



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

Present
Anupam Sonal
Chief General Manager
Date: April 9, 2019
CA No. NDL 332/2018

In the matter of
Energetic Construction Private Limited
Plot No. 100, Ground Floor, Okhla Industrial Estate, Phase III, New Delhi-110020
(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 November 12, 2018 (received at Reserve Bank of India, New Delhi on November 14, 2018) 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 delay in filing form FC-GPR after issue of debentures, in terms of paragraph 9(1)(B) of 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 (hereinafter referred to as FEMA 20/2000-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 7, 1996 and is engaged in the business of construction of buildings carried out on own-account basis or on a fee or



contract basis.

(b) The applicant had reported the allotment of compulsorily convertible debentures (CCDs) to its foreign investor M/s Gateway Holdings LDC, Cayman Island on two occasions with delay of 4 months & 15 days and 4 months & 18 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of allotment	Amount (₹)	Date of Reporting
1	14.10.2016	200242500	31.03.2017
2	17.10.2016	66737400	31.03.2017
	Total	26,69,79,900	

Whereas, in terms of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures or warrants in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered Office of the company operates, not later than 30 days from the date of issue of shares or convertible debentures or warrants, a report in the form FC-GPR as specified by the Reserve Bank from time to time together with documents prescribed therein.

(c) Thus, there are contraventions of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-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 Amit Dua, Senior Manager-Accounts of TCG Developments (India) Private Limited, a group company of the applicant, appeared for personal hearing on April 4, 2019 on behalf of the applicant. The representative of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that contraventions were without any malafide or wilful intention but were mainly due to unavoidable circumstances and adhering to certain mandatory statutory compliances under the Companies Act, 2013, which happens in October/ November every year. He 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 9(1)(B) of Schedule 1 to FEMA 20/ 2000-RB, due to delay in filing form FC-GPR after issue of debentures as detailed in paragraph 2(b) above. The contraventions relate to an amount of ₹26,69,79,900/- (Rupees Twenty Six Crore Sixty Nine Lakh Seventy Nine Thousand and Nine Hundred only) and the periods of delay are 4 months & 15 days and 4 months & 18 days.

5. It has been declared in the compounding application dated November 12, 2018, 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 dated January 3, 2019 furnished as part of 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. 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 **₹73,000/- (Rupees Seventy Three Thousand only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions of Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-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 **₹73,000/- (Rupees Seventy Three Thousand 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 9th day of April 2019.

Sd/-
(Anupam Sonal)
Chief General Manager