 50,000 of its application money in January 2016, Remaining USD 50,000 was not received by the applicant, it being part of the share of losses incurred e.g committed rent, legal expenses etc. The overseas JV was wound up in April 2017, with the Certificate of Termination being dated April 24, 2017.

Share Certificate for USD 510 only was produced by the applicant with delay on March 24, 2017 and the remaining USD 49,490 was retained as share application money till it was written off. This constituted contravention of Regulation 15(i) of the Notification No. FEMA 120-RB, 2004. Annual Performance Reports (APRs) for the years 2015 and 2016 were filed beyond due date in contravention of Regulation 15(iii) *ibid*. Non-submission of valuation certificate on reporting disinvestment of USD 50,000 with full write off was contravention Regulation 16(1)(iii) *ibid*.

3.(a) Regulation 15(i) of Notification No FEMA 120-RB, 2004, obliges an Indian Party, which has acquired foreign security in terms of the Regulations to 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.

(b) According to paragraph 15(iii) *ibid*, an Indian Party, which has acquired foreign security in terms of the Regulations in Part- I, shall “submit to the Reserve Bank every year within 60 days from the date of expiry of the statutory period as prescribed by the respective laws of the host country for finalisation of the audited accounts of the Joint Venture/Wholly Owned Subsidiary outside India or such further period as may be allowed by Reserve Bank, an annual performance report in form APR ...”.



(c) According to Regulation 16(1)(iii) of Notification No FEMA 120-RB 2004 as amended from time to time, an Indian party may disinvest any share or security held by him in a Joint Venture or Wholly Owned Subsidiary outside India provided that 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 Joint Venture or Wholly Owned Subsidiary.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/1877/15.20.67/2019-20 dated October 14, 2019. The meeting was held on November 13, 2019 in which the company was represented by Mr Ajay Taparia, Director. The representative explained that the company could not implement its plan of running an Indian restaurant in the US as American visas could not be arranged for key staff to run the restaurant. However, it was able to recoup about half the investment. The official expressed doubt about the applicability of Regulation 16(1)(iii) in their case since there was no sale or transfer of shares. The undersigned pointed out the relevant regulations of Notification FEMA 120 whereby disinvestments involving write off required the company to submit a valuation to show the salvage value of the company, which the company representative accepted.

5. It has been declared in the compounding application dated July 4, 2019, that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has also been declared in the declaration furnished along 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 been informed of initiation of any such enquiry/investigation/adjudication proceedings against it 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.



6. I have carefully considered the documents on record and submission made by the applicant in his application and during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Regulation 15(i),15(iii) and 16(1)(iii) of Notification No FEMA 120-RB 2004 as amended from time to time. The amount and period of contravention is as follows: The partial share certificates were delayed by a year and non-submission of share certificates were regularised in April 2019 i.e three years after they were due. The APRs for 2015 and 2016 were submitted with delay in 2017. The company reported closure of JV in April 2017 with write off of USD 50,000/- equivalent to INR 32,69,275/- without submission of a valuation certificate based on audited balance sheet of the JV, for which a post facto approval subject to compounding was accorded in April 2019.

7. In terms of provisions of section 13 of FEMA, any person contravening any provision of the Act shall be liable to pay up to three times the sum involved in the contravention upon adjudication. However, taking into account the relevant facts and circumstance 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.1,32,148/- (Rupees One Lakh Thirty Two Thousand One Hundred Forty Eight only) will meet the ends of justice.

8. Accordingly, I compound the admitted contravention namely, the contravention of Regulations 15(i), 15(iii) and 16(1)(iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 4, 2004, as amended from time to time, by the applicant, based on the facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs.1,32,148/- (Rupees One Lakh Thirty Two Thousand One Hundred Forty Eight only) which shall be deposited by the applicant with the Reserve Bank of India, 5th Floor, Amar Building, Sir P M Road, Mumbai-400001 by a Demand Draft drawn in favour of "Reserve Bank of India" and payable at



FED,CEFA
Maheshwari Foods and Hospitality Pvt Ltd
C.A. No.4970/2019

“Mumbai” within a period of 15 days from the date of the 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 shall apply. The application is disposed accordingly.

Dated this 26th day of November 2019.

Sd/-
(Sharmila Thakur)
General Manager