



In the

Reserve Bank of India
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Marg
Mumbai - 400 001

Present

Devinder Kumar
Deputy General Manager

Date: October 17, 2017
CA NO: 4425/2017

In the matter of

S. Maragathamani
54-A Muthu Nagar, Karur- 639002, Tamil Nadu

(Applicant)

In exercise of 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 June 02, 2017 (received in the Reserve Bank of India on June 08, 2017) for compounding the 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) making of overseas direct investment in the wholly owned subsidiary in UAE by the resident individual without prior approval of the Reserve Bank, (ii) non-reporting of the remitted amount in the prescribed Form ODI (Part I) and (iii) delay in submission of Annual Performance Reports (APRs) pertaining to years 2010, 2011, 2012, 2013, 2014 and 2015. The above were in contravention of Regulations 5(1) and Para 1, 2 and 3 of Part D of Schedule V read with Regulation 15(iii) of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified



vide Notification No. FEMA 120/2004-RB dated July 07, 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, Smt. S. Margathamani (PAN No. ABKPS2816H), is a Resident individual and had remitted an amount of AED 1,70,000 (₹25,00,000/-) on July 29, 2009 towards capital contribution to the newly incorporated wholly owned subsidiary K.S.N. FZC located in the Emirate of Sharjah. The name was later changed to Shamaradi Industrial FZC through an amendment to Memorandum and Article of Association on December 27, 2010. The capital was distributed in the ratio of 90:5:5 between the applicant and her sons Mr Dinesh S and Mr Ravindran K S. The Resident individuals were not eligible to make any direct investment outside India under the then Notification No. FEMA 120/2004-RB.

The aforesaid notification was amended subsequently with prospective effect and Resident individuals were allowed to acquire or set up a JV or WOS abroad with effect from August 05, 2013 under the newly inserted Regulation 20A and Schedule V to the notification *ibid*. However, the applicant neither took prior approval of the Reserve Bank at the time of forming the WOS nor after the aforementioned amendment. Further, in terms of Part D of Schedule V to the amended notification, the Resident individuals making overseas direct investments have the obligation to adhere to certain reporting requirements. The applicant did not submit the duly completed Form ODI in respect of the amount remitted towards equity stake in WOS and also the APRs for the years 2010-2015, when the new provisions have come into the force.

The Reserve Bank, when approached by the applicant, allotted the UIN number vide its letter dated September 16, 2016 and advised that the above contraventions can be compounded under FEMA, 1999 provided an application in this regard is made as per the prescribed procedure.

3. Thus, the applicant contravened the provisions of Regulations 5(1) and Para 1, 2 and 3 of Part D of Schedule V read with Regulation 15(iii) of Notification No. FEMA 120/2004-RB, which are reproduced below:

3.1 Regulation 5(1): “.....no person resident in India shall make any direct investment outside India.....”

3.2 Para 1 of Part D of Schedule V (as amended from time to time): 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 authorised dealer, within 30 days of making the remittance.

3.3 Para 2 of Part D of Schedule V (as amended from time to time): The investment, as made by a resident individual, shall be reported by the designated authorised dealer to the Reserve Bank in Form ODI Part I and II within 30 days of making the remittance.

3.3 Para 3 of Part D of Schedule V: The obligations as required in terms of Regulation 15 of this Notification shall also apply to the resident individuals who have set up or acquired a JV or WOS under the provisions of this Schedule.

3.4 Regulation 15(iii) (as amended from time to time): An Indian Party shall submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before a specified date, an Annual Performance Report (APR) in Part III of Form ODI in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time. The APR, so required to be submitted, has to be based on the audited annual accounts of the JV / WOS for the preceding year, unless specifically exempted by the Reserve Bank.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter FED.CO.CEFA.No./2123/15.20.67/2017-18 dated September 08, 2017 for further submission in person and /or producing documents, if any, in support of the application. The personal hearing was held on October 04, 2017 during which Shri Pranshu Khemka, Chartered Accountant, represented the applicant. The representative of the applicant, while admitting the contraventions for which compounding has been sought, submitted that the lapses were inadvertent and requested that a lenient view may be taken in the matter. 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 applicant during the personal hearing and thereafter.

5. I have given my careful consideration to the documents on record and submissions made during the personal hearing and thereafter. Accordingly, I hold that the applicant has contravened the provisions of Regulations 5(1) and Para 1, 2 and 3 of Part D of Schedule V read with Regulation 15(iii) of FEMA 120/ 2004-RB. The amount and the period of contravention is as under:



(i) Regulation 5(1): The amount of contravention is ₹25,00,000/- and the period of contravention is taken as four years approximately.

(ii) Para 1 and 2 of Part D of Schedule V: The period of contravention for non-reporting of investment in Form ODI has been taken from the effective date of amendment in the FEMA notification *ibid*, i.e. August 05, 2013 to March 29, 2016.

(ii) Para 3 of Part D of Schedule V read with Regulation 15(iii): Delay in submission of APRs as mentioned in Para 2 above.

6. In terms of provisions of section 13 of FEMA, any person contravening any provision of the Act shall be liable to pay up to three times the sum involved in the contravention upon adjudication. However, after considering the submissions made by the applicant with regard to the contraventions and the entire relevant facts and circumstances of the case, 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 ₹1,42,750/- (Rupees One lakh forty two thousand seven hundred fifty 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, viz., Regulation 5(1) and Para 1, 2 and 3 of Part D of Schedule V read with Regulation 15(iii) of Notification No FEMA 120/2004-RB, on payment of a sum of ₹1,42,750/- (Rupees One lakh forty two thousand seven hundred 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 "Reserve Bank of India" and payable at "Mumbai" within a period of 15 days from the date of the 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 shall apply.

The application is disposed of accordingly.

Dated this the seventeenth day of October, 2017.

Sd/-

(Devinder Kumar)
Deputy General Manager