



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: July 14, 2017
CA No 4310 / 2017

In the matter of
Genus Power Infrastructure Limited
G-14, Sector 63 , 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 thereunder, I pass the following

Order

The applicant has filed application dated February 12, 2017 (received in the Reserve Bank on February 22, 2017), 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 (i) non submission of form ODI I in respect of the initial investment made in the overseas Joint Venture (JV), Genus SA, Brazil (ii) delay in submission of forms APR relating to the JV. The above are in contravention of paragraphs 6(2)(vi) 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 4, 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 Genus Power Infrastructure Limited (GPIL) on August 6, 1992 under the Companies Act, 1956. (CIN NO: L51909UP1992PLC051997) for the business of manufacturing electric meters and invertors. With the intention to offer a complete range of electronic energy meters and metering solutions in Brazil and other Latin American countries, it entered into a joint venture with a local company to set up a Joint Venture company in the name of Genus SA in Brazil in June 2006. GPIL sent an initial remittance of USD 200,000 (equivalent to INR 93,06,000) for equity participation in the JV on September 6, 2006 by debit to its foreign currency bank account held with ICICI Bank, UK. The relative ODI form for the remittance could not be produced by the applicant as required in terms of paragraph 6(2)(vi) of Notification No FEMA 120-RB 2004. All subsequent remittances were undertaken through Bank of Baroda (BOB), the designated AD bank for the JV in question. UIN was allotted by RBI on March 14, 2007. GPIL however, submitted a letter dated June 6, 2009 to BOB, the AD Bank, showing the entire amount of equity remittances made to the JV, including the initial remittance of USD 200,000 together with the relative share certificates. The remittance was finally reported / ratified by RBI on March 3, 2016 at the time of processing the write off application of the company.

Further, the company did not submit the Annual Performance Report (APR) for the years 2008, 2010, 2011, 2012, and 2013 as required in terms of paragraph 15(iii) of Notification No FEMA 120-RB 2004. The APRs for the years 2008, 2010, 2011, 2012, 2013, 2014 were all submitted in August 2015.

3. According to paragraph 6(2)(vi) of Notification No FEMA 120-RB 2004 as amended from time to time, an Indian party may make direct investment in a Joint Venture or Wholly Owned Subsidiary outside India provided it “submits form ODI, duly completed, to the designated branch of an authorised dealer”, BOB in this case. 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/12326/15.20.67/2016-17 dated June 9, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on June 22, 2017 in which Shri Ramesh Chandra Saxena, Dy. General Manager (Taxation) represented the company before the undersigned. Shri Saxena explained that the copy of form ODI could not be traced at the end of the applicant company. In regard to delay in submission of APRs, Shri Saxena stated that this was due to the delayed receipt of copy of Financial Statements from the overseas JV company, alongwith a prolonged dispute between the JV partners which could not be resolved and led to GPIL exiting the JV in 2015. He averred that reasons for delay were beyond the control of the Indian company.

5. 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 Regulation 6 (2) (vi) and 15(iii) of FEMA 120-RB 2004 as amended from time to time. The amount and period of contravention is as follows: Equity remittance of USD 200000 (INR 93,06,000) on Sep 6, 2006 was not reported vide form ODI to the designated AD bank. It was reported to the AD bank vide the company's letter dated June 23, 2009 i.e after 2 years 10 months. (The AD bank however missed reporting the transaction to RBI at the time and uploaded in the ODI system of RBI only on March 3, 2016.) Further, five APRs were submitted by the company with various periods of delay.

6. 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.1,55,836/- (Rupees One Lakh Fifty Five Thousand Eight Hundred Thirty Six only) will meet the ends of justice.



7. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 6(2) (vi) 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 4, 2004, as amended from time to time, by the applicant stated above on the facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs.1,55,836/- (Rupees One Lakh Fifty Five Thousand Eight Hundred Thirty Six only) which shall be deposited by the applicant with the Reserve Bank of India, 11th Floor, Central Office Building, Shahid Bhagat Singh Marg, 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 the fourteenth day of July 2017.

Sd/-

(Sharmila Thakur)
General Manager