



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

R.K. Moolchandani
Chief General Manager

Date: May 23, 2019
CA No. 4885/2019

In the matter of

Microfinish Valves Private Limited
B-161/162, Industrial Estate
Gokul Road, Hubli - 580030

(Applicant)

In exercise of the powers conferred under section 15(1) of the Foreign Exchange Management Act, 1999 and the Regulations/Rules/Notifications/ Orders made there under, I pass the following

Order

The applicant has filed a compounding application dated January 30, 2019 (received in the Reserve Bank of India on February 01, 2019), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The applicant has sought to be compounded for (i) delay in receipt of share certificate beyond the stipulated time period of six months and (iii) delay in submission of Annual Performance Report (APR), beyond the stipulated time period, in contravention of Regulations 15(i) and 15(iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB dated July 7, 2004, as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB).



2. The relevant facts of the case are as follows: The applicant company was incorporated as Microfinish Valves Pvt. Ltd. (CIN U29120KA1983PTC005209), under the Companies Act, 1956, on March 10, 1983. It changed its name to Microfinish Valves Ltd. on June 14, 1996 and back to Microfinish Valves Pvt. Ltd. on July 14, 2005. The applicant company is engaged in the business of manufacture of industrial ball valves.

The applicant company incorporated a wholly owned subsidiary (WOS), namely, Microfinish Valves Inc. in United States of America in June 2010. The applicant company made overseas direct investment (ODI), to the extent of USD 1,382,000, in the WOS from June 2010 to April 2013. However, out of the abovementioned investment, share certificates for the ODI related remittances to the extent of USD 1,381,000 (Rs. 6,65,41,206/-) were received on December 22, 2017, with a delay beyond the prescribed period of 6 months, in contravention of Regulation 15(i) of Notification No. FEMA 120-RB. The details of such transactions are as follows:

S.No.	Amount of remittance (INR)	Date of remittance	Date of receipt of share certificate
1	2261840	28.06.2010	22.12.2017
2	2354000	19.07.2010	22.12.2017
3	2324000	03.09.2010	22.12.2017
4	2684400	12.10.2010	22.12.2017
5	2887950	02.11.2010	22.12.2017
6	2939300	10.12.2010	22.12.2017
7	3642400	18.01.2011	22.12.2017
8	6825000	14.02.2011	22.12.2017
9	2272500	05.04.2011	22.12.2017
10	887900	21.04.2011	22.12.2017
11	2660400	03.05.2011	22.12.2017
12	1114250	05.05.2011	22.12.2017
13	2704800	17.05.2011	22.12.2017



14	1378200	03.06.2011	22.12.2017
15	1789200	30.06.2011	22.12.2017
16	1153175	06.09.2011	22.12.2017
17	987600	08.11.2011	22.12.2017
18	1268500	15.11.2011	22.12.2017
19	738192	17.02.2012	22.12.2017
20	1723586	22.02.2012	22.12.2017
21	1261500	10.03.2012	22.12.2017
22	1281913	09.04.2012	22.12.2017
23	5438800	14.12.2012	22.12.2017
24	4108298	31.12.2012	22.12.2017
25	1884803	24.01.2013	22.12.2017
26	3246600	13.03.2013	22.12.2017
27	4722099	29.04.2013	22.12.2017
Total	6,65,41,206		

Further, the applicant company reported APRs for the years 2012, 2013 and 2015 with a delay beyond the stipulated time period, in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB.

3. Regulation 15(i) of Notification No. FEMA 120/2004-RB states that, “An Indian Party, which has acquired foreign security in terms of the Regulations in Part I, shall receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months.....from the date of effecting remittance....”

Further, Regulation 15(iii) of the said Notification obliges the Indian Party to “submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before a specified date, an Annual Performance Report (APR) in Part III of Form ODI, as prescribed by the Reserve Bank from time to time, in respect of each JV or WOS outside India....”



4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/6402/15.20.67/2018-19 dated April 26, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on May 10, 2019 during which Shri Tilak. K. Vikamshi, Chairman of the Board of the applicant company, represented the applicant. The representative of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to ignorance and requested that a lenient view may be taken in the matter.

It has been declared in the compounding application dated January 30, 2019, that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has also been declared in the declaration submitted along with the compounding application that the applicant was not under any enquiry/investigation/adjudication by any agency as on the date of the application and has, in this regard, not been informed of initiation of any such enquiry/investigation/adjudication proceedings against them thereafter. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made by the applicant and this order is without prejudice to any other action which may be taken by any authority under the extant laws if the said declarations are subsequently discovered to be false and/or incorrect.

The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Regulations 15(i) and 15(iii) of Notification No. FEMA 120/2004-RB. The amounts and periods of contravention are as follows:

Regulation 15(i): Amount of contravention – Rs. 6,65,41,206/- and period of contravention ranges from 3 years and 8 months to 7 years and 3 months approximately.



Regulation 15(iii): As stated in paragraph 2 above.

6. In terms of Section 13 of the FEMA, any person contravening any provision of the Act shall be liable to a penalty up to thrice the sum involved in such contravention upon adjudication. However, taking into account the relevant facts and circumstances of the case as stated in the foregoing paragraphs, I consider that an amount of Rs. 17,40,000/- (Rupees seventeen lakh forty thousand only) will meet the ends of justice.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulations 15(i) and 15(iii) of Notification No. FEMA 120/2004-RB, by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs. 17,40,000/- (Rupees seventeen lakh forty thousand only), which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai 400001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at "Mumbai" within a period of 15 days from the date of this order. In case of failure to deposit the compounded amount within the above mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 dated May 3, 2000 shall apply.

The application is disposed of accordingly.

Dated this the 23rd day of May, 2019

Sd/-
(R.K. Moolchandani)
Chief General Manager