CHAPTER SIX

TRANSACTIONS IN SHARES & DEBENTURES

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CHAPTER - 6
TRANSACTIONS IN SHARES AND DEBENTURES

6.1 Sale/transfer through Stock Exchanges in India

Under Section 108 of the Companies Act, 1956, every transfer of a share or debenture of a joint stock company shall be on a prescribed instrument of transfer (Form 7B) duly stamped and executed by or on behalf of both the transferor and transferee. The transfer form (for shares only) shall, before it is executed by any party, be presented to the Registrar of Companies or other prescribed authority who shall stamp or otherwise endorse thereon the date on which it is so presented. The form is then valid till the date of the first book closure of the company whose shares are proposed to be transferred or for a period of 12 months from the date of such presentation, whichever is later. An invalid form can be revalidated by the Registrar of Companies or other stamping authority. Every instrument of transfer shall also have share transfer adhesive stamps at the rate of 50 paise per Rs. 100/- or any fraction thereof of the consideration for which the shares are proposed to be transferred affixed thereon before it is lodged with the company concerned for registration. If the consideration mentioned on the share transfer form is lower than the market value of the share prevailing on the date of execution of the form, the market value shall be taken for

Footnote Forms 1, 1A, 7B, 18, 29, & 32 are prescribed under the Companies Act, 1956 - refer the Companies (Central Government's) General Rules & Forms, 1956.

48/-
the purpose of stamp duty. The share/debenture certificate which should accompany the transfer form, will be returned to the transferee by the company after the transfer has been duly processed.

6.2 Transfers from NRIs

Sale and transfer of shares/debentures of Indian companies from non-residents to other persons, whether resident in India or not, require the approval of the RBI. This is under Sec.19 (5) of FERA. However, where the sale of shares is on non-repatriation basis, general exemption from this requirement has been granted vide a notification no. F.10/11/83-CCI(INV) dt: May 4, 1983 of the Govt. of India issued under S.19 (6) of FERA. This exemption is subject to the condition that the sale is effected through a member of a recognised stock exchange in India and the proceeds are credited to the non-resident seller's NRO A/c in India. In practice, however, companies insist on RBI permission before registering the transfer of such shares. The RBI has clarified to some companies that it is not necessary for them to satisfy themselves that the sale proceeds of the shares have in fact been credited to the ordinary non-resident account of the transferor.

The above exemption is confined to shares only and does not cover bonds and debentures as S.19(5) of FERA refers only to shares. Besides, the notification covers only transferees who are individuals and not others like corporate bodies. For permission to sell shares/debentures acquired with repatriation rights, the NRI may submit to the RBI through
his designated bank in India, a consolidated application by letter giving full particulars of the shares he desires to sell in the near future, including the RBI approvals for acquiring or holding them. The RBI will grant permission for repatriation of funds to the extent of the cost of acquisition of the shares/debentures sold or the actual sale proceeds realised, whichever is less, without production of a no objection certificate from the Income Tax authorities. The balance amount (if any) will be allowed to be repatriated on production of the tax clearance certificate.

In the case of shares acquired under the Portfolio Investment Scheme, repatriation of sale proceeds will be allowed only if the investment has been held for a period of at least one year from the date of registration of the shares in the NRI’s name.

The RBI’s permission for sales/transfers of shares through the stock exchange is generally valid for four years at a time; it may be renewed for a further period of four years on application.

6.3 Sale/transfer of shares/debentures by private arrangement

The sale or transfer of shares/debentures by non-residents to non-residents or residents by private arrangement requires the RBI’s specific approval. Applications for such permission should be made either by the transferor or the transferee in form TSI (Appendix XIX). The RBI applies a set of norms, like valuation of shares being fair and reasonable and in conformity with valuation guidelines and the control and management of the companies not changing hands, while approving such transfers. Production of a no
objection certificate from the income tax authorities is essential for repatriation permission.
For sale of shares/debentures without repatriation benefits permission should be obtained from the regional office of the RBI under whose jurisdiction the applicant's non-resident bank account is maintained.

6.4 Transmission on death
Where shares are held in joint names, these will be transmitted to the surviving shareholder/s by the company on application in the event of the death of the first holder. The death certificate should be forwarded to the company for this purpose along with the share certificate.
Where shares are held in a single name, the heirs of the deceased shareholder will have to obtain a succession certificate from the competent court and then apply to the company for transmission of the shares to their names. The legal heirs will also have to seek RBI approval by making an application in form TSI.

6.5 Gift of shares
Transfer of shares by way of gift from a resident Indian to an NRI or vice-versa or from one NRI to another requires the prior approval of the RBI for which an application will have to be made. The transferor will have to obtain a tax clearance certificate and submit it along with the application to the RBI.

6.6 Right/Bonus Shares
NRIs, as indeed other non-residents, are entitled to Right and Bonus shares on their holdings as and when these are declared by the companies concerned with the necessary statutory approvals. The companies issuing such shares
should seek FERA approval under Section 19. In the case of NRIs such shares, issued on a non-repatriation basis, are to be held by the banks designated by them.

6.7 Export of shares, securities

Export of share/debenture certificates, Govt. securities, Units of the UTI and National Plan/Savings certificates purchased by the NRIs from funds remitted to India or held in NRE / FCNR accounts in India are freely allowed by the RBI on application by the investors' bankers. UTI has been granted general permission to export Unit Certificates to the non-resident purchasers.

6.8 Refund of excess subscription

Refunds of all excess subscriptions to share issues may be re-credited to the NRE/FCNR accounts from where the funds were originally withdrawn for investment or remitted back to the beneficiaries in cases where the subscriptions were received from abroad.

6.9 Remittance of dividend

Banks authorised to deal in foreign exchange may, without RBI's approval, remit dividends to non-resident shareholders in cases where the dividend earning shares do not exceed Rs. 5 lakhs in face value or 25% of the total issued capital of the company concerned, whichever is less. Dividends remittable on portfolio investment of shares are generally undertaken under this facility.
In cases of NRI investments made under the 40% scheme, the investee company approaches the RBI for permission to remit dividends through a designated bank. The RBI then grants general permission to the designated bank to remit the dividends for the first and subsequent years. However, remittances of dividend in respect of investment under the 74% scheme require the RBI's specific approval year to year.