



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

Present
V. G. Sekar
Chief General Manager
Date: January 10, 2020
CA No. NDL 521/2019

In the matter of
Enviro Way Bio-Science Private Limited
C-243, Mayfield Garden, Sector 51, Near Nirvana, Gurgaon, Haryana 122001
(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 July 3, 2019 (received at Reserve Bank of India, New Delhi on August 14, 2019) and addendums dated August 30, 2019 and November 22, 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 to person resident outside India after receipt of amount of consideration, 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 then applicable.



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

(a) The applicant company, incorporated on November 8, 2004, is engaged in the treatment of waste water or sewer by means of physical, chemical or biological processes.

(b) The applicant had reported receipt of foreign inward remittance on twenty six occasions from August 2009 to August 2014. On twenty four occasions, the applicant had reported the receipt of remittances from its foreign investors with delay ranging from 3 days to 3 years, 4 months and 11 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	12.08.2009	6,39,563.00	22.01.2013
2	01.09.2009	8,69,839.20	22.01.2013
3	23.09.2009	3,12,235.00	22.01.2013
4	25.09.2009	4,38,125.00	22.01.2013
5	20.10.2009	8,90,000.00	22.01.2013
6	13.11.2009	2,18,475.00	22.01.2013
7	23.12.2009	4,38,700.00	22.01.2013
8	30.03.2010	87,630.00	22.01.2013
9	21.04.2011	4,66,649.00	22.01.2013
10	08.07.2011	5,26,092.00	22.01.2013
11	04.08.2011	4,78,853.00	22.01.2013
12	11.10.2011	4,75,011.00	22.01.2013
13	03.11.2011	4,82,423.00	06.03.2014
14	15.11.2011	5,17,443.00	06.03.2014
15	02.12.2011	5,14,338.00	22.01.2013
16	03.01.2012	13,01,030.00	22.01.2013
17	12.01.2012	12,62,757.00	22.01.2013
18	20.01.2012	12,35,936.00	22.01.2013
19	31.01.2012	4,92,438.00	22.01.2013
20	05.12.2012	5,49,056.00	11.01.2013
21	10.12.2012	11,01,676.00	18.01.2013
22	18.06.2013	28,05,808.58	17.08.2013
23	07.03.2014	11,17,187.50	09.04.2014
24	01.07.2014	5,61,620.00	05.08.2014
		1,77,82,885.28	

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 the documents prescribed therein.

(c) The applicant had reported the issue of shares on three occasions from February 2010 to October 2017. On two occasions, the applicant had reported the issue of shares to its foreign investors with delay of 5 months & 2 days and 1 year, 9 months & 15 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	02.02.2010	37,95,000.00	19.12.2011
2	10.10.2017	58,75,396.52	11.04.2018
	Total	96,70,396.52	

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 the documents prescribed therein.

(d) The applicant had issued equity shares on three occasions against the twenty six foreign inward remittances received from August 2009 to August 2014. On two occasions, the applicant had issued shares after receipt of consideration with delay ranging from 6 months & 2 days to 3 years, 9 months & 25 days, without the approval of RBI, 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 Issue
1	23.12.2009	11,937.20*	10.12.2013
2	30.03.2010	87,630.00	10.12.2013
3	21.04.2011	4,66,649.00	10.12.2013
4	08.07.2011	5,26,092.00	10.12.2013
5	04.08.2011	4,78,853.00	10.12.2013
6	11.10.2011	4,75,011.00	10.12.2013
7	03.11.2011	4,82,423.00	10.12.2013
8	15.11.2011	5,17,443.00	10.12.2013



Sl. No.	Date of Receipt	Amount (₹)	Date Of Issue
9	02.12.2011	5,14,338.00	10.12.2013
10	03.01.2012	13,01,030.00	10.12.2013
11	12.01.2012	12,62,757.00	10.12.2013
12	20.01.2012	12,35,936.00	10.12.2013
13	31.01.2012	4,92,438.00	10.12.2013
14	05.12.2012	5,49,056.00	10.12.2013
15	10.12.2012	11,01,676.00	10.12.2013
16	18.06.2013	793.85**	10.10.2017
17	18.12.2013	14,44,193.00	10.10.2017
18	07.03.2014	11,17,187.50	10.10.2017
19	01.07.2014	5,61,620.00	10.10.2017
20	11.08.2014	27,51,600.00	10.10.2017
	Total	1,53,78,663.55	

(* Balance from ₹4,38,700.00 received on 23.12.2009

** Balance from ₹28,05,808.58 received on 18.06.2013)

Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, equity instruments should be issued within 180 days of the receipt of inward remittance. In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received should be refunded to the non-resident investor. Provided that the Reserve Bank may on an application made to it and for sufficient reasons permit 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) 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. Shri Arpit Goyal, Consultant, appeared for personal hearing on January 10, 2020 on behalf of the applicant. The representative admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to inadequate guidance in the matter of RBI compliances. He 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 ₹1,77,82,885.28 (Rupees One Crore Seventy Seven Lakh Eighty Two Thousand Eight Hundred Eighty Five and Paise Twenty Eight only) and the period of delay ranges from 3 days to 3 years, 4 months and 11 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 ₹96,70,396.52 (Rupees Ninety Six Lakh Seventy Thousand Three Hundred Ninety Six and Paise Fifty Two only) and the periods of delay are 5 months & 2 days and 1 year, 9 months & 15 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in issue of shares to person resident outside India after receipt of the amount of consideration as detailed in paragraph 2(d) above. The contraventions relate to an amount of ₹1,53,78,663.55 (Rupees One Crore Fifty Three Lakh Seventy Eight Thousand Six Hundred Sixty Three and Paise Fifty Five only) and the periods of delay ranges from 6 months and 2 days to 3 years, 9 months and 25 days.

5. It has been declared in the compounding application dated July 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 August 30, 2019 furnished as part of 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 **₹1,83,695.00 (Rupees One Lakh Eighty Three Thousand Six Hundred and Ninety Five 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 **₹1,83,695.00 (Rupees One Lakh Eighty Three Thousand Six Hundred and Ninety Five 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 10th day of January 2020.

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