



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 5, 2017
CA No 4484/2017

In the matter of

Cropnosys (India) Private Limited
B1-104C, Boomerang, Chandivali Farms Road
Powai, Andheri (East), Mumbai 400 072

(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 July 04, 2017 (received in the Reserve Bank on August 14, 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 relate to availing External Commercial Borrowing (ECB) (i) utilization of a portion of ECB proceeds for non-permissible end use; (ii) parking a portion of the ECB proceeds in the fixed deposit with a bank and (iii) draw down of the ECB without obtaining Loan Registration Number (LRN) from the Reserve Bank of India (RBI). 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 3rd May 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 3/2000-RB) read with Paragraphs 1(iv), (ix) and (xi) of Schedule I to this Regulation.

2. The relevant facts are as under: The applicant, Croptosys (India) Private Ltd (CIPL), was incorporated on April 05, 2006 under the Companies Act, 1956 (CIN U24129MH2006PTC160969). It is engaged in the business of manufacturing of pesticides and fungicides for crops, agro-chemical goods, acids, salts, alkalis, antibiotics etc. CIPL received ECB loans amounting to USD 549950 (Rs.2,82,17,935/-) and USD 449950 (Rs.2,50,98,211/-) from M/s Chemolutions Ltd, UAE against issuance of redeemable non-cumulative preference shares on April 09, 2012 and June 13, 2012 respectively. The borrowing by way of issue of preference shares on or after April 30, 2007, other than those which are fully and mandatorily convertible into equity within a specified time and issue of convertible debentures on or after June 07, 2007, other than those which are fully and mandatorily convertible into equity within a specified time, to a person resident outside India shall be considered as debt and shall have to conform to Regulation 6 of Notification No. FEMA 3/2000-RB. Accordingly, the issuance of redeemable preference shares by CIPL had to conform to the provisions of FEMA 3/2000-RB.

2.1 The drawdown of the above funds which was in the nature of debt was undertaken by CIPL without obtaining the Loan Registration Number (LRN) from RBI in contravention of Paragraph 1(xi) of Schedule 1 to Regulation 6 of Notification No. FEMA 3/2000-RB.

2.2 Though the loan proceeds were primarily used for expansion of the project in order to create long-term assets, a portion of the funds was used for purposes other than the expansion programme i.e. for non-permissible end-uses. CIPL utilized amounts of Rs.44 lakhs and Rs.10 lakhs on May 31, 2012 and December 19, 2012 respectively for non-permissible end-uses thereby contravening Paragraph 1(iv) of Schedule 1 to Regulation 6 of Notification No. FEMA 3/2000-RB. The transactions were reversed on August 30, 2013.

2.3 Further a portion of the loan amounting to Rs.1 crore was parked in fixed deposit with a bank on August 10, 2012 which was not permitted during the



relevant period. The applicant thus contravened Paragraph 1(ix) of Schedule 1 to Regulation 6 of Notification No. FEMA 3/2000-RB. The transaction was reversed on October 23, 2012.

2.4 RBI vide letter FED.CO.ECBD./1286/03.02.107/2016-17 dated August 3, 2016 advised the applicant of the above contraventions which relate to Regulation 6 of Notification No. FEMA 3/2000-RB dated 3rd May 2000 read with paragraphs 1(iv), (ix) and (xi) of Schedule I to the Regulations.

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....". The primary responsibility of ensuring that the loan raised/utilized are in conformity with the ECB guidelines and the Reserve Bank regulations/directions/circulars is that of the borrower concerned. During its operations, CIPL committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 3/2000-RB:-

3.1 Whereas Paragraph 1(iv) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB provides that ECB can be raised only for investment in real sector in India (such as import of capital goods, new projects, modernization/expansion of existing production units) under the automatic route. ECB availed by CIPL for purposes other than those specified in Schedule 1 to the Regulations is not a permissible end use under the Automatic Route. The amount of contravention was Rs.54 lakhs and the period of contravention ranges 9 months to 15 months approximately.

3.2 Whereas Paragraph 1(ix) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB provides that the proceeds of borrowings in foreign exchange availed under the schedule may, pending utilisation for permissible end-uses, be parked abroad or in India as directed by the Reserve Bank from time to time. CIPL parked a portion of the loan in fixed deposit with a bank thereby contravening the said FEMA Regulation. The amount of contravention was Rs.1 crore and the period of contravention was three months approximately.



3.3 Whereas 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”. The draw-down by the applicant was made without making application for obtaining LRN from RBI which was in contravention of the said FEMA provisions. The amount of contravention was Rs.5,33,16,146/- and the period of contravention ranges 5 years 3 months to 5 years 5 months approximately.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/2855/15.20.67/2017-18 dated September 29, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on October 04, 2017 during which Shri L.D. Alur, Manager-Commercial, CIPL represented the applicant. The representative of the applicant submitted that the company had inadvertently failed to comply with the FEMA regulations 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 Regulation 6 of Notification No. FEMA 3/2000-RB read with Paragraphs 1(iv), (ix) and (xi) of Schedule I to the Regulations as per the details given in paragraphs 2 and 3 above.

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.5,29,071/- (Rupees five lakhs twenty nine thousand and seventy one 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 contraventions committed by the applicant namely, Regulation 6 of Notification No. FEMA 3/2000-RB read with Paragraphs 1(iv), (ix) and (xi) of Schedule I to this Regulations on payment of a sum of Rs.5,29,071/- (Rupees five lakhs twenty nine thousand and seventy one 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 fifth day of October, 2017

Sd/-

Shekhar Bhatnagar
Chief General Manager