



In the

Reserve Bank of India
Foreign Exchange Department
Mumbai Regional Office
Main Building, 3rd floor
Shahid Bhagat Singh Marg, Fort
Mumbai 400 001

Present

J. K. Pandey
Chief General Manager

Date: September 10, 2018

C.A. No. 761/2018

In the matter of

Independence Brewing Company Private Limited
Zero One, Sr. No.79/1,
Pingle Vasti, Ghorpadi-Mundhwa Road
Mundhwa, Pune – 411 036
(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 thereunder, I pass the following

Order

1. The applicant has filed the compounding application dated April 04, 2018 (received at the Reserve Bank of India on April 17, 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 are (i) delay in reporting receipt of foreign inward remittance towards subscription to equity and (ii) delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to a person resident outside India, in terms of paragraphs 9 (1) (A) and 9 (1) (B) respectively, of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000



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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 company was incorporated on July 19, 2011, under the Companies Act, 1956 as Independence Brewing Company Private Limited. Its main activities are (i) to carry on in India or elsewhere the business as distillers, brewers, blenders, refiners, manufacturers, producers, processors, makers, preparers, growers, inventors, convertors, importers, exporters, traders, buyers, sellers, resellers, wholesalers, retailers, suppliers, indenters, packers, movers, preservers, bottlers, stockist, agents, sub-agents, merchants, distributors, dealers, marketers, consignors, consignees, brokers, concessionaries or otherwise deal in all type, kinds, brands, makes and varieties of beverages, concentrates, spirits, drinks, cocktails, mock tails, juices and shakes including alcoholic, non-alcoholic, liqueurs, aerated, fruit based, agro based and the like. (ii) To promote, establish, setup, acquire, build, own, lease, run, manage, operate, carry on in India or elsewhere pubs, bars, restaurants, hotels, motels, parlors, beer, houses, clubs, resorts, recreation centers, refreshment rooms, lodges, guest houses, cafes, inn, leisure centers, dining halls, canteens, dhabas, eating joints and the like.



3. The applicant received foreign inward remittances from Indus Brew LLC, United States of America, towards equity / preference share capital and reported the same to the Reserve Bank of India as indicated in the table.

Sr. No.	Amount in INR	Date of receipt	Date of reporting	Delay
1	3,08,538.00	30/03/2012	28/08/2012	0Y 3M 29D
2	1,52,58,000.00	12/04/2012	28/08/2012	0Y 3M 17D
3	1,56,78,000.00	24/04/2012	28/08/2012	0Y 3M 5D
4	1,30,12,500.00	27/04/2012	28/08/2012	0Y 3M 2D
5	64,17,000.00	29/06/2012	28/08/2012	0Y 1M 0D
6	5,49,500.00	27/07/2012	03/08/2012	NO
7	45,52,500.00	01/11/2013	29/01/2014	0Y 1M 29D
8	41,71,420.00	18/11/2013	29/01/2014	0Y 1M 12D
9	23,19,900.00	10/12/2013	26/03/2014	0Y 2M 14D
10	18,04,500.00	19/03/2014	26/03/2014	NO
11	14,51,750.00	22/05/2014	28/06/2014	0Y 0M 7D
12	26,84,700.00	22/07/2014	13/08/2014	NO
13	37,92,600.00	15/07/2015	30/07/2015	NO
14	91,02,800.00	17/08/2015	09/09/2015	NO
15	1,32,24,000.00	23/11/2015	17/12/2015	NO
Total	9,43,27,708.00			

The applicant reported receipt of remittances to the Reserve Bank of India with a delay ranging from 7 Days to 3 Months 29 Days, approximately, in respect of remittances listed at serial no. 1 to 5, 7 to 9 and 11 above. Whereas in terms of paragraph 9 (1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report foreign inward remittances 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.



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4. The company allotted equity shares/preference shares/convertible preference shares and filed FC-GPR as indicated below:

Sr. No.	No. of shares	FV in INR	Premium in INR	Amount involved in INR	Date of allotment	Date of filing	Delay
1	30000	10.00	0.00	3,00,000.00	31/03/2012	09/11/2012	0Y 6M 9D
2	101773	10.00	490.00	5,08,86,500.00	31/07/2012	14/12/2012	0Y 3M 14D
3	15411	10.00	706.61	1,10,43,676.71	15/04/2014	09/12/2014	0Y 6M 25D
4	1833	10.00	1759.73	32,43,915.09	24/05/2014	08/12/2014	0Y 5M 15D
5	1501	10.00	1759.73	26,56,364.73	24/07/2014	08/12/2014	0Y 3M 15D
6	2000	10.00	1883.00	37,86,000.00	12/09/2015	31/03/2016	0Y 5M 18D
7	4667	10.00	1940.00	91,00,650.00	16/10/2015	31/03/2016	0Y 4M 14D
8	6667	10.00	1970.00	1,32,00,660.00	20/01/2016	31/03/2016	0Y 1M 10D
			Total	9,42,17,767.00			

The applicant filed form FC-GPR as indicated at serial No. 01 to 08 above with a delay ranging from 1 Month 10 Days to 6 Months 25 Days, approximately. Whereas, in terms of Paragraph 9 (1) (B) of 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 person resident outside India.

5. The applicant was given an opportunity for personal hearing vide e-mail dated August 6, 2018, for further submission in person and/or producing documents, if any, in support of the application. The applicant vide letter dated August 6, 2018, had requested grant of waiver from attending the personal hearing. The applicant, in the compounding application, had admitted the contraventions as stated above for which compounding has been sought. It had been submitted that the contraventions were not wilful and were unintentional. 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 made in this context by the applicant.



6. 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 following FEMA provisions issued in terms of:

(a) Paragraph 9 (1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in reporting of receipt of foreign inward remittances towards subscription to equity as detailed in paragraph no. 3 above. The contravention relates to an amount of Rs.6,31,69,608.00 (Rupees Six Crore Thirty One Lakh Sixty Nine Thousand Six Hundred Eight Only) and the delay ranging from 7 Days to 3 Months 29, Days approximately.

(b) Paragraph 9 (1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB due to the delay in submission of Form FC-GPR to the Reserve Bank of India after issue of shares to persons resident outside India as detailed in para 4 above. The contravention relates to an amount of Rs.9,42,17,767.00 (Rupees Nine Crore Forty Two Lakh Seventeen Thousand Seven Hundred Sixty Seven Only) and the delay ranging from 1 Month 10 Days to 6 Months 25 Days, approximately.

7. It has been declared in the compounding application dated April 04, 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 further been stated in the declaration, 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's 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.



8. 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.1,34,440/- (Rupees One Lakh Thirty Four Thousand Four Hundred Forty Only) will meet the ends of justice.

9. Accordingly, I compound the admitted contraventions namely, the contraventions of paragraphs 9(1) (A) and 9(1) (B) of Schedule 1 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.1,34,440/- (Rupees One Lakh Thirty Four Thousand Four Hundred Forty Only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, 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.



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10. The above order is passed only in respect of contraventions of para 9 (1) (A) and 9 (1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.

The application is disposed of accordingly.

Dated: September 10, 2018.

Compounding Authority

Sd/-
(J. K. Pandey)
Chief General Manager