



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

S.Arumugam
Assistant General Manager

Date: November 22, 2019
CA No 4954 / 2019

In the matter of

Essar Steel India Ltd
Essar House, 11 K.K.Marg, Mahalaxmi
Mumbai 400034

(Applicant)

In exercise of the powers conferred under section 15 (1) of Foreign Exchange Management Act, 1999 and the Regulations/Rules/Notifications/Orders made there under, I pass the following

Order

The applicant has filed the application dated May 26, 2019 (received at the Reserve Bank on May 30, 2019) and an addendum dated August 19, 2019 for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) effecting remittance without prior approval when the Indian Party (IP) was under investigation. (ii) Delayed submission of APRs and (iii) Disinvestment without obtaining valuation.



The above amount to the contravention of Regulations 6(2) (iii), 15(iii) and 16(1) (iii) 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, Essar Steel India Limited (CIN No.U27100GJ1976FLC013787) is a company incorporated on June 01, 1976 under Companies Act 1956 as Essar Construction limited and the name of the company was changed to Essar Steel India limited on January 18, 2012. It is registered with Registrar of Companies, Gujarat, Dadra and Nagar Haveli and is involved in the manufacture of steel. The applicant Company set up a wholly Owned Subsidiary (WOS) Essar Steel Overseas Ltd in Mauritius by remitting USD 1 (INR 47) on August 07, 2010. Since the applicant company was under investigation by the Directorate of Intelligence (DRI) at the time of effecting the remittance, it was not eligible to make ODI under automatic route and hence the investment was in contravention of Regulation 6(2) (iii) of Notification No. FEMA 120/RB-2004 dated July 07, 2004. The WOS was later liquidated on March 09, 2012 and no valuation was done as required under Regulation 16(1)(iii) of Notification No. FEMA.120/ RB-2004 dated July 07, 2004 and hence a contravention of the Regulation *ibid*. The transactions were taken on record on August 14, 2019. Further, the applicant had reported Annual Performance Reports (APRs) for the accounting years 2011 and 2012 with a delay on June 15, 2013 and December 17, 2013 contravening Regulation 15(iii) of Notification *ibid*.

3. (i) In terms of Regulation 6(2) (iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, Overseas Direct Investment is permitted in certain cases provided “The Indian Party is not on the Reserve Bank's Exporters caution list / list of defaulters to the banking system circulated by the Reserve Bank or under investigation by any investigation / enforcement agency or regulatory body.



(ii) Further, Regulation 15 (iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, states that, “An Indian Party which has acquired foreign security in terms of the Regulation in Part I shall submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before a specified date, an Annual performance Report (APR) in Part III of Form ODI in respect of each JV or WOS outside India.....”.

(iii) Further, in terms of Regulation 16(1) An Indian Party may transfer, by way of sale to another Indian Party which complies with the provisions of Regulation 6 above, or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions:.....(iii) if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/2310/15.20.67/2019-20 dated November 06, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on November 18, 2019 during which Mr Prahalad Pandit, General Manager, Essar Steel India Ltd and Ms Leena Agarwal, Senior Manager, Essar Steel India Ltd represented the applicant company. The representatives, of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations and was unintentional. The application is, therefore, 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 Regulations 6(2) (iii), 15(iii) and 16(1) (iii) of Notification No.FEMA.120/2004-RB amount of contravention is Rs.47/- and period of contravention ranges from seven years five months to nine years and one month approximately.



6. It has been declared in the compounding application dated May 26, 2019, that the particulars given by the applicant in the application are true and correct to the best of his knowledge and belief. The applicant had declared that they are under investigation by DRI, Mumbai, Jamnagar, Bhubaneswar, Kakinada Offices and Enforcement Directorate (DoE), Mumbai and Ahmedabad offices. The Reserve Bank as per the laid down procedure had sought a No Objection Certificate, to proceed with the compounding application from the DoE on June 20, 2019 and had sent a reminder on July 07, 2019 and has not received any reply till date. 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 and if the said declarations 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 83/- (Rupees Eighty 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, Regulations 6(2)(iii),15(iii) and 16(1)(iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 83/- (Rupees Eighty 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 22nd of November, 2019

Sd/-
(S Arumugam)
Assistant General Manager