



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: January 18, 2018

CA NO: 4477/2017
In the matter of

Sterling Industries
N-11, MIDC, AMBAD, Nasik- Maharashtra-422010
(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 July 24, 2017 (received in the Reserve Bank of India on July 28, 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) delayed submission of Annual Performance Report (APR) for the years ended December 2012, 2013 and December 16, 2014 and ii) disinvestment in the overseas JV without fair valuation of its investment in contravention of the provisions of Regulation 15(iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 and 16(1)(iii) read with 16(1A)(ii) 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 Sterling Industries on April 01, 1992 as a registered partnership firm. The applicant is engaged in manufacture of auto parts. The applicant had set up a Wholly Owned Subsidiary (WOS) in USA January 1, 2012 and remitted USD 20000.00 (INR 1003899.10) on February 23, 2012 and USD 10000.00 (INR.565040.32) on February 27, 2012 under aromatic route and UIN was allotted on March 20, 2012. The applicant submitted APRs for the financial year ended December 31, 2012 and December 31, 2013 on May 30, 2014 and for the year ended December 16, 2014 on May 03, 2017 to the AD bank. The AD bank on reported in the APR online on June 27, 2014 for the APRs pertains to the years 2012 and 2013 and on April 21, 2017 for the APR pertains to the year ended December 16, 2014. The delay in 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 December 16, 2014 without valuation certificate by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the WOS. The above amount to the contravention of the Regulation 16(1)(iii) of Notification No FEMA 120-RB 2004 read with 16(1A)(ii) of Notification No FEMA 120-RB 2004. The applicant had submitted the form ODI Part IV on April 03, 2017 to the AD bank and the AD bank reported the same on May 05, 2017. The administrative actions were completed on May 03, 2017.

3.1 Regulation 15(iii) of the said Notification requires that an Indian party has to submit to the Reserve Bank, through the designated Authorised 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, and other reports or documents as may be prescribed by the Reserve Bank from time to time. The APR, so required to be submitted, has to be based on the audited annual accounts of the JV / WOS for the preceding year, unless specifically exempted by the Reserve Bank.



3.2 Regulation 16(1)(ii) of the said notification requires that 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.

3.3 Regulation 16(1A)(ii) of the said notification requires that disinvestments with the amount to be repatriated on 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.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter FED.CO. CEFA .No./5888/15.20.67/2017-18 dated January 10, 2018 for further submission in person and /or producing documents, if any, in support of the application. The applicant appeared for the personal hearing on January 17, 2018. Shri. Behari Jeevanlal Pherwani and Smt. Shakuntala Behari Pherwani, partners of the applicant firm represented the applicant. 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(iii) of FEMA 120-RB-2004 and 16(1)(iii) read with 16(1A)(ii) of FEMA 120-RB-2004 as amended from time to time. The amount and period of contravention is as follows.

i) Regulation 15(iii) of FEMA 120-RB 2004 as amended from time to time: Delayed submission of APRs for the financial years ended December 2012 and December 16, 2014. The period of contravention: 11 months for the APR pertained to December 2012 and two years and 10 months for the APR pertained to December 16, 2014. The amount of contravention: USD 30,000.000 (INR: 15,68,939.42)

iv) Regulation 16(i)(iii) read with 16(1A)(ii) of FEMA 120-RB 2004 of FEMA 120-RB 2004 as amended from time to time: Amount of contravention- USD



30,000.000 (INR: 15,68,939.42) and period of contravention: 2 years and 7 months and 9 days 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.79,414.00 ((Rupees seventy nine thousand four hundred and fourteen only) will meet the ends of justice.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 15(iii) and 16(1)(iii) read with 16(1A)(ii) 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.79,414.00 ((Rupees seventy nine thousand four hundred and fourteen only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Office, 5th Floor, Amar Building, Fort, 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 eighteenth day of January 2018.

Sd/-

(R. Seetharaman)

Deputy General Manager