



In the

Reserve Bank of India
Foreign Exchange Department
3rd Floor
15, Netaji Subhas Road
Kolkata – 700 001

Present

R.K.Das
Deputy General Manager

Date: October 31, 2019
C.A.113/2019

In the matter of

M/s CONSTELLATION UNIFIED CLOUD PRIVATE LIMITED
Park Plaza, First Floor, 71, Park Street
Kolkata-700016
West Bengal
(Applicant)

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

Order

The applicant had filed a compounding application dated July 15, 2019 (received at Reserve Bank on July 18, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded is for delay in submission to the Reserve Bank of both Form ARF after receipt of inflow from a person resident outside India and Form FC-GPR after issue of shares to a person resident outside India beyond the stipulated 30 days in terms of Paragraph 9(1)(A) and 9(1)(B) respectively and also for prior allotment of



shares before receipt of money to a person resident outside India in terms of Paragraph 8 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 03, 2000 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The company had contravened Para 9(1) (A) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000 in respect of the under mentioned foreign inward remittance as given in Table 1 below towards subscription to equity shares from its foreign investor, Mr.Divyesh Mittal:

Table 1. Contravention of Para 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000						
S. No.	Name of Investor	Inflow (INR)	Inflow (USD)	Date of inflow	Date of reporting of inflow to RBI	Delay beyond 30 days (Days)
1	Mr.Divyesh Mittal	4,00,000.00	N.A	05-Apr-17	10-Apr-19	705
Total		4,00,000.00	-			

Inflow of Sr.No.1 had been reported to the Reserve Bank of India 705 days beyond the stipulated period of 30 days as provided in Para 9 (1) (A) of FEMA 20/2000-RB dated May 3, 2000. This delay is being treated as material contravention and subjected to compounding.



3. The company had allotted shares before receipt of money as per details in Table 2 below:

Table 2: Allotment of shares before receipt of money

Contravention of Para 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000					
S. No.	Inflow (INR)	Date of Inflow	Date of allotment of shares	Amount for which shares issued (INR)	Prior allotment of shares before receipt of money (Days)
1	4,00,000.00	05-Apr-17	10-Nov-16	4,00,000.00	146

From the above table, it is observed that the company had received the inflow on April 05, 2017 but allotted shares on November 10, 2016 which is 146 days prior to the receipt of inflow this is a contravention to the provisions of Para 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000 and be subjected to compounding.

4. The company had contravened Para 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000 in respect of following foreign inward remittances as given in Table 3:

Table 3. Contravention of Para 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 03, 2000						
S. No.	Inflow (INR)	Amount for which shares have been issued	Date of inflow	Date of allotment of shares	Date of reporting of allotment of shares to RBI	Delay beyond 30 days, if any (days)
1	4,00,000.00	4,00,000.00	05-Apr-17	10-Nov-16	13-Jun-19	915
2	6,38,329.00	6,38,000.00	14-Jul-17	15-Jul-17	15-Sep-18	397
3	7,99,922.00	7,99,920.00	06-Sep-17	20-Oct-17	09-Jul-18	232
4	4,83,075.00	4,83,070.00	09-Oct-17	20-Oct-17	09-Jul-18	232
	23,21,326.00	23,20,990.00				



It is observed from Table 3 above, all reporting's of FCGPR were with a delay ranging from 232 days to 915 days (beyond the stipulated 30 days). The delayed reporting of the FC-GPR are being treated as material contravention and subjected to compounding.

5. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter No.KOL.FED.FID.631 /06.01.002/2019-20 dated October 21, 2019, for further submission in person and/or producing documents, if any, in support of the application. The applicant, represented by Mr. Raj Kr. Banthia (Authorized Representative), appeared for personal hearing on October 31, 2019. The representative of the applicant admitted the contraventions as stated in para 2, 3 and 4 of this Order.

6. It has been declared in the compounding application dated July 15, 2019 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has 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/him/her thereafter. It has further been declared that the applicant has not filed any appeal under section 17 or section 19 of FEMA, 1999. 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.

7. I have given 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 provisions of paragraph 8, 9(1)(A) & 9(1)(B) of



Schedule 1 of Notification No. FEMA 20/2000-RB dated May 03, 2000. The contravention relates to an amount of INR 3120990.

8. In terms of section 13 of the FEMA any person contravening any provision of the act shall be liable for a penalty upto thrice the sum of the contravention upon adjudication. However, considering the circumstances which led to the delay and other relevant facts of the case I am inclined to take a lenient view of the amount for which the contravention is to be compounded and I consider that an amount of **Rs.58,283 (Rupees Fifty Eight Thousand Two Hundred and Eighty Three only)** will meet the end of justice.

9. Accordingly, I compound the admitted contravention viz. paragraph 8, 9(1)(A) & 9(1)(B) of Schedule 1 of 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 Proceeding) Rules, 2000 on payment of an amount **Rs.58,283 (Rupees Fifty Eight Thousand Two Hundred and Eighty Three only)** which are to be deposited by the applicant with the Reserve Bank of India, Kolkata by a demand draft in favor of Reserve Bank of India and payable at Kolkata within 15 days from the date of issue of the order. In case of failure to deposit the compounded amount within the above mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceeding) Rules, 2000 dated May 03, 2000 shall apply.

10. The application is disposed off accordingly.

Dated this Thirty First day of October, Two Thousand and Nineteen.

Sd/-
(R.K.Das)
Deputy General Manager