



In the

Reserve Bank of India
Foreign Exchange Department
5th Floor, Amar Building
Sir PM Road
Mumbai – 400001

Present

R. Seetharaman
Deputy General Manager

Date: December 12, 2017
CA NO: 4443/2017
In the matter of

Sahajanand Medical Technologies Private Limited
Sahajanand Estate, Wakharia Wadi, Near Dabholi Char Rasta,
Ved Road, Surat, Gujarat 395004
(Applicant)

In exercise of powers conferred under section 15(1) of the Foreign Exchange Management Act, 1999 and the Regulations/Rules/ Notifications/orders made there under, I pass the following

Order

The applicant has filed a compounding application dated June 27, 2017 (received in the Reserve Bank of India on June 29, 2017) for compounding the contraventions of the provisions of the Foreign Exchange Management Act, 1999 (The FEMA) and the regulations issued there under. The contraventions sought to be compounded relate to (i) non-receipt of share certificates for its investment made in Joint venture in USA ii) non-submission of Annual Performance Report (APR) for the years 2011-12, 2012-13, 2013-14 and 2014-15 ii) disinvestment with write-off without submitting the APR for the year 2014-15 and iv) disinvestment in the overseas JV without fair valuation of its investment in contravention of the provisions of Regulation 15(i), 15(iii), 16(1)(v) and 16(1)(iii) read



with 16(1A)(ii) and 16(3) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 7, 2004, as amended from time to time (hereinafter referred to as Notification No FEMA 120-RB 2004).

2. The relevant facts of the case are follows:

(i) The applicant was incorporated as Sahajanand Medical Technologies Private Limited on October 18, 2001 with CIN NO: U33119GJ2001PTC040121. The applicant is engaged in the business of research, manufacturing, sales and marketing of all implantable cardiovascular medical devices useful in the interventional cardiology. The applicant had set up a Joint Venture (JV) with foreign partners Mr. Joseph M. Thielen and Mr. William J. Drasler in USA, M/s. Femoralis LLC in the year 2011 by remitting USD 33,000.00 (INR 14,52,000.00) on May 3, 2011 and USD 2000.00 (INR 89,500.00) on July 1, 2011. The applicant had subscribed 10% of the share capital of the said JV and the 45% of the share capital each was held by Mr. Joseph M. Thielen and Mr. William J. Drasler (foreign partners). The applicant filed Form ODI on December 23, 2011, the contravention of the regulation 6(2)(vi) was brought to the notice of the applicant by OI, FED, CO of the Reserve bank of India on January 13, 2012. Accordingly, the company made an application dated February 17, 2012 (received at the Reserve Bank of India on February 21, 2012) for compounding. The UIN was allotted by the Reserve Bank of India on April 30, 2012. The contravention of the Regulation 6(2)(vi) was compounded vide order dated July 18, 2012.

(ii) The applicant did not receive the share certificates for the investment made in the said JV. The non-receipt of share certificates was in contravention of the regulation 15(i) of FEMA 120-RB 2004. The applicant not submitted APRs for the financial years ended March 2012, March 2013, March 2014 and March 2015. The non-submission of APRs was in contravention of regulation 15(iii) of Notification No FEMA 120-RB 2004. The applicant disinvested the entire investment with full write-off on during the year 2015-16 without submission of APR together with audited



accounts for the year 2014-15 and without submission of fair valuation of its investment. The above amount to the contravention of the Regulation 16(1)(v) and 16(1)(iii) read with 16(1A)(ii) and 16(3) of Notification No FEMA 120-RB 2004. The applicant submitted a letter dated May 11, 2017 and mail dated May 17, 2017 to take record of the closure of the JV, the contraventions stated above were brought to the notice of the applicant by OID, FED, CO of Reserve Bank of India on May 22, 2017 and the administrative actions were completed on October 25, 2017.

3.1 Regulation 15(i) of the said Notification requires that an Indian Party, which has acquired foreign security shall receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalised became due to the Indian Party or the date on which the amount due was allowed to be capitalised;

3.2 Regulation 15(iii) of the said Notification requires that an Indian party has to submit to the Reserve Bank every year within 60 days from the date of expiry of the statutory period as prescribed by the respective laws of the host country for finalisation of the audited accounts of the Joint Venture / Wholly Owned Subsidiary outside India or such further period as may be allowed by Reserve Bank, an annual performance report in form APR in respect of each Joint Venture or Wholly Owned Subsidiary outside India set up or acquired by the Indian Party and other reports or documents as may be stipulated by the Reserve Bank.

3.3 Regulation 16(1)(iii) of the said notification requires an Indian Party may transfer, by way of sale to another Indian Party which complies with the provisions of Regulation 6 above, or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the condition if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant



as the fair value of the shares based on the latest audited financial statements of the JV / WOS.

3.4 Regulation 16(1)(v) of the said notification requires that the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank.

3.5 Regulation 16(1A)(1)(ii) of the said notification requires that disinvestments by an Indian party where disinvestment is less than the amount of the original investment, shall be subject to the conditions listed in clause (ii) to (vi) of sub-regulation (1) of Regulation 16 of the said notification.

3.6 Regulation 16(3) of the said notification requires that an Indian party, which does not satisfy the criteria specified at regulation 16 (1) of the said notification shall apply to the Reserve Bank for permission to transfer by way of sale of shares of a JV / WOS outside India which may be granted subject to such conditions as the Reserve Bank may consider appropriate

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter FED.CO. CEFA .No./4076/15.20.67/2017-18 dated November 7, 2017 for further submission in person and /or producing documents, if any, in support of the application. Shri. Jatin Tikiwala, GM-Finance, Sahajanand Medical Technologies Private Limited vide e-mail dated November 8, 2017 stated that they have filed exhaustive reply on this matter and requested to decide the matter ex-parte and without personal hearing on the basis of available documents. The application is considered on the basis of the averments made and documents produced in the application.

5. I have given my careful consideration of the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Regulation 15(i), 15(iii), 16(1)(v) and 16(1)(iii) read with 16(1A)(ii) and



16(3) of FEMA 120-RB-2004 as amended from time to time. The amount and period of contravention is as follows.

i) Regulation 15(i) of FEMA 120-RB 2004 as amended from time to time: The amount of contravention was at (i) USD 33,000.00 (INR-14,52,000.00) and (ii) USD 2000.00 (INR- 89500.00) and the period of contravention was (i) five years and eight months approximately and (ii) five years and six months approximately, respectively.

ii) Regulation 15(iii) of FEMA 120-RB 2004 as amended from time to time: Non-submission of APRs for the financial years ended March 2012, March 2013, March 2014 and March 2015. The period of contravention varies from two years to five years for the above APRs. The amount of contravention: USD 35,000.000 (INR:15,41,500.00)

iii) Regulation 16(1)(iii) read with 16(1A)(ii) and 16(3) of FEMA 120-RB 2004 as amended from time to time: Amount of contravention- USD 35,000.00 (INR:15,41,500.00) and period of contravention: 1 years and 3 months approximately

iv) Regulation 16(i)(v) of FEMA 120-RB 2004 read with 16(1A)(ii) and 16(3) of FEMA 120-RB 2004 as amended from time to time: Amount of contravention- USD 35,000.00 (INR:15,41,500.00) and period of contravention: 1 years and 3 months approximately

6. In terms of provisions of section 13 of FEMA, any person contravening any provision of the Act shall be liable to pay up to three times the sum involved in the contravention upon adjudication. However, taking into account the relevant facts and circumstance of the case as stated in the foregoing paragraphs, I am persuaded to take a lenient view on the amount for which the contraventions are to be compounded and I consider that an amount of Rs.218518.00 (Rupees two lakh eighteen thousand five hundred and eighteen only) will meet the end of justice.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 15(i),15(iii), 16(1)(v) and 16(1)(iii) read with 16(1A)(ii) and 16(3) of Notification No FEMA 120-RB 2004 of Foreign



Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 4, 2004, as amended from time to time, by the applicant stated above on the facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs.218518.00 (Rupees two lakh eighteen thousand five hundred and eighteen only) which shall be deposited by the applicant with the Reserve Bank of India, 11th Floor, Central Office Building, Shahid Bhagat Singh Marg, Mumbai-400001 by a Demand Draft drawn in favour of "Reserve Bank of India" and payable at "Mumbai" within a period of 15 days from the date of the 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 shall apply.

The application is disposed accordingly.

Dated this the twelfth day of December 2017.

Sd/-

(R. Seetharaman)

Deputy General Manager