



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: October 10, 2017
CA No 4502 / 2017

In the matter of

Gold Coast Diagnostics Private Limited
39/34, Basement, Old Rajendra Nagar
New Delhi - 110060
(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 August 23, 2017 (received in the Reserve Bank on August 28, 2017), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are (i) borrower not eligible to avail ECB (ii) availing ECB from a non-recognized lender, (iii) availing ECB for an end-use that was not permitted (iv) non-compliance with average maturity period guidelines, (v) drawdown of External Commercial Borrowing (ECB) before obtaining Loan Registration



Number (LRN) from the Reserve Bank of India (RBI) and (vi) delay in meeting the reporting requirements.

The above were in contravention of Regulation 6 of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3 /2000-RB dated May 3, 2000, as amended from time to time (hereinafter referred to as Notification No. FEMA 3 /2000-RB), read with paragraphs 1(i), (iii), (iv), (v), (xi) and (xii) of Schedule I to this Regulation, as amended from time to time.

2. The relevant facts are as under: The applicant was incorporated as Gold Coast Diagnostics Private Limited on July 07, 2015, under the Companies Act, 2013 (CIN: U74999DL2015PTC282489). The applicant is engaged in the business of running, owning, managing and administering diagnostic centers, scan centers, nursing homes, clinics, dispensaries, clinical pathological testing laboratories, X-ray and ECG clinics in India and abroad. The applicant availed a commercial loan of USD 200,000 (Rs. 1,26,63,022) from Gold Coast Medical Investment LLC, a US based LLC, vide two transactions dated July 10, 2015 and July 13, 2015. The applicant, being engaged in the business of diagnostic centers, clinics, nursing homes etc., was not an eligible borrower, and thus contravened the provisions of Paragraph 1(i) of Schedule I to Notification No. FEMA 3/2000-RB. The lender was not a foreign equity holder and was not a recognized lender under the automatic rule as per the provisions of FEMA, and the borrowing was thus in contravention of provisions of Paragraph 1(iii) of Schedule I to Notification No. FEMA 3/2000-RB. The end-use for which the loan was availed, i.e., for expansion of business, was not a permitted end-use, thus contravening the provisions of Paragraph 1(iv) of Schedule I to Notification No. FEMA 3/2000-RB. Agreed tenor of the loan was one year, which was not in compliance with the specified minimum maturity guidelines, thus contravening Paragraph 1(v) of Schedule I to Notification No. FEMA 3/2000-RB dated 3rd May 2000. The drawdown of the loan happened without obtaining the Loan Registration Number (LRN) from RBI, thus contravening the provisions of Paragraph 1(xi) of Schedule I to Notification No. FEMA 3/2000-RB. The reporting requirements were also not met, thus contravening Paragraph



1(xii) of Schedule I to Notification No. FEMA 3/2000-RB dated 3rd May 2000. The entire transaction was unwound on July 13, 2017.

3. In terms of Regulation 6 of Notification No.FEMA.3/2000-RB dated May 03, 2000 as amended from time to time "a person resident in India may raise in accordance with the provisions of the Automatic Route Scheme specified in Schedule I, foreign currency loans of the nature and for the purposes as specified in that Schedule....".

Paragraph 1(i) of Schedule I to FEMA Notification No. FEMA.3/2000-RB, provides the eligibility criteria for borrowers for availing external commercial borrowings. The Reserve bank has amended the criteria for time to time, by issuing necessary directions through AP (DIR) Circulars and Master Directions. The applicant was engaged in the business of diagnostic centers, clinics, nursing homes etc., an activity in which ECB was not permitted as per the extant instructions, and hence was not an eligible borrower.

Paragraph 1(iii) of Schedule I to FEMA Notification No. FEMA.3/2000-RB, provides that, "The borrowings in foreign currency by way of issue of bonds, floating rate notes or other debt instruments by whatever name called may be made from – (a) International bank or export credit agency or international capital market, or (b) Multilateral financial institutions, namely, IFC, ADB, CDC etc., or (c) Foreign collaborator or foreign equity holder as specified by the Reserve Bank, or (d) Supplier of equipment provided the amount of loan raised does not exceed the total cost of the equipment being supplied by the lender, or (e) Any other eligible entity as prescribed by the Reserve bank in consultation with the Government of India."

Paragraph 1(iv) of Schedule I to FEMA Notification No. FEMA.3/2000-RB provides the end-uses for which ECB is permitted. However, availing ECB for expansion of business is not a permitted end-use.

Paragraph 1(v) of Schedule I to FEMA Notification No. FEMA.3/2000-RB, as then applicable, provides that "the maturity of the borrowings in foreign exchange shall not be less than 3 years for the loan of an amount upto USD 20 million or its equivalent".

Paragraph 1(xi) of Schedule I to FEMA Notification No. FEMA.3/2000-RB states that, "draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms



of the loan agreement only after obtaining the loan registration number from the Reserve Bank”.

Paragraph 1 (xii) of Schedule I to FEMA Notification No. FEMA.3/2000-RB states that “The borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/2859/15.20.67/2017-18 dated September 29, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant sought to be exempted from the personal hearing with the Compounding Authority vide their e-mail dated October 05, 2017. The application is, therefore, being considered on the basis of the averments made in the compounding application and the documents submitted therein.

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 Regulation 6 of Notification No. FEMA 3/2000-RB read with Paragraphs 1(i), (iii), (iv), (v), (xi) and (xii) of Schedule I to this Regulation. The amount of contravention is Rs. 1,26,63,022/- and the period of contravention is two 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. The applicant was an ineligible borrower, raised loans from an ineligible lender and for an end-use that was not permitted under FEMA, 1999 and the Regulations issued thereunder. Further, the applicant did not pay any interest on the borrowings to the overseas lender for the period during which the borrowings were retained. Thus, undue gains can be deemed to have accrued to the applicant for the entire amount of loan, where the borrowings were retained without payment of interest on the loan. With a view to neutralize such undue gains to the applicant, the average 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. 18,98,801/- (Rupees eighteen lakh ninety eight thousand eight hundred and one only), incorporating the impact of neutralization as above, 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 contraventions committed by the applicant namely, Regulation 6 of Notification No. FEMA 3/2000-RB dated 3rd May 2000 read with Paragraphs 1(i), (iii), (iv), (v), (xi) and (xii) of Schedule I to this Regulation, as amended from time to time, on payment of a sum of Rs. 18,98,801/- (Rupees eighteen lakh ninety eight thousand eight hundred and one only), which shall be deposited by the applicant with Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai 400001 by a demand draft drawn in favor 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 tenth day of October, 2017

Sd/-

(Shekhar Bhatnagar)
Chief General Manager



FED, CEFA
Gold Coast Diagnostics Private Limited
CA No 4502/2017