



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: February 28, 2018
CA No.4511/2017

In the matter of

Karan Kapur

**3, The Cliff, 27 Pochkhanwala Road, Worli Road,
Mumbai-400 030
(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 September 6, 2017 (received at the Reserve Bank of India on September 7, 2017) and an addendum letters/ e-mails dated December 6, 2017 and January 17, 2018 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 USD 10,000 (Equivalent to INR 6,04,300/-) made by Karan Kapur a resident individual for acquiring 50% equity shares of wholly owned subsidiary **in Singapore** namely "**Kapoc Foods Pte Limited**" under LRS scheme **prior to August 5,2013** is 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 is in contravention of Regulation 20A read with Para 1&2 of Part D of Schedule V newly inserted in the Notification *ibid*.



- (iii) Delayed submission of APR for the year 2014 is not in line with Regulation 15(iii) read with Para 3 of Part D of Schedule V of Notification No. FEMA 120.
- (iv) The sale proceeds USD 250 (equivalent to INR 16737/-) was repatriated on February 10, 2017 from the date of disinvestment (May 6, 2015) which is not in line with Para 3 of Part C of Schedule V of Regulation 20 A of *ibid*.

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

The applicant "Karan Kapur", a **resident individual** had undertaken ODI of USD 10,000 towards equity (of 50% shares) of WOS in Singapore incorporated in the name of "Kapoc Foods Pte Limited" through HDFC bank on July 23, 2013 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 WOS as a resident individual on July 23, 2013 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 shall make any direct investment outside 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 August 10, 2016. 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.

The applicant was delayed in submission of APR for the year 2014 the same is in contravention of Regulation 15(iii) of Notification No. FEMA 120. Whereas in terms of Para 3 of Part D of Schedule V of Regulation 20A of FEMA *ibid*, the obligations as required in terms of Regulation 15 of this Notification shall also apply to the resident individuals who have set up or acquired a JV or WOS under the provisions of this schedule.

Further, the resident individual had disinvested the shares of WOS for USD 10,391 (INR 6,47,633/-) on May 6, 2015 but the sale proceeds for USD 250 (INR 16,737/-) was repatriated on February 10, 2017 which was not repatriated within the stipulated time. Whereas in terms of Para 3 of Part C of Schedule V of Regulation 20A, the disinvestment proceeds shall be repatriated to India immediately and in any case not later than 60 days from the date of disinvestment and the same may be reported to designated AD bank. Thus the Resident individual had contravened para C.3 of Schedule V of Regulation 20A of FEMA 120.

3. The applicant was given an opportunity for personal hearing vide letter FED.CO.CEFA.No.6723/15.20.67/2015-16 dated February 9, 2018 for further submission in person and or producing documents, if any, in support of the application. Accordingly, the date of hearing was fixed on February 27, 2018. However, a representative of the applicant, Shri Anshul Bhatt, Company Secretary in practice was present for personal hearing 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 USD 10,000 prior to August 5, 2013, delayed submission of APR for the year 2014, non –reporting of the remitted amount in the prescribed Form ODI Part I and non-repatriation of sale proceeds of USD 250 within time are in contravention of



Regulation 5(1), Regulation 15(iii), Regulation 20A read with Para 1 and 2 of Part D and Para 3 of Part C of Schedule V of Notification No. FEMA 120 /RB-2004 dated July 7, 2004. The total amount of contravention is USD 10,250 (INR 6,21,037) 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), Regulation 15(iii) and Regulation 20A read with Para 1 and 2 of Part D and Para 3 of Part C 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. 1,14,092/-(Rupees One Lakh Fourteen Thousand Ninety Two only) meets the ends of justice.

7. Accordingly, I compound the admitted contravention committed by the applicant namely: contravention of Regulations 5(1), Regulation 15(iii) and Regulation 20A read with Para 1 and 2 of Part D and Para 3 of Part C 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 Rs. 1,14,092/-(Rupees One Lakh Fourteen Thousand Ninety Two 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 twenty eighth day of February, 2018

Sd/-



FED, CP, CEFA
Karan Kapur
CA No. 4511/2017

(Arvind Kumar Dohare)
Assistant General Manager