



In the

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

Present

Pawanjeet Kaur Rishi
Assistant General Manager

Date: July 5, 2017
CA No 4302 / 2017

In the matter of

Mahesh Mohan Uberoi
6573, Landings Court, BOCA Raton, Florida
USA

(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 January 24, 2017 (received in the Reserve Bank on February 9, 2017), 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 (i) the mode of payment for acquisition of shares (ii) transfer of shares from NRI to NR without RBI approval. The above amount to the contravention of Paragraph 8 of Schedule 1 of FEMA 20 and Regulation 9 (2)(ii) of Foreign Exchange Management (Transfer or Issue of Security By a Person Resident Outside India) Regulations, 2000 notified vide Notification No.



FEMA 20/2000-RB dated May 3, 2000 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts are as under: The applicant Mahesh Mohan Uberoi is a non resident Indian and is currently residing in USA. The applicant was an initial subscriber of My Personal Health Record Express (India) Pvt Ltd and subscribed to 980 equity shares of the above entity on October 27, 2010, each having value of Rs.100. Subscription amount of INR 98000 was paid by Webify Services India Pvt Ltd to the Company on November 20, 2010 on behalf of the applicant, thereby contravening Para 8 of Schedule 1 of FEMA 20 pertaining to mode of payment for acquisition of shares. The NRI later on refunded the cost of shares to the investee company and the investee company further paid it to Webify as advised by RBI vide letter dated June 9, 2016.

The applicant transferred 980 shares of My Personal Health Record Express (India) to my Personal Health Record Express Inc, (non-resident) on January 31, 2012 without obtaining prior approval of Reserve Bank, thereby contravening Para 9(2)(ii) of FEMA 20. Post facto approval of RBI was conveyed vide letter dated June 9, 2016.

3. Para 8 of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time states that “....A company in India issuing shares or convertible debentures or warrants under this Schedule to a person resident outside India shall receive the amount of consideration for such shares or convertible debentures or warrants –

- (i) by inward remittance through normal banking channels, or
- (ii) by debit to NRE / FCNR (B) account of the person concerned maintained with an authorized dealer / authorized bank, or
- (iii) by debit to a non-interest bearing Escrow account (in Indian Rupees) maintained in India with an AD bank in accordance with Foreign Exchange Management (Deposit) Regulations, 2000.”

Further, according to Para 9(2)(ii) of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time, “A person resident outside India, not being a Non-resident Indian or an overseas corporate body, may transfer



by way of sale or gift the [shares or convertible debentures or warrants of an Indian company or units of an Investment Vehicle] held by him or it to any person resident outside India.”

4. The applicant was given an opportunity for personal hearing vide letter No. FED.CO.CEFA No./11636/15.20.67/2016-17 dated May 23, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant vide its letter dated June 5, 2017 requested for exemption from personal hearing. The application is, therefore, being considered on the basis of the averments made in the application.

5. I have given my careful consideration to the documents on record. It was observed that the applicant has contravened the provisions of Paragraph 8 of Schedule 1 of FEMA 20 and Regulation 9(2)(ii) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time. The amount and period of contravention is as follows:

(i) Para 8 of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention– Rs. 98000/- and period of contravention – 6 years approximately.

(iii) Regulation 9(2)(ii) of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs.98000 - 5 years approx

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. 51421/- (Rupees fifty one thousand and four hundred twenty one only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contravention



committed by the applicant namely, Paragraph 8 of Schedule 1, Regulation 9(2)(ii) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, on payment of a sum of Rs. 51421/- (Rupees fifty one thousand and four hundred twenty one 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 fifth day of July, 2017

Sd/-

(Pawanjeet Kaur Rishi)
Assistant General Manager