



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: October 25, 2017
C.A. **4504/2017**

In the matter of

Jasper Infotech Private Limited
68, Ground Floor. OKHLA Industrial Estates,
Phase III, New Delhi 110 020
(Applicant)

In exercise of the powers 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 an application dated August 10, 2017 (received in the Reserve Bank on August 14, 2017) along with the letter dated August 29, 2017 admitting the contraventions (received in the Reserve Bank on September 04, 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 relates to undertaking foreign direct investment (FDI) under overseas direct investment (ODI) route in contravention of the provisions of Regulation 6(2)(ii) 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, Jasper infotech Private Limited (JIPL), was incorporated under the Companies Act 1956 (CIN



U72300DL2007PTC168097) on September 12, 2007. JIPL was engaged in the business of establishing, developing, designing, producing and conceptualizing direct marketing solutions through web and non-web based platforms. Another Indian company viz Accelyst Solutions Private Limited (ASPL) was incorporated on July 29, 2008 with a paid-up capital of Rs.100,000/- and as on March 31, 2011 50% of ASPL's equity was held by Shri Kunal Shah and 50% by Tancom Electronics Pvt Ltd (an Indian company). Accelyst Pte Ltd (APL) was incorporated under the laws of Singapore on September 27, 2011 which was stated to be a Holding Company in Form ODI. In November 2011 Mr. Kunal Shah, Mr. Sandeep Tandon and Ms. Gauri Tandon (erstwhile promoter/shareholders) acquired 10500 shares, 2100 shares and 8400 shares (these shares were split in the ratio of 1:1000 on February 11, 2014) of APL, Singapore respectively for a total amount of USD 21000 from other non-resident individuals/entities. During the period December 2011 to March 2015 APL, Singapore raised an amount of USD 116,690,263 through issuance of 73692097 optionally convertible preference shares (OCPS) to non-resident investors. In November 2011, APL acquired 9999 shares (99.99% stake) in ASPL (one share continued to be held by Tancom Electronics Pvt Ltd) for Rs.100/- per share (against valuation of Rs.92.20 per share) and thus ASPL became JV of APL, Singapore. Out of the funds raised through issuance of OCPS by APL, Singapore, Rs.3,62,06,35,706/-, were invested into ASPL during the period April 2012 to July 2015, in the form of compulsorily convertible debentures (CCDs) issued by ASPL which were later converted to equity shares. The fate of the remaining amount has neither been disclosed nor is covered within the purview of this order. During the period January 2010 to April 2017 JIPL received foreign direct investment (FDI) into equity and preference shares from various non-resident entities based in USA, Mauritius, China, Singapore & Cayman Islands amounting to Rs.10302.66 crore and JIPL is a widely held foreign owned and controlled company.

2.1 In March 2015, JIPL acquired, through a secondary purchase transaction, shares of Accelyst Pte Ltd (APL) from the resident individuals and non-resident entities for a total amount of USD 339,368,176.07 (Rs.2118,71,43,413.45/-) at a time when APL already had a JV in India i.e. ASPL and acquisition was as under:-



Payment to non-resident shareholders of APL by JIPL during its acquisition		
Date	USD	INR
March 25, 2015	153,868,861.69	959,29,54,182.23
March 27, 2015	97,519,543.93	609,45,81,542.21
Sub-Total	251,388,407.62	1568,75,35,724.45
Payment to resident shareholders (Shri Kunal Shah, Shri Sandeep Tandon and Ms. Gauri Tandon) of APL by JIPL		
Date	USD	INR
March 25, 2015	43,715,943.00	273,32,95,620
March 27, 2015	44,263,825.45	276,63,12,069
Sub-Total	87,979,768.45	549,96,07,689
Total acquisition cost	339,368,176.07	2118,71,43,413.45

2.2 As per the valuation certificate dated March 19, 2015 issued by M/s Corporate Professionals Private Ltd, a category-1 SEBI registered merchant banker APL being a holding company majorly derived its value from investment in its Indian subsidiary viz ASPL and as on January 31, 2015 the fair value of share of APL was derived at USD 4.163 per equity and per preference share using NAV methodology. The total appreciation in the value of the investments made by APL in ASPL over a span of 3 years and 2 months approximately (i.e. December 2011 to January 2015) was taken as USD 280.017 million approximately which was computed using DFCF (Discounted Free Cash flow) methodology based upon the standalone business projections of ASPL for 04 years and 02 months ended March 31, 2019 as provided by the Management of the company. Thus, the acquisition of APL by JIPL resulted in an ODI-FDI structure, resulting in contravention of Regulation 5(1) read with Regulation 6(2)(ii) of Notification No. FEMA 120/2004-RB on the part of JIPL. RBI vide letter FE.CO.OID/7199/19.60.091/2016-17 dated January 16, 2017 advised JIPL of the above contravention that FDI through ODI is not envisaged under FEMA Notification No. 120/2004-RB and any business undertaken through such structures unless approved by RBI is not treated as bonafide in terms of Regulation 5(1) read with Regulation 6(2)(ii) of Notification ibid, also advising them that the above contravention could be compounded after the completion of administrative action, i.e., disinvestment of stake in APL, Singapore by JIPL. RBI had also advised the resident individuals viz Shri Sandeep Tandon, Shri Kunal Shah and Ms. Gauri Tandon to also apply for compounding of contravention of Regulation 5(1) and 3 of FEMA 120/2004-RB.



2.3 OID further vide letter FE.CO.OID./7200/19.60.091/2016-17 dated January 16, 2017 conveyed its 'No objection' to the JIPL's Authorized Dealer (AD) Bank viz Citi Bank NA for receiving equity shares of ASPL held by APL as consideration for disinvestment by way of liquidation of the overseas WOS i.e. APL subject to JIPL complying with regulations of FEMA 120 except Regulation 16(2) and opting for compounding after completion of the administrative action of unwinding the ODI-FDI structure. APL, Singapore was liquidated with lodgement of the dissolution with Accounting and Corporate Regulatory Authority (ACRA), Singapore on March 30, 2017 and was finally dissolved on June 30, 2017 while shares of ASPL held by APL were transferred to JIPL as consideration for disinvestment. As per Form FCTRS submitted with RBI 15099837 unlisted equity shares of Face Value Rs.10/- were transferred at a negotiated price of Rs.1402.79/- per share and the total amount of consideration was Rs.2118,19,00,345.23/-. As per the valuation certificate dated December 30, 2016 issued by M/s Corporate Professionals Private Ltd fair value of APL's share was derived at USD 3.94 per share as on October 31, 2016. The total appreciation in the value of the investments made by APL in ASPL was taken as USD 262,623,275.68 which was computed by using DFCF methodology based upon the standalone business projections of ASPL for 10 years and 5 months ended March 31, 2027 as provided by the Management of the company. Thus, the value per share of ASPL was certified to be Rs.1422.44/- as on October 31, 2016.

3. Whereas Regulation 5(1) of Notification No. FEMA 120/2000-RB states that '*Save as otherwise provided in the Act or rules or regulations made or directions issued thereunder, or with prior approval of the Reserve Bank no person resident in India shall make any direct investment outside India.*' Further, Regulation 6(2)(ii) of Notification No. FEMA 120/2004-RB states that an Indian Party may make direct investment in a Joint Venture or Wholly Owned Subsidiary outside India provided that the direct investment is made in an overseas JV or WOS engaged in a bona fide business activity. The acquisition of the Singapore entity by JIPL in 2015 resulted in an ODI-FDI structure thereby leading to contravention of the said FEMA Regulation.



4. The applicant was given an opportunity for personal hearing vide our letter No. FE.CO.CEFA/2795/15.20.67/2017-18 dated September 27, 2017 for further submission in person and/or producing documents, if any, in support of the application. Shri Kunal Bahl, CEO, Shri Jason Kothari, Chief Strategy & Investment Officer and Shri Sachin Gupta, Senior Director from JIPL appeared for the personal hearing on October 11, 2017. During the personal hearing, the representatives of the applicant admitted the contraventions committed by the applicant for which they have sought compounding and requested that a lenient view may be taken in the matter. 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 during the personal hearing. Incidentally, the compounding applications filed by the above mentioned resident individuals viz Shri Sandeep Tandon and Shri Kunal Shah were withdrawn vide letters dated October 25, 2017 while the compounding application filed by Ms. Gauri Tandon is under process as on the date of this order.

5. I have given my careful consideration to the documents on record and submissions made by the applicant. Accordingly, I hold that the applicant contravened the provisions of FEMA issued in terms of Regulation 5(1) read with Regulation 6(2)(ii) of Notification No. FEMA 120/2004-RB dated July 7, 2004. The amount of contravention was USD 339,368,177 (Rs.2118,71,43,413.45/-) and the period of contravention was two years 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. However, 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 I consider that payment of an amount of Rs.12,71,72,860/- (Rupees twelve crore seventy one lakhs seventy two thousand eight hundred and sixty only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contravention of Regulation 5(1) read with Regulation 6(2)(ii) 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.12,71,72,860/- (Rupees twelve crore seventy one lakhs seventy two thousand eight hundred and sixty 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 fifth day of October, 2017.

Sd/-

Jyoti Kumar Pandey
Chief General Manager