



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: January 17, 2020
CA No 4979/ 2019

In the matter of

Nithya Packaging Private Limited
No 48, 3rd cross Anandarangapillai nagar,
Puducherry 605008.

(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 July 24, 2019 (received in the Reserve Bank of India on July 24, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions admitted are: (i) delay in receipt of share certificates (ii) delay in submission of Annual Performance Reports (APRs) (iii) routing of remittances through banks other than the designated AD bank (iv) delay in submission of Form ODI and (v) non-reporting of issuance of corporate guarantees under ODI, in contravention of Regulation 15(i), 15(iii), 6(2)(v) and 6(2)(vi), 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 company was incorporated on March 29, 1996 (CIN U20231PY1996PTC001216) and is involved in manufacturing of craft paper and corrugated box. The company had made overseas direct investment (ODI) in May 2010 in its overseas wholly owned subsidiary (WOS) in Sri Lanka, namely "M/s Nithya Paper and Boards Lanka Pvt Ltd". The company had delayed filing of Form ODI for this ODI and had also not reported the financial commitment undertaken through corporate guarantees issued in 2015. The company received share certificates for the ODI with a delay beyond the stipulated period of 6 months. The company had also delayed filing of the APRs for the years from 2011 to 2017. Further, the applicant company had undertaken remittance transactions under the ODI through banks other than the designated AD bank. The transactions were taken on record by RBI, subject to compounding and thus administrative action was complete.

3. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/2619/15.20.67/2019-20 dated November 21, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on November 28, 2019, during which the applicant submitted that the contraventions were inadvertent and requested that a lenient view may be taken in the matter. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the meeting with the Compounding Authority.

4. It has been declared in the compounding application dated July 24, 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.

5. I have given my careful consideration to the documents on record and submissions made during the personal hearing. It was observed that the applicant has contravened the provisions of Regulation 15(i), 15(iii), 6(2)(v) and 6(2)(vi) of Notification No.FEMA.120/2004-RB. The amount of contravention and period of contravention are as follows:

(i) Regulation 15(i) of FEMA 120/2004-RB, dated July 07, 2004 - Rs 21,91,38,641.70 and the period of contravention ranges from 3 days to 2 years and nine months approximately

(ii) Regulation 15(iii) of FEMA 120/2004-RB, dated July 07, 2004 – six APRs were delayed (for the years from 2010 to 2015)

(iii) Regulation 6(2)(v) of FEMA 120/2004-RB, dated July 07, 2004 – Rs. 28,70,24,281 and the period of contravention ranges from one day to five years and eight months approximately

(iv) Regulation 6(2)(vi) of FEMA 120/2004-RB, dated July 07, 2004 – Rs. 16,41,92,421.80 and the period of contravention ranges from 22 days to five years approximately and

(v) Regulation 6(2)(vi) of FEMA 120/2004-RB, dated July 07, 2004 – Rs. 120,91,86,211 and the period of contravention ranges from one year and three months to three years 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.39,38,507/- (Rupees Thirty nine lakhs thirty eight thousand five hundred and seven only) will meet the ends of justice.



7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contravention committed by the applicant namely, Regulation 15(i), 15(iii), 6(2)(v) and 6(2)(vi) of Notification No.FEMA.120/2004-RB, on payment of a sum of Rs.39,38,507/- (Rupees Thirty nine lakhs thirty eight thousand five hundred and seven only) which shall be deposited by the applicant with the "The Chief General Manager – In – Charge, 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 17th day of January, 2020

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