



In the

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

Present

Vandana Khare
General Manager

Date: May 29, 2019
CA No 4880 / 2019

In the matter of

M/s Eastman Power Plant Engineering Company (Pvt.) Ltd.
1, Abdul Hamid Street, Kolkata - 700069

(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 January 24, 2019 (received in the Reserve Bank on January 28, 2019), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are (i) borrower not eligible to avail ECB (ii) availing ECB from a non-recognized lender, (iii) availing ECB for an end-use that was not permitted (iv) non-compliance with minimum average maturity period guidelines, (v) not meeting the reporting requirements.

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 May 3, 2000, as amended from time to time (hereinafter referred to as Notification No. FEMA 3 /2000-RB), read with Paragraphs 1(i), further read with Paragraph 4 of schedule I and Paragraph 2 of the Annex to A.P. (DIR Series) Circular No.32 dated November 30, 2015 and Paragraphs 1(iii), 1(iv), 1(v) and 1(xii) of Schedule I to this Regulation, as amended from time to time.

2. The relevant facts are as under: The applicant company, namely, M/s Eastman Power Plant Engineering Company (Pvt.) Ltd was incorporated on July 31, 1973 under the Companies Act, 1956 (CIN U31200WB1973PTC028921). M/s Wepuko Pahnke GmbH (M/s Wepuko), a company based in Germany, received a contract from Mishra Dhatu Nigam, a Government of India Undertaking under Ministry of Defence, to carry out the work of revamping of 15MN Forging Press. The order value of the project was ₹ 1,47,04,452/-. M/s Wepuko appointed the applicant company as their partner and sub-contractor for execution of this project. In order to meet the working capital requirement of the project the applicant company requested M/s Wepuko to give a temporary interest free advance of 30% of the order value amounting to ₹ 44,11,335/-. Accordingly, the applicant company entered into a loan agreement with M/s Wepuko on August 30, 2017. As part of the agreement, the applicant company received two inward remittances (₹ 14,70,445/- on November 06, 2017 and ₹ 29,40,890/- on January 31, 2018) from M/s Wepuko as interest free advance to mobilize manpower and tools for execution of the project. The above transaction was in contravention of Para 1(i) read with Paragraph 4 of schedule I and Paragraph 2 of the Annex to A.P. (DIR Series) Circular No.32 dated November 30, 2015, Paragraph 1(iii), (iv),(v) and (xii) to Schedule I read with Regulation 6(1) of FEMA 3/2000. The entire transaction was unwound on January 02, 2019.

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, provides the eligibility criteria for borrowers for availing external commercial borrowings. The Reserve



bank has amended the criteria for time to time, by issuing necessary directions through A.P. (DIR Series) Circulars and Master Directions. The applicant was engaged in the activity of sub-contracting, an activity in which ECB was not permitted as per the extant instructions, and hence was not an eligible borrower.

Paragraph 4 of Schedule I to FEMA Notification No. FEMA.3/2000-RB, provides that Reserve Bank may in consultation with the Government of India, prescribe for the automatic route, any provision or proviso regarding various parameters....such as addition/deletion of borrowers eligible to raise such borrowings, overseas lenders,...etc.

Paragraph 1(iii) of Schedule I to FEMA Notification No. FEMA.3/2000-RB, provides that, “the borrowings in foreign currency by way of issue of bonds, floating rate notes or other debt instruments by whatever name called may be made from – (a) International bank or export credit agency or international capital market, or (b) Multilateral financial institutions, namely, IFC, ADB, CDC etc., or (c) Foreign collaborator or foreign equity holder as specified by the Reserve Bank, or (d) Supplier of equipment provided the amount of loan raised does not exceed the total cost of the equipment being supplied by the lender, or (e) Any other eligible entity as prescribed by the Reserve bank in consultation with the Government of India”. The applicant availed ECB from non-resident entity which did not hold any equity in the applicant company and hence non-resident entity was not an eligible lender.

Paragraph 1(iv) of Schedule I to FEMA Notification No. FEMA.3/2000-RB provides the end-uses for which ECB is permitted. However, availing ECB for working capital purpose is not a permitted end-use until it is from foreign equity holder.

Paragraph 1(v) of Schedule I to FEMA Notification No. FEMA.3/2000-RB, as then applicable, provides that “the maturity of the borrowings in foreign exchange shall not be less than 3 years for the loan of an amount up to USD 20 million or its equivalent”.

Paragraph 1 (xii) of Schedule I to FEMA Notification No. FEMA.3/2000-RB states that “The borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/6407/15.20.67/2018-19 dated April 26, 2019 for further submission in person



and/or producing documents, if any, in support of the application. However, the company vide their email dated May 13, 2019 submitted that they were unable to appear for personal hearing.

It has also been declared in the compounding application dated January 24, 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 enclosed declaration of the said 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. 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. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced, and submissions made in the application and the accompanying documents.

5. I have given my careful consideration to the documents on record and submissions made by the applicant company. 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) further read with Paragraph 4 of schedule I and Paragraph 2 of the Annex to A.P. (DIR Series) Circular No.32 dated November 30, 2015, Paragraph 1(iii), (iv), (v) and (xii) of Schedule I to this Regulation. The amount of contravention is ₹ 44,11,335/- and the period of contravention is approximately 12 to 14 months.

6. 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 INR 72,793/- (Rupees Seventy Two Thousand Seven Hundred and Ninety Three only) will meet the ends of justice in the circumstances of this case.

7. 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) further read with Paragraph 4 of schedule I and Paragraph 2 of the Annex to A.P. (DIR Series) Circular No.32 dated November 30, 2015, Paragraph 1(iii), (iv), (v) and (xii) of Schedule I to this Regulation, on payment of a sum of INR 72,793/- (Rupees Seventy Two Thousand Seven Hundred and Ninety Three only), which shall be deposited by the applicant with Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai 400001 by a demand draft drawn in favor 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 29th day of May, 2019

Sd/-

(Vandana Khare)

General Manager