



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

Present  
Jayant Kumar Dash  
Regional Director (Gujarat, Daman & Diu and Dadra & Nagar Haveli) /  
Chief General Manager (Ahmedabad)

November 22, 2018  
CEFA.CO.ID.10800 / C.A. No. AHM - 110 / 2018-19  
Matter  
Kusters Calico Machinery Pvt. Ltd.  
(CIN: U29260GJ1996PTC054866)

National Highway No. 8, Bamangam, Taluka Karjan, Dist. Vadodara, Gujarat - 391210

गुजरात / 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 August 21, 2018 (received at Reserve Bank of India on August 30, 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 / refund of share application money beyond stipulated period of 180 days; in terms of paragraphs 9 (1) (A), 9 (1) (B) and 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 3<sup>rd</sup> 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 July 1, 1996 under the provisions of the Companies Act, 1956 (CIN: U29260GJ1996PTC054866). The company is engaged in manufacturing of textile machinery and converting machinery, bearing NIC Code: 28261 to 28269. During the year 2016 the applicant company has received two inflows amounting to **₹4,06,20,000/-** from foreign investor Jagenberg Aktiengesellschaft, Germany under automatic route. Company has issued the shares for amount of **₹4,06,00,000/-** whereas, an excess amount of **₹20,000/-** was refunded with Reserve Bank's permission after 180 days.



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

**(Table - A)**

<b>Sr. No.</b>	<b>Amount of foreign inward remittance (₹)</b>	<b>Date of receipt</b>	<b>Date of reporting to RBI*</b>	<b>Days delay excluding prescribed time of 30 days</b>
1	70,00,000	17-03-2016	17-05-2016	31
2	3,36,20,000	14-12-2016	20-01-2017	7
<b>Total</b>	<b>4,06,20,000</b>			

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

4. As indicated in the Table A above, the applicant reported the receipt of two foreign inward remittances, amounting to **₹4,06,20,000/-** to the Ahmedabad Regional Office of the Reserve Bank of India. Both the inflows were reported with a delay ranging from 7 to 31 days approximately beyond the prescribed period 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 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:**



(Table - B)

Sr. No.	No of shares issued	Amount of shares (₹)	Date of issue of shares	Date of submission of FC-GPR to RBI *	Days delay excluding prescribed time of 30 days
1	7,00,000	70,00,000	23-03-2016	09-10-2017	535
2	33,60,000	3,36,00,000	19-12-2016	09-10-2017	264
<b>Total</b>	<b>40,60,000</b>	<b>4,06,00,000</b>			

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

6. As indicated in the Table B above, the applicant has filed two form FC-GPRs amounting to ₹4,06,00,000/- with a delay ranging from 264 to 535 days approximately beyond the prescribed period 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 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000:

(Table - C)

Sr. No.	Date of receipt	Amount of Refund (₹)	Date of Refund	Days delay excluding prescribed time of 180 days
1	14-12-2016	20,000	28-05-2018	350
		<b>20,000</b>		



8. It is observed that the Company has refunded the excess share application money of ₹20,000/- with the approval of the Reserve Bank of India with the delay of approximately 350 days beyond the prescribed period of 180 days 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.627/06.04.15 (A) CEFA /2018-19 dated October 26, 2018 for further submission in person and /or producing documents, if any, in support of the application. Shri Mukesh Parikh, Deputy General Manager and Ms. Ruchita Tushar Patel, Partner of M/s DRP & Associates, Company Secretaries represented the applicant for the personal hearing on November 22, 2018. 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 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 dated August 21, 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 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. 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 ₹4,06,20,000/- and the delay is ranging from 7 to 31 days approximately.

**B) Paragraph 9 (1) (B) of Schedule 1 to 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 of contravention involved is ₹4,06,00,000/- and the delay is ranging from 264 to 535 days approximately.

**C) Paragraph 8 of Schedule 1 to FEMA Notification FEMA 20/2000- RB dated May 3, 2000:** Due to delay in refund of share application money beyond stipulated period of 180 days from date of receipt detailed in Paragraph 8 above. The amount involved is ₹20,000/- and the delay is 350 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 ₹1,03,280/- (Rupees One lakh three thousand two hundred eighty only) will meet the ends of justice.

14. Accordingly, I compound the admitted contraventions, namely contravention of paragraph 9(1) (A), 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 ₹1,03,280/- (Rupees One lakh three thousand two hundred eighty 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 22<sup>nd</sup> day of November, 2018.

(Jayant Kumar Dash)

Regional Director (Gujarat, Daman & Diu and Dadra & Nagar Haveli) /

Chief General Manager (Ahmedabad)