



In the

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

Present

Shekhar Bhatnagar
Chief General Manager

Date: February 08, 2017
C.A. 4141/2016

In the matter of

M/s Kirtilal M. Shah
FC – 4090, Bharat Diamond Bourse,
Bandra – Kurla Complex, Bandra (East), Mumbai – 400 051

(Applicant)

In exercise of the powers 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 compounding application dated August 31, 2016 (received in the Reserve Bank on September 01, 2016) for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded relates to making delayed payment to foreign suppliers in connection with import of rough diamonds in contravention of Regulation 5(3) of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3/2000-RB dated 3rd May 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 3/2000-RB) read with Paragraph A.12 of A.P (DIR Series) Circular No.9 dated August 24, 2000.

2. The relevant facts of the case are as follows: The applicant was set up as a partnership firm under a Deed of Partnership dated April 03, 2008. The applicant is



engaged in the business of dealing in precious stones, precious metals, bullion, jewellery, etc. The applicant imported rough diamonds from Sundiam Dmcc Dubai amounting to USD 15,42,888.39 (Rs.9,84,94,712.44/-). The applicant was unable to make the payment for the above imports within the prescribed time limit of six months which is in contravention of Regulation 5(3) of Notification No. FEMA 3/2000-RB read with Paragraph A.12 of A.P (DIR Series) Circular No.9 dated August 24, 2000. The details of overdue import payments are as below:

Sr. No.	Invoice No. and Date	Outstanding Invoice amount in USD	Outstanding Invoice amount in INR	Amount repaid on
1.	EX/029/15-R dated 10.05.2015	200437.00	1,27,97,902.45	23.09.2016
2.	EX/030/15-R dated 11.05.2015	154777.00	98,82,511.45	23.09.2016
3.	EX/031/15-R dated 14.05.2015	191023.00	1,21,58,613.95	23.09.2016
4.	EX/032/15-R dated 18.05.2015	325581.00	2,07,42,765.51	23.09.2016 and partly on 26.09.2016
5.	EX/049/15-R dated 07.07.2015	432064.39	2,74,18,806.19	26.09.2016
6.	EX/051/15-R dated 27.07.2015	168747.00	1,08,26,807.52	28.09.2016
7.	EX/062/15-R dated 10.09.2015	70259.00	46,67,305.37	28.09.2016
	Total	15,42,888.39	9,84,94,712.44	

The applicant received Reserve Bank of India (RBI) approval for remittance of USD 15,42,888.39 vide letter FED.MRO.CAD.IMP/1045/03.01.04/2015-16 dated



August 11, 2016 and the said amount was remitted to the overseas entity on various dates in September, 2016.

3. In terms of Regulation 5(3) of Notification No. FEMA 3/2000-RB,"an importer in India may, for import of goods into India, avail of foreign currency credit for a period not exceeding six months extended by the overseas supplier of goods, provided the import is in compliance with the Export Import Policy of the Government of India in force".

Further, in terms of Paragraph A.12 of A.P (DIR Series) Circular No.9 dated August 24, 2000 "remittances against imports should be completed not later than six months from the date of shipment. Accordingly, deferred payment arrangements involving payments beyond a period of six months from the date of shipment are treated as external commercial borrowings which require prior approval of the Reserve Bank/Government of India".

4. The applicant was given an opportunity for personal hearing vide letter No. FE. CO. CEFA/ 7721 /15.20.67/2016-17 dated January 31, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing took place on February 07, 2017 and Shri Jitendra Shah and Shri Kushala N. Shetty represented the applicant. During the personal hearing, the representatives of the applicant admitted the contravention committed by the applicant for which they have sought compounding. The representatives submitted that the delays in import payments were on account of cash flow mismatches arising out of delay in realizing certain export proceeds in the course of their business. They requested that a lenient and sympathetic view may be taken in the matter.

5. 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 the provisions of Regulation 5(3) of Notification No. FEMA 3/2000-RB read with Paragraph A.12 of A.P (DIR Series) Circular No.9 dated August 24, 2000. The total amount of contravention is USD 15,42,888.39 (Rs.9,84,94,712.44/-) and the duration of contravention is one year 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. However, after considering 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 I consider that payment of an amount of Rs.5,42,500/- (Rupees five lakhs forty two thousand and five hundred only) will meet the ends of justice.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 5(3) of Notification No. FEMA 3/2000-RB read with Paragraph A.12 of A.P (DIR Series) Circular No.9 dated August 24, 2000 by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.5,42,500/- (Rupees five lakhs forty two thousand and five hundred only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai – 400 001 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 eighth day of February, 2017

Sd/-

Shekhar Bhatnagar
Chief General Manager