



In the

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

Present

Meenakshi Ganju
Deputy General Manager

Date: September 24, 2018
C.A. 4718/2018

In the matter of

Pest Control (India) Pvt. Limited
Registered Office: Narayani, Ambabai Temple Compound, Aarey Road, Goregaon
(West), Mumbai-400 104

(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 June 4, 2018 (received in the Reserve Bank of India on June 5, 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 delayed receipt of share certificates for the investment done in overseas entity i.e. beyond the prescribed period of 6 months in contravention of Regulation 15(i) 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 reported Annual Performance Reports (APRs) for the period 2004 to 2010, with delay ranging from 51 days to 159 days in contravention of Regulation 15(iii) of FEMA 120/2004-RB.

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



2.1 The applicant, a private limited company incorporated as Pest Control (India) Pvt. Limited under the Companies Act, 1956, on July 30, 1954 and its name was changed to Pest Control (India) Ltd. on December 21, 1983 and further as Pest Control (India) Pvt. Ltd. on April 10, 2001. The applicant is engaged in the business of entomology, agricultural technology, technical consultant, providing pest control service, etc. in India.

2.2. The applicant along with Alpha Cleaning Limited, a Mauritian company, formed a joint venture (JV) in Mauritius namely Alpha PCI Pest Management Ltd. with 50% stake held by each. The applicant remitted Mauritian rupee (MUR) 7,00,000 on December 8, 2004 and MUR 10,00,000 on March 16, 2009. The JV was incorporated on September 10, 2004 and its operations commenced from July 1, 2005. The applicant submitted share certificates for the above two remittances on May 9, 2006 and October 13, 2010 respectively i.e. beyond the prescribed period of 6 months, thereby contravening Regulation 15(i) of FEMA 120/2004-RB. Further, the applicant reported Annual Performance Reports (APRs) for the period 2004 to 2010, with delay ranging from 51 days to 159 days in contravention of Regulation 15(iii) of FEMA 120/2004-RB. Due to unsatisfactory performance of the JV, the applicant decided to disinvest its stake in the overseas JV in August 2011.

3. The following are the observed contraventions:

3.1 Whereas Regulation 15(i) of FEMA 120/2004, states that an Indian Party, which has acquired foreign security in terms of the Regulations in Part- I, 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 capitalised became due to the Indian Party or the date on which the amount due was allowed to be capitalised.

3.2 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.

4. The applicant was given an opportunity for personal hearing vide letter No.FE.CO.CEFA.No./668/15.20.67/2018-19 dated August 1, 2018 for further submission in person and/ or producing documents, if any, in support of the application. Shri Gururaj Agnihotri represented the applicant company during the personal hearing held on August 8, 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. 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(i)-The amount of contravention in INR, as declared by the applicant is ₹26,02,933/- approximately and the period of contravention taken is between 11 and 13 months from the date of such remittance to the date of submission of proof of investment.

(ii) Regulation 15(iii)-The amount of contravention in INR, as declared by the applicant is ₹26,02,933/- approximately and the period of contravention is as mentioned at para 2.2 above.

6. It has been declared in the compounding application dated June 4, 2018 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been declared in the declaration dated June 4, 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 it/him/her thereafter. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made 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 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 ₹90,000/- (Rupees Ninety Thousand only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulations 15(i) and 15(iii) 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 ₹90,000/- (Rupees Ninety Thousand 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 twenty fourth day of September 2018

Sd/-

(Meenakshi Ganju)
Deputy General Manager