



In the

Reserve Bank of India
10/3/8, Nrupathunga Road
Bengaluru-560001

Present

Shri P J Thomas
Regional Director, Karnataka and
Chief General Manager, Bengaluru

Date: December 14, 2018
C.A. BGL 316/2018

In the matter of

M/s Liwayway Foods India Private Limited
#54 (shed No.2), Bommasandra Industrial Area
Hosur Road
Bengaluru - 560099

(Applicant)

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

ORDER

The applicant has filed a compounding application dated July 15, 2018, received at this office of Reserve Bank of India, Bengaluru on August 02, 2018, and addendum to the application dated December 10, 2018, received on December 13, 2018, 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 are, (i) delay in reporting receipt of foreign inward remittances towards subscription to equity, (ii) allotment of shares prior to receipt of share application money and allotment of shares beyond 180 days from the date of receipt of inward remittance, and (iii) delay in submission of Form FC-GPRs to the Reserve Bank, after issue of shares to a person resident outside India, in terms of Paragraphs 9(1)(A), 8 and 9(1)(B) respectively, of Schedule I 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 03, 2000, and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts of the case are as follows: The applicant, M/s Liwayway Foods India Private Limited, was originally incorporated as M/s Ceers Liwayway Foods Private Limited, on November 08, 2010, under the Companies Act, 1956, as per the Certificate of Incorporation issued by the Registrar of Companies, Karnataka. Subsequently, name of the company has changed to M/s Liwayway Foods India Private Limited, with effect from May 02, 2013, under the Companies Act, 1956, as per the Certificate of Incorporation issued by the Registrar of Companies, Karnataka. The company is engaged in the business of manufacturing, buying and selling all types and kinds of flavors for food industry. The applicant had received funds towards share application money from the foreign investors, namely, M/s Liwayway Marketing Corporation, Philippines, and M/s Sunarin Laroshe International Company Limited, Philippines, as shown below:

Table – 1

Sl. No.	Date of Receipt	Amount (INR)	Date of reporting to RBI/AD
1	09-02-2011	49,846.00	09-05-2012
2	18-05-2012	3,002.00	12-06-2012
3	24-08-2011	1,17,86,421.00	08-10-2011
4	09-11-2011	1,27,78,869.00	21-11-2011
5	07-12-2011	3,10,34,705.00	16-12-2011
6	20-04-2012	20,50,563.64	07-05-2012
7	09-05-2012	84,91,431.25	29-05-2012
8	11-05-2012	99,73,687.50	29-05-2012
9	23-05-2012	22,09,178.40	06-06-2012
10	31-05-2012	1,26,58,053.98	27-06-2012
11	05-06-2012	74,30,373.75	27-06-2012
12	12-06-2012	73,88,801.45	27-06-2012
13	12-07-2012	1,54,01,424.75	30-07-2012



14	25-07-2012	1,55,83,408.50	14-08-2012
15	17-08-2012	1,37,48,625.00	30-08-2012
16	18-09-2012	1,32,98,670.00	25-10-2012
17	04-12-2012	3,02,12,839.00	31-12-2012
18	08-01-2013	3,54,23,637.50	21-01-2013
19	23-01-2013	98,79,514.75	31-01-2013
20	08-03-2013	83,91,896.25	26-03-2013
21	09-04-2013	69,51,452.93	14-05-2013
22	10-06-2013	1,08,08,421.10	19-07-2013
23	08-07-2013	2,00,45,095.00	19-07-2013
24	20-08-2013	2,00,04,292.25	30-08-2013
25	08-10-2013	1,52,48,475.00	31-10-2013
26	06-12-2013	1,47,12,867.25	26-12-2013
27	17-02-2014	1,46,62,350.00	26-02-2014
28	10-03-2014	2,71,33,372.00	05-04-2014
29	07-05-2014	1,18,80,396.00	13-05-2014
30	26-06-2014	2,48,18,233.00	04-07-2014
31	01-08-2014	25,19,08,069.00	12-08-2014
32	07-10-2014	2,53,10,261.00	11-10-2014
33	04-02-2015	1,47,39,142.00	25-02-2015
34	25-03-2015	1,48,80,726.00	22-04-2015
35	12-06-2015	1,26,88,287.00	29-06-2015
36	24-07-2015	1,52,14,288.00	05-08-2015
37	24-09-2015	1,50,67,831.00	08-10-2015
38	27-11-2015	1,58,86,213.00	16-12-2015
39	12-01-2016	1,59,34,207.00	29-01-2016
40	19-02-2016	5,79,25,660.00	07-03-2016
41	07-04-2016	18,38,18,227.00	03-06-2016
42	24-05-2016	1,60,80,201.00	27-06-2016
43	12-07-2016	1,59,46,464.00	02-09-2016
44	21-09-2016	1,58,57,218.00	17-11-2016
45	28-10-2016	1,58,26,022.00	24-11-2016
46	05-12-2016	1,61,35,583.00	28-12-2016
47	13-01-2017	1,61,33,183.00	15-02-2017
48	02-03-2017	1,57,78,028.00	09-03-2017
49	24-04-2017	1,52,62,092.00	27-04-2017
50	25-05-2017	1,52,98,088.00	07-06-2017
51	10-07-2017	1,54,30,071.00	07-08-2017



52	13-09-2017	1,53,46,337.30	06-10-2017
53	23-10-2017	1,55,67,113.38	23-11-2017
	Total	122,60,93,214.93	

The applicant reported receipt of remittances to the Reserve Bank of India / Authorized Dealer Bank, with a delay ranging from one day to one year, one month and twenty eight days, beyond the stipulated period of 30 days in respect of remittances as indicated at serial numbers 1, 3, 16, 21, 22, 41 to 44, 47 and 53, in the Table-1 above. Whereas, in terms of paragraph 9(1)(A) of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report to the Reserve Bank of India, as per the prescribed procedure, not later than 30 days from the date of receipt of the amount of consideration.

3. The company had allotted equity shares to the foreign investors, in terms of Paragraph 8 of Schedule 1 to Notification No. FEMA.20/2000 RB dated May 03, 2000. However, in the instances mentioned here below, the company had allotted shares prior to the receipt of inward remittances or allotted shares beyond 180 days from the date of receipt of inward remittances, without prior approval from Reserve Bank of India.

(i) The company had allotted 5000 equity shares worth ₹50,000.00, to the non-resident investor, Mr. Oszen Angsanto Chan, Philippines, on February 24, 2011. However, a part of the share application money, amounting to ₹3,002.00, pertaining to the aforesaid allotment, was received after the allotment of shares, on May 18, 2012. The amount of contravention is **₹3,002.00**, and the period of delay is one year two months and twenty four days; and

(ii) The Company had received inward remittances of ₹1,17,86,421.00, and ₹1,27,78,869.00, from the non-resident investors, M/s Liwayway Marketing Corporation, Philippines, and M/s Sunarin Laroshe International Company Limited, Philippines, on August 24, 2011, and November 09, 2011, respectively. However, the company had allotted shares to the non-resident



investor M/s Sunarin Laroshe International Company Limited, Philippines, on May 15, 2012, beyond 180 days from the date of receipt of inward remittance without prior approval of Reserve Bank of India. The amount of contravention is ₹2,45,65,290.00, and the period of delay ranges from eight days to two months and twenty five days.

In terms of Paragraph 8 of schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000, as amended from time to time, read with A.P. (DIR Series) Circular No.20 dated December 14, 2007, an Indian company accepting FDI has to receive the share application money from the non-resident investor prior to the allotment of shares, and the shares have to be issued/amount to be refunded within 180 days of from the date of receipt of inward remittance.

4. The applicant company allotted equity shares and filed Form FC-GPRs with Reserve Bank/AD as indicated below:

Table – 2

Sl. No.	Date of Allotment	Number of shares allotted	Amount (INR)	Date of reporting to RBI/AD
1	24-02-2011	5000	50,000.00	19-06-2012
2	15-05-2012	5559999	5,55,99,990.00	19-06-2012
3	01-10-2012	5020208	5,02,02,080.00	25-10-2012
4	07-01-2013	5803212	5,80,32,120.00	16-02-2013
5	01-06-2013	8390788	8,39,07,880.00	26-06-2013
6	30-09-2013	5780926	5,78,09,260.00	19-11-2013
7	05-03-2014	2996134	2,99,61,340.00	04-04-2014
8	23-06-2014	5367611	5,36,76,110.00	18-07-2014
9	17-07-2014	2481823	2,48,18,230.00	13-08-2014
10	04-09-2014	25190806	25,19,08,060.00	26-09-2014
11	05-12-2014	2531026	2,53,10,260.00	13-01-2015
12	30-03-2015	1473914	1,47,39,140.00	22-04-2015
13	15-06-2015	1488072	1,48,80,720.00	09-07-2015
14	30-09-2015	2790257	2,79,02,570.00	19-10-2015
15	25-11-2015	1506783	1,50,67,830.00	11-01-2016
16	01-02-2016	1588621	1,58,86,210.00	26-02-2016



17	11-03-2016	1593420	1,59,34,200.00	19-04-2016
18	09-05-2016	5792566	5,79,25,660.00	30-05-2016
19	04-07-2016	18381822	18,38,18,220.00	19-07-2016
20	25-08-2016	1608020	1,60,80,200.00	15-09-2016
21	15-12-2016	1594646	1,59,46,460.00	10-01-2017
22	16-03-2017	1585721	1,58,57,210.00	05-04-2017
23	03-04-2017	1582602	1,58,26,020.00	21-04-2017
24	29-04-2017	1613558	1,61,35,580.00	15-05-2017
25	04-05-2017	1613318	1,61,33,180.00	15-05-2017
26	13-05-2017	1577802	1,57,78,020.00	10-06-2017
27	19-06-2017	1526209	1,52,62,090.00	14-07-2017
28	17-07-2017	1529808	1,52,98,080.00	12-08-2017
29	31-08-2017	1543007	1,54,30,070.00	22-09-2017
30	16-10-2017	1534633	1,53,46,330.00	08-11-2017
	Total		121,05,23,120.00	

The applicant filed the Form FC-GPRs on allotment of shares with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank with a delay ranging from five days to one year two months and twenty four days, beyond the prescribed period of 30 days in respect of allotment of shares as indicated at serial numbers 1, 2, 4, 6, 11, 15, and 17 in the Table - 2 above. Whereas, in terms of Paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000, an Indian company issuing shares in accordance with these Regulations has to submit to the Reserve Bank of India, a report in Form FC-GPR, along with documents prescribed therein, within 30 days from the date of issue of shares to person/s resident outside India.

5. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID (CEFA) No. 1726/22.08.170/2018-19 dated December 11, 2018, for further submission in person, and/or producing documents, if any, in support of the application. The applicant's authorized representative Mr. Bharat Hegde, Company Secretary, who appeared for the personal hearing on December 14, 2018, admitted the contraventions as stated in paragraphs 2, 3 and 4 above, committed by the applicant, for which compounding has been



sought. During the personal hearing, it was submitted that the delay was not willful or with malafide intention, but was mainly due to inadvertence, and the same would not be repeated. In view of the above, he requested to take a lenient view in disposal of the application. The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as other documents and submissions made in this context by the applicant during personal hearing and thereafter.

6. I have given my careful consideration to the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:

(a) Paragraph 9 (1) (A) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in reporting of foreign inward remittances received towards subscription to equity as detailed in paragraph 2 above. The contravention relates to an amount of **₹30,62,97,217.41**, and the period of delay ranges from one day to one year one month and twenty eight days;

(b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, due to allotment of shares prior to receipt of inward remittances, and allotment of shares beyond 180 days from the date of receipt of inward remittances, without prior approval from Reserve Bank of India as detailed in paragraph 3 above. The total amount of contravention is **₹2,45,68,292.00**, and the period of delay ranges from eight days to one year two months and twenty four days; and

(c) Paragraph 9 (1) (B) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in submission of Form FC-GPRs to the Reserve Bank after issue of shares to person/s resident outside India, as detailed in paragraph 4 above. The contravention relates to an amount of **₹22,78,03,660.00**, and the period of delay ranges from five days to one year two months and twenty four days.



7. It has been declared in the compounding application dated July 15, 2018, that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has been declared in the undertaking, 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, 1999. 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.

8. 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 amount for which the contraventions are to be compounded, and I consider that an amount of **₹2,09,110.00, (Rupees Two Lakh Nine Thousand One Hundred and Ten only)**, will meet the ends of justice.

9. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1)(A), 8 and 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB by the applicant, on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹2,09,110.00, (Rupees Two Lakh Nine Thousand One Hundred and Ten only)**, which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 2nd Floor, 10/3/8, Nrupathunga Road, Bengaluru – 560001, by a demand draft drawn in favour of the “Reserve Bank of India” and payable at Bengaluru 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 of accordingly.

Dated this, the Fourteenth day of December, 2018.

(P J Thomas)
Regional Director, Karnataka and
Chief General Manager, Bengaluru