



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)

November 27, 2019
CEFA.CO.ID.10972 / C.A. No. AHM - 139 / 2018-19

Matter
LAVIOSA INDIA PRIVATE LIMITED
(CIN: U14210GJ2009PTC056289)

Survey No. 388, Bhuj Mandvi Highway, Village – Pundi, Taluka: Mandvi, Kutch - 370487

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

LAVIOSA INDIA PRIVATE LIMITED (hereinafter referred to as applicant) has filed the application dated August 19, 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; and (iii) delay in issue of share beyond stipulated period of 180 days from the date of receipt of the inward remittance, as required under Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB. The applicant has therefore contravened the provisions of Paragraphs 9(1)(A), 9(1)(B) and Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB. The said Regulations have been issued by the Reserve Bank of India in exercise of its powers under the provisions of the FEMA, 1999.

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

(i) The applicant was incorporated on March 6, 2009 under the provisions of the Companies Act, 2013 (CIN: U14210GJ2009PTC056289). The applicant has received foreign inward remittances from the investor “resident outside India”, viz., Laviosa Chimica Mineraria S.P.A, Italy towards equity shares during the years 2009 to 2017. Contraventions were noted in respect of reporting of foreign inward remittance, reporting of issuance of shares and delay in issue of shares in the transactions detailed in the subsequent paragraphs.



(ii) The receipt of the foreign inward remittance from the “person resident outside India” was reported with a 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	Date of reporting by company to RBI*	Delay beyond prescribed period of 30 days
1	Laviosa Chimica Mineraria S.P.A, Italy	4,99,95,000/-	17-04-2017	07-11-2017	174

* For the purpose of calculation of delay under Paragraph 9(1)(A), 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 remittance amounting to ₹4,99,95,000/- to the Ahmedabad Regional Office of the Reserve Bank of India with a delay of 174 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 I 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 these Regulations shall submit through AD bank to the Regional Office concerned of the 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 Indian company for issue of shares or convertible debentures or warrants, report in ARF as specified by Reserve Bank from time to time, along with documents stipulated therein.



(c) The applicant has thus 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 a 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 dated May 3, 2000						
Sl. No.	Name of the investor	No. of shares	Amount of shares (₹)	Date of issue of shares	Date of reporting to RBI*	Delay beyond prescribed period of 30 days
1	Laviosa Chimica Mineraria S.P.A, Italy	33,33,000	4,99,95,000/-	02-05-2017	03-07-2018	397

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

(a) As indicated in the Table 2 above, the applicant has issued 33,33,000 equity shares amounting to ₹4,99,95,000/- to “person resident outside India” on May 2, 2017 and submitted the report in Form FC-GPR to the AD Bank with a delay of 397 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 these Regulations is required to submit to the 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 thus 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) Further, 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						
Sl. No.	Name of the investor	No. of Shares issued	Amount of shares (₹)	Date of receipt of inward remittance	Date of issue of shares	Delay beyond prescribed period of 180 days
1	Laviosa Chimica Mineraria S.P.A, Italy	2,15,040	21,50,400/-	9-11-2009	12-07-2010	65

- (a) As indicated at Table 3 above, the applicant has issued shares amounting to ₹21,50,400/- to the “person resident outside India” on July 12, 2010, with a delay of 65 days beyond prescribed period of 180 days without obtaining the permission of the Reserve Bank.
- (b) 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. Further, 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 thus failed to issue the shares to Laviosa Chimica Mineraria S.P.A, Italy within the prescribed period of 180 days thereby contravening the provisions of Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB.



3. The applicant was given an opportunity for personal hearing vide letter FE.AH.No.529/06.04.15/CEFA/2019-20 dated November 4, 2019 for further submission in person and/or producing documents, if any, in support of the application. Shri Denis Desouza, Director and Shri Saumya Seth, a practising Chartered Accountant, represented the applicant for the personal hearing held on November 15, 2019 at 4th Floor, Main Office Building, Reserve Bank of India, Ahmedabad. The representatives of the applicant stated that the Indian JV Partner M/s Trimex Industries Private Limited had not undertaken regulatory compliances in respect of share capital received by applicant from Laviosa Chimica Mineraria S.P.A, Italy during 2009 to 2015. Further, they admitted to the contravention for which compounding has been sought and stated the delay occurred due to delay in issue of FIRC by AD bank, error in selection of AD bank in e-Biz Portal and lack of professional knowledge. They also submitted that delay was without any malafide intentions and have assured not to repeat such mistakes in future and requested for a lenient view in disposal of the application and they are willing to accept any direction/order of the Compounding Authority in connection with their 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 has, in this regard, not informed of initiation of any such enquiry / investigation / adjudication proceedings against it 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.



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 FEMA Notification FEMA 20/2000–RB dated May 3, 2000, 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 ₹4,99,95,000/- and the delay in submission is 174 days;
- (ii) Paragraph 9(1)(B) of Schedule 1 to FEMA Notification FEMA 20/2000–RB dated May 3, 2000, 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 ₹4,99,95,000/- and the delay in submission is 397 days; and
- (iii) First and second Proviso to Paragraph 8 of Schedule 1 to FEMA Notification FEMA 20/2000–RB dated May 3, 2000, due to delay in issue of shares as detailed in paragraph 2(iv) above. The amount of contravention involved is ₹21,50,400/- and the delay in issue of shares is 65 days.

6. In terms of Section 13 of the FEMA, any person contravening any provision of the Act 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 amount of penalty of ₹1,49,065/- (Rupees One Lakh Forty Nine Thousand Sixty Five only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions, namely contravention of Paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 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 ₹1,49,065/- (Rupees One Lakh Forty Nine Thousand Sixty Five 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 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 Paragraph 9 (1)(A), 9(1)(B) and Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000 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.

The application is disposed of accordingly.

Dated the 27th day of November, 2019.

Sd/-

(Santosh Kumar Panigrahy)

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

Chief General Manager (Ahmedabad)