



In the

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

Present

Nivedita Dwivedi
Assistant General Manager

Date: February 03, 2020
CA No 5041 / 2019

In the matter of

R Systems International Limited
GF—A, 6, Devika Tower
Nehru Place, New Delhi - 110019

(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 17, 2019 (received at the Reserve Bank on October 22, 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) making a foreign direct investment (FDI) in India through overseas direct investment (ODI) route, resulting in an ODI-FDI structure and (ii) delay in submission of Annual Performance Reports (APRs) beyond the stipulated time period, in contravention of Regulations 5(1) read with 13 and 15(iii), respectively, 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 R Systems (India) Pvt. Ltd. (CIN: L74899DL1993PLC053579), on 14.05.1993. Its name was subsequently changed to R Systems (India) Pvt. Ltd. on 07.08.2000. The applicant company is engaged in the business of software development (IT and ITES).

The applicant invested SGD 3,500 towards ODI in a wholly owned subsidiary (WOS), namely, R Systems (Singapore) Pte Ltd, in September, 2000. The WOS acquired another entity in Singapore, namely, IBIZ Consultancy Pte Ltd. on 30.04.2015. In July 2015, IBIZ Consultancy Pte Ltd. purchased 49,999 shares of an Indian entity, namely, IBIZ Consultancy Services India Pvt. Ltd., for a consideration of INR 4,99,900/-. This resulted in the creation of an ODI-FDI structure, in contravention of Regulations 5(1) read with 13 of Notification No. FEMA 120/2004-RB. The applicant has now directly acquired the abovementioned shares of IBIZ Consultancy Services India Pvt. Ltd., thereby ending the ODI-FDI structure. The reporting of the same in Form FC-TRS was done in August, 2019.

Further, the applicant submitted 9 APRs (for the years ending 2001, 2002, 2003, 2004, 2006, 2007, 2009, 2010 and 2014), with a delay beyond the stipulated time period, in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB.

3. In terms of Regulation 5(1) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, "Save as otherwise provided in the Act, rules or regulations made or directions issued thereunder, or with prior approval of the Reserve Bank, no person resident in India shall make any direct investment outside India".

Further, Regulation 13 lays down the conditions for diversification of activities/setting-up of step-down subsidiary/alteration of the shareholding pattern in the overseas entity.



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 II 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. FED.CO.CEFA/3811/15.20.67/2019-20 dated January 23, 2020 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on January 27, 2020 during which Shri Nand Sardana, CFO of the applicant company and Shri Deepender Kumar Agarwal, CA, represented the applicant. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations and requested that a lenient view may be taken in the matter.

It has been declared in the compounding application dated October 17, 2020, 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 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 5(1) read with



13 and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount of contravention is INR 4,99,990/- and period of contravention ranges from eight days to four years two months 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 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. 1,43,500/- (Rupees one lakh forty three thousand five hundred 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 5(1) read with 13 and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 1,43,500/- (Rupees one lakh forty three thousand five hundred 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 3rd of February, 2020

Sd/-
(Nivedita Dwivedi)
Assistant General Manager