



In the

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

Present

Shekhar Bhatnagar
Chief General Manager

Date: January 23, 2018
CA No. **4519/2017**

In the matter of

Indian Energy Exchange Limited
4th floor, TDI Center, Plot No 7,
District Center Jasola, New Delhi 110 025

(Applicant)

In exercise of the 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 September 11, 2017 (received in the Reserve Bank of India on September 13, 2017) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded relate to non-adherence to the conditions which were stipulated for receiving foreign investments and failure to bring the shareholding in line with the FDI Policy within the time period given by Foreign Investment Promotion Board (FIPB), Ministry of Finance, Government of India in contravention of the provisions contained in Regulation 5(1)(i) read with para F.8 of Annex B to Schedule 1 of 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 3rd May 2000, as then applicable (hereinafter referred to as Notification No. FEMA 20/2000-RB) and the consolidated FDI Policy.



2. The relevant facts of the case are as follows: Indian Energy Exchange Limited (IEX), the applicant, is an unlisted public limited company incorporated on March 26, 2007 (CIN: U74999DL2007PLC277039) under the Companies Act, 1956 and is a power exchange registered under the Central Electricity Regulatory Commission (Power Market) Regulations 2010. In September 2010, the non-resident investors viz Bessemer Venture Partners Trust (BVPT) and Lightspeed Venture Partners VIII, Mauritius (LSVP), each acquired 15,16,431 equity shares of Rs10/- each constituting 5.56% of total equity share capital of the company through secondary transactions under the automatic route for an aggregate amount of Rs.17,50,11,300/- each. Additionally, both BVPT and LSVP also subscribed to 15,16,431 Compulsory Convertible Preference Shares(CCPS) of Rs.10/- each convertible to 5% of equity share capital on a fully diluted basis. At the time of the aforesaid investments in 2010, there were no specific provisions regulating foreign investment in Power Exchanges. Subsequently, the DIPP issued Press Note No. 8 in 2012 (which came into effect on September 20, 2012), pursuant to which, foreign investment in Power Exchanges was limited to 49%, subject to compliance with certain other conditions which, inter alia, required that no non-resident investor or entity, including persons acting in concert, will hold more than 5% of the equity in these companies. Accordingly, the investors jointly with the company made an application dated January 31, 2013 to the FIPB, seeking post-facto approval for the investments made in the company. The company was directed by FIPB vide letter no. 30/2013- FC.I dated May 01, 2013 to bring the shareholding pattern in line with the FDI policy within one year. The investors applied for an extension of time to the FIPB and the Board granted an extension of one year, followed by another extension of one year i.e. till April 30, 2015 vide letter No. 30/2013-FC-1 dated May 16, 2014 to bring the shareholding pattern according to para 6.2.26.1 of Circular 1 of 2012 (introduced vide Press Note No. 8 of 2012).

The applicant was further advised by FIPB vide letter No.30/FC/2013-FIPB dated May 29, 2015 to align its equity, fulfil all conditions prescribed in Para 6.2.19.2 of the consolidated FDI Circular of April 2014, divest the FDI stake immediately and apply to the RBI for compounding. BVPT vide letter dated June 04, 2015 informed IEX of having divested its stake in 15,16,431 equity shares to another non-resident viz Pathfinder Mauritius Ltd (PFL). However, it was observed that PFL was holding 5.56% after



acquiring the stake from BVPT which was in contravention of the FDI Policy. LSVP informed the company on August 17, 2015 of having divested 0.56% of its equity stake in IEX. On March 04, 2016 PFL informed IEX that they had divested their excess shareholding amounting 0.56% to a domestic investor in order to comply with the FDI policy.

In case of another non-resident investor viz M/s Multiples Private Equity Fund I Ltd, Mauritius (MPEFL), FIPB vide letter No. 6 (2012)/ 241 (2011) dated February 15, 2012 granted its approval to acquire upto 10.9% of the issued, subscribed and paid up share capital of IEX on a fully diluted basis. Accordingly, on March 26, 2012 MPEFL acquired 18,19,717 equity shares in IEX from M/s PTC India Financial Services Limited for an amount of Rs.30,30,01,077/-. As on March 25, 2016, MPEFL held these shares in IEX, which amounted to 6.316% of IEX's paid up equity share capital. FIPB vide letter No. 30/FC/2013 dated June 20, 2016 directed IEX to provide an undertaking within 10 days that they would adhere to all conditions of Para 6.2.19.2 of FDI policy and bring down the foreign shareholding held by MPEFL to the threshold limit of 5% within 6 months. On December 23, 2016 MPEFL informed IEX of having sold 190,609 equity shares amounting to 0.6618% of the share capital to another non-resident investor and as a result its stake in IEX was reduced to 5.6542%. On March 03, 2017 MPEFL informed IEX of having further disposed 188,501 equity shares amounting to 0.6542% of the share capital to another resident thereby bringing down its stake to 5%. The same was reported by IEX to FIPB on March 06, 2017. The following delays in bringing the shareholding in line with the FDI Policy within the time period given by FIPB was in contravention of Regulation 5(1)(i) read with para F.8 of Annex B to Schedule 1 of FEMA 20/2000-RB, as then applicable.

Non-resident Investor	Deadline given by FIPB to align shareholding with the FDI Policy	Actual alignment (reducing the shareholding below 5% in IEX)	Amount (the cost of acquisition of equity shares of IEX in excess of the prescribed limit)
BVPT	30.04.2015	04.06.2015	INR 1,75,01,107
PFM	04.06.2015	04.03.2016	INR 1,75,01,107



LVSP	30.04.2015	27.08.2015	INR 1,75,01,107
MPEFL	20.12.2016	03.03.2017	INR 6,31,25,607

3. In terms of regulation 5(1)(i) of FEMA 20/2000-RB 'A person resident outside India (other than a citizen of Bangladesh or Pakistan) or an entity incorporated outside India (other than an entity in Bangladesh or Pakistan), may purchase shares or convertible debentures or warrants of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1'. In terms of Para 2 of Schedule 1 to FEMA 20/2000-RB 'An Indian company,may issue shares or convertible debentures or warrants to a person resident outside India, subject to the limits prescribed in Annex B to this schedule, in accordance with the Entry Routes specified therein and the provisions of Foreign Direct Investment Policy, as notified by the Ministry of Commerce & Industry, Government of India, from time to time'. Further, in terms of Para F.8 of Annex B to Schedule I of Notification No. FEMA 20/2000-RB, as then applicable, foreign investment in the power exchange sector was permissible upto 49% under the Automatic route, subject to fulfilment of certain conditions which inter-alia provided that no non-resident investor / entity, including persons acting in concert, will hold more than 5% of the equity in these companies.

Whereas the applicant did not comply with the conditions above which were stipulated for receiving foreign investments as the said investor limit of 5% was breached by four non-resident investors.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/5891/15.20.67/2017-18 dated January 11, 2017 for further submission in person and/or producing documents, if any, in support of the application. Shri S.N. Goel, Managing Director & CEO, Shri Vineet Harlalka, CFO & Company Secretary from IEX along with consultants viz Shri Kishore Joshi and Shri Prashant Prakhar represented the applicant during the personal hearing held on January 22, 2018. The representatives of the applicant admitted the contraventions for which compounding had been sought. They submitted that the delay in aligning the shareholding was mainly due to adverse market conditions and that the same was inadvertent and unintentional. They 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.

5. FIPB vide its letter No.30/2013-FC-1 dated September 12, 2016 referred the matter to Directorate of Enforcement (DoE) for necessary action under FEMA, 1999. DoE issued a Show Cause Notice dated June 15, 2017 to the applicant and its directors for the above FEMA contraventions. Further in response to RBI's letter FE.CO.CEFA./3084/15.20.67/2017-18 dated October 05, 2017 DoE vide letter F No.T-4/2-D/HQ/2017/ADE dated December 28, 2017 replied that it did not have any objection to compounding by RBI in the matter. Accordingly, the above contraventions which are being compounded in this Order is without prejudice to any other action which may be taken by any authority under the extant laws. I have given my careful consideration to the documents on record and the submissions made by the applicant. I hold that the applicant has contravened the provisions of FEMA, 1999 issued in terms of Regulation 5(1)(i) read with para F.8 of Annex B to Schedule I of Notification No. FEMA 20/2000-RB, as then applicable, in respect of four of its non-resident investors. The total amount of contravention was Rs.11,56,28,928/- approximately while the period of contravention ranges two months to nine months approximately.

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. However, taking into account the relevant facts and circumstances of the case as stated in the foregoing paragraphs, 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 Rs.6,28,145/- (Rupees six lakh twenty eight thousand one hundred and forty five only) will meet the ends of justice.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 5(1)(i) read with para F.8 of Annex B to Schedule I of Notification No. FEMA 20/2000-RB, as then applicable, by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.6,28,145/- (Rupees six lakh twenty eight thousand one hundred and forty five 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 of accordingly.

Dated this the twenty third day of January, 2018

Sd/-

(Shekhar Bhatnagar)
Chief General Manager