

E A S Sarma

Former Secretary to Government, of India

To

Shri Ajay Seth

Secretary (DEA)

Ministry of Finance

Govt of India

Dear Shri Seth,

I refer to my letter of September 18, 2022 on Finance Ministry's revised overseas investment guidelines issued vide GSR 646(E) dated 22-8-

2022 (<http://eassarma.in/v1/sites/default/files/public/Letter-to-DEA-on-Overseas-investment-rules.pdf>), which not only allows investments by domestic companies in tax-haven countries but also permits investments in overseas companies which can round trip the funds to India through third country intermediary shell companies.

On a closer examination of GSR 646(E) cited above

(https://www.rbi.org.in/scripts/FS_Notification.aspx?Id=12381&fn=5&Mode=0), I find that it has yet another highly questionable provision, in para 3(iii)(b), that there is no longer a need for any approval for a domestic corporate entity or an individual, investing overseas, even if the corporate or the individual is "under investigation by any investigative agency/regulatory body". It is a sweeping exemption that permits corporate promoters, even if they are being investigated by SEBI, RBI, Registrar of Companies, SFIO, DRI, ED and CBI, to transfer domestic funds to overseas shell companies in tax haven countries! It amounts to the government deliberately weakening its own investigating agencies!

Has the Finance Ministry consulted the concerned Ministries, the regulatory authorities and the investigating agencies, before issuing such an open-ended revision in the guidelines?

It is well known that some corporate groups have set up illicit shell companies overseas, including in tax haven countries, where they have stashed their wealth to evade domestic taxes and using those funds to manipulate the Indian stock markets as they wish and routing donations to political parties through opaque vehicles such as Electoral Bonds, in return for *quid pro quos* including tweaking of domestic laws to further their interests. From what I see from the August 2022 circular, the Finance Ministry is openly facilitating tainted companies to round trip their funds through tax haven countries!

In a Rajya Sabha reply given by the Corporate Affairs Ministry (Question No 359) on February 6, 2018, the Ministry admitted that "shell companies" were not defined in the Indian laws and even volunteered to cite a definition of such companies adopted by the OECD. Apparently, it prompted the Ministry to set up a Task Force to examine in depth the manner in which the relevant laws need to be amended to incorporate a consistent, well established definition of a "shell company". Five years have elapsed since the above information was placed before the Parliament and there is no sign of any action on the part of the concerned Ministries to bring forward the necessary amendments to the Companies Act, the SEBI Act etc. Does it not imply that the government has, whether deliberately or otherwise, allowed such a serious legal vacuum to continue, while domestic companies are merrily exploiting it to their advantage.

Against this background, I suggest that the Finance Ministry keeps the changes introduced by GSR 646(E) of August 2022 in abeyance and, in consultation with the Corporate Affairs Ministry and SEBI, process a Bill to amend the Companies Act and the SEBI Act to incorporate a clear, consistent definition of "shell companies" expeditiously.

The recent CreditSights report of August 2022 and the more recent Hindenburg report, alleging that the Adani Group has set up numerous overseas shell companies to evade taxes and manipulate the stock market, should have woken up the government into action but, from the statements that have come from Central Ministries and the regulatory bodies fail to indicate any anxiety on their part.

I hope that the Finance and Corporate Affairs Ministries act at least now, before any further damage is caused.

Regards,

Yours sincerely,

E A S Sarma

Visakhapatnam

9-2-2023