



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

6, Sansad Marg

New Delhi-110001

Present

Ajay Kumar

Regional Director for Delhi and CGM, New Delhi

Date: July 17, 2019

CA No. NDL 408/2019

In the matter of

Lulu and Sky Brands Private Limited

F-1/5, First Floor, Okhla Industrial Area, Phase 1, 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 March 18, 2019 (received at Reserve Bank of India, New Delhi on March 20, 2019) and addendum dated April 17, 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 filing Form FC-GPR after issue of shares in terms of paragraph 9(1)(B) 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, and (ii) delay in refund of the excess share application money beyond the prescribed period in terms of paragraph 2(3) 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 May 26, 2016, is engaged in activities of other commission agents, n.e.c. (including commission agents working in emerging areas for wholesale trade).

(b) The applicant had reported the allotment of Compulsorily Convertible Debentures (CCDs) in Form FC-GPR to its foreign investor, M/s Excel Way International Limited, UK on two occasion with delay of 3 months and 1 month & 21 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of allotment	No. of CCDs allotted	Amount (₹)	Date of Reporting
1	19.09.2017	49,976	2,39,88,480.00	19.01.2018
2	30.10.2017	50,024	2,40,11,520.00	19.01.2018
		Total	4,80,00,000.00	

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 Form FC-GPR as specified by the Reserve Bank from time to time together with documents prescribed therein.

c) The applicant had received foreign inward remittance amounting to ₹1,08,48,750/- from its foreign investor Mr. Simon Alexander Lowater, Taiwan on September 28, 2018 for allotment of 10,000 Equity shares amounting to ₹1,05,00,000.00. The excess amount of ₹3,48,750/- was refunded on January 25, 2019 with a delay of 1 month and 13 days beyond the prescribed period of 75 days, in contravention of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB. Whereas, in terms of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, where capital instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance through



banking channels or by credit to his NRE/ FCNR(B) accounts, as the case may be, within fifteen days from the date of completion of sixty days.

(d) Thus, there are contraventions of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, and paragraph 2(3) 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. Swati Jain and Ms. Neha Singhal, both Company Secretary, appeared for personal hearing on July 15, 2019 on behalf of the applicant. The representatives of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, they submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to delay in receipt of copies of FIRC and KYC of the remitters for delay in filing Form FC-GPR and delay in receipt of SWIFT Code of the foreign investor from the foreign bank for delay in refund of excess share application money. 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 following FEMA provisions:

a) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in reporting of Forms FC-GPR as detailed in paragraph 2(b) above. The contraventions relate to an amount of ₹4,80,00,000.00 (Rupees Four Crore and Eighty Lakh only) and the period of delay are 3 months and 1 month & 21 days.

b) Paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable, on account of delay in refund of excess share application money beyond the prescribed period of 75 days as detailed in paragraph 2(c) above. The contravention relates to an amount of ₹3,48,750.00 (Rupees Three Lakh Forty Eight Thousand Seven Hundred and Fifty only) and the period of delay is 1 month and 13 days.





5. It has been declared in the compounding application dated March 18, 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 by the company 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 **₹82,744/- (Rupees Eighty Two Thousand Seven Hundred and Forty Four only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, and paragraph 2(3) 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 **₹82,744/- (Rupees Eighty Two Thousand Seven 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 17th day of July, 2019.

Sd/-
(Ajay Kumar)
Regional Director for Delhi and CGM, New Delhi