



In the

Reserve Bank of India  
Foreign Exchange Department  
3<sup>rd</sup> Floor  
15, Netaji Subhas Road  
Kolkata – 700 001

Present

**Imtiyaz Ahmad**  
**Deputy General Manager**

Date: July 11, 2018

C.A.069/2018

In the matter of

**M/s TCG Urban Infrastructure Holdings Private Limited**

Bengal Intelligent Park  
Ground floor, Beta building  
Block EP&GP, Sector V  
Salt Lake Electronic Complex  
Kolkata-700 091  
West Bengal

(Applicant)

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

**Order**

The applicant had filed a compounding application dated May 3, 2018 (received at Reserve Bank on May 4, 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 is refund of share subscription amount after 180 days of receipt of advance amount in terms of Paragraph 8 to 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 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: The applicant was originally incorporated under Companies Act, 1956, on March 5, 1981 as M/s Shabya Trades and Investments Limited which was renamed on July 9, 2001 to M/s TCG Urban Infrastructure Holdings Limited and further renamed as M/s TCG Urban Infrastructure Holdings Private Limited on May 22, 2008. The applicant is in the business of real estate developers, construction and other development activities related to real estate.

The applicant received foreign inward remittances from Dr. Purnendu Chatterjee, New York towards subscription to equity shares as tabulated below:

| SI.No        | Amount in INR           | Date of receipt | Date of reporting to RBI |
|--------------|-------------------------|-----------------|--------------------------|
| 1            | 73,16,46,300.00         | 21.09.2005      | 07.03.2008               |
| 2            | 22,71,49,636.56         | 18.05.2006      | 05.06.2006               |
| 3            | 37,04,34,744.24         | 10.03.2006      | 07.03.2008               |
| 4            | 17,78,79,644.24         | 10.03.2006      | 05.06.2006               |
| 5            | 67,54,49,639.76         | 10.05.2006      | 05.06.2006               |
| <b>Total</b> | <b>218,25,59,964.80</b> |                 |                          |

The applicant reported receipt of advance remittance towards share subscription to Kolkata Regional Office of Reserve Bank on the above mentioned dates with a delay ranging one month twenty-seven days to two years four months fifteen days, whereas in terms of paragraph 9(1)(A) 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.

3. The applicant allotted equity shares in a single tranche to Dr. Purnendu Chatterjee, New York (as mentioned below) and reported to Reserve Bank of India as under:

| Sl.No        | Amount in INR for which FCGPR submitted | Date of receipt | Date of allotment of shares | FCGPR submitted to RBI |
|--------------|---|-----------------|-----------------------------|------------------------|
| 1            | 108,00,00,000                           | 21.09.2005      | 22.11.2007                  | 08.01.2008             |
| 2            | 71,85,98,542                            | 10.03.2006      |                             | 07.03.2008             |
| 3            | 36,90,00,000                            | 10.03.2006      |                             | 07.03.2008             |
| 4            | 1,30,33,848                             | 10.05.2006      |                             | 07.03.2008             |
| <b>Total</b> | <b>218,06,32,389.96</b>                 |                 |                             |                        |

In terms of paragraph 9(1)(B) 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 a report in form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to persons outside India. However, the applicant reported the allotment of Shares (in form FC-GPR) to the Reserve Bank of India, Kolkata Regional Office with a delay of eighteen days to two months fourteen days (as per the table above) beyond the stipulated period of 30 days.

4. The applicant allotted 10,86,154 equity shares @ Rs 12; 17,50,374-5% Redeemable preference shares @Rs 410.54; 3,69,00,000-7% Redeemable preference shares @Rs 10; 10,80,00,000- 8% Redeemable preference shares @Rs 10 on November 22, 2007 in a single tranche to Dr. Purnendu Chatterjee, New York as detailed below:



| S.No. | Date of inflow | Amount (INR)            | Date of issue of shares | Amount of shares issued (INR) |
|-------|----------------|-------------------------|-------------------------|-------------------------------|
| 1     | 21.09.2005     | 73,16,46,300.00         | 22.11.2007              | 71,85,98,542                  |
| 2     | 10.03.2006     | 37,04,34,744.24         |                         | 36,90,00,000                  |
| 3     | 10.03.2006     | 17,78,79,644.24         |                         | 108,00,00,000                 |
| 4     | 10.05.2006     | 67,54,49,639.76         |                         | 1,30,33,848                   |
| 5     | 18.05.2006     | 22,71,49,636.56         |                         |                               |
|       | <b>Total</b>   | <b>218,25,59,964.80</b> |                         | <b>218,06,32,389.96</b>       |

Equity instruments were issued for Rs 218,06,32,389.96 out of the total remittance amount of Rs 218,25,59,964.80 as received from foreign investor. It was observed that an amount of Rs 19,27,574.84 was left unutilized with the company and upon receiving refund request from the company, the company was advised to refund the amount vide our letter KOL.FED.1013/03.39.602/2017-2018 dated December 19, 2017. The amount of Rs 19,27,574.84 (USD 30,342.94) was refunded by the company to overseas investor, Dr. Purnendu Chatterjee, New York on January 23, 2018.

As per Para 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000, if permission for refund of advance is sought after 180 days of receipt of amount, there is a contravention of Para 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000.

5. The applicant was given an opportunity for personal hearing vide Reserve Bank's letter No.KOL.FED.FID.2478/03.39.602/2017-18 dated June 27, 2018 for further submission in person and/or producing documents, if any, in support of the application. The applicant represented by Shri Atul Mittal (chartered accountant) appeared for personal hearing on July 11, 2018. The representative of the applicant admitted the contraventions as stated in para 4 above committed by the applicant for which compounding has been sought. During personal hearing, it was submitted that the delay was not willful or with a mala fide intention and was mainly due to lack of proper follow-up from the company's end. In view of this, the company requested to take a lenient view in the matter. The application for compounding is therefore being



considered on the basis of averments made in the application as well as other documents and submission made in the context by the applicant during personal hearing and thereafter.

6. It has been declared in the compounding application dated May 4, 2018 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been declared in the declaration 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/him/her thereafter. It has further been declared that the applicant has not filed any appeal under either 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. The contraventions have taken place before November 7, 2017 and hence the application for compounding has been considered as per provisions of erstwhile FEMA Notification No 20/2000-RB.

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 8 of Schedule 1 of Notification No.FEMA 20/2000-RB dated May 03, 2000 for refund of share subscription beyond 180 days from receipt of advance amount as details in paragraph 4 above. The contravention relates to an amount of Rs.19,27,574.84/- and the duration is eleven years two months five days approximately.

8. In terms of Section 13 of the FEMA any person contravening any provision of the act shall be liable for a penalty upto thrice the sum of the contravention upon



adjudication. However, considering the circumstances which led 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 44,457/- (Rupees Forty four Thousand Four Hundred Fifty-seven only)** will meet the end of justice.

9. Accordingly, I compound the admitted contravention viz. Paragraph 8 of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000 by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceeding) Rules, 2000 on payment of an amount **Rs 44,457/- (Rupees Forty four Thousand Four Hundred Fifty-seven only)** which are to be deposited by the applicant with the Reserve Bank of India, Kolkata by a demand draft in favour of Reserve Bank of India and payable at Kolkata within 15 days from the date of issue of the 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 03, 2000 shall apply (the application is disposed of accordingly).

Dated, the 11<sup>th</sup> July, 2018

Sd/-

(Imtiyaz Ahmad)

Deputy General Manager