



In the

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

Present

**R.K. Moolchandani**  
**Chief General Manager**

Date: June 12, 2019  
CA No 4853 / 2018

In the matter of

**Mahajan Overseas Private Limited**  
**B-1/F8 Mohan Co-operative Industrial Estate**  
**Mathura Road, New Delhi - 110044**

**(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 December 28, 2018 (received in the Reserve Bank on the same day) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder, for (i) getting an SBLC issued in favour of its step down subsidiary (SDS), without prior approval of the Reserve Bank of India (ii) delay in filing Form ODI with respect to reporting of issuance of the SBLC (iii) renewal of SBLC (which formed a part of the financial commitment) when the submission of Annual Performance Report (APR) was pending (iv) delay in receipt of share certificates - beyond the stipulated time period and (v)



delay in submission of APR beyond the stipulated time period, in contravention of Regulations 6(3)(ii)(i), 6(2)(vi), 6(2)(iv), 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 are as under: The applicant was incorporated as Mahajan Construction Private Limited (CIN U52110DL1981PTC012364), under the Companies Act, 1956, on 21.09.1981. Its name was subsequently changed to Mahajan Overseas Private Limited on 09.08.1984. The applicant is engaged in the business of manufacture and export of handicrafts, home furnishings, textile items etc.

A wholly owned subsidiary (WOS) of the applicant, namely Mahajan Hongkong Limited, was incorporated in Hongkong on 19.05.2008. The WOS further incorporated a step-down subsidiary of the applicant in Canada on 09.10.2008. The applicant company extended an SBLC amounting to USD 500,000 (INR 3,54,60,000) in favour of the SDS on 06.01.2010. The SBLC was renewed four times beginning 30.08.2012, without prior approval of RBI, in contravention of Regulation 6(3)(ii)(i) of Notification No. FEMA 120/2004-RB. The issuance of SBLC was ratified by the Bank and taken on record on 27.11.2018. Further, the renewal of SBLC was reported in Form ODI beyond the stipulated time period, thereby contravening Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB. The SBLC, which formed a part of the financial commitment, was renewed when the submission of Annual Performance Reports (APRs) for the year 2012-13 was pending, thereby contravening Regulation 6(2)(iv) of the abovementioned Notification. Also, the share certificates, for remittances sent on 26.05.2008 and 29.10.2009, were received on 27.01.2012, with a delay beyond the stipulated time period, which is in contravention of Regulation 15(i) of Notification No. FEMA 120/2004-RB. Further, there was a delay in submission of APRs for the years 2009 to 2018, in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB.



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3,54,60,000) in favour of the SDS on 06.01.2010. The SBLC was renewed four times beginning 30.08.2012, without prior approval of RBI, in contravention of Regulation 6(3)(ii)(i) of Notification No. FEMA 120/2004-RB. The issuance of SBLC was ratified by the Bank and taken on record on 27.11.2018. Further, the renewal of SBLC was reported in Form ODI beyond the stipulated time period, thereby contravening Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB. The SBLC, which formed a part of the financial commitment, was renewed when the submission of Annual Performance Reports (APRs) for the year 2012-13 was pending, thereby contravening Regulation 6(2)(iv) of the abovementioned Notification. Also, the share certificates, for remittances sent on 26.05.2008 and 29.10.2009, were received on 27.01.2012, with a delay beyond the stipulated time period, which is in contravention of Regulation 15(i) of Notification No. FEMA 120/2004-RB. Further, there was a delay in submission of APRs for the years 2009 to 2018, in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB.

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A wholly owned subsidiary (WOS) of the applicant, namely Mahajan Hongkong Limited, was incorporated in Hongkong on 19.05.2008. This overseas WOS further incorporated an overseas SDS of the applicant in Canada on 09.10.2008. The applicant company extended an SBLC amounting to USD 500,000 (INR 3,54,60,000) in favour of the SDS on 06.01.2010. The SBLC was renewed four times beginning 30.08.2012, without prior approval of RBI, in contravention of Regulation 6(3)(ii)(i) of Notification No. FEMA 120/2004-RB. The issuance of SBLC was ratified by the Reserve Bank and taken on record on 27.11.2018. Further, the renewal of SBLC was reported in Form ODI with delay beyond the stipulated time period, thereby contravening Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB. The SBLC, which formed a part of the financial commitment under ODI, was renewed when the submission of Annual Performance Reports (APRs) for the year 2012-13 was pending,



thereby contravening Regulation 6(2)(iv) of the abovementioned Notification. Also, the share certificates, for remittances sent on 26.05.2008 and 29.10.2009, were received on 27.01.2012, with a delay beyond the stipulated time period, which is in contravention of Regulation 15(i) of Notification No. FEMA 120/2004-RB. Further, there was a delay in submission of APRs for the years 2009 to 2018, in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB.

3. Regulation 6(3)(ii)(i) of Notification No.FEMA.120/2004-RB prescribes for the issuance of a bank guarantee on behalf of JV (Joint Venture) or WOS under automatic route. Thus, issuance of a bank guarantee in favour of SDS, is not permitted without prior approval of the Reserve Bank.

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(2)(iv) allows for overseas direct investment provided that, “The Indian party has submitted Annual Performance Report in respect of all its overseas investments.....as prescribed by the Reserve Bank from time to time.” Further, in terms of Regulation 15(i) of Notification No.FEMA.120/2004-RB, “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”.

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.....”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/6889/15.20.67/2018-19 dated May 23, 2019 for further submission in person and/or producing documents, if any, in support of the application. In the absence of the Compounding Authority, owing to administrative exigencies, a meeting was held with an official of the Bank acting as a representative of the Compounding Authority on June 06, 2019, during which Shri Aman Gulati, Director-Finance of the applicant represented the applicants. The representative of the applicant submitted that they could not comply with FEMA regulations as they were not suitably advised by their AD bank and requested that a lenient view may be taken in the matter. Since the personal hearing with the Compounding Authority could not be held, the representative of the applicant was offered another mutually convenient date for personal hearing. However, he stated that being satisfied with the meeting held with the RBI official, he was willing to forego the opportunity for personal hearing. He, further, followed it up with a mail dated June 10, 2019, confirming this position.

It has been declared in the compounding application dated December 28, 2018, 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 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 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 meeting with the official of RBI acting as a representative of the Compounding Authority.

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(3)(ii)(i), 6(2)(vi), 6(2)(iv), 15(i) and 15(iii) of Notification No.FEMA.120/2004-RB. The amounts and periods of contravention are as follows:

(i) Regulations 6(3)(ii)(i), 6(2)(vi) and 6(2)(iv) – Amount of contravention – Rs. 3,54,60,000/- and period of contravention ranges from two years and nine months to six years and five months approximately

(ii) Regulation 15(i) – Amount of contravention – Rs. 6,08,020/- and period of contravention ranges from one year nine months to three years two months approximately

(vi) Regulation 15(iii) – As given in Para 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. 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. 8,98,710/- (Rupees eight lakh ninety eight thousand seven hundred and ten 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(3)(ii)(i), 6(2)(vi), 6(2)(iv), 15(i) and 15(iii) of Notification No.FEMA.120/2004-RB, on payment of a sum of Rs. 8,98,710/- (Rupees eight lakh ninety eight thousand seven hundred and ten 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 12th day of June, 2019

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