



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

Present
Ashish Gogia
Assistant General Manager

January 25, 2019
CEFA.CO.ID.11277 / C.A. No. AHM - 116 / 2018-19
Matter
Quality Exim Pvt. Ltd.
(CIN: U51100GJ1994PTC022718)

Sub Plot – 5, Sector – 1, Unit – 11, New Block 456,
Dholi Integrated Spinning Park Ltd., Dholka, Ahmedabad - 382240

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 October 29, 2018 (received at Reserve Bank of India on November 1, 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 is delay in allotment of shares / refund of share application money beyond stipulated period of 180 days; in terms of Paragraph 8, 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).

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

The applicant company was incorporated on August 09, 1994 under the provisions of the Companies Act, 1956 (CIN: U51100GJ1994PTC022718). The company is engaged in the business of wholesale of fabrics, bearing NIC Code: 46411. The applicant company has received one inflow amounting to ₹4,27,01,732/- from foreign investor Drakensburg Investments Ltd, UAE under automatic route. Company has issued the shares for amount of ₹4,25,00,000/- whereas, an excess amount of ₹1,93,631/- was refunded without Reserve Bank's permission after 180 days and ₹8,101/- ignored.

3. Contravention under Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000:

(Table - C)

Sr. No.	Date of receipt	Amount of Refund (₹)	Date of Refund	Days delay excluding prescribed time of 180 days
1	11-10-2017	1,93,631	20-04-2018	11
		1,93,631		



4. It is observed that the Company has refunded the excess share application money of ₹1,93,631/- without prior approval of the Reserve Bank of India with the delay of approximately 11 days beyond the prescribed period of 180 days as stipulated in Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000. Whereas, in terms of 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, 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.

5. The applicant was given an opportunity for personal hearing vide our letter FE.AH.No.1017/06.04.15 (A) / CEFA / 2018-19 dated January 10, 2019 for further submission in person and / or producing documents, if any, in support of the application. Applicant has vide their letter dated January 11, 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 not intentional and was an inadvertent error on the part of the company and they have 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.

6. The application for compounding is 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.

7. It has been declared in the compounding application dated October 29, 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 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.

8. 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:

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 4 above. The amount involved is ₹1,93,631/- and the delay is 11 days approximately.

9. 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 ₹53,517/- (Rupees fifty three thousand five hundred seventeen only) will meet the ends of justice.

10. Accordingly, I compound the admitted contraventions, namely contravention of Paragraph 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 ₹53,517/- (Rupees fifty three thousand five hundred seventeen only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Ground Floor, Near Gandhi Bridge, 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 25th day of January, 2019.

Sd/-

(Ashish Gogia)

Assistant General Manager