



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

Ramesh Kumar Moolchandani
Chief General Manager

Date: April 26, 2019
CA No 4825 / 2018

In the matter of

Mahboob Rehman
16/84, 143 Cantonment
Kanpur - 208001

(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 November 26, 2018 (received in the Reserve Bank on November 30, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The applicant has sought to be compounded for (i) delay in filing Form ODI with respect to overseas investments made and making overseas direct investment without issuance of Unique Identification Number (UIN) and (ii) non-submission of Annual Performance Reports (APR) within the stipulated time period, in contravention of Regulation 20A read with paragraph D(3) of Schedule V and Regulation 20A



read with paragraph D(1) of Schedule V further read with Regulation 15(iii) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB dated July 7, 2004 as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB).

2. The relevant facts are as under: The applicant is a resident Indian, who, along with Shri Rashid Ahmad Mirza and Ms. Yasmin Mirza, two other resident Indians formed a wholly owned subsidiary (WOS), namely, Atlas Enterprises FZC, in UAE, on September 06, 2015. The details of the ODI remittances made by the three individuals are as follows:

Name of the remitter	Date of remittance	Amount remitted (USD)	Amount remitted (₹ equivalent)
Rashid Ahmad Mirza	19.08.2016	240,000	1,60,92,354.00
Yasmin Mirza	19.08.2016	240,000	1,60,92,354.00
Mahboob Rehman	23.08.2016	246,400	1,66,50,057.50

The ODI Form – Part I with respect to the abovementioned remittances was submitted by the applicant, Shri Mahboob Rehman, on 22.09.2017, with a delay beyond the stipulated period, in contravention of Regulation 20A read with paragraph D(3) of Schedule V of Notification No. FEMA 120/2004-RB. The UIN was allotted in 2017.

Further, the APRs for the years 2016 and 2017 were submitted on 04.05.2018 and 05.02.2019 respectively, with a delay beyond the stipulated period, in contravention of Regulation 20A read with paragraph D(1) of Schedule V further read with Regulation 15(iii) of Notification No. FEMA 120/2004-RB. Any one of the individuals could file the APRs within the stipulated time period. However, the compounding amount with respect to this contravention has been imposed in the Compounding Order issued with respect to Shri Rashid Ahmad Mirza, who has the largest percentage shareholding in the WOS, among the three individuals. The contravention on this count, in respect of the applicant's



compounding application is thus deemed to not exist and is not required to be compounded.

3. In terms of Regulation 20A read with paragraph D(1) of Schedule V of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, a resident individual is permitted to make Overseas Direct Investment in certain cases, provided "The resident individual, making overseas direct investments under the provisions of this Schedule, submits duly completed Form ODI, as prescribed by the Reserve Bank, from time to time, to the designated authorized dealer, within 30 days of making the remittance".

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/5716/15.20.67/2018-19 dated March 28, 2019 for further submission in person and/or producing documents, if any, in support of the application. The applicant, vide his e-mail communication dated March 29, 2019, conveyed his inability to appear for the personal hearing due to certain unavoidable circumstances and requested that the compounding application be disposed on the basis of the documents already submitted.

It has been declared in the compounding application dated November 26, 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 submitted along 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 been informed of initiation of any such enquiry/investigation/adjudication proceedings against him 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.

The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and the submissions made therein and thereafter.



5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulation 20A read with paragraph D(3) of Schedule V of Notification No.FEMA.120/2004-RB. The amount of contravention is Rs. 1,66,50,057.50/- and the period of contravention is one year approximately.

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. 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. 1,33,250/- (Rupees one lakh thirty three thousand two hundred and fifty only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulation 20A read with paragraph D(3) of Schedule V of Notification No.FEMA.120/2004-RB, on payment of a sum of Rs. 1,33,250/- (Rupees one lakh thirty three thousand two hundred and fifty 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 April, 2019

Sd/-
(Ramesh Kumar Moolchandani)
Chief General Manager