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Summary of few latest Compounding Orders (ODI) passed by Reserve Bank of India (RBI)

Few definitions:

Contravention

- a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 ('the Act) and rules/ regulations/ notification/ orders/ directions/ circulars issued thereunder.

Compounding

- the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. The Reserve Bank is empowered to compound any contravention as defined under section 13 of FEMA, 1999 except the contravention under section 3(a) ibid.

General Penalty

- penalty levied can be **up to 300%** of the amount involved for any contravention under the Act and Regulations thereunder.

Compounding Fee

- varies for different offences and may include a fixed and a variable component depending on the circumstances of the case.

Name of Applicant : Aricent Technologies (Holdings) Limited

Order Date: 15/04/2019

Regulation:

Regulation 5(1) read with 13 of FEM Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB

Requirement of above regulation:

The transaction of making ODI in an entity with pre-existing FDI, requires prior approval of the RBI.

Contravention :

Making Overseas Direct Investment (ODI) with an already existing Foreign Direct Investment (FDI) structure

Matter Compounded:

- The applicant, with an intent to expand its business interests, acquired the 50.25 % shares of a company, incorporated in Mauritius, from its existing shareholders.
- However, the company of Mauritius was already holding investment in Indian company when ODI was made by the applicant.
- The resultant structure amounted to making ODI in an entity with pre-existing FDI (which is not permitted without RBI approval).
- The entire structure now have been unwound.

Period of Contravention	3 Years 1 Month
Amount Involved	Rs. 5,72,58,60,000/-
Compounding Fee	Rs. 3,72,68,090/-

Name of Applicant : Mr. Virendra Agrawal
Order Date: 21/06/2019

Regulation:

Regulations 22(4) read with Regulation 3 of FEM Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB

Requirement of above regulation:

A person resident in India may transfer the shares acquired only by way of sale, provided that the Reserve Bank may, on application made to it, permit any person resident in India to issue or transfer any foreign security.

Contravention :

Transfer of foreign securities (without sale of shares) by the applicant to his wife without prior permission of the Reserve Bank of India.

Matter Compounded:

- The applicant was rewarded 8,000 shares of the company in which he used to work, to be issued in 2 tranches.
- The consideration for the reward of shares equivalent to face value INR 17,532 had been deducted from the applicant's salary.
- As per the option available in the reward plan, the applicant named his wife for 3,000 shares (value worth USD 300/INR 13,149) out of the 4,000 shares to be received in the second tranche and subsequently shares were allotted in her name.
- However, this nomination was done without the prior permission of the Reserve Bank of India.

Period of Contravention	12 Years 3 Months
Amount Involved	Rs. 13,149/-
Compounding Fee	Rs. 16,108 /-

Name of Applicant : Shapoorji Pallonji Oil and Gas Private Limited

Order Date: 10/01/2019

Regulation:

Regulations 6(2) (vi) and 6(3) of FEM Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB

Requirement of above regulation:

- The Indian Party must submit Part I of the Form ODI, duly completed, to the designated AD branch.
- Investment under this Regulation may be funded out of one or more of the following sources:
 - EEFC Account
 - Drawal of foreign exchange from an AD in India

Contravention :

- Delayed reporting of ODI
- Wrong Method of Funding of ODI

Matter Compounded:

- The applicant has set-up a JV, in Singapore with 51% of stake with a Foreign Party holdings limited which is holding 49 % of stake in the JV.
- The Pre incorporation charges amounting to SGD 10201(INR 4,90,406) for setting up of this JV was paid by the applicant's existing JV in Singapore.
- These pre incorporation charges were later capitalized and share certificates were issued in the name of applicant company. This method of funding of ODI is not in compliance with RBI Regulations.
- Form ODI part I for the aforesaid transaction was also submitted with a delay of 1 year.
- RBI gave post facto approval by allotting UIN.

Period of Contravention	6 Months
Amount Involved	Rs. 4,90,406/-
Compounding Fee	Rs. 63,452/-