



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
Central Office Cell, 2nd floor
6, Sansad Marg
New Delhi - 110 001

Present
J.K. Pandey
Chief General Manager
Date: September 22, 2017
C.A. No.68 /2017

In the matter of

(SEPCO ELECTRIC POWER CONSTRUCTION CORPORATION)
Head Office – Block A, Chengcheng Mansion, No. 10567, Jingshi Road, Jinan,
Shandong, China
Project (Site) Address - Village Banwala, Mansa-Talwandi Sabo Road, District
Mansa – 151 302, Punjab, India

In exercise of the powers under Section 15 (1) of Foreign Exchange Management Act, 1999 and the Regulations / Rules / Notifications / Orders made thereunder, I pass the following Order.

Order

The applicant has filed an application dated April 15, 2017 (received on April 21, 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 relate to transfer of assets by a Project Office in contravention of the provisions of Regulations 6(ii) of Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business)



Regulations, 2000 notified vide Notification No. FEMA.22 /2000-RB dated May 03, 2000, as amended from time to time (hereinafter referred to as FEMA.22 /2000-RB).

2. The relevant facts of the case are as follows: The applicant, SEPCO Electric Power Construction Corporation is a company incorporated on August 25, 1992 under the laws of China. SEPCO was awarded contract by Talwandi Sabo Power Limited, Punjab, India for thermal power plant at Talwandi Sabo, Mansa, Punjab, India. Accordingly, SEPCO established Project Office in India. In order to execute work as per contract, SEPCO Project Office imported four (4) Gantry Cranes and two (2) Tower cranes at the cost of Rs.27,71,46,186/- (Rupees twenty seven crore seventy one lakh forty six thousand one hundred eighty six only) from China, which were required for construction and erection activities at project site. After completion of work in India, these machines (assets of the Project Office) were sold and sent directly to Pakistani Branch Office of SEPCO instead of sending back to company's Head Office in China, considering very high cost of logistics and very long duration to transfer these machines from India to Pakistani site via China. However, requisite permission of the Reserve Bank was not obtained for selling and transfer of these assets of Project Office to a third party outside India which amounts to contravention of Regulation 6(ii) of Notification No. FEMA.22 /2000-RB dated May 03, 2000, as amended from time to time.

These machines (assets) i.e. four Gantry Cranes and two Tower Cranes were sold vide contract agreement dated July 30, 2015 and transferred in between September 22, 2015 and October 3, 2015 for which invoices were raised on August 28, 2015. These transactions were made from the existing Project Office in India, for consideration amount of Rs.12,49,15,345/- (Rupees twelve crore forty nine lakh fifteen thousand three hundred forty five only) which was credited to the Project Office bank account on December 09, 2016 from Pakistani Branch Office of SEPCO. The entire amount was put under lien by ICICI bank on our advice vide letter FE.CO.FID /557 /10.97.871 /2016-2017 dated December 07, 2016. The aforementioned contravention has been regularized by according post-facto approval and removing lien vide our letter FE.CO.FID /1184 /10.97.871 /2016-2017 dated March 16, 2017, subject to compounding of contraventions.



3. Previously, this Project Office was also compounded on March 23, 2015 (CA No. 6/2014) for contravention of Regulation 3 and 4 of FEMA 22/2000-RB dated May 3, 2000 for opening of Project Office without Reserve Bank's permission. It is added here that the present contravention of Regulation 6(ii) of FEMA 22 ibid. is different from the aforesaid earlier contravention for which compounding order dated March 23, 2015 was issued.

4. The applicant has contravened Regulation 6(ii) of Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000 notified vide Notification No. FEMA.22 /2000-RB dated May 03, 2000, as amended from time to time, which stipulates that *a person resident outside India permitted by the Reserve Bank under Regulation 5, to establish a Project or Site Office in India shall not undertake or carry on any activity other than the activity relating and incidental to execution of the project.*

5. The applicant has been given an opportunity for personal hearing vide our email dated September 14, 2017 for further submission in person and /or producing documents, if any, in support of the application. Mr. Hinesh R. Doshi, authorized representative of the company represented the applicant, for the personal hearing held on September 22, 2017. The representative of the applicant admitted the contraventions committed by the applicant for which they have sought compounding and submitted that the lapse was not intentional and requested to take a lenient view. The application for compounding is, therefore, being decided 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.

6. I have given my careful consideration to the documents on record and submission made by the applicant. Accordingly, I hold that the applicant has contravened the provisions of Regulation 6(ii) of Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000 notified vide Notification No. FEMA.22 /2000-RB dated May 03, 2000, as amended from time to time, by selling and transferring assets of Indian Project Office amounting Rs.12,49,15,345/- (Rupees twelve crore forty nine lakh fifteen thousand



three hundred forty five only), to a third party viz., Pakistani Branch Office of SEPCO. I hold the period of contravention to be 1 year 7 months and 15 days i.e. from the date of the contract to the date of regularization of contravention.

7. In terms of Section 13 of the FEMA, 1999, 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, 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 contraventions are to be compounded and I consider that payment of an amount of **Rs. 4,67,204/- (Rupees four lakh sixty seven thousand two hundred four only)** will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 6(ii) of Foreign Exchange Management (Establishment in India of Branch or Office or Other place of Business) Regulations, 2000, notified vide Notification No. FEMA.22/2000-RB dated May 03, 2000, as amended from time to time, 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.4,67,204/- (Rupees four lakh sixty seven thousand two hundred four only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Office Cell, 2nd Floor, 6, Sansad Marg, New Delhi – 110 001 by a demand draft drawn in favor of the "Reserve Bank of India" and payable at Delhi 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 03, 2000, as amended from time to time, shall apply.

The application is disposed accordingly.

Dated this the 22nd day of September, 2017

Sd/-

(J .K. Pandey)

Chief General Manager