



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Ajay Kumar Misra
Chief General Manager

Date: September 7, 2018
C.A. 4687/2018

In the matter of

Hinduja National Power Corporation Limited
HINDUJA House, 171 Dr Annie Besant Road,
Worli, Mumbai 400 018

(Applicant)

In exercise of the powers conferred 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 has filed a compounding application dated April 19, 2018 (received in the Reserve Bank on April 23, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are (i) delay in receipt of a part of the consideration for the partly-paid equity shares issued to a non-resident beyond the prescribed time limit and; (ii) delay in reporting the allotment of partly paid equity shares, to the extent the equity shares are called up, in Form FC-GPR, beyond the prescribed period. These contraventions relate to regulation 2(ii) 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 3rd May 2000, as then applicable (hereinafter referred to as Notification No. FEMA 20/2000-RB) read with para 2(ii)(a) of AP DIR Circular No. 3 dated July 14,



2014 and para 9(1)(B) of schedule 1 to Notification No. FEMA 20/2000-RB read with para 2(iii)(a) of AP DIR Circular No. 3 dated July 14, 2014 respectively.

2. The relevant facts of the case are as follows:

The applicant, Hinduja National Power Corporation Limited (HNPCL), an unlisted public company was incorporated on March 16, 1994 under the Indian Companies Act, 1956 (CIN U40109TG1994PLC017199). It is engaged in the business of power generation. In order to finance the cost escalations of its 1040 MW thermal power project at Vishakhapatnam, HNPCL issued partly paid-up equity shares under a rights issue to the existing resident and non-resident shareholders. on June 12, 2015. The shares were accordingly allotted on June 29, 2015 as under (table A):

Table A

Name of shareholder	Residential status	No. of shares	Total consideration (₹)
Hinduja Energy Limited (HEL)	Non-resident	14,39,60,017	288,92,77,541
Hinduja Energy (India) Limited	Resident	90,04,607	18,07,22,462
		15,29,64,624	307,00,00,003

The above consideration amounting to ₹288,92,77,541/- was received from the non-resident investor i.e. HEL by HNPCL as under (table B):

Table B

Sr No.	Date of receipt	Received towards	Amount (₹)	Date of reporting in form FCGPR
1	30-06-2015	Allotment of shares	95,12,66,873	27-07-2015
2	27-08-2015	First call	35,31,84,280	8-11-2017
3	26-11-2015	Second call	42,22,73,670	8-11-2017
4	03-11-2016	Final call	116,25,52,718	8-11-2017
		Total	288,92,77,541	



In terms of the regulation 2(ii) of Notification No. FEMA 20/2000-RB read with para 2(ii)(a) of AP DIR Circular No. 3 dated July 14, 2014 the entire consideration towards issue of shares to the non-resident investor was required to be brought within a period of 12 months by the applicant. The applicant, however, brought only an amount of ₹172,67,24,823/- within a period of 12 months from the date of issue of shares and further vide letter dated June 22, 2016 requested the Reserve Bank for grant of extension of time for receipt of the balance consideration of ₹116,25,52,718/- beyond the prescribed time which was not acceded to by the Bank. Receipt of a part of the consideration for the equity shares issued to a non-resident beyond the prescribed time limit of 12 months was in contravention of regulation 2(ii) of Notification No. FEMA 20/2000-RB as then applicable, read with AP DIR Circular No. 3 dated July 14, 2014.

In terms of para 2(iii)(a) of AP DIR Circular No. 3 dated July 14, 2014 read with para 9(1)(B) of schedule 1 to Notification No. FEMA 20/2000-RB, as then applicable, the reporting of issue of partly paid equity shares shall be made in form FCGPR within a period of 30 days, to the extent the equity shares are called up. The applicant filed form FCGPR with delay beyond the prescribed time in 3 instances as at serial Nos. 2, 3 & 4 in the table B above thereby contravening the said FEMA regulation. The applicant was advised of the contraventions committed vide letter FE.CO.FID.No.8036/10.78.000(112)/2016-17 dated February 07, 2017.

3. The applicant, during the course of its operations, committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 20/2000-RB as then applicable:-

3.1 In terms of regulation 2(ii) of Notification No. FEMA 20/2000-RB "Capital' means equity shares, preference shares and convertible debentures.....Explanation: The equity shares issued in accordance with the provisions of the Companies Act, as applicable, shall include equity shares that have been partly paid.' Further, in terms of para 2(ii)(a) of AP DIR Circular No. 3 dated July 14, 2014 '*The pricing of the partly paid equity shares shall be determined upfront and 25% of the total consideration amount (including share premium, if any), shall also be received upfront; The balance consideration towards fully paid equity shares shall be received within a period of 12 months.*'



Whereas the applicant brought a part of the consideration for the partly-paid equity shares issued to a non-resident beyond the prescribed time limit of 12 months thereby contravening the said FEMA provisions.

3.2 In terms of para 9(1)(B) of schedule I to Notification No. FEMA 20/2000-RB, as then applicable, 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 outside India. Further, in terms of para 2(iii)(a) of AP DIR Circular No. 3 dated July 14, 2014 *'The reporting of receipt of foreign inward remittance towards each upfront /call payment for FDI transaction shall be made in Advance Reporting Form (format enclosed) along with copy/ies of Foreign Inward Remittance Certificate/s (FIRC), Know Your Customer (KYC) report on non-resident investor and details of the Government approval, if any. The reporting of issue or transfer of partly paid shares shall be made in form FC-GPR and form FC-TRS respectively, to the extent the equity shares are called up.'*

Whereas the applicant reported the allotment of partly paid equity shares in Form FC-GPR beyond the prescribed period in 3 instances as at serial Nos. 2, 3 & 4 in the Table B thereby contravening the said FEMA provision.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/661/15.20.67/2018-19 dated August 01, 2018 for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for the personal hearing held on August 13, 2018 and Shri Venugopal K., Chief Financial Officer, Shri Prasenjit Guha, Vice-President, Legal & Company Secretary and Shri M. Rajani Kanth from the applicant company along with Shri Dev Raj Singh, consultant from Ernst & Young LLP attended the hearing. The representatives of the applicant admitted the contraventions for which compounding has been sought and submitted that the contraventions were inadvertent and unintentional and requested that the matter may be viewed leniently. 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 connected with the application.



5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant has contravened the regulations of Notification No. FEMA 20/2000-RB as per the details given in para 2 and 3 above. The amount and period in respect of the contraventions is as under:

- i) Regulation 2(ii) of Notification No. FEMA 20/2000-RB read with para 2(ii)(a) of AP DIR Circular No. 3 dated July 14, 2014 - The amount of contravention is ₹116,25,52,718/- and the period of contravention is 5 months approximately.
- ii) Para 9(1)(B) of schedule 1 to Notification No. FEMA 20/2000-RB read with para 2(iii)(a) of AP DIR Circular No. 3 dated July 14, 2014 - The amount of contravention is ₹193,80,10,668/- and the period of contravention ranges from 6 months to 1 year 8 months approximately.

6. It has been declared in the compounding application dated April 19, 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 April 26, 2018 furnished by the applicant's authorized representative 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 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. 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 ₹62,81,097/- (Rupees sixty two lakhs eighty one thousand and ninety seven only) will meet the ends of justice.



8. Accordingly, I compound the admitted contraventions namely, the contraventions of regulation 2(ii) of Notification No. FEMA 20/2000-RB read with para 2(ii)(a) of AP DIR Circular No. 3 dated July 14, 2014 and para 9(1)(B) of schedule 1 to Notification No. FEMA 20/2000-RB read with para 2(iii)(a) of AP DIR Circular No. 3 dated July 14, 2014 by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹62,81,097/- (Rupees sixty two lakhs eighty one thousand and ninety seven 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 of accordingly.

Dated this the seventh day of September, 2018.

Sd/-

Ajay Kumar Misra
Chief General Manager