



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 09, 2019
CA No 4818 / 2018

In the matter of

Laqshya Media Limited
Jaganlaxmi, Laqshya House
Next to Rameshwar Temple
Saraswati Baug Society Road
Jogeshwari (East), Mumbai - 400060

(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 has filed the application dated November 13, 2018 (received in the Reserve Bank on November 14, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder, for (i) breach of the net-worth limit for total financial commitment under Overseas Direct Investment (ODI) regulations (ii) delay in filing Form ODI with respect to reporting of issuance of guarantee (iii) issuance of open-ended guarantee (iv) issuance of guarantee on behalf of



step-down subsidiary (SDS) when it was not enabled under the ODI regulations (v) non-reporting of setting up of SDS within the stipulated time period (vi) non-submission of Annual Performance Reports (APR) within the stipulated time period and (vii) disinvestment with write-off - without prior RBI approval, in contravention of Regulations 6(2)(i), 6(2)(vi), 6(3)(ii)(c), 6(4)(i), 13, 15(iii) and 16A(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 company was incorporated as Laqshya Media Pvt. Ltd. (CIN U74300MH1997PLC105548), under the Companies Act, 1956, on January 31, 1997. It changed its name to Laqshya Media Ltd. (LML) on September 27, 2017. The applicant company is engaged in the business of advertising and content development for all kinds of media.

The applicant company incorporated a wholly owned subsidiary (WOS), namely, Laqshya Media International, Mauritius (LMI) on December 04, 2006, which is an investment (holding) company. LMI holds 75% of the share capital of Gulf Media Holding, Mauritius (GMH), which is also an investment (holding) company. The remaining 25% of the equity share capital of GMH is held by AK VII Limited (Amwal). GMH holds 100% stake in Arab Media Holding (AMH), Mauritius, which further holds 100% stake in Right Angle Media FZ-LLC (RAM), UAE. At the time of Amwal's investment in GMH, RAM was a directly held WOS of GMH and subsequently was indirectly held subsidiary since 2009-10. Pursuant to the Share Subscription Agreement (SSA), dated 28.05.2007, entered into among GMH, Amwal, LMI, RAM, Mr. Alok Jalan (promoter of the applicant company) and Mr. Anup Jalan (former promoter of the applicant company, who is no longer associated with the applicant company), Amwal invested AED 137.5 million (INR 180,15,25,000) in GMH for acquisition of 25% of its share capital. A Shareholders' Agreement (SHA) was signed on 03.06.2007 - which was amended on 17.06.2009. Under the SHA, Amwal had the right to exercise a put option if the IPO of GMH was not successfully



completed before the fifth anniversary of signing of SHA (i.e., June 04, 2012). Upon exercise of the put option, the applicant was required to purchase Amwal's share capital of GMH for an amount equal to AED 137.5 million. In furtherance of the SHA, LML executed an Indemnity Agreement on 17.06.2009 undertaking to indemnify Amwal against all losses (upto a maximum of AED 137.5 million less any realized distribution amounts) in relation to or as a result of failure of the applicant or GMH to comply with any of their respective obligations under the SHA.

The entering into the abovementioned Indemnity Agreement was akin to issuing a guarantee. Issuance of a guarantee on behalf of step down subsidiary (in this case, GMH) was not permitted in 2009 (was enabled only vide circular dated 27.05.2011). The issuance of guarantee was thus in contravention of Regulation 6(4)(i) of Notification No. FEMA 120/2004-RB. At the time of issuance, the guarantee was 'open-ended' one and thus in contravention of Regulation 6(3)(ii)(c) of Notification No. FEMA 120/2004-RB. The applicant later provided an end date of 31.12.2030 for the guarantee which was taken on record by RBI on 04.01.2019. Further, the issuance of the guarantee was not reported in Form ODI Part I within the stipulated time period of 30 days, in contravention of Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB. The online reporting was done on 07.05.2018. The issuance of the guarantee also led to a breach of the limit of 400% of net worth, for total financial commitment. The abovementioned limit was breached on three other occasions, in contravention of Regulation 6(2)(i) of Notification No. FEMA 120/2004-RB. The requisite reporting for setting up of SDS (RAM), on 04.01.2007, was done only on 02.02.2018, beyond the stipulated time period of 30 days, in contravention of Regulation 13 of Notification No. FEMA 120/2004-RB. Further, the submission of APRs for the years 2007 to 2013 and 2016 to 2017 was delayed beyond the stipulated time period, in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB. Lastly, the applicant wrote off certain receivables to the extent of INR 27,00,08,108/-, on 31.01.2017, without prior approval of the Reserve Bank of India, in contravention of Regulation 16A(3) of Notification No. FEMA 120/2004-RB. The post facto approval for the same was provided on 11.01.2019.



3. Regulation 6(2)(i) of Notification No.FEMA.120/2004-RB prescribes the limit for total financial commitment as a percentage of net-worth for making ODI.

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

Regulation 6(3)(ii)(c) of the same Notification prohibits the issuance of open-ended guarantees.

According to Regulation 6(4)(i) of the same Notification, as then applicable, An Indian Party may extend a loan or a guarantee to or on behalf of the Joint Venture/Wholly Owned Subsidiary abroad, within the permissible financial commitment, provided that the Indian Party has made investment by way of contribution to the equity capital of the Joint Venture”.

Further, in terms of Regulation 13 of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, "A JV/WOS set up by the Indian party as per the Regulations may diversify its activities/ set-up step-down subsidiaries/ alter the shareholding pattern of the overseas entity: Provided the Indian Party reports to the Reserve Bank, the details of such decisions taken by the JV/WOS within 30 days of the approval of those decisions by the competent authority concerned of such JV/WOS in terms of local laws of the host country, and, include the same in the Annual Performance Report required to be forwarded annually to the Reserve Bank in terms of Regulation 15”.

Further, in terms of Regulation 15 (iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, “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.....”.

Finally, Regulation 16A(3) of the same Notification as mentioned above, states that, “An unlisted Indian party, who has set-up WOS abroad or has at least 51 percent stake in an overseas JV, is permitted to write-off capital and other



receivables up to 25 percent of the equity investment in the JV/WOS under the Approval Route”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/6405/15.20.67/2018-19 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 07, 2019 during which Shri Vijay Agarwal, Chief Financial Officer of the applicant and Ms. Ritcha R.A., Company Secretary, represented the applicants. The representatives 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 November 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 also been declared in the declaration furnished 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 it/him/her 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. It was observed that the applicant has contravened the provisions of Regulations 6(2)(i), 6(2)(vi), 6(3)(ii)(c), 6(4)(i), 13, 15(iii) and 16A(3) of Notification



No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amounts and periods of contravention are as follows:

- (i) Regulation 6(2)(i) – Amount of contravention – Rs. 101,79,00,000/- and period of contravention is four months approximately
- (ii) Regulation 6(2)(vi) – Amount of contravention – Rs. 180,15,25,000/- and period of contravention is eight years and ten months approximately
- (iii) Regulation 6(3)(ii)(c) – Amount of contravention – Rs. 180,15,25,000/- and period of contravention is nine years and seven months approximately
- (iv) Regulation 6(4)(i) - Amount of contravention – Rs. 180,15,25,000/- and the period of contravention is two years approximately.
- (v) Regulation 13 - Amount of contravention – Rs. 11,86,00,000/- and the period of contravention is one year approximately.
- (vi) Regulation 15(iii) – As given in Para 2 above.
- (vii) Regulation 16A(3) - Amount of contravention – Rs. 27,00,08,108/- and period of contravention is two years 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 and the entire facts and circumstances of the case, it stands to reason that payment of an amount of Rs. 1,20,67,671/- (Rupees one crore twenty lakh sixty seven thousand six hundred and seventy one 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 namely, Regulations 6(2)(i), 6(2)(vi), 6(3)(ii)(c), 6(4)(i), 13, 15(iii) and 16A(3) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 1,20,67,671/- (Rupees one crore twenty lakh sixty seven thousand six hundred and seventy one 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 09th day of May, 2019

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