



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi – 110 001

Present
V. G. Sekar
Chief General Manager
Date: February 7, 2020
CA No. NDL 554/ 2019

In the matter of
Filatech Enterprise Private Limited
Augusta Point, Unit 19, First Floor, Sector-53, Gurugram, Haryana 122002
(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 September 9, 2019 (received at Reserve Bank of India, New Delhi on September 24, 2019) and addendum dated November 25, 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 remittance received for issue of shares, (ii) delay in filing Form FC-GPR after issue of shares, and (iii) delay in issue of shares after receipt of inward remittance in terms of paragraphs 9(1)(A), 9(1)(B) and 8 respectively of Schedule 1 of 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 then applicable.



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

(a) The applicant company was incorporated in the name of Newsite Polymers Private Limited, under the Companies Act, 1956, on June 19, 2006. The name of the company was changed to Filatech Enterprise Private Limited on March 23, 2009. The applicant 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 reported receipt of foreign inward remittances from its foreign investors on six occasions and reported them with delay ranging from 9 years, 10 months and 22 days to 11 years, 10 months and 6 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	25.09.2006	34,22,250.00	01.08.2019
2	25.09.2006	34,22,250.00	01.08.2019
3	19.12.2006	4,45,996.00	01.08.2019
4	25.01.2007	7,48,906.00	01.08.2019
5	07.02.2007	17,92,369.00	01.08.2019
6	09.09.2008	44,80,900.00	23.08.2019
		1,43,12,671.00	

* Reporting of receipt of foreign inward remittance for issue of capital instruments was dispensed with in terms of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Second Amendment) Regulations, 2018 w.e.f. September 1, 2018. Delay in reporting of remittance has, therefore, been taken upto 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 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 indicating the details prescribed therein.

(c) The applicant had issued shares to its foreign investors on two occasions and reported the same with delay of 11 years, 9 months & 3 days and 10 years, 3 months & 24 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	29.09.2007	98,31,771.00	01.08.2019
2	31.03.2009	44,80,900.00	23.08.2019
	Total	1,43,12,671.00	

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 to Reserve Bank, not later than 30 days from the date of issue of shares, a report in Form FC-GPR together with the documents prescribed therein.

(d) The applicant had received the consideration amounting to ₹44,80,900.00 on September 9, 2008 from its foreign investor, Mr. Yang Wen Hu, Taiwan and, against the consideration received, issued 179236 equity shares on March 31, 2009, without RBI approval, with a delay of 23 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, 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.

(e) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 of 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 Navin Goyal, Director and Ms. Deepali Bansal, Consultant, appeared for personal hearing on February 5, 2020 on behalf of the applicant. The representatives of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, they submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to lack of awareness about FEMA compliances. 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 remittances received for issue of shares as detailed in paragraph 2(b) above. The contraventions relate to an amount of



₹1,43,12,671.00 (Rupees One Crore Forty Three Lakh Twelve Thousand Six Hundred and Seventy One only) and the period of delay ranges from 9 years, 10 months and 22 days to 11 years, 10 months and 6 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 ₹1,43,12,671.00.00 (Rupees One Crore Forty Three Lakh Twelve Thousand Six Hundred and Seventy One only) and the period of delays are 11 years, 9 months & 3 days and 10 years, 3 months & 24 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in issue of shares after receipt of inward remittance, as detailed in paragraph 2(d) above. The contravention relates to an amount of ₹44,80,900.00 (Rupees Forty Four Lakh Eighty Thousand and Nine Hundred only) and the period of delay is 23 days.

5. It has been declared in the compounding application dated September 9, 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 September 9, 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 **₹4,10,463.00 (Rupees Four Lakh Ten Thousand Four Hundred Sixty Three 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 **₹4,10,463.00 (Rupees Four Lakh Ten Thousand Four Hundred Sixty Three 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 7th of February 2020.

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