



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
Fort, Mumbai - 400 001

Present

A.K.Pandey
Chief General Manager

Date: December 22, 2016
CA No 4083/2016

In the matter of

Patel Realty (India) Limited
Patel Engineering Compound, Patel Estate Road
Jogeshwari (West), Mumbai – 400 102

(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 July 28, 2016 (received in the Reserve Bank of India on July 29, 2016) 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 (i) utilization of funds of the overseas branch of parent company for direct investment into overseas step down subsidiary; (ii) extending loan to step down subsidiary through overseas branch office; (iii) not obtaining share certificate in respect of overseas investment within the prescribed period and non-submission of evidence of conversion of such investment into loan; and (iv) delay in submission of Annual Performance Reports (APRs) in contravention of the provisions of Regulations 6(3), 6(4), 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 of the case are as follows: The applicant was originally incorporated as Patel Realty (India) Private Limited on January 18, 2007 under the Companies Act, 1956 (CIN U70200MH2007PLC167118). The name of the applicant was changed to Patel Realty (India) Limited on April 03, 2007. The applicant is engaged in the infrastructure sector and operates as builder and contractor. The applicant remitted USD 3,25,000 (Rs.1,99,51,750/-) directly from the branch office of its parent company, Patel Engineering Limited (PEL), USA to the account of its step down subsidiary (SDS), Les Salines Development Limited (LSDL) in Mauritius on January 27, 2015. The SDS was engaged in developing an integrated township on the land leased out by the Government of Mauritius and the funds were remitted to meet the financial needs of the SDS. LSDL is the subsidiary of Waterfront Developers Limited (WDL), Mauritius, a wholly owned subsidiary (WOS) of the applicant. The utilization of funds of overseas branch office of the parent company for direct investment in the SDS is not a permissible method of investment and is a violation of Regulation 6(3) of Notification No. FEMA 120/2004-RB dated July 7, 2004.

Regulation 6(3) of Notification No. FEMA 120/2004-RB dated July 7, 2004 provides that an Indian Party may make direct investment in a Joint Venture or Wholly Owned Subsidiary outside India and the investment may be funded "...out of balance held in the Exchange Earners' Foreign Currency Account of the Indian Party maintained with an authorized dealer".

2.a Further, the applicant extended loan to the SDS through its branch office in Mauritius, which is not a permissible method of funding, in tranches as below:

Sr.No.	Date Investment	of	Remittance in MUR	Remittance USD	in	Amount in INR
1	17.02.2011			2,00,000		91,30,140
2	08.03.2011			2,50,000		1,14,07,925
3	31.03.2011			1,00,000		45,28,540
4	05.04.2011			1,00,000		44,79,850
5	16.04.2011			1,00,000		4510000
6	03.05.2011			150000		6674595
7	16.05.2011			100000		4469500
8	20.05.2011			100000		4468000
9	08.06.2011			100000		4537000
10	27.06.2011			90000		4093200



11	08.08.2011		100000	4524000
12	31.08.2011	45,00,000		71,56,032
13	07.09.2011		25000	11,52,405
14	07.09.2011	25,00,000		39,38,920
15	07.09.2011	50,00,000		78,77,841
16	21.10.2011		21000	10,52,373
17	29.11.2011	25,00,000		42,80,612
18	16.12.2011	10,00,000		17,98,897
19	09.01.2012	4,50,000		7,73,640
20	24.03.2012	9,39,000		16,12,619
21	24.03.2012		32000	1665338
	Total	1,68,89,000	14,68,000	9,41,31,427

Whereas Regulation 6(4)(i) of Notification No. FEMA 120/2004-RB dated July 7, 2004 provides that “an Indian Party may extend a loan or a guarantee to or on behalf of the Joint Venture / Wholly Owned Subsidiary abroad, within the permissible financial commitment, provided that the Indian Party has made investment by way of contribution to the equity capital of the Joint Venture”.

Whereas the above loan was extended by the applicant to the SDS through its branch office in Mauritius which is not a permissible method of funding.

2.c On August 04, 2008, the applicant remitted a sum of USD 17,50,000 to WDL, Mauritius (WOS of the applicant) towards share application money. However, subsequently WDL did not issue the shares and an amount of USD 17,40,000 was returned by WDL to the applicant on September 24, 2008. The balance amount of USD 10,000 was retained by WDL and the applicant has submitted that this amount was taken in its books as a loan to WDL.

In terms of Regulation 15(i) of Notification No. FEMA 120/2004-RB, “an Indian Party, which has acquired foreign security.....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, or such further period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalized became due to the Indian Party or the date on which the amount due was allowed to be capitalized”.



Whereas the applicant did not obtain share certificate for the above investment within the prescribed period or submit any document to the RBI to evidence the conversion of the amount to loan. The applicant submitted that the conversion of share application money of USD 10,000 into loan by the applicant may be taken on record by Reserve Bank of India (RBI) and this request was acceded to in November, 2016.

2.d Finally, the applicant delayed in the submission of APRs for the years 2009, 2010, 2011 and 2012 in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB.

In terms of Regulation 15(iii) of FEMA 120/2004, the applicant is required to submit to the Reserve Bank of India an Annual Performance Report (APR) in Form ODI Part III in respect of each JV or WOS outside India and other reports or documents as may be specified by the Reserve Bank from time to time, on or before the 30th of June every year.

3. The applicant was given an opportunity for personal hearing vide our letter No. FE.CO.CEFA/ 5774/15.20.67/2016-17 dated December 07, 2016 for further submission in person and/or producing documents, if any, in support of the application. Shri K R Ramasubramanian, Director and Ms. Jayalakshmi, Company Secretary represented the applicant in the personal hearing held on December 22, 2016. During the personal hearing, the representative of the applicant admitted the contraventions committed by the applicant for which they have sought the compounding and submitted that the lapse was not intentional and requested that a lenient view may be taken.

4. I have given my careful consideration to the documents on record and submission made by the applicant. Accordingly, I hold that the applicant has contravened the provisions of Regulations 6(3), 6(4), 15(i) and 15(iii) of Notification No. FEMA.120/2004-RB. The amount and duration of the contraventions is as below:

i. Regulation 6(3) of Notification No. FEMA 120/2004-RB dated July 7, 2004 – Amount of contravention is USD 3,25,000 (Rs.1,99,51,750/-) and the duration of contravention is one year and six months approximately.

ii. Regulation 6(4)(i) of Notification No. FEMA 120/2004-RB dated July 7, 2004 – Amount of contravention is MUR 1,68,89,000 and USD 14,68,000 (Rs. 9,41,31,427) and the duration of contravention ranges from four years and four months to five years and five months approximately.



iii. Regulation 15(i) of Notification No. FEMA 120/2004-RB– Amount of contravention is USD 10,000 and the duration of contravention is eight years approximately.

iv. Regulation 15(iii) of Notification No. FEMA 120/2004-RB– Submission of APRs was delayed for the years 2009, 2010, 2011 and 2012.

5. 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 entire 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 payment of an amount of Rs.10,17,800/- (Rupees ten lakhs seventeen thousand and eight hundred only) will meet the ends of justice.

6. Accordingly, I compound the admitted contravention namely, the contravention of Regulations 6(3), 6(4), 15(i) and 15(iii) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000 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.10,17,800/- (Rupees ten lakhs seventeen thousand and eight hundred 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 second day of December, 2016

Sd/-

(A.K.Pandey)
Chief General Manager