



In the

**Reserve Bank of India**  
Foreign Exchange Department  
Mumbai Regional Office  
Main Building, 3rd floor  
Shahid Bhagat Singh Marg, Fort  
Mumbai 400 001

Present

**Shri G. P. Borah**  
Chief General Manager

**Date: February 16, 2018**

**C.A. No. 725/2017**

In the matter of

**Bericap India Private Limited**  
Plot No. A-6, M.I.D.C.  
Talegaon Industrial Area  
Tal. Maval, Dist. Pune  
Maharashtra- 410 507

**(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**

1. The applicant has filed the compounding application dated October 4, 2017 (received at the Reserve Bank of India on October 4, 2017) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are (i) neither the equity instruments were issued nor the money refunded to the foreign investor, a person resident outside India within 180 days of the receipt of the inward remittance (ii) delay in reporting receipt of foreign inward remittance towards subscription to equity & (iii) delay in submission of Form FC-GPR



to the Reserve Bank after issue of shares to a person resident outside India in terms of paragraphs 8, 9(1)(A) & 9(1)(B) 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 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 company was incorporated on February 1, 2001 under the Companies Act, 1956. Its main activity is to manufacture, process, design, export, import, buy, sell and deal in, act as sales agents in all types of closures including the following variants such as, closures for carbonated soft drinks, closures with pull-up spouts, screw closures for plastic containers, sure seal system, closures for agro-chemicals, closures system for plastic palls, child resistant closures for plastic packaging, push pull closures, closures system for metal packaging, clenched closures for metal packaging, closures for aerosol cans, screw closures with inner conical seal, two piece weldable closures with conical seal, screw closures with carrying handle, plastic closures for beverages, two piece screw closures with conical seal, two piece screw closures with injected liner, two piece screw closures with barrier sealing system, beverage closures, flip flop closures, tamper evident closures, custom made closures, decorative closures, directional pour spout, telescopic spout, press fit closures crimp on closures, rubber stoppers, fez closures and snap closures and market capping heads, capping heads, capping equipments and tooling for capping.

3. The applicant received foreign inward remittance from Bericap Holding GMBH, Germany towards equity / preference share capital and reported the same to the Reserve Bank as indicated below.

<b>Sr. No.</b>	<b>Amount in Rs.</b>	<b>Date of receipt</b>	<b>Date of reporting</b>
1	3,12,94,298	17-01-2002	24-01-2002
2	2,02,47,000	11-02-2003	ECB
3	78,76,400	18-12-2003	ECB
4	36,70,100	06-04-2004	ECB



5	4,34,58,832	04-04-2006	10-04-2006
6	4,48,00,000	30-04-2007	30-05-2011
7	89,15,600	12-07-2007	30-05-2011
8	2,99,70,000	06-09-2007	30-05-2011
9	1,59,79,600	20-12-2007	ECB
10	5,11,28,000	15-01-2008	30-05-2011
11	1,67,51,000	20-12-2008	ECB
12	1,33,70,000	04-06-2009	26-11-2009
13	3,50,01,300	16-11-2009	19-11-2009
14	3,62,44,000	27-11-2009	02-12-2009
15	3,38,34,500	07-12-2009	08-12-2009
16	4,94,00,000	19-11-2010	29-11-2010
17	6,12,00,000	24-02-2011	02-03-2011
18	6,76,50,000	02-11-2011	15-11-2011
19	5,01,75,000	12-10-2012	30-10-2012
20	20,85,00,000	26-03-2013	02-04-2013
21	20,37,72,000	04-03-2014	19-03-2014
Total	1,03,32,37,630		

The applicant reported receipt of remittances to the Reserve Bank of India on dates indicated above with a delay ranging from 4 months 23 days to 4 years approximately, in respect of remittance recorded at serial no. 6 to 8, 10 and 12 above, beyond the stipulated time of 30 days. Whereas, in terms of Paragraph 9(1)(A) of Schedule 1 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.

4. The company allotted equity shares/preference shares/convertible preference shares and filed FC-GPRs as indicated below:

Sr. No	No of Shares	FV	Amount in Rs.	Date of allotment	Date of reporting
1	30,62,725	10	3,06,27,250	15-04-2002	10-05-2002
2	66,704	10	6,67,040	28-11-2002	13-12-2002
3	18,93,016	10	1,89,30,160	23-01-2006	10-04-2006
4	7,87,640	10	78,76,400	23-01-2006	10-04-2006
5	3,67,010	10	36,70,100	23-01-2006	10-04-2006
6	43,45,883	10	4,34,58,830	23-01-2006	10-04-2006
7	44,80,000	10	4,48,00,000	16-08-2007	30-05-2011



8	8,91,560	10	89,15,600	16-08-2007	30-05-2011
9	29,97,000	10	2,99,70,000	11-01-2008	30-05-2011
10	19,47,400	10	1,94,74,000	25-04-2012	22-05-2012
11	51,12,800	10	5,11,28,000	26-03-2009	30-05-2011
12	17,38,750	10	1,73,87,500	05-04-2013	25-04-2013
13	13,37,000	10	1,33,70,000	10-12-2009	04-01-2010
14	35,00,130	10	3,50,01,300	10-12-2009	04-01-2010
15	36,24,400	10	3,62,44,000	10-12-2009	04-01-2010
16	33,83,450	10	3,38,34,500	10-12-2009	04-01-2010
17	49,40,000	10	4,94,00,000	14-01-2011	09-02-2011
18	61,20,000	10	6,12,00,000	19-04-2011	11-05-2011
19	67,65,000	10	6,76,50,000	06-12-2011	04-01-2012
20	50,17,500	10	5,01,75,000	11-12-2012	07-01-2013
21	2,08,50,000	10	20,85,00,000	05-04-2013	25-04-2013
22	2,03,77,200	10	20,37,72,000	06-05-2014	06-06-2014
		Total	1,03,60,51,680		

The applicant filed form FC-GPRs as indicated above with a delay ranging from 1 month 16 days to 3 years 8 months 14 days approximately, beyond the prescribed limit in respect of allotment indicated at Sr. No. 3 to 9 and 11 above. Whereas, in terms of Paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to Reserve Bank a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident outside India.

5. In respect of remittances amounting to Rs.6,44,98,000/- (Rupees Six Crore Forty Four Lakh Ninety Eight Thousand only), at serial nos. 10 and 12 in para 3 above, the company allotted shares after 180 days of receipt of investment with a delay ranging from 9 days to 8 months 12 days approximately. Whereas in terms of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned, provided 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. The amendment in paragraph 8 of Schedule 1 to Notification No. FEMA



20/2000-RB was introduced by issue of Foreign Exchange Management (Transfer or Issue of security by A person resident outside India) (Third Amendment) Regulations, 2007 notified, vide Notification No. FEMA 170/2007-RB dated 13th November, 2007, in the official Gazette of the Government of India.

6. The applicant was given an opportunity for personal hearing vide e-mail dated February 7, 2018 for further submission in person and/or for producing documents, if any, in support of the application. The applicant appeared for personal hearing on February 9, 2018, during which Shri Shripad Kanitkar, Finance Director and Shri Jayavant Bhave, Practicing Company Secretary represented the applicant in the cabin of Shri G. P. Borah, Chief General Manager, Mumbai Regional Office. The representatives of the applicant admitted the contraventions for which compounding has been sought. During the hearing it was submitted that delay was inadvertent and unintentional. The representatives of the applicant requested that in view of the foregoing a lenient view may be taken 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.

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

(a) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB since the shares were not issued to the person resident outside India within 180 days from the date of receipt of the inward remittance/share application not refunded to the person resident outside India within 180 days from the date of receipt of the inward remittance. The contravention relates to an amount of Rs.6,44,98,000/- (Rupees Six Crore Forty Four Lakh Ninety Eight Thousand only) with a delay ranging from 9 days to 8 months 12 days approximately.



(b) Paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in reporting of receipt of foreign inward remittance towards subscription towards shares as detailed in paragraph 3 above. The contravention relates to an amount of Rs.14,81,83,600/- (Rupees Fourteen Crore Eighty One Lakh Eighty Three Thousand Six Hundred only) and with a delay ranging from 4 months 23 days to 4 years, approximately.

(c) Paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India and the contravention relates to an amount of Rs.20,87,49,090/- (Rupees Twenty Crore Eighty Seven Lakh Forty Nine Thousand Ninety Only) with a delay ranging from 1 month 16 days to 3 years 8 months 14 days approximately.

8. It has been declared in the compounding application dated October 4, 2017 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been declared in the declaration dated nil 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/him/her 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.

9. 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 Rs.15,14,043/- (Rupees Fifteen Lakh Fourteen Thousand Forty Three Only) will meet the ends of justice.

10. Accordingly, I compound the admitted contravention namely, the contraventions of Paragraph 8, 9(1)(A) and 9(1)(B) of Schedule 1 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 Rs.15,14,043/- (Rupees Fifteen Lakh Fourteen Thousand Forty Three Only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, 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.

11. The above order is passed only in respect of contraventions of paragraph 8, 9(1) (A) and 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.

The application is disposed of accordingly.

Dated: February 16, 2018.

**Compounding Authority**

**Sd/-**

**(G. P. Borah)**  
Chief General Manager