



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
Fort, Mumbai - 400 001

Present

Meenakshi Ganju
Deputy General Manager
Date: December 09, 2019
C.A. 4991/2019

In the matter of

Mr. Rajesh Gilbert Salins
Palm Spring Society Ltd. Bunglow No.7,
Opp. Chandan Cinema, Juhu
Mumbai 400 049

(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 July 26, 2019 (received in the Reserve Bank of India on August 2, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded relate to (i) Regulation 5(1) of Notification No. FEMA 120/2000-RB dated July 07, 2004 as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB), (ii) contravention of Para C.4 of Schedule V read with Regulation 20A of Notification No. FEMA 120/ 2000-RB.

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

2.1 The applicant a resident individual (RI) invested AED 50,000 and AED 22,000 on November 20, 2017 and January 19, 2018 respectively in an overseas WOS viz., Bell O



Seal DWC-LLC in UAE. Dubai World Central (DWC) Free Zone issued share certificates of AED 1,00,000 to the applicant on June 21, 2017 to the RI. Share certificates were received by the RI prior to date of remittance i.e., share certificates without payment or on deferred payment basis, resulting in contravention of Regulation 5(1) of Notification No. FEMA 120/ 2000-RB.

2.2 Due to adverse market conditions, the overseas entity went on incurring losses and accordingly, it was decided to close the overseas WOS. The applicant disinvested his stake and the entire equity was written off, which is in contravention of Para C.4 of Schedule V read with Regulation 20A of Notification No. FEMA 120/ 2000-RB.

3. The following are the observed contraventions:

3.1 Whereas Regulation 5(1) of the Notification No. FEMA 120/2004-RB states that save as otherwise provided in the Act, rules or regulations made or directions issued there under, or with prior approval of the Reserve Bank, no person resident in India shall make any direct investment outside India.....receiving share certificates without making remittance or on deferred payment basis not permitted under the Notification.

3.2 Whereas para C.4 of Schedule V read with Regulation 20A of the Notification No. FEMA 120/2004-RB states that No write off shall be allowed in case of disinvestments by the resident individuals.

4. The applicant was given an opportunity for personal hearing vide letter No.FE.CO.CEFA.No./2625/15.20.67/2018-19 dated November 21, 2019 for further submission in person and/ or producing documents, if any, in support of the application. Mr.Viral Satra, Partner, Shah & Modi Chartered Accountants, the representative of the applicant submitted during the personal hearing held on November 27, 2019 that the contraventions on the part of the applicant were unintentional and arose out of lack of knowledge about the legal requirements associated with the transaction, which the applicant had entered with an intention of setting up business abroad. The representative of the applicant also requested for a lenient view on the contraventions, in view of the fact, that he had approached the transaction only from a technical background and could not understand the 'legal complexities' of the matter. The application for compounding was considered based on the averments made in the application as well as other documents and submissions made in this context by the applicant.



5. I have given my careful consideration to the documents on record and submissions made by the representatives of the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant contravened the following Regulations of Notification No. FEMA120/2004-RB dated July 7, 2004:

(i) Regulation 5(1) – The amount of contravention as declared by the applicant is ₹8,88,500/- and ₹3,83,020/- and the period of contravention is from June 21, 2017 to November 20, 2017 and January 19, 2018 respectively.

(ii) Para C.4 of Schedule V read with Regulation 20A – The amount of contravention as declared by the applicant is ₹12,71,520/- and the period of contravention as declared by the applicant is from August 31, 2018 to October 23, 2018.

6. It has been declared in the compounding application dated July 26, 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 declaration dated July 26, 2019, 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 it/him/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.

7. 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. However, taking into account the relevant facts and circumstances of the case as stated in the foregoing paragraphs, I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and I consider that payment of an amount of ₹1,12,715/- (Rupees One Lakh Twelve Thousand Seven Hundred and Fifteen only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contravention of Regulation 5(1) and Para C.4 of Schedule V read with Regulation 20A of Notification No. FEMA 120/2004-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of



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₹1,12,715/- (Rupees One Lakh Twelve Thousand Seven Hundred and Fifteen only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai – 400 001 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 day the 9th of December, 2019

Sd/-

(Meenakshi Ganju)
Deputy General Manager