



In the

Reserve Bank of India
Foreign Exchange Department
5th Floor, Amar Building
Sir PM Road
Mumbai – 400001

Present

R. Seetharaman
Deputy General Manager

Date: July 24, 2017
CA NO: 4362/2017

In the matter of

Adknowledge Asia Pacific (India) Private Limited
B-4, Parle Colony CHS Ltd, Sahakar Road Next to Gokul Arcade, Vile Parle (East)
Mumbai- 400057

(Applicant)

In exercise of 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 April 26, 2017 (received in the Reserve Bank of India on April 28, 2017) for compounding the 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 is borrowing (Security deposit on behalf of the applicant was directly paid to the licensor Mr. Kashyap Davda by its holding company in abroad in connection with leave and license for the new premises of the applicant) in Indian rupee without meeting the stipulated conditions, in contravention of Regulation 3 read with Para 1(i), Para 1 (xi) and para 1 (xiii) of Schedule I of Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations 2000 notified vide Notification No. FEMA



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3/2000- RB dated May 3, 2000, as amended from time to time (hereinafter referred to as Notification No FEMA 3/2000-RB).

2. The relevant facts of the case are follows: The applicant was incorporated as Adknowledge Asia Pacific (India) Private Limited on June 23, 2015 under the Companies Act, 2013 (CIN NO: U74120MH2015FTC265927). The applicant is engaged in providing advertisement services including digital advertising, internet advertising, web banner advertising, mobile advertising, technical support services and other related support services. The applicant was incorporated as a subsidiary of Adknowledge Asia Pacific Pte Limited, Singapore who is holding 99.99% of equity in the Indian company. The overseas holding company deposited INR 15,00,000/- on August 08, 2015 in to the bank account of the licensor Mr. Kashyap Davda as security deposit on behalf of the Indian company to have office space. The payments since remitted by the holding company to the licensor, amounted to external commercial borrowings, there by contravening regulation 3 read with Schedule I of Notification FEMA 3/2000-RB. The amount was waived by the holding company vide its letter dated April 10, 2017. These transactions were later reported to the Reserve Bank of India by the applicant vide its application for compounding dated April 26, 2017 and administrative action is completed in respect of the above contravention.

3. Regulation 3 of Notification No FEMA 3/2000- RB states that “Save as otherwise provided in the Act, Rules or regulations made thereunder, no person resident in India shall borrow or lend in foreign exchange from or to a person resident in or outside India....”

Whereas Schedule I of the same notification stipulates certain conditions for borrowings in foreign exchange under automatic route.

Para 1(I) of Schedule I- Eligibility:

(a) Any company registered under the Companies Act, 1956, other than a financial intermediary (such as a bank, financial institution, housing finance company and a non-banking finance company) is eligible to borrow under this Schedule



[provided in case the entity is under investigation / adjudications / appeals by the law enforcing agencies, for violation of any of the provision of the regulations under the Act, it shall indicate to the Authorized Dealers (ADs) about pendency of investigations / adjudications / appeals, while availing foreign currency borrowing.]

(b) Non- Government Organisations and Micro Finance Institutions engaged in micro-finance activities may borrow in foreign exchange under this Schedule under such terms and conditions as specified by the Reserve Bank from time to time

[provided in case the entity is under investigation / adjudications / appeals by the law enforcing agencies, for violation of any of the provision of the regulations under the Act, it shall indicate to the Authorized Dealers (ADs) about pendency of investigations / adjudications / appeals, while availing foreign currency borrowing.]

(c) Any other entity as specified by the Reserve Bank.

[provided in case the entity is under investigation / adjudications / appeals by the law enforcing agencies, for violation of any of the provision of the regulations under the Act, it shall indicate to the Authorized Dealers (ADs) about pendency of investigations / adjudications / appeals, while availing foreign currency borrowing.]

Para 1(xi) of Schedule I- Drawal of Loan: Draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only after obtaining the loan registration number from the Reserve Bank

Para 1(xii) of Schedule I- Reporting: The borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time.

4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter FED.CO. CEFA .No./11912/15.20.67/2016-17 dated May 30, 2017 for further submission in person and /or producing documents, if any, in support of the application. The personal hearing was held on June 27, 2017 during which Shri Umesh. A. Vaishya Sr. Accountant represented the applicants. The application is considered on the basis of the averments made and documents produced in the application.



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5. I have given my careful consideration of the documents on record and submission made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the provisions of Regulation 3 read with Schedule I of Notification No. FEMA 3/2000-RB as amended from time to time. The amount of contravention is Rs. 15,00,000/- and period of contravention is one year and eight months approximately.

6. In terms of provisions of section 13 of FEMA, any person contravening any provision of the Act shall be liable to pay up to three times the sum involved in the contravention upon adjudication. However, taking into account the relevant facts and circumstance 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.58250/- (Rupees fifty eight thousand two thousand and fifty only) will meet the end of justice.

7. Accordingly, I compound the admitted contravention namely, the contravention of Regulation 3 read with Schedule I of Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No 3/2000-RB dated May 3, 2000, as amended from time to time, by the applicant stated above on the facts discussed above in terms of Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of Rs.58250/- (Rupees fifty eight thousand two thousand and fifty only) which shall be deposited by the applicant with the Reserve Bank of India, 11th Floor, Central Office Building, Shahid Bhagat Singh Marg, Mumbai-400001 by a Demand Draft drawn in favour of "Reserve Bank of India" and payable at "Mumbai" within a period of 15 days from the date of the 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 shall apply.

The application is disposed accordingly.

Dated this twenty fourth day of July 2017.

Sd/-

(R. Seetharaman)



Deputy General Manager

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