



In the

Reserve Bank of India
Foreign Exchange Department
5th floor, Amar Building
Fort, Mumbai - 400 001.

Present

Mitali Gupta Shaikh
Deputy General Manager

Date: February 13, 2017

CA No. 4179/2016

In the matter of

Kushank Goel

C- 476, Vikaspuri, New Delhi 110018

(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 September 16, 2016 (received at the Reserve Bank on October 3, 2016) seeking 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 pertains to disinvestment of equity in an overseas joint venture company within one year, in contravention of Regulation 16(1)(v) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000 notified vide Notification No. **FEMA 120** /2004-RB dated July 7, 2004 and 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, Kushank Goel, is a resident individual, residing at C-476 Vikaspuri, New Delhi. The individual applicant made an investment of HKD 387,500 equivalent to USD 50,000 (INR 30,63,690) in equity shares of M/s KLG Enterprises Ltd, Hong Kong on October 8, 2014 under the Liberalised Remittance Scheme, acquiring 33.33% stake in the JV. KLG Enterprises Ltd. is an overseas Joint Venture company incorporated in Hongkong on July 14, 2014. The applicant remitted USD 50,000 on Oct. 8, 2014 to the overseas entity through Authorised Dealer bank, Vijaya Bank. Share Certificates towards the investment were received on November 11, 2014.

3. The new JV company was to take up trading business but due to some reasons, the business could not take off. Hence the applicant divested from the overseas Joint Venture by selling his shares to a local resident, who was also their foreign partner in the JV, who acquired the shares at cost (no profit/ loss). The proceeds of the disinvestment was repatriated on March 31, 2015, before the overseas concern could complete one year of operation from the date of investment, which was a contravention of Regulation 16 (1) (v) of FEMA 120 /RB-2004.

4. In terms of Regulation 16(1)(v) of FEMA 120/ 2004-RB, one of the conditions for such disinvestment, without prior approval of the Reserve Bank, *is that the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;*

Whereas the applicant divested his investment in less than one full year of investment in the overseas entity, in contravention of Regulation 16(1)(v) of FEMA 120/ 2004-RB. As the overseas entity was not functional at the time of disinvestment, the submission of APRs was not relevant.



5. The above transaction relating to disinvestment was reported by the applicant in Part IV of Form ODI through the Authorised Dealer, Vijaya Bank, New Delhi and the transaction was regularized on January 18, 2016. The disinvestment has been taken on record. Unique Identification Number (UIN) NDJRN20160135 was allotted by RBI to the overseas Joint Venture, vide letter dated February 10, 2016.

6. The applicant was given an opportunity for personal hearing vide Reserve Bank's letter No.FE.CO.CEFA/6593/15.20.67/2016-17 dated January 4, 2017 for further submission in person and/or producing documents, if any, in support of the application. The authorized representative of the applicant appeared for personal hearing on February 9, 2017, during which Shri R.B. Singh was present. During the personal hearing, the applicant admitted the contravention committed for which he has sought compounding. The authorized representative stated that the contravention occurred due to lack of knowledge of the relevant FEMA provisions and was inadvertent. The representative requested that in view of the foregoing, a lenient view may be taken in disposal of the application.

7. 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 made in this context.

8. I have given my careful consideration to the documents on record and submissions made by the applicant. Accordingly, I hold that the applicant has contravened Regulation 16(1)(v) of Notification No. **FEMA 120/2004-RB**. The contravention relates to an amount of Rs. 30,63,690/- approximately.

9. In terms of Section 13 of the FEMA, any person contravening any provision of the Act shall be liable to a penalty upto 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 contravention is to be compounded and I consider that an amount of **Rs. 66,850/- (Rupees Sixty six thousand, eight hundred and fifty only)** will meet the ends of justice.



10. Accordingly, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, I compound the admitted contraventions committed by the applicant namely, Regulation 16(1)(v) of Notification No. **FEMA 120/2004-RB** on the facts discussed above, on payment of an amount of Rs. 66,850/- (Rupees Sixty six thousand, eight hundred and fifty 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 thirteenth day of February, 2017

Sd/-

Mitali Gupta Shaikh
Deputy General Manager