



In the

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

Present

Kamlesh Sharma
Deputy General Manager

Date: April 24, 2018
C.A. 4549/2017

In the matter of

Skyweb Infotech Limited
Regd. Office: 15th Floor, EROS Corporate Tower
Nehru Place, New Delhi- 110 019

(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 17, 2017 (received in the Reserve Bank of India on October 30, 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 “outward remittance made directly to a step down subsidiary (SDS) without prior approval”; (ii) “not obtaining share certificates against the direct investment made in an overseas joint venture (JV) entity”; (iii) “delay in submission of annual performance reports (APRs) in respect of overseas JV”; and (iv) “disinvestment of overseas JV involving write-off under automatic route which was not permitted at that time”. These contraventions relate to the provisions of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations as applicable at the time the said transactions were made {FEMA Notification No. 19 dated May



3, 2000 and FEMA Notification No. 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:

2.1 The applicant- Skyweb Infotech Limited (SIL) was registered , based on a fresh certificate of incorporation consequent upon change of name) on March 28, 2000 with its registered office at 15th Floor, EROS Corporate Tower, Nehru Place, New Delhi- 110 019. The applicant's main objects relate to business of manufacturing and dealing with computer hardware products and software and other related services.

2.2 The applicant (SIL) made an outward remittance of USD 25,000.00 on September 28, 2002, to acquire stake in the equity of Highveld Investments Limited, Mauritius (HILM) – a company incorporated in Mauritius in February 2000. Thus, HILM became an overseas JV of the applicant under the regulations under FEMA for which a unique identification number (UIN) was allocated in 2002.

2.3 During the financial year 2002 itself, the overseas JV (HILM) had established a company in the USA, namely Cross Border IT Inc., USA (CBIT) which thus became an overseas SDS under the overseas JV (HILM). The applicant (SIL) had made an outward remittance of USD 15,000.00 directly to the overseas SDS (CBIT), without prior approval on July 17, 2002. The direct investment in overseas SD (CBIT) was made by the applicant even before it made outward remittance for its investment in the equity of the overseas JV (HILM). However, since the remittance to CBIT was deemed to have been made on behalf of HILM, there was no intention of obtaining a separate UIN for CBIT.

2.4 The applicant could not submit share certificate or any other proof of investment in the equity of overseas JV (HILM) and overseas SDS (CBIT) in respect of the outward remittances made. It was submitted that while these remittances towards equity were made to meet initial expenses for intended expansion of business, the overseas JV (HILM) as well as the SDS (CBIT) could not become *fully functional* at any stage. The overseas JV (HILM) was 'deregistered' in May 2005 and the overseas SDS was also deemed as 'ceasing to exist' with effect from the same date. As a consequence of the



disinvestment, there was an inward remittance from repatriation of USD 25,000.00, against the total outward remittance of USD 40,000.00 in connection with the overseas JV and SDS. Thus, as the amount repatriated on disinvestment was less than the amount invested, the balance amount of USD 15,000.00 was deemed as write-off of investment in overseas JV.

3. The following are the observed contraventions:

3.1 Whereas in terms of Regulation 3 of FEMA Notification No. 19 dated May 3, 2000 (the then applicable regulations), the applicant (SIL) was not permitted to make an outward remittance directly to the overseas SDS (CBIT), it remitted USD 15,000.00 (equivalent of ₹ 7,35,450.00), without prior permission from the Reserve Bank of India.

3.2 Whereas in terms of Regulation 15(i) of FEMA 120/2004 the applicant, (SIL) which had made outward remittance towards equity of overseas JV in terms of these Regulations, should have received share certificates or any other document as an evidence of investment in the foreign entities to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date on which the amount was remitted; the applicant did not receive share certificate or any other proof of investment in the overseas JV (HILM) even as the said overseas JV (HILM) was 'deregistered' in May 2005. The amount remitted to the SDS (CBIT) purportedly on behalf of HILM was also taken as the intended investment in the overseas JV (HILM).

3.3 Whereas in terms of Regulation 15(iii) of FEMA 120/2004 an applicant is required to submit to the Reserve Bank, an Annual Performance Report (APR), as prescribed by the Reserve Bank from time to time, in respect of each overseas JV - through the designated Authorized Dealer, every year on or before a specified date; the APRs for 2003 and 2004 (i.e. 2 years) were submitted (in July 2017) with delay beyond the prescribed period.

3.4 Whereas in terms of Regulation 16(3) of FEMA 120/2004 (before the amendment brought vide FEMA 277 with effect from June 29, 2011), prior permission from Reserve Bank was necessary in cases of disinvestment involving write-off of investment made in overseas JV; the applicant disinvested from the overseas JV with a write off, under automatic route.



4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA No. /15.20.67/2017-18 dated March 26, 2018 for further submission in person and/or producing documents, if any, in support of the application. A personal hearing held on April 5, 2018 in which the applicant (SIL) was represented by Shri M.S. Sridhar (CEO, Aaditya International, a Management / FEMA Consulting firm). The representative submitted that the applicant had inadvertently failed to comply with the FEMA regulations. The representative also submitted that documents such as share certificate and APRs could not be obtained because the overseas JV and SDS could never become fully functional and requested for a lenient view in the matter. The application for compounding was considered on the basis of the averments made in the application as well as other documents and submissions made in this context by the applicant.

5. I have given my careful consideration to the documents on record and submissions made by the representatives of the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant contravened the following Regulations of Notification No. FEMA 19 dated May 3, 2000 and FEMA 120/2004-RB dated July 7, 2004:

- a) Regulation 3 of FEMA 19 - The amount of contravention is USD 15,000.00 (₹ 735,450.00) and the period of contravention is taken as 15 years and 3 months – from the date of first outward remittance in respect of intended overseas direct investment (ODI) to the date of submission of compounding application.
- b) Regulation 15(i) of FEMA 120 - The amount of contravention is taken as USD 40,000.00 (₹ 1,949,950.00) and the period of contravention is taken as 15 years 3 months from the date of the first outward remittance in respect of intended overseas direct investment (ODI) to the date of submission of compounding application.
- c) Regulation 15(iii) of FEMA 120 - The APRs for the year 2003 and 2004 were submitted with a delay (on July 25, 2017).
- d) Regulation 16(3) of FEMA 120 - The amount of contravention is taken as the entire amount of investment which was made in the overseas JV and SDS i.e. USD 40,000.00 (₹ 1,949,950.00) when disinvestment - involving



write off was carried out under automatic route, not permitted under the regulations.

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, taking into account the relevant facts and circumstances of the case as stated in the foregoing paragraphs, I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and I consider that payment of an amount of ₹ 292,641.00 (₹ Two Lakh Ninety Two Thousand Six Hundred and Forty One only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulations 3 of Notification No. FEMA 19 dated May 3, 2000, and Regulations 15(i), 15(iii) and 16(3) of Notification No. FEMA 120/2004-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹ 292,641.00 (₹ Two Lakh Ninety Two Thousand Six Hundred and Forty One 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 twenty fourth day of April, 2018

Sd/-

(Kamlesh Sharma)
Deputy General Manager