



In the

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

Present

**Shekhar Bhatnagar**  
**Chief General Manager**

Date: February 07, 2017  
CA No 4165 / 2016

In the matter of

**Guetermann India Private Limited**  
**205, CA Chambers, 18/12**  
**WEA Karol Bagh**  
**New Delhi – 110005**

**(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 September 19, 2016 (received in the Reserve Bank on September 27, 2016), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) delay in issue of equity shares beyond the stipulated time period (ii) delay in filing of form FC-GPR beyond the stipulated time period (iii) delay in allotment of shares beyond the stipulated time period and (iv) allotment of shares against the funds payable by the applicant for assets transferred by the investor on closure of Liaison Office of the investor in India, without prior



RBI approval. The above amount to the contravention of Paragraph 8, 9(1)(A) and 9(1)(B) of Schedule 1 of 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 as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB, and Regulation 4 of the same Notification. The applicant has also applied for compounding of contravention of Regulation 3 of Notification No. FEMA 20/2000-RB, for allotment of shares against the funds payable by the applicant for assets transferred by the investor on closure of Liaison Office of the investor in India, without prior RBI approval. However, after scrutiny it was observed that this amounted to the contravention of only Regulation 4 of Notification No. FEMA 20/2000-RB, and not Regulation 3 of the same Notification. The application is thus being considered for the contraventions of Paragraph 8, 9(1)(A) and 9(1)(B) of Schedule 1 and Regulation 4 of Notification No. FEMA 20/2000-RB.

2. The relevant facts are as under: The applicant, a resident company, was incorporated as Guetermann India Private Limited on February 14, 2005 under the Companies Act, 1956 (CIN: U51909DL2005PTC132991). The applicant is engaged in, inter alia, the business of production, sales, marketing, distribution, export and import of sewing threads, creative articles and complementary goods of any kind. The applicant had received a total of 42 foreign inward remittances from July 8, 2005 to November 27, 2009, for issue of equity shares, out of which, on 39 occasions, there was a delay in reporting as follows:

S.No.	Amount (INR)	Date of receipt	Date of reporting
1	2699320	08.07.2005	28.10.2005
2	13111875	18.07.2005	28.10.2005
3	14919375	31.05.2006	13.10.2006
4	14829375	24.08.2006	13.10.2006
5	8721937.99	16.10.2006	04.07.2007
6	32431000	12.12.2007	04.07.2011



7	3200000	12.05.2008	16.03.2009
8	9924000	21.05.2008	01.01.2009
9	4626300	19.06.2008	01.01.2009
10	3346500	30.06.2008	01.01.2009
11	6666000	11.07.2008	16.03.2009
12	6714000	17.07.2008	01.01.2009
13	5260800	06.08.2008	01.01.2009
14	3144500	14.08.2008	16.03.2009
15	6298000	18.08.2008	16.03.2009
16	6514000	15.09.2008	16.03.2009
17	3343000	26.09.2008	16.03.2009
18	6412000	07.10.2008	16.03.2009
19	9324000	29.10.2008	16.03.2009
20	7429200	19.11.2008	16.03.2009
21	5340000	17.12.2008	16.03.2009
22	6241000	21.01.2009	16.03.2009
23	3094500	03.02.2009	12.05.2009
24	6258000	24.02.2009	12.05.2009
25	6589000	02.04.2009	12.05.2009
26	6525000	12.03.2009	12.05.2009
27	3237500	06.05.2009	17.06.2009
28	3170500	19.05.2009	26.06.2009
29	2334500	23.06.2009	07.08.2009
30	2297400	17.06.2009	07.08.2009
31	1660250	02.07.2009	07.08.2009
32	2374750	23.07.2009	07.10.2009
33	1695000	30.07.2009	07.10.2009
34	4471350	31.08.2009	07.10.2009
35	2036100	18.08.2009	07.10.2009
36	2786400	25.09.2009	14.12.2009
37	3445500	26.10.2009	20.01.2010
38	3434500	30.10.2009	18.01.2010



39	1722000	27.11.2009	23.02.2010
Total	23,76,28,432.99		

The reporting for the above remittances was done with delay beyond the stipulated time period of 30 days, there by contravening Para 9(1)(A) of Schedule 1 of Notification No. FEMA 20/2000-RB.

The equity shares were allotted on 12 occasions, out of which, on 7 occasions, there was a delay in reporting beyond the stipulated period of 30 days, in Form FC-GPR, as follows:

S.No.	Amount (INR)	Date of allotment	Date of reporting
1	67548000	01.04.2007	31.07.2007
2	4192000	27.11.2007	29.01.2008
3	29871600	18.11.2008	01.01.2009
4	6666000	10.01.2009	19.02.2009
5	25466100	21.01.2010	23.02.2010
6	29381660	30.03.2010	29.09.2010
7	43785130	25.06.2014	04.08.2014
Total	20,69,10,490		

The above was in contravention of Para 9(1)(B) of Schedule 1 of Notification No. FEMA 20/2000-RB.

The equity shares for the following remittances were issued with a delay beyond the stipulated time period of 180 days, as follows:

S.No.	Amount (INR)	Date of receipt of remittances	Date of RBI approval
1	32431000	12.12.2007	17.12.2015
2	3200000	12.05.2008	17.12.2015
Total	35631000		



This was in contravention of Para 8 of Schedule 1 of Notification No. FEMA 20/2000-RB. RBI, vide its letter no. ND.FED.FID/10418/06.04.5090/2015-16, dated December 17, 2015, accorded its approval for allotment of shares amounting to Rs. 3,14,39,000/-, to foreign investor within 30 days from the date of approval. The applicant had allotted 419200 equity shares amounting to Rs. 41,92,000/- on November 27, 2007, against the funds payable by the company for assets transferred by the investor on closure of Liaison Office in India, without the prior permission of the Reserve Bank of India. The applicant had requested for adjustment of consideration for these shares out of the pending share application money of Rs. 3,56,31,000/-, which was permitted vide RBI letters ND.FED.FID/10418/06.04.5090/2015-16 and ND.FED.FID/10420/06.04.5090/2015-16. Thus, post-adjustment RBI granted approval for allotment of shares amounting to Rs. 3,14,39,000/-.

The applicant had allotted 419200 equity shares amounting to Rs. 41,92,000/- on November 27, 2007, against the funds payable by the company for assets transferred by the investor on closure of Liaison Office in India, without the prior permission of the Reserve Bank of India. This was in contravention of Regulation 4 of Notification No. FEMA 20/2000-RB. The post facto approval for the same was given by RBI on December 17, 2015, subject to compounding.

3. Para 8 of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time states that “....Provided that if the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE/FCNR(B)/Escrow account, the amount of consideration so received shall be refunded to the person concerned by outward remittance....”.

Further, according to Para 9(1)(A) of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time, “An Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of receipt of the amount of consideration received by Indian company for issue of shares and



convertible debentures, a report in form specified in Annex C to this Schedule along with a copy/ies of Foreign Inward Remittance Certificate/s (FIRC), Know Your Customer (KYC) report on the non-resident investor and details of the Government approval, if any”.

Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time states that “An Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of issue of shares, a report in the Form FC-GPR as specified by the Reserve Bank from time to time....”.

Whereas, according to Regulation 4 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time, “Save as otherwise provided in the Act or Rules or Regulations made thereunder, an Indian entity shall not issue any security to a person resident outside India or shall not record in its books any transfer of security from or to such person....”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/6553/15.20.67/2015-16 dated January 04, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on January 25, 2017 during which Shri Suresh Bhardwaj Head-Finance/, Guetermann India Private Limited Shri Atul Mittal, Chartered Accountant, represented the applicant. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to ignorance and requested that a lenient view may be taken in the matter. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Paragraph 8, 9(1)(A) and 9(1)(B) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as



amended from time to time, and Regulation 4 of the same Notification. The amount of contravention is as follows:

(i) Para 8 of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention for delay of issue of shares beyond 180 days – Rs. 3,14,39,000/- and period of contravention is seven to seven and a half years approximately.

(ii) Para 9(1)(A) of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 23,76,28,433/- and Period of contravention – 1 month to 3 years 6 months approximately.

(iii) Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 20,69,10,490/- and Period of contravention – 2 days to 5 months approximately.

(iv) Regulation 4 of Notification No.FEMA.20/2000-RB – Rs. 41,92,000/- and Period of contravention – eight years approximately.

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 Rs. 6,71,232/- (Rupees six lakh seventy one thousand two hundred and thirty two only), will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contravention committed by the applicant namely, Paragraph 8, 9(1)(A) and 9(1)(B) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, and Regulation 4 of the same Notification on payment of a sum of Rs. 6,71,232/- (Rupees six lakh seventy one thousand two hundred and thirty two only), which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, 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.

The application is disposed accordingly.

Dated this the seventh day of February, 2017

Sd/-

**(Shekhar Bhatnagar)**  
**Chief General Manager**