



In the

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

Present

**R.K. Moolchandani**  
**Chief General Manager**

Date: August 8, 2018  
C.A. 4686/2018

In the matter of

**Take Business Cloud Private Limited**  
**New No. 6, Old No 14, First Floor, Sixth Cross Street, CIT Colony,**  
**Mylapore, Chennai 600 004**

**(Applicant)**

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

**Order**

The applicant has filed the application dated April 18, 2018 (received in the Reserve Bank on April 19, 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) delay in reporting the outward remittances made to the overseas entity; (ii) delay in receipt of the share certificate towards the outward remittance made to the overseas entity; (iii) undertaking disinvestment of the stake in the overseas entity with write-off without necessary prior approval when the applicant was not eligible to undertake disinvestment under the automatic route and; (iv) disinvestment from the overseas entity without submission of Annual Performance Reports (APRs) in contravention of the provisions of regulations 6(2)(vi), 15(i), 16(1A) and 16(1)(v) respectively 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 follows:

2.1 The applicant, Take Business Cloud Private Limited (TBCPL), was incorporated on February 08, 2007 under the Indian Companies Act, 1956. The CIN of the applicant company is U72900TN2007PTC062313. The applicant made an outward remittance amounting to USD 21 million (₹92,82,00,000/-) on March 20, 2007 through its designated Authorized Dealer (AD) bank to the overseas entity in USA viz Navitas Inc (formerly Take Solutions Inc). Navitas Inc was a joint venture between TSL and Take Business Cloud Private Limited (TBCPL), another Indian group company, in which TSL was holding 35.19% with TBCPL holding the remaining 64.81% of total share capital. The outward remittance was reported in Form ODI Part-I by the applicant with delay beyond the prescribed time on July 28, 2017 which was in contravention of regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB. The share certificate in respect of the investment was received with delay beyond the prescribed time on July 28, 2017 which was in contravention of regulation 15(i) of Notification No. FEMA 120/2004-RB.

2.2 As the applicant was an unlisted company and the amount of the overseas direct investment in the overseas entity was in excess of USD 10 million, the applicant was not permitted to undertake disinvestment with write-off under the automatic route. The applicant, however, disinvested its stake in the overseas entity on March 26, 2012 with write-off and transferred its stake to another overseas entity viz Take Solutions Global Holdings Pte Ltd, Singapore. The disinvestment was reported in Form ODI-Part III on July 28, 2017. On disinvestment an amount of USD 184,68,121 (₹94,72,29,904/-) was repatriated towards equity on March 26, 2012. The disinvestment with write off without obtaining necessary prior approval was in contravention of regulation 16(1A)(i)(c) of Notification No. FEMA 120/2004-RB. The disinvestment was taken on record by the Reserve Bank on August 01, 2017. The disinvestment was made without submission of APRs which was in contravention of regulation 16(1)(v) of Notification No. FEMA 120/2004-RB. The APR for the year ended March 31, 2012 was submitted on March 09, 2017.

The applicant was advised of the contraventions committed vide letter FE.CO.DID.No.1456/19.20.335/2017-18 dated August 02, 2017.

3. During the course of its operations, TBCPL committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 120/2004:-



3.1 Whereas in terms of regulation 6(2)(vi) of FEMA 120/2004, the Indian Party making direct investment in a JV/WOS outside India has to submit Part I of Form ODI, duly completed, to the designated branch of an Authorized Dealer bank, the applicant did not report the investments made in the overseas entity within the prescribed time period of 30 days thereby contravening the said FEMA regulation.

3.2 Whereas in terms of regulation 15(i) of FEMA 120/2004, *“an Indian Party, which has acquired foreign security.....shall receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalized became due to the Indian Party or the date on which the amount due was allowed to be capitalized”*.

The applicant did not receive share certificates for the investments as detailed in paragraph 2 above within the prescribed period of six months thereby contravening the said FEMA regulation.

3.3 In terms of regulation 16(1)(v) of Notification No. FEMA 120/2004-RB, *‘An Indian Party may transfer, by way of sale to another Indian Party ....., or to a person resident outside India, 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.*

Whereas the applicant disinvested its stake in the overseas WOS without submission of APRs thereby contravening the said FEMA regulation.

3.4 Whereas in terms of regulation 16(1A) Notification No. FEMA 120/2004-RB an Indian Party may disinvest its stake in an overseas entity, if the amount to be repatriated on disinvestment is less than the amount of the original investment where the Indian Party is an unlisted company and the investment in the overseas venture does not exceed USD 10 million.

The applicant disinvested its stake in the overseas entity with write off without obtaining necessary prior approval from the Reserve Bank when the applicant was not eligible to undertake the disinvestment in the overseas entity under the automatic route and thus the applicant contravened the said FEMA regulation.



4. The applicant was given an opportunity for personal hearing vide our letter No. FE.CO.CEFA No.687/15.20.67/2018-19 dated August 01, 2018 for further submission in person and/or producing documents, if any, in support of the application. Shri Avaneesh Singh, Chief Legal Officer & Company Secretary represented the applicant company during the personal hearing held on August 06, 2018. The representative of the applicant submitted that the contraventions on company's part were unintentional and requested that a lenient view may be taken by the Compounding Authority. The application for compounding is, therefore, being 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. I have given my careful consideration to the documents on record and submissions made by the applicant's representative during the personal hearing and thereafter. Accordingly, I hold that the applicant has contravened the FEMA provisions issued in terms of the following regulations of Notification No. FEMA 120/2004-RB dated July 7, 2004 as detailed in paragraphs 2 and 3 above:

(i) Regulation 6(2)(vi) – The amount of contravention is USD 21 million (₹92,82,00,000/-) and the period of contravention is 10 years and 4 months approximately.

(ii) Regulation 15(i) – The amount of contravention is USD 21 million (₹92,82,00,000/-) and the period of contravention is 9 years and 11 months approximately.

(iii) Regulation 16(1A) of FEMA 120 – The amount of contravention is USD 184,68,121 (₹94,72,29,904/-) approximately and the period of contravention is 5 years and 5 months approximately.

(iv) Regulation 16(1)(v) of FEMA 120 – The amount of contravention is USD 184,68,121 (₹94,72,29,904/-) approximately and the period of contravention is 5 years approximately.

6. It has been declared in the compounding application dated April 18, 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 undertaking dated April 18, 2018 submitted with the application by the applicant's Company Secretary 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 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 ₹1,49,78,167/- (Rupees one crore forty nine lakhs seventy eight thousand one hundred and sixty seven only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contravention of the regulations 6(2)(vi), 15(i), 16(1A) 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 ₹1,49,78,167/- (Rupees one crore forty nine lakhs seventy eight thousand one hundred and sixty seven only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5<sup>th</sup> 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 eighth day of August, 2018.

Sd/-

**(R.K. Moolchandani)**  
**Chief General Manager**