



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: January 15, 2018
CA No 4514/ 2017

In the matter of

Rishiroop Limited
84, Atlanta, Nariman Point
Mumbai 400 021

(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 07, 2017 (received in the Reserve Bank on September 12, 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 Issuance of OCPS and RPS in contravention of FEMA 20, as these are not FDI compliant instruments. The above were in contravention of Regulation 2(ii) and Regulation 7(2) of 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 3rd May 2000 as amended from time to



time (hereinafter referred to as Notification No. FEMA 20/2000-RB) by issuing optionally convertible preference shares and redeemable preference shares to persons resident outside India.

2. The relevant facts are as under:

The applicant was incorporated as Puneet Resins Private Limited on September 24, 1984 under the Companies Act, 1956 (CIN L25200MH1984PLC034093). It changed its name to Puneet Resins Limited on July 13, 1993 and further to Rishiroop Limited on August 11, 2015.

A scheme of Amalgamation between Rishiroop Rubber (International) Limited (transferor) and Rishiroop Limited (Transferee) was approved by Hon'ble High court of judicature at Bombay and Gujarat.

In accordance with the terms of the scheme, the company had allotted 71,03,935 OCPS of Rs.10/- each at premium of Rs.34 to the erstwhile shareholders of M/s Rishiroop Rubber (International) Limited which included 129,568 OCPS allotted to non-resident on September 08, 2015.

The OCPS were converted to Redeemable Preference Shares February 24, 2017. Issuance of OCPS and RPS is in contravention of FEMA 20, as these are not FDI compliant instruments. The amount and period of contravention is as under:

Allotment of OCPS to conversion into RPS

08.09.2015 – 23.02.2017: 534 days

Amount: 5,701,036

Allotment of RPS to redemption of RPS

24.02.2017- 23.08.2017 (tenure of RPS is 6 months): 180 days

Amount: 5,745,256

The above contraventions relate to Regulation 2(ii) and Regulation 7(2) of Notification No. FEMA 20/2000-RB.

3. In terms of Regulation 2 (ii) of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time " 'Capital' means equity shares, preference



shares and convertible debentures”, while Regulation 7(2) states that “Where a Scheme of Arrangement for an Indian company has been approved by a Court in India, the Indian company may issue non-convertible redeemable preference shares or debentures out of its general reserves.... subject to ... the original acquisition of shares / convertible debentures (including non-convertible / optionally convertible / partially convertible preference shares issued as on and up to April 30, 2007 and optionally convertible / partially convertible debentures issued up to June 7, 2007 under Foreign Direct Investment Scheme and treated as eligible (FDI) compliant instruments under the then applicable guidelines.”

The primary responsibility of ensuring that the funds raised/utilized are in conformity with the FDI guidelines and the Reserve Bank regulations/directions/circulars is that of the concerned borrower.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA.No./4663/15.20.67/2017-18 dated November 24, 07, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on December 06, 2017 during which Shri Agnelo A. Fernandes, Company Secretary and Head Legal, represented the applicant. The representative 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 2(ii) and Regulation 7(2) of Notification No. FEMA 20/2000-RB by issuing optionally convertible preference shares and redeemable preference shares to persons resident outside India. The amount of contravention is INR 57,01,036.00 for a period of 534 days and INR 57,45,256.00 for 180 days.



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 112955.00 (Rupees One lakh twelve thousand and nine hundred and fifty five 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 2(ii) and Regulation 7(2) of Notification No. FEMA 20/2000-RB by issuing optionally convertible preference shares and redeemable preference shares to persons resident outside India on payment of a sum of INR 112955.00 (Rupees One lakh twelve thousand and nine hundred and fifty five 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 fifteenth day of January, 2018

Sd/-

(Vandana Khare)
General Manager