



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
P M Road
Mumbai - 400 001

Present
Sharmila Thakur
General Manager

Date: January 25, 2018

CA No 4473 / 2017

In the matter of
Hurix Systems Private Limited
Unit No 102, 1st floor, Multi Storied Building SEEPZ SEZ
Andheri East
Mumbai 400096
(Applicant)

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

Order

The applicant has filed the application dated Aug 2, 2017 (received in the Reserve Bank on Aug 3, 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 disinvestment without submission of a valuation certificate, non-reporting/delayed reporting of remittances, non-receipt of share certificates, remitting funds through a non-designated AD bank and delayed reporting of Annual Performance Reports. The above are in contravention of Regulations 16(1)(iii), 6(2)(vi), 15(i), 6(2)(v) and 15(iii) 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 as follow:

The applicant company was incorporated as Hurix Systems Pvt Ltd on May 22, 2000 having CIN U64200MH2000PTC126681 and its registered office at Unit 102, 1st floor, Multi Storied Building, SEEPZ-SEZ, Andheri (East), Mumbai – 400097. The company was engaged in the business of Information Technology and Information Technology related businesses and services.

In October 2001, the applicant incorporated a wholly owned subsidiary (WOS) in the name Hurix Systems Inc in USA to engage in building, distributing and managing digital content across various IT platforms and to cater to the company's US customers. The company made several remittances over the years 2001 and 2002 aggregating \$97000/- (INR46,93,179/-) towards subscription of equity share capital of the WOS. However, only two remittances valued at \$35000 were on record in RBI and although the company maintained that all remittances had been duly reported, no evidence of having submitted Form ODI I could be produced either by the applicant nor by the AD Bank. The company reported \$62000/- worth of remittances effected in 2002, on 15.12.2016. One of these remittances, \$9500/- dated 23.6.2002, was effected through HSBC which was not the designated bank for the investment. The applicant could not produce the share certificates for the equity holding in the WOS, on the plea that company records of 2002 had been destroyed. Hurix USA did not gain much business and remained non operational since last many years till it was voluntarily liquidated in 2015. The IP received a Dissolution Certificate stating the date of dissolution as 01.06.2015. No valuation certificate was produced to show the value of shares at the time of dissolution and the company wrote off its entire investment. APRs for the years 2006 to 20015 were submitted/ reported with delay, on 1.4.2015, in a bunch.

3. (a) According to Regulation 16(1)(iii) of Notification No FEMA 120-RB 2004 as amended from time to time, an Indian party may disinvest any share or security held by him in a Joint Venture or Wholly Owned Subsidiary outside India provided that 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 Joint Venture or Wholly Owned Subsidiary.

(b) According to Regulation 6(2)(vi) *ibid*, an Indian party may make direct investment in a Joint Venture or Wholly Owned Subsidiary outside India provided it “submits form ODI, duly completed, to the designated branch of an authorised dealer”, HDFC Bank in this case.

(c) Regulation 15(i) obliges an Indian Party, which has acquired foreign security in terms of the Regulations to 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.

(d) Regulation 6(2)(v) requires that the Indian Party routes all transactions relating to the investment in a Joint Venture/Wholly Owned Subsidiary through only one branch of an authorised dealer to be designated by it and

(e) According to Regulation 15(iii) *ibid*, an Indian Party, which has acquired foreign security in terms of the Regulations in Part- I, shall “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 ...”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/5889/15.20.67/2017-18 dated Jan 10, 2018 for further submission in person and/or for producing documents, if any, in support of the application. The personal hearing was held on Jan 17, 2018 in which Shri Manoj Gupta, Associate Director, Finance represented the applicant company. Shri Gupta explained that the WOS, Hurix Systems Inc, formed in 2001 was in a dormant state for many years and that the IP had seen many changes in management and personnel since then. As a result, the company was unable to trace documents it claimed to have submitted in 2002 for effecting remittances and the share certificates of the WOS. In regard to non submission of the valuation certificate, the company was under the wrong



impression that it was required only when the shares were transferred to a third party and not at the time of voluntary liquidation. He agreed with the contraventions and prayed for leniency.

5. I have carefully considered 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 Regulations 16 (1) (iii), 6 (2) (vi), 6 (2) (v), 15 (i) and 15 (iii) of FEMA 120-RB 2004 as amended from time to time. The amount of contravention in regard to Reg 16 (1)(iii) is considered to be the value of the disinvestment made i.e USD 97,000/- equivalent to INR 46,93,179/- for the period from the date of liquidation upto the date of applying for compounding. The contravention of Reg 6 (2) (vi) is in regard to delayed reporting of remittances, made in 2002, valued at USD62000/- or INR30,13,922/- and reported in 2016 to RBI. Contravention of Reg 6 (2) (v) relates to the remittance of USD 9500/- or INR4,58,317/- through a non-designated bank, the period for which was taken from the date of remittance to the date of reporting to RBI. Non submission of share certificates is in contravention of Reg 15 (i) and delayed submission of APRs is in contravention of Reg 15 (iii) of FEMA 120.

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.2,76,596/- (Rupees Two Lakh Seventy Six Thousand Five Hundred Ninety Six only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contravention of Regulations 16(1) (iii), 6 (2) (vi), 6 (2) (v), 15 (i) and 15 (iii) 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,



by the applicant, based on the facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs.2,76,596/- (Rupees Two Lakh Seventy Six Thousand Five Hundred Ninety Six 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 twenty fifth day of January 2018.

Sd/-

(Sharmila Thakur)

General Manager