



In the

Reserve Bank of India
Foreign Exchange Department
5th floor, Amar Building
Fort, Mumbai - 400 001

Present

Nitin Puppal
Assistant General Manager

Date: August 05, 2016
CA No. 3914/2016

In the matter of

All-ways Logistics Private Ltd
60, Savarkar Apartment, Plot No. 39, IP Extension,
Patparganj, New Delhi – 110 092.

(Applicant)

In exercise of the powers 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 February 05, 2016 (received at the Reserve Bank on February 10, 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 by the applicant are the contraventions of provisions of Regulation 6 (2) (vi) and 15 (iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004 Notification No. FEMA.120 / RB-2004 dated July 7, 2004 as amended from time to time (hereinafter referred to as FEMA 120/2004 RB).

2. The relevant facts of the case are as follows:

The Applicant, All-ways Logistics Private Ltd, New Delhi has been incorporated on March 14, 2012 in Hong Kong. The 10000 equity shares of HKD 1 each have been allotted in the



name of Director of that company i.e. Deepak Kumar Gupta (6000 shares) and Nishi Gupta (4000 shares) instead of to the company i.e. All-ways Logistics Private Ltd. Upon realization of their mistake, the aforesaid equity shares have been transferred on April 03, 2012 to the promoter of the company without any cash / kind consideration. The foreign currency meant for travelling expenses had been used to open the new bank account in Hong Kong and the same has been treated as transfer of initial share capital instead of advance. The transaction took place on July 23, 2012. The Indian Party did not submit the duly completed Part I of the Form ODI, as prescribed by the Reserve Bank from time to time, to the designated branch of an authorized dealer. The applicant also did not submit the APRs for the year 2013, 2014 and 2015 within the stipulated time.

3. FEMA Notification No. 120/2004-RB, *ibid*, regulates the overseas investment by a person resident outside India and Regulation 6 (2) (vi) of the said Notification permits for overseas direct investment in certain cases provided, “the Indian Party submits duly completed Part I of the Form ODI, as prescribed by the Reserve Bank from time to time, to the designated branch of an authorized dealer”.

In terms of Regulation 15 (iii) of the said Notification, “an Indian Party, which has acquired foreign security in terms of the Regulations 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, as prescribed by the Reserve Bank from time to time, in respect of each JV or WOS outside India, 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 FE. CO. CEFA. No. 372/15.20.67/2016-17 dated July 12, 2016 for further submission in person and / or producing documents, if any, in support of the application. However, the applicant vide their email dated July 15, 2016 requested the Bank to proceed with the compounding of contravention for the applicant as they had already submitted all documents available with them. The IP in their application dated February 05, 2016 stated that there was no intention to violate the rules of FEMA. 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.



5. I have given my careful consideration to the documents on record and submissions made by the applicant in their application. Accordingly, I hold that the applicant has contravened the FEMA provisions issued in terms of Regulations 6 (2) (vi) and Regulations 15 (iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004 Notification No. FEMA.120 / RB-2004 dated July 7, 2004 as amended from time to time. The period of contravention is approximately three years and the amount of contravention is HKD 10,000 (Rs.67,500 approximately).

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 contraventions are to be compounded and I consider that an amount of Rs. 43,000/- (Rupees Forty three thousand only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contraventions of Regulation 6 (2) (vi) and Regulation 15 (iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004 Notification No. FEMA.120 / RB-2004 dated July 7, 2004 as amended from time to time 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. 43,000/- (Rupees Forty three thousand 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 of accordingly.

Dated this the fifth day of August, 2016

Sd/-

(Nitin Puppal)
Assistant General Manager

