



In the

Reserve Bank of India
Foreign Exchange Department
5th Floor, Amar Building
Sir PM Road
Mumbai – 400001

Present

Kamlesh Sharma
Assistant General Manager

Date: October 27, 2017
CA NO: 4402/2017
In the matter of

Zafarul Amin

15/288, Civil Lines, Uttar Pradesh, Kanpur - 208001

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 May 16, 2017 (received in the Reserve Bank of India on May 23, 2017) for compounding the contraventions of the provisions of the Foreign Exchange Management Act, 1999 (FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) overseas direct investment (ODI) by resident individual (RI) when it was not enabled for RI (i.e. prior to August 5, 2013) under the provisions of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 4, 2004, as amended from time to time (hereinafter referred to as Notification No FEMA 120-RB 2004) ii) non submission of Form ODI Part I and Part II in respect of the ODI which was deemed as enabled post August 5, 2013 and (iii) non- submission of Annual Performance Reports (APRs) for the years 2013 to 2015 in respect of the ODI. The above transactions resulted



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in contravention of Regulation 5(1), Para D(1) and D(2) of Schedule V - read with Regulation 20(A), and Para D(3) of Schedule V - read with Regulation 15(iii) of Notification No FEMA 120-RB 2004.

2. The relevant facts of the case are follows:

The applicant, Mr. Zafarul Amin is an Indian resident, residing at 15/288, Civil Lines, Uttar Pradesh, Kanpur - 208001. The applicant is son of Mr. Mukhtarul Amin, Chairman and Managing Director of Superhouse Group which comprises of several companies including Superhouse Limited (after change of name to Superhouse Limited in November 2006 - originally incorporated in January 1980 as Superhouse Leathers Limited under the Companies Act, 1956) engaged in the manufacturing and export of finished leather, leather footwear and other leather products. In February 2005, Mr. Zafarul Amin joined Mr. Mukhtarul Amin and Mrs. Shahina Mukhtar (wife of Mr. Mukhtarul Amin and mother of Mr. Zafarul Amin, the applicant) to jointly acquire a 50% stake in the equity of a German company viz. Stabilus Saffey GmbH (referred to as SSG hereinafter). The applicant remitted Euro 12,400.00 to individually acquire 12.4% stake in the equity of SSG, while Mr. Mukhtarul Amin and Mrs. Shahina Mukhtar remitted Euro 18,800 each (to individually acquire 18.8% stake each). Thus, the combined total remittance on behalf of these three RIs was of Euro 50,000 towards acquisition of a combined stake of 50% in the equity of SSG. The acquisition was aimed at business growth and expansion in German and European market. The remaining 50% stake in the equity of SSG (which became an overseas Joint Venture, i.e. JV as a result of the ODI by the said RIs) is held by Intercueros GmbH, another German company. The applicant remitted Euro 12,400.00 on February 24, 2005 (INR 7,11,277.00) for the purchase of shares of SSG forming 12.40% - which was in the nature of ODI, even as ODI by an RI was not permitted prior to August 5, 2013. Thus, this acquisition in 2005 was in contravention of the regulation 5 (1) of FEMA 120-RB 2004. Subsequently, with the revision in the guidelines ODI by RIs was enabled with effect from August 5, 2013 and should have been accordingly reported as ODI, as per



the extant guidelines. The applicant, however, submitted Form ODI Part I and Part II to the Authorised Dealer (AD) bank on January 16, 2017. This delay in submission was in contravention of Para D(1) and (2) of Schedule V read with Regulation 20(A), of Notification No FEMA 120-RB 2004. Further, the applicant submitted the APR for the years 2013, 2014 and 2015 on February 07, 2017 - involving a delay of varied duration in respect of the three APRs, thus contravening Para D(3) of Schedule V read with Regulation 15(iii) of Notification No FEMA 120-RB 2004. These transactions were later reported to the Reserve Bank of India by the AD bank on February 07, 2017 and were regularised on March 3, 2017.

3.1 Para D(1) of Schedule V of the said notification requires that the RI, making ODI under the provisions of this Schedule, shall submit Part I of the Form ODI, duly completed, to the designated AD bank, within 30 days of making the remittance.

3.2 Para D(2) of Schedule V of the said notification requires that the ODI, as made by an RI, shall be reported by the designated AD bank to the Reserve Bank in Form ODI Part I and Part II within 30 days of making the remittance.

3.3 Para D(3) of Schedule V of the said notification requires that the obligations as required in terms of Regulation 15 of this Notification shall also apply to the RIs who have set up or acquired a stake in overseas JV or Wholly owned Subsidiaries (WOS) under the provisions of this Schedule.

3.4 Regulation 15(III) of the said Notification requires that the RIs who have undertaken ODI shall submit to the Reserve Bank every year within 60 days from the date of expiry of the statutory period as prescribed by the respective laws of the host country for finalisation of the audited accounts of the JV / WOS outside India or such further period as may be allowed by Reserve Bank, an APR in respect of each JV or WOS outside India set up or acquired by the Indian Party or the RI, and other reports or documents as may be stipulated by the Reserve Bank.



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3.5 The other related RIs - Mr. Mukhtarul Amin and Mrs. Shahina Mukhtar have also submitted their respective compounding applications for the same contraventions in relation to the abovementioned transactions. Mr. R. Seetharaman, Deputy General Manager, Foreign Exchange Department, Reserve Bank of India was appointed as the Compounding Authority in respect of those two compounding applications which were received on the same date, along with the compounding application from Mr. Zafarul Amin, the applicant.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter FED.CO. CEFA .No./2844/15.20.67/2017-18 dated September 29, 2017 for further submission, in person and /or producing documents, if any, in support of the application. Mr. Yakshay Chheda, Counsel, Bombay High Court was authorised by the applicant (and other related RIs) to represent him for the purpose of compounding process. Incidentally, Mr. Yakshay Chheda had been nominated as the authorised representative of the other two RIs (apart from Mr Zafarul Amin) as mentioned above - who have filed compounding application in respect of the same transactions / contraventions. As was desired by and agreed with Mr Yakshay Chheda a combined personal hearing was held at Reserve Bank of India on October 13, 2017 in respect of all three compounding applications – including the compounding application received from Mr. Zafarul Amin. This personal hearing was conducted by Mr. R. Seetharaman, the Compounding Authority appointed in respect of the other two compounding applications. I have consulted Mr. R. Seetharaman and have noted the submissions and observations from the personal hearing and Mr Yakshay Chheda had confirmed that no additional submissions were to be made specific to the compounding application of Mr. Zafarul Amin. The application is considered on the basis of the averments made and documents produced in the application and during the personal hearing.

5. I have given my careful consideration of the documents on record and submission made by the representative of the applicant during the



personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Regulations 5(1), Para D(1) and D(2) of Schedule V read with Regulation 20(A), and Para D(3) of Schedule V read with Regulation 15(iii) of FEMA 120-RB 2004, as amended from time to time. The amount and period in respect of these contraventions is as follows:

i) Regulation 5(1) of FEMA 120-RB 2004 as amended from time to time: The amount of contravention: Euro 12,400.00 (INR 7,11,277.00). The period of contravention was 8 years 6 months approximately.

ii) Para D(1) and D(2) of Schedule V read with Regulation 20(A) of FEMA 120-RB 2004 as amended from time to time: The amount of contravention: Euro 12,400.00 (INR 7,11,277.00) and the period of contravention is three years and five months approximately.

iii) Para D(3) of Schedule V read with Regulation 15(iii) of FEMA 120-RB 2004. The period of contravention was three years two months, two years two months, and one year two months for the APRs for the years 2013, 2014 and 2015, respectively. *However, in this case since the APRs in respect of the same overseas JV were to be submitted by any one of the RIs, the obligation is deemed to fall on the RI with the highest equity stake among the RIs. Therefore, this applicant is given exemption from this obligation since this contravention is being compounded in respect of the compounding application submitted by Mr. Mukhtarul Amin who has the highest equity stake (18.8%) in the overseas JV and who incidentally is also related to the applicant, Mr. Zafarul Amin and also with the other RI (Mrs. Shahina Mukhtar) in the same case.*

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, taking into account the relevant facts and circumstance of the case as stated in the foregoing paragraphs, 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 Rs.68,751.00 (Rupees Sixty Eight Thousand Seven Hundred and Fifty One only) will meet the end of justice.



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7. Accordingly, I compound the admitted contravention namely, the contravention of Regulations 5(1), Para D(1) and D(2) of Schedule V read with Regulation 20(A) and Para D(3) of Schedule V read with Regulation 15(iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 4, 2004, as amended from time to time, by the applicant stated above on the facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs. 68,751.00 (Rupees Sixty Eight Thousand Seven Hundred and Fifty One only) which shall be deposited by the applicant with the Reserve Bank of India, 11th Floor, Central Office Building, Shahid Bhagat Singh Marg, 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 accordingly.

Dated this the twenty seventh day of October 2017.

Sd/-

(Kamlesh Sharma)
Assistant General Manager