

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Enterysys Corporation)
with last known addresses of:)
1307 Muench Court)
San Jose, CA 95131)
)
and)
)
Plot No. 39, Public Sector)
Employees Colony)
New Bowenpally 500011)
Secunderabad)
India)
)
Respondent.)
)
Shekar Babu)
a.k.a. Bob Babu)
with last known addresses of:)
1307 Muench Court)
San Jose, CA 95131)
)
and)
)
c/o Enterysys Corporation)
Plot No. 39, Public Sector)
Employees Colony)
New Bowenpally 500011)
Secunderabad)
India)
)
Related Person.)
)

**ORDER MAKING DENIAL OF EXPORT PRIVILEGES
APPLICABLE TO A RELATED PERSON**

Pursuant to Section 766.23 of the Export Administration Regulations (“EAR” or “Regulations”),¹ the Bureau of Industry and Security (“BIS”), U.S. Department of Commerce, through its Office of Export Enforcement (“OEE”), has requested that I make the denial order that was issued against Respondent Enterysys Corporation (“Enterysys”) on December 3, 2012, and published in the *Federal Register* on December 14, 2012, and will remain in effect until December 14, 2022 (hereinafter the “Denial Order”), applicable to the following individual as a person related to Enterysys:

Shekar Babu
a.k.a. Bob Babu
with last known addresses of:
1307 Muench Court
San Jose, CA 95131

and

c/o Enterysys Corporation
Plot No. 39, Public Sector
Employees Colony
New Bowenpally 500011
Secunderabad
India

I. BACKGROUND

A. The Denial Order

The Denial Order issued as part of the Final Decision and Order issued by the Under

¹ The Regulations currently are codified at 15 C.F.R. Parts 730-774 (2013). The Regulations issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000)) (the “Act”). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 Fed. Reg. 49,699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.* (2006 and Supp. IV 2010)).

Secretary of Commerce for Industry and Security (“Under Secretary”) concluding a formal BIS administrative proceeding against Enterysys. *In the Matter of Enterysys Corporation*, 11-BIS-0005 (Final Decision and Order dated Dec. 3, 2012, and published in the *Federal Register* on Dec. 14, 2012 (77 Fed. Reg. 74,458)). The Under Secretary affirmed the findings and conclusions contained in the Recommended Decision and Order issued by an Administrative Law Judge (“ALJ”), in which the ALJ found Enterysys in default, found the facts to be as alleged in the Charging Letter, and concluded that Enterysys had committed the sixteen (16) violations alleged in the Charging Letter.

BIS served the Charging Letter on Enterysys at its last known addresses in California and India. On August 2, 2011, Shekar Babu sent an email to BIS’s counsel acknowledging receipt of the Charging Letter, which had been sent to Enterysys marked to Babu’s attention as President of the company. Eventually, Enterysys/Babu ceased communicating with BIS and Enterysys failed to answer the Charging Letter, requiring BIS to move for a default order.

As alleged in the Charging Letter, determined by the ALJ, and affirmed by the Under Secretary, Enterysys engaged in the following conduct in violation of the Regulations:

Charge 1 15 C.F.R. § 764.2(h) – Evasion

In or about May 2006, Enterysys engaged in a transaction and took other actions with intent to evade the provisions of the Regulations. Through false statements to a U.S. manufacturer and freight forwarder, Enterysys obtained and exported to India twenty square meters of ceramic cloth, an item subject to the Regulations, classified under Export Control Classification Number (“ECCN”) 1C010, controlled for National Security reasons, and valued at \$15,460, without obtaining the required license pursuant to Section 742.4 of the Regulations. Enterysys purchased the ceramic cloth from a U.S. manufacturer and arranged for the manufacturer to ship the item to a freight forwarder identified by Enterysys, knowing that a license was required for the export of the ceramic cloth to India. On or about May 1, 2006, when Enterysys asked that the U.S. manufacturer to ship the ceramic cloth to Enterysys’s freight forwarder instead of directly to Enterysys, Enterysys was informed by the manufacturer that the material “is a controlled commodity in terms of export to India,” and the manufacturer asked Enterysys for assurance and

a “guarantee” that the ceramic cloth would not be exported to India. In response, also on or about May 1, 2006, Enterysys stated, “This is not going out of USA.” In addition, in arranging for the purchase from the U.S. manufacturer, Enterysys asked the manufacturer not to put any packing list, invoice or certificate of conformance in the box with the ceramic cloth, but rather to fax the documents to Enterysys. Enterysys also arranged for its freight forwarder to ship the ceramic cloth to Enterysys in India. Once the manufacturer shipped the ceramic cloth to the freight forwarder identified by Enterysys, Enterysys provided the freight forwarder with shipping documentation on or about May 2, 2006, including a packing list and invoice that falsely identified the ceramic cloth as twenty square meters of “used waste material” with a value of \$200. The ceramic cloth arrived at the freight forwarder on or about May 3, 2006, and was exported pursuant to Enterysys’s instructions to India on or about May 5, 2006. Enterysys undertook these acts to facilitate the export of U.S.-origin ceramic cloth to India without the required Department of Commerce license and to avoid detection by law enforcement. In so doing, Enterysys committed one violation of Section 764.2(h) of the Regulations.

Charge 2 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct by Exporting Ceramic Cloth to India without the Required License

On or about May 5, 2006, Enterysys engaged in conduct prohibited by the Regulations by exporting to India twenty square meters of ceramic cloth, an item subject to the Regulations, classified under ECCN 1C010, controlled for National Security reasons and valued at \$15,460, without the Department of Commerce license required pursuant to Section 742.4 of the Regulations. In so doing, Enterysys committed one violation of Section 764.2(a) of the Regulations.

Charges 3-13 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct by Exporting Electronic Components to a Listed Entity without the Required Licenses

On eleven occasions between on or about August 12, 2005 and November 27, 2007, Enterysys engaged in conduct prohibited by the Regulations by exporting various electronic components, designated as EAR99 items² and valued at a total of \$38,527, from the United States to Bharat Dynamics Limited (“BDL”) in Hyderabad, India, without the Department of Commerce license required by Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. BDL is an entity that is designated in the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, and at all times pertinent hereto that designation included a requirement that a Department of Commerce license was required for all exports to BDL. In so doing, Enterysys committed eleven violations of Section 764.2(a) of the Regulations.

² EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2005-07).

Charge 14**15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation**

On or about July 11, 2007, in connection with the transaction described in Charge 11, above, Entersys ordered, bought, stored, transferred, transported and forwarded electronic components, designated as EAR99 items and valued at \$8,644, that were to be exported from the United States to BDL in Hyderabad, India, with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Entersys had knowledge that exports to BDL required authorization from the Department of Commerce because, in or around May 2007, Entersys provided these items to a freight forwarder and was informed by the freight forwarder that items being exported to BDL required an export license and that BDL was on the Entity List. The freight forwarder also directed Entersys to the BIS website. The freight forwarder then returned the items to Entersys. Subsequently, Entersys provided the items to a second freight forwarder for export to BDL even though Entersys knew that an export license was required and had not been obtained. In so doing, Entersys committed one violation of Section 764.2(e) of the Regulations.

Charges 15-16**15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation**

On two occasions on or about November 7, 2007 and November 27, 2007, in connection with the transactions described in Charges 12 and 13, above, Entersys ordered, bought, stored, transferred, transported and forwarded electronic components, designated as EAR99 items and valued at \$11,266.85, that were to be exported from the United States to BDL in Hyderabad, India, with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Entersys had knowledge that exports to BDL required authorization from the Department of Commerce because, in or around May 2007, Entersys was informed by a freight forwarder that items being exported to BDL required a license and that BDL was on the Entity List. The freight forwarder also directed Entersys to the BIS website. Subsequently, Entersys wrote an e-mail on or about October 11, 2007, to the Department of Commerce requesting guidance about license requirements to BDL, and in response was provided with a copy of the Entity List, advised, among other things, that all exporting companies need to check transactions against certain lists, and provided with a link to such lists on the BIS website. Thereafter, on October 24, 2007, Entersys's President Shekar Babu wrote an email stating that he was "working directly with US Govt on the export license" and that the license would "take a month." Nevertheless, Entersys did not apply for or obtain the required export license. In so doing, Entersys committed two violations of Section 764.2(e) of the Regulations.

As noted in Final Decision and Order, the "ALJ also recommended that the Under Secretary deny Entersys's export privileges for a period of ten years, citing, *inter alia*, Entersys's 'evasive and knowing misconduct and . . . series of unlawful exports,' including 'deliberate efforts to evade the Regulations in connection with the export of . . . an item

controlled for national security reasons,' and its three similar 'knowledge violations in connection with the unlicensed export of electronic components to BDL.'" Final Decision and Order, at 74,460 (quoting Recommended Decision and Order at 15-16). The ALJ further noted that "Respondent's misconduct exhibited a severe disregard for the Regulations and U.S. export controls and a monetary penalty is not likely to be an effective deterrent in this case." *Id.* (quoting Recommended Decision and Order at 17-18).

The Under Secretary agreed with this recommendation and imposed the Denial Order given, *inter alia*, the nature and number of the violations and the importance of deterring Enterysys and others from acting to evade the Regulations and otherwise knowingly violate the Regulations. *Id.* at 8.

B. Related Person's Notice Letter

This matter is now before me upon BIS's request to add Shekar Babu to the Denial Order as a related person to Enterysys.³

Pursuant to the Regulations, BIS notified Shekar Babu of its intent to add him as a person related to Enterysys by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, in light of his position as President of Enterysys. This notice was provided by letter on February 13, 2013, sent in accordance with Sections 766.5(b) and 766.23(b) of the Regulations.

Shekar Babu never responded.

³ I have been designated by the Under Secretary as the authorized official to consider BIS's request under Section 766.23 of the Regulations. *See* 15 C.F.R. § 766.23(b).

II. APPLICATION OF SECTION 766.23 (RELATED PERSONS)

A. Legal Standard

Section 766.23(a) of the Regulations provides, in pertinent part, that:

In order to prevent evasion, certain types of orders under [Part 766] may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders, and those that exclude a respondent from practice before BIS.

15 C.F.R. § 766.23(a). Thus, a denial order may be made applicable to related persons, by adding them to the denial order at issue, in order to prevent evasion of the order. *Id.*

B. Findings

Based on the record here, I find that Shekar Babu is a related person to Enterysys and that he should be added to the Denial Order in order to prevent its evasion. Babu is the President of Enterysys. In addition, he was personally involved in at least some of the transactions and violations that led to the issuance of the Denial Order against Enterysys, including knowledge and evasion violations.

As stated in the knowledge violations set forth in Charges 15-16 of the Charging Letter, Babu falsely stated in connection with Enterysys's planned export of electronic components to Bharat Dynamics Limited ("BDL"), an Indian entity on BIS's Entity List at all pertinent times, that he was "working directly with US Govt on the export license" and that the license would "take a month." In reality, as also set forth in Charges 12-13, neither Babu nor Enterysys ever applied for or obtained the required export licenses, and during the course of the following five weeks, two unlawful exports of the items were made to BDL. Overall, while operating under Babu's management, Enterysys made eleven (11) unlawful exports to BDL, *see* Charges 3-13,

which was placed on the Entity List in 1998 through a rule published in the *Federal Register* establishing an entity-specific license requirement for certain entities, including BDL, that were “determined to be involved in nuclear or missile activities.” *See India and Pakistan Sanctions and Other Measures*, 63 Fed. Reg. 64,322 (Nov. 19, 1998).⁴

Charge 1 involved similar conduct by Babu. As set forth in Charge 1, through false statements to a U.S. manufacturer and freight forwarder, Enterysys obtained and exported to India ceramic cloth, an item controlled under the Regulations for National Security reasons, without obtaining the required BIS export license. The manufacturer asked Enterysys for assurance and a “guarantee” that the ceramic cloth would not be exported to India. In response, on or about May 1, 2006, the U.S. manufacturer received an email from Enterysys stating, “This is not going out of USA.” I have been provided with a copy of this email, originally obtained by BIS’s Office of Export Enforcement, with regard to the instant related person’s request. Although he is not identified by name in Charge 1, the email was sent from Mr. Babu’s Enterysys email address. Within days of this email, and pursuant to Enterysys’s instructions to its freight forwarder, the item was exported to India without a license. *See Charges 1-2.*

Based on the foregoing and the record as a whole in this matter, I find that Shekar Babu is a person related to Enterysys by “ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business” pursuant to Section 766.23 of the Regulations, and that the Denial Order against Enterysys Corporation, which will remain in

⁴ BDL remained on the Entity List at all times pertinent to this case, and in fact until January 25, 2011, more than three years after Enterysys’s violations at issue here, which occurred between August 12, 2005 and November 27, 2007. *See U.S.-India Bilateral Understanding: Revisions to U.S. Export and Reexport Controls Under the Export Administration Regulations*, 76 Fed. Reg. 4,228 (Jan. 25, 2011).

effect until December 14, 2022, should be made applicable to Shekar Babu in order to prevent evasion of that order.

III. ORDER

IT IS THEREFORE ORDERED:

FIRST, that from the date this Order is published in the *Federal Register*, until December 14, 2022, Shekar Babu, also known as Bob Babu, located at the following addresses: 1307 Muench Court, San Jose, CA 95131; and c/o Enterysys Corporation, Plot No. 39, Public Sector, Employees Colony, New Bowenpally 500011, Secunderabad, India (hereinafter referred to as “Denied Person”) may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

SECOND, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

FIFTH, that this Order shall be served on the Denied Person and on BIS, and shall be published in the *Federal Register*.

This Order is effective upon publication in the *Federal Register* and shall remain in effect until December 14, 2022.


DAVID W. MILLS
Assistant Secretary of Commerce
for Export Enforcement

Entered this 19th day of June 2013.