



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Harpreet Singh Grewal
Assistant General Manager

Date: October 11, 2018
CA No 4725 / 2018

In the matter of

M/s Respoint Shoes Private Limited
No.33, Gudiyatham Road, Thuthipet
Ambur, Tamil Nadu 635811
(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 June 01, 2018 (received in the Reserve Bank on June 07, 2018), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The applicant company has sought compounding for (i) loan proceeds were used to meet company formation and related expenses, which were not permitted end-uses; (ii) drawdown of proceeds before obtaining Loan Registration Number (LRN); and (iii) reporting guidelines not being met.



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The above amount to 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 May 3, 2000, as amended from time to time (hereinafter referred to as Notification No. FEMA 3 /2000-RB), read with paragraphs 1 (iv), (xi) and (xii) of Schedule I to this Regulation.

2. The relevant facts are as under: The applicant company, namely, M/s Respoint Shoes Private Limited was incorporated on December 18, 2006 under the Companies Act, 1956 (CIN U19201TN2006PTC077162). Between March 2007 and April 2007, the company received Euro 5000 (INR 2,88,600) from M/s Hollre B.V, its parent company situated in The Netherlands. Out of the said amount of INR 2,88,600, the company submitted to have accounted INR 1,00,000 towards issuance of 10,000 equity shares of INR 10 each. 9,999 shares were issued in the name of Mr. Pawan Bhasin as an authorized representative of M/s Hollre B.V, while the remaining one equity share was issued in the name of Mr. Arvinf Rallan, as nominee of Hollre B.V. Thus, the remaining INR 1,88,600 was treated as External Commercial Borrowing (ECB) from its parent company, which was utilized towards company formation and related expenses. In doing so, the company not only contravened ECB provisions of permitted end-uses but also drawn the amount before obtaining LRN and not met the reporting requirements.. All the above were in contravention of Regulation 6 of Notification No. FEMA 3/2000-RB read with paragraphs 1(iv), (xi) and (xii) of Schedule I of the same Notification. The loan was repaid in July 2018.

3. In terms of Regulation 6 of Notification No. FEMA 3/2000-RB, "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....". Paragraph 1(iv) of Schedule I to FEMA Notification No. FEMA.3/2000-RB provides the end-uses for which ECB is permitted. However, loan towards 'company formation and related expenses' is not a permitted end-use. Paragraph 1(xi) of Schedule I to FEMA Notification No. FEMA.3/2000-RB 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". Paragraph 1 (xii) of Schedule I to FEMA Notification No. FEMA.3/2000-RB states that "The borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time".



4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/1263/15.20.67/2018-19 dated August 31, 2018 for further submission in person and/or producing documents, if any, in support of the application. However, the company vide its letter dated September 06, 2018 submitted that they did not have any additional information to submit other than already submitted documents in which they had admitted to the contraventions.

It has also been declared in the compounding application dated June 01, 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 also been declared in the enclosed declaration of the said application that the applicant was not under any enquiry/investigation/adjudication by any agency as on the date of the application. 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. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced, and submissions made in the application and the accompanying documents.

5. I have given my careful consideration to the documents on record and submissions made by the applicant company 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 (iv), (xi) and (xii) of Schedule I to this Regulation. The amount of contravention is INR 1,88,600 and the period of contravention is a little over 11 years.

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 51,415/- (Rupees Fifty One Thousand Four Hundred and Fifteen only) will meet the ends of justice in the circumstances of this case.



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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 (iv), (xi) and (xii) of Schedule I to this Regulation, on payment of a sum of INR 51,415/- (Rupees Fifty One Thousand Four Hundred and Fifteen only), which shall be deposited by the applicant with Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai 400001 by a demand draft drawn in favor 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 eleventh day of October, 2018

Sd/-

(Harpreet Singh Grewal)

Assistant General Manager