



In the

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

Present

Kamlesh Sharma
Deputy General Manager

Date: May 9, 2018
C.A. 4575/2017

In the matter of

J K Enviro-Tech Limited
Regd. Office: P.O. Central Pulp Mills- 394660
Fort Sonagarh, Tapi, Gujarat

(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 November 15, 2017(received in the Reserve Bank of India on November 21, 2017) 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 relates to “disinvestment of entire stake in the equity of overseas wholly owned subsidiary (WOS) within one year of initial equity investment - without prior approval from the Reserve Bank of India”. This contravention relates to the provisions of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations - FEMA Notification No. 120/2004-RB dated July 7, 2004, as amended from time to time (hereinafter referred to as Notification No. FEMA120/2004-RB).



2. The relevant facts of the case are as follows:

2.1 The applicant company- J K Enviro-Tech Limited (JKETL) was incorporated on December 19, 2007 with its first registered office at New Delhi. Subsequently, in July 2013, the company changed its registered office to its present address in Gujarat and the Corporate Identity Number (CIN) was accordingly changed to U73100DL2007PLC171682.

The applicant company's main objects relate to business of establishing, operating and maintaining lime kilns for environment protection and undertaking projects for ecological up-gradation in the field of pollution control filtration, among others.

2.2 The applicant company (JKETL) made an outward remittance of USD 1,000.00 on February 26, 2016 towards acquisition of equity of an overseas company Habras International (Singapore) Pte Ltd (HISPL). On June 10, 2016, JKETL sent another remittance of USD 25,000.00 towards the equity of HISPL. The said overseas company (HISPL) was renamed as J K Paper International (Singapore) Pte. Ltd (JKPISPL), with effect from October 14, 2016.

2.3 On February 6, 2017, the applicant company (JKETL) disinvested from its overseas WOS (JKPISPL – formerly named HISPL) by transferring its stake (by sale) to its holding company in India viz. J K Paper Limited.

3. The following is the contravention observed with regard to the above:

3.1 Whereas in terms of Regulation 16(1)(v) of FEMA 120/2004, one of the conditions to be fulfilled by an Indian party that has made a direct investment (ODI) in an overseas entity, to be able to transfer by way of sale of foreign security to another eligible Indian party or to a person resident outside India - *under automatic route*; is that such overseas entity should have been in operation for at least one full year from the date of initial ODI by such Indian party. Thus, prior permission from Reserve Bank was necessary in this case as the applicant company (JKETL) intended to disinvest (by transfer of its entire stake) within one year of its initial ODI in the equity of the overseas entity (JKPISPL – formerly named HISPL).



4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA No.8037/15.20.67/2017-18 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 6, 2018 in which the applicant company was represented by Shri Ashok Gupta, Director, J K Enviro-Tech Ltd (and Vice President, J K Paper Ltd, New Delhi). The applicant company submitted that, before going ahead with the disinvestment under automatic route, it had inadvertently ignored the fact that the overseas entity had not yet completed one year of operation from the date when ODI was first made in that overseas entity. Thus, this transfer of stake - without prior approval, resulted in a contravention of regulations under FEMA. 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. It has been declared in the compounding application dated November 15, 2017 that the particulars given by the applicant in the application were true and correct to the best of their/his/her knowledge and belief. It has been declared in the declaration dated November 15, 2017 furnished 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 informed of initiation of any such enquiry/investigation/adjudication proceedings against it/him/her thereafter. 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.

6. I have given my careful consideration to the documents on record and submissions made by the representative of the applicant during the personal hearing. Accordingly, I hold that the applicant contravened the following Regulation of Notification No. FEMA120/2004-RB dated July 7, 2004:

Regulation 16(1)(v) of FEMA 120: The amount of contravention is taken as the entire amount of investment in the overseas entity i.e. USD 26,000.00 (1,753,686.00) at the time of disinvestment - carried out under automatic



route – within one year of the initial investment in the equity of the overseas entity. The period of contravention is being taken as around 9 months (less than one year) - from the date of disinvestment till the date of submission of compounding application.

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 contravention is to be compounded and I consider that payment of an amount of ₹ 58,768.00 (₹ Fifty Eight Thousand Seven Hundred and Sixty Eight only) will meet the ends of justice.

8. Accordingly, I compound the admitted contravention namely, the contravention of the Regulation 16(1) (v) of Notification No. FEMA120/2004-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 ₹ 58, 768.00 (₹ Fifty Eight Thousand Seven Hundred and Sixty Eight 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 ninth day of May, 2018

Sd/-

(Kamlesh Sharma)
Deputy General Manager