



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: November 6, 2018  
CA No 4707 / 2018

In the matter of

**Modular Power Pvt Ltd**  
**E-302, Stellar Park,**  
**Sector - 62**  
**Noida, UP – 201301**

**(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 May 4, 2018 (received in the Reserve Bank on May 18, 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 failure to submit share certificates in time, disinvestment from the JV without submission of the Annual Performance Report (APR) and delayed submission /non submission of APRs for the years 2008, 2009 and 2010. The above are in contravention of paragraphs 15(i), 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 Modular Power Pvt Ltd on October 23, 2003 under Companies Act 1956 with CIN U40108DL2003PTC122793. The company is primarily engaged in the business to generate, transmit, distribute and supply power, provide consultancy and advisory services related to the power sector.

The applicant invested Eur 100,000 (equivalent to INR 58,45,116) in the overseas Joint Venture Energy Age Group Ltd, Germany acquiring 0.5% stake in January 2008 and was allotted UIN NDJAZ20080163. Due to global recession, there was delay in forming the Joint Venture and subsequently delay in getting confirmation of share allotment. The overseas entity issued a letter dated 22.1.2010 certifying allotment of 0.5% of shares to Modular Power which was submitted to authorised dealer in March 2010 with a delay beyond 6 months, in contravention of Regulation 15 (i) of Notification No FEMA 120-RB 2004.

As the company was a minority stakeholder holding 0.5% stake in the JV, it found it very difficult to obtain financial data by due dates and furnish APR within required timelines. The company submitted APR based on provisional financial statements, for year ended March 2008 in March 2010 and for the year ended March 2009 in February 2017, the delays being in contravention of Regulation 15(iii) of Notification No FEMA 120-RB 2004. The submission of APR for 2010 was waived by RBI in view of the winding up proceedings of the JV initiated during the year.

In October 2010, the JV filed a petition in a German court for insolvency. Court appointed an Insolvency Administrator to whom the applicant submitted a 'Petition of Claims'. However, the Administrator informed the company on November 2010 that no claim was admissible. The German Embassy was approached for help in making some recoveries but to no avail. The company reported disinvestment effective from November 28, 2010. At this time, the APRs for 2009 and 2010 were still pending and hence the disinvestment was in contravention of Regulation 16(1)(v) of Notification No FEMA 120-RB 2004.



3. (a) Regulation 15(i) obliges an Indian Party, which has acquired foreign security in terms of the Regulations to receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months.

(b) 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.

(c) 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/2487/15.20.67/2018-19 dated October 29, 2018 for further submission in person and/or for producing documents, if any, in support of the application. The personal hearing was held on November 2, 2018 in which Shri Amit Madhav, Chartered Accountant represented the company and explained to the undersigned the circumstances under which the company was closed and the delays in submitting share certificate and APRs.

5. 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 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), 15(i) 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 100,000/- equivalent to INR 58,45,117/-, which was disinvested without following the due process as laid down in Reg 16(1)(v) of FEMA 120. The submission of evidence of investment was delayed by more than a year. The APRs for 2008 and 2009 were submitted with delay, in contravention to guidelines on regulatory reporting. The submission of APR for 2010 was waived subject to compounding.

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.133,838/- (Rupees One lakh Thirty Three Thousand Eight Hundred Thirty Eight 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.133,838/- (Rupees One lakh Thirty Three Thousand Eight Hundred Thirty Eight only) which shall be deposited by the



applicant with the Reserve Bank of India, 5<sup>th</sup> floor, Amar Building, P M Road, Fort, 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 sixth day of November 2018.

Sd/-

(Sharmila Thakur)  
General Manager