



In the

Reserve Bank of India
Foreign Exchange Department
5th Floor, Amar Building
Sir PM Road
Mumbai – 400001

Present

R. Seetharaman
Deputy General Manager

Date: December 21, 2017
CA NO: 4449/2017
In the matter of

Vaibhav Sanghi

1 Turf View Motilal Sanghi Marg, Worli, Mumbai-400018

Applicant

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

Order

The applicant has filed a compounding application dated June 29, 2017 (received in the Reserve Bank of India on July 3, 2017) for compounding the contraventions of the provisions of the Foreign Exchange Management Act, 1999 (FEMA 1999) and the regulations issued there under. The contravention sought to be compounded relates to purchase of shares of Indian company using overseas investor from the funds remitted under LRS held in residents overseas accounts. The above transaction resulted in contravention of provisions of Section 3(b) and Section 10(6) of Foreign Exchange management Act, 1999 read with provisions of Schedule I of Notification No. FEMA.1/2000-RB dated 3rd May 2000.



2. The relevant facts of the case are follows:

The shares of an Indian company namely M/s. Windmere Hospitality India Private Limited were held by a Mauritius company M/s. Windmere Hospitality (India) Private Limited, Mauritius. The applicant, Shri. Vaibhav Sanghi along with his family members, Shri. Mahendra Kumar Sanghi, Ms. Manju Sanghi, and Shri. Ashwin Sanghi, all residents, had purchased shares of the said Indian company viz. M/s. Windmere Hospitality India Private Limited from its Mauritius based holding company viz. M/s. Windmere Hospitality (India) Private Limited, Mauritius on July 5, 2016. The shares were purchased using the funds held in the applicant's overseas accounts remitted under LRS on September 24, 2013 by giving declaration that they shall be utilised for investment in shares overseas. Foreign Investment Division, Foreign Exchange Department, Central Office, Reserve Bank of India vide letter dated February 6, 2017 addressed to the HDFC Bank, Trade Finance Department (AD bank) on the subject matter of transfer of shares from Non-resident company (M/s. Windmere Hospitality (India) Private Limited, Mauritius) to Resident Individuals (applicant and their family members), stated that in terms of provisions contained in Schedule 1 to Notification No FEMA 1/2000 –RB dated May 3, 2000 as amended from time to time, investment in Indian companies using funds remitted under LRS is not permitted and the AD bank may advise the company to unwind the transaction and approach Reserve Bank of India for compounding.

The applicant had remitted INR 25,45,250.00 (GBP25,000.00) to HSBC (UK) account on September 24, 2013. From this amount, GBP 12787.52 utilised for the purchase of the shares of an Indian company viz. M/s. Windmere Hospitality India Private Limited from its Mauritius based holding company M/s. Windmere Hospitality (India) Private Limited, Mauritius on July 5, 2016. This transaction resulted in contravention of Section 3(b) and Section 10(6) of Foreign Exchange management Act, 1999 read with provisions of Schedule I of Notification No. FEMA.1/2000-



RB dated May 3, 2000. The transaction was reversed on May 16, 2017 and the amount GBP 12787.52 (INR1042566.51) was a credited back on May 30, 2017.

3.1 Section 3(b) of FEMA 1999 states that “any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorised person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section “.

3.2 Section 10(6) of FEMA 1999 states that “any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorised person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

3.3 Schedule I, of Notification No. FEMA.1/2000-RB dated May 3, 2000 contains the list of permissible classes of Capital Account Transactions of persons resident in India can undertake in terms of Regulation 3(1)(A) of Notification No. FEMA.1/2000-RB dated May 3, 2000.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank’s letter FED.CO. CEFA .No./4656/15.20.67/2017-18 dated November 24, 2017 for further submission in person and /or producing documents, if any, in support of the application. The personal hearing was



held on December 5, 2017 during which Shri. Ashwin Sanghi, Director, M.K. Sanghi Group and Shri. Dilip J Thakkar, Chartered Accountant, Partner, Jayantilal Thakkar Associates, Mumbai and Rajesh P. Shah, Chartered Accountant, Partner, Jayantilal Thakkar Associates, Mumbai represented the applicant. The application is considered on the basis of the averments made and documents produced in the application.

5. I have given my careful consideration of 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 Section 3(b) and Section 10(6) of Foreign Exchange management Act, 1999 read with provisions of Schedule I of Notification No. FEMA.1/2000-RB dated May 3, 2000. The amount and period of contravention is as follows.

i) Provisions of Section 3(b) of Foreign Exchange Management Act, 1999 as amended from time to time: The amount of contravention: GBP 12787.52 (INR111114.42). The period of contravention was, 10 months and 26 days approximately.

ii) Provisions of Section 10(6) of Foreign Exchange Management Act, 1999 as amended from time to time: The amount of contravention: GBP 12787.52 (INR111114.42). The period of contravention was, 10 months and 26 days approximately.

6. In terms of provisions of section 13 of FEMA, any person contravening any provision of the Act shall be liable to pay up to three times the sum involved in the contravention upon adjudication. However, taking into account the relevant facts and circumstance 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 Rs.111115.00 (Rupees One lakh eleven thousand one hundred and fifteen only) will meet the end of justice.

7. Accordingly, I compound the admitted contraventions namely, contravention of provisions of Section 3(b) and Section 10(6) of Foreign



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Exchange management Act, 1999 read with provisions of Schedule I of Notification No. FEMA.1/2000-RB dated May 3, 2000, by the applicant on the basis of facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs.111115.00 (Rupees One lakh eleven thousand one hundred and fifteen only) which shall be deposited by the applicant with the Reserve Bank of India, 11th Floor, Central Office Building, Shahid Bhagat Singh Marg, Mumbai-400001 by 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 the 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 shall apply.

The application is disposed accordingly.

Dated this the twenty first day of December 2017.

Sd/-

(R. Seetharaman)

Deputy General Manager