



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: June 02, 2017
CA No 4245 / 2016

In the matter of

Batliboi Limited
Bharat House, 104, Bombay Samachar Marg
Fort, Mumbai – 400001

(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 December 15, 2016 (received in the Reserve Bank on the same day) 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) making overseas direct investment in an entity which had pre-existing foreign direct investment (ii) non-reporting of setting up of step-down subsidiary within the stipulated time period and (iii) non-submission of Annual Performance Reports (APR) within the stipulated time period. The above amount to the contravention of Regulations 6(2)(ii), 13 and 15(iii) 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 Bhogilal Menghraj and Company Private Limited on December 01, 1941 (CIN: L52320MH1941PLC003494). The name of the applicant was changed to Hansa Industrial Tools Company Limited on November 28, 1970, then to Batliboi Engineering Company Limited on January 28, 1983, further to Batliboi and Company Limited on August 16, 1984, and finally to Batliboi Limited on April 03, 1996. The applicant is engaged in the business of import and export of machinery of all kind, spare parts and accessories etc. The applicant set-up an investment holding company, namely Queen Projects (Mauritius) Ltd., in Mauritius, on February 2, 2007, which further set-up a WOS, namely, Vanderma Holding Ltd., Cyprus, which acquired 70% stake in AESA Air Engineering SA, France. Following investments were made in AESA Air Engineering SA, France, by the applicant:

S.No.	Date of investment	Amount of investment (Euro)	Amount of investment (INR)	Purpose of remittance
1	11/02/2007	50000	2847500	Equity investment
2	01/06/2007	670000	36922427	Equity investment
3	25/10/2007	410000	23169100	Equity investment
4	01/11/2007	331715.46	18977641	Equity investment
	Total	1461715.46	81916668	

AESA Air Engineering S.A., France, already had a pre-existing investment in AESA Air Engineering Private Limited, India. The above investments, thus, amounted to making an overseas investment in a company having an investment in India, and were in contravention of Regulation 6(2)(ii) of Notification No. FEMA 120/2004-RB. Since the investment in the Indian



company was pre-existing at the time of making ODI, the above was regularized by the Overseas Investment Division, FED, CO, Reserve Bank of India on November 18, 2016, advising the applicant on compounding.

Further, the applicant invested (directly or through acquisition) in step-down subsidiaries (SDS), as follows:

S.No.	Name of SDS	Date of investment	Amount of investment in foreign currencies	Amount of investment in INR	Date of reporting to AD Bank
1	AESA Air Engineering SA, France	July 06, 2007	Euro 1461715.46	8,19,16,668	November 04, 2016
2	AESA Air Engineering Private Limited, India	July 06, 2007		20,00,000	November 04, 2016
3	AESA Air Engineering PTE Limited, Singapore	July 06, 2007	SGD 100000	26,57,790	November 04, 2016
4	AESA Air Engineering Limited, China	July 06, 2007	CNY 1065420	56,61,390	November 04, 2016
5	Vanderma Holdings Limited, Cyprus	April 10, 2007	CAD 5372888	20,00,99,000	November 04, 2016
6	Pilatus View	April 10, 2007	CHF	1,26,58,4000	November



	Holding AG, Switzerland	2007	3611500		04, 2016
7	Quickmill Inc., Canada	April 13, 2007	CAD 3082589	11,59,67,000	November 04, 2016
8	760 Rye Street, Canada	April 15, 2009	CAD 1	41	November 04, 2016

The abovementioned investments were reported with a delay beyond the stipulated time period, thus contravening Regulation 13 of Notification No. FEMA 120/2004-RB.

The Annual Performance Reports (APRs) for the years 2010, 2011, 2012 and 2014 were submitted with a delay beyond the stipulated time period, thus contravening Regulation 15 (iii) of Notification No. FEMA 120/2004-RB.

3. In terms of Regulation 6(2)(ii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, Overseas Direct Investment is permitted in certain cases provided, "The direct investment is made in an overseas JV or WOS engaged in a bonafide business activity".

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".

Further, in terms of Regulation 15 (iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, "An Indian Party which has



acquired foreign security in terms of the Regulation in Part I shall submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before a specified date, an Annual performance Report (APR) in Part III of Form ODI in respect of each JV or WOS outside India.....”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/11275/15.20.67/2016-17 dated May 12, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on May 26, 2017 during which Ms. Prema Chandrasekhar, Group Chief Financial Offices, Batliboi Limited, Shri Ketan Vyas, CFO, Batliboi Limited and Shri Shirish Rathod, Deputy Manager, Batliboi Limited, 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 6(2)(ii), 13 and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount of contravention is as follows:

- (i) Regulations 6(2)(ii) – Amount of contravention – Rs. 8,19,16,668/- and period of contravention is nine and a half years approximately
- (ii) Regulation 13 and 15(iii) - As given in Para 2 above.

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.



36,98,458/- (Rupees thirty six lakh ninety eight thousand four hundred and fifty eight 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)(ii), 13 and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 36,98,458/- (Rupees thirty six lakh ninety eight thousand four hundred and fifty eight 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 second day of June, 2017

Sd/-

(J.K. Pandey)
Chief General Manager