



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi - 110001

Present
V. G. Sekar
Chief General Manager
Date: October 3, 2019
CA No. NDL 457/2019

In the matter of
Talf Solar India Private Limited
B-9, 6428, Vasant Kunj, South West Delhi, Delhi - 110070
(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 May 14, 2019 (received at Reserve Bank of India, New Delhi on May 27, 2019) and addendum dated June 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. The contraventions sought to be compounded are those of (i) delay in reporting foreign inward remittances received for issue of shares, (ii) delay in filing Form FC-GPR after issue of shares, and (iii) issue of shares to person resident outside India prior to receipt of the amount of consideration, in terms of paragraphs 9(1)(A), 9(1)(B) and 8 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 10, 2017, is engaged in the business of Solar Energy Systems (including poly Silicon & Chemical Technology), processing, casting, cell manufacturing, module manufacturing and system installation relating to Solar Energy.

(b) The applicant had received foreign inward remittance on two occasions during the years 2017 and 2018. The inward remittance amounting to ₹1,14,88,326.43 received on June 14, 2017 from its foreign investor, M/s Talf Services Limited, Mauritius, was reported by the applicant on January 23, 2019 with a delay of 1 year, 1 month and 17 days beyond the prescribed period, in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures or warrants in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of receipt of the amount of consideration received by Indian company for issue of shares or convertible debentures or warrants, a report in Advance Reporting Form as specified by Reserve Bank from time to time along with documents prescribed therein. Reporting of receipt of foreign inward remittance for issue of capital instruments in Advance Remittance Form was dispensed with in terms of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Amendment) Regulations, 2018 with effect from September 1, 2018. Delay in reporting of foreign inward remittance has, therefore, been taken up to August 31, 2018. On another occasion, there was delay in reporting the receipt of foreign inward remittance which was in contravention of the provisions of Regulation 13.1(1) of FEMA 20(R)/2017-RB, as then applicable, and the applicant paid Late Submission Fee (LSF) for the said contravention as required in terms of Regulation 13.2 of FEMA 20(R)/2017-RB.

(c) The applicant had issued shares on two occasions during the year 2017 and reported both of them with delay. The issue of 11,48,590 equity shares to M/s Talf Services Limited, Mauritius on June 15, 2017 for a consideration of ₹1,14,85,900/- was reported by the applicant on January 23, 2019 with a delay of 1 year, 6 months and 8 days beyond the prescribed period, in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph



9(1)(B) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures or warrants in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of issue of shares or convertible debentures or warrants, a report in Form FC-GPR as specified by the Reserve Bank from time to time together with documents prescribed therein. On the second occasion, the delay was in contravention of the provisions of Regulation 13.1(2) of FEMA 20(R)/2017-RB, as then applicable, and the applicant paid Late Submission Fee (LSF) for the said contravention as required in terms of Regulation 13.2 of FEMA 20(R)/2017-RB.

(d) The applicant had allotted 6,667 equity shares to its subscribers to the Memorandum of Association (MoA) for a consideration of ₹66,670/-. The amount of consideration thereagainst was received from the subscriber, Shri Saurabh Rao, U.K. on February 23, 2018 with a delay of 9 months and 14 days beyond the prescribed period, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, an Indian company accepting FDI has to receive the share application money from the non-resident investor prior to the allotment of shares, and the shares have to be issued/ amount to be refunded, in case shares have not been issued, within 180 days from the date of receipt of inward remittance.

(e) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 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. Ms. Timsy Aggarwal, Company Secretary, appeared for personal hearing on October 3, 2019 on behalf of the applicant. The representative admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, she submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to inadvertence, lack of awareness of the law and poor guidance from the CA/ CS firm. She 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 contravention relates to an amount of ₹1,14,88,326.43 (Rupees One Crore Fourteen Lakh Eighty Eight Thousand Three Hundred Twenty Six and Paise Forty Three only) and the period of delay is 1 year, 1 month and 17 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 contravention relates to an amount of ₹1,14,85,900/- (Rupees One Crore Fourteen Lakh Eighty Five Thousand and Nine Hundred only) and the period of delay is 1 year, 6 months and 8 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of issue of shares to person resident outside India prior to receipt of the amount of consideration as detailed in paragraph 2(d) above. The contravention relates to an amount of ₹66,670/- (Rupees Sixty Six Thousand Six Hundred and Seventy only) and the period of contravention is 9 months and 14 days.

5. It has been declared in the compounding application dated May 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 also been declared in the declaration dated June 24, 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 **₹1,87,700/- (Rupees One Lakh Eighty Seven Thousand and Seven Hundred 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 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 **₹1,87,700/- (Rupees One Lakh Eighty Seven Thousand and Seven Hundred 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 3rd day of October 2019.

Sd/-
(V.G. Sekar)
Chief General Manager