



In the

**RESERVE BANK OF INDIA**

Foreign Exchange Department

6, Sansad Marg

New Delhi - 110001

Present

**Md. Shakir Hasan**

**Assistant General Manager**

Date: September 30, 2019

CA No. NDL 458/2019

In the matter of

**General Energy Management Systems Private Limited**

521-522 Commercial Tower, Le Meridien Hotel, Janpath, New Delhi - 110001

**(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 May 23, 2019 (received at Reserve Bank of India, New Delhi on May 28, 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 (i) delay in reporting foreign inward remittance received for issue of shares, (ii) delay in filing Form FC-GPR after issue of shares, and (iii) delay in issue of shares and delay in refund of excess share application money, in terms of paragraphs 9(1)(A), 9(1)(B) and 8 [read with paragraph 5 of A.P. (DIR Series) Circular No. 20 dated December 14, 2007] respectively 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, incorporated on October 12, 1999, is engaged in the business of providing maintenance services, business auxiliary services, sales of traded goods and manufacturing of goods related to oil and gas industry.

(b) The applicant had received foreign inward remittance of ₹2,87,054.59 on October 5, 2000 from its foreign investor, Ms. Anna Stella Belli, Italy and reported the same on May 19, 2018 with a delay of 17 years, 6 months and 15 days beyond the prescribed period, in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank, not later than 30 days from the date of receipt of the amount of consideration, a report indicating the details prescribed therein.

(c) The applicant had issued 25,000 equity shares to Ms. Anna Stella Belli, Italy on December 12, 2002 for a consideration of ₹2,50,000/- and reported the same on May 19, 2018 with a delay of 15 years, 4 months and 8 days beyond the prescribed period, in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank, not later than 30 days from the date of issue of shares, a report in Form FC-GPR together with documents prescribed therein.

(d) The applicant had issued the aforesaid equity shares with a delay of 1 year, 8 months and 9 days beyond the prescribed period, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable. Further, the applicant sought approval for refund of excess share application money amounting to ₹37,054.59 to Ms. Anna Stella Belli, Italy from the Reserve Bank of India through their AD bank on November 13, 2018 with a delay of 10 years, 11 months and 16 days. Approval for refund was granted on March 6, 2019 and the excess share application money was refunded on March 29, 2019 beyond the prescribed period, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, read with A.P.



(DIR Series) Circular No. 20 dated December 14, 2007. Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, equity instruments should be issued within 180 days from the date of receipt of inward remittance. In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received should be refunded to the person concerned. Provided that the Reserve Bank may on an application made to it and for sufficient reasons permit to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt. And, in terms of paragraph 5 of A.P. (DIR Series) Circular No. 20 dated December 14, 2007, in all cases where, as on November 28, 2007, 180 days have elapsed since receipt of funds and the equity instruments have not been issued, the companies are required to approach the Foreign Exchange Department of the Regional Office concerned of the Reserve Bank through their AD Category-I bank with a definite action plan either for allotment of equity instruments or for refund of the advance, with full details, for specific approval.

(e) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 [read with paragraph 5 of A.P. (DIR Series) Circular No. 20 dated December 14, 2007] 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 R.S. Bhatia, Company Secretary, appeared for personal hearing on September 30, 2019 on behalf of the applicant. The representative admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to oversight. 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 following FEMA provisions:

(a) Paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on



account of delay in reporting foreign inward remittance received for issue of shares as detailed in paragraph 2(b) above. The contravention relates to an amount of ₹2,87,054.59 (Rupees Two Lakh Eighty Seven Thousand Fifty Four and Paise Fifty Nine only) and the period of delay is 17 years, 6 months and 15 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in filing Form FC-GPR after issue of shares as detailed in paragraph 2(c) above. The contravention relates to an amount of ₹2,50,000/- (Rupees Two Lakh and Fifty Thousand only) and the period of delay is 15 years, 4 months and 8 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, read with paragraph 5 of A.P. (DIR Series) Circular No. 20 dated December 14, 2007, on account of delay in issue of shares and delay in refund of excess share application money beyond 180 days from the date of receipt of inward remittance, as detailed in paragraph 2(d) above. The contravention pertaining to delay in issue of shares relates to an amount of ₹2,50,000/- (Rupees Two Lakh and Fifty Thousand only) and the period of delay is 1 year, 8 months and 9 days and that pertaining to delay in refund of excess share application money relates to ₹37,054.59 (Rupees Thirty Seven Thousand Fifty Four and Paise Fifty Nine only) with period of delay being 10 years, 11 months and 16 days.

5. It has been declared in the compounding application dated May 23, 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 dated June 1, 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. 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 **₹92,011/- (Rupees Ninety Two Thousand and Eleven only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 [read with paragraph 5 of A.P. (DIR Series) Circular No. 20 dated December 14, 2007] 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 **₹92,011/- (Rupees Ninety Two Thousand and Eleven 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 30<sup>th</sup> day of September 2019.

Sd/-  
**(Md. Shakir Hasan)**  
**Assistant General Manager**