



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: February 24, 2020
CA No 5010/ 2019

In the matter of

Windlass Engineers and Services Pvt Ltd
Y-8 - A G/F Y Block Internal Road
Hauz Khas, Near M C D School,
New Delhi 110 016.

(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 August 22, 2019 (received in the Reserve Bank on September 16, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions are: (a) Receipt of shares on deferred basis and (b) Delay in submission of Annual Performance Reports (APRs) for the years from 2016 to 2018; in violation of Regulation 5(1) read with Regulation 6(3) and Regulation 15(iii), respectively, 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 are as under:

The applicant company was incorporated on February 01, 2007 as Windlass Engineers & Services Pvt. Ltd. under the Companies Act 1956. (CIN U74991UR2007PTC032356). The company undertakes manufacturing of oilfield equipment and servicing of machines.

The applicant company had set up an overseas Joint Venture (JV) named 'Windlass International Limited' (WIL) in British Virgin Island in 2015.

The overseas JV (WIL) allotted equity shares to the applicant company on February 17, 2016 for a total value of USD 23,76,146.40, against which the applicant company made two remittances of USD 15,53,885.37 and USD 2,96,960 on February 17, 2016 and June 07, 2016, respectively. The receipt of shares for the balance amount of USD 5,25,301.03 - against which no payment was made to the JV, was in contravention of Regulation 5(1) read with Regulation 6(3) of FEMA 120.

Further, the receipt of shares on February 17, 2016 prior to the date of remittance (June 07, 2016) of USD 2,96,960 was also in contravention of Regulation 5(1) read with Regulation 6(3) of FEMA 120 .

Further, the applicant company had delayed the submission of APRs for the years from 2016 to 2018 thereby contravening Regulation 15 (iii) of FEMA 120. The applicant company has surrendered the shares equivalent to the balance (unpaid) amount of USD 525301.03 to the JV, thereby regularising the transaction on November 03, 2019.

The abovementioned transactions were taken on record, subject to compounding of the contraventions.

3. The applicant was given an opportunity for personal hearing (vide letter No. FE.CO.CEFA/3807/15.20.67/2019-20 dated January 23, 2020) for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on January 29, 2020, during which the applicant submitted that the contraventions were inadvertent and requested that a lenient view may be taken in the matter. The application is, therefore,



being considered on the basis of the averments made, the documents produced, and submissions made by the applicant in the application.

4. It has been declared in the compounding application dated August 22, 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 declaration furnished along with the compounding application that the applicant was under enquiry by the Directorate of Enforcement (DoE), in connection with the overseas direct investment related transactions of the company and that all the details required by DoE at the time had been furnished by the applicant. RBI, vide its letter reference No. FED.CO.CEFA/1550/15.20.67/2019-20 dated September 24, 2019 and subsequent reminder dated November 01, 2019 had sought comments / No Objection Certificate (NOC) from DoE to proceed with the compounding process.

DoE indicated their objection to compounding vide letter ref. No. RBI/SDE/WR/B-260/2019/2490, dated November 18, 2019 and stated that *“as the investigation is in progress and is pending, the request of the applicant may not be acceded to”*. However, they did not quote any condition specified in the proviso to rule 8(2) of the Foreign Exchange (Compounding Proceedings) Rules, 2000 which could be applicable in the instant case. In view of the fact that DoE did not state the specific grounds for their objection, as required under FEMA, 1999 and Foreign Exchange (Compounding Proceedings) Rules, 2000, the compounding order is being issued. However, this order is only in respect of contraventions mentioned in paragraph 2 above, and is without prejudice to any action that may be taken by DoE or any other agency against the applicant company on the issues, which are not covered under this order.

5. I have given my careful consideration to the documents on record and submissions made by the applicant. It was observed that the applicant has contravened the provisions of Regulation 5(1) read with Regulation 6(3) and Regulation 15(iii), of Notification No.FEMA.120/2004-RB. The amount and period of contravention involved is as follows:



(i) Regulation 5(1) read with Regulation 6(3) – Rs.5,59,28,196/- and the period of contravention ranges from four months to three years and eight months approximately

(iii) Regulation 15(iii) – three APRs delayed for the years 2016 - 2018

6. In terms of Section 13 of the FEMA, any person contravening the provisions 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. 4,13,738/- (Rupees four lakhs thirteen thousand seven hundred and thirty eight only) will meet the ends of justice.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contravention committed by the applicant namely, Regulation 15(ii) and Regulation 15(iii) of Notification No.FEMA.120/2004-RB, on payment of a sum of Rs. 4,13,738/- (Rupees four lakhs thirteen thousand seven hundred and thirty eight only) which shall be deposited by the applicant with the "The Chief General Manager – In – Charge, 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 24th day of February, 2020

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