



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi-110001

Present
Devika Gowrishankar
Deputy General Manager
Date: February 17, 2020
CA No. NDL 590/2019

In the matter of
ACRO HR Solutions (India) Private Limited
G-10, Hemkunt Chamber, 89, Nehru Place, New Delhi 110019
(Applicant)

In exercise of the powers under Section 15(1) of Foreign Exchange Management Act, 1999 and the Regulations/ Rules/ Notifications/ Orders made thereunder, I pass the following Order.

ORDER

The applicant has filed the compounding application dated November 25, 2019 (received at Reserve Bank of India, New Delhi on November 29, 2019) and addendum received on December 27, 2019 for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are those of (i) delay in reporting foreign inward remittance received for issue of shares, (ii) delay in filing Form FC-GPR after issue of shares, and (iii) delay in issue of shares after receipt of inward remittance, in terms of paragraphs 9(1)(A), 9(1)(B) and 8 [read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007] 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 May 3, 2000 (hereinafter referred to as FEMA 20/2000-RB), as then applicable.



2. The relevant facts of the case are as follows:

(a) The applicant company, incorporated on September 2, 2004, is engaged in the business of providing manpower supply and support services.

(b) The applicant had reported receipt of foreign inward remittances from its foreign investor, M/s ACRO HR Solutions Inc., USA, on four occasions and reported them with delay ranging from 13 years, 7 months and 5 days to 13 years, 8 months and 9 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of receipt	Amount (₹)	Date of reporting*
1	22.11.2004	1,25,580.00	20.09.2019
2	01.12.2004	53,148.00	22.10.2019
3	24.12.2004	2,61,480.00	22.10.2019
4	27.12.2004	7,90,065.00	19.11.2019
	Total	12,30,273.00	

* Reporting of receipt of foreign inward remittance for issue of capital instruments was dispensed with in terms of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Second Amendment) Regulations, 2018 w.e.f. September 1, 2018. Delay in reporting of remittance has, therefore, been taken upto August 31, 2018.

Whereas, in terms of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank, not later than 30 days from the date of receipt of the amount of consideration, a report indicating the details prescribed therein.

(c) The applicant had reported issue of shares to its foreign investor, M/s ACRO HR Solutions Inc., USA, on three occasions with delay ranging from 11 years, 8 months and 7 days to 14 years, 11 months and 18 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of Issue	Amount (₹)	Date of reporting
1	02.09.2004	99,990.00	20.09.2019
2	31.03.2005	3,40,210.00	22.10.2019
3	11.02.2008	7,90,070.00	19.11.2019
	Total	12,30,270.00	

Whereas, in terms of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank, not later than 30 days from the



date of issue of shares, a report in Form FC-GPR together with the documents prescribed therein.

(d) The applicant had received the consideration of ₹7,90,065.00 on December 27, 2004 and issued 79007 equity shares thereagainst on February 11, 2008, without RBI approval, with delay of 2 months and 13 days beyond the prescribed period, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007. Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007, equity instruments should be issued within 180 days of the receipt of inward remittance. In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received should be refunded immediately to the non-resident investor. Provided that 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. And, in terms of paragraph 5 of A.P (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- I bank with a definite action plan either for allotment of equity instruments or for refund of the advance, with full details, for specific approval.

(e) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 [read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007] of Schedule 1 to FEMA 20/2000-RB, as then applicable.

3. The applicant was given an opportunity for personal hearing for further submission in person and/ or by producing documents, if any, in support of the application. Shri Lokesh Gupta, Chartered Accountant, appeared for personal hearing on February 17, 2020 on behalf of the applicant. The representative of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to lack of knowledge on the part of the management as also on account of lack of proper guidance from professionals and



AD bank. The application for compounding is, therefore, being considered on the basis of averments made in the application as well as other documents and submissions made during the personal hearing.

4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the following FEMA provisions:

(a) Paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in reporting foreign inward remittances received for issue of shares as detailed in paragraph 2(b) above. The contraventions relate to an amount of ₹12,30,273.00 (Rupees Twelve Lakh Thirty Thousand Two Hundred and Seventy Three only) and the period of delay ranges from 13 years, 7 months and 5 days to 13 years, 8 months and 9 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in filing Form FC-GPR after issue of shares as detailed in paragraph 2(c) above. The contraventions relate to an amount of ₹12,30,270.00 (Rupees Twelve Lakh Thirty Thousand Two Hundred and Seventy only) and the period of delay ranges from 11 years, 8 months and 7 days to 14 years, 11 months and 18 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB [read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007], as then applicable, on account of delay in issue of shares after receipt of inward remittance, as detailed in paragraph 2(d) above. The contravention relates to an amount of ₹7,90,065.00 (Rupees Seven Lakh Ninety Thousand and Sixty Five only) and the period of delay is 2 months and 13 days.

5. It has been declared in the compounding application dated November 25, 2019, that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief. It has also been declared in the declaration furnished with the compounding application that the applicant was not under any enquiry/ investigation/ adjudication by any agency as on the date of the application and has, in this regard, not informed of initiation of any such enquiry/ investigation/ adjudication proceedings against it, thereafter. It has further been declared that the applicant has not filed any appeal under Section 17 or Section 19 of FEMA. Accordingly, the above contraventions which are being compounded in this Order are



subject to the veracity of the above declarations made by the applicant and this Order is without prejudice to any other action which may be taken by any authority under the extant laws if the said declarations are subsequently discovered to be false and/ or incorrect.

6. In terms of Section 13 of 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. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to compound the contraventions, in line with the Guidance Note on Computation Matrix prescribed as part of Master Direction – Compounding of Contraventions, framed in accordance with the Foreign Exchange (Compounding Proceedings) Rules, 2000. Accordingly, it stands to reason that payment of an amount of **₹1,56,473.00 (Rupees One Lakh Fifty Six Thousand Four Hundred and Seventy Three only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 [read with A.P. (DIR Series) Circular No. 20 dated December 14, 2007] of Schedule 1 to FEMA 20/2000-RB, as then applicable, by the applicant based on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹1,56,473.00 (Rupees One Lakh Fifty Six Thousand Four Hundred and Seventy Three only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi - 110001 by a demand draft drawn in favour of the “Reserve Bank of India” and payable at New Delhi 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 17th day of February 2020.

Sd/-
(Devika Gowrishankar)
Deputy General Manager