



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
P M Road
Mumbai - 400 001

Present
Sharmila Thakur
General Manager

Date: September 6, 2018
CA No 4658 / 2018

In the matter of

Shyam Metalics and Energy Ltd
Trinity Tower, 83 Topsia Road,
7th floor
Kolkata 700046

(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 March 15, 2018 (received in the Reserve Bank on March 19, 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 are disinvestment from the JV without submission of the Annual Performance Report (APR) and delayed submission of APRs for the years 2012 to 2014 and 2016. The above are in contravention of paragraphs 16(1)(v) and 15(iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 7, 2004, as amended from time to time (hereinafter referred to as Notification No FEMA 120-RB 2004).



2. The relevant facts of the case are follows:

The applicant was incorporated as Shyam DRI Power Ltd on Dec 10, 2002. The name of the company was later changed to Shyam Metals and Energy Ltd (CIN U01122W1995PTC073938). The company is primarily engaged in the business of manufacture and sale of ferro-alloys, iron and steel products and power generation.

The applicant company set up a JV in Zimbabwe by name Shyam Minimet Africa Private Ltd in August, 2011 under Automatic route with the object to purchase / acquire/ sell/ dispose and deal in mines and mining rights. However no activity could be undertaken due to lack of commercially feasible opportunities. The company had remitted funds totalling Euro 76,118/- (equivalent to INR 51,84,798/-) between August 2011 and October 2012. As no opportunities came their way, the applicant company decided to close the JV to save on recurring administrative expenses and write off the investment in August 2015. It submitted APRs for the years 2012 to 2015 in July 2015 and initiated process of filing for closure of the JV with the concerned authorities in Harare. The company finally filed for dissolution in January 2017 while the APR for the year 2016 was pending. Subsequently, the APR was filed in April 2017 only.

3.(a) According to paragraph 16(1)(v) of Notification No FEMA 120-RB 2004 as amended from time to time, an Indian party may disinvest from its overseas JV with or without any write-off of its initial investment provided it has been in operation for at least one year and has submitted all APRs that were due.

(b) According to of paragraph 15(iii) *ibid*, an Indian Party, which has acquired foreign security in terms of the Regulations in Part- I, shall “submit to the Reserve Bank every year within 60 days from the date of expiry of the statutory period as prescribed by the respective laws of the host country for finalisation of the audited accounts of the Joint Venture/Wholly Owned Subsidiary outside India or such further period as may be allowed by Reserve Bank, an annual performance report in form APR ...”.



4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/683/15.20.67/2018-19 dated Aug 1, 2018 for further submission in person and/or for producing documents, if any, in support of the application. The personal hearing was held on Aug 16, 2018 in which Shri S K Dujari, Chief Financial Officer of the company met the undersigned and explained the circumstances under which the company was closed and the lags in communication between the Indian company and officials of the foreign JV leading to the delays in submitting APRs.

5. It has been declared in the compounding application dated Jan 18, 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 dated nil, 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. 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. I have carefully considered the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Regulations 16 (1) (v) and 15(iii) of FEMA 120-RB 2004 as amended from time to time. The amount of contravention is considered to be the value of the investment made i.e Euro 76,118/- equivalent to INR 51,84,798/-, which was disinvested without following the due process as laid down in Reg 16(1)(v) of FEMA 120. The APRs for four years i.e 2012, 2013, 2014 and 2016 were submitted with delay in contravention to guidelines on regulatory reporting.



7. In terms of provisions of section 13 of FEMA, any person contravening any provision of the Act shall be liable to pay up to three times the sum involved in the contravention upon adjudication. However, taking into account the relevant facts and circumstance 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.115,924/- (Rupees One lakh Fifteen thousand Nine Hundred Twenty four only) will meet the ends of justice.

8. Accordingly, I compound the admitted contravention namely, the contravention of Regulations 16(1) (v) and 15(iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 7, 2004, as amended from time to time, by the applicant based on the facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs.115,924/- (Rupees One lakh Fifteen Thousand Nine Hundred Twenty four only) which shall be deposited by the applicant with the Reserve Bank of India, 11th Floor, Central Office Building, Shahid Bhagat Singh Marg, Mumbai-400001 by a Demand Draft drawn in favour of "Reserve Bank of India" and payable at Mumbai within a period of 15 days from the date of the 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 shall apply. The application is disposed accordingly.

Dated this the sixth day of September 2018.

Sd/-

(Sharmila Thakur)

General Manager