



In the

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

Present

Jyoti Kumar Pandey
Chief General Manager

Date: July 28, 2017
C.A. 4318/2017

In the matter of
Mahindra & Mahindra Limited
Mahindra Towers, Dr. G M Bhosale Marg,
Worli, Mumbai – 400 018, Maharashtra

(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 February 28, 2017 (received in the Reserve Bank of India on March 02, 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 relate to (i) delayed reporting of acquisition of the stake in the overseas entity in the prescribed form to the Reserve Bank of India (RBI); (ii) delayed reporting of disinvestment in the overseas entity in the prescribed form to RBI 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), 16(2) 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 Mahindra & Mohammed Limited on October 02, 1945 under the Indian Companies Act, 1913 and its name was subsequently changed to Mahindra & Mahindra Limited (MML) on January 13, 1948. The CIN of MML is L65990MH1945PLC004558. It is engaged in the business of merchandise, commodities, machinery, tools, goods and articles of all kinds especially automobile sector. On June 30, 2006, Mahindra Holdings & Finance Limited (MHFL) invested USD 3 million (INR 13,82,70,000/-) in an overseas joint venture (JV) in USA namely, Prana Holdings Inc and the share certificate was received on November 13, 2006. MHFL was subsequently merged with its parent company namely, MML vide Bombay High Court order dated July 18, 2008 effective from February 01, 2008. As a result of the merger of the Indian party with its parent company the MHFL's stake in the overseas JV was transferred to MML which was reported online on June 22, 2016 and was taken on record by the Bank on September 28, 2016. The MML did not report the said acquisition of the stake in the overseas JV from MHFL in Form ODI - I within the prescribed time period in contravention of Regulation 6(2)(vi) of FEMA 120/2004-RB. MHFL did not report the said disinvestment of its stake in the overseas JV within the prescribed time period in contravention of Regulation 16(2) of FEMA 120/2004-RB.

The applicant also delayed in filing the Annual Performance Reports in form APR with the RBI in respect of the overseas entity for the years ended March 31, 2008 to March 31, 2015 (i.e. 8 years) beyond the prescribed period in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB dated July 7, 2004.

The applicant was advised of the contraventions committed vide letter FE.CO.DID.No.7671/19.18.389/2016-17 dated January 30, 2017.

3. During the course of its operations, MML committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 120/2004:-



3.1 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 acquisition of the stake in the overseas JV, on account of MHFL's merger with itself, within the prescribed time period of 30 days as per the details given in paragraph 2 above. The amount of contravention was USD 3 million (INR 13,82,70,000/-) and the period of contravention was around eight years.

3.2 Whereas Regulation 16(2) of FEMA 120/2004 clearly stipulates that 'Sale proceeds of shares / securities shall be repatriated to India immediatelyand documentary evidence to this effect shall be submitted to the Regional office of the Reserve Bank through the designated authorized dealer'.

MHFL did not report the disinvestment of its stake in the overseas JV within the prescribed time period as detailed in Paragraph 2 above thereby contravening the said FEMA Regulation. The amount of contravention was USD 3 million (INR 13,82,70,000/-) and the period of contravention was around eight years..

3.3 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 ended March 31, 2008 to March 31, 2015 (i.e. 8 years) were submitted to the RBI with delay beyond the prescribed period in contravention of the said FEMA Regulation.

4. The applicant was given an opportunity for personal hearing vide our letter No. FE.CO.CEFA No.123/15.20.67/2017-18 dated July 06, 2017 for further submission in person and/or producing documents, if any, in support of the



application. Shri Nikhil Sohoni, Senior Vice-President – Corporate Finance, Shri Mandar Vartak, Vice-President, Business Planning and Shri Rasesh Joshi, General Manager – Corporate Finance represented the applicant during the personal hearing held on July 26, 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 has contravened the FEMA provisions issued in terms of Regulations 6(2)(vi), 16(2) and 15(iii) of Notification No. FEMA 120/2004-RB dated July 7, 2004 as detailed in paragraphs 2 and 3 above.

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.16,83,333/- (Rupees sixteen lakhs eighty three thousand three hundred and thirty three only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulations 6(2)(vi),16(2) 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.16,83,333/- (Rupees sixteen lakhs eighty three thousand three hundred and thirty three 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 eighth day of July, 2017.

Sd/-

(Jyoti Kumar Pandey)
Chief General Manager