

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

RESERVED ON: 08.07.2025

DELIVERED ON: 01.08.2025

PRESENT:

THE HON'BLE MR. JUSTICE TAPABRATA CHAKRABORTY

AND

THE HON'BLE MR. JUSTICE REETOBROTO KUMAR MITRA

MAT 524 OF 2025

WITH

IA NO. CAN 1 OF 2025

SANJAY JHUNJHUNWALA

- VERSUS -

RESERVE BANK OF INDIA & ORS.

Appearance:

Mr. P. Chidambaram, Sr. Advocate,

Mr. T. Shatnagen, Adv.

Mr. Aditya Kanodia, Adv.

Mrs. Shreya Trivedi, Adv.

... For the Applicant/Petitioner

Mr. Jaideep Gupta, Sr. Advocate,

Ms. Suchishmita Ghosh, Adv.

... For the respondent nos. 1 and 2

Mr. Arijit Chakraborti, Adv.

Mr. Debsoumya Basak, Adv.

Ms. Swati Kumari Singh, Adv.

... For the respondent nos. 3 and 4

Reetobroto Kumar Mitra, J.:

1. The present appeal challenges an order passed by a learned Single Judge on 1st April, 2025, dismissing the Writ Petition filed by the appellant herein. The primary prayer in the Writ Petition was that the writ petitioner be permitted to renew the compounding application made by him, thereby quashing the rejection of the compounding application on 11th September, 2024.
2. The facts in a nutshell are:-
 - a. The petitioner utilised the liberalised remittance scheme between February 2011 and 8th February 2013 to remit USD5,99,999 equivalent to (at prevailing exchange rate at the time) Rs. 2.97 crores to the LGT Bank of Singapore.
 - b. The purpose of such remittance was to invest in international bonds, securities and mutual funds through a foreign currency denominated portfolio investment account.
 - c. The amount invested by the petitioner was used to earn profit for the LGT Bank from its own portfolio bank.
 - d. The bank would give short term advances for optimising gains against the pledge of investment held in the appellant's portfolio account.

- e. Such investment resulted in large gains for the petitioner.
- f. The petitioner, some time in 2015, closed the account with a profit of approximately USD 66,773 equivalent to Rs. 1.24 crores.
- g. The petitioner had offered such gains for tax purposes and had paid the tax in 2015 itself.
- h. The trouble erupted some time in 2020 when the Enforcement Directorate initiated proceedings on 17th April 2020 by way of complaint of contravention of provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as the Act).
- i. Pursuant to the complaint, a show cause notice dated 20th April, 2020 was issued under Section 16 read with Rule 4 of Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 for contravention of provisions of Sections 3(a), 3(b) and 4 of the Act read with Regulation 3 of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations 2000, as to why an inquiry should not be initiated against the appellant.
- j. The appellant had given a reply to such show cause notice. In respect of the above, the authorities proceeded to conduct an inquiry. Even as the

proceedings were pending, the appellant filed a compounding application on 20th January, 2023.

- k. The said application was returned by the authority *vide* an email dated 8th January, 2024 (Page 138) on the ground that there was lack of clarity and granted liberty to the appellant to approach the concerned authority (External Commercial Borrowing Division-ECDB) with a fresh application.
- l. The Adjudicating Authority by its order dated 28th March, 2024 passed an order, holding the appellant guilty of borrowing without the permission of the RBI in the form of short term advances and thereby in contravention of Regulation 3 of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations 2000. The adjudicating authority imposed a penalty of Rupees 10 Crore on the appellant herein, under Section 13(1) of the Act read with the Adjudication Rules.
- m. This order was not appealed by the appellant; on the contrary, a second compounding application was made, admitting in no uncertain terms, the contravention of borrowing without RBI's permissions and violations of provisions of LRS for trading of foreign exchange for an unauthorised debit of Rs. 30.13 crores.

- n. It is this second compounding application dated May 6, 2024 filed on May 10, 2024 by the appellant, which was rejected on 11th September 2024 by the authority, inter alia on the ground that the adjudication process had already been completed and an order had also been passed on 28th March 2024, on account whereof the compounding application could not be entertained.
- 3. It is this rejection which was challenged by the appellant by way of WPA 2065 of 2025. Thus, the conspectus of the dispute in the present appeal, as in the Writ Petition, is extremely limited and relates only to the issue: whether a compounding application can be entertained after the order of adjudication had been passed by the competent authority.
- 4. Mr. P. Chidambaram, learned senior advocate appearing for the appellant, had raised a singular issue: whether a compounding application can be filed after adjudication by the concerned authority. In support of his contention that such a compounding could be made, learned senior counsel has raised the following points:-
 - a. The power of compounding is vested primarily in Section 15 of the Act read with Rule 7 of the Compounding Proceedings Rules, 2000 read with Rule 11 thereof.

- b. He has also placed reliance on the provisions of Section 3, 4, 13, 15, 17 and 19 of the Act and also referred to the Compounding Rules 2000, relying on Rules 3, 4 and 5.
- c. Learned senior counsel has argued that the charges under Sections 3(a), 3(b), and 4 are separate and distinct, and that Section 15 of the Act expressly differentiates between violations under these provisions by assigning two separate authorities for compounding such offences. Furthermore, Section 19 establishes a distinct appellate authority for contraventions of the aforesaid provisions. Consequently, prior to adjudication it is not possible for a person charged with contravention of multiple provisions of the Act to ascertain which authority is competent to entertain the compounding of the offences.
- d. Any violation of Section 3a, 3b and 4 of the Act, would have separate appellate authorities as well as separate compounding authorities.
- e. Thus, he argued that it was only after the final order of adjudication being passed, that the appellant became aware of the contravention or violation with which he had been charged and only then could he identify the appropriate compounding authority to approach.
- f. He also urged, that it is an admitted position that no appeal had been preferred by the appellant on account whereof the appellant was entitled

to invoke the provisions of compounding and make an application in terms thereof.

- g. The learned Senior Counsel has also sought to impress on us that the time allowed for filing of an appeal under Section 19 of the Act against an order of adjudication is 45 days and the enforcement of such an order can take place only upon the expiry of 90 days from the order. Therefore, it is implied that an application for compounding ought to be made within a period of 45 days from the date of the adjudication order, without filing an appeal under Section 19.
- h. The appellant contended that it was only after receipt of the order of adjudication dated 28th March, 2024 that he came to learn that he had been exonerated of the charges of contravention of Section 3(a) and (b) of the Act. Thus, it is only then that the appellant could identify which of the compounding authorities he could approach. Thus, any compounding application prior thereto would have been an idle formality and could result in a procedural hazard. Thus, the second application for compounding on 6th May, 2024 was not only within the time specified but also necessarily made post the adjudication order as that would bring clarity regarding the particular compounding authority that the appellant would have to approach.

- i. Learned senior counsel for the appellant further submitted that the impugned order had been passed without considering these facts and was bereft of any reasoning and ought to be set aside.
 - j. He further argued that the first compounding application was filed on erroneous legal advice since at that juncture there was no requirement to file such application as it was yet to be determined as to whether the appellant had contravened the provisions of Section 3(a) or any other provision of the Act. It is only upon such determination the appellant could have filed the compounding application. It would be further explicit from the provisions of Clause 6.4 of the master circular being FED Master Direction No. 4 of 2015 - 2016 that the right to compound contravention under the provisions of the Act is left ajar till the date of issuance of the order of the Adjudicating Authority or till filing of an appeal against the order passed by the Adjudicating Authority under the provisions of FEMA.
5. We have also heard Mr. Jaideep Gupta, learned senior advocate appearing for the respondent nos. 1 and 2.
- a. Mr. Gupta has drawn our attention to Section 15(2) of the Act relating to the power to compound contravention, which clearly states that where a contravention has been compounded no proceeding or further proceeding shall be initiated or continued, as the case may be, against the

person committing such contravention in respect of the contravention so compounded. The stress is on the words “initiated” and “continued”. According to him, these words have to be read in the context of the sequence and prescribed timeline in the Act. It clearly means that the compounding can be done prior to or during the pendency of the proceeding against a person committing such contravention.

- b. The whole purpose, according to him, of compounding is to settle the dispute, without having to wait for an elaborate adjudicatory process. If, therefore, one waits for the adjudication process to be completed and then applies for compounding, the whole purpose of the Act to provide for compounding of offences becomes redundant.
- c. He has laid great stress on the fact that compounding cannot be done post adjudication, as that would destroy the very fabric of the Act itself. Several sections were also relied upon by Mr. Gupta, particularly Sections 13, 14, 14A, 16, 19(1) and 19(2), all to emphasise that the Act prescribes specified timelines and that such timelines cannot be relaxed or disregarded as the very purpose of the Act itself would then be nugatory.
- d. Mr. Gupta has relied upon the decisions reported in 2002 (1) SCC 367 and 2008 (4) SCC 175.

6. Mr. Arijit Chakraborty appearing for the respondent nos. 3 and 4 has primarily adopted the submissions of Mr. Gupta. In addition thereto, he relied on the form meant for Compounding Application under Rule 4 and 5 of the Foreign Exchange (Compounding Proceeding) Rules 2000. This form mandates in serial no. 4, the disclosure of the name of the adjudicating authority, before whom the case is pending.
7. We have heard counsel for all the parties at great length and considered their submissions and the documents on record.
8. Before going into the arguments made by the parties, we deem it fit to explain what exactly is meant by the term compounding and the purpose thereof.
9. Compounding is necessarily to be preceded by a charge of contravention. Contravention is a breach of the provisions of the Act or rules and regulations framed thereunder.
10. Compounding is the process of voluntarily admitting the contravention, pleading guilty and seeking redressal.
11. It is thus a voluntary process by which an individual or a corporate entity seeks redressal of contravention, which he admits.
12. Compounding is meant to provide comfort and concession to an errant party who admits, of his own volition, the guilt of the contravention. The admission of

guilt also ensures curtailment of the process of inquiry and adjudication by the specified authority.

13. Thus, compounding rests on an admission of the contravention alleged. This admission may be simply stated as “I am guilty of the violation of provisions of the Act as charged”. If this admission is not forthcoming, there is no question of entertaining any compounding application.
14. Thus, it would stand to reason that such an admission of contravention is made by the person charged at a stage prior to the adjudication. This is because, on adjudication once a person is found guilty he does not have to admit his guilt or contravention as he is already found to be guilty of the contravention.
15. Compounding can be done at two stages. The first, upon a notice of contravention being received by the person concerned, prior to commencement of any inquiry, investigation or adjudication by the directorate of enforcement or by RBI (Rule 4). The second, is post commencement of any enquiry, investigation or adjudication by the directorate of enforcement, but prior to its completion. There cannot be any other stage at which the compounding application can be made.
16. It is in this conspectus that we propose to deal with the matter. The scheme of the Act makes it clear that a compounding application has to be made before the proceedings under Section 13 of the Act are concluded by imposition of a

penalty. This follows from the words “initiated” or “continued” appearing in Section 15(2) of the Act.

17. Once a person is charged with a contravention, a complaint is required to be made in writing before the adjudicating authority constituted under Section 16 of the Act by an officer authorised by a general or special order of the Central Government as envisaged in Section 16(3) of the Act. Upon the person so appointed, acting as the adjudicating authority, holding the inquiry and finding the person charged to be guilty of the contravention, a penalty is liable to be imposed on the said person, as envisaged under Section 13 of the said Act.
18. Once proceedings under Section 13 of the Act are completed, Section 14 comes into play enabling enforcement of the orders passed by the adjudicating authority. Various enforcement measures have been provided depending on the nature and quantum of the contravention. However, for every process of enforcement, the concerned defaulter has to be given a hearing.
19. Section 15 deals with compounding of a contravention by the concerned person. However, the scheme specifies that once proceedings under Section 13 come to an end, there is no longer a question of compounding, as the entire amount of penalty as adjudicated will have to be paid.
20. In the present case, the plea advanced by the appellant that since he had been charged with multiple contraventions, the appellate authority and the

compounding authority for such offences being different, he would not be in a position to make a compounding application till he knew the outcome of the adjudication of such contraventions does not find favour, as he made the first compounding application on 20th January, 2023, prior to the adjudicatory authority passing its order.

21. In the mail of 8th January, 2024, the concerned authority had clearly stated that due to lack of clarity, the application for compounding of the appellant herein was being returned. The applicant (appellant herein), had been asked to approach the External Commercial Borrowing Division (ECBD), with a fresh application.
22. Thus, the plea now taken, that the appellant would not know which authority to approach prior to adjudication is rather ill founded.
23. The second compounding application affirmed by the appellant on 6th May 2024 and filed on 10th May, 2024 left serial 4 blank. Serial 4 mandates disclosure of the name of the adjudicating authority before whom the case is pending. Though several sub paras have been added, beyond the statutory mandate, seeking to explain why the application for compounding was being made at such a belated stage.

24. Such explanation does not in any manner refer to the non-identifiability of the compounding authority, prior to the adjudication, the ground so vociferously argued by the appellant before us.
25. Rule 6 of the Compounding Rules, 2000 makes it clear that once a contravention is compounded before adjudication, no enquiry shall be made for adjudication of such contravention.
26. Rule 7 brings further clarity to a situation where compounding of a contravention is made after a complaint under the Act.
27. In fact, Rule 7 in no uncertain term spells out the authority to whom the compounding application should be made.
28. Rule 11 of the Compounding Rules 2000, states that no contravention will be compounded if any appeal under Section 17 or 19 has been filed.
29. The converse of Rule 11, cannot be construed as the universal truth without any applicability of the parameter set forth in the Act.
30. It cannot mean that if an errant party has not preferred an appeal, he is entitled to compound his contravention without fulfilling the other criteria specified in the Act. The other criteria being that the compounding application has to be made while the case is pending before the Adjudicating Authority.

31. The appellant clearly was a fence sitter and chose to take a chance until termination of the process by adjudication by the concerned adjudicating authority.
32. Upon such adjudication on 28th March, 2024, resulting in adverse findings against him, the appellant chose to initiate a second round of compounding proceedings only in May 2024, when he had the liberty to do so in January 2024, upon return of the first application on 8th January 2024.
33. The master circular being FED Master Direction No. 4 of 2015 - 2016 specifies in clause 6.4 that once adjudication has been done by the Directorate of Enforcement and an appeal preferred therefrom under Section 17 or Section 19 of the the Act, no contravention can be compounded in terms of Rule 11 of the Foreign Exchange (Compounding Proceedings) Rules, 2000. The second part of this clause, 6.4 of the master circular, merely fortifies the first part by saying that the adjudication referred in the undertaking, as stipulated in Annex (III) along with the compounding application, is that they will not file any appeal under Section 17 or Section 19 of the Act. This undertaking is from the applicant that he will not prefer an appeal from the order of adjudication, if such an order is passed during the pendency of the compounding application. The purpose of a compounding application, to avoid the time taken for adjudication and appeal from the order of contravention, will be rendered completely nugatory if the compounding is done or permitted to be done post adjudication of the contravention. Undertaking necessarily means that a person makes a

promise to do or not to do something in the future. Hence, an undertaking that the appeal has not been or will not be filed by the applicant, as specified in Annex (III), is the sine qua non for a compounding application. The provisions of the Act, the Rules and the Master Circular need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted.

34. The decision relied upon by Mr. Jaideep Gupta, particularly the one of the Hon'ble Supreme Court in 2008 (4) SCC 175, is clear and unequivocal. Though it relates to a case under the Customs Act, 1962, the principle thereof is aptly applicable to the present case, that the compounding mechanism is to prevent needlessly proliferating litigation and holding up of collection.
35. Though reference was made to the Foreign Exchange (Compounding Proceedings) Rules, 2024 and particularly to Rule 9 thereof, which makes it clear in no uncertain terms that contravention shall not be compounded where the adjudicating authority has already passed an order imposing penalty under Section 13 of the Act. However, it was agreed by all parties appearing before us that the same shall not apply to the present case in view of Rule 14 thereof.
36. The Act, to consolidate and amend the law relating to foreign exchange, was made with an object to facilitate external trade and payments and for promoting the orderly development and maintenance of the foreign exchange market in India. In order to enhance the object of the Act, which is defined as a complete code in itself, it has been provided with strict timelines. Thus, to hold that a

compounding application, which is made to curtail the process of recovery of penalties from errant persons, can be done after the adjudication process has attained finality would, disrupt the fabric of the Act, which stipulates strict timelines for such recovery.

37. The purpose of the compounding mechanism envisaged under the Act is based on utility, that is, for efficient collection of penalties due from errant persons.
38. In this particular case, the compounding application has been made at a stage when the adjudication process has been completed. Thus, the question of admission of guilt of the contravention complained of, by the errant person, the sine qua non for a compounding application, is quite redundant, as he had already been found guilty of the contravention of the provisions of the Act and the Regulations.
39. In the circumstances aforesaid, the second application for compounding affirmed on 6th May 2024 and filed on 10th May, 2024 was rightly rejected by the compounding authority, holding, inter alia, that the adjudication order had already been passed by the adjudicating authority with respect to the contravention applied for in the compounding application. Since the order had already held that there had been contravention of the provisions of the Act and the Regulations, the question of admission of contravention by the appellant herein was redundant.

40. The Learned Single Judge has considered all aspects of the matter and has rightly dismissed the Writ Petition of the appellant herein. Thus, we uphold the order of the learned Single Judge as we find no infirmity in the order.
41. In these circumstances, the appeal fails and is hereby dismissed.
42. An urgent photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.)

(Tapabrata Chakraborty, J.)