



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Shekhar Bhatnagar
Chief General Manager

Date: June 21, 2018
CA No 4632 / 2018

In the matter of

Endurance Technologies Limited
K-228, MIDC Industrial Area Waluj
Aurangabad, Maharashtra - 431136

(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 January 29, 2018 (received in the Reserve Bank on January 30, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are (i) delay in filing Form ODI beyond the stipulated time period, (ii) funding of overseas investment through a mode other than the permitted modes and (iii) non-submission of Annual Performance Reports (APR) within the stipulated time period. The above amount to the contravention of



Regulations 6(2)(vi), 6(3) and 15(iii) 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 under: The applicant, an Indian company, was incorporated as Endurance Suspension Systems (India) Limited on December 27, 1999 (CIN: L34102MH1999PLC123296) under the Companies Act, 1956. Its name was subsequently changed to Endurance Transmission Systems (India) Limited on December 06, 2000 and to Endurance Technologies Private Limited on August 11, 2006. Its status was changed to a public limited company on July 09, 2010, to a private limited company on January 18, 2012 and again to a public limited company on May 31, 2016. It is engaged in the manufacturing of the automotive components, suspension products, transmission products and brake systems. The applicant set up a Special Purpose Vehicle namely, Endurance Overseas Srl in Italy on May 14, 2007 for the purpose of making strategic investments in Europe. The initial share capital amounting to Euro 10,000 and the incorporation expenses amounting to Euro 500 were paid by ETL's German subsidiary namely, Endurance Amann GmbH which was repaid by ETL on October 06, 2017 Rs.803,355/-). The overseas investment made by ETL under the automatic route in the Italy SPV in May 2007 was reported with delay in form ODI-Part-1 on March 10, 2017 which was in contravention of regulation 6(2)(vi) of FEMA 120. Further, funding of the overseas investment by a mode other than that permitted under regulation 6(3) of FEMA 120 was in contravention of the said regulation. .

The applicant, an Indian company, was incorporated as Endurance Suspension Systems (India) Limited on December 27, 1999 (CIN: L34102MH1999PLC123296) under the Companies Act, 1956. Its name was subsequently changed to Endurance Transmission Systems (India) Limited on December 06, 2000 and to Endurance Technologies Private Limited on August 11, 2006. Its status was changed to a public limited company on July 09, 2010,



to a private limited company on January 18, 2012 and again to a public limited company on May 31, 2016. It is engaged in the manufacturing of the automotive components, suspension products, transmission products and brake systems. The applicant set up a Special Purpose Vehicle namely, Endurance Overseas Srl in Italy on May 14, 2007 for the purpose of making strategic investments in Europe. The initial share capital amounting to Euro 10,000 and the incorporation expenses amounting to Euro 500 were paid by ETL's German subsidiary namely, Endurance Amann GmbH which was repaid by ETL on October 06, 2017 Rs.803,355/-). The overseas investment made by ETL under the automatic route in the Italy SPV in May 2007 was reported with delay in form ODI-Part-1 on March 10, 2017 which was in contravention of regulation 6(2)(vi) of FEMA 120. Further, funding of the overseas investment by a mode other than that permitted under regulation 6(3) of FEMA 120 was in contravention of the said regulation. .

ETL had extended loans to its Italian SPV and the interest accrued on the loans was capitalized as under:-

Date of capitalization	Amount (Euro)	Amount (Rs.)
February 26, 2010	156,083	1,09,47,662
July 02, 2012	319,010	2,18,20,284
Total	475,093	3,27,67,946

ETL reported the capitalization of the interest as above with delay on March 10, 2017 which was in contravention of regulation 6(2)(vi) of FEMA 120.

RBI vide letter FE.CO.OID./5768/19.05.219/2017-18 dated January 04, 2018 advised the applicant of the above contraventions.

Further, the APRs for two years i.e. from the year ended March 31, 2015 to the year ended March 31, 2016 were submitted with delay which was in contravention of regulation 15(iii) of FEMA 120.



The applicant, an Indian company, was incorporated as Endurance Suspension Systems (India) Limited on December 27, 1999 (CIN: L34102MH1999PLC123296) under the Companies Act, 1956. Its name was subsequently changed to Endurance Transmission Systems (India) Limited on December 06, 2000 and to Endurance Technologies Private Limited on August 11, 2006. Its status was changed to a public limited company on July 09, 2010, then to a private limited company on January 18, 2012 and again to a public limited company on May 31, 2016, whereby its name was changed to Endurance Technologies Limited (ETL). It is engaged in the manufacturing of automotive components, suspension products, transmission products and brake systems. The applicant set up a Special Purpose Vehicle namely, Endurance Overseas Srl in Italy on May 14, 2007 for the purpose of making strategic investments in Europe. The initial share capital amounting to Euro 10,000 and the incorporation expenses amounting to Euro 500 (a total of Euro 10500, equivalent to Rs. 803,355/-) were paid, on behalf of ETL, by its other subsidiary namely, Endurance Amann GmbH (EAG), incorporated in Germany. This amount was repaid by ETL to EAG on October 06, 2017, following RBI's approval letter Ref. No. FE.CO.OID/12185/19.05.219/2017-18, dated August 03, 2017, subject to and without prejudice to any action that may be subsequently taken by RBI. The overseas investment made by ETL under the automatic route in the Italy SPV in May 2007 was reported in Form ODI, with a delay of more than nine years beyond the stipulated time period, on March 10, 2017. This was in contravention of regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB. Further, funding of the overseas investment by a mode other than those permitted under Regulation 6(3) of Notification No. FEMA 120/2004-RB was in contravention of the said regulation.

Further, ETL had extended loans to its Italian SPV and the interest accrued on the loans was capitalized as under:-

Date of capitalization	Amount (Euro)	Equivalent Amount (Rs.)
February 26, 2010	156,083	1,09,47,662



July 02, 2012	319,010	2,18,20,284
Total	475,093	3,27,67,946

ETL reported the capitalization of the amounts of interest on the loans with a delay beyond the stipulated time period, on March 10, 2017 which was, again, in contravention of Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB.

RBI vide letter FE.CO.OID./5768/19.05.219/2017-18 dated January 04, 2018 advised the applicant of the above contraventions.

Further, the APRs for two years i.e. from the year ended March 31, 2015 to the year ended March 31, 2016 were submitted with a delay beyond the stipulated time period, in contravention of regulation 15(iii) of Notification No. FEMA 120/2004-RB.

3. In terms of Regulation 6(2)(vi) of Notification No.FEMA.120/2004-RB, an Indian party is permitted to make Overseas Direct Investment (ODI) in certain cases, provided “The Indian Party submits Part I of Form ODI, duly completed, to the designated branch of an authorized dealer”.

Regulation 6(3) of Notification No.FEMA.120/2004-RB, provides the list of permitted methods of funding of overseas investment. The abovementioned method, as used by the applicant, does not form a part of such permitted modes.

Further, in terms of Regulation 15 (iii) of Notification No.FEMA.120/2004-RB, “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 III of Form ODI in respect of each JV or WOS outside India.....”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/11905/15.20.67/2016-17 dated June 15, 2018 for further submission in person and/or producing documents, if any, in support of the



application. The personal hearing was held on June 19, 2018 during which Shri Sunil. N. Lalai, Company Secretary and V.P. – Legal and Shri Rajkumar Mundra, Treasurer and Head – Investor Relations, represented the applicant. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to ignorance and requested for a lenient view in the matter.

It has also been declared in the compounding application dated January 29, 2018, that the particulars given on behalf of the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has also been declared in the undertaking dated January 29, 2018, 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 been 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.

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 6(2)(vi), 6(3) and 15(iii) of Notification No.FEMA.120/2004-RB. The amounts and periods related to the contraventions are as follows:

Regulation 6(2)(vi): Amount of contravention – Rs. 3,35,71,301/- and period of contravention ranges from four year seven months to nine years nine months approximately.



Regulation 6(3): Amount of contravention – Rs. 8,03,355/- and period of contravention – ten years two months approximately.

Regulation 15(iii): As indicated in para 2 above.

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. 6,74,942/- (Rupees six lakh seventy four thousand nine hundred and forty two 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 6(2)(vi), 6(3) and 15(iii) of Notification No.FEMA.120/2004-RB, on payment of a sum of Rs. 6,74,942/- (Rupees six lakh seventy four thousand nine hundred and forty two 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 twenty first day of June, 2018

Sd/-

(Shekhar Bhatnagar)
Chief General Manager