



In the

Reserve Bank of India
Foreign Exchange Department
3rd Floor
15, Netaji Subhas Road
Kolkata – 700 001

Present

R. Srivastava
Assistant General Manager

Date: September 11, 2019
C.A.109/2019

In the matter of

M/s MHA IMEX OVERSEAS PRIVATE LIMITED
15 Noormal Lohia Lane, 2nd Floor
Kolkata-700 007
West Bengal
(Applicant)

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

Order

The applicant had filed a compounding application dated May 20, 2019 (received at Reserve Bank on May 27, 2019) 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 is for delay in allotment of shares beyond the stipulated 180 days of the receipt of inflow to a person resident outside India in terms of Paragraph 8 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 03, 2000 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts of the case are as follows. The applicant, M/s MHA IMEX OVERSEAS PRIVATE LIMITED, was incorporated on August 27, 1997 and is in the business of Cafeterias, fast-food restaurants and other food preparation in market stalls (NIC Code 2008 – 56102).

3. The company had received the foreign inward remittances towards subscription to equity shares from Hussain Abdulla, a Non-resident remitter, Maldives as given in Table 1 below.

S. No.	Inflow (INR)	Date of Inflow	Date of allotment of shares	Amount for which shares issued (INR)	Shortfall/Excess	Date of refund	Delay in allotment beyond 180 days
1	11,45,250.00	24-Sep-04	07-Jun-05	2,17,50,000.00	1,02,950.00	N/A	76
2	13,61,919.00	26-Oct-04	07-Jun-05				44
3	65,58,844.00	21-Dec-04	07-Jun-05				0
4	1,22,21,345.00	11-Jan-05	07-Jun-05				0
5	2,17,047.00	08-Mar-05	07-Jun-05				0
6	3,48,545.00	28-Mar-05	07-Jun-05				0
7	2,60,048.00	09-Aug-05	27-Feb-07	41,12,500.00	1,052.00	N/A	387
8	4,38,142.00	30-Aug-05	27-Feb-07				366
9	24,30,337.00	28-Jan-06	27-Feb-07				215
10	4,40,738.00	08-Feb-06	27-Feb-07				204
11	4,41,337.00	03-Mar-06	27-Feb-07				181
12	4,46,800.00	12-Apr-06	20-Aug-07	47,92,500.00	1,104.00	N/A	315
13	4,55,915.00	26-May-06	20-Aug-07				271
14	4,57,313.00	20-Jun-06	20-Aug-07				246
15	5,08,276.00	28-Jun-06	20-Aug-07				238
16	4,56,414.00	03-Oct-06	20-Aug-07				141
17	2,65,495.00	10-Jan-07	20-Aug-07				42
18	22,02,339.00	21-Feb-07	20-Aug-07				0
19	6,12,887.00	21-Aug-07	24-Apr-08	25,85,700.00	2,267.00	N/A	67
20	5,94,305.00	25-Sep-07	24-Apr-08				32
21	3,90,713.00	09-Nov-07	24-Apr-08				0
22	5,86,363.00	08-Jan-08	24-Apr-08				0



23	4,02,595.00	11-Mar-08	24-Apr-08				0
24	19,89,403.00	03-Apr-08	02-Sep-08				0
25	10,00,649.00	29-Apr-08	02-Sep-08				0
26	14,74,618.00	14-May-08	02-Sep-08				0
27	5,10,561.00	06-Jun-08	02-Sep-08		17.00	N/A	0
28	21,36,859.00	10-Jun-08	02-Sep-08				0
29	5,17,960.00	21-Aug-08	02-Sep-08	76,32,300.00			0
30	9,35,298.00	03-Oct-08	27-Mar-09				0
31	2,47,755.00	28-Oct-08	27-Mar-09				0
32	4,85,670.00	04-Nov-08	27-Mar-09				0
33	9,90,257.00	19-Nov-08	27-Mar-09				0
34	2,42,770.00	13-Jan-09	27-Mar-09		51.00	N/A	0
35	9,75,288.00	15-Jan-09	27-Mar-09				0
36	12,44,253.00	20-Feb-09	27-Mar-09				0
37	7,66,183.00	17-Mar-09	27-Mar-09	58,87,440.00			0
38	4,97,652.00	24-Apr-09	09-Dec-09				49
39	4,93,259.00	15-May-09	09-Dec-09		639.00		28
40	4,81,277.00	21-Jul-09	09-Dec-09	14,71,600.00		N/A	0
41	9,28,303.00	24-Nov-09	19-May-10				0
42	4,56,714.00	03-Mar-10	19-May-10				0
43	2,36,367.00	17-Mar-10	19-May-10				0
44	4,52,820.00	18-Mar-10	19-May-10				0
45	6,65,184.00	07-Apr-10	19-May-10				0
46	4,43,634.00	04-May-10	19-May-10	31,82,400.00	1261	N/A	0
	5,14,15,701.00						

In terms of the Circular A. P. (DIR Series) Circular No.20 dated December 14, 2007, the equity instruments should be issued within 180 days of the receipt of the inward remittance with effect from November 29, 2007. On perusal of Table 1 above, it is observed that in two of the inflows (Sr. No. 38 & 39), the company had not allotted shares within the stipulated period as per the provisions of Para 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000 read with A. P. (DIR Series) Circular No.20 dated December 14, 2007.

4. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter No.KOL.FED.FID.263/06.01.002/2019-20 dated August 19, 2019 for further submission in person and/or producing documents, if any, in support of the application. The applicant, represented by Mr. Prabhakar H.N. (Authorized Representative), appeared for personal hearing on September 11,



2019. The representative of the applicant admitted the contraventions as stated in para 3 of this Order.

5. It has been declared in the compounding application dated May 20, 2019 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has 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/him/her thereafter. It has further been declared that the applicant has not filed any appeal under section 17 or section 19 of FEMA, 1999. 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. The contraventions being sought for compounding have taken place before November 7, 2017 and hence the application for compounding is being considered as per provisions of erstwhile Notification No. FEMA 20/2000-RB dated May 03, 2000.

6. I have given careful consideration to the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened provisions of paragraph 8 of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 03, 2000. The contravention relates to an amount of INR 9,90,911.

7. In terms of section 13 of the FEMA any person contravening any provision of the act shall be liable for a penalty upto thrice the sum of the contravention upon adjudication. However, considering the circumstances which led to the delay and other relevant facts of the case I am inclined to take a lenient view of the amount for which the contravention is to be compounded and I consider that an amount of Rs. 41,216 (Rupees Forty One Thousand Two Hundred and Sixteen only) will meet the end of justice.



8. Accordingly, I compound the admitted contravention viz. Paragraph 8 of Schedule 1 of 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 Proceeding) Rules, 2000 on payment of an amount Rs. 41,216 (Rupees Forty One Thousand Two Hundred and Sixteen only), which are to be deposited by the applicant with the Reserve Bank of India, Kolkata by a demand draft in favor of Reserve Bank of India and payable at Kolkata within 15 days from the date of issue of the order. In case of failure to deposit the compounded amount within the above mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceeding) Rules, 2000 dated May 03, 2000 shall apply.

9. The application is disposed off accordingly.

Dated this Eleventh day of September, Two Thousand and Nineteen.

(R. Srivastava)
Assistant General Manager