



In the

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

Present

Attah Omar Basheer
General Manager

Date: February 23, 2017
CA No 4208 / 2016

In the matter of

Chirag Sheth
No.1-Shardul Bungalow, Nr.Shyamal Cross Road,
132 Feet Ring Road, Satellite, Ahmedabad - 380051

(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 October 28, 2016 (received in the Reserve Bank of India on November 3, 2016) 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 non-submission of Form ODI within the stipulated time. The above was in contravention of Regulation 20 A read with Schedule V, and Regulation 6 (2) (vi) read with 2(k) 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: The applicant, a Resident Indian, invested overseas, in a wholly owned subsidiary (WOS) M/s Dharm Diamonds on October 22, 2013. The investment was made through the remittances under the automatic route of Liberalized Remittance Scheme (LRS). The details of the remittance is as under:

S. No.	Date of remittance	Date of reporting to AD	Date of reporting by AD to RBI	Amount remitted (USD)	Amount in INR
1	22.10.2013	14.06.2016	21.06.2016	75,000	4,627,535
Total				75,000	4,627,535

Overseas Direct Investment by resident individuals was permitted vide amendment Notification No. FEMA.263/RB-2013 dated March 5, 2013 (effective from August 5, 2013 i.e. date of publication in official Gazette) and subject to certain criteria being fulfilled. These criteria were detailed in Schedule V inserted in the FEMA 120/2004-RB vide the abovementioned notification.

Further, Form ODI Part I was not submitted within the stipulated time period of 30 days of making the remittance, thus contravening Regulation 20A read with Schedule V and Regulation 6 (2) (vi) read with 2 (k) of Notification No. FEMA 120/2004-RB. The applicant was allotted UIN AHWAZ20160989.

3. Regulation 20A, added vide Notification No. FEMA.263/RB-2013 effective dated August 5, 2013, states that "A resident individual (single or in association with another resident individual or with an 'Indian Party' as defined in this Notification) satisfying the criteria as per Schedule V of this Notification, may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India".

Further, Schedule V vide para D(1) states that "The resident individual, making overseas direct investments under the provisions of this Schedule, shall submit Part I of the Form ODI, duly completed, to the designated authorized dealer, within 30 days of making the remittance", while para D(2) states that "The investment, as made by a resident individual, shall be reported by the designated authorized dealer to the Reserve Bank in Form ODI Parts I and II within 30 days of making the remittance".



Regulation 6 (2) (vi) of Notification No. FEMA 120/2004-RB, dated July 7, 2004, as amended from time to time, states that Overseas Direct Investment by an Indian party shall be permitted provided "The Indian Party submits Part I of Form ODI, duly completed, to the designated branch of an authorized dealer".

Further Regulation 2 (k) defines Indian Party as "...includes any other entity in India as may be notified by the Reserve Bank...."

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/7934/15.20.67/2016-17 dated February 3, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant, sent a letter dated February 8, 2017 via email waiving the opportunity for personal hearing and requested that a lenient view be taken on the compounding application on the basis of the documents already submitted by the applicant along with the compounding application. 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. Accordingly, I hold that the applicant has contravened the provisions of Regulation 20 A read with Schedule V, and Regulation 6 (2) (vi) read with 2(k) 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). The amount of contravention is Rs.4,627,535/- and the period of contravention is two years, seven months and twenty three days.

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. 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 Rs.77,765/- (Rupees Seventy Seven Thousand Seven Hundred and Sixty Five only) will meet the ends of justice.



7. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 20 A read with Schedule V, and Regulation 6 (2) (vi) read with 2(k) 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 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 Rs.77,765/- (Rupees Seventy Seven Thousand Seven Hundred and Sixty Five 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 twenty third day of February, 2017

Sd/-

(Attah Omar Basheer)
General Manager