



In the

Reserve Bank of India
10/3/8, Nrupathunga Road
Bengaluru-560001

Present

Ms. M Ramakumari
Deputy General Manager

Date: June 18, 2019
C.A. BGL 382/2019

In the matter of

M/s British Orient Infotel Private Limited
No.29, 1st Main, 3rd Stage
4th Block, Basveshwaranagar
Bengaluru - 560079
(Applicant)

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

ORDER

The applicant has filed a compounding application dated February 14, 2019, received at this office of Reserve Bank of India, Bengaluru on February 14, 2019, and addendum to the application dated March 25, 2019, received on March 27, 2019, for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999, (the FEMA), and the regulations issued there under. The contraventions sought to be compounded are, (i) delay in reporting receipt of foreign inward remittance towards subscription to equity, (ii) allotment of shares prior to receipt of inward remittance, (iii) delay in submission of form FC-GPR to the Reserve Bank, after issue of shares to a person resident outside India, in terms of Paragraphs 9(1)(A), 8, and 9(1)(B), respectively, of Schedule I 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), and (iv) taking on record in its



books by the applicant without prior approval, the transfer of shares from Resident to Non-Resident investors, and (v) delay in reporting the transfer of shares from Resident to Non-Resident investors, in terms of Regulation 4 and Regulation 10 A (b) (i) read with Paragraph 10 of Schedule 1 to Notification No. FEMA 20/2000-RB, as amended vide AP (DIR Series) Circular No. 63 dated April 22, 2009, respectively.

2. The relevant facts of the case are as follows: M/s British Orient Infotel Private Limited, was incorporated on September 29, 2004, under the Companies Act, 1956. The activity undertaken by the company is providing BPO and Medical transcription services through Information Technology. The applicant had received fund towards share application money from the non-resident investor, namely, M/s Dictate IT Limited, UK, as shown below:

Table – 1

Sl. No	Date of Receipt	Amount (INR)	Date of Reporting to RBI /AD
1	26-09-2005	33,450.00	31-08-2018
2	12-03-2019	4,289.28	Reported through Single Master Form (SMF), introduced with effect from September 01, 2018
	Total	37,739.28	

The applicant reported receipt of remittance to the Reserve Bank / Authorized Dealer Bank, with a delay of twelve years and ten months and four days, beyond the stipulated period of 30 days in respect of the remittance as indicated at serial number 1, in the Table-1 above. Whereas, in terms of paragraph 9(1)(A) of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations, should report to the Reserve Bank of India, as per the prescribed procedure, not later than 30 days from the date of receipt of the amount of consideration.

3. The company had received inward remittances of ₹33,450.00, and ₹4,289.28, amounting to ₹37,739.28, from the non-resident investor M/s Dictate



IT Limited, UK, on September 26, 2005, and March 12, 2019, respectively. The company had allotted 3750 equity shares worth ₹37,500.00, to the non-resident investor on October 10, 2005. However, part of the share application money of ₹4,289.28, pertaining to the aforesaid allotment, was received after the allotment of shares with a delay of eleven years three months and eleven days. Whereas, in terms of Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, dated May 03, 2000, as amended from time to time, read with A.P. (DIR Series) Circular No.20 dated December 14, 2007, shares have to be issued/amount to be refunded within 180 days from the date of receipt of inward remittance by the Indian company receiving FDI.

4. The company had allotted equity shares to the non-resident investor and filed form FC-GPR with Reserve Bank/AD Bank as indicated below:

Table – 2

Sl. No.	Date of Allotment	Amount (INR)	Date of reporting to RBI/AD
1	10-10-2005	37,500.00	29-01-2019
	Total	37,500.00	

The applicant had filed form FC-GPR on allotment of shares with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank, with a delay of thirteen years two months and twenty days, beyond the prescribed period of 30 days in respect of allotment of shares as indicated in the Table - 2 above. Whereas, in terms of Paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000, an Indian company issuing shares in accordance with these Regulations, has to submit to the Reserve Bank of India, a report in form FC-GPR, along with documents prescribed therein, within 30 days from the date of issue of shares to persons resident outside India.

5. A resident shareholder of the applicant company, Mr. Kanadsamy Murali Krishnan, Bengaluru, had transferred 3900 equity shares held by him in the company to a Non-Resident, M/s. Dictate IT Limited, UK, for an amount of



₹38,26,157.40, on February 18, 2009. The details of the transaction are indicated below:

Table – 3

No. of shares transferred	Amount of consideration received in Rs.	Date of transfer	Date on which transfer were taken on record by the company's account	Date on which post facto approval was given by RBI
3900	38,26,157.40	18-02-2009	21-02-2009	26-12-2018

The applicant company had taken on record, the said transfer of shares in the books of the company without obtaining prior approval from Reserve Bank of India, whereas in terms of Regulation 4 of Notification No. FEMA 20/2000- RB, dated May 3, 2000, an Indian entity shall not issue any security to a person resident outside India or shall not record in its books any transfer of security from or to such a person, provided that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an entity to issue any security to a person resident outside India or to record in its books, transfer of security from or to such person, subject to such conditions as may be considered necessary. The amount of contravention is **₹38,26,157.40**, and the period of contravention is nine years ten months and five days.

6. The transfer of shares from Resident to Non-Resident as described in para 5 above was reported to the Reserve Bank of India on December 05, 2018, whereas as per Regulation 10 A (b) (i) read with Paragraph 10 of Schedule 1 to Notification No. FEMA 20/2000-RB, read with AP (DIR Series) Circular No. 63 dated April 22, 2009, the form FC-TRS should be submitted to the AD Category – I bank, within 60 days from the date of receipt of the amount of consideration which was received on November 12, 2008. The onus of submission of the form FC-TRS within the given timeframe would be on the transferor / transferee, resident in India. The form FC-TRS was submitted to AD Bank, with a delay of



nine years seven months and thirteen days, the amount of contravention is **₹38,26,157.40**.

7. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID (CEFA) No. 6855/22.11.509/2018-19 dated June 11, 2019, and email dated June 11, 2019, for further submission in person, and/or producing documents, if any, in support of the application. The applicant's authorized representatives, Mr. Subramanya T, General Manger - Finance, and Ms. Shilpa Shah, Legal Consultant, who appeared for the personal hearing on June 14, 2019, admitted the contraventions as stated in paragraphs 2, 3, 4, 5 and 6 above, committed by the applicant, for which compounding has been sought. During the personal hearing, it was submitted that the delay in seeking approval or reporting was not willful or with malafide intention, but was mainly due to inadvertence, and the same would not be repeated. In view of the above, the authorized representatives requested to take a lenient view in disposal of the application. 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 made in this context by the applicant during personal hearing and thereafter.

8. I have given my 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 the following FEMA provisions issued in terms of:

(a) Paragraph 9 (1) (A) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in reporting of foreign inward remittances received towards subscription to equity as detailed in Paragraph 2 above. The contravention relates to an amount of **₹33,450.00**, and the period of delay is twelve years ten months and five days;

(b) Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in receipt of amount of consideration, as detailed in Paragraph 3



above. The contravention relates to an amount of **₹4,289.28**, and the period of delay is eleven years three months and eleven days.

(c) Paragraph 9 (1) (B) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in submission of form FC-GPR to the Reserve Bank, after issue of shares, to person resident outside India as detailed in Paragraph 4 above. The contravention relates to an amount of **₹37,500.00**, and the period of delay is thirteen years two months and twenty days.

(d) Regulation 4 of Notification No. FEMA 20/2000-RB, due to taking on record in its books by the applicant without approval, the transfer of shares by Resident to Non-Resident as detailed in Paragraph 5 above. The contravention relates to an amount of **₹38,26,157.40**, and the period of delay is nine years ten months and five days; and

(e) Regulation 10A (b)(i) read with Paragraph 10 of Schedule I to FEMA 20/2000-RB, due to delay in reporting of transfer of shares in form FCTRS, as detailed in Paragraph 6 above. The amount of contravention is **₹38,26,157.40**, and the period of delay is nine years seven months and thirteen days.

9. It has been declared in the compounding application dated February 14, 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 been declared in the undertaking, 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, 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.



10. 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 contraventions are to be compounded, and I consider that an amount of **₹1,20,124.00 (Rupees One Lakh Twenty Thousand One Hundred and Twenty Four only)**, will meet the ends of justice.

11. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1)(A), 8, 9(1)(B), Regulation 4 and Regulation 10A (b)(i) read with para 10 of Schedule I to Notification No. FEMA 20/2000-RB, by the applicant, based on the facts discussed above, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹1,20,124.00 (Rupees One Lakh Twenty Thousand One Hundred and Twenty Four only)**, which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 2nd Floor, 10/3/8, Nrupathunga Road, Bengaluru – 560001, by a demand draft drawn in favour of the “Reserve Bank of India” and payable at Bengaluru 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 Eighteenth day of June 2019.

Sd/-

(M Ramakumari)
Deputy General Manager