



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
P M Road
Mumbai - 400 001

Present
Sharmila Thakur
General Manager

Date: October 9, 2017
CA No 4381 / 2017

In the matter of
Jasmin Infotech Pvt Ltd
Plot No 119, Velachery Tambaram Road
Palikaranani
Chennai - 600100
(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 April 28, 2017 (received in the Reserve Bank on May 3, 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 reporting of investment in the overseas Wholly Owned Subsidiary, Jasmine Infotech Inc, USA (ii) non submission of forms APR relating to the WOS. The above are in contravention of paragraphs 16(2)(vi) and 15 (iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 4, 2004, as amended from time to time (hereinafter referred to as Notification No FEMA 120-RB 2004).



2. The relevant facts of the case are follows:

The applicant was incorporated as Jasmin Infotech Pvt Ltd on August 17, 1998 under the Companies Act, 1956. (CIN NO: U72300TN1998PTC040985). The company was in the business of providing design and development services covering hardware and software, customisable product designs and IPs, system integration and other solutions that improve quality and accelerate time-to-market for a broad range of embedded systems.

The applicant set up a wholly owned subsidiary in in 2010 by the name Jasmin Infotech Inc by remitting funds through Canara Bank. However, the company did not submit form ODI 1 for the above transaction allegedly due to ignorance of rules, it being their first investment overseas, nor was it advised by its AD bank to do so. It remitted a total of USD 101,116 equivalent to INR 47,11,004 extending over a period from Feb 2, 2010 to Sep 16, 2011. The company also did not file the mandatory Annual Performance Reports (APRs) with respect to its US WOS since 2010. On being advised of the irregularity, the company reported all the remittances on June 21 2016 in Form ODI1 and filed all the pending APRs on July 25, 2016 through Canara Bank.

3. According to paragraph 6(2)(vi) of Notification No FEMA 120-RB 2004 as amended from time to time, an Indian party must submit duly completed Part 1 of Form ODI as prescribed by RBI, to the designated branch of its authorised dealer at the time of making any investment overseas. According to paragraph 15(iii) *ibid*, an Indian Party, which has acquired foreign security in terms of the Regulations in Part-I, shall “submit to the Reserve Bank every year within 60 days from the date of expiry of the statutory period as prescribed by the respective laws of the host country for finalisation 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 APR ...”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/2098/15.20.67/2017-18 dated Sep 7, 2017 for further submission in



person and/or producing documents, if any, in support of the application. However, the IP did not avail of the opportunity for personal hearing on the grounds that the company was based in Chennai and it would be difficult for them to appear for the hearing in Mumbai. The IP sent an mail dated Oct 3 2017 stating that the compounding of the contravention under FEMA 1999 may go ahead without personal hearing.

5. I have carefully considered the documents on record and the oral statements of the IP over phone. Accordingly, I hold that the applicant has contravened the provisions of Regulation 6 (2) (vi) and 15(iii) (v) of FEMA 120-RB 2004 as amended from time to time. The amount and period of contravention is as follows. The equity and loan remittances of USD 101,116 equivalent to INR 47,11,004 were made over two years starting from Feb 2, 2010 to Sep 16, 2017 and finally reported to RBI on June 21 2016. The average delay for reporting, taking the first and last dates of remittance, was 5 years 7 months. Six APRs for the years 2010, 2011, 2012, 2013, 2014 and 2015 were reported with delay on July 25, 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, taking into account the relevant facts and circumstance of the case as stated in the foregoing paragraphs, 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 Rs.1,09,900/- (Rupees One Lakh Nine Thousand Nine Hundred only) will meet the ends of justice.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 6(2) (vi) and 15(iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 4, 2004, as amended from time to time, by the applicant stated above on the facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs.1,09,900/- (Rupees One Lakh Nine



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Thousand Nine Hundred only) which shall be deposited by the applicant with the Reserve Bank of India, 11th Floor, Central Office Building, Shahid Bhagat Singh Marg, 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 accordingly.

Dated this the ninth day of October 2017.

Sd/-

(Sharmila Thakur)
General Manager