



In the
Reserve Bank of India
Foreign Exchange Department
Ahmedabad – 380014

Present
Santosh Kumar Panigrahy
Regional Director (Gujarat, Daman & Diu and Dadra & Nagar Haveli) /
Chief General Manager (Ahmedabad)

March 18, 2020
CEFA.CO.ID.12576 / C.A. No. AHM - 146 / 2019-20

Matter
HYDCO ENGINEERING PRIVATE LIMITED
(CIN: U29249GJ2007PTC050353)
Survey No. 928/1, Near GEB Substation, Chhatral Kadi Road
Chhatral, Ta. Kalol, Dist. Gandhinagar– 382729
Gujarat

(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 thereunder, I pass the following order:



Order

HYDCO ENGINEERING PRIVATE LIMITED (hereinafter referred to as applicant) has filed the application dated October 17, 2019, complete in all respects, 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) delay beyond 30 days in submitting report in Advance Reporting Form (ARF) to the Reserve Bank, through Authorised Dealer bank (AD bank) after receipt of foreign inward remittance towards subscription to equity as required under Paragraph 9(1)(A) 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, as then applicable (hereinafter referred to as Notification No. FEMA 20/2000-RB); (ii) delay beyond 30 days in submitting report in Form-Foreign Currency-Gross Provisional Return (FC-GPR) to the Reserve Bank, through AD bank, after the date of issue of shares to “persons resident outside India” as required under Paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB; (iii) delay in issue of share beyond stipulated period of 180 days from the date of receipt of the inward remittance, as required under A.P. (Dir. Series) Circular No. 20 dated December 14, 2007 read with Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB; (iv) delay in filing the Annual Return in respect of the Foreign Liabilities and Assets (FLA Return) as required under Paragraph 9 (2) of Schedule 1 to Notification No. FEMA 20/ 2000-RB as then applicable; and (v) delay in filing the Annual Return in respect of the FLA Return as required under Regulation 13.1(3) of Notification No. 20 R/2017-RB dated November 07, 2017 (hereinafter referred to as Notification No. FEMA 20 R/2017-RB) as then applicable. The said Regulations have been issued by the Reserve Bank of India in exercise of its powers under the provisions of FEMA, 1999.

2. The relevant facts of the case are as follows:

(i) The applicant was incorporated on March 28, 2007 under the provisions of the Companies Act, 1956 (CIN: U29249GJ2007PTC050353). The applicant has received foreign inward remittances from the “person resident outside India”, towards equity shares during the years 2007 to 2017. Contraventions were noted in respect of reporting of



foreign inward remittance, reporting of issuance of shares, delay in issue of shares and delay in filing FLA Returns in the transactions detailed in the subsequent Paragraphs.

(ii) The receipt of the foreign inward remittances from the “person resident outside India” were reported with delay by the applicant by filing ARF as provided below:

Table 1 - Reporting under Paragraph 9(1)(A) of Schedule 1
to Notification No. FEMA 20/2000-RB

Sl. No.	Name of the remitter	Amount of foreign inward remittance (₹)	Date of receipt of foreign inward remittance	Date of reporting by applicant to RBI*	Delay beyond prescribed period of 30 days
1	Ross Hutton, Australia	2,37,599	20-03-2008	18-09-2008	152
2	Ross Hutton, Australia	94,95,360	30-08-2008	16-10-2008	17
3	Ian Charles Pitcher, Australia	1,03,28,580	11-08-2008	18-09-2008	8
4	Ross Hutton, Australia	1,05,30,800	03-06-2009	28-08-2009	56
5	Ross Hutton, Australia	1,13,55,000	15-07-2009	28-08-2009	14
6	Marie Jean Hutton, Australia	1,79,50,503	29-11-2016	31-08-2018	610
	Total	5,98,97,842			

*For the purpose of calculation of delay under Paragraph 9(1)(A) of Schedule 1, date of reporting by the applicant to AD Bank is taken as date of reporting to RBI.

- (a) As indicated in the Table 1 above, the applicant reported the receipt of foreign inward remittances amounting to ₹5,98,97,842 to the Ahmedabad Regional Office of the Reserve Bank of India with a delay ranging from 8 to 610 days beyond the prescribed period of 30 days from the date of receipt of foreign inward remittance.
- (b) In terms of Regulation 5(1) of the Notification No. FEMA 20/2000-RB, a “person resident outside India” (other than a citizen of Bangladesh or Pakistan) or an entity incorporated outside India (other than an entity of Bangladesh or Pakistan) may purchase shares or convertible debentures or warrants of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1 to the said Regulations. Paragraph 9(1)(A) of Schedule 1 to the Regulations mandates that an Indian company issuing shares or convertible debentures or warrants in accordance with the Regulations shall submit through AD bank to the concerned Regional Office of Reserve Bank under whose



jurisdiction the registered office of the company operates, not later than 30 days from the date of receipt of the amount of consideration received by the Indian company for issue of shares or convertible debentures or warrants, a report in ARF as specified by Reserve Bank from time to time, along with documents stipulated therein.

(c) The applicant has failed to submit the report in ARF within the time frame as required under Paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB, thereby contravening the provisions of the said Notification.

(iii) The applicant allotted equity shares to “person resident outside India” and reported the same with delay by filling Form FC-GPR as provided below:

Table 2 - Reporting under Paragraph 9(1)(B) of Schedule 1
to Notification No. FEMA 20/2000-RB

Sl. No.	Name of the remitter	No. of shares issued	Amount of shares (₹)	Date of issue of shares	Date of reporting to RBI*	Delay beyond prescribed period of 30 days
1	Ross Hutton, Australia	15,28,665	3,69,43,247	29-01-2011	21-04-2011	52
2	Marie Jean Hutton, Australia	9,96,600	1,79,50,503	10-12-2016	11-10-2019	1005
3	Marie Jean Hutton, Australia	8,24,916	1,45,18,529	14-08-2017	02-03-2019	535
	Total	33,50,181	6,94,12,279			

**For the purpose of calculation of delay under Paragraph 9(1)(B) of Schedule 1, date of reporting by the applicant to AD Bank is taken as date of reporting to RBI.*

(a) As indicated in Table 2 above, the applicant has issued 33,50,181 equity shares amounting to ₹6,94,12,279/- to “person resident outside India” and submitted the report in Form FC-GPR to the AD Bank with a delay ranging from 52 to 1005 days beyond the prescribed period of 30 days from the date of issue of shares.

(b) Paragraph 9(1)(B) of Schedule 1 to the Notification No. FEMA 20/2000-RB mandates that an Indian company issuing shares in accordance with the Regulations is required to submit to Reserve Bank of India through AD bank, a report in Form FC-GPR, as specified by the Reserve Bank from time to time, along



with documents stipulated therein, within 30 days from the date of issue of shares to the “person resident outside India”.

(c) The applicant has failed to submit the report in Form FC-GPR within the time frame as required under Paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB, thereby contravening the provisions of the said Notification.

(iv) The applicant has issued the shares to the “person resident outside India” with a delay as provided below:

Table 3 - Delay in issue of shares under A.P. (Dir. Series) Circular No. 20 dated December 14, 2007 read with Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB

Sl. No.	Name of the investor	Amount of shares (₹)	Date of receipt of inward remittance	Date of issue of shares	Delay beyond prescribed period of 180 days
1	Ross Hutton, Australia	2,37,599/-	20-03-2008	12-01-2009	118

(a) As indicated at Table 3 above, the applicant has issued shares amounting to ₹2,37,599/- to the “person resident outside India” on January 12, 2009, with a delay of 118 days beyond prescribed period of 180 days without obtaining the permission of the Reserve Bank.

(b) In terms of A.P. (Dir. Series) Circular No. 20 dated December 14, 2007, shares are required to be issued within 180 days of the receipt of the inward remittance. Further, in terms of first proviso to 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. Again, in terms of second proviso to Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, the Reserve Bank may, on an application made to it and for sufficient reasons, permit the company 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 of foreign inward remittance.



(c) The applicant has failed to issue the shares to “person resident outside India” within the prescribed period of 180 days as required under A.P. (Dir. Series) Circular No. 20 dated December 14, 2007 read with Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB thereby contravening the said directive and notification.

(v) The applicant filed FLA Returns with delay, for the financial years 2011-12, 2012-13, 2015-16, 2016-17 and 2017-18 as provided below:

Table 4 - Reporting under Paragraph 9 (2) of Schedule 1 to
Notification No. FEMA 20/ 2000-RB

Sl. No.	Financial Year	Due date of filing	Date of Actual filing	Delay in no. of days
1	2011-12	15-07-2012	01-08-2012	17
2	2012-13	15-07-2013	02-09-2013	49
3	2015-16	15-07-2016	19-07-2016	4
4	2016-17	15-07-2017	13-10-2017	90

Table 5 - Reporting under Regulation 13.1(3) of
Notification No.20 R/2017-RB

Sl. No.	Financial Year	Due date of filing	Date of Actual filing	Delay in no. of days
1	2017-18	15.07.2018	28-09-2018	75

(a) As indicated in the Table 4 and 5 above, the applicant filed FLA Returns for the financial years viz. 2011-12, 2012-13, 2015-16, 2016-17 and 2017-18 with delay beyond the due date of filing, ranging from 4 to 90 days.

(b) In terms of Paragraph 9 (2) of Schedule 1 to Notification No. FEMA 20/ 2000-RB as then applicable, all Indian companies, which have received Foreign Direct Investment in the previous year(s), including the current year, are required to submit to the Reserve Bank of India, on or before the 15th day of July of each year, a report titled 'Annual Return on Foreign Liabilities and Assets' as specified by the Reserve Bank from time to time.

(c) Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, was issued vide Notification No. 20R / 2017-RB dated November 07, 2017 which was effective from November 07, 2017. In terms of Regulation 13.1(3) to Notification No. FEMA 20(R) / 2017-RB as then



applicable, an Indian company which has received FDI or an LLP which has received investment by way of capital contribution in the previous year(s) including the current year, is required to submit FLA Returns to the Reserve Bank on or before the 15th day of July of each year.

(d) The applicant has failed to report the FLA Returns within the time frame as required under Paragraph 9 (2) of Schedule 1 to Notification No. FEMA 20/ 2000-RB as then applicable and Regulation 13.1(3) of Notification No.20 R/2017-RB as then applicable, thereby contravening the provisions of the said Regulations.

3. The applicant was given an opportunity for personal hearing vide letter FE.AH.No.1044/06.04.15/CEFA/2019-20 dated February 13, 2020 for further submission in person and/or producing documents, if any, in support of the application. Shri Prashant H Pandya, Managing Director, Shri Vijay K Sambhawani, Manager and Ms. Deshana Pathak, Company Secretary represented the applicant for the personal hearing held on March 16, 2020 at 4th Floor, Main Office Building, Reserve Bank of India, Ahmedabad. The representatives of the applicant submitted that the delay occurred due to lack of awareness of filing procedure for ARF and FC-GPR and technical issues in the e-biz portal. Further, the applicant has submitted that they are law-abiding company and have assured to comply with FEMA rules and regulations in future. Stating that the delay has been without any malafide intention, they have requested for a lenient approach and are willing to accept any direction/order of the Compounding Authority in connection with its compounding application. The application for compounding is, therefore, being considered on the basis of the statements made in the application, documents and submissions made in this context by the applicant/representatives.

4. It has been declared in the compounding application that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has also been declared that the applicant was not under any enquiry / investigation / adjudication by any investigating agency as on the date of the application and that there has not been initiation of any such enquiry / investigation / adjudication proceedings against it thereafter, till date. It has further been declared that the applicant has not filed any appeal under Section 17 or Section 19 of the FEMA, 1999. Accordingly, the above



contraventions which are being compounded in this order are subject to the veracity of the above declarations made by the applicant and this order is without prejudice to any other action which may be taken by any authority under the extant laws if the said declarations are subsequently discovered to be false and/or incorrect.

5. I have given my careful consideration to the documents on record and submissions made by the applicant in its application. I am satisfied and hold that the applicant has contravened the statutory requirement in terms of:

- (i) Paragraph 9(1)(A) of Schedule 1 to Notification FEMA 20/2000–RB, due to delay in submitting report in ARF, after receipt of foreign inward remittance towards subscription of shares as detailed in Paragraph 2(ii) above. The amount of contravention involved is ₹5,98,97,842/- and the delay in submission range from 8 to 610 days;
- (ii) Paragraph 9(1)(B) of Schedule 1 to Notification FEMA 20/2000–RB, due to delay in submitting report in Form FC-GPR, after issue of shares to the “person resident outside India” as detailed in Paragraph 2(iii) above. The amount of contravention involved is ₹6,94,12,279/- and the delay in submission range from 52 to 1005 days;
- (iii) A.P. (Dir. Series) Circular No. 20 dated December 14, 2007 read with First and second Proviso to Paragraph 8 of Schedule 1 to Notification FEMA 20/2000–RB, due to delay in issue of shares as detailed in Paragraph 2(iv) above. The amount of contravention involved is ₹2,37,599/- and the delay in issue of shares is 118 days;
- (iv) Paragraph 9 (2) of Schedule 1 to Notification No. FEMA 20/ 2000-RB, due to delay in filing the Annual Return in respect of the Foreign Liabilities and Assets, as detailed in Paragraph 2(v) above and the delay in submission range from 4 to 90 for the financial years 2011-12, 2012-13, 2015-16 and 2016-17; and
- (v) Regulation 13.1(3) of Notification No.20 R/2017-RB, due to delay in filing the Annual Return in respect of the Foreign Liabilities and Assets, as detailed in Paragraph 2(v) above and the delay in submission is 75 days for the financial year 2017-18.



6. In terms of Section 13 of the FEMA, any person contravening any provision of the Act, or any regulation, notification, etc. issued in exercise of the powers under FEMA, shall be liable to pay 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 therefore, I consider that an amount of penalty for ₹4,38,371/- (Rupees Four Lakh Thirty Eight Thousand Three Hundred Seventy One only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions, namely contravention of Paragraphs 9(1)(A), 9(1)(B), 8 and 9 (2) of Schedule 1 to Notification No. FEMA 20/2000-RB read with A.P. (Dir. Series) Circular No. 20 dated December 14, 2007 and Regulation 13.1(3) of Notification No.20 R/2017-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 ₹4,38,371/- (Rupees Four Lakh Thirty Eight Thousand Three Hundred Seventy One only). The same shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Ground Floor, Near Gandhi Bridge, Post Bag No. 1, Ahmedabad - 380014 by way of a demand draft drawn in favour of the "Reserve Bank of India" and payable at Ahmedabad 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.

8. The above Order is passed only in respect of contraventions of Paragraphs 9(1)(A), 9(1)(B), 8 and 9 (2) of Schedule 1 to Notification No. FEMA 20/2000-RB read with A.P. (Dir. Series) Circular No. 20 dated December 14, 2007 and Regulation 13.1(3) of Notification No.20 R/2017-RB as mentioned in Para 2 and does not restrict the right of any other authority to proceed against the applicant for any other violations / contraventions noticed at any point of time.

9. The compounding of the contravention under clause (iv) of Para 2 as also clause (iii) of Para 5 of this order would not prevent any other authorities from taking action against the company/any person concerned, under the Companies Act or any other applicable Law.



Therefore, by compounding the said contravention under the provisions of FEMA, the Bank would not be legitimising any violation committed by the company/any person concerned, under the Companies Act or any other relevant Laws in vogue at the time of contravention and it would be open for the Authorities concerned under the applicable Laws to take appropriate action, as deemed necessary.

The application is disposed of accordingly.

Dated the 18th day of March, 2020.

Sd/-

(Santosh Kumar Panigrahy)
Regional Director (Gujarat, Daman & Diu and Dadra & Nagar Haveli) /
Chief General Manager (Ahmedabad)