



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
5th floor, Amar Building
Fort, Mumbai - 400 001

Present

Jyoti Kumar Pandey
Chief General Manager

Date: July 28, 2017
C.A. 4375/2017

In the matter of

Abja Global Hospitality Investments Private Limited
58, 15th Cross, 2nd phase
JP Nagar, Bengaluru– 560 078

(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 May 03, 2017 (received in the Reserve Bank of India on May 05, 2017) 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 relate to non receipt of the proof of the investments made in the overseas wholly-owned subsidiary (WOS) within the prescribed period in contravention of the provisions of Regulation 15(i) 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 of the case are as follows: Abja Global Hospitality Investments Private Limited (AGHIPL), the applicant, was incorporated on October 12, 2015 under the Companies Act, 2013 (CIN U74900KA2015PTC083366). AGHIPL is engaged in the business of running hotels, restaurants, cafes, holiday camps, resorts etc and allied activities. It set up a wholly-owned subsidiary in Germany namely, Tamara Hospitality Investments Gmbh (hereinafter referred as 'German WOS'), which was set up primarily for the acquisition and development of local hospitality projects in Europe. The applicant made overseas direct investments (ODI) amounting to EURO 18.10 million in its German WOS during the period 2015-2016 as under:

Table A

Sr. No	Date of transaction	Amount in Foreign currency (EURO)	Date of reporting	Purpose
1.	30.10.2015	50,000	03.11.2015	Equity capital of German WOS
2.	04.11.2015	50,000	05.11.2015	Classified as 'capital reserves' in the books of German WOS
3.	01.12.2015	1,500,000	07.12.2015	
4.	18.12.2015	1,375,000	22.12.2015	
5.	07.01.2016	1,500,000	08.01.2016	
6.	29.02.2016	1,625,000	02.03.2016	
7.	07.10.2016	3,000,000	12.10.2016	
8.	14.10.2016	3,000,000	25.10.2016	
9.	24.11.2016	6,000,000	29.11.2016	Equity capital of German WOS
	Total	1,810,000,000		

The applicant duly submitted the proof of investment in the share capital of its German WOS for EURO 50000 for initial tranche of ODI remittance (at serial number 1 above) to its AD Bank namely, AXIS Bank Limited, which was taken on record. However, for the ODI investments made by the applicant from November 04, 2015 to October 14, 2016 amounting to EURO 12.05 million, German WOS had to classify the investments as 'capital reserves' in its books due to an error made by it in following the procedure as laid down under the German Law for increase of



authorized share capital and omission of the step of passing a resolution which was essential for increase of the equity of a company. As a result of this omission the German WOS failed to register the ODI remittances at serial numbers 2 to 8 of the table above amounting to EURO 12.05 million as further capital infusion which therefore had to be classified as 'capital reserves' as was observed from the certified statements of the German WOS as on December 31, 2016. AGHIPL further submitted a copy of the board resolution dated March 14, 2017 to the effect that the above investment of EURO 12.05 million shall always be considered as equity investments notwithstanding that the same has been recorded and reported as 'capital reserves' in the books of its German WOS. The applicant thus delayed in submission of the proof of investments made in its German WOS beyond the stipulated time period in contravention of Regulation 15(i) of FEMA 120/2004. RBI vide letter FE.CO.OID./10658/19.51.447/2016-17 dated April 25, 2017 advised the applicant of the said contravention. The ODI remittance of EURO 6 million at serial number 9 of the table above was reflected as the equity capital in the WOS's books as on December 31, 2016.

3. Whereas in terms of Regulation 15(i) of FEMA 120/2004, "an Indian Party, which has acquired foreign security.....shall receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalized became due to the Indian Party or the date on which the amount due was allowed to be capitalized".

The applicant did not submit the proof of investments as detailed in paragraph 2 above within the prescribed period of six months thereby contravening the said FEMA Regulation.

4. The applicant was given an opportunity for personal hearing vide our letter No. FE.CO.CEFA No.116/15.20.67/2017-18 dated July 06, 2017 for further submission in person and/or producing documents, if any, in support of the application. Shri Rajendra Rao, Director, AGHIPL, Shri Debjit D. Chaudhuri, MD, Tamara Hospitality Investments GmbH, Shri S. Padiparthi, AXIS Bank along with



consultants Shri R. Shroff and Shri Tanmay Patnaik represented the applicant during the personal hearing held on July 21, 2017. The representatives of the applicant submitted that the contraventions on their part were unintentional and a lenient view may be taken. 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 in this context by the applicant.

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 contravened Regulation 15(i) of Notification No. FEMA 120/2004-RB dated July 7, 2004 as per the details given at paragraphs 2 and 3 above. The amount of contravention was EURO 12.05 million (INR 88 crore approximately) and the period of contravention ranges one month to one year.

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 payment of an amount of Rs.70,000/- (Rupees seventy thousand only) will meet the ends of justice in the circumstances of the case.

7. Accordingly, I compound the admitted contraventions namely, the contravention of the Regulation 15(i) of Notification No. FEMA 120/2004-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs.70,000/- (Rupees seventy thousand only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai – 400 001 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 July, 2017

Sd/-

(Jyoti Kumar Pandey)
Chief General Manager