



In the

**RESERVE BANK OF INDIA**

Foreign Exchange Department

6, Sansad Marg

New Delhi-110001

Present

**Anupam Sonal**

**Chief General Manager**

Date: February 22, 2019

CA No. NDL 315/2018

In the matter of

**OMP India Private Limited**

Village – Bhagola, Devli Road, Palwal, Faridabad-121102

**(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 21, 2018 (received at Reserve Bank of India, New Delhi on October 9, 2018) for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contravention 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, and (iii) receipt of amount of consideration after allotment of shares and delay in allotment of shares beyond 180 days of the receipt of the amount of consideration from persons resident outside India, in terms of paragraphs 9(1)(A), 9(1)(B) and 8 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, as amended from time to time.



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

(a) The applicant company was incorporated on January 11, 2007 and is engaged in manufacture of other transport equipment, such as, pushcarts, handcrafts etc.

(b) The applicant had reported the receipt of twenty one foreign inward remittances during the period January 22, 2007 to February 8, 2017 with delay ranging from 4 days to 9 years, 3 months and 26 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, as then applicable.

<b>Contravention of Para 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000</b>			
<b>Sr. No.</b>	<b>Date of receipt</b>	<b>Amount (in INR)</b>	<b>Date of reporting</b>
1.	22.01.2007	5673000.00	20.03.2007
2.	22.08.2008	19384300.00	16.01.2018
3.	23.08.2008	25220000.00	04.03.2013
4.	19.07.2010	5960808.00	25.08.2010
5.	04.08.2010	4225900.00	16.09.2010
6.	03.09.2010	7672719.00	07.02.2012
7.	29.09.2010	7800100.00	07.02.2012
8.	02.07.2012	1393050.00	31.08.2012
9.	18.07.2012	8438720.00	31.08.2012
10.	25.03.2013	4874275.00	04.07.2013
11.	23.04.2013	4923269.00	04.07.2013
12.	23.08.2013	11113026.00	26.09.2013
13.	15.10.2013	41666025.00	27.11.2013
14.	17.01.2014	16653196.00	07.07.2016
15.	28.02.2014	33915290.00	17.09.2014
16.	28.03.2014	13165780.00	17.09.2014
17.	28.03.2014	19748990.00	17.09.2014
18.	30.04.2014	20746870.00	17.09.2014
19.	04.06.2014	5637183.00	17.09.2014
20.	08.05.2015	21427408.00	07.07.2016
21.	08.02.2017	2146318.00	03.11.2017
	<b>Total</b>	<b>28,17,86,227.00</b>	

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 should report to Reserve Bank of India, as per the prescribed procedure, not later than 30 days from the date of receipt of the amount of consideration.

(c) The company had reported the allotment of shares on six occasions with delay ranging from 3 months and 11 days to 5 years, 4 months and 19 days beyond the



prescribed period, as detailed below, in contravention of paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, as then applicable.

<b>Contravention of Para 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000</b>				
<b>Sr. No.</b>	<b>Date of Allotment</b>	<b>No. of Shares Allotted</b>	<b>Amount (in INR)</b>	<b>Date of reporting</b>
1	22.01.2007	10000	100000.00	10.07.2012
2	05.03.2007	636900	6369000.00	20.09.2007
3	07.01.2011	406063	40606300.00	13.01.2012
4	05.09.2011	948490	94849000.00	16.01.2012
5	01.04.2017	25250	2146250.00	05.10.2017
6	06.07.2015	252087	21427395.00	09.07.2018
	<b>Total</b>		<b>16,54,97,945.00</b>	

Whereas, in terms of Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to Reserve Bank a report in Form FC-GPR along with documents prescribed therein, within 30 days from the date of issue of shares to a person resident outside India.

(d) A foreign inward remittance of ₹56,73,000/- was received by the company on January 22, 2007 from its foreign investor M/s OMP SRL, Italy, and out of this fund 10,000 MOA shares worth ₹1,00,000/- were issued to the investor on January 22, 2007. The balance amount of ₹55,73,000/- was utilized for issue of 6,36,900 equity shares on March 5, 2007 for a consideration amount of ₹63,69,000/-. The deficit amount of ₹7,96,000/- (₹63,69,000/- minus ₹55,73,000/-) was received only on March 25, 2013, i.e., with a delay of 6 years and 20 days after allotment of shares on March 5, 2007 in contravention of paragraph 8 of Schedule 1 to Notification No. FEMA 20/ 2000-RB dated May 3, 2000, as then applicable. Further, the company allotted shares on four more occasions with delay ranging from 1 day to 9 years, 2 months and 16 days beyond the prescribed period of 180 days from the date of receipt of inward remittances, as detailed below, in contravention of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, as then applicable. The allotment of shares beyond 180 days were with the prior approval of the Reserve Bank of India in two cases mentioned at Sr. No. 2 and 3 below while the other three cases (Sr. Nos. 1, 4, & 5) were without the prior approval of the Reserve Bank of India.



<b>Contravention of Para 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000</b>			
<b>Sr. No.</b>	<b>Date of receipt</b>	<b>Amount ( in INR)</b>	<b>Date of allotment</b>
1.	25.03.2013	796000.00	05.03.2007
2.	22.08.2008	19384300.00	04.05.2018
3.	23.08.2008	25220000.00	04.05.2018
4.	23.08.2013	11113026.00	24.02.2014
5.	21.10.2014	15654277.00	20.04.2015
	<b>Total</b>	<b>7,21,67,603.00</b>	

Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB dated May 3, 2000, as then applicable, an Indian company has to issue shares/ convertible debentures/ warrants within 180 days from the date of receipt of the inward remittance or date of debit to NRE/FCNR(B) account, as the case may be. In case the capital instruments are not issued within 180 days, 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 an 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 Notification No. 20 /2000-RB dated May 3, 2000, 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 Gianfranco Atzeri, CEO & Director of the company and Shri Deepender Kumar Agarwal, Chartered Accountant appeared for personal hearing on February 21, 2019 on behalf of the applicant. The representatives of the applicant admitted the contraventions committed by the company for which compounding has been sought. During the personal hearing, they submitted that delays were without any *malafide* or wilful intention but were mainly due to oversight of FEMA 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, due to delay in reporting of foreign inward remittances received towards subscription of shares as detailed in paragraph 2(b) above. The contraventions relate to an amount of ₹28,17,86,227/- (Rupees Twenty Eight Crore Seventeen Lakh Eighty Six Thousand Two Hundred Twenty Seven only) and the period of delay ranges from 4 days to 9 years, 3 months and 26 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, due to delay in filing of Forms FC-GPR to the Reserve Bank after issue of shares to persons resident outside India as detailed in paragraph 2(c) above. The contraventions relate to an amount of ₹16,54,97,945/- (Rupees Sixteen Crore Fifty Four Lakh Ninety Seven Thousand Nine Hundred Forty Five only) and the period of delay ranges from 3 months and 11 days to 5 years, 4 months and 19 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/000-RB, due to receipt of the amount of consideration after the allotment of shares as also due to delay in allotment of shares beyond 180 days of the receipt of the amount of consideration from persons resident outside India as detailed in paragraph 2(d) above. The contraventions relate to a total amount of ₹7,21,67,603/- (Rupees Seven Crore Twenty One Lakh Sixty Seven Thousand Six Hundred and Three only) and the period of delay ranges from 1 day to 9 years, 2 months and 16 days.

5. It has been declared in the compounding application dated September 21, 2018 that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has been declared in the undertaking dated February 6, 2019 furnished by the Director of the company as part of 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, 1999. Accordingly, the 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 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 **₹16,99,677/- (Rupees Sixteen Lakh Ninety Nine Thousand Six Hundred and Seventy Seven only)** will meet the ends of justice.

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 **₹16,99,677/- (Rupees Sixteen Lakh Ninety Nine Thousand Six Hundred and Seventy Seven 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 22<sup>nd</sup> day of February 2019.

Sd/-

**(Anupam Sonal)**  
**Chief General Manager**