



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: July 12, 2016
CA No 3892 / 2016

In the matter of

The Malayala Manorama Company Limited
P.B. No. 26, Manorama Bldgs, K.K. Road
Kottayam, Kerala - 686001

(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 January 16, 2016 (received in the Reserve Bank on January 20, 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) delay in filing Form ODI (ii) non-reporting of setting up of step-down subsidiary within the stipulated time period (iii) non-receipt of share certificates within the stipulated time period and (iv) non-submission of Annual Performance Reports (APR) within the stipulated time period. The above amount to the contravention of Regulations 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 Malayala Manorama Co Limited on March 04, 1889 (CIN: U2212KL1889PLC000647). The applicant is engaged in the business of printing and publishing of newspapers and periodicals. A Wholly Owned Subsidiary (WOS) of the applicant company, namely, Malayala Manorama FZ LLC was incorporated in Dubai on November 21, 2005. Further, a step-down subsidiary, namely, Malayala Manorama Fujairah FZ LLC was set up in 2013-14.

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

S.No.	Date of fund transfer	Purpose	Amount (AED)	Equivalent amount in INR	Date of reporting
1	04.11.2005	Incorporation expenses	50000	6,31,212	
2	24.07.2007	Investment in WOS	56000	6,23,436.80	
3	01.08.2007		189000	21,09,092	
4	21.08.2007		17800	1,98,753	
5	06.10.2007		10844	1,17,461	
6	22.11.2007		30000	3,22,398	
7	28.11.2007		75000	8,12,356	
8	23.06.2008		59446.80	6,96,509	
9	02.09.2013		27750	5,00,629	
10	26.09.2013	6615000	11,26,39,122		
11	03.10.2013	50000	8,46,807		
12	25.11.2013	50000	8,57,756		
13	24.12.2013	235000	42,38,483		



14	09.01.2014	Investment in Step- Down Subsidiary, Malayala Manorama Fujairah FZ LLC	199000	33,82,002	22.06.2015		
15	13.01.2014		365000	61,57,000			
16	22.01.2014		125000	21,17,017			
17	27.01.2014		210240	36,13,248			
18	14.02.2014		85000	14,50,507			
19	19.02.2014		265000	45,18,179			
20	06.03.2014		100000	16,77,465			
21	19.03.2014		75000	12,54,608			
22	04.04.2014		67000	11,06,113			
23	11.04.2014		50000	8,25,455			
24	09.05.2014		100000	16,43,250			
25	13.05.2014		100000	16,39,145			
26	16.05.2014		50000	8,06,023			
27	23.05.2014		61000	9,77,338			
28	27.05.2014		58000	9,35,781			
29	06.06.2014		50000	8,10,610			
30	10.06.2014		75000	12,17,246			
31	17.06.2014		50000	8,25,320			
32	25.06.2014		115000	18,93,830			
33	07.07.2014		15000	2,46,529			
34	24.07.2014		169000	27,81,256			
35	30.07.2014		76000	12,51,783			
36	11.08.2014		60000	10,04,672			
37	19.08.2014		70000	11,63,299			
38	26.08.2014		238000	39,44,166			
39	27.08.2014		25000	4,13,762			
40	24.09.2014		165000	27,58,784			
41	29.10.2014		165000	27,71,054			
42	25.11.2014		165000	27,97,249			
			Total	10814080.80		18,05,76,705.80	



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 15.06.2015.

The share certificates for the investments from 24.07.2007 to 24.09.2014 were received on 30.04.2015, with a delay beyond the stipulated time period, thus contravening Regulation 15 (i) of Notification No. FEMA 120/2004-RB.

The Annual Performance Reports (APRs) for the years 2005-2013 were submitted on October 14, 2014, with a delay ranging from 1 year approximately to 9 years approximately, thus contravening Regulation 15 (iii) of Notification No. FEMA 120/2004-RB.

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

S.No.	Name of SDS	Date of incorporation	Date of reporting
1	Malayala Manorama Fujairah FZ LLC	25.09.2013	14.10.2014

The setting up of the SDS was reported with a delay beyond the stipulated time period, thus contravening Regulation 13 of Notification No. FEMA 120/2004-RB.

3. 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/12487/15.20.67/2015-16 dated May 02, 2016 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on July 08, 2016 during which Shri Siji Joseph, Senior General Manager, Finance, and Shri Vivek Mallya, 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)



(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) Regulation 6 (2) (vi) – Amount of contravention – Rs. 18,05,76,705.80/- and the period of contravention ranges from approximately 6 months to approximately 10 years.

(ii) Regulation 13 - Amount of contravention – Rs. 17,50,65,488/- and the period of contravention is 1 year approximately.

(iii) Regulation 15 (i) – Amount of contravention – Rs. 17,43,77,190.80/- and the period of contravention ranges from approx. 1 month to 8 years approximately.

(iv) Regulation 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. 13,13,681/- (thirteen lakh thirteen thousand six hundred and eighty one 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) (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. 13,13,681/- (thirteen lakh thirteen thousand six hundred and eighty one 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 twelfth day of July, 2016

Sd/-

A.K. Pandey
Chief General Manager