## APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

**(1) (3) MP-FE-777/CHN/2024 Stay**
**FPA-FE-79/CHN/2020**

M/s Tata Capital Forex Ltd. ... Appellant

**(4) MP-FE-778/CHN/2024 Stay**
**FPA-FE-80/CHN/2020**

Shri Ashwin Savoor ... Appellant

Versus

The Joint Director
Directorate of Enforcement, Chennai ... Respondent

**<u>Advocates/Authorized Representatives who appeared</u>**

For the Appellants : Dr. M. R. Venkatesh, Advocate
Mr. Rakesh Karala, Advocate

For the Respondent : Mr. Vivek Gurnani, Advocate
Mr. Kanishk Maurya, Advocate

**<u>CORAM</u>**
**SHRI BALESH KUMAR : MEMBER**
**SHRI RAJESH MALHOTRA : MEMBER**

**<u>FINAL ORDER</u>**
**30.04.2026**

This Order disposes of the Appeals Nos. FPA-FE-79/CHN/2020 filed by M/s Tata Capital Forex Ltd. and FPA-FE-80/CHN/2020 filed by Shri Ashwin Savoor (Regional Manager) against the Order No. JD/CEZO/Z-I/04/2020 dated 23.03.2020 (Impugned Order) passed by the Joint Director, Directorate of Enforcement, Government of India, Chennai. The Ld. Adjudicating

Authority (AA) imposed the penalty of Rs. 83,00,000/- on M/s Tata Capital Forex Ltd. for the contravention of Sections 3 (a), 10 (4) & 10 (5) of the Foreign Exchange Management Act, 1999 (FEMA), and Rs. 83,00,000/- on Shri Ashwin Savoor for the contravention of Sections 3 (a), 10 (4), 10 (5) & 10 (6) of FEMA read with Regulation 6 (1) of Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulation 2000 further read with Section 42 of FEMA. The amount involved in the aforementioned contravention was SGD 1762597 equivalent to Rs. 8,36,25,797/-.

**2.** Ld. Counsel for the Appellants submitted that the Impugned Order is bad in law, arbitrary and in violation of principle of natural justice as no opportunity to file a reply on merits and personal hearing to argue on merits was granted. Moreover, under Rule 5 & 6 of the Adjudication Proceedings and Appeal Rules, 2000, which specifically requires the Ld. AA to give multiple hearings and enforce the attendance of any person acquainted with the facts was denied. Ld. Counsel further pleaded that the Complaint under Section 16 was filed on 26.03.2019, which was after five years of unexplained delay. Ld. Counsel contended that the Ld. AA has wrongly stated in the Impugned Order that even after advising them to file detailed reply during the course of hearing on 17.02.2020, the Appellants did not file the final reply. Ld. Counsel stated that no such advisory was recorded in the daily order dated 17.02.2020.

**3.** Ld. Counsel for the Appellant submitted that the Ld. AA should have considered that the Appellant is an Authorised Person as per Section 2 (c) of FEMA. Hence the Appellant would fall under the jurisdiction of Reserve Bank of India (RBI) under Chapter III of FEMA. The plain reading of Section 13 of FEMA would exclude the Appellants from the levy of penalty under that Section. Even the power of investigation of the Respondent Directorate was restricted only to a person and does not cover an Authorized Person. Ld. Counsel submitted that the 3 categories of contraventions contemplated under Section 13 cannot be simultaneously used for charging a person, much less an Authorised Person. Ld. Counsel stated that the RBI did not find any contravention by the Appellants. Ld. Counsel also argued that there is blatant violation of Rule 4 (1) of FEMA Adjudication Proceedings and Appeal Rules 2000. Ld. Counsel for the Appellants cited the Judgments of Kanwar Natwar Singh vs. Enforcement Directorate (2010) 13 SCC 255 and Shashank Vyankatesh Manohar vs. Union of India & Others 2013 (5) ALL MR 551. Ld. Counsel for the Appellants contended that the individual Appellant Shri Ashwin Savoor was not in-charge of the affairs of the Company. He submitted that the individual Appellant was given charge of the affairs of the relevant Department only with effect from 06.11.2014. Ld. Counsel prayed for allowing the two Appeals.

**4.** Ld. Counsel for the Respondent Directorate submitted that the Show Cause Notice dated 29.03.2019 was duly received by

every Noticee in April 2019, yet the Appellants filed their replies on 14.10.2019. In spite of getting full opportunity the Appellants filed interim replies and did not submit final reply even till personal hearing was held on 17.02.2020. Ld. Counsel stated that there was no delay since the investigation was being conducted over five years, wherein summons were issued to the Appellants, as well as to the passengers and certain other persons. In fact, Shri Ashwin Savoor appeared before the Investigating Authority on 21.12.2018 and tendered his statement. Therefore, under such circumstances there was no delay. Ld. Counsel also contended that even though the Appellant Company was an Authorised Person it engaged in transactions with unauthorized individuals releasing foreign exchange without complying with mandatory stipulations leading to loss of Rs. 8,36,25,797/- of foreign exchange. Thus, the argument that Section 13 of FEMA does not cover such transactions is baseless. Ld. Counsel stated that the Appellant had released foreign exchange in the form of pre-paid forex cards in the name of 141 passengers who were not identified and did not use the forex for the declared purpose. The allegation that the SCN was pre-determined cannot hold. Ld. Counsel denied that there is any violation of principles of natural justice for not having been granted cross examination. In this regard, he cited the following Judgments in Kanungo & Company vs. Collector of Customs and Ors. (1973) 2 SCC 438, Telstar Travels Private Limited and Ors. vs. Enforcement Directorate (2013) 9 SCC 549 and Bimal K. Jain vs. Directorate of

Enforcement (FPA-FE-13/HYD/2012). Ld. Counsel further argued that Shri Ashwin Savoor in his statement dated 21.12.2018 admitted about the fact of issuance of pre-paid forex cards to persons from whom the money had not been received, which was paid for by the third parties. He also admitted that due care had not been exercised, but attributed the same to lower staff. Ld. Counsel prayed for dismissing the Appeals.

**5.** We have considered the rival submissions and the material on record. It is not disputed by the Appellants that 141 transactions of foreign exchange, to the extent of total amount of SGD 1762597 equivalent to Rs. 8,36,25,797/-, towards the sale of Forex Travel Pre-Paid Cards, in the names of 141 passengers was entered into by the Appellant Company. We find that the detailed investigation was conducted by the Respondent Directorate wherein scrutiny of the ticket copies, verification of signatures of the passengers on their passports vis-à-vis in the application for release of foreign exchange, and inquiries about names and contact details were conducted. It was found that the Appellant Company had initiated and issued Forex Pre-Paid Cards in the names of passengers against bulk payments received from various entities who were not related to the passengers. It was also found that the E-mail IDs and contact numbers mentioned on the applications for release of foreign exchange were the same or similar on the day of transactions. The investigation has also brought out the modus operandi of the Appellant Company to have received money against

such Forex Travel Pre-Paid Cards from third parties. In one such case a noticee to the SCN, Shri A Ganeshan proprietor of M/s Abi Export and Import admitted having transmitted 23 demand drafts of the amount of Rs. 1,17,49,326/- along with travel documents to the Appellant Company for issue of Forex Travel Pre-Paid Cards to unknown passengers. In the face of such detailed investigations having been conducted in such meticulous manner by the Respondent Directorate, the contention of the Appellants that there was delay in issuing the Complaint and the SCN, is baseless and cannot be sustained.

**6.** In the Judgment **State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd. 363 (2007) 11 Supreme Court Cases 363,** the Hon'ble Court stated that the statutory authority must exercise jurisdiction within a reasonable period even if no period of limitation has been prescribed under the statute. The Hon'ble Court has gone on to state that what should be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors. This is further clarified in the Judgment in the matter of **Chennai Metropolitan Water Supply and Sewerage Board and Others vs. T. T. Murali Babu (2014) 4 Supreme Court Cases 108,** wherein the Hon'ble Supreme Court has in detail explained the meaning of delay and laches and its impact. The Hon'ble Court has also observed that in certain circumstances delay and laches may not be fatal. In the present instance the Respondent Directorate had put the Appellant

Company to notice through summons dated 23.07.2015. However, failure to provide information for subsequent queries on the part of the Appellants takes the case out of the clutches of the principle of laches. In this regard, paragraph 2.35 of the Impugned Order brings out the factual position:

> *"2.35. Though in his statement dated 21.12.2018, Shri Ashwin Savoor stated that they held transactions of 103 forex cards against receipt of payments through RTGS, no details of the remitters except mentioning M/s Rose Enterprise (62 RTGS), M/s Rose Travels (32 RTGS), Shri S.Kannan (6 RTGS) and Shri Shajan (1 RTGS). Even after filing STR in November, 2014 and inspite of getting summons from 2015 in the ongoing investigation, till now TCFL have not able to give the complete details of these remitters from whom the payments were received through banking channel. For having been done these RTGS transactions of payments into credit of their bank accounts TCFL for release of forex cards, they have not even taken KYC documents of the remitters nor made any veracity of the said remitters. However, in the investigations through enquiries with the banks obtained the addresses of M/s Rose Enterprise and M/s Rose Travels and the person concerned as Shahul Hameed. Summons were issued to him, but the same were*

*received back undelivered with remarks of Postal authorities. It was not explained by Shri Savoor whether the said person/firm was only remitter of payments through RTGS or the same person had approached TCFL for applying and obtaining forex cards. However, TCFL repeatedly submitted that they had collected all the required documents and adhered to rigorous standards of due diligence at that relevant point of time and till date."*

**7.** Since lot of emphasis has been given by the Appellants upon non-compliance to the provisions of Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules 2000, we reproduce the provisions as follows:

*"4. Holding of inquiry*

1. *For the purpose of adjudicating under section 13 of the Act whether any person has committed any contravention as specified in that section of the Act, the Adjudicating Authority shall, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held against him.*

*2. Every notice under sub-rule (1) to any such person shall indicate the nature of contravention alleged to have been committed by him.*

*3. After considering the cause, if any, shown by such person, the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his legal practitioner or a chartered accountant duly authorised by him.*

*4. On the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention, alleged to have been committed by such person indicating the provisions of the Act or of rules, regulations, notifications, direction or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place.*

*5. The Adjudicating Authority shall, then, given an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the*

*hearing may be adjourned to a future date and in taking such evidence the Adjudicating Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872).*

6. *While holding an inquiry under this rule the Adjudicating Authority shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Authority may be useful for or relevant to the subject matter of the inquiry.*

7. *If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Authority, the Adjudicating Authority may proceed with the adjudication proceedings in the absence of such person after recording the reasons for doing so.*

8. *If, upon consideration of the evidence produced before the Adjudicating Authority, the Adjudicating Authority is satisfied that the person has committed the contravention, he may, by order in writing, impose such penalty as he*

*thinks fit, in accordance with the provisions of section 13 of the Act.*

9. *Every order made under sub-rule (8) of the rule 4 shall specify the provisions of the Act or of the rules, regulations, notifications, direction or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention has taken place and shall contain brief reasons for such decisions.*

10. *Every order made under sub-rule (8) shall be dated and signed by the Adjudicating Authority.*

11. *A copy of the order made under sub-rule (8) of rule 4 shall be supplied free of charge to the person against whom the order is made and all other copies of proceedings shall be supplied to him on payment of copying fee @Rs. 2 per page.*

12. *The copying fee referred to in sub-rule (11) shall be paid in cash or in the form of demand draft in favour of the Adjudicating Authority."*

**8.** In this regard, the Ld. Counsel for the Appellants has cited the following paragraph of **the Judgment of the Hon'ble Supreme**

**Court of India in Kanwar Natwar Singh v. Enforcement Directorate (2010) 13 SCC 255:**

> *"18. The Rules do not provide and empower the Adjudicating Authority to straightaway make any inquiry into allegations of contravention against any person against whom a complaint has been received by it. Rule 4 of the Rules mandates that for the purpose of adjudication whether any person has committed any contravention, the Adjudicating Authority shall issue a notice to such person requiring him to show cause as to why an inquiry should not be held against him. It is clear from a bare reading of the rule that show cause notice to be so issued is not for the purposes of making any adjudication into alleged contravention but only for the purpose of deciding whether an inquiry should be held against him or not. Every such notice is required to indicate the nature of contravention alleged to have been committed by the person concerned. That after taking the cause, if any, shown by such person, the Adjudicating Authority is required to form an opinion as to whether an inquiry is required to be held into the allegations of contravention. It is only then the real and substantial inquiry into allegations of contravention begins."*

We find that the SCN in the matter was issued on 29.03.2019 by the Adjudicating Authority viz the Joint Director, Enforcement Directorate, Chennai. It is matter of record that the SCN was received by the Appellants in the month of April, 2019. It is also a matter of record that the Appellants vide letter dated 14.10.2019 replied to the SCN raising issues relating to jurisdiction of the Respondent Directorate, the delay in issuing SCN, the Appellant Company being an Authorised Person and hence could only be under control of the RBI, and prayer for allowing cross examination. We find that the Ld. AA has certified as having gone through the records of the case to form an opinion to go ahead with the inquiry by fixing the personal hearing. Part of paragraph 4.5, paragraph 4.6 and paragraph 4.8 of the Impugned Order are reproduced below:

> *"4.5. The Adjudicating Authority, i.e. the Joint Director, on carefully going through the records of the case, was of the opinion that an inquiry needs to be held as contemplated in Rule 4 of Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000...........*
>
> *4.6. For the Noticee 1, 2 and 3, Personal Hearing was fixed on 10.02.2020 at the Office of the Joint Director, Directorate of Enforcement, 3rd Floor, Murugesa Naicker Complex, No: 84, Greams Road, Chennai-600 006 and the same was intimated to the noticee(s) vide*

*a communication dated 28.01.2020. PH Notice was received by the Noticee 2 and 3 while in the case of Noticee 1 it was returned undelivered by the postal authorities with postal remarks "left". On 07.02.2020 Dr. M R Venkatesh, Advocate, representing Noticee No. 1 and 2 visited the office and requested for adjournment and he also received the PH letter dated 28.01.2020 meant for Noticee 1. On considering the said request, the Adjudicating Authority fixed the next Personal Hearing on 17.02.2020 for the Noticee 1 and 2. Further on 10.02.2020 a letter dated 07.02.2020 was received from Sh. Ashwin Savoor, General Manager-Sales and Operations, Thomas Cook(India) Ltd. wherein he informed that pursuant to the order of the National Company Law Tribunal, Mumbai Bench, dated October 10, 2019 and Order of the National Company Law Tribunal, Bengaluru Bench, dated November 7, 2019 on the Composite Scheme of Arrangement and Amalgamation between Thomas Cook(India) Limited, Travel Corporation(India) Ltd., TC Travel Services Limited, TC Forex Services Ltd and SOTC Travel Management Private Ltd. and Quess Corp Limited and their respective shareholders, the Company has amalgamated into the holding company i.e. Thomas Cook (India) Limited.*

*4.8. On 17.02.2020, Dr. M R Venkatesh Advocate representing M/s. Tata Capital Forex Limited, Noticee 1 (now known as Thomas Cook (India) Limited,] and Shri. Ashwin Balkrishna Savoor, Noticee No 2, General Manager Sales and Operations of M/s. Tata Capital Forex Limited [now known as Thomas Cook (India) Limited) appeared before the Adjudicating Authority for the scheduled Personal Hearing. During the personal hearing Ld Counsel for the Noticee No 1 and 2 made submissions regarding inherent lack of Jurisdiction of the Enforcement Directorate to investigate and issue of Show Cause Notice to Authorised Persons as per the detailed interim written submissions. Ld. Counsel also pointed out that Noticee No 2 was not in charge of the affairs of Noticee Nol when the contravention is alleged to have taken place. Ld. Counsel also sought time to cross-examine Noticee No 3, Noticee No 4 and Noticee No 5 along with the Complainant Officer which was denied."*

We therefore do not find that the provisions of Rule 4 (supra) have been contravened. The interpretation in the Judgment (supra) in the matter of Kanwar Natwar Singh has been satisfied. The compliance becomes evident on reading of paragraph 21 of the **Judgment Shashank Vyankatesh Manohar vs. Union of India & Others [2013 (5) ALL MR 551],** cited by the Appellant:

*"Thus, in view of the above discussion, we are of the view that Adjudicating Authority after issuing show cause notice and receiving objections to the notice from the noticee, is required to apply his mind to the objections by recording his reasons for forming an opinion on the file. This exercise need not be preceded by personal hearing and the order to be passed on the objections is not required to be detailed order, but it must disclose some link with the objections raised by the noticee and the opinion formed by the Adjudicating Authority. This recording of the opinion of the Adjudicating Authority would be given to the noticee when the proceedings are dropped in the form of an order. However, in cases where the opinion is formed to proceed further with the show cause notice, then a notice for personal hearing is required to be given to the party in terms of Rule 4 of the Adjudication Rules. However, if on receipt of the notice for personal hearing, the recorded reasons are sought for by the noticee, the same should be given. However, this recording of reasons 21 of 35 upa WP-5305-2013 is not an appealable order but it would give the noticee a chance during adjudication proceedings to meet the reasons which led the Adjudicating Authority to form an opinion that he must proceed further with the*

*inquiry against noticee. This would only result in fair procedure which would be in consonance not only with Rule 4 of the Adjudication Rules but with principles of natural justice."*

Here the Ld. AA has itself recorded in the afore cited paragraphs of the Impugned Order of having formed an opinion after issuing of the SCN and of having given opportunity through personal hearings to the Appellants, who did not go beyond the preliminary objections. The Judgment (supra) in the matter of Shashank Vyankatesh Manohar itself makes it clear that the Adjudication under Section 13 cannot be substituted by the preliminary stage of forming the opinion under the Rule to adjudicate the matter. The objection raised by the Appellants that no advisory was given by the Ld. AA to them to file detailed reply contrary to what has been recorded in the Impugned Order is of no significance since there was nothing to prevent the Appellants to file the detailed reply, if they had so chosen.

**9.** The argument of the Appellants that since the Appellant Company is the FFMC and the Authorised Person, contravention, if any, by the Authorised Person needs to be dealt by the RBI, in view of Sections 10, 11 & 12 falling within Chapter III of FEMA. In this regard the Appellants have drawn attention to Section 2 (c) of FEMA, which defines the Authorised Person as,

*"An Authorised Dealer, money changer, off-shore banking unit or any other person for the time being authorized under Sub-Section (1) of Section 10 to deal in foreign exchange or foreign securities;"*

In this regard, the definition of 'person' under Section 2 (u) of FEMA includes:

*"(u) "person" includes-*

*(i) an individual,*

*(ii) a Hindu undivided family,*

*(iii) a company,*

*(iv) a firm, incorporated or not,*

*(v) an association of persons or a body of individuals, whether incorporated or not,*

*(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and*

*(vii) any agency, office or branch owned or controlled* by *such person;"*

It is useful to cite how this question raised by the Appellants before the Ld. AA has been disposed of in paragraphs 5.10 & 5.11 of the Impugned Order:

*"5.10 With regard to the contention of Noticees 1 & 2* (Appellant Company & Individual Appellant)*, that they being Authorised dealers cannot be charged under Section 3(a) of FEMA, 1999, and that only RBI can adjudicate the Authorised persons, it is to be noted that*

*though they are Authorised Persons, they have dealt with unauthorised persons on a commission basis to siphon off the foreign exchange from the country without following the procedure prescribed by the Reserve Bank. Such transactions even if they were done through authorised person, the transactions are to be treated as the one done outside the scope of licensing condition, as there were omissions and commissions on the part of Authorised Person in dealing with the foreign exchange. It was admitted by Noticee 2 vide his voluntary statement mentioned supra that they had not paid attention to the RTGS/NEFT payments. Noticee-1 failed to adhere to directions/instructions/guidelines, resulting in loss of the foreign exchange to the tune of Rs. 8.36 crores to the country in the form of forex pre-paid cards which were handed over to unauthorised persons, the sale of such forex pre-paid cards to unauthorised persons by Noticee-1 cannot treated as legal transaction and therefore, such transactions shall be deemed to be contrary to the letter and spirit of Section 3 (a) of FEMA which says "Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall deal in or transfer any foreign exchange or*

*foreign security to any person not being an authorised person". Dubious transactions with unknown/ unauthorised persons cannot be treated as authorised transactions. The word "transfer" includes sale, purchase, exchange, etc., as per the definition under section 2 (ze) of FEMA, 1999. I am of the view that since the transfer of foreign exchange by Noticee -1 was otherwise than as provided for in the license granted by RBI, Noticee -1, though an authorised person, will be covered in the phrase "no person" figuring in Section 3 (a) of FEMA, 1999, as Noticee 1 Company is also a person under the definition of FEMA, 1999. Therefore, section 3 (a) of FEMA is squarely applicable in the instant case. Hence, Noticees 1 and 2 can be charged under section 3(a) of FEMA, 1999 as the foreign exchange has not been dealt with in an authorised manner.*

*5.11 With regard to the contention of Noticees 1&2, that they being Authorised dealers cannot be charged by ED and only RBI can adjudicate the Authorised persons, I find that, there is no bar on this Directorate from adjudicating a case involving Authorised Dealers for the violation of Chapter III of FEMA, 1999. It is to be noted that Section 13 (1) of FEMA 1999 clearly states that if any person contravenes any rule, regulation,*

*notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall be upon adjudication, liable to penalty. Section 13 of FEMA specifies "any person which will very well include "authorised persons also. The legislation's intention is very clear in not excluding the penal provisions under section 11(3) of FEMA under the ambit of Section 13. Moreover, the objective of Section 11 of FEMA is to empower RBI to issue directions to authorised persons for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder. As it is a fact on record that the country had suffered loss of Foreign Exchange by not following due diligence by Noticee 1, they cannot go scot free. There is no exemption granted in Section 13 of FEMA, 1999 that penalty cannot be imposed on an authorised person upon adjudication. Officers of Enforcement Directorate are Adjudicating Authorities in terms of Section 16 of FEMA 1999 read with relevant Notifications whereas the officers of RBI are not adjudicating authorities under section 16 of FEMA, 1999. The case law of Arun Kumar Vs UoI is would not help them as the issue of lack of jurisdiction has been*

*denied as above. The case law of LIC Vs Escorts Ltd is not relevant to the facts of the case as the same is related to authority of RBI in granting permissions. Therefore, I find that the aforesaid averments of the Noticee fails and accordingly the same are rejected.”*

On examination of definition of person as afore cited, it is obvious that an individual as well as a Company and for that matter every artificial juridical person is included in the definition. The Authorised Person is also a person who is so authorised under Sub-Section (1) of Section 10. There is no statutory provision as to exclude the Authorised Person from the definition of person. Since the provisions of FEMA are applicable to any person, the same are equally applicable to the Authorised Person. Chapter III provides for certain special provisions in relation to the Authorised Person and to ensure compliance to the provisions of Section 10 of FEMA, the RBI has been empowered under Section 11 to issue directions and to inspect under Section 12. Under Sub-Section (3) of Section 11 the Authorised Person can be penalized up to Rs. 10,000/- for non-compliance to the directions of the RBI, which may extend to additional penalty of Rs. 2000 everyday for continuing contravention. The language of Section 13 provides for imposition of penalty up to thrice the sum of the amount of contravention or Rs. 2,00,000/- where the amount of contravention is not quantifiable or penalty of Rs. 5,000/- everyday for continuing contravention. Mere reading of the provisions makes it obvious

that the existence of Chapter III of FEMA does not either preclude or curtail the powers bestowed under Section 13 of FEMA. Ld. Counsel for the Appellant argued that Section 3 (a) cannot be invoked against the Appellant Company which is an Authorised Dealer / Full Fledged Money Changer and only Sections 10 (4) & 10 (5) of FEMA can be invoked and adjudicated under Section 11 of the Act. A Full-Fledged Money Changer who has been given a licence to operate under certain conditions and obligations cannot have the liberty to contravene various provisions of FEMA 1999 and plead that only RBI can adjudicate the contraventions under Section 11. Section 13 of FEMA 1999 itself provides for imposition of penalty for contravention of any condition subject to which an authorization is issued by the Reserve Bank of India. Section 3 (a) requires that no person shall deal in or transfer any foreign exchange or foreign security to any person not being an authorized person, save as otherwise provided. Therefore, it follows that the Appellant Company is as much liable for penalty under Section 13 of FEMA as any other 'person' on being found that it has indulged in contraventions of Section 3 (a). The statute does not provide for any special treatment under the present facts and circumstances for the Authorised Person. There is also nothing in the statute that prevents invoking of contraventions of Section 3 (a) along with those of Sections 10 (4) & 10 (5) of FEMA 1999. It is also erroneous to argue that the three categories of contravention contemplated under Section 13 cannot be simultaneously invoked against the

same person/Authorised Person. There is nothing in the statute to prevent that. We therefore reject the arguments made by the Appellants that no penalty under Section 13 could be imposed on the Authorised Person.

**10.** The Appellants have expressed grievance at not having been given an opportunity to cross examine the Noticees No. 3, 4 & 5 along with the Complainant Officer. Noticee No. 3 is Shri K. Ganesan, Proprietor of M/s Abi Export and Import, Noticee No. 4 is Axis Bank Ltd. and Noticee No. 5 is Shri Neeraj Sinha, then Sr. Vice President in Axis Bank Ltd. It is observed from the Impugned Order, that the Appellant Company being a Full-Fledged Money Changer (FFMC) had entered into Agreement with Axis Bank Ltd. to sell the pre-paid Forex Cards on behalf of the Bank. Paragraph 2.39 of the Impugned Order brings out the following arrangement between the two:

> *"2.39. Scrutiny of the copy of the Agreement executed between TCFL and Axis Bank Limited, revealed the following:*
>
> - *Axis Bank has agreed to appoint the FFMC for selling the prepaid forex cards on behalf of the bank;*
> - *Affiliate means any subsidiary of Axis Bank which issues or distributes Forex Plus Cards;*

- *Authorise in respect of the representatives means the creation by Axis Bank of the respective user Ids and passwords for the Representatives in the Forex Plus Card System;*

- *Authorised Representatives means the representatives of the FFMC who shall, on behalf of the FFMC, be required to confirm and authorise the information in relation to the sale/loading of Travel Currency Cards into the system;*

- *Travel Currency Card means a Prepaid Forex Card which is sold to the outbound traveller and linked to a Foreign Currency account with the bank and prefunded by the card holder with the required forex amount;*

- *Travel Currency Card System means the system owned by Axis Bank through which the FFMC and its authorised representative shall issue instructions to Axis Bank in relation the loading/reloading of Travel Currency Cards;*

- *Payment means the payment due from the FFMC to Axis Bank in respect of the sale of the Travel Currency Cards or any foreign exchange loaded onto a Travel Currency Card payable to account(s) nominated by Axis Bank;*

- *Procedures means all such procedures and/or training literature or operating instructions published or otherwise issued by Axis Bank from time to time in respect of the Services;*

- *Service means the sale of Travel Currency Cards or foreign exchange issued by Axis Bank in accordance with the Agreement;*

- *The FFMC will, immediately upon becoming aware of any loss, theft or dishonest dealings by any person (including, but not limited to, employee embezzlement of falsification) or disappearance of any Travel Currency Cards notify Axis Bank in accordance with the Agreement and with the Procedures, and shall fully cooperate with any investigation undertaken by Axis Bank, or its representatives;*

- *Axis Bank shall be entitled at any time on reasonable notice to carry out a physical audit of the Travel Currency Cards at any Branch during normal business hours and will provide the FFMC with the finding of such audit;*

- *The FFMC shall not acquire any right, title, or interest in any Travel Currency Cards except in*

*respect of the Service as expressly set out in the Agreement;*

- *Upon the sale of each of the Travel Currency Cards, the FFMC will enter the customer details and Card details along with the amount to be loaded on the card in the Travel Currency card System. The Customer details will contain such information as required by Axis Bank, including but not limited to the customer's email id, correspondence address, contact number, passport details;*

- *The FFMC shall obtain all original sales documentation as advised by Axis Bank from time to time and retain the originals on behalf of Axis Bank with right to Axis Bank to inspect and verify the same. Alternatively, at the request of Axis Bank, the FFMC shall forward the same to Axis Bank at the end of every Business Day;*

- *The FFMC will submit a certificate to the Axis Bank on a yearly basis confirming compliance with the Know Your Customs (KYC) norms and the AML documentation while issuing/reloading Axis Bank Travel Currency Card."*

With respect to Noticee No. 5 i.e. Shri Neeraj Sinha it is on record that he was the Head of the Retail Forex and Remittances of the Axis Bank Ltd. at the relevant point of time. Ld. AA rejected the prayer for cross examination by citing the two Judgments of M/s Kanungo & Co., Vs. Collector of Customs, Kolkata & Others and Shri J. Ibrahim, S/o Jainulabdeen vs. The Special Director, ED, [2000 (4) CTC 298].

**11.** The relevant paragraph in the decision of the **Hon'ble Supreme Court in Kanungo & Company vs. Collector of Customs & Ors. [AIR 1972 SC 2136],** which has laid down that in all cases cross-examination of a witness may not be necessary may be quoted as follows:

> *"12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our-opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence*

*of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly, we hold that there is no force in the third contention of the appellant."*

**12.** Another decision of the **Hon'ble Supreme Court in Dharampal Satyapal Ltd. v. CCE, (2015) 8 SCC 519: (2015) 33 GSTR 1: 2015 SCC OnLine SC 489 at page 538,** opined that law on natural justice has evolved and every violation of principles of natural justice need not result in setting aside an order, unless and until, prejudice has been established by the aggrieved party. The relevant paragraphs are extracted herein:

*"We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing 'would make no difference' –*

*meaning that a hearing would not change the ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in Malloch v. Aberdeen Corporation [(1971) 2 All ER 1278 (HL)], who said that a 'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain'. Relying on these comments, Brandon LJ opined in Cinnamond v. British Airports Authority [(1980) 2 All ER 368 (CA)] that 'no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused*

*any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing."*

**13.** The Judgment of the **Hon'ble Supreme Court in M/s Telestar Travels Pvt. Ltd. vs. Special Director of Enforcement, [2013 AIR SCW 1304],** has held that denial of request to cross-examine the witnesses by the Ld. Adjudicating Authority does not violate the principles of Natural Justice.

*"20. Coming to the case at hand, the Adjudicating Authority has mainly relied upon the statements of the appellants and the documents seized in the course of the search of their premises. But there is no dispute that apart from what was seized from the business premises of the appellants the Adjudicating Authority also placed reliance upon documents produced by Miss Anita Chotrani and Mr. Raut. These documents were, it is admitted disclosed to the appellants who were permitted to inspect the same. The production of the documents duly confronted to the appellants was in the nature of production in terms of Section 139 of the*

*Evidence Act, where the witness producing the documents is not subjected to cross examination. Such being the case, the refusal of the Adjudicating Authority to permit cross examination of the witnesses producing the documents cannot even on the principles of Evidence Act be found fault with. At any rate, the disclosure of the documents to the appellants and the opportunity given to them to rebut and explain the same was a substantial compliance with the principles of natural justice. That being so, there was and could be no prejudice to the appellants nor was any demonstrated by the appellants before us or before the Courts below. The third limb of the case of the appellants also in that view fails and is rejected."*

**14.** In this regard, we find support from the three Judge Bench Judgment of the **Hon'ble Supreme Court in State of U.P. v. Sudhir Kumar Singh, [(2021) 19 SCC 706].** The relevant paragraphs are extracted below:

*"42. An analysis of the aforesaid judgments thus reveals:*

*42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule*

*cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.*

*42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.*

*42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.*

*42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an*

*appraisal of the facts of a case, and not by the authority who denies natural justice to a person.*

*42.5. The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."*

**15.** On perusal of these judgments, it would be reasonable to make the following inferences:

(a) There does not appear to be any straight-jacket framework as to when cross-examination can be granted. To lay down any rigid rules as to when in compliance of principles of natural justice, opportunity to cross-examine should be given is almost impossible. It all depends on the subject matter. In the application of the concept of fair play there has to be flexibility. The application of the principles of natural justice depends on the facts and circumstances of each case.

(b) While it is true that quasi-judicial proceedings are also subject to adherence to the principles of natural justice, the need for providing the opportunity of cross-examination will arise where the denial of such opportunity would cause prejudice to the interest of

the party who has been denied the opportunity. The Court cannot grant in vain any remedy merely because there is a breach of procedure unless it is demonstrated that such breach has caused loss of something of substance.

(c) The Courts have taken consistent stand that the cross-examination of the Investigating Officers is not necessary unless compelling reasons are brought forth. In fact, cross-examination of those witnesses who have produced documents has also not been found necessary. The disclosure of the documents to the Appellants and the opportunity given to them to rebut and explain the same has been regarded as substantial compliance with the principles of natural justice.

**16.** We observe that under the facts and circumstances of the present case the denial of cross examination has neither resulted in prejudice to the Appellant nor caused violation of principles of natural justice. It is on record that the Appellant Company was in an Agreement with the Axis Bank Ltd. to be its affiliate for distribution and sale of Pre-Paid Forex Cards. We observe that the arrangement between the Appellant Company and the Axis Bank Ltd. was well within the knowledge of the Appellant Company and its Officer concerned. The Complainant under Section 16 (3) of FEMA had filed the Complaint before the Ld. AA along with copies

of relied upon documents. There is no grievance on record that the relied upon documents were not shared with the Appellants. Among the relied upon documents are the copy of the statement dated 01.02.2019 of Shri Mahesh Mehta of Axis Bank Ltd. recorded under FEMA and copy of letter dated 08.02.2019 submitted by their Counsel on behalf of Axis Bank Ltd. The Appellants have also failed to demonstrate what further information could have been elicited through cross examination which was not already available with the Appellants and of which a large part had been admitted by the Appellants.

**17.** We observe that the Appellant Company had indulged in issuing of a large number of Forex Travel Pre-Paid Card, which could not be traced to the persons who actually travelled abroad. During the course of investigation, it has been established that the money for each of these issued pre-paid card was not received by the Appellant Company from the person in whose name the pre-paid card was issued and was received in bulk from third parties. The plea of the Appellant Company that there were no provisions of law as to prohibit them from the receipt of funds from third parties cannot be accepted. The entire scheme of Forex Travel Pre-Paid Card was to facilitate the genuine passengers to obtain bona fide amount of foreign exchange so as to travel abroad. It was therefore imperative and logical that those Companies which opted for issuing Forex Travel Pre-Paid Card acted in prudent and reasoned manner. One way of being satisfied of genuineness of the person

who was issued Pre-Paid Card was to establish the identity of such person as to who was actually travelling abroad by seeing his passport and retain the photocopy of the passport for record. The very fact that the Appellant Company allowed itself to retain photocopies of passport by obtaining such photocopies through third persons or agencies, demonstrates the lack of caution and care which were required for the discharge of its responsibility and functioning. The findings made by the Ld. AA in paragraph 5.7 of the Impugned Order, after examining a number of RBI Circulars on the need to undertake KYC verification and establish the identification of genuine passengers clearly brings out the blatant violations by the Appellant Company, which are reproduced below:

> *"5.7 From the material available on record:-*
>
> *i) I find that to get release the above-mentioned foreign exchange illegally, some unauthorised person(s) had misused the identity of said passengers by submitting copies of their passport and visa to M/s TCFL for the said purpose. Admittedly, when approached, M/s TCFL have entertained the said unauthorised person(s) other than the actual passengers flouting the norms prescribed by RBI as detailed above.*
>
> *ii) I also find that filled in printed applications/forms of M/s TCFL for releasing foreign exchange, which included Declaration/Undertaking under FEMA which*

*are supposed to be obtained from actual passengers with their signatures, were also been obtained from the said unknown person(s) without verifying the passengers in whose name the foreign exchange is issued.*

*iii) Further, on receipt of payments through RTGS/DD which got credited into their bank account received from the unknown remitters, other than the passenger, have knowingly, released foreign exchange and sold, loaded and handed over the forex prepaid cards to those unknown and unauthorised person(s) issued in the names of the 141 passengers as detailed in the Annexure to the Complaint in question.*

*iv) I further find that M/s. TCFL have entertained Shri K. Ganesan, proprietor of M/s. Abi Export and Import, unknown and unrelated person of other than the actual passengers accepted the 14 DDs (ICICI Bank, West Mambalam Branch) to the tune of Rs.67,15,464/-, 6 DDs (South Indian Bank, Medavakkam) to the tune of Rs. 35,42,810 and 3 DDs (Axis Bank, Selaiyur Branch) to the tune of Rs. 14,91,052/- totaling to Rs. 1,17,49,326 / along documents including copies of passports, visas, travel tickets and allowed Shri Ganesan to file application for release of foreign exchange, etc. and initiated process of issuance of*

*forex cards in the names of the passengers mentioned in the Annexure, loaded the forex prepaid cards and also handed over the said forex cards to the said Shri K. Ganesan, an unknown/unrelated/ third party person under Cash Memo.*

*v) I also found that, M/s. TCFL have admitted sale of forex cards to unauthorised persons against the transactions through RTGS of huge amounts into their credits, have not disclosed the details of the remitters or to whom the forex cards were handed over, etc. M/s. TCFL have not cooperated in the investigation by furnishing details of those unknown person(s) who approached them and to whom the forex cards were handed over and they have also not obtained the details of such remitters even though the same was mandatory while dealing with foreign exchange as per the KYC norms and guidelines issued by the RBI.*

*vi) I found that during the investigations, Shri K. Ganesan has taken a name of Ibrahim stating that under his (Ibrahim's) instructions he had carried out the transaction and would provide details or get the said Ibrahim in the investigation; however, he did not able to sustain his deposition in this regard. It was found from the banks transactions and documents under his (K. Ganesan) signature and he was aware of*

*the same as he had admittedly monitored all his banks account transactions*

*vii) With regard to the transactions of sale and loading of forex cards dealt against payments in the mode of DDs, I found that, Shri K. Ganesan has admitted in his statement that he used to visit the FFMCs to submit the DDs and documents. On the basis of Shri Ganesan's statement of corroborative evidence, it is clear that M/S TCFL were never approached by the listed passengers, in whose name the said prepaid forex cards were issued, for applying/obtaining and loading of forex cards.*

*viii) M/s TCFL being AD-II, is responsible for compliance with applicable laws and regulations including KYC norms stipulated by RBI.*

*ix) Shri Ashwin Savoor of M/S TCFL, in his statement has admitted that their lower staff have not acted carefully while handling the transactions and not followed the guidelines of KYC norms.*

*x) Shri Ashwin Savoor of M/S TCFL, has not submitted the details the person(s)/firm(s), who submitted the documents for release of foreign exchange in the form of prepaid forex cards which were sold/loaded against payments of RTGS in 103 transactions and the*

*remaining DDs. As the forex cards are to be handed over in person, Shri Ashwin Savoor has not able to state in his statement in the absence of passengers, to whom the forex cards were handed over by M/S TCFL.*

*xi) In view of the denial of travel/applying for/receiving the said cards by passengers in whose names the said forex cards were issued, it stands to reason that Shri Ashwin Savoor had indulged in issuance of forex cards in the name of the said 141 passengers by dealing with unauthorised and unknown persons. In absence of true declaration by the actual passengers it has to be construed Shri Ashwin Savoor, as a de-facto declarant and thus he acted as person other than an authorised person in purchasing the foreign exchange and utilised the same for unauthorised purpose as the passengers were never utilised the same."*

On perusal of these findings, the conclusion that the Appellant Company allowed foreign exchange worth Rs. 8,36,25,797/- to be siphoned off by selling pre-paid foreign currency card without complying with the same rigorous standards of due diligence and KYC as they would have if they were selling foreign currency to their customers, is inescapable.

**18.** With regard to the charges against the individual Appellant, we find these to have arisen from contravention of Sections 3 (a),

10 (4), 10 (5) & 10 (6) of FEMA read with Regulation 6 (1) of Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulation 2000 further read with Section 42 of FEMA from his role as Regional Manager and Head-Sales and Operations of the Appellant Company. The charge for contravention of Section 10 (6) of FEMA read with the Regulation, 2000 has arisen from his role in individual capacity. On perusal of the Impugned Order, we find that the individual Appellant Shri Ashwin Savoor had admitted in statement tendered on 21.12.2018 under Section 37 of FEMA, the contraventions indulged in by the Appellant Company. Shri Ashwin Savoor attributed the contravention to the ground level staff and stated that one Shri A. Shyam Kumar, Manager-Sales was terminated for the lapses. He admitted the receipt of third party bulk payments by the Appellant Company. He also admitted that the Appellant Company had not followed the KYC norms. We find paragraphs 5.16 & 5.17 of the Impugned Order relevant in this regard:

> *"5.16. Now with regard to the contention of Noticee 2 that Section 10(6) of FEMA, 1999 gets attracted only to those declarants who have acquired or purchased foreign exchange from the Authorised person and neither used for the declared purpose nor have surrendered such foreign exchange to the authorised person and that liability of an employee under section 42 of FEMA, 1999 can be extended only to a person not*

*an authorised person, I find that in the instant case, though the prepaid forex cards were issued in the names of 141 passengers portraying that the said persons have declared before the Authorised Dealer for release of foreign exchange towards prepaid forex cards, in fact no passenger had utilised the said prepaid forex cards and since the forex has been released by the Noticee 1 by not identifying the passengers, and the said forex was neither used for the declared purpose, nor submitted to the Authorised Person within the specified period, Noticee 2, Head - Sales & Operations of Noticee 1, has been charged as the defacto declarant. Further, there is no bar on the Department to charge the persons responsible for unauthorised dealings of foreign exchange which was siphoned off from the country. Hence, the contentions of the Noticee 2 in this regard merit rejection.*

*5.17. With regard to the liability of Noticee 2, I find from the voluntary statement dated 21.12.2018 of Noticee2, wherein, he, himself admitted that the lower level staff had not paid attention for the payments received through RTGS/NEFT and that the said transactions were not brought to the notice of the higher officers of the management. No concrete evidence was produced by Noticee 2 that he was not responsible for the affairs*

*of Noticee 1 during the relevant period. Mere unawareness of actions of his lower level employees on behalf of Noticee 1, cannot help him to escape from the clutches of law. As Head- Sales & Operations of Noticee 1, he is responsible for the affairs of Noticee 1 and to see that the affairs of Noticee 1 were conducted in accordance with the provisions of law. In view of the above discussions and the rule position, as specified above, I have no hesitation in arriving at the conclusion that Noticee 2 had contravened the provisions of Sections 3(a), 10(4), 10(5) and 10(6) of FEMA, 1999 read with Regulation 6(1) of Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000 to the tune of SGD 1762597 equivalent to 8,3625,797 in terms of Section 42(1) of FEMA, 1999 as alleged in the show cause notice and hold him guilty of the said contraventions."*

**19.** The individual Appellant pleaded that he was not responsible for the affairs of the Company in the jurisdiction of South India during the relevant time, as he was working in West Zone in Mumbai during the said period. We, after having carefully scrutinized the material, find that an E-mail dated 06.11.2014 issued by Human Resources Department of the Appellant Company states that the individual Appellant Shri Ashwin Savoor, Regional

Manager-Forex (West) will hold additional responsibility for South and will be redesignated as Regional Manager-Forex (West & South) with effect from 06.11.2014. This is backed by Certificate dated 29.07.2020 issued by Mona Cheriyan, President & Group Head-Human Resources of Thomas Cook (India) Ltd. issued on 27.08.2020 that Shri Ashwin Savoor currently designated as General Manager has been working in the Foreign Exchange Department of Thomas Cook (India) Ltd. since 01.12.2019. The certificate further states that Shri Ashwin Savoor was redesignated as Regional Manager-Forex (West & South) of Tata Capital Forex Services Ltd. with effect from 06.11.2014. It is on record that M/s Tata Capital Forex Ltd. was amalgamated into M/s Thomas Cook (India) Ltd., consequent to the Orders dated 10.10.2019 and 07.11.2019 of NCLT, Mumbai and Bangaluru respectively. We find that the investigation for the impugned transactions covered the period 01.04.2013 to 31.03.2015. Even if the individual Appellant took over as In-charge of the work relating to said impugned transactions with effect from 06.11.2014, it cannot be stated that Shri Ashwin Savoor was not responsible for the conduct of the affairs of the Company during the relevant period for the jurisdiction in which the contraventions occurred. However, since Shri Ashwin Savoor was not responsible for such work for the full period in which the contravention occurred, we need to take that into account, while deciding upon the penalty for which the individual Appellant is liable.

**20.** With respect to the penalty imposed for the contravention of Section 10 (6) of FEMA read with Regulation 6 (1) of Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulation 2000, we find that the Ld. AA has held him as the de-facto declarant for having failed to specify the actual passengers, who were issued the Forex Travel Pre-Paid Cards. On perusal of paragraph 21 of the Complaint filed under Section 16 (3) of FEMA, we find the following:

> *"In the absence of complete details/documents revealing the identity and genuineness of the actual declarant or the person with whom he dealt with, it appeared that Shri Ashwin Savoor has acted as defacto declarant for the purpose of forex mentioned in the declaration under sub-section (5) of section 10 and does not use it for such purpose or does not surrender it and thereby he contravened section 10(6) of FEMA read with Regulation 6 of the Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000 and thereby he rendered himself liable to be proceeded against under section 13(1) of FEMA."*

We are unable to convince ourselves that because the individual Appellant failed to furnish complete details/ documents revealing the identity and genuineness of the actual declarant, he could be substituted for the persons in whose name the Forex Travel Pre-

Paid Cards were issued by the Appellant Company without having exercised due diligence and caution. We therefore, under the present set of facts and circumstances, cannot extend the statutory provision of Section 10 (6) of FEMA deeming it to be contravention of the provisions of the Act, for not complying with the declaration made to the Appellant Company under Section 10 (5) of FEMA, to the individual Appellant Shri Ashwin Savoor, for his inability to furnish complete details/documents. We shall therefore take this into account while re-determining the penalty for which Shri Savoor is liable.

**21.** To conclude, we find that the well-established Appellant Company, with organized business set-up, failed to exercise due diligence in the discharge of its functions, which resulted in loss of foreign exchange equivalent to Rs. 8,36,25,797/-. Even though being an Authorised Person, they not only failed to be prudent and cautious in adhering to the instructions of the RBI, but also allowed unverified persons and entities to enter into transactions with it, which was not permissible. Such transactions happened repeatedly which therefore cannot be regarded as mere mistake, but as serious lapse on the part of the Appellant Company. The investigations have revealed glaring violations on the part of the Appellant Company. The Appellant Company must suffer penalty for the aforementioned serious acts of omission and commission which led to the aforementioned contraventions of FEMA. We also find that the individual Appellant responsible for the

contraventions of Sections 3 (a), 10 (4) & 10 (5) of FEMA in terms of Section 42 (1) of FEMA. In view of the reasons given in the preceding paragraphs, the individual Appellant is liable for penalty less than that imposed on him in the Impugned Order.

**22.** We find that the total penalty imposed on the Appellant Company is Rs. 83,00,000/- which is approximately 10% of the contravention amount Rs. 8,36,25,797/-. In view of the facts of the case and the statutory provisions, we uphold the penalty amount. Pre-deposit of penalty, if made, to be adjusted against the penalty amount. The ends of justice shall be met on reduction of penalty to Rs. 16,60,000/- on the individual Appellant. Pre-deposit of penalty, if made, shall be adjusted against the reduced penalty amount.

**23.** In view of the aforementioned discussions and analysis, we dismiss the Appeal No. FPA-FE-79/CHN/ 2020 filed by M/s Tata Capital Forex Ltd. and we partly allow the Appeal No. FPA-FE-80/ CHN/2020 filed by Shri Ashwin Savoor. Applications pending, if any, are disposed of accordingly.

**(Rajesh Malhotra)**
**Member**

**(Balesh Kumar)**
**Member**

**New Delhi**
**30th April, 2026**
'AK'