COMPOUNDING OF CONTRAVENTIONS UNDER FOREIGN EXCHANGE MANAGEMENT ACT,1999

By

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ADVOCATE

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Governing Provisions

- Section 15 of the Foreign Exchange Management Act, 1999 read with Section 13

- Foreign Exchange Management (Compounding Proceedings) Rules, 2000, as amended,

- Master Direction on Compounding of Contraventions under FEMA, 1999 – No.04/2015-16 dated January 1, 2016, as amended

- A.P.(DIR Series) Circulars

Compounding-Meaning

- Compounding – Means to settle a dispute by concession or arrangement ie., to condone an offence in exchange for money.
- Offence/Contravention – Means commissioning of an act contrary to or forbidden by law. Offences are transgression of law.
- Law – What is ? – Art 13(3) of the Constitution – Law means the laws made by the Legislature including *intra vires* statutory orders and orders made in exercise of powers conferred by the statutory rules.
- Nature of contraventions can be compounded:

Provisions of the Act.

Rules

Regulations

Master Directions

Circulars

Orders

Section 15 of FEMA,1999

POWER TO COMPOUND CONTRAVENTION

- Any contravention under section 13 can be compounded
- Application to be made specifically by the contravener
- Compounding would be done within 180 days of receipt of application
- Either by Officers of Directorate of Enforcement or by
- Officers of Reserve Bank of India
- Who would be authorised specifically by Central Government
- Manner of proceeding with the Application is also prescribed by Central Government

Section 15

SECTION 15(2)

- When contravention is compounded under sub-section (1)
- Against such contravener – No proceedings, as the case may be, shall be initiated
- No proceedings, can be continued, as the case may be
- Under section 13 for the contravention so compounded

Compounding Proceedings Rules, 2000

Compounding Authority

CONTRAVENTION OF SECTION 3(2) OF FEMA,1999	ANY OTHER CONTRAVENTION
Deputy Direction – Amount involved less than Rs.5 lacs	Assistant General Manager – Rs.10 Lacs or below
Additional Director – Rs.5 lacs upto 10 Lacs	Deputy General Manager – 10 lacs – 40 Lacs
Special Director –Rs.10 Lacs upto Rs.50 Lacs	General Manager – 40 lacs – 1 Crore
Special Director with Deputy Legal Adviser – Rs.50 Lacs upto Rs.1 Crore	Chief General Manager – Rs.1 Crore and above
Director of Enforcement with Special Director – Above Rs.1 Crore	

Compounding Authority – Sub-delegation by RBI

Delegation of Compounding Powers to Regional Office/Sub-Office of RBI – Master Direction

1. Non-reporting of receipt of foreign inward remittance within 30 days to Regional Office of RBI
2. Non filing of FC-GPR within 30 days of allotment of shares/convertible debentures/warrants
3. Non filing of Annual Returns on Foreign Assets and Liabilities
4. Non allotment of shares on receipt of foreign inward remittance within 180 days
5. Non adherence to pricing guidelines under FDI
6. Any violation of conditions prescribed under Non-debt Instruments Rules, 2019
7. Issue of shares without the approval of RBI or Government wherever required
8. Any violation of conditions on transfer of shares
9. Sale requiring prior permission of RBI not adhered to
10. Receiving Investment in India from Non-residents or taking on record transfer without adhering to the stipulated conditions.
11. Any violation on Downstream investment conditions
12. Any violation relating to reporting of FDI in a LLP

COMPOUNDING AUTHORITY- Cont

- All other applications will have to be sent to :

Cell for Effective Implementation of FEMA (CEFA),

Foreign Exchange Department,

Reserve Bank of India

5^{th} Floor, Amar, Building, Sir P M Road

Fort, Mumbai – 400 001

Sub-delegation of Compounding Powers

Compounding by FED, CO Cell, New Delhi

1. Relating to violations by Liaison Office, Branch Office or Project Office under respective regulations.
2. Any violation relating to Non-resident foreign accounts under Deposit Regulations.
3. Violations/contravention pertaining to acquisition of immovable property outside India
4. Violations/contraventions pertaining to acquisition of immovable property in India

Other Conditions

- Amounts Above 1 Crore – Regional Office at Panaji and Kochi will have no jurisdiction. Mumbai Regional Officer and Thiruvananthapuram Regional Office would compound such contraventions.
- Application should be made to the Regional Office where the Applicant falls.
- Other applications will be made before FED, CO Cell, New Delhi.

Compounding Rules

EXCEPTIONS WHERE APPLICATION CANNOT BE PREFERRED

1. Amount involved in the contravention is not quantifiable
2. Similar Contravention was compounded in case of the contravener within 3 years
3. Contravener has filed Appeals against the order of Adjudicating Authority before Special Director (Appeals) or Appellate Tribunal
4. Where contravention relates to serious offences like money laundering, terror financing or affecting the sovereignty or integrity of the Nation. This decision is taken in consultation with Enforcement Directorate who is the investigating agency. In such cases compounding application is remitted back to ED for further investigation and continuation of proceedings in accordance with law.
5. Where contravention relates to non securing of approval from Government or any other authority, then such approvals should be secured/obtained before preferring the compounding application.

Compounding Rules

Rule 6

- Where contravention is compounded before Adjudication [section 16] then NO INQUIRY SHALL BE HELD for Adjudication of such contravention.

Rule 7

- When Compounding is made after Complaint [Section 16(3)] – Compounding Authority will bring to the notice of Adjudicating Authority of the compounding done. On such notice the Adjudicating Authority will DISCHARGE the person.

- Rule 8 – Procedure for Compounding

- The CA will call for information, record, documents relevant for compounding proceedings and provide an opportunity of hearing to the applicant. Will pass an order within 180 days from the date of application.

Compounding Rules

- Rule 9 – Payment of Amount

- The fine/amount imposed by the CA in the order should be paid within 15 days by way of a Demand Draft favouring the CA.
- Failure to pay within the stipulated time, would mean that the contravener has never made an application for compounding. [Rule 10]
- The Order should specify the Provisions of the Act/Rules/Directions/Orders contravened. The details of the alleged contravention. The order should be dated and signed. [Rule 12]
- A copy of the order should be suppled to the Applicant as well as the Adjudicating Authority.[Rule 13]

Master Direction on Compounding

- Purpose of Compounding is with a view to providing comfort by minimizing transaction cost, while taking severe view of wilful, mala fide and fraudulent transactions.

FACTORS TAKEN INTO ACCOUNT WHILE PASSING COMPOUNDING ORDER

A. Amount of gain/unfair advantage received as a result of contravention (wherever quantifiable)

B. Amount of loss caused to authority/agency/exchequer due to contravention

C. Economic benefit to the contravener due to delayed nature of compliance or avoiding such compliance

D. Repetitive nature of contravention. Track record/History of non-compliance

E. Contravener’s conduct – while undertaking the transaction/disclosure of full facts in Application. Submission made during personal hearing.

F. Any other factor considered relevant/appropriate.

GUIDANCE NOTE ON COMPUTATIONAL MATRIX

Type of contravention	Existing Formula
1] <u>Reporting Contraventions</u> **A) FEMA 20** Para 9(1)(A), 9(1)(B), part B of FC(GPR), FCTRS (Reg. 10) and taking on record FCTRS (Reg. 4) **B) FEMA 3** Non submission of ECB statements **C) FEMA 120** Non reporting/delay in reporting of acquisition/setup of subsidiaries/step down subsidiaries /changes in the shareholding pattern **D) Any other reporting contraventions (except those in Row 2 below)**	Fixed amount : Rs10000/- (applied once for each contravention in a compounding application) + Variable amount as under: Up to 10 lakhs: 1000 per year Above Rs.10 lakhs & below Rs. 40 lakhs: 2500 per year Rs.40 lakhs or more and below Rs. 100 lakhs: 7000 per year Rs.1-10 crore : 50000 per year Rs.10 -100 Crore : 100000 per year Above Rs.100 Crore : 200000 per year
E) Reporting contraventions by LO/BO/PO	As above, subject to ceiling of Rs.2 lakhs. In case of Project Office, the amount imposed shall be calculated on 10% of total project cost.
2] <u>AAC/ APR/ FLAR/ Share certificate delays</u> In case of non-submission/ delayed submission of APR/ share certificates (FEMA 120) or AAC (FEMA 22) or FCGPR (B) [4]or FLA Returns - FEMA 20 / FEMA 20 (R) / FEMA 120/FEMA 395	Rs.10000/- per AAC/APR/FCGPR (B)[5]/FLA Return delayed. Delayed receipt of share certificate – Rs.10000/- per year, the total amount being subject to ceiling of 300% of the amount invested.
3] **A] <u>Allotment/Refunds</u>** Para 8 of FEMA 20/2000-RB (non-allotment of shares or allotment/ refund after the stipulated 180 days) **B] <u>LO/BO/PO</u>** **(Other than reporting contraventions)**	Rs.30000/- + given percentage: 1st year : 0.30% 1-2 years : 0.35% 2-3 years : 0.40% 3-4 years : 0.45% 4-5 years : 0.50% >5 years : 0.75% (For project offices the amount of contravention shall be deemed to be 10% of the cost of project).
4] <u>All other contraventions, – including all contraventions of FEMA20(R)/2017/NDIR, 2019/FEMA 395/ 2019/, except contraventions pertaining to FLA returns and corporate guarantees</u>	Rs.50000/- + given percentage: 1st year : 0.50% 1-2 years : 0.55% 2-3 years : 0.60% 3-4 years : 0.65% 4-5 years : 0.70% >5 years : 0.75%
5] <u>Issue of Corporate Guarantees</u> without UIN/ without permission wherever required /open ended guarantees or any other contravention related to issue of Corporate Guarantees.	Rs.500000/- + given percentage: 1st year : 0.050% 1-2 years : 0.055% 2-3 years : 0.060% 3-4 years : 0.065% 4-5 years : 0.070% >5 years : 0.075% In case the contravention includes issue of guarantees for raising loans which are invested back into India, the amount imposed may be trebled.
*The contraventions of FEMA 20 existing and continuing as on November 07, 2017 (i.e. the starting date of contraventions prior to November 07, 2017) will be compounded as per 1(A) above.	

COMPUTATIONAL MATRIX - CONTD

II. The above amounts are presently subject to the following provisos, viz.

i. the amount imposed should not exceed 300% of the amount of contravention
ii. In case the amount of contravention is less than Rs. One lakh, the total amount imposed should not be more than amount of simple interest @5% p.a. calculated on the amount of contravention and for the period of the contravention in case of reporting contraventions and @10% p.a. in respect of all other contraventions.

III. In case of paragraph 8 of Schedule I to FEMA 20/2000 RB contraventions, the amount imposed will be further graded as under:

a. If the shares are allotted after 180 days without the prior approval of Reserve Bank, 1.25 times the amount calculated as per table above (subject to provisos at (i) & (ii) above).
b. If the shares are not allotted and the amount is refunded after 180 days with the Bank's permission: 1.50 times the amount calculated as per table above (subject to provisos at (i) & (ii) above)
c. If the shares are not allotted and the amount is refunded after 180 days without the Bank's permission: 1.75 times the amount calculated as per table above (subject to provisos at (i) & (ii) above).

IV. In cases where it is established that the contravenor has made undue gains, the amount thereof may be neutralized to a reasonable extent by adding the same to the compounding amount calculated as per chart.

V. If a party who has been compounded earlier applies for compounding again for similar contravention, the amount calculated as above may be enhanced by 50%.

VI. For calculating amount in respect of reporting contraventions under para I.1 above, the period of contravention may be considered proportionately {(approx. rounded off to next higher month ÷ 12) X amount for 1 year}. The total no. of days does not exclude Sundays/holidays.

Option to Compound or pay LSF in lieu of Compounding

- The 2017 Regulation provided for payment of late submission fee, for delays in reporting under the FDI Regulations.
- Master Direction on Reporting under Foreign Exchange Management Act, 1999 has laid down the amount of Late Submission Fees (LSF) that shall be laid down on the reporting delays that have taken place post 7th November 2017. The delayed submission and levy of late fees are as follows:

a.Amount of late fees that shall be levied:

Amount involved in reporting (in INR)	Late Submission Fees (LSF) as % of the amount involved*	Maximum amount of LSF applicable
Up to INR 1,00,00,000	0.05 %	Lower of: •INR 10,00,000 or •300% of the amount involved
More than INR 1,00,00,000	0.15 %	Lower of: •INR 1,00,00,000 or •300% of the amount involved
*Note: 1.The %age of LSF will be doubled every 12 months 2.Minimum applicable LSF shall be INR 100.		

b. The payment of LSF is an option for regularizing reporting delays without undergoing compounding procedure.

c. Calculation of amount of LSF to be done based on the following formula:

Amount involved X time rounded off to the next higher month X 0.05 % or 0.15 % as the case may be

In the case of ARF, the amount involved shall be the amount of inward remittance. And in the case of FC-GPR, the amount involved shall be the amount allotted to the non-resident person.

d. The final acknowledgement shall be granted after the late submission fee is paid by the applicant.

e. The date of reporting to the AD bank shall be deemed to be the date of reporting to the Reserve Bank provided the prescribed documentation is complete in all respects.

f. In case the reporting form (whether in physical or electronic form) is incomplete, then the delay will continue till such time the form is received complete in all respects.

g. The late submission fee is for reporting delays only and not for contraventions made for non-issue/ late issue of capital instruments or non-transfer/ late transfer of capital instruments etc.

h. Mode of payment: The Late Submission Fee may be paid by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at the Regional Office concerned.

Regional office of RBI has the discretion to levy LSF ranging from Minimum LSF as calculated based on the formula to the criteria mentioned for Maximum LSF (as detailed in the table above).

- LSF is introduced for regularising delay in compliance of ECB guidelines also. Vide A.P.(DIR Series) Circular No.17 dated January 16, 2019.

COMPOUNDING ORDERS FOR DISCUSSION

Orders under FDI Regulations

Atria Convergence Technologies Pvt Ltd – CA 3958/2016 & India Value Fund III-A – CA. No.3875/2016
Facts: The Applicant Company was incorporated on June 16, 2000. Applicant is in the business of providing wireline broadband Internet Services. A Domestic Venture Capital Fund invested 65% of the Equity in the Applicant Company and also undertakes indirect investment in the year 2008. The Applicant Company considered the investment as falling under Schedule VI of FEMA, 1999. It turned out that 90% of the Units of the Domestic Venture Capital Fund was held by Foreign Venture Capital Investor which is 100% owned by non-residents. On receiving the investment the Applicant Company made further investment in downstream investment in multiple Indian Companies which are engaged in cable network and Multi System Operators and Internet Service Providers and also in some dormant companies.
Law: The guidelines on downstream investment was first issued by DIPP vide Press Note No.3 dated 13.2.2009. The Ministry of Commerce and Industry guidelines even though issued, there were no consequential amendment to the extant Regulations. The amendment was effected by RBI only by Notification No.FEMA 278/2013-RB dated June 07, 2013 wef., February 13, 2009 ie., giving retrospective effect. 2. Indirect foreign investment had to be reported under the extant Regulations within the prescribed period. 3. The Regulations prohibit investment in dormant companies without the prior approval of FIPB 4. The Resident Company which has a downstream investment could not have merged with another company without obtaining prior approval of FIPB.

Compounding Orders..

Violations: 1. Exceeding the sectoral cap provided on foreign investment in cable network and MSO activity
2. Not reporting indirect foreign investment to the RBI within the prescribed period.
3. Investment in dormant companies without prior FIPB approval
4. Merger with resident company without prior approval of FIPB- Regulation 14(6)(i) r/w. Annex B to Sch I. Reg 14(6)(ii)(a), Regulation 14(6)(ii)(d) and Regulation 7(1)(a) of FDI Regulations.

The Applicant applies to FIPB for a post facto approval and obtains approval. Directed to seek compounding of the violation. Applies to CA and the violations are compounded with fine of Rs.73.41 Lacs

The Domestic Venture Capital Fund also seeks compounding of violation in C.A.No.3875/2015. Imposed compounding fine of Rs.1.25 crore. Admission by the CA in Para 5 that there was no clarity.

Observations : The compounding order itself says there was no clarity in law as to treatment of foreign investment through VC Fund. It is stated that the company should have reported the facts and status of investment as per the direction issued by RBI vide its circular dated July 04, 2013.
No reason provided in the order as to how the compounding fine/penalty is calculated.

Compounding Orders..

Edunetwork Pvt Ltd – CA 4577/2017 & Gaurav Bamania –C.A.No.4578/2017
Facts: The Applicant receives investment from A for acquisition of shares. The investor is an NRI. However, the amount was received from the NRI's resident account and not from the permitted methods ie., out of foreign inward remittance or through debit out of funds held in NRE/FCNR/NRO Account.
The NRI also made application seeking compounding of the violation. His violation was on two counts ie., one under the Deposit Regulations wherein he had not designated the account as NRO on becoming an NRI and other buying shares in the Indian Company out of his resident account in violation of FDI Regulations.
It highlights the simple issue of re-designating the resident bank account which was not done when a person becomes and NRI within 30 days of he changing his residential status. In one transaction there arise multiple violations under the Act.

Compounding orders-FDI

Arani Agro Industries – CA.Hyd 208
Facts: The Applicant a limited company from 1986 and a private limited from 1.8.2013. Applicant obtains FIPB approval for allotment of preference shares with a condition that redemption would not take place prior to five years in 2002. The Applicant applied for regularization of their violations in 2012. The violations were for the period from 2003-2004. FIPB granted post facto approval subject to compounding by RBI. The Applicant records transfer of shares by way of swap from Resident to Non-resident. 99209 preference shares and 81,360 preference shares of Rs.100 was swapped for 992090 equity shares of Rs.10 each and 813,600 equity shares of Rs.10 on 25.12.2002 and 15.03.2003 without the prior approval of FIPB. Post facto approval taken. The Applicant also records transfer of shares from resident to non-resident without prior approval of FIPB on 27.3.2004. As per the compounding order all the share transfers have happened at face value.
The violations identified in the order for compounding is : i.Issue of equity shares in lieu of technology transfer to person resident outside india ii. Redeeming of preference shares issued to a PROI prior to lock in period of five years without obtaining prior approval of FIPB III. Taking on company's record, transfer of shares by way of swap between non-resident and resident investors and transfer of shares from resident investors to non-resident investors iv. Other violations not discussed

Arani Order…

The order does not state as to how a company which is in existence from 1986 could record transfer of shares at face value. The order does not state on the requirement of following pricing guidelines on transfer of shares from resident to non-resident.

Para 5 of Schedule 1 provides that price of shares issued to person resident outside India under this Schedule, shall not be less than the valuation of shares done as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker where the shares of the company are not listed in any recognised stock exchange.

Regulation 5B, which was inserted with retrospective effect from 26.9.2012, overriding Para 5 states that where shares in an Indian company are issued to a person resident outside India in compliance with the provisions of Companies Act, 1956, by way of subscription to Memorandum of Association , such investments may be made at <u>face value subject to eligibility to invest under this Schedule.</u>

Therefore, I see no possibility of swap of shares or transfer of shares at face value. There seems to be serious non-consideration of this issue.

Compounding – FDI Regulations

Essar Oil Limited – CA No.675/2016 - The applicant did not admit the Compounding Fine.
Facts: Applicant receives foreign inward remittance from M/s.Essar Energy Holdings Limited, Mauritius towards issue of GDR on various dates from June, 2014 to January, 2015. The amount received was Rs.1500 crore. The Applicant was unable to proceed with the issuance of proposed GDR due to clarifications sought by SEBI on previous GDR issued and also due to changes in the Depository Receipts guidelines issued by Government. The Applicant approached RBI on May 11, 2016 for refund of advance and receiving it back as equity investment. The Applicant approaches the Reserve Bank for according approval for issuance of Shares to the foreign company and the transaction of recording the amount received towards allotment of shares were done on February 10, 2017.
Violations/Contravention: i. The equity instrument was issued to the foreign investor, beyond 180 days of receipt of foreign inward remittance ii. Delay in reporting receipt of foreign inward remittance towards subscription to equity under FDI Regulations

Compounding-FDI violations

Interesting observation of the Compounding Authority:
The money was received by the Applicant towards issue of GDRs but did not issue it. The Applicant approached RBI after a delay of more than 1 year to seek issuance of shares to the foreign company. The company had retained funds in the intervening period.
That the Applicant has gained undue advantage of the money for a period of around 2 years till they approached the RBI. The CA states that the gains have to be neutralized. Therefore based on State Bank notional rates of interest that would have been payable if the applicant had sourced such advances through domestic borrowings. Thus the undue gains that have to be neutralized would be an amount of Rs.241.16 crores and therefore the compounding fine/penalty was imposed in the order.

This finding of the Compounding Authority is grossly opposed to the Guidance Note on computation matrix issued by Master Direction No.04/2015-16 dated 1.1.2016. The compounding order was passed on April 28, 2017. The contravention alleged squarely falls under "Guidance Note on Computation Matrix" ie., violation of Para 8 of FEMA 20/2000-RB. The quantum of fine imposed is savage and grossly opposed to the computation Mechanism which could have been around 5.3 crores.

Compounding Orders-Current Account Violations

TV Today Network Limited- CA.4149/2016

- Allegation is that prior permission not obtained to make remittance towards hiring of transponders from Ministry of Information and Broadcasting. Item 6(a) of Schedule II of Current Account Rules. Payments made for the period from March 2003 to December 2005.
- Post facto approval granted by MIB to the Applicant.
- The violation was compounded with fine of 34.28 lacs.
- The Director of the Company was also proceeded under section 42(1) for vicarious liability [CA No.4925/2019]. The CA of the Director was also compounded. The issue is whether any amount is involved in commissioning of an offence by the Director to compound the offence. The proceedings against the Director should have been dropped by the Adjudicating Authority and not by the Compounding Authority.

Compounding-Current Account Violations

Jaguar Buildcon Private Limited – CA 3950/2016

- The Applicant undertook to build luxury hotel with an estimated cost of USD 110 million. The appellant hired various foreign consultants for the project. Appellants remits foreign exchange equivalent of Rs.15.75 crores to the foreign consultants.
- Contravention is that the payments so made is in violation of Item No.15 of Schedule III to Current Account Rules.
- Permission of RBI had to be taken for making remittance exceeding USD 10 million per project for consultancy service.
- Applicant obtains post facto approval from the RBI for the payments made. For two more payments of Rs.48 lacs the permission was sought later.
- This application was limited to only the two transactions for which later approval was obtained from RBI. The earlier order of compounding on the Rs.15.75 crores payment is not available on the website.
- A small fine is imposed on the Applicant in this case. It is not clear as to whether the amount involved was computed leaving the permissible amount of USD 10 million

Compounding-ODI Violations

Jasper Infotech Private Limited-CA 4504/2017

FACTS

- Shareholders of the Applicant forms a company ASPL in India. This company had a paid up capital of Rs.1 lac. 50% shares held by Individual another 50% by another Indian Company.
- APL a company was incorporated in Singapore. 10,500 shares of this company was acquired by three resident Individuals Mr.KS Mr.ST and Ms.GT from other non-resident Individuals.
- APL raises USD 116690263 by issuance of Optionally Convertible Preference Shares (OCPS) to non-resident investors.
- Nov,2011 APL acquires 99.99% shares of ASPL. ASPL is a JV company of APL.
- ASPL issues compulsorily convertible debentures for an amount of Rs.362 crores which was later converted into Equity.
- The Applicant received foreign direct investment of Rs.10302.66 crores from various non-resident entities in USA, Mauritius, China, Singapore and Cayman Islands.
- During 2015 Applicant (JIPL) through secondary purchase transaction, acquires shares of APL (Singapore) from resident individuals and non-resident entity for a total consideration of Rs.2118 crores.
- Share valuation certificate issued by Merchant Banker for APL which is a holding company of ASPL derived its value from holding shares in the Indian company.
- Acquisition of shares of APL by JIPL(Applicant) resulted in ODI-FDI structure.

Compounding-ODI violations

VIOLATION

- This structure has resulted in contravention of Regulation 5(1) read with Regulation 6(2)(ii) of Notification No.120/2004-RB dated January 16, 2017.
- This structure unless approved by RBI is not treated as *bonafide*.
- The Compounding of the contravention is possible only when JIPL disinvest stake in APL, Singapore.
- RBI advises three Individuals holding shares in APL to also apply for compounding of the violation for transferring APL shares to JIPL.
- The violation of JIPL is that shares of overseas JV or WOS could be taken only when the foreign company is engaged in bona fide business activity. But the acquisition of APL resulted in ODI-FDI structure leading to contravention of FEMA Regulations.

ACTION TAKEN

- APL,Singapore was liquidated on March 30, 2017 dissolved in June,2017. Shares of ASPL held by APL were transferred to JIPL as consideration for disinvestment. Ie., non-resident to resident transfer for a consideration of 2118 crores.

Compounding-ODI contravention

- The violation of JIPL was compounded after restructuring for a compounding fine of Rs.12.71 crores. The amount of contravention was considered as Rs.2118 Crore wherein the amount was paid by JIPL for acquiring the shares of ASPL held by APL to make the structure in line with the provisions of FEMA, 1999.
- The compounding order has overlooked the investment made by three Individuals in APL, Singapore which was formed only to secure funds for the Indian Company viz., ASPL. The violation of the investors are not compounded. The foreign company was not undertaking any bona fide business activity and has only secured funds for the Indian Company. There are no compounding orders hosted compounding the violation of Individuals investing in APL.

Compounding Orders- Borrowing or Lending Regulations

Cisco Systems (India) Private Limited- CA No.4253/2016

Facts: Company is in the business of software development to group affiliates. The shares of the Indian Subsidiary is held by Cisco, Netherlands- Cisco, Mauritius and Cisco, Denmark.

The Company received various services from Cisco, USA and Cisco, Netherlands which amount remained unpaid for more than 7 years.

The payments were effected to the above companies only in January, 2017. Total payments amounted to Rs.38.49 crores

Violation: Such overdue payments amounted to external commercial borrowings for which no approval was sought in violation of FEM(Borrowing and Lending in Foreign Exchange) Regulations, 2000

The violation was compounded by imposition of CF of Rs.2.87 crores.

REMARKS: Stark example of a current account transaction getting converted into a capital account transaction due to passage of time.

Compounding order… ODI violations contd

RIR Enterprises-CA.No.4096/2016

FACTS: Applicant a partnership firm. Incorporates a WOS in Mauritius. The Firm issues corporate and personal guarantee to ICICI Bank, Bahrain on behalf of WOS to secure a loan of USD 30 million. The networth of the Partnership firm when such guarantee was issued was Rs.14,929/-.

On receiving the loan, the WOS invests the proceeds in CCPS of an Indian Company, which is stated to be in the business of software publishing who were not entitled to raise ECB under FEMA.

The Applicant's earlier application before the CA was returned as the matter was investigated by the Enforcement Directorate. ED issues show cause notice on June 18, 2018. Applicant files WP and the court directs the CA to consider the application.

WOS pledges the CCPS to ICICI Bank, Bahrain as further collateral security.

Violation: 1. The financial commitment of the Firm exceeded 400% of networth.

2. The WOS was not undertaking any bona fide business activity other than raising loan. The WOS incorporated was in violation of the Regulations.

Compounding Orders… contd… Borrowing or Lending

Mohan R Velgapudi – CA.HYD.481

FACTS: The Applicant is a person of Indian Origin holding shares of Indian Company on **non-repatriation basis.** RBI grants permission to the Applicant to convert his investment from non-repatriation basis to repatriation basis. The Applicant also sought to transfer the shares held by him to a non-resident company. The permission also directed the Applicant to adhere to reporting guidelines.

VIOLATION: The Applicant had not reported the transaction to the AD in Form FC-TRS. It is also under observation that after the application was filed, the transactions were under investigation by ED. However, due to the applicant having not filed any appeal either under section 17 or under section 19. The application was considered.

ORDER: The contravention was compounded by imposing a compounding fine of Rs.5.22 lacs for delay in reporting of sale of shares valued at Rs.19.35crores.