



In the
Reserve Bank of India
Foreign Exchange Department
3rd Floor
15, Netaji Subhash Road
Kolkata-700001

Present

Monisha Chakraborty
General Manager

Date: - December 14, 2017
C.A 062/2017

In the matter of

M/s ITH Engineering India Pvt Ltd

2/3, Justice Dwarkanath Road, Justice Court, Second Floor, Kolkata- 700020,
West Bengal, India

(Applicant)

In exercise of the powers 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 November 16, 2017 (received at Reserve Bank on November 16, 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 as follows:-

- i) Delay in submission of form FC-GPR to the Reserve Bank of India after issue of shares to a company/entity/person resident outside India beyond the stipulated period of 30 days in terms of paragraph 9(1) 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 May 3, 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).
- ii) Delay in submission of Advance Remittance Form to the Reserve Bank of India after receipt of consideration amount from foreign investors beyond the stipulated



period of 30 days in terms of paragraph 9(1) A to Schedule I of Notification No. FEMA 20/2000.

iii) Issue of shares against receipt of part consideration amount (issue of shares against shortfall amount) in terms of para 8 of Notification No. FEMA 20/2000-RB.

2. The relevant facts of the case are as follows: - The applicant was incorporated under the Companies Act, 1956 on February 20, 2013. The applicant is engaged in the wholesale business of other machinery and equipments (hydraulic category). The applicant had received inward foreign remittances as Foreign Direct Investment (FDI) from foreign investors Frank Hohmann and Joerg Hohmann, based in Germany for subscription to its equity shares on the following occasions as tabulated below:-

M/s ITH Engineering India Pvt Ltd:-

Inflow of foreign remittance (FDI) and utilisation thereof:-

Table 1

| SI | Amt(INR) | Date of inflow | Date of reporting to RBI | Delay Under para 9(1) A | Date of allocation of shares | Date of reporting to RBI | Delay under para 9(1)B |
|-------|-----------|----------------|--------------------------|-------------------------|------------------------------|--------------------------|------------------------|
| 1 | 8,05,309 | 03.05.13 | 31.05.13 | Nil | 20.02.13 | 17.03.16 | 2yrs 11m 24d |
| 2 | 8,04,469 | 06.05.13 | 31.05.13 | Nil | | | |
| 3 | 23,51,641 | 20.11.13 | 24.04.15 | 16m3d | 31.03.14 | 01.10.15 | 17 m |
| 4 | 23,63,888 | 20.11.13 | 24.04.15 | 16m3d | | | |
| 5 | 44,906 | 22.08.16 | 18.04.17 | 6m27d | - | - | - |
| 6 | 33,501 | 27.09.16 | 22.04.17 | 5m26d | - | - | - |
| Total | 64,03,714 | | | | | | |

[* date of first reporting to AD Bank has been taken for computation of reporting delay

m-months; d-days]

Table 2

Shares allocated against receipt of remittance:-

| SI | Amt(INR) | Amt. after deduction of bank charges (INR) | No of shares allocated | Value/ share (INR) | Total value of shares allocated | Shortfall/ Excess amount in shares issued (INR) | Net shortfall (INR) |
|----|----------|--|------------------------|--------------------|---------------------------------|---|---------------------|
| 1 | 8,05,309 | 8,04,524 | 8,000 | 100 | 16,00,000 | 8,209 | 78,407 |



| | | | | | | | |
|-----|-----------|-----------|--------|-----|-----------|-----------------------|--|
| 2 | 8,04,469 | 8,03,685 | 8,000 | 100 | | (excess) | |
| 3 | 23,51,641 | 23,50,570 | 48,000 | 100 | 48,00,000 | 86,616 (shortfall) | |
| 4 | 23,63,888 | 23,62,814 | | | | | |
| 5 | 44,906 | N.A | N.A | N.A | N.A | N.A | |
| 6 | 33,501 | N.A | N.A | | | | |
| Tot | 64,03,714 | | | | | | |

[* The net shortfall amount of Rs.78,407/- has been brought in by the applicant in two tranches of Rs.44,906/- and Rs.33501/- (Sl. 5&6) from two different investors as mentioned in Table 3. Hence shares have not been separately allocated against these remittances.]

Table 3:-

Investor details and shortfall incurred therein:-

| SI | Amt(INR) | Date of inflow | Name of Overseas investor |
|-------|-----------|----------------|---------------------------------|
| 1 | 8,05,309 | 03.05.13 | Frank Hohmann |
| 2 | 8,04,469 | 06.05.13 | Joerg Hohmann |
| 3 | 23,51,641 | 20.11.13 | Frank Hohmann |
| 4 | 23,63,888 | 20.11.13 | Joerg Hohmann |
| 5 | 44,906 | 22.08.16 | Frank Hohmann(shortfall amount) |
| 6 | 33,501 | 27.09.16 | Joerg Hohmann(shortfall amount) |
| Total | 64,03,714 | | |

3. Reporting of receipt of foreign inward remittances to RBI (Para 9(1) A of Schedule I of FEMA 20/2000):-

The applicant had reported the remittances in Sl. 3-6 of Table 1 to the Reserve Bank with an approximate delay ranging from 5 months, 26 days to 16 months, 3 days. Whereas an Indian company receiving foreign direct investment from overseas investor for issue of shares should report the receipt of consideration of amount within 30 days of receipt in terms of paragraph 9(1) A of Schedule I of Notification FEMA 20/2000. Thus the applicant is in contravention of the aforementioned provision with the eligible amount for contravention being Rs.78407/- and the approximate duration of contravention ranging from 6 to 7 months.

4. Allocation of shares against consideration received-reporting to RBI in form FC-GPR. (Para 9(1) B of Schedule I of FEMA 20/2000).

The applicant allotted equity shares for a face value of Rs.100/- per share and filed FC-GPRs on dates indicated in Table 1. There is an approximate delay ranging from 17 months to 2years, 11months ,24 days in filing FC-GPRs to RBI beyond the stipulated period of 30 days from the date of allocation of shares. Whereas in terms of provisions of para 9(1) B of schedule 1 to FEMA 20/2000-RB, an Indian company



issuing shares in accordance with these regulations has to submit to Reserve Bank a report in form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident/company/entity resident outside India. The applicant is therefore observed to be in contravention of para 9(1) B of schedule 1 of FEMA 20/2000-RB. The contravention relates to an amount of Rs.48,00,000 with the period of delay being 17 months approximately.

5. Other Contraventions- issue of shares against receipt of part consideration amount (shortfall):-

In respect of the remittances received in Sl.1-4 of Table 1, a net shortfall of Rs.78,407/- as detailed in Table 2 was observed. The applicant was advised to bring in the amount of shortfall from the overseas investors which was done on two occasions on August 22, 2016 and September 27, 2016(provided in Table 3). However, the applicant had allocated shares to the foreign investors on March 31, 2014 prior to receipt of full consideration amount. The applicant is thus observed to be in contravention of para 8 of Notification No. FEMA 20/2000-RB. The contravention relates to an amount of shortfall involved i.e. Rs.78407/- and the duration of contravention calculated from the date of allocation of shares till the date of bringing in the shortfall amount which is approximately 2 years 5 months and 26 days(from March 31, 2014 to September 27, 2016).

6.The applicant was given an opportunity for personal hearing vide this office's letter No.Kol.FED.FID.991/03.40.073/2017-18 dated December 13, 2017 for further submission in person and/or producing documents, if, any, in support of the application. The applicant, (represented by Shri Somen Bhattacharjee, Accountant) appeared for personal hearing on December 14, 2017. The applicant admitted the contravention as stated in paragraphs 3, 4 and 5 above for which compounding was sought. During the personal hearing, the applicant submitted that the delay had happened inadvertently due to lack of information.

The applicant further submitted that the contravention was not on account of wilful or mala fide intent. In view of this, the applicant requested to take a lenient view 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 submission made in this context by the applicant during the personal hearing.

7. I have given 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) B of schedule 1 of Notification No. FEMA 20/2000-RB due to delay in submission of form FC-GPR to the Reserve Bank after issue of shares to persons/company/entities resident outside India as detailed in paragraph 4 above. The contravention relates to an amount of Rs.48,00,000.00 and the period of contravention is 17 months approximately.



b) Paragraph 9(1) A of schedule 1 of Notification No. FEMA 20/2000-RB due to delay in reporting of receipt of foreign inward remittance towards consideration amount for issue of shares to Reserve Bank beyond stipulated period as detailed in paragraph 3 above. The contravention relates to an amount of Rs.78407/- and the approximate period of contravention is 7 months approximately.

c) Paragraph 8 of Notification No. FEMA 20/2000-RB for issue of shares against receipt of part consideration/shortfall amount. The contravention relates to an amount of Rs.78407/- and the period of contravention is 2 years 5 months and 26 days.

8. In terms of section 13 of the FEMA, any person contravening any provision of the act shall be liable for a penalty up to thrice the sum of the contravention upon adjudication. However, considering the circumstances leading to the delay and other relevant facts of the case, I am inclined to take a lenient view of the amount for which the contravention is to be compounded and I consider that an amount of Rs.41,294/- (Rupees Forty One Thousand Two Hundred and Ninety Four only) will meet the end of justice.

9. Accordingly, I compound the admitted contraventions namely the contraventions of paragraph 9(1) B of Schedule 1 to Notification No. FEMA 20/2000-RB, paragraph 9(1) A of schedule 1 to Notification No. FEMA 20/2000-RB and paragraph 8 of Notification No. FEMA 20/2000-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceeding) Rules, 2000 on payment of an amount of Rs.41,294/- (Rupees Forty One Thousand Two Hundred and Ninety Four only) which is to be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Third Floor, 15 N.S. Road, Kolkata-700001 by a demand draft drawn in favour of "Reserve Bank of India" and payable at "Kolkata" 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 Proceeding) Rules, 2000 dated May 3, 2000 shall apply.

The application is disposed of accordingly.

Dated this Fourteenth day of December 2017.

Sd/-

(Monisha Chakraborty)

General Manager