



**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
5th floor, Amar Building  
Fort, Mumbai - 400 001

Present

**Jyoti Kumar Pandey**  
**Chief General Manager**

Date: October 5, 2017  
C.A. 4432/2017

In the matter of

**Solkar Solar Industry Limited**  
**13/2, Jayalakshmipuram,**  
**1<sup>st</sup> Street, Nungambakkam, Chennai 600 034**

**(Applicant)**

In exercise of the powers 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 June 07, 2017 (received in the Reserve Bank on June 12, 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 a) delayed submission of Form ODI Part I for reporting investment in Joint Venture (JV) overseas; b) delayed submission of Annual Performance Report (APR) in respect of the overseas entity (Part III of Form ODI); c) issuance of open-ended corporate and personal guarantees on behalf of the overseas entity and; d) disinvestment in the overseas JV at a value below the fair value in contravention of the provisions of Regulations 6(2)(vi), 15(iii), 6(3)(ii)( c ) and 16(1)(iii) respectively of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004, notified vide Notification No. FEMA 120/2004-RB dated July 7,



2004 and as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB).

2. The relevant facts of the case are as follows: The applicant was incorporated as Solker Enterprises Private Limited on May 29, 1991 under the Companies Act, 1956 (CIN:U33309TN1991PLC020868). Its name was changed to Solker Industries Private Limited on July 27, 1995 and the status was changed to public limited company on February 27, 1996. Finally on April 19, 2005 its name was changed to Solkar Solar Industry Limited (SSIL). It is engaged in the business of manufacture and sale of solar energy based equipments, non-conventional energy devices, domestic appliances and equipments.

2.1 SSIL made the following remittances /undertook financial commitments to its overseas JV viz., Eco Solar Technologies Pte Ltd in Singapore:-

Date of Transaction	Date of reporting	Equity	Corporate/personal guarantee
		Amount in SGD	
01-10-2006	28-12-2006	40,000	0
03-11-2006	09-01-2017	0	111,000
03-11-2006	09-01-2017	0	180,000
03-11-2006	09-01-2017	0	90,000
01-12-2006	28-12-2006	25,000	0
01-01-2007	28-12-2007	50,000	0
29-10-2007	09-01-2017	0	1,111,200
12-11-2007	09-01-2017	0	1,111,200
10-09-2008	09-01-2017	0	100,000
10-09-2008	09-01-2017	0	100,000
		<b>1,15,000.00</b>	<b>2,803,400</b>

2.2 SSIL extended open ended corporate guarantees as well as personal guarantees amounting to SGD 2,803,400 (INR 8,12,98,600/-) to Indian Bank, Singapore branch on behalf of its overseas JV, thereby contravening Regulation 6(3)(ii)(c) of FEMA 120/2004-RB. These open ended guarantees were closed on October 24, 2016. Further, these guarantees were issued without submitting Form



ODI - I within the prescribed period in contravention of Regulation 6(2)(vi) of FEMA 120/2004-RB. Due to business losses, the overseas entity could not meet the commitments and guarantees issued by SSIL were invoked by Indian Bank, Singapore. SSIL negotiated a one-time settlement with the Indian Bank, Singapore at an amount of SGD 4,08,000. The overseas entity was wound up on August 25, 2011. The valuation certificate of the shares held by the Indian Party at the time of disinvestment indicated liquidation value of SGD 32,600. However, only SGD 8,560 was realized as disinvestment proceeds which was appropriated towards receiver's cost. The disinvestment proceeds were less than the fair value of the overseas JV which was in contravention of Regulation 16(1)(iii) of FEMA 120/2004-RB.

2.3 The applicant also delayed filing the Annual Performance Reports in form APR with the RBI in respect of the overseas entity for the years ended March 31, 2007 to March 31, 2010 (i.e. 4 years) beyond the prescribed period in contravention of Regulation 15(iii) of Notification No. FEMA 120/2004-RB dated July 7, 2004. The APRs were submitted on December 24, 2016.

3. During the course of its operations, SSIL committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 120/2004:-

3.1 Whereas Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB states that the Indian Party making direct investment in a JV/WOS outside India may do so provided it "submits Part I of Form ODI, duly completed, to the designated branch of an Authorized Dealer". The applicant did not report the corporate and the personal guarantees extended to the overseas entity within the prescribed time period of 30 days as per the details given in paragraph 2 above thereby contravening the said FEMA Regulation. The amount of contravention was SGD 2,803,400 (INR 8,12,98,600/-) and the period of contravention ranges from 8 years 01 month to 10 years approximately.

3.2 Whereas Regulation 6(3)(ii)( c ) of Notification No. FEMA 120/2004-RB provides that an Indian Party may make direct investment in a Joint Venture or Wholly Owned Subsidiary outside India and the investment may be funded "...out



of hundred per cent of the value of guarantees issued by the Indian party to or on behalf of the Joint Venture company or Wholly Owned Subsidiary.... Provided that no guarantee is 'open ended'

The applicant extended open-ended corporate as well as personal guarantees to Indian Bank, Singapore branch on behalf of its overseas JV thereby contravening the said FEMA Regulation. The amount of contravention was SGD 2,803,400 (INR 8,12,98,600/-) and the period of contravention ranges from 8 years 01 month to 10 years approximately.

3.3 Whereas in terms of Regulation 15(iii) of FEMA 120/2004 an applicant is required to submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before a specified date, an Annual Performance Report (APR) in Part III of Form ODI, as prescribed by the Reserve Bank from time to time, in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time. The APR, so required to be submitted, has to be based on the audited annual accounts of the JV / WOS for the preceding year, unless specifically exempted by the Reserve Bank.

The APRs for the years March 31, 2007 to March 31, 2010 (i.e. 4 years) were submitted to the RBI with delay beyond the prescribed period thereby contravening the said FEMA Regulation.

3.4 Whereas in terms of Regulation 16(1)(iii) of Notification No. FEMA 120/2004-RB 'An Indian Party may transfer, by way of sale to another Indian Party ....., or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the ...condition that if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS.'

The disinvestment proceeds were less than the fair value of the overseas JV as per the details given in paragraph 2 above thereby contravening the said FEMA



Regulation. The amount of contravention was SGD 24,040 (INR 6,97,160/-) and the period of contravention was 5 years 10 months approximately.

4. The applicant was given an opportunity for personal hearing vide our letter No. FE.CO.CEFA/2105/15.20.67/2017-18 dated September 07, 2017 for further submission in person and/or producing documents, if any, in support of the application. Shri K.E. Raghunathan, Managing Director, SSIL appeared for the personal hearing held on September 21, 2017. During the personal hearing, the representative of the applicant submitted that the contraventions were a result of oversight and lack of adequate information of existing rules / regulations and requested that a lenient view may be taken in the matter. The representative admitted the contraventions of Regulations 6(2)(vi) and 6(3)(ii)( c ) while denied acceptance of contravention of Regulations 15(iii) and 16(1)(iii) of FEMA 120/2004-RB committed by the applicant for which they have sought compounding. The applicant vide letter dated September 22, 2017 stated that the APRs for the years 2006-07, 2007-08, 2008-09 and 2009-10 had been submitted to the Indian Bank, Thousand Lights branch, Chennai on the respective due dates which were not forwarded by the Indian Bank to RBI. Purportedly, the proof of submission of these documents to Indian Bank was lost in the heavy rains that occurred in 2015. The applicant forwarded a copy of the letter issued by the Indian Bank dated April 19, 2012 advising the applicant to submit the APR for the FY 2010-11. The applicant vide letter dated September 22, 2017 denied its involvement in contravention of Regulation 16(1)(iii) of FEMA 120/2004-RB stating that the assets of the overseas entity were liquidated by the receiver appointed by the Indian Bank without any consultation with the applicant. The applicant has further submitted vide letters dated September 22, 2017 that the corporate and the personal guarantees were executed on the assurance from the Indian Bank, Singapore that the dates of expiry would be filled by them and that these guarantees were to be reported by the Indian Bank directly to RBI. 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.



5. I have given my careful consideration to the documents on record and submissions made by the applicant. Since the applicant has denied acceptance of contravention of Regulations 15(iii) and 16(1)(iii) of FEMA 120/2004-RB committed by the applicant, the same have not been compounded and in respect of these contraventions other provisions of FEMA shall apply. As regards other contraventions, I hold that the applicant contravened the provisions of FEMA issued in terms of Regulations 6(2)(vi) and 6(3)(ii)( c ) of Notification 120/2004-RB dated July 7, 2004 as per the details given in Paragraphs 2 and 3 above.

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. While the argument that delay in reporting of the transactions and issuance of open-ended guarantees is chiefly attributable to the Authorized Dealer can be sustained to a certain extent and the contravention of Regulations 6(2)(vi) and 6(3)(ii)( c ) can be dealt with leniency, it is reiterated that the onus of complying with the FEMA provisions lies with the applicant. 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 I consider that payment of an amount of Rs.11,21,948/- (Rupees Eleven lakhs twenty one thousand nine hundred and forty eight only) will meet the ends of justice. This order covers only the contravention of Regulations 6(2)(vi) and 6(3)(ii)( c ) of FEMA 120/2004-RB as stated above and is without prejudice to the action that may be taken by any other authority with regard to other contraventions committed by the applicant.

7. Accordingly, I compound the admitted contraventions namely, the contraventions of Regulations 6(2)(vi) and 6(3)(ii)( c ) of Notification No. FEMA 120/2004-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.11,21,948/- (Rupees Eleven lakhs twenty one thousand nine hundred and forty eight only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5<sup>th</sup> Floor, Amar Building, Fort, Mumbai – 400 001 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 fifth day of October, 2017.

Sd/-

**Jyoti Kumar Pandey**  
**Chief General Manage**