

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 2065 of 2025

Sanjay Jhunjunwala

Vs.

Reserve Bank of India & Ors.

For the writ petitioner	:-	Mr. P. Chidambaram, Sr. Adv. Mr. Tanmay Bhatnagar, Adv. Mr. Aditya Kanodia, Adv. Ms. Shreya Trivedi, Adv. Mr. Shounak Bhattacharya, Adv.
For respondent no. 1 & 2	:-	Mr. Jaideep Gupta, Adv. Mr. Prasun Ghosh, Adv. Ms. Suchismita Chatterjee Ghosh, Adv. Mr. Malay Kumar Seal, Adv.
For ED	:-	Mr. Arijit Chakraborty, Adv. Mr. Deepak Sharma, Adv. Ms. Swati Singh, Adv.
Hearing concluded on	:-	14.02.2025
Judgment on	:-	01.04.2025

Amrita Sinha, J.:-

1. Communication of the Reserve Bank of India (RBI) returning the application made by the petitioner seeking compounding of the offence adjudicated by the adjudicating authority under the Foreign Exchange Management Act, 1999 (FEMA) in September, 2024 and the subsequent demand notice issued by the Assistant Director (PRC), Government of India are impugned in the instant writ petition.

2. The petitioner was found to have contravened certain provisions of FEMA. An adjudication order was passed by the adjudicating authority. After the adjudication process was complete and an order of penalty was passed on 27th March, 2024 the petitioner filed an application for compounding under Rule 4 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on 6th May, 2024.
3. RBI returned the said application in September, 2024 on the ground that since the adjudication order was already passed by the adjudicating authority in respect of the contraventions detected, the compounding application cannot be processed. Subsequent thereto a demand notice was issued on 17th January, 2025 directing the petitioner to pay the outstanding penalty or to submit order of the appellate authority dispensing deposit of the imposed penalty.
4. The petitioner accepted the order of adjudication and hence, not preferred any appeal from the same. Submission of the petitioner is that he may be allowed to avail the benefit of compounding at this stage. According to the respondent authority, compounding of offence is permissible prior to passing the order of adjudication. Once the order of adjudication is passed and the adjudication proceeding is concluded, there is no scope for entertaining the prayer for compounding.

5. The respondents contend that after the adjudication order is passed, the contravener may prefer an appeal challenging the same, if aggrieved, or else pay the penalty that has been imposed.
6. As there is no dispute with regard to the factual issues and only a point of law is to be answered, the parties have agreed for hearing of the writ petition without filing any affidavit. Accordingly, the writ petition is being decided only on the legal issue as to whether a contravener can be permitted to avail the benefit of compounding the contravention after an order of adjudication has been passed by the competent authority.
7. According to Section 3(a) of FEMA no person shall deal in or transfer any Foreign Exchange or Foreign Security to any person not being an authorised person. Section 4 of FEMA lays down that save and except otherwise provided in the Act, no person resident in India shall acquire, hold, own, possess or transfer in Foreign Exchange, Foreign Security or any immovable property situated outside India. Section 11 of FEMA lays down the power of the Reserve Bank to issue directions to authorise persons for securing compliance of the provisions of the Act, Rules, Regulations, notifications or directions made thereunder.
8. Section 13 of FEMA deals with the penalties for contravention of the provisions of the Act, Rules, Regulation, notification, direction or order issued under the Act. Section 14 relates to enforcement of the orders of the adjudicating authority. Section 15 lays down the power to

compound contravention. Section 17 lays down the provision for appeal to the Special Director (appeals) and Section 19 deals with the provision of appeal before the appellate Tribunal. Section 46 lays down the power to make rules. Section 46 (2) (b) lays down that the Rule may provide for the manner in which the contravention may be compounded under Section 15 (1) of the Act.

9. The Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 specifies the regulations for borrower or lender in Foreign Exchange by a resident of India, by a person residing in India. Regulation 3 of the aforesaid Regulations prescribes that save as otherwise provided in the Act, Rules or Regulations made thereunder, no person resident in India shall borrow or lend in Foreign Exchange from or to a person resident in or outside India. The Reserve Bank may, for sufficient reasons, permit a person to borrow or lend in Foreign Exchange from or to a person resident outside India.
10. The adjudicating authority found that the petitioner contravened provision of Regulation 3 of the aforesaid Regulations. The petitioner contends that he ought to be permitted to avail the benefit of compounding the offence as adjudicated by the adjudicating authority. According to the authority, the same is impermissible in view of the provisions of the Foreign Exchange (Compounding Proceedings) Rules, 2000.

11. Stress has been laid on Rule 4 (4) of the Compounding Proceedings Rules which mentions that every application for compounding any contravention under the Rule shall be made in Form to the Reserve Bank of India along with the prescribed fee. Rule 6 of the Compounding Proceedings Rules has been placed which mentions that where any contravention is compounded before the adjudication of any contravention under Section 16, no inquiry shall be held for adjudication of such contravention in relation to such contravention against the person in relation to whom the contravention is so compounded.
12. Section 7 of the Compounding Proceedings Rules prescribes that where the compounding of any contravention is made after making of a complaint under Section 16 (3), such compounding shall be brought by the specified authority in writing to the notice of the adjudicating authority and on such notice of the compounding of the contravention being given, the person in relation to whom the contravention is so compounded shall be discharged.
13. Rule 11 of the Compounding Proceedings Rules stipulates that no contravention shall be compounded if an appeal has been filed under Section 17 or 19 of the Act. The Rule contains a prescribed format in which the application for compounding is to be made. The form requires disclosing the name of the adjudicating authority before whom the case is pending.

14. The petitioner interprets Rule 11 of the Compounding Proceedings Rules by submitting that compounding will not be permissible if, and only if, an appeal has been filed against the adjudication order. As the petitioner has not preferred the appeal but has accepted the order of the adjudicating authority, accordingly, permission ought to be given to the petitioner to seek compounding of the contravention.
15. Master Direction of the Reserve Bank of India for compounding of contraventions under FEMA being FED Master Direction No. 4/2015-16 dated 1st January, 2016 published by the Chief General Manager in-Charge, Reserve Bank of India last updated on 24th May, 2022 has been relied upon wherein the purpose of formulating the Compounding Rules, 2000 has been mentioned.
16. Direction 1.3 mentions that Reserve Bank of India is empowered to compound all the contraventions of FEMA, 1999 except Section 3 (a) with a view to provide comfort to individuals and corporate community by minimizing transaction costs while taking view of wilful, mala fide and fraudulent transactions. Direction 5.2 of the Master Directions mentions that the format of the application for compounding is appended to the Compounding Rules, 2000.
17. Direction 5.3 prescribes that along with the application in the prescribed format, the applicant may also furnish details as per Annexure II and the applicant is required to submit an undertaking as per Annexure III that they are not under any enquiry/ investigation/

adjudication by Directorate of Enforcement, as on the date of the application and to inform to the compounding authority/ RBI immediately, in writing, if any enquiry/ investigation/ adjudication proceedings are initiated by the Directorate of Enforcement against the applicant after the date of filing the compounding application, but on or before the date of issuance of the compounding order to enable the bank to complete the compounding process within the time frame.

18. Direction 5.4 prescribes that the application for compounding will be treated as incomplete if the same is without all required details. Direction 5.6 indicates that if an application for compounding is not submitted in the prescribed format or is found incomplete due to the absence of any mandatory details, declarations, documents or the directives as prescribed, the application will not be taken up for processing and shall be liable to be returned to the applicant.
19. Direction 6.4 mentions that any case where adjudication has been done by the Directorate of Enforcement and an appeal has been filed under Section 17 or 19 of FEMA, no contravention can be compounded in terms of Rule 11 of the Compounding Proceedings Rules, 2000. The applicant shall conform in the undertaking required to be furnished as per Annexure III along with the compounding application that they have not filed any appeal under Section 17 or Section 19 of FEMA.

20. Direction 7 lays down the detailed scope and procedure for compounding. For effective implementation of the compounding process under FEMA, the Reserve Bank of India has framed the procedure for compounding on contravention in details. The same has been published by the Reserve Bank of India in A.P. (DIR Series) Circular 31 dated 1st February, 2005.
21. Clause 6 of the compounding process dated 1st February, 2005 lays down that application for compounding contravention may be filed with the compounding authority, including those which are under adjudication process and have not been disposed of. No contravention would be compounded which has been finally adjudicated and disposed of by the adjudicating authority. The prescribed format in which the application for compounding is to be filed requires disclosing the name of the adjudicating authority before whom the case is pending.
22. The idea of compounding an offence is to get the issue settled without the parties going for regular trial/ adjudication upon payment of compensation or fine, as applicable. In case there is a provision for compounding, the parties seek to avail the said remedy only to get the issue settled by way of negotiation without undergoing the legal intricacies of a regular adjudication process. By this manner the usual lengthy process of adjudicating the offence can be avoided and valuable time can be saved.

23. Compounding cannot be claimed as a matter of right but it is always subject to the legal provisions. Once the offender/contravener agrees to avail the benefit of compounding, the same implies that the party is agreeable for a settlement and there is no requirement of the issue being taken up for adjudication. The very object of compounding an offence will be frustrated if prayer for compounding is made after the adjudication process is concluded.
24. From the chronological sequence of events in this case it appears that the subject transactions took place between 31st February, 2011 and 8th February, 2013. Show cause notice was issued by the adjudicating authority being the Special Director (Enforcement Directorate) on 18th November, 2022. Application for compounding was filed by the petitioner on 20th January, 2023 but the same was returned on 8th January, 2024 on the ground that the application lacked clarity and all facts and figures were not mentioned therein. The petitioner was given liberty to file fresh compounding application.
25. The learned senior counsel of the petitioner submits that, as per legal advice, the petitioner did not file any further application for compounding the contraventions. The adjudicating authority proceeded with the adjudication proceeding and passed final order on 28th March, 2024 imposing penalty of rupees ten crore. After the adjudication order was passed, application for compounding was filed by the petitioner.

26. It has been submitted by the petitioner that the petitioner is not aggrieved by the order passed by the adjudicating authority and hence, did not choose to prefer appeal against the said order. The petitioner, at this stage, seeks compounding of the offence. The prayer of the petitioner seeking compounding stood rejected and returned as not maintainable on 11th September, 2024. Writ petition was filed by the petitioner challenging the same being WPA 30030 of 2024.
27. During the pendency of the said writ petition demand notice was served upon the petitioner seeking recovery of the penalty amount. Challenging the same the instant writ petition has been filed. As all issues agitated in the earlier writ petition has been made a subject matter of dispute in the instant writ petition also, accordingly, the earlier writ petition filed by the petitioner being WPA 30030 of 2024 stood dismissed.
28. In the instant case the offence of the petitioner was a compoundable one. The petitioner, though applied for compounding at the initial stage, but did not proceed with the same after the application of the petitioner was returned for want of proper details. The petitioner, without raising any objection, participated in the adjudication proceeding. The participation of the petitioner implies that the petitioner did not want to compound the offence and, accordingly, proceeded for adjudication of the same. After the adjudication order was passed and the petitioner has been found guilty of the offences,

now prayer has been made to permit the petitioner to proceed with the compounding.

29. It appears that the petitioner simply tried to test the waters and see as to whether the adjudication order comes in his favour or not. After the adjudication order went against him and penalty amount has been quantified, the petitioner seeks to proceed with the compounding. Had the petitioner been aggrieved he would have been required to prefer an appeal, and for doing so, the petitioner had to deposit the entire amount of penalty. The petitioner is trying his level best not to pay the penalty that has been imposed and delay the proceeding for an indefinite period on the plea of compounding.
30. Proceedings under FEMA are required to be initiated and concluded in a time bound manner. Separate timelines are mentioned in respect of the steps that are to be taken either for adjudication or filing or disposal of proceeding. The contravention which took place in the years 2011 to 2013 was detected by the authority and show cause notice was issued in the year 2022. After the offence of the petitioner has been adjudicated and penalty imposed, the petitioner would be bound to pay the amount of penalty quantified.
31. Permitting the contravener to avail the benefit of compounding at this stage would require the entire issue to be reopened all over again. The same will frustrate the whole adjudication rendering the adjudication proceeding nugatory and the entire time period consumed in the

process of adjudication gets wasted. It is only for the purpose of avoiding the rigmarole of the adjudication process that the provision for compounding has been incorporated in the Act. The moment the contravener foregoes the benefit of compounding the offence, the next step forward is to reach the adjudication proceeding to its finality.

32. The order which is executable at present is the order of the adjudicating authority. Not more than one order on the same set of facts, between the same parties, can be permitted to be executed is one of the cardinal principles of jurisprudence. If the prayer of the petitioner for compounding the offence after conclusion of the adjudication process is allowed, then there will be two orders; first, the order of the adjudicating authority and second, the order of the compounding authority. In respect of a contravention two orders cannot survive at the same time.
33. The compounding authority does not have the determination or the jurisdiction to cancel/overrule or set at naught the order passed by the adjudicating authority. It is only one order that survives and that is the order of the adjudicating authority. The petitioner took the risk and did not proceed with his application for compounding prior to conclusion of the adjudication proceeding. The petitioner could have pressed the application for compounding any time prior to conclusion of the adjudication. The FED Master Direction number 4/2015-16 permits compounding even when the adjudication proceeding is ongoing. After the adjudication is complete and offence has been

established, the contravener would be bound to comply with the direction passed by the adjudicating authority.

34. The Act is in place since 1999 and the relevant Rules, Regulations, Circulars are also existing for quite some time. The petitioner has not been able to show a single instance when the authority permitted compounding after conclusion of the adjudication process. The interpretation of the petitioner, if accepted, will lead to an uncertain situation and reaching finality to the proceeding will be a never-ending process.
35. As the said situation is not contemplated in the Act, there is no time limit prescribed within which an application of compounding can be filed after the order of adjudication has been passed. It will be an open ended process and any person found guilty in the adjudication proceeding, can seek to file an application for compounding any time he chooses. Penal provision of the Act cannot be taken so lightly leaving it in such an indecisive state. By this way the contravener will remain scot-free and the penal provision of the Act cannot be implemented. The Act will be rendered completely toothless. The same will also give out a very wrong message to the society at large. Tendency to circumvent the law will increase. To avoid such a situation, the legislature has consciously not provided the provision to compound an offence after conclusion of the adjudication process.

36. The Court is of the opinion that the application made by the petitioner seeking compounding of the offence on conclusion of the adjudication proceeding cannot be allowed and the authority rightly rejected the application filed by the petitioner.
37. The Court is not inclined to exercise jurisdiction in the matter.
38. The writ petition fails and is hereby dismissed. The interim order stands vacated.
39. No costs.
40. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)