



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: December 26, 2017
CA No 4527/ 2017

In the matter of

Modern Montessori International India Private Limited
Plot No. 1113, DLF Phase 1, Opp E-45, Bodhi Marg
Gurgaon -122 002

(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 September 22, 2017 (received in the Reserve Bank on September 27, 2017) 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) the borrower is not an eligible borrower in terms of extant ECB guidelines; (ii) utilization of ECB proceeds as working capital for expansion of business is a non-permissible end use; (iii) draw down of the ECB without obtaining Loan Registration Number (LRN) from the Reserve Bank of India (RBI) is not permitted and (iv) reporting guidelines were not adhered to. 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(i), (iv), (xi) and (xii) of Schedule I to this Regulation and further read with Paragraphs 1(A)(i), (v), 1(C)(i)(c) and (d) of Annex to A.P.(DIR Series) Circular No. 5 dated August 01, 2005 (as amended from time to time).

2. The relevant facts are as under:

The applicant was incorporated as Maria Montessori International India Private Limited, a private limited company on under the Companies Act, 1956 (CIN U80301DL2003PTC118290) on January 02, 2003. Subsequently, on February 11, 2003, its name was changed to Modern Montessori International India Private Limited (MMIPL). The company is engaged in providing educational services rendered through non-technical colleges, schools, universities and other institutions. The company had raised SGD 255,957.90 (equivalent to INR 74,18,968.01) as a loan in 4 tranches from June 23, 2004 to July 11, 2013 from their foreign equity holder, Modern Montessori International Pte Limited, Singapore (MMIPL), as given in the table below:

Period of contravention	Amount in foreign currency (SGD)	Amount in INR	Amount & date of refund
24.06.2004 to 21.08.2017	75,000.00	2,000,000.00	74,18,967.85
01.10.2004 to 21.08.2017	150,957.90	4,091,000.00	
02.04.2013 to 21.08.2017	20,000.00	863,930.89	
11.07.2013 to 21.08.2017	10,000.00	464,037.12	21.08.2017
Total	255,957.90	74,18,968.01	

As the applicant is engaged in the business of providing educational services, it is not eligible to raise such a loan. Further, the loan was utilized for a non-permissible end-use and drawdown of the loan took place without obtaining Loan Registration number (LRN) from the Reserve Bank of India (RBI).



The above contraventions relate to Regulation 6 of Notification No. FEMA 3/2000-RB dated 3rd May 2000 read with Paragraphs 1(i), (iv), (xi) and (xii) of Schedule I to this Regulation and further read with Paragraphs 1(A)(i), (v), 1(C)(i)(c) and (d) of Annex to A.P.(DIR Series) Circular No. 5 dated August 01, 2005 (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(i) of Schedule – I to Notification No. FEMA 3/2000-RB read with paragraph 1(A)(i) of Annex to AP (DIR Series) Circular No 5 dated August 5, 2005, as then applicable, deals with borrowers eligible to raise ECB. As per extant provisions, companies engaged in providing educational services are not eligible to borrow in the form of ECB.

3. b) Paragraph 1(iv) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB read with Paragraph 1A(v) of Annex to A.P (DIR Series) Circular No 5 dated August 5, 2005, as then applicable, provides that ECB can be raised only for investment in real sector in India (such as import of capital goods, new projects, modernization/expansion of existing production units) under the automatic route. ECB availed for non-capital expenditure is not a permissible end use under the Automatic Route.

3. c) Paragraph 1(xi) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB read with paragraph 1(C)(i)(c) of Annex to AP (DIR Series) Circular No 5 dated August 5, 2005 states that "draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only after



obtaining the loan registration number from the Reserve Bank”. The draw-down by the applicant was made without making application for obtaining LRN from RBI.

3. d) Paragraph 1(xii) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB read with paragraph 1(C)(i)(d) of Annex to AP (DIR Series) Circular No 5 dated August 5, 2005 states that “the borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time”. The ECB was not reported to RBI.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA.No./4045/15.20.67/2017-18 dated November 07, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on November 22, 2017 during which Shri Ravi Batra 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. 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 read with paragraphs 1(i), (iv), (xi) and (xii) of Schedule I to this Regulation and further read with Paragraphs 1(A)(i), (v), 1(C)(i)(c) and (d) of Annex to A.P.(DIR Series) Circular No. 5 dated August 01, 2005 (as amended from time to time). The amount of contravention is INR 74,18,968.01 and the period of contravention ranges from 4 years 1 month to 13 years and 2 months.

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. 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 INR 1,04,980.00 (Rupees One lakh four thousand nine hundred and eighty only) will meet the ends of justice in the circumstances of this case.

7. 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 read with Paragraphs 1(i), (iv), (xi) and (xii) of Schedule I to this Regulation and further read with Paragraphs 1(A)(i), (v), 1(C)(i)(c) and (d) of Annex to A.P.(Dir Series) Circular No. 5 dated August 01, 2005 (as amended from time to time) on payment of a sum of INR 1,04,980.00 (Rupees One lakh four thousand nine hundred and eighty 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 twenty sixth day of December, 2017

Sd/-

(Vandana Khare)
General Manager