

HINESH R. DOSHI & CO. LLP

Chartered Accountants

FEMA UPDATES (COMPOUNDING ORDERS - ODI) DATE: 6-SEPTEMBER-2018

Summary of few latest Compounding Orders passed by Reserve Bank of India (RBI)



Contravention

- Means a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 ('the Act) and rules/ regulations/ notification/ orders/ directions/ circulars issued thereunder.

Compounding

- Refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. The Reserve Bank is empowered to compound any contravention as defined under section 13 of FEMA, 1999 except the contravention under section 3(a) ibid.

General Penalty

- As per provisions of section 13 of the Act, penalty levied can be **up to 300%** of the amount involved for any contravention under the Act and Regulations thereunder.

Compounding Fee

- The Compounding Fee varies for different offences and may include a fixed and a variable component depending on the circumstances of the case.

CASE 1:

Name of Applicant	Bennett Broadcasting and Distribution Services Limited Order date: 16th May, 2018
Contravention	<i>Non-repatriation of dues receivable from foreign entity within the stipulated time period.</i>
Relevant Regulation	Regulation 15(ii) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB
Requirement of the Regulation	An Indian Party, which has acquired foreign security shall repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc. within 60 days of its falling due, or such further period as the Reserve Bank may permit.
Matter Compounded	<ul style="list-style-type: none">• The applicant Indian company had receivables due from its wholly owned subsidiary (WOS) amounting to Rs. 6,23,53,909/-• Due to poor financial position, the WOS was unable to pay the outstanding dues.• The Indian company then filed an application for liquidation with the RBI seeking to write-off the dues.• RBI allowed the liquidation subject to compounding of contravention by payment of the amount ordered.
Period of contravention	2 years 5 months
Amount involved	Rs. 6,23,53,909 /-
Compounding Fee	Rs. 4,24,123 /-

CASE 2:

Name of Applicant	Millith Karv Engineering & Trading Pvt. Ltd. Order date: 27 th June, 2018
Contravention	<i>Non-filing of share certificates within the stipulated time</i>
Relevant Regulation	Regulation 15 (i) of Notification No. FEMA.120/2004-RB
Requirement of the Regulation	An Indian Party which has acquired foreign security in terms of the Regulation in Part I shall receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within 6 months: i From the date of effecting remittance or ii The date on which the amount to be capitalized became due to the Indian Party or iii The date on which the amount due was allowed to be capitalized.
Matter Compounded	<ul style="list-style-type: none">• In this case, the applicant, an Indian company made an initial investment with an overseas entity to the extent of USD 200,000 on the basis of letter of confirmation for a deal.• However, the business deal did not materialize and the remittance was repatriated back within 9 months of the investment date.• The company did not file any evidence of investment with the RBI within the time period of six months which resulted into a contravention.
Period of contravention	3 months
Amount involved	Rs.1,10,70,990/-
Compounding Fee	Rs.10,000/-

CASE 3:

Name of Applicant	CI Global Technologies Pvt Ltd Order Date: 8 th June, 2018		
Contravention	<i>Non-Reporting of Form ODI</i>	<i>Improper method of Funding</i>	<i>Delay in submission of APRs</i>
Relevant Regulation	Regulation 6(2)(vi) of Notification No. FEMA 120/RB-2004.	Regulation 6 (3) of Notification No. FEMA 120/RB-2004.	Regulation 15(iii) of Notification No. FEMA 120/RB-2004.
Requirement of the Regulation	An Indian party which invests outside India investment in Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India is required to submit Form ODI-Part I to the Authorized dealer.	This clause lists out the modes of funding an investment by Indian party in its JV or WOS outside India.	An Indian Party, which has acquired foreign security is required to submit to RBI an Annual Performance Report (APR) every year on or before a specified date for each JV or WOS outside India.
Matter Compounded	<ul style="list-style-type: none"> • The applicant, an Indian Company, remitted USD 10,380.15 to its foreign WOS in November 2005 towards investment. • Form ODI Part I was reported for these transactions with a delay. 	<ul style="list-style-type: none"> • The applicant had made ODI by way of Traveler's Cheque which is not a permitted method of funding. 	<ul style="list-style-type: none"> • The applicant had reported APR's for the period of 7 years on January 01, 2017 instead of reporting for every year.
Period of contravention	9 years		
Amount involved	Rs. 4,66,583 /-		
Compounding Fee	Rs.1,62,499 /-		

CASE 4:

Name of Applicant	Reno Mercantile Private Limited Order date: 18 th May, 2018	
Contravention	<i>Making an overseas investment in excess of 400% of net worth</i>	<i>Delay in submission of Form ODI Part I beyond the stipulated time period.</i>
Relevant Regulation	Regulation 6(2)(i) of Notification No. FEMA.120/2004-RB read with Regulation 2(o)	Regulation 6(2)(vi) of Notification No.FEMA.120/2004-RB
Requirement of the Regulation	An Indian party is permitted to make Overseas Direct investments (ODI) provided its total financial commitment does not exceed 400% of the its net worth as per the last audited balance sheet.	An Indian party is permitted to make ODI in certain cases, provided “the Indian Party submits Part I of Form ODI, duly completed, to the designated branch of an authorized dealer”
Matter Compounded	<ul style="list-style-type: none"> • In this case, the applicant, an Indian company, acquired the stake in a Singaporean company for Rs. 30.86 crores when its net worth was only Rs. 0.93 crores. • This investment, which was more than 400% of net worth resulted into a contravention. • However, the contravention was made good by increasing the Net worth through infusion of Share Capital within 3 months. 	<ul style="list-style-type: none"> • The applicant made a delay in filing Form ODI
Period of contravention	3 months	9 months
Amount involved	Rs. 27,13,79,037 /-	Rs. 30,85,79,037/-
Compounding Fee	Rs. 14,91,895/-	

CASE 5:

Name of Applicant	J K Enviro-Tech Limited Order date: 9 th May, 2018
Contravention	<i>Disinvestment within one year of initial equity investment - without prior RBI approval.</i>
Relevant Regulation	Regulation 16(1)(v) of FEMA 120/2004-RB
Requirement of the Regulation	One of the conditions to be fulfilled for disinvestment by an Indian party that has made an ODI is that the investee overseas entity should have been in operation for at least one full year from the date of initial remittance by such Indian party.
Matter Compounded	<ul style="list-style-type: none"> • The applicant company acquired equity shares of an overseas company by outward remittance in February 2016. • Even before completion of one year from the date of remittance, it transferred the stake of overseas entity to its holding company in India by way of Sale, thereby disinvesting without RBI's permission.
Period of contravention	9 months (from the date of disinvestment till the date of submission of compounding application)
Amount involved	USD 26,000 ~ INR 1,753,686/-
Compounding Fee	Rs. 58,768/-

