



In the

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

Present

R. Seetharaman  
Deputy General Manager

Date: October 27, 2017  
CA NO: 4400/2017  
In the matter of

**Shahina Mukhtar**

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 (The 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



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. Mukhtarul Amin, is an Indian resident individual, residing at 15/288, Civil Lines, Uttar Pradesh, Kanpur-208001. The applicant is the Chairman and Managing Director of Super House Limited engaged in the manufacturing and export of finished leather, leather footwear and other leather products. On February 24, 2005 Mrs. Shahina Mukhtar (wife of Mr.Mukhtarul Amin) and Mr. Mukhtarul Amin remitted Euro 18,800 each and Mr. Zafarul Amin (son of Mr.Mukhtarul Amin) remitted Euro12,400 to acquire 50% equity of a German company M/s. Stabilus Saftey Gmph for its business growth and expansion. Remaining 50% shares were held by Intercueros Gmph another German company. The applicant remitted Euro 18,800.00 on February 24, 2005 (INR10,99,072.00) for the purchase of shares of M/s. Stabilus Saftey Gmph forming 18.80% of the total equity of the Joint venture. Prior to August 5, 2013, overseas direct investment by a resident Individual was not permitted. Thus, this acquisition in 2005 was in contravention of the regulation 5 (1) of FEMA 120-RB 2004. The applicant submitted Form ODI Part I and Part II to the Authorised Dealer 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. The applicant submitted the APR for the years 2013, 2014 and 2015 with a delay on February 07, 2017, 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 regularised on March 3, 2017.

3.1 Para D(1) of Schedule V of the said notification requires that the resident individual, making overseas direct investment 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 overseas direct investment, as made by a resident individual, shall be reported by the designated AD bank to the Reserve Bank in Form ODI Part I and 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 resident individuals who have set up or acquired a stake in overseas Joint Venture (JV) or Wholly owned Subsidiaries (WOS) under the provisions of this Schedule.

3.4 Regulation 15(III) of the said Notification requires that the resident individual who undertaken overseas direct investment 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 Annual Performance Report (APR) in respect of each JV or WOS outside India set up or acquired by the Indian Party, or the resident individual and other reports or documents as may be stipulated by the Reserve Bank.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter FED.CO. CEFA .No./2845/15.20.67/2017-18 dated September 29, 2017 for further submission in person and /or producing documents, if any, in support of the application. The personal hearing was held on October 13, 2017 during which Shri.Yakshay Chheda, Counsel, Bombay High Court represented the applicant. The application is considered on the basis of the averments made and documents produced in the application.

5. I have given my careful consideration of the documents on record and submission made by 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 of contravention is as follows.

i) Regulation 5(1) of FEMA 120-RB 2004 as amended from time to time: The amount of contravention: Euro 18,800.00 (INR 1099072.00). 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 18,800.00 (INR 1099072.00) 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 any one of 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 also the highest equity stake (18.8%) in the overseas JV and who incidentally is also related to the applicant, Mrs. Shahina Mukhtar and also with other RI Mr. Zafarul Amin 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.76771.00 (Rupees Seventy six thousand seven hundred and seventy one only) will meet the end of justice.



**FED, CEFA**  
**Shahina Mukhtar**  
**CA NO: 4401/2017**

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.76771.00 (Rupees Seventy six thousand seven hundred and seventy one only) which shall be deposited by the applicant with the Reserve Bank of India, 11<sup>th</sup> 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/-

(R. Seetharaman)

Deputy General Manager