



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
5th floor, Amr Building  
Sir P M Road  
Mumbai - 400 001

Present

**R.K. Moolchandani**  
**Chief General Manager**

Date: June 20, 2019  
CA No 4846 / 2018

In the matter of

**Marari Hideaways Resorts and Travels Pvt. Ltd.**  
**20/263B, Shastrimukku, Mararikulam**  
**Kalavoor, Alappuzha - 688546**  
**(Applicant)**

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

### **Order**

The applicant has filed the application dated December 15, 2018 (received in the Reserve Bank on December 26, 2018), 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 are, (i) availing External Commercial Borrowing (ECB) for an end-use that was not permitted (ii) drawdown before obtaining Loan Registration Number (LRN) from the Reserve Bank of India (RBI) and (iii) non-compliance with reporting requirements for ECB.

The above were in contravention of Regulation 6 of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3 /2000-RB dated May 3, 2000, as amended from time to time (hereinafter referred to as Notification No.



FEMA 3 /2000-RB), read with paragraphs 1(iv), 1(xi) and 1(xii) of Schedule I to this Regulation, as amended from time to time.

2. The relevant facts are as under: The applicant company was incorporated as Marari Hideaways Resorts and Travels Pvt Ltd (CIN U55101KL2007PTC020579), under the Companies Act, 1956, on March 29, 2007. It is engaged in the business of running and maintaining hotels, motels, holiday homes and rest houses.

The applicant company received certain inward remittances (totaling to Rs. 1,36,21,213.14/- ) from Mr. Keith Baker, a foreign shareholder of the applicant company, on various dates between May 2007 and January 2017. Out of the above inward remittances, shares were issued for Rs. 23,50,000/-, on March 31, 2013. The remaining amount (Rs. 1,12,71,213.14/-) was treated as 'loans and advances' in the books of accounts of the applicant company. The details of all inward remittances (totalling to Rs. 1,36,21,213.14/-) are as under:

S.No.	Date of receipt	Amount received (INR)
1	04.05.2007	16,17,719
2	21.08.2007	9,74,119
3	05.03.2008	7,59,403.20
4	18.11.2008	7,01,171.91
5	27.02.2009	7,03,084.43
6	30.10.2009	7,56,472.43
7	23.08.2010	7,03,942.43
8	02.12.2010	8,35,532.43
9	10.01.2011	6,86,932.43
10	19.05.2011	7,18,372.43
11	13.07.2011	6,97,072.43
12	28.10.2011	7,78,972.43
13	16.02.2012	6,02,807.25
14	29.03.2012	3,91,605.68
15	28.05.2012	8,44,292.91
16	23.11.2015	3,99,971.38
17	16.12.2015	9,99,971.37



18	20.01.2017	4,49,770.00
Total		1,36,21,213.14

Out of the total loan amount, Rs. 1,10,65,296.53/- was refunded by the applicant company on June 13, 2018. The requirement for refund of the remaining amount was waived by the foreign equity holder and the same was informed to the Reserve Bank vide letter dated 21.02.2019.

The applicant company has contravened the following regulations of Schedule I to FEMA 3/2000-RB

- (i) Para 1(iv) (end-use not permitted) of Schedule I – The loan amount was used by the applicant for general corporate purposes, which was not a permitted end-use.
- (ii) Para 1(xi) (draw-down before obtaining LRN) of Schedule I – The draw-down of the loan happened before obtaining LRN for ECB, which was not permitted.
- (iii) Para 1(xii) (not reporting ECB transaction) of Schedule I – the applicant did not meet the reporting requirement for ECB as specified by the Reserve Bank.

3. In terms of Regulation 6 of Notification No.FEMA.3/2000-RB dated May 03, 2000 as amended from time to time "a person resident in India .... may raise in accordance with the provisions of the Automatic Route Scheme specified in Schedule I, foreign currency loans of the nature and for the purposes as specified in that Schedule....".

Paragraph 1(iv) of Schedule I to FEMA Notification No. FEMA.3/2000-RB provides the end-uses for which ECB is permitted. However, working capital purposes was not a permitted end-use for ECB, before issuance of AP (DIR Series) Circular No. 31, dated September 4, 2013, vide which it was then permitted.

Paragraph 1(xi) of Schedule I to FEMA Notification No. FEMA.3/2000-RB states that, "draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only after obtaining the loan registration number from the Reserve Bank".

Paragraph 1 (xii) of Schedule I to FEMA Notification No. FEMA.3/2000-RB states that "The borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time".

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/6888/15.20.67/2018-19 dated May 23, 2019 for further submission in person



and/or producing documents, if any, in support of the application. The personal hearing was held on June 18, 2019, during which Shri C.S. George, Auditor of the applicant company and Shri M.S. Sridhar, Consultant, represented the applicant. The representatives of the applicant submitted that the company had inadvertently failed to comply with the FEMA regulations due to ignorance, and therefore requested that a lenient view may be taken in the matter. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulation 6 of Notification No. FEMA 3/2000-RB read with Paragraphs 1(iv), (xi) and (xii) of Schedule I to this Regulation. The amount of contravention is Rs. 1,12,71,213.14/- and the period of contravention ranges from two years to eleven years approximately.

6. 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. The applicant raised loans for an end-use that was not permitted under FEMA, 1999 and the Regulations issued thereunder. Further, the applicant did not pay any interest on such borrowings for the period during which the funds were retained and used. Thus, undue gains were deemed to have accrued to the applicant for the amounts of loan availed prior to September 4, 2013 (consequent to which ECB was permitted to be utilized for working capital purposes), and retained for the period till such time when the end-use was permitted under the Regulations. With a view to neutralize such undue gains to the applicant, the average rates of interest accruing on Government of India Bonds having a ten year maturity period have been notionally applied to determine the minimum rate of interest that would have been payable by the applicant if such borrowings were sourced domestically.

Therefore, after considering the submissions made by the applicant with regard to the contraventions and the entire facts and circumstances of the case, I am persuaded to take a view that undue gains made by the applicant require to be neutralized and it stands to reason that payment of an amount of Rs. 25,02,894/- (Rupees twenty five lakh two thousand eight



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Marari Hideaways Resorts and Travels Private Limited  
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hundred and ninety four only), incorporating the impact of neutralization as above, will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulation 6 of Notification No. FEMA 3/2000-RB read with Paragraphs 1(iv), (xi) and (xii) of Schedule I to this Regulation, as amended from time to time, on payment of a sum of Rs. 25,02,894/- (Rupees twenty five lakh two thousand eight hundred and ninety four only), which shall be deposited by the applicant with Reserve Bank of India, Foreign

Exchange Department, 5<sup>th</sup> Floor, Amar Building, Fort, Mumbai 400001 by a demand draft drawn in favor 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 accordingly.

Dated this the 20th day of June, 2019

**Sd/-**

**(R.K. Moolchandani)**

**Chief General Manager**