



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

6, Sansad Marg

New Delhi-110001

Present

P S Khual

General Manager

Date: July 3, 2019

CA No. NDL 387/2019

In the matter of

K&L Communications India Private Limited

F-89/19, Okhla Phase-I, New Delhi-110020

(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 February 8, 2019 (received at Reserve Bank of India, New Delhi on February 19, 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 remittance received for issue of shares, (ii) delay in filing form FC-GPR after issue of shares, (iii) delay in refund of excess share application money beyond 180 days and, (iv) delay in filing the Annual Return on Foreign Liabilities and Assets (FLAR), in terms of paragraphs 9(1)(A), 9(1)(B), 8 and 9(2) 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 was incorporated on October 24, 2007 as M/s K & L Arms Communication Private Limited. The name of the company was changed to M/s K&L Communications India Private Limited on March 19, 2019 (after submission of the compounding application). The company is engaged in the business of advertising.

(b) The applicant had received foreign inward remittance of ₹5,09,730/- on November 14, 2007 from its foreign investor, M/s K&L Inc., Japan and reported it on December 5, 2018 with a delay of 10 years, 8 months and 17 days beyond the prescribed period in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank, not later than 30 days from the date of receipt of the amount of consideration, a report indicating the details as prescribed therein.

(c) The applicant had issued 50,000 Equity Shares to its foreign investor, M/s K&L Inc., Japan on March 12, 2008 for a consideration of ₹5,00,000/- and reported it on December 5, 2018 with a delay of 10 years, 7 months and 24 days beyond the prescribed period in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank, not later than 30 days from the date of issue of shares, a report in the form FC-GPR together with documents prescribed therein.

(d) The applicant had refunded the excess share application money of ₹9,730/- to its foreign investor, M/s K&L Inc., Japan on May 4, 2012, through its AD bank, with a delay of 3 years, 11 months and 22 days beyond the prescribed period of 180 days from the date of receipt of foreign inward remittance, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007. Whereas, in terms of



paragraph 8 of Schedule 1 to FEMA 20/2000-RB read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned. Provided that the Reserve Bank may on an application made to it and for sufficient reasons permit to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt.

(e) The applicant had delayed in filing the FLAR/ Part B of form FC-GPR for the financial years 2007-2008 to 2014-2015 to the Reserve Bank with delay ranging from 3 years, 1 month and 29 days to 10 years, 5 months and 1 day beyond the prescribed period, as detailed below, in contravention of paragraph 9(2) of Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas in terms of paragraph 9(2) of Schedule 1 to FEMA 20/2000-RB, all Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year shall submit to the Reserve Bank, on or before the 15th day of July of each year, a report titled 'Annual Return on Foreign Liabilities and Assets' as specified by the Reserve Bank from time to time. Part B of form FC-GPR was replaced by FLAR vide A.P. (DIR Series) Circular No. 45 dated March 15, 2011.

Sl. No.	Financial Year	Due Date	Date of Reporting
1	2007-2008	30.06.2008*	01.12.2018
2	2008-2009	31.07.2009 [#]	01.12.2018
3	2009-2010	31.07.2010 [#]	01.12.2018
4	2010-2011	15.07.2011	12.09.2018
5	2011-2012	15.07.2012	12.09.2018
6	2012-2013	15.07.2013	12.09.2018
7	2013-2014	15.07.2014	13.09.2018
8	2014-2015	15.07.2015	13.09.2018

*As per A.P. (DIR Series) Circular No. 40 dated April 20, 2007

[#]As per A.P. (DIR Series) Circular No. 44 dated May 30, 2008

(f) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B), 8 and 9(2) 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 Sanjay Sood and Ms. Deepti Gajwani, both consultants, appeared for personal hearing on July 2, 2019 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, they submitted that contraventions were without any *malafide* or wilful intention but were mainly due to oversight as the company was not having adequate professional assistance to comply with these provisions. 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, on account of delay in reporting foreign inward remittance received towards subscription of shares as detailed in paragraph 2(b) above. The contravention relates to an amount of ₹5,09,730/- (Rupees Five Lakh Nine Thousand Seven Hundred and Thirty only) and the period of delay is 10 years, 8 months and 17 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, 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 ₹5,00,000/- (Rupees Five Lakh only) and the period of delay is 10 years, 7 months and 24 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, on account of delay in refund of excess share application money beyond 180 days, as detailed in paragraph 2(d) above. The contravention relates to an amount of ₹9,730/- (Rupees Nine Thousand Seven Hundred and Thirty only) and the period of delay is 3 years, 11 months and 22 days.

(d) Paragraph 9(2) of Schedule 1 to FEMA 20/2000-RB, on account of delay in filing the FLAR/ Part B of form FC-GPR for the financial years 2007-2008 to 2014-2015, as detailed in paragraph 2(e) above. Foreign liabilities of the company as on March 31, 2015 stood at ₹91.57 lakh as per FLA Return and the period of delay ranges from 3 years, 1 month and 29 days to 10 years, 5 months and 1 day.



5. It has been declared in the compounding application dated February 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 February 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 **₹1,25,312/- (Rupees One Lakh Twenty Five Thousand Three Hundred and Twelve 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), 8 and 9(2) 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 **₹1,25,312/- (Rupees One Lakh Twenty Five Thousand Three Hundred and Twelve 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 3rd day of July 2019.

Sd/-
(P S Khual)
General Manager