



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

Present
V. G. Sekar
Chief General Manager
Date: February 20, 2020
CA No. NDL 556/2019

In the matter of
Ashimara Housing Private Limited
B3/47, Safdarjung Enclave, New Delhi -110029
(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 September 20, 2019 (received at Reserve Bank of India, New Delhi on September 26, 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 issue of shares, and (iii) delay in issue of shares after receipt of remittance, 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 then applicable.



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

(a) The applicant company, incorporated on June 06, 2016, is engaged in the business of providing housing facilities such as hostels and PG accommodation to students.

(b) The applicant had reported receipt of foreign inward remittance from its foreign investors on nine occasions during the period May 2017 to June 2018 and reported seven of them with delay ranging from 11 months and 9 days to 1 year and 3 months 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	02.05.2017	50,00,000.00	10.08.2019*
2	05.05.2017	10,01,325.00	10.08.2019*
3	11.05.2017	10,00,000.00	10.08.2019*
4	23.05.2017	10,00,186.00	10.08.2019*
5	30.05.2017	10,00,000.00	19.08.2019*
6	14.06.2017	10,00,000.00	19.08.2019*
7	19.06.2017	15,00,000.00	28.06.2018
	Total	1,15,01,511.00	

* Reporting of receipt of foreign inward remittance for issue of capital instruments in Advance Remittance Form was dispensed with in terms of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Second Amendment) Regulations, 2018 with effect from September 1, 2018. Delay in reporting of foreign inward remittance has, therefore, been taken up to August 31, 2018.

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 a copy/ies of documents prescribed therein. Further, on two other occasions there was delay in reporting the receipt of remittance in contravention of the provisions of Regulation 13.1(1) of FEMA 20(R)/2017-RB, as then applicable, and the applicant paid Late Submission Fee (LSF) for the said contravention as required in terms of Regulation 13.2 of FEMA 20(R)/2017-RB.

(c) The applicant had reported the issue of shares to its foreign investors on three occasions and reported two of them with delay of 1 year, 8 months & 9 days and 1



year, 8 months & 15 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 Issue	Amount (₹)	Date of Reporting in Form FC-GPR
1	01.11.2017	80,01,440.00	10.08.2019
2	04.11.2017	35,00,000.00	19.08.2019
	Total	1,15,01,440.00	

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 the Form FC-GPR as specified by the Reserve Bank from time to time together with the documents prescribed therein. Further, on one occasion there was delay in filing Form FC-GPR in contravention of the provisions of Regulation 13.1(2) of FEMA 20(R)/2017-RB, as then applicable, and the applicant paid Late Submission Fee (LSF) for the said contravention as required in terms of Regulation 13.2 of FEMA 20(R)/2017-RB.

(d) The applicant had received foreign inward remittance of ₹50,00,000/- on May 02, 2017 and issued shares thereagainst on November 01, 2017 with a delay of 3 days in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB. Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, a company in India issuing shares or convertible debentures or warrants under this Schedule to a person resident outside India shall receive the amount of consideration for such shares or convertible debentures or warrants by inward remittance through normal banking channels, or by debit to NRE / FCNR (B) account of the person concerned maintained with an authorised dealer / authorized bank, or by debit to a non-interest bearing Escrow account (in Indian Rupees) maintained in India with an AD bank in accordance with Foreign Exchange Management (Deposit) Regulations, 2000. Provided that if the shares or convertible debentures or warrants are not issued within 180 days from the date of receipt of the inward remittance or date of NRE / FCNR (B) / Escrow account, the amount of consideration so received shall be refunded to the person concerned by outward remittance through normal banking channels or by credit to his NRE /



FCNR (B) account, as the case may be. Provided further that the Reserve Bank, may on application made to it and for sufficient reasons permit an Indian company to refund the amount of consideration received towards issue of security, if such amount of consideration is outstanding beyond a period of 180 days from the date of receipt.

(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 Naveen Narang, Company Secretary, appeared for personal hearing on February 18, 2020 on behalf of the applicant. The representative admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to delay in receipt of KYC and lack of awareness about FEMA compliances. He 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 ₹1,15,01,511/- (Rupees One Crore Fifteen Lakh One Thousand Five Hundred and Eleven only) and the period of delay ranges from 11 months and 9 days to 1 year and 3 months.

(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 ₹1,15,01,440/- (Rupees One Crore Fifteen Lakh One Thousand Four Hundred and Forty only) and the period of delays are 1 year, 8 months & 9 days and 1 year, 8 months & 15 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account



of delay in issue of shares after receipt of remittance as detailed in paragraph 2(d) above. The contravention relates to an amount of ₹50,00,000/- (Rupees Fifty Lakh only) and the delay is of 3 days.

5. It has been declared in the compounding application dated September 20, 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 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. 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 **₹1,14,045/- (Rupees One Lakh Fourteen Thousand and Forty Five 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 **₹1,14,045/- (Rupees One Lakh Fourteen Thousand and Forty Five 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 20th day of February 2020.

Sd-
(V.G. Sekar)
Chief General Manager