



In the

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

Present

**Ramesh Kumar Moolchandani**  
**Chief General Manager**

Date: April 15, 2019  
CA No 4803 / 2018

In the matter of

**Aricent Technologies (Holdings) Limited**  
**5, Jain Mandir Marg (Annexe.)**  
**Connaught Place, New Delhi - 110001**

**(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 25, 2018 (received in the Reserve Bank on October 29, 2018), and an addendum vide email dated 05.04.2019, for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded is making Overseas Direct Investment (ODI) with an already existing Foreign Direct Investment (FDI) structure, which is not permissible, and is a contravention of Regulation 5(1) read with 13 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 Kappa Investments Limited (CIN: U65993DL2006PLC149728), under the Companies Act, 1956, on June 14, 2006. Its name was changed to Aricent Technologies (Holdings) Limited on May 28, 2007. It is engaged in the business of providing all kinds of information technology based and enabled services in India and abroad.

In August 2015 (07.08.2015), the applicant, with an intent to expand its business interests, acquired the shares of Aricent Mauritius Engineering Services PCC (Aricent Mauritius), incorporated in Mauritius, from its existing shareholders. The total amount remitted by the applicant to the existing shareholders for acquiring equity participation of 50.28%, amounted to USD 90,000,000 (Rs. 572,58,60,000/-). However, Aricent Mauritius was already holding investment in Aricent Technologies Private Limited, India (Aricent India) when ODI was made by the applicant. The resultant structure amounted to making ODI in an entity with pre-existing FDI, which is not permitted without the prior approval of RBI. The entire structure has now been unwound (FDI leg on August 18, 2018 and ODI leg on September 11, 2018).

3. The transaction of making ODI in an entity with pre-existing FDI, without prior RBI approval, was thus, in contravention of Regulation 5(1) read with 13 of Notification No. FEMA 120/2004-RB.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/4891/15.20.67/2018-19 dated February 15, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on March 27, 2019 during which Shri Jitendra Grover, Vice President – Finance, Shri Parveen Jain, Vice President – Legal, and Company Secretary and Shri Atul Mittal, Consultant represented the applicant. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations, due to ignorance and inadequate guidance, and had no malafide intention in making the overseas investment. It further submitted that since the FDI



structure was pre-existing, the overseas investment made was in the bonafide belief that it was not in contravention of the law. The applicant requested that a lenient view may be taken in the matter.

It has also been declared in the compounding application dated October 25, 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/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 Regulation 5(1) read with 13 of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount of contravention is Rs. 572,58,60,000/- and the period of contravention is three years 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. 3,72,68,090/- (Rupees three crore



seventy two lakh sixty eight thousand and ninety 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, Regulation 5(1) read with 13 of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 3,72,68,090/- (Rupees three crore seventy two lakh sixty eight thousand and ninety 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 15th of April, 2019

**Sd/-**  
**(Ramesh Kumar Moolchandani)**  
**Chief General Manager**