



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. Gautam Prasad Borah**  
Chief General Manager

**Date: April 28, 2017**

**C.A. No. 675/2016**

In the matter of

**M/s Essar Oil Limited**  
Equinox Business Park,  
4<sup>th</sup> Floor, Tower-2,  
Off Bandra Kurla Complex,  
LBS Marg, Kurla (West),  
Mumbai-400070

**(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 December 20, 2016 (received at the Reserve Bank on December 26, 2016) 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) the equity instruments were issued to the foreign investor, beyond 180 days of the receipt of the inward remittance and (ii) delay in reporting receipt of foreign inward remittance towards subscription to equity, in terms of



paragraphs 8 and 9(1)(A) 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 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 September 12, 1989 under the Companies Act, 1956 and is engaged in the business to engage in exploration of oil and gas onshore and offshore, in India and elsewhere and to tap oil and gas reserves and processing and marketing of oil, gas in India or elsewhere found. The applicant received foreign inward remittance from M/s Essar Energy Holding Limited, Mauritius towards GDR (Global Depository Receipts) issues and reported the same to the Reserve Bank as indicated below.

| <b>Sr. No.</b> | <b>Amount of Foreign Inward remittance (INR)</b> | <b>Date of receipt</b> | <b>Date of reporting to RBI</b> |
|----------------|--|------------------------|---------------------------------|
| 1.             | 839,16,76,740.00                                 | 30.06.2014             | 28.07.2014                      |
| 2.             | 193,98,92,000.00                                 | 05.12.2014             | 05.01.2015                      |
| 3.             | 213,23,19,650.00                                 | 12.12.2014             | 05.01.2015                      |
| 4.             | 254,13,88,250.00                                 | 09.01.2015             | 19.05.2016                      |
| <b>Total</b>   | <b>1500,52,76,640.00</b>                         |                        |                                 |

The applicant stated that the company could not proceed with the proposed GDR issue due to certain clarifications raised by SEBI for previous GDR issues as well as due to changes in DR (Depository Receipts) guidelines issued by Government of India. The applicant further stated that the company approached Reserve Bank of India, Central Office, on May 11, 2016 for refund of advance and receiving it back towards issuance of equity. The applicant reported receipt of remittance to the Reserve Bank with a delay of 1 year 3 months and 11 days approximately beyond the stipulated time of 30 days in respect of remittances recorded at serial no.4 above. 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 foreign inward remittances to the



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Reserve Bank of India as per the prescribed procedure not later than 30 days from the date of receipt of the amount of consideration.

3. The allotment of shares made on February 10, 2017 amounting to Rs.1500,52,76,640/- was made after 180 days of receipt of remittances with the approval of Reserve Bank. The company approached Reserve Bank of India, Mumbai Regional Office, on January 03, 2017 for specific approval to issue shares against the advances received as above. The Reserve Bank vide letter dated January 17, 2017 accorded approval for issuance of shares and the transaction was completed on February 10, 2017 with a delay ranging from 1 year 5 months 24 days to 2 years and 3 days approximately. Whereas in terms of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, and as amended from time to time, if the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE/FCNR(B) account, the amount of consideration so received shall be refunded to the person concerned by outward remittance 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 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.

4. It is noted that the company received advance remittances as detailed in para 2 above towards GDR issue. However the company neither issued GDR/Shares nor refunded the amount to the overseas remitter. The company approached Reserve Bank of India, Central Office, only on May 11, 2016 with a delay ranging from 1 year 4 months and 2 days to 1 year 10 months and 11 days approximately from the date



of receipt of remittances. It is further noted that the company has retained the funds in the intervening period.

5. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FED.MRO.CEFA/2016-17 dated April 07, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for personal hearing on April 12, 2017 during which Mr. Prahalad Pandit, General Manager, Essar Group and Mr. C.M. Bhatt, Vice President, Finance represented the applicant. The representatives of the applicant admitted the contraventions for which compounding has been sought. During the personal hearing, it was submitted that the delay was inadvertent and unintentional. They requested that in view thereof, 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 submitted along with the application.

6. 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 issued beyond 180 days from the date of receipt of the inward remittance. The contravention relates to an amount of Rs. 1500,52,76,640/- and the duration of the contravention is ranging from 1 year 5 months and 24 days to 2 years and 3 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 no. 2 above. The contravention relates to an amount of Rs. 254,13,88,250/- and the duration of contravention is 1 year 3 months and 11 days approximately.



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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 contraventions upon adjudication. The applicant has received remittances as detailed in paragraph 2 above as advance against GDR issue. However the company neither issued the GDR/Shares nor refunded the amount. The entire remittances (Rs 1500,52,76,640/-) were retained by the applicant. The applicant approached Reserve Bank of India, Central Office, only on May 11, 2016 with a delay ranging from 1 year 4 months 2 days to 1 year 10 months and 11 days approximately with the request to return the advance and receive it back for issuance of equity shares. It is deemed that undue gain have accrued to the applicant for the intervening period where the advances were retained without due reckoning under schedule I, FEMA 20/2000-RB. With a view to neutralize such undue gains to the applicant, the base rates of State Bank of India have been notionally applied to determine the rate of interest that would have been payable if the applicant had sourced such advances through domestic borrowings. Therefore, taking into account the relevant facts and circumstances of the case as stated in the foregoing paragraphs, I am persuaded to take a view that undue gains made by the applicant require to be neutralized and I consider that an amount of Rs. 241,16,30,941/- (Rupees Two Hundred Forty One Crore Sixteen Lakh Thirty Thousand Nine Hundred Forty One only), incorporating the impact of neutralization as above, will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contravention of paragraphs 8 and 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB 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 Rs. 241,16,30,941/- (Rupees Two Hundred Forty One Crore Sixteen Lakh Thirty Thousand Nine Hundred Forty One 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



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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.

9. The above order is passed only in respect of contraventions of Para 8 and 9(1)(A) of Schedule 1 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.

Date: April 28, 2017

**Compounding Authority**

**Sd/-**

**(Gautam Prasad Borah)**  
Chief General Manager