



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: April 26, 2017  
CA No. 4233/2016

In the matter of

**Aarti Yarnfab Private Limited**  
**Village Alipur, Khalsa Tehsil – Gharaunda**  
**Karnal, Haryana – 132 114**

**(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**

The applicant has filed a compounding application dated November 24, 2016 (received in the Reserve Bank of India on December 05, 2016) 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 relate to (i) raising loan from Non-Resident Indian (NRI) majority shareholder through borrowings and without using the requisite public offer route of issuing non-convertible debentures (NCDs) and (ii) making repayment of part loan amount before the expiry of three years, thus failing to comply with the minimum maturity requirements as applicable in contravention of Regulation 5(1)(i) and 5(1)(iii) of Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 notified vide Notification No. FEMA 4/2000-RB dated 3rd May 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 4/2000-RB).



2. The relevant facts of the case are as follows: The applicant was incorporated as Aarti Yarnfab Private Limited on March 30, 2009 under the Companies Act, 1956 (CIN U17120HR2009PTC038930). The applicant is engaged in the business of manufacturing yarns, textiles, home furnishings, etc. During 2012 and 2013, the applicant availed loans amounting to Rs.13,29,51,000/- on various dates from its non-resident Indian (NRI) majority shareholder, Shri Sandeep Rajkumar Gupta. The applicant subsequently sought Reserve Bank of India (RBI) approval for conversion of the loans into External Commercial Borrowing (ECB). However, the request of the applicant was not acceded to and the applicant was advised to refund the loan amount of Rs.13,29,51,000/- to the NRI equity holder vide RBI letter FED.CO.ECBD. 1460/03.02.107/2016-17 dated August 08, 2016. Thereafter, due to insufficiency of funds, the applicant sought and obtained RBI approval for conversion of part loan amount of Rs.10,29,51,000/- into equity shares and repayment of the residual loan amount of Rs.3,00,00,000/- to the NRI lender vide letter CO. FED.ECBD/ 3747/03.02.107/2016-17 dated October 07, 2016. The applicant refunded the amount of Rs.3,00,00,000/- to Shri Sandeep Rajkumar Gupta on October 28, 2016 by way of credit to his NRE account. With regard to the balance amount of Rs.10,29,51,000/-, the applicant issued 26,47,916 equity shares having face value of Rs.10/- at a premium of Rs.28.88 on November 01, 2016. The applicant filed Form FC-GPR for the said allotment on November 19, 2016. The details of loan amounts received and the respective dates of repayment / conversion to equity by the applicant are as below:

S.No.	Date of Receipts of Loan Amount	Amount Received (in INR)	Date of repayment/ conversion to equity
1	16-10-2012	1,000.00	01-11-2016
2	16-10-2012	50,000.00	01-11-2016
3	17-10-2012	50,000.00	01-11-2016
4	17-10-2012	50,000.00	01-11-2016
5	17-10-2012	1,00,000.00	01-11-2016
6	19-10-2012	10,00,000.00	28-10-2016
7	20-10-2012	10,00,000.00	28-10-2016
8	13-11-2012	10,00,000.00	28-10-2016
9	14-11-2012	10,00,000.00	28-10-2016
10	16-11-2012	10,00,000.00	28-10-2016
11	19-11-2012	10,00,000.00	28-10-2016
12	20-11-2012	10,00,000.00	28-10-2016



13	21-11-2012	10,00,000.00	28-10-2016
14	22-11-2012	10,00,000.00	28-10-2016
15	23-11-2012	10,00,000.00	28-10-2016
16	26-11-2012	10,00,000.00	28-10-2016
17	08-12-2012	10,00,000.00	28-10-2016
18	10-12-2012	10,00,000.00	28-10-2016
19	11-12-2012	10,00,000.00	28-10-2016
20	12-12-2012	10,00,000.00	28-10-2016
21	13-12-2012	10,00,000.00	28-10-2016
22	14-12-2012	10,00,000.00	28-10-2016
23	15-12-2012	10,00,000.00	28-10-2016
24	16-12-2012	10,00,000.00	28-10-2016
25	17-12-2012	10,00,000.00	28-10-2016
26	19-12-2012	10,00,000.00	28-10-2016
27	20-12-2012	10,00,000.00	28-10-2016
28	21-12-2012	10,00,000.00	28-10-2016
29	25-12-2012	10,00,000.00	28-10-2016
30	26-12-2012	10,00,000.00	28-10-2016
31	27-12-2012	10,00,000.00	28-10-2016
32	28-12-2012	10,00,000.00	28-10-2016
33	31-12-2012	10,00,000.00	28-10-2016
34	01-01-2013	10,00,000.00	28-10-2016
35	05-01-2013	10,00,000.00	28-10-2016
36	05-01-2013	10,00,000.00	01-11-2016
37	07-01-2013	10,00,000.00	01-11-2016
38	09-01-2013	10,00,000.00	01-11-2016
39	10-01-2013	10,00,000.00	01-11-2016
40	12-01-2013	10,00,000.00	01-11-2016
41	13-01-2013	10,00,000.00	01-11-2016
42	14-01-2013	10,00,000.00	01-11-2016
43	17-01-2013	10,00,000.00	01-11-2016
44	19-01-2013	50,00,000.00	01-11-2016
45	21-01-2013	50,00,000.00	01-11-2016
46	22-01-2013	50,00,000.00	01-11-2016
47	30-01-2013	10,00,000.00	01-11-2016
48	31-01-2013	10,00,000.00	01-11-2016
49	01-02-2013	10,00,000.00	01-11-2016
50	02-02-2013	10,00,000.00	01-11-2016
51	03-02-2013	10,00,000.00	01-11-2016
52	05-02-2013	10,00,000.00	01-11-2016
53	11-02-2013	10,00,000.00	01-11-2016
54	12-02-2013	10,00,000.00	01-11-2016
55	13-02-2013	10,00,000.00	01-11-2016



56	14-02-2013	10,00,000.00	01-11-2016
57	16-02-2013	10,00,000.00	01-11-2016
58	18-02-2013	10,00,000.00	01-11-2016
59	21-02-2013	10,00,000.00	01-11-2016
60	21-02-2013	50,00,000.00	01-11-2016
61	23-02-2013	50,00,000.00	01-11-2016
62	28-02-2013	30,00,000.00	01-11-2016
63	05-03-2013	50,00,000.00	01-11-2016
64	12-03-2013	50,00,000.00	01-11-2016
65	21-03-2013	50,00,000.00	01-11-2016
66	05-04-2013	50,00,000.00	01-11-2016
67	18-04-2013	50,00,000.00	01-11-2016
68	01-05-2013	10,00,000.00	01-11-2016
69	07-05-2013	10,00,000.00	01-11-2016
70	08-05-2013	10,00,000.00	01-11-2016
71	09-05-2013	10,00,000.00	01-11-2016
72	11-05-2013	10,00,000.00	01-11-2016
73	17-05-2013	10,00,000.00	01-11-2016
74	17-05-2013	9,00,000.00	01-11-2016
75	21-05-2013	10,00,000.00	01-11-2016
76	23-05-2013	10,00,000.00	01-11-2016
77	24-05-2013	9,00,000.00	01-11-2016
78	31-05-2013	9,00,000.00	01-11-2016
79	07-06-2013	10,00,000.00	01-11-2016
80	08-06-2013	10,00,000.00	01-11-2016
81	10-06-2013	10,00,000.00	01-11-2016
82	11-06-2013	10,00,000.00	01-11-2016
83	12-06-2013	10,00,000.00	01-11-2016
84	13-06-2013	10,00,000.00	01-11-2016
85	15-06-2013	2,00,000.00	01-11-2016
86	16-06-2013	2,00,000.00	01-11-2016
87	17-06-2013	2,00,000.00	01-11-2016
88	18-06-2013	2,00,000.00	01-11-2016
89	19-06-2013	2,00,000.00	01-11-2016
90	20-06-2013	2,00,000.00	01-11-2016
91	21-06-2013	2,00,000.00	01-11-2016
92	22-06-2013	2,00,000.00	01-11-2016
93	23-06-2013	2,00,000.00	01-11-2016
94	24-06-2013	2,00,000.00	01-11-2016
95	02-07-2013	50,00,000.00	01-11-2016
96	15-07-2013	50,00,000.00	01-11-2016
<b>TOTAL</b>		<b>13,29,51,000.00</b>	



The applicant further also additionally received Rs.24,00,000/- as loan from the NRI equity holder, Shri Sandeep Rajkumar Gupta, on October 17, 2012. The loan was repaid by the applicant on the dates below, prior to expiry of 3 years from the date of the loan. No approval of the RBI was sought with regard to this loan.

S.No.	Date of Receipts of Loan Amount	Amount Received (in INR)	Date of repayment
1.	17.10.2012	10,00,000.00	18.02.2014
		14,00,000.00	18.06.2014
	<b>Total</b>	<b>24,00,000.00</b>	

The availing of borrowings by the applicant in the above manner was in contravention of Regulations 5(1)(i) and 5(1)(iii) of Notification No. FEMA 4/2000-RB as loans were raised without using the requisite public offer route of issuing non-convertible debentures (NCDs) and part repayment of loan was carried out without meeting the minimum maturity period of 3 years, as applicable.

3. Whereas in terms of Regulation 5(1) of Notification No. FEMA 4/2000-RB dated May 03, 2000 "...a Company incorporated in India may borrow in rupees on repatriation or non-repatriation basis, from a non-resident Indian or a person of Indian origin resident outside India by way of investment in Non-convertible Debentures (NCDs) subject to the following conditions:

(i) the issue of Non-convertible Debentures (NCDs) is made by public offer;

(ii) .....

(iii) the period for redemption of such Non-convertible Debentures (NCDs) is not less than three years; "...

The applicant failed to comply with the above requirements for raising loans from non-resident Indians.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/7885/15.20.67/2016-17 dated February 02, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for the personal hearing on February 20, 2017 and Shri Deepender Kumar, Consultant, Deepender Anil & Associates represented the applicant. The representative of the applicant admitted the contraventions for which compounding



has been sought and submitted that the lapses were inadvertent. He requested that a lenient view may be taken in the matter. 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 the personal hearing and thereafter.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Regulations 5(1)(i) and 5(1)(iii) of Notification No. FEMA 4/ 2000-RB for raising loans from NRI promoters without using the requisite public offer route of issuance of non-convertible debentures and failure to comply with the minimum maturity period of three years for part repayment of the loan. The total amount of contravention is Rs.13,53,51,000/- and the period of contravention ranges from one year and four months to four years and four months 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. The applicant raised loans by way of direct borrowings from NRI promoters, which is not a permissible form of borrowing under the regulations. Further, the applicant did not pay any interest on the borrowings to the NRI lender for the period during which the borrowings were retained. While a major portion of the borrowings (i.e. Rs.10,29,51,000) were converted to equity with the approval of the RBI, an amount of Rs.3,00,00,000/- was refunded to the NRI lender with RBI approval and Rs.24,00,000/- was refunded by the applicant without obtaining RBI approval. The conversion of the loan to equity entails payment of dividend prospectively on the amount so converted and neutralizes the benefit gained by the applicant in retaining the borrowings without payment of interest. However, undue gains can be deemed to have accrued to the applicant for the amount of loan refunded to the NRI lender (i.e., Rs.3,00,00,000 and Rs.24,00,000), where the borrowings were retained without payment of interest on the loan. With a view to neutralize such undue gains to the applicant, the rates of interest accruing on Government of India Bonds having a ten year maturity period have been notionally applied to determine the minimum rate of interest that would have been payable by the applicant if such borrowings were sourced domestically.



Therefore, after considering the submissions made by the applicant with regard to the contraventions and the entire facts and circumstances of the case, I am persuaded to take a view that undue gains made by the applicant require to be neutralized and it stands to reason that payment of an amount of Rs.1,10,80,000/- (Rupees one crore ten lakhs and eighty thousand only), incorporating the impact of neutralization as above, will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulations 5(1)(i) and 5(1)(iii) of Notification No. FEMA 4/ 2000-RB by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.1,10,80,000/- (Rupees one crore ten lakhs and eighty thousand only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5<sup>th</sup> 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 of accordingly.

Dated this the twenty sixth day of April, 2017

Sd/-

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