



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

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

March 29, 2019
CEFA.CO.ID.115511 / C.A. No. AHM - 125 / 2018-19
Matter
Deepkiran Foods Pvt. Ltd.
(CIN: U15410GJ1998PTC034391)

101, Astron Tower, Opp. Fun Republic, S. G. Highway Cross Road, Satellite,
Ahmedabad -380015

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 there under, I pass the following order:



Order

The applicant has filed compounding application dated December 10, 2018 (received at Reserve Bank of India on January 22, 2019) 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 reporting receipt of foreign inward remittance towards subscription to equity; and (ii) delay in refund of share application money beyond stipulated period of 180 days; in terms of paragraphs 9 (1) (A) and 8 respectively, 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 as then applicable and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

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

The applicant company was incorporated on July 16, 1998 under the provisions of the Companies Act, 1956 (CIN: U15410GJ1998PTC034391). The company is engaged in manufacture of semi-processed and instant foods bearing NIC Code 2008: 10799. The applicant company has received twenty one inflows amounting to **₹3,14,53,491/-** from five non-resident investors (i) Deep Foods Inc., (ii) Archit Amin, (iii) Deepak Amin, (iv) Arvind Amin and (v) Bhagwati Amin, USA under approval route. Company has issued the Equity Shares / Compulsorily Convertible Debentures (CCD) / Compulsorily Convertible Preference Shares (CCPS) for an amount of **₹2,99,99,800/-** whereas, an excess share application money amounting to **₹14,53,589/-** was refunded with Reserve Bank's permission after 180 days and the remaining amount of **₹102/-** being insignificant was ignored.



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

(Table - A)

Sr. No.	Remitter	Date of receipt	Amount of foreign inward remittance (₹)	Date of reporting by AD bank to RBI*	Days delay excluding prescribed time of 30 days
1	Deep Foods Inc.	19-07-2000	30,36,200	25-06-2002	676
2	Archit Amin	10-04-2001	11,63,534	25-06-2002	411
3	Archit Amin	08-06-2001	9,38,200	25-06-2002	352
4	Archit Amin	28-07-2001	14,05,800	25-06-2002	302
5	Archit Amin	17-07-2001	11,75,500	25-06-2002	313
6	Archit Amin	18-09-2001	16,73,350	25-06-2002	250
7	Archit Amin	18-10-2001	19,17,200	25-06-2002	220
8	Archit Amin	16-01-2002	19,28,000	25-06-2002	130
9	Archit Amin	30-01-2002	24,24,000	25-06-2002	116
10	Deepak Amin	11-05-2001	2,33,632	25-06-2002	380
11	Deepak Amin	16-05-2001	9,36,600	25-06-2002	375
12	Deepak Amin	22-06-2001	14,07,000	25-06-2002	338
13	Deepak Amin	14-08-2001	11,75,000	25-06-2002	285
14	Deepak Amin	14-08-2001	9,40,000	25-06-2002	285
15	Deepak Amin	24-08-2001	16,44,880	25-06-2002	275
16	Deepak Amin	30-08-2001	18,83,200	25-06-2002	269
17	Deepak Amin	08-11-2001	19,17,200	25-06-2002	199
18	Deepak Amin	25-01-2002	24,14,275	25-06-2002	121
19	Arvind Amin	25-09-2000	13,80,000	25-06-2002	608
20	Arvind Amin	09-04-2001	2,32,185	25-06-2002	412
21	Bhagwati Amin	22-02-2001	16,27,735	25-06-2002	458
	Total		3,14,53,491		

* 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 twenty one foreign inward remittances, amounting to ₹3,14,53,491/- to the Ahmedabad Regional Office of the Reserve Bank of India. All the twenty one inflows were reported with a delay ranging from 116 to 676 days beyond 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 stands to contravene the provisions stipulated in paragraph 9 (1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.

5. The applicant allotted equity shares and filed FC-GPRs as stated below:

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

(Table - B)

Sr. No.	Investor	No. of Shares/ CCD/ CCPS Issued	Amount of Shares/ CCD/CCPS (₹)	Date of Issue of Shares/ CCD/CCPS	Date of reporting by AD bank to RBI*	Days delay excluding prescribed time of 30 days
1	Deep Foods Inc.	2,99,998	29,99,980	01-06-2002	25-06-2002	No delay
2	Archit Amin	11,99,992	1,19,99,920	01-06-2002	25-06-2002	No delay
3	Deepak Amin	11,99,992	1,19,99,920	01-06-2002	25-06-2002	No delay
4	Arvind Amin	1,49,999	14,99,990	01-06-2002	25-06-2002	No delay
5	Bhagwati Amin	1,49,999	14,99,990	01-06-2002	25-06-2002	No delay
		29,99,980	2,99,99,800			

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

6. As indicated in the Table B above, the applicant has filed five Form FC-GPRs amounting to **₹2,99,99,800/-** and issued 29,99,980 Equity Shares / Compulsorily Convertible Debentures / Compulsorily Convertible Preference Shares within the stipulated period of 30 days from the date of allotment of shares. Whereas, in terms of paragraph 9 (1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, an Indian company issuing shares in accordance with these Regulations has to submit to 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 person resident outside India. Thus, the company is not in contravention of 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 8 of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000:

(Table - C)

Date of receipt of remittance	Amount of Shares/CCD/CCPS/Refund (₹)	Date of Refund/ Issue of Shares /CCD/CCPS	Days delay in refund of excess share application money excluding prescribed time of 180 days
29-11-2007*	14,53,589	14-02-2019	3915

* Delay in refund calculated w.e.f. 29.11.2007 in terms of A.P. (Dir Series) Circular No. 20 dated December 14, 2007.

8. It is observed that the Company has refunded the excess share application money amounting to ₹14,53,589/- with the permission of the Reserve Bank of India with the delay of 3915 days beyond the prescribed period of 180 days from the date of receipt of money on November 29, 2007. The date of receipt of money is taken as November 29, 2007 as the provision to refund the excess share application money came into effect from November 29, 2007 in terms of instructions contained in A.P. (Dir Series) Circular No. 20 dated December 14, 2007. Whereas, in terms of Para 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, provided the Reserve Bank may, on an application made to it and for sufficient reasons permit 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. The amendment in paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB was introduced by issue of Foreign Exchange Management (Transfer or Issue of Security by A Person Resident outside India) (Third Amendment) Regulations, 2007 notified vide, Notification No. FEMA 170/2007-RB dated November 13, 2007 in the official Gazette of the Government of India. Further in terms of Paragraph 5 of AP(Dir series) Circular No.20 dated December 14, 2007, in all cases where, as on November 28, 2007, 180 days have elapsed since receipt of funds and the equity instruments have not been issued,



the companies are required to approach the Foreign Exchange Department of the Regional Office concerned of the Reserve Bank through their AD Category-1 bank with a definite action plan whether for allotment of equity instruments or for refund of the advance, with full details, for specific approval. Thus, the company stands to contravene the provisions stipulated in Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000.

9. The applicant was given an opportunity for personal hearing vide our letter FE.AH.No.1417/06.04.15 (A) CEFA /2018-19 dated March 19, 2019 for further submission in person and/or producing documents, if any, in support of the application. Applicant has vide their letter dated March 22, 2019 requested to dispose of their application as per documents submitted and sought an exemption from personal hearing with the Compounding Authority. Applicant has admitted in their application to the contraventions for which compounding has been sought and stated that the non-compliance was unintentional and without any malafide or fraudulent intentions on the part of the Company and they have requested to take a sympathetic 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 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.

11. It has been declared in the compounding application dated December 10, 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 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) (A) of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000: Due to delay in reporting of receipt of foreign inward remittances towards subscription of shares as detailed in paragraph 4 above. The amount of contravention involved is ₹3,14,53,491/- and the delay is ranging from 116 to 676 days.

B) Paragraph 8 of Schedule 1 to FEMA Notification FEMA20/2000- RB dated May 3, 2000: Due to delay in refund of share application money beyond stipulated period of 180 days from date of receipt detailed in Paragraph 8 above. The amount involved is ₹14,53,589/- and the delay is 3915 days.

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 ₹1,12,563/- (Rupees One Lakh Twelve Thousand Five Hundred Sixty Three only) will meet the ends of justice.



14. Accordingly, I compound the admitted contraventions, namely contravention of paragraph 9(1) (A) and 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000, by the applicant, on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹1,12,563/- (Rupees One Lakh Twelve Thousand Five Hundred Sixty Three 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 – 380014 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 29th day of March, 2019.

Sd/-

(Jayant Kumar Dash)

Regional Director (Gujarat, Daman & Diu and Dadra & Nagar Haveli) /

Chief General Manager (Ahmedabad)