



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: March 13, 2019
CA No 4798 / 2018

In the matter of

SKJ Goods Private Limited
101, E-36, Jawahar Park Delhi
Delhi-110092

(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 October 10, 2018 (received at the Reserve Bank on October 22, 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 or any other document as an evidence of investment in the foreign entity (ii) Delay in submission of



Annual Performance Reports (APRs) within the stipulated time period and (iii) Disinvestment without the submission of APRs.

The above amount to the contravention of Regulations 15(1), 15(iii) and 16(1) (v) 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, SKJ Goods Private Limited (CIN: U51909DL2013PTC262232) is a company incorporated on December 16, 2013 engaged in wholesale trading of goods. The applicant remitted AED 47,758 (INR 8,11,096) on October 14, 2014 towards investment in overseas Wholly Owned Subsidiary (WOS) named SKJ Goods Private Limited FZE in UAE. However, the applicant had received share certificate for the amount of AED 35,000 on December 27, 2016 which is beyond the stipulated time as prescribed under Regulation 15(i) of the Notification *ibid*. Further, the balance amount of AED 12,758 was repatriated back to India with a delay on March 22, 2017 which is not in line with the Regulation *ibid*. The applicant had reported the APRs for the year 2015 and 2016 with a delay on February 06, 2017, contravening Regulation 15(iii) of Notification *ibid*. The applicant company later divested its stake in the overseas WOS on October 19, 2017. However, this disinvestment was effected without the submission of APR for that year, which is not in compliance with Regulation 16(1) (v) of the Notification *ibid*. The APR for the period 2017 was subsequently reported on December 27, 2017.

3. (i) In terms of Regulation 15(i) 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 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 period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalized because due to the IP or the date on which the amount due was capitalized.



(ii) 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.....”.

(iii) Further, in terms of Regulation 16(1) 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:.....(v) the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank.

4. The applicant was given an opportunity for personal hearing vide letter No. FED.CO.CEFA/4141/15.20.67/2018-19 dated January 11, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on January 16, 2019 during which Mr Deepender Kumar, Chartered Accountant represented the applicant company. 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 15(1), 15(iii) and 16(1) (v) of Notification No.FEMA.120/2004-RB. The amount of contravention is as follows:

(i) Regulation 15 (i) – Amount of contravention Rs 8,11,096 and the period of contravention is two years approximately



- (ii) Regulation 15(iii) – Two APRs as mentioned at para 2 above
- (iii) Regulation 16(i)(v) – Amount of contravention Rs 8,11,096 and the period of contravention was one year approximately

6. It has been declared in the compounding application dated October 10, 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 October 10, 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. 1,14,055/- (Rupees One lakh Fourteen Thousand and Fifty Five only), 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 15(i),15(iii) and 16(1)(v) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 1,14,055/- (Rupees One lakh Fourteen Thousand and Fifty Five 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 thirteenth day of March, 2018

Sd/-

(S Arumugam)
Assistant General Manager