



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: May 9, 2017
CA No 4250 / 2016

In the matter of

Mindtree Limited
Global Village, RVCE Post, Mysore Road
Bengaluru-560059

(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 12, 2016 (received in the Reserve Bank on December 19, 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 stake in its Wholly Owned Subsidiary (WOS) (with write-off), without submission of Annual Performance Reports (APRs) due, under the automatic route and (ii) non-submission of Annual Performance Reports (APR) within the stipulated time period. The above amount to the contravention of Regulations 16(1)(v) 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 Mindtree Limited (CIN: L72200KA1999PLC025564), on August 05, 1999. The applicant is engaged in the business of software development, production, sub-contracting and experts, systems engineering services and training, management consulting etc. The applicant set-up a WOS, Mindtree Software (Shenzhen) Co. Ltd. in China, on November 18, 2009, and remitted USD 500,000 to the WOS on January 15, 2010. The WOS was liquidated on August 01, 2012. The disinvestment proceeds to the extent of USD 321,076 were repatriated and USD 178,924 were written off. The disinvestment was reported with a delay, on July 15, 2016, and was also carried out without the submission of the APRs for the years 2010 and 2011, thus contravening Regulation 16(1)(v) of Notification No. FEMA 120/2004-RB dated July 7, 2004 as amended from time to time. The Annual Performance Reports (APRs) for the years 2010 and 2011 were submitted with a delay beyond the stipulated time period, thus contravening Regulation 15(iii) of the same Notification.

3. In terms of Regulation 16(1)(v) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, transfer by way of sale of shares of a JV/WOS outside India is permitted, provided, “the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank”.

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/9822/15.20.67/2016-17 dated March 30, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on April 20, 2017 during which Shri J. Senthil Kumar, Program Director – Finance, represented the applicants. The representative 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(1)(v) 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 Rs. 2,30,45,000/- (USD 500,000) and the period of contravention ranges from four years to five 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. 2,31,315 /- (Rupees two lakh thirty one thousand three hundred and fifteen 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(1)(v) 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. 2,31,315 /- (Rupees two lakh thirty one thousand three 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 accordingly.

Dated this the ninth day of May, 2017

Sd/-

J.K. Pandey
(Chief General Manager)