



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Shekhar Bhatnagar
Chief General Manager

Date: February 13, 2017
CA No 4157 / 2016

In the matter of

TVS Logistics Services Limited
58, Eldams Road, Teynampet
Chennai – 600018

(Applicant)

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

Order

The applicant has filed the application dated September 17, 2016 (received in the Reserve Bank on September 22, 2016) 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 are (i) delay in reporting issuance of Corporate Guarantee in Form ODI and (ii) non-reporting of setting up of step-down subsidiaries within the stipulated time period. The above amount to the contravention of Regulations 6(2)(vi) and 13 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 are as under: The applicant was incorporated as TVS Logistics Services Limited on November 16, 2004 (CIN: U63011TN2004PLC054655). The applicant is engaged in the business of providing logistics and allied services. A Wholly Owned Subsidiary (WOS) of the applicant company, namely, TVS-Asianics Supply Chain Solutions Limited (TVS-Asianics), Singapore, was incorporated in Singapore on October 09, 2014. TVS-Asianics further incorporated a step-down subsidiary in Australia, namely, TVS Asianics Australia Holdings Pty. Ltd. (TVS Australia), on July 15, 2015. The applicant reported the set-up of this step-down subsidiary on January 19, 2016, with a delay beyond the stipulated time period of 30 days, thus contravening Regulation 13 of Notification No. FEMA 120/2004-RB.

TVS-Australia then acquired TIF Holdings Pty. Ltd., Australia, to the extent of 55% shareholding, on August 7, 2015. The acquisition was reported within the stipulated time period. However, the fact that the acquisition was done through TVS-Australia was erroneously not disclosed at the time of reporting. The applicant then correctly reported the set-up of this step-down subsidiary on January 19, 2016, which was with a delay beyond the stipulated time period, thus contravening Regulation 13 of Notification No. FEMA 120/2004-RB.

The applicant, further, issued a corporate guarantee to TVS Asianics, Singapore, for an amount of USD 8.055 Mio, on September 29, 2015. The reporting of the issuance of this corporate guarantee in Form ODI was done with a delay beyond the stipulated time period, thus contravening Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB. The reporting of the corporate guarantee was taken on record on October 25, 2016.

3. In terms of Regulation 6 (2) (vi) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, an Indian party is permitted to make Overseas Direct Investment in certain cases, provided “The Indian Party submits Part I of Form ODI, duly completed, to the designated branch of an authorized dealer”.



In terms of Regulation 13 of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, "A JV/WOS set up by the Indian party as per the Regulations may diversify its activities/ set-up step-down subsidiaries/ alter the shareholding pattern of 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 in terms of local laws of the host country, and, include the same in the Annual Performance Report required to be forwarded annually to the Reserve Bank in terms of Regulation 15".

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/7823/15.20.67/2016-17 dated February 2, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on February 7, 2017 during which Shri Baskar Lakshmanan, Group CFO, Shri J. Sivakumar, Group Treasury Head and Shri K. Ramasubramanian, represented the applicants. The representative of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to ignorance and requested that a lenient view may be taken in the matter. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulations 6(2)(vi) and 13 of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount and period of contravention is as follows:

(i) Regulation 6(2)(vi) – Amount of contravention – Rs. 53,43,11,510 (USD 8.055 Mn) and period of contravention is 11 months approximately.

(ii) Regulation 13 - Amount of contravention for delay in reporting of TVS Asianics Australia Holdings Pty. Ltd. – Rs. 23,11,48,808/- (SGD 4,950,001) and the period of contravention is five and a half months approximately.



(iii) Regulation 13 - Amount of contravention for delay in reporting of TIF Holdings Pty. Ltd. – Rs. 63,96,29,188/- (AUD 12.13 mn) and the period of contravention is four and a half months approximately.

6. 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. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of Rs. 9,77,156/- (Rupees nine lakh seventy seven thousand one hundred and fifty six only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulations 6 (2)(vi) and 13 of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 9,77,156/- (Rupees nine lakh seventy seven thousand one hundred and fifty six 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 accordingly.

Dated this the thirteenth day of February, 2017

Sd/-

(Shekhar Bhatnagar)
Chief General Manager