



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

Present
Devika Gowrishankar
Deputy General Manager
Date: January 17, 2020
CA No. NDL 526/2019

In the matter of
Farnham Enterprises Private Limited
Plot No. 52, Anand Vihar, Nagli Sakrawati, Najafgarh
New Delhi - 110043
(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 August 8, 2019 (received at Reserve Bank of India, New Delhi on August 27, 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) issue of shares to person resident outside India prior to receipt of the amount of consideration, and (ii) delay in refund of excess share application money, in terms of paragraphs 2(2) and 2(3) respectively of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 notified vide Notification No. FEMA 20(R)/2017-RB dated November 7, 2017 (hereinafter referred to as FEMA 20(R)/2017-RB), as then applicable.



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

(a) The applicant company, incorporated on January 16, 2018, is engaged in the business of other non-specialised wholesale trade n.e.c..

(b) The applicant issued 1,48,500 equity shares on January 17, 2018 to the subscriber to its Memorandum of Association, M/s B.M.E. Commerce Ltd., Israel. The consideration for the said shares amounting to ₹14,85,000/- was received in two tranches with delay of 1 month & 6 days and 7 months & 19 days, beyond the prescribed period, as detailed below, in contravention of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable.

Sl.No.	Date of issue	Amount (₹)	Date of receipt
1	17.01.2018	7,66,610.02	23.02.2018
2	17.01.2018	7,18,389.98	05.09.2018
	Total	14,85,000.00	

Whereas, in terms of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, an Indian company accepting FDI has to receive the share application money from the non-resident investor prior to the issue of shares, and shares have to be issued within sixty days from the date of receipt of the consideration.

(c) The applicant had received share application money amounting to ₹15,45,768.04 and issued shares for a consideration of ₹14,85,000/- as detailed in paragraph 2(b) above. The excess amount of ₹60,768.04 was refunded to M/s B.M.E. Commerce Ltd., Israel, on March 06, 2019, with a delay of 3 month and 15 days beyond the prescribed period, in contravention of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable. Whereas, in terms of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, where such capital instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance through banking channels or by credit to his NRE / FCNR(B) accounts, as the case may, be within fifteen days from the date of completion of sixty days.

(d) Thus, there are contraventions of paragraphs 2(2) and 2(3) of Schedule 1 to FEMA 20(R)/ 2017-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. Ms. Princy Agrawal, Consultant, appeared for personal hearing on



January 16, 2020 on behalf of the applicant. The representative of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, she submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to lack of awareness about FEMA compliance. She 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 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable, on account of issue of shares to person resident outside India prior to receipt of the amount of consideration as detailed in paragraph 2(b) above. The contraventions relates to an amount of ₹14,85,000/- (Rupees Fourteen Lakh and Eighty Five Thousand only) and the periods of contraventions are 1 month & 6 days and 7 month & 19 days.

(b) Paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable, on account of delay in refund of excess share application money as detailed in paragraph 2(c) above. The contravention relates to an amount of ₹60,768.04 (Rupees Sixty Thousand Seven Hundred Sixty Eight and Paise Four only) and the period of delay is 3 months and 15 days.

5. It has been declared in the compounding application dated August 8, 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 August 8, 2019 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 **₹57,729/- (Rupees Fifty Seven Thousand Seven Hundred and Twenty Nine only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraphs 2(2) and 2(3) of Schedule 1 to FEMA 20(R)/2017-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 **₹57,729/- (Rupees Fifty Seven Thousand Seven Hundred and Twenty Nine 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 17th day of January 2020.

Sd/-
(Devika Gowrishankar)
Deputy General Manager

