



In the

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

Present

Ajay Kumar Misra
Chief General Manager

Date: October 15, 2018
CA No 4722 / 2018

In the matter of

Safari Retreats Private Limited
721, Rasulgarh
Bhubaneswar - 751010

(Applicant)

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

Order

The applicant has filed the application dated June 07, 2018 (received in the Reserve Bank on June 11, 2018), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The applicant company has sought to be compounded for (i) taking on record transfer of shares from resident Indian to non – resident Indian, without the transfer being reported in the Form FC-TRS and (ii) delay in reporting receipt of funds for issue of shares beyond the stipulated period, in contravention of Regulation 4, and Regulation 5(1) read with paragraph 9(1)(A) of Schedule 1 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 company was incorporated as Safari Retreats Private Limited on February 27, 1982 (CIN: U70101OR1982PTC001037). It is engaged in the business of purchase, lease, exchange of land, buildings etc. and in carrying on the business of hotel, motel, restaurant, café etc. and any activities related to development of tourism.

On June 14, 2007, M/s Banyan Real Estate Fund, Mauritius, acquired 26000 equity shares of the applicant company, held by Shri Rahul Saraf, for a consideration of Rs. 1,63,02,000/-. The transfer of shares was reported in Form FC-TRS to the AD Bank on March 16, 2017, with a delay of 9 years 7 months, in contravention of Regulation 10A(b)(i) read with para 10 of Schedule I to Notification No. FEMA 20/2000-RB. The transferee, Shri Rahul Saraf, has been compounded for the above contravention vide compounding order dated May 24, 2018.

The above transfer of shares was taken on record by the applicant company without reporting in Form-FCTRS, in contravention of Regulation 4 of Notification No. FEMA 20/2000-RB.

Further, there was a delay in reporting inward remittances, beyond the stipulated period of 30 days, on two instances, in contravention of Regulation 5(1) read with Para 9(1)(A) of Schedule I of Notification No. FEMA 20/2000-RB.

The details are as follows:

S.No.	Name of remitter	Total amount (INR)	Date of receipt of remittance	Reported to RBI on
1	M/s Banyan Real Estate Fund	1,63,02,000	June 14, 2007	July 17, 2007
2	M/s Banyan Real Estate Fund	17,85,52,295	June 14, 2007	July 17, 2007



3. Regulation 4 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time states that, “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 to record in its books transfer of security from or to such person....”

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”.

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/1281/15.20.67/2017-18 dated August 31, 2018 for further submission in person and/or producing documents, if any, in support of the application. The applicant company, vide e-mail dated September 01, 2018, stated that they did-not intend to appear for the personal hearing. They also requested to proceed further without the personal hearing and take a lenient view in the matter, based on the documents already submitted by them.

It has also been declared in the compounding application dated June 07, 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 also 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 been 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.

The application is, therefore, being considered on the basis of the averments made in the application and the documents produced therein 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 Regulation 4 and Regulation 5(1) read with paragraph 9(1)(A) of Notification No.FEMA.20/2000-RB. The amount of contravention is as follows:

(i) Regulation 4 of Notification No. FEMA.20/2000-RB – Amount of contravention – Rs. 1,63,02,000/- and Period of contravention is nine years seven months approximately.

(ii) Regulation 5(1) read with paragraph 9(1)(A) of Schedule 1 of Notification No. FEMA.20/2000-RB – Amount of contravention – Rs. 17,85,52,295/- and Period of contravention is 2 days 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. Rs. 5,07,500/- (Rupees five lakh seven thousand five hundred 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, Regulation 4 and Regulation 5(1) read with paragraph 9(1)(A) of Notification No.FEMA.20/2000-RB, on payment of a sum of Rs. 5,07,500/- (Rupees five lakh seven thousand five hundred 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 fifteenth day of October, 2018

Sd/-

Ajay Kumar Misra
(Chief General Manager)