



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
Fort, Mumbai - 400 001

Present

J.K.Pandey
Chief General Manager

Date: May 26, 2017
C.A. 4234/2016

In the matter of

Uma Polymers Limited
1st Floor, C Wing, Abhay Chambers,
Jalori Gate, Jodhpur 342 001, Rajasthan

(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 December 01, 2016 (received in the Reserve Bank of India on December 02, 2016) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded relate to delayed reporting of corporate guarantees extended to overseas entity in contravention of the provisions of Regulation 6(2)(vi) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004, notified vide Notification No. FEMA 120/2004-RB dated July 7, 2004, as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB). The applicant further submitted an addendum vide email dated January 09, 2017 seeking compounding of contravention of the provisions of Regulation 6(3) of Notification No. FEMA 120/2004-RB dated July 7, 2004, relating to payments in INR to the directors of the company for procuring foreign exchange for meeting expenses towards the incorporation of its overseas entity.



2. The relevant facts of the case are as follows: Uma Polymers Private Limited was incorporated on April 29, 1987 under the Companies Act, 1956 (CIN U25201RJ1987PLC003956). The status was changed to public limited in name of Uma Polymers Limited on October 11, 1995. It was engaged in the business of manufacturing flexible packaging materials. Another company, Umax Packaging Limited (UPL) which subsequently got merged into the applicant by an order of the Mumbai High Court dated November 14, 2014, set up a Wholly Owned Subsidiary namely, Umax Packaging LLC (hereinafter referred as 'WOS') in USA in September 2011 which was reported to RBI on October 27, 2011. Instead of sending money through normal banking channel as envisaged under Regulation 6(3) of Notification No. FEMA 120/2004-RB, an amount of Rs.7 lacs was paid in cash by UPL to its Managing Director on September 01, 2011 for his visit to USA in connection with setting up of the WOS out of which Travellers' Cheques (TCs) and foreign currency amounting to USD 10,000 was purchased by him. The applicant submitted copies of TCs amounting to USD 9,000 along with copy of deposit ticket amounting to USD 10,000. Further, UPL did not report this transaction while applying for UIN. Instead a subsequent transaction of USD 300,000 dated September 29, 2011 was declared as first transaction.

3. UPL had also extended three corporate guarantees aggregating USD 31.50 lacs (Rs.1568.70 lacs) on March 06, 2012 to its WOS which was reported to RBI on January 07, 2013. The company did not report the above guarantees within the prescribed time period of 30 days in contravention of Regulation 6(2)(vi) of Notification No. FEMA 120/2004-RB dated July 7, 2004. Whereas in terms of Regulation 6(2)(vi) of FEMA 120/2004, an Indian Party making direct investment in a JV/WOS outside India has to submit duly completed Part I of Form ODI, as prescribed by Reserve Bank from time to time, to the designated branch of an Authorized Dealer, the company did not report the above guarantees within the prescribed time period thereby contravening the said Regulation of FEMA 120/2004.

4. The applicant was given an opportunity for personal hearing vide our letter No. FE.CO.CEFA No.10987/15.20.67/2016-17 dated May 04, 2017 for further submission in person and/or producing documents, if any, in support of the application. Shri B.B. Bapna, Chief Financial Officer along with Shri C.L. Khimsara, Vice-President from Uma Polymers Limited represented the applicant during the personal hearing held on May



17, 2017. The representatives of the applicant submitted that the contraventions on their part were unintentional and due to oversight. 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.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Since the company had obtained UIN in 2011 against a transaction of USD 300,000 dated September 29, 2011, it would appear that this was deliberate misstatement as the company was aware that the WOS was actually set up on September 20, 2011 having a bank account No. 140150000080 with First Bank of Missouri, USA. Incidentally, in terms of the anti-money laundering guidelines issued vide Notification RBI/2009-10/235 dated November 27, 2009 no Authorized Person could accept payment in excess of Rs.50,000/- towards sale of foreign exchange in cash. The facility of compounding is not available for deliberate contravention of FEMA, 1999 and the same cannot be compounded. The applicant is directed to approach Directorate of Enforcement for adjudication.

6. Further, as regards matter of corporate guarantees I hold that the applicant contravened the provisions of FEMA issued in terms of Regulations 6(2)(vi) of Notification No. FEMA 120/2004-RB dated July 7, 2004. The amount of contravention is USD 31.50 lacs (Rs.1568.70 lacs) and the period of contravention ranges four to five 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. 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 contravention is to be compounded and I consider that payment of an amount of Rs.6,09,809/- (Rupees Six Lacs Nine Thousand Eight Hundred and Nine only) will meet the ends of justice in the circumstances of the case.

7. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulations 6(2)(vi) of Notification No. FEMA 120/2004-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.6,09,809/- (Rupees Six Lacs Nine Thousand Eight Hundred and Nine only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai – 400 001 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 twenty sixth day of May, 2017

Sd/-

J.K.Pandey
Chief General Manager