



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
Fort, Mumbai - 400 001

Present

J.K.Pandey
Chief General Manager

Date: May 26, 2017
C.A. 4247/2016

In the matter of

Intercode Solutions Private Limited
112, Ravi Industrial Estate, Off Mahakali Caves Road
Andheri (E), Mumbai – 400 093

(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 06, 2016 (received in the Reserve Bank of India on December 14, 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 relate to (i) delayed reporting of remittances made to overseas entity in the prescribed form to the Reserve Bank of India (RBI); (ii) non receipt of share certificate in respect of the overseas investments within the prescribed period and; (iii) delay in submission of Annual Performance Reports (APRs) in respect of the overseas entity in contravention of the provisions of Regulations 6(2)(vi),15(i) and 15(iii) 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 initially incorporated as Everest Packaging Private Limited on April 06, 1974 under the Companies Act, 1956 (CIN U74999MH1974PTC017378). The name of the applicant was changed to Intercode Solutions Private Limited on May 10, 2002. The applicant is engaged in the business of manufacturing of self-adhesive labels. In September 2010, another group company, Interlabels Industries Private Limited, had invested in a joint venture (JV) in Bangladesh viz., Interlabels Robust Bangladesh Private Limited (hereinafter referred as 'JV'). In the year 2012, the name of the Indian company, Interlabels Industries Private Limited, was changed to Skanem Interlabels Industries Private Limited. The Indian company transferred its Barcode business to the applicant on February 02, 2012 thereby disinvesting its stake in the JV and transferring the same to the applicant. The applicant undertook the following transactions without submitting Form ODI - I within the prescribed period in contravention of Regulation 6(2)(vi) of FEMA 120/2004-RB:

Table A

Sr. No	Date of transaction	Amount in Foreign currency	FCY	Amount in INR	Date of submission of Form ODI	Mode
1.	11.06.2014	2,03,698.06	USD	1,20,85,405.89	06.10.2015	Stake acquired from the Indian Party
2.	14.01.2015	25,000.00	USD	15,60,495.00	06.10.2015	Outward remittance to JV
3.	04.06.2015	47,500.00	Euro	34,50,361.00	06.10.2015	Outward remittance to JV
	Total	2,76,198.06		1,70,96,261.89		

Further, there was delay in receipt of share certificates for the following investments beyond the prescribed period in contravention of Regulation 15(i) of FEMA 120/2004-RB:



Table B

Sr.No.	Date of remittance	Amount in Foreign currency	FCY	Share certificate date
1.	14.01.2015	25,000	USD	21.08.2015

The applicant also delayed filing the Annual Performance Reports in form APR with the RBI in respect of the overseas entity for the years ended March 31, 2012 to March 31, 2015 (i.e. 4 years) beyond the prescribed period in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB dated July 7, 2004.

3. Whereas in terms of Regulation 6(2)(vi) of FEMA 120/2004, 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 the investments made in the overseas entity within the prescribed time period of 30 days.

3.1 Whereas in terms of Regulation 15(i) of FEMA 120/2004, “an Indian Party, which has acquired foreign security.....shall receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalized became due to the Indian Party or the date on which the amount due was allowed to be capitalized”.

The applicant did not receive share certificates for the investments as detailed in Table B above within the prescribed period of six months.

3.2 Whereas in terms of Regulation 15(iii) of FEMA 120/2004 an applicant is required to submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before a specified date, an Annual Performance Report (APR) in Part III of Form ODI, as prescribed by the Reserve Bank from time to time, in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time. The APR, so required to be



submitted, has to be based on the audited annual accounts of the JV / WOS for the preceding year, unless specifically exempted by the Reserve Bank.

The APRs for the years March 31, 2012 to March 31, 2015 (i.e. 4 years) were submitted to the RBI with delay beyond the prescribed period.

4. The applicant was given an opportunity for personal hearing vide our letter No. FE.CO.CEFA No.9821/15.20.67/2016-17 dated March 30, 2017 for further submission in person and/or producing documents, if any, in support of the application. Shri Ajay Suryakant Rasam and Ms Nisha Atmaram Dadhich represented the applicant during the personal hearing held on April 12, 2017. The representatives of the applicant submitted that the contraventions on their part were unintentional and a lenient view may be taken. 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 and thereafter. Accordingly, I hold that the applicant contravened the following Regulations of Notification No. FEMA 120/2004-RB dated July 7, 2004:

i) Regulation 6(2)(vi) - The amount of contravention was Rs 1,70,96,262/- approximately and the period of contravention ranges from 1 year 06 months to 02 years 05 months.

ii) Regulation 15(i) – The amount of contravention was USD 25000 and the period of contravention was approximately 01 year 05 months.

iii) Regulation 15(iii) - The APRs for the years March 31, 2012 to March 31, 2015 (i.e. 4 years) were submitted to the RBI with delay beyond the prescribed period.

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.1,99,325/- (Rupees



One Lac Ninety Nine Thousand Three Hundred and Twenty Five only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulations 6(2)(vi),15(i) and 15(iii) 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.1,99,325/- (Rupees One Lac Ninety Nine Thousand Three Hundred and Twenty Five 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 twenty sixth day of May, 2017

Sd/-

(J.K.Pandey)
Chief General Manager