



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

J.K. Pandey
Chief General Manager

Date: March 31, 2017
CA No 4226 / 2016

In the matter of

Gharda Chemicals Limited
48, Hill Road, Bandra (West)
Mumbai - 400050

(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 3, 2016 (received in the Reserve Bank on November 18, 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) disinvestment of stakes in WOS, involving write-off, by an unlisted company where investment in overseas venture exceeded USD 10 million, without prior permission of the Reserve Bank of India and (ii) non-repatriation of disinvestment proceeds post-liquidation, but taking over the remaining assets and liabilities of the WOS in the books of the applicant. The



above amount to the contravention of Regulations 16(1A)(i)(c) and 16(2) 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 Gharda Chemicals Limited (CIN: U24110MH1967PLC013688), on March 6, 1967. The applicant is engaged in the business of selling chemical process know-how and of manufacturing dyes, chemicals and textile auxiliaries etc. A wholly owned subsidiary (WOS) of the applicant, namely, Gharda USA Inc. (Gharda USA), was set-up in USA on October 8, 1997. The total remittances sent to the WOS by the applicant were to the tune of \$ 14,317,995.33. On account of suffering substantial year-on-year losses in the WOS, the applicant liquidated the WOS with effect from September 29, 2004. The liquidation involved a write-off to the extent of USD 18,51,411. As the applicant was an unlisted company and the investment in the WOS exceeded USD 10 million, the applicant was required to take RBI approval before writing off the amount. As the said approval was not taken, the disinvestment amounted to the contravention of Regulation 16(1A)(i)(c) of as Notification No. FEMA 120/2004-RB. The remaining assets and liabilities of the WOS (to the extent of USD 12,466,584), were not repatriated as proceeds from disinvestment, but were taken over in the books of the applicant in the form of Intellectual Property Rights. This amounted to the contravention of Regulation 16(2) of Notification No. FEMA 120/2004-RB.

3. In terms of Regulation 16(1A)(i)(c) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, "in the following cases, an Indian Party may disinvest, if the amount to be repatriated on disinvestment is less than the amount of the original investment: where the Indian party is an unlisted company and the investment in the overseas venture does not exceed USD 10 million".

Further, Regulation 16(2) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, states that, "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”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/8841/15.20.67/2016-17 dated March 3, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on March 24, 2017 during which Shri Florian Rodrigues, Chief Financial Officer, Shri Rakesh Dave, Deputy Manager, Accounts, and Shri Ramesh Krishnamoorthy, Deputy Manager, Accounts, represented the applicants. The representatives 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 Regulation 16(1A)(i)(c) and 16(2) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount of contravention is USD 14,317,995.33 (INR 65,29,41,469) and the period of contravention is twelve and a half years 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.



49,47,061/- (Rupees forty nine lakh forty seven thousand and sixty one 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 16(1A)(i)(c) and 16(2) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 49,47,061/- (Rupees forty nine lakh forty seven thousand and sixty one 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 thirty first day of March, 2017

Sd/-

J.K. Pandey
Chief General Manager