



In the
Reserve Bank of India
Foreign Exchange Department
Mumbai Regional Office
Main Building, 3rd floor
Shahid Bhagat Singh Marg, Fort
Mumbai 400 001

Present
Shri J.K. Pandey
Chief General Manager

May 31, 2019

CA NO. MUM 874/2019

In the matter of
M/s D S Smith Products & Services India Pvt Ltd
409, Dalamal Chambers,
New Marine Lines,
Mumbai 400 020
(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

- 1** The applicant has filed the compounding application dated January 14, 2019, received at the Reserve Bank on April 15, 2019, for compounding of contravention/s of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are in respect of the following Regulations/ paras under 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 and as amended from time to time (hereinafter referred to as FEMA 20):
 - I** Para 9 (1) (A) of FEMA 20: Delay in reporting receipt of foreign inward remittance towards subscription to equity



- II Para 8 of FEMA 20: Neither the equity instruments were issued, nor the money refunded to the foreign investor within 180 days from the receipt of the inward remittance
- III Para 9 (2) of FEMA 20: Delay in filing 'Annual Return on Foreign Liabilities and Assets' (FLA Returns).

2 Brief facts of the applicant company are as follows:

Date of Incorporation	September 02, 1996
Its main activities are:	Manufacturers, importers, exporters, ditributors, processors, agents and dealers in all kinds of coloured, natural, printed and non printed packaging materials.

3 The applicant received foreign inward remittances from non-resident investors towards equity shares / compulsorily convertible preference shares/ compulsorily convertible debentures and it reported the same to the Reserve Bank on dates as indicated below.

<u>Delay in reporting Foreign Direct Investment &/or Delay in allotting the shares/ refunding the amount</u>						
<u>(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days, and LSF stands for : Late Submission Fees</u>						
S No/ LSF	Date of inward remittance (DD-MM-YY)	Amount received (in INR)	Date of reporting to RBI (DD-MM-YY)	Para 9 (1) A delay	Date of allotment/ refund (DD-MM-YY)	Para 8 delay
1	29/01/07	6,633,000.00	28/03/07	0Y 0M 27D	27/04/07	0
2	05/06/07	2,061,500.00	21/06/07	0	18/04/18	10Y 4M 15D
2	05/06/07	3,000,000.00	21/06/07	0	26/04/18	10Y 4M 23D
2	05/06/07	1,000,000.00	21/06/07	0	28/08/18	10Y 8M 24D
3	26/09/07	10,903,750.00	10/03/10	2Y 4M 12D	18/04/18	10Y 0M 24D
	TOTAL	23,598,250.00				

In terms of Para 9(1)(A) of FEMA 20, an Indian company issuing shares or convertible debentures 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. However, the applicant reported receipt of remittances to the Reserve Bank of India on dates indicated above with a delay ranging from 0Y 0M 27D to 2Y 4M 12D in 2 out of 3 total remittances beyond the stipulated time of 30 days.



- 4 In respect of remittances amounting to Rs.16,965,250 (Rupees One Crore Sixty Nine Lakh Sixty Five Thousand Two Hundred Fifty and Zero Paise Only), indicated in the table above the company allotted shares/ refunded the amount after 180 days from the date of receipt of investment, with a delay ranging from 10Y 0M 24D to 10Y 8M 24D. Whereas in terms of paragraph 8 of Schedule 1 to FEMA 20, an Indian company is required to issue shares or refund the amount within 180 days from the date of receipt of inward remittance.
- 5 The company has not filed/delayed in filing the Annual Return on Foreign Liabilities and Assets (FLA return) to the Reserve Bank of India for the Financial Years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. Whereas, in terms of Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20, all Indian companies which have received Foreign Direct Investment in the previous years including the current year, shall submit to the Reserve Bank of India, on or before the due date (as applicable) each year, a report titled 'Annual Return on Foreign Liabilities and Assets' as specified by the Reserve Bank from time to time.
- 6 The applicant was given an opportunity for personal hearing, for further submission in person and/or for producing documents, if any, in support of the application vide e-mail dated May 22, 2019. The applicant appeared for personal hearing on May 27, 2019, during which Mr Rohit Kashyab, Consultant and Mr Sagar Gupta, Consultant represented the applicant in the cabin of Shri J.K. Pandey, Chief General Manager, Mumbai Regional Office. The representatives of the applicant admitted the contraventions for which compounding has been sought. During the hearing it was submitted that delay was inadvertent and unintentional. The representatives 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.
- 7 I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:
 - I Para 9 (1) (A) of FEMA 20, due to the delay in reporting of receipt of foreign inward remittance towards subscription towards shares as detailed above. The contravention relates to total amount of Rs.17,536,750 (Rupees One Crore Seventy Five Lakh Thirty Six Thousand Seven Hundred Fifty and Zero Paise Only) and with a delay ranging from minimum 0Y 0M 27D to maximum 2Y 4M 12D approximately.



- II** Para 8 of FEMA 20, since the shares were neither issued nor the amount was refunded to the person resident outside India within the prescribed time from the date of receipt of the inward remittance. The contravention relates to total amount of Rs.16,965,250 (Rupees One Crore Sixty Nine Lakh Sixty Five Thousand Two Hundred Fifty and Zero Paise Only) and with a delay ranging from minimum 10Y 0M 24D to maximum 10Y 8M 24D approximately.
- III** Para 9 (2) of FEMA 20, due to non-filing/delay in filing of Annual Return on Foreign Liabilities and Assets for the Financial Years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17.
- 8** It has been declared in the compounding application dated January 14, 2019 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has also been declared in a declaration attached to 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.
- 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 I consider that an amount of Rs.409,906 (Rupees Four Lakh Nine Thousand Nine Hundred Six and Zero Paise Only) will meet the ends of justice.
- 10** Accordingly, I compound the admitted contravention/s namely, the contravention/s of Para 9 (1) (A) of FEMA 20, Para 8 of FEMA 20 and Para 9 (2) of FEMA 20, by the applicant, on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs. 409,906 (Rupees Four Lakh Nine Thousand Nine Hundred Six and Zero Paise Only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, Fort, Mumbai-400001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Mumbai 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.



- 11 The above order is passed only in respect of contraventions of Para 9 (1) (A) of FEMA 20, Para 8 of FEMA 20 and Para 9 (2) of FEMA 20 and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.

- 12 The application is disposed of accordingly.
dated: May 31, 2019

Compounding Authority

(J.K. Pandey)
Chief General Manager