



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

Present
D B Singh
Deputy General Manager

August 29, 2017
CEFA.CO.ID.8001 /C.A.No. AHM- 86 /2017-18

In the matter of
M/s Calumite India Manufacturing Pvt. Ltd.
F - 907, Titanium City Centre, Near Sachin Tower, 100 Ft. Road
Satellite, Ahmedabad - 380015
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 May 24, 2017 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 and (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 issue of shares beyond the stipulated period of 180 days from the date of receipt of the inward remittance; in terms of paragraphs 9(1)(A), 9(1)(B) and Paragraph 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 3rd 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 February 25, 2014 under the provisions of the Companies Act, 1956 (CIN: U24100GJ2014FTC078896). The company is engaged in manufacturing of Calumite, which is a main raw material for glass industries. The applicant company has received total eight inflows amounting to ₹93,10,410/- from foreign investors under automatic route and reported the same to Reserve Bank of India as indicated below:

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

2000 – Contravention detected:

(Table -1)

Sr. No.	Remitter	Date of receipt	Amount of foreign inward remittance (Rs)	Date of reporting to RBI*	Days delay excluding prescribed time of 30 days.
1	Calumite S.A.	07/01/2015	183250	29/01/2015	No delay
2	Calumite S.A.	15/06/2016	2247367	13/07/2016	No delay
3	Calumite S.A.	15/03/2017	3418700	20/03/2017	No delay
	Sub Total A		5849317		
4	J. O. Hopkins & Associates	14/01/2015	100	14/08/2017	913 days
5	Calumite International	05/01/2015	99662	29/09/2015	237 days



6	Calumite International	22/01/2015	4662	29/09/2015	220 days
7	Calumite S.A.	12/04/2016	450388	13/07/2016	62 days
8	Calumite S.A.	19/10/2016	2906281	09/01/2017	52 days
	Sub Total B		3461093		
	Grand Total (A+B)		9310410		

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

4. The applicant reported the receipt of eight inward remittances, amounting to ₹93,10,410/- (Rupees ninety three lakh ten thousand four hundred ten only) to the Ahmedabad Regional Office of the Reserve Bank of India. Out of which, three inflows amounting to ₹58,49,317/- were reported within stipulated period. However five inflows amounting to ₹34,61,093/- were reported with the delay of 52 to 913 days. Whereas, in terms of paragraph 9(1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures 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.

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 –Contravention detected: (Table -2)

Sr. No.	Investor	No. of Shares Issued	Amount of Shares (Rs.)	Date of Issue of Shares	Date of reporting to RBI*	Days delay excluding prescribed time of 30days
1	Calumite S.A.	290628	2906280	02/02/2017	04/03/2017	No delay



2	Calumite S.A.	341870	3418700	12/06/2017	23/06/2017	No delay
3	Calumite S.A.	18325	183250	14/09/2015	29/09/2015	No delay
4	Calumite International	433	4330	14/09/2015	29/09/2015	No delay
	Sub Total A	651256	6512560			
5	J. O. Hopkins & Associates	1	10	25/02/2014	14/08/2017	1236 days
6	J. O. Hopkins & Associates	9	90	26/09/2015	14/08/2017	658 days
7	Calumite International	9999	99990	03/03/2015	29/09/2015	180 days
8	Calumite S.A.	269775	2697750	15/06/2016	27/07/2016	12 days
	Sub Total B	279784	2797840			
	Total	931040	9310400			

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

6. As indicated in the table above, the applicant has filed eight form FC-GPRs amounting to ₹93,10,400/-. Out of which, four form FC-GPRs amounting to ₹65,12,560/- were filed within stipulated period. However four form FC-GPRs amounting to ₹27,97,840/- were filed with the delay ranging from 12 to 1236 days beyond the prescribed timeline 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.

7. Contravention under Para 8 of Schedule I of FEMA notification 20/2000- RB dated May 3, 2000. Contravention detected. (Table - 3)



Sr. No	Investor	No. of Shares Issued	Amount of Shares (₹)	Date of receipt of remittance	Date of Issue of Shares	Days delay excluding prescribed time of 180 days
1	Calumite International	9999	99990	05/01/2015	03/03/2015	No delay
2	Calumite S.A.	269775	2697750	12/04/2016	15/06/2016	No delay
3	Calumite S.A.	290628	2906280	19/10/2016	02/02/2017	No delay
4	Calumite S.A.	341870	3418700	15/03/2017	12/06/2017	No delay
	Total A	912272	9122720			
5	J. O. Hopkins & Associates	1	10	14/01/2015	25/02/2014	263 days*
6	J. O. Hopkins & Associates	9	90	14/01/2015	26/09/2015	75 days
7	Calumite S.A.	18325	183250	07/01/2015	14/09/2015	70 days
8	Calumite International	433	4330	22/01/2015	14/09/2015	55 days
	Total B	18768	187680			
	Total	931040	9310400			

* Amount received after two months from the date of issue of shares.

8. As indicated in the table above, the applicant has allotted shares for the entire amount against total inflow of ₹93,10,400. It is observed that shares amounting to ₹1,87,680 were allotted with the delay of 55 to 263 days beyond the period of 180 days 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.259/06.04.15 (C90)/CEFA/2017-18 dated August 22, 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 August 28, 2017 during which the Director of the Company Shri Harshil Tapiawala and its Consultant Chartered Accountants Shri Gourav Maheshwari and Ms. Vidya Subramanian represented the applicant. 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 for 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. I have given my careful consideration to the documents on record and submission made by the applicant during the personal hearing and thereafter. 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 shares as detailed in paragraph 4 above. The amount of contravention involved is ₹34,61,093/- with delay of approximately for 52 to 913 days beyond the stipulated time of 30 days.

B) Paragraph 9(1) (B) of Schedule 1 of 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 involved is ₹27,97,840/- and the delay is for approximately 12 to 1236 days .

C) Paragraph 8 of Schedule I of FEMA NotificationFEMA20/2000- RB dated May 3, 2000: Due to delay in allotment of shares beyond stipulated period of 180 days from date of receipts detailed in Paragraph 8 above. The amount involved is ₹1,87,680/- and the delay is for 55 to 263 days approximately.

12. 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 ₹52,789/- (Rupees Fifty two thousand seven hundred eighty nine only) will meet the ends of justice.

13. 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 ₹52,789/- (Rupees Fifty two thousand seven hundred eighty nine 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 29th day of August, 2017.

Sd/-

(D B Singh)
Deputy General Manager