



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 26, 2018
CA No 4568 / 2017

In the matter of

Buimerc Core Investments Private Limited
Plot No. 836/89, Arackal Building, Janatha Road, Vyttila
Ernakulam, Kerala - 682019

(Applicant)

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

Order

The applicant has filed the application dated November 07, 2017 (received in the Reserve Bank on November 13, 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) delay in reporting receipt of funds for issue of shares (ii) delay in filing of form FC-GPR beyond the stipulated time period and (iii) receiving foreign investment with a purpose of investing in the capital of other companies, without prior Government/FIPB approval. The above amount to the contravention of Paragraphs 9(1)(A) and 9(1)(B) of Schedule 1, and Para 2 of



Schedule I read with Regulation 14(6)(ii)(d)(A) 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 are as under: The applicant, a resident company, was incorporated as Sreevaas Corporate Investments Private Limited on December 12, 2008 under the Companies Act, 1956 (CIN: U65993KL2008PTC023545). Its name was changed to Buimerc Core investments Private Limited on July 31, 2013, with the main objective of undertaking the business as a Core Investment Company as per the guidelines issued by Reserve Bank of India from time to time.

The applicant received foreign investment in 2009, with a view to function as an NBFC. Due to financial reasons, the minimum capitalization norms could not be met and the promoters decided not to pursue any business activity. In 2013, the applicant decided to change its name and the activity of the company to that of a core investment company. Subsequently, vide letter dated 05.03.2015, the applicant received a post-facto approval from FIPB, for the original investment received and for operating as a core investment company, subject to compounding by RBI.

Thus, the receipt of Rs. 2,00,00,000/- (Rs. 1,25,00,000/- on 05.02.2009 and Rs. 75,00,000/- on 11.02.2009) from non-resident promoter, Mr. Siddharth Balachandran in 2009, for investing in the capital of other companies, without the prior approval of Government/FIPB, was in contravention of Para 2 of Schedule 1, read with Regulation 14(6)(ii)(d)(A) of Notification No. FEMA 20/2000-RB.

These inward remittances were reported with a delay beyond the stipulated time period of 30 days, in contravention of Paragraph 9(1)(A) of Schedule I of Notification No. FEMA 20/2000-RB, as follows:



Date of receipt	Date of reporting	Amount (INR)
05.02.2009	18.07.2013	1,25,00,000
11.02.2009	18.07.2013	75,00,000

Out of the above, the shares to the extent of Rs. 1,90,00,000/- were allotted to non-resident, for which the Form FCGPR was filed as follows:

Amount for which shares allotted (INR)	Date of allotment of shares	Date of filing of Form FC-GPR
1,90,00,000	18.02.2009	24.09.2015

The allotment of shares was not reported within the stipulated time period, thus contravening Paragraph 9(1)(B) of Schedule I of Notification No. FEMA 20/2000-RB.

3. Whereas Para 2 of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time, refers to automatic route of Reserve Bank for issue of shares by an Indian company, Regulation 14(6)(ii)(d)(A) of the same Notification states that, "Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies, will require prior Government/FIPB approval, regardless of the amount or extent of foreign investment....."

According to Para 9(1)(A) of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time, "An Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of receipt of the amount of consideration received by Indian company for issue of shares and convertible debentures, a



report in form specified in Annex C to this Schedule along with a copy/ies of Foreign Inward Remittance Certificate/s (FIRC), Know Your Customer (KYC) report on the non-resident investor and details of the Government approval, if any”.

Further, Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time states that “An Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of issue of shares, a report in the Form FC-GPR as specified by the Reserve Bank from time to time....”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/6785/15.20.67/2017-18 dated February 09, 2018 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on February 23, 2018 during which Shri Bijoy, Company Secretary, and Shri Sashi Kumar Menon, General Manager, represented the applicant. The representative of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations and requested that a lenient view may be taken in the matter.

It has also been declared in the compounding application dated November 07, 2017, that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has been subsequently declared in the declaration dated February 26, 2018, furnished as an addendum to 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 been informed of initiation of any such enquiry/investigation/adjudication proceedings against it/him/her 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. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing and thereafter.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Paragraphs 9(1)(A) and 9(1)(B) and Para 2 of Schedule I read with Regulation 14(6)(ii)(d)(A) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time. The amount of contravention is as follows:

(i) Para 9(1)(A) of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 1,90,00,000/- (although amount of foreign fund received is INR 2,00,00,000/-, since INR 10,00,000/- worth of shares were gifted to a resident and gifting of shares from non-resident to resident is permitted under the automatic route, thus the relaxation in the amount of contravention has been granted) and Period of contravention – four years five months approximately.

(ii) Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 1,90,00,000/- and Period of contravention – six and a half years approximately.

(iii) Para 2 of Schedule 1, read with Regulation 14(6)(ii)(d)(A) of Notification No. FEMA 20/2000-RB – Amount of contravention – Rs. 1,90,00,000/- (although amount of foreign fund received is INR 2,00,00,000/-, since INR 10,00,000/- worth of shares were gifted to a resident and gifting of shares from non-resident to resident is permitted under the automatic route, thus the relaxation in the amount of contravention has been granted) and Period of contravention – 6 years 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. After considering the submissions made



by the applicant and the entire facts and circumstances of the case I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of Rs. 7,58,333/- (Rupees seven lakh fifty eight thousand three hundred and thirty three only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contravention committed by the applicant namely, Paragraphs 9(1)(A) and 9(1)(B) and Para 2 of Schedule I read with Regulation 14(6)(ii)(d)(A) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, on payment of a sum of Rs. 7,58,333/- (Rupees seven lakh fifty eight thousand three hundred and thirty three only), which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th 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 accordingly.

Dated this the twenty sixth day of February, 2018

Sd/-

Shekhar Bhatnagar
(Chief General Manager)