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FEMA UPDATES (COMPOUNDING ORDERS – FEMA 4/2000-RB)

DATE: 26-NOVEMBER-2018

*Summary of few latest Compounding Orders passed by Reserve Bank of India (RBI)*



## Contravention

- Means a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 ('the Act) and rules/ regulations/ notification/ orders/ directions/ circulars issued thereunder.

## Compounding

- Refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. The Reserve Bank is empowered to compound any contravention as defined under section 13 of FEMA, 1999 except the contravention under section 3(a) *ibid.*

## General Penalty

- As per provisions of section 13 of the Act, penalty levied can be **up to 300%** of the amount involved for any contravention under the Act and Regulations thereunder.

## Compounding Fee

- The Compounding Fee varies for different offences and may include a fixed and a variable component depending on the circumstances of the case.

**CASE 1:**

<b>Name of Applicant</b>	<b>Noble Tech Industries Private Limited</b> Order Date:11 <sup>th</sup> May, 2017	
<b>Contravention</b>	<i>Raising loan from Non-Resident Indian (NRI) promoter shareholder through unsecured borrowings and without using the requisite public offer route involving investment in non-convertible debentures (NCDs)</i>	<i>Making part repayment of the loan amount before the expiry of 3 years.</i>
<b>Relevant Regulation</b>	Regulation 5(1)(i) of Notification No. FEMA 4/2000-RB.	Regulation 5(1)(iii) of Notification No. FEMA 4/2000-RB.
<b>Requirement of the Regulation:</b>	A Company incorporated in India may borrow in rupees on repatriation or non-repatriation basis, from a NRI or a person of Indian origin resident outside India by way of investment in NCDs through public offer.	The period for redemption should not be less than 3 years.
<b>Matter Compounded</b>	<ul style="list-style-type: none"> <li>• The applicant availed unsecured loans amounting to Rs.92,48,74,894/- on various dates between January 30, 2008 to February 02, 2016 from an NRI, who is one of the shareholders.</li> <li>• The applicant made repayments of loan amount of Rs.21,38,37,027/- without RBI approval prior to expiry of the minimum maturity period of 3 years.</li> <li>• After receiving the approval of RBI, the applicant converted the loan amount of INR 18 crore and INR 53.10 crore into equity capital on 31.03.2016 and 31.10.2016 respectively, and refunded INR 37,867 to the NRI on 31.10.2016, thereby completing the administrative action.</li> <li>• The conversion of the loan to equity entails payment of dividend prospectively on the amount so converted and neutralizes the benefit gained by the applicant in retaining the borrowings without payment of interest. However, undue gains can be deemed to have accrued to the applicant for the amount of loan refunded to the NRI lender</li> </ul>	
<b>Period of contravention</b>	8 Years and 6 Months	
<b>Amount involved</b>	Rs.92,48,74,894/-	
<b>Compounding Fee</b>	<b>Rs. 3,42,73,470/-</b> <b>(Considering impact of neutralization and the undue gains accrued for the amount refunded to the NRI on the basis of average rates of interest accruing on Government of India Bonds having a ten year maturity period)</b>	

**CASE 2:**

<b>Name of Applicant</b>	<b>Mr Faizan Aziz</b> Order date: 15 <sup>th</sup> September, 2016
<b>Contravention</b>	<i>Using borrowed funds from NRI for acquiring shares domestically</i>
<b>Relevant Regulation:</b>	Regulation 6 (2) of Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 notified vide Notification FEMA 4/2000-RB
<b>Requirement of the Regulation</b>	Any person resident in India, whether a company or otherwise, is not permitted to use proceeds of money raised in Rupee from a NRI for any investment, whether by way of capital or otherwise, in any company or partnership firm or proprietorship concern or any entity, whether incorporated or not, or for relending
<b>Matter Compounded</b>	<ul style="list-style-type: none"> <li>• The applicant, in order to acquire shares in a domestic company, of which he was one of the promoters, raised a loan from an NRI.</li> <li>• The loan was from NRO account of the lender maintained with ICICI Bank, Bangalore Branch.</li> <li>• The amount was repaid to NRI lender by crediting it to his NRO account within a year</li> </ul>
<b>Period of contravention</b>	11 months
<b>Amount involved</b>	Rs. 85,750/-.
<b>Compounding Fee</b>	<b>Rs. 8,000/-</b>

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