



In the
Reserve Bank of India
Foreign Exchange Department
Central Vista, Sector 17, P.B.No.2
Chandigarh-160017

Present

Smt. Rachna Dikshit
Regional Director (Punjab ,Haryana and U.T. of Chandigarh)
Chief General Manager, Chandigarh

Date: May 23, 2019
CA No. CHA 42 /2019

In the matter of

M/s Exito Gourmet Pvt. Ltd.
182 / 63, Industrial Area – I
Chandigarh – 160 002

(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

The applicant has filed a compounding application dated 23.04.2019 (received on 23.04.2019) for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded pertain to (i) delay beyond 30 days in reporting receipt of foreign inward remittance towards subscription to equity shares, (ii) delay beyond 30 days in submission of Form FC-GPR to the Reserve Bank after issue of shares to a person resident outside India iii) delay in issuance of shares beyond stipulated 180 days (iv) delay in filing of FLA returns; in terms of Paragraph 9(1) (A), Para 9(1) (B) ,Para 8 and Paragraph 9(2) of Schedule 1 respectively to the 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 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB) and (v) delay in filing of FLA returns in terms of regulation 13.1(3) of Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2017, notified vide Notification No. FEMA 20(R)/2017-RB dated November 07, 2017 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20(R)/2017-RB)



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

The applicant company was incorporated on July 02, 2008 under the Companies Act 1956. The applicant is engaged in manufacturing of milk products like- Cheese mozzarella, Cheddar, Mascarpone, Ricotta etc.

3. The applicant received foreign inward remittance towards investment in equity shares from non-residents as under:

Sr. No.	Date of Inflow	Indian Currency Amount	Date of reporting to RBI	Delay beyond 30 Days
1.	29.07.2011	34,65,550.00	22.08.2016	1821 Days
2.	25.08.2011	19,87,800.00	22.08.2016	1794 Days
3.	29.11.2011	41,70,000.00	22.08.2016	1698 Days
4.	17.02.2012	9,75,450.00	22.08.2016	1618 Days
5.	05.03.2012	1,64,52,500.00	22.08.2016	1601 Days
6.	03.07.2012	27,52,640.00	22.08.2016	1481 Days

The above remittance was not reported to Reserve Bank of India within the prescribed time period. The applicant reported the receipt of remittance to Reserve Bank of India with delay ranging from **1481 days to 1821 days**, in contravention of Para 9(1) (A) of Schedule 1 to Notification No. FEMA 20/2000RB dated May 3, 2000, in terms of which 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.

4. Further, the applicant company issued shares to the non-resident investor but filed the Form FC-GPR with delay as indicated below.

Sr. No.	Date of inflow	Amount	Shares issued on	Share Amount	Date of reporting to RBI	Delay beyond 30 Days
1	14.07.2008	12,00,000.00	18.07.2008	75,000.00	14.05.2009	270 Days
2	23.07.2008	34,50,000.00	17.01.2009	2,39,04,900.00	14.05.2009	87 Days
	08.09.2008	23,50,000.00				
	13.10.2008	10,00,000.00				
	17.07.2008	22,74,394.30				
	17.09.2008	27,81,340.69				
	24.12.2008	29,33,550.22				
	17.07.2008	57,93,597.14				
	18.09.2008	21,96,094.60				



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3	24.07.2009	13,40,907.15	15.01.2010	45,03,078.40	22.08.2016	2381 Days
	24.07.2009	6,70,453.38				
	10.09.2009	5,50,901.53				
	11.09.2009	5,52,722.96				
	16.09.2009	13,88,382.50				
4	12.01.2010	6,25,000.00	20.08.2010	22,68,120.69	22.08.2016	2164 Days
	18.01.2010	6,27,786.90				
	04.02.2010	4,38,711.70				
	30.04.2010	5,76,626.00				
5	18.08.2010	17,56,542.31	15.01.2011	74,36,050.56	22.08.2016	2016 Days
	28.12.2010	56,79,578.61				
6	27.04.2011	19,50,000.00	15.06.2011	19,50,000.00	22.08.2016	1865 Days
7	29.07.2011	34,65,550.00	15.01.2012	96,23,350.99	22.08.2016	1651 Days
	25.08.2011	19,87,800.00				
	29.11.2011	41,70,000.00				
8	17.02.2012	9,75,450.00	15.06.2012	2,01,70,975.45	22.08.2016	1499 Days
	05.03.2012	1,64,42,500.00				
	03.07.2012	27,52,640.00				
9	27.06.2014	1,40,00,000.00	10.07.2014	1,39,99,965	06.10.2014	58 Days

The applicant reported the allotment of shares to the Reserve Bank with delay ranging from **58 days to 2381 days**. The delay in reporting to the Reserve Bank in Form FC-GPR, beyond the prescribed period of 30 days in respect of allotment of the above shares, is in contravention of the provisions stipulated in the Paragraph 9(1) (B) of Schedule I to FEMA Notification No.20/2000-RB dated May 3, 2000, in terms of which 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 the person resident outside India.

5. The company has not issued the shares within the scheduled time limit, as indicated below:

<u>Sr. No.</u>	<u>Amount</u>	<u>Date of inflow</u>	<u>Shares issued on</u>	<u>Delay in issuance of shares</u>
1.	11,25,000.00	14.07.2008	17.01.2009	7 Days
2	22,74,394.30	17.07.2008	17.01.2009	4 Days
3	57,93,597.14	17.07.2008	17.01.2009	4 Days
4	6,25,000.00	12.01.2010	20.08.2010	40 Days
5	6,27,786.90	18.01.2010	20.08.2010	34 Days
6	4,38,711.70	04.02.2010	20.08.2010	17 Days

As mentioned above, the company issued the shares with delay ranging from **4 days to 40 days** beyond stipulated period of 180 days which is a contravention under



paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.

6. The company has delayed in filing FLA Return (Foreign liabilities and Assets) from financial year 2010-2011 till 2016 -2017 as shown below:

Sr. No.	Particulars	Financial Year	Due date of filing	Date of actual filing
1	FLA Return	2010-11	15-07-2011	07.05.2019
2	FLA Return	2011-12	15-07-2012	07.05.2019
3	FLA Return	2012-13	15-07-2013	07.05.2019
4	FLA Return	2013-14	15-07-2014	07.05.2019
5	FLA Return	2014-15	15-07-2015	07.05.2019
6	FLA Return	2015-16	15-07-2016	07.05.2019
7	FLA Return	2016-17	15-07-2017	07.05.2019

The applicant has filed FLA return from financial year 2010-2011 till 2016 -2017 with delay. Whereas, in terms of Para 9(2) of FEMA 20/2000-RB as then applicable and as amended, all Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year shall 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' (FLA) as specified by the Reserve Bank from time to time.

7. The company has delayed in filing FLA Return (Foreign liabilities and Assets for financial year 2017 -2018 as shown below:

Sr. No.	Particulars	Financial Year	Due date of filing	Date of actual filing
1	FLA Return	2017-18	15.07.2018	07.05.2019

The applicant has filed FLA return for FY 2017 -2018 with delay. Whereas, in terms of Regulation 13.1(3) of Notification No. FEMA 20R/2017-RB dated November 07, 2017 as then applicable and as amended, all Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year shall 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' (FLA) as specified by the Reserve Bank from time to time.

8. The applicant was given an opportunity for personal hearing vide our letter No.FE.CG/FID/930/03.01.164/2018-19 dated May 07, 2019 for further submission in person and/or producing documents, if any, in support of the application. Sh. Puneet Gupta, Director and Sh. Neeraj Kumar, Accountant of the company appeared for the personal hearing on May 21, 2019. During the personal hearing, the representatives of the applicant admitted the contravention committed by them for which they have sought compounding. The representative submitted that the contraventions were due to lack of awareness of the procedural requirements and were not intentional and have requested



for taking a lenient view in the matter. The application is, therefore, being considered on the basis of the averments made in the application, and documents produced.

9. It has been declared in the compounding application dated April 23, 2019, 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 undertaking 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 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.

10. I have given my careful consideration to the documents on record and submissions 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 I to Notification No. FEMA 20/2000-RB dated May 3, 2000** due to delay in reporting of receipt of foreign inward remittance towards subscription of shares as detailed in paragraph 3 above. The contravention relates to an amount of ₹ **2,98,03,940/- with the delay ranging from 1481 days to 1821 days.**
- b. **Paragraph 9 (1) (B) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000** due to delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India as detailed in paragraph 4 above. The contravention relates to an amount of ₹ **8,39,31,441.09/- with the delay ranging from 58 days to 2381 days.**
- c. **Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000** due to delay in issuance of shares to foreign investor beyond stipulated time period as detailed in paragraph 5 above. The contravention relates to an amount of ₹ **1,08,84,490.04/- with the delay ranging from 4 days to 40 days.**
- d. **Paragraph 9 (2) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000** due to delay in filing of FLA returns from the Financial Year 2010-11 to 2016-17 as detailed in paragraph 6 above.



e. Regulation 13.1(3) of Notification No. FEMA 20(R)/ 2017- RB dated November 07, 2017 due to delay in Filing of FLA return for FY 2017-18 as detailed in paragraph 7 above.

11. 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 contravention is to be compounded and I consider that amount of penalty of ₹ **8,53,981.00 (Rs Eight lakh Fifty Three thousand Nine hundred Eighty One only)** will meet the ends of justice.

12. Accordingly, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, I compound the admitted contravention committed by the applicant, namely contravention of Paragraph 9(1) (A), Para 9(1) (B), Para 8 and Paragraph 9(2) of Schedule 1 respectively to the 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 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB) and (v) delay in filing of FLA returns in terms of regulation 13.1(3) of Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2017, notified vide Notification No. FEMA 20(R)/2017-RB dated November 07, 2017 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20(R)/2017-RB) on the facts discussed above, on payment of an amount of ₹ **8,53,981.00 (Rs Eight lakh Fifty Three thousand Nine hundred Eighty One only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Vista, Sector 17, Chandigarh-160017 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at "Chandigarh" **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 23rd day of May 2019.

Sd/-

Rachna Dikshit

Regional Director

Chief General Manager