



In the

Reserve Bank of India
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Marg
Mumbai - 400 001

Present

Devinder Kumar
Deputy General Manager

Date: December 7, 2017
CA NO: 4489/2017

In the matter of

Shree Bhavani Power Projects Private Limited
D-21, First Floor, Panchsheel Enclave, New Delhi-110 017

(Applicant)

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

Order

The applicant has filed a compounding application dated August 10, 2017 (received in the Reserve Bank of India on August 21, 2017) for compounding the 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) borrowing in foreign exchange from the non-resident individual, (ii) utilisation of borrowing in foreign exchange for a non-specified purpose, (iii) borrowing in foreign exchange without obtaining loan registration number from the Reserve Bank and (iv) non-adherence to the specified reporting procedure. The above were in contravention of Paras 1(iii), 1(iv)(B), 1(xi) and 1(xii)



of Schedule-I to then prevailing 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).

2. The relevant facts of the case are as follows: The applicant was incorporated as Shree Bhavani Power Projects Private Limited on June 21, 2006 under the Companies Act, 1956 (CIN NO: U40102DL2006PTC149949). The applicant is engaged in the business of generation and supply of electricity and other allied activities. The applicant took an interest free loan of GBP 20,000 (equiv. to ₹16,13,984/-) from Shri David Luyombya, one of its directors. The amount was received by the applicant on April 26, 2007 and was repayable upon the project achieving positive cash flows. In February 2017, the applicant through its authorised dealer approached Reserve Bank for approval to repay the loan amount. The Reserve Bank, vide letter dated June 21, 2017, conveyed 'no objection' for repayment of loan subject to usual conditions and advised that the above contraventions can be compounded (a voluntary process) provided an application in prescribed format is made along with the requisite documents and fees.

3. Thus, the applicant contravened the provisions of Paras 1(iii), 1(iv)(B), 1(xi) and 1(xii) of Schedule-I to Notification No. FEMA 3/2000-RB.

3.1 Para 1(iii) of Schedule-I prescribes 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).....(d), (e) Any other eligible entity as prescribed by the Reserve Bank in consultation with Government of India.

3.2 Para 1(iv)(B) of Schedule-I states that other than the purposes specified in Para 1(iv)(A), the borrowings shall not be utilised for any other purpose including the purposes, namely:

“On-lending, investment in capital (stock) market, investment in real estate business, working capital requirements, general corporate purpose, and repayment of Rupee loans.”



3.3 Para 1(xi) of Schedule-I (as amended from time to time) prescribes that the 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 from the Reserve Bank.

3.4 Para 1(xii) of Schedule-I requires 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 the Reserve Bank's letter FED.CO.CEFA.No./2857/15.20.67/2017-18 dated September 29, 2017 for further submission in person and /or producing documents, if any, in support of the application. The personal hearing was held on November 28, 2017 during which Shri Bhanu Pratap Singh, Managing Director represented the applicant. The representative of the applicant, while admitting the contraventions for which compounding has been sought, submitted that the lapses were inadvertent and requested that a lenient view may be taken in the matter. The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as other documents and submissions made in this context by the applicant during the personal hearing.

5. I have given my careful consideration of the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Paras 1(iii), 1(iv)(B), 1(xi) and 1(xii) of Schedule-I to Notification No. FEMA 3/2000-RB. The amount of contravention is ₹16,13,984/- and the period of contravention is ten years and three months.

6. In terms of provisions of section 13 of FEMA, any person contravening any provision of the Act shall be liable to pay up to three times the sum involved in the contravention upon adjudication. However, after considering the submissions made by the applicant with regard to the contraventions and the entire relevant facts and circumstances of the case, I am persuaded to take a lenient view on the amount for which the contraventions are to be compounded and I consider that an amount of ₹1,21,940/- (Rupees One lakh twenty one thousand nine hundred forty only) will meet the ends of justice.



7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, the admitted contravention committed by the applicant, viz., of Paras 1(iii), 1(iv)(B), 1(xi) and 1(xii) of Schedule-I to the Notification No. FEMA 3/2000-RB on payment of a sum of ₹1,21,940/- (Rupees One lakh twenty one thousand nine hundred forty 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 "Reserve Bank of India" and payable at "Mumbai" within a period of 15 days from the date of the 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 shall apply.

The application is disposed of accordingly.

Dated this the seventh day of December, 2017.

Sd/-

(Devinder Kumar)
Deputy General Manager