



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

R.K. Moolchandani
Chief General Manager

Date: July 10, 2019
CA No 4871 / 2019

In the matter of

Tata Chemicals Limited
Bombay House, 24, Homi Mody Street
Fort Mumbai - 400001

(Applicant)

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

Order

The applicant has filed the application dated January 16, 2019 (received in the Reserve Bank on January 18, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The applicant has sought to be compounded for extending loan without any equity contribution, to overseas Joint Venture (JV), without prior approval of the Reserve Bank of India, in contravention of Regulation 6(4) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA



120/2004-RB dated July 7, 2004 as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB).

2. The relevant facts of the case are as under: The applicant company, M/s Tata Chemicals Ltd. was incorporated in India (CIN L24239MH1939PLC002893), under the Companies Act, 1913, on January 23, 1939. It is engaged in the business of manufacturing chemicals and fertilizers. The applicant company set-up an overseas JV, namely, Grown Energy Zambeze Limitada (GEZ), Mozambique, under overseas direct investment (ODI) on April 22, 2008. The applicant company remitted an amount of USD 275,000 (INR 1,19,15,500) in three tranches from 26.02.2008 to 26.09.2008, as project advance. Subsequently, in June 2009, the applicant company decided to quit the project due to uncertainty around allotment of land. No shares were issued against the remittances sent, and these remittances were treated as loans/advances by the applicant company. The money has now been brought back into India and the UIN has been closed on 07.05.2019. Extending loan without equity contribution was a contravention of Regulation 6(4) of Notification No. FEMA 120/2004-RB.

3. In terms of Regulation 6(4) of Notification No. FEMA.120/2004-RB, as then applicable, "An Indian Party may extend a loan or a guarantee to or on behalf of the Joint Venture/ Wholly Owned Subsidiary abroad, within the permissible financial commitment, provided that the Indian Party has made investment by way of contribution to the equity capital of the Joint Venture."

4. The applicant company was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/7556/15.20.67/2018-19 dated June 24, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on June 28, 2019 during which Shri Vijay N Furia, Assistant General Manager, Strategic Finance, and Shri Sameer Maniar, Consultant, represented the applicant. The representatives of the applicant company submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to ignorance and requested that a lenient view may be taken in the matter.



It has been declared in the compounding application dated January 16, 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 along 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 been informed of initiation of any such enquiry/investigation/adjudication proceedings against it thereafter. 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.

The application is, therefore, being considered on the basis of the averments made in the application, the documents produced, and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulation 6(4) of Notification No.FEMA.120/2004-RB. The amount of contravention is Rs. 1,19,15,500/- and the period of contravention is eleven years approximately.

6. 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. After considering the submissions made by the applicant and the entire facts and circumstances of the case, it stands to reason that payment of an amount of Rs. 1,39,366/- (Rupees one lakh thirty nine thousand three hundred and sixty six only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulation 6(4) of Notification No.FEMA.120/2004-RB, on payment of a sum of Rs. 1,39,366/- (Rupees one



lakh thirty nine thousand three hundred and sixty six only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, 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.

The application is disposed accordingly.

Dated this the 10th day of July, 2019

Sd/-
(R.K. Moolchandani)
Chief General Manager