



In the  
Reserve Bank of India  
Foreign Exchange Department,  
Reserve Bank of India, MG Road  
Kanpur – 208001

Present

**Dr. (Smt.) Tuli Roy**  
**Regional Director (Uttar Pradesh) and**  
**Chief General Manager, Kanpur**

Date: September 27, 2019  
C.A. KAN11/2019

In the matter of

**M/s Shivalik Rasayan Limited**  
**Registered Office: Village Kolhupani, Post Office Chandanwari,**  
**Via Prem Nagar, Dehradun, Uttarakhand – 248007**

**(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**

The applicant has filed a compounding application dated July 05, 2019 (received at Reserve Bank of India, Kanpur on July 17, 2019) and addendum dated July 27, 2019



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(received at Reserve Bank of India, Kanpur on August 02, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are (i) delay in allotment of shares to a person resident outside India and (ii) delay in refund of excess share application money. This amounts to contravention of paragraph 2 (2) and paragraph 2 (3) respectively of Schedule I to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 notified vide Notification No. FEMA20(R)/ 2017-RB dated November 7, 2017.

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

2.1 The Indian company (applicant) was incorporated on March 16, 1979 under the Companies Act, 1956 (CIN L24237UR1979PLC005041). The applicant company is engaged in the activity of manufacturing of organophosphorus based insecticides and chemicals.

2.2 The applicant allotted shares to Casper Tingker Holdings APS, Denmark (foreign investor) with delay beyond the stipulated time period of 60 days as indicated below:

Date of Receipt of Share Application Money	Amount of Inflow (In Rs.)	Date of Issue of Shares	Delay
July 24, 2018	3,25,99,587.00	September 27, 2018	05 days

As mentioned above, the applicant delayed allotment of shares beyond stipulated time period of 60 days after receipt of inflow, in contravention of paragraph 2 (2) of Schedule I of the Notification No. FEMA20(R)/ 2017-RB dated November 7, 2017. Paragraph 2(2) of Schedule 1 of Notification ibid states that "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".



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2.3 Further, the Indian company had received share application money amounting to Rs. 21,46,64,779.05 in total from four foreign investors in six tranches. The shares were allotted on September 27, 2018 for FCGPR reference numbers FCGPR041917471 and FCGPR021913034 and the excess share application money amounting to ₹ 27,64,779.05 was refunded beyond the stipulated time period as follows:

Investor	Date of Receipt of Fund	Amount of Inflow (Rs.)	Share Allotment Value (Rs.)	Excess Amount (Rs.)	Date of Refund	No. of days of delay
FFC 3 APS	Aug 02, 18	1,62,42,561.60	1,63,00,000.00	23,991.60	June 12, 2019	190
	Sep 19, 18	81,430.00				
Casper Tingker Holdings APS	Jul 24, 18	3,25,99,587.00	3,26,00,000.00	3,078.00	June 14, 2019	192
	Sep 19, 18	3,491.00				
Eric Aarestrup Sorensen	Aug 02, 18	3,40,98,636.00	3,26,00,000.00	14,98,636.00	June 11, 2019	237
KIM Ginnerup APS	Jul 30, 18	13,16,39,073.45	13,04,00,000.00	12,39,073.45	June 11, 2019	240
		21,46,64,779.05	21,19,00,000.00	27,64,779.05		



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As tabulated above, the applicant refunded the excess share application money with a delay ranging from 190 to 240 days approximately beyond the prescribed time period of 75 days (60+15), in contravention of paragraph 2 (3) of Schedule 1 to FEMA Notification ibid. Paragraph 2(3) of Schedule 1 of the Notification ibid states that “where such capital instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance through banking channels or by credit to his NRE/ FCNR(B) accounts, as the case may be within fifteen days from the date of completion of sixty days, provided prior approval of the Reserve Bank shall be required for payment of interest, if any, as laid down in the Companies Act, 2013, for delay in refund of the amount so received.”

2.4 Thus, there are contraventions of paragraphs 2(2) and 2(3) of Schedule 1 of FEMA Notification 20(R)/2017-RB dated November 7, 2017.

3. The applicant was given an opportunity for personal hearing vide letter no. कान.वि.नि/प्र.वि.नि/सं.126/08.11.383/2019-20 dated August 28, 2019 for further submission in person and/or producing documents, if any, in support of the application. Ms. Parul Choudhary, Company Secretary represented the applicant for personal hearing held on September 17, 2019. The authorized representative of the applicant submitted that the contraventions on the part of the applicant company were inadvertent and unintentional. The representative of the applicant company also requested that in view thereof, the matter may be viewed leniently. The application for compounding was considered based on the averments made in the application as well as other documents and submissions made in this context by the applicant.

4. I have given my careful consideration to the documents on record and submissions made by the representative of the applicant company during the personal hearing.



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Accordingly, I hold that the applicant has contravened the following Regulations of Notification No. FEMA20(R)/ 2017-RB dated November 7, 2017:

- i. Paragraph 2 (2) of Schedule I – The allotment of shares to resident outside India, was not done within prescribed time period, wherein the amount of contravention in INR as declared by the applicant is ₹ 3,25,99,587/- and the period of contravention is taken as 05 days.
- ii. Paragraph 2 (3) of Schedule I – There was a delay in refund of excess share application money to resident outside India, wherein the amount of contravention in INR as declared by the applicant is ₹ 27,64,779.05 and the period of contravention ranges from 190 days to 240 days approximately.

5. It has been declared in the compounding application dated July 05, 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 July 05, 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. 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 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



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amount for which the contraventions are to be compounded and I consider that an amount of **₹ 2,30,000/- (Rupees Two Lakh and thirty thousand only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contraventions of paras 2(2) and 2(3) of Schedule I of Notification No. FEMA20(R)/ 2017-RB dated November 7, 2017 by the applicant, based on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of **₹ 2,30,000/- (Rupees Two Lakh and thirty thousand only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mahatma Gandhi Marg, Kanpur- 208 001, by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Kanpur within a period of 15 days from the date of this order. In case of failure to deposit the compounded amount within the abovementioned period, Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 dated May 3, 2000 shall apply.

The application is disposed of accordingly.

Dated this 27<sup>th</sup> day of September 2019.

Sd/-

Dr. (Smt.) Tuli Roy

Regional Director (Uttar Pradesh) and

Chief General Manager, Kanpur