



In the
Reserve Bank of India
Foreign Exchange Department
Mumbai Regional Office
Main Building, 3rd floor
Shahid Bhagat Singh Marg, Fort
Mumbai 400 001

Present
Shri R.K. Mahana
General Manager

June 10, 2019

C A No. MUM 856/2019

In the matter of
M/s Maritime Montering Norinco India Private Limited
301-302, Orbit Plaza, New Prabha Devi Marg,
Behind Chaitanya Tower, Prabhadevi
Mumbai 400025

(Applicant)

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

Order

- 1** The applicant has filed the compounding application dated March 06, 2019, received at the Reserve Bank on March 15, 2019, for compounding of contravention/s of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are in respect of the following Regulations/ paras under Schedule 1 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 3, 2000 and as amended from time to time (hereinafter referred to as FEMA 20):
 - I** Para 9 (1) (A) of FEMA 20: Delay in reporting receipt of foreign inward remittance towards subscription to equity



- II Para 9 (1) (B) of FEMA 20: Delay in filing Form FC GPR to Reserve Bank after issue of shares to person resident outside India
- III Para 5 of FEMA 20: issuance of shares without adherence to the Pricing Guidelines
- 2 Brief facts of the applicant company are as follows:

Date of Incorporation	August 18, 2010
Its main activities are:	1)Service activities incidental to water transportation 2)Other retail sale in non-specialized stores

- 3 The applicant received foreign inward remittances from non-resident investors towards equity shares / compulsorily convertible preference shares/ compulsorily convertible debentures and it reported the same to the Reserve Bank on dates as indicated below.

<u>Delay in reporting Foreign Direct Investment &/or Delay in allotting the shares/ refunding the amount</u>						
<u>(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days, and LSF stands for : Late Submission Fees</u>						
S No/ LSF	Date of inward remittanc e (DD-MM-YY)	Amount received (in INR)	Date of reporting to RBI (DD-MM-YY)	Para 9 (1) A delay	Date of allotment / refund (DD-MM-YY)	Para 8 delay
1	16/12/10	70,000.00	11/10/11	0Y 8M 25D	08/09/10	0
2	21/12/10	3,500,000.00	11/10/11	0Y 8M 20D	08/09/10	0
3	08/02/11	1,711,742.00	13/05/11	0Y 2M 4D	08/09/10	0
	TOTAL	5,281,742.00				

The applicant reported receipt of remittances to the Reserve Bank of India on dates indicated above with a delay ranging from 0Y 2M 4D to 0Y 8M 25D. Further, the applicant company delayed in reporting in case of all the remittances beyond the stipulated time of 30 days. Whereas, in terms of Para 9 (1) (A) of FEMA 20, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report to the Reserve Bank of India as per the prescribed procedure not later than 30 days from the date of receipt of the amount of consideration.

- 4 The company allotted equity shares/compulsorily convertible preference shares/compulsorily convertible debentures and filed FC-GPRs as indicated in the table:



Delay in filing Form FCGPR						
<u>(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days, LSF stands for : Late Submission Fees, IP stands for Issue Price and FV stands for Face Value</u>						
Sno/ LSF	Date of allotment (DD-MM-YY)	Number of shares	IP (FV+ premium) (in INR)	Amount (IP*no of shares) (in INR)	Date of reporting (DD-MM-YY)	Para 9 (1) (B) delay
1	08/09/10	52500	100.00	5,250,000.00	11/01/12	1Y 3M 3D
	TOTAL			5,250,000.00		

The applicant filed form FC-GPR as indicated above with a delay of 1Y 3M 3D. Whereas, in terms of Para 9(1) (B) of FEMA 20, an Indian company issuing shares in accordance with these Regulations has to submit to RBI a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to Non Resident.

- 5 The Applicant company allotted equity shares to a person resident outside India, but failed to comply with the Pricing Guidelines stipulated in Para 5 of Notification No. FEMA 20. The details of allotments wherein the pricing guidelines were not complied are stated in the table below:

Delay under Para 5				
<u>(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days, LSF stands for : Late Submission Fees, IP stands for Issue Price and FV stands for Face Value</u>				
S.No	Date of allotment (DD-MM-YY)	Date of bringing shortfall (DD-MM-YY)	Para 5 delay	Shortfall
1	9/8/2010	12/16/2010	0Y 3M 8D	70,000.00
2	9/8/2010	12/21/2010	0Y 3M 13D	3,500,000.00
3	9/8/2010	2/8/2011	0Y 5M 0D	1,680,000.00
Total				5,250,000.00

Whereas, in terms of Para 5 of FEMA 20, shares cannot be issued to a person resident outside India under this Schedule, without receiving consideration as determined by the valuation of shares done as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker where the shares of the company are not listed on any recognised stock exchange in India.



- 6** The applicant was given an opportunity for personal hearing, for further submission in person and/or for producing documents, if any, in support of the application vide e-mail dated May 21, 2019. The applicant applied for waiver of personal hearing vide e mail dated May 22, 2019. The applicant, in the compounding application, had admitted the contraventions as stated above for which compounding has been sought. It had been submitted that the contraventions were not wilful and were unintentional. The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as other documents and submissions made in this context by the applicant.
- 7** I have given my careful consideration to the documents on record and thereafter. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:
- I** Para 9 (1) (A) of FEMA 20, due to the delay in reporting of receipt of foreign inward remittance towards subscription towards shares as detailed above. The contravention relates to total amount of Rs.5,281,742 (Rupees Fifty Two Lakh Eighty One Thousand Seven Hundred Forty Two and Zero Paise Only) and with a delay ranging from minimum 0Y 2M 4D to maximum 0Y 8M 25D approximately.
- II** Para 9 (1) (B) of FEMA 20, due to the delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India and the contravention relates to total amount of Rs.5,250,000 (Rupees Fifty Two Lakh Fifty Thousand and Zero Paise Only) with a delay of 1Y 3M 3D approximately.
- III** Para 5 of FEMA 20, due to allotting the shares to a person resident outside India without receiving consideration, determined in accordance with FEMA guidelines and the contravention amount relates to Rs. 52,50,000 (Rupees Fifty Two lakh Fifty Thousand Only) and the delay ranging from 0Y 3M 08D to 0Y 5M 0D approximately.
- 8** It has been declared in the compounding application dated March 06, 2019 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 also been declared in a declaration attached to 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.



- 9 In terms of Section 13 of the 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. However, taking into account the relevant facts and circumstances of the case as stated in the foregoing paragraphs, I am persuaded to take a lenient view on the amount for which the contraventions are to be compounded and I consider that an amount of Rs.108,833 (Rupees One Lakh Eight Thousand Eight Hundred Thirty Three and Zero Paise Only) will meet the ends of justice.
- 10 Accordingly, I compound the admitted contravention/s namely, the contravention/s of Para 9 (1) (A) of FEMA 20, Para 9 (1) (B) of FEMA 20 and Para 5 of FEMA 20, by the applicant, on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs. 108,833 (Rupees One Lakh Eight Thousand Eight Hundred Thirty Three and Zero Paise Only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, Fort, Mumbai-400001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Mumbai 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.
- 11 The above order is passed only in respect of contraventions of Para 9 (1) (A) of FEMA 20, Para 9 (1) (B) of FEMA 20 and Para 5 of FEMA 20 and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.
- 12 The application is disposed of accordingly.
dated: June 10, 2019

Compounding Authority

(R.K. Mahana)
General Manager

