



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

Jyoti Kumar Pandey
Chief General Manager

Date: July 04, 2017
CA No 4284 / 2017

In the matter of

Sahyadri Hospitals Limited
Survey No. 89 & 90, Plot No. 54,
Lokmanya Colony, Kothrud
Pune - 411038

(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 18, 2017 (received in the Reserve Bank on January 24, 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) non-realization of dues within the stipulated time period and (ii) disinvesting from JV/WOS outside India with outstanding dues. The above amount to the contravention of Regulations 15(ii) and 16(1)(iv) 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 Sahyadri Hospitals Limited (CIN: U85110PN1996PLC099499), on May 14, 1996. The applicant is engaged in the business of providing clinical, diagnostic and medical services. The applicant entered into a Joint Venture (JV), namely, Sahyadri Speciality Pacific Hospital Ltd., in Fiji, on January 31, 2012. The applicant rendered certain services to the JV, for which invoices were raised on the JV from time to time. Out of these invoices, two remained unrealized as follows:

S.No.	Invoice Number	Date	Amount in USD	Amount in INR
1	001/13	10.11.2013	25000	1491500
2	011/14	16.03.2014	112640	6894694

The above dues were to be repatriated within the stipulated time period of 60 days of their falling due. However, the same could not be realized and RBI gave permission to write off the abovementioned amount on 18.05.2016. The above non-realization within the stipulated time period was in contravention of Regulation 15(ii) of Notification No. FEMA 120/2004-RB.

Further, the applicant disinvested in the JV on October 13, 2014, which was taken on record by RBI on June 10, 2015, for an amount of INR 1.05 crores (USD 171,955). The above disinvestment, however, was done with outstanding dues, in contravention of Regulation 16(1)(iv) of Notification No. FEMA 120/2004-RB.

3. In terms of Regulation 15(ii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, an Indian Party, which has acquired foreign security in terms of the Regulations in Part I, shall, “repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due, or such further period as the Reserve Bank may permit....”.



Further, in terms of Regulation 16(1)(iv) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, "An Indian Party may transfer, by way of sale to another Indian Party which complies with the provisions of Regulation 6 above, or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions:... (iv) the Indian Party does not have any outstanding dues by way of dividend, technical know-how, fees, royalty, consultancy, commission or other entitlements and/or export proceeds from the JV or WOS."

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/11279/15.20.67/2016-17 dated May 12, 2017 for further submission in person and/or producing documents, if any, in support of the application. Subsequently, a meeting was held on May 30, 2017 between Shri A.O. Basheer, General Manager, Reserve Bank of India and the representatives of the applicant, during which Ms. Asmita Kulkarni, Company Secretary, Sahyadri Hospitals Limited, Shri Rahul Manjrekar, Partner, KPMG and Ms. Chaitali Rao, Chartered Accountant, 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 applicant further sought to be exempted from the personal hearing with the Compounding Authority vide their e-mail dated July 03, 2017. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the meeting with Shri A.O. Basheer.

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 15(ii) and 16(1)(iv) 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 follows:

- (i) Regulation 15(ii): Amount of contravention – Rs. 83,86,194/- and Period of contravention – two years to three years approximately



(ii) Regulation 16(1)(iv): Amount of contravention – Rs. 1.05 crore and
Period of contravention – two years to three 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. 2,09,870/- (Rupees two lakh nine thousand eight hundred and seventy 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 15(ii) and 16(1)(iv) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 2,09,870/- (Rupees two lakh nine thousand eight hundred and seventy 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 fourth day of July, 2017

Sd/-

(Jyoti Kumar Pandey)
Chief General Manager