



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. 4675/2018

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) repatriation of disinvestment proceeds with delay; (ii) 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 16(2), 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 2008-2010, the applicant made outward remittances amounting to USD 11,98,500 towards participation in equity and USD 169,500 towards loan to an overseas joint venture company in Oman viz Towell-Take Investments LLC. The overseas entity was a joint venture wherein the TSL was holding 51% of the total paid up share capital amounting to OMR 5,07,909 and the remaining shares of 49% were held by the JV partner i.e. Towell Group of Oman.

2.2 As a part of the business restructuring the applicant disinvested its stake in the overseas JV on December 15, 2011 and transferred its stake to its another overseas wholly-owned subsidiary viz Take Solutions Global Holdings Pte Ltd, Singapore. The disinvestment was reported in form ODI-Part III on April 25, 2017. The disinvestment in the overseas entity 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 January 04, 2017. The disinvestment proceeds amounting to USD 11,85,552 (₹6,08,06,962/-) were repatriated with delay beyond the prescribed period of 90 days on March 27, 2012 which was in contravention of regulation 16(2) of Notification No. FEMA 120/2004-RB. The loan amount along with interest was repaid during the period 2012-14 and the total amount was USD 212,286.

2.3 The applicant also delayed the filing of APRs in prescribed form with the RBI in respect of the overseas entity for the years ended March 31, 2009, March 31, 2011 and March 31, 2012 (i.e. 3 years) beyond the prescribed period 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.480/19.20.450/2017-18 dated July 13, 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 In terms of regulation 16(2) of Notification No. FEMA 120/2004-RB, '*Sale proceeds of shares / securities shall be repatriated to India immediately on receipt thereof and in any case not later than 90 days from the date of sale of the shares / securities and documentary evidence to this effect shall be submitted to the Regional office of the Reserve Bank through the designated authorized dealer*'

Whereas the applicant repatriated the proceeds towards disinvestment of its stake in the overseas entity with delay beyond the prescribed time thereby contravening the said FEMA regulation.

3.2 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 entity without submission of APRs thereby contravening the said FEMA regulation.

3.3 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 2008-09, 2010-11 and 2011-12 (i.e. 3 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.686/15.20.67/2018-19 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 16(2) – The amount of contravention is USD 11,85,552 (₹6,08,06,962/-) and the period of contravention is 1 month approximately.
- (ii) Regulation 16(1)(v) – The amount of contravention is USD 11,85,552 (₹6,08,06,962/-) and the period of contravention is 5 years and 1 month approximately.
- (iv) Regulation 15(iii) – The APR for 3 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 ₹8,90,087/- (Rupees eight lakhs ninety thousand and eighty seven only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contravention of the regulations 16(2), 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 ₹8,90,087/- (Rupees eight lakhs ninety thousand and eighty seven 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