



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
11th floor, NCOB  
Shahid Bhagat Singh Marg  
Mumbai - 400 001

Present

**Ajay Kumar Misra**  
**Chief General Manager**

Date: November 18, 2019  
CA No 4959/ 2019

In the matter of

**Utkarsh CoreInvest Ltd.**  
**S-2/639-56, Varuna Vihar Colony,**  
**J.P. Mehta Road, Cantt. Varanasi 221 002**

**(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 June 13, 2019 (received in the Reserve Bank on June 17, 2019), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are: (i) foreign investment in a company which is involved in the activity of investing in the capital of other Indian companies without



the necessary prior government approval and (ii) taking on record the transfer of shares of the company - from a non-resident entity to another non-resident entity without prior government approval. The above transactions and actions resulted in contravention of (i) Regulation 16(B)(5) of FEMA 20(R)/2017 dated November 7, 2017 and (ii) Regulation 4 of FEMA 20/2000 – RB dated May 3, 2000 – as applicable for the respective transactions on different dates.

2. The relevant facts of the case are as under:

The applicant company was originally incorporated as Shree Pathrakali Finance Company Pvt Ltd in May 1990. The name of the company was changed to Utkarsh Micro Finance Ltd (UMFL) (CIN: UP65191UP1990PLC045609) in February 2010.

UMFL, on application, was issued a licence to establish a Small Finance Bank (SFB) in terms of Department of Banking Regulation (DBR, RBI) letter dated November 25, 2016. One of the conditions stipulated therein was that UMFL as the promoting entity of the SFB shall be registered as NBFC-CIC after the transfer of its business to the bank. Accordingly, UMFL had applied to Department of Non-Banking Regulation (DNBR, RBI), Kanpur Regional Office (RO) in December 2016 for registration as an NBFC-CIC. It also entered into a "Business Transfer Agreement" dated January 21, 2017 for transfer of its micro finance business to the SFB (Utkarsh Small Finance Bank Ltd). RBI, DNBR, Kanpur RO had issued a new Certificate of Registration dated May 03, 2018 to the UMFL classifying it as NBFC-CIC-ND-SI. Accordingly, the name of the company (UMFL) was changed to Utkarsh CoreInvest Ltd, in October 2018.

After applying for a licence to start a SFB, the applicant company (UMFL) which had foreign shareholding of around 84.1 %, made changes in its capital structure to become a 'resident owned and controlled' entity. In order to bring the foreign shareholding below 50%, the applicant company raised equity capital (by way of rights issue) which was offered to both resident and non-resident shareholders in November 2017. The applicant company received foreign investments to the tune of Rs 28,68,95,310/-. This was in contravention of the then applicable Regulation 16(B)(5) of FEMA 20(R), which stated that " *Foreign investment into an Indian company, engaged only in the activity of investing*



*in the capital of other Indian company/ies, will require prior approval of the Government. A core investment company (CIC) will have to additionally follow the Reserve Bank's regulatory framework for CICs".*

During August 2017, International finance Corporation (IFC), a non-resident entity, had transferred 42,69,726 shares amounting to Rs. 55,50,64,380/-, to another non-resident entity, viz., responAbility Participations Mauritius. This was in contravention of the then applicable Regulation 4 of FEMA 20, which stated that “ *Save as otherwise provided in the Act, or rules or regulations made thereunder, an Indian entity shall not issue any security to a person resident outside India or shall not record in its books any transfer of security from or to such person.*”

Government of India, MoF, DEA, while according its approval for another transaction in October 2018, which involved share transfer between two non-resident entities had vide its letter dated October 22, 2018, advised the applicant company to approach RBI for compounding for “past foreign investments made in UMFL, including share transfers among non-residents, without Gol approval”.

The foreign investment transactions were taken as regularized on March 26, 2018, in the light of the amendment in FEMA 20(R), according to which, under Regulation 16 B, foreign investment in investing companies registered as NBFCs with RBI was permitted under 100% automatic route.

3. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/2185 /15.20.67/2019-20 dated October 30, 2019 for further submission in person and/or producing documents, if any, in support of the application. The applicant sought to forego the option of personal hearing with the Compounding Authority vide their letter dated November 05, 2019.

4. It has been declared in the compounding application dated June 13, 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 by the applicant. It was observed that the applicant has contravened the provisions of i) Regulation 16(B)(5) of FEMA 20(R)/2017 dated November 7, 2017 and (ii) Regulation 4 of FEMA 20/2000 – RB dated May 3, 2000.

The amount of contravention is Rs. 84,19,59,690/- and the period of contravention is approximately seven months.

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. Therefore, after considering the submissions made by the applicant with regard to the contraventions and the entire facts and circumstances of the case, it stands to reason that payment of an amount of Rs. 43,09,797/- (Rupees forty three lakhs nine thousand seven hundred and ninety 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 contraventions committed by the applicant namely, Regulation 16(B)(5) of FEMA 20(R)/2017 dated November 7, 2017 and Regulation 4 of FEMA 20/2000 – RB dated May 3, 2000, as amended from time to time, on payment of a sum of Rs. 43,09,797/- (Rupees forty three lakhs nine thousand seven



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hundred and ninety seven only) which shall be deposited by the applicant with "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 favor 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 18<sup>th</sup> day of November, 2019

**Sd/-**

**(Ajay Kumar Misra)**

**Chief General Manager**