



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Ajay Kumar Misra
Chief General Manager

Date: March 01, 2019
CA No 4802/2018

In the matter of

SNC Lavalin Engineering India Private Limited
Trade Star, A-Wing, 2nd Floor
J.B. Nagar, Andheri-Kurla Road
Andheri (East), Mumbai - 400059

(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 October 24, 2018 (received in the Reserve Bank on October 29, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded relate to the applicant receiving inward remittances as parental support (and supposed to be repaid) from overseas parent company. However, since the payables remained outstanding beyond a period of three years, such inward remittances amounted to deemed External Commercial Borrowings (ECB), when (i) the borrower was not an eligible borrower in terms of extant ECB guidelines; (ii) utilization of (deemed) ECB proceeds to meet operational expenses was non-permissible end use; and (iii) draw down of the (deemed) ECB without obtaining Loan Registration Number (LRN) from



the Reserve Bank of India (RBI). The above were in contravention of regulation 6(1) of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3/2000-RB dated 3rd May 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 3/2000-RB) read with paragraphs 1(i), (iv) and (xi) of Schedule I to these regulations.

2. The relevant facts are as under: The applicant company was incorporated as RJ Associates (Engineers) Private Limited (CIN U74999MH1984PTC034236), under the Companies Act, 1956, on October 10, 1984. It changed its name to SNC Lavalin Engineering Private Limited with effect from August 30, 2005. It is engaged in the business of financing and asset management, engineering, procurement, construction, training, operations and maintenance and telecommunications.

The applicant is a wholly owned subsidiary (WOS) of SNC Lavalin Inc., Canada (SNC Canada). The applicant received certain inward remittances to the extent of Rs. 11,60,49,776/- from its parent company in the nature of parental support, during the period from 2005-06 to 2007-08 (details in the table below):

S.No.	Date of remittance	Amount received (INR)
1	22.06.2005	28,20,865
2	15.09.2005	9216,900
3	03.03.2006	15,67,955
4	05.04.2006	8,24,044
5	03.05.2006	1,31,791
6	12.05.2006	14,35,077
7	01.08.2006	3,48,359
8	10.08.2006	3,16,595
9	18.10.2006	4,92,325
10	01.11.2006	17,48,095
11	11.11.2006	3,53,63,458
12	22.11.2006	1,81,162
13	07.06.2006	28,24,293
14	21.12.2006	2,21,97,250
15	21.12.2006	90,643
16	15.01.2007	3,85,943
17	31.01.2007	11,04,021
18	13.09.2007	3,50,01,000
Total		11,60,49,776



Due to liquidity related problems, the applicant could not repay the advances to the overseas parent company. As the dues remained outstanding for a period exceeding three years, the nature of these dues was deemed as ECB. However, in respect of the transactions related to the deemed ECB, the applicant was observed to be in contravention of Regulation 6 of Notification No. FEMA 3/2000-RB read with para 1(i) (not an eligible borrower), para 1(iv) (end-use not permitted), para 1(xi) (drawing advance without obtaining LRN and para 1(xii) (not reporting ECB transaction). On the applicant's request, RBI, vide its letter dated 26.06.2018, issued 'no objection' for conversion of the outstanding payables into equity subject to the applicant obtaining lender's consent and complying with the extant FDI policy/FEMA regulations. On applicant's further request, RBI, vide letter dated 28.08.2018, granted waiver to the applicant from filing ECB-2 returns, however, advising the applicant to, inter-alia, ensure compliance with FDI reporting requirements in Form-FCGPR. The applicant issued equity shares and reported the same in Form – FCGPR, on 30.09.2018, thereby completing the administrative action.

3. In terms of regulation 6(1) of Notification No.FEMA.3/2000-RB dated May 03, 2000 as amended from time to time "a person resident in India may raise in accordance with the provisions of the Automatic Route Scheme specified in Schedule I, foreign currency loans of the nature and for the purposes as specified in that Schedule....".

Paragraph 1(i) of schedule – I to FEMA Notification No. FEMA.3/2000-RB lays down the eligibility criteria for the borrowers eligible to raise ECB in terms of which entities engaged in consultancy services are not eligible to raise ECB.

Paragraph 1(iv) of schedule – I to FEMA Notification No. FEMA.3/2000-RB provides that ECB can be raised only for investment in real sector in India (such as import of capital goods, new projects, modernization/expansion of existing production units) under the automatic route.

Paragraph 1(xi) of schedule – I to FEMA Notification No. FEMA.3/2000-RB states that 'draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only after obtaining the loan registration number (LRN) from the Reserve Bank'.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/4890/15.20.67/2018-19 dated February 15, 2019 for further submission in person and/or producing documents, if any, in support of the application. The



personal hearing was held on February 21, 2019 during which Ms. Neetu Vinayak, Shri Hiten Sutar, Shri Bhushan Chaudhari and Ms. Chaitali Mane, represented the applicant. During the personal hearing the representatives of the applicant submitted that the company had inadvertently failed to comply with the FEMA regulations and requested that a lenient view may be taken in the matter. Accordingly, the application is 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(1) of Notification No. FEMA 3/2000-RB read with paragraphs 1(i), (iv) and (xi) of Schedule I to the regulations.

6. It has been declared in the compounding application dated October 24, 2018 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 along with the applicant 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 as required in terms of the said undertaking. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made/undertaking furnished 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/undertakings are subsequently discovered to be false and/or incorrect.

7. 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 I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of Rs. 9,20,373/- (Rupees nine lakhs twenty thousand three hundred and seventy three only) will meet the ends of justice in the circumstances of this case.



8. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, regulation 6(1) of Notification No. FEMA 3/2000-RB read with paragraphs 1(i), (iv) and (xi) of schedule I to this regulations on payment of a sum of Rs. 9,20,373/- (Rupees nine lakhs twenty thousand three hundred and seventy three 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 first day of March, 2019.

Sd/-
(Ajay Kumar Misra)
Chief General Manager