



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: January 16, 2019
CA No 4764 / 2018

In the matter of

Zensar Technologies Limited
Zensar Knowledge Park, Plot No. 4, MIDC
Kharadi, Off. 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 thereunder, I pass the following

Order

The applicant company has filed the application dated August 06, 2018 (received in the Reserve Bank on August 16, 2018), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The applicant company has sought to be compounded for non-repatriation of dues receivables from the foreign entity to India within the prescribed period and disinvestment of stakes in WOS, without prior RBI approval, with (i) outstanding



dues and (ii) ongoing DoE investigation, in contravention of Regulation 15 (ii), Regulation 16(3) read with 16(1A)(ii) further read with 16(1)(iv) and Regulation 16(3) read with 16(1A)(ii) further read with 16(1)(vi) 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 company was incorporated as International Computers and Tabulators Indian Manufacturing Company Limited (CIN L72200PN1963PLC012621), under the Companies Act, 1956, on March 29, 1963. The name of the applicant company was changed to International Computers Indian Manufacture Limited on July 08, 1968; then to Fujitsu ICIM limited on August 10, 1994; and finally to Zensar Technologies Limited on August 13, 2001. The applicant company is engaged in the business of computers and software.

The applicant company set up a JV in Japan namely Zensar Advanced Technologies Limited (ZATL) in 2007 which was subsequently converted into WOS. Due to consistent losses and negative net worth, the applicant company decided to liquidate the WOS. The applicant company disinvested the WOS involving write off without obtaining prior approval from RBI when the receivables were due from WOS. This is in contravention of Regulation 16(3) read with 16(1A)(ii) further read with 16(1)(iv) of Notification No. FEMA 120/2004-RB.

Non-repatriation of dues receivable from the foreign entity to India within 60 days of its falling due is in contravention of Regulation 15(ii) of Notification No. FEMA 120/2004-RB

Further, the applicant company had also contravened Regulation 16(3) read with 16(1A)(ii) further read with 16(1)(vi) of Notification *ibid*, by not taking prior RBI approval before disinvestment when the applicant company was under DoE investigation. The disinvestment was taken on record by RBI on November 9, 2018, thereby completing the administrative action.



3. In terms of Regulation 15(ii) of Notification No.FEMA.120/2004-RB, “An Indian Party, which has acquired foreign security in terms of the Regulations in Part I, shall- repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due, or such further period as the Reserve Bank may permit”.

According to Regulation 16(1A)(ii) of Notification No.FEMA.120/2004-RB, “in the following cases, an Indian Party may disinvest, if the amount to be repatriated on disinvestment is less than the amount of the original investment: provided such disinvestments shall be subject to the conditions listed in clauses (ii) to (vi) of sub-regulation (1) of Regulation 16”.

According to Regulation 16(1)(iv) of Notification No.FEMA.120/2004-RB, “An Indian Party may transfer, by way of sale to another Indian Party which complies with the provisions of Regulation 6 above, or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions: the Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and/or export proceeds from the JV or WOS”.

According to Regulation 16(1)(vi) of Notification No.FEMA.120/2004-RB, “An Indian Party may transfer, by way of sale to another Indian Party which complies with the provisions of Regulation 6 above, or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions: the Indian party is not under investigation by CBI/DoE/SEBI/IRDA or any other regulatory authority in India.”

Further, according to Regulation 16(3) of Notification No.FEMA.120/2004-RB, “An Indian party, which does not satisfy the criteria specified at sub-regulation (1) above, shall apply to the Reserve Bank for permission to transfer by way of sale of shares of a JV/WOS outside India which may be granted subject to such conditions as the Reserve Bank may consider appropriate”.

4. The applicant company was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/3099/15.20.67/2018-19 dated November 27, 2018 for further submission in person and/or producing documents, if any, in support



of the application. The personal hearing was held on December 05, 2018 during which Shri Rajiv Mundhra, Assistant Vice President and Shri Rohit Rai, Senior Manager, Treasury represented the applicant company. The representative of the applicant company submitted that the applicant company 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 also been declared in the compounding application dated August 06, 2018, that the particulars given by the applicant company in the application are true and correct to the best of their/his/her knowledge and belief. It has also been declared in the declaration furnished along with the compounding application that summons have been issued to the applicant company by the Directorate of Enforcement (DoE). The DoE, vide their letter ref No. F.No. RBI/SDE/WR/B-190/2018/3569 dated 13.12.2018, has stated that it has no objection on RBI initiating action on the application under compounding procedure for the contraventions under FEMA, 1999. This order is thus in accordance with the no-objection given by DoE and without prejudice to any action that may be taken by DoE because of the ongoing investigations.

It has further been declared that the applicant company has not filed any appeal under section 17 or section 19 of FEMA, 1999. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of all the above declarations made by the applicant company 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 company during the personal hearing. It was observed that the applicant company has contravened the provisions of Regulation 15(ii), Regulation 16(3) read with 16(1A)(ii) further read with 16(1)(iv) and Regulation 16(3) read with 16(1A)(ii) further read with 16(1)(vi) of



Notification No.FEMA.120/2004-RB. The amount and period of contravention is as follows:

(i) Regulation 15 (ii): Amount of contravention: Rs. Rs. 15,55,04,959/- and period of contravention is four years eight months approximately;

(ii) Regulation 16(3) read with 16(1A)(ii) further read with 16(1)(iv): Amount of contravention: Rs. 15,55,04,959/- and period of contravention is three years eight months approximately;

(iii) Regulation 16(3) read with 16(1A)(ii) further read with 16(1)(vi): Amount of contravention: Rs. 1,85,81,800/- and period of contravention is three years eight months approximately.

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. After considering the submissions made by the applicant company 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. Rs. 23,70,099/- (Rupees twenty three lakh seventy thousand and ninety nine only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant company namely, Regulations 15(ii), Regulation 16(3) read with 16(1A)(ii) further read with 16(1)(iv) and Regulation 16(3) read with 16(1A)(ii) further read with 16(1)(vi) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 23,70,099/- (Rupees twenty three lakh seventy thousand and ninety nine only), which shall be deposited by the applicant company 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 sixteenth day of January, 2019

Sd/-

(R K Moolchandani)
Chief General Manager