



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

Present
V. G. Sekar
Chief General Manager
Date: September 9, 2019
CA No. NDL 432/2019

In the matter of
French Bakery Private Limited
Level 15, Eros Corporate Tower, Nehru Place, New Delhi - 110019
(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 April 11, 2019 (received at Reserve Bank of India, New Delhi on April 15, 2019) and addendums dated April 24, 2019 and July 15, 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) delay in issue of shares beyond 180 days from the date of receipt of inward remittances, 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, and (iv) issue of shares to persons resident outside India prior to receipt of inward remittance, in terms



of paragraph 2(2) of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 notified vide Notification No. FEMA 20(R)/2017-RB dated November 7, 2017 (hereinafter referred to as FEMA 20(R)/2017-RB), as amended from time to time.

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

(a) The applicant company, incorporated on October 14, 2008, is engaged in the business of production, distribution and sale of biscuits, cakes, pastries, rusk etc.

(b) The applicant had reported receipt of foreign inward remittance on eighty three occasions from February 2010 to May 2018. On fifty occasions, the applicant had reported the remittances received from its foreign investors with delay ranging from 2 days to 4 years, 11 months and 10 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	20.08.2010	17,54,031.00	18.10.2010
2	23.08.2010	11,06,655.00	18.10.2010
3	23.08.2010	11,06,515.00	18.10.2010
4	24.08.2010	14,38,710.00	18.10.2010
5	09.09.2010	27,62,580.00	18.10.2010
6	15.09.2010	27,52,080.00	18.10.2010
7	31.01.2011	45,37,546.20	28.04.2011
8	18.07.2011	37,45,358.68	02.12.2011
9	01.11.2011	38,78,880.00	07.12.2011
10	26.12.2011	7,80,945.00	22.08.2012
11	08.05.2012	40,62,269.16	17.05.2017
12	14.06.2012	8,27,735.97	13.09.2012
13	14.06.2012	10,46,758.89	13.09.2012
14	19.06.2012	8,36,442.96	13.09.2012
15	29.06.2012	75,34,450.00	13.09.2012
16	06.08.2012	10,02,749.72	13.09.2012
17	07.08.2012	7,67,769.39	13.09.2012
18	07.08.2012	11,38,987.55	19.11.2012
19	28.09.2012	53,00,157.53	11.12.2012
20	11.10.2012	51,57,336.24	11.12.2012
21	21.11.2012	6,18,609.50	24.05.2013
22	21.11.2012	10,12,010.93	27.05.2013
23	29.11.2012	7,31,390.38	27.05.2013
24	31.12.2012	27,45,063.75	27.05.2013
25	27.02.2013	38,61,210.00	27.05.2013
26	17.04.2013	24,58,019.28	17.06.2013
27	29.04.2013	16,04,251.93	05.07.2013



Sl. No.	Date of Receipt	Amount (₹)	Date of Reporting
28	03.05.2013	5,86,254.22	14.03.2018
29	03.05.2013	16,55,590.42	05.06.2013
30	07.05.2013	5,80,491.65	14.03.2018
31	28.06.2013	9,31,408.00	09.03.2018
32	24.07.2013	5,41,506.31	27.02.2018
33	23.08.2013	35,32,484.85	26.09.2013
34	03.09.2013	12,06,209.60	12.06.2017
35	13.09.2013	3,77,850.82	17.02.2018
36	19.09.2013	16,32,710.00	19.03.2018
37	08.01.2014	28,82,201.00	17.05.2017
38	18.02.2014	22,42,647.00	12.06.2017
39	03.04.2014	20,12,565.00	09.03.2018
40	17.04.2014	50,23,500.00	19.05.2014
41	02.06.2014	1,02,72,500.00	22.01.2015
42	19.08.2014	50,54,525.00	07.02.2018
43	07.10.2014	28,65,182.51	14.03.2018
44	17.10.2014	30,56,000.00	22.03.2018
45	06.05.2015	63,02,000.00	26.09.2016
46	23.09.2015	65,68,500.00	26.09.2016
47	23.03.2016	66,47,500.00	30.09.2016
48*	10.05.2016	66,34,000.00	30.11.2018
49	03.02.2017	49,55,700.00	21.03.2017
50*	03.10.2017	20,00,000.00	18.12.2018
	Total	14,21,29,840.44	

*Reporting of receipt of foreign inward remittance for issue of capital instruments in Advance Remittance Form was dispensed with in terms of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Amendment) Regulations, 2018 with effect from September 1, 2018. Delay in reporting of foreign inward remittance has, therefore, been taken up to August 31, 2018.

Whereas, in terms of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures or warrants 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 or convertible debentures or warrants, a report in Advance Reporting Form as specified by Reserve Bank from time to time along with documents prescribed therein. Further, on five other occasions the delays were in contravention of the provisions of Regulation 13.1(1) of FEMA 20(R)/2017-RB, as then applicable, and the applicant paid Late Submission Fee (LSF) for the said contraventions as required in terms of Regulation 13.2 of FEMA 20(R)/2017-RB.

(c) The applicant had reported the issue of shares on forty four occasions from March 2010 to May 2018. On thirty four occasions, the applicant had reported the issue of



shares to its foreign investors with delay ranging from 5 days to 7 years, 10 months and 3 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	22.03.2010	11,75,730.00	28.06.2010
2	04.06.2010	64,28,160.00	01.11.2010
3	22.11.2010	1,02,43,950.00	25.10.2018
4	28.04.2011	45,37,530.00	02.06.2011
5	02.01.2012	37,45,350.00	08.02.2012
6	15.04.2012	38,78,865.00	16.06.2017
7	15.06.2012	52,71,435.00	17.06.2017
8	30.10.2012	67,63,295.00	05.04.2018
9	15.11.2012	9,900.00	03.01.2019
10	22.12.2012	1,04,43,840.00	10.03.2018
11	22.03.2013	89,68,180.00	19.09.2016
12	22.03.2013	1,04,57,395.00	11.12.2018
13	01.07.2013	15,17,620.00	04.07.2018
14	01.07.2013	70,33,975.00	02.07.2018
15	31.12.2013	93,71,570.00	26.06.2018
16	31.12.2013	15,84,050.00	22.10.2018
17	31.03.2014	51,24,795.00	08.02.2018
18	10.06.2014	1,52,95,930.00	06.02.2018
19	01.09.2014	50,54,465.00	26.03.2018
20	20.11.2014	59,21,110.00	30.08.2018
21	02.12.2014	20,12,530.00	29.05.2018
22	15.01.2015	63,16,960.00	23.05.2016
23	20.03.2015	62,34,995.00	10.03.2018
24	07.05.2015	63,01,945.00	20.02.2018
25	05.10.2015	65,68,445.00	14.10.2016
26	24.03.2016	66,47,485.00	03.02.2018
27	11.05.2016	66,33,965.00	30.11.2018
28	15.10.2016	56,64,360.00	23.03.2017
29	28.10.2016	49,19,525.00	23.03.2017
30	04.02.2017	49,55,665.00	23.06.2017
31	23.03.2017	35,23,325.00	29.06.2017
32	26.05.2017	50,49,720.00	03.02.2018
33	07.07.2017	64,54,955.00	03.02.2018
34	06.10.2017	19,99,985.00	18.12.2018
	Total	19,61,11,005.00	

Whereas, in terms of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures or warrants 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 or warrants, a report in Form FC-GPR as specified by the Reserve Bank from time to time together with documents prescribed therein. Further, on eight other occasions the delays were in contravention of the provisions of Regulation 13.1(2) of FEMA 20(R)/2017-RB, as then applicable, and the applicant paid Late Submission Fee (LSF) for the said contraventions as required in terms of Regulation 13.2 of FEMA 20(R)/2017-RB.

(d) The applicant had issued 30,962 equity shares on December 2, 2014 for a consideration of ₹20,12,530/- against the remittance received from its foreign investor on April 3, 2014 with delay of 2 months and 2 days beyond the prescribed period, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, a company in India issuing shares or convertible debentures or warrants under this Schedule to a person resident outside India shall receive the amount of consideration for such shares or convertible debentures or warrants by inward remittance through normal banking channels, or by debit to NRE/ FCNR(B) account of the person concerned maintained with an authorised dealer/ authorised bank, or by debit to a non-interest bearing Escrow account (in Indian Rupees) maintained in India with an AD bank in accordance with Foreign Exchange Management (Deposit) Regulations, 2000. Provided that if the shares or convertible debentures or warrants are not issued within 180 days from the date of receipt of the inward remittance or date of NRE/ FCNR(B)/ Escrow 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)/ Escrow account, as the case may be. Provided further that the Reserve Bank may, on an 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 is outstanding beyond a period of 180 days from the date of receipt.

(e) The applicant had issued 33,783 equity shares on April 19, 2018 for a consideration of ₹24,99,942/- against the remittance received from its foreign investor on April 20, 2018, in contravention of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable. Whereas, in terms of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, capital instruments shall be issued to the person resident outside India making such investment within sixty days from the date of receipt of the consideration.



(f) 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, and paragraph 2(2) of Schedule 1 to FEMA 20(R)/ 2017-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 Raman Oberoi, Manager, Finance and Ms. Durga, Company Secretary, appeared for personal hearing on September 6, 2019 on behalf of the applicant. The representatives admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, they submitted that contraventions were without any *malafide* or wilful intention but were mainly due to delay in receipt of FIRC and KYC from their AD bank, procedural issues and inadvertence. They 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 ₹14,21,29,840.44 (Rupees Fourteen Crore Twenty One Lakh Twenty Nine Thousand Eight Hundred Forty and Paise Forty Four only) and the period of delay ranges from 2 days to 4 years, 11 months and 10 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 ₹19,61,11,005/- (Rupees Nineteen Crore Sixty One Lakh Eleven Thousand and Five only) and the period of delay ranges from 5 days to 7 years, 10 months and 3 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in issue of shares beyond 180 days from the date of receipt of inward remittance, as detailed in paragraph 2(d) above. The contravention relates to an



amount of ₹20,12,530/- (Rupees Twenty Lakh Twelve Thousand Five Hundred and Thirty only) and the period of delay is 2 month and 2 days.

(d) Paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable, on account of issue of shares to persons resident outside India prior to receipt of inward remittance as detailed in paragraph 2(e) above. The contravention relates to an amount of ₹24,99,942/- (Rupees Twenty Four Lakh Ninety Nine Thousand Nine Hundred and Forty Two only) and the period of contravention is 1 day.

5. It has been declared in the compounding application dated April 11, 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 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 **₹18,73,642/- (Rupees Eighteen Lakh Seventy Three Thousand Six Hundred and Forty 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, and paragraph 2(2) of Schedule 1 to FEMA 20(R)/ 2017-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 **₹18,73,642/- (Rupees Eighteen Lakh Seventy Three Thousand Six Hundred and Forty 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 9th day of September 2019.

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