



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

6, Sansad Marg

New Delhi-110001

Present

P S Khual

General Manager

Date: August 21, 2019

CA No. NDL 423/2019

In the matter of

Indian Transelectric Company Limited

26, Shivaji Marg, Najafgarh Road, Industrial Area, New Delhi-110015

(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 April 22, 2019 (received at Reserve Bank of India, New Delhi on April 24, 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, against Memorandum issued on March 7, 2019. 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 beyond 180 days from the date of receipt of inward remittances, 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 March 26, 2007, is engaged in the business of manufacture of electric transformers.

(b) The applicant had reported the receipt of remittances from its foreign investors viz. Shri Venkata Subrahmanya Balendu Agastya Raju, Kenya, Smt. Janaki Devi Agastya Raju, Kenya and Shri Manoj J.C. Shah, Kenya, on ten occasions with delay ranging from 21 days to 2 years, 11 months and 5 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of receipt	Amount (₹)	Date of Reporting
1	07.04.2007	6,39,937.20	12.04.2010
2	13.04.2007	4,22,648.80	12.04.2010
3	18.04.2007	2,08,590.90	12.04.2010
4	10.08.2007	5,02,388.39	12.04.2010
5	10.08.2007	5,02,717.49	12.04.2010
6	10.12.2007	11,70,777.19	12.04.2010
7	26.09.2008	4,34,723.13	19.11.2008
8	26.09.2008	6,64,337.13	19.11.2008
9	29.09.2008	3,24,001.64	19.11.2008
10	29.09.2008	4,40,274.79	19.11.2008
	Total	53,10,396.66	

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 reported the issue of shares to its foreign investors viz. Shri Venkata Subrahmanya Balendu Agastya Raju, Kenya, Smt. Janaki Devi Agastya Raju, Kenya and Shri Manoj J.C. Shah, Kenya, on two occasions with delay of 1 year, 8 months & 13 days and 2 years, 11 months & 2 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable.



Sl. No.	Date of Issue	Amount (₹)	Date of Reporting
1	10.04.2007	2,00,000.00	12.04.2010
2	30.06.2008	32,47,050.00	12.04.2010
	Total	34,47,050.00	

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 3,24,705 equity shares on June 30, 2008 for a consideration of ₹32,47,059.97, as detailed below, with delay ranging from 23 days to 7 months and 2 days 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.

Sl. No.	Date of receipt	Amount (₹)	Date of Issue
1	07.04.2007*	4,39,937.20	30.06.2008
2	13.04.2007*	4,22,648.80	30.06.2008
3	18.04.2007*	2,08,590.90	30.06.2008
4	10.08.2007	5,02,388.39	30.06.2008
5	10.08.2007	5,02,717.49	30.06.2008
6	10.12.2007	11,70,777.19	30.06.2008
	Total	32,47,059.97	

*Cut off date taken as 28.11.2007.

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 Rajiv Malik, Company Secretary, appeared for personal hearing on August 20, 2019 on behalf of the applicant. The representative of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that contraventions were without any *malafide* or wilful intention but were mainly due to inadvertence and lack of awareness about FEMA compliances. 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 contraventions relate to an amount of ₹53,10,396.66 (Rupees Fifty Three Lakh Ten Thousand Three Hundred Ninety Six and Paise Sixty Six only) and the period of delay ranges from 21 days to 2 years, 11 months and 5 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 contraventions relate to an amount of ₹34,47,050/- (Rupees Thirty Four Lakh Forty Seven Thousand and Fifty only) and the periods of delay are 1 year, 8 months & 13 days and 2 years, 11 months & 2 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 beyond 180 days from the date of receipt of inward remittances as detailed in paragraph 2(d) above. The contraventions relate to an amount of ₹32,47,059.97 (Rupees Thirty Two Lakh Forty Seven Thousand Fifty Nine and Paise Ninety Seven only) and the period of delay ranges from 23 days to 7 months and 2 days.

5. It has been declared in the compounding application dated April 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 also been declared in the declaration dated April 26, 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 **₹97,376/- (Rupees Ninety Seven Thousand Three Hundred and Seventy Six 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 **₹97,376/- (Rupees Ninety Seven Thousand Three Hundred and Seventy Six 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 21st day of August 2019.

Sd/-
(P S Khual)
General Manager