



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi-110001

Present
P S Khual
General Manager
Date: February 18, 2019
CA No. NDL 319/2018

In the matter of
Saurabh Khurana
Jaypee Greens, 1101, Crescent Court (Tower-3)
Greater Noida, Uttar Pradesh-201308

(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 October 9, 2018 (received at Reserve Bank of India, New Delhi on October 18, 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 non-adherence to pricing guidelines and reporting requirements for transfer of shares from Resident to Non-Resident in Form FC-TRS in terms of Regulation 10A(b)(iii) of 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 then applicable, read with paragraph 2.2(b) of Annex-I to A.P.(DIR Series) Circular No. 49 dated May 4, 2010 and paragraph 4 of A.P.(DIR Series) Circular No. 63 dated April 22, 2009.



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

(a) The applicant, a resident individual, had transferred 27,999 equity shares of M/s Foresight IT Solutions and Consulting India Private Limited, a company engaged in the business of writing, modifying and testing of computer program to meet the needs of a particular client excluding web-page designing, to M/s Foresight Group International AG, a non-resident company, on June 2, 2010 for a consideration of ₹33,05,841.93 (Rupees Thirty Three Lakh Five Thousand Eight Hundred Forty One and Paise Ninety Three only) received on May 5, 2010 and July 10, 2017. The applicant reported the said transfer of shares in Form FC-TRS on January 19, 2018. There was, thus, a delay of 7 years, 6 months and 15 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 had not adhered to pricing guidelines in the said transfer of shares as only ₹28,000/- was received on May 5, 2010, in terms of the share purchase agreement dated October 1, 2009, whereunder the seller had agreed to sell 28,000 equity shares at a price of ₹1/- only. However, 1 (One) equity share was retained for regulatory purposes and 27,999 equity shares were transferred on June 2, 2010. Pursuant to a diligence on the company, it was brought to the notice of the seller that the said transfer of share was not in compliance with the pricing guidelines as per FEMA, 1999 and the Regulations issued thereunder. Subsequently, based on the valuation report of an independent Chartered Accountant, who determined the fair value of the share at ₹118.07, the remaining amount of ₹32,77,841.93 (Rupees Thirty Two Lakh Seventy Seven Thousand Eight Hundred Forty One and Paise Ninety Three only) was received on July 10, 2017. There was, thus, a delay of 7 years, 2 months and 5 days in compliance to pricing guidelines.

(c) Whereas, in terms of Regulation 10A(b)(iii) of FEMA 20/2000-RB dated May 3, 2000, as then applicable, a person resident in India who proposes to transfer to a person resident outside India, any share/convertible debenture of an Indian company whose activities fall under Annexure B to Schedule 1, other than item No. 1, 2, and 3 and subject to sectoral limits specified therein, shall transfer such shares/debentures without prior approval of Government and RBI, if the same is by way of sale, subject to the condition that the concerned parties adhere to pricing guidelines, documentation and reporting requirements for such transfers, as may be specified by



Reserve Bank from time to time. And, in terms of paragraph 4 of A.P.(DIR Series) Circular No. 63 dated April 22, 2009, the Form FC-TRS should be submitted to the AD Category - I bank within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/ transferee, resident in India. Further, in terms of paragraph 2.2(b) of Annex-I to A.P.(DIR Series) Circular No. 49 dated May 4, 2010, the transfer of shares shall be at a price not less than the fair value to be determined by a SEBI registered Category - I – Merchant Banker or a Chartered Accountant as per the discounted free cash flow method.

(d) Thus, there are contraventions of Regulation 10A(b)(iii) of FEMA 20/2000-RB dated May 3, 2000, as then applicable, read with paragraph 2.2(b) of Annex-I to A.P.(DIR Series) Circular No. 49 dated May 4, 2010 and paragraph 4 of A.P.(DIR Series) Circular No. 63 dated April 22, 2009.

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 Prashant Prakhar, Legal Counsel appeared for personal hearing on February 15, 2019 on behalf of the applicant. The representative of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to inadvertent oversight of the provisions of the extant FEMA Regulations. He 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)(iii) of FEMA 20/2000-RB dated May 3, 2000, as then applicable, read with paragraph 2.2(b) of Annex-I to A.P.(DIR Series) Circular No. 49 dated May 4, 2010 and paragraph 4 of A.P.(DIR Series) Circular No. 63 dated April 22, 2009. The amount of contravention for delayed reporting in Form FC-TRS is ₹33,05,841.93 (Rupees Thirty Three Lakh Five Thousand Eight Hundred Forty One and Paise Ninety Three only) and the



period of contravention is 7 years, 6 months and 15 days and the amount of contravention for pricing guidelines is ₹32,77,841.93 (Rupees Thirty Two Lakh Seventy Seven Thousand Eight Hundred Forty One and Paise Ninety Three only) and the period of contravention is 7 years, 2 months and 5 days.

5. It has been declared in the compounding application dated October 9, 2018, that the particulars given by the applicant in the application are true and correct to the best of his knowledge and belief. It has also been declared in the declaration dated February 6, 2019 furnished as part of 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 him, 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 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 **₹47,075/- (Rupees Forty Seven Thousand and Seventy Five only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions of Regulation 10A(b)(iii) of FEMA 20/2000-RB dated May 3, 2000, as then applicable, read with paragraph 2.2(b) of Annex-I to A.P.(DIR Series) Circular No. 49 dated May 4, 2010 and paragraph 4 of A.P.(DIR Series) Circular No. 63 dated April 22, 2009 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 **₹47,075/- (Rupees Forty Seven Thousand and Seventy Five 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/-

(P S Khual)
General Manager