



In the

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

Present

Meenakshi Ganju
Deputy General Manager

Date: July 17, 2018
C.A. 4627/2018

In the matter of

Anand Rathi Wealth Services Limited
Registered Office: 4th Floor, Silver Metropolis, Jai Coach Compound,
Opp.Bimbisar Nagar, Goregaon (E), Mumbai-400 063

(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 15, 2018 (received in the Reserve Bank of India on January 24, 2018) 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 non-submission of Annual Performance Reports (APRs) for the period 2006 to 2009, in contravention of Regulation 15(iii) of FEMA 120 / RB-2004 dated July 7, 2004 as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB). Further the applicant had written off the entire amount of ODI under automatic route without obtaining fair valuation certificate and without submitting APRs in contravention of Regulation 16(1)(iii) and Reg 16(1)(v) of FEMA 120 /2004-RB respectively.

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



2.1 The applicant, a private limited company incorporated as Hitkari Finvest Private under

the Companies Act, 1956. The applicant is engaged in the business of funds management and venture capital, financial advisor, wealth management etc. in India.

2.2. The applicant invested USD 30,000 on October 19, 2005 in an overseas WOS viz. Anand Rathi India Realty Fund in Mauritius. The company was unable to commence operations and the applicant decided to close the company vide Board Resolution dated May 17, 2008. The company was removed from the Registrar of Companies in Mauritius w.e.f. August 6, 2009. The applicant did not submit annual performance reports (APRs) for the period 2006 to 2009, thereby contravening Regulation 15(iii) of FEMA 120 / RB-2004 dated July 7, 2004 as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB). Further the applicant had written off the entire amount of ODI under automatic route without obtaining fair valuation certificate and without submitting APRs in contravention of Regulation 16(1)(iii) and Reg 16(1)(v) of FEMA 120 /2004-RB respectively.

3. The following are the observed contraventions:

3.1 Whereas Regulation 15(iii) of FEMA 120/2004, states that an Indian Party, which has acquired foreign security in terms of the Regulations in Part- I, shall -submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before a specified date, an Annual Performance Report (APR) in Part III of Form ODI, as prescribed by the Reserve Bank from time to time, in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time. The APR, so required to be submitted, has to be based on the audited annual accounts of the JV / WOS for the preceding year, unless specifically exempted by the Reserve Bank.

3.2 Whereas Regulation 16(1)(iii) of the notification *ibid*, states that an Indian Party may transfer, by way of sale to another Indian Party any share or security held by it in a JV or WOS outside India subject to the condition that if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS.



3.3 Whereas Regulation 16(1)(v) of the notification *ibid*, states that that an Indian Party may transfer, by way of sale to another Indian Party any share or security held by it in a JV or WOS outside India subject to the condition that the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank.

4. The applicant was given an opportunity for personal hearing vide letter No.FE.CO.CEFA.No./1/15.20.67/2017-18 dated July 2, 2018 for further submission in person and/or producing documents, if any, in support of the application. Shri Nitesh Porwal (Assistant

Vice President) represented the applicant company during the personal hearing held on July 10, 2018. The representative of the applicant submitted that the contraventions on the part of the applicant company were unintentional and arose out of lack of knowledge about the legal requirements associated with the transaction which the applicant entered with an intention of expanding its business abroad. The representative of the applicant company also requested for a lenient view on the contraventions, in view of the fact that the promoters had approached the transaction only from a technical background and could not understand the 'legal complexities' of the matter and that the overseas WOS was closed down without starting its operations as the purpose for which it was set-up could not be accomplished. The Overseas WOS of the company closed its operations and was removed from register of the Companies Act 2001 of Mauritius Government on August 6, 2009. A copy of Mauritius Government Gazette to that effect was also shown. The representative of the company also submitted that the fair valuation of the shares written off was not obtained out of ignorance of law. The application for compounding was considered based on 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. FEMA120/2004-RB dated July 7, 2004:

(i) Regulation 15(iii)-The amount of contravention in INR, as declared by the applicant is ₹13,67,400/- approximately and the period of contravention is taken as 8 years, 7 months



and 18 days from the date of such cash payment to the date of submission of compounding application.

(ii) Regulation 16(1)(iii)-The amount of contravention in INR, as declared by the applicant is ₹13,67,400/- approximately and the period of contravention is taken as 8 years, 7 months and 18 days from the date of such cash payment to the date of submission of compounding application.

(iii) Reg 16(1)(v)-The amount of contravention in INR, as declared by the applicant is ₹13,67,400/- approximately and the period of contravention is taken as 8 years, 7 months and 18 days from the date of such cash payment to the date of submission of compounding application.

6. It has been declared in the compounding application dated January 15, 2018 that the particulars given by the applicant in the application are true and correct to the best of his knowledge and belief. It has been declared in the declaration dated January 30, 2018 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 him thereafter as required in terms of the said undertaking. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made/undertaking furnished 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/undertakings are subsequently discovered to be false and/or incorrect.

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 ₹2,10,510/- (Rupees two lakh ten thousand five hundred and ten only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulations 15(iii), 16(1)(iii) and 16(1)(v) 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 ₹2,10,510/- (Rupees two lakh ten thousand five hundred and ten 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 day the seventeenth day of July 2018

Sd/-

(Meenakshi Ganju)

Deputy General Manager