



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
Secretariat Road
Saifabad, Hyderabad 500 004

Present

R Subramanian
Regional Director

Date: February 19, 2018
C.A. HYD 254

In the matter of

M/s. Agarwal Sponge and Energy Private Limited
H. No. 15-1-52/1
Jagdish Nivas, 1st Floor, Old Feelkhana
Hyderabad-500012
Telangana

(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 compounding application dated October 11, 2017 received on October 13, 2017 for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are (i) delay in reporting receipt of foreign inward remittances and (ii) delay in submission of Form FC-GPR to Reserve Bank of India after issue of shares towards subscription to equity in terms of Paragraph 9(1)(A) and Paragraph 9(1)(B) 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 3rd May 2000 (hereinafter referred to as Notification No. FEMA 20 /2000-RB) as then applicable.

2. The relevant facts of the case are as follows:

- a) The applicant is a resident company incorporated as Private Limited Company under the Companies Act, 1956 on 22.01.2004 (CIN: U27109AP2004PTC042472). The company is engaged in the business of manufacturing sponge iron and generation of electricity.
- b) The applicant had received foreign inward remittances from two foreign investors towards advance for subscription to equity shares as indicated below.

Sl No	Name of Remitter	Total Amount (INR)	Date of Receipt	Date of Reporting
1	Sega Exports Ltd.	18607279	26.10.2009	16.11.2009
2	Sega Exports Ltd.	18799272	28.10.2009	16.11.2009
3	Sega Exports Ltd.	9415270	05.11.2009	16.11.2009
4	Mohan Nainani	27448079	22.05.2012	29.06.2012
5	Sega Exports Ltd.	30632856	23.10.2013	21.11.2013
	Total	10,49,02,756		

The applicant received foreign inward remittances amounting to ₹10,49,02,756/- as indicated above out of which one remittance of ₹2,74,48,079/- was reported to Reserve Bank of India with a delay of 8 days beyond the prescribed period of 30 days. Whereas in terms of Paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report to the Reserve Bank of India as per the prescribed procedure not later than 30 days from the date of receipt of the amount of consideration. The company has refunded the remittance of



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₹3,06,32,856/- to the foreign investor on 25.02.2014 within the prescribed time period of 180 days from the date of receipt of inward remittance.

c) The company allotted shares and filed form FC-GPRs as indicated below:

Sl No	Name of investor	Date of allotment of shares	Number of shares/CCPS allotted	Amount for which shares allotted (INR)	Date of reporting
1	Sega Exports Ltd.	18.03.2010	1300606	46821816	15.04.2010
2	Mohan Nainani	07.11.2012	422273	27447745	28.06.2014
	Total		1722879	74269561	

The applicant filed form FCGPRs for issue of shares amounting to ₹7,42,69,561/- as indicated above out of which shares amounting to ₹2,74,47,745/- was reported with a delay of 1 year 6 months 22 days approximately beyond the stipulated period of 30 days. Whereas in terms of Paragraph 9(1)(B) of Schedule 1 to Notification no. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to Reserve Bank of India a report in form FCGPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident outside India.

3. (a) The applicant was given an opportunity for personal hearing vide Reserve Bank's letter No. HY.FE.FID/1439/14.66.003/2017-18 dated February 14, 2018 for further submission in person and/or producing documents, if any, in support of the application.

(b) The applicant appeared for personal hearing on February 16, 2018 during which Shri. Murarilal Agarwal, Executive Director represented the applicant. The Director of the company admitted the contraventions for which the compounding has



been sought. During the personal hearing it was submitted that the delay was not wilful or with a malafide intention but was on account of change in their internal management. In view of the foregoing, the representative of the applicant requested to take a lenient view in disposal of the application. The application for compounding is, therefore, being considered on the basis of the averments made in the application as well the submissions made in this context by the applicant during the personal hearing.

4. I have given my careful consideration to the documents on record. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:-

(a) Paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB for delay in reporting the receipt of consideration towards issue of shares amounting to ₹2,74,48,079/- and the delay is 8 days.

(b) Paragraph 9(1)(B) of Schedule 1 to Notification No. 20/2000-RB for delay in submission of Form FC-GPR to Reserve Bank of India after issue of shares to persons resident outside India and the contravention relates to an amount of ₹2,74,47,745/- and the period of contravention is 1 year 6 months 22 days approximately.

5. It has been declared in the compounding application dated October 11, 2017 that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has been declared in the declaration dated October 11, 2017 furnished with 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. 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 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 contravention is to be compounded and I consider that an amount of Rs. **1,03,000/-(Rupees One Lakh Three Thousand Only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions, namely, the contraventions of Paragraph 9(1)(A) and Paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA-20/2000-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs. **1,03,000/-(Rupees One Lakh Three Thousand Only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 1st Floor, Saifabad, Hyderabad - 500004 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Hyderabad 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 19th day of February 2018

Sd/-

(R Subramanian)
Regional Director



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