



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 11, 2017  
C.A. 4409/2017

In the matter of

**Synfosys Business Solutions Limited**  
**Second Floor, Rock vista, Rock Dale, Somajiguda**  
**Hyderabad 500 082**

**(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 May 22, 2017 (received in the Reserve Bank of India on May 24, 2017) for compounding of contravention 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) keeping of amounts in escrow account abroad without carrying out the acquisition of the overseas entity as intended and; (ii) utilizing a portion of the amount remitted abroad into an escrow account for purposes- other than for ODI in contravention of Regulation 5(1) 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) read with Regulation 7(9) of Foreign Exchange Management (Foreign Currency Accounts by a person resident in India)



Regulations, 2000 notified vide erstwhile Notification No. FEMA.10/2000-RB dated 3rd May 2000, as amended from time to time (hereinafter referred to as Notification No. FEMA 10/2000-RB) and Regulation 6(2)(ii) of FEMA 120/2004-RB respectively.

2. The relevant facts of the case are as follows: Synfosys business Solutions Limited (SBSL), the applicant, is an unlisted resident company which was incorporated on September 18, 1997 under the Companies Act, 1956 (CIN U72200TG1997PLC027979). It is engaged in the business of providing IT and ITES services. In May, 2012 SBSL entered into an agreement with DAHL Consulting Inc in USA to acquire its 100% stake for a consideration of USD 18 million and in terms of the said agreement it opened an escrow account with Wells Fargo Bank, USA for the purpose of acquiring overseas entity. SBSL remitted an amount of USD 2 million through its AD Bank viz erstwhile ING Vysya Bank (now merged with Kotak Mahindra Bank Ltd) for the above acquisition as under:

<b>Date of remittance</b>	<b>Source</b>	<b>Amount (USD)</b>	<b>Amount (INR)</b>
14-08-2012	Cash Remittance - EEFC	4,18,788	2,33,67,292
14-08-2012	Cash Remittance - Market purchase	5,81,212	3,24,30,134
16-11-2012	Cash Remittance - EEFC	5,92,794	3,27,21,708
16-11-2012	Cash Remittance - Market purchase	7,206	3,97,765
26-11-2012	Cash Remittance - EEFC	99,994	55,91,716
26-11-2012	Cash Remittance - Market purchase	3,00,006	1,67,76,490
	<b>Total</b>	<b>2,000,000</b>	<b>11,12,85,105</b>

The acquisition did not take place as the applicant was not able to raise adequate funds and the purchase contract was terminated resulting in the closure of escrow account abroad. While the acquisition could not be carried out, the remittance was reported as Overseas Direct Investment (ODI) and UIN was allotted in respect of overseas entity intended to be acquired. SBSL debited the escrow account with the incidental expenditure pertaining to the intended acquisition amounting to USD 8,80,105 incurred towards legal fees, consultancy fees, agency fees, termination



fees etc. The applicant repatriated USD 7,10,000 to India through the normal banking channel as under:

<b>Date of inward remittance</b>	<b>Amount (USD)</b>
09.04.2014	2,35,000
18.06.2014	35,000
31.07.2014	1,60,000
25.09.2014	1,20,000
13.03.2015	1,60,000
	7,10,000

The balance left in the escrow account amounting to USD 4,09,895 was parked as loan with another wholly owned subsidiary (WOS) of the applicant viz Synfosys Business Solutions Inc, USA for which reporting under ODI regulations had not been done. The escrow account was closed on May 05, 2015. Using the amount remitted abroad through an escrow account for purposes- other than for ODI, is not permitted method of funding under extant ODI guidelines and is in contravention of Regulation 6(2)(ii) of FEMA 120/2004-RB. As the intended acquisition of the overseas entity was not carried out as per ODI regulations, keeping of amounts in escrow account is in contravention of Regulation 5(1) of FEMA 120/2004-RB read with Regulation 7(9) of erstwhile Notification No. FEMA.10/2000-RB. RBI vide letter FE.CO.OID./10600/19.69.667/2016-17 dated April 26, 2017 advised the applicant of the above contraventions.

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 7(9) of erstwhile Notification No. FEMA.10/2000-RB provides that '*An Indian party may open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of overseas direct investments subject to the .....terms and conditions .....(iv)The remittances sent to the Foreign Currency Account (FCA) by the Indian party should be utilized only for making overseas direct investment into the JV / WOS abroad.*'



As the intended acquisition of the overseas entity was not carried out as per ODI regulations, keeping of amounts in escrow account is in contravention of Regulation 5(1) of FEMA 120/2004-RB read with Regulation 7(9) of erstwhile Notification No. FEMA.10/2000-RB. Approximately, the amount of contravention was USD 2,000,000 (Rs.11,12,85,105/-) and period of contravention ranges two years six months to two years nine months.

Whereas Regulation 6(2)(ii) of Notification No. FEMA 20/2000-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. SBSL parked a portion of the amount remitted abroad into the escrow account as loan with another WOS, other than the one for which the amount was remitted, thereby contravening the said FEMA regulation. Approximately, the amount of contravention was USD 4,09,895 (Rs.2,28,07,604/-) and period of contravention was two years one month.

4. The applicant was given an opportunity for personal hearing vide our letter No. FED.CO.CEFA No.2102/15.20.67/2017-18 dated September 07, 2017 for further submission in person and/or producing documents, if any, in support of the application. Shri V.S. Sanker, Advisor and Shri Bheem Singh, Manager-Accounts from the company represented the applicant during the personal hearing held on October 06, 2017. The representatives of the applicant admitted the contraventions for which compounding has been sought and submitted that the lapses were inadvertent and unintentional. The representatives further submitted that the contraventions had occurred primarily due to lack of proper advice from the Authorized Dealer bank. They requested that in view thereof, the matter may be viewed leniently. 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 Regulation 5(1) of



Notification No. FEMA.120/2004-RB read with Regulation 7(9) of erstwhile Notification No. FEMA.10/2000-RB and Regulation 6(2)(ii) of Notification No. FEMA.120/2004-RB as per the details given 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.7,70,347/- (Rupees seven lakhs seventy thousand three hundred and forty seven only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulation 5(1) of Notification No. FEMA.120/2004-RB read with Regulation 7(9) of erstwhile Notification No. FEMA.10/2000-RB and 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.7,70,347/- (Rupees seven lakhs seventy thousand three hundred and forty seven 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 – 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 eleventh day of October, 2017

**Sd/-**

**Jyoti Kumar Pandey**  
**Chief General Manager**