



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: June 15, 2017
C.A. 4320/2017

In the matter of

Kepto Tourism Services Private Limited
Villa G, Villa Rivabammin Vaddo
Candolim, Goa

(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 February 04, 2017 (received at Reserve Bank of India on March 03, 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) delay in reporting foreign inward remittances; (ii) delay in reporting allotment of shares after receipt of the funds and; (iii) delay in allotment of shares beyond the prescribed period of 180 days after receipt of the funds in contravention of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule I to 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).



2. The relevant facts of the case are as follows: Kepo Tourism Services Private Limited (KTSPL) was incorporated on November 11, 2005 under the Companies Act, 1956 (CIN U63040GA2005PTC004214). The applicant is engaged in the travel and tourism business. KTSPL received Foreign Direct Investment (FDI) amounting to Rs.2,62,61,600/- in 2006 and reported allotment of 1000 equity shares of Rs.100/- each and 2,61,616 preference shares of Rs.100/- each to RBI in Form FC-GPR dated December 30, 2006. The same was taken on record by RBI vide registration number FC-2008-PJR-0654 on March 17, 2008.

2.1 The applicant further received the following foreign inward remittances from non-resident Director:-

Table A

Sr.No	Name of remitter	Date of remittance received	Amount in INR	Date of reporting to RBI
1	Mr. Christopher G. Pouncey	08-12-2006	34,94,800	30-09-2015
2		21-12-2006	34,80,800	30-09-2015
3		21-03-2007	68,21,600	30-09-2015
4		05-07-2007	32,60,000	30-09-2015
5		25-04-2008	23,73,900	30-09-2015
6		05-10-2009	3,02,440	30-09-2015
7		23-08-2013	4,91,250	26-10-2013
		Total	2,02,24,790	

KTSPL received FDI of Rs.2,02,24,790/- during the period December 08,2006 to August 23, 2013 and has reported the receipt of foreign inward remittances with delay ranging from two months to eight years nine months approximately as given above. The delay was in contravention of Paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB.

2.2 KTSPL allotted preference shares during the period from January 05, 2007 to February 07, 2014 to the non-resident investors as under:-



Table B

Sr.No	Name of Investor	Date of allotment of shares	Amount (INR) for which shares allotted	Date of reporting to RBI	No. of shares allotted
1	Mr. Christopher G. Pouncey	05-01-2007	34,87,800	10-08-2015	34,878
2	Ms. Sheila Keegan	05-01-2007	34,87,800	10-08-2015	34,878
3	Mr. Christopher G. Pouncey	30-12-2007	50,40,800	10-08-2015	50,408
4	Ms. Sheila Keegan	30-12-2007	50,40,800	10-08-2015	50,408
5	Mr. Christopher G. Pouncey	24-05-2008	11,87,000	10-08-2015	11,870
6	Ms. Sheila Keegan	24-05-2008	11,86,900	10-08-2015	11,869
7	Mr. Christopher G. Pouncey	03-11-2009	1,51,200	10-08-2015	1,512
8	Ms. Sheila Keegan	03-11-2009	1,51,200	10-08-2015	1,512
9	Mr. Christopher G. Pouncey	07-02-2014	4,91,200	10-08-2015	4,912
		Total	2,02,24,700		2,02,247

KT SPL reported the allotment of preference shares in Form FC-GPR amounting to Rs.2,02,24,700/- with delay ranging from one year six months to eight years seven months approximately. The delay was in contravention of Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB.

2.3 KT SPL allotted 1,00,816 preference shares on December 30, 2007 against the total amount received on March 21, 2007 and July 05, 2007 as per the details given at serial numbers 3 and 4 respectively of table A above. Thus, in one instance there was delay in the allotment of shares by the applicant against receipt of foreign remittance beyond the prescribed period of 180 days in contravention of Paragraph 8 of Schedule I of Notification No 20/2000- RB and the period of delay was around three months as below:



Table C

Sr.No.	No. of Shares	FDI received	Date of receipt of inward remittance	Date of allotment of shares
1	68,216	68,21,600	21-03-2007	30-12-2007

Subsequently, KTSPL converted all the 4,63,863 preference shares of Rs.100/- each into equity shares of Rs.100/- each and it was reported to RBI vide letters dated December 31, 2014 and July 31, 2015. RBI vide letter FE.PNJ.1306/01.10.548/2015-16 dated May 18, 2016 advised the applicant of the above contraventions.

3. During the course of its operations, KTSPL committed the following contraventions of FEMA provisions as laid down under Notification No. FEMA 20/2000-RB as amended:-

3.1 Whereas, in terms of Paragraph 9 (1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report foreign inward remittances to the Reserve Bank of India as per the prescribed procedure not later than 30 days from the date of receipt of the amount of consideration.

KTSPL has reported the inward remittances beyond the prescribed period in 7 instances as per the details given in Table A above thereby contravening the said FEMA provision. The amount of contravention was Rs.2,02,24,790/- and the period of contravention ranges two months to eight years nine months approximately.

3.2 Whereas in terms of Paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to Reserve Bank a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident outside India.

KTSPL reported the allotment of shares in Form FC-GPR beyond the prescribed period in 9 instances as per the details given in Table B above thereby



contravening the said FEMA provision. The amount of contravention was Rs.2,02,24,790/- and the period of contravention ranges one year six months to eight years seven months approximately.

3.3 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 to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt.

KTSPAL allotted shares after a lapse of 180 days as per the details given in Table C above thereby contravening the said FEMA provision. The amount of contravention was Rs.68,21,600/- and the period of contravention was three months approximately.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter No. FE.CO.CEFA/11650/15.20.67/2016-17 dated May 24, 2017 for further submission in person and/or producing documents, if any, in support of the application. Mr. Christopher G. Pouncey, Director, KTSPAL along with Mr. Augustus Monteiro and Ms. C.H. Jhakkur represented the applicant during the personal hearing held on June 09, 2017. The representatives of the applicant admitted the contraventions for which compounding has been sought and submitted that the delay was inadvertent and unintentional. They 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 submitted 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 FEMA provisions issued



in terms of Paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule I to Notification No. FEMA 20/2000-RB as per the details given at paragraph 2 and 3 above.

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 contraventions are to be compounded and I consider that an amount of Rs.4,16,673/- (Rupees four lakhs sixteen thousand six hundred and seventy three only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, the contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule I to 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.4,16,673/- (Rupees four lakhs sixteen thousand six hundred and seventy three 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 of accordingly.

Dated this the fifteenth day of June, 2017.

Sd/-

(Shekhar Bhatnagar)
Chief General Manager