



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 17, 2018  
CA No 4595 / 2017

In the matter of

**Sumanth Ramanujam**  
**17, Parthasarathy Gardens**  
**Chennai - 600018**

**(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 December 5, 2017 (received in the Reserve Bank of India on December 7, 2017), and an addendum dated March 19, 2018, for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) Overseas Direct Investment (ODI) by a resident individual at a time when the same was not permitted under the extant FEMA regulations; (ii) transfer of securities held in an overseas entity by a resident Indian which he was not permitted to acquire/hold in the first place (iii) Delay in reporting the investment in the overseas JV; (iv) holding the investment in an overseas holding company; (v) delay in reporting the disinvestment



of the stake in the overseas JV and; (vi) delay in submission of the Annual Performance Reports (APRs). The above were in contravention of Regulation 5(1), Regulation 3, para D(1) of schedule V read with regulation 20A, para A(6) of schedule V read with regulation 20A, para D(4) of schedule V read with regulation 20A and Regulation 15(iii) respectively, of Foreign Exchange Management (Transfer or Issue of Any foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB dated July 7, 2004 as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB).

2. The relevant facts of the case are as follows: Shri Sumanth Ramanujam, the applicant, a resident Indian, remitted an amount of Singapore Dollars (SGD) 116,800 (Rs.31,59,440/-), on October 19, 2007, to an overseas joint-venture (JV) in Singapore, namely, Vikasa Pte Ltd, towards subscription of 116,800 shares. The overseas entity was incorporated on August 27, 2007 with a capital of SGD 1 subscribed by a non-resident Indian based in Singapore. The share certificate was received on November 26, 2007. The remittance was sent under Liberalized Remittance Scheme (LRS), when the applicant was not permitted to undertake overseas direct investment under LRS. Overseas Direct Investment by resident individuals was permitted vide Notification No. FEMA.263/RB-2013 dated March 5, 2013, effective from August 5, 2013 (date of notification in the Gazette), which was an amendment to Notification No. FEMA 120/2004-RB. The investment was thus in contravention of Regulation 5(1) of FEMA 120/2004-RB. RBI vide letter FE.CO.OID.2590/19.33.001/2017-18 dated September 19, 2017 advised the applicant of the above contravention. Further, the overseas JV was an investment holding company whereas the overseas direct investment by resident individuals was permitted only in operating entity with effect from August 05, 2013. Holding the investments in an overseas company other than an operating entity, on or after August 05, 2013 was in contravention of para A (6) of schedule V read with regulation 20A of FEMA 120/2004-RB. The investment in the overseas JV was reported on October 05, 2017. The delay in reporting was in contravention of para D (1) of schedule V read with regulation 20A of FEMA 120/2004-RB.



The applicant's mother Ms. Prema Ramanujam and father, Shri R. Ramanujam, also remitted amounts of SGD 116,800 each on October 19, 2007 and June 21, 2010 respectively to the above overseas JV towards subscription to its shares. On March 20, 2015, the applicant received the 116,800 shares from Shri R. Ramanujam, as a gift. The applicant disinvested his stake in the overseas entity for SGD 4,426,342 (Rs. 20,57,19,358/-) at a price of USD 13.496 per share, on March 29, 2017, in favor of an Indian company namely, M/s Reno Mercantile Pvt. Ltd., without prior approval of the Reserve Bank of India and before the allotment of UIN. The applicant transferred the shares which he was not permitted to acquire or hold in the first place as per the then applicable FEMA regulations. This was in contravention of Regulation 3 of FEMA 120/2004-RB. Further, the disinvestment was reported through the AD bank on December 18, 2017 which was in contravention of para D (4) of schedule V read with regulation 20A of FEMA 120/2004-RB.

The applicant also delayed in filing the Annual Performance Reports in form APR with the RBI in respect of the overseas entity for the years ended March 31, 2008 to March 31, 2016 (i.e. 9 years) beyond the prescribed period in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB dated July 7, 2004.

3. During the course of its operations, the applicant committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 120/2004:-

3.1 Regulation 5 (1) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time states that ".....no person resident in India shall make any direct investment outside India...".

Whereas the applicant made investment in an overseas JV when the applicant was not permitted to undertake overseas direct investment under LRS thereby contravening the said FEMA regulation.

3.2 Further Regulation 3 of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time states that, "Save as otherwise provided in the



Act or rules or regulations made or directions issued thereunder, no person resident in India shall issue or transfer any foreign security...”.

Whereas the applicant transferred the shares held in the overseas entity which he was not permitted to acquire or hold in the first place thereby contravening the said FEMA regulation.

3.3 In terms of para A (6) of schedule V read with regulation 20A of FEMA 120/2004-RB *‘The JV or WOS, to be acquired / set up by a resident individual under this Schedule, shall be an operating entity only’.*

Whereas the applicant made overseas direct investment in a JV which was an investment holding company thereby contravening the said FEMA regulation.

3.4 In terms of para D (1) of schedule V read with regulation 20A of FEMA 120/2004-RB *‘The resident individual, making overseas direct investments under the provisions of this Schedule, submits duly completed Part I of the Form ODI, as prescribed by the Reserve Bank from time to time, to the designated authorised dealer, within 30 days of making the remittance.’*

Whereas the applicant did not report the investment in the overseas JV even after the same was permitted with effect from August 05, 2013 thereby contravening the said FEMA regulation.

3.5 In terms of para D (4) of schedule V read with regulation 20A of FEMA 120/2004-RB *‘The disinvestment by the resident individual may be reported by the designated AD to the Reserve Bank in Part IV of Form ODI, as prescribed by the Reserve Bank from time to time, within 30 days of receipt of disinvestment proceeds.’*

Whereas the applicant reported the disinvestment of his stake in the overseas JV with delay thereby contravening the said FEMA regulation.

3.6 In terms of Regulation 15(iii) of FEMA 120/2004 an applicant is required to submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before a specified date, an Annual Performance Report (APR) in Part III of



Form ODI, as prescribed by the Reserve Bank from time to time, in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time. The APR, so required to be submitted, has to be based on the audited annual accounts of the JV / WOS for the preceding year, unless specifically exempted by the Reserve Bank.

Whereas the APRs for the years ended March 31, 2008 to March 31, 2016 (i.e. 9 years) were submitted to the RBI with delay beyond the prescribed period in contravention of the said FEMA Regulation.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/9111/15.20.67/2017-18 dated May 09, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on May 16, 2018 during which Shri R. Ramanujan and Shri N.S. Srinivasan, represented the applicant. They requested that a lenient view may be taken in the matter. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced, and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulations 3 and 5(1) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount and period of contravention is as under:

Regulation 5(1): Amount of contravention: Rs.31,59,440/- and period of contravention: five years and ten months approximately

Regulation 3: Amount of contravention: Rs. 20,57,19,358/- and period of contravention: from the date of disinvestment (March 29, 2017) to the date of the submission of the addendum when this contravention was admitted March 19, 2018 i.e., one year approximately.

Para A(6) of schedule V read with regulation 20A: Amount of contravention: Rs.31,59,440/- and period of contravention: three years and eight months approximately.



Para D(1) of schedule V read with regulation 20A: Amount of contravention: Rs.31,59,440/- and period of contravention: four years and two months approximately.

Para D(4) of schedule V read with regulation 20A: Amount of contravention: Rs. 20,57,19,358/- and period of contravention: eight months approximately.

Regulation 15(iii): For the years ended March 31, 2008 to March 31, 2016 (i.e. 9 years).

Ms. Prema Ramanujam and Shri R. Ramanujam have filed separate compounding applications for contraventions of FEMA regulations and are being compounded separately.

6. It has been declared in the compounding application dated December 05, 2017 that the particulars given by the applicant in the application are true and correct to the best of her knowledge and belief. It has been declared in the undertaking dated May 15, 2018 submitted subsequently 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 her 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. The applicant made an ODI of Rs.31,59,440/- in October 2007, when it was not permitted under the then applicable FEMA regulations. The applicant transferred the shares in favour of M/s Reno Mercantile Private Limited in March, 2017, and received an amount of Rs. 20,57,19,358/- as the



disinvestment proceeds. The above transfer was of the shares that the applicant was not permitted to acquire or hold in the first place.

Research has revealed that equity investment in India over a 5-year period would, at best, yield a CAGR of 25%. Had the applicant invested an amount of Rs.31,59,440/- in India, and assuming he had received a return based on CAGR of 30%, the amount that he would have then received on August 05, 2013 i.e. the date when the overseas direct investment by resident individuals was permitted would be Rs.1,45,84,779/- approximately. The applicant received an amount of Rs. 20,57,19,358/- as the total disinvestment proceeds in March 2017. RBI vide A. P. (DIR Series) Circular No. 51 dated May 08, 2007 had explicitly clarified that remittances under the Liberalised Remittance Scheme '*are allowed under the Scheme only in respect of permissible current or capital account transactions. All other transactions which are otherwise not permissible under FEMA .....are not allowed under the Scheme.*' Further, resident individuals were allowed to set up Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) outside India for bonafide business activities outside India with effect from August 5, 2013 vide Notification No.FEMA 263/RB-2013 read with A. P. (DIR Series) Circular No. 51 dated August 14, 2013. Thus, any proportionate gains made during the period from May 08, 2007 to August 05, 2013 on the investments has been made out of a transaction that was not permissible under FEMA regulations during the relevant period and by resorting to contravention of FEMA regulations. Hence, the proportionate gains upto August 05, 2013, even after considering a reasonable CAGR of 30% on the original investment, has to be taken as the undue gains which need to be neutralized. Accordingly, undue gains to the tune of Rs.11,29,06,162/- is deemed to have accrued to the applicant,.

Therefore, after considering the submissions made by the applicant with regard to the contraventions and the entire facts and circumstances of the case, I am persuaded to take a view that undue gains made by the applicant require to be neutralized and it stands to reason that payment of an amount of Rs.11,43,16,108/- (Rupees eleven crore forty three lakh sixteen thousand one hundred and eight only),



incorporating the impact of neutralization as above, will meet the ends of justice in the circumstances of this case. Since the activities of the overseas entity has not been declared, this Order is without prejudice to any action that may be taken in case the activities are not in consonance with FEMA, 1999.

8. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contravention committed by the applicant namely, para A(6), D(1), D(4) of schedule V read with regulation 20A and Regulations 5(1), 3 and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 11,43,16,108/- (Rupees eleven crore forty three lakh sixteen thousand one hundred and 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 accordingly.

Dated this the seventeenth day of May, 2018

Sd/-

**(Shekhar Bhatnagar)**  
**Chief General Manager**