



In the

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

Present

A.O. Basheer
General Manager

Date: June 21 , 2017
CA No 4294 / 2017

In the matter of

Nissan Trading India Private Limited
Plot No. 1C, Sipcot Industrial Park
Muttur (Post), Oragadam
Sriperumbudur Taluk, Kancheepuram
Tamil Nadu - 602105

(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 January 23, 2017 (received in the Reserve Bank on February 08, 2017) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded is, exceeding the limit of wholesale trading among group companies beyond the prescribed limit of 25%. The above amounts to the contravention of Paragraph 15.1.2(d) of Annex B of Schedule I 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 May 3, 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts are as under: The applicant was incorporated as Nissan Trading India Private Limited on July 13, 2007 (CIN: U50404TN2011FTC081480). The applicant is engaged in the business of rendering advice on sourcing of automotive parts and component services to its Group Companies, and providing supply chain management services in India. The applicant is a Joint Venture (JV) between Nissan Trading Company Limited, Japan, which holds 99% stake in the applicant and Nissan Trading Japan Company Limited, which holds the rest 1% stake. During the financial year 2014-15, the applicant made a total domestic sales of INR 1,42,79,440, out of which sales amounting to INR 79,23,431, were made to Renault Nissan Automotive India Private Limited (RNAIPL), a Group Company of the applicant. The details of the sales made to RNAIPL are as follows:

S.No.	Date of invoice	Amount (in INR)
1	02.06.2014	11,70,590
2	02.06.2014	8,40.549
3	23.06.2014	17,68,166.45
4	23.06.2014	41,44,125.20
Total		79,23,430.65

Paragraph 15.1.2(d) of Annex B of Schedule I of Notification No. FEMA 20/2000-RB, as then applicable, permitted wholesale trading of goods among Group Companies, provided it did-not exceed 25% of the total turnover of the wholesale venture. The above transactions, thus, amounted to the contravention of Paragraph 15.1.2(d) of Annex B of Schedule I of Notification No. FEMA 20/2000-RB, as then applicable.

3. Paragraph 15.1.2(d) of Annexure B of Schedule I of Notification No. FEMA 20/2000-RB states that, "Wholesale trading of goods would be permitted



among companies of the same group. However, such wholesale trading to group companies taken together should not exceed 25% of the total turnover of the wholesale venture”.

In the instant scenario, the sales to group companies should not have exceeded 25% of the total turnover for the year 2014-15, i.e., such sales should have been limited to INR 35,69,860. The sales to the extent of INR 43,53,571, were thus in contravention of the above Notification.

The post-facto approval for the sales made to the group companies in excess of the threshold limit stipulated under the guidelines, was granted by Reserve Bank of India vide letter Reference No. FED.CO.FID/10490/10.78.000/2016-17, dated April 20, 2017.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/11236/15.20.67/2016-17 dated May 11, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on May 31, 2017 during which Shri Masaki Kobayashi, Managing Director, Nissan Trading India Private Limited, Shri Kamesh Susarla, Director, BSR & Co. LLP, Chartered Accountants, and Shri R. Ramesh, Manager, BSR & Co. LLP, Chartered Accountants, 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 Paragraph 15.1.2(d) of Annex B of Schedule I, 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 May 3, 2000, as



amended from time to time. The amount of contravention is Rs. 43,53,571/- and the period of contravention is two years and ten 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. 76121/- (Rupees seventy six thousand one hundred and twenty one 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 contravention committed by the applicant namely, Paragraph 15.1.2(d) of Annex B of Schedule I 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 May 3, 2000 as amended from time to time, on payment of a sum of Rs. 76121/- (Rupees seventy six thousand one hundred and twenty one 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 twenty first day of June, 2017

Sd/-

(A.O. Basheer)
General Manager