



In the  
**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
6, Sansad Marg  
New Delhi - 110001

Present  
**Md. Shakir Hasan**  
**Assistant General Manager**

Date: October 9, 2019  
CA No. NDL 459/2019

In the matter of  
**Beachem Private Limited**  
35, Community Centre (Basement), Basant Lok, Vasant Vihar, New Delhi - 110057  
**(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 April 30, 2019 (received at Reserve Bank of India, New Delhi on May 29, 2019) and addendums dated July 26, 2019 and September 25, 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 reporting foreign inward remittances received for issue of shares, (ii) delay in filing Form FC-GPR after allotment of shares, and (iii) allotment of shares to person resident outside India prior to receipt of the amount of consideration and delay in refund of excess share application money, in terms of paragraphs 9(1)(A), 9(1)(B) and 8 respectively 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.



2. The relevant facts of the case are as follows:

(a) The applicant company, incorporated on May 17, 2017, is engaged in the business of buying, transporting and exporting goods being pieces/ items of arts, antiques, handicrafts on retail as well as wholesale basis in India.

(b) The applicant had reported receipt of foreign inward remittance on two occasions during the year 2017. On both the occasions, the applicant had reported the remittances received from its foreign investor, M/s Beachem LLC, U.S.A., with delay of 3 months & 7 days and 4 months & 10 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of Receipt	Amount (₹)	Date of Reporting
1	13.07.2017	6,29,626.00	22.12.2017
2	16.08.2017	9,582.00	22.12.2017
	<b>Total</b>	<b>6,39,208.00</b>	

Whereas, in terms of paragraph 9(1)(A) 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 receipt of the amount of consideration received by Indian company for issue of shares or convertible debentures or warrants, a report in Advance Reporting Form as specified by Reserve Bank from time to time along with documents prescribed therein.

(c) The applicant had reported the allotment of shares on May 17, 2017 to the subscriber to the Memorandum of Association (MoA), M/s Beachem LLC, U.S.A., the consideration for which was received on two occasions with delay of 10 months & 19 days and 11 months & 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	Date of Receipt	Amount (₹)	Date of Reporting
1	17.05.2017	13.07.2017	6,29,620.00	02.08.2018
2	17.05.2017	16.08.2017	3,980.00	03.08.2018
		<b>Total</b>	<b>6,33,600.00</b>	



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.

(d) The applicant had received the inward remittance of ₹3,980/- on August 16, 2017 against 398 shares allotted to the subscriber to the MoA, M/s Beachem LLC, U.S.A., on May 17, 2017 with a delay of 1 month, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable. Further, the applicant had refunded the excess share application money of ₹5,602/- received on August 16, 2017 to its foreign investor, M/s Beachem LLC, U.S.A., on March 20, 2019, through its AD bank, without RBI approval, with a delay of 1 year, 1 month and 8 days beyond the prescribed period, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, an Indian company accepting FDI has to receive the share application money from the non-resident investor prior to the allotment of shares, and the shares have to be issued/ amount to be refunded, in case shares have not been issued, within 180 days from the date of receipt of inward remittance.

(e) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 to FEMA 20/2000-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. Shri Anuj Devasar, Director and Shri Rakesh Chhabra, Chartered Accountant, appeared for personal hearing on October 9, 2019 on behalf of the applicant. The representatives 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 FIRC with correct purpose, foreign exchange fluctuation/ bank charges and inadvertent omission. 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)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in reporting foreign inward remittance received for issue of shares as detailed in paragraph 2(b) above. The contraventions relate to an amount of ₹6,39,208/- (Rupees Six Lakh Thirty Nine Thousand Two Hundred and Eight only) and the periods of delay are 3 months & 7 days and 4 months & 10 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in filing Form FC-GPR after issue of shares as detailed in paragraph 2(c) above. The contraventions relate to an amount of ₹6,33,600/- (Rupees Six Lakh Thirty Three Thousand and Six Hundred only) and the periods of delay are 10 months & 19 days and 11 months & 21 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of allotment of shares to person resident outside India prior to receipt of inward remittance and delay in refund of excess share application money as detailed in paragraph 2(d) above. The contravention pertaining to allotment of shares to person resident outside India prior to receipt of inward remittance relates to an amount of ₹3,980/- (Rupees Three Thousand Nine Hundred and Eighty only) and the period of delay is 1 month and that pertaining to delay in refund of excess share application money relates to an amount of ₹5,602/- (Rupees Five Thousand Six Hundred and Two only) and the period of delay is 1 year, 1 month and 8 days.

5. It has been declared in the compounding application dated April 30, 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 dated June 19, 2019 furnished as part of 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 **₹23,357/- (Rupees Twenty Three Thousand Three Hundred and Fifty Seven only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 to FEMA 20/2000-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 **₹23,357/- (Rupees Twenty Three Thousand Three Hundred and Fifty Seven 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 9<sup>th</sup> day of October 2019.

Sd/-  
**(Md. Shakir Hasan)**  
**Assistant General Manager**