



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

Central Office Cell, 1st floor

6, Sansad Marg

New Delhi - 110 001

Present

R.K. Moolchandani

Chief General Manager

Date: October 11, 2019

C.A. No.102 /2019

In the matter of

M/s ETF

Gurgaon Project office (MG-SE-17)

E-11, Block B 1

Extension Ground Floor

Mohan Co-operative Industrial Estate

Mathura Road

New Delhi - 110044

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 ETF, has filed an application dated April 18, 2019 (received in RBI on April 24, 2019) for compounding of contraventions 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 from one project to another, in contravention of Regulation



4(k), Regulation 4(f) 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.

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

- a. The applicant, M/s ETF, a company incorporated and registered under the laws of France specializes in construction and maintenance of railway networks, urban transport networks and industrial siblings. It is involved in the development of railway infrastructure, high speed lines, concrete slab tracks, metal and rubber wheeled tramway systems, etc.
- b. They have established following Project Offices in India for executing the following contracts
 - (i) Contract MG-SE-17 with IL & FS Rail Limited (referred as MG-SE-17, Gurgaon)
 - (ii) Railway Infrastructure Contract awarded by Rail Vikas Nigam Limited (RVNL)- Construction contract with SEW-ETF-AIL JV2 (referred as RVNL Kanpur)
 - (iii) Contract CT19A (referred as CT-19A Noida)
- c. As per the applicant, as far as possible, project expenses relating to a particular contract were met from the contract receipts relating to the said contract or from remittances obtained from the Head Office in France depending upon the requirement of funds.
- d. There are, however, occasions where funds available in the bank account for a particular contract were insufficient to meet the expenses of the said contract necessitating inter-project transfer of funds.
- e. During the FY 2016-17, ETF has obtained approval from Reserve Bank of India for inter-project transfer of funds up to ₹1,00,00,000/- from the PO of MG-SE-17 to CT-19A.
- f. Besides this, during the Financial Year 2016-17 and 2017-18 Gurgaon Project office did inter project utilization of funds and allocation of common expenditure amounting to ₹ 4,60,55,459/- (Rupees Four crore sixty lakh fifty-five thousand four hundred fifty-nine only) i.e. total debits and credits.



- g. The above activity (inter-project utilization of funds) of Gurgaon Project office does not relate to the contract secured by the foreign entity for which the project office was established. Hence, the same amounts to contravention of the 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.
- h. Regulation 4(l) 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.
- i. In the AACs for the year ended March 31, 2017 and March 31, 2018, the auditor has qualified the AACs by observing that the inter-project transfers were done without Reserve Bank approval. Further, transfer of project assets from Gurgaon Project office to another amounting to ₹ 1,06,44,273/- was also done without RBI approval. This amounts to contravention of Regulation 4(k) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 as amended from time to time, read with Para 11 of FED Master Direction No.10/2015-16 dated January 1, 2016 as updated from time to time.
- j. Regulation 4(k) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 as amended from time to time states that a person resident outside India permitted under these Regulations to establish a branch office or liaison office or



project office may apply to the concerned Authorised Dealer Category-I bank for transfer of its assets to a Joint Venture / Wholly Owned Subsidiary or any other entity in India. Authorised Dealer Category-I bank shall be guided by the instructions laid down by Reserve Bank in this regard.

- k. The above contraventions were regularized vide RBI letter No. FE.CO.FID/634/10.01.000/2018-19 dated February 25, 2019 and the applicant was granted post facto approval subject to compounding of the contravention.
- l. The total amount involved in inter-project utilization of funds and transfer of project assets from one project to another i.e. ₹ 5,66,99,732/- (Rupees Five crore sixty-six lakh ninety-nine thousand seven hundred thirty two only) has been considered as the amount of contravention.
- m. The first payment was made on May 16, 2016 and contravention was regularized on February 25, 2019. Hence the period of contravention has been treated from May 16, 2016 to February 25, 2019 i.e. 2 years 9 months and 9 days.
- n. The amount and period of contravention is as follows:
 - Amount:** ₹ 5,66,99,732/- (Rupees Five crore sixty-six lakh ninety-nine thousand seven hundred thirty two only).
 - Period:** 2 years 9 months and 9 days i.e from May 16, 2016 to February 25, 2019.

Contravention:

3. The applicant has contravened Regulation 4(k), Regulation 4(f) 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.

Regulation 4(k) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016 as amended from time to time states that a person resident outside India permitted under these Regulations to establish a branch office or liaison office or project office may apply to the concerned Authorised Dealer Category-I bank for transfer of its assets to a Joint Venture / Wholly Owned Subsidiary or any other entity in India. Authorised Dealer Category-I bank shall be guided by the instructions laid down by Reserve Bank in this regard.



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/634/10.01.000/2018-19 dated February 25, 2019.

4. The applicant was given an opportunity for personal hearing vide email dated October 7, 2019 for further submission in person and /or producing documents, if any, in support of the application. Applicant's representative Mr. R Raghunath, partner of M/s Vishwanath, Singh & Associates, appeared representing the applicant, for the personal hearing on October 11, 2019. The representative 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. 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. 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. R Raghunath 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 4(k), Regulation 4(f) 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. The contravention amount i.e. total amount involved in inter project transfer of funds and transfer of project assets from one project to another comes to ₹ 5,66,99,732/- (Rupees Five crore sixty-six lakh ninety-nine thousand seven hundred thirty two only) and the period of contravention stands at 2 years 9 months and 9 days i.e from May 16, 2016 – date of first payment 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 ₹ 2,56,799/- (Rupees Two lakh fifty six thousand seven hundred ninety-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 4(k), Regulation 4(f) and Annex D of Regulation 4(l) of Notification No.FEMA.22(R)/RB-2016 dated March 31, 2016, as amended from time to time, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹ 2,56,799/- (Rupees Two lakh fifty six thousand seven hundred ninety-nine only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Office Cell, 1st 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 Eleventh day of October 2019.

R.K. Moolchandani
Chief General Manager