



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi-110001

Present

Sh. Rohit Jain
Chief General Manager

Date: March 29, 2017
C.A.NDL 237/2017

In the matter of

GSH (India) Private Limited.
Flat No. 315, Hemkunt Towers, 3rd floor, 98
Nehru Place, New Delhi 110019

(Applicant)

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

Order

The applicant has filed a compounding application dated January 04, 2017 (received in Reserve Bank of India on January 10, 2017) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are those of (i) delay in reporting of inflow of funds received from a person resident outside India for allotment of shares in terms of Paragraph 9(1)(A) 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 3rd May, 2000 as amended from time to time (hereinafter referred to as FEMA 20/2000- RB) and (ii) delay in refund of shares application money beyond the prescribed period of 180 days in terms of Paragraph 8 of Schedule 1 to FEMA 20/2000-RB.

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

- a) The applicant company was incorporated under the Companies Act, 1956 on April 27, 2012 and allotted registration No. U74999DL2012FTC234873 by Registrar of Companies. The company is engaged in providing manpower and management resources for engineering and maintenance services to all types of infrastructure and machinery.
- b) The company had received a total of 29 foreign inward remittances from December 27, 2012 to September 16, 2015 for issue of equity shares, out of which, on 8 occasions the company had reported inward remittances with delay ranging from 4 months and 24 days to 1 year and 7 months (as detailed hereunder) beyond the prescribed period in contravention of Paragraph 9 (1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.

| Contravention of Para 9(1)(A) of Schedule 1 to Notification No.FEMA20/2000-RB | | | |
|--------------------------------------------------------------------------------------|------------------------|-----------------------|---------------------------------|
| S. No. | Date of Receipt | Amount (Rs.) | Date of Reporting to RBI |
| 1 | 23.04.2013 | 3,77,435.91 | 23.12.2014 |
| 2 | 29.04.2013 | 1,13,994.38 | 23.12.2014 |
| 3 | 23.05.2013 | 30,00,771.91 | 23.12.2014 |
| 4 | 18.06.2013 | 1,00,000.00 | 09.12.2014 |
| 5 | 02.07.2013 | 30,00,771.91 | 23.12.2014 |
| 6 | 29.08.2013 | 29,99,971.91 | 23.12.2014 |
| 7 | 26.09.2013 | 32,20,310.91 | 23.12.2014 |
| 8 | 03.10.2013 | 1,18,46,000.00 | 26.03.2014 |
| | Total | 2,46,59,256.93 | |

Whereas in terms of Paragraph 9 (1) (A) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report to Reserve Bank of India, receipt of amount of consideration towards share subscription not later than 30 days from the date of receipt of the said amount.

- c) The company had received 7 remittances amounting to Rs.2,45,59,256.93 from April 23, 2013 to October 03, 2013 (as detailed under) but neither allotted shares nor refunded the amount and approached RBI on 07.05.2014 seeking approval for refund of share application money with a delay ranging from 1 month 6 days

to 6 months and 17 days beyond prescribed period of 180 days in contravention of para 8 of Schedule 1 to FEMA Notification No 20 /2000-RB dated May 3, 2000.

| Contravention of Para 8 of Schedule 1 to Notification No.FEMA20/2000-RB | | | |
|--------------------------------------------------------------------------------|------------------------|-----------------------|-------------------------|
| S.No. | Date of receipt | Amount (Rs.) | Date of Approach |
| 1 | 23.04.2013 | 3,77,435.91 | 07.05.2014 |
| 2 | 29.04.2013 | 1,13,994.38 | 07.05.2014 |
| 3 | 23.05.2013 | 30,00,771.91 | 07.05.2014 |
| 4 | 02.07.2013 | 30,00,771.91 | 07.05.2014 |
| 5 | 29.08.2013 | 29,99,971.91 | 07.05.2014 |
| 6 | 26.09.2013 | 32,20,310.91 | 07.05.2014 |
| 7 | 03.10.2013 | 1,18,46,000.00 | 07.05.2014 |
| | Total | 2,45,59,256.93 | |

Whereas, in terms of Paragraph 8 of Schedule 1 to FEMA notification No 20/2000-RB, equity instruments should be issued within 180 days of the receipt of the inward remittance. In case the equity instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor through normal banking channels or by credit to his NRE/FCNR (B) account, as the case may be. Provided further that the Reserve Bank, may on an application made to it and for sufficient reasons permit an Indian Company to issue shares/ refund the amount of consideration received towards issue of security, if such amount of consideration is outstanding beyond a period of 180 days from the date of receipt.

Thus, there are contraventions of Paragraph 9(1) A and 8 of Schedule 1 to FEMA Notification No 20 /2000-RB dated May 3, 2000.

3. The applicant was given an opportunity for personal hearing for further submission in person and/or by producing documents, if any, in support of the application. Sh. Venkatesh. N, Company Secretary and SH. S.S. Manian, DGM (Compliance) appeared for the personal hearing on March 27, 2017 on behalf of the company. The representatives of the applicant company admitted the contraventions committed by them for which they have sought compounding. They stated that due to late receipt of FIRCs from the AD bank, the reporting was delayed. They further stated that there has been no malafide intention by the company and a lack of knowledge of

regulations led to these contraventions and requested for a lenient view in the matter.

The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as submissions made in this context by the applicant during the personal hearing.

4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the following FEMA provisions:

(a) Paragraph 9 (1) (A) of Schedule 1 to FEMA 20/2000-RB due to delay in reporting the inflow of funds from a person resident outside India. The contravention relates to an amount of Rs.2,46,59,256.93 and the duration of contravention is ranging from 4 months and 24 days to 1 year and 7 months, beyond the prescribed period of 30 days.

(b) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB due to delay in refund of share application money. The contravention relates to an amount of Rs.2,45,59,256.93 and duration of contravention ranges from 1 month and 6 days to 6 months and 17 days beyond the prescribed period of 180 days.

5. 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.2,04,647/- (Rupees Two lakhs four thousand six hundred and forty seven only)** will meet the ends of justice.

6. Accordingly, I compound the admitted contraventions, namely, the contraventions of Paragraph 9 (1)(A) and Paragraph 8 of Schedule 1 to FEMA 20/2000- RB by the applicant on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **Rs.2,04,647/- (Rupees Two lakhs four thousand six hundred and forty seven only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi – 110001, by a

demand draft drawn in favour of the "Reserve Bank of India" and payable at New Delhi 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 29th day of March, 2017.

Sd/-

(Rohit Jain)
Chief General Manager