Compounding of Offences/ Contraventions under FEMA, 1999

Compounding: Meaning

- Settle an offence committed by the contravener;
- Through imposition of a monetary penalty ;
- Without going in for litigation after the contravener acknowledges having committed the contravention

FEMA Provisions

- Section 15 of FEMA 1999 covers powers to compound contraventions and empowers the Compounding Authority to compound the contraventions.

- Section 13 of FEMA covers penalties in respect contraventions which are compounded

Compounding Rules, 2000

- The Government of India has, in consultation with the Reserve Bank placed the responsibilities of administering compounding of cases with the Reserve Bank, except under Section 3(a) of FEMA, 1999.

- Accordingly, the Government notified Compounding Rules, 2000 vide Notification No. G.S.R.383(E) dated 3rd May 2000.

Background Objective to allow Compounding

- The procedure for compounding of contraventions under FEMA, 1999 have been framed with a view to provide comfort to the citizens and corporate community by minimizing transaction costs, while taking severe view of willful, *malafide and fraudulent transactions.*

Powers to Compound

- Thus RBI can compound contraventions of all the sections of FEMA except those those at Clause (a) of Section 3 of FEMA 1999.

- Directorate of Enforcement is empowered to compound cases under the clause ibid.

- Section 3(a): *"Deal in or transfer any foreign exchange or foreign security to any person not being an authorised person"*

Nature and Scope

- The nature of contravention is ascertained keeping in view, inter alia, the following indicative points :
  a. whether the contravention is technical and / or minor in nature and needs only an administrative cautionary advice;
  b. whether the contravention is serious in nature and warrants compounding of the contravention; and

Nature and Scope

c. whether the contravention, prima facie, involves money-laundering, national and security concerns involving serious infringement of the regulatory framework.

Technical Contravention

- Delay of period up to six months in submission of returns /statements to Central Office like:
  - i) Indian Company issuing shares under ADR / GDR Scheme
  - ii) Annual Activity Certificate by Branch Office
  - iii) APR – Annual Performance Report (APR) on the functioning of Indian Joint Venture (JV) / Wholly Owned Subsidiaries (WOS).

Technical Contravention

- Delay of period up to six months in submission of returns /statements to Regional Office like:
  - i) Inflow of share application / subscription money.
  - ii) Reporting of issue of shares by the company to a Person Resident outside India.
  - iii).Annual Activity Certificate by Liaison Office / Project Office

- **Also those Cases of contravention involving**
  - Money Laundering,
  - national security concerns,
  - Involving serious infringements of the regulatory frame work,
  - the cases where the cases for compounding have not been filed within the stipulated period in the memorandum issued by RBI;

  will be referred to under Section 37 of FEMA or to the Anti-Money Laundering Authority instituted under the PMLA 2002

Process

- CEFA has been set up at Foreign Exchange Department, Central Office, Mumbai for carrying out compounding proceedings.
- The Regional Offices were given the powers to compound certain cases.
- An application for compounding of a contravention to be submitted to the Compounding Authority either on being advised of a contravention through a memorandum or *suo moto* on being made or becoming aware of the contravention.

Process

- Application, along with prescribed fee and documents to be submitted to The Compounding Authority, Central Office or the Regional Office concerned depending on the amount;
- The application fee shall be paid by a DD in favour of the RBI

Process

- The proceedings would be concluded and order issued by the Compounding Authority within 180 days from the date of receipt of the application for compounding.
- This time limit would be from the date of receipt of application for compounding to the date of issue of compounding order.
- The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings.

Process

- Such additional information where ever called for shall be submitted within 30 days or such additional period as allowed by the CA.

- In case the contravener fails to submit the additional information called for within specified period, the application for compounding will be liable for rejection.

Process

- Contraventions relating to any transaction under FEMA but requiring approval or permission from the Government Department concerned or any Statutory Authority as the case may be, would not be compounded

unless

- the required approval is obtained from the authorities concerned.

Compounding Order

- The Compounding Authority shall pass an order after affording the contravener an opportunity of being heard.

- The compounding order has to specify the provisions of the Act, Rules, Directions etc. under which the contravention has taken place along with the details of the alleged contravention.

Penalty

- The sum for which the contravention has been compounded shall be paid within 15 days from the date of the order of compounding.
- If the contravener fails to pay, it would be construed that the entity has not made an application for compounding of the said contravention.

Penalty

The following factors, are taken into consideration for arriving at the quantum of penalty –

- the amount of gain of unfair advantage, wherever quantifiable, as a result of the contravention.
- the amount of loss caused to any authority / agency / exchequer ;
- economic benefits accruing to the contravener from delayed compliance or compliance avoided

Penalty

- the repetitive nature of the contravention, the track record and / or history of non-compliance of the contravener
- contravener’s conduct in undertaking the transaction and disclosure of full facts in the application and submissions made during the personal hearing and
- any other factor considered relevant and appropriate

Quantum of Penalty

- up to 3 times of the sum involved in such contravention where the amount is quantifiable;
- up to Rs. 2L, where the amount is not quantifiable
- where the contravention is a continuing one, further penalty which may extend to Rs. 5K for every day after the first day during which the contravention continues (Section 13(1), Chapter IV of FEMA,

COMPOUNDING

- Once a contravention has been compounded by the Compounding Authority, no proceeding or further proceeding will be initiated or continued, as the case may be, against the contravener.
- No contravention would be compounded which has been finally adjudicated and disposed off by the Adjudicating Authority.

COMPOUNDING

- If a contravention is committed by any person within a period of 3 years from the date on which a similar contravention committed by him was compounded under the compounding rules, such contraventions may be referred to Directorate of Enforcement under section 37 of FEMA, 1999.

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