



In the

Reserve Bank of India
Foreign Exchange Department
3rd Floor
15, Netaji Subhas Road
Kolkata – 700 001

Present

H. Thangzaman
Chief General Manager

Date: July 23, 2018

C.A.067/2018

In the matter of

M/s Newtown Leisure Pvt Ltd

Flat 6B, Rajhans & Rajshree Apartments,
6 Hastings Park Road Road,
31 Judges Court Road,
Kolkata-700027
West Bengal

(Applicant)

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

Order

The applicant had filed a compounding application dated March 3, 2018 (received at Reserve Bank on March 5, 2018) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded is for



delay in refund of advance amount after 180 days of receipt of amount in terms of Paragraph 8 to Schedule 1 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 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: The applicant was incorporated under Companies Act, 1956, on May 8, 2008 and he is in the business of hotels and hospitality sector.

The applicant received four foreign inward remittances from foreign investors towards subscription to equity shares as tabulated below:

Sl. No	Foreign Investor	Amount in INR	Date of receipt	Date of reporting to RBI
1	Deuchny Properties Ltd	2,18,19,200	06.08.2008	03.11.2008
2	Deuchny Properties Ltd	3,68,14,500	11.09.2008	03.11.2008
3	Reco Joy Pte Ltd	38,04,38,002	28.11.2008	22.12.2008
4	Deuchny Properties Ltd	5,33,80,020	09.02.2009	20.03.2009
Total		49,24,51,722		

The applicant reported receipt of advance remittance towards share subscription to Kolkata Regional Office of Reserve Bank on the above mentioned dates with a delay ranging approximately ten days to two months stipulated time, whereas in terms of paragraph 9(1)(A) Schedule 1 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 applicant allotted equity shares in two tranches to foreign investors (as mentioned below) and reported to Reserve Bank of India as under:

S.No	Amount in INR for which FCGPR submitted	Date of allotment of shares	FCGPR submitted to RBI on
1	50,00,000	19.08.2008	19.08.2008
2	49,00,000	23.12.2008	30.06.2009
Total	99,00,000		



In terms of paragraph 9(1)(B) Schedule 1 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 FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to persons outside India. However, the applicant reported the allotment of Shares (in form FC-GPR) at serial no. 2 of the above table to the Reserve Bank of India, Kolkata Regional Office with a delay of approximately five months beyond the stipulated period of 30 days.

4. The applicant allotted 9,90,000 equity shares worth ₹ 99,00,000 against a total receipt of ₹49,24,51,722 at an issue price of ₹ 10/- per share as detailed below:

S. No.	Amount (INR)	Date of inflow	Date of issue of shares	Amount for which shares allocated (INR)	Amount of Refund (INR)	Date of Refund
1	2,18,19,200	06.08.2008	19.08.2008	50,00,000	1,68,19,200	03.02.2009
2	3,68,14,500	11.09.2008	N.A	Nil	3,68,14,500	03.02.2009
3	38,04,38,002	28.11.2008	23.12.2008	49,00,000	25,50,00,000 12,05,38,002	18.05.2009 14.03.2018
4	5,33,80,020	09.02.2009	N.A	Nil	5,33,80,020	14.03.2018
Total	49,24,51,722			99,00,000	48,25,51,722	

The allotment of shares was within the stipulated period from receipt of foreign inward remittances as mentioned in above table. Whereas in terms of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, as amended from time to time, if shares are not issued within 180 days from the date of receipt of 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. An amendment stipulating the upper limit of 180 days for issue of shares in paragraph 8 of Sch. 1 of Notification No.FEMA 20/2000-RB was introduced by issue of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Third amendment) Regulations 2007 notified vide Notification No. FEMA 170/2007-RB dated November 13, 2007 in the official Gazette of the Government of India.



Hence, the refund of amount Rs 17,39,18,022 effected on March 14, 2018 is in contravention of Para 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000.

5. The applicant was given an opportunity for personal hearing vide Reserve Bank's letter No.KOL.FED.FID.77/03.39.711/2017-18 dated July 11, 2018 for further submission in person and/or producing documents, if any, in support of the application. The applicant represented by Shri Raj Kumar Jha, Shri Deepak Gupta and Shri K.Ramasubramanian appeared for personal hearing on July 23, 2018. The representative of the applicant admitted the contraventions as stated in para 4 above committed by the applicant for which compounding has been sought. During personal hearing, it was submitted that the staff of the company was not fully conversant with the procedures and timelines of FEMA and that the delays in refund are purely inadvertent and not with any malice. In view of this, the company requested to take a lenient view in the matter. The application for compounding is therefore being considered on the basis of averments made in the application as well as other documents and submission made in the context by the applicant during personal hearing and thereafter.

6. It has been declared in the compounding application dated March 3, 2018 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 declared in the declaration 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. 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 contraventions being sought for compounding have taken place before November 7, 2017 and hence the



application for compounding is being considered as per provisions of erstwhile Notification No. FEMA 20/2000-RB dated May 03, 2000.

7. 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 8 of Schedule 1 of Notification No.FEMA 20/2000-RB dated May 03, 2000, for delay in refund of advance amount after 180 days of receipt of amount as details in paragraph 4 above. The contravention relates to an amount of Rs.17,39,18,022/- and the duration is 8 years 7 months 5 days approximately.

8. In terms of Section 13 of the FEMA any person contravening any provision of the act shall be liable for a penalty upto thrice the sum of the contravention upon adjudication. However, considering the circumstances which led 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 13,34,385/- (Rupees Thirteen lakh Thirty-four Thousand Three Hundred Eighty-five only) will meet the end of justice.

9. Accordingly, I compound the admitted contravention viz. Paragraph 8 of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000 by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceeding) Rules, 2000 on payment of an amount Rs.13,34,385/- (Rupees Thirteen lakh Thirty-four Thousand Three Hundred Eighty-five only) which are to be deposited by the applicant with the Reserve Bank of India, Kolkata by a demand draft in favour of Reserve Bank of India and payable at Kolkata within 15 days from the date of issue of the order. In case of failure to deposit the compounded amount within the above mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceeding) Rules, 2000 dated May 03, 2000 shall apply (the application is disposed of accordingly).



Dated, the 23rd July, 2018

_____s/d_____

(H. Thangzaman)

Chief General Manager, Kolkata