



In the
Reserve Bank of India
Foreign Exchange Department
Ahmedabad-380009

Present
N Senthil Kumar
General Manager

July 21, 2017
CEFA.CO.ID.7995 /C.A.No. AHM- 82 /2017-18

In the matter of
M/s Kaizen Infrastructure LLP
(Formerly M/s Kaizen Infrastructure Pvt. Ltd.)
Oriental House, S V Kinariwala Road, B/H British Library,
Law Garden, Ellisbridge, Ahmedabad - 380006
Gujarat

(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:

Order

The applicant has filed compounding application dated March 3, 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 beyond 30 days in submission of Form FC-GPR to the Reserve Bank after issue of shares to a person resident



outside India and (ii) delay in allotment of shares beyond stipulated period of 180 days; in terms of paragraphs 9(1) (B) and Paragraph 8 respectively, of Schedule 1 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 and 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: The applicant company was incorporated and named as Kaizen Infrastructure Pvt. Ltd. on November 19, 2004 under the provisions of the Companies Act, 1956 subsequently, the company was converted into a LLP and its name changed to Kaizen Infrastructure LLP on March 15, 2013 and the company is engaged in infrastructure development of all kind of projects like Hotels, resorts, buildings, offices townships. Flats, houses, factories, warehouses, shops, clubs, theatres, water parks, hospitals, electric generating stations etc. The applicant company has received one inflow amounting to ₹75,24,000/- from Foreign investor under automatic route and reported the same to Reserve Bank of India as indicated below:

Para 9(1) (A) – Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000 – No contravention detected: (Table -1)

Sr No	Remitter	Date of receipt	Amount of foreign inward remittance (Rs)	Date of reporting to AD bank by company	Date of reporting by AD bank to RBI	Days delay excluding prescribed time of 30 days.
1	Mr Kirit Shivabhai Patel	17/06/2006	75,24,000	29/06/2006	29/06/2006	No delay

The applicant reported the receipt of one inward remittance, amounting to ₹75,24,000/- to the Ahmedabad Regional Office of the Reserve Bank of India. It was reported within stipulated period of 30 days from the date of receipt of the amount of consideration. Therefore, the firm has not contravened paragraph 9(1)



(A) of Schedule 1 to Notification No. FEMA 20/2000-RB, wherein an Indian company issuing shares or convertible debentures in accordance with these Regulations should report 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.

3. The applicant allotted equity shares and filed FC-GPRs as stated below:

Para 9(1) (B) – Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000 –Contravention detected: (Table -2)

Sr. No.	Investor	No. of Shares Issued	Amount of Shares(Rs.)	Date of Issue of Shares	Date of Submission of FC-GPR by Company to AD	Days delay excluding prescribed time of 30days*
1	Mr Kirit Shivabhai Patel	100000	1000000	11/06/2007	14/08/2007	31 days
2	Mr Kirit Shivabhai Patel	652400	6524000	26/06/2009	26/08/2009	34 days
	Total	752400	7524000			

*For calculation of days of delay under 9(1)(B) reporting to AD is taken as reporting to RBI.

4. As indicated in the table above, the applicant has filed 2 form FC-GPRs amounting to ₹75,24,000/- with a delay ranging from 31 to 34 days beyond the prescribed timeline of 30 days. Whereas, in terms of paragraph 9(1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to the Reserve Bank of India a report in form FC-GPR, along with documents prescribed therein, within 30 days from the date of issue of shares to the overseas investor. Thus, the company stands to contravene the provisions stipulated in Paragraph 9(1) (B) of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000.



5. Contravention under Para 8 of Schedule I of FEMA notification 20/2000- RB dated May 3, 2000. Contravention detected. (Table - 3)

Sr. No.	Investor	Date of remittance received	Amount of Shares (Rs.)	Date of Issue of Shares	Days delay excluding prescribed time of 180days
1	Mr Kirit Shivabhai Patel	17/06/2006	1000000	11/06/2007	179 days delay
2	Mr Kirit Shivabhai Patel	17/06/2006	6524000	26/06/2009	925 days delay
	Total		7524000		

6. As indicated in the table above, the applicant has allotted shares for the entire amount against total inflow of ₹75,24,000. It is observed that shares amounting to ₹75,24,000 were allotted with the delay of 179 to 925 days beyond stipulated period of 180 days without obtaining prior approval from Reserve Bank of India as stipulated in Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000. Whereas, in terms of Para 8 of Schedule 1 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 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. The amendment in paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB was introduced by issue of Foreign Exchange Management (Transfer or Issue of Security by A Person Resident outside India) (Third Amendment) Regulations, 2007 notified vide, Notification No. FEMA 170/2007-RB dated November 13, 2007 in the official Gazette of the Government of India. Further in terms of paragraph 5 of AP(Dir series) Circular No.20 dated December 14, 2007, in all cases where, as on November 28, 2007, 180 days have elapsed since receipt of funds and the equity instruments have not been issued, the companies are required to approach the Foreign Exchange Department of the Regional Office concerned of the



Reserve Bank through their AD Category-1 bank with a definite action plan whether for allotment of equity instruments or for refund of the advance, with full details, for specific approval. Thus, the company stands to contravene the provisions stipulated in Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000- RB dated May 3, 2000.

7. The applicant was given an opportunity for personal hearing vide our letter FE.AH.No.78/06.04.15 (K33)/CEFA/2017-18 dated July 7, 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 July 14, 2017 during which the Partner of the firm Shri Vishwesh Patel and its Accountant Shri Naresh K. Shah represented the applicant. They admitted to the contraventions for which compounding has been sought and stated that the non-compliance was not intentional and was an inadvertent error on the part of the Company and they deeply regret for the delay caused and requested to take lenient view. They also stated that they are willing to accept any direction/ order of the Compounding authority in connection with their compounding application.

8. The representative of the applicant requested that in view of the foregoing, a lenient view may be taken in disposal of the application. 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 during personal hearing and thereafter.

9. I have given my careful consideration to the documents on record and submission made by the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:

A) Paragraph 9(1) (B) of Schedule 1 of FEMA Notification FEMA 20/2000 – RB dated May 3, 2000 : Due to delay in submission of form FC-GPR, after issue of shares to persons resident outside India as detailed in paragraph 3 above. The amount involved is ₹75,24,000/- and the delay is for approximately 31 to 34 days .



B) Paragraph 8 of Schedule I of FEMA Notification FEMA20/2000- RB dated May

3, 2000: Due to delay in allotment of shares beyond stipulated period of 180 days from date of receipts detailed in Paragraph above. The amount involved is ₹75,24,000/- and the delay is for 179 to 925 days approximately.

10. 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 therefore, I consider that amount of penalty of ₹77,985/- (Rupees Seventy seven thousand nine hundred eighty five only) will meet the ends of justice.

11. Accordingly, I compound the admitted contraventions, namely contravention of paragraph 9(1) (B) and 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000, by the applicant, on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹77,985/- (Rupees Seventy seven thousand nine hundred eighty five only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, La-Gajjar Chambers, Ashram Road, Ahmedabad –380 009 by a demand draft drawn in favour of the “Reserve Bank of India” and payable at Ahmedabad 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 the 21st day of July, 2017.

Sd/-

(N Senthil Kumar)
General Manager



FED, Ahmedabad CEFA.CO.ID.7995/C.A. No.AHM-82/2017-18:
M/s Kaizen Infrastructure LLP.