



In the

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

Present

S.Arumugam
Assistant General Manager

Date: December 11, 2018
CA No 4727 / 2018

In the matter of

Tavisca Solutions Pvt Ltd
7th Floor, B Block,
Weikfield IT Citi Info Park Nagar Road
Pune-411014

(Applicant)

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

Order

The applicant has filed the application dated June 13, 2018 (received at the Reserve Bank on June 15, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) Delay in receipt of Share Certificate (ii) Delay in submission of APRs within the stipulated time period (iii) Delay in submission of ODI Form Part I and (iv) Method of Funding of ODI through cash. The above amount to the contravention of Regulations 15(i), 15(iii), 6(2) (vi), and 6(3) 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 are as under: The applicant Tavisca Solutions Private Limited is a Company incorporated in the year 2008, in India under the Companies Act, 1956 (CIN: U72100PN2008PTC13221). The applicant is engaged in the business of Software/hardware development, maintenance, up gradation, installation, distribution consultation etc. The applicant set-up a wholly owned subsidiary (WOS), Tavisca LLC, a newly incorporated company located at 3422, Old Capital Trail, suite 700, Wilmington, DE 19808-6192, USA. The applicant had remitted USD 500(INR 30,766) on January 17, 2014 towards investment in the WOS. Mr Mahendra Yadav, Managing Director of the applicant company had invested USD 500(INR 30,766) towards capital investment in Cash in the overseas WOS on January 17, 2014. The applicant reported Form ODI part I for the transaction, with delay in August 12, 2016 which is not in compliance with the Regulation 6(2)(vi) of Notification No. FEMA 120/RB-2004 dated July, 2004 as amended from time to time. Further, the applicant had made ODI by way of cash deposit which is not a permitted method of funding and hence not in compliance with Regulation 6 (3) of the Notification *ibid*. While the amount of foreign exchange carried abroad by the Managing Director of the applicant company for a business trip was within the permissible limit in this case, direct payment by cash in foreign exchange is not a permissible mode of remittance for making remittance overseas direct investment (ODI). In view of the relatively small amount involved in the first (and till date the only) ODI transaction by the applicant and other bona fide of the case - including the fact that the foreign exchange was acquired by the applicant company in India through banking channels, the contravention has been found eligible to be admitted for compounding.

The applicant had reported Annual Performance Reports (APRs) for the period 2015 to 2017 with delay on August 17, 2017, contravening Regulation 15 (iii) of



Notification *ibid*. The applicant has received the certificate for the investment from Tavisca LLC on September 30, 2014 which is beyond the stipulated time of six months as prescribed in the Regulation 15(i) of the Notification *ibid*.

3. In terms of Regulation 6(2)(vi) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, Overseas Direct Investment is permitted in certain cases provided “ the Indian Party submits Part I of the Form ODI, duly completed, to the designated branch of an authorized dealer”.

Further, in terms of Regulation 6(3) of Notification *ibid* “Investment under this Regulation may be funded out of one or more of the following sources, namely:

- (i) Out of the balance held in Exchange Earners’ Foreign Currency account of the Indian Party maintained with an authorized dealer in accordance with Regulation 4 of Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2000;
- (ii) drawal of foreign exchange from an authorized dealer in India shall not exceed 100% or as decided by the Reserve Bank from time to time, of the networth of the Indian Party as on the date of last audited balance sheet.....

In terms of Regulation 15(i) of Notification *ibid* “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, or such further period as Reserve Bank may permit, from the date of effecting remittance.....”

Further, Regulation 15 (iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, states that, “An Indian Party which has acquired foreign security in terms of the Regulation in Part I shall 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 in respect of each JV or WOS outside India.....”.



4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA.No./2288/15.20.67/2018-19 dated October 19, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on November 14, 2018 during which Mr CS Kuldeep D Ruchandani, Partner, KPRC & Associates, Company secretaries, Pune, represented the applicant. The representative, of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations and was unintentional. 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. It was observed that the applicant has contravened the provisions of Regulations 6(2) (vi), 6 (3), 15(i) and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount and period of contravention is as under:

Sl.No	Nature of Contravention	Regulation	Amt in INR	Period of contravention
1	Delay in receipt of share certificate	Regulation 15(i) of Notification.No.FEM A.120/RB-2004 dated July 07, 2004	30,766	3 months
2	Delay in submission of APRs	Regulation 15(iii) of Notification.No.FEM A.120/RB-2004 dated July 07, 2004	30,766	34 months
3	Delay in Submission of Form ODI	Regulation 6(2)(vi) of Notification.No.FEM	30,766	31 months



		A.120/RB-2004 dated July 07, 2004		
4	Method of Funding	Regulation 6(3) of Notification.No.FEM A.120/RB-2004 dated July 07, 2004	30,766	34 months

6. It has been declared in the compounding application dated June 13, 2018, that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been declared in the Annex III of the Compounding Application dated June 13, 2018, that the applicant was not under any enquiry/investigation/adjudication by any agency as on the date of the application. 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.

7. 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. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of Rs. 17,819/- (Rupees Seventeen thousand eight hundred and nineteen), will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulations 6(2)(vi), 6(3), 15(i) and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 17,819 (Rupees Seventeen thousand



eight hundred and nineteen 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 accordingly.

Dated this the eleventh day of December, 2018

Sd/-

(S Arumugam)
Assistant General Manager