



**Reserve Bank of India
Foreign Exchange Department
Mumbai Regional Office
Main Building, 3rd floor
Shahid Bhagat Singh Marg, Fort
Mumbai 400 001**

CA No. MUM955/2019

In the matter of
M/s Fleming Dutyfree Shop Pvt Ltd
D-73/1, TTC Industrial Area,
MIDC Turbhe ,
Navi Mumbai 400 705
(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 thereunder, I pass the following

Order

- 1 The applicant has filed the compounding application dated August 30, 2019, received at the Reserve Bank on September 09, 2019, for compounding of contravention/s of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contravention/s sought to be compounded are in respect of the following (Regulations/ paras under 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 May 3, 2000 and as amended from time to time (hereinafter referred to as FEMA 20):
 - (i) Para 9 (1) (A) of FEMA 20: Delay in reporting receipt of foreign inward remittance towards subscription to equity
 - (ii) Para 8 of FEMA 20: Neither the equity instruments were issued, nor the money refunded to the foreign investor within 180 days from the receipt of the inward remittance
- 2 Brief details of the applicant company are as follows:

Date of Incorporation	March 05, 2004
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Its main activities are:	Retail sale in non-specialized stores with food, beverages or tobacco predominating
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- 3 The applicant received foreign inward remittances from non-resident investors towards equity shares / compulsorily convertible preference shares/ compulsorily convertible debentures and it reported the same to the Reserve Bank on dates as indicated below.

<u>Delay in reporting Foreign Direct Investment &/or delay in allotting the shares/ refunding the amount</u>						
<u>(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days, and LSF stands for : Late Submission Fees</u>						
Sr. No/ LSF	Date of inward remittance (DD-MM-YY)	Amount received (in INR)	Date of reporting to RBI (DD-MM-YY)	Delay in reporting Foreign Investment	Date of allotment / refund (DD-MM-YY)	Delay in allotment or refund (delay computed from Dt of receipt or 29-11-2007 whichever is later)
1	16-03-05	81,73,980.00	17-06-05	0Y 2M 1D	05-03-09	1Y 3M 4D
1A	16-03-05	1,05,000.00	17-06-05	0Y 2M 1D	NA	NA
2	23-03-05	65,22,364.00	17-06-05	0Y 1M 24D	05-03-09	1Y 3M 4D
2A	23-03-05	37,44,000.00	17-06-05	0Y 1M 24D	NA	NA
3	28-03-05	203,03,656.00	17-06-05	0Y 1M 19D	05-03-09	1Y 3M 4D
3A	28-03-05	37,46,488.00	17-06-05	0Y 1M 19D	24-02-10	2Y 2M 26D
4	28-03-05	87,44,644.00	17-06-05	0Y 1M 19D	24-02-10	2Y 2M 26D
5	08-04-05	225,09,295.00	17-06-05	0Y 1M 9D	24-02-10	2Y 2M 26D
6	11-08-07	4000,00,000.00	10-09-07	0	NA	NA
7	08-09-12	1990,08,000.00	20-09-12	0	14-09-12	0Y 0M 0D
8	24-08-12	219,54,100.00	20-09-12	0	14-09-12	0Y 0M 0D
9	30-08-12	422,25,600.00	20-09-12	0	14-09-12	0Y 0M 0D
10	28-08-12	281,18,400.00	20-09-12	0	14-09-12	0Y 0M 0D
11	13-09-12	1785,21,970.00	20-09-12	0	14-09-12	0Y 0M 0D
12	13-09-12	550,83,200.00	20-09-12	0	14-09-12	0Y 0M 0D
13	13-09-12	884,57,830.00	20-09-12	0	14-09-12	0Y 0M 0D
14	14-08-12	1447,16,000.00	13-09-12	0	14-09-12	0Y 0M 0D
15	22-08-12	678,09,600.00	20-09-12	0	14-09-12	0Y 0M 0D
16	21-08-12	177,05,300.00	20-09-12	0	14-09-12	0Y 0M 0D
16A	21-08-12	455,53,300.00	20-09-12	0	01-01-13	0Y 0M 0D
	TOTAL	13630,02,727.00				



In terms of Para 9 (1) (A) of FEMA 20, an Indian company issuing equity shares/ compulsorily convertible debentures/compulsorily convertible preference shares 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. However the applicant company reported receipt of remittances to the Reserve Bank of India on dates indicated above in 5 out of 16 total remittances with a delay ranging from 0Y 1M 9D to 0Y 2M 1D.

- 4 In respect of remittances amounting to Rs.700,00,427/- (Rupees Seven Crore Four Hundred Twenty Seven and Zero Paise Only), indicated in the table above the company allotted shares/ refunded the amount after 180 days from the date of receipt of investment. Whereas in terms of para 8 of FEMA 20, an Indian company is required to issue shares or refund the amount within 180 days from the date of receipt of inward remittance. The period of delay under this para ranges from 1Y 3M 4D to 2Y 2M 26D.
- 5 The applicant was given an opportunity for personal hearing, for further submission in person and/or for producing documents, if any, in support of the application vide e-mail dated December 12, 2019. The applicant appeared for personal hearing on December 17, 2019, during which Ms Suvarna Bhatjiwale,, Mr Prashant Maurya, Authorised Representatives of the company and Mr K Ramasubramaniam, Consultant represented the applicant in the office of the Compounding Authority. The representatives of the applicant admitted the contraventions for which compounding has been sought. During the hearing by the Compounding Authority the representative of the applicant submitted that the delay was inadvertant and unintentional. They 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.
- 6 I have given my careful consideration to the documents on record and submissions 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:
 - (i) Para 9 (1) (A) of FEMA 20, due to the delay in reporting of receipt of foreign inward remittance towards subscription towards shares as detailed above. The contravention relates to total amount of Rs.738,49,427/- (Rupees Seven Crore Thirty Eight Lakh Forty Nine Thousand Four Hundred Twenty Seven and Zero Paise Only) and with a delay ranging from minimum 0Y 1M 9D to maximum 0Y 2M 1D approximately.
 - (ii) Para 8 of FEMA 20, since the shares were neither issued nor the amount was refunded to the person resident outside India within the prescribed time from the date of receipt of the inward remittance. The contravention relates to total amount of Rs.700,00,427/- (Rupees Seven Crore Four Hundred Twenty Seven and Zero Paise Only) and with a delay ranging from minimum 1Y 3M 4D to maximum 2Y 2M 26D approximately.



- 7 It has been declared in the compounding application dated August 30, 2019 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has also been declared in a declaration attached to the compounding application that the applicant was not under any enquiry/investigation/adjudication by any agency as on the date of the application and has, in this regard, not informed of initiation of any such enquiry/investigation/adjudication proceedings against it/him/her thereafter. It has further been declared that the applicant has not filed any appeal under section 17 or section 19 of FEMA, 1999. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made by the applicant and this order is without prejudice to any other action which may be taken by any authority under the extant laws if the said declarations are subsequently discovered to be false and/or incorrect.
- 8 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 I consider that an amount of Rs.5,21,211/- (Rupees Five Lakh Twenty One Thousand Two Hundred Eleven and Zero Paise Only) will meet the ends of justice.
- 9 Accordingly, I compound the admitted contravention/s namely, the contravention/s of Para 9 (1) (A) of FEMA 20 and Para 8 of FEMA 20, 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. 5,21,211/- (Rupees Five Lakh Twenty One Thousand Two Hundred Eleven and Zero Paise Only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, 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.
- 10 The above order is passed only in respect of contraventions of Para 9 (1) (A) of FEMA 20 and Para 8 of FEMA 20 and does not restrict the rights of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.
- 11 The application is disposed of accordingly.

(Aviral Jain)
Chief General Manager and
Compounding Authority

Dated: December 20,2019