



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

Present
V.G. Sekar
Chief General Manager

Date: October 11, 2019
CA No. NDL 483/2019

In the matter of
Tuna Envirotech Private Limited
4F-05, Global Foyer, Golf Course Road, Sector-43, Gurugram
Haryana - 122002
(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 June 13, 2019 (received at Reserve Bank of India, New Delhi on June 19, 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 allotment of shares to the person resident outside India prior to receipt of the amount of consideration, in terms of paragraph 2(2) 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, incorporated on September 05, 2018, is engaged in the business of manufacturing, designing, developing, buying, selling, importing & exporting of pollution control equipment and marketing and providing support services for its parent company.

(b) The applicant had received foreign inward remittances on two occasions against 10,00,000 equity shares allotted on September 05, 2018 to its subscribers to the Memorandum of Association (MoA), M/s Zhejiang Tuna Environmental Science and Technology Co. Ltd., China, for a consideration of ₹1,00,00,000/- with delay of 11 days and 4 months & 25 days, beyond the prescribed period, as detailed below, in contravention of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable.

S. No.	Date of allotment	Amount (₹)	Date of receipt of remittance
1	05.09.2018	98,75,950/-	15.11.2018
2	05.09.2018	1,24,050/-	29.03.2019
Total		1,00,00,000/-	

Whereas, in terms of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, an Indian company accepting FDI has to receive the share application money from the non-resident investor prior to allotment of shares, and the shares have to be issued within sixty days from the date of the receipt of consideration. The applicant had reported the said allotment in Form FC-GPR with delay on May 20, 2019 in contravention of the provisions of Regulation 13.1(2) of FEMA 20(R)/2017-RB, as then applicable, and 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) Thus, there are contraventions of paragraph 2(2) 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. Shri Ankur Gupta, Director and Shri Rakesh Sahu, Chartered Accountant, appeared for personal hearing on October 10, 2019 on behalf of the applicant. The representatives of the applicant 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 credit of the first tranche of remittance, initiated on November 1, 2018, to the applicant's account and delay in approval from the investor company for repatriation of shortfall amount on account of difference in exchange rate for the second tranche of remittance. 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 provision of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, on account of allotment of shares to the person resident outside India prior to receipt of the amount of consideration as detailed in paragraph 2(b) above. The contraventions relate to an amount of ₹1,00,00,000/- (Rupees One Crore only) and the periods of delay are 11 days and 4 months & 25 days.

5. It has been declared in the compounding application dated June 13, 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 **₹1,00,000/- (Rupees One Lakh only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraph 2(2) 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 **₹1,00,000/- (Rupees One Lakh 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 11th day of October 2019.

Sd/-
(V.G. Sekar)
Chief General Manager