



In the

Reserve Bank of India
10/3/8, Nrupathunga Road
Bengaluru-560001

Present

Shri P J Thomas
Regional Director, Karnataka and
Chief General Manager, Bengaluru

Date: December 27, 2018
C.A. BGL 320/2018

In the matter of

M/s Seven India Hospitality Private Limited
No.7, 10th Floor, Gamma Block
Sigma Soft Tech Park, Varthur Road
Bengaluru - 560066
(Applicant)

In exercise of the powers under section 15(1) of the Foreign Exchange Management Act, 1999, and the Regulations / Rules / Notifications / Orders framed there under, I pass the following

ORDER

The applicant has filed a compounding application dated August 01, 2018, received at this office of Reserve Bank of India, Bengaluru on August 13, 2018, for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999, (the FEMA), and the regulations issued there under. The contraventions sought to be compounded are, (i) delay in reporting receipt of foreign inward remittances towards subscription to equity, (ii) delay in refund of excess share application money to the foreign investors, persons resident outside India, beyond 180 days from the date of receipt of the inward remittances, (iii) delay in submission of Form FC-GPRs to the Reserve Bank, after issue of shares to a person resident outside India, in terms of Paragraphs 9(1)(A), 8 and 9(1)(B), respectively, of Schedule I 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 03, 2000 as amended from time to time (hereinafter referred to as Notification



No. FEMA 20/2000-RB), and (iv) delay in reporting the transfer of shares by Non-Resident to Resident in terms of Regulation 10 A (b) (i) read with Paragraph 10 of Schedule 1 to Notification No. FEMA 20/2000-RB, as amended vide AP (DIR Series) Circular No. 63 dated April 22, 2009.

2. The relevant facts of the case are as follows: M/s Seven India Hospitality Private Limited, was incorporated on March 14, 2006, under the Companies Act, 1956. The activity undertaken by the company is providing Accommodation Services, viz. Hotels and Motels, Drive-inns, resorts providing short term lodging facilities, including accommodation in house boats. The applicant had received funds towards share application money from the foreign investor, namely, M/s Seven Partners SAS, France, as shown below:

Table – 1

Sl. No	Date of Receipt	Amount (INR)	Date of Reporting to RBI /AD
1	19-05-2006	2,02,94,750.00	24-05-2006
2	11-12-2007	69,18,000.00	24-12-2007
3	04-01-2008	30,57,570.00	18-01-2008
4	23-01-2008	69,10,800.00	21-02-2008
5	20-02-2008	32,22,450.00	10-03-2008
6	13-05-2008	25,97,332.00	17-05-2008
7	10-06-2008	33,20,671.00	20-08-2008
8	25-06-2008	15,92,272.00	20-08-2008
9	02-07-2008	67,80,000.00	20-08-2008
10	10-07-2008	14,84,749.00	20-08-2008
11	04-08-2008	20,99,150.00	20-08-2008
12	09-09-2008	41,10,913.00	23-09-2008
13	17-09-2008	18,36,550.00	04-10-2008
14	25-09-2008	30,35,813.00	16-10-2008
15	16-10-2008	71,38,663.00	13-11-2008
16	15-12-2008	64,11,663.00	17-01-2008



17	09-01-2009	19,78,680.00	17-01-2009
18	16-03-2009	19,87,674.00	26-03-2009
19	16-03-2009	9,93,174.00	26-03-2009
20	24-04-2009	16,41,873.00	21-05-2009
21	29-05-2009	9,82,988.00	06-06-2009
22	09-01-2009	16,48,680.00	17-01-2009
23	25-06-2009	31,76,318.00	10-07-2009
24	10-07-2009	31,68,801.00	03-08-2009
25	14-09-2009	35,25,089.00	08-10-2009
26	30-10-2009	52,10,763.00	21-11-2009
27	12-01-2010	13,05,094.00	08-02-2010
28	10-02-2010	17,11,881.00	05-04-2010
29	26-03-2010	59,98,500.00	05-04-2010
30	11-05-2010	28,48,860.00	07-06-2010
31	25-05-2010	23,14,842.00	07-06-2010
32	12-10-2010	57,08,665.00	28-10-2010
33	04-03-2011	60,49,890.00	29-04-2011
34	24-05-2011	15,85,000.00	07-06-2011
35	08-06-2011	30,67,794.00	24-06-2011
36	05-07-2011	22,46,416.00	18-07-2011
37	10-08-2011	10,32,308.00	19-08-2011
38	07-09-2011	10,32,000.00	28-09-2011
39	23-09-2011	30,47,500.00	28-09-2011
40	08-11-2011	14,85,000.00	24-11-2011
41	13-12-2011	15,44,840.00	06-02-2012
42	13-01-2012	9,86,459.00	06-02-2012
43	21-11-2012	1,27,58,200.00	10-12-2012
44	06-08-2014	20,35,870.00	04-09-2014
	Total	16,18,84,505.00	



The applicant reported receipt of remittances to the Reserve Bank / Authorized Dealer Bank, with a delay ranging from three days to one month and ten days, beyond the stipulated period of 30 days in respect of remittances as indicated at serial numbers 7 to 10, 16, 28, 33 and 41, in the Table-1 above. Whereas, in terms of Paragraph 9(1)(A) of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations, should report to the Reserve Bank of India, as per the prescribed procedure, not later than 30 days from the date of receipt of the amount of consideration.

3. The company had received certain foreign inward remittances during the period May 2006, to May 2009, and the company had allotted equity shares to the foreign investors in terms of Paragraph 8 of Schedule 1 to Notification No. FEMA.20/2000 RB dated May 03, 2000. However, after share allotment, there was excess share application money, which the company refunded to the foreign investors with a delay. Below mentioned are the instances where the company has refunded the excess share application money to the foreign investors beyond the stipulated period of 180 days with the approval of Reserve Bank of India:

- i) The company had received an inward remittance of ₹202,94,750.00, from the non-resident investor M/s. Seven Partners SAS, France, on May 19, 2006. The company had allotted 4,92,500 equity shares worth ₹202,91,000, and the excess share application money of **₹3,750.00**, was refunded on May 14, 2018, to the non-resident investor.
- ii) The company had received an inward remittance of ₹201,08,820.00, in four tranches from December 11, 2007, to February 20, 2008, from the non-resident investor M/s. Seven Partners SAS, France. The company had allotted 2,42,262 equity shares worth ₹201,07,746.00, and the excess share application money of **₹1,074.00**, was refunded on May 14, 2018, to the non-resident investor.



- iii) The company had received an inward remittance of ₹92,33,069.00, in six tranches from January 09, 2009, to May 29, 2009, from the non-resident investor M/s. Seven Partners SAS, France. The company had allotted 1,11,217 equity shares worth ₹92,31,011.00, and the excess share application money of **₹2,058.00**, was refunded on May 14, 2018, to the non-resident investor.

The company was accorded approval to refund the excess share application money of **₹6,882.00**, vide Reserve Bank's letter FE.BG.FID.No.3353/21.06.291/2017-18 dated March 09, 2018. Whereas, in terms of Paragraph 8 of Schedule 1 to Notification no. FEMA 20/2000- RB dated May 3, 2000, and as amended from time to time, read with AP (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 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. In the above mentioned instances, the delay in refund of excess share application money ranges from eight years five months and nineteen days to ten years five months and fifteen days.

4. The company had allotted equity shares to the foreign investors and filed Form FC-GPRs with Reserve Bank/AD Bank as indicated below:

Table – 2

Sl. No.	Date of Allotment	Number of shares allotted	Amount (INR)	Date of reporting to RBI/AD
1	26-07-2006	492500	202,91,000.00	17-08-2006
2	30-07-2008	242262	201,07,746.00	02-09-2008
3	08-11-2008	286998	238,20,834.00	10-11-2008
4	24-03-2009	199833	165,86,139.00	25-04-2009
5	07-07-2009	111217	92,31,011.00	11-08-2009



6	19-12-2009	174146	144,54,118.00	20-01-2010
7	23-03-2010	43898	36,43,534.00	28-04-2010
8	18-09-2010	72271	59,98,493.00	20-10-2010
9	04-11-2010	62213	51,63,679.00	03-02-2011
10	08-04-2011	68779	57,08,657.00	10-05-2011
11	30-08-2011	72891	60,49,953.00	03-10-2011
12	17-11-2011	83123	68,99,209.00	17-12-2011
13	03-02-2012	79479	65,96,757.00	29-02-2012
14	28-05-2012	30498	25,31,334.00	27-06-2012
15	04-12-2012	421340	127,58,175.20	04-01-2014
16	05-09-2014	67234	20,35,845.52	15-05-2015
	Total		16,18,76,484.72	

The applicant had filed Form FC-GPRs on allotment of shares with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank, with a delay ranging from two days to one year and one day, beyond the prescribed period of 30 days in respect of allotment of shares as indicated at serial number 2, 4 to 11, 15 and 16, in the Table - 2 above. Whereas, in terms of Paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000, an Indian company issuing shares in accordance with these Regulations, has to submit to the Reserve Bank of India, a report in Form FC-GPR, along with documents prescribed therein, within 30 days from the date of issue of shares to persons resident outside India.

5. A resident investor M/s. UKN hospitality Pvt Ltd, Bengaluru, had obtained shares from the non-resident shareholder of the company, namely, M/s. Seven Partners SAS, France, and filed Form FC-TRS with Reserve Bank/AD Bank as indicated below:



Table – 3

Sl. No	Name of the resident buyer	No. of shares transferred	Date of transfer of shares	Amount of consideration received in Rs.	Date of receipt of consideration	Date of filing Form FCTRS
1	M/s. UKN hospitality Pvt Ltd, Bengaluru	348373	15-11-2016	31,35,357.00	15-11-2016	11-10-2017
2	M/s. UKN hospitality Pvt Ltd, Bengaluru	286998	24-01-2017	25,82,982.00	24-01-2017	11-10-2017
3	M/s. UKN hospitality Pvt Ltd, Bengaluru	109977	24-03-2017	9,89,793.00	24-03-2017	11-10-2017
4	M/s. UKN hospitality Pvt Ltd, Bengaluru	344995	18-05-2017	31,04,955.00	18-05-2017	06-11-2017
5	M/s. UKN hospitality Pvt Ltd, Bengaluru	315838	08-09-2017	28,42,542.00	08-09-2017	15-03-2018
	Total			126,55,629.00		

The applicant had filed Form FC-TRS with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank, with a delay ranging from three months and twenty days to eight months and twenty seven days, beyond the prescribed period of 60 days from the date of receipt of amount of consideration as indicated in the Table - 3 above. As per Regulation 10 A (b) (i) read with Paragraph 10 of Schedule 1 to Notification No. FEMA 20/2000-RB and AP (DIR Series) Circular No. 63 dated April 22, 2009, the Form FC-TRS should be submitted to the AD Category – I bank, within 60 days from the date of receipt of the amount of consideration or date of transfer of shares, whichever is earlier. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor / transferee, resident in India.

6. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID.(CEFA) No. 1759/22.06.291/2018-19 dated December



13, 2018, and email dated December 21, 2018, for further submission in person, and/or producing documents, if any, in support of the application. The applicant's authorized representative, Mr. Abhishek G, Practicing Company Secretary, who appeared for the personal hearing on December 27, 2018, admitted the contraventions as stated in paragraphs 2, 3, 4 and 5 above, committed by the applicant, for which compounding has been sought. During the personal hearing, it was submitted that the delay in seeking approval or reporting was not willful or with malafide intention, but was mainly due to inadvertence, and the same would not be repeated. In view of the above, he requested to take a lenient view in disposal of the application. The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as other documents and submissions made in this context by the applicant during personal hearing and thereafter.

7. I have given my careful consideration to the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:

(a) Paragraph 9 (1) (A) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in reporting of foreign inward remittances received towards subscription to equity as detailed in Paragraph 2 above. The contravention relates to an amount of **₹2,88,95,966.00**, and the period of delay ranges from three days to one month and ten days;

(b) Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB as the applicant refunded the excess share application money to the foreign investor with a delay beyond the stipulated period of 180 days from the date of receipt of amount of consideration as detailed in paragraph 3 above. The contravention relates to an amount of **₹6,882.00**, and the period of contravention ranges from eight years five months and nineteen days to ten years five months and fifteen days;



(c) Paragraph 9 (1) (B) of Schedule I to Notification No. FEMA 20/2000-RB, due to delay in submission of Form FC-GPR to the Reserve Bank, after issue of shares, to person resident outside India as detailed in Paragraph 4 above. The contravention relates to an amount of **₹10,17,37,350.72**, and the period of delay ranges from two days to one year and one day; and

(d) Regulation 10A (b) (i) read with Paragraph 10 of Schedule I to FEMA 20/2000-RB, due to delay in reporting of transfer of shares as detailed in Paragraph 5 above. The amount of contravention is **₹1,26,55,629.00**, and the period of delay ranges from three months twenty days to eight months and twenty seven days.

8. It has been declared in the compounding application dated August 01, 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 August 01, 2018, 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, 1999. 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.

9. 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 **₹1,16,543 (Rupees One**



Lakh Sixteen Thousand Five Hundred and Forty Three only), will meet the ends of justice.

10. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1)(A), 8, 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB, and Regulation 10A (b)(i) read with para 10 of Schedule I of the Notification ibid, by the applicant, based on the facts discussed above, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹1,16,543 (Rupees One Lakh Sixteen Thousand Five Hundred and Forty Three only)**, which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 2nd Floor, 10/3/8, Nrupathunga Road, Bengaluru – 560001, by a demand draft drawn in favour of the “Reserve Bank of India” and payable at Bengaluru 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 of accordingly.

Dated this, the Twenty Seventh day of December 2018.

(P J Thomas)
Regional Director, Karnataka and
Chief General Manager, Bengaluru