



In the

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

Present

Nimmi Kaul
General Manager

Date: October 1, 2018
CA No 4742/ 2018

In the matter of

Pradeep Khemka
62/6 Ballygunge Circular Road
Kolkata 700019

(Applicant)

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

Order

The applicant has filed the application dated April 10, 2018 (received in the Reserve Bank on April 13, 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 are retention of assets abroad that were declared under the Black Money Act beyond 180 days from the date of declaration without prior approval of Reserve Bank. The above amounts to the contravention of Regulation 4, of Foreign Exchange Management (Regularization of assets held abroad by a person resident in India) Regulations, 2015 notified vide Notification No. FEMA



348/2015-RB dated September 25, 2015 (hereinafter referred to as FEMA 348).

2. The relevant facts are as under:

(a) The applicant Shri Pradeep Khemka, a resident Indian, declared foreign assets (Seaworld Foundation, Liechtenstein, of which he was the settlor and first beneficiary) to the extent of USD 30,46,861 on September 26, 2015 under the Black Money (undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015, and paid a tax of INR 11,57,19,780 on December 28, 2015 on the same. The applicant received an amount of USD 29,71,165.38 on October 13, 2015, after liquidation of his foreign assets. However, the balance amount of USD 89,369.04 (initially balance amount was declared as USD 75,695.62 but this increased to USD 89,369.04 due to increase in the market value as per submissions of the applicant) was not remitted to India within the specified period of 180 days, as prescribed under Regulation 4 of FEMA 348. No approval was sought from RBI by the applicant for retaining the amount beyond the period of 180 days as required in terms of Regulation 4 of FEMA 348 read with para 3(c) of A.P. (DIR Series) Circular no. 18 dated September 30, 2015. This amount of USD 89,369.04 was repatriated on November 28, 2017. The applicant then approached the Kolkata regional office of Reserve Bank, for post facto approval. The contravention has since been examined and regularized by the Reserve Bank vide approval dated March 22, 2018, subject to compounding. As per the inward remittance transaction advice issued by Axis bank the funds remitted have been credited to the applicant's account on April 18, 2018.

3. In terms of regulation 4 of FEMA 348:

"No proceedings shall lie under the provisions of the Act, against a person resident in India who has made a declaration under section 59 of the Black Money Act, in respect of any undisclosed asset located outside India and has paid the tax and penalty in accordance with the provisions of Chapter VI of the Black Money Act.



Provided that where the declarant intends to continue to hold the asset so declared, he shall apply to the Reserve Bank within 180 days from the date of declaration, for permission under the relevant provisions of the Act, or rules and regulations framed thereunder, if such permission is necessary as on the date of application.

Provided further that where the declarant does not intend to hold the asset so declared or the permission to hold such asset is refused by the Reserve Bank, as the case may be, the declarant shall dispose of the said asset within 180 days from the date of making such declaration or the date of receipt of the communication from the Reserve Bank conveying refusal of permission or within such extended period as may be permitted by the Reserve Bank and bring back the proceeds to India immediately through the banking channel.”

4. The applicant was given an opportunity for personal hearing vide letter No. FED.CO.CEFA No./1265/15.20.67/2018-19 dated August 31, 2018 for further submission in person and/or producing documents, if any, in support of the application. The applicant sought to be exempted from the personal hearing with the Compounding Authority vide his e-mail dated September 19, 2018. The application is, therefore, being considered on the basis of the averments made in the compounding application and the documents submitted.

5. I have given my careful consideration to the documents on record. It was observed that the applicant has contravened the provisions of Regulation 4, of FEMA 348. The amount and period of contravention is as follows:
Amount of contravention– Rs. 58,08,988/- and period of contravention – 2 years approximately.

6. 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. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of



Rs.81,949/- (Rupees eighty one thousand nine hundred forty nine only) will meet the ends of justice in the circumstances of this case.

7. It has been declared in the compounding application dated April 10, 2018 that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has been declared in the declaration dated April 10, 2018 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 against it thereafter. Accordingly, the above contravention which is being compounded in 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

8. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contravention committed by the applicant namely, Regulation 4, of FEMA 348 on payment of a sum of Rs.81,949/- (Rupees eighty one thousand nine hundred forty 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 first day of October, 2018

Sd/-

(Nimmi Kaul)
General Manager