



In the

RESERVE BANK OF INDIA

Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Manmohan

Deputy General Manager

Date: August 09, 2019

C.A. 4904 / 2019

In the matter of

Orient Box Movers Private Limited

601, Acme Plaza, Andheri Kurla Road, Andheri East, Mumbai – 400059

(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 there under, I pass the following

Order

The applicant has filed a compounding application dated March 13, 2019 (received in the Reserve Bank on March 14, 2019) for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded relate to borrowing by the applicant in Rupees from a Non Resident Indian (NRI) other than by way of issue of Non-Convertible Debentures, in contravention of Regulation 5(1)(i) read



with Regulation 5(1)(v)(A) and Regulation 5(1)(v)(B) of Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 notified vide Notification No. FEMA 4/2000-RB dated 3rd May 2000 (hereinafter referred to as Notification No. FEMA 4 / 2000-RB).

2. The relevant facts of the case are as follows: Orient Box Movers was established as a partnership firm in 1989 and was subsequently incorporated as private limited company under the name Orient Box Movers Private Limited (OBM) on July 31, 1996 [CIN – U63090MH1996PTC101488]. The major activities of the company include refrigerated containers pre-trip inspection, monitoring temperatures in Mumbai Port on behalf of major shipping lines. The company has diversified its operations into various sectors such as transportation of laden and empty containers, management of empty yards, labour contracts etc.

2.1 OBM was appointed as handling and transport contractor for Maharashtra State Warehousing Corporation (MSWC) at Dronagiri node (CFS) and Navi Mumbai since September 2009. To undertake this contract with MSWC, OBM along with its group companies had taken various secured loans from Citizen Credit Co-op Bank for purchase of handling equipment and tractor trailers for handling & transportation. OBM incurred huge losses from the aforesaid contract with MSWC and accordingly was not in a financial position to repay the secured loans availed from Citizen Credit Co-op Bank. Eventually OBM was classified as Non Performing Asset (NPA) by Citizen Credit Co-op Bank in December 2012.

In order to keep the company afloat, OBM decided to avail unsecured rupee loan from the son-in-law of the director of the company after passing a Board resolution to this effect. OBM entered into a Memorandum of Understanding (MOU) with the son-in-law of the Director, namely Mr. Craig Donaldson (an Australian Citizen, being PIO) to borrow funds in Indian currency to the extent of approximately Rs. 29,00,000/-. The MOU carried the condition of repayment the loan with interest rate @10% p.a. without any stipulation of period of borrowing. As per MOU, OBM could repay the loan whenever it



achieves a healthy financial position. The loan of Rs. 28,79,100/- was sent by wire transfer from Australia by Mr. Craig Donaldson on October 15, 2012 and was received by OBM in its bank account on October 18, 2012. The proceeds of the load were utilized towards repayment of overdue bank loan and towards miscellaneous payments for keeping company afloat.

2.2 The applicant had borrowed in Rupees from a NRI other than by way of issue of Non-Convertible Debentures. The applicant had contravened the Regulation 5(1)(i) read with Regulation 5(1)(v)(A) and Regulation 5(1)(v)(B) of Notification No. FEMA 4/2000-RB. FED CO, RBI has granted approval to the company for repayment of loan vide letter Ref. No. CO.FED.ECBD / 9634 / 03.02.107/2017-18 dated May 22, 2018 wherein the company was advised to immediately unwind the transaction. Pursuant to the aforesaid RBI approval, the company made repayment of principal amount of loan of Rs. 28,79,100/- on July 09, 2018 and has also made the payment of Rs. 13,92,211.25 on February 27, 2019 towards interest of the said loan.

3. The applicant committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 4/2000-RB, as then applicable:-

3.1 In terms of Regulation 5(1) (i) of Notification No. FEMA 4/2000-RB “... a company incorporated in India may borrow in rupees on repatriation or non- repatriation basis, from a nonresident Indian or a person of Indian origin resident outside India, by way of investment in Non-Convertible Debentures (NCDs) issue of which is made by public offer.”

3.2 In terms of Regulation 5(1)(v)(A) of Notification No. FEMA 4/2000-RB “the borrowing company files with the nearest office of the Reserve Bank, not later than 30 days from the date of receipt of remittance for investment in Non-Convertible Debentures (NCDs), full details of the remittances received, namely; (a) a list containing names and addresses of Non-Resident Indians (NRIs) who have remitted funds for investment in Non-Convertible Debentures (NCDs) on repatriation and / or non-repatriation basis, (b) amount and date of receipt of remittance and its rupee equivalent;



and (c) names and addresses of authorised dealers through whom the remittance has been received;”

3.3 In terms of Regulation 5(1)(v)(B) of Notification No. FEMA 4/2000-RB *“the borrowing company files with the nearest office of the Reserve Bank, not later than 30 days from the date of issue of Non-Convertible Debentures (NCDs), full details of the investment, namely; (a) a list containing names and addresses of Non-Resident Indians (NRIs) and number of Non-Convertible Debentures (NCDs) issued to each of them on repatriation and / or non-repatriation basis and (b) a certificate from the Company Secretary of the borrowing company that all provisions of the Act, rules and regulations in regard to issue of Non-Convertible Debentures (NCDs) have been duly complied with.”*

4. The applicant was given an opportunity for personal hearing vide Reserve Bank's letter No. FED.CO.CEFA.No./7553/15.20.67/2018-19 dated June 24, 2019 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on July 04, 2019, which was attended by Mr. Francisco Clemente Rebelo, CEO of Orient Box Movers Private Limited and representatives from M/s P.R Bhuta & Co. Chartered Accountants. The applicant had submitted that it had inadvertently and unintentionally failed to comply with the FEMA regulations due to ignorance and requested that a lenient view may be taken in the matter. The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as other documents and submissions submitted along with the application.

5. I have given my careful consideration to the documents on record and thereafter. Accordingly, I hold that the applicant has contravened the Regulation 5(1)(i) read with Regulation 5(1)(v)(A) and Regulation 5(1)(v)(B) of FEMA 4/2000-RB as amended from time to time. The contravention relates to borrowing in Rupees from NRI an amount of **Rs. 28,79,100/-** and the period of contravention ranges from **October 18, 2012 to July 09, 2018 i.e. five year and eight months** approximately.



6. It has been declared in the compounding application dated March 13, 2019 that the particulars given by the applicant in the application are true and correct to the best of his knowledge and belief. It has been declared in the undertaking submitted with the application by the applicant 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 him thereafter as required in terms of the said undertaking. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made/undertaking furnished 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/undertakings are subsequently discovered to be false and/or incorrect.

7. 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 contravention is to be compounded and I consider that an amount of **Rs.71,593/- (Rupees seventy one thousand five hundred and ninety three only)** will meet the ends of justice in the circumstances of the case.

8. Accordingly, I compound the admitted contraventions namely, the contravention of Regulation 5(1)(i) read with Regulation 5(1)(v)(A) and Regulation 5(1)(v)(B) of Notification No. FEMA 4/2000-RB amended from time to time by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of **Rs.71,593/- (Rupees seventy one thousand five hundred and ninety three only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai 400001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at "Mumbai" 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 this the 09th day of August, 2019

Sd/-
Manmohan
Deputy General Manager