



In the

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

Present

Attah Omar Basheer
General Manager

Date: June 13, 2017
CA No 4344 / 2017

In the matter of

Lodha Developers Private Limited
412, Floor 4, 17G Vardhaman Chamber,
Cawasji Patel Road, Horniman Circle,
Fort, Mumbai - 400 001.

(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 April 13, 2017 (received at the Reserve Bank on April 17, 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) holding loan in the overseas entity (JV) without equity contribution, ii) non-reporting of post investment changes in existing JV, iii) delay in submission of Annual Performance Reports (APRs), iv) disinvesting in the JV with outstanding dues and v) repatriation of disinvestment proceeds



beyond the stipulated time period of 90 days, thereby contravening the provisions of Regulation 6(4), 13, 15(iii), 16(1)(iv) and 16(2) respectively of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000, notified vide Notification No. FEMA.120/2000-RB dated July 7, 2004 and as amended from time to time (hereinafter referred to as Notification No. FEMA.120/2000-RB).

2. The relevant facts of the case are as follows: The applicant company was incorporated as Lodha Developers Private Limited in Mumbai, under the Companies Act 1956, on September 25, 1995 (CIN: U45200MH1995PTC093041). The name was changed to Lodha Developers Limited on August 10, 2009 and again to Lodha Developers Private Limited on January 11, 2013. The applicant is engaged in the business of construction and maintenance of buildings, as dealers, contractors, etc. and other allied activities. The applicant invested an amount of USD 50,000 in the equity shares of its JV viz., Bellissimo Holdings Singapore Pte Ltd for acquisition of 76% stake, on March 01, 2008. The applicant invested a further amount of USD 8,764 and SGD 1,56,125 in redeemable preference shares (loan) between September 2008 to May 2009. The equity investment was disinvested on March 31, 2011 though the applicant continued to hold loan amounting to USD 8,764 and SGD 1,36,125 in the JV, thereby contravening Regulation 6 (4) of Notification No. FEMA.120/2000-RB.

Further, the applicant was having outstanding dues in the form of loan investment amounting to USD 8,764 and SGD 1,36,125 at the time of disinvestment, thereby contravening Regulation 16(1)(iv) of Notification No. FEMA 120/2000-RB.

The applicant disinvested its stake in the JV to the extent of equity investment of USD 50,000 on March 31, 2011. However, the disinvestment proceeds were repatriated on August 07, 2012, which was beyond the stipulated time period of 90 days, thereby contravening Regulation 16(2) of Notification No. FEMA.120/2000-RB.



The applicant further converted the investment of USD 8,764 and SGD 1,36,125 in redeemable preference shares to compulsorily convertible preference shares on April 01, 2012. However, reporting of the same was not done within the stipulated time period of 30 days, thereby contravening Regulation 13 of the Notification No. FEMA.120/2000-RB.

Further, the applicant also did not submit the Annual Performance Reports (APRs) of the JV, viz., Bellissimo Holdings Singapore Pte Ltd, within the stipulated time period. The details of the same are as below:

Sr. No.	Financial Year	Due date of submission of APRs	Date of actual submission to AD Bank	Delay
1	2008-09	June 30, 2008	September 13, 2011	3 years 2 months (approx.)
2	2009-10	June 30, 2009	September 13, 2011	2 years 2 months (approx.)
3	2010-11	June 30, 2010	September 04, 2011	1 year 2 months (approx.)
4	2011-12	June 30, 2012	March 24, 2014	1 year 8 months (approx.)
5	2012-13	June 30, 2013	March 24, 2014	8 months (approx.)
6	2013-14	June 30, 2014	November 19, 2014	4 months (approx.)
7	2014-15	June 30, 2015	September 28, 2015	3 months (approx.)

This was in contravention of Regulation 15 (iii) of Notification No. FEMA 120/2004-RB.

3. In terms of Regulation 6(4) of Notification No. FEMA.120/2000-RB states, " An Indian Party may extend a loan or a guarantee to or on behalf of the Joint Venture/Wholly Owned Subsidiary abroad, within the permissible financial commitment, provided that the Indian Party has made investment by way of contribution to the equity capital of the Joint Venture".



Regulation 13 of Notification No. FEMA.120/2000-RB states, "A JV/WOS set up by the Indian party as per the Regulations may diversify its activities/ set-up step-down subsidiaries/ alter the shareholding pattern of the overseas entity: Provided the Indian Party reports to the Reserve Bank, the details of such decisions taken by the JV/WOS within 30 days of the approval of those decisions....."

Regulation 15 (iii) of Notification No. FEMA.120/2000-RB states, "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 II of Form ODI in respect of each JV or WOS outside India.....".

Regulation 16(1)(iv) of Notification No. FEMA.120/2000-RB states, " An Indian party may transfer by way of sale to another Indian party who complies with the provisions of Regulation 6 above, or to a person resident outside India, any share or security held by him in a JV or WOS outside India... The Indian party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements, and/or export proceeds from the JV or WOS".

Regulation 16(2) of Notification No. FEMA.120/2000-RB No. FEMA.120/2000-RB, " Sale proceeds of shares/securities shall be repatriated to India immediately on receipt thereof and in any case not later than 90 days from the date of sale of the shares/securities and documentary evidence to this effect shall be submitted to the Regional office of the Reserve Bank through the designated authorized dealer".

4. The applicant vide letter dated May 04, 2017 waived the opportunity for personal hearing and requested that the compounding application be considered on the basis of the documents already submitted by the applicant alongwith the compounding applications. The application is, therefore, being considered on the basis of the averments made in the application.



5. I have given my careful consideration to the documents on record. It was observed that the applicant has contravened the provisions of Regulation 6(4), 13, 15 (iii), 16(1)(iv) and 16 (2) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time. The amount of contravention is follows:

- i) Regulation 6(4) of Notification No. FEMA 120 - amount of contravention - Rs. 47,57,015/- and period of contravention is six years and one month approximately.
- ii) Regulation 13 of Notification No. FEMA 120 - amount of contravention - Rs. 47,57,015/- and period of contravention is five years approximately.
- iii) Regulation 15(iii) of Notification No. FEMA 120 - amount of contravention - Rs. 47,57,015/- and period of contravention as mentioned in para 2 above.
- iv) Regulation 16(1)(iv) of Notification No. FEMA 120 - and Rs. 47,57,015/- for amount of contravention - Rs. 47,57,015/- and period of contravention is six years and one month approximately.
- v) Regulation 16(2) of Notification No FEMA.120 - amount of contravention - Rs. 20,19,500/- and period of contravention is five years and ten months approximately.

6. 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.

7. 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, 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 INR 3,51,501/- (Rupees Three lakhs fifty one thousand five hundred one only) will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contraventions committed by the applicant namely, Regulations 6(4), 13, 15 (iii), 16(1)(iv) and 16 (2) of Notification No.FEMA.120/2004-RB dated July 7, 2004, as amended from time to time, on payment of a sum of Rs. 3,51,501/- (Rupees Three lakhs fifty one thousand five hundred one 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 thirteenth day of June, 2017

Sd/-

(Attah Omar Basheer)
General Manager