



In the

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

Present

**Nitin Puppal**  
**Assistant General Manager**

Date: March 27, 2017  
CA No. 4201/2016

In the matter of

**Shri - Nirmal Kumar Bardiya**  
**24, Bardiya Colony, Museum Road, Jaipur - 302004.**

**(Applicant)**

In exercise of the powers 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 14, 2016 (received at the Reserve Bank on October 18, 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 by the applicant is the contravention of provisions of Regulation 5 (1) read with 2 (k) and Regulation 6 (2) (vi) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004 Notification No. FEMA.120 / RB-2004 dated July 7, 2004 (hereinafter referred to as FEMA 120/RB-2004).

2. The relevant facts of the case are as follows:

The Applicant, Shri Nirmal Kumar Bardiya a resident individual had remitted Euro 6250 to acquire 50% partly paid-up equity shares of Herotron E – Beam Services, GmbH, Germany under LRS on December 21, 2010. Overseas Direct Investment by resident individuals was permitted vide Notification No. FEMA.263/RB-2013 dated March 5, 2013, effective from date



August 5, 2013 (date of notification in the Gazette), which was an amendment to Notification No. FEMA 120/RB-2004. Therefore, the transaction was in contravention of Regulation 5 (1) read with 2 (k) of Notification No. FEMA 120/RB-2004, dated July 7, 2004 (as then applicable), as amended from time to time. Also, the applicant submitted ODI Form I for the remittance effected on December 21, 2010 with a delay of four years and eight months approximately i.e. on August 25, 2015, thereby contravening Regulation 6 (2) (vi) of FEMA 120/RB-2004, dated July 7, 2004 (as then applicable), as amended from time to time.

3. FEMA Notification No. 120/ RB-2004, *ibid*, regulates the overseas investment by a person resident outside India and as per Regulation 5 (1) read with 2 (k) of the said Notification, save as otherwise provided in the Act, rules or regulations made or directions issued there under, or with prior approval of the Reserve Bank, no person in India shall make any direct investment outside India. This provision was applicable till issuance of FEMA notification No. 263 issued on August 05, 2013 *vide* which, the resident individuals have been allowed to make overseas direct investment subject to certain terms and conditions.

4. FEMA notification No. 120/2004-RB, *ibid*, regulates the overseas investment by a person resident outside India and as per Regulation 6 (2) (vi) of the said notification, the Indian Party is required to submit duly completed Part I of the Form ODI, as prescribed by the Reserve Bank.

5. The applicant was given an opportunity for personal hearing *vide* the Reserve Bank's letter FE. CO. CEFA. No. 7927/15.20.67/2016-17 dated February 03, 2017 for further submission in person and / or producing documents, if any, in support of the application. The personal hearing took place on February 08, 2017 at 12.30 p.m. during which Ms. Nivedita Sarda, Advocate, and Shri Gyan Chand Jain, Manager of RMC Gems India represented the resident individual applicant.

6. The applicant through its representatives has stated that the company in which he has invested is engaged in bonafide business activity and falls under automatic route. However, he was not aware that prior to August 05, 2013, individuals were not allowed to invest in overseas companies under Overseas Direct Investment category and the contravention was inadvertent and without any malafide intention by the individual and / or its officers. The representatives admitted the contraventions committed by the applicant for which compounding has been sought. The representatives of the applicant, therefore, requested



that in view of the foregoing, a lenient view may be taken in disposal of the 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 made in this context by the representatives of the applicant during personal hearing.

7. I have given my careful consideration to the documents on record and submissions made by the representatives of the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the FEMA provisions issued in terms of Regulations 5 (1) read with Regulation 2 (k) and Regulation 6 (2) (vi) of FEMA 120/RB-2004. The applicant had made investment on December 21, 2010 and continued to hold beyond August 05, 2013 and submitted Form ODI Part I on August 25, 2015. The contravention relates to the value of shares in INR equivalent to Euro 6250 (Rs. 3,70,911). The period of contravention is from three years to five years, approximately.

8. 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 contravention is to be compounded and I consider that an amount of Rs. 67,500/- (Rupees Sixty Seven Thousand Five Hundred only) will meet the ends of justice.

9. Accordingly, I compound the admitted contravention namely, the contravention of Regulations 5 (1) and Regulation 6 (2) (vi) of Notification No. FEMA 120/RB-2004, dated July 7, 2004, 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. 67,500/- (Rupees Sixty Seven Thousand Five hundred only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5<sup>th</sup> 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 March 27, 2017

Sd/-

**(Nitin Puppal)**  
**Assistant General Manager**