



In the
Reserve Bank of India
10/3/8, Nrupathunga Road
Bengaluru-560001

Present

Shri Jose J Kattoor
Regional Director, Karnataka and
Chief General Manager, Bengaluru

Date: February 25, 2020
C.A. BGL505/2014

In the matter of

M/s Sustaintech India Private Limited
Flat B-3, Krishna Apartments, 46/47
18th Cross, Malleshwaram
Bengaluru 560055

(Applicant)

In exercise of the powers under Section 15 (1) of the Foreign Exchange Management Act, 1999, and the Regulations/Rules/Notifications/Orders framed there under, I pass the following

Order

The applicant has filed a compounding application dated October 14, 2019, received at the office of Reserve Bank of India, Bengaluru, on October 18, 2019, for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999, (the FEMA) and the Regulations issued there under. The contraventions sought to be compounded are, (i) delay in reporting receipt of foreign inward remittances towards subscription to equity, (ii) delay in allotment of shares beyond 180 days from the date of receipt of inward remittance and allotment of shares prior to the receipt of inward remittance, and (iii) delay in submission of form FC-GPR to the Reserve Bank, after issue of shares to a person resident outside India, in terms of Paragraphs 9(1)(A), 8 and 9(1)(B), respectively, of Schedule I 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).

2. The relevant facts of the case are as follows: The applicant M/s Sustaintech India Private Limited, was incorporated on February 16, 2009, under the Companies Act, 1956, as per the Certificate of Incorporation issued by the Registrar of Companies, Karnataka. The activity undertaken by the company is manufacture of fuel-efficient wood burning stoves for the benefit of street food vendors and families in rural and semi-rural areas through innovative technology. The applicant had received funds towards share application money, from the non-resident investors, namely, M/s. The ERM Foundation, United Kingdom, M/s. Insitor Fund SCA, Luxembourg, and Anna Mundeep Singh & Richard Prem Singh, United Kingdom, as shown below:

Table -1

Sr. No.	Date of Receipt	Total Amount (INR)	Date of Reporting to RBI / AD Bank
1	08-04-2011	19,05,342.00	19-05-2011
2	10-06-2011	19,50,000.00	20-07-2011
3	22-06-2011	45,000.00	20-07-2011
4	27-06-2011	18,98,674.00	08-07-2011
5	03-08-2011	50,520.00	25-01-2012
6	24-12-2013	19,50,010.00	16-01-2014
7	27-12-2013	20,42,288.00	16-01-2014
8	30-12-2013	19,50,010.00	16-01-2014
	Total	1,17,91,844.00	

The applicant reported receipt of remittances to the Reserve Bank / Authorized Dealer Bank, with a delay ranging from ten days to four months and twenty three days, beyond the stipulated period of 30 days in respect of the remittances as indicated at serial numbers 1, 2 and 5 in Table-1 above. Whereas, in terms of Paragraph 9(1)(A) of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report to the Reserve Bank of India, as per the prescribed



procedure, not later than 30 days, from the date of receipt of the amount of consideration.

3. The company had contravened the provisions of Paragraph 8 of Schedule 1 to Notification no. FEMA 20/2000-RB, dated May 3, 2000, in the below mentioned instances:

- i. The company had allotted 195 Compulsorily Convertible Debentures (CCDs) worth ₹19,50,000.00, on July 07, 2011, to the non-resident investor, Anna Mundeep Singh & Richard Prem Singh, United Kingdom. However, an amount of ₹49,714.00, which is a part of the total amount of consideration, pertaining to the aforesaid share allotment was received on August 03, 2011, with a delay of twenty-seven days from the date allotment of shares. The amount of contravention is **₹49,714.00**, and the period of delay is twenty-seven days; and
- ii. The company had received an inward remittance of ₹20,42,288.00, on December 27, 2013, from the non-resident investor, Anna Mundeep Singh & Richard Prem Singh, United Kingdom, and allotted 195 CCDs and 1 equity share worth ₹19,50,010.00, on January 13, 2014, leaving behind an excess of ₹92,278.00. Subsequently, the said excess share application money, was utilized to allot 122 equity shares worth ₹93,311.70, to the non-resident investor, Anna Mundeep Singh & Richard Prem Singh, United Kingdom, on April 27, 2018, with a delay of three years ten months and two days, beyond the stipulated period of 180 days from the date of inward remittance, with prior approval of Reserve Bank of India. The company was given approval vide Reserve Bank's letter Ref No.FE.BG.FID.No.4007/21.08.362/2017-18, dated April 20, 2018. The amount of contravention is **₹93,311.70**, and the period of delay is three years ten months and two days.

Whereas, in terms of Paragraph 8 of Schedule 1 to Notification no. FEMA 20/2000- RB, dated May 3, 2000 and as amended from time to time, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned, provided 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.

4. The company had allotted shares and filed form FC-GPRs, with Reserve Bank/AD Bank, as indicated below:

Table-2

Sr. No.	Date of Allotment	Number of shares allotted	Amount (INR)	Date of reporting to RBI/AD Bank
1	07-07-2011	585 CCDs	58,50,000.00	17-11-2012
2	13-01-2014	585 CCDs & 3 Equity	58,50,030.00	16-10-2014
3	27-04-2018	122 Equity	93,311.70	15-05-2018
		1170 – CCDs ; 125 – Equity	1,17,93,341.70	

The applicant filed form FC-GPRs, on allotment of shares, with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank, with a delay ranging from eight months four days to one year three months and eleven days, beyond the prescribed period of 30 days, in respect of the allotments indicated at serial numbers 1 and 2 in the Table - 2 above. Whereas, in terms of Paragraph 9(1)(B) of Schedule I to Notification No. FEMA. 20/2000-RB dated May 3, 2000, an Indian company issuing shares in accordance with these Regulations, has to submit to Reserve Bank of India, a report in form FC-GPR, along with documents prescribed therein, within 30 days from the date of issue of shares to persons resident outside India.

5. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID (CEFA) No.1884/22.08.362/2019-20, dated February 06, 2020, for further submission in person and/or producing documents, if any, in support of the application. The applicant's authorized representative Ms. Svati Bhogle, Founder, who appeared for the personal hearing on February 20, 2020, admitted the contraventions as stated in paragraphs 2, 3 and 4 above, committed by the applicant, for which compounding has been sought. During the personal hearing, the representative of the applicant requested that as the contraventions were not intentional or with a malafide intention, and was mainly due to inadvertence, a lenient view may be taken in disposal of the application.



The application for compounding is, therefore, being considered on the basis of the averments made in the application, as well as other documents and submissions made in this context, by the applicant during personal hearing and thereafter.

6. I have given my 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 the following FEMA provisions issued in terms of:

(a) Paragraph 9(1)(A) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in reporting of foreign inward remittances, received towards subscription to equity as detailed in paragraph 2 above. The contravention relates to an amount of **₹39,05,862.00**, and the period of delay ranges from ten days to four months and twenty-three days;

(b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB,

- i. Allotment of shares prior to receipt of inward remittance, as detailed in paragraph 3 above. The contravention relates to amount of **₹49,714.00**, and the period of delay is twenty-seven days.
- ii. Delay in allotment of shares, beyond 180 days from the date of receipt of inward remittance, as detailed in paragraph 3 above. The contravention relates to amount of **₹93,311.70**, and the period of delay is three years ten months and two days.

(c) Paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in submission of form FC-GPR to the Reserve Bank, after issue of shares to persons resident outside India as detailed in paragraph 4 above. The contravention relates to an amount of **₹1,17,00,030.00**, and the period of delay ranges from eight months four days to one year three months and eleven days.

7. It has been declared in the compounding application dated October 14, 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 been declared in the undertaking, 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, 1999. 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.

8. 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. 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 **₹65,949.00 (Sixty Five Thousand Nine Hundred and Forty Nine only)**, will meet the ends of justice.

9. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1)(A), 8 and 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB, by the applicant, based on the facts discussed above, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹65,949.00 (Sixty Five Thousand Nine Hundred and Forty Nine only)**, which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 2nd Floor, 10/3/8, Nrupathunga Road, Bengaluru – 560001, by a demand draft drawn in favour of the “Reserve Bank of India”, payable at Bengaluru, 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 of accordingly.

Dated this, the Twenty Fifth day of February 2020.

Sd/-
(Jose J Kattoor)
Regional Director, Karnataka and
Chief General Manager, Bengaluru