



In the
Reserve Bank of India
Foreign Exchange Department
Mumbai Regional Office
Main Building, 3rd floor
Shahid Bhagat Singh Marg, Fort
Mumbai 400 001

Present
Shri J.K. Pandey
Chief General Manager

March 22, 2019

CA NO. MUM 830/2019

In the matter of

M/s KDD (India) Private Limited
Regus Suburb Centre Pvt. Ltd., Level 4,
Dynasty-Business Park, A-Wing, 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 thereunder, I pass the following

Order

- 1** The applicant has filed the compounding application dated January 17, 2019, received at the Reserve Bank on January 31, 2019, for compounding of contravention/s of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are in respect of the following paras under 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 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB) and Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations 2017, notified vide Notification No FEMA 20R/2017 RB dated November 07, 2017, as amended from time to time (hereinafter referred to as Notification No. FEMA 20R/2017-RB):



- a) Para 9 (1) (A) of Notification No. FEMA 20/2000-RB: delay in reporting receipt of foreign inward remittance towards subscription to equity
 - b) Para 9 (1) (B) of Notification No. FEMA 20/2000-RB: delay in filing Form FC GPR to Reserve Bank after issue of shares to person resident outside India
 - c) Para 2(2) of Notification No. FEMA 20R/2017-RB: neither the equity instruments were issued, nor the money refunded to the foreign investor, a person resident outside India within 60/75 days (as applicable) of the receipt of the inward remittance
- 2 Brief details of the company M/s KDD (India) Private Limited are as follows:

Date of Incorporation	December 17, 2008
Its main activities are:	Manufacture of other non-alcoholic beverages, to set up dairy farms in India and to deal in products like milk, cream, butter etc

- 3 The applicant received foreign inward remittances from non-resident investors towards equity / compulsorily convertible preference shares/ compulsorily convertible debentures and the company reported the same to the Reserve Bank on dates as indicated below.

Delay under 9(1)(A) &/or Para 8						
(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days, LSF stands for : Late Submission Fees						
S No/ Isf	Date of inward remittance	Amount received (in INR)	Date of reporting to RBI	Para 9 (1) (A) delay	Date of allotment/ refund	Para 2(2) delay
1	03/02/09	100,000.00	02/03/09	0	08/02/09	0
2	08/04/09	9,900,000.00	23/04/09	0	20/08/09	0
3	25/09/09	10,000,000.00	14/10/09	0	08/11/09	0
4	25/03/10	60,000,000.00	15/04/10	0	16/07/10	0
5	20/10/10	60,000,000.00	19/11/10	0	24/03/11	0
6	08/07/11	10,000,000.00	23/07/11	0	20/10/11	0
7	21/09/11	10,000,000.00	18/10/11	0	20/10/11	0
8	01/12/11	10,000,000.00	13/02/12	0Y 1M 12D	24/05/12	0
9	13/01/12	10,000,000.00	13/02/12	0	24/05/12	0
10	21/02/12	20,000,000.00	16/03/12	0	24/05/12	0
11	22/03/12	20,000,000.00	20/04/12	0	24/05/12	0
12	29/03/12	20,000,000.00	30/04/12	0Y 0M 1D	24/05/12	0
13	03/05/12	20,000,000.00	25/05/12	0	24/05/12	0
14	22/05/12	30,000,000.00	01/06/12	0	24/05/12	0



15	30/10/12	20,000,000.00	28/11/12	0	25/04/13	0
16	30/11/12	30,000,000.00	18/12/12	0	24/04/13	0
17	05/02/13	20,000,000.00	18/02/13	0	01/08/13	0
18	25/02/13	20,000,000.00	25/03/13	0	01/08/13	0
19	14/03/13	20,000,000.00	25/03/13	0	01/08/13	0
20	28/03/13	50,000,000.00	16/04/13	0	01/08/13	0
21	27/09/13	50,000,000.00	28/10/13	0	25/11/13	0
22	01/06/13	20,000,000.00	01/07/13	0	25/11/13	0
23	14/06/13	40,000,000.00	01/07/13	0	25/11/13	0
24	21/02/14	50,000,000.00	20/03/14	0	18/06/14	0
25	27/03/14	80,000,000.00	23/04/14	0	18/06/14	0
26	27/05/14	50,000,000.00	25/06/14	0	26/07/14	0
27	23/09/14	50,000,000.00	21/10/14	0	20/11/14	0
28	26/11/14	50,000,000.00	17/12/14	0	22/01/15	0
29	11/03/15	50,000,000.00	06/04/15	0	30/04/15	0
30	25/02/16	40,000,000.00	31/03/16	0Y 0M 4D	28/04/16	0
31	25/04/16	60,000,000.00	31/05/16	0Y 0M 5D	16/05/16	0
32	03/03/17	50,000,000.00	06/12/17	0Y 8M 2D	20/03/17	0
33	18/09/17	25,000,000.00	06/12/17	0Y 1M 18D	11/10/17	0
34	14/02/18	24,000,000.00	13/03/18	0	07/05/18	0Y 0M 22D
35	25/05/18	12,000,000.00	12/06/18	0	16/08/18	0Y 0M 23D
	TOTAL	1,101,000,000.00				

The applicant reported receipt of remittances to the Reserve Bank of India on dates indicated above with a delay ranging from 0Y 0M 1D to 0Y 8M 2D. Further, the applicant company delayed in reporting in 6 out of 35 total remittances beyond the stipulated time of 30 days. Whereas, in terms of Paragraph 9 (1) (A) of Schedule 1 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.

- 4 In respect of remittances amounting to Rs.36,000,000 (Rupees Three Crore Sixty Lakh and Zero Paise Only), indicated in the table above, the company allotted shares/ refunded the amount after 60days/75 days (as applicable) from the date of receipt of investment, with a delay ranging from 0Y 0M 22D to 0Y 0M 23D. Whereas in terms of 2(2) of Schedule 1 to Notification No. FEMA 20R/2017-RB, an Indian company is required to issue shares or refund the amount within 60 days/75 days (as applicable) from the date of receipt of inward remittance.
- 5 The company allotted equity shares/preference shares/convertible preference shares and filed FC-GPRs as indicated below:



Contravention under Para 9(1)(B)						
(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days, LSF stands for : Late Submission Fees and FV stands for Face Value)						
Sno / Isf	Date of allotment	Number of shares	FV+ premium (in INR)	Amount (FV*no of shares) (in INR)	Date of reporting	Para 9 (1) (B) delay
1	08/02/09	10000	10	100,000.00	12/03/09	0Y 0M 1D
2	20/08/09	990000	10	9,900,000.00	07/09/09	0
3	08/11/09	1000000	10	10,000,000.00	01/12/09	0
4	16/07/10	6000000	10	60,000,000.00	05/04/11	0Y 7M 17D
5	24/03/11	6000000	10	60,000,000.00	09/04/11	0
6	20/10/11	2000000	10	20,000,000.00	18/11/11	0
7	24/05/12	13000000	10	130,000,000.00	07/06/12	0
8	25/04/13	625000	80	50,000,000.00	25/05/13	0
9	01/08/13	1375000	80	110,000,000.00	28/08/13	0
10	25/11/13	1375000	80	110,000,000.00	03/12/13	0
11	18/06/14	1625000	80	130,000,000.00	18/07/14	0
12	26/07/14	625000	80	50,000,000.00	25/08/14	0
13	20/11/14	625000	80	50,000,000.00	19/12/14	0
14	22/01/15	625000	80	50,000,000.00	20/02/15	0
15	30/04/15	625000	80	50,000,000.00	26/05/15	0
16	28/04/16	800000	50	40,000,000.00	25/07/16	0Y 1M 27D
17	16/05/16	1200000	50	60,000,000.00	25/07/16	0Y 1M 8D
18	20/03/17	1000000	50	50,000,000.00	14/07/17	0Y 2M 24D
19	11/10/17	500000	50	25,000,000.00	05/02/18	0Y 2M 25D
20	07/05/18	400000	60	24,000,000.00	07/06/18	0
21	16/08/18	200000	60	12,000,000.00	11/09/18	0
	TOTAL			1,101,000,000.00		

The applicant filed form FC-GPRs as indicated above with a delay ranging from 0Y 0M 1D to 0Y 7M 17D. Whereas, in terms of Paragraph 9(1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to RBI a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to Non Resident.

- 6 The applicant was given an opportunity for personal hearing, for further submission in person and/or for producing documents, if any, in support of the application vide e-mail dated March 12, 2019. The applicant applied for waiver of personal hearing vide e mail dated March 12, 2019. The applicant, in the compounding application, had admitted the contraventions as stated above for which compounding has been sought. It had been submitted that the contraventions were not wilful and were unintentional. 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.



- 7 I have given my careful consideration to the documents on record and thereafter. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:
- a) Paragraph 9(1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in reporting of receipt of foreign inward remittance towards subscription of shares as detailed above. The contravention relates to total amount of Rs.205,000,000 (Rupees Twenty Crore Fifty Lakh and Zero Paise Only) and with a delay ranging from minimum 0Y 0M 1D to maximum 0Y 8M 2D approximately.
 - b) Paragraph 9(1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India and the contravention relates to total amount of Rs.235,100,000 (Rupees Twenty Three Crore Fifty One Lakh and Zero Paise Only) and with a delay ranging from minimum 0Y 0M 1D to maximum 0Y 7M 17D approximately.
 - c) Paragraph 2(2) of Schedule 1 to Notification No. FEMA 20R/2017-RB since the shares were not issued to the person resident outside India within 60 from the date of receipt of the inward remittance. The contravention relates to total amount of Rs.36,000,000 (Rupees Three Crore Sixty Lakh and Zero Paise Only) and with a delay ranging from minimum 0Y 0M 22D to maximum 0Y 0M 23D approximately.
- 8 It has been declared in the compounding application dated January 17, 2019 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has also been declared in a declaration attached to 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/him/her 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.
- 9 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 Rs.429,583 (Rupees Four Lakh Twenty Nine Thousand Five Hundred Eighty Three and Zero Paise Only) will meet the ends of justice.



- 10 Accordingly, I compound the admitted contravention/s namely, the contravention/s of Para 9 (1) (A), Para 9 (1) (B) and Para 2(2) of Schedule 1 to Notification No. FEMA 20/2000-RB and Notification No FEMA 20R/2017-RB by the applicant, on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.429,583 (Rupees Four Lakh Twenty Nine Thousand Five Hundred Eighty Three and Zero Paise Only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, 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.
- 11 The above order is passed only in respect of contraventions of Para 9 (1) (A), Para 9 (1) (B) and Para 2(2) of Schedule 1 to Notification No. FEMA 20/2000-RB and Notification No. FEMA 20R/2017-RB. and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.
- 12 The application is disposed of accordingly.
Dated: March 22, 2019

Compounding Authority

(J.K. Pandey)
Chief General Manager