



In the

**RESERVE BANK OF INDIA**

Foreign Exchange Department

Central Office Cell, 1<sup>st</sup> floor

6, Sansad Marg

New Delhi - 110 001

Present

**R.K. Moolchandani**

**Chief General Manager**

Date: November 8, 2019

C.A. No.101 /2019

In the matter of

**M/s ILJIN Electric Co. Ltd.**

**(Delhi Project Office)**

**207-208, Uday Plaza Building,**

**16-A, Uday Park**

**New Delhi - 110049**

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 M/s ILJIN Electric Co. Ltd. (Delhi Project Office), has filed an application dated April 2, 2019 (received in RBI on May 29, 2019) for compounding of contravention of the provisions of Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded relate to inter project transfer of funds and transfer of project assets, in contravention of Regulation 5(ii) of Notification No. FEMA.22/2000-RB dated May 3, 2000, Regulation



4(f) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 read with Annex D of Regulation 4(l) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 and Regulation 8 of Notification No. FEMA.22/2000-RB dated 3rd May 2000 (as amended from time to time) read with Para H (v)(b)(c)&(e) of FED Master Circular No. 07/2015-16 dated July 01, 2015.

**2. The relevant facts of the case are as follows:**

- a. The applicant, M/s ILJIN Electric Company Limited Korea, a foreign company registered in India on January 19, 2007 has established Delhi Project Office on July 1, 2007 under General Permission.
- b. The Delhi PO was awarded a contract by Delhi Metro Rail Corporation Limited (DMRC) for supply, laying, testing and commissioning of extra high voltage electric cables for receiving sub stations Jhangirpuri, Ambedkar Colony, Munduka and Botanical Garden and Sushant Lok with total value of contract of ₹ 17,93,02,458/-.
- c. The Delhi PO opened two bank accounts with Citibank NA Vashi, Navi Mumbai branch with account No. 0253012118 and 0019049116 for the Project Office operations.
- d. As per the terms of the contract executed between ILJIN Electric Company Ltd.- Delhi PO and DMRC, the last phase of contract was completed in June 2015. Upon completion of the Project, request for remittance of the surplus amount in the Delhi PO bank account and closure of Delhi PO was filed with the bank
- e. The bank informed the company in 2016 that the surplus amount of ₹ 2,50,40,877/- could not be remitted as on scrutiny it was observed that certain inter project transfers were made which are restricted as per the Master Circular issued by RBI.
- f. AD bank vide letter dated December 10, 2015 had informed RBI, MRO that during internal review of AAC for FY 2013-14, the bank observed that the entity has also set up other POs one at Hyderabad (for executing project work allotted by Transmission Corporation of Andhra Pradesh Limited in 2011-12) and one at Mumbai (Mumbai PO account was opened by the entity with Citi Bank under general permission for Project awarded by Mumbai Railway Vikas Corporation).



- g. It was observed by the bank that the transactions pertaining to Hyderabad PO and Mumbai PO were routed through the bank account opened by the entity for Delhi PO.
- h. The entity vide letter dated February 15, 2018 approached FED, CO Cell, New Delhi and the AD bank vide letter dated August 31, 2018 confirmed that the inter-project transfers amounting to ₹ 30,44,83,043-(total debits and credits) were done from/to the accounts of Delhi PO to Mumbai and Hyderabad POs during the period of 2011 to 2017.
- i. In the AACs for the year ended March 31, 2012 to March 31, 2017, the auditor has qualified the AACs by observing that the inter-project transfers were done without Reserve Bank permission.
- j. The above activity (inter-project utilization of funds) of Delhi Project office does not relate to the contract secured by the foreign entity for which the Delhi project office was established. Hence, the same amounts to contravention of the Regulation 5(ii) of Notification No. FEMA.22/2000-RB dated May 3, 2000 and Regulation 4(f) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 read with Annex D of Regulation 4(l) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 as amended from time to time.
- k. The project office has also transferred assets without AD Bank's approval. Some of the assets were transferred at more than the book value. The total WDV of transferred assets is ₹ 9473 (Rupees Nine thousand four hundred seventy three only) which were transferred at ₹ 22,750/- (Rupees Twenty two thousand seven hundred fifty only). Further, intangible asset viz. tally software having written down value of ₹ 1,31,827/- were also transferred by the Delhi PO without Reserve Bank permission.
- l. The aforesaid transfer of assets amounts to contravention of Regulation 8 of Notification No. FEMA.22/2000-RB dated 3rd May 2000 (as amended from time to time) read with Para H (v)(b)(c)&(e) of FED Master Circular No. 07/2015-16 dated July 01, 2015.
- m. Regulation 8 of Notification No. FEMA.22/2000-RB dated 3rd May 2000 (as amended from time to time) states that a person resident outside India permitted under Regulation 5 to establish a Branch or Project or Liaison Office may, at the



time of closure of said Branch or Project or Liaison Office, as the case may be, apply to the authorized dealer concerned for transfer of its assets to JV / WOS or any other entity in India.

- n. Para H (v) of FED Master Circular No. 07/2015-16 dated July 01, 2015 states that powers relating to transfer of assets of Liaison / Branch Office / Project Office have been delegated to AD Category-1 Banks subject to compliance with the following stipulations:
- a. Such proposals will be considered only from LO / BOs who are adhering to the operational guidelines stipulated in AP DIR Circular No.23 & 24 of December 30, 2009 such as (i) submission of AACs (up to the current financial year) at regular annual intervals with copies endorsed to DGIT (International Taxation) and (ii) obtained PAN from IT Authorities and have got registered with ROC under Companies Act 1956, if necessary. Similarly, proposals from POs should conform to the guidelines issued in AP DIR Cir.No.44 dated May 17, 2005 with regard to initial reporting requirements (para.2.3) and submission of CA certified annual report indicating project status (para.2.4).
  - b. A certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred indicating their date of acquisition, original price, depreciation till date, present book value or WDV and sale consideration to be obtained. Statutory Auditor should also confirm that the assets were not re-valued after their initial acquisition. The sale consideration should not be more than the book value in each case.
  - c. The assets should have been acquired by the LO / BO / PO from inward remittances and no intangible assets such as good will, pre-operative expenses should be included. No revenue expenses such as lease hold improvements incurred by LO / BOs can be capitalised and transferred to JV / WOS.
  - d. AD bank to ensure payment of all applicable taxes while permitting transfer of assets.
  - e. Transfer of assets to be allowed by AD banks only when the foreign entity intends to close their LO / BO / PO operations in India.



- f. Credits to the bank accounts of LO / BO / PO on account of such transfer of assets will be treated as permissible credits.
- o. The above contraventions were regularized vide RBI letter No. FE.CO.FID/626/10.01.001/2018-19 dated February 25, 2019 and the applicant was granted post facto approval subject to compounding of the contravention.
- p. The total amount which is involved in inter project utilization and transfer of assets (tangible and intangible) i.e. ₹ 30,46,37,620/- (Rupees Thirty crore forty six lakh thirty seven thousand six hundred twenty only) has been considered as the amount of contravention.
- q. The WDV of assets is ₹ 9,473 (Rupees Nine thousand four hundred seventy three only) and they were sold for ₹ 22,750/- (Rupees Twenty two thousand seven hundred fifty only). Since the applicant cannot earn by way of undue gain, the difference in the sale price and the WDV i.e. ₹13,277 (Rupees Thirteen thousand two hundred seventy seven only) has been considered as the undue gain.
- r. The first transaction was done on February 7, 2012 and contravention was regularized on February 25, 2019. Hence the period of contravention has been treated from February 7, 2012 to February 25, 2019 i.e. 7 years and 18 days.
- s. The amount and period of contravention is as follows:
- Amount:** ₹ 30,46,37,620/- (Rupees Thirty crore forty six lakh thirty seven thousand six hundred twenty only)
- Undue gain:** ₹13,277 (Rupees Thirteen thousand two hundred seventy seven only)
- Period:** 7 years and 18 days i.e from February 7, 2012 to February 25, 2019.

**Contravention:**

The applicant has contravened Regulation 5(ii) of Notification No. FEMA.22/2000-RB dated May 3, 2000, Regulation 4(f) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 read with Annex D of Regulation 4(l) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 and Regulation 8 of Notification No. FEMA.22/2000-RB dated 3rd May 2000 (as amended from time to time) read with Para H (v)(b)(c)&(e) of



FED Master Circular No. 07/2015-16 dated July 01, 2015. Regulation 8 of Notification No. FEMA.22/2000-RB dated 3rd May 2000 (as amended from time to time) states that a person resident outside India permitted under Regulation 5 to establish a Branch or Project or Liaison Office may, at the time of closure of said Branch or Project or Liaison Office, as the case may be, apply to the authorized dealer concerned for transfer of its assets to JV / WOS or any other entity in India.

Regulation 4(l) (Annex D) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 states that the branch office / liaison office may submit the Annual Activity Certificate (Annex D) as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year. In case the annual accounts of the office are finalized with reference to a date other than March 31, the AAC along with the audited financial statements may be submitted within six months from the due date of the Balance Sheets to the Authorised Dealer Category-bank and the Director General of Income Tax (International Taxation), Drum Shape Building, I.P. Estate, New Delhi 110002.

AAC from a Chartered Accountant showing the project status and certifying that the accounts of the project office have been audited and the activities undertaken are in conformity with the general / specific permission given by the Reserve Bank may be submitted by the project office to the designated Authorised Dealer Category-I bank. The above contraventions were regularized by RBI vide letter No. FE.CO.FID/626/10.01.001/2018-19 dated February 25, 2019.

4. The applicant was given an opportunity for personal hearing vide email dated October 31, 2019 for further submission in person and /or producing documents, if any, in support of the application. Applicant's representative Mr. AK Murahari, Chartered Accountant accompanied by two officials, appeared representing the applicant, for the personal hearing on November 8, 2019. The representatives of the applicant admitted the contraventions committed by the applicant for which they have sought compounding and submitted that the contraventions were not intentional and requested to take a lenient view.

5. It has been declared in the compounding application 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 undertaking furnished with the compounding application that the applicant is 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. Accordingly, the above contraventions which are being compounded in this order is 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 for compounding is, therefore, being decided on the basis of the averments/submission made in the application as well as other documents and also submissions made in this context by Mr. AK Murahari and other two representatives during the personal hearing.

6. I have given my careful consideration to the documents on record and submission made by the applicant. Accordingly, I hold that the applicant has contravened Regulation 5(ii) of Notification No. FEMA.22/2000-RB dated May 3, 2000, Regulation 4(f) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 read with Annex D of Regulation 4(l) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 and Regulation 8 of Notification No. FEMA.22/2000-RB dated 3rd May 2000 (as amended from time to time) read with Para H (v)(b)(c)&(e) of FED Master Circular No. 07/2015-16 dated July 01, 2015. The contravention amount i.e. total amount involved in inter project utilization of funds and transfer of tally software and assets comes to ₹ 30,46,37,620/- (Rupees Thirty crore forty six lakh thirty seven thousand six hundred twenty only) and the period of contravention stands at 7 years and 18 days i.e from February 7, 2012 – date of first transaction to February 25, 2019 – date of Regularization.

7. In terms of Section 13 of the FEMA, 1999, 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, after considering the submissions made by the applicant and the entire facts and circumstances of the case, I consider that payment of an amount of ₹ 23,28,059/- (Rupees Twenty three lakh twenty eight thousand fifty nine only) will meet the ends of justice in the circumstances of this case.



8. Accordingly, I compound the admitted contraventions namely the contravention of Regulation 5(ii) of Notification No. FEMA.22/2000-RB dated May 3, 2000, Regulation 4(f) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 read with Annex D of Regulation 4(l) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 and Regulation 8 of Notification No. FEMA.22/2000-RB dated 3rd May 2000 (as amended from time to time) read with Para H (v)(b)(c)&(e) of FED Master Circular No. 07/2015-16 dated July 01, 2015, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹ 23,28,059/- (Rupees Twenty three lakh twenty eight thousand fifty nine only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Office Cell, 1<sup>st</sup> Floor, 6, Sansad Marg, New Delhi – 110 001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at 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 03, 2000, as amended from time to time, shall apply.

The application is disposed accordingly.

Dated this the 8<sup>th</sup> day of November 2019.

**R.K. Moolchandani**  
**Chief General Manager**