



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Devinder Kumar
Deputy General Manager

Date: May 30, 2018
CA No 4593 / 2017

In the matter of

R. 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) 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 are (i) Overseas Direct Investment (ODI) by a resident individual at a time when the same was not permitted under the then applicable FEMA regulations; (ii) transfer of securities held in an overseas entity by a resident Indian which the applicant 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 JV other than an operating entity; (v) disinvestment of the stake in the overseas JV in a manner other than the prescribed routes, (vi) delay in reporting the disinvestment of



the stake in the overseas JV and; (vii) delay in submission of the Annual Performance Reports (APRs) for the years ending March 31, 2008 to March 31, 2016 (i.e. 9 years), which were in contravention of regulations 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 C (1) 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: Mr. R Ramanujam, the applicant, a resident Indian, remitted an amount of Singapore Dollars (SGD) 116,800 (Rs.39,30,320/-) on June 10, 2010, 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 issued on June 21, 2010 in the joint name of the applicant and his elder son Mr.Srikanth Ramanujam. The remittance for the overseas investment was sent under Liberalized Remittance Scheme (LRS), which then was not permitted. 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 not an operating entity 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 JV 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 son Mr. Sumanth Ramanujam and wife Mrs. Prema Ramanujam, also remitted amounts of SGD 116,800 each on October 19, 2007 to the above overseas JV towards subscription to its shares. On March 20, 2015, Mr. R. Ramanujam gifted the entire holding of 116,800 shares to his son Mr. Sumanth Ramanujam. Thus applicant disinvested his stake in the overseas entity in favor of his son without prior approval of the Reserve Bank 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 done by way of gift and was reported with delay through the AD bank on December 18, 2017, which were in contravention of para C (1) and 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. The applicant committed the contravention of the following provisions of the Notification No. FEMA 120/2004-RB:

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...”.

3.2 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...”.



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.*'

3.4 In terms of para C (1) of schedule V read with regulation 20A of FEMA 120/2004-RB '*A resident individual, who has acquired / set up a JV or WOS under the provisions of this Schedule, may disinvest (partially or fully) by way of transfer / sale or by way of liquidation / merger of the JV or WOS.*'

3.5 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.*'

3.6 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.*'

3.7 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.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/9113/15.20.67/2017-18 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 Mr. R. Ramanujam himself presented his case. He submitted that the contravention happened due to ignorance of the law and that it was completely unintentional. He 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 regulation 5(1), regulation 3, para A(6), C (1), D(1) and D(4) of schedule V read with regulation 20A and regulation 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. As the contravention of regulation 15(iii) pertaining to delayed submission of APRs in respect of the same overseas JV in Singapore has already been compounded in another application submitted by Mr. Sumanth Ramanujam, the same has not been compounded in this order.

The amount for each of the contravention is Rs.39,30,320/- and the periods of contravention are as under:

Regulation 5 (1): Three years and two months approximately

Regulation 3: Two years and eight months approximately.

Para A (6) of schedule V read with regulation 20A: One year and eight months approximately.

Para C (1) of schedule V read with regulation 20A: Two years and eight months approximately.

Para D (1) of schedule V read with regulation 20A: One year and eight months approximately.



Para D (4) of schedule V read with regulation 20A: Two years and nine months approximately.

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 his knowledge and belief. It has been declared in the undertaking submitted 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, 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 lenient view on the amount for which the contraventions are to be compounded and I consider that an amount of ₹3,25,239/- (Rupees Three lakh twenty five thousand two hundred thirty nine only) will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contravention committed by the applicant namely, regulation 5(1), regulation 3, para A(6), C (1), D(1) and D(4) of schedule V read with regulation 20A of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of ₹3,25,239/- (Rupees Three lakh twenty five thousand two hundred thirty nine 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 thirtieth day of May, 2018

Sd/-

(Devinder Kumar)
Deputy General Manager