



In the

Reserve Bank of India
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Marg
Mumbai - 400 001

Present

Devinder Kumar
Deputy General Manager

Date: October 16, 2017
CA NO: 4407/2017

In the matter of

Venus Aesthetic LLP
318-319, Green Elina, Opp. Sneh Sankul Wadi, Anand Mahal Road, Adajan,
Surat – 395009 (Gujarat)

(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 May 22, 2017 (received in the Reserve Bank on May 26, 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 are (i) receipt of capital contribution from M/s Venus Concept USA, on behalf of the overseas partner M/s Venus Concept Canada Corporation, by the resident LLP without prior approval of the Government/FIPB and (ii) non-reporting of the amount received towards capital contribution to the Regional Office concerned of the Reserve Bank. The above were in contravention of Regulations 5(9) read with Para



4 of the Schedule 9 and Para 7(i) of the Schedule 9 to the 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 May 03, 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: The applicant was incorporated as Venus Aesthetic LLP (LLP Identification No.: AAD-4425) on February 25, 2015 under the Limited Liability Partnership Act, 2008. The partners, viz., Dr. Joykumar Shah (Indian Resident), Mr. Gregory Joseph Van Staveren (Canadian Inhabitant) and Mr. Domenico Serafino (Canadian Inhabitant) contributed ₹30,00,000/- in the ratio of 49:25.5:25.5, thus making the foreign holding in applicant company to 51 percent. The applicant is engaged in business of providing aesthetic treatment, anti-aging treatment, body sculpting treatment etc. and research in the related field. With effect from February 28, 2015, both the Canadian inhabitants ceased to be the partners and M/s Venus Concept Canada Corporation was inducted as new partner vide modification agreement dated March 19, 2015. Subsequently, a new partner, Mr. Virag Patel was inducted to the LLP vide another modification agreement dated August 16, 2015. The foreign capital contribution, however, remained unchanged at 51 percent throughout the period. The applicant received the foreign contribution of ₹15,30,000/- on April 06, 2015 through State Bank of India, Surat.

The current status of capital contribution and share in Profit & Loss is as under:

Sr. No.	Partner	Capital Contribution (₹)	Share in Profit & Loss
1.	Joykumar Shah	14,69,700	48.99%
2.	Venus Concept Canada Corporation	15,30,000	51.00%
3.	Virag Patel	300	0.01%

However, the applicant did not obtain the prior approval from Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, Ministry of Finance, Govt. of India, which was a mandatory requirement under the then Notification No. FEMA 20/2000-RB. On request of the applicant, the FIPB granted post-facto approval for foreign collaboration vide letter dated April 05, 2016 with one of the conditions that



applicant has to approach Reserve Bank for compounding within 90 days of issue of the approval letter. As the applicant could not apply for compounding within the prescribed time limit, FIPB, again on their request, permitted them to approach Reserve Bank within 60 days of its letter dated March 31, 2017.

Further, the applicant did not report the details of the receipt of the amount of consideration for capital contribution in Form FDI-LLP(I) along with requisite documents/information to the Regional Office concerned of the Reserve Bank.

3. Thus, the applicant contravened the provisions of Regulations 5(9) read with Para 4 of the Schedule 9 and Para 7(i) of the Schedule 9 to the then Notification No. FEMA 20/2000-RB, which are reproduced below:

3.1 Regulation 5(9): 'A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India, (other than an entity in Pakistan or Bangladesh), not being a registered Foreign Institutional Investor or Foreign Venture Capital Investor or Qualified Foreign Investor registered with SEBI or Foreign Portfolio Investor registered in accordance with SEBI guidelines, may contribute foreign capital either by way of capital contribution or by way of acquisition/transfer of profit shares in the capital structure of an LLP under Foreign Direct Investment, subject to the terms and conditions as specified in Schedule 9.'

3.2 Para 4 of Schedule 9 (as amended from time to time): 'Any form of foreign investment in a LLP, direct or indirect (regardless of nature of 'ownership' or 'control' of an Indian Company) shall require Government / FIPB approval.'

3.2 Para 7(i) of Schedule 9: 'LLPs shall report to the Regional Office concerned of the Reserve Bank, the details of the receipt of the amount of consideration for capital contribution and 'profit shares' in Form FOREIGN DIRECT INVESTMENT-LLP(I) as specified by Reserve Bank from time to time, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report on the non-resident investor, through an AD Category-I bank, and valuation certificate (as per paragraph 4 above) as regards pricing at the earliest but not later than 30 days from the date of receipt of the amount of consideration. The report would be acknowledged by the Regional Office concerned, which would allot a Unique Identification Number (UIN) for the amount reported.'



4. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter FED.CO.CEFA.No./2110/15.20.67/2017-18 dated September 08, 2017 for further submission in person and /or producing documents, if any, in support of the application. The personal hearing was held on October 06, 2017 and Shri Chetan Kakariya, Chartered Accountant represented the applicant. The representative of the applicant admitted the contraventions for which compounding has been sought and submitted that the lapses were inadvertent. He requested that a lenient view may be taken in the matter. 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 the personal hearing and thereafter.

5. I have given my careful consideration to 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 5(9) read with Para 4 of the Schedule 9 and Para 7(i) of the Schedule 9 to the then FEMA 20/2000-RB. The amount and/or the period of contravention is as under:

(i) Regulation 5(9): The amount of contravention is ₹15,30,000/- and the period of contravention is one year.

(ii) Para 7(i) of schedule 9: The period of contravention is approximately two years.

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, after considering the submissions made by the applicant with regard to the contraventions and the entire relevant facts and circumstances of the case, 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 ₹72,650/- (Rupees Seventy two thousand six hundred fifty only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, the admitted contravention committed by the applicant, namely, Regulation 5(9) read with Para 4 of the Schedule 9 and Para 7(i) of the Schedule 9 to Notification No FEMA 20/2000-RB on payment of a sum of ₹72,650/-



(Rupees Seventy two thousand six hundred fifty 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 “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 of accordingly.

Dated this the sixteenth day of October, 2017.

Sd/-

(Devinder Kumar)
Deputy General Manager