



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. 4674/2018

In the matter of

Take Solutions Limited
27, Tank Bund Road, Nungambakkam, Chennai 600 034

(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 05, 2018 (received in the Reserve Bank on April 09, 2018) along with the addendum submitted vide email dated June 20, 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) making remittances to overseas entity through banks other than the designated Authorized Dealer (AD) bank; (ii) delay in reporting of the disinvestment of the step-down subsidiary; (iii) delay in submission of Annual Performance Reports (APRs) in respect of the overseas entity; and; (iv) disinvestment from the overseas entity without submission of APRs in contravention of the provisions of regulations 6(2)(v), 13, 15(iii) 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 was initially incorporated as Take Solutions Private Limited on December 20, 2000 under the Indian Companies Act, 1956 and its status was subsequently changed to public limited company on March 29, 2004 and the name was changed to Take Solutions Limited. The CIN of the applicant company, Take Solutions Limited (TSL) is L63090TN2000PLC046338. The company is engaged in the business of supply chain solutions providing niche services to top pharma companies in regulatory, safety and clinical verticals. During the period 2005-2008, the applicant made outward remittances amounting to USD 11.4 million (₹49,84,57,138/-) through its Authorized Dealer (AD) banks, viz HSBC bank until March 2007 and through YES bank thereafter to its overseas wholly-owned subsidiary (WOS) in USA viz Navitas Inc (formerly known as Take Solutions Inc) towards subscription to equity shares. Navitas Inc was a joint venture between TSL and Take Business Cloud Private Limited (TBCL), another Indian group company, in which TSL was holding 35.19% with TBCL holding the remaining 64.81% of total share capital. In addition to the above outward remittances towards equity in overseas WOS, the applicant further made following remittances through bank other than the designated AD bank which was in contravention of regulation 6(2)(v) of Notification No. FEMA 120/2004-RB:

Date	Amt(USD)	Amt(₹)	Purpose	Bank
12-08-2009	25,83,630	12,36,26,726	Loan	Citi bank
22-10-2009	24,00,000	11,18,16,000	Loan	DBS bank
	49,83,630	23,54,42,726		

2.2 The overseas WOS had five subsidiaries, out of which one subsidiary viz Clear Orbit Inc was disinvested on September 30, 2010 by way of merger with its parent company i.e. Navitas Inc. Clear Orbit Inc was acquired by Navitas Inc in June 2007 for a consideration of USD 27,442,602 (₹111,36,20,789/-). At the time of merger in 2010, the investment of Navitas Inc in Clear Orbit was USD 29,774,709 (₹133,89,68,663/-). The disinvestment of the step-down subsidiary (SDS) was reported with delay on July 27, 2017 which was in contravention of regulation 13 of Notification No. FEMA 120/2004-RB.

2.3 As a part of the internal business restructuring the applicant disinvested its stake in the overseas WOS on March 23, 2012 and transferred its stake to its another overseas wholly-owned subsidiary viz Take Solutions Global Holdings Pte Ltd, Singapore at book value. As a result Navitas Inc became a step-down subsidiary of TSL. The disinvestment was reported in form ODI-Part III on July 27, 2017. The disinvestment was made without submission of Annual Performance Reports (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. On disinvestment, an amount of USD 97,70,567 (₹50,11,32,371/-) was repatriated towards equity on March 26, 2012. The loan amount along with interest was repaid in July 2017 and the total amount was USD 62,08,487.

2.4 The applicant also delayed the filing of APRs in prescribed form with the RBI in respect of the overseas entity for the financial years 2008 through 2012 (i.e. 5 years) beyond the prescribed period which was in contravention of regulation 15(iii) of Notification No. FEMA 120/2004-RB dated July 7, 2004.

The applicant was advised of the contraventions committed vide letter FE.CO.DID.No.453/19.20.335/2017-18 dated August 02, 2017.

3. During the course of its operations, TSL 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)(v) of Notification No. FEMA 120/2004-RB, the Indian Party must route all transactions relating to the investment in a JV/ WOS through only one branch of an authorized dealer to be designated by it, the applicant made outward remittances through bank other than the designated AD bank thereby contravening the said FEMA regulation.

3.2 In terms of regulation 13 of Notification No. FEMA 120/2004-RB 'A JV / WOS set up by the Indian party as per the Regulations may diversify its activities / set up step down subsidiary / alter the shareholding pattern in the overseas entity Provided the Indian party reports to the Reserve Bank, the details of such decisions taken by the JV / WOS within 30 days of the approval of those decisions by the competent authority concerned of such JV / WOS'

Whereas the disinvestment of the step-down subsidiary (SDS) was reported with delay by the applicant 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 15(iii) of FEMA 120/2004 an applicant is required to 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 APRs for the years March 31, 2008 to March 31, 2012 (i.e. 5 years) were submitted to the RBI with delay beyond the prescribed period in contravention of the said FEMA regulation.

4. The applicant was given an opportunity for personal hearing vide our letter No. FE.CO.CEFA No.685/15.20.67/2018-19 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. 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)(v) – The amount of contravention is USD 49,83,630 (₹23,54,42,726/-) and the period of contravention ranges from 8 years and 6 months to 8 years and 8 months approximately.
- (ii) Regulation 13 – The amount of contravention is USD 27,442,602 (₹111,36,20,789/-) and the period of contravention is 7 years and 1 month approximately.
- (iii) Regulation 16(1)(v) of FEMA 120 – The amount of contravention is USD 97,70,567 (₹50,11,32,371/-) approximately and the period of contravention is 5 years approximately.
- (iv) Regulation 15(iii) – The APR for 5 years was submitted with delay.



6. It has been declared in the compounding application dated April 05, 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 05, 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 ₹68,50,414/- (Rupees sixty eight lakhs fifty thousand four hundred and fourteen only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contravention of the regulations 6(2)(v), 13, 15(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 ₹68,50,414/- (Rupees sixty eight lakhs fifty thousand four hundred and fourteen 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 eighth day of August, 2018.

Sd/-

(R.K. Moolchandani)
Chief General Manager