



In the

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

Present

Shekhar Bhatnagar
Chief General Manager

Date: December 18, 2017
CA No 4499 / 2017

In the matter of

Avyukta Constructions Private Limited
1 Gunrock Enclave, Secunderabad
Telangana - 500009

(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 August 28, 2017 (received in the Reserve Bank on August 29, 2017), 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 taking on record transfer of shares from non-resident Indian (NRI) to Non-resident (NR), without prior approval of the Reserve Bank of India. The above amounts to the contravention of Regulation 4 read with Regulation 9(2)(ii) 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).

2. The relevant facts are as under: The applicant was incorporated as Avyukta Constructions Private Limited, on November 8, 2014, under the Companies Act, 1956 (CIN: U45200TG2014PTC096288). The applicant is engaged in infrastructure business.

An NRI, Ms. Raparathi Balamani, was allotted 95038 shares of the applicant on 26.08.2015 and further 160242 shares on 05.12.2015. On 12.07.2017, she transferred all her shares to M/s One Solar Lane LLC, USA, a Non-resident entity, vide a swap of shares arrangement, in return getting a shareholding in M/s One Solar Lane LLC, USA. As it was a swap of shares, there was no physical flow of funds. The deemed value of the transaction is Rs. 1,54,29,123/-. The above transfer was carried out without the approval of the Reserve Bank of India, and was taken on record by the applicant, in contravention of Regulation 4 read with Regulation 9(2)(ii) of Notification No. FEMA 20/2000-RB. The post-facto approval, subject to compounding, was granted by RBI vide letter dated September 05, 2017.

The NRI, Ms. Raparathi Balamani, has also contravened Regulation 3 of Notification No. FEMA 20/2000-RB. The post-facto approval granted vide RBI letter dated September 05, 2017, has also advised her to apply for compounding of the same, which shall be taken up separately, as and when the compounding application is filed by the applicant.

3. Regulation 4 of Notification No. FEMA.20/2000-RB dated May 03, 2000 as amended from time to time states 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 to record in its books transfer of security from or to such person...."

Further, Regulation 9(2)(ii) of the same Notification states, "A non-resident Indian may transfer by way of sale or gift, the shares or convertible debentures or warrants of an Indian company or units of an Investment Vehicle held by him or it to another Non-resident Indian only."



4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/4043/15.20.67/2017-18 dated November 07, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on December 15, 2017 during which Shri Amanullah, Managing Director of the applicant company, 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. 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 4 read with Regulation 9(2)(ii) of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time. The amount of contravention is Rs. 1,54,29,123/- and the period of contravention is 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. Rs. 18,333/- (Rupees eighteen thousand three hundred and thirty three 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 4 read with Regulation 9(2)(ii) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, on payment of a sum of Rs. 18,333/- (Rupees eighteen thousand



three hundred and thirty three 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 eighteenth day of December, 2017

Sd/-

Shekhar Bhatnagar
(Chief General Manager)