



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

Present
Md. Shakir Hasan
Assistant General Manager

Date: January 27, 2020
CA No. NDL 546/2019

In the matter of
Medbay India Private Limited
30, Malka Ganj, 30 UA, Jawahar Nagar, New Delhi – 110007

(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 19, 2019 (received at Reserve Bank of India, New Delhi on September 03, 2019) and addendum dated January 10, 2020 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) issue of shares to person resident outside India prior to receipt of the amount of consideration, 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, and (iv) delay in refund of excess share application money, in terms of paragraph 2(3) 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 December 02, 2015, is engaged in the business of operation of web sites that use a search engine to generate and maintain extensive databases of internet addresses and content in an easily searchable format.

(b) The applicant had reported the receipt of foreign inward remittance from its foreign investors on four occasions. The receipt of remittance amounting to ₹1,09,926.14 on December 08, 2016 from M/s Letsventure Online Pte Limited, Singapore, was reported by the applicant on June 03, 2017 with a delay of 4 months and 27 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 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 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 the delays were in contravention of the provisions of Regulation 13.1(1) of FEMA 20(R)/2017-RB, as then applicable, and the applicant has 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 issue of shares to its foreign investors on four occasions and reported two of them with delay of 11 months & 29 days and 2 years, 6 months & 6 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	14.12.2016	1,09,680.00	11.01.2018
2	14.12.2016	4,82,592.00	19.07.2019
	Total	5,92,272.00	

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 two other occasions the delays were in contravention of the provisions of Regulation 13.1(2) of FEMA 20(R)/2017-RB, as then applicable, and the applicant has 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 issued 1 equity share and 43 CCPs on December 14, 2016 for a consideration of ₹4,82,592/-, against the foreign inward remittance received on June 18, 2019 with a delay of 2 years, 6 months and 4 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, 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



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) The applicant had received share application money amounting to ₹1,00,00,000/- on May 02, 2018 and issued shares for a consideration of ₹99,92,325/- on May 15, 2018. The excess amount of ₹7,675/- was refunded to the investor on January 14, 2019, with a delay of 5 months and 29 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.

(f) 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, and paragraph 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. Shri Akshay Mehta, Company Secretary, appeared for personal hearing on January 24, 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 on account of delay in receipt of KYC and FIRC with correct purpose and change in consultants. 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 contravention relates to an amount of ₹1,09,926.14 (Rupees One Lakh Nine Thousand Nine Hundred Twenty Six and Paise Fourteen only) and the period of delay is 4 months and 27 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 ₹5,92,272/- (Rupees Five Lakh Ninety Two Thousand Two Hundred and Seventy Two only) and the period of delays are 11 months & 29 days and 2 years, 6 months & 6 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of issue of shares prior to receipt of the amount of consideration as detailed in paragraph 2(d) above. The contravention relates to an amount of ₹4,82,592/- (Rupees Four Lakh Eighty Two Thousand Five Hundred and Ninety Two only) and the period of contravention is 2 years, 6 months and 4 days.

(d) Paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017, on account of delay in refund of excess share application money beyond the prescribed period as detailed in paragraph 2(e) above. The contravention relates to an amount of ₹7,675/- (Rupees Seven Thousand Six Hundred and Seventy Five only) and the period of delay is 5 months and 29 days.

5. It has been declared in the compounding application dated August 19, 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 November 08, 2019 furnished as a 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 contraventions 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 **₹56,314/- (Rupees Fifty Six Thousand Three Hundred and Fourteen 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, and paragraph 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 **₹56,314/- (Rupees Fifty Six Thousand Three Hundred and Fourteen 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 27th day of January 2020.

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