



In the
Reserve Bank of India
Foreign Exchange Department
Ahmedabad-380009

Present
Jayant Kumar Dash
Chief General Manager (The Regional Director)

March 28, 2018
CEFA.CO.ID.9550 / C.A.No. AHM - 94 / 2017-18

Matter
M/s BC Instruments India Pvt. Ltd.
(CIN: U29119GJ2003PTC43024)
Plot No. 1802/4, Phase - IV, Vithal Udhyognagar - 388121, Anand
Gujarat

(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 there under, I pass the following order:

Order

The applicant has filed compounding application dated January 3, 2018 (Received at Reserve Bank of India on January 4, 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 beyond 30 days in reporting receipt of foreign inward remittance towards subscription to equity (ii) delay beyond 30 days in submission of Form FC-GPR to the



Reserve Bank after issue of shares to a person resident outside India and (iii) delay in allotment of shares beyond stipulated period of 180 days; in terms of paragraphs 9 (1) (A), 9 (1) (B) and paragraph 8 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 3rd May 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 October 8, 2003 under the provisions of the Companies Act, 1956 (CIN: U29119GJ2003PTC43024). The company is engaged in high precision machining of components, aerospace, medical instruments and other products. The applicant company has received total twenty nine inflows amounting to ₹3,79,59,390/- from foreign investors under automatic route and reported the same to Reserve Bank of India as indicated below:

3. **Para 9(1) (A) – Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000 – Contravention detected:** (Table -1)

Sr. No.	Remitter	Date of receipt	Amount of foreign inward remittance (₹)	Date of reporting to RBI*	Days delay excluding prescribed time of 30 days
1	Bruno Conzelmann	11-11-2003	70000	08-12-2003	No delay
2	Harshad Patel	11-11-2003	20000	08-12-2003	No delay
3	BCP Holdings Inc.	11-11-2003	1272920	08-12-2003	No delay
4	BCP Holdings Inc.	30-01-2004	2036400	26-02-2004	No delay
5	BCP Holdings Inc.	11-02-2004	846250	26-02-2004	No delay
6	Harshad Patel	19-04-2004	1278900	30-04-2004	No delay
7	BCP Holdings Inc.	19-04-2004	514000	30-04-2004	No delay
8	BC Precision Inc.	12-03-2009	4987500	09-04-2009	No delay
9	Brucon Inc.	08-04-2009	503963	09-04-2009	No delay
10	Shannon Wheeler	24-03-2009	508500	09-04-2009	No delay
11	Ramila Patel	02-04-2009	949368	27-04-2009	No delay
12	BCP Holdings Inc.	28-03-2011	4688524	10-04-2011	No delay
13	Taras Lozowskij	28-03-2011	450300	10-04-2011	No delay
14	Rocon Inc.	18-04-2011	276426	14-05-2011	No delay
15	Bruno Conzelmann	18-04-2011	1121076	14-05-2011	No delay



16	BCP Holdings Inc.	11-07-2011	5439000	02-08-2011	No delay
17	Rocon Inc.	08-08-2011	279251	27-08-2011	No delay
18	Brucon Inc.	22-09-2011	591000	22-09-2011	No delay
19	Taras Lozowskij	11-07-2011	453250	02-08-2011	No delay
20	Ramila Patel	29-07-2011	6540637	09-08-2011	No delay
21	Shannon Wheeler	22-07-2011	578875	09-08-2011	No delay
	Sub Total A		33406140		
1	BCP Holdings Inc.	30-03-2005	596930	26-10-2017	4563 days
2	BCP Holdings Inc.	30-03-2005	473960	26-10-2017	4563 days
3	BCP Holdings Inc.	30-03-2005	473960	26-10-2017	4563 days
4	BCP Holdings Inc.	30-03-2005	473960	26-10-2017	4563 days
5	BCP Holdings Inc.	30-03-2005	473960	26-10-2017	4563 days
6	Ramila Patel	24-03-2009	1062230	04-05-2009	11 days
7	Bruno Conzelmann	21-03-2009	499125	27-04-2009	7 days
8	Rocon Inc.	21-03-2009	499125	27-04-2009	7 days
	Sub Total B		4553250		
	Grand Total (A+B)		37959390		

* The date for calculation of delay under 9(1) (A) taken as date of inflow reporting by Company to AD.

4. The applicant reported the receipt of twenty nine inward remittances, amounting to ₹3,79,59,390/- to the Ahmedabad Regional Office of the Reserve Bank of India. Out of twenty nine inflows eight inflows amounting to ₹45,53,250/- were reported with a delay ranging from 7 to 4563 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. Thus the company stands to contravene the provisions stipulated in paragraph 9(1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.

5. The applicant allotted equity shares and filed FC-GPRs as stated below:

Para 9(1) (B) – Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000 –Contravention detected: (Table -2)

Sr. No.	Name of the Foreign Investor	No of shares	Amount of shares	Date of issue of	Date of submission	Days delay
---------	------------------------------	--------------	------------------	------------------	--------------------	------------



		issued	(₹)	shares	of FC-GPR to RBI *	excluding prescribed time of 30 days
1	Bruno Conzelmann Harshad Patel BCP Holdings Inc.	7000 2000 127292	1362920	04-12-2003	20-12-2003	No Delay
2	BCP Holdings Inc.	203640	2036400	22-02-2004	26-02-2004	No Delay
3	BCP Holdings Inc.	84625	846250	22-02-2004	26-02-2004	No Delay
4	Harshad Patel	127890	1278900	21-04-2004	30-04-2004	No Delay
5	BCP Holdings Inc.	51400	514000	21-04-2004	30-04-2004	No Delay
6	BCP Holdings Inc. Taras Lozowskij Rocon Inc. Bruno Conzelmann	183936 17666 10844 43981	6536324	12-09-2011	26-09-2011	No Delay
7	BCP Holdings Inc. Rocon Inc. Brucon Inc. Taras Lozowskij Ramila Patel Shannon Wheeler	213378 10955 23186 17781 256596 22710	13882007	23-11-2011	12-12-2011	No Delay
	Sub Total A	1404880	26456801			
1	BCP Holdings Inc.	249277	2492770	10-04-2005	18-12-2017	4605 days
2	BC Precision Inc. Brucon Inc. Shannon Wheeler Ramila Patel	230796 23531 23321 49155	7062213	18-08-2009	22-09-2009	5 days
3	Rocon Inc. Bruno Conzelmann Ramila Patel	23097 23097 43932	1947623	19-09-2009	07-11-2017	2941 days
	Sub Total B	666206	11502606			
	Grand Total (A+B)	2071086	37959407**			

* For calculation of days of delay under 9(1)(B) date of reporting to AD bank is taken as reporting to RBI.

** Shortfall of ₹ 17/- has been ignored.



6. As indicated in the table above, the applicant has filed three form FC-GPRs amounting to ₹1,15,02,606/- with a delay ranging from 5 to 4605 days beyond the prescribed timeline of 30 days. 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 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 the overseas investor. Thus, the company stands to contravene the provisions stipulated in Paragraph 9(1) (B) of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000.

7. Contravention under Para 8 of Schedule I of FEMA notification 20/2000- RB dated May 3, 2000. Contravention detected. (Table - 3)

Sr. No.	Investor	Date of remittance received	Amount of shares (₹)	Date of issue of shares	Days delay excluding prescribed time of 180 days
1	Bruno Conzelmann	21-03-2009	499125	19-09-2009	2 days delay
2	Rocon Inc.	21-03-2009	499125	19-09-2009	2 days delay
	Total		998250		

8. As indicated in the table above, the applicant has allotted shares for the entire amount against total inflow of ₹9,98,250/-. It is observed that shares amounting to ₹9,98,250/-were allotted with the delay of 2 days beyond stipulated period of 180 days without obtaining prior approval from Reserve Bank of India as stipulated in Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000. Whereas, in terms of Para 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 November 13, 2007 in the official Gazette of the Government of India. Further in terms of paragraph 5 of AP(Dir series) Circular No.20 dated December 14, 2007, in all cases where, as on November 28, 2007, 180 days have elapsed since receipt of funds and the equity instruments have not been issued, the companies are required to approach the Foreign Exchange Department of the Regional Office concerned of the Reserve Bank through their AD Category-1 bank with a definite action plan whether for allotment of equity instruments or for refund of the advance, with full details, for specific approval. Thus, the company stands to contravene the provisions stipulated in Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000.

9. The applicant was given an opportunity for personal hearing vide our letter FE.AH.No.1219/06.04.15 (B) /CEFA/2017-18 dated March 9, 2018 for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for the personal hearing on March 28, 2018 during which the Managing Director of the Company Shri Sunil Dave represented the applicant. They admitted to the contraventions for which compounding has been sought and stated that the non-compliance was not intentional and was an inadvertent error on the part of the Company and they deeply regret for the delay caused and requested to take lenient view. They also stated that they are willing to accept any direction/ order of the Compounding authority in connection with their compounding application.

10. The representative 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.



11. It has been declared in the compounding application (addendum) dated January 22, 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 declaration dated January 22, 2018 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.

12. I have given my careful consideration to the documents on record and submission 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 9 (1) (A) of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000: Due to delay in reporting of receipt of foreign inward remittances towards subscription of shares as detailed in paragraph 4 above. The amount of contravention involved is ₹45,53,250/- and the delay is for approximately 7 to 4563 days.

B) Paragraph 9(1) (B) of Schedule 1 of FEMA Notification FEMA 20/2000 – RB dated May 3, 2000: Due to delay in submission of form FC-GPR, after issue of shares to persons resident outside India as detailed in paragraph 6 above. The amount involved is ₹1,15,02,606/- and the delay is for approximately 5 to 4605 days .



C) Paragraph 8 of Schedule I of FEMA Notification FEMA20/2000- RB dated May

3, 2000: Due to delay in allotment of shares beyond stipulated period of 180 days from date of receipts detailed in Paragraph 8 above. The amount involved is ₹9,98,250/- and the delay is for 2 days approximately.

13. 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 therefore, I consider that amount of penalty of ₹1,76,538/- (Rupees One lakh seventy sixty thousand five hundred thirty eight only) will meet the ends of justice.

14. Accordingly, I compound the admitted contraventions, namely contravention of paragraph 9(1) (B) and 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000, by the applicant, on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹1,76,538/- (Rupees One lakh seventy sixty thousand five hundred thirty eight only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, La-Gajjar Chambers, Ashram Road, Ahmedabad –380 009 by a demand draft drawn in favour of the “Reserve Bank of India” and payable at Ahmedabad 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 the 28th day of March, 2018.

Sd/-

(Jayant Kumar Dash)

Chief General Manager (Regional Director)