



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Shekhar Bhatnagar
Chief General Manager

Date: May 24, 2018
C.A. 4651/2018

In the matter of

Rahul Saraf
3, Hungerford street, Kolkata 700 017
(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 there under, I pass the following

Order

The applicant has filed a compounding application dated March 08, 2018 (received in the Reserve Bank on March 13, 2018) and addendum dated May 24, 2018 for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded relate to (i) delay in reporting transfer of shares in Form FC-TRS and; (ii) transfer of shares to a person resident outside India without obtaining the valuation certificate in contravention of para 10 of schedule 1 and regulation 10(A)(b)(i) read with para 5 of schedule 1 respectively of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated 3rd May 2000 as then applicable (hereinafter referred to as Notification No. FEMA 20/2000-RB).



2. The relevant facts of the case are as follows: Safari Retreats Private Limited (SRPL) is a company incorporated under the Companies Act, 1956 on February 27, 1982. It is engaged in the construction and development of a multiplex cum shopping mall in Bhubaneshwar. On June 14, 2007, Banyan Real Estate Fund, Mauritius acquired 26000 equity shares of SRPL of face value Rs.10/- each at a price of Rs.627/- per share for a total consideration of Rs.1,63,02,000/- from Shri Rahul Saraf, a resident individual. The said shares were acquired by the overseas entity under the automatic route. The applicant failed to report the transfer of the shares in the form FC-TRS within the prescribed time period thereby contravening para 10 of schedule 1 to FEMA 20/2000-RB. The applicant reported transfer of shares with delay in form FC-TRS to the AD bank on March 16, 2017 enclosing therewith a copy of the valuation certificate dated March 10, 2017 from a chartered accountant certifying the fair value of the shares as on June 14, 2007. It is apparent that the shares were transferred by the applicant to a person resident outside India without obtaining valuation duly certified by a chartered accountant which was in contravention of regulation 10(A)(b)(i) read with para 5 of schedule 1 to FEMA 20/2000-RB. RBI vide letter FED.(Bhu) No.362/09.01.001/2017-18 dated February 01, 2018 advised the applicant of the above contraventions.

3. The applicant committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 20/2000-RB, as then applicable:-

3.1 In terms of para 10 of schedule 1 to FEMA 20/2000-RB '*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.*'

Whereas the applicant reported the transfer of shares with delay beyond the prescribed time period thereby contravening the said FEMA regulation.



3.2 In terms of para 5 of schedule 1 of FEMA 20/2000-RB '*Price of shares issued to persons resident outside India under this Schedule, shall not be less than the valuation of shares done as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker where the shares of the company are not listed on any recognised stock exchange in India.* Further, in terms of regulation 10(A)(b)(i) of FEMA 20/2000-RB '*A person resident in India who proposes to transfer to a person resident outside India [not being erstwhile OCB) 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 the condition 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.* Whereas the applicant transferred the shares to a person resident outside India without obtaining valuation certificate and did not therefore adhere to the pricing guidelines thereby contravening regulation 10(A)(b)(i) read with para 5 of schedule 1 of FEMA 20/2000-RB.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/8813/15.20.67/2017-18 dated April 26, 2018 for further submission in person and/or producing documents, if any, in support of the application. The applicant vide letter dated April 30, 2018 submitted that he did not wish to attend the personal hearing and that the case be disposed on the basis of the documents submitted. The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as other documents and submissions submitted along with the application.

5. I have given my careful consideration to the documents on record and thereafter. Accordingly, I hold that the applicant has contravened the following FEMA provisions:



i. Para 10 of schedule 1 to FEMA 20/2000-RB. The contravention relates to an amount of Rs.1,63,02,000/- and the period of contravention is nine years eight months approximately.

ii. Regulation 10(A)(b)(i) read with para 5 of schedule 1 of FEMA 20/2000-RB: The contravention relates to an amount of Rs.1,63,02,000/- and the period of contravention is nine years nine months approximately.

6. It has been declared in the compounding application dated March 08, 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 been declared in the undertaking submitted with the application by the applicant 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 him thereafter as required in terms of the said undertaking. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made/undertaking furnished 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/undertakings are subsequently discovered to be false and/or incorrect.

7. 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 contravention is to be compounded and I consider that an amount of Rs.6,65,598/- (Rupees six lacs sixty five thousand five hundred ninety eight only) will meet the ends of justice in the circumstances of the case.

8. Accordingly, I compound the admitted contraventions namely, the contravention of para 10 of schedule 1 and regulation 10(A)(b)(i) read with para 5 of schedule 1 of Notification No. FEMA 20/2000-RB by the applicant as stated



above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.6,65,598/- (Rupees six lacs sixty five thousand five hundred ninety eight 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 of accordingly.

Dated this the twenty fourth day of May, 2018

Sd/-

Shekhar Bhatnagar
Chief General Manager