



In the

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

Present

A.K. Pandey
Chief General Manager

Date: December 22, 2016
CA No 4112 / 2016

In the matter of

Dada Sons Private Limited
Savitri II, G.T. Road, Dholewal Chowk
Ludhiana, Punjab - 141003

(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 August 09, 2016 (received in the Reserve Bank on August 18, 2016) 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) making total financial commitment in excess of the prescribed percentage of net-worth (ii) delay in filing Form ODI (iii) non-reporting of setting up of step-down subsidiary within the stipulated time period (iv) non-receipt of share certificates within the stipulated time period and (v) non-submission of Annual Performance Reports (APR) within the stipulated



time period. The above amount to the contravention of Regulations 6(2)(i), 6(2)(vi), 13, 15(i) and 15(iii) 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 Dada Sons Private Limited on July 24, 2013 (CIN: U74900PB2014PTC038771). The applicant acts as a Holding Company to companies in India and abroad and is engaged in the business of trading in automobiles, spares and accessories. A Wholly Owned Subsidiary (WOS) of the applicant company, namely, Dada Sons Singapore Pte. Ltd., was incorporated in Singapore on November 04, 2014. Further, a step-down subsidiary, namely, Transrev RSA Pty. Ltd. was set up in South Africa, on September 18, 2014.

The applicant company made the following Overseas Direct Investments in the WOS:

S.No.	Date of investment	Amount of investment (USD)	Amount of investment (INR)	Purpose of remittance
1	4.11.2014	17000	1049386	Equity investment
2	10.02.2015	6000	375833	Equity investment
3	19.02.2015	9000	563869	Equity investment
4	09.03.2015	5000	316756	Equity investment
5	06.04.2015	8000	502031	Equity investment
6	16.04.2015	32000	2004864	Equity investment
7	05.05.2015	7000	448298	Equity investment
8	12.06.2015	10000	644459	Equity investment
9	09.07.2015	12000	766505	Equity investment
10	10.08.2015	10000	642018	Equity investment
11	04.09.2015	45000	2997299	Equity investment
12	04.09.2015	25000	1666113	Equity investment



13	31.07.2014	9341.01	567271	Incorporation expenses that have been capitalized by WOS
	Total	195314	12544702	

The above mentioned investments were made in the automatic route when the applicant's net worth was negative, thus contravening Regulation 6(2)(i) of Notification No. FEMA 120/2004-RB.

The Form ODI for the above investments was filed with delay, thus contravening Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB. The UIN was allotted on 28.12.2015.

Further, the applicant had set up the following step-down subsidiary (SDS):

S.No.	Name of SDS	Date of incorporation	Date of reporting
1	Transrev RSA Pty. Ltd.	18.09.2014	14.10.2015

The investments were made in the SDS as follows:

S.No.	Date of investment	Amount of investment in USD	Amount of investment in INR	Date of reporting
1	19/04/16	10,000	666663	24/08/2016
2	02/06/2016	20,000	13,45,066	02/07/2016
	Total	30,000	20,11,729	

The abovementioned investments were reported with a delay beyond the stipulated time period, thus contravening Regulation 13 of Notification No. FEMA 120/2004-RB.

The share certificates for the following investments were submitted with a delay beyond the stipulated time period, thus contravening Regulation 15(i) of Notification No. FEMA 120/2004-RB.



S.No.	Date of receipt of remittance	No. of shares	Date of submission of share certificates
1	12.08.2014	1	14.10.2015
2	31.03.2015	46314	14.10.2015

The Annual Performance Reports (APRs) for the year 2014-15 was submitted with a delay beyond the stipulated time period, thus contravening Regulation 15 (iii) of Notification No. FEMA 120/2004-RB.

3. In terms of Regulation 6(2)(i) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, "The total financial commitment of the Indian Party in Joint Ventures/ Wholly Owned Subsidiaries shall not exceed 100%, or as decided by the Reserve Bank from time to time, of the net worth of the Indian Party as on the date of the last audited balance sheet".

In terms of Regulation 6 (2) (vi) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, an Indian party is permitted to make Overseas Direct Investment in certain cases, provided "The Indian Party submits Part I of Form ODI, duly completed, to the designated branch of an authorized dealer".

In terms of Regulation 13 of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, "A JV/WOS set up by the Indian party as per the Regulations may diversify its activities/ set-up step-down subsidiaries/ alter the shareholding pattern of the overseas entity: Provided the Indian Party reports to the Reserve Bank, the details of such decisions taken by the JV/WOS within 30 days of the approval of those decisions by the competent authority concerned of such JV/WOS in terms of local laws of the host country, and, include the same in the Annual Performance Report required to be forwarded annually to the Reserve Bank in terms of Regulation 15".

Regulation 15 (i) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time states that "An Indian Party which has acquired foreign security in terms of the Regulation in Part I shall receive share



certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months....”

Further, in terms of Regulation 15 (iii) 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 Regulation in Part I shall submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before a specified date, an Annual performance Report (APR) in Part III of Form ODI in respect of each JV or WOS outside India.....”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/4446/15.20.67/2016-17 dated October 27, 2016 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on November 18, 2016 during which Shri Deepender Kumar, Chartered Accountant, represented the applicants. The representative 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 application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

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 6(2)(i), 6(2)(vi), 13, 15(i) and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount of contravention is as follows:

- (i) Regulations 6(2)(i) – Amount of contravention – Rs. 1,25,44,702/- and period of contravention ranges from eleven months to two years approximately
- (ii) Regulation 6(2)(vi) – Amount of contravention – Rs. 1,25,44,702/- and period of contravention ranges from one month to one year three months approximately



- (ii) Regulation 13 - Amount of contravention – Rs. 20,11,729/- and the period of contravention is 2 months to 3 months approximately.
- (iii) Regulation 15(i) and 15(iii) – As given in Para 2 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. 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. 2,62,659/- (two lakh sixty two thousand six hundred and fifty nine 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 6(2)(i), 6 (2)(vi), 13, 15(i) and 15(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 2,62,659/- (two lakh sixty two thousand six hundred and fifty nine 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 twenty second day of December, 2016

Sd/-

(A.K. Pandey)
Chief General Manager