



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi-110001

Present
Devika Gowrishankar
Deputy General Manager
Date: March 4, 2019
CA No. NDL 328/2018

In the matter of
Dormeuil India Private Limited
803, Vikram Tower, Rajendra Place, New Delhi-110008
(Applicant)

In exercise of the powers under Section 15(1) of Foreign Exchange Management Act, 1999 and the Regulations/ Rules/ Notifications/ Orders made thereunder, I pass the following Order.

ORDER

The applicant has filed the compounding application dated October 26, 2018 (received at Reserve Bank of India, New Delhi on October 29, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are those of (i) delay in reporting foreign inward remittance received for issue of shares, in terms of 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 (hereinafter referred to as FEMA 20/2000-RB) as amended from time to time, (ii) delay in filing Form FC-GPR after issue of shares, in terms of Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB and (iii) delay in issue of shares beyond 180 days and mode of receipt of funds, in terms of Paragraph 8 of Schedule 1 to FEMA 20/2000-RB.



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

(a) The applicant company was incorporated on June 2, 2008 and is engaged in the business of wholesale of textiles, fabrics, yarn, household linen, articles of clothing, floor coverings and tapestry, sports clothes.

(b) The applicant had received three remittances from its foreign investor, M/s Dormeuil SAS, France and reported them with delay ranging from 8 years, 11 months and 3 days to 9 years and 19 days beyond the prescribed period of 30 days in contravention of Paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

S. No.	Date of receipt	Amount (₹)	Date of Reporting
1	21.07.2008	420272.71	08.09.2017
2	28.07.2008	246946.5	08.09.2017
3	05.09.2008	3123747.5	08.09.2017
	Total	37,90,966.71	

Whereas, in terms of Paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank, not later than 30 days from the date of receipt of the amount of consideration, a report as per the prescribed procedure.

(c) The applicant had issued 3,79,097 equity shares to M/s Dormeuil SAS, France against the remittances mentioned at 2(b) above on March 31, 2011 for a consideration amount of ₹37,90,970/- and reported the same on August 9, 2017 with a delay of 6 years, 3 months and 10 days beyond the prescribed period of 30 days in contravention of Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank, not later than 30 days from the date of issue of shares, a report in Form FC-GPR together with documents prescribed therein.

(d) The applicant had issued 3,79,097 equity shares on March 31, 2011 against the foreign inward remittances received on three different occasions with delay ranging from 2 years and 27 days to 2 years, 2 months and 14 days beyond the prescribed period of 180 days from the date of receipt of foreign inward remittances, as detailed below, in contravention of Paragraph 8 of Schedule 1 to FEMA 20/2000-RB.



S. No.	Date of receipt	Amount (₹)	Date of allotment
1	21.07.2008	420272.71	31.03.2011
2	28.07.2008	246946.5	31.03.2011
3	05.09.2008	3123747.5	31.03.2011
	Total	37,90,966.71	

Further, the Director of the company had received two remittances in his account from M/s Dormeuil SAS, France for the purposes of incorporation, subscription to initial capital and funding of its Indian subsidiary, the investee company. Funds received by the Director were transferred to the company and the company issued shares to M/s Dormeuil SAS, France against these remittances on March 31, 2011. The company could not procure FIRC's against these remittances from its AD bank as the said remittances were received by the individual and not the company. The company vide their letter dated December 14, 2017 approached RBI to take on record the Form FC-GPR without FIRC's. The company was advised vide RBI letter dated April 24, 2018, to unwind the transaction subject to compounding as funds were received by third party on behalf of the company. Accordingly, the funds received through the Director were remitted back to the investor on May 18, 2018 with periods of contravention being 10 years & 23 days and 9 years, 11 months & 25 days, as detailed below, and shares issued against these remittances were annulled as per Board Resolution dated May 22, 2018.

S. No.	Date of receipt	Amount (₹)	Date of unwinding
1	25.04.2008	233114.96	18.05.2018
2	23.05.2008	421682.65	18.05.2018
	Total	6,54,797.61	

Whereas, in terms of Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, a company in India issuing shares or convertible debentures under this Schedule to a person resident outside India shall receive the amount of consideration for such shares by inward remittance through normal banking channels, or by debit to NRE/ FCNR account of the person concerned maintained with an authorised dealer/ authorised bank. Provided that if the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE/ FCNR(B) account, the amount of consideration so received shall be refunded to the person concerned by outward remittance through normal banking channels or by



credit to his NRE/ FCNR(B) account, as the case may be. Provided further that the Reserve Bank of India, may on application made to it and for sufficient reasons permit an Indian company to refund the amount of consideration received towards issue of security, if such amount of consideration is outstanding beyond a period of 180 days from the date of receipt.

(e) Thus, there are contraventions of Paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable.

3. The applicant was given an opportunity for personal hearing for further submission in person and/ or by producing documents, if any, in support of the application. Shri Bhim Rathke, Director appeared for personal hearing on March 4, 2019 on behalf of the applicant. The representative of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that contraventions were without any *malafide* or wilful intention but were mainly due to inadvertent oversight of the provisions of the extant FEMA Regulations. He requested for a lenient view in the matter. The application for compounding is, therefore, being considered on the basis of averments made in the application as well as other documents and submissions made during the personal hearing.

4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the following FEMA provisions:

(a) Paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, due to delay in reporting of foreign inward remittances received towards subscription of shares as detailed in paragraph 2(b) above. The contravention relates to an amount of ₹37,90,966.71 (Rupees Thirty Seven Lakh Ninety Thousand Nine Hundred Sixty Six and Paise Seventy One only) and the period of delay ranges from 8 years, 11 months and 3 days to 9 years and 19 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, due to delay in filing Form FC-GPR after issue of shares as detailed in paragraph 2(c) above. The contravention relates to an amount of ₹37,90,970/- (Rupees Thirty Seven Lakh Ninety Thousand Nine Hundred Seventy only) and the period of delay is 6 years, 3 months and 10 days.



(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, due to delay in issue of shares beyond 180 days and mode of receipt of funds, as detailed in paragraph 2(d) above. The contravention pertaining to delay in issue of shares relates to an amount of ₹37,90,966.71 (Rupees Thirty Seven Lakh Ninety Thousand Nine Hundred Sixty Six and Paise Seventy One only) and the period of delay ranges from 2 years and 27 days to 2 years, 2 months and 14 days and that pertaining to receipt of the amount of consideration through third party relates to ₹6,54,797.61 (Rupees Six Lakh Fifty Four Thousand Seven Hundred Ninety Seven and Paise Sixty One only) with periods of contravention being 10 years & 23 days and 9 years, 11 months & 25 days.

5. It has been declared in the compounding application dated October 26, 2018, that the particulars given by the applicant in the application are true and correct to the best of his knowledge and belief. It has also been declared in the declaration dated December 7, 2018 furnished as part of 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 him, thereafter. It has further been declared that the applicant has not filed any appeal under Section 17 or Section 19 of FEMA. 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.

6. In terms of Section 13 of 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 **₹1,40,306/- (Rupees One Lakh Forty Thousand Three Hundred and Six only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions of Paragraphs 9(1)(A),



9(1)(B) and 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, by the applicant based on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹1,40,306/- (Rupees One Lakh Forty Thousand Three Hundred and Six only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi-110001 by a demand draft drawn in favour of the “Reserve Bank of India” and payable at New Delhi 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 accordingly.

Dated this the 4th day of March 2019.

Sd/-
(Devika Gowrishankar)
Deputy General Manager