



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
3rd Floor
15, Netaji Subhas Road
Kolkata – 700 001

Present

Monisha Chakraborty
General Manager

Date: September 14, 2017
C.A. 057 / 2017

In the matter of

M/s Magaldi Power India Private Limited
Flat no.8, 4th Floor,
147 Lake Gardens,
Kolkata - 700 045.

(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 June 28, 2017 (received at Reserve Bank on June 28, 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; (ii) delay in submission of form FC-GPR to the Reserve Bank on allotment of shares to a person resident outside India beyond the stipulated 30 days in terms of paragraph 9(1)(A) and paragraph 9(1)(B) 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 3rd, 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 was incorporated under the Companies Act, 1956 on March 20th, 2009. The main objective of the applicant is in engineering, manufacturing, selling, servicing and assembling of dry bottom ash extraction. The applicant received foreign inward remittances from foreign investor M/s Magaldi Power S.P.A, Italy towards subscription to equity shares as tabulated below:

S.No	Amount of foreign inward remittance (INR)	Date of receipt	Date of reporting to RBI
1	10,00,000	02.11.2010	16.08.2012
2	35,45,000	23.11.2012	06.02.2013
3	53,91,740	22.02.2013	28.03.2013
Total	99,36,740		

The applicant reported receipt of advance remittances amounting to Rs 99,36,740/- to Kolkata Regional Office of Reserve Bank on the above mentioned dates with delay ranging from six days to one year seven months fourteen days approximately beyond the prescribed limit in respect of remittances. 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 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 applicant allotted 4,88,553 equity shares and filed FC-GPRs as indicated below:

S.No	No. of shares	Issue price per share (INR)	Amount for which shares issued (INR)	Date of allotment of shares	Reported to RBI on
1	1,00,000	10	10,00,000	02.11.2010	22.09.2015
2	3,88,553	23	89,36,740	16.05.2013	10.09.2014
Total	4,88,553		99,36,740		

The applicant filed Form FC-GPRs with a delay ranging from one year two months twenty-five days to four years nine months twenty days approximately beyond the



prescribed limit in respect of allotment of shares. Whereas in terms of paragraph 9(1)(B) of Schedule 1 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. The applicant allotted 4,88,553 equity shares for a face value of Rs.10/- per share across two tranches for the three foreign inward remittances to foreign investor within the stipulated period from receipt of foreign inward remittances, in terms of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, as per which an Indian company has to issue shares within 180 days from receipt of foreign inward remittances.

5. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No.KOL.FED.FID.447/03.40.035/2017-18 dated September 12, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant represented by Shri Ashish Brahma, Chartered Accountant appeared for personal hearing on September 14, 2017. The authorized representative of the applicant admitted the contravention for which compounding has been sought and submitted that the delay was not willful or with a malafide intention.

The representative of the applicant requested that in view of the foregoing, a lenient view may be taken in disposal of the application. 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 personal hearing and thereafter.

6. I have given 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 provision issued in terms of:-
(a) Paragraph 9(1)(A) of Schedule 1 of Notification No.FEMA 20/2000-RB due to delay in reporting of foreign inward remittances received towards subscription to equity as detailed in paragraph 2 above. The contravention relates to an amount of Rs. 53,91,740/- with duration of six 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 as detailed in paragraph 3 above. The contravention relates to an amount of Rs. 89,36,740/- and the period of contravention is one year two months twenty-five 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 am persuaded to take a lenient view on the amount for which the contravention is to be compounded and I consider that an amount of **Rs 36,350/- (Rupees Thirty six Thousand Three Hundred Fifty only)** which is arrived at as per Foreign Exchange (Compounding Proceedings) Rules, 2000 mentioned vide A.P. (DIR Series) Circular no. 73 dated May 26, 2016, will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contravention of Paragraph 9(1)(A) and Paragraph 9(1)(B) 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 Proceeding) Rules, 2000 on payment of an amount **Rs 36,350/- (Rupees Thirty six Thousand Three Hundred Fifty only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Third Floor, 15 N.S. Road, Kolkata- 700 001 by a demand draft drawn in favour of "Reserve Bank of India" and payable at "Kolkata" 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 Proceeding) Rules, 2000 dated May 03, 2000 shall apply.

The application is disposed of accordingly.

Dated this the fourteenth day of September, 2017.

Sd/-

(Monisha Chakraborty)

General Manager