



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present
Sharmila Thakur
General Manager

Date: May 14, 2018
CA No 4625 / 2018

In the matter of
Shapoorji Pallonji And Company Private Limited
41/44, Minoo Desai Marg
Colaba
Mumbai 400005

(Applicant)

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

Order

The applicant has filed the application dated Jan 18, 2018 (received in the Reserve Bank on Jan 22, 2018), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded is non utilisation of funds remitted for the purpose of investment in proposed JV together with non-repatriation of the funds back. The above is in contravention of paragraph 6(2)(ii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 7, 2004, as amended from time to time (hereinafter referred to as Notification No FEMA 120-RB 2004).

2. The relevant facts of the case are follows:



During 2005-06, Shapoorji Pallonji and Company Private Ltd (the company) was executing a contract in Bangladesh for construction of the Canadian Chancery / High Commission complex in Dhaka under a project export approval of Exim Bank, Mumbai. On the basis of this project, the company planned to set up a JV with a local partner to explore and develop business prospects in Bangladesh.

Accordingly, the company remitted a total of USD 182,775 equivalent to INR 81,72,690 from January 2006 to March 2006 to the credit of the foreign currency account maintained in connection with the Canadian Chancery project for the purpose of ultimately investing in the JV. At about this time the political environment in Bangladesh underwent a drastic change for the worse resulting in political turmoil and uncertainty. This prompted the company to review its plans and it was decided to abandon the move to set up the JV. The company sought to repatriate back the funds but faced problems of rigid and inconvenient rules and regulations in respect foreign exchange as well as obstruction problems from the Bangladesh partner. Faced with the risk of total loss of the funds and write off, the company decided to utilise the funds in the execution of their existing project. This has been deemed to be diversion of remittance from original purpose and utilisation in a non-bonafide business in violation of Regulation 6(2)(ii) of Notification No FEMA 120-RB 2004 as amended from time to time. The fact of utilisation of remitted funds in this manner was reported to RBI in August 2009 with a request to cancel the UIN.

3. According to Regulation 6(2)(ii) of Notification No FEMA 120-RB 2004 as amended from time to time an Indian party may make direct investment in a Joint Venture or Wholly Owned Subsidiary outside India engaged in a bonafide business activity. Herein, "bonafide business" would be treated as the one for which remittance was made.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/8045/15.20.67/2017-18 dated March 26, 2018 for further submission in person and/or for producing documents, if any, in support of the application. The personal hearing was held on April 4, 2018 in which Ms Dolly Rawal, VP Finance and Accounts and Shri Nirmal Jagawat, Chief Financial Officer represented the



applicant company. Ms Rawal explained that the company was confronted by a situation wherein it could not proceed with the setting up of the JV due to the extreme political turmoil in the country, nor did the regulations allow free repatriation of the funds. As such, the company decided to utilise the money remitted in an existing project in Bangladesh rather than risk losing it completely. She agreed with the contraventions *and prayed for leniency*.

5. It has been declared in the compounding application dated Jan 18, 2018 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been declared in the declaration dated nil, furnished with the compounding application 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 it/him/her thereafter. 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.

6. I have carefully considered 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 Regulations 6 (2) (ii) of FEMA 120-RB 2004 as amended from time to time. The amount of contravention is considered to be the value of the investment made i.e USD 182,775 equivalent to INR 81,72,690 for the period from March 2006 till August 2009 when the company reported the matter to RBI and sought condonation.

7. 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 indicating that the



company faced an external situation beyond its control and acted to cut its losses, 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.103, 122/- (Rupees One lakh Three Thousand One Hundred Twenty Two) will meet the ends of justice.

8. Accordingly, I compound the admitted contravention namely, the contravention of Regulations 6 (2) (ii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 7, 2004, as amended from time to time, by the applicant, based on the facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs.103, 122/- (Rupees One lakh Three Thousand One Hundred Twenty Two Only only) which shall be deposited by the applicant with the Reserve Bank of India, 5th Floor, Amar Building, Sir P M Road, 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 fourteenth day of May 2018.

Sd/-

(Sharmila Thakur)

General Manager