



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Ajay Kumar Misra
Chief General Manager

Date: May 24, 2019
CA No 4842 / 2018

In the matter of

Genpact India Private Limited
12A (Ground Floor), Prakash Deep Building
7, Tolstoy Marg, 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 thereunder, I pass the following

Order

The applicant has filed the application dated November 26, 2018 (received in the Reserve Bank on December 05, 2018), 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 violation of a condition specified in the approval letter dated 04.04.2016 issued by the Reserve Bank of India, to the applicant company, for acquiring 100% shareholding in an Indian company, namely, M/s Endeavour Software Technologies Ltd., from its non-resident and resident shareholders, which resulted in contravention of Regulation 3 of Foreign Exchange



Management (Transfer or Issue of Security By a Person Resident Outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB), read with the approval letter reference No. FED.CO.FID.No. 6013/10.21.360/2015-16 dated 04.04.2016.

2. The relevant facts as provided in the application are, as under: The applicant company, (CIN U73100KA2005PTC035584), was incorporated as Empower Research Knowledge Services Private Limited, under the Companies Act, 1956, on February 10, 2005. It changed its name to Genpact India Private Limited on April 22, 2016. The applicant company is engaged in the business of research, analysis and data processing with respect to various industries, companies, markets, audiences etc.

The applicant company, entered a share purchase agreement (SPA) dated 30.09.2015, pursuant to which the applicant was to acquire entire shareholding of an Indian company, namely, Endeavour Software Technologies Limited. The applicant, vide its letter dated 27.01.2016, through its AD bank, sought approval for payment of the contingent consideration (upto USD 3.5 million), under SPA, on a deferred basis. Reserve Bank of India (vide its letter dated 04.04.2016), permitted the applicant to pay the contingent deferred consideration within 24 months from the transaction closing date under the SPA. As the transaction contemplated under the SPA was closed on 13.04.2016, the contingent deferred consideration was payable latest by 12.04.2018. However, the applicant could not make the payment within the indicated time limit and (vide letter dated 15.06.2018), sought RBI's approval to remit the amount of contingent consideration, beyond the time specified in RBI's abovementioned letter. RBI, vide letter dated 24.09.2018, permitted the payment of the contingent consideration, subject to compounding of contravention. As the initial permission was valid only till 12.04.2018, the transaction was thus in contravention of Regulation 3 of Notification No. FEMA 20/2017-RB, read with approval letter reference No. FED.CO.FID.No. 6013/10.21.360/2015-16 dated 04.04.2016. The entire payment (INR



24,91,25,450), which was due as contingent deferred consideration was completed on 26.04.2019.

3. Regulation 3 of Notification No. FEMA 20/2000-RB states that, "Save as otherwise provided in the Act, or rules or regulations made thereunder, no person resident outside India shall issue or transfer any security:.....provided further that the Reserve Bank may, on an application made to it and for sufficient reasons, permit a person resident outside India to issue or transfer any security, subject to such conditions as may be considered necessary."

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/6395/15.20.67/2018-19 dated April 26, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on May 14, 2019 during which Shri Raman Sharma, Advocate, represented the applicant. The representative 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 November 26, 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 issued a Show Cause Notice by Directorate of Enforcement (DoE) regarding certain non-compliances with respect to late reporting of receipt of foreign inward remittance and late reporting of allotment of shares in Form-FCGPR, with respect to receipt of share application money by M/s NGEN Media Services Pvt. Ltd. The applicant has further declared that the notice has been served to them as the applicant company is the successor of M/s NGEN Media Services Pvt. Ltd., post its amalgamation into the applicant company. The applicant has also stated in their declaration dated 10.05.2019 that the abovementioned contraventions with regard to M/s NGEN Media Services Pvt. Ltd. predate its amalgamation into the applicant company and that no other



investigation is ongoing against the applicant with respect to any other FEMA contravention.

RBI vide letters ref. Nos. FE.CO.CEFA./3729/15.20.67/2018-19 and FE.CO.CEFA./4526/15.20.67/2018-19 dated December 26, 2018 and January 28 2019, respectively, had sought comments from DoE as to whether its investigation pertained to the contraventions sought to be compounded by the applicant and whether it had any objection to compounding by RBI. As DoE has not responded to the abovementioned letters, and the fact the contraventions with respect to M/s NGEN Media Services Private Limited predate its amalgamation into the applicant company, the compounding application has been processed in accordance with the provisions under FEMA, Compounding Rules and related guidelines. This Compounding Order is being issued only with respect to the contravention mentioned in para 2 above and is without prejudice to any action which may be taken by any other authority under the extant laws.

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 3 of Notification No. FEMA 20/2000-RB, read with approval letter ref No. FED.CO.FID.No. 6013/10.21.360/2015-16 dated 04.04.2016. The amount of contravention is Rs. 24,91,25,450/- and period of contravention is one year 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 compound the contraventions, in line with the Guidance Note on Computation Matrix prescribed as part of Master Direction – Compounding of Contraventions, framed in accordance with the Foreign Exchange (Compounding Proceedings) Rules 2000. Accordingly, it stands to reason that payment of an amount of Rs. 12,95,627/- (Rupees twelve lakh ninety five thousand six hundred and twenty seven 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 contravention committed by the applicant namely, Regulation 3 of Notification No. FEMA 20/2000-RB, read with the approval letter reference No. FED.CO.FID.No. 6013/10.21.360/2015-16 dated 04.04.2016, on payment of a sum of Rs. 12,95,627/- (Rupees twelve lakh ninety five thousand six hundred and twenty seven 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 24th day of May, 2019

Sd/-
(Ajay Kumar Misra)
Chief General Manager