



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

Present
V. G. Sekar
Chief General Manager
Date: October 30, 2019
CA No. NDL 467/2019

In the matter of
Crosslay Remedies Limited
N-110, Panchsheel Park, South Delhi, New Delhi - 110017
(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 June 3, 2019 (received at Reserve Bank of India, New Delhi on June 7, 2019) and addendum dated September 27, 2019 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 remittances received for issue of shares, (ii) delay in filing Form FC-GPR after issue of shares, and (iii) issue of shares to person resident outside India prior to receipt of the amount of consideration and delay in refund of excess share application money, in terms of paragraphs 9(1)(A), 9(1)(B) and 8 respectively 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.



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

(a) The applicant company was incorporated on January 8, 2002 as Crosslay Remedies Private Limited and the name was changed to Crosslay Remedies Limited on August 11, 2006. The applicant is engaged in hospital activities.

(b) The applicant had reported receipt of foreign inward remittance on sixty seven occasions from October 2005 to February 2014. On nineteen occasions, the applicant had reported the remittances received from its foreign investors with delay ranging from 1 day to 3 months and 22 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of Receipt	Amount (₹)	Date of Reporting
1	13.10.2005	67,11,000.00	21.11.2005
2	14.10.2005	10,27,870.00	21.11.2005
3	16.11.2005	1,13,71,814.00	19.12.2005
4	30.01.2006	19,77,300.00	17.03.2006
5	16.03.2006	28,75,600.00	25.05.2006
6	19.04.2006	17,68,800.00	25.05.2006
7	14.07.2006	32,14,400.00	29.09.2006
8	27.07.2006	9,27,400.00	29.09.2006
9	23.08.2007	66,69,300.00	24.09.2007
10	27.08.2007	10,16,265.00	28.09.2007
11	14.12.2007	92,23,750.00	14.01.2008
12	11.03.2008	40,07,797.00	24.04.2008
13	12.03.2009	5,09,100.00	16.04.2009
14	21.05.2009	46,70,000.00	13.07.2009
15	01.06.2009	46,36,000.00	13.07.2009
16	21.04.2010	88,19,647.20	03.06.2010
17	25.09.2010	15,00,000.00	21.01.2011
18	14.10.2010	2,26,252.00	22.11.2010
19	26.07.2011	2,18,150.00	17.12.2011
	Total	7,13,70,445.20	

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 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 and convertible debentures, a report in form specified in Annex C to this Schedule along with documents prescribed therein.



(c) The applicant had reported the issue of shares on twenty eight occasions from October 2005 to March 2014. On fifteen occasions, the applicant had reported the issue of shares to its foreign investors with delay ranging from 1 day to 1 year, 2 months and 2 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of Issue	Amount (₹)	Date of Reporting
1	24.04.2006	46,44,400.00	25.05.2006
2	30.09.2007	2,92,32,200.00	25.03.2008
3	03.11.2007	29,42,400.00	19.04.2008
4	30.01.2008	95,31,510.00	01.05.2009
5	15.05.2008	1,21,65,960.00	08.04.2009
6	11.08.2008	41,92,440.00	01.05.2009
7	17.01.2009	14,28,980.00	20.04.2009
8	27.02.2009	4,82,100.00	20.04.2009
9	07.08.2009	1,27,53,850.00	07.09.2009
10	30.09.2010	15,00,000.00	17.01.2011
11	15.11.2010	29,63,000.00	23.12.2010
12	08.03.2011	2,30,03,150.00	16.01.2012
13	31.03.2011	4,49,89,640.00	16.01.2012
14	23.08.2011	46,81,990.00	16.01.2012
15	18.02.2014	30,61,000.00	02.04.2014
	Total	15,75,72,620.00	

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 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 issue of shares or convertible debentures, a report in Form FC-GPR as specified by the Reserve Bank from time to time together with documents prescribed therein.

(d) The applicant had received two tranches of the inward remittances from its foreign investor, Dr. Arun Narula, against issue of 2239110 equity shares with delay of 1 day each, as detailed below, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of Issue	Amount (₹)	Date of Receipt
1	30.09.2007	24,19,200.00	01.10.2007
2	30.09.2007	66,52,800.00	01.10.2007
	Total	90,72,000.00	



Further, the applicant had refunded the excess share application money amounting to ₹29,76,458/- to its foreign investor, Dr. Arun Narula through its AD bank, without RBI approval, with delay of 1 year, 5 months & 6 days and 1 year, 9 months & 26 days beyond the prescribed period, as detailed below, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of Receipt	Amount (₹)	Date of Refund
1	14.12.2007	3,20,458.00	17.11.2009
2	14.12.2007	26,56,000.00	06.04.2010
	Total	29,76,458.00	

Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, an Indian company accepting FDI has to receive the share application money from the non-resident investor prior to issue of shares, and the shares have to be issued/ amount to be refunded, in case shares have not been issued, within 180 days from the date of receipt of inward remittance. Reserve Bank may, however, on an application made to it, permit refund of the amount of consideration, if such amount 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. Ms. Jyoti Kukreja, Consultant, appeared for personal hearing on October 29, 2019 on behalf of the applicant. The representative admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, she submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to inadvertence and delay in processing of documents. She 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, as then applicable, on account of delay in reporting foreign inward remittance received for issue of shares as detailed in paragraph 2(b) above. The contraventions relate to an amount of ₹7,13,70,445.20 (Rupees Seven Crore Thirteen Lakh Seventy Thousand Four Hundred Forty Five and Paise Twenty only) and the period of delay ranges from 1 day to 3 months and 22 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in filing Form FC-GPR after issue of shares as detailed in paragraph 2(c) above. The contraventions relate to an amount of ₹15,75,72,620/- (Rupees Fifteen Crore Seventy Five Lakh Seventy Two Thousand Six Hundred and Twenty only) and the period of delay ranges from 1 day to 1 year, 2 months and 2 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of issue of shares to person resident outside India prior to receipt of inward remittance and delay in refund of excess share application money as detailed in paragraph 2(d) above. The contravention pertaining to issue of shares to person resident outside India prior to receipt of inward remittance relates to an amount of ₹90,72,000/- (Rupees Ninety Lakh and Seventy Two Thousand only) and the periods of delay are 1 day each and that pertaining to delay in refund of excess share application money relates to an amount of ₹29,76,458/- (Rupees Twenty Nine Lakh Seventy Six Thousand Four Hundred and Fifty Eight only) and the periods of delay are 1 year, 5 months & 6 days and 1 year, 9 months & 26 days.

5. It has been declared in the compounding application dated June 3, 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 also been declared in the declaration dated June 3, 2019 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. 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. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to compound the contraventions, in line with the Guidance Note on Computation Matrix prescribed as part of Master Direction – Compounding of Contraventions, framed in accordance with the Foreign Exchange (Compounding Proceedings) Rules 2000. Accordingly, it stands to reason that payment of an amount of **₹2,93,392/- (Rupees Two Lakh Ninety Three Thousand Three Hundred and Ninety Two only)** will meet the ends of justice in the circumstances of this case.

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 **₹2,93,392/- (Rupees Two Lakh Ninety Three Thousand Three Hundred and Ninety Two 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 30th day of October 2019.

Sd/-
(V.G. Sekar)
Chief General Manager