



In the

**Reserve Bank of India**  
Foreign Exchange Department  
11th floor, Central Office Building  
Shahid Bhagat Singh Road  
Mumbai - 400 001

Present

**Devinder Kumar**  
**Deputy General Manager**

Date: September 15, 2017  
CA NO: 4334/2017

In the matter of

**ALP Overseas Private Limited**  
**Corporate Office: Plot No 32, Sector 18, HUDA, Gurgaon, Haryana-122015**  
**(Applicant)**

In exercise of powers conferred under section 15 (1) of the Foreign Exchange Management Act, 1999 and the Regulations/ Rules/ Notifications/ orders made there under, I pass the following

**Order**

The applicant has filed a compounding application dated March 23, 2017 (received in the Reserve Bank of India on March 27, 2017) for compounding the 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) capitalisation into loan of the amount remitted by the applicant for meeting expenses of its wholly owned subsidiary ALP Africa (Pty) Ltd., (ii) writing off of the amount so capitalised without the approval of the Reserve Bank, (iii) non-reporting of the amount capitalised to the authorised dealer in the prescribed Form ODI (Part I) and (iv) delays in submission of Annual Performance Reports



(APRs) for the years 2010, 2011, 2012, 2015 and 2016. The above were in contravention of Regulations 11(1), 16A(3), 6(2)(vi) and 15(iii) respectively of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB dated July 07, 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 incorporated as GTP Overseas Private Limited on July 3, 1996 under the Companies Act, 1956. (CIN NO: U74900DL1996PTC080083). Its name was changed to ALP Overseas Private Limited on June 15, 2007 and ALP Elastomers Private Limited on November 3, 2007 and again to ALP Overseas Private Limited on February 6, 2008. The applicant is engaged in manufacturing of automobile sealing products. During the year 2009-10, the applicant remitted a total of US\$ 40,175 (₹19,31,533/-) in thirteen installments towards payment of various expenses to third parties on behalf of its wholly owned subsidiary ALP Africa (Pty) Ltd. This amount was capitalised by converting it into loan to the WOS in the year 2010 without the approval of the Reserve Bank. The said amount was later written-off in the year 2013 and 2015, again without the approval of the Reserve Bank. The details are as under:

Amount in US \$	Amount in INR	Date of Capitalisation	Amount in INR	Date of Write-off
40175	19,31,533	31.03.2010		
			1,07,689	31.03.2013
			18,23,844	31.03.2015
		Total	19,31,533	

Further, the applicant did not submit the Form ODI in respect of the amount capitalised in the year 2010. Also, the applicant did not submit APRs for the years 2010, 2011, 2012, 2015 and 2016 within the prescribed period. The Reserve Bank, when approached by the applicant, conveyed 'No Objection', vide letter dated March 17, 2017, to the capitalisation of expenses into loan and the subsequent write-off of the same subject to certain terms and conditions including action under FEMA, 1999.



3. Thus, the applicant contravened the provisions of Regulations 11(1), 16A(3), 6(2)(vi) and 15(iii) of Notification No. FEMA 120/2004-RB, which are reproduced below:

3.1 Regulation 11(1) of the said notification allows an Indian Party to make direct investment outside India in accordance with the Regulations in Part-I by way of capitalisation in full or part of the amount due to the Indian Party from the foreign entity towards:

- (i) payment for export of plant, machinery, equipment and other goods/software to the foreign entity;
- (ii) fees, royalties, commissions or other entitlements due to the Indian Party from the foreign entity for the supply of technical know-how, consultancy, managerial or other services

3.2 Regulation 16 A(3) of the said notification provides that an unlisted Indian Party, who has set up WOS abroad or have at least 51 per cent stake in an overseas JV, is permitted to write off capital and other receivables up to 25 per cent of the equity investment in the JV/WOS under the Approval Route.

3.3 Regulation 6(2)(vi) (as amended from time to time) of the said notification requires the Indian Party to submit Part-I of the Form ODI, duly completed, to the designated branch of an authorised dealer.

3.4 Regulation 15(iii) (as amended from time to time) of the said notification requires the Indian party to submit to the Reserve Bank through the Authorised Dealer every year within 60 days from the date of expiry of the statutory period as specified by the respective laws of the host country for finalization of the audited accounts of the Joint Venture / Wholly Owned Subsidiary outside India or such further period as may be allowed by Reserve Bank, an Annual Performance Report in Form ODI Part III in respect of each Joint Venture or Wholly Owned Subsidiary outside India set up or acquired by the Indian Party and other reports or documents as may be prescribed by the Reserve Bank from time to time.



4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter FED.CO.CEFA.No./2080/15.20.67/2017-18 dated September 04, 2017 for further submission in person and /or producing documents, if any, in support of the application. Shri Sushil Kumar Dubey, Company Secretary, Shri Manoj Shah, Chartered Accountant and Shri Viral Satra, Chartered Accountant represented the applicant during the personal hearing held on September 12, 2017. The representatives of the applicant admitted the contraventions for which compounding has been sought and submitted that the lapses were inadvertent. They 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.

5. I have given my careful consideration of the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Regulation 11(1), 16A(3), 6(2)(vi) and 15(iii) of FEMA 120-RB 2004. The amount and the period of contravention is as under:

(i) Regulation 11(1): The amount of contravention is ₹19,31,533/- and the period of contravention is seven years approximately.

(ii) Regulation 16A (3): The amount of contravention is ₹19,31,533/- and the period of contravention is approximately two to four years.

(iii) Regulation 6(2)(vi): As mentioned in Para 2 above.

(iv) Regulation 15(iii): Delay in submission of APRs for the year 2010, 2011, 2012, 2015 and 2016.

6. In terms of provisions of section 13 of FEMA, any person contravening any provision of the Act shall be liable to pay up to three times the sum involved in the contravention upon adjudication. However, after considering the submissions made by the applicant with regard to the contraventions and the entire relevant facts and circumstances of the case, I am persuaded to take a lenient view on the amount for which the contraventions are to be compounded and I consider that an amount of



₹2,02,718/- (Rupees Two lakh two thousand seven hundred eighteen only) will meet the ends of justice.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, the admitted contravention of Regulation 11(1), 16A(3), 6(2)(vi) and 15(iii) of Notification No FEMA 120/2004-RB by the applicant on payment of ₹2,02,718/- (Rupees Two lakh two thousand seven hundred eighteen only), which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5<sup>th</sup> Floor, Amar Building, Fort, Mumbai-400001 by a Demand Draft drawn in favour of "Reserve Bank of India" and payable at "Mumbai" within a period of 15 days from the date of the 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 shall apply.

The application is disposed of accordingly.

Dated this fifteenth day of September, 2017.

Sd/-

**(Devinder Kumar)**  
**Deputy General Manager**