

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

(Act 42 of 1999, dt. 29-12-1999)

[As amended by the International Financial Services Centres Authority Act, 2019 (50 of 2019), dt. 20-12-2019, w.e.f. 1-10-2020]

An Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

COMMENTS

The Preamble sets the tone for the changes in approach and application of foreign exchange management. It focuses on smoothening out the operations of external trade and payments, which are the centrepiece of foreign exchange management and then moves over, more importantly, to infusion of orderliness in the turbulent foreign exchange market. It would be indicative of the recognition of the problems in international trade and foreign exchange markets operating round the clock in the world and the need to facilitate our integration and active participation globally.

The Preamble is a key to understand the provisions of the Act and ascertain the legislative intent behind the provisions. In a situation of doubt and ambiguity in the wording of the specific provision the Preamble would help in arriving at a fair construction.

CHAPTER I PRELIMINARY

1. Short title, extent, application and commencement

(1) This Act may be called the Foreign Exchange Management Act, 1999.

(2) It extends to the whole of India.

(3) It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.

(4) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint:

PROVIDED that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

¹ Enforced w.e.f. 1-6-2000 vide GSR 371(E), dt. 1-5-2000.

COMMENTS

With the increasing investments in and out of India, it is understandable to have a line of control in place under FEMA to monitor the interaction of the overseas branches, offices and agencies through the controlling organisation in India as envisaged in section 1(3). The concept of 'owned or controlled' has staged a come-back-earlier foreign controlled company gave way to FERA Company. The management through the Board of Directors and the interlinked percentage of shareholding would count.

The definition of 'person resident in India' has been enlarged to include offices, branches and agencies in India, owned and controlled by person resident in or outside India. The sweeping reach of FERA to cover all citizens of India, outside India has been diluted; FEMA applies if such persons are considered as residents of India.

The Government of India has already notified w.e.f. 1-6-2000 vide GSR 371(E), dt. 1-5-2000, as the date of commencement of the Act.

2. Definitions

In this Act, unless the context otherwise requires,—

- (a) "Adjudicating authority" means an officer authorised under sub-section (1) of section 16;
- ¹[(b) "Appellate Tribunal" means the Appellate Tribunal referred to in section 18;]
- (c) "authorised person" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;
- ²[(cc) "Authorised Officer" means an officer of the Directorate of Enforcement authorised by the Central Government under section 37A;]
- (d) "Bench" means a Bench of the Appellate Tribunal;
- (e) "capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6;
- (f) "chairperson" means the chairperson of the Appellate Tribunal;
- (g) "chartered accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;
- ²[(gg) "Competent Authority" means the Authority appointed by the Central Government under sub-section (2) of section 37A;]
- (h) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;

¹ Substituted by Finance Act, 2017 (7 of 2017), w.e.f. 26-5-2017 vide SO 1696(E), dt. 26-5-2017. Prior to substitution, clause (b) read as under:

"(b) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange established under section 18"

² Inserted by Finance Act, 2015 (20 of 2015), dt. 14-5-2015, w.e.f. 9-9-2015 vide SO 2454(E), dt. 8-3-2015.

- (i) "currency notes" means and includes cash in the form of coins and bank notes;
- (j) "current account transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,—
 - (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,
 - (ii) payments due as interest on loans and as net income from investments,
 - (iii) remittances for living expenses of parents, spouse and children residing abroad, and
 - (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;
- (k) "Director of Enforcement" means the Director of Enforcement appointed under sub-section (1) of section 36;
- (l) "export", with its grammatical variations and cognate expressions means,—
 - (i) the taking out of India to a place outside India any goods,
 - (ii) provision of services from India to any person outside India;
- (m) "foreign currency" means any currency other than Indian currency;
- (n) "foreign exchange" means foreign currency and includes,—
 - (i) deposits, credits and balances payable in any foreign currency,
 - (ii) drafts, travellers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
 - (iii) drafts, travellers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;
- (o) "foreign security" means any security, in the form of shares, stocks, bonds, debentures, or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;
- (p) "import", with its grammatical variations and cognate expressions, means bringing into India any goods or services;
- (q) "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934;
- (r) "legal practitioner" shall have the meaning assigned to it in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961;

- (s) "member" means a member of the Appellate Tribunal and includes the chairperson thereof;
- (t) "notify" means to notify in the Official Gazette and the expression "notification" shall be construed accordingly;
- (u) "person" includes—
 - (i) an individual,
 - (ii) a Hindu undivided family,
 - (iii) a company,
 - (iv) a firm,
 - (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;
- (v) "person resident in India" means—
 - (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include—
 - (A) a person who has gone out of India or who stays outside India, in either case—
 - (a) for or on taking up employment outside India, or
 - (b) for carrying on outside India a business or vocation outside India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - (B) a person who has come to or stays in India, in either case, otherwise than—
 - (a) for or on taking up employment in India, or
 - (b) for carrying on in India a business or vocation in India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
 - (ii) any person or body corporate registered or incorporated in India,
 - (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
 - (iv) an office, branch or agency outside India owned or controlled by a person resident in India;
- (w) "person resident outside India" means a person who is not resident in India;

- (x) “prescribed” means prescribed by rules made under this Act;
- (y) “repatriate to India” means bringing into India the realised foreign exchange and—
- (i) the selling of such foreign exchange to an authorised person in India in exchange for rupees, or
 - (ii) the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank,
- and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression “repatriation” shall be construed accordingly;
- (z) “Reserve Bank” means the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (za) “security” means shares, stocks, bonds and debentures, government securities as defined in the Public Debt Act, 1944 (18 of 1944), savings certificates to which the Government Savings Certificates Act, 1959 (46 of 1959) applies, deposit receipts in respect of deposits of securities and units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 (52 of 1963) or of any mutual fund and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act;
- (zb) “service” means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;
- (zc) “Special Director (Appeals)” means an officer appointed under ¹[section 17];
- (zd) “specify” means to specify by regulations made under this Act and the expression “specified” shall be construed accordingly;
- (ze) “transfer” includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

COMMENTS

Adjudicating Authority

For the purposes of adjudication in respect of penalties under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers as it may think fit, as the adjudicating authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under section 13 a reasonable opportunity of being heard for the purpose of imposing penalty.

¹ Substituted for “section 18” by Finance Act, 2017 (7 of 2017), w.e.f. 26-5-2017.

Where the Adjudicating Authority is of opinion that the said person is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct the said person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit.

The Central Government shall, while appointing the Adjudicating Authorities under sub-section (1), also specify in the order published in the Official Gazette, their respective jurisdictions. No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government. The said person may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority. Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and—

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code*;

** Now refer sections 229 and 267, respectively of Bharatiya Nyaya Sanhita, 2023.*

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973**.

*** Now refer sections 384 and 385, respectively of Bharatiya Nagarik Suraksha Sanhita, 2023*

Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavour shall be made to dispose of the complaint finally within one year from the date of receipt of the complaint:

PROVIDED that where the complaint cannot be disposed of within the said period, the Adjudicating Authority shall record periodically the reasons in writing for not disposing of the complaint within the said period.

Appellate Tribunal

Under section 18, the Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and Special Director (Appeals) under the Act.

Authorised person

The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

An authorisation under this section shall be in writing and shall be subject to the conditions laid down therein. An authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that—

(a) it is in public interest so to do; or

(b) the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder, no such authorisation shall be revoked on any ground referred to in clause (b) unless the authorised person has been given a reasonable opportunity of making a representation in the matter.

An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.

An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.

Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorised person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

Bench

The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and the Special Director (Appeals) under this Act.

Capital account transaction

Sub-section (3) of section 6 says, without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following:—

- (a) transfer or issue of any foreign security by a person resident in India;
- (b) transfer or issue of any security by a person resident outside India;
- (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- (d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- (f) deposits between persons resident in India and persons resident outside India;
- (g) export, import or holding of currency or currency notes;
- (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred—
 - (i) by a person resident in India and owed to a person resident outside India; or
 - (ii) by a person resident outside India.

Chartered accountant

Under section 2(1)(b) of the Chartered Accountants Act, 1949, a chartered accountant is a person who is a member of the Institute of Chartered Accountants of India constituted under that Act.

Currency

Currency means, money and such bank notes or other paper money as are authorized by law and do in fact circulate from hand to hand as the medium of exchange. Certificates of deposit are “currency”—*State ex rel. Cole v. Trimble*, 307 Mo. 57, 269, S.W. 959, 961; *Millikan v. Security Trust Co.*, 187 Ind. 307, 118, N.E. 568, 570. *Gold certificate held “currency”*. *Nortz v. U.S.*, Ct.Cl., 294 U.S. 317, 55 S.Ct. 428, 79 L.Ed. 907, 907 A.L.R. 1346.

The term “money” is synonymous with “currency” and imports any currency, token, bank notes, or other circulating medium in general use as the representative of value.—*People v. Miller* 292 Ill.App. 643, 11 N.E. 2d 827

Under section 2(f) of the Foreign Exchange Regulation Act, 1973, “currency” includes all coins, currency notes, bank notes, postal orders, money orders, cheques, drafts, travellers’ cheques, letters of credit, bills of exchange and promissory notes.

Director of enforcement

Under section 36(1), the Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purpose of this Act.

Without prejudice to provisions of sub-section (1), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

Subject to the conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

Foreign currency

“Foreign currency” means any currency other than Indian currency within the meaning of section 2(g) of the Foreign Exchange Regulation Act, 1973.

Foreign exchange

Section 2(h) of the Foreign Exchange Regulation Act, 1973 defined “foreign exchange” means foreign currency and includes—

- (i) all deposits, credits and balance, payable in any foreign currency and any drafts, travellers’ cheques, letters of credit and bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency;
- (ii) any instrument payable, at the option of the drawee or holder thereof or any other party thereto, either in Indian currency or in foreign currency or partly in one and partly in the other.

Foreign security

Under section 2(i) of the Foreign Exchange Regulation Act, 1973, “foreign security” meant any security created or issued elsewhere than in India, and any security the principal of or interest on which is payable in any foreign currency or elsewhere than in India.

Indian currency

Section 28A of the Reserve Bank of India Act, 1934 dealing with the issue of special bank notes and special one rupee notes says : For the purpose of controlling the circulation of bank notes without India, the Bank may, notwithstanding anything contained in any other provision of this Act, issue bank notes of such design, form and material as may be approved under sub-section (3) (hereinafter in this section referred to as special bank notes) of the denominational values of five rupees, ten rupees and one hundred rupees.

For the purpose of controlling the circulation of Government of India one rupee notes without India, the Central Government may, notwithstanding anything contained in any other provision of this Act or in the Currency Ordinance, 1940 (Ordinance 4 of 1940), issue Government of India notes of the denominational value of one rupee of such design, form

and material as may be adopted under sub-section (3) (hereinafter in this section referred to as special one rupee notes).

The design, form and material of the special bank notes shall be such as may be approved by the Central Government after consideration of the recommendations made by the Governor and of the special one rupee notes shall be such as the Central Government may think fit to adopt.

Neither the special bank notes nor the special one rupee notes shall be legal tender in India. The special one rupee note shall be deemed to be included in the expression "rupee coin" for all the purposes of this Act except section 39, but shall be deemed not to be a currency note for any of the purposes of this Act. Where a special bank note is on its face expressed to be payable at a specified office or branch of the Bank, obligation imposed by section 39 shall be only on the specified office or branch and, further, shall be subject to such regulations as may be made under this section. The Bank may, with the previous sanction of the Central Government make regulations to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this section, and, in particular, the manner in which, and the conditions or limitations subject to which—

- (i) bank notes and one rupee notes in circulation in any country outside India may be replaced by special notes issued under this section;
- (ii) any such special notes may be exchanged for any other bank notes or one rupee notes.

Legal practitioner

Under section 2(i) of the Advocates Act, 1961, "legal practitioner" means an advocate or vakil of any High Court, a pleader, mukhtar or revenue agent.

CHAPTER II

REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

3. Dealing in foreign exchange, etc.

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—

- (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;
- (b) make any payment to or for the credit of any person resident outside India in any manner;
- (c) receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner;
Explanation : For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;
- (d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Explanation : For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or

drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

COMMENTS

A person who violates the provisions of FEMA to a large extent can be detained under the preventive detention Act, namely COFEPOSA Act. Object of FEMA is also promotion of orderly development and maintenance of foreign exchange market in India. Power of detention is a prevention measure and it does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community.—*Union of India v. Venkateshan S. and Anr., 2002 (81) ECC 1 (SC)*

4. Holding of foreign exchange, etc.

Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

5. Current account transactions

Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction:

PROVIDED that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

COMMENTS

This is a major break through in the regulations of freeing drawal of exchange for current account transactions following the declaration under Article VIII under IMF Regulations.

A cautious approach of imposing reasonable restrictions has been envisaged. To begin with such transactions have been broadly categorised under section 2(5). To simplify the operations, the present transactions have been grouped under three Schedules : Prohibition, Government approval and RBI approval (with increased quantum of exchange for specified purposes). The freedom has however to be exercised with vigilance and RBI has drawn pointed attention of authorised persons to the provisions in section 10(5) of FEMA stating that before undertaking any transaction the authorised dealer has to ask for declaration, information and document to reasonably satisfy himself that the transaction is not designed for any contravention or evasion of the provisions of FEMA. No application form is to be prescribed by RBI in ordinary course.

6. Capital account transactions

(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government, specify—

¹[(a) any class or classes of capital account transactions, involving debt instruments, which are permissible;]

(b) the limit up to which foreign exchange shall be admissible for such transactions:

²[(c) any conditions which may be placed on such transactions:]

1 Substituted by Finance Act, 2015 (20 of 2015), dt. 14-5-2015, w.e.f. 15-10-2019, vide SO 3715(E), dt. 15-10-2019. Prior to substitution, clause (a) read as under:

“(a) any class or classes of capital account transactions which are permissible;”

2 Inserted, *ibid.*

¹[PROVIDED that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.]

²[(2A) The Central Government may, in consultation with the Reserve Bank, prescribe—

- (a) any class or classes of capital account transactions, not involving debt instruments, which are permissible;
- (b) the limit up to which foreign exchange shall be admissible for such transactions; and
- (c) any conditions which may be placed on such transactions.]

³[xxx]

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

(6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

1 Substituted by Finance Act, 2015 (20 of 2015), dt. 14-5-2015, w.e.f. 15-10-2019, vide SO 3715(E), dt. 15-10-2019. Prior to substitution, proviso read as under:

“PROVIDED that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.”

2 Inserted, *ibid*.

3 Omitted, *ibid*. Prior to omission, sub-section (3) read as under:

“(3) Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following:—

- (a) transfer or issue of any foreign security by a person resident in India;
- (b) transfer or issue of any security by a person resident outside India;
- (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- (d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- (f) deposits between persons resident in India and persons resident outside India;
- (g) export, import or holding of currency or currency notes;
- (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred—
 - (i) by a person resident in India and owed to a person resident outside India; or
 - (ii) by a person resident outside India.”

¹[(7) For the purposes of this section, the term “debt instrument” shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.]

7. Export of goods and services

(1) Every exporter of goods shall—

- (a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India;
- (b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.

(2) The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.

(3) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

8. Realisation and repatriation of foreign exchange

Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

9. Exemption from realisation and repatriation in certain cases

The provisions of sections 4 and 8 shall not apply to the following, namely:—

- (a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify;
- (b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;
- (c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;
- (d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising therefrom;

¹ Inserted by Finance Act, 2015 (20 of 2015), dt. 14-5-2015, w.e.f. 15-10-2019.

- (e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and
- (f) such other receipts in foreign exchange as the Reserve Bank may specify.

CHAPTER III AUTHORISED PERSON

10. Authorised person

(1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

(2) An authorisation under this section shall be in writing and shall be subject to the conditions laid down therein.

(3) An authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that—

- (a) it is in public interest so to do; or
- (b) the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder:

PROVIDED that no such authorisation shall be revoked on any ground referred to in clause (b) unless the authorised person has been given a reasonable opportunity of making a representation in the matter.

(4) An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.

(5) An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.

(6) Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose

or does not surrender it to authorised person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

11. Reserve Bank's powers to issue directions to authorised person

(1) The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.

(2) The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, direct any authorised person to furnish such information, in such manner, as it deems fit.

(3) Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being heard, impose on the authorised person a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

12. Power of Reserve Bank to inspect authorised person

(1) The Reserve Bank may, at any time, cause an inspection to be made, by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, of the business of any authorised person as may appear to it to be necessary or expedient for the purpose of—

- (a) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;
- (b) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so;
- (c) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

(2) It shall be the duty of every authorised person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under sub-section (1), such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct.

CHAPTER IV
CONTRAVENTION AND PENALTIES

13. Penalties

(1) If any person contravenes any provision of this Act, or 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, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

¹[(1A) If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be liable to a penalty up to three times the sum involved in such contravention and confiscation of the value equivalent, situated in India, the Foreign exchange, foreign security or immovable property.

(1B) If the Adjudicating Authority, in a proceeding under sub-section (1A) deems fit, he may, after recording the reasons in writing, recommend for the initiation of prosecution and if the Director of Enforcement is satisfied, he may, after recording the reasons in writing, may direct prosecution by filing a Criminal Complaint against the guilty person by an officer not below the rank of Assistant Director.

(1C) If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be, in addition to the penalty imposed under sub-section (1A), punishable with imprisonment for a term which may extend to five years and with fine.

(1D) No court shall take cognizance of an offence under sub-section (1C) of section 13 except as on complaint in writing by an officer not below the rank of Assistant Director referred to in sub-section (1B).]

(2) Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Explanation : For the purposes of this sub-section, “property” in respect of which contravention has taken place, shall include—

¹ Inserted by Finance Act, 2015 (20 of 2015), dt. 14-5-2015, w.e.f. 9-9-2015.

- (a) deposits in a bank, where the said property is converted into such deposits;
- (b) Indian currency, where the said property is converted into that currency; and
- (c) any other property which has resulted out of the conversion of that property.

14. Enforcement of the orders of Adjudicating Authority

(1) Subject to the provisions of sub-section (2) of section 19, if any person fails to make full payment of the penalty imposed on him under section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.

(2) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudicating Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Adjudicating Authority, for reasons in writing, is satisfied—

- (a) that the defaulter, with the object or effect of obstructing the recovery of penalty, has after the issue of notice by the Adjudicating Authority, dishonestly transferred, concealed, or removed any part of his property; or
- (b) that the defaulter has, or has had since the issuing of notice by the Adjudicating Authority, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(3) Notwithstanding anything contained in sub-section (1), a warrant for the arrest of the defaulter may be issued by the Adjudicating Authority if the Adjudicating Authority is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.

(4) Where appearance is not made pursuant to a notice issued and served under sub-section (1), the Adjudicating Authority may issue a warrant for the arrest of the defaulter.

(5) A warrant of arrest issued by the Adjudicating Authority under sub-section (3) or sub-section (4) may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may for the time being be found.

(6) Every person arrested in pursuance of a warrant of arrest under this section shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

PROVIDED that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

Explanation : For the purposes of this sub-section, where the defaulter is a Hindu undivided family, the karta thereof shall be deemed to be the defaulter.

(7) When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority under this section, the Adjudicating Authority shall give the defaulter an opportunity showing cause why he should not be committed to the civil prison.

(8) Pending the conclusion of the inquiry, the Adjudicating Authority may, in his discretion, order the defaulter to be detained in the custody of such officer as the Adjudicating Authority may think fit or release him on his furnishing the security to the satisfaction of the Adjudicating Authority for his appearance as and when required.

(9) Upon the conclusion of the inquiry, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

PROVIDED that in order to give a defaulter an opportunity of satisfying the arrears, the Adjudicating Authority may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Adjudicating Authority for his appearance at the expiration of the specified period if the arrears are not satisfied.

(10) When the Adjudicating Authority does not make an order of detention under sub-section (9), he shall, if the defaulter is under arrest, direct his release.

(11) Every person detained in the civil prison in execution of the certificate may be so detained,—

- (a) where the certificate is for a demand of an amount exceeding rupees one crore, up to three years; and
- (b) in any other case, up to six months:

PROVIDED that he shall be released from such detention on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison.

(12) A defaulter released from detention under this section shall not, merely by reason of his release, be discharged from his liability for the arrears, but he shall not be liable to be arrested under the certificate in execution of which he was detained in the civil prison.

(13) A detention order may be executed at any place in India in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, 1973(2 of 1974)¹.

²[14A. Power to recover arrears of penalty

(1) Save as otherwise provided in this Act, the Adjudicating Authority may, by order in writing, authorise an officer of Enforcement not below the rank of Assistant Director to recover any arrears of penalty from any person who fails to

¹ Now refer Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023).

² Inserted by Finance Act, 2016 (28 of 2016), dt. 14-5-2016, w.e.f. 22-11-2016 vide GSR 1080(E), dt. 21-11-2016.

make full payment of penalty imposed on him under section 13 within the period of ninety days from the date on which the notice for payment of such penalty is served on him.

(2) The officer referred to in sub-section (1) shall exercise all the like powers which are conferred on the income-tax authority in relation to recovery of tax under the Income-tax Act, 1961 (43 of 1961) and the procedure laid down under the Second Schedule to the said Act shall *mutatis mutandis* apply in relation to recovery of arrears of penalty under this Act.]

15. Power to compound contravention

(1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed.

(2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

CHAPTER V

ADJUDICATION AND APPEAL

16. Appointment of Adjudicating Authority

(1) For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under section 13, against whom a complaint has been made under sub-section (2) (hereinafter in this section referred to as the said person) a reasonable opportunity of being heard for the purpose of imposing any penalty:

PROVIDED that where the Adjudicating Authority is of opinion that the said person is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct the said person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit.

(2) The Central Government shall, while appointing the Adjudicating Authorities under sub-section (1), also specify in the order published in the Official Gazette, their respective jurisdictions.

(3) No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.

(4) The said person may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority.

(5) Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and—

- (a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860)¹;
- (b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974)².

(6) Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavour shall be made to dispose of the complaint finally within one year from the date of receipt of the complaint:

PROVIDED that where the complaint cannot be disposed of within the said period, the Adjudicating Authority shall record periodically the reasons in writing for not disposing of the complaint within the said period.

17. Appeal to Special Director (Appeals)

(1) The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities under this section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.

(2) Any person aggrieved by an order made by the Adjudicating Authority, being an Assistant Director of Enforcement or a Deputy Director of Enforcement, may prefer an appeal to the Special Director (Appeals).

(3) Every appeal under sub-section (1) shall be filed within forty-five days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

PROVIDED that the Special Director (Appeals) may entertain an appeal after the expiry of the said period of forty-five days, if he is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Special Director (Appeals) may after giving the parties to the appeal an opportunity of being heard, pass such order thereon as he thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Special Director (Appeals) shall send a copy of every order made by him to the parties to appeal and to the concerned Adjudicating Authority.

(6) The Special Director (Appeals) shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and—

- (a) all proceedings before him shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860)¹;
- (b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974)².

1 Corresponding to erstwhile Act. Now refer sections 229 and 267, respectively of Bharatiya Nyaya Sanhita, 2023 (45 of 2023).

2 Now refer sections 384 and 385, respectively of Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023).

¹[18. Appellate Tribunal

The Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976), shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.]

19. Appeal to Appellate Tribunal

(1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:

PROVIDED that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall, while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government:

PROVIDED FURTHER that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

PROVIDED that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Special Director (Appeals), as the case may be.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

¹ Substituted by Finance Act, 2017 (7 of 2017), w.e.f. 26-5-2017 vide SO 1696(E), dt. 26-5-2017. Prior to substitution, section 18 read as under:

"18. Establishment of Appellate Tribunal

The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities, Competent Authorities and the Special Director (Appeals) under this Act."

PROVIDED that where any appeal could not be disposed off within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing off the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the Adjudicating Authority under section 16 in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

COMMENTS

Deposit of 50% of penalty amount of Rs. 10 lakhs and submission of Bank guarantee for remaining 50% amount. Waiver of deposit if party has prima facie case. Direction of Tribunal to determine quantum of waiver to be granted. Charges in show-cause notice against Bank of Baroda and PNB of having abetted notice No. 1 in contravention of section 8(1) read with section 64(2) and sections 6(4), 6(5), 49, 73(3) of FERA held to be proved. Penalty of Rs. 10 lakhs on petitioner Bank imposed. Petitioner itself has reasonably good prima facie case, requiring consideration. It is not a case of 'undue financial hardship', as mentioned in proviso of section 19 of FEMA, it should not negate plea of waiver of deposit. Petitioner has required to deposit 50% of penalty amount i.e. sum of Rs. 5 lakhs within 15 days.—*Bank of Baroda v. Appellate Tribunal for Foreign Exchange & Another, 118 (2005) DLT 308*

20. ¹[xxx]

COMMENTS

Certain appeals placed before member of Appellate Tribunal. Application moved before member for transfer of appeals to Division Bench. Member dismissing the applications as no complicated question of law involved to refer to Division Bench. Chairperson, on application moved before him, passing transfer order and referring appeals to Division Bench as they involve complicated questions of fact and law. Exercise of concurrent jurisdiction by Chairperson not permissible under section 20(4).—*Directorate of Enforcement v. Appellate Tribunal for Foreign Exchange, 108 (2003) DLT 1*

¹ Omitted by Finance Act, 2017 (7 of 2017), w.e.f. 26-5-2017 vide SO 1696(E), dt. 26-5-2017. Prior to omission, section 20 read as under:

“20. Composition of Appellate Tribunal

- (1) The Appellate Tribunal shall consist of a Chairperson and such number of Members as the Central Government may deem fit.
- (2) Subject to the provisions of this Act,—
 - (a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;
 - (b) a Bench may be constituted by the Chairperson with one or more Members as the Chairperson may deem fit;
 - (c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, notify;
 - (d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.
- (3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.
- (4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.”