



In the

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

Present

**Vandana Khare**  
**General Manager**

Date: March 10, 2017  
CA No 4239/2016

In the matter of

**ReliaSoft India Private Limited**  
90, Arihant Nitco Park, 5<sup>th</sup> Floor Dr Radhakrishnan Salai,  
Mylapore, Chennai, Tamil Nadu

**(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 November 28, 2016 (received in the Reserve Bank on December 1, 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 relate to availing External Commercial Borrowing (ECB) when (i) the borrower is not an eligible borrower in terms of extant ECB guidelines; (ii) utilization of ECB proceeds to meet non-capital expenditure of the company is a non-permissible end use; (iii) draw down of the ECB without obtaining Loan Registration Number (LRN) from the Reserve Bank of India (RBI) is not permitted and (iv) reporting guidelines were not adhered to. The above were in contravention of Regulation 6



of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3/2000-RB dated 3rd May 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 3/2000-RB) read with Paragraphs 1(i), (iv), (xi) and (xii) of Schedule I to this Regulation and further read with Paragraphs 1(A)(i), (v), 1(C)(i)(c) and (d) of Annex to A.P.(DIR Series) Circular No. 5 dated August 01, 2005 (as amended from time to time).

2. The relevant facts are as under: The applicant was initially incorporated as a private limited company on December 10, 2003 under the Companies Act, 1956 (CIN U72200TN2003PTC052116). The applicant is engaged in the business of trading in software licenses. The applicant is a wholly owned subsidiary of ReliaSoft Corporation Inc. USA. The applicant obtained a loan amounting to Rs.42,94,050/- from its holding company, ReliaSoft Corporation Inc. USA, to meet non-capital expenditure of the company. The loan amount was received on various dates in 2006. A summary of the amounts received by the applicant is given below:

Sr.No.	Currency & Amount	INR Equivalent	Date of Receipt
1.	USD 50,000	22,10,000	09.02.2006
2.	USD 10,000	4,63,200	23.08.2006
3.	USD 35,000	16,20,850	31.08.2006
<b>Total</b>	<b>USD 95,000</b>	<b>42,94,050</b>	

As the applicant is engaged in the trading business, it is not eligible to raise such a loan under the Automatic Route. Further, the loan was utilized for a non-permissible end-use and drawdown of the loan took place without obtaining Loan Registration number (LRN) from the Reserve Bank of India (RBI).

The above contraventions relate to Regulation 6 of Notification No. FEMA 3/2000-RB dated 3rd May 2000 read with Paragraphs 1(i), (iv), (xi) and (xii) of Schedule I to this Regulation and further read with Paragraphs 1(A)(i), (v), 1(C)(i)(c) and (d) of Annex to A.P.(DIR Series) Circular No. 5 dated August 01, 2005 (as amended from time to time). In response to an application made to the RBI by the AD Bank, State Bank of India, forwarding a request of the company seeking post facto approval for netting-off export receivables against ECB received from holding company, post



facto approval from Foreign Exchange Management Act, 1999 (FEMA) angle in netting-off foreign currency loan amounting to USD 95,000 raised from the overseas company M/s ReliaSoft Corporation, USA through inward remittances from February 2006 to August 2006, against export receivables from the latter was given vide RBI letter FED.CO.ECBD/2551/03.02.107/2016-17 dated September 7, 2016. The company was advised that being engaged in trading of software licenses and other IT services it was not eligible to raise ECB. It was also advised that by raising the ECB, drawing down of the loan without obtaining LRN, utilising loan proceeds for non-capital expenditure and non-reporting of ECB it had contravened FEMA.

3. In terms of Regulation 6 of Notification No.FEMA.3/2000-RB dated May 03, 2000 as amended from time to time "a person resident in India .... may raise in accordance with the provisions of the Automatic Route Scheme specified in Schedule I, foreign currency loans of the nature and for the purposes as specified in that Schedule....". The Reserve Bank has issued necessary directions vide AP (DIR Series) Circulars, laying down the basic rules for availing of ECB under the Automatic Route. The primary responsibility of ensuring that the loan raised/utilized are in conformity with the ECB guidelines and the Reserve Bank regulations/directions/circulars is that of the concerned borrower.

a) Paragraph 1(i) of Schedule – I to Notification No. FEMA 3/2000-RB read with paragraph 1(A)(i) of Annex to AP (DIR Series) Circular No 5 dated August 5, 2005, as then applicable, deals with borrowers eligible to raise ECB. As per extant provisions, companies engaged in trading activities are not eligible to borrow in the form of ECB.

b) Paragraph 1(iv) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB read with Paragraph 1A(v) of Annex to A.P (DIR Series) Circular No 5 dated August 5, 2005, as then applicable, provides that ECB can be raised only for investment in real sector in India (such as import of capital goods, new projects, modernization/expansion of existing production units) under the automatic route. ECB availed for non-capital expenditure is not a permissible end use under the Automatic Route.



c) Paragraph 1(xi) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB read with paragraph 1(C)(i)(c) of Annex to AP (DIR Series) Circular No 5 dated August 5, 2005 states that “draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only after obtaining the loan registration number from the Reserve Bank”. The draw-down by the applicant was made without making application for obtaining LRN from RBI.

d) Paragraph 1(xii) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB read with paragraph 1(C)(i)(d) of Annex to AP (DIR Series) Circular No 5 dated August 5, 2005 states that “the borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time”. The ECB was not reported to RBI.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA.No./7996/15.20.67/2016-17 dated February 6, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on February 15, 2017 during which Shri Ashish Daweshar represented the applicant. The representatives of the applicant submitted that the company had inadvertently failed to comply with the FEMA regulations 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 Regulation 6 of Notification No. FEMA 3/2000-RB read with paragraphs 1(i), (iv), (xi) and (xii) of Schedule I to this Regulation and further read with Paragraphs 1(A)(i), (v), 1(C)(i)(c) and (d) of Annex to A.P.(DIR Series) Circular No. 5 dated August 01, 2005 (as amended from time to time). The amount of contravention is Rs.42,94,050/- and the period of contravention ranges between 10 years and 10 years 6 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.82,205/- (Rupees Eighty two thousand, two hundred and five 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, Regulation 6 of Notification No. FEMA 3/2000-RB read with Paragraphs 1(i), (iv), (xi) and (xii) of Schedule I to this Regulation and further read with Paragraphs 1(A)(i), (v), 1(C)(i)(c) and (d) of Annex to A.P.(Dir Series) Circular No. 5 dated August 01, 2005 (as amended from time to time) on payment of a sum of Rs.82,205/- (Rupees Eighty two thousand, two hundred and five 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 tenth day of March, 2017

Sd/-

**(Vandana Khare)**  
**General Manager**