



In the

Reserve Bank of India
Foreign Exchange Department
Fort Glacis, No.16, Rajaji Salai
Chennai 600 001

Present

B Sarangi
Deputy General Manager

Date : July 20, 2017
C.A.667/2016

In the matter of

M/s. Trichy Energy Ltd.,
(formerly Tenaga B.K. Power (Samayapuram) Ltd.
No.4 (Old No.16),
Pattabiraman Street, 2nd Floor,
Chennai 600079

(Applicant)

In exercise of the powers 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 April 07, 2017 (received at Reserve Bank on May 02, 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) delay in reporting of inflow of funds received from a person resident outside India for allotment of shares



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(ii) delay in submission of Form FC-GPR on allotment of shares with Reserve Bank and
(iii) delay in write off of excess share application money received in terms of Paragraph 9 (1) A, Paragraph 9 (1) B and Paragraph 8 respectively, of Schedule I 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 and 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 July 02, 1997 under the provisions of the Companies Act, 1956 (Registration No. U74999TN1997PLC038549) and is engaged in the business of electric power generation by non-coal based thermal (e.g. diesel, gas). The applicant received foreign inward remittances as detailed below from M/s TNB Repair and Maintenance Sdn. Bhd, Malaysia (REMACO) towards subscription to equity shares between the financial years 1999-2000, pursuant to FIPB approval dated December 08, 1997 for 100% foreign equity participation amounting to ₹100 crores.

Sl. No	Amount of Foreign Inward Remittance (in Rs.)	Date of receipt	Reported to RBI on
1	10,00,000	01.06.2000	20.07.2017
2	4,00,000	01.06.2000	20.07.2017

The applicant neither reported the same to Reserve Bank nor does it have any proof of receipt of inward remittance. In the absence of documentary proof evidencing the date of receipt of foreign Inward remittances, the duration of contravention has been calculated from the effective date of FEMA to the date on which the compounding order is passed as per Reserve Bank letter CHE.FED.FID.Comp/743/25.20.369/2016-17 dated 19.08.2016. Hence, the duration of contravention is 17 years one month 19 days approximately. Whereas, in terms of paragraph 9 (1) A of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report to the 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 company allotted equity shares as indicated below:

Sl. No.	No. of shares/CCPs allotted	Face Value (in Rs.)	Amount (INR)	Date of allotment of shares	Reported to RBI on
1	100000	10	10,00,000	30.03.2000	20.07.2017

The applicant has not filed the form FC-GPR with Reserve Bank. Since the allotment has taken place before FEMA 1999 came into existence, the duration of contravention has been calculated from the effective date of FEMA to the date on which the compounding order is passed as per Reserve Bank letter CHE.FED.FID.Comp/743/25.20.369/2016-17 dated 19.08.2016. Hence, the duration of contravention is 17 years one month 19 days approximately. Whereas in terms of paragraph 9 (1) B of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to Reserve Bank a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident outside India.

4. As the company did not have any future business plans in India and also did not have adequate cash balances to repay the share application money, the company sought to write off the balance amount of ₹ 4,00,000/- remaining after allotment of shares as detailed below:

Sl. No.	Date of receipt	Amount (INR)	Date of regularisation
1	01.06.2000	4,00,000	20.07.2017

Reserve Bank has accorded its approval to write off the share application money subject to compounding of contraventions under 9(1) A, 9(1) B and Para 8. The duration of contravention is nine years seven months 21 days approximately. Whereas in terms of paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB, read with AP (Dir Series) Circular No.20 dated December 14, 2007 the shares have to be issued/amount refunded within 180 days from the date of receipt of the inward remittance.



5. The applicant was given an opportunity for personal hearing vide Reserve Bank's mail dated July 14, 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 July 19, 2017 during which Shri Nikhil J Varghese, Manager and Shri Mahadevan R, Assistant Manager, PricewaterhouseCoopers Pvt Ltd., represented the applicant. The authorized representatives of the applicant admitted the contraventions as stated in para 2 to 4 above committed by the applicant for which compounding has been sought. During the personal hearing, it was submitted that the delays were unintentional. 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.

6. I have given my careful consideration to the documents on record and submission made by the applicant in the compounding application and during the personal hearing. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:

- (a) Paragraph 9 (1) A of Schedule 1 to Notification No. FEMA 20/2000-RB due to delay in reporting of receipt of inward remittances towards subscription of equity shares as detailed in paragraph 2 above. The contravention relates to an amount of ₹ 14,00,000/- with duration of contravention being 17 years one month 19 days approximately;
- (b) Paragraph 9 (1) B of Schedule 1 to Notification No. FEMA 20/2000-RB due to delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India. The contravention relates to an amount of ₹ 10,00,000/- with the duration of contravention being 17 years one month 19 days approximately; and
- (c) Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB due to delay in write off of excess share application with prior approval of Reserve Bank. The



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contravention relates to an amount of ₹ 4,00,000/- with the duration of contravention being nine years seven months 21 days approximately.

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 contravention upon adjudication. However, taking into account the relevant facts and circumstances of the case as stated in the foregoing paragraphs, I consider that an amount of **₹ 1,21,010/-** (Rupees one lakh twenty one thousand and ten only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contraventions of paragraphs 9 (1) A, 9 (1) B and 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of **₹ 1,21,010/-** (Rupees one lakh twenty one thousand and ten only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Fort Glacis, No.16, Rajaji Salai, Chennai - 600 001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Chennai 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 Twentieth day of July, 2017.

Sd/-

B Sarangi
Deputy General Manager