



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

Present
Md. Shakir Hasan
Assistant General Manager

Date: September 18, 2019
CA No. NDL 460/2019

In the matter of
Healthcubed India Private Limited
B-221, Okhla Industrial Area Phase- I, New Delhi - 110020
(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 May 04, 2019 (received at Reserve Bank of India, New Delhi on May 15, 2019) and addendum dated August 29, 2019 for compounding of contraventions 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 (i) delay in reporting foreign inward remittance received for issue of shares, (ii) delay in filing Form FC-GPR after issue of shares, and (iii) issue of shares to the person resident outside India prior to receipt of the amount of consideration in terms of paragraphs 9(1)(A), 9(1)(B) and 8 respectively 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 (hereinafter referred to as FEMA 20/2000-RB), as amended from time to time.



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

(a) The applicant company, incorporated on November 06, 2015, is engaged in the business of manufacturing of other medical and dental instruments n.e.c.

(b) The applicant had received foreign inward remittance of ₹99,980/- on January 13, 2016, as consideration for MoA shares, from its foreign investor, M/s Healthcubed Inc, U.S.A., and reported the same on June 06, 2018 with a delay of 2 years, 3 months and 25 days beyond the prescribed period, in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, 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 shares or convertible debentures or warrants, a report in Advance Reporting Form as specified by Reserve Bank from time to time along with the documents prescribed therein.

(c) The applicant had allotted 9,998 MoA shares for a consideration of ₹99,980/- to M/s Healthcubed Inc, U.S.A., on November 06, 2015 and reported the same in Form FC-GPR on February 14, 2019 with a delay of 3 years and 2 days beyond the prescribed period, in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, 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 issue of shares or convertible debentures or warrants, a report in the Form FC-GPR as specified by the Reserve Bank from time to time together with the documents prescribed therein.

(d) The applicant had received the consideration amount of ₹99,980/- on January 13, 2016 against the MoA shares allotted on November 06, 2015 with a delay of 8 days beyond the prescribed period, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, a company in India issuing shares or convertible



debentures or warrants under this Schedule to a person resident outside India shall receive the amount of consideration for such shares or convertible debentures or warrants by inward remittance through normal banking channels, or by debit to NRE / FCNR (B) account of the person concerned maintained with an authorised dealer / authorized bank, or by debit to a non-interest bearing Escrow account (in Indian Rupees) maintained in India with an AD bank in accordance with Foreign Exchange Management (Deposit) Regulations, 2000, provided that if the shares or convertible debentures or warrants are not issued within 180 days from the date of receipt of the inward remittance or date of NRE / FCNR (B) / Escrow account, the amount of consideration so received shall be refunded to the person concerned by outward remittance through normal banking channels or by credit to his NRE / FCNR (B) account, as the case may be, provided further that the Reserve Bank, may on application made to it and for sufficient reasons permit an Indian company to refund the amount of consideration received towards issue of security, if such amount of consideration is outstanding beyond a period of 180 days from the date of receipt.

(e) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 to FEMA 20/2000-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 Akshay Pahwa, consultant, appeared for personal hearing on September 17, 2019 on behalf of the applicant. The representative admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to lack of awareness of the foreign investor about the timeframe for remitting the fund, delay in receipt of FIRC, detection of delay during the financial audit of the company and resolving the issues pertaining to submission of Form FC-GPR on FIRMS portal. He 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 following FEMA provisions:

(a) Paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in reporting foreign inward remittance received towards subscription of shares as detailed in paragraph 2(b) above. The contravention relates to an amount of ₹99,980/- (Rupees Ninety Nine Thousand Nine Hundred and Eighty only) and the delay is of 2 years 3 months and 25 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in filing Form FC-GPR after allotment of shares as detailed in paragraph 2(c) above. The contravention relates to an amount of ₹99,980/- (Rupees Ninety Nine Thousand Nine Hundred and Eighty only) and the delay is of 3 years and 2 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in receipt of the amount of consideration from subscriber to the Memorandum of Association of the company as detailed in paragraph 2(d) above. The contravention relates to an amount of ₹99,980/- (Rupees Ninety Nine Thousand Nine Hundred and Eighty only) and the delay is of 8 days.

5. It has been declared in the compounding application dated May 04, 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 **₹27,844/- (Rupees Twenty Seven Thousand Eight Hundred and Forty Four only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraphs 8, 9(1)(A) and 9(1)(B) of Schedule 1 to FEMA 20/2000-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 **₹27,844/- (Rupees Twenty Seven Thousand Eight Hundred and Forty Four 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 18th day of September 2019.

(Md. Shakir Hasan)
Assistant General Manager