



In the

Reserve Bank of India
Foreign Exchange Department
3rd Floor
15, Netaji Subhas Road
Kolkata – 700 001

Present

H. Thangzaman
Chief General Manager

Date: March 25, 2019
C.A.095/2019

In the matter of

M/s Lorch Welding Products Pvt. Ltd.
1/159, Gariahat Road, 1st Floor
Kolkata-700 068
West Bengal
(Applicant)

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

Order

The applicant had filed a compounding application dated December 31, 2018 (received at Reserve Bank on December 31, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded is for delay in submission to the Reserve Bank of Form FC-GPR after issue of shares to a person resident outside India beyond the stipulated 30 days in terms of Paragraph 9(1)(B) and also for delay in refund of excess amount after share allotment beyond the stipulated 180 days of the receipt of inflow to a person resident outside India in terms of Paragraph 8 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India)



Regulations, 2000 notified, vide Notification No. FEMA 20/2000-RB dated May 03, 2000 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts of the case are as follows. The applicant, M/s Lorch Welding Products Pvt. Ltd., was incorporated under Companies Act, 1956, on November 19, 2007 and is in the business of Wholesale of other machinery, equipment and supplies {NIC-2008: 46599}. The company had received the foreign inward remittances towards subscription to equity shares from its foreign investor.

3. The company allotted shares as per details in Table 2 below:

Table 1: Allotment of shares

Inflow (INR)	Date of inflow	Date of allotment of shares	Amount for which shares issued (INR)	Excess Amount (INR)
8,17,728	2-Apr-14	15-May-14	7,000,000	165,077
63,41,454	16-Apr-14			
5,895	17-Apr-14			
1,46,98,620	7-Apr-15	18-Apr-15	20,000,000	81,060
53,82,440	17-Apr-15			
2,72,46,137			27,000,000	

In terms of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, the excess share application money is to be refunded to the remitter within 180 days of the receipt of inflow. However, the applicant has refunded the excess amount of Rs.81,060/- to the remitter with a delay of 1081 days, beyond the stipulated period of 180 days from the receipt of remittance (Table 2).

Table 2: Refund of excess

Excess Amount (INR)	Date of refund	Delay in refund beyond 180 days
165,077	3-Jul-14	Nil
81,060	19-Sep-18	1081 (delay in refund)



4. The applicant reported the allotment of shares (in form FC-GPR) to the Bank with a delay beyond the stipulated period of 30 days as detailed in Table 3:

Table 3: Allotment of shares and reporting of FCGPR

Amount for which shares have been issued (INR)	Date of allotment of shares	Date of reporting of allotment of shares to RBI	Delay beyond 30 days, if any (days)
7,000,000.00	15-May-14	09-Nov-16	879
20,000,000.00	18-Apr-15	12-Nov-18	1274

5. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter No.KOL.FED.FID.1367/06.01.002/2018-19 dated March 4, 2019, for further submission in person and/or producing documents, if any, in support of the application. The applicant, represented by Shri Rohit Gupta (Authorized Representative), appeared for personal hearing on March 25, 2019. The representative of the applicant admitted the contraventions as stated in para 3 and 4 of this Order.

6. It has been declared in the compounding application dated December 31, 2018 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has 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/him/her 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 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.



7. I have given careful consideration to the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened provisions of paragraph 8 and 9(1)(B) of Schedule 1 of Notification No. FEMA 20/2000-RB. The contravention relates to an amount of INR 2,70,81,060.

8. In terms of section 13 of the FEMA any person contravening any provision of the act shall be liable for a penalty up to thrice the sum of the contravention upon adjudication. However, considering the circumstances which led to the delay and other relevant facts of the case I am inclined to take a lenient view of the amount for which the contravention is to be compounded and I consider that an amount of Rs.2,31,661 (Rupees Two lakh Thirty-one Thousand Six Hundred and Sixty-one only) will meet the end of justice.

9. Accordingly, I compound the admitted contravention viz. Paragraph 2 of Schedule 1 of Notification No. FEMA 20(R) dated November 7, 2017 by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceeding) Rules, 2000 on payment of an amount Rs.2,31,661 (Rupees Two lakh Thirty-one Thousand Six Hundred and Sixty-one only) which are to be deposited by the applicant with the Reserve Bank of India, Kolkata by a demand draft in favor of Reserve Bank of India and payable at Kolkata within 15 days from the date of issue of the order. In case of failure to deposit the compounded amount within the above-mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceeding) Rules, 2000 dated May 03, 2000 shall apply.

10. The application is disposed-off accordingly.

Dated this Twenty Fifth day of March Two Thousand and Nineteen.

Sd/-
(H. Thangzamuan)
Chief General Manager