



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: June 05, 2017
C.A. 4244/2016

In the matter of

Marchmont International Finance Limited
IFS Court, Bank Street, 28, Cybercity
Ebene 72201, Mauritius

(Applicant)

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

Order

The applicant has filed a compounding application dated December 08, 2016 (received at Reserve Bank of India on December 14, 2016) through its legal counsel namely, Khaitan & Co, One Indiabulls Centre, 13th Floor, 841, Senapati Bapat Marg, Elphinstone Road, Mumbai 400 013 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 (i) undertaking investments by debit to NRO account without furnishing the necessary undertaking to the AD bank in contravention of Paragraph 1(c) of Schedule 3 to Foreign Exchange Management (Deposit) Regulations, 2000 notified vide Notification No. FEMA 5 /2000-RB dated 3rd May 2000 as amended from time to time (hereinafter referred to as FEMA 5/2000-RB); (ii) undertaking transactions on the stock



exchanges in India through broker without specific permission of the RBI in contravention of Regulations 3 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated 3rd May 2000 as amended from time to time (hereinafter referred to as FEMA 20/2000-RB); (iii) undertaking the secondary market transactions under the portfolio investment scheme although neither being an FII registered with SEBI nor being an NRI in contravention of Regulation 5(2) read with Regulation 5(3) of FEMA 20 /2000-RB; (iv) acquisition of the shares of the Indian companies by debit to its NRO account in contravention of Paragraph 8 of Schedule 1 of FEMA 20 /2000-RB and; (v) acquisition of the shares of an Indian entity engaged in financial sector activity without obtaining the necessary NOC from RBI in contravention of erstwhile Regulation 10(A)(b)(v) of FEMA 20 /2000-RB.

2. The relevant facts of the case are as follows: Marchmont International Finance Limited (MIFL) was registered under the laws of Mauritius on December 26, 2000. It is engaged in the business of investment holding activities and provision of consultancy services. MIFL opened an NRO account with HSBC bank, Bangalore on November 30, 2006 and thereafter, made remittances amounting to Rs.3,94,67,124/- to the said NRO account as below:

Table A

Sr. No	Date	Remitter	Amount in foreign currency	Amount in INR
1	15-12-2006	MIFL	USD 1,00,000	44,60,000
2	15-12-2006	MIFL	GBP 3,99,990	3,50,07,124
		Total		3,94,67,124

MIFL purchased the shares of listed Indian companies as mentioned in table B below from time to time out of the proceeds of the NRO account amounting to Rs.2,48,40,760/- by private arrangements through its broker.

Table B

Sr. No.	Date	Name of Investee Company	No of shares	Price per share	Total
1	9-02-2007	India Infoline Ltd*	30,000	374.50	1,12,35,000
2	26-02-2007	Hindalco Industries Ltd	7,500	145.55	10,91,625



3	12-03-2007	IVRCL Infrastructure & Projects Ltd	1,500	278.70	4,18,050
4	13-03-2007	Indian Cements Ltd	4,000	154.11	6,16,440
5	13-03-2007	NTPC Ltd	1,500	142.20	2,13,300
6	17-04-2007	ICICI Bank Ltd**	500	888.97	4,44,485
7	17-04-2007	Punj Lloyd Ltd	2,500	185.56	4,63,900
8	01-08-2007	India Infoline Ltd*	1,200	683.53	8,20,236
9	02-08-2007	India Infoline Ltd*	8,800	684.48	60,23,424
10	08-08-2007	India Infoline Ltd*	5,000	702.86	35,14,300
Total			62,500		2,48,40,760

*45000 shares of IIFL were acquired as above while following share split another 1,80,000 shares of IIFL were acquired by the company. Thus, a total of 2,25,000 shares of IIFL had been acquired by the company and **the average cost of acquisition per share was Rs 95.969/-**

** The average cost of acquisition per share of ICICI Bank Limited was Rs. 888.97/-

RBI vide letter FED.CO.CEFA/25020/15.20.67/CA No. 1445/2010-11 dated April 25, 2011 advised MIFL to divest the shares of India Infoline Limited (IIFL) as the same had been acquired directly on the stock exchange by its broker on behalf of MIFL which was deemed as a portfolio investment transaction by MIFL and to approach for compounding in any case not later than 60 days from the date of the letter. Further, MIFL was also advised to obtain RBI's post facto approval for acquisition of shares of ICICI Bank Limited (being in the financial services sector) by way of transfer of the shares through private arrangement from resident entity. Subsequently vide letter FED.CO.FID./3863/10.21.257/2011-12 dated August 16, 2011, RBI advised MIFL to divest the stake acquired in ICICI Bank Limited over stock exchange in favor of residents and deposit the sale proceeds thereof in the NRO account. The applicant divested the stake acquired in ICICI Bank Limited on April 22, 2014 through its broker for a total amount (net of brokerage & taxes) of Rs. 6,38,587.65/- and transferred the sale proceeds into its NRO account. Further, the applicant divested the entire stake acquired in IIFL through its broker on stock exchange as under:

Table C

Trade date	No. of shares sold	Amount net of brokerage & taxes
10-11-2014	16,000	27,41,989.99
11-11-2014	15,000	26,35,413.79
12-11-2014	17,661	32,09,163.53



13-11-2014	1,00,000	1,70,53,479.87
14-11-2014	1,339	2,40,143.47
19-11-2014	10,000	18,33,286.19
20-11-2014	3,800	7,20,706.17
26-11-2014	1,096	2,01,026.10
27-11-2014	6,000	11,24,894.65
28-11-2014	174	320.73.13
03-12-2014	5,241	9,80,542.98
04-12-2014	500	94,517.58
08-12-2014	909	1,67,989.66
09-12-2014	500	91,665.41
10-12-2014	1,000	1,84,824.87
05-01-2015	2,000	3,59,700.07
15-01-2015	4,000	6,88,040.05
16-01-2015	10,780	18,48,504.55
20-01-2015	3,000	5,14,171.08
23-01-2015	3,000	5,11,134.88
27-01-2015	15,000	27,03,372.05
28-01-2015	3,000	5,61,980.88
29-01-2015	5,000	9,59,429.45
Total	2,25,000	3,94,25,977.27

Thus, the average sale price per share of IIFL by the applicant was Rs.175.226 and that of ICICI Bank Limited was Rs.1277.18.

3. During the course of its operations, MIFL committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 20/2000-RB:

3.1 Whereas in terms of Para 1(c) of Schedule 3 to FEMA 5 /2000-RB “At the time of opening of the NRO account, the account holder should furnish an undertaking to the authorised dealer/authorised bank with whom the account is maintained that in cases of debits to the account for the purpose of investment in India and credits representing sale proceeds of investments, he will ensure that such investments/disinvestments will be in accordance with the regulations made by Reserve Bank in this regard.”

MIFL undertook above investments as mentioned in table B above by debit to NRO account without furnishing the necessary undertaking to the AD bank



thereby contravening the said FEMA Regulation. The amount of contravention was Rs.2,48,40,760/- and the period of contravention was more than 10 years.

3.2 Whereas in terms of Regulation 3 of FEMA 20 /2000-RB “.....no person resident outside India shall issue or transfer any security..... Provided further that the Reserve Bank may,permit a person resident outside India to issue or transfer any security, subject to such conditions as may be considered necessary.”

MIFL undertook transactions as mentioned in table B above on the stock exchanges in India through broker without specific permission of the RBI in this regard thereby contravening the said FEMA Regulations. The amount of contravention was Rs.2,48,40,760/- and the period of contravention was more than 9 years.

3.3 Whereas in terms of Regulation 5(2) of FEMA 20 /2000-RB “A registered Foreign Institutional Investor (FII) may purchase shares or convertible debentures of an Indian company under the Portfolio Investment Scheme, subject to terms and conditions specified in Schedule 2.” Further, whereas in terms of Regulation 5(3) of FEMA 20 /2000-RB “A non-resident Indian may purchase shares or convertible debentures of an Indian company subject to terms and conditions specified in Schedule 3.”

MIFL, neither being a FII registered with SEBI nor being an NRI, was not eligible to undertake the secondary market transactions under the portfolio investment scheme specified in Schedule 2 and 3 of FEMA 20/2000-RB. MIFL thus by undertaking such transactions as mentioned in table B above involving shares of IIFL contravened Regulation 5(2) read with Regulation 5(3) of FEMA 20 /2000-RB. The amount of contravention was Rs.2,15,92,960/- and the period of contravention was approximately six years.

3.4 Whereas Para 8 of Schedule 1 of FEMA 20 /2000-RB stipulates that “A company in India issuing shares or convertible debentures under this Schedule



to a person resident outside India shall receive the amount of consideration for such shares -

- i) by inward remittance through normal banking channels, or
- ii) by debit to NRE/FCNR account of the person concerned maintained with an authorised dealer/authorised bank, or
- iii) by debit to a non-interest bearing Escrow account..... “

MIFL acquired the shares of the Indian companies as mentioned in table B above by debit to its NRO account thereby contravening the said FEMA Regulation. The amount of contravention was Rs.2,48,40,760/- and the period of contravention was more than 9 years.

3.5 Whereas in terms of erstwhile Regulation 10(A)(b)(v) of FEMA 20 /2000-RB transfer of shares of the Indian companies engaged in financial services sector by way of sale from residents to non-residents required a 'No Objection Certificate' from the concerned financial sector regulator(s) of the investee company.

MIFL acquired the shares of ICICI Bank Limited as mentioned at serial number 6 in table B above without obtaining the necessary NOC from RBI thereby contravening the said FEMA Regulation. The amount of contravention was Rs.4,44,485/- and the period of contravention was more than 7 years.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/11646/15.20.67/2016-17 dated May 23, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for the personal hearing on June 01, 2017 and Shri M. Ladha along with Ms. S. Datta from Khaitan & Co represented the applicant. The representatives of the applicant admitted the contraventions for which compounding has been sought and submitted that the same was inadvertent and unintentional. They requested that in view thereof, the matter may be viewed leniently. 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 along with the application.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant has contravened the FEMA provisions issued in terms of Paragraph 1(c) of Schedule 3 to Notification No. FEMA 5 /2000-RB, Regulations 3, 5(2) read with 5(3), 10(A)(b)(v) and Paragraph 8 of Schedule 1 to Notification No. FEMA 20 /2000-RB as detailed in paragraph 3 above.

6. It may be noted that the above contraventions which are being compounded in this Order are only those contraventions which have been admitted by the applicant in the abovementioned application for compounding and this Order is without prejudice to any other action which may be taken by any other authority under FEMA, 1999 with regard to any other contraventions committed but not admitted hereto by the applicant on the issues not covered under this order.

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. The applicant was directed by RBI vide letter dated April 25, 2011 to divest the shares of IIFL and to approach for compounding in any case not later than 60 days from the date of the letter. The applicant, however, disposed the shares of IIFL from November 10, 2014 to January 29, 2015 as mentioned in table C above. Subsequently applicant was directed by RBI vide letter dated August 16, 2011 to divest the stake acquired in ICICI Bank Limited. The applicant, however, divested the same on April 22, 2014 through its broker. Thus, undue gains can be deemed to have accrued to the applicant for delaying the divestment and not complying with the directions of RBI within the prescribed time period. The average cost of acquisition per share by the applicant of IIFL and ICICI Bank was Rs.95.969/- and Rs.888.97/-



respectively. The average of the closing prices on BSE and NSE of the shares of IIFL on April 25, 2011 was Rs.73/- per share while that of ICICI Bank on August 16, 2011 was Rs.935.375/- per share. The average sale price per share of IIFL and ICICI Bank net of brokerage and taxes was Rs.175.226/- and Rs.1277.18/- respectively. It is noted that applicant's transactions resulted in gains arising out of delay in complying with the extant instructions / RBI's directions. Accordingly, with a view to neutralize such gains the difference between the actual sale price per share and the higher of the average cost of acquisition per share or the average of the closing prices on BSE and NSE of the shares of IIFL and ICICI Bank on April 25, 2011 and August 16, 2011 respectively have been considered.

Therefore, after considering the submissions made by the applicant with regard to the contraventions and the entire facts and circumstances of the case, I am persuaded to take a view that undue gains made by the applicant as mentioned above require to be neutralized and I consider that an amount of Rs.1,89,78,115/- (Rupees One crore eighty nine lakhs seventy eight thousand one hundred and fifteen only), incorporating the impact of neutralization as above, will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound the admitted contraventions namely, the contraventions of Paragraph 1(c) of Schedule 3 to Notification No. FEMA 5 /2000-RB, Regulations 3, 5(2) read with 5(3), 10(A)(b)(v) and Paragraph 8 of Schedule 1 to Notification No. FEMA 20 /2000-RB by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.1,89,78,115/- (Rupees One crore eighty nine lakhs seventy eight thousand one hundred and fifteen 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 of accordingly.

Dated this the fifth day of June, 2017.

Sd/-

Shekhar Bhatnagar
Chief General Manager