



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Vandana Khare
General Manager

Date: April 24, 2019
CA No. 4888/2019

In the matter of

Laxmiflex Packtech India Private Ltd.
Regus Platinum Business Centre Pvt. Ltd.
Level 13, Platinum Techno Park,
Plot No. 17 & 18, Sector 30,
Vashi, Navi Mumbai-400 705

(Applicant)

In exercise of the powers conferred under section 15(1) of Foreign Exchange Management Act, 1999 and the Regulations/Rules/Notifications/Orders made there under, I pass the following

Order

The applicant has filed the application dated February 07, 2019 (received in the Reserve Bank on February 08, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded relate to availing External Commercial Borrowing (ECB) when (i) draw down of the ECB without obtaining Loan Registration Number (LRN) from the Reserve Bank of India (RBI); (ii) not meeting reporting requirements. The above were in contravention of Regulation 6 of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3/2000-RB dated 3rd May 2000 as amended from time to time (hereinafter



referred to as Notification No. FEMA 3/2000-RB) read with Paragraphs 1 (xi) and (xii) of Schedule I to this Regulation and further read with Paragraph E 16 of Annex to A.P.(DIR Series) Circular No. 32 dated November 30, 2015 (as amended from time to time).

2. The relevant facts are as under: The applicant was initially incorporated as a private limited company on June 11, 2015 under the Companies Act, 2013 (CIN U74900MH2015FTC294905). The applicant is engaged in the business of manufacturing, design, distribution and sales of packaging products. The applicant company had availed two INR loans of INR 35 lakh and INR 20 lakh, on January 12, 2016 and February 15, 2016, respectively, from its non-resident holding Company, M/s Lamiflex AB Company, Sweden without obtaining LRN, which was not in compliance of reporting requirements under ECB framework.

The above contraventions relate to Regulation 6 of Notification No. FEMA 3/2000-RB dated 3rd May read with Paragraphs 1 (xi) and (xii) of Schedule I to this Regulation and further read with Paragraph E 16 of Annex to A.P.(DIR Series) Circular No. 32 dated November 30, 2015 (as amended from time to time).

3. In terms of Regulation 6 of Notification No.FEMA.3/2000-RB dated May 03, 2000 as amended from time to time "a person resident in India may raise in accordance with the provisions of the Automatic Route Scheme specified in Schedule I, foreign currency loans of the nature and for the purposes as specified in that Schedule....". The Reserve Bank has issued necessary directions vide AP (DIR Series) Circulars, laying down the basic rules for availing of ECB under the Automatic Route. The primary responsibility of ensuring that the loan raised/utilized are in conformity with the ECB guidelines and the Reserve Bank regulations/directions/circulars is that of the concerned borrower.

3. a) Paragraph 1(xi) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB read with paragraph E 16 of Annex to A.P.(DIR Series) Circular No. 32 dated November 30, 2015 which states that "Any draw-down in respect of an ECB as well as payment of any fees / charges for raising an ECB should happen only after obtaining the LRN from the Reserve Bank". The draw-down by the applicant was made without making application for obtaining LRN from RBI.



3. b) Paragraph 1(xii) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB read with paragraph E 16 of Annex to A.P.(DIR Series) Circular No. 32 dated November 30, 2015 which states that “the borrowers are required to submit a copy of duly certified ECB 2 Return through the AD Cat I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates”. The ECB was not reported to RBI.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/5721/15.20.67/2018-19 dated March 28, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on April 12, 2019 during which Shri Rakesh Pattanaik, Director and Shri Kamal Sharma, authorized representative, represented the applicant. The representatives of the applicant submitted that the company had inadvertently failed to comply with the FEMA regulations and requested that a lenient view may be taken in the matter. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced, and submissions made during the personal hearing.

5. ‘It has been declared in the compounding application dated February 07, 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 been declared in the declaration dated (date) 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/him/her thereafter. 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. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulation 6 of Notification No. FEMA 3/2000-RB dated 3rd May read with Paragraphs 1 (xi) and (xii) of



Schedule I to this Regulation and further read with Paragraph E 16 of Annex to A.P.(DIR Series) Circular No. 32 dated November 30, 2015 (as amended from time to time). The amount of contravention is Rs. 55,00,000/- and the period of contravention ranges between 2 years and 10 months to 2 years and 09 months, approximately.

7. 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. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of Rs.31,000/- (Rupees thirty one thousand only) will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulation 6 of Notification No. FEMA 3/2000-RB dated 3rd May read with Paragraphs 1 (xi) and (xii) of Schedule I to this Regulation and further read with Paragraph E 16 of Annex to A.P.(DIR Series) Circular No. 32 dated November 30, 2015 (as amended from time to time) on payment of a sum of Rs.31,000/- (Rupees thirty one thousand only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, 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.

The application is disposed accordingly.

Dated this the 24th day of April 2019

Sd/-
(Vandana Khare)
General Manager