



In the

Reserve Bank of India
Foreign Exchange Department
5th Floor, Amar Building
Sir PM Road
Mumbai – 400001

Present

R. Seetharaman
Deputy General Manager

Date: October 13, 2017
CA NO: 4418/2017
In the matter of

Northern Exim Private Limited,
Seven, A, 'Sagar', 6, Tilak Marg, New Delhi-110001
(Applicant)

In exercise of 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

The applicant has filed a compounding application dated May 10, 2017 (received in the Reserve Bank of India on May 18, 2017) for compounding the contraventions of the provisions of the Foreign Exchange Management Act, 1999 (The FEMA) and the regulations issued there under. The contravention sought to be compounded (i) the delay in submission of information on change in the foreign partner in the JV, and reporting of investment in step down subsidiary and (ii) delay in submission of Annual Performance Reports (APRs) for the years 2004 to 2014. The above amount to the contravention of the Regulation 13, and 15(iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 4, 2004, as amended from time to time (hereinafter



referred to as Notification No FEMA 120-RB 2004).The applicant also stated in its application that the copy of the share certificate for its investment in JV was submitted to AD bank on November 22, 2016.

2. The relevant facts of the case are follows:

The applicant was incorporated as Northern Exim Private Limited on December 10, 1997 with CIN NO: U15133UP1987PTC009193 and transferred its Registration from Uttar Pradesh to New Delhi with CIN No: U74920DL1987PTC145225 vide the order of Company Law Board(CLB), Northern Region Bench dated December 13, 2005. The applicant is engaged in the business of trading of metals and ores. The applicant had set up a Joint Venture (JV) M/s. Indo International Trading FZCO in the year 2004 in Dubai, United Arab Emirates by remitting USD 54454.00 on March 1, 2004. The applicant received share certificate dated March 6, 2004 and received on April 10, 2004. The applicant submitted the copy of the share certificate to the AD bank on November 22, 2016. The applicant had subscribed 40% of the share capital of the said JV and the 60% of the share capital was held by a foreign partner, M/s. Tenaska International Power Limited, Mauritius. On September 7, 2005 M/s. Spanning Star Group SA, Belize had acquired the 60% stake from M/s. Tenaska International Power Limited, Mauritius and further M/s. Suplee International Inc, British Virgin Island had acquired the above 60% of the share capital from M/s Spanning Star Group SA, Belize on March 1, 2016. The change in the shareholding pattern was reported by the applicant to the AD bank on December 6, 2016, contravening Regulation 13 of Notification No FEMA 120-RB 2004). The applicant had setup a step down subsidiary on January 4, 2016 Solo Trade and Investment Inc, in British Virgin Islands and reported to AD bank on December 6 2016 contravening Regulation 13 of Notification No FEMA 120-RB 2004). The applicant has submitted the APR for the years ended December 2004 to 2014 on December 6, 2016, contravening Regulation 15(iii) of Notification No FEMA 120-RB 2004). These transactions were later reported to the Reserve Bank of India by the applicant through AD bank and the transactions were regularised on July 14, 2017.



3.1 Regulation 13 of the said Notification requires that a JV / WOS set up by the Indian party as per the Regulations may diversify its activities / set up step down subsidiary / alter the shareholding pattern in the overseas entity Provided the Indian party reports to the Reserve Bank, the details of such decisions taken by the JV / WOS within 30 days of the approval of those decisions by the competent authority concerned of such JV / WOS in terms of local laws of the host country, and, include the same in the Annual Performance Report required to be forwarded annually to the Reserve Bank in terms of Regulation 15.

3.3 Regulation 15(III) of the said Notification requires that submit to the Reserve Bank every year within 60 days from the date of expiry of the statutory period as prescribed by the respective laws of the host country for finalisation of the audited accounts of the Joint Venture / Wholly Owned Subsidiary outside India or such further period as may be allowed by Reserve Bank, an annual performance report in form APR in respect of each Joint Venture or Wholly Owned Subsidiary outside India set up or acquired by the Indian Party and other reports or documents as may be stipulated by the Reserve Bank.

3.4 Regulation 15(i) of the Notification No FEMA 120-RB 2004 requires that an Indian Party, which has acquired foreign security in terms of the Regulations in Part-I, shall receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalised became due to the Indian Party or the date on which the amount due was allowed to be capitalised.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter FED.CO. CEFA .No./210315.20.67/2017-18 dated September 7, 2017 for further submission in person and /or producing documents, if any, in support of the application. The personal hearing was held on September 21, 2017 during which Ms. Sabina Nagpal, Legal



Consultant, M/s. Northern Exim Pvt Ltd represented the applicants. The application is considered on the basis of the averments made and documents produced in the application.

5. I have given my careful consideration of the documents on record and submission made by the applicant during the personal hearing. The applicant has stated in the compounding application that the share certificate was received by the applicant on April 10, 2004 (as per the information furnished in Part XI: Annex II of the compounding application) for its remittance sent on March 1, 2014 (i.e., within 6 months of remittance for share capital) and a copy of the share certificate was submitted as exhibit in the compounding application. Accordingly, I hold that the applicant has contravened the provisions of Regulation 13 and 15(iii) of FEMA 120-RB 2004 as amended from time to time and not contravened the provisions of Regulation 15(i) of Notification No FEMA 120-RB 2004). The amount and period of contravention is as follows.

i) Regulation 13 of FEMA 120-RB 2004 as amended from time to time:

a) Amount of contravention- Rs.2374211.00 (USD 54454.00) and period of contravention: 8 months on one occasion and 11 years and 2 months on another occasion approximately.

b) Amount of contravention- Rs.669800.00 (USD 10000.00) and period of contravention: 10 months approximately.

ii) Regulation 15(iii) of FEMA 120-RB 2004 as amended from time to time: Annual Performance Reports (APRS) for the years 2004 to 2014 submitted on December 6, 2016 .The period of contravention varied from 1 year to 11 years pertains to the APR for the years 2004 to 2014.

6. In terms of provisions of section 13 of FEMA, any person contravening any provision of the Act shall be liable to pay up to three times the sum involved in the contravention upon adjudication. However, taking into account the relevant facts and circumstance 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.170417.00 (Rupees one lakh seventy thousand four hundred and seventeen only) will meet the end of justice.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 13 and 15(iii) of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No 120/2004-RB dated July 4, 2004, as amended from time to time, by the applicant stated above on the facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs.170417.00 (Rupees one lakh seventy thousand four hundred and seventeen only) which shall be deposited by the applicant with the Reserve Bank of India, 11th Floor, Central Office Building, Shahid Bhagat Singh Marg, Mumbai-400001 by a Demand Draft drawn in favour of "Reserve Bank of India" and payable at "Mumbai" within a period of 15 days from the date of the 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 shall apply.

The application is disposed accordingly.

Dated this the thirteenth day of October 2017.

Sd/-

(R. Seetharaman)
Deputy General Manager