



In the

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

Present

Shekhar Bhatnagar
Chief General Manager

Date: May 11, 2017
CA No. 4238/2016

In the matter of

Noble Tech Industries Private Limited
6/9, Kasthuri Estate, 3rd Street
Poes Garden, Chennai – 600 086

(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 there under, I pass the following

Order

The applicant has filed a compounding application dated November 21, 2016 (received in the Reserve Bank of India on September 15, 2016) 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 relate to (i) raising loan from Non-Resident Indian (NRI) promoter shareholder through unsecured borrowings and without using the requisite public offer route involving investment in non-convertible debentures (NCDs) and (ii) making part repayment of the loan amount before the expiry of three years, thus failing to comply with the minimum maturity requirements as applicable in contravention of Regulation 5(1)(i) and 5(1)(iii) of Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 notified vide Notification No. FEMA 4/2000-RB dated 3rd May 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 4/2000-RB).



2. The relevant facts of the case are as follows: The applicant was initially incorporated as V.K.G. Steel & Energy Private Limited on September 14, 2004 under the Companies Act, 1956 (CIN U72300TN2004PTC054213). The name of the applicant was changed to Noble Tech Industries Private Limited on July 13, 2009. The applicant is engaged in the business of manufacturing steel. The applicant availed unsecured loans amounting to Rs.92,48,74,894/- on various dates between January 30, 2008 to February 02, 2016 from a non-resident Indian (NRI), Mrs. Ameena Begum residing at Abu Dhabi, who is one of the major shareholders of the applicant, as detailed below:

S.No.	Date of receipt	Loan amount (INR)
1	30.01.2008	10000000
2	28.03.2008	10000000
3	31.03.2008	80000000
4	12.05.2008	10000000
5	06.08.2008	10000000
6	06.12.2008	5000000
7	21.01.2009	5000000
8	26.03.2009	5000000
9	20.04.2009	5000000
10	02.06.2009	7500000
11	31.08.2009	4000000
12	15.09.2009	3000000
13	18.09.2009	6500000
14	01.10.2009	2500000
15	13.10.2009	5100000
16	20.10.2009	4500000
17	04.01.2010	10000000
18	30.01.2010	5000000
19	10.03.2010	10000000
20	22.05.2010	5000000
21	24.12.2010	3014958
22	23.04.2011	5000000



23	26.04.2011	3500000
24	23.06.2011	4000000
25	11.01.2012	10000000
26	10.02.2012	5000000
27	06.03.2012	7500000
28	13.03.2012	10000000
29	26.03.2012	10000000
30	28.03.2012	50000000
31	04.04.2012	10000000
32	03.05.2012	5000000
33	11.05.2012	10000000
34	03.07.2012	2000000
35	05.07.2012	3000000
36	07.07.2012	36000000
37	13.07.2012	4100000
38	18.07.2012	5000000
39	06.08.2012	20000000
40	08.08.2012	6000000
41	10.08.2012	4000000
42	28.09.2012	13020000
43	19.10.2012	6000000
44	03.11.2012	3300000
45	08.11.2012	1700000
46	27.11.2012	3000000
47	05.12.2012	10000000
48	06.12.2012	4000000
49	11.12.2012	2500000
50	13.12.2012	500000
51	26.02.2013	6000000
52	27.02.2013	4000000
53	02.03.2013	12500000
54	30.03.2013	2500050



55	10.05.2013	10000000
56	21.06.2013	20000000
57	27.06.2013	5000000
58	03.07.2013	20000000
59	04.07.2013	10000000
60	19.07.2013	10000000
61	02.08.2013	10000000
62	07.08.2013	8000000
63	31.08.2013	50000000
64	16.09.2013	35000000
65	17.09.2013	15000000
66	29.01.2014	5000000
67	03.02.2014	5000000
68	03.03.2014	1000000
69	22.03.2014	1000000
70	23.04.2014	1025000
71	28.04.2014	1000000
72	03.05.2014	6000000
73	10.05.2014	4000000
74	14.05.2014	12500000
75	31.05.2014	5000000
76	01.08.2014	20000000
77	07.08.2014	5314886
78	08.09.2014	1000000
79	24.09.2014	5000000
80	07.10.2014	1500000
81	27.10.2014	15000000
82	24.11.2014	10000000
83	27.11.2014	5000000
84	27.01.2015	10000000
85	16.02.2015	15000000
86	06.03.2015	5000000



87	16.03.2015	5000000
88	24.03.2015	10000000
89	28.03.2015	10000000
90	09.04.2015	8000000
91	13.04.2015	5000000
92	16.04.2015	7000000
93	14.05.2015	5000000
94	18.05.2015	500000
95	13.06.2015	5000000
96	29.06.2015	20000000
97	01.07.2015	4000000
98	02.07.2015	15000000
99	21.08.2015	2000000
100	04.11.2015	1000000
101	17.11.2015	1500000
102	28.12.2015	1000000
103	29.12.2015	300000
104	31.12.2015	2000000
105	27.01.2016	5000000
106	28.01.2016	2500000
107	02.02.2016	2500000
Total		924874894

The applicant made repayments of loan amount of Rs.21,38,37,027/- as detailed below, prior to expiry of the minimum maturity period of three years.

S.No.	Date of repayment	Loan amount (INR)
1	02.07.2008	5000000
2	03.07.2008	10000000
3	22.07.2008	5000000
4	25.07.2008	10000000
5	26.07.2008	10000000



6	06.08.2008	5000000
7	20.08.2008	14722069
8	11.09.2008	4000000
9	22.09.2008	4000000
10	13.11.2008	5000000
11	04.12.2008	7500000
12	12.12.2008	5000000
13	17.12.2008	2500000
14	19.12.2008	5000000
15	29.01.2009	2500000
16	09.03.2009	5000000
17	13.03.2009	5000000
18	16.03.2009	3300000
19	07.04.2010	10000000
20	04.05.2010	2500000
21	07.05.2010	2500000
22	17.02.2011	3014958
23	29.03.2016	52500000
24	30.03.2016	4800000
25	29.06.2016	30000000
Total		21,38,37,027

The applicant received the approval of the Reserve Bank of India (RBI) for conversion of loans amounting to Rs.18 crores into equity vide letter reference No. Che.FED.FID/4174/25.14.097/2015-16 dated February 11, 2016. Thereafter, the applicant received RBI approval for conversion of additional loan amount of Rs.53,10,37,867/- into equity shares vide letter reference No. Co.FED.ECBD.3243/03.02.107/2016-17 dated September 26, 2016. The applicant converted loan amount of Rs.53,10,00,000/- into equity and the balance amount of Rs.37,867 has been refunded to the NRI shareholder, Mrs. Ameena Begum.



The raising of loans by the applicant directly by way of borrowings from NRI promoters without using the requisite public offer route of issuance of non-convertible debentures is in contravention of the provisions of Regulation 5(1)(i) of Notification No. FEMA 4/2000-RB. The failure to comply with the minimum maturity period of three years is also a contravention of Regulation 5(1)(iii) of the same Notification. The applicant converted the loan amount of INR 18 crore and INR 53.10 crore into equity capital on 31.03.2016 and 31.10.2016 respectively, and refunded INR 37,867 to the NRI on 31.10.2016, thereby completing the administrative action.

3. Whereas in terms of Regulation 5(1) of Notification No. FEMA 4/2000-RB dated May 03, 2000 “....a Company incorporated in India may borrow in rupees on repatriation or non-repatriation basis, from a non-resident Indian or a person of Indian origin resident outside India by way of investment in Non-convertible Debentures (NCDs) subject to the following conditions:

(i) the issue of Non-convertible Debentures (NCDs) is made by public offer;(iii) the period for redemption....is not less than three years;....”

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/7883/15.20.67/2016-17 dated February 02, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for the personal hearing on February 20, 2017 and Shri Deepak Kothari, GM, Accounts and Finance, represented the applicant. The representative of the applicant admitted the contraventions for which compounding has been sought and submitted that the lapses were inadvertent. They requested that a lenient view may be taken in the matter. 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 during the personal hearing and thereafter.

5. 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 provisions of Regulations 5(1)(i) and 5(1)(iii) of Notification No. FEMA 4/ 2000-RB for raising loans from NRI promoters without using the requisite public



offer route of issuance of non-convertible debentures. The total amount of contravention is Rs.92,48,74,894/- and the period of contravention ranges between four months and eight and a half years approximately.

6. 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. The applicant raised loans by way of direct borrowings from NRI promoters, which is not a permissible form of borrowing under the regulations. Further, the applicant did not pay any interest on the borrowings to the NRI lender for the period during which the borrowings were retained. While a major portion of the borrowings (i.e. Rs.71.10 crore) were converted to equity with the approval of the RBI, an amount of Rs. 37,867/- was refunded to the NRI lender with RBI approval and Rs. 21,38,37,027/- was refunded by the applicant without obtaining RBI approval. The conversion of the loan to equity entails payment of dividend prospectively on the amount so converted and neutralizes the benefit gained by the applicant in retaining the borrowings without payment of interest. However, undue gains can be deemed to have accrued to the applicant for the amount of loan refunded to the NRI lender (i.e., Rs. 37,867/- and Rs. 21,38,37,027/-), where the borrowings were retained without payment of interest on the loan. With a view to neutralize such undue gains to the applicant, the average rates of interest accruing on Government of India Bonds having a ten year maturity period have been notionally applied to determine the minimum rate of interest that would have been payable by the applicant if such borrowings were sourced domestically.

Therefore, after considering the submissions made by the applicant with regard to the contraventions and the entire facts and circumstances of the case, I am persuaded to take a view that undue gains made by the applicant require to be neutralized and it stands to reason that payment of an amount of Rs. 3,42,73,470/- (Rupees three crore forty two lakh seventy three thousand four hundred and seventy only), incorporating the impact of neutralization as above, will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulations 5(1)(i) and 5(1)(iii) of Notification No. FEMA 4/2000-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. 3,42,73,470/- (Rupees three crore forty two lakh seventy three thousand four hundred and seventy 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 eleventh day of May, 2017

Sd/-

(Shekhar Bhatnagar)
Chief General Manager