



In the

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

Present

Ajay Kumar Misra
Chief General Manager

Date: July 10, 2018
C.A. 4690/2018

In the matter of

R Mohan
P. No. 4J, 4th Block, No. 136, Shyamala Ceebros Garden,
Arcot Road, Saligramam, Chennai 600 093

(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 22, 2017 (received in the Reserve Bank of India, Chennai Regional Office on February 26, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded relate to transfer of shares of an Indian company by the applicant to a person resident outside India without filing the necessary declaration in form FC-TRS with the Authorized Dealer (AD) bank and receiving the sale consideration for transfer of such shares on deferred payment basis otherwise than through the permitted methods of payment in contravention of regulation 10A(b)(iii) read with para 8 of schedule 1 to 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 (hereinafter referred to as Notification No. FEMA 20/2000-RB), as then applicable, read with A.P. (DIR Series) Circular No.16 dated October 4, 2004.



2. The relevant facts of the case are as follows: The applicant, is a resident individual who was one of the shareholders holding 125000 equity shares of face value of ₹10/- each of Sathya Auto Private Limited (SAPL), an unlisted company incorporated on June 06, 2005 (CIN: U50101TN2005PTC056529) under the Companies Act, 1956. SAPL is engaged in the business of manufacture of auto components and other related accessories. The applicant, Shri R Mohan, transferred 124500 equity shares of face value of ₹10/- each of SAPL to Shri Muthukumar Ayarpadde, a non-resident Indian, on April 12, 2007 for a total consideration of ₹59,26,200/-. The applicant through his authorized representative submitted vide email dated June 26, 2018 that the remaining 500 shares were transferred by the applicant to Ms. Parmeshwari, a resident Indian for an amount of ₹23,800/- which was paid by Shri Ayarpadde. The shares were transferred at a price of ₹47.60/- per equity share. The total sale consideration amounting to ₹59,50,000/- for the shares transferred to Shri Ayarpadde was paid to the applicant through A-Rank Holdings Private Limited (AHPL), an unlisted Indian company and SAPL. The details of the transfer of funds through AHPL & SAPL in respect of the sale consideration are given below in table A:-

Table A

| Sr. No. | Date of payment | Mode of payment | Amount (₹) |
|----------------|------------------------|---|--------------------|
| 1. | March 17, 2007 | Shri Ayarpadde transferred funds | 12,50,000 |
| 2. | April 03, 2007 | from his NRE a/c maintained with | 12,50,000 |
| 3. | October 16, 2007 | Bank of Baroda, T-Nagar branch, Chennai to AHPL which in turn made the payment to the applicant | 33,50,000 |
| 4. | April 24, 2008 | Funds transferred from AHPL to SAPL, which in turn made the payment to the applicant | 182,330* |
| | Total | | 60,32,330** |

*includes ₹100,000/- towards sale consideration & the balance towards repayment of dues payable by SAPL to the applicant

**Includes ₹59,50,000/- towards sale consideration & the balance towards repayment of dues payable by SAPL to the applicant



The transfer of shares from residents to non-residents for the activities falling under automatic route under FDI policy was brought under the general permission w.e.f. October 04, 2004 vide Notification No.FEMA.131/2005-RB dated March 17, 2005 subject to certain conditions which, inter alia, included adherence to pricing guidelines, documentation and reporting requirements for such transfers by the parties concerned. The detailed guidelines covering the methods of payment, pricing, documentation and reporting requirements were issued vide A.P. (DIR Series) Circular No.16 dated October 4, 2004. Out of the total consideration, a part amounting to ₹34,50,000/- (out of the entries stated at serial numbers 3 & 4 of table A above) was paid over a period of one year without obtaining prior approval from RBI for deferred payment. In terms of regulation 10A(b)(iii) read with para 8 of schedule 1 to FEMA 20/2000-RB, as then applicable, read with A.P. (DIR Series) Circular No.16 dated October 4, 2004 the sale consideration in respect of the shares purchased by a non-resident Indian shall be remitted to India through normal banking channels or by way of debit to his/her NRE / FCNR (B) accounts. Receipt of sale consideration by the applicant on deferred payment basis at a time when the same was not permitted, was in contravention of the above provisions under FEMA. Further, the entire amount of consideration amounting to ₹59,50,000/- was received through the third parties namely, AHPL and SAPL. Receipt of sale consideration by the applicant through third parties, not being a permitted method of payment, was in contravention of the above provisions under FEMA.

In terms of regulation 10A(b)(iii) of FEMA 20/2000-RB, as then applicable, read with A.P. (DIR Series) Circular No.16 dated October 4, 2004, the applicant was required to comply with the documentation requirements, which inter alia included submission of a declaration in form FC-TRS to the AD bank at the time of transferring the shares. The applicant reported the transfer of shares with delay in form FC-TRS acknowledged by the AD bank on March 28, 2011. Such transfer of shares in April 2007 amounting to ₹59,26,200/- by the applicant without the necessary submissions i.e. without filing FC-TRS was in contravention of regulation 10A(b)(iii) of FEMA 20/2000-RB read with A.P. (DIR Series) Circular No.16 dated October 4, 2004. RBI granted post facto approval to SAPL for taking the transfer of shares on record.

3. In terms of regulation 10A(b)(iii) of Notification FEMA 20/2000-RB, as then applicable, *'A person resident in India who proposes to transfer to a person resident*



outside India any share / convertible debenture of an Indian Company whose activities fall under Annexure B to Schedule 1, shall transfer such shares / debentures without prior approval of Government and RBI if the same is by way of sale subject to the condition that the concerned parties adhere to pricing guidelines, documentation and reporting requirements for such transfers, as may be specified by Reserve Bank from time to time.' In terms of para 8 of schedule 1 to Notification FEMA 20/2000-RB, as then applicable, read with A.P. (DIR Series) Circular No.16 dated October 4, 2004 the sale consideration in respect of the shares transferred to a non-resident Indian shall be received by way of inward remittance through normal banking channels, or by debit to NRE / FCNR account of the person concerned maintained with an authorised dealer / authorised bank. Further, in terms of regulation 10A(b)(iii) of FEMA 20/2000-RB read with A.P. (DIR Series) Circular No.16 dated October 4, 2004 the applicant was required to comply with the documentation requirements, which inter alia included submission of a declaration in form FC-TRS to the AD bank at the time of transferring the shares to a non-resident Indian.

Whereas the applicant transferred the shares of an Indian company to a person resident outside India without filing the necessary declaration in form FC-TRS with the AD bank and received the sale consideration for transfer of shares on deferred payment basis otherwise than through the permitted methods of payment thereby contravening the said FEMA provisions.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No.FE.CO.CEFA/10355/15.20.67/2017-18 dated June 15, 2018 for further submission in person and/or producing documents, if any, in support of the application. Shri M. Arumugam along with Ms. V. Undale from JCSS Consulting Private Limited represented the applicant during the personal hearing held on July 06, 2018. The representatives of the applicant admitted the contraventions for which compounding had been sought. They submitted that the contraventions were inadvertent and unintentional. They requested that a lenient view may be taken in the matter. 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 submissions made by the applicant's representatives thereafter during the personal



hearing. Accordingly, I hold that the applicant has contravened regulation 10A(b)(iii) read with para 8 of schedule 1 to FEMA 20/2000-RB, as then applicable, read with A.P. (DIR Series) Circular No.16 dated October 4, 2004. The amount and period of contravention was as under:

i) Receipt of sale consideration on deferred payment basis - The amount of contravention was ₹34,50,000/- and the period of contravention was 9 years and 8 months approximately.

(ii) Receipt of sale consideration through third parties - The amount of contravention was ₹59,50,000/- and the period of contravention ranges from 8 years and 7 months to 9 years and 8 months approximately.

iii) Transfer of shares to a person resident outside India without complying with the documentation requirements - The amount of contravention was ₹59,26,200/- and the period of contravention was 4 years approximately.

Thus, the total amount of contravention was ₹1,53,02,400/-.

6. It has been declared in the compounding application dated December 22, 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 dated June 14, 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 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 contraventions are to be compounded and I consider that an amount of ₹1,58,842/- (Rupees one lakh fifty eight thousand eight hundred forty two only) will meet the ends of justice in the circumstances of the case.



8. Accordingly, I compound the admitted contraventions namely, the contraventions of regulation 10A(b)(iii) read with para 8 of schedule 1 to FEMA 20/2000-RB, as then applicable, read with A.P. (DIR Series) Circular No.16 dated October 4, 2004 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 ₹1,58,842/- (Rupees one lakh fifty eight thousand eight hundred forty two 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 tenth day of July, 2018.

Sd/-

Ajay Kumar Misra
Chief General Manager