



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: March 07, 2017
C.A. 4158/2016

In the matter of

Pramati Technologies Private Limited
Midtown, 6-3-348, Road No.1, Banjara Hills
Hyderabad – 500 034

(Applicant)

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

Order

The applicant has filed the application dated September 19, 2016 (received in the Reserve Bank of India on September 20, 2016) for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded relates to (i) the delayed submission of Form ODI Part I for capitalization of the Intellectual Property Rights (IPR) and (ii) making investments overseas by way of remittance and capitalization of IPR without share valuation certificate in contravention of the provisions of Regulations 6(2)(vi) and 6(6) 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: The applicant was incorporated as Pramati Technologies Private Limited on April 21, 1998 under the Companies Act, 1956 (CIN U72200TG1998PTC029263). The applicant is engaged in the business of marketing software products, consultancy services, internet provider services and related activities. The applicant set up a joint venture (JV) company, WaveMaker, Inc., USA, on February 20, 2013. The applicant entered into a technology transfer agreement for the transfer of Intellectual Property (IP) known as Pramati Server 6.5 on April 1, 2013 for USD 245,000 to its overseas JV, WaveMaker Inc., USA (earlier known as Cloudjee Inc.). The IP was capitalized for the amount of USD 245,000 against issue of Series A preferred stock by the overseas entity to the applicant. Further, the applicant also remitted USD 224,000 on April 23, 2013 to WaveMaker, Inc., USA for the issue of shares. The applicant delayed in submission of Form ODI Part I for reporting capitalization of IP and also undertook the investments, i.e., remittance of USD 224,000 and capitalization of IP for USD 245,000 without requisite share valuation certificate in contravention of the provisions of Regulations 6(2)(vi) and 6(6) of Notification No. FEMA 120/2004-RB. The applicant subsequently obtained the share valuation certificate dated May 23, 2016. The applicant reported the capitalization of IPR amounting to USD 245,000 in Form ODI Part I to the Reserve Bank of India (RBI) on April 24, 2014.

3. Whereas in terms of Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB, the Indian Party making direct investment in a JV/WOS outside India has to submit Part I of Form ODI, duly completed, to the designated branch of an Authorized Dealer.

The applicant did not report to the RBI the capitalization of IPR transferred to the overseas entity within the prescribed time period of 30 days.

Further, Regulation 6(6) of Notification No. FEMA 120/2004-RB states that “for the purposes of investment under this Regulation by way of remittance from India in an existing company outside India, the valuation of shares of the company outside India shall be made, -

...(ii) in all other cases, by a Chartered Accountant or a Certified Public Accountant....”.



The applicant did not carry out valuation of shares as required.

4. The applicant was given an opportunity for personal hearing vide our letter No. FE.CO.CEFA No.7822/15.20.67/2016-17 dated February 02, 2017 for further submission in person and/or producing documents, if any, in support of the application. Shri Harish Thirumalai, Vice President, Finance, Shri Surajit Sur, Senior Manager – Finance and Shri S.R. Mehta, Consultant, S.R. Mehta & Co. represented the applicant during the personal hearing held on February 20, 2017. The representative of the applicant stated that the contraventions on their part were unintentional and that a lenient view may be taken in the matter. 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 during the personal hearing. Accordingly, I hold that the applicant contravened the provisions of FEMA as below:

- i. Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB - USD 245,000 (Rs.1,33,11,952.50) with period of contravention being one year and one month approximately.
- ii. Regulation 6(6) of Notification No. FEMA 120/2004-RB - USD 224,000 (Rs.1,21,63,088/-) and USD 245,000 (Rs.1,33,11,952.50) with period of contravention being three years and two 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. 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 Rs.3,38,800/- (Rupees three lakhs thirty eight thousand and eight hundred only) will meet the ends of justice.



7. Accordingly, I compound the admitted contraventions namely, the contravention of Regulations 6(2)(vi) and 6(6) 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 Rs.3,38,800/- (Rupees three lakhs thirty eight thousand and eight hundred 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 07th day of March, 2017

Sd/-

(Shekhar Bhatnagar)
Chief General Manager