



In the  
Reserve Bank of India  
Foreign Exchange Department  
Ahmedabad – 380014

Present  
Dinesh Bahadur Singh  
Deputy General Manager

January 16, 2020  
CEFA.CO.ID.12066 / C.A. No. AHM - 144 / 2019-20

Matter  
Michelle A. DCosta  
501, Anand House 3, EME Stadium Road, Fatehgunj,  
Baroda, Gujarat - 390002

(Applicant)

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



## Order

Ms. Michelle A. DCosta (hereinafter referred to as applicant) has filed application dated October 01, 2019, complete in all respects, for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (FEMA, 1999) and the regulations issued thereunder. The contravention sought to be compounded is delay beyond 60 days in submitting a report in Form Foreign Currency Transfer of Shares (FC-TRS) to the Reserve Bank, through Authorised Dealer bank (AD bank) after receipt of amount of consideration towards transfer of shares by way of a sale from “a person resident in India” to “a person resident outside India” as required under Regulation 10 A (b) (i) read with Paragraph 10 (i) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, as then applicable (hereinafter referred to as Notification No. FEMA 20/2000-RB). The said Regulation have been issued by the Reserve Bank of India in exercise of its powers under the provisions of the FEMA, 1999.

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

(i) The applicant is a resident individual having PAN: BHLPD0967N, residing at 501, Anand House 3, EME Stadium Road, Fatehgunj, Baroda, Gujarat – 390002. The applicant has received one foreign inward remittance amounting to ₹12,64,180.76 from “a person resident outside India” viz. VSY Varlibaslar Saglik Yatirimlari Ve Hizmetleri Turizm Sanayi Ve Dis Ticaret Limited Sirketi, Turkey towards transfer of equity shares amounting to ₹12,64,200/- of VSY Ophthalmic India Pvt. Ltd., Vadodara. The shortfall of ₹19.24 has been ignored. The applicant reported the transfer of shares from “a person resident in India” to “a person resident outside India” in Form FC-TRS to its Authorised Dealer bank with a delay of 805 days beyond the prescribed period of 60 days from the date of receipt of consideration thereby contravening Regulation 10A(b)(i) read with paragraph 10(i) of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000 as then applicable.



(ii) The receipt of the consideration from the “person resident outside India” was reported by the applicant by filing Form FC-TRS as provided below:

Reporting under Regulation 10A(b)(i) read with paragraph 10(i) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000: Contravention detected

(Table 1)

Sr. No.	Name of the remitter	Amount of consideration received (₹)	Date of Receipt	Date of reporting to RBI*	Delay beyond prescribed period of 60 days
1	VSY Varlibaslar Saglik Yatirimlari Ve Hizmetleri Turizm Sanayi Ve Dis Ticaret Limited Sirketi, Turkey	12,64,180.76	02-02-2017	17-06-2019	805

\* For the purpose of calculation of delay under Regulation 10A(b)(i) read with paragraph 10(i) of Schedule 1, date of reporting by the applicant to AD bank is taken as date of reporting to RBI.

(a) As indicated in the Table 1 above, the applicant reported transfer of 7,000 shares of VSY Ophthalmic India Pvt. Ltd., Vadodara in Form FC-TRS and receipt of one foreign inward remittance amounting to **₹12,64,180.76** to the Ahmedabad Regional Office of the Reserve Bank of India with a delay of 805 days beyond the prescribed period of 60 days from the date of receipt of the amount of consideration.

(b) In terms of Regulation 5(1) of the Notification No. FEMA 20/2000-RB, “a person resident outside India” (other than a citizen of Bangladesh or Pakistan) or an entity incorporated outside India (other than an entity of Bangladesh or Pakistan) may purchase shares or convertible debentures or warrants of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule I to the said Regulations. Regulation 10A(b)(i) of Notification FEMA 20/2000-RB dated May 3, 2000 mandates that a person resident in India who proposes to transfer to a person resident outside India any shares or convertible debentures or warrants 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 or convertible debentures or warrants] without prior approval of the Reserve Bank if the same is by way of sale, subject to 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. Further, Paragraph 10(i) of Schedule 1 to Notification FEMA 20/2000-RB dated May 3, 2000 mandates that in case of transfer of shares or convertible debentures or warrants 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.

- (c) The applicant has thus failed to submit the report in Form FC-TRS within the time frame as required under Regulation 10A(b)(i) read with Paragraph 10(i) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, thereby contravening the provisions of the said Notification.

3. The applicant was given an opportunity for personal hearing vide letter FE(AH)No.791/06.04.15/CEFA/2019-20 dated December 30, 2019, for further submission in person and/or producing documents, if any, in support of the application. The applicant, vide her e-mail dated December 31, 2019, requested to dispose of her application as per documents submitted and sought an exemption from personal hearing with the Compounding Authority. The applicant has submitted that the inadvertent delay was due to repeated filings in SMF - FIRMS portal as she was unaware about issues in FCTRS filings. Further, the applicant is willing to accept any direction/order of the Compounding Authority in connection with her compounding application. The application for compounding is, therefore, being considered on the basis of the statements made in the application as well as other documents and submissions made in this context by the applicant.



4. It has been declared in the compounding application that the particulars given by the applicant in the application are true and correct to the best of her knowledge and belief. It has also been declared 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 her 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.

5. I have given my careful consideration to the documents on record and submissions made by the applicant in her application. I am satisfied and hold that the applicant has contravened the statutory requirement in terms of Regulation 10A(b)(i) read with Paragraph 10(i) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, due to delay in submitting Form FC-TRS, after transfer of shares from “a person resident in India” to “a person resident outside India” as detailed in paragraph 2(ii) above. The amount of contravention involved is ₹12,64,180.76 and the delay in submission is 805 days.

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 therefore, I consider that an amount of ₹15,625/- (Rupees Fifteen Thousand Six Hundred Twenty Five only) as penalty, will meet the ends of justice.

7. Accordingly, I compound the admitted contravention, namely contravention of Regulation 10A(b)(i) read with paragraph 10(i) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, by the applicant, on the facts discussed above, in terms



of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of ₹15,625/- (Rupees Fifteen Thousand Six Hundred Twenty Five only). The same shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Ground Floor, Near Gandhi Bridge, Post Box No. 1, Ahmedabad – 380 014 by a demand draft drawn in favour of the “Reserve Bank of India” and payable at Ahmedabad 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 of accordingly.

Dated the 16<sup>th</sup> day of January, 2020.

Sd/-

(Dinesh Bahadur Singh)  
Deputy General Manager