



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
Fort, Mumbai - 400 001

Present

Jyoti Kumar Pandey
Chief General Manager

Date: January 02, 2018
CA No 4469/2017

In the matter of

Halcyon Finance & Capital Advisors Private Limited
Hoechst House, Ground Floor,
Nariman Point, Mumbai – 400 021

(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 July 17, 2017 (received on July 18, 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 relate to a) undertaking foreign direct investment (FDI) through the overseas direct investment (ODI) route; b) non-reporting of the step down subsidiary within the prescribed time period and; c) non-submission of Annual Performance Reports (APR) in respect of the overseas JV company in contravention of the provisions of Regulation 6(2)(ii), 13 and 15(iii) respectively 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 of the case are as follows: Halcyon Finance & Capital Advisors Private Limited (HFC), the applicant, is a private limited company incorporated on February



05, 2010 (CIN: U65191MH2010PTC199781) under the Companies Act, 1956. It is engaged in the business of providing management & consultancy services to organizations in various sectors such as healthcare, mining, entertainment and media. In April 2010, HFC set up a wholly-owned subsidiary (WOS) in Singapore namely, Infrahealth Pte Ltd (hereinafter referred as 'WOS') and remitted USD 200,000 and USD 3,614,676 on July 13, 2010 & July 16, 2012 respectively to the overseas WOS towards acquisition of its equity shares. The overseas WOS raised USD 60 million (USD 50 million as term loan and USD 10 million as credit line) from JP Morgan Chase Bank, Singapore through convertible credit facility. In July 2010 the overseas WOS acquired the entire stake in M/s Integrated Health & Healthcare Services Private Limited (IHHS India now called as M/s Radiant Life Care Private Limited) from another non-resident entity viz M/s Integrated Hospital & Healthcare Services, Mauritius for an amount of USD 44,382,975 (Rs.209,21,57,752/-) and subsequently during the period 2010-2016 further invested USD 18,061,528 (Rs.92,85,65,229/-) in the equity of IHHS, India by way of remittances into India (total investment in SDS was USD 62,444,503 i.e. Rs.302,07,22,981/- approximately). Thus, IHHS, India became a subsidiary of the overseas WOS and a step down subsidiary (SDS) of HFC.

Since foreign direct investment (FDI) through overseas direct investment (ODI) is not a bona fide business activity in terms of the provisions of Regulation 6(2)(ii) of FEMA 120/2004-RB, RBI vide letter FE.CO.OID.No.6789/19.58.025/2013-14 dated October 03, 2013 advised HFC to unwind either FDI or ODI leg of the structure. Accordingly, the FDI leg was unwound by transfer of the shares of IHHS, India held by the overseas WOS to HFC for a consideration of Rs.426,00,36,447/- on November 16, 2016. The acquisition of IHHS, India by HFC was funded out of the funds raised through loans and non-convertible debentures from M/s KKR India Financial Services Private Ltd and its affiliates.

IHHS, India became a SDS of HFC with acquisition of shares by the overseas WOS on July 09, 2010 but the same was reported to RBI with delay beyond the prescribed period in July 2012 in contravention of Regulation 13 of FEMA 120/2004-RB. The applicant also delayed filing the Annual Performance Reports in form APR with the RBI in respect of the overseas entity for the years ended March 31, 2011 to March 31, 2016 (i.e. 6 years) beyond the prescribed period in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB. RBI vide letter FE.CO.OID.No.8712/19.58.025/2016-17 dated March 03, 2017 advised HFC of the above contraventions.



3. Regulation 6(2)(ii) of Notification No. FEMA.120/2004-RB dated July 7, 2004 states that an Indian party may make direct investment in a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India provided that direct investment is made in an overseas JV or WOS engaged in a bona fide business activity. Whereas the acquisition of the Indian entity by the overseas WOS in 2010 resulted in an ODI-FDI structure thereby leading to contravention of the said FEMA Regulation.

3.1 Regulation 13 of FEMA 120/2004 states that “A JV / WOS set up by the Indian party as per the Regulations may diversify its activities / set up step down subsidiary / alter the shareholding pattern in 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”. Whereas, the applicant did not report the investment by its overseas WOS in the Indian SDS within the prescribed period of 30 days thereby contravening the said FEMA Regulation.

3.2 Regulation 15(iii) of FEMA 120/2004 provides that “an Indian Party, which has acquired foreign security....shall 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.....” Whereas the applicant delayed in filing the APRs for the period 2011-2016 (i.e. 6 years) in respect of the overseas entity thereby contravening the said FEMA Regulation.

4. The applicant was given an opportunity for personal hearing vide our letter No. FE.CO.CEFA/5225/15.20.67/2017-18 dated December 14, 2017 for further submission in person and/or producing documents, if any, in support of the application. Ms. Vandana Pakle from HFC along with Shri K.C. Gandhi, Chartered Accountant represented the applicant in the personal hearing held on December 18, 2017. During the personal hearing, the representative of the applicant admitted the contraventions committed by the applicant for which they have sought the compounding and submitted that the lapse was not intentional and requested that a lenient view may be taken.

5. It was observed from the records that IHHS, India, which is now a subsidiary of HFC, was under investigation by Directorate of Enforcement (DoE). Accordingly, RBI vide



letter FE.CO.CEFA./3754/15.20.67/CA no.4469/2017-18 dated October 30, 2017, requested DoE to kindly confirm whether the contraventions sought to be compounded by HFC were also subject of DoE investigation and whether it had any objection to compounding by RBI. DoE vide letter F No.RBI/SDE/WR/B-169/2017/2841 dated November 30, 2017 replied that there was no investigation being carried out against HFC. I have given my careful consideration to the documents on record and submission made by the applicant. Accordingly, I hold that the applicant has contravened the following provisions of FEMA Notification No. FEMA.120/2004-RB:

- i) Regulation 6(2)(ii) – The amount of contravention was USD 62,444,503 i.e. Rs.302,07,22,981/- and the period of contravention was 6 years 4 months approximately.
- ii) Regulation 13 – The amount of contravention was USD 62,444,503 i.e. Rs.302,07,22,981/- and the period of contravention was 1 years 11 months approximately.
- iii) Regulation 15(iii) – 6 years i.e. for the years 2011-16.

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. However, after considering the entire facts and circumstances of the case, I am persuaded to take a lenient view on the amount for which the contraventions are to be compounded and I consider that payment of an amount of Rs.2,31,58,756/- (Rupees two crore thirty one lakh fifty eight thousand seven hundred and fifty six only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contravention of Regulation 6(2)(ii), 13 and 15(iii) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.2,31,58,756/- (Rupees two crore thirty one lakh fifty eight thousand seven hundred and fifty six only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai – 400 001 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 second day of January, 2018.

Sd/-

(Jyoti Kumar Pandey)
Chief General Manager