



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: July 01, 2019
CA No 4872 / 2019

In the matter of

MCML Systems Private Limited
C-9, KSSIDC, Industrial Estate
Yelahanka, Bangalore - 560064

(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 January 14, 2019 (received in the Reserve Bank on January 23, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The applicant has sought to be compounded for (i) non-submission of Annual Performance Reports (APR) within the stipulated time period and (ii) disinvestment (with write-off), without prior approval and without submission of all the APRs, in contravention of Regulations 15(iii) and 16(1A)(ii) read with 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 company, namely, MCML Systems Private Limited (CIN U32109KA1999PTC025579), was incorporated under the Companies Act, 1956, on August 09, 1999. The applicant company is engaged in the business of designing, construction, installation and commissioning of railway signaling, tracks and structures and overhead electrification for railways.

On September 05, 2007, an overseas wholly owned subsidiary (WOS) of the applicant company, namely, MCML Systems Australia Pty. Ltd. was set-up, to which the applicant company made some equity and loan remittances during January 2008 - March 2009. The details of these remittances are as under:

S.No.	Date of remittance	Loan/Equity	Amount (AUD)	Amount (INR)
1	21.01.2008	Equity	10,000	3,40,000
2	07.02.2008	Equity	50,000	17,87,500
3	09.07.2008	Loan	60,000	25,03,200
4	01.10.2008	Loan	80,000	30,07,200
5	17.03.2009	Loan	1,40,000	48,09,000

The WOS was dissolved on 21.07.2012 pursuant to creditor's voluntary winding up under the relevant laws of Australia, the country in which the WOS was incorporated. The disinvestment by the applicant (done on 22.12.2013) with write-off, without prior approval of the Reserve Bank of India and without submission of APRs for the years 2008 to 2013 was in contravention of Regulation 16(1A)(ii) read with 16(1)(v) of Notification No. FEMA 120/2004-RB. Further, the non-submission of APRs from 2008 to 2013 was in contravention of Regulation 15(iii) of the same Notification. The disinvestment was taken on record on 15.01.2018 and the applicant was exempted from requirement of submission of pending APRs, at the time of disinvestment.



3. 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.....”.

Further, Regulation 16(1A)(ii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, while talking about disinvestments where the amount to be repatriated is less than the amount of the original investment, states that, “Such disinvestments shall be subject to the conditions listed in clauses (ii) to (vi) of sub-regulation (1) of Regulation 16”. In this context, Regulation 16(1)(v) of the abovementioned Notification states that, “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. FE.CO.CEFA/6893/15.20.67/2018-19 dated May 23, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on June 12, 2019 during which Shri Dilip Kumar Chalasani, Director, represented the applicant. The representative 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 January 14, 2019, 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 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(iii) and 16(1A)(ii) read with 16(1)(v) 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 follows:

(i) Regulation 15(iii) – As given in Para 2 above.

(iv) Regulation 16(1)(v) - Amount of contravention – Rs. 1,24,46,900/- and period of contravention is four years and one month 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. 1,97,128/- (Rupees one lakh ninety seven thousand one hundred and twenty eight 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 15(iii) and 16(1A)(ii) read with 16(1)(v) of Notification No.FEMA.120/2004-RB, on payment of a sum of Rs. 1,97,128/- (Rupees one lakh ninety seven thousand one hundred and twenty eight 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 1st day of July, 2019

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