



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: August 27, 2018
C.A. 4650/2018

In the matter of

Muthukumar Ayarpadde
C/o JCSS Consulting Private Limited,
No. 20, Uniworth Plaza, 2nd Floor, Sankey Road,
Bengaluru 560 020

(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 thereunder, I pass the following

Order

The applicant has filed a compounding application dated December 13, 2017 (received in the Reserve Bank of India on March 09, 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 relate to (i) acquisition of the shares of an Indian Company from its resident shareholders on deferred payment basis otherwise than through the permitted methods of payment in contravention of regulation 3, and; (ii) transfer of shares of an Indian company from non-resident Indian (NRI) to a non-resident entity without obtaining prior approval from the Reserve Bank in contravention of regulations 3 and 9(2)(ii) respectively of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated 3rd May 2000 (hereinafter referred to as Notification No. FEMA 20/2000-RB), as then applicable.



2. The relevant facts of the case are as follows: The applicant is an NRI who purchased 499,500 equity shares of face value of ₹10/- each of Sathya Auto Private Limited (SAPL), an unlisted Indian company incorporated on June 06, 2005 (CIN: U50101TN2005PTC056529) under the Companies Act, 1956. SAPL is engaged in the business of manufacturing of auto components and other related accessories. The applicant, Mr. Muthukumar Ayarpadde, acquired the shares of SAPL from its resident shareholders as under:-

Table A

Date of transfer	Date of acknowledgment by AD bank	No. of shares	Price / share (₹)	Resident seller	Sale consideration (₹)
April 12, 2007	March 28, 2011	125000	47.60	R. Sundarajan	59,50,000
April 12, 2007	March 28, 2011	125000	47.60	Vigno Prasath	59,50,000
April 12, 2007	March 28, 2011	124500	47.60	R. Mohan	59,26,200
April 12, 2007	March 28, 2011	125000	47.60	R. Magesh	59,50,000
		499500*			2,37,76,200

- Out of total 500,000 shares of SAPL, remaining 500 shares were transferred to Ms. Parmeshwari, a resident Indian for an amount of ₹23,800/-.

The NRI investor, Mr. Muthukumar Ayarpadde, intended to acquire the stake in SAPL through 'A-Rank Holdings Private Limited' (AHPL), an Indian company. Accordingly, the applicant infused funds in AHPL from his NRE a/c with Bank of Baroda. Subsequently, due to a change in the business plan the applicant decided to set up a holding company outside India for various acquisitions in India. Thus, the above 499,500 shares were transferred to Mr. Ayarpadde for which the entire consideration amounting to ₹2,37,76,200/- was routed through the third parties viz AHPL and SAPL, which was in contravention of regulation 3 of Notification No. FEMA 20/2000-RB, as then applicable. The details of the transfer of funds through AHPL & SAPL in respect of the sale consideration are given below:-



Table B

Date of payment	Resident shareholders (sellers)	Mode of payment	Amount (₹)
March 17, 2007	R Magesh	Mr. Ayarpadde transferred funds from his NRE a/c with Bank of Baroda to AHPL which in turn paid to the resident shareholders	12,50,000
	R Mohan		12,50,000
	R Sundarajan		12,50,000
	R Vignoprasath		12,50,000
April 03, 2007	R Mohan		12,50,000
April 04, 2007	R Sundarajan		12,50,000
April 05, 2007	R Magesh		12,50,000
April 04, 2007	R Vignoprasath		12,50,000
October 16, 2007	R Mohan		33,50,000
October 16, 2007	R Vignoprasath		33,50,000
October 17, 2007	R Sundarajan	33,50,000	
October 18, 2007	R Magesh	33,50,000	
April 24, 2008	R Mohan	Mr. Ayarpadde transferred funds to AHPL which in turn transferred funds to SAPL which finally paid to the resident shareholders	182,330*
April 19, 2008	R Sundarajan		182,329*
April 23, 2008	R Vignoprasath		182,329*
April 30, 2008	R Magesh		182,329*
		Total	2,41,29,317**

***Includes ₹2,37,76,200/- towards sale consideration & the balance towards repayment of dues payable by SAPL to its resident shareholders*

Thus, a part of the consideration amounting to ₹1,37,76,200/- was paid over a period of one year without obtaining prior approval from the Reserve Bank for deferred payment which was in contravention of regulation 3 of Notification No. FEMA 20/2000-RB. Mr. Ayarpadde subsequently transferred all the shares (499,500 shares) to another non-resident entity viz MK Auto Components Limited (MKAL) on June 06, 2008. MKAL was incorporated under the laws of Malaysia to act as the overseas



holding company for making downstream investments into India. The transfer of shares of an Indian company from non-resident Indian (NRI) to non-resident (NR) entity without obtaining prior approval from the Reserve Bank was in contravention of regulation 9(2)(ii) of Notification No. FEMA 20/2000-RB, as then applicable. The Reserve Bank vide letter FED.CO.FID.No.5152/10.21.361/2016-17 dated November 18, 2016 granted post facto approval for transfer of shares from NRI to NR.

3. In terms of regulation 3 of Notification No. FEMA 20/2000-RB, as then applicable, '*Save as otherwise provided in the Act, or rules or regulations made thereunder, no person resident outside India shall issue or transfer any security.*'

Whereas the applicant acquired the shares of an Indian company the sale consideration for which was paid on deferred payment basis otherwise than through the permitted methods of payment i.e. through the third parties, thereby contravening the said FEMA provisions.

In terms of regulation 9(2)(ii) of Notification No. FEMA 20/2000-RB, as then applicable, '*A non-resident Indian may transfer by way of sale or gift, the shares or convertible debentures or warrants of an Indian company or units of an Investment Vehicle held by him or it to another non-resident Indian only.*'

Whereas the applicant transferred the shares of an Indian company to a non-resident entity without obtaining prior approval from the Reserve Bank thereby contravening the said FEMA provisions.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No.FE.CO.CEFA/681/15.20.67/2018-19 dated August 01, 2018 for further submission in person and/or producing documents, if any, in support of the application. The applicant's representatives from JCSS Consulting Private Limited vide email dated August 07, 2018 submitted that the applicant did not wish to attend the personal hearing and requested that the case be disposed on the basis of the documents and information already submitted with the application. The application for compounding was, therefore, considered on the basis of the averments made in the application as well as other documents and submissions submitted along with the application.

5. I have given my careful consideration to the documents on record and submissions made thereafter. Accordingly, I hold that the applicant has contravened



regulations 3 and 9(2)(ii) of Notification No. FEMA 20/2000-RB, as then applicable.

The amount and period of contravention was as under:

- i) Regulation 3 - The amount of contravention was ₹3,75,52,400/- and the period of contravention ranges from 8 years and 7 months to 9 years and 8 months approximately.
- ii) Regulation 9(2)(ii) - The amount of contravention was ₹2,37,76,200/- and the period of contravention was 8 years and 8 months approximately.

6. It has been declared in the compounding application 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 undertaking dated March 16, 2018 submitted subsequently by the applicant 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 contraventions are to be compounded and I consider that an amount of ₹559,965/- (Rupees five lakh fifty nine thousand nine hundred sixty five only) will meet the ends of justice in the circumstances of the case.

8. Accordingly, I compound the admitted contraventions namely, the contravention of regulations 3 and 9(2)(ii) of Notification No. FEMA 20/2000-RB, as then applicable, 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 ₹559,965/- (Rupees five lakh fifty nine thousand nine hundred sixty five 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 twenty seventh day of August, 2018.

Sd/-

Ajay Kumar Misra
Chief General Manager