



In the

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

Present

Ajay Kumar Misra
Chief General Manager

Date: July 26, 2019
CA No 4911 / 2019

In the matter of

Vineet Harlalka
Fourth Floor, TDI Centre
Plot No. 7, Jasola District Centre
New Delhi - 110025

(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 March 25, 2019 (received in the Reserve Bank on March 28, 2019), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The compounding is sought for contravention of Section 42(1) of FEMA, 1999 which stipulates that '*Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly*'. The abovementioned applicant was one of the Directors of M/s Indian Energy Exchange Limited during the



relevant period when the company had contravened certain provisions of FEMA 1999, namely, non-adherence to the conditions which were stipulated for receiving foreign investments and failure to bring the shareholding in line with that specified in the provisions of Regulation 5(1)(i) read with para F.8 of Annexure B to Schedule I of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulation, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as then applicable (hereinafter referred to as Notification No. FEMA 20/2000-RB), within the time period given by Foreign Investment Promotion Board (FIPB), Ministry of Finance, Government of India.

2. The relevant facts, as per the compounding application, are as under: The abovementioned applicant was a Director of an Indian company viz., M/s Indian Energy Exchange Limited during the relevant period when the company had failed to comply with the conditions which were stipulated for receiving foreign investments and failure to bring the shareholding in line with Regulation 5(1)(i) read with para F.8 of Annex B to Schedule 1 of Notification No. FEMA 20/2000-RB (with respect to four shareholders – the total amount of contravention being Rs. 11,56,28,928/-) within the time period given by Foreign Investment Promotion Board (FIPB), Ministry of Finance, Government of India. This non-adherence resulted in contravention of the provisions contained in the abovementioned Regulation by the company (M/s Indian Energy Exchange Limited), for which it was compounded vide Compounding Order dated January 23, 2018.

The applicant being a Director of M/s Indian Energy Exchange Limited has submitted a compounding application for contravention of Section 42(1) of FEMA 1999 read with Regulation 5(1)(i) of Notification No. FEMA 20/2000-RB read with sections 6(3)(b) and 47(3) of FEMA, 1999. Section 42(1) of FEMA 1999 state '*Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly*'. The compounding application has, however, been submitted by the applicant for the contravention with respect to only one shareholder (MPEFL), the amount of contravention involved being Rs. 6,31,25,607/-.

3. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/6717/15.20.67/2018-19 dated June 24, 2019 for further submission in



person and/or producing documents, if any, in support of the application. The personal hearing was held on July 05, 2019 during which Shri Vineet Harlalka and Shri Kishore Joshi, authorized representatives of the applicant, were present. The representatives of the applicant submitted that the contraventions of FEMA regulations had been inadvertently committed by the company when the applicant was its Director, and requested that a lenient view may be taken in the matter.

The applicant has declared in the compounding application that he was issued a Show Cause Notice (SCN) No. T-4/02-D/HQ/2017, dated June 15, 2017 by the Directorate of Enforcement (DoE). RBI vide letter FE.CO.CEFA./5900/15.20.67/2018-19 dated April 03, 2019 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. A reminder letter ref. No. FE.CO.CEFA/6543/15.20.67/2018-19, was sent to DoE on May 06, 2019. No response has been received from DoE to the abovementioned letters. However, vide letter ref. No. F.No.T-4/2-D/HQ/2017/ADE dated December 28, 2017, DoE had stated that they had no objection to the compounding of M/s Indian Energy Exchange Limited, for the contravention of which the applicant has applied for compounding, being a Director of the company (under Section 42(1) of FEMA, 1999). Accordingly, as no comments have been received in the present case, this Compounding Order is being issued after considering the comments offered by DoE in case of M/s Indian Energy Exchange Limited and based on the submission of the applicant that the company had inadvertently committed the contraventions when he was a Director of the company. This Order is without prejudice to any action which may be taken by any other authority under FEMA, 1999 and/or any other extant laws.

4. I have given my careful consideration to the documents on record. It was observed that the applicant is subject to the provisions of Section 42(1) of FEMA, 1999, in respect of contraventions committed by the company where he was a Director. The amount of contravention (committed by the company and applied for by the applicant) is Rs. 6,31,25,607/- and the period of contravention is 4 months approximately.

5. 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. 36,563/- (Rupees thirty six thousand five hundred and sixty three only) will meet the ends of justice in the circumstances of this case.

6. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contravention committed by the applicant namely, Section 42(1) of FEMA, 1999, on payment of a sum of Rs. 36,563/- (Rupees thirty six thousand five hundred and sixty 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 26th day of July, 2019

Sd/-
Ajay Kumar Misra
(Chief General Manager)