



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

Present
Md. Shakir Hasan
Assistant General Manager

Date: December 19, 2019
CA No. NDL 518/2019

In the matter of
Adani Brahma Belvedere Private Limited
Flat No. 53, Block C, Flatted Factory Complex, Jhandewalan, New Delhi - 110055
(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 August 5, 2019 (received at Reserve Bank of India, New Delhi on August 7, 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 contravention sought to be compounded is of issue of shares to person resident outside India prior to receipt of the amount of consideration, 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 June 27, 2018, is engaged in the activities relating to alteration, addition, repair, maintenance carried out on own-account basis or on a fee or contract basis.

(b) The applicant issued 5,000 equity shares on June 28, 2018 to the subscriber to its Memorandum of Association, M/s Brahma Opportunities B Ltd., Mauritius. The consideration for the said shares amounting to ₹50,000/- was received on November 27, 2018, 5 months after the issue of shares, in contravention of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable. 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 issue of shares, and shares have to be issued within sixty days from the date of receipt of the consideration.

(c) Thus, there is a contravention 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. Shri Vishal Gupta, Chartered Accountant and Ms. Priyanshi Kapoor, Company Secretary, appeared for personal hearing on December 18, 2019 on behalf of the applicant. The representatives of the applicant admitted the contravention committed by the applicant for which compounding has been sought. During the personal hearing, they submitted that the contravention was without any malafide or wilful intention but was mainly due to delay in opening of the bank account of the company. They 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 provision of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable, on account of issue of shares to person resident outside India prior to receipt of the amount of consideration as detailed in



paragraph 2(b) above. The contravention relates to an amount of ₹50,000/- (Rupees Fifty Thousand only) and the period of contravention is 5 months.

5. It has been declared in the compounding application dated August 5, 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 as part of 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 contravention which is being compounded in this Order is 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 contravention 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 **₹2,100/- (Rupees Two Thousand and One Hundred only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contravention 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 **₹2,100/- (Rupees Two Thousand and One Hundred 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 19th day of December 2019.

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