



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: February 06, 2018
CA No 4539 / 2017

In the matter of

Trigyn Technologies Limited
27, SDF-I, 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 there under, I pass the following

Order

The applicant has filed the application dated October 05, 2017 (received at the Reserve Bank on October 06, 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 delay in submission of Annual Performance Reports (APRs) and disinvesting with write-off without the prior approval of the Reserve Bank of India, thereby contravening the provisions of Regulations 15(iii) and 16(3) respectively of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000, notified vide Notification No.



FEMA.120/2000-RB dated July 7, 2004 and as amended from time to time (hereinafter referred to as Notification No. FEMA.120/2000-RB).

2. The relevant facts of the case are as follows: The applicant company was incorporated as Leading Edge Systems Private Limited under the Companies Act 1956 on March 25, 1986 (CIN: L72200MH1986PLC039341). The name was changed to Leading Edge Systems Limited on August 08, 1994 and again to Trigyn Technologies Limited on July 19, 2000. The applicant is engaged in the business of designing, developing, selling, installing and maintaining all kinds of computer software and hardware on home, personal, micro, mini and mainframe computer systems for the domestic and software export market. The applicant acquired Applisoft INC., USA, a company incorporated in USA on 01.01.2001, by way of purchase of shares from the existing shareholders. For this purpose, \$ 7,480,000 (INR 35,04,20,612) and \$ 1,520,000 (INR 7,12,08,467) were remitted on 01.01.2001 and 02.01.2001 respectively. The share certificates were received on 10.01.2001. On 08.02.2010, the applicant disinvested its entire stake in the WOS (Applisoft), with write-off of USD 9 million (INR 42,16,29,079) without the prior approval of the Reserve Bank of India. This was in contravention of Regulation 16(3) of Notification No. FEMA.120/2000-RB. The disinvestment was taken on record on 12.10.2017.

Further, the Annual Performance Reports (APRs) for the years 2002-10 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 15 (iii) 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 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 II of Form ODI in respect of each JV or WOS outside India.....".

Further, Regulation 16(3) of Notification *ibid* states, " An Indian party, which does-not satisfy the criteria specified at sub-regulation (1) above, shall apply to the Reserve Bank for permission to transfer by way of sale of shares of a



JV/WOS outside India which may be granted subject to such conditions as the Reserve Bank may consider appropriate.”

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/4667/15.20.67/2017-18 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 November 29, 2017 during which Shri Amin Bhojani, CFO, Shri Parthasarathy Iyengar, Vice-President and Company Secretary and Ms. Ishita Bhatt, Manager, Finance, 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.

4. Meanwhile, since the submission of the compounding application, it was also observed that the applicant appeared to be under investigation with respect to its shareholding in e-Capital Solutions (Bermuda) Limited. Hence, the applicant was advised to provide a declaration confirming that there were no direct/indirect linkages between the WOS with respect to which the compounding application has been filed, i.e., Applisoft Inc., USA, and the other WOS of the applicant, i.e., e-Capital Solutions (Bermuda) Limited. In response to the same, the applicant submitted a declaration dated 01.02.1018, stating the following:

“We Trigyn Technologies Limited, India (hereinafter referred to as “Trigyn India”) hereby confirm/declare that to the best of our knowledge and basrd on the available records there are no direct linkages between Applisoft Inc., USA (hereinafter referred to as “Applisoft”) and e-Capital Solutions (Bermuda) Limited, Bermuda (hereinafter referred to as “e-Capital”) except that Applisoft and e-Capital were wholly-owned Subsidiaries of Trigyn India and had no direct pecuniary transactions between them.



We, also confirm that Trigyn Technologies Inc., USA (hereinafter referred to as “Trigyn USA”) became a wholly-owned subsidiary of Trigyn India on liquidation of eCapital. Trigyn USA had bonafide transactions with eCapital as well as Applisoft while it was a subsidiary of eCapital. Except as stated above there are no direct transactions between Applisoft and eCapital.”

It has also been declared in the compounding application dated October 05, 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 subsequently declared in the declaration dated January 23, 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. 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 and thereafter.

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 15(iii) and 16(3) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount of contravention is Rs. 42,16,29,079/- and the period of contravention is seven and a half years approximately.

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. 33,02,218/- (Rupees thirty three lakh two thousand two hundred and eighteen 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 15(iii) and 16(3) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 33,02,218/- (Rupees thirty three lakh two thousand two hundred and eighteen 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 sixth day of February, 2018

Sd/-

(Jyoti Kumar Pandey)
Chief General Manager