



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 02, 2019
C.A. 4981/2019

In the matter of

Shri Sanjay Jayantilal Mankad
B-3, Sunflower Society, Diwalipura
Vadodara-390007

(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 18, 2019 (received in the Reserve Bank of India on July 26, 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) delayed submission of Form ODI Part I, thereby contravening Para D.1 of Schedule V read with Regulation 20A 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) delayed submission of APRs for the years 2014 to 2018, thereby contravening Para D.3 of Schedule V read with Regulation 20A of Notification No. FEMA 120/ 2000-RB and (iii) routing of the remittance of ODI through a non-designated AD Bank, which is in contravention of Regulation 6(2)(v) of Notification No. FEMA 120/2000-RB.

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



2.1 The applicant, a resident individual had remitted AUD 59,653 on October 16, 2014 towards investment in overseas JV viz., V.A. Mining Pty. Ltd. in Australia. The applicant submitted Form ODI Part I for the said remittance with delay on June 20, 2018, thereby contravening Para D.1 of Schedule V read with Regulation 20A of Notification No. FEMA 120/ 2000-RB.

2.2 Further, the applicant submitted APRs for the years 2014 to 2018 with delay on July 4, 2018 (for the years 2014 to 2017) and on March 25, 2019 (for the year 2018), thereby contravening Para D.3 of Schedule V read with Regulation 20A of Notification No. FEMA 120/ 2000-RB dated July 07, 2004.

2.3 The applicant routed the aforesaid remittance for ODI through ICICI Bank instead of the designated AD bank i.e., Canara Bank, in contravention of Regulation 6(2)(v) of Notification FEMA 120/ 2000-RB.

3. The following are the observed contraventions:

3.1 Whereas Para D.1 of Schedule V read with Regulation 20A of Notification No. FEMA 120/2004-RB states that the resident individual, making overseas direct investments under the provisions of this Schedule, submits duly completed Part I of the Form ODI, as prescribed by the Reserve Bank from time to time, to the designated authorised dealer, within 30 days of making the remittance.

3.2 Whereas para D.3 of Schedule V read with Regulation 20A of Notification No. FEMA 120/2004-RB states that the obligations as required in terms of Regulation 15 of this Notification shall also apply to the resident individuals who have set up or acquired a JV or WOS under the provisions of this Schedule.

3.2 Whereas Regulation 6(2)(v) of Notification No. FEMA 120/2004-RB states an Indian party routes all transactions relating to the investment in a Joint Venture / Wholly Owned Subsidiary through only one branch of an authorised dealer to be designated by it.

4. The applicant was given an opportunity for personal hearing vide letter No.FE.CO.CEFA.No./2165/15.20.67/2018-19 dated October 29, 2019 for further submission in person and/ or producing documents, if any, in support of the application. Shri Sanjay Jayantilal Mankad the applicant submitted during the personal hearing held on November 25, 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 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) Para D.1 of Schedule V read with Regulation 20A – The amount of contravention as declared by the applicant is ₹33,00,000/- and the period of contravention is from November 16, 2014 (due date) to June 20, 2018 (date of submission of Form ODI Part I).

(ii) Para D.3 of Schedule V read with Regulation 20A – The period of contravention as declared by the applicant is between one year to four years.

(ii) Regulation 6(2)(v)- The amount of contravention, as declared by the applicant is ₹33,00,000/- and the period of contravention is from October 16, 2014 to January 1, 2019.

6. It has been declared in the compounding application dated July 18, 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 18, 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 ₹1,42,267/- (Rupees One Lakh Forty Two Thousand Two Hundred and Sixty Seven only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contravention of Para D.1 and D.3 of Schedule V read with Regulation 20A and Regulation 6(2)(v) 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 ₹1,42,267/- (Rupees One Lakh Forty Two Thousand Two Hundred and Sixty Seven 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 the 2nd day of December, 2019

Sd/-

(Meenakshi Ganju)
Deputy General Manager