In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th Floor, Amar Building
Sir P M Road
Mumbai - 400 001

Present

J.K. Pandey
Chief General Manager

Date: May 12, 2017
CA No 4282 / 2017

In the matter of

MKU Holdings Private Limited
104 Munish Plaza, 20 Ansari Road
Darya Ganj, New Delhi - 110002

(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 January 17, 2017 (received in the Reserve Bank on January 20, 2017), for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) non-repatriation of interest due on loans within the stipulated time period and (ii) non-submission of Annual Performance Reports (APR) within the stipulated time period. The above amount to the contravention of Regulations 15(ii) and 15 (iii) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 notified vide Notification No.

FEMA 120/2004-RB dated July 7, 2004 as amended from time to time (hereinafter referred to as Notification No. FEMA 120/2004-RB).

2.   The relevant facts are as under: The applicant was incorporated as Green Shelters (India) Private Limited (CIN: U25206DL2005PTC131013), on January 04, 2005. It changed its name to MKU Holdings Private Limited with effect from June 13, 2007. The applicant is engaged in the business of an investment company, trading and dealing in shares, debentures, stocks etc. A wholly owned subsidiary (WOS) of the applicant, namely, MKU Cyprus Limited, was set-up in Cyprus on May 05, 2006. The applicant extended loans to the WOS, for which interest amounts were due as follows:

S.No.	Interest amount (USD)	Interest amount(INR)	Interest amount due on
1	176,301	69,48,022.41	31/12/2007
2	508,405	24632222.25	31/12/2008

The above amounts were to be repatriated within the stipulated time period of 60 days of their falling due. However, the above amounts were written off on 31.12.2009, thereby contravening Regulation 15(ii) of Notification No. FEMA 120/2004-RB. The Annual Performance Reports (APRs) for the years 2007-2013 were submitted with a delay beyond the stipulated time period, thus contravening Regulation 15(iii) of the same Notification.

3.   In terms of Regulation 15(ii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, an Indian Party, which has acquired foreign security in terms of the Regulations in Part I, shall, "repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due, or such further period as the Reserve Bank may permit….".

Further, in terms of Regulation 15 (iii) of Notification No.FEMA.120/2004-RB dated July 07, 2004 as amended from time to time, "An Indian Party which has acquired foreign security in terms of the Regulation in Part I shall submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before a specified date, an Annual performance Report (APR) in Part III of Form ODI in respect of each JV or WOS outside India…..".

4.   The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/9832/15.20.67/2016-17 dated March 31, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on April 18, 2017 during which Shri Deepender Kumar, Chartered Accountant, represented the applicants. The representative 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 15(ii) and 15 (iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount of contravention is Rs. 3,15,80,244.66/- and the period of contravention ranges from two years to ten 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. 3,56,852/- (Rupees three lakh fifty six thousand eight hundred and fifty two 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 contraventions committed by the applicant namely, Regulations 15(ii) and 15 (iii) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 3,56,852/- (Rupees three lakh fifty six thousand eight

hundred and fifty two 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 twelfth day of May, 2017

Sd/-

(J.K. Pandey)
Chief General Manager