



In the
Reserve Bank of India
Foreign Exchange Department
Ahmedabad – 380014

Present
Santosh Kumar Panigrahy
Regional Director (Gujarat, Daman & Diu and Dadra & Nagar Haveli) /
Chief General Manager (Ahmedabad)

August 20, 2019
CEFA.CO.ID.11618 / C.A. No. AHM - 130 / 2018-19

Matter
JP Iscon Private Limited
(CIN: U45201GJ2004PTC044776)
'Iscon House', Opp. Associated Petrol Pump, Off C G Road, Ahmedabad - 380009
गुजरात / Gujarat
(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:



Order

JP Iscon Private Limited (hereinafter referred to as applicant) has filed application dated April 4, 2019, complete in all respects, 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) delay beyond 30 days in submitting report in Advance Reporting Form (ARF) to the Reserve Bank, through Authorised Dealer bank (AD bank) after receipt of foreign inward remittances towards subscription to equity as required under Paragraph 9(1)(A) of 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, as then applicable (hereinafter referred to as Notification No. FEMA 20/2000-RB); (ii) delay beyond 30 days in submitting report in Form-Foreign Currency-Gross Provisional Return (FC-GPR) to the Reserve Bank, through AD bank, after the date of issue of shares to “persons resident outside India” as required under Paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB; and (iii) delay in issue of shares and delay in refund of share application money beyond stipulated period of 180 days, as required under Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB. The applicant has therefore contravened the provisions of Paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 to Notification No. FEMA 20/2000-RB. The said Regulations have been issued by the Reserve Bank of India in exercise of its powers under the provisions of the FEMA, 1999.

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

(i) The applicant was incorporated on September 21, 2004 under the provisions of the Companies Act, 1956 (CIN: U45201GJ2004PTC044776). The applicant is engaged in “owning and leasing of real estate activities” bearing NIC Code 2008: 68100. The applicant has received six foreign inward remittances amounting to ₹23,12,32,162/- under the automatic route from three investors resident outside India viz. (i) Mira Investments LLC, USA; (ii) JHM Hotels LLC, USA; and (iii) Bullari Investments, Mauritius. The applicant has issued 19,73,933 equity shares amounting to ₹20,15,43,474/- to two



investors resident outside India viz. (i) JHM Hotels LLC, USA; and (ii) Bullari Investments, Mauritius. However, entire share application money amounting to ₹2,96,46,000/- received from Mira Investments LLC, USA was refunded to the investor. In addition, excess share application money amounting to ₹42,388/- and ₹300/- was refunded to Bullari Investments, Mauritius and JHM Hotels LLC, USA respectively.

(ii) The receipt of the foreign inward remittances from the “persons resident outside India” was reported by the applicant by filing ARF as provided below:

Reporting under Paragraph 9(1)(A) – Schedule 1 to Notification No. FEMA
20/2000-RB: Contravention detected

(Table 1)

| Sr. No. | Name of the investors | Date of receipt | Amount of foreign inward remittance (₹) | Date of reporting by Company to RBI | Delay beyond prescribed period of 30 days |
|---------|--------------------------------|-----------------|-----------------------------------------|-------------------------------------|-------------------------------------------|
| 1 | Mira Investments LLC, USA | 13-04-2007 | 2,88,36,000 | 08-05-2007 | No Delay |
| 2 | Mira Investments LLC, USA | 21-05-2007 | 8,10,000 | 02-07-2007 | 12 Days |
| 3 | JHM Hotels LLC, USA | 13-09-2007 | 4,03,97,500 | 04-10-2007 | No Delay |
| 4 | JHM Hotels LLC, USA | 20-09-2007 | 10,76,22,000 | 04-10-2007 | No Delay |
| 5 | JHM Hotels LLC, USA | 26-10-2007 | 1,97,30,000 | 19-11-2007 | No Delay |
| 6 | Bullari Investments, Mauritius | 15-01-2009 | 3,38,36,662 | 28-01-2009* | No Delay |
| | TOTAL | | 23,12,32,162 | | |

* For calculation of delay under paragraph 9(1)(A), date of reporting by the applicant to AD bank is taken as date of reporting to RBI.



- (a) As indicated in the Table 1 above, the applicant reported the receipt of six foreign inward remittances amounting to ₹23,12,32,162/- to the Ahmedabad Regional Office of the Reserve Bank of India. Out of the above, one foreign inward remittance (Sr. No. 2 of Table 1) amounting to ₹8,10,000/- was reported with a delay of 12 days beyond the prescribed period of 30 days from the date of receipt of foreign inward remittance.
- (b) In terms of Regulation 5(1) of the Notification No. FEMA 20/2000-RB, a “person resident outside India” (other than a citizen of Bangladesh or Pakistan) or an entity incorporated outside India (other than an entity of Bangladesh or Pakistan) may purchase shares or convertible debentures or warrants of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule I to the said Regulations. Paragraph 9(1)(A) of Schedule 1 to the Regulations mandates that an Indian company issuing shares or convertible debentures or warrants in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of receipt of the amount of consideration received by Indian company for issue of shares or convertible debentures or warrants, report in ARF as specified by Reserve Bank from time to time, along with documents stipulated therein.
- (c) The applicant has failed to submit the report in ARF within the time frame as required under Paragraph 9(1)(A) of Schedule 1 read with Notification No. FEMA 20/2000-RB, thereby contravening the provisions of the said Notification.
- (iii) The applicant allotted equity shares to “persons resident outside India” and reported the same by filling Form FC-GPR as provided below:



Reporting under Paragraph 9(1)(B) – Schedule 1 to Notification No. FEMA
20/2000-RB dated May 3, 2000: Contravention detected

(Table 2)

| Sr. No. | Name of the investors | No. of shares issued | Amount of shares (₹) | Date of issue of shares | Date of reporting to RBI* | Delay beyond prescribed period of 30 days |
|---------|---------------------------------|----------------------|----------------------|-------------------------|---------------------------|-------------------------------------------|
| 1 | JHM Hotels LLC, USA | 16,77,492 | 16,77,49,200 | 19-02-2009 | 18-04-2009 | 28 days |
| 2 | Bulllari Investments, Mauritius | 2,96,441 | 3,37,94,274 | 19-02-2009 | 18-04-2009 | 28 days |
| | TOTAL | 19,73,933 | 20,15,43,474 | | | |

* For calculation of delay under paragraph 9(1)(B), date of reporting by the applicant to AD bank is taken as date of reporting to RBI.

(a) As indicated in the Table 2 above, the applicant has issued 19,73,933 equity shares amounting to ₹20,15,43,474/- to “persons resident outside India” on February 19, 2009 and submitted the report in Form FC-GPR to the AD bank on April 18, 2009, with a delay of 28 days, beyond the prescribed period of 30 days from date of issue of equity shares.

(b) Paragraph 9(1)(B) of Schedule 1 to the Notification No. FEMA 20/2000-RB mandates that an Indian company issuing shares in accordance with these Regulations is required to submit to the Reserve Bank of India through AD bank, a report in Form FC-GPR, as specified by the Reserve Bank from time to time, along with documents stipulated therein, within 30 days from the date of issue of shares to the “person resident outside India”.

(c) The applicant has failed to submit the report in Form FC-GPR within the time frame as required under Paragraph 9(1)(B) of Schedule 1 read with Notification No.FEMA 20/2000-RB, thereby contravening the provisions of the said Notification.



(iv) The applicant has issued equity shares and also refunded the share application money beyond the prescribed period under the provisions of Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB as provided below:

A. Delay in issue of shares: Contravention detected

(Table 3)

| Sr. No. | Name of the investors | No. of shares issued | Amount of shares issued (₹) | Date of receipt of remittance | Date of issue of shares | Delay beyond prescribed period of 180 days |
|---------|---------------------------------|----------------------|-----------------------------|-------------------------------|-------------------------|--------------------------------------------|
| 1 | JHM Hotels LLC, USA | 16,77,492 | 16,77,49,200 | 29-11-2007* | 19-02-2009 | 268 days |
| 2 | Bulllari Investments, Mauritius | 2,96,441 | 3,37,94,274 | 15-01-2009 | 19-02-2009 | No delay |
| | TOTAL | 19,73,933 | 20,15,43,474 | | | |

*The date of receipt of remittance is taken as November 29, 2007 for issue of equity shares as the provision to issue equity shares within 180 days of the date of receipt of inward remittance came into effect from November 29, 2007, in terms of instructions contained in A.P. (Dir Series) Circular No. 20 dated December 14, 2007.

(a) As indicated at Sr. No. 1 in Table 3 above, the applicant has issued equity shares amounting to ₹16,77,49,200/- on February 19, 2009 with a delay of 268 days to the “person resident outside India”.

B. Delay in refund of share application money: Contravention detected

(Table 4)

| Sr. No. | Name of the investors | Amount Refunded (₹) | Date of receipt of remittance | Date of refund | Delay beyond prescribed period of 180 days |
|---------|---------------------------------|---------------------|-------------------------------|----------------|--------------------------------------------|
| 1 | Mira Investments LLC, USA | 2,88,36,000 | 29-11-2007* | 29-12-2008 | 216 days** |
| 2 | Mira Investments LLC, USA | 8,10,000 | 29-11-2007* | 29-12-2008 | 216 days** |
| 3 | JHM Hotels LLC, USA | 300 | 29-11-2007* | 06-03-2009 | 283 days |
| 4 | Bulllari Investments, Mauritius | 42,388 | 15-01-2009 | 06-03-2009 | No Delay |
| | TOTAL | 2,96,88,688 | | | |



**The date of receipt of remittance is taken as November 29, 2007 for refund of amounts indicated at Sr. 1 to 3 as the provision to refund the share application money came into effect from November 29, 2007, in terms of instructions contained in A.P. (Dir Series) Circular No. 20 dated December 14, 2007.*

*** The applicant approached the Reserve Bank with an application dated June 4, 2008 for grant of a permission to refund the share application money (Sr. No. 1 & 2) which was granted by the Reserve Bank on October 13, 2008. However, the applicant refunded the share application money on December 29, 2008. Accordingly, a delay of 85 days has been ascertained for the purpose of calculation of delay in refund of share application money.*

(b) As indicated in the Table 4 above, the entire share application money of ₹2,88,36,000/- and ₹8,10,000/- was refunded to Mira Investments LLC, USA (Sr. No. 1 & 2) with the permission of the Reserve Bank with a delay of 85 days. An excess share application money of ₹300/- was refunded to JHM Hotels LLC, USA (Sr. No. 3) without Reserve Bank's permission with a delay of 283 days; and an amount of ₹42,388/- was refunded to Bullari Investments, Mauritius (Sr. No. 4) within the prescribed period.

(c) In terms of first proviso to Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned. Further, in terms of second proviso to Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, the Reserve Bank may, on an application made to it and for sufficient reasons permit the company to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt of foreign inward remittance. In terms of Paragraph 5 of AP (Dir series) Circular No.20 dated December 14, 2007, in all cases where, as on November 28, 2007, 180 days have elapsed since receipt of funds and the equity instruments have not been issued, the companies are required to approach the Foreign Exchange Department of the Regional Office concerned of the Reserve Bank through their AD Category-1 bank with a definite action plan whether for allotment of equity instruments or for refund of the advance, with full details, for specific approval.



(d) The applicant has failed to

- issue the equity shares within the prescribed period of 180 days to JHM Hotels LLC, USA as required under Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB.; and
- refund the share application money to Mira Investments LLC, USA and JHM Hotels LLC, USA within the prescribed period of 180 days as required under Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB.

3. The applicant was given an opportunity for personal hearing vide letter FE.AH.No.1923/06.04.15(A)CEFA/2018-19 dated June 21, 2019 for further submission in person and/or producing documents, if any, in support of the application. The applicant vide its letter dated June 25, 2019 requested to dispose of its application as per documents submitted and sought an exemption from personal hearing with the Compounding Authority. The applicant admitted in its application to the contravention for which compounding has been sought and stated that the delay occurred due to inadvertence and have assured to comply with the FEMA provisions in future. Further, it has stated that it is willing to accept any direction/ order of the Compounding Authority in connection with their compounding application. The application for compounding is, therefore, being considered on the basis of the statements made in the application as well as other documents and submissions made in this context by the applicant.

4. It has been declared in the compounding application that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. Further, it has been declared in the declaration furnished with the compounding application that the applicant was under enquiry/investigation/adjudication by Directorate of Enforcement (DoE) as on the date of the application. Accordingly, RBI vide letter FE.AH.FID.No.1300/06.04.15 (S)/2018-19 dated March 5, 2019 had sought comments from DoE to be furnished within 30 days as to whether it had objection, if any, in terms of the proviso to rule 8(2) of the Compounding Rules to compounding of the contraventions sought to be compounded by the applicant. DoE vide its letter F.No.RBI/SDE/WR/B-



222/2019/334 dated April 30, 2019 has confirmed its 'no objection' to compounding by Reserve Bank in the matter. Accordingly, the above contraventions which are being compounded in this Order are without prejudice to any other action which may be taken by any authority under the extant laws.

5. I have given my careful consideration to the documents on record and submissions made by the applicant in its application. I am satisfied and hold that the applicant has contravened the statutory requirement in terms of:

- (i) Paragraph 9(1)(A) of Schedule 1 to FEMA Notification FEMA 20/2000–RB dated May 3, 2000, due to delay in submitting report in ARF, after receipt of foreign inward remittance towards subscription of shares as detailed in paragraph 2(ii) above. The amount of contravention involved is ₹8,10,000/- and the delay in submission is 12 days.
- (ii) Paragraph 9(1)(B) of Schedule 1 to FEMA Notification FEMA 20/2000–RB dated May 3, 2000, due to delay in submitting report in Form FC-GPR, after issue of shares to “persons resident outside India” as detailed in paragraph 2(iii) above. The amount of contravention involved is ₹20,15,43,474/- and the delay in submission is 28 days.
- (iii) Paragraph 8 of Schedule 1 to FEMA Notification FEMA 20/2000–RB dated May 3, 2000, due to delay in:
 - (a) issue of equity shares as detailed in paragraph 2(iv)(a) above. The amount of contravention involved is ₹16,77,49,200/- and the delay in issue of shares is 268 days; and
 - (b) refund of share application money as detailed in paragraph 2(iv)(b) above. The amount of contravention involved is ₹2,96,46,300/- and the delay in refund ranges from 85 to 283 days.

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. 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 therefore, I consider that amount of penalty of ₹8,35,550/- (Rupees Eight Lakh Thirty Five Thousand Five Hundred Fifty only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions, namely contravention of Paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, by the applicant, on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹8,35,550/- (Rupees Eight Lakh Thirty Five Thousand Five Hundred Fifty only). The same shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Ground Floor, Near Gandhi Bridge, Post Bag No. 1, Ahmedabad - 380014 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Ahmedabad 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 of accordingly.

Dated the 20th day of August, 2019.

Sd/-

(Santosh Kumar Panigrahy)

Regional Director (Gujarat, Daman & Diu and Dadra & Nagar Haveli) /

Chief General Manager (Ahmedabad)