



In the

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

Present

Nimmi R Kaul
General Manager

Date: April 25, 2019
CA No 4815/2018

In the matter of

Shri Vitthal Beriwal
10/11 Sarvapriya Vihar, New Delhi 110 016

(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 November 13, 2018 (received in the Reserve Bank on November 16, 2018), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contravention sought to be compounded is remittance made as gift under the Liberalized Remittance Scheme (LRS) from a person resident in India to another person resident in India which is not permitted under the LRS guidelines.

2. The relevant facts are as under: The applicant, a resident individual, remitted GBP 125,000 (Rs. 88,71,402/-), to the overseas joint foreign currency account of Shri Shyam Sunder Beriwal and Smt. Bimla Devi Beriwal (his grandparents), as a gift, on 19.10.2010, under LRS. However, since the



applicant and his grandparents are resident Indians, the transaction was not permitted under LRS and was thus in contravention of Section 5 of FEMA, 1999 read with Paragraph 7(b) of the Master Direction on LRS. The applicant approached RBI for post facto approval of the transaction and was advised vide letter FED. CO.EPD.1895/21.52.006/2018-19 dated October 04, 2018 to unwind the transactions and thereafter approach RBI for compounding. The applicant has received back the remitted amount on 05.11.2018 by unwinding of the transaction.

3. In terms of Section 5 of FEMA, 1999:

“Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction

Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.”

Further, in terms of Para 7(b) of the Master Direction on Liberalized Remittance Scheme dated January 1, 2016, “any resident individual may remit up-to USD 2,50,000 in one FY as gift to a person residing outside India or as donation to an organization outside India.”

In the instant case the applicant (a resident) contravened the above provision by remitting GBP 1,25,000 as gift to his grandparents who were residents.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/4902/15.20.67/2018-19 dated February 15, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on February 28, 2019 during which CA Shri Deepender Kumar represented the applicant. The representative of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations and requested that a lenient view may be taken in the matter. 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.



The applicant has declared in the compounding application that he was issued a Show Cause Notice (SCN) No. T-4/01/FEMA/DLZO-I/2018/JD(SM)/5701 dated 26.03.2018 by the Directorate of Enforcement (DoE) for alleged contraventions of FEMA, 1999. RBI vide letter FE.CO.CEFA/2988/15.20.67/2017-18 dated November 20, 2018 had sought comments from DoE as to whether its investigation pertained to the contraventions sought to be compounded by the applicant and whether it had any objection to compounding by RBI. DoE vide its letter F.No. RBI/SDE/WR/B-189/2018/3841 dated 05.02.2019 has stated that the investigation against the applicant has been concluded and the complaint has been filed. The present status of the case is at the adjudication stage. Further, on perusal of case, prima-facie it does not appear to be a case related to a serious contravention suspected of money laundering or terror financing. Accordingly, this compounding order is being issued after considering the comments offered by DoE and is without prejudice to any action which may be taken by any other authority under the extant laws.

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 Section 5 of FEMA, 1999 read with Paragraph 7(b) of the Master Direction on LRS. The amount of contravention is Rs. 88,71,402/- and the period of contravention is 8 years and 18 days.

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 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. 116,536/- (Rupees one lakh sixteen thousand five hundred and thirty six 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 contravention committed by the applicant namely, Section 5 of FEMA, 1999 read with Paragraph 7(b) of the Master Direction on LRS, on payment of a sum of Rs. 116,536/- (Rupees one lakh sixteen thousand five hundred and thirty six 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 25th April, 2019

Sd/-
(Nimmi R Kaul)
General Manager