



In the

Reserve Bank of India
Foreign Exchange Department
Mumbai Regional Office
Main Building, 3rd floor
Shahid Bhagat Singh Marg, Fort
Mumbai 400 001

Present

Shri J. K. Pandey
Chief General Manager

Date: August 01, 2018

C.A. No. 749/2018

In the matter of

BWF Tec India Private Limited
Gat No. 360,362,363,364
Village Urse, Taluka Maval
Dist. Pune – 410 506

(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

1. The applicant has filed the compounding application dated March 22, 2018 (received at the Reserve Bank on March 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) neither the equity instruments were issued nor the money refunded to the foreign investor, a person resident outside India within 180 days of the receipt of the inward remittance (ii) delay in reporting receipt of foreign inward remittance towards subscription to equity & (iii) delay in submission of Form FC-GPR



to the Reserve Bank after issue of shares to a person resident outside India (iv) delay in filing 'Annual Return on Foreign Liabilities and Assets' (FLA Returns), in terms of paragraphs 8, 9(1)(A), 9(1)(B) and 9(2) respectively, of 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 3, 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 company was incorporated on February 20, 2008 under the Companies Act, 1956 as BWF Tec India Private Limited in jurisdiction of National Capital Territory of Delhi & Haryana. The registered office of the company was changed from State of Delhi to State of Maharashtra on November 12, 2009. Its main activities are (i) To carry on in India or elsewhere whether directly or through subsidiaries or in partnership or otherwise the business of manufacturers, buyers, sellers, importers, exporters, assemblers, wholesalers, retailers, traders, dealers, producer, agents (including C&F agents), franchisee, brokers, distributors and factors of textile filter media for dust cleaning of industrial processes like steel, aluminum, cement, waste incinerators, coal fired plants and other industrial process. (ii) To carry on in India or elsewhere whether directly or through subsidiaries or in partnership or otherwise the business as importers and exporters of goods or merchandise or services of any description and to act as commission agents, advertising agents, forwarding and cleaning agents, transport agents, brokers and indenting agents in local and international trade, services, deals of any nature.

3. The applicant received foreign inward remittance from BWF Offermann Schmid, Co. KG, Germany, BWF Unternehmenbeteili Gungen International GmbH, Germany and BWF Tec GMBH Co. KG, Germany towards equity / preference share capital and reported the same to the Reserve Bank as indicated below.



Sr. No.	Amount received in INR	Date of receipt	Date of reporting
1	50,00,000.00	28/05/2008	08/03/2017
2	50,00,000.00	13/06/2008	16/05/2017
3	12,13,00,000.00	04/11/2008	17/11/2011
4	32,92,415.00	08/10/2008	27/03/2017
5	26,09,324.00	02/06/2008	27/03/2017
6	62,62,980.00	30/04/2008	29/03/2017
7	14,55,000.00	17/04/2010	14/05/2010
8	28,08,500.00	02/07/2010	07/08/2010
9	54,35,000.00	18/08/2010	24/08/2016
10	1,03,71,094.00	21/10/2010	20/04/2011
11	1,02,32,813.00	18/11/2010	18/05/2011
12	44,16,000.00	18/12/2010	18/05/2011
13	66,12,000.00	12/01/2011	02/06/2016
14	14,15,260.00	05/07/2011	11/07/2011
15	3,60,28,198.00	21/03/2013	14/05/2013
16	2,45,00,000.00	03/11/2016	18/01/2017
17	2,45,00,000.00	26/12/2016	13/02/2017
Total	27,12,38,584.00		

The applicant reported receipt of remittances to the Reserve Bank of India on dates indicated above with a delay ranging from 5 days to 8 years 10 months 2 days approximately, in respect of remittance recorded at serial no. 1 to 6, 8 to 13 and 15 to 17 above, beyond the stipulated time of 30 days. Whereas, in terms of Paragraph 9(1)(A) of 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.

4. The company allotted equity shares/preference shares/convertible preference shares and filed FC-GPRs as indicated below:

Sr. No.	No. of shares	FV in INR	Premium in INR	Amount in INR	Date of allotment	Date of Reporting
1	1000000	10	0	1,00,00,000.00	16/06/2008	08/03/2017
2	13339510	10	0	13,33,95,100.00	15/12/2008	17/11/2011
3	145500	10	0	14,55,000.00	08/06/2010	08/07/2010
4	824300	10	0	82,43,000.00	09/09/2010	23/01/2017



5	141526	10	0	14,15,260.00	01/12/2011	20/03/2012
6	4264019	10	0	4,26,40,190.00	31/07/2013	10/09/2013
7	6524393	10	0	6,52,43,930.00	24/09/2015	13/07/2016
8	4900000	10	0	4,90,00,000.00	30/12/2016	24/04/2017
			Total	31,13,92,480.00		

The applicant filed form FC-GPRs as indicated above with a delay ranging from 10 days to 8 years 7 months 20 days approximately, beyond the prescribed limit in respect of allotment indicated at Sr. No. 1, 2 and 4 to 8 above. Whereas, in terms of Paragraph 9(1)(B) of 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 person resident outside India.

5. In respect of remittances amounting to Rs.1,54,84,304/- (Rupees One Crore Fifty Four Lakh Eighty Four Thousand Three Hundred Four only), at serial no 5, 6 and 13 above in para 3 above, the company allotted shares after 180 days of receipt of investment with a delay ranging from 15 days to 2 years 20 days approximately. Whereas in terms of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned, provided the Reserve Bank may, on an application made to it and for sufficient reasons permit to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt. The amendment in paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB was introduced by issue of Foreign Exchange Management (Transfer or Issue of security by A person resident outside India) (Third Amendment) Regulations, 2007 notified, vide Notification No. FEMA 170/2007-RB dated 13th November, 2007 in the official Gazette of the Government of India.

6. The company has not filed the Annual Return on Foreign Liabilities and Assets (FLA return) to the Reserve Bank of India for the Financial Years 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. Whereas, in terms of Paragraph 9(2) of Schedule 1



to Notification No. FEMA 20/2000-RB read with A. P. (DIR Series) Circular No. 29 dated February 02, 2017, all Indian companies which have received Foreign Direct Investment in the previous years including the current year, shall submit to the Reserve Bank of India, on or before the 15th day of July each year, a report titled 'Annual Return on Foreign Liabilities and Assets' as specified by the Reserve Bank from time to time.

7. The applicant was given an opportunity for personal hearing vide e-mail dated July 12, 2018, for further submission in person and/or for producing documents, if any, in support of the application. The applicant vide e-mail dated July 12, 2018 have informed that they will not be appearing for the personal hearing. The applicant, in the compounding application, had admitted the contraventions as stated above for which compounding has been sought. It had been submitted that the contraventions were not wilful and were unintentional. 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 made in this context by the applicant.

8. 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 following FEMA provisions issued in terms of:

(a) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB since the shares were not issued to the person resident outside India within 180 days from the date of receipt of the inward remittance/share application not refunded to the person resident outside India within 180 days from the date of receipt of the inward remittance. The contravention relates to an amount of Rs.1,54,84,304/- (Rupees One Crore Fifty Four Lakh Eighty Four Thousand Three Hundred Four only) and with the delay ranging from 15 days to 2 years 20 days approximately.

(b) Paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in reporting of receipt of foreign inward remittance towards subscription towards shares as detailed in paragraph 3 above. The contravention relates to an amount of Rs.26,83,68,324/- (Rupees Twenty Six Crore Eighty Three Lakh Sixty



Eight Thousand Three Hundred Twenty Four only) and with a delay ranging from 5 days to 8 years 10 months 2 days approximately.

(c) Paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India and the contravention relates to an amount of Rs.30,99,37,480/- (Rupees Thirty Crore Ninety Nine Lakh Thirty Seven Thousand Four Hundred Eighty Only) with a delay ranging from 10 days to 8 years 7 months 20 days approximately.

(d) Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB due to non-filing of Annual Return on Foreign Liabilities and Assets for the Financial Years 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13.

9. It has been declared in the compounding application dated March 22, 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. It has further been declared that the applicant has not filed any appeal under 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.

10. 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 Rs.15,99,805/- (Rupees Fifteen Lakh Ninety Nine Thousand Eight Hundred Five only) will meet the ends of justice.

11. Accordingly, I compound the admitted contravention namely, the contraventions of Paragraph 8, 9(1)(A), 9(1)(B) and 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.15,99,805/- (Rupees Fifteen Lakh Ninety Nine Thousand Eight Hundred Five only which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, 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.

12. The above order is passed only in respect of contraventions of paragraph 8, 9(1)(A), 9(1)(B) and 9(2) of Schedule I to Notification No. FEMA 20/2000-RB and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.

The application is disposed of accordingly.

Dated: August 01, 2018.

Compounding Authority

Sd/-

(J. K. Pandey)

Chief General Manager