



In the
Reserve Bank of India
Foreign Exchange Department
Ahmedabad-380009

Present
Dinesh Bahadur Singh
Deputy General Manager

January 30, 2019
CEFA.CO.ID.11278 / C.A. No. AHM - 117 / 2018-19
Matter
Bitumag Industries Pvt. Ltd.
(CIN: U74999GJ2017PTC095656)

No. 11, Basant Bahar, Opp. Sterling City, Bopal, Dascroi,
Ahmedabad, Gujarat - 380058

गुजरात / 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

The applicant has filed compounding application dated November 12, 2018 (received at Reserve Bank of India on November 15, 2018) 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 are (i) delay beyond 30 days in submission of Form FC-GPR to the Reserve Bank after issue of shares to a person resident outside India in terms of paragraphs 9 (1) B 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 3rd May 2000 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB) and (ii) delay in allotment of shares / refund of share application money beyond stipulated period of 60 days in terms of Paragraph 2 of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 to Notification No. FEMA 20 (R)/2017-RB dated November 17, 2017

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

The applicant company was incorporated on February 2, 2017 under the provisions of the Companies Act, 2013 (CIN: U74999GJ2017PTC095656). The company is engaged in manufacturing and trading in bitumen, specialty grades of bitumen, including polymer modified bitumen, specialties, modified bitumen, bitumen derivatives, water proofing materials, intermediaries, by-products etc. (NIC Code 2008: 20299). The applicant company has reported receipt of two inflows amounting to ₹2,29,56,573/- within prescribed period of 30 days from foreign investor Optichem Specialties FZE, Dubai, UAE under automatic route. Company has reported two issue of the shares in Form FC-GPR amounting to ₹2,28,00,000/- wherein it has reported one Form FC-GPR for the amount of ₹38,00,000/- with a delay beyond the prescribed



period of 30 days whereas, an excess amount of ₹1,56,573/- was also refunded with a delay beyond the prescribed period of 60 days.

3. Paragraph 9(1) (A) – Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000:

(Table - A)

Sr. No.	Amount of foreign inward remittance (₹)	Date of receipt	Date of reporting to RBI*	Days delay excluding prescribed time of 30 days
1	38,00,000	19-09-2017	30-09-2017	No delay

* The date for calculation of delay under 9(1) (A) taken as date of inflow reporting by Company to AD.

Regulation 13.1(1) of Notification No. FEMA 20 (R)/2017-RB dated November 7, 2017:

Sr. No.	Amount of foreign inward remittance (₹)	Date of receipt	Date of reporting to RBI*	Days delay excluding prescribed time of 30 days
2	1,91,56,573	19-07-2018	06-08-2018	No delay
Total	2,29,56,573			

* The date for calculation of delay under 9(1) (A) taken as date of inflow reporting by Company to AD.

4. As indicated in the Table A above, the applicant reported the receipt of two foreign inward remittances, amounting to ₹2,29,56,573/- to the Ahmedabad Regional Office of the Reserve Bank of India. Both the inflows were reported within the prescribed period of 30 days. Whereas, in terms of paragraph 9 (1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares 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. Thus, the company has not contravened the provisions stipulated in paragraph 9 (1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000 and Regulation 13.1(1) of Notification No. FEMA 20 (R)/2017-RB dated November 7, 2017.



5. The applicant allotted equity shares and filed Form FCGPRs as stated below:

Paragraph 9 (1) (B) – Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000:

(Table - B)

Sr. No.	No of shares issued	Amount of shares (₹)	Date of issue of shares	Date of submission of FC-GPR to RBI *	Days delay excluding prescribed time of 30 days
1	3,80,000	38,00,000	22-09-2017	29-11-2017	38

* For calculation of days of delay under 9(1) (B) date of reporting to AD bank is taken as reporting to RBI.

Regulation 13.1(2) of Notification No. FEMA 20 (R)/2017-RB dated November 7, 2017:

Sr. No.	No of shares issued	Amount of shares (₹)	Date of issue of shares	Date of submission of FC-GPR to RBI *	Days delay excluding prescribed time of 30 days
2	19,00,000	1,90,00,000	20-07-2018	28-08-2018	9 (LSF Paid)
Total	3,40,000	2,28,00,000			

* For calculation of days of delay under 13.1(2) date of reporting to AD bank is taken as reporting to RBI.

6. As indicated in the Table B above, the applicant has filed two form FC-GPRs amounting to **₹2,28,00,000/-** and it has reported first Form FC-GPR amounting to ₹38,00,000/- (Sr. No. 1) with a delay of 38 days approximately and has reported the second Form FC-GPR amounting to ₹1,90,00,000/- (Sr. No. 2) with a delay of 9 days. However, second Form FCGPR has been regularised and treated as regular, as the company has paid the Late Submission Fee (LSF). 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 the Reserve Bank of India, a report in form FC-GPR, along with documents prescribed therein,



within 30 days from the date of issue of shares to the overseas investor. Thus, the company stands to contravene the provisions stipulated in Paragraph 9 (1) (B) of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000.

7. Contravention under Paragraph 2 of Schedule 1 to Notification No. FEMA 20 (R)/2017-RB dated November 17, 2017:

(Table - C)

Sr. No.	Date of receipt	Amount of Refund (₹)	Date of Refund	Days delay excluding prescribed time of 60 days
1	19-07-2018	1,56,573	22-10-2018	35

8. It is observed from the table C above that the Company has refunded the share application money of ₹1,56,573/- with the delay of approximately 35 days beyond the prescribed period of 60 days as stipulated in Paragraph 2 of Schedule 1 to Notification No. FEMA 20 (R)/2017- RB dated November 7, 2017. Whereas, in terms of Paragraph 2 of Schedule 1 to Notification No. FEMA 20 (R)/2017- RB, if the shares are not issued within 60 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned. Thus, the company stands to contravene the provisions stipulated in Paragraph 2 of Schedule 1 to Notification No. FEMA 20 (R)/2017- RB dated November 7, 2017.

9. The applicant was given an opportunity for personal hearing vide our letter FE.AH.No.1028/06.04.15 (A) CEFA /2018-19 dated January 16, 2019 for further submission in person and /or producing documents, if any, in support of the application. Shri Prashant Balodia, CS of M/s PDS & Co., Company Secretaries represented the applicant for the personal hearing on January 30, 2018. They admitted to the contraventions for which compounding has been sought and stated that the non-compliance was not intentional and was an inadvertent error on the part of the Company and they deeply regret the delay caused and requested to take lenient view. They also stated that they are willing to accept any direction/ order of the Compounding Authority in connection with their compounding application.



10. 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.

11. It has been declared in the compounding application dated November 12, 2018 that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has been declared in the declaration furnished with the addendum to compounding application that the applicant was not under any enquiry / investigation / adjudication by any agency as on the date of the application and has, in this regard, not informed of initiation of any such enquiry /investigation / adjudication proceedings against it/him/her thereafter. It has further been declared that the applicant has not filed any appeal under section 17 or section 19 of 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.

12. 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 following FEMA provisions issued in terms of:

A) Paragraph 9 (1) (B) of Schedule 1 to FEMA Notification FEMA 20/2000 – RB dated May 3, 2000: Due to delay in submission of form FC-GPR, after issue of shares to persons resident outside India as detailed in paragraph 6 above. The amount of contravention involved is ₹38,00,000/- and the delay is ranging from 38 days approximately.

B) Paragraph 2 of Schedule 1 to FEMA Notification FEMA20 (R)/2017- RB dated November 7, 2017: Due to delay in refund of share application money beyond



stipulated period of 60 days from date of receipt detailed in Paragraph 8 above. The amount involved is ₹1,56,573/- and the delay is 35 days approximately.

13. 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 therefore, I consider that amount of penalty of ₹61,208/- (Rupees Sixty one thousand two hundred eight only) will meet the ends of justice.

14. Accordingly, I compound the admitted contraventions, namely contravention of paragraph 9 (1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000 and Paragraph 2 of Schedule 1 to Notification No. FEMA 20 (R)/2017-RB dated November 17, 2017 by the applicant, on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹61,208/- (Rupees Sixty one thousand two hundred eight only) which 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 –380 014 by 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.

The application is disposed of accordingly.

Dated the 30th day of January, 2019.

Sd/-

(Dinesh Bahadur Singh)
Deputy General Manager