



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi-110001

Present
Md. Shakir Hasan
Assistant General Manager

Date: August 7, 2019
CA No. NDL 444/2019

In the matter of
Brown-Forman India Private Limited
701-702, Seventh Floor, Time Tower, MG Road, Gurugram, Haryana-122002
(Applicant)

In exercise of the powers under Section 15(1) of Foreign Exchange Management Act, 1999 and the Regulations/ Rules/ Notifications/ Orders made thereunder, I pass the following Order.

ORDER

The applicant has filed the compounding application dated April 17, 2019 (received at Reserve Bank of India, New Delhi on April 30, 2019) and addendum dated June 27, 2019 for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are those of allotment of shares to persons resident outside India prior to receipt of inward remittance, in terms of paragraph 2(2) of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 notified vide Notification No. FEMA 20(R)/2017-RB dated November 7, 2017 (hereinafter referred to as FEMA 20(R)/2017-RB), as amended from time to time.

2. The relevant facts of the case are as follows:

(a) The applicant company, incorporated on April 6, 2018, is engaged in the business of retail sale of alcoholic beverages not consumed on the spot.



(b) The applicant had received inward remittances amounting to ₹5,00,000/- as consideration for the MoA shares allotted on April 6, 2018 from its foreign investors viz. M/s Brown-Forman Netherlands B.V., Netherlands and M/s Brown-Forman Dutch Holdings B.V., Netherlands, with delay of 5 months & 14 days and 5 months & 21 days beyond the prescribed period, as detailed below, in contravention of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable.

Sl.No.	Date of allotment	Amount (INR)	Date of receipt
1	06.04.2018	4,99,900.00	19.11.2018
2	06.04.2018	100.00	26.11.2018
	Total	5,00,000.00	

Whereas, in terms of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, an Indian company accepting FDI has to receive the share application money from the non-resident investor prior to the allotment of shares, and the shares have to be issued within 60 days from the date of receipt of inward remittance.

(c) Thus, there are contraventions of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable.

3. The applicant was given an opportunity for personal hearing for further submission in person and/ or by producing documents, if any, in support of the application. Ms. Manisha Rawat, Company Secretary, appeared for personal hearing on August 6, 2019 on behalf of the applicant. The representative of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, she submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to administrative delay in opening of the bank account of the company and thereafter, transfer of funds by foreign investor after completion of KYC formalities. She requested for a lenient view in the matter. The application for compounding is, therefore, being considered on the basis of averments made in the application as well as other documents and submissions made during the personal hearing.

4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold



that the applicant has contravened the provisions of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable, on account of allotment of shares to persons resident outside India prior to receipt of inward remittance as detailed in paragraph 2(b) above. The contraventions relate to an amount of ₹5,00,000/- (Rupees Five Lakh only) and the periods of delay are 5 months & 14 days and 5 months & 21 days.

5. It has been declared in the compounding application dated April 17, 2019, that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has also been declared in the declaration furnished with 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, thereafter. It has further been declared that the applicant has not filed any appeal under Section 17 or Section 19 of FEMA. 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.

6. In terms of Section 13 of 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 compound the contraventions, in line with the Guidance Note on Computation Matrix prescribed as part of Master Direction – Compounding of Contraventions, framed in accordance with the Foreign Exchange (Compounding Proceedings) Rules 2000. Accordingly, it stands to reason that payment of an amount of **₹52,501/- (Rupees Fifty Two Thousand Five Hundred and One only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable, by the applicant based on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹52,501/- (Rupees Fifty Two**



Thousand Five Hundred and One only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi-110001 by a demand draft drawn in favour of the “Reserve Bank of India” and payable at New Delhi 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 7th day of August 2019.

Sd/-
(Md. Shakir Hasan)
Assistant General Manager