



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

6, Sansad Marg

New Delhi-110001

Present

Md. Shakir Hasan
Assistant General Manager

Date: February 18, 2019

CA No. NDL 338/2018

In the matter of

Kamla Sharma

282, Pocket – D, Mayur Vihar, Phase – II, New Delhi 110091

(Applicant)

In exercise of the powers under Section 15 (1) of Foreign Exchange Management Act, 1999 and the Regulations / Rules / Notifications / Orders made thereunder, I pass the following Order.

ORDER

The applicant has filed the compounding application dated November 22, 2018 (received at Reserve Bank of India, New Delhi on November 29, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are of delay in reporting of transfer of shares from Resident to Non-Resident in Form FC-TRS in terms of Regulation 10A(b)(i) read with paragraph 10 of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.



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

(a) The applicant, a resident individual, had transferred 1000 equity shares of M/s Rising Sun Energy Private Limited to M/s Sunseap International Pte Ltd., Singapore, a non-resident company, on August 7, 2015 for a consideration of ₹10,000/- (Rupees Ten Thousand only) of which ₹9430/- was received on August 24, 2015 and ₹570/- on August 31, 2015). The applicant reported the said transfer of shares in Form FC-TRS on November 4, 2017. There was, thus, a delay of 2 years and 5 days in reporting the transfer of shares beyond the prescribed time period of 60 days from the date of receipt of the amount of consideration.

(b) The applicant further transferred 4800 equity shares of M/s Rising Sun Energy Private Limited to M/s Rising Sun Energy Pte Ltd., Singapore, a non-resident company, on October 27, 2016 for a consideration of ₹48,000/- (Rupees Forty Eight Thousand only) received on October 27, 2016. The applicant reported the said transfer of shares in Form FC-TRS on August 28, 2017. There was, thus, a delay of 8 months and 2 days in reporting the transfer of shares beyond the prescribed time period of 60 days from the date of receipt of the amount of consideration.

(c) Whereas, in terms of Regulation 10A(b)(i) of FEMA 20/2000-RB dated May 3, 2000, a person resident in India who proposes to transfer to a person resident outside India, any shares of an Indian company under the Foreign Direct Investment Scheme, whose activities fall under Annex B to Schedule 1, shall, subject to sectoral limits specified therein, transfer such shares without prior approval of the Reserve Bank if the same is by way of sale, subject to the condition that the parties concerned adhere to the pricing guidelines, documentation and reporting requirements for such transfers, stipulated by the Reserve Bank from time to time. And, in terms of paragraph 10 of Schedule 1 to FEMA 20/2000-RB dated May 3, 2000, in case of transfer of shares of an Indian company by way of sale from a person resident in India to a person resident outside India or vice versa, the transferor / transferee, resident in India, shall submit to the AD bank a report in the Form FC-TRS, as specified by the Reserve Bank from time to time within 60 days from the date of receipt or payment of the amount of consideration. The onus of submission of the Form FC-TRS within the specified time shall be on the transferor/ transferee, resident in India.

(d) Thus, there are contraventions of Regulation 10A(b)(i) of FEMA 20/2000-RB



dated May 3, 2000 read with paragraph 10 of Schedule 1 to FEMA 20/2000-RB dated May 3, 2000, as then applicable.

3. The applicant was given an opportunity for personal hearing for further submission in person and/or by producing documents, if any, in support of the application. Shri Keshav Bansal and Ms Kamini Bawari, both Company Secretary, appeared for personal hearing on February 14, 2019 on behalf of the applicant. The representatives of the applicant admitted the contravention committed by the applicant for which compounding has been sought. During the personal hearing, they submitted that the contraventions were committed without any *malafide* or wilful intention, but were mainly due to insufficient knowledge of FEMA Regulations. They requested for a lenient view in the matter. The application for compounding is, therefore, being considered on the basis of averments made in the application as well as other documents and submissions made during the personal hearing.

4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant had contravened the provisions of Regulation 10A(b)(i) read with paragraph 10 of Schedule 1 to FEMA 20/2000-RB dated May 3, 2000. The amount of contravention is ₹58,000/- (Rupees Fifty Eight Thousand only) and the period of contravention ranges from 8 months and 2 days to 2 years and 5 days.

5. It has been declared in the compounding application dated November 22, 2018 that the particulars given by the applicant in the application are true and correct to the best of her knowledge and belief. It has been declared in the undertaking dated November 22, 2018 furnished with the compounding application that the applicant is 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, thereafter. It has further been declared that the applicant has not filed any appeal under Section 17 or Section 19 of FEMA, 1999. 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.

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. 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 contraventions are to be compounded and I consider that an amount of **₹12,830/- (Rupees Twelve Thousand Eight Hundred and Thirty only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions of Regulation 10A(b)(i) of FEMA 20/2000-RB dated May 3, 2000 read with paragraph 10 of Schedule 1 to FEMA 20/ 2000-RB dated May 3, 2000, as then applicable, by the applicant based on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹12,830/- (Rupees Twelve Thousand Eight Hundred and Thirty only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi - 110001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at New Delhi 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 18th day of February 2019.

Sd/-

(Md. Shakir Hasan)
Assistant General Manager