



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: April 28, 2017
CA No 4225 / 2016

In the matter of

Sharekhan Consultants Private Limited
10th Floor, Beta Building, Lodha iThink Techno Campus
Off. JVLR, Opp. Kanjurmarg Railway Station
Kanjurmarg (East)
Mumbai – 400042

(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 16, 2016 (received in the Reserve Bank on November 17, 2016) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contravention sought to be compounded is, undertaking the activities of mutual fund distribution and referral services even after the applicant became a foreign owned company. The above amounts to the contravention of Regulation 5(1)(i) read with Paragraph F.8.1 of Annex B of Schedule I 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 was incorporated as Sharekhan Shares and Securities Private Limited on June 20, 2000 (CIN: U67120MH2000PTC127257). It changed its name to Sharekhan Distribution Services Private Limited on March 13, 2002, and then to Sharekhan Distribution Services Limited on June 21, 2007, after conversion to a Public Limited Company. It again changed its name to Sharekhan Insurance Broking Limited on July 02, 2008. It converted to Private Limited Company and changed its name to Sharekhan Insurance Broking Private Limited on March 24, 2015 and finally to Sharekhan Consultants Private Limited, on May 13, 2015. The applicant is engaged in the business of broking and other financial services. The applicant is a Wholly Owned Subsidiary (WOS) of Sharekhan Financial Services Private Ltd., which is further a WOS of Sharekhan Limited. The applicant was an Indian owned and controlled company till 2006-07. In 2007-08, it became a foreign owned and controlled company, with foreign shareholding exceeding 75%. The applicant undertook mutual fund distribution from 2011-12 till 01.04.2015, after its conversion to a foreign owned company. This amounted to a contravention of Regulation 5(1)(i) read with Paragraph F.8.1 of Annex B of Schedule I of Notification No. FEMA 20/2000-RB, as foreign investment in mutual fund distribution activity was not permitted under 100% automatic route. The applicant also undertook referral activities, which was again not permitted under 100% automatic route, till the issuance of FEMA Notification No. 375/2016-RB dated 09.09.2016. The above, thus, again amounted to the contravention of Regulation 5(1)(i) read with Paragraph F.8.1 of Annex B of Schedule I of Notification No. FEMA 20/2000-RB.

3. Regulation 5(1)(i) of Notification No. FEMA 20/2000-RB, as amended from time to time, states that, "A person resident outside India (other than a citizen of Bangladesh or Pakistan) or an entity incorporated outside India (other



than an entity in Bangladesh or Pakistan), may purchase shares or convertible debentures or warrants of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule I”.

Further, Paragraph F.8.1 of Annexure B of Schedule I of Notification No. FEMA 20/2000-RB specifies the activities for which foreign investment in NBFC is allowed under the automatic route. This list does-not include mutual fund distribution activity. Referral activities were also not permitted under this route prior to the issuance of Notification No. 375/2016-RB dated 09.09.2016,

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/9824/15.20.67/2016-17 dated March 29, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on April 19, 2017 during which Shri Kunal. S. Karnani, CFO and Shri Vijay. H. Sakali, Company Secretary, represented the applicant. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to ignorance and requested that a lenient view may be taken in the matter. 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.

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 5(1)(i) read with Paragraph F.8.1 of Annex B of Schedule I, 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. The amount of contravention is Rs. 6,40,00,000/- and the period of contravention ranges from two years to five 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. 4,02,500/- (Rupees four lakh two thousand and 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 5(1)(i) read with Paragraph F.8.1 of Annex B of Schedule I 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, on payment of a sum of Rs. 4,02,500/- (Rupees four lakh two thousand and 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 twenty eighth day of April, 2017

Sd/-

(Shekhar Bhatnagar)
Chief General Manager