



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
11th floor, Central Office Building  
Shahid Bhagat Singh Road  
Mumbai - 400 001

Present

**Shekhar Bhatnagar**  
**Chief General Manager**

Date: February 28, 2018  
C.A. 4518/2017

In the matter of

**Advent Business Credit Development Company Private Limited**  
Indo-German Technology Park Survey No 297, 298,  
Post & Village Urawade, Taluka Mulshi,  
District Pune 412108, Maharashtra

(Applicant)

In exercise of the powers conferred 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 August 21, 2017 (received at Reserve Bank of India on September 12, 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 (i) undertaking wholesale trading activity at a time when the same was not permitted under the automatic route for foreign investment and issuance of equity shares to its parent company by converting overseas loan into equity shares without taking prior Government approval; (ii) delay in reporting with respect to receipt of the funds (iii) delay in reporting allotment of shares after receipt of the funds; (iv) recording in its books the transfer of equity shares from resident individual to non-resident without Government approval and; (v) availing overseas loan without requisite prior approval. These were in contravention of



paragraph 3 of schedule 1, paragraphs 9(1)(A) and 9(1)(B) of schedule I and regulation 10A(b)(ii) read with regulation 4 respectively 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 3rd May 2000, as then applicable (hereinafter referred to as Notification No. FEMA 20/2000-RB) and Regulation 3 of Notification No. FEMA 3/2000-RB dated 3rd May 2000, as then applicable.

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

2.1 Advent Business Credit Development Company Private Limited (ABCD), the applicant, is a private limited company incorporated on May 19, 1999 (CIN: U65929PN1999PTC013643) under the Companies Act, 1956 and is a wholly owned subsidiary of Uni-cash Verwaltungsgesellschaft, GmbH ('Uni-Cash') earlier known as Uniweld Schweißtechnik GmbH, an entity incorporated in Germany. Uni-cash Germany is part of the IBG Industrie-Beteiligungsgesellschaft GmbH & Co. KG Group (IBG Group'). ABCD is in the business of setting-up and operating the Industrial Parks in India. The applicant had undertaken wholesale trading activity of electrical welding products for an interim period in the FY 2000-01 and FY 2001-02 without Government approval which was in contravention of paragraph 3 of schedule 1 to FEMA 20/2000-RB, as then applicable, read with then prevailing FDI policy. ABCD imported materials from overseas group companies and sales were made to manufacturing industrial units in India. The activity was subsequently placed under the automatic route with effect from February 10, 2006 vide Press Note 4 of 2006 issued by Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India. The foreign investment in the applicant company upto March 31, 2002 was Rs.100,00,000/-.

2.2 ABCD received an overseas loan of Rs.14,21,36,697/- from its parent company, Uni-cash, out of which Rs.10,54,67,107/- was received under FERA regime i.e. till June 01, 2000 and Rs.3,66,69,590/- was received under FEMA regime (FY 2000-01 and FY 2001-02). The applicant has filed a separate compounding application for obtaining loan from overseas parent without prior RBI approval in terms of Regulation 3 of FEMA 3 which has been dealt with separately.



A part of the loan amounting to Rs.1,52,17,605/- was waived by Uni-cash in FY 2002-03. The applicant issued 90,000 equity shares of Rs.1,000/- each to its parent Company in the FY 2008-09 by converting overseas loan into equity shares at par on December 15, 2008 without obtaining necessary approval from the Government. This transaction was unwound as directed by FIPB vide letter No. 19/2012/FIPB dated April 25, 2012 under the Capital Reduction Scheme duly approved by the Mumbai High Court vide its order dated May 08, 2015. Issuance of equity shares to its parent company by converting overseas loan into equity shares without taking prior Government approval was in contravention of paragraph 3 of schedule 1 to FEMA 20/2000-RB, as then applicable.

2.3 ABCD was initially set-up in 1999 with a subscribed equity share capital of Rs.61,000/- divided into 61 shares of Rs.1000/- each, out of which 10 equity shares each were held by two resident individuals viz Mr. Shamit Majmudar and Mr. Anshul Majmudar, while 41 equity shares were held by non-resident company viz Uni-Cash Germany. Subsequently, 20 equity shares were transferred by resident individuals to Uni-Cash as under:-

- a) 10 equity shares & 5 equity shares held respectively by Mr. Anshul Majmudar & Shamit Majmudar were transferred on August 31, 1999;
- b) 5 equity shares held by Mr. Shamit Majmudar were transferred on October 10, 2000

Whereas the transfer of shares at (a) pertains to FERA period and cannot be compounded, the transfer of shares at (b) above without approval was in contravention of regulation 10A(b)(ii) read with regulation 4 of FEMA 20/2000-RB, as then applicable.

2.4 ABCD vide letter dated January 18, 2012 sought post facto approvals from the Foreign Investment Promotion Board (FIPB) for the following:

- a) Industrial Park activities since Financial Year 1999-2000;
- b) wholesale trading operations undertaken in FY 2000-01 and FY 2001-02;
- c) transfer of 20 equity shares from resident individuals to non-resident company as stated at para 2.3 above and;



d) issue of 90,000 equity shares of Rs.1,000/- each on December 15, 2008 by converting the overseas loan as stated at para 2.2 above

The FIPB vide letter No. 19/2012/FIPB dated April 25, 2012 granted post facto approval for the (a), (b) and ( c ) mentioned above subject to compounding by the Reserve Bank while with respect to (d) above FIPB advised the applicant to unwind the transaction, subject to compounding by the Reserve Bank.

2.5 The applicant received Foreign Direct Investment (FDI) amounting to Rs.99,89,000/- towards investment in its equity shares, the details of which are as under:-

**Table A**

Sr.No	Date of remittance received	Amount in INR	Date of reporting to RBI
1	01-09-1997	4,98,000	07-08-2015
2	16-07-1998	46,94,000	07-08-2015
3	19-04-1999	41,000	07-08-2015
4	21-10-1999	47,56,000	07-08-2015
	<b>Total</b>	99,89,000	

The remittances above were received during the FERA regime and therefore cannot be compounded.

2.6 The applicant allotted equity shares during the period 1999 to 2002 to the non-resident investors as under:-

**Table B**

Sr.No	Date of allotment of shares	Amount (INR) for which shares allotted	Date of reporting to RBI	No. of shares allotted
1	19-05-1999	41,000	13-04-2016	41
2	08-10-2002	99,39,000	14-08-2015	9,939
	<b>Total</b>	<b>99,80,000</b>		<b>9,980</b>



The allotment of shares at Sr.No.1 was made during the FERA regime and therefore cannot be compounded. Accordingly, the applicant reported the allotment of equity shares in Form FC-GPR amounting to Rs.99,39,000/- with delay of 13 years approximately. The delay was in contravention of paragraph 9(1)(B) of schedule 1 to FEMA 20/2000-RB.

RBI vide letter No. FED.MRO.CAP/343/04.51.955/2017-18 dated August 04, 2017 advised the applicant of the above contraventions of schedule 1 to FEMA 20/2000-RB, as then applicable.

3. The applicant, during the course of its operations, committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 20/2000-RB as then applicable:-

3.1 In terms of paragraph 3 of schedule 1 to FEMA 20/2000-RB, as then applicable, *'An Indian company intending to issue shares to a person resident outside India in accordance with these Regulations directly against foreign inward remittance (or by debit to NRE account / FCNR account) or against consideration other than inward remittance i.e., against royalty / lump sum fee due for payment / import of capital goods by units in SEZs / ECBs (excluding those deemed as ECBs) shall obtain prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India, if the Indian company proposes to issue shares to a person resident outside India beyond sectoral limits or the activity of the Indian company falls under the FIPB route, as stipulated in Annex B to this Schedule.'*

Whereas the applicant undertook wholesale trading activity during an interim period in the FY 2000-01 and FY 2001-02 without prior Government approval thereby contravening the said FEMA provisions. Further, FIPB vide letter No. 19/2012/FIPB dated April 25, 2012 advised the applicant to unwind, subject to compounding by RBI, the issuance of 90,000 equity shares of Rs.1,000/- each to its parent company against pre-incorporation loan which was in contravention of the said FEMA provisions. The amount of contravention was Rs.10 crore while the period of contravention ranges 5 years 9 months to 6 years 5 months approximately.



3.2 In terms of regulation 10A(b)(ii) of FEMA 20/2000-RB, as then applicable, 'A person resident in India who proposes to transfer to a person resident outside India any shares or convertible debentures or warrants of an Indian company under the Foreign Direct Investment Scheme .....without prior approval of the Reserve Bank if the same is by way of sale, subject to ..... where the transfer of shares or convertible debentures or warrants requires the prior approval of the Foreign Investment Promotion Board (FIPB) as per the extant Foreign Direct Investment (FDI) policy, the requisite approval of the FIPB has been obtained.'

Further, in terms of regulation 4 of FEMA 20/2000-RB, as then applicable, 'Save as otherwise provided in the Act or Rules or Regulations made thereunder, an Indian entity shall not issue any security to a person resident outside India or shall not record in its books any transfer of security from or to such person.'

Whereas the applicant recorded in its books the transfer of 5 equity shares of Rs.1000/- each in October 2000 from resident individual to non-resident without Government approval in contravention of regulation 10A(b)(ii) read with regulation 4 of FEMA 20/2000-RB, as then applicable. The amount of contravention was Rs.5,000/- while the period of contravention was 16 years 7 months approximately.

3.3 In terms of paragraph 9(1)(B) of schedule I to Notification No. FEMA 20/2000-RB, as then applicable, 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 outside India.

Whereas the applicant reported the allotment of shares in Form FC-GPR beyond the prescribed period in one instance as per the details given in Table B above thereby contravening the said FEMA provision. The amount of contravention was Rs.99,39,000/- while the period of contravention was 15 years approximately.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/4665/15.20.67/2017-18 dated November 24, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for the personal hearing held on December 08, 2017 and Shri Uday Godbole from the applicant company along



with Chartered Accountants Shri S. Motorwala and Shri Davinder Banga attended the hearing. The representatives of the applicant admitted the contraventions for which compounding has been sought and submitted that the same was inadvertent and unintentional. They requested that in view thereof, 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 other documents and submissions submitted along with the application.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant has contravened the FEMA provisions issued in terms of regulation 10A(b)(ii) read with regulation 4 and paragraphs 3 and 9(1)(B) of schedule I to Notification No. FEMA 20/2000-RB, as then applicable, as per the details given at paragraphs 2 and 3 above.

6. It has been declared in the compounding application dated August 21, 2017 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 January 29, 2018 furnished subsequently by the applicant 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 as required in terms of the said undertaking. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made/undertaking furnished 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/undertakings are subsequently discovered to be false and/or incorrect.

7. 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.9,14,833/- (Rupees nine lakhs fourteen thousand eight hundred and thirty three only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contraventions of regulation 10A(b)(ii) read with regulation 4 and paragraphs 3 and 9(1)(B) of schedule I to Notification No. FEMA 20/2000-RB by the applicant as stated above on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.9,14,833/- (Rupees nine lakhs fourteen thousand eight hundred and thirty three only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5<sup>th</sup> Floor, Amar Building, Fort, Mumbai 400001 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 twenty eighth day of February, 2018.

Sd/-

**(Shekhar Bhatnagar)**  
**Chief General Manager**