



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: April 25, 2018
CA No 4631/2018

In the matter of

Surbana International Consultants (India) Private Limited
Unit - D, 3rd Floor, Brij Tarang, 6-3-1191/6, Kundanbagh,
Begumpet, Hyderabad 500 016, 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 application dated January 09, 2018 (received in the Reserve Bank on January 29, 2018) 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 relate to availing External Commercial Borrowing (ECB) from overseas holding company and the payables remaining outstanding to the overseas group entities beyond a period of three years amounting to deemed ECB when (i) the borrower was not an eligible borrower in terms of extant ECB guidelines; (ii) foreign lenders were not recognized lenders at the time of the drawdown dates; (iii) utilization of ECB proceeds to meet operational expenses was non-permissible end use; (iv)



draw down of the ECB without obtaining Loan Registration Number (LRN) from the Reserve Bank of India (RBI); and (v) non-adherence to the ECB reporting guidelines. The above were in contravention of regulation 6(1) of 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) read with paragraphs 1(i), (iii), (iv), (xi) and (xii) of schedule I to this regulations.

2. The relevant facts are as under: The applicant company was incorporated as Cesma International Consultants (India) Private Ltd on February 13, 2003 under the Companies Act, 1956 (CIN U74210TG2003PTC040481) and its name was subsequently changed to Surbana International Consultants (India) Private Ltd (SICPL) on August 02, 2005. It is engaged in the business of providing architectural design, master planning and project consultancy services to various clients in India. SICPL is a wholly owned subsidiary of Cesma International Pte Ltd, Singapore ('Cesma Singapore). It regularly sought expert assistance in the areas of business development and technical consultancy from its overseas group entities viz Surbana Jurong Consultants Pte Ltd, Singapore (Surbana Singapore) and SIPM Consultants Pte Ltd, Singapore (SIPM Singapore). During the course of rendering the services, the overseas group entities incurred expenditure amounting to SGD 64,27,869 (Rs.31,96,08,020/-) primarily on account of travel expenses, hotel expenses, consultancy services etc on behalf of SICPL which were cross charged to SICPL on cost to cost basis. The details of the payables as per the books of accounts as on March 31, 2016 towards the overseas group entities are as under:-

Amount in SGD

Sr. No.	FY	Surbana Singapore	SIPM Singapore	Sub-total
	Consultancy services			
1	2007-08	16,44,747	-	16,44,747
2	2008-09	19,12,696	-	19,12,696
3	2009-10	5,78,198	-	5,78,198
4	2010-11	8,59,120	-	8,59,120
5	2011-12	9,60,911	-	9,60,911
6	2012-13	62,101	9,418	71,519
	Reimbursement of expenses			



1	2005-06	23,188	-	23,188
2	2011-12	2,20,203	96,347	3,16,550
3	2012-13	60,940	-	60,940
	Total	63,22,104	1,05,765	64,27,869

SICPL could not pay the above dues to the overseas group companies due to financial hardships and liquidity concerns. As the dues remained outstanding for a period exceeding three years, these were in the nature of deemed ECB. The applicant was not eligible to raise ECB as companies engaged in the business of providing consultancy services were not permitted to undertake ECB under automatic route. The applicant thereby contravened para 1(i) of schedule I to regulation 6(1) of Notification No. FEMA 3/2000-RB. The group entities who extended the loan were not recognized as permitted lenders which is in contravention of para 1(iii) of schedule I to regulation 6(1) of Notification No. FEMA 3/2000-RB. The end use of ECB loan as reimbursement of the expenses incurred by the group entities is not a permitted end-use which is in contravention of para 1(iv) of schedule I to regulation 6(1) of Notification No. FEMA 3/2000-RB. The funds were drawn without obtaining Loan Registration number (LRN) from RBI which is in contravention of para 1(xi) of schedule I to regulation 6(1) of Notification No. FEMA 3/2000-RB. The applicant did not adhere to the reporting requirement, thereby contravening para 1(xii) of schedule I to regulation 6(1) of Notification No. FEMA 3/2000-RB. RBI vide letter CO.FED.ECBD.9005/03.02.107/2016-17 .dated March 08, 2017 granted approval for conversion of outstanding payables to the overseas group entities into equity subject to the applicant obtaining lender's consent, complying with the extant FDI policy / FEMA regulations specified therein and opting for compounding of above contraventions. The applicant issued equity shares against the said payables to Surbana Singapore and SIPM Singapore on June 30, 2017 and reported the allotment of shares in Form-FC-GPR on October 27, 2017.

The applicant also availed an interest free ECB amounting to SGD 500,000 (Rs.1,37,21,200/-) on March 15, 2005 for modernization/expansion of its existing unit from its holding company i.e. Cesma Singapore payable in 24 quarterly instalments over a period of 6 years while the Loan registration No. 2005190 was issued by RBI on May 31, 2005. The funds were drawn from March 15, 2005 to July 18, 2005. SICPL repaid the overseas loan in 24 instalments during the period



from April 02, 2007 to January 02, 2013. The applicant was not eligible to raise ECB as companies engaged in the business of providing consultancy services were not permitted to raise ECB under automatic route. The applicant thereby contravened para 1(i) of schedule I to regulation 6(1) of Notification No. FEMA 3/2000-RB. The funds amounting to SGD 170,000 (Rs.43,73,265/-) were drawn towards a portion of the loan before obtaining Loan Registration number (LRN) from RBI which was in contravention of para 1(xi) of schedule I to regulation 6(1) of Notification No. FEMA 3/2000-RB.

3. In terms of regulation 6(1) of Notification No.FEMA.3/2000-RB dated May 03, 2000 as amended from time to time "a person resident in India may raise in accordance with the provisions of the Automatic Route Scheme specified in Schedule I, foreign currency loans of the nature and for the purposes as specified in that Schedule....". The primary responsibility of ensuring that the loan raised/utilized are in conformity with the ECB guidelines and the Reserve Bank regulations/directions is that of the concerned borrower. During its operations, SICPL committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 3/2000-RB:-

3.1 Paragraph 1(i) of schedule – I to FEMA Notification No. FEMA.3/2000-RB lays down the eligibility criteria for the borrowers eligible to raise ECB in terms of which entities engaged in consultancy services are not eligible to raise ECB. Whereas SICPL which was engaged in consultancy services raised ECB thereby contravening the said FEMA regulation. The amount of contravention was SGD 69,27,869 (Rs.33,33,29,220/-) and the period of contravention ranges 2 years to 9 years approximately.

3.2 Paragraph 1(iii) of schedule – I to FEMA Notification No. FEMA.3/2000-RB, as then applicable, states that borrowers can raise ECB from internationally recognised sources such as (i) international banks, (ii) international capital markets, (iii) multilateral financial institutions (such as IFC, ADB, CDC etc.) (iv) export credit agencies, (v) suppliers of equipment, (vi) foreign collaborators and (vii) foreign equity holders as specified by the Reserve Bank. Whereas the overseas group entities of the applicant were not recognized lenders in terms of the above provisions. The amount of contravention was SGD 64,27,869



(Rs.31,96,08,020/-) and the period of contravention ranges 2 years to 9 years approximately.

3.3 Paragraph 1(iv) of schedule – I to FEMA Notification No. FEMA.3/2000-RB provides that ECB can be raised only for investment in real sector in India (such as import of capital goods, new projects, modernization/expansion of existing production units) under the automatic route. Whereas the ECB availed by SICPL for reimbursement of the expenses incurred by the group entities was not a permissible end use under the Automatic Route thereby contravening the said FEMA regulation. The amount of contravention was SGD 64,27,869 (Rs.31,96,08,020/-) and the period of contravention ranges 2 years to 9 years approximately.

3.4 Paragraph 1(xi) of schedule – I to FEMA Notification No. FEMA.3/2000-RB states that '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 (LRN) from the Reserve Bank'. Whereas the draw-down by the applicant was made without / before obtaining LRN from RBI thereby contravening the said FEMA regulation. The amount of contravention was SGD 65,97,869 (Rs.32,39,81,285/-) and the period of contravention ranges 2 years to 9 years approximately.

3.5 Paragraph 1(xii) of schedule – I to FEMA Notification No. FEMA.3/2000-RB states that 'The borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time'. Whereas the applicant did not adhere with the ECB reporting requirements thereby contravening the said FEMA regulation. The amount of contravention was SGD 64,27,869 (Rs.31,96,08,020/-) and the period of contravention ranges 2 years to 9 years approximately.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/8046/15.20.67/2017-18 dated March 26, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on April 17, 2018 during which Shri Umesh M. Mudnur, Deputy Director-Finance, Jurong Consultants (India) Private Limited and Shri D. Lakshmana Kumar along with their consultants from BSR & Associates LLP, Ms.



Mitali Pakle represented the applicant. During the personal hearing the representatives of the applicant submitted that the company had inadvertently failed to comply with the FEMA regulations and requested that a lenient view may be taken in the matter. Accordingly, the application is being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of regulation 6(1) of Notification No. FEMA 3/2000-RB read with paragraphs 1(i), (iii), (iv), (xi) and (xii) of schedule I to the regulations as per the details given in paragraphs 2 and 3 above.

6. It has been declared in the compounding application dated January 09, 2018 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 undertaking dated February 02, 2018 furnished subsequently by the applicant 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 as required in terms of the said undertaking. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made/undertaking furnished 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/undertakings are subsequently discovered to be false and/or incorrect.

7. 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. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of Rs.24,55,213/- (Rupees twenty four lakhs fifty five thousand two hundred and thirteen only) will meet the ends of justice in the circumstances of this case.



8. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, regulation 6(1) of Notification No. FEMA 3/2000-RB read with paragraphs 1(i), (iii), (iv), (xi) and (xii) of schedule I to this regulations on payment of a sum of Rs.24,55,213/- (Rupees twenty four lakhs fifty five thousand two hundred and thirteen 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 accordingly.

Dated this the twenty fifth day of April, 2018.

Sd/-

Shekhar Bhatnagar
Chief General Manager