



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: December 06, 2019
C.A.117/2019

In the matter of

M/s CDE ASIA LIMITED
Ecospace Business Park Block 4A, 6th Floor,
Action Area II, New Town
Kolkata-700160
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 July 29, 2019 (received at Reserve Bank on August 01, 2019) 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 both Form ARF after receipt of inflow from a person resident outside India and Form FC-GPR after issue of shares to a person resident outside India beyond the stipulated 30 days in terms



of Paragraph 9(1)(A) and 9(1)(B) respectively, for delay in refund the excess amount in terms of Paragraph 8 and also for delay in filing the Annual Return in respect of the Foreign Liabilities and Assets (FLAR) in terms of Para 9 (2) 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). The company had also contravened delay in filing the Annual Return on Foreign Liabilities and Assets (FLA) in terms of regulation 13.1(3) to Notification No. FEMA 20(R)/2017-RB dated November 7, 2017.

2. The company had contravened Para 9(1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000 in respect of following foreign inward remittances as given in Table A below towards subscription to shares from its foreign investors CDE Global Investments Ltd, U.K :

Table A. Contravention of Para 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000						
S. No.	Name of Investor	Inflow (INR)	Inflow (GBP)	Date of inflow	Date of reporting of inflow to RBI	Delay beyond 30 days (Days) up to 31.08.18
1	CDE Global Investments Ltd	48,02,616.00	68086	07-Jul-11	12-Feb-19	2582
2	CDE Global Investments Ltd	60,00,000.00	N.A	17-Mar-12	12-Feb-19	2328
3	CDE Global Investments Ltd	36,84,968.00	36474	25-Apr-14	23-Jul-14	59
Total		1,44,87,584.00				

All the aforementioned inward remittances have been reported to the Reserve Bank of India with a delay beyond the stipulated period of 30 days with a delay ranging from 59 days to 2582 days, leading to contravention of Para 9 (1) (A) of FEMA 20/2000-RB dated May 3, 2000.



3. As given in Table B, the company had received the inflow on March 07, 2013 and allotted shares on March 30, 2013 but the un-utilized amount of Rs. 12,384 was refunded on August 14, 2014 with delay of 345 days (beyond 180 days from the date of inflow). This is a contravention to the provisions of Para 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.

Table: B

S. No.	Name of Investor	Inflow (INR)	Date of inflow	Date of allotment of shares	Amount for which shares issued (INR)	Refund Amount (INR)	Date of refund	Delay in refund beyond 180 days
1	CDE Global Investments Ltd	36,12,384.00	07-Mar-13	30-Mar-13	36,00,000.00	12,384.00	14-Aug-14	345

4. The company had contravened Para 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000 in respect of following foreign inward remittances as given in Table C:

Table C. Contravention of Para 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000						
S. No.	Inflow (INR)	Amount for which shares have been issued	Date of inflow	Date of allotment of shares	Date of reporting of allotment of shares to RBI	Delay beyond 30 days, if any (days)
1	42,68,865.00	15687000	18-Nov-06	25-Mar-07	21-Feb-19	4321
2	17,25,041.00		28-Nov-06	25-Mar-07	21-Feb-19	
3	35,13,003.00		05-Dec-06	25-Mar-07	21-Feb-19	
4	26,14,420.00		22-Dec-06	25-Mar-07	21-Feb-19	
5	35,63,306.00		15-Feb-07	25-Mar-07	21-Feb-19	
6	48,02,616.00	48,00,000.00	07-Jul-11	04-Aug-11	12-Feb-19	2719
7	60,00,000.00	60,00,000.00	17-Mar-12	30-Mar-12	12-Feb-19	2480
8	36,12,384.00	36,00,000.00	07-Mar-13	30-Mar-13	25-Apr-14	361
9	36,84,968.00	36,00,000.00	25-Apr-14	29-Apr-14	24-Feb-15	271
	3,37,84,603.00	3,36,87,000.00				



5. The company has submitted Annual Return on Foreign Liabilities and Assets (31.03.2007 - 31.03.2017) to DSIM, CO, RBI, Mumbai and there is delay in filling of each annual returns i.e 11 delayed returns as mentioned in the Table D. This is a contravention to the provisions of the Para 9 (2) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000.

Table D: Delay in filing the Annual Return in respect of the Foreign Liabilities and Assets (FLAR).		
FLA Return delay		Total No. of Returns delayed
From (Year)	To (Year)	
2007	2017	11

6. The company has submitted Annual Return on Foreign Liabilities and Assets for the financial year ended on March 31, 2018 with delay to DSIM, C,O, RBI, Mumbai. This delay in filling of the annual return is a contravention in terms of the regulation 13.1(3) to Notification No. FEMA 20(R)/2017-RB dated November 7, 2017.

Table E: Delay in filing the Annual Return on Foreign Liabilities and Assets (FLA).		
FLA Return delay		Total No. of Returns delayed
From (Year)	To (Year)	
2018	2018	01

7. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter No.KOL.FED.FID.859 /06.01.002/2019-20 dated November 28, 2019 for further submission in person and/or producing documents, if any, in



support of the application. The applicant, represented by Mr. Aditya Jain (Authorized Representative), appeared for personal hearing on December 06, 2019. The representative of the applicant admitted the contraventions as stated in para 2, 3, 4, 5 & 6 of this Order.

8. It has been declared in the compounding application dated July 29, 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 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.

9. 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, 9(1)(A) & 9(1)(B), 9 (2) of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 03, 2000 and also of regulation 13.1(3) to Notification No. FEMA 20(R)/2017-RB dated November 7, 2017. The contravention relates to an amount of INR 4,81,86,968.00.

10. In terms of section 13 of the FEMA any person contravening any provision of the act shall be liable for a penalty upto 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. 9,48,363 (Rupees Nine Lakh Forty Eight Thousand Three Hundred and Sixty Three only)** will meet the end of justice.



11. Accordingly, I compound the admitted contravention viz. paragraph 8, 9(1)(A) & 9(1)(B), 9 (2) of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 03, 2000 and regulation 13.1(3) to Notification No. FEMA 20(R)/2017-RB 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. 9,48,363 (Rupees Nine Lakh Forty Eight Thousand Three Hundred and Sixty Three 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.

12. The application is disposed off accordingly.

Dated this Sixth day of December, Two Thousand and Nineteen.

Sd/-
(H. Thangzamuan)
Chief General Manager