



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
11th Floor, Central Office Building
Fort, Mumbai - 400 001

Present

Attah Omar Basheer
General Manager

Date: February 10, 2017
C.A. 4176 / 2016

In the matter of

TANO India Advisors Private Limited
9, Nirlon Hose, Ground Floor, 254-B, Dr. Annie Besant Road
Worli, Mumbai 400025

(Applicant)

In exercise of the powers 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 October 3, 2016 (received on October 3, 2016) for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded involve Regulation 3 of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No.FEMA.3/2000-RB dated 3rd May 2000 and as amended from time to time (Notification No. FEMA.3/2000-RB, hereinafter)

2. The relevant facts of the case are as follows: M/s Tano India Advisors Pvt. Ltd. (TIA) is a financial advisory company incorporated on September 21, 2005 with CIN U74999MH2005PTC156242. It is a sub-advisor to M/s Tano Mauritius Investments (TMI), a Mauritius-based advisory company. TMI is owned by M/s



Tano Capital LLC (Tano Capital), a California based regulated entity. Tano Capital intended to start a real estate advisory business for opportunities in India, for which purpose it set-up a SPV, M/s Tano Streit Real Estate Investments LLC (Tano Streit) in Delaware, USA, in partnership with Streit India LLC, a USA based entity owned by M/s Divco West vide agreement dated June 29, 2007.

In September 2007, Tano Streit advanced USD 2,50,000 to TIA, to enable it to set up a team in India that could offer advisory services. An amount of USD 250000/- (Rs.9,927,500/-) was received in the bank account maintained with Standard Chartered Bank on September 27, 2007. Subsequently, Tano Capital LLC and Divco West decided to dissolve Tano Streit on a mutual consent basis and a certificate of cancellation dated February 21, 2008 was issued by the State of Delaware. In terms of the dissolution, the advance was moved to the books of Tano Capital, where they continued to show it as a receivable. Tano Capital decided to explore setting up of a Real Estate Fund on its own and hence, retained the advance of USD 250,000, given to TIA. However, unable to start the Fund, it was decided in 2014 to not pursue the initiative further, and permission to refund the advance was sought from the Bank. The Foreign Exchange Department (External Payments Division) vide letter FE.CO.EPD/9132/21.52.007/2015-16 dated February 11, 2016 granted permission for remitting USD 2,50,000 advance to Tano Capital USA subject to the applicant applying for compounding under Regulation 3 of FEMA 3/2000RB. The company applied for compounding on March 22, 2016. It was noted that the advance had been received from M/s Tano Streit which had since been dissolved. The applicant was proposing to remit the amount to Tano Capital only without any consent of the other co-owner of Tano Streit i.e. M/s Divco West. Further, the reasons for seeking permission to refund the advance after eight years were not sufficiently clear. The compounding application was returned and the matter was referred to the Directorate of Enforcement (DoE) for further investigation. Pursuant to the return of the Compounding Application, the company again approached the Bank for compounding. TIA was advised to get (a) a notarized letter from Tano Capital confirming the advance to TIA was properly transferred to its books of account in terms of dissolution agreement with its partner in Tano Streit; (b) a letter from M/s Divco West that no dues were receivable from TIA and they had no objection in TIA remitting the advance of USD 250000 to Tano



Capital; (c) a specific approval from the Foreign Exchange Department (External Payments Division) for refund of the amount to Tano Capital instead of Tano Streit as the latter no longer existed. The applicant submitted additional documents alongwith a letter dated September 16, 2016 from M/s Divco West (the other co-owner of Tano Streit) to the effect that the advance that the amount may be paid to Tano Capital. The applicant also submitted a letter FE.CO.EPD/3457/21.52.001/2016-17 dated September 30, 2016 issued by the Foreign Exchange Department (External Payments Division) granting specific permission for remitting USD 2,50,000 advance to Tano Capital LLC which was received earlier from M/s Tano Streit LLC subject to the applicant applying for compounding under Reg 3 of FEMA 3/2000RB. The applicant has filed the Compounding Application thereafter. The applicant has also intimated vide letter dated October 21, 2016 that the amount was remitted to Tano Capital LLC on October 19, 2016.

3. In terms of Regulation 3 of Notification No. FEMA.3/2000-Rb dated May 03, 2000 as amended from time to time," Save as otherwise provided in the Act, Rules, or Regulations made thereunder, no person resident in India shall borrow or lend in foreign exchange from or to a person resident in or outside India....".

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/ 7880/ 15.20.67/ 2016-17 dated February 3, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for personal hearing on February 08, 2017 and was represented by Mr. Hetal Gandhi, Director. The authorised representatives of the applicant admitted the contraventions for which compounding has been sought. During the personal hearing, it was submitted that the contravention was due to ignorance of FEMA provisions. The amount received from Tano Streit has been shown in the books of accounts of TIA for these years as a payable and had remained part of TIA's bank/investment balance for the entire period and was not utilised for any other purpose. The representative of the applicant requested that in view of the foregoing, a lenient view may be taken in disposal of the application. 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 during personal hearing.

5. As adjudication proceedings against the applicant are ongoing before the Directorate of Enforcement (DoE), this compounding order is issued only in respect of contraventions mentioned in paragraph 2 above and is without prejudice to any action that may be taken by Directorate of Enforcement against the applicant on the issues not covered under this order.

6. In view of the above, I hold that the applicant has contravened Regulation 3 of Notification No.FEMA.3/2000-RB. The contravention in question relates to an amount of Rs.9927500/- and the period is from the date of receipt of funds i.e. September 27, 2007 upto October 19, 2016. 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 entire facts and circumstances of the case, and the submissions made by the applicant, I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and I consider that payment of an amount of Rs.124,450/-(Rupees One hundred and twenty four thousand and four hundred and fifty 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, the contravention of Regulation 3 of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEMA.3/2000-RB dated May 3, 2000) as amended from time to time on payment of a sum of Rs.124,450/- (Rupees One hundred and twenty four thousand and four hundred and fifty 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.

Dated this the tenth day of February 2017

Sd/-

(Attah Omar Basheer)
General Manager