Present

Raj Kumar Das
Deputy General Manager

Date: - December 1, 2017
C.A 061/2017

In the matter of

M/s Vivaan Hotels Pvt Ltd

235/1, Acharya Jagdish Chandra Bose Road Kolkata- 700020, West Bengal, India

(Applicant)

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

Order

The applicant has filed a compounding application (date of application not mentioned) (received at Reserve Bank on November 14, 2017) 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 delay in submission of form FC-GPR to the Reserve Bank of India after issue of shares to a company/entity/person resident outside India beyond the stipulated period of 30 days in terms of paragraph 9(1) B to schedule 1 of 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 (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts of the case are as follows: - The applicant was incorporated under the Companies Act, 1956 on September 16, 2012. The applicant is engaged in the business of hospitality and owners, lessors, managers, licensors, lessees of hotels, holiday homes, cottages, tourist bungalows etc. The applicant had received inward foreign remittances as Foreign Direct Investment (FDI) from foreign investor M/s Kyoueisya Co Ltd, incorporated in Tokyo, Japan for subscription to its equity shares on the following occasions as tabulated below:-

M/s Vivaan Hotels Pvt Ltd:-

Inflow of foreign remittance (FDI) and utilisation thereof:-

Table 1-

Sl	Amt(INR)	Date of inflow	Date of reporting to RBI	Delay Under para 9(1) A	Date of allocation of shares	Date of reporting to RBI	Delay under para 9(1)B
1	37,18,132.44	09.10.15	13.10.16	11m4d	09.10.15	24.12.16	13m15d
	Total	37,18,132.44					

3. The applicant allotted equity shares for a face value of Rs.10/- per share and filed FC-GPRs on dates indicated in the above table. There is a delay of 13 months and 15 days in filing FC-GPRs to RBI beyond the stipulated period of 30 days from the date of allocation of shares. As per provisions of para 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 person resident/company/entity resident outside India. The applicant is therefore observed to be in contravention of para 9(1) B of schedule 1 of FEMA 20/2000-RB.

4. The applicant was given an opportunity for personal hearing vide this office's letter No.Kol.FED.FID.805/03.40.262/2017-18 dated November 23, 2017 for further submission in person and/or producing documents, if, any, in support of the application. The applicant, (represented by Shri Ashok Bhatia, Chartered Accountant

and Shri SurinderSharma, Manager-Finance) appeared for personal hearing on December 1, 2017. The applicants admitted the contravention as stated in paragraph 3 above for which compounding was sought. During the personal hearing, the applicants submitted that the delay had happened inadvertently due to lack of information.

The applicant further submitted that the contravention was not on account of wilful or mala fide intent. In view of this, the applicant requested to take a lenient view in the matter. The application for compounding is , therefore, being considered on the basis of the averments made in the application as well as other documents and submission made in this context by the applicant during personal hearing.

5. I have given 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) B of schedule 1 of Notification No. FEMA 20/2000-RB due to delay in submission of form FC-GPR to the Reserve Bank after issue of shares to persons/company/entities resident outside India as detailed in paragraph 3 above. The contravention relates to an amount of **Rs.37,18,132.44** and the period of contravention is **13 months 15 days** approximately.

6. In terms of section 13 of the FEMA, any person contravening any provision of the act shall be liable for a penalty up to thrice the sum of the contravention upon adjudication. However, considering the circumstances leading to the delay and other relevant facts of the case, I am inclined to take a lenient view of the amount for which the contravention is to be compounded and I consider that an amount of **Rs.12,917** (**Rupees Twelve Thousand Nine Hundred and Seventeen only**) will meet the end of justice.

7. Accordingly, I compound the admitted contraventions namely the contraventions of paragraph 9(1) B of Schedule 1 to Notification No. FEMA 20/2000-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceeding) Rules, 2000 on payment of an amount of **Rs.12,917**(**Rupees Twelve Thousand Nine Hundred and Seventeen only**) which is to be deposited by the applicant with the Reserve Bank of India, Foreign

Exchange Department, Third Floor, 15 N.S. Road, Kolkata-700001 by a demand draft drawn in favour of "Reserve Bank of India" and payable at "Kolkata" within a period of 15 days from the date of this order. In caseof failure to deposit the compounded amount within the above mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceeding) Rules, 2000 dated May 3, 2000 shall apply.

The application is disposed of accordingly.

Dated this First day of December 2017.

Sd/-

(Raj Kumar Das)

Deputy General Manager