



In the

Reserve Bank of India
Foreign Exchange Department
Mumbai Regional Office
Main Building, 3rd floor
Shahid Bhagat Singh Marg, Fort
Mumbai 400 001

Present

Shri G. P. Borah
Chief General Manager

Date: October 17, 2017

C.A. No. 705/2017

In the matter of

Yuanda International Aluminium Engineering (India) Pvt. Ltd.
C- 409 & 410, Crystal Plaza
4th floor, New Link Road
Andheri (West)
Mumbai 400 053

(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

1. The applicant has filed the compounding application dated June 12, 2017 (received at the Reserve Bank on July 7, 2017) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are (i) neither the equity instruments were issued nor the money refunded to the foreign investor, a person resident outside India within 180 days of the receipt of the inward remittance; (ii) delay in reporting receipt of foreign inward remittance towards subscription to equity; and (iii) delay in submission of Form FC-GPR to the Reserve



Bank after issue of shares to a person resident outside India in terms of paragraphs 8, 9(1)(A) and 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 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 7, 2011 under the Companies Act, 1956. Its main activity is to carry on the business of designing, fabricating, installation of aluminium skylight, curtain wall, windows and doors, steel structure, large scale LED screen panel project, building illumination, automatic doors and sun shading indoors and outdoors, ventilation, smoke extraction, window clearing equipment, metal working platform and building clearing equipment, clearing and maintenance of curtain wall, processing of constructional engineering, interior and exterior decorative panel and stainless steel decorative panel, design, fabrication and installation of shield of whole set industrial machine, subway shield door, safety door, automatic check-in system, tram road traffic equipment, no-obstruct lift platform, design, fabrication and installation of photovoltaic glass and light wall, manufacture and installation of environment protection products. The applicant received foreign inward remittance from M/s Shenyang Yuanda Aluminium Industry Engineering Co. Ltd., China & Mr. Jingfeng Xiong, China towards equity / preference share capital and reported the same to the Reserve Bank as indicated below:

Sr. no	Amount	Date of receipt	Date of reporting
1.	1,20,74,400	17/01/2012	14/02/2012
2.	1,65,09,000	08/06/2012	09/07/2012
Total	2,85,83,400		

The applicant reported receipt of remittances to the Reserve Bank on dates indicated above and with a delay of one day beyond the stipulated time of 30 days in respect of remittances recorded at serial no. 2 above. 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 company allotted equity shares/preference shares/convertible preference shares and filed FC-GPRs as indicated below:

Sr no	No of shares	Face value	Premium	Amount Rs.	Date of allotment	Date of reporting
1.	9,90,000	10	-----	99,00,000	07/07/2011	15/10/2012
2.	10,000	10	-----	1,00,000	07/07/2011	15/10/2012
3.	2,07,440	10	-----	20,74,400	07/03/2012	03/10/2012
4.	16,50,900	10	-----	1,65,09,000	29/06/2012	07/08/2012
Total	28,58,340			2,85,83,400		

The applicant filed form FC-GPRs as indicated above with a delay ranging from 9 days to 1 year 2 months 8 days approximately beyond the prescribed limit in respect of allotment indicated at Sr. No. 1 to 4 above. 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 a person resident outside India.

4. Further it is observed that the company has allotted shares on July 7, 2011 amounting to Rs. 1,00,00,000/- for subscription towards Memorandum of Association against the remittance received 6 months 10 days later on January 17, 2012. Whereas in terms of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned, provided the Reserve Bank may, on an application made to it and for sufficient reasons permit to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt. The amendment in paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB was introduced by issue of Foreign Exchange Management (Transfer or Issue of security by A person resident outside India) (Third Amendment) Regulations, 2007 notified, vide Notification No. FEMA 170/2007-RB dated 13th November, 2007 in the official Gazette of the Government of India.



5. The applicant was given an opportunity for personal hearing vide e-mail dated September 25, 2017 for further submission in person and/or for producing documents, if any, in support of the application. The applicant appeared for personal hearing on September 29, 2017 during which Shri Sukrit Ghosh, Advocate represented the applicant in the cabin of Shri G. P. Borah, Chief General Manager, Mumbai Regional Office. The representatives of the applicant admitted the contraventions for which compounding has been sought. During the hearing it was submitted that delay was inadvertent and unintentional. 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 my 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 provisions issued in terms of:

(a) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB as the shares were issued to the person resident outside India before the date of receipt of the inward remittance. The contravention relates to an amount of Rs. 1,00,00,000/- and the duration of the contravention is 6 months 10 days.

(b) Paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in reporting of receipt of foreign inward remittance towards subscription towards shares as detailed in paragraph 2 above. The contravention relates to an amount of Rs1,65,09,000/- with a delay of one day.

(c) Paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to a person resident outside India and the contravention relates to an amount of Rs. 2,85,83,400/- with a delay ranging from 9 days to 1 year 2 months 8 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 contraventions are to be compounded and I consider that an amount of Rs. 1,51,750/- (Rupees one lakh fifty one thousand seven hundred and fifty only) will meet the ends of justice.

8. Accordingly, I compound the admitted contravention namely, the contraventions of Paragraph 8, 9(1)(A) and 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 Proceedings) Rules, 2000 on payment of an amount of Rs. 1,51,750/- (Rupees one lakh fifty one thousand seven hundred and fifty only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, 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.

9. The above order is passed only in respect of contraventions of paragraph 8, 9(1)(A) and 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.

The application is disposed of accordingly.

Dated: October 17, 2017

Compounding Authority

Sd/-

(G. P. Borah)
Chief General Manager