



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: May 15, 2017  
C.A. 4241/2016

In the matter of

**Kalinga Hospital Limited**  
**Chandrasekharpur, Bhubaneswar**  
**Orissa – 751 023**

**(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 there under, I pass the following

**Order**

The applicant has filed a compounding application dated December 03, 2016 (received at Reserve Bank of India on December 08, 2016) on behalf of its holding company viz Hospital Corporation of Orissa, Inc. (hereinafter referred as HCO, Inc.) 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 relate to acquisition of equity shares of the applicant by an Overseas Corporate Body (OCB) from a resident Indian shareholder without the prior approval of the Reserve Bank of India (RBI) in contravention of Regulation 10(A)(b) 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 3rd May 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB). The applicant has further filed an addendum dated May 02, 2017 seeking compounding



of contravention that relate to refund of share application money beyond the prescribed period of 180 days specified for allotment / refund of shares without the prior approval of the Reserve Bank of India (RBI) in contravention of Paragraph 8 of Schedule I of Notification No. FEMA 20/2000-RB.

2. The relevant facts of the case are as follows: The applicant was initially incorporated as Kalinga Hospital Private Limited on May 02, 1990 under the Companies Act, 1956 (CIN U85110OR1990PLC002492). The applicant thereafter became a public limited company and the name of the applicant was changed to Kalinga Hospital Limited (KHL) on April 22, 1994. The applicant is engaged in the business of establishing & running hospitals, nursing homes etc. HCO, Inc., an erstwhile OCB incorporated in New Jersey, USA, presently holds 1,46,52,356 equity shares of the applicant. Given below are the details of shares of the applicant acquired by HCO, Inc.

**Table A: Summary of shares of the applicant acquired by HCO, Inc.**

Name of the Investor	Number of shares	Amount for which shares allotted	Mode of Acquisition
Hospital Corporation of Orissa, Inc.	42,458 <sup>1</sup>	42,45,800	Inward remittance
	2,06,703 <sup>1</sup>	2,06,70,300	
	10,723 <sup>1</sup>	10,72,300	
	5,05,973	50,59,730	
	61,25,000	6,12,50,000	Conversion of ECB into equity
	34,22,543	3,42,25,430	Inward remittance
	20,00,000	6,00,00,000	Acquired from IPICOL on 25.10.2010
<b>Total</b>	<b>1,46,52,356</b>	<b>18,65,23,560</b>	

1. Face value Rs. 100 each. On [06/05/1998], there was split in face value of equity shares of KHL from Rs. 100 each to Rs. 10 each.



The conversion of external commercial borrowing (ECB) of Rs.6,12,50,000 into equity as listed in Table A above was taken on record by the RBI vide letter FED (BHU) No.1042/08.02.149/2004-05 dated April 20, 2005. While the approval of RBI for the issuance of 1,26,52,356 shares to HCO, Inc. is in place, the balance 20,00,000 equity shares of the applicant amounting to Rs.6,00,00,000/- (listed under Table A) were acquired by HCO, Inc. from Industrial Promotion and Investment Corporation of Orissa Limited (IPICOL), an Indian entity, without the prior approval of the RBI. The said acquisition of 20,00,000 shares of the applicant by the erstwhile OCB from another resident Indian shareholder, without the prior approval of the RBI, was in contravention of Regulation 10(A)(b) of Notification No. FEMA 20/2000-RB. HCO, Inc. sought RBI approval for the transfer of its stake of 1,46,52,356 equity shares in the applicant to Hospital Corporation of Orissa, Inc., Florida, a non-resident, through merger with the transferee company. RBI granted approval for the said transfer vide letter FED.CO.FID No. 6005/10.21.384/2016-17 dated December 16, 2016. Further, in the above letter, RBI also granted post facto approval for the acquisition of 20,00,000 equity shares of the applicant by HCO Inc., an OCB, from a resident shareholder, subject to compounding.

As detailed in table A above, HCO, Inc. subscribed to 65,27,356 equity shares of the applicant amounting to Rs.6,52,73,560 through receipt of foreign inward remittance. The details of inward remittance received and the corresponding allotment of shares are as below:

**Table B:**

Sr. No	Name of Remitter	Total Amount (INR)	Date of Receipt	Date of allotment
1	Hospital Corporation of Orissa, Inc	2,10,194	24-06-1991	21-08-1995
	Hospital Corporation of Orissa, Inc	22,00,000	13-02-1991	
	Hospital Corporation of Orissa, Inc	1,74,216	13-06-1990	
	Hospital Corporation of Orissa, Inc	2,61,325	22-06-1990	
	Hospital Corporation of Orissa, Inc	3,47,826	29-06-1990	



	Orissa, Inc			
	Hospital Corporation of Orissa, Inc	1,96,464	20-04-1991	
	Hospital Corporation of Orissa, Inc	6,87,286	09-05-1990	
	Hospital Corporation of Orissa, Inc	1,68,500	02-05-1990	
	<b>Sub-total</b>	<b>42,45,811</b>		
2	Hospital Corporation of Orissa, Inc	7,16,332	23-04-1992	28-03-1997
	Hospital Corporation of Orissa, Inc	11,42,675	02-06-1992	
	Hospital Corporation of Orissa, Inc	2,06,452	29-09-1992	
	Hospital Corporation of Orissa, Inc	3,59,551	29-09-1992	
	Hospital Corporation of Orissa, Inc	47,02,500	25-05-1995	
	Hospital Corporation of Orissa, Inc	35,78,926	29-01-1996	
	Hospital Corporation of Orissa, Inc	32,44,175	18-04-1996	
	Hospital Corporation of Orissa, Inc	21,03,148	27-05-1996	
	Hospital Corporation of Orissa, Inc	14,18,136	08-08-1996	
	Hospital Corporation of Orissa, Inc	5,30,986	26-09-1996	
	Hospital Corporation of Orissa, Inc	26,67,433	26-09-1996	
	<b>Sub-total</b>	<b>2,06,70,314</b>		
3	Hospital Corporation of Orissa, Inc	10,72,300	14-02-1997	31/03//1998
	<b>Sub-total</b>	<b>10,72,300</b>		
4	Hospital Corporation of Orissa, Inc	30,40,796	28-12-1999	08-03-2005
	Hospital Corporation of Orissa, Inc	20,18,938	15-01-1998	
	<b>Sub-total</b>	<b>50,59,734</b>		
5	Hospital Corporation of Orissa, Inc	1,48,92,058	04-03-2008	29-01-2009
	Hospital Corporation of Orissa, Inc	71,43,763	11-04-2008	
	Hospital Corporation of Orissa, Inc	51,83,293	09-05-2008	
	Hospital Corporation of Orissa, Inc	55,73,100	07-07-2008	



	Hospital Corporation of Orissa, Inc	15,14,520	08-10-2008	
	<b>Sub-total</b>	<b>3,43,06,734</b>		

As given under point no. 5 of table B above, an amount of Rs.3,43,06,734 was received by the applicant as foreign inward remittance from HCO, Inc. against which shares were allotted for Rs. 3,42,25,430 only and the balance amount of Rs.81,304/- was refunded by the applicant on August 09, 2010. The applicant thus refunded the excess share application money beyond the prescribed period of 180 days from the date of receipt of the investment without obtaining RBI approval in contravention of Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB.

3. Whereas in terms of Regulation 10(A)(b) of Notification No. FEMA 20/2000-RB, "A person resident in India who proposes to transfer to a person resident outside India (not being erstwhile OCBs) any [shares or convertible debentures or warrants] of an Indian company under the Foreign Direct Investment scheme.....', the acquisition of shares of an Indian company by an OCB from another resident Indian shareholder is not permissible under the Automatic Route. Thus, the acquisition of 20,00,000 shares of the applicant by the erstwhile OCB from another resident Indian shareholder, without the prior approval of the RBI, was in contravention of Regulation 10(A)(b) of Notification No. FEMA 20/2000-RB Whereas in terms of Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned. Provided that the Reserve Bank may, on an application made to it and for sufficient reasons permit an Indian company to refund the amount of consideration received towards issue of security, if such amount of consideration is outstanding beyond a period of 180 days from the date of receipt. The refund of the excess share application money by the applicant beyond the prescribed period of 180 days from the date of receipt without obtaining RBI approval was in contravention of the said FEMA provisions.



4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/8845/15.20.67/2016-17 dated March 03, 2017 for further submission in person and/or producing documents, if any, in support of the application. The applicant appeared for the personal hearing on March 30, 2017 and Shri Subhransu Sekhar Biswal, Advisor represented the applicant. The representative of the applicant admitted the contraventions for which compounding has been sought and submitted that the contraventions were inadvertent and unintentional. He requested that in view thereof, the matter may be viewed leniently. 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 along with the application.

5. 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

- i. Regulation 10(A)(b) of Notification No. FEMA 20/2000-RB. The contravention relates to an amount of Rs.6,00,00,000/- and the period of contravention is six years approximately.
- ii. Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB. The contravention relates to an amount of Rs.81,304/- and the period of contravention is eight years six months 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. 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 contravention is to be compounded and I consider that an amount of Rs.5,88,568/- (Rupees Five lacs Eighty Eight Thousand Five Hundred Sixty Eight only) will meet the ends of justice in the circumstances of the case.



7. Accordingly, I compound the admitted contraventions namely, the contravention of Regulation 10(A)(b) and Paragraph 8 of Schedule 1 of 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.5,88,568/- (Rupees Five lacs Eighty Eight Thousand Five Hundred Sixty Eight only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5<sup>th</sup> 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 of accordingly.

Dated this the fifteenth day of May, 2017

Sd/-

**Shekhar Bhatnagar**  
**Chief General Manager**