



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

Jyoti Kumar Pandey
Chief General Manager

Date: January 31, 2018
CA No 4533 / 2017

In the matter of

Zodiac Clothing Company Limited
Nyloc House, 254, D-2
Dr. Annie Besant Road
Worli, Mumbai - 400030

(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 October 03, 2017 (received in the Reserve Bank on October 04, 2017) for compounding of 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 are (i) making overseas direct investment in an entity engaged in real estate business (ii) non-reporting of setting up of step-down subsidiary within the stipulated time period and (iii) non-submission of Annual Performance Reports (APR) within the stipulated time period. The above



amount to the contravention of Regulations 5(2) read with 6(2)(ii), 13 and 15(iii) 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 was incorporated as Zodiac Clothing Company Limited on June 14, 1984 (CIN: L17100MH1984PLC033143). The applicant is engaged in the business of manufacturing and dealing in neckwear, ties, collars, scarves, shawls etc. The applicant set-up a wholly owned subsidiary (WOS) and step-down-subidiaries (SDS) as follows:

| S.No. | Name of the company | WOS/SDS | Date of set-up/acquisition | Amount of investment (foreign currency) | Amount of investment (INR) |
|-------|--|------------------|---|---|----------------------------|
| 1 | Zodiac Clothing Company, SA, Switzerland | WOS | 19.06.1995 | CHF 250000 | 65,91,000 |
| 2 | Zodiac Clothing Company (UAE) LLC | First level SDS | 11.01.2005 | AED 300000 | 35,80,413 |
| 3 | Zodiac Clothing Company INC ZCC, USA | Second level SDS | 19.08.2008 (dissolved on 15.06.2017) | USD 10000 | 4,32,300 |
| 4 | Zodiac Properties | Second level SDS | 26.01.2010 (dissolved on | AED 18500000 | 33,51,27,500 |



| | | | | | |
|--|--------------|--|-------------|---|--|
| | Limited, UAE | | 26.01.2017) | (out of which AED 18490000 invested on 07.09.2016. Initial acquisition amount: AED 10000) | |
|--|--------------|--|-------------|---|--|

The setting-up of the SDS were reported with a delay beyond the stipulated time period, thus contravening Regulation 13 of Notification No. FEMA 120/2004-RB. The online reporting of the SDS was done in 2016.

Further, the acquisition of stake in Zodiac Properties Limited whose activity was 'purchase of real estate', was a non-bonafide activity and thus in contravention of Regulations 5(2) read with 6(2)(ii) of Notification No. FEMA 120/2004-RB. The SDS was unwound on 26.01.2017, thereby completing the administrative action.

The Annual Performance Reports (APRs) for the years 2012-2014 were submitted with a delay beyond the stipulated time period, thus contravening Regulation 15 (iii) of Notification No. FEMA 120/2004-RB.

3. In terms of Regulation 5(2) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, "No Indian party shall make any direct investment in a foreign entity engaged in real estate business or banking business."

Further, in terms of Regulation 6(2)(ii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, Overseas Direct Investment is permitted in certain cases provided, "The direct investment is made in an overseas JV or WOS engaged in a bonafide business activity".



In terms of Regulation 13 of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, "A JV/WOS set up by the Indian party as per the Regulations may diversify its activities/ set-up step-down subsidiaries/ alter the shareholding pattern of the overseas entity: Provided the Indian Party reports to the Reserve Bank, the details of such decisions taken by the JV/WOS within 30 days of the approval of those decisions by the competent authority concerned of such JV/WOS in terms of local laws of the host country, and, include the same in the Annual Performance Report required to be forwarded annually to the Reserve Bank in terms of Regulation 15".

Further, Regulation 15 (iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, states that, "An Indian Party which has acquired foreign security in terms of the Regulation in Part I shall submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before a specified date, an Annual performance Report (APR) in Part III of Form ODI in respect of each JV or WOS outside India.....".

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/5892/15.20.67/2017-18 dated January 11, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on January 23, 2018 during which Shri Dilip. J. Thakkar, FCA, Shri Rajesh. P. Shah, FCA and Shri Kumar Iyer, Company Secretary, Zodiac Clothing Company Limited, represented the applicants. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to ignorance 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 Regulations 5(2) read with 6(2)(ii), 13 and 15(iii) of Notification No.FEMA.120/2004-RB dated



July 7, 2004, as amended from time to time. The amount of contravention is as follows:

- (i) Regulations 5(2) read with 6(2)(ii) – Amount of contravention – Rs. 33,51,27,500/- and period of contravention ranges from four four months to seven years approximately
- (ii) Regulation 13 and 15(iii) - As given in Para 2 above.

6. It has been declared in the compounding application dated October 03, 2017, that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been declared in the declaration dated January 25, 2018, furnished as an addendum to 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 informed of initiation of any such enquiry/investigation/adjudication proceedings against it/him/her thereafter. It has further been declared that the applicant has not filed any appeal under section 17 or section 19 of FEMA, 1999. 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.

7. 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. 18,07,868/- (Rupees eighteen lakh seven thousand eight hundred and sixty eight only), will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulations 5(2) read with 6(2)(ii), 13 and



15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 18,07,868/- (Rupees eighteen lakh seven thousand eight hundred and sixty eight 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 thirty first day of January, 2018

Sd/-

(Jyoti Kumar Pandey)
Chief General Manager