



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

Jyoti Kumar Pandey
Chief General Manager

Date: November 28, 2017
CA No 4444 / 2017

In the matter of

Arun Mammen
11, Boat Club Road, 3rd Avenue, R.A. Puram
Chennai, Tamil Nadu - 600028

(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 June 21, 2017 (received in the Reserve Bank on June 27, 2017) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded is opening and maintenance of Foreign Currency Accounts abroad by a resident Indian. The above was in contravention of Regulation 3 of Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000 notified vide Notification No. FEMA 10/2000-RB dated 3rd May 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 10/2000-RB).



2. The relevant facts are as under: The applicant, Shri Arun Mammen, a resident Indian, is the Managing Director of MRF Limited, India. He, along with his brother, Shri Kandathil Mammen, with a view to pursue other business activities, namely consultancy and advisory services outside India, opened various foreign currency accounts overseas, in order to credit their earnings abroad, as under:

S.No.	Account	Date of opening	Date of closing	Amount (foreign currency)	Amount (INR)
1	UBS AG - 1/162,234/00,02	25.04.2005	08.08.2008	1,771,845.58 USD	7,80,43,137.30
2	UBS AG - 0/162,234/00,12	25.04.2005	01.07.2005	Nil	Nil
3	UBS AG - 1/186,020/43,18	30.11.2006	30.05.2007	62.45 Pound Sterling	5,335.30
4	UBS AG - 1/186,020/00,00	27.11.2006	07.06.2007	2,990,936.82 USD	12,98,38,357.10
5	UBS AG - 1/186,020/00,19	30.11.2006	25.01.2007	26.19 USD	943.26
6	UBS AG - 1/186,020/43,27	30.11.2006	25.01.2007	Nil	Nil
7	First Gulf Bank, UAE - 1036001666284010	06.07.2013	10.08.2014	6,640,132 USD	40,06,73,577.77
8	First Gulf Bank, UAE - 1036001666284010	01.07.2013	10.08.2014	5,005.13 AED	82,070.47
9	Standard Chartered Bank, UAE - 18341724701	01.01.2007	17.03.2011	50,150.45 AED	5,87,528.01
10	Standard Chartered Bank, UAE - 18341724701	01.01.2005	02.04.2011	826,491.08 USD	3,62,16,256.97



11	UBS AG – 1/186,020/00,18	30.11.2006	30.05.2007	207,209.84 USD	1,13,29,871.59
Total					65,67,77,077.77

This was in contravention of Regulation 3 of Notification No. FEMA 10/2000-RB, as amended from time to time. The accounts have now been closed and the proceeds repatriated to India.

3. In terms of Regulation 3 of Notification No.FEMA.10/2000-RB dated May 03, 2000 as amended from time to time, “Save as otherwise provided in the Act or rules or regulations made thereunder, no person resident in India shall open or hold or maintain a Foreign Currency Account....”

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/2852/15.20.67/2017-18 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 09, 2017 during which Shri Deepender Kumar, Chartered Accountant, represented the applicant. The representative of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to ignorance and requested that a lenient view may be taken in the matter. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulation 3 of Notification No. FEMA 10/2000-RB (as amended from time to time). The amount of contravention is Rs. 65,67,77,077.77/- (for both the joint account holders) and the period of contravention ranges from two months to six years approximately.

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. The applicant opened foreign currency accounts



and credited his earnings abroad in the same, which was a contravention of FEMA regulations. Since the opening of the foreign currency accounts was not permitted, hence the interest earned by the applicant from those accounts, to the extent of Rs. 1,05,07,103.87/-, is being deemed to be accrued as an undue gain to the applicant and the other holder of the joint accounts. Therefore, after considering the submissions made by the applicant with regard to the contraventions and the entire facts and circumstances of the case, I am persuaded to take a view that undue gains made by the applicant require to be neutralized and it stands to reason that payment of an amount of Rs. 69,45,495/- (Rupees sixty nine lakh forty five thousand four hundred and ninety five only), incorporating the impact of neutralization as above, 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 contraventions committed by the applicant namely, Regulation 3 of Notification No. FEMA 10/2000-RB dated 3rd May 2000 (as amended from time to time), on payment of a sum of Rs. 69,45,495/- (Rupees sixty nine lakh forty five thousand four hundred and ninety five 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 twenty eighth day of November, 2017

Sd/-

(Jyoti Kumar Pandey)
Chief General Manager