



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

J. K. Pandey
Chief General Manager

Date: July 31, 2018

C.A. No. 753/2018

In the matter of

Ashland India Private Limited
8th Floor, R City Office
Above R City Mall
LBS Marg, Ghatkopar (West)
Mumbai - 400086

(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 April 3, 2018 (received at the Reserve Bank on April 6, 2018) 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) allotment of shares to Non-Resident prior to receipt of consideration (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) and 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 July 19, 2007 under the Companies Act, 1956 as Ashland India Private Limited. In pursuant to orders of Honourable Bombay High Court under Sections 391 to 394 of the Companies Act, 1956, dated September 12, 2014 Hercules Industrial Chemicals Private Limited (hereinafter referred to as HICPL) amalgamated with Ashland India Private Limited (hereinafter referred to as AIPL). Its main activities of applicant company are, (i) To carry on the business of manufacturing, processing, packing, distributing, supplying, selling, importing, exporting and trading of chemicals, chemical compounds, oil and oil derivatives, plastics, technical equipment and technical components, as well as rendering of technical services (ii) To perform engineering analysis, design and project management services, provide marketing, sales and support services and carry on research and development activities, investigations and experimental work in relation to the businesses carried on by Ashland group (iii) To assist the Ashland group and the other companies of the group in fulfilling their counter trade obligations.

3. The AIPL received foreign inward remittances from Ashland Holdings B.V., Netherland and HICPL received inward remittances from Hercules Incorporated, USA and East Bay Realty Service Inc., USA towards equity / preference share capital and reported the same to the Reserve Bank as indicated below.

HICPL				
Sr. No.	Amount received in INR	Date of receipt	Date of reporting	Delay
1	9,53,046.00	03/01/2003	28/04/2003	0Y 2M 25 D
2	98,281.00	23/07/2008	02/09/2008	0Y 0M 10D
3	4,307.00	25/08/2008	19/02/2009	0Y 4M 25D
4	873.00	02/09/2008	16/10/2008	0Y 0M 13D
5	4,00,00,000.00	17/03/2011	15/04/2011	NO



Sr. No.	Amount received in INR	Date of receipt	Date of reporting	Delay
Total	4,10,56,507.00			
AIPL				
6	92,00,000.00	30/08/2007	21/09/2007	NO
7	1,12,50,000.00	14/09/2007	21/09/2007	NO
8	95,50,000.00	03/11/2007	29/11/2007	NO
9	1,60,00,000.00	24/01/2008	26/05/2008	0Y 3M 1D
10	5,00,00,000.00	03/04/2008	06/05/2008	0Y 0M 2D
11	6,50,00,000.00	20/06/2008	09/07/2008	NO
12	3,90,00,000.00	29/08/2008	01/10/2008	0Y 0M 2D
13	4,00,00,000.00	10/11/2008	19/11/2008	NO
14	5,00,00,000.00	10/02/2009	27/02/2009	NO
15	5,00,00,000.00	17/11/2009	08/12/2009	NO
16	4,50,00,000.00	13/04/2010	20/04/2010	NO
17	8,00,00,000.00	31/12/2010	28/01/2011	NO
18	3,50,00,000.00	31/03/2011	18/04/2011	NO
19	19,50,00,000.00	27/08/2015	23/09/2015	NO
Total	69,50,00,000.00			

The HICPL reported receipt of remittances to the Reserve Bank of India on dates indicated above with a delay ranging from 10 Days to 4 Months 25 Days approximately, in respect of remittance recorded at serial no. 1 to 4 above, beyond the stipulated time of 30 days. The AIPL reported receipt of remittances to the Reserve Bank of India on dates indicated above with a delay ranging from 2 Days to 3 Months 1 Day, approximately, in respect of remittance recorded at serial no. 9, 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/ convertible preference shares/ convertible debentures and filed FC-GPRs as indicated below:



HICPL							
Sr. No.	No. of shares	FV in INR	Premi um in INR	Amount involved in INR	Date of allotment	Date of filing	Delay
1	1000	100	0	1,00,000.00	24/10/2002	03/03/2009	6Y 3M 7D
2	1	100	0	100.00	24/10/2002	03/03/2009	6Y 3M 7D
3	9530	100	0	9,53,000.00	21/03/2003	28/04/2003	0Y 0M 7D
4	400000	100	0	4,00,00,000.00	31/05/2011	30/06/2011	NO
			Total	4,10,53,100.00			
AIPL							
Sr. No.	No. of shares	FV in INR	Premi um in INR	Amount involved in INR	Date of allotment	Date of filing	Delay
5	920000	10	0	92,00,000.00	08/10/2007	01/11/2007	NO
6	1125000	10	0	1,12,50,000.00	08/10/2007	01/11/2007	NO
7	955000	10	0	95,50,000.00	19/11/2007	19/12/2007	NO
8	1600000	10	0	1,60,00,000.00	31/03/2008	26/05/2008	0Y 0M 25D
9	5000000	10	0	5,00,00,000.00	30/06/2008	05/08/2008	0Y 0M 5D
10	6500000	10	0	6,50,00,000.00	29/09/2008	27/10/2008	NO
11	3900000	10	0	3,90,00,000.00	29/09/2008	27/10/2008	NO
12	4000000	10	0	4,00,00,000.00	24/02/2009	17/03/2009	NO
13	5000000	10	0	5,00,00,000.00	24/02/2009	17/03/2009	NO
14	5000000	10	0	5,00,00,000.00	07/12/2009	24/12/2009	NO
15	4500000	10	0	4,50,00,000.00	30/06/2010	29/07/2010	NO
16	8000000	10	0	8,00,00,000.00	28/01/2011	25/02/2011	NO
17	3500000	10	0	3,50,00,000.00	09/05/2011	07/06/2011	NO
18	1484228	10	0	1,48,42,280.00	30/09/2014	03/12/2014	0Y 1M 3D
19	6500000	10	20	19,50,00,000.00	27/08/2015	23/09/2015	NO
			Total	70,98,42,280.00			

The HICPL filed form FC-GPRs as indicated above with a delay ranging from 7 Days to 6 Years 3 Months 7 Days, approximately, beyond the prescribed limit in respect of allotment indicated at serial no 1 to 3 above. The AIPL filed form FC-GPRs as indicated above with a delay ranging from 5 Days to 1 Month 3 Days, approximately, beyond the prescribed limit in respect of allotment indicated at serial no. 8, 9 and 18 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. The HICPL allotted shares to Non-Resident investors, prior to receipt of consideration as indicated below,

Sr. No.	Amount received in INR	Date of receipt	Date of Issue	Period of issue of shares prior to receipt of FDI
1	98,281.00	23/07/2008	24/10/2002	5Y 7M 0D
2	4,307.00	25/08/2008	24/10/2002	5Y 8M 2D
3	873.00	02/09/2008	24/10/2002	5Y 8M 10D
Total	1,03,461.00			

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 July 12, 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 July 13, 2018, during which Shri Shreekant Patil, Commercial Director and Shri Sharad Chaudhari, Legal Manager, represented the applicant in the cabin of Smt. J. K. Pandey, 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 company allotted shares to Non-Resident investors, prior to receipt of consideration. The contravention relates to an amount of Rs.1,03,461.00 (Rupees One Lakh Three Thousand Four Hundred Sixty One only) and the delay ranging from 5 Years 7 Months to 5 Years 8 Months 10 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.10,60,56,507.00 (Rupees Ten Crore Sixty Lakh Fifty Six Thousand Five Hundred Seven only) and with a delay ranging from 2 Days to 4 Months 25 Days, 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.8,18,95,380/- (Rupees Eight Crore Eighteen Lakh Ninety Five Thousand Three Hundred Eighty Only) with a delay ranging from 5 Days to 6 Years 3 Months 7 Days, approximately.



8. It has been declared in the compounding application dated April 3, 2018 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 May 23, 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.

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.1,05,346/- (Rupees One Lakh Five Thousand Three Hundred Forty Six 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. 1,05,346/- (Rupees One Lakh Five Thousand Three Hundred Forty Six 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



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Ashland India Private Limited
MUM 753

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: July 31, 2018.

Compounding Authority

Sd/-
(J. K. Pandey)

Chief General Manager