



In the

**RESERVE BANK OF INDIA**

Foreign Exchange Department

Central Office Cell, 1<sup>st</sup> floor

6, Sansad Marg

New Delhi - 110 001

Present

**Rahul Sinha**

**General Manager**

Date: October 1, 2019

C.A. No.99 /2019

In the matter of

**IHI Corporation**

**302, Sigma Technology Street**

**Hiranandani Gardens**

**Powai, Mumbai - 400076**

In exercise of the powers under Section 15 (1) of Foreign Exchange Management Act, 1999 and the Regulations / Rules / Notifications / Orders made thereunder, I pass the following Order.

**Order**

The applicant M/s IHI Corporation, has filed an application dated March 6, 2019 (received in RBI on April 9, 2019) for compounding of contravention of the provisions of Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contravention sought to be compounded relates to transfer of Diesel Generator sets at profit before finalization of closure of Project office (PO) in India and without Reserve Bank permission, in contravention of Regulation 4(k) of Notification



No.FEMA.22(R)/RB-2016 dated March 31, 2016 read with Para 11(i) and 11(ii) of FED Master Direction No. 10 dated January 01, 2016 as amended from time to time.

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

- a. The applicant, M/s IHI Corporation, a company incorporated in Japan was awarded a contract in November 2013 by GSPC LNG Ltd for engineering, procurement, construction and commissioning assistance for LNG storage tanks at Mundra, Gujarat. The total amount of the contract is ₹ 3,86,65,06,032/-.
- b. Pursuant to the above, IHI established its Project Office in Mumbai under general permission. The said project is on the verge of completion.
- c. IHI has disposed certain assets which were not expected to be required for completing remaining work under the contract viz. 22 Diesel Generator sets on October 06, 2017 without prior approval from Reserve Bank of India.
- d. The said Diesel Generator sets were sold before finalization of closure of PO in India and without Reserve Bank permission at profit for a total consideration of ₹ 64,90,000/- (out of which ₹ 9,90,000 is IGST). The book value of Diesel Generator sets is ₹ 27,15,369/-. The aforesaid transfer of Generator sets amounts to contravention of Regulation 4(k) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 read with Para 11(i) and 11(ii) of FED Master Direction No. 10 dated January 01, 2016 as amended from time to time.
- e. Regulation 4(k) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 states that a person resident outside India permitted under these Regulations to establish a branch office or liaison office or project office may apply to the concerned Authorised Dealer Category-I bank for transfer of its assets to a Joint Venture / Wholly Owned Subsidiary or any other entity in India. Authorised Dealer Category-I bank shall be guided by the instructions laid down by Reserve Bank in this regard.
- f. Para 11(i) of FED Master Direction No.10/2015-16 dated January 1, 2016 states that transfer of assets by way of sale to the JV / WoS be allowed by AD Category-I bank only when the non-resident entity intends to close their BO / LO / PO operations in India.



- g. Para 11(ii) of FED Master Direction No.10/2015-16 dated January 1, 2016 states that a certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred indicating their date of acquisition, original price, depreciation till date, present book value or written down value (WDV) and sale consideration to be obtained. Statutory Auditor should also confirm that the assets were not re-valued after their initial acquisition. The sale consideration should not be more than the book value in each case.
- h. The above contravention was regularized by FED CO Cell, New Delhi vide letter No. FE.CO.FID/595/10.01.001/2018-19 dated February 08, 2019.
- i. The sale price of Generator sets i.e. ₹ 64,90,000/- (Rupees Sixty four lakh ninety thousand only) has been considered as the amount of contravention.
- j. The book value of Diesel Generator sets is ₹ 27,15,369/- and they were sold for ₹ 64,90,000/-. The applicant has earned a profit of ₹ 37,74,631/-. However, the applicant has paid ₹ 9,90,000/- as IGST. Therefore, the difference in the profit earned and the IGST i.e. ₹ 27,84,631/- (Rupees Twenty seven lakh eighty four thousand six hundred thirty one only) has been considered as the undue gain.
- k. The sale transaction took place on October 6, 2017 and the contravention was regularized on February 8, 2019. Hence, the period of contravention has been treated from October 6, 2017 to February 8, 2019 i.e. 1 year 4 months and 2 days.
- l. The amount and period of contravention is as follows:
- Amount:** ₹ 64,90,000/- (Rupees Sixty four lakh ninety thousand only)
- Undue Gain:** 27,84,631/- (Rupees Twenty seven lakh eighty four thousand six hundred thirty one only)
- Period:** 1 year 4 months and 2 days i.e. from October 6, 2017 to February 8, 2019.

**Contravention:**

3. The applicant has contravened Regulation 4(k) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 read with Para 11(i) and 11(ii) of FED Master Direction No. 10 dated January 01, 2016 as amended from time to time.



Regulation 4(k) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 states that a person resident outside India permitted under these Regulations to establish a branch office or liaison office or project office may apply to the concerned Authorised Dealer Category-I bank for transfer of its assets to a Joint Venture / Wholly Owned Subsidiary or any other entity in India. Authorised Dealer Category-I bank shall be guided by the instructions laid down by Reserve Bank in this regard.

Para 11(i) of FED Master Direction No.10/2015-16 dated January 1, 2016 states that transfer of assets by way of sale to the JV / WoS be allowed by AD Category-I bank only when the non-resident entity intends to close their BO / LO / PO operations in India.

Para 11(ii) of FED Master Direction No.10/2015-16 dated January 1, 2016 states that a certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred indicating their date of acquisition, original price, depreciation till date, present book value or written down value (WDV) and sale consideration to be obtained. Statutory Auditor should also confirm that the assets were not re-valued after their initial acquisition. The sale consideration should not be more than the book value in each case.

The above contravention was regularized by FED CO Cell, New Delhi vide letter No. FE.CO.FID/595/10.01.001/2018-19 dated February 08, 2019.

4. The applicant was given an opportunity for personal hearing vide email dated August 20, 2019 for further submission in person and /or producing documents, if any, in support of the application. Applicant's representative Mr Ravi Tulsani accompanied with three others appeared representing the applicant, for the personal hearing on August 26, 2019. The representatives of the applicant admitted the contravention committed by the applicant for which they have sought compounding and submitted that the contravention was not intentional and requested to take a lenient view.

5. It has been declared in the compounding application that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has also been declared in the undertaking furnished with the compounding application that the applicant is not under any enquiry/investigation/adjudication by any agency as on the date of the application and has, in this regard, not informed of initiation



of any such enquiry/investigation/adjudication proceedings against it thereafter. It has further been declared that the applicant has not filed any appeal under section 17 or section 19 of FEMA, 1999. Accordingly, the above contravention which is being compounded in this order is subject to the veracity of the above declarations made by the applicant and this order is without prejudice to any other action which may be taken by any authority under the extant laws if the said declarations are subsequently discovered to be false and/or incorrect. The application for compounding is, therefore, being decided on the basis of the averments/submission made in the application as well as other documents and also submissions made in this context by Mr. Ravi Tulsani during the personal hearing.

6. I have given my careful consideration to the documents on record and submission made by the applicant. Accordingly, I hold that the applicant has contravened Regulation 4(k) of Notification No.FEMA.22(R)/RB-2016 dated March 31, read with Para 11(i) and 11(ii) of FED Master Direction No. 10 dated January 01, 2016 as amended from time to time. The contravention amount i.e. selling price of Diesel Generator sets comes to ₹ 64,90,000/-(Rupees Sixty four lakh ninety thousand only) and the period of contravention stands at 1 year 4 months and 2 days (i.e. from the date of sale to the date of regularization).

7. In terms of Section 13 of the FEMA, 1999, 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, after considering the submissions made by the applicant and the entire facts and circumstances of the case, I consider that payment of an amount of ₹ 28,37,346/- (Rupees Twenty eight lakh thirty seven thousand three hundred forty six only) will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound the admitted contravention namely the contravention of Regulation 4(k) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 read with Para 11(i) and 11(ii) of FED Master Direction No. 10 dated January 01, 2016 as amended from time to time, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹ 28,37,346/- (Rupees Twenty eight lakh thirty seven thousand three hundred forty six only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central



Office Cell, 1<sup>st</sup> Floor, 6, Sansad Marg, New Delhi – 110 001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Delhi 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 03, 2000, as amended from time to time, shall apply.

The application is disposed accordingly.

Dated this the 1<sup>st</sup> day of October 2019.

**Rahul Sinha**  
**General Manager**