



In the
Reserve Bank of India
Foreign Exchange Department
5th Floor, Amar Building
Fort, Mumbai-400 001

Present

Arvind Kumar Dohare
Assistant General Manager

Date: December 20, 2017
CA No.4453/2017

In the matter of

Amit Jain

26, Feroz Gandhi Marg, Lajpat Nagar - 3
New Delhi - 110024

(Applicant)

In exercise of the powers conferred under section 15 (1) of Foreign Exchange Management Act, 1999 and the Regulations/Rules/ Notification/ Orders made there under, I pass the following

Order

The applicant filed a compounding application dated June 28, 2017 (received at the Reserve Bank of India on July 6, 2017) and an addendum letter dated August 01, 2017 for compounding of the contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA or Act) and the Regulations issued there under. The contraventions sought to be compounded are as under:

- (i) the outward remittance of Euro 3125 made by **Amit Jain** a resident individual for acquiring 12.5% equity shares of Joint Venture in **Germany** namely "**Shingora Europe Gm bH**" under LRS scheme **prior to August 5, 2013** in contravention of **Regulation 5(1)** of Notification No.FEMA.120/RB-2004 dated July 07, 2004 and as amended from time to time (herein after referred to as the Notification No. FEMA 120/RB-2004).



- (ii) Non- reporting of remitted amount in the prescribed Form ODI Part I in contravention of **Regulation 20A** read with **Para 1 and 2 of Part D of Schedule V** newly inserted in the Notification *ibid*.

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

The Indian Company namely “**Shingora Textiles Limited**” was incorporated on June 5, 2008 under the companies Act, 1956 and the same is engaged in the business of manufacturing and sale of textiles products and allied activities. The registered office of the company was at 26, Feroz Gandhi Marg, Lajpat Nagar-3, New Delhi- 110 024. The applicant “**Amit Jain**”, **resident individual and director of the Company “Shingora Textiles Limited”** had undertaken ODI of Euro 3125 towards equity (of 12.5% shares) of JV in Germany incorporated in the name of “**Shingora Europe GmbH**” through HSBC bank on May 14, 2012 which is not in line with Regulation 5 (1) of the Notification No. FEMA120/RB-2004 as the remittance was made prior to August 5, 2013. The resident individual remitting money for overseas investments was not eligible prior to August 5, 2013 under Notification No. FEMA. 120/ RB-2004 dated July 7, 2004. Thus the applicant who had made investment in the JV as a resident individual on May 10, 2012 under Liberalised Remittance Scheme (LRS) had contravened the provisions of Regulation 5(1) whereas in terms of Regulation 5(1) of Notification No. FEMA 120/ RB-2004, “---no person resident in India-----”.

Subsequently, the captioned Notification was amended with prospective effect and resident individual was allowed to acquire or set up a JV or WOS abroad with effect from August 05, 2013 under newly inserted Regulation 20A, schedule V to the Notification *ibid*.

In view of amended Notification No. FEMA. 263/ RB- 2013 dated March 5, 2013 notified on August 5, 2013, the resident individual should have taken initiative to submit/ report the Form ODI Part I through designated authorised dealer after the date of notified of the Notification as the resident individual making ODI have the obligation to adhere to certain reporting requirements. Hence, the resident individual contravened the Regulation 20A read with para 1 and 2 of Part D of schedule V of Notification No. FEMA.263 /RB-2013 dated March 5, 2013 (amendment of Notification No. FEMA 120/ RB-2004) which is reproduced appended:

- (i) In terms of Para 1 of Part D of schedule V of Regulation 20 A (as amended from time to time), the resident individual, making overseas direct investments under the provisions of this schedule, shall submit duly completed Part I of the Form



ODI, as prescribed by the RBI from time to time to designated authorised dealer, within 30 days of making the remittance.

- (ii) In terms of Para 2 of Part D of schedule V of Regulation 20 A (as amended from time to time), the investment, as made by a resident individual, shall be reported by the designated authorised dealer to the Reserve Bank of India in Form ODI Part I and II as prescribed by the Reserve Bank of India from time to time, within 30 days of making the remittance.

Further, the resident individual had submitted the Form ODI Part I to regularise the ODI transaction on June 13, 2017. The transaction was regularised subject to without prejudice to any action that may be taken by Compounding Authority on compounding application submitted by the applicant. Further, the resident individual, director of the Shingora Textiles Ltd, had disinvested the shares of JV for Rs. 2,21,510.84 to Shingora Textiles Limited on March 30, 2013 .

3. The applicant was given an opportunity for personal hearing vide letter FED.CO.CEFA.No.2851/15.20.67/2015-16 dated September 29, 2015 for further submission in person and or producing documents, if any, in support of the application. Accordingly, the date of hearing was fixed on October 10, 2017. However, a representative of the applicant Shri Sandeep Thapar, Manager (Export) of “**Shingora Textiles Ltd**” for personal hearing was present on the date. During personal hearing, the representative of the applicant admitted the contraventions committed by the Individual for which he sought the compounding. The application for compounding has, therefore been considered on the basis of averments made in the application as well as the submission made in this context during the personal hearing.

4. In view of the above, remitting Euro 3125 prior to August 5, 2013, is in the contravention of Regulation 5(1) and non –reporting of the remitted amount in the prescribed Form ODI Part I is in contravention of Regulation 20A read with Para 1 and 2 of Part D of Schedule V of Notification No. FEMA 120 /RB-2004 dated July 7, 2004. The amount of contravention is Euro 3125 (INR 2,21,510.84) and the period of contravention includes five year approximately.

5. I have given my careful consideration to the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Regulation 5(1) and Regulation 20A read with Para 1 and 2 of



Part D of Schedule V of Notification No. FEMA 120 /RB-2004 dated July 7, 2004 as amended from time to time.

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, after considering the relevant facts and the 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 Rs. 65,218/- (Rupees sixty five thousand two hundred eighteen only) meets the ends of justice.

7. Accordingly, I compound the admitted contravention committed by the applicant namely: contravention of Regulations 5(1) and Regulation 20A read with Para 1 and 2 of Part D of Schedule V of Notification No. FEMA 120/RB-2004 dated July 7, 2004 on the facts discussed above in terms of Foreign Exchange (compounding Proceeding) Rules, 2000, on payment of the amount of Rs. 65,218/- (Rupees sixty five thousand two hundred eighteen only) which shall be deposited by the applicant with Reserve Bank of India, Foreign Exchange Department, 5th floor, Amar Building, Fort, Mumbai 400 001 by way of a demand draft drawn in favour of "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 twentieth day of December, 2017

Sd/-

(Arvind Kumar Dohare)

Assistant General Manager