



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

October 14, 2019

CA No. MUM914/2019

In the matter of
M/s Val Products India Pvt Ltd
E 219, MIDC Area,
Baramati MH 413 133

(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 June 12, 2019, received at the Reserve Bank on June 24, 2019, for compounding of contravention/s of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contravention/s 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) Regulation 4 of FEMA 20: Taking on record by the applicant, the transfer of shares from a Non Resident Indian to a person resident in India, without obtaining approval from RBI.

2 Brief details of the applicant company are as follows:

| | |
|---------------------------------|--|
| Date of Incorporation | May 16, 1996 |
| Its main activities are: | Manufacture of machinery for the dairy industry and for processing of meat ,fish and poultry |

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> | | | | | | |
| <u>Note: Delay under Para 8 has been computed from 29-11-2007 as per A.P. (Dir Series) Circular No.20 dated December 14, 2007</u> | | | | | | |
| Sr. 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 | 21-08-96 | 14,71,117.00 | NA | 0 | 29-08-96 | 0Y 0M 0D |
| 2 | 16-10-96 | 14,93,712.00 | NA | 0 | 08-03-19 | 11Y 3M 7D |
| 3 | 31-10-96 | 17,80,431.00 | NA | 0 | 08-03-19 | 11Y 3M 7D |
| 4 | 26-12-96 | 10,70,999.00 | NA | 0 | 08-03-19 | 11Y 3M 7D |
| 5 | 30-12-96 | 21,48,895.00 | NA | 0 | 08-03-19 | 11Y 3M 7D |
| 6 | 30-01-97 | 7,12,899.00 | NA | 0 | 08-03-19 | 11Y 3M 7D |
| 7 | 11-02-97 | 35,80,496.00 | NA | 0 | 08-03-19 | 11Y 3M 7D |
| 8 | 10-03-97 | 23,26,146.00 | NA | 0 | 08-03-19 | 11Y 3M 7D |
| 9 | 03-04-97 | 53,71,925.00 | NA | 0 | 08-03-19 | 11Y 3M 7D |
| 10 | 29-04-97 | 63,57,088.00 | NA | 0 | 08-03-19 | 11Y 3M 7D |
| 11 | 25-07-97 | 10,68,505.00 | NA | 0 | 08-03-19 | 11Y 3M 7D |
| 12 | 30-12-11 | 1,19,32,971.00 | 25-08-12 | 0Y 6M 25D | 25-06-12 | 0Y 0M 0D |
| | TOTAL | 3,93,15,184.00 | | | | |

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 out of which one remittance was reported with a delay of 0Y 6M 25D.



- 4 In respect of remittances amounting to Rs.2,59,11,096 (Rupees Two Crore Fifty Nine Lakh Eleven Thousand Ninety Six 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 of 11Y 3M 7D. Whereas in terms of para 8 of 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 Shares of the company were transferred by Non Resident Indian to a Foreign Company on date indicated in the table below.

| Contravention under Regulation 4 | | | | |
|--|---------------------|--|---|--------------------------|
| <u>(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days, LSF stands for : Late Submission Fees</u> | | | | |
| <u>(delay under Regulation 4 has been computed till 07-11-2017, i.e. date of Notification of FEMA 20R, vide which NRI to NR transfer was put under automatic route.</u> | | | | |
| S. No | Remittance amount | Date on which company took on record the transfer (DD-MM-YY) | Dt of Notification of FEMA 20R (DD-MM-YY) | delay under Regulation 4 |
| 1 | 11,18,200.00 | 20-01-12 | 07-11-17 | 5Y 9M 18D |
| Total | 11,18,200.00 | | | |

The company took on record the transfer of 1,11,820 equity shares from Non Resident Indian (holding shares on repatriable basis) to a Foreign Company without obtaining approval from the Reserve Bank of India. Whereas as per Regulation 4 of FEMA 20, save as otherwise provided in the Act or Rules or Regulations made thereunder, an Indian entity shall not issue any security to a person resident outside India or shall not record in its books any transfer of security from or to such person, provided that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an entity to issue any security to a person resident outside India or to record in its books transfer of security from or to such person, subject to such conditions as may be considered necessary. The contravention relates to amount of Rs. 11,18,200 (Rupees Eleven Lakh Eighteen Thousand Two Hundred and Zero Paise Only) with a delay of 5Y 9M 18D approximately.

- 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 October 04, 2019. The applicant applied for waiver of personal hearing vide e mail dated October 10, 2019. The applicant, in the compounding application, had admitted the contraventions as stated above for which compounding has been sought. It had been submitted that the contraventions were not wilful and were unintentional. 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.



- 7 I have given my careful consideration to the documents on record 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.1,19,32,971 (Rupees One Crore Nineteen Lakh Thirty Two Thousand Nine Hundred Seventy One and Zero Paise Only) with a delay of 0Y 6M 25D 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.2,59,11,096 (Rupees Two Crore Fifty Nine Lakh Eleven Thousand Ninety Six and Zero Paise Only) with a delay of 11Y 3M 7D approximately.
 - (iii) Regulation 4 of FEMA 20, for recording in its books a transfer of security from or to such person without obtaining approval from RBI. The contravention relates to total amount of Rs.11,18,200 (Rupees Eleven Lakh Eighteen Thousand Two Hundred and Zero Paise Only) with a delay of 5Y 9M 18D approximately.
- 8 It has been declared in the compounding application dated June 12, 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.3,85,249 (Rupees Three Lakh Eighty Five Thousand Two Hundred Forty Nine 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 Regulation 4 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. 3,85,249 (Rupees Three Lakh Eighty Five Thousand Two Hundred Forty Nine 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 Regulation 4 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: October 14, 2019

Compounding Authority

(J.K. Pandey)
Chief General Manager