



In the

Reserve Bank of India
10/3/8, Nrupathunga Road
Bengaluru-560001

Present

Ms. M Rama Kumari
Deputy General Manager

Date: February 09, 2018
C.A. BGL 263/2017

In the matter of

M/s Shinwa (India) Engineering & Trading Private Limited
Indra Krupa, No.17, Ward No.54, 3rd Floor
100 feet Ring Road, 3rd Phase, 6th Block
Banashankari-3rd Stage
Bengaluru - 560085
(Applicant)

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

ORDER

The applicant has filed a compounding application dated October 30, 2017, received at this office of Reserve Bank of India, Bengaluru on November 10, 2017, 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) delay in reporting receipt of foreign inward remittances towards subscription to equity, (ii) non-issue of equity instruments to the foreign investor, a person resident outside India, within 180 days of the receipt of the inward remittance, and (iii) delay in submission of Form FC-GPRs to the Reserve Bank, after issue of shares to a person resident outside India, in terms of paragraphs 9(1)(A), 8 and 9(1)(B), respectively, of Schedule I 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 May 03, 2000, and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).



2. The relevant facts of the case are as follows: M/s Shinwa (India) Engineering & Trading Private Limited, was incorporated on July 07, 2008, under the Companies Act, 1956. The company is engaged in the business of import, sale, installation, technical support and maintenance of factory automation and quality control related equipment and accessories and spare parts. The applicant had received funds towards share application money from the foreign investor, namely, M/s Shinwa Intec Co Limited, Thailand, as shown below:

Table – 1

Sl. No	Date of Receipt	Amount (INR)	Date of Reporting to RBI /AD
1	22-08-2008	8,50,000.00	24-02-2009
2	01-10-2008	15,00,000.00	24-02-2009
3	31-07-2009	14,99,779.00	28-08-2009
4	15-07-2010	10,60,000.00	12-08-2010
5	13-02-2014	2,00,00,000.00	11-03-2014
	Total	2,49,09,779.00	

The applicant reported receipt of remittances to the Reserve Bank of India / Authorized Dealer Bank, with a delay ranging from three months and twenty four days to five months and three days approximately, beyond the stipulated period of 30 days in respect of remittances as indicated in Table-1 above at Sr. Nos. 1 and 2. Whereas, in terms of paragraph 9(1)(A) of Schedule I 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.

3. Shares to the extent of Rs.10,60,000.00, relating to the inward remittance received on July 15, 2010, were allotted on August 10, 2011, beyond the stipulated period of 180 days with the prior approval of Reserve Bank of India, vide letter FE.BG.FID.No.557/21.07.144/2011-12 dated July 29, 2011. Whereas, in terms of paragraph 8 of Schedule 1 to Notification no. FEMA 20/2000- RB,



dated May 3, 2000, and as amended from time to time, read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007, the shares have to be issued/amount refunded within 180 days of receipt of inward remittance. The amount of contravention is **Rs.10,60,000.00**, and the period of delay is seven months approximately.

4. The applicant company had allotted equity shares to the foreign investors and filed Form FC-GPRs with Reserve Bank/AD Bank as indicated below:

Table – 2

Sl. No.	Date of Allotment	Amount (INR)	Date of reporting to RBI/AD
1	29-09-2008	8,50,000.00	24-02-2009
2	26-01-2009	15,00,000.00	05-03-2009
3	11-01-2010	14,90,000.00	06-04-2010
4	10-08-2011	10,60,000.00	06-09-2011
5	30-05-2014	2,00,00,000.00	05-06-2014
	Total	2,49,00,000.00	

The applicant had filed Form FC-GPRs on allotment of shares with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank with a delay ranging from eight days to three months and twenty six days approximately, beyond the prescribed period of 30 days in respect of allotment of shares as indicated in Table - 2 above at Sr. Nos. 1 to 3. Whereas, in terms of Paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000, an Indian company issuing shares in accordance with these Regulations has to submit to the Reserve Bank of India, a report in Form FC-GPR, along with documents prescribed therein, within 30 days from the date of issue of shares to persons resident outside India.

5. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID (CEFA) No. 3011/22.07.144/2017-18 dated February 07, 2018, for further submission in person, and/or producing documents, if any, in support of the application. The applicant's authorized representative Mr. Nygil



Kuriakose, Practicing Company Secretary, who appeared for the personal hearing on February 09, 2018, admitted the contraventions as stated in paragraphs 2, 3 and 4 above, committed by the applicant, for which compounding has been sought. During the personal hearing, it was submitted that the delay was not willful or with malafide intention, but was mainly due to inadvertence, and the same would not be repeated. In view of the above, he 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 as other documents and submissions made in this context by the applicant during personal hearing and thereafter.

6. I have given my careful consideration to the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:

(a) Paragraph 9 (1) (A) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in reporting of foreign inward remittances received towards subscription to equity as detailed in paragraph 2 above. The contravention relates to an amount of **Rs.23,50,000.00**, and the period of delay ranges from three months and twenty four days to five months and three days approximately;

(b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, as the applicant had allotted the shares to the foreign investors, beyond the stipulated period of 180 days from the date of receipt of inward remittance, as detailed in paragraph 3 above. The contravention relates to an amount of **Rs.10,60,000.00**, and the period of delay is seven months approximately; and

(c) Paragraph 9 (1) (B) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in submission of Form FC-GPRs to the Reserve Bank after issue of shares to persons resident outside India, as detailed in paragraph 4 above. The contravention relates to an amount of **Rs.38,40,000.00**, and the



period of delay ranging from eight days to three months and twenty six days approximately.

7. It has been declared in the compounding application dated October 30, 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 November 30, 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. It has further been declared that the applicant has not filed any appeal under Section 17 or Section 19 of FEMA, 1999. 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.

8. 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.55,460.00 (Rupees Fifty Five Thousand Four Hundred and Sixty only)**, will meet the ends of justice.

9. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1)(A), 8 and 9(1)(B) of Schedule I 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.55,460.00 (Rupees Fifty Five Thousand Four Hundred and Sixty only)**, which shall be deposited by the applicant with the Reserve Bank of



India, Foreign Exchange Department, 2nd Floor, 10/3/8, Nrupathunga Road, Bengaluru – 560001, by a demand draft drawn in favour of the “Reserve Bank of India” and payable at Bengaluru 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 Ninth day of February, 2018.

Sd/-

(M Rama Kumari)
Deputy General Manager