



In the

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

Present

Vandana Khare
General Manager

Date: September 27, 2017
CA No 4392/ 2017

In the matter of

CCL Consultants (India) Private Limited
314, 3rd Floor, Midas, Sahar Plaza
M.V.Road, Andheri (East)
Mumbai - 400 059

(Applicant)

In exercise of the powers conferred under section 15(1) of Foreign Exchange Management Act, 1999 and the Regulations/Rules/Notifications/Orders made there under, I pass the following

Order

The applicant has filed the application dated May 15, 2017 (received in the Reserve Bank on May 16, 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 relate to availing External Commercial Borrowing (ECB) when (i) the borrower is not an eligible borrower in terms of extant ECB guidelines; (ii) utilization of ECB proceeds to meet non-capital expenditure of the company is a non-permissible end use; (iii) draw down of the ECB without obtaining Loan Registration Number (LRN) from the Reserve Bank of India (RBI) is not permitted and (iv) reporting guidelines were not adhered to. The above were in contravention of Regulation 6 of Foreign



Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3/2000-RB dated 3rd May 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 3/2000-RB) read with Paragraphs 1(i), (iv), (xi) and (xii) of Schedule I to this Regulation and further read with Paragraphs 1(A)(i), (v), 1(C)(i)(c) and (d) of Annex to A.P.(DIR Series) Circular No. 5 dated August 01, 2005 (as amended from time to time).

2. The relevant facts are as under:

The applicant was incorporated as a private limited company on under the Companies Act, 1956 (CIN U74999MH2012PTC228856). CCIPL is engaged in providing advisory and consultancy on all matters and problems relating to the process of outsourcing of agents, call centers to individual and to provide advisory on FMCG, Real Estate, and Mining etc. The holding company of CCIPL i.e. CCL Limited provided financial assistance to meet the daily expenses of CCIPL such as payment of salary, rent, legal fees etc. to the tune of USD 93,930 equivalent to INR 51,67,671 from April 2012 to January 2013. CCIPL has received USD 93,930 as interest free loan from its holding company i.e. CCL Limited for making various payments as mentioned aforesaid. CCIPL has converted the loan amount into equity capital by making an allotment of 1,89,922 equity shares having face value of INR 19.20 totaling to INR 51,67,671 equivalent to USD 93,930, by passing a resolution in the board meeting. CCIPL has filed requisite FC-GPR with RBI and the same has been acknowledged.

As the applicant is engaged in the business of consulting, it is not eligible to raise such a loan under the Automatic Route. Further, the loan was utilized for a non-permissible end-use and drawdown of the loan took place without obtaining Loan Registration number (LRN) from the Reserve Bank of India (RBI).

The above contraventions relate to Regulation 6 of Notification No. FEMA 3/2000-RB dated 3rd May 2000 read with Paragraphs 1(i), (iv), (xi) and (xii) of Schedule I to this Regulation and further read with Paragraphs 1(A)(i), (v), 1(C)(i)(c) and (d) of



Annex to A.P.(DIR Series) Circular No. 5 dated August 01, 2005 (as amended from time to time).

The captioned company had applied for compounding twice earlier of FEMA contraventions. The compounding application dated October 1, 2013 was returned to the company on March 25, 2014 with an advice to complete all administrative action related to conversion of the loan of USD 93,930 to equity shares. The company applied for compounding once again on November 3, 2016. During the personal hearing on February 22, 2017, it was observed that the captioned company had issued shares for USD 93,930, equivalent to INR 55,45,724, by adopting an incorrect exchange rate of 59.04 instead of using the then prevailing INR rate to determine the exact value of the loan amount i.e. the company had issued shares worth INR 55,45,724 instead of INR 51,67,671, leading to a shortfall of INR 378053 (55,45,724-51,67,671). As the company was unable to reconcile the amount of remittances received (both in USD and INR) with the exact value of shares issued to the parent company, the compounding application was returned vide letter No. FE.CO.CEFA/9446/15.20.67/2016-17 dated March 21, 2016, advising them to submit a fresh compounding application after reconciliation of the financial statement.

The company once again applied for compounding on May 15, 2017. It was advised vide letter No. CO.FED.ECBD/128/03.02.107/2017-18 dated July 04, 2017 to submit an addendum to the compounding since the company was in the business of acting as advisers and consultants on all matters and problems relating to the process of outsourcing of agents, call centers to individuals, bodies corporate, societies etc., and thus is not eligible to raise ECB and had also not met the reporting requirements for external commercial borrowings. The company submitted the addendum to their compounding application on July 11, 2017.

3. In terms of Regulation 6 of Notification No.FEMA.3/2000-RB dated May 03, 2000 as amended from time to time "a person resident in India may raise in accordance with the provisions of the Automatic Route Scheme specified in Schedule I, foreign currency loans of the nature and for the purposes as specified in that Schedule....". The Reserve Bank has issued necessary directions vide AP



(DIR Series) Circulars, laying down the basic rules for availing of ECB under the Automatic Route. The primary responsibility of ensuring that the loan raised/utilized are in conformity with the ECB guidelines and the Reserve Bank regulations/directions/circulars is that of the concerned borrower.

3. a) Paragraph 1(i) of Schedule – I to Notification No. FEMA 3/2000-RB read with paragraph 1(A)(i) of Annex to AP (DIR Series) Circular No 5 dated August 5, 2005, as then applicable, deals with borrowers eligible to raise ECB. As per extant provisions, companies engaged in trading activities are not eligible to borrow in the form of ECB.

3. b) Paragraph 1(iv) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB read with Paragraph 1A(v) of Annex to A.P (DIR Series) Circular No 5 dated August 5, 2005, as then applicable, provides that ECB can be raised only for investment in real sector in India (such as import of capital goods, new projects, modernization/expansion of existing production units) under the automatic route. ECB availed for non-capital expenditure is not a permissible end use under the Automatic Route.

3. c) Paragraph 1(xi) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB read with paragraph 1(C)(i)(c) of Annex to AP (DIR Series) Circular No 5 dated August 5, 2005 states that “draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only after obtaining the loan registration number from the Reserve Bank”. The draw-down by the applicant was made without making application for obtaining LRN from RBI.

3. d) Paragraph 1(xii) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB read with paragraph 1(C)(i)(d) of Annex to AP (DIR Series) Circular No 5 dated August 5, 2005 states that “the borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time”. The ECB was not reported to RBI.



4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA.No./2101/15.20.67/2016-17 dated September 07, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on September 19, 2017 during which Smt. Meenakshi Iyer, Director, Shri Mahendra Zaveri, Chartered Accountant, Shri Rajesh Shah, Chartered Accountant, and Shri Vishal Shah, Chartered Accountant, represented the applicant. The representatives of the applicant submitted that the company had inadvertently failed to comply with the FEMA regulations and requested that a lenient view may be taken in the matter. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulation 6 of Notification No. FEMA 3/2000-RB read with paragraphs 1(i), (iv), (xi) and (xii) of Schedule I to this Regulation and further read with Paragraphs 1(A)(i), (v), 1(C)(i)(c) and (d) of Annex to A.P.(DIR Series) Circular No. 5 dated August 01, 2005 (as amended from time to time). The amount of contravention is INR 51,67,671/- and the period of contravention is 2 years, 7 months and 29 days.

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. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of INR 81,006/- (Rupees Eighty one thousand and six only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulation 6 of Notification No. FEMA 3/2000-RB read with Paragraphs 1(i), (iv), (xi) and (xii) of Schedule I to this Regulation and further read with



Paragraphs 1(A)(i), (v), 1(C)(i)(c) and (d) of Annex to A.P.(Dir Series) Circular No. 5 dated August 01, 2005 (as amended from time to time) on payment of a sum of INR 81,006/- (Rupees Eighty one thousand and six 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 accordingly.

Dated this the twenty seventh day of September, 2017

Sd/-

(Vandana Khare)
General Manager