



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 5, 2017
CA No 4218 / 2016

In the matter of

VFS Global Services Pvt. Ltd.
20th Floor, Tower A, Urmi Estate
95, Ganpatrao Kadam Marg
Lower Parel (West), Mumbai - 400013

(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 November 14, 2016 (received in the Reserve Bank on November 16, 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) undertaking a non-bonafide business activity, (ii) delay in reporting in Form ODI Part-I and (iii) delay in reporting of disinvestment. The above amount to the contravention of Regulations 6(2)(ii), 6(2)(vi) and 16(2) 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 CIBT India Private Limited on January 10, 2006 (CIN: U75210MH2006PTC158812). The applicant changed its name to Kuoni Visa Services Private Limited (Kuoni India), vide a fresh certificate of incorporation, on July 19, 2007, and finally to VFS Global Services Private Limited on January 16, 2009. It is engaged in the business of providing services of travel documentation, passport and visa processing facilitation etc., and other related services.

VFS (India) Pvt. Ltd. (VFS India), an entity incorporated in India on July 10, 2001 (initially called Fastrac Visa Facilitation Services Pvt. Ltd.), set-up a WOS, VF Worldwide Holdings Ltd., in Mauritius (VFS Mauritius), on June 04, 2004, and remitted USD 6,65,000 as equity capital. In 2008, VFS (India) Pvt. Ltd. amalgamated with Kuoni Visa Services Private Limited (Kuoni India), pursuant to a court approved Scheme of Amalgamation. Kuoni India was a JV between Kuoni Asian Investment (Mauritius) Limited (Kuoni Mauritius), which held 99.48% of the equity shares, and Kuoni Travel Holding Limited, Switzerland, which held rest of the stake. The legal existence of VFS (India) Private Limited thus ceased to exist. Thereafter, on January 16, 2009, Kuoni Visa Services Private Limited changed its name to VFS Global Services Private Limited. The restructuring pursuant to this amalgamation was reported through the Form ODI with a delay beyond the stipulated time period, thus contravening Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB.

Pursuant to the Scheme of Amalgamation, all assets and liabilities of VFS India were transferred to Kuoni India. The assets so transferred included USD 6,65,000, held by VFS India in VFS Mauritius. This restructuring leading to disinvestment of stake of VFS India in VFS Mauritius did not lead to any repatriation of proceeds to India and was not reported within the stipulated time period, thus contravening Regulation 16(2) of Notification No. FEMA 120/2004-RB.



The reporting in Form ODI were completed in September, 2012, and have been taken on record.

On December 17, 2010, VFS Mauritius issued 5,98,500 equity shares of USD 10 each on preferential basis to VFS Global Services Plc (VFS UK), a public limited company incorporated in United Kingdom, thereby diluting the existing stake of VFS Global in VFS Mauritius to 10% from 100%. On December 28 2010, Kuoni Mauritius, the parent company of VFS Global (post amalgamation and restructuring), sold its stake in VFS Global to VFS Mauritius. This resulted in cross holding between VFS Global and VFS Mauritius (VFS Mauritius holding 99.48% stake in VFS Global and VFS Global holding 10% stake, representing the original equity investment of USD 6,65,000, in VFS Mauritius). As FDI through ODI is not considered as a bonafide business activity, the applicant was thus in contravention of Regulation 6(2)(ii) of Notification No. FEMA 120/2004-RB.

The applicant has now disinvested the 10% stake in VFS Mauritius and the disinvestment has been taken on record, thereby completing the administrative action, subject to compounding.

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, “an Indian party is permitted to make Overseas Direct Investment in certain cases, provided the direct investment is made in an overseas JV or WOS engaged in a bonafide business activity”.

Further, in terms of Regulation 6(2)(vi) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, an Indian Party is permitted to make direct investment in a Joint Venture or a Wholly Owned Subsidiary outside India, provided, “The Indian Party submits duly completed Part I of the Form ODI, as prescribed by the Reserve Bank from time to time, to the designated branch of an Authorized Dealer”.

Also, Regulation 16(2) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, states that, post transfer by way of sale of shares of a JV/WOS outside India, “sale proceeds of shares/securities shall be repatriated to India immediately on receipt thereof and in any case not later



than 90 days from the date of sale of the shares/securities and documentary evidence to this effect shall be submitted to the Regional office of the Reserve Bank through the designated authorized dealer”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/8793/15.20.67/2016-17 dated March 01, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on April 27, 2017 during which Ms. Manju Anand, Head- Corporate Secretariat, VFS Global, Shri R.K. Bhandary, Head- Corporate Finance, VFS Global, Shri Shabbir Motorwala, Chartered Accountant and Ms. Darshana Jain, Chartered Accountant, represented the applicant. 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), 6(2)(vi) and 16(2) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount of contravention is Rs. 3,04,95,237/- (INR 665000) and the period of contravention ranges from four years to eight 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.



6,98,714/- (Rupees six lakh ninety eight thousand seven hundred and fourteen 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), 6(2)(vi) and 16(2) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 6,98,714/- (Rupees six lakh ninety eight thousand seven hundred and fourteen 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 fifth day of May, 2017

Sd/-

J.K. Pandey
(Chief General Manager)