



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 12, 2019
CA No 4865 / 2019

In the matter of

Shobha Kalra
60, Adarsh Nagar
Rishikesh, Dehradun - 249201

(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 January 16, 2019 (received in the Reserve Bank on January 17, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The applicant has sought to be compounded for (i) delay in filing Form ODI with respect to overseas investments made and making overseas direct investment without issuance of Unique Identification Number (UIN) and (ii) non-submission of Annual Performance Reports (APR) within the stipulated time period, and (iii) non-receipt of share certificates within the stipulated time period, in contravention of Regulation 20A read with



paragraph D(1) of Schedule V, Regulation 20A read with paragraph D(3) of Schedule V further read with Regulation 15(iii), and Regulation 20A read with paragraph D(3) of Schedule V further read with Regulation 15(i) 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 Ms. Shobha Kalra is a resident individual. The applicant remitted HKD 6,500 (Rs. 53,651/-) on 26.02.2015 towards the equity capital of the overseas entity viz., Allyquantum Ltd in Hong Kong. Form ODI Part I for the above transaction was submitted to AD Bank on 21.04.2016 with a delay beyond the stipulated time period, thereby contravening Regulation 20A read with Para D(1) of Schedule V of Notification No. FEMA 120. The applicant submitted APRs for the years 2016 (on 26.02.2018) and 2017 (on 17.01.2019), with delay beyond the stipulated time period, thereby contravening Regulation 20A read with Para D(3) of Schedule V and Regulation 15(iiii) of Notification No. FEMA 120. However, during the personal hearing it was observed that the resident individual had received share certificates for the remitted amount 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.

3. In terms of Regulation 20A read with paragraph D(1) of Schedule V of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, a resident individual is permitted to make Overseas Direct Investment in certain cases, provided “The resident individual, making overseas direct investments under the provisions of this Schedule, submits duly completed Form ODI, as prescribed by the Reserve Bank, from time to time, to the designated authorized dealer, within 30 days of making the remittance”.



Further, Regulation 20A read with paragraph D(3) of Schedule V further read with Regulation 15(iii) of Notification No. FEMA 120/2004-RB specifies the time period for filing of APRs by a resident individual.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/5717/15.20.67/2018-19 dated March 28, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on April 11, 2019. It was attended by Shri Manish Shah and Shri Nishit Parikh, authorized representatives of the applicant. The representatives of the applicant submitted that the applicant 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.

It has been declared in the compounding application dated January 16, 2019, that the particulars given by the applicant in the application are true and correct to the best of her knowledge and belief. It has also been declared in the declaration submitted 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 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.

The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and the submissions made therein and thereafter.

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 Regulation 20A



read with paragraph D(1) of Schedule V and Regulation 20A read with paragraph D(3) of Schedule V further read with Regulation 15(iii) of Notification No.FEMA.120/2004-RB. The amount of contravention is Rs. 53,651/- and the period of contravention ranges from one month to one year one month approximately.

6. 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, it stands to reason that payment of an amount of Rs. 6,483/- (Rupees six thousand four hundred and eighty three only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulation 20A read with paragraph D(1) of Schedule V and Regulation 20A read with paragraph D(3) of Schedule V further read with Regulation 15(iii) of Notification No.FEMA.120/2004-RB, on payment of a sum of Rs. 6,483/- (Rupees six thousand four hundred and eighty three 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 12th day of July, 2019

Sd/-
(S. Arumugam)
Assistant General Manager