



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi-110001

Present
Md. Shakir Hasan
Assistant General Manager

Date: August 30, 2019
CA No. NDL 461/2019

In the matter of
Longjian Road and Bridge India Private Limited
D15, F 5 & 6, South Ext.-II, New Delhi - 110049
(Applicant)

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 has filed the compounding application dated May 19, 2019 (received at Reserve Bank of India, New Delhi on May 21, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are those of (i) issue of shares to the person resident outside India prior to receipt of the amount of consideration, and (ii) delay in refund of the excess share application money beyond the prescribed period, in terms of paragraphs 2(2) and 2(3) respectively of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 notified vide Notification No. FEMA 20(R)/2017-RB dated November 7, 2017 (hereinafter referred to as FEMA 20(R)/2017-RB), as amended from time to time.



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

(a) The applicant company was incorporated on May 09, 2018 and is engaged in the business of construction and maintenance of motorways, streets, roads, other vehicular and pedestrian ways, highways, bridges, tunnels and subways.

(b) The applicant had allotted 10,000 equity shares as subscription to Memorandum of Association (MoA) on May 09, 2018 for a consideration of ₹1,00,000/- and reported the same in Form FC-GPR with delay on February 7, 2019 in contravention of the provisions of Regulation 13.1(2) of FEMA 20(R)/2017-RB, as then applicable. The applicant paid Late Submission Fee (LSF) for the said contravention as required in terms of Regulation 13.2 of FEMA 20(R)/ 2017-RB, as then applicable.

(c) The applicant had received the inward remittance of ₹1,11,557.16 on September 14, 2018 against the MoA shares allotted on May 09, 2018 from its foreign investor, M/s Longjian Road and Bridge Co. Ltd., China with a delay of 2 months and 6 days beyond the prescribed period in contravention of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable. Whereas, in terms of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, capital instruments shall be issued to the person resident outside India making such investment within sixty days from the date of receipt of the consideration

(d) The applicant had received ₹1,11,557.16 from its foreign investor and allotted shares worth ₹1,00,000/-. The excess share application money amounting to ₹11,557.16 was refunded by the applicant on April 20, 2019 with a delay of 4 months and 23 days beyond the prescribed period, in contravention of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable. Whereas, in terms of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, where such capital instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance through banking channels or by credit to his NRE / FCNR(B) accounts, as the case may be within fifteen days from the date of completion of sixty days.

(d) Thus, there are contraventions of paragraphs 2(2) and 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable.

3. The applicant was given an opportunity for personal hearing for further submission in person and/ or by producing documents, if any, in support of the application. Ms Juhi Kathuria and Shri Nishant Nayyar, both Company Secretary,



appeared for personal hearing on August 30, 2019 on behalf of the applicant. The representatives admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, they submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to delay in crediting the company's account by the AD bank and lack of knowledge of FEMA compliances. They requested for a lenient view in the matter. The application for compounding is, therefore, being considered on the basis of averments made in the application as well as other documents and submissions made during the personal hearing.

4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the following FEMA provisions:

(a) Paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, on account of delay in receipt of the amount of consideration from subscriber to the Memorandum of Association of the company as detailed in paragraph 2(c) above. The contravention relates to an amount of ₹1,00,000.00 (Rupees One Lakh only) and the period of delay is 2 months and 6 days.

(b) Paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017, on account of delay in refund of excess share application money beyond the prescribed period as detailed in paragraph 2(d) above. The contravention relates to an amount of ₹11,557.16 (Rupees Eleven Thousand Five Hundred Fifty Seven and Paise Sixteen only) and the period of delay is 4 months and 23 days.

5. It has been declared in the compounding application dated May 19, 2019, 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 declaration furnished with the compounding application that the applicant was 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. Accordingly, the above contraventions which are being compounded in this Order are 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.

6. In terms of Section 13 of 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 compound the contraventions, in line with the Guidance Note on Computation Matrix prescribed as part of Master Direction – Compounding of Contraventions, framed in accordance with the Foreign Exchange (Compounding Proceedings) Rules, 2000. Accordingly, it stands to reason that payment of an amount of **₹50,558/- (Rupees Fifty Thousand Five Hundred and Fifty Eight only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraphs 2(2) and 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable, by the applicant based on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹50,558/- (Rupees Fifty Thousand Five Hundred and Fifty Eight only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi - 110001 by a demand draft drawn in favour of the “Reserve Bank of India” and payable at New 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 3, 2000 shall apply.

The application is disposed accordingly.

Dated this the 30th day of August 2019.

Sd/-

(Md. Shakir Hasan)

Assistant General Manager