



In the

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

Present

Ajay Kumar Misra
Chief General Manager

Date: May 14, 2018
CA No. 4640/2018

In the matter of

M&C Saatchi Communications Private Limited
141 B DDA Flats Shahpurjat
New Delhi - 110049

(Applicant)

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

Order

The applicant has filed a compounding application dated February 12, 2018 (received in the Reserve Bank of India on February 20, 2018), and an addendum dated March 28, 2018 for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded is deemed borrowing (expenditure occurred by group companies on behalf of the applicant, not paid within the stipulated time period) in foreign exchange from its group companies abroad without meeting the stipulated conditions, in contravention of Regulation 6(1) read with Paragraphs 1(i), (iv), (xi) and (xii) of Schedule I of Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3/2000-RB dated May 3, 2000, as amended from time to time (hereinafter referred to as Notification No. FEMA 3/2000-RB).



2. The relevant facts of the case are as follows: The applicant company was incorporated as M&C Saatchi Communications Private Ltd on October 13, 2005 under the Companies Act, 1956 (CIN U74300DL2005PTC141682). It is engaged in the business of advertising, is a subsidiary of M&C Saatchi International Holdings BV, Netherlands and the ultimate holding company of M&C Saatchi PLC, UK. M&C Saatchi PLC, UK and other group companies incurred the following expenditure on behalf of the applicant:

S.No.	Date	Expenditure incurred by	Nature of expenses	Amount (GBP)	Amount (INR)
1	30.12.2005	M&C Saatchi PLC, UK	Sharing of group marketing cost and worldwide meeting	2729.35	248316.26
2	30.06.2006	-do-	-do-	25671	2335547.58
3	30.06.2007	-do-		13043	1186652.14
4	30.11.2007	-do-	-do-	17122	1557759.56
5	30.06.2009	M&C Saatchi Agency Pvt. Ltd., Australia	-do-	114136.37	10384126.94
6	30.06.2009	M&C Saatchi (Hong Kong) Ltd.	-do-	276600.39	25165103.48
7	30.06.2009	M&C Saatchi PLC, UK	-do-	22293.20	2028235.33
8	12.10.2010	M&C Saatchi	-do-	39998.58	3639070.80



		Agency Pvt. Ltd., Australia			
9	31.12.2012	M&C Saatchi PLC, UK	-do-	31733.70	2887132.02
10	31.01.2013	-do-	-do-	3158.53	287363.05
11	28.02.2013	-do-	-do-	3213.51	292365.13
12	30.03.2013	-do-	-do-	3331.38	303088.95
13	30.04.2013	-do-	-do-	3213.51	292365.13
14	31.12.2013	-do-	-do-	12897.46	1173410.91
15	31.12.2013	-do-	-do-	12340.60	1122747.78
16	31.03.2014	-do-	-do-	9547.13	868597.88
17	30.04.2014	-do-	-do-	3148.29	286431.42
Total				594,178.36	5,40,58,314.44

The applicant could not pay the above dues to the group companies due to liquidity concerns. As the dues remained outstanding for a period exceeding three years, these were in the nature of deemed ECB. The applicant was not eligible to raise ECB as companies engaged in the business of providing consultancy services were not permitted to undertake ECB under automatic route. The applicant thereby contravened Para 1(i) of Schedule I to Regulation 6(1) of Notification No. FEMA 3/2000-RB. The end use of ECB loan was not a permitted end-use which is in contravention of Para 1(iv) of Schedule I to Regulation 6(1) of Notification No. FEMA 3/2000-RB. The funds were drawn without obtaining Loan Registration number (LRN) from RBI which is in contravention of Para 1(xi) of Schedule I to Regulation 6(1) of Notification No. FEMA 3/2000-RB. The applicant did not adhere to reporting requirement, thereby contravening Para 1(xii) of Schedule I to Regulation 6(1) of Notification No. FEMA 3/2000-RB. RBI vide letter ND.FED.PCD.No. 1947/02.01.003/Mar16/2016-17 dated October 25, 2016 granted its 'no objection' for refund of outstanding payables to the overseas group entities, subject to compounding. The applicant refunded the said payables on February 01, 2018.



3. In terms of Regulation 6(1) of Notification No.FEMA.3/2000-RB dated May 03, 2000 as amended from time to time "a person resident in India may raise in accordance with the provisions of the Automatic Route Scheme specified in Schedule I, foreign currency loans of the nature and for the purposes as specified in that Schedule....".

Paragraph 1(i) of Schedule I to FEMA Notification No. FEMA.3/2000-RB, provides for the eligible borrowers. As the applicant was engaged in the business of providing consultancy services, it was not eligible to raise ECB.

Paragraph 1(iv) of Schedule I to FEMA Notification No. FEMA.3/2000-RB provides the end-uses for which ECB is permitted.

Paragraph 1(xi) of Schedule I to FEMA Notification No. FEMA.3/2000-RB states that, "draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only after obtaining the loan registration number from the Reserve Bank".

Paragraph 1 (xii) of Schedule I to FEMA Notification No. FEMA.3/2000-RB states that "The borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time".

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/8812/15.20.67/2017-18 dated April 26, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on May 08, 2018 during which Shri Deepender Kumar, Chartered Accountant, represented the applicant. The representative 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.

It has also been declared in the compounding application dated February 14, 2018, 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 furnished along with 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 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.

6. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Regulation 6(1) read with Paragraphs 1(i), (iv), (xi) and (xii) of Schedule I of Notification No. FEMA 3/2000-RB dated May 3, 2000, as amended from time to time. The amount of contravention is Rs. 5,40,58,314.44/- and period of contravention ranges from ten months to ten years approximately.

7. 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 contraventions are to be compounded and I consider that an amount of Rs. 4,39,600/- (Rupees four lakh thirty nine thousand six hundred only) will meet the ends of justice.

8. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 6(1) read with Paragraphs 1(i), (iv), (xi) and (xii) of Schedule I of Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3/2000-RB dated May 3, 2000, as amended from time to time, by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs. 4,39,600/- (Rupees four lakh thirty nine thousand six hundred 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 of accordingly.

Dated this the fourteenth day of May, 2018

Sd/-

(Ajay Kumar Misra)
Chief General Manager