



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 12, 2018
CA No 4501 / 2017

In the matter of

Tata Hitachi Construction Machinery Company Private Limited
Jubilee Building, 45 Museum Road
Bengaluru - 560025

(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 June 13, 2017 (received in the Reserve Bank on August 31, 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) disinvestment of stakes in WOS, involving write-off, by an unlisted company where investment in overseas venture exceeded USD 10 million, without prior permission of the Reserve Bank of India, (ii) liquidation of the WOS without the submission of APRs, (iii) non-repatriation of dues within 60 days and writing off the interest on loan upon liquidation and (iv) delay in



submission of APRs beyond the stipulated time period. The above amount to the contravention of Regulations 16(1A)(i)(c), 16(1A)(ii) read with 16(1)(v), 15(ii) 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, in India, as Tata Hitachi Construction Machinery Company Private Limited (CIN: U85110KA1998PTC024588), on December 30, 1998. The applicant is engaged in the business of designing, manufacturing, assembling, selling, etc., of all kinds of excavators, cranes, loaders etc.

The applicant acquired 60% stake in M/s Comoplesa Lebrero S.A., Spain, in 2008, for a consideration of Euro 3.60 million. The remaining 40% stake was acquired in 2011-12, making the overseas entity a Wholly Owned Subsidiary (WOS) of the applicant. The total investment of the applicant in the WOS was to the extent of equity of Euro 7 million and loan of Euro 17.84 million (a total of INR (181.89 crore). After exhausting all options of revival of the WOS, the applicant liquidated the WOS with effect from March 31, 2015, with a write-off of the entire amount of investment, i.e., INR 181.89 crore. As the applicant was an unlisted company and the investment in the WOS exceeded USD 10 million, the applicant was required to take RBI approval before writing off the amount. As the said approval was not taken, the disinvestment amounted to the contravention of Regulation 16(1A)(i)(c) of Notification No. FEMA 120/2004-RB. The disinvestment was also done without the submission of APRs, in contravention of Regulation 16(1A)(ii) read with 16(1)(v) of the abovementioned Notification.

The interest due on the loan (INR 5.49 crore) was also not repatriated but written off, thereby contravening Regulation 15(ii) of Notification No. FEMA 120/2004-RB.

Further, the APRs for the years ending 2009 to 2015 were submitted with a delay beyond the stipulated time period, thereby contravening Regulation 15(iii) of Notification No. FEMA 120/2004-RB.



3. In terms of Regulation 16(1A)(i)(c) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, “in the following cases, an Indian Party may disinvest, if the amount to be repatriated on disinvestment is less than the amount of the original investment: where the Indian party is an unlisted company and the investment in the overseas venture does not exceed USD 10 million”.

Further, Regulation 16(1A)(ii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, states that, “Such disinvestments shall be subject to the conditions listed in clauses (ii) to (vi) of sub-regulation (1) of Regulation 16”. In this context, Regulation 16(1)(v) of the abovementioned Notification states 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”.

In terms of Regulation 15(ii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, “An Indian Party, which has acquired foreign security in terms of the Regulations in Part I, shall – repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due, or such further period as the Reserve Bank may permit”.

Further, Regulation 15(iii) of the same Notification 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/4661/15.20.67/2017-18 dated November 24, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on December 05, 2017 during which Shri N. Venkatakrishnan, Senior Vice-President and Chief Finance Officer, Tata Hitachi Construction Machinery Company Private Limited, represented the applicants. The representative 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 16(1A)(i)(c), 16(1A)(ii) read with 16(1)(v), 15(ii) and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount and period of contravention is as follows:

Regulations 16(1A)(i)(c), 16(1A)(ii) read with 16(1)(v): Amount of contravention – Euro 25,012,637 (INR 181.89 crore) and period of contravention is two years and five months approximately.

Regulation 15(ii) – Amount of contravention – Euro 817,069 (INR 5.49 crore) and period of contravention is two years and five months approximately.

Regulation 15(iii) – As indicated in Para 2 above.

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. 1,14,12,800/- (Rupees one crore fourteen lakh twelve thousand and eight hundred 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, Regulations 16(1A)(i)(c), 16(1A)(ii) read with 16(1)(v), 15(ii) 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. 1,14,12,800/- (Rupees one crore fourteen lakh twelve thousand and eight hundred 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 twelfth day of January, 2018

Sd/-

Jyoti Kumar Pandey
(Chief General Manager)