



**In the
Reserve Bank of India
Foreign Exchange Department
7th Floor, Gera's Imperium-II,
20 EDC Complex, Patto Plaza,
Panaji 403 001, Goa, INDIA**

Present

**Meenakshi Gad
Deputy General Manager**

Date: February 12, 2018

CA No: PAN 9

In the matter of

**M/s Benson Hotels Pvt Ltd
Regd. Office: H.No.92/5, Freitas Vaddo,
Verla-Parra, Bardez, Goa 403510
(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 dated November 14, 2017 for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded are (i) delay in reporting receipt of foreign inward remittance towards subscription to equity; (ii) delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to a person resident



outside India and delay in refund of share application money beyond 180 days in terms of paragraphs 9(1)(A), 9(1)(B) and 8 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 3rd May 2000 and 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:

- i) The applicant is a company registered as a private limited company, incorporated on December 3, 2004 under the Companies Act, 1956 with the main object of undertaking the business of Hotel and Tourism Sector.
- ii) The applicant received foreign inward remittances towards issue of equity shares as detailed below:

Sr. No.	Name of Remitter	Amount (Rs.)	Date of Receipt	Reported to RBI on
1	Alan and Julia Selwood	1,00,000/-	3-Dec-2004	9-Dec-2004
2		15,96,400/-	28-Oct-2005	23-Dec-2005
3		39,80,000/-	7-Dec-2005	23-Dec-2005
	Total	56,76,400/-		

The applicant reported receipt of remittances to the Foreign Exchange Department, Panaji Office of the Reserve Bank on the dates indicated above with a delay of 26 days in respect of one remittance, beyond the stipulated time of 30 days. 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.



- iii) The applicant allotted equity shares and filed FC-GPRs as indicated below:

Sr. No.	Name of Investor	No. of Shares	Amount (Rs.)	Date of allotment	Reported to RBI on
1	Alan and Julia Selwood	1,000	1,00,000/-	4-Dec-2004	9-Dec-2004
2		14,000	14,00,000/-	18-Nov-2005	23-Dec-2005
3		5,000	5,00,000/-	22-Dec-2005	23-Dec-2005
		Total	20,00,000/-		

The applicant filed Form FC-GPR in respect of shares allotted with a delay of 5 days on one occasion beyond the stipulated time of 30 days. Whereas in terms of paragraph 9 (1) (B) of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to Reserve Bank a report in Form FCGPR along with documents prescribed therein within 30 days from the date of issue of shares to a person resident outside India.

- iv) The company had received the inward remittances towards FDI and allotted shares after the prescribed period of 180 days as detailed below –

Sr. No.	Name of Remitter	Amount (in ₹)	Date of Credit	Date of Refund
1	Alan and Julia Selwood	1,96,400/-	28-Oct-2005	27-Oct-2017
2		34,80,000/-	7-Dec-2005	
	Total	36,76,400/-		

The company has refunded the excess share application money with a delay ranging from 11 years 4 months 21 days to 11 years 6 months and



approximately. Whereas in terms of paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB, the shares have to be issued and / or amount refunded within 180 days from the date of receipt of the inward remittance.

3. The applicant was given an opportunity for personal hearing vide Reserve Bank's letter no. PNJ.FED: 413 / 02.01.233 / 2017-18 January 31, 2018 for further submission in person and/or producing documents, if any, in support of the application. Mr. Alan Selwood and Mrs. Julia Selwood, the Directors of the applicant company appeared for the personal hearing on February 7, 2018. The applicants admitted the contraventions committed by the company for which compounding has been sought. They further stated that they had not been conversant/familiar with local laws and there has been no unfair gain to any party due to above contravention. In view of the above foregoing, the representatives requested that the matter may be viewed leniently. The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as submissions made in this context during the personal hearing.

4. It has been declared in the compounding application dated November 14, 2017 that the particulars given by the applicants in the application are true and correct to the best of their knowledge and belief. It has been declared in the declaration dated nil (received in this office on February 8, 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/him/her thereafter. 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.

5. I have given my careful consideration to the documents on record and in the compounding application. Accordingly, I hold that the applicant has contravened the FEMA provisions issued in terms of:

- (i) Paragraph 9 (1) (A) of Schedule I to Notification No. FEMA 20/2000-RB due to the delay in reporting of receipt of foreign inward remittance towards subscription to equity as detailed in paragraph 2 above. The contravention relates to an amount of **Rs.15,96,400/-** and the duration of delay is 26 days.
- (ii) 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 persons resident outside India and the contravention relates to an amount of **Rs.14,00,000/-** and the duration of delay is 5 days.
- (iii) Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB due to delay in refund of shares application money. The contravention relates to an amount of **Rs.36,76,400/-** and the duration of contravention ranges from 11 years 4 months 21 days to 11 years 6 months and approximately.

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 **Rs.77,973/- (Rupees Seventy Seven Thousand Nine Hundred Seventy Three only)** will meet the ends of justice.



7. Accordingly, I compound the admitted contraventions namely, the contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule I to Notification No. FEMA 20/2000-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of **Rs.77,973/- (Rupees Seventy Seven Thousand Nine Hundred Seventy Three only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Gera Imperium II, 7th Floor, EDC, Patto Plaza, Panaji, Goa 403 001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at "Mumbai" 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 12th day of February, 2018

Sd/-

(Meenakshi Gad)
Deputy General Manager