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Chartered Accountants

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) .

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 : Zee Entertainment Enterprises Limited
Order Date: 29/01/2019

Regulation:

Regulation 6(5) and Regulation 15(iii) of FEM (Transfer or Issue of any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB

Requirement of above regulation:

- An Indian Party is permitted to extend loan or guarantee to or on behalf of Joint Venture (JV) or WOS abroad, only in case of prior equity contribution by the Indian Party in such entities
- An Indian Party which has acquired foreign security in terms of the Regulation in Part I shall submit to the RBI, through the AD bank, 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

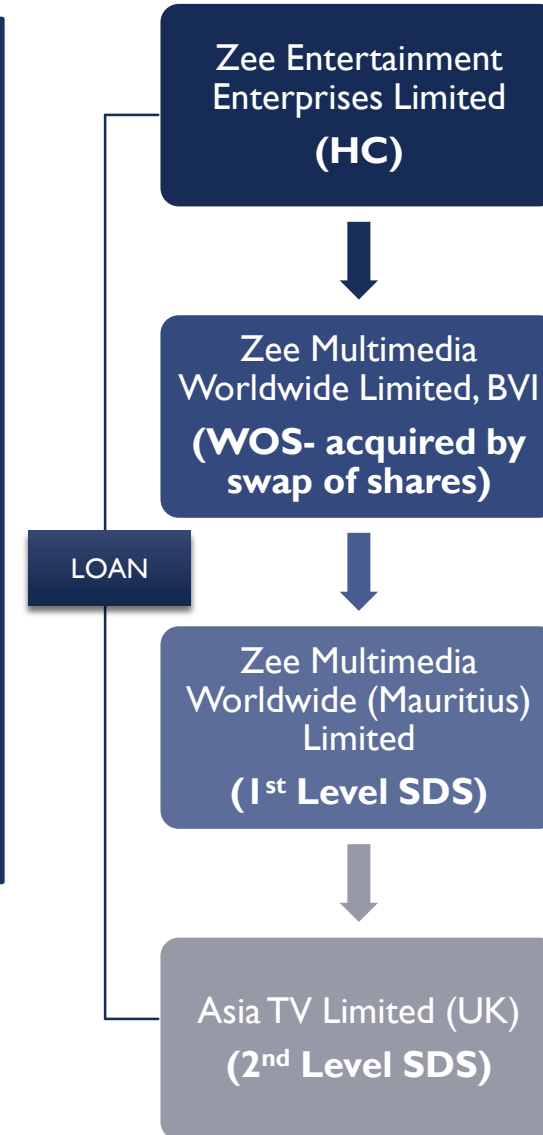
Contravention :

- Extending a loan to a step down subsidiary (SDS) abroad without having equity participation in it.
- Non-submission of Annual Performance Reports (APRs)

Matter Compounded:

- The applicant company provided a foreign currency loan (out of FCCB proceeds lying abroad) of USD 13 million (INR 58,50,00,000) to Asia TV Limited (UK), its second level SDS without having any equity participation in it.
- The APRs with respect to Zee Multimedia Worldwide Limited, BVI (for the years 2008, 2009 and 2010) another overseas WOS of the applicant company, were filed by the applicant company with a delay beyond the stipulated time period.

Period of Contravention	12 Years 6 Months
Amount Involved	Rs. 58,50,00,000/-
Compounding Fee	Rs. 44,87,500/-



Name of Applicant : Mahajan Overseas Private Limited
Order Date: 12/06/2019

Regulation:

Regulations 6(3)(ii)(i), 6(2)(vi), 6(2)(iv), 15(i) and 15(iii) of FEM (Transfer or Issue of any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB

Requirement of above regulation:

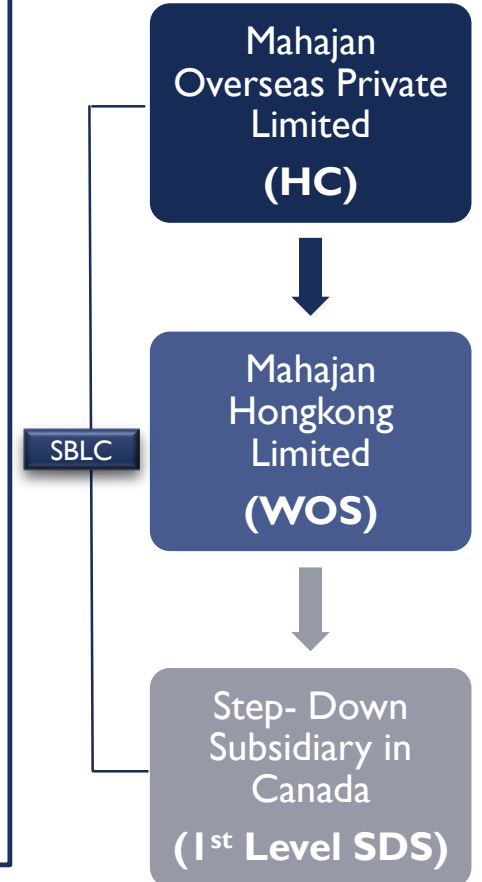
- Issuance of a bank guarantee in favour of SDS, is not permitted without prior approval of the RBI.
- The Indian Party must submit Part I of Form ODI and Annual Performance Report, duly completed, to the AD bank as per time limits provided by RBI.
- Any alter in the shareholding pattern of the SDS must be reported within 30 days in terms of local laws of the host country and must also be reported in APR.

Contravention :

- Getting an SBLC issued in favour of its step down subsidiary (SDS), without prior approval of the RBI
- Delay in filing Form ODI for reporting of issuance of the SBLC
- Renewal of SBLC when the submission of APR was pending
- Delay in receipt of share certificates and submission of APR

Matter Compounded:

- The applicant company extended an SBLC amounting to USD 500,000 (INR 3,54,60,000) in favour of the SDS.
- The SBLC was renewed four times, without prior approval of RBI.
- The issuance of SBLC was ratified by the Bank and taken on record after 8 years.
- Further, the renewal of SBLC was reported in Form ODI beyond the stipulated time period.
- The SBLC, which formed a part of the financial commitment, was renewed when the submission of Annual Performance Reports (APRs) for the year 2012-13 was pending.
- The share certificates, for remittances sent, were received with a delay of 3 years.
- Further, there was a delay in submission of APRs for the years 2009 to 2018.



Period of Contravention	3 Years 2 Months
Amount Involved	Rs. 36,068,020/-
Compounding Fee	Rs. 8,98,710/-

Name of Applicant : Rashid Ahmad Mirza
Order Date: 26/04/2019

Regulation:

Regulation 20A read with paragraph D(3) and D(1) of Schedule V read with Regulation 15(iii) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120/2004-RB

Requirement of above regulation:

- The resident individual, making overseas direct investments under the provisions of this Schedule, submits duly completed Form ODI, as prescribed by the RBI to the AD bank, within 30 days of making the remittance.
- The resident individual must file APR within the time limit specified in the regulation.

Contravention :

- Delay in filing Form ODI with respect to overseas investments made and making ODI without issuance of Unique Identification Number (UIN)
- Non-submission of Annual Performance Reports (APR) within the stipulated time period

Matter Compounded:

- The applicant is a resident Indian, who, along with two other resident Indians, formed a wholly owned subsidiary (WOS), in UAE.
- The ODI Form – Part I with respect to the ODI remittances by the three individuals was submitted with a delay beyond the stipulated period.
- Further, the APRs for the years 2016 and 2017 were submitted, with a delay beyond the stipulated period.

Period of Contravention	1 Year 6 Months
Amount Involved	Rs. 1,60,92,354/-
Compounding Fee	Rs. 1,58,508/-/-