



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th Floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Vandana Khare
General Manager

Date: June 30, 2017
CA No 4275/ 2017

In the matter of

Lubi Industries LLP
Near Kalyan Mills, Naroda Road
Ahmedabad

(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 21, 2016 (received in the Reserve Bank on January 12, 2017) 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) acquiring shares of the overseas Wholly Owned Subsidiary (WOS) from a foreign partner without fair valuation and ii) holding of overseas direct investment by an LLP when it was not permitted. The above amounts to the contravention of Regulations 6(6) and Regulations 6 and 9 read with 2k, 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:

Lubi Industries Private Limited was incorporated as a private limited company on April 27, 2005 (CIN: U27310GJ2005PTC045942). On February 14, 2013 the applicant, Lubi Industries LLP came into existence, through conversion from a Private Limited Company to a limited Liability Partnership (LLP) (LLPIN: AAB-3587). The applicant is engaged in the business of manufacturing, supply and export of motors and pumps.

Lubi Pumps FZE (Free Zone Establishment) was initially registered as a FZC (Free Zone Company) in UAE, in December 2008. In the abovementioned FZC, 67.67% shares were held by erstwhile Lubi Pumps Private Limited and balance 33.33% were held by a UAE resident, Shri Pruthvi Raj. In February, 2009, the shares held by Shri Pruthvi Raj were acquired by erstwhile Lubi Pumps Private Limited, for a consideration of AED 50,000. Consequent to an order by the Gujrat High Court, Lubi Pumps Pvt. Ltd. had amalgamated with Lubi Industries Pvt. Ltd. with effect from April 01, 2012. The abovementioned acquisition of shares by the applicant (when it was still a private limited company) from Shri Pruthvi Raj, was done without a fair valuation of shares, which was in contravention of Regulation 6(6) of Notification No. FEMA 120/2004-RB. The fair valuation certificate was finally received on April 11, 2017.

Further, while it was still a private limited company, the applicant invested in an overseas WOS, viz., Lubi Pumps FZE in UAE in 2009. Subsequently, on February 14, 2013, the status of the applicant company changed to LLP. LLPs were, at that time, not eligible to make Overseas Direct Investments. They were enabled for the same only with effect from May 07, 2014, on which date Notification No. FEMA.299/2014-RB dated March 24, 2014 was notified. Hence, the overseas investment held by the applicant for the period between February 14, 2013 and May 07, 2014 is not in line with Regulations 6 and 9 read with 2(k) of FEMA 120/2004-RB.



3. In terms of Regulation 6(6)(a)(ii) of Notification No.FEMA.120/2004-RB, as amended from time to time, "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”.

Further, Regulations 6 and 9 of the abovementioned Notification provide the conditions under which overseas direct investment as permitted in certain cases and the conditions for the approval of the Reserve Bank in certain cases respectively.

Whereas Regulation 2k of the same Notification defines ‘Indian Party’ for the purposes of this Notification. This definition did-not include LLP before the amendment Notification dated May 7, 2014.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/10751/15.20.67/2016-17 dated April 26, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on May 25, 2017 during which Shri Parag P. Jhaveri, Chartered Accountant, 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 Regulations 6(6) and Regulations 6 and 9 read with 2k of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount and period of contravention is as under:

(a) Regulation 6(6): Amount of contravention – Rs. 6,50,408/- (AED 50,000) and Period of contravention – eight years approximately.



(b) Regulations 6 and 9 read with 2k: Amount of contravention – Rs. 69,80,787/- (USD 141,540) and Period of contravention – one year three 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. 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. 1,43,272/- (Rupees one lakh forty three thousand two hundred and seventy two 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(6) and Regulations 6 and 9 read with 2k of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 1,43,272/- (Rupees one lakh forty three thousand two seventy two 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 thirtieth day of June, 2017

Sd/-

(Vandana Khare)
General Manager