



In the
Reserve Bank of India
Foreign Exchange Department
Mumbai Regional Office
Main Building, 3rd floor
Shahid Bhagat Singh Marg, Fort
Mumbai 400 001

Present
Shri Sunil Pethkar
Assistant General Manager

September 25, 2019

CA No. MUM 932/2019

In the matter of
Shri. Dineshkumar Garg
Flat No 701/702, Amogh Apartment,
Plot No 126, Ramdaspath,
Nagpur- 440 010

(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 thereunder, I pass the following

Order

- 1** The applicant has filed the compounding application dated July 16, 2019, received at the Reserve Bank on July 23, 2019, for compounding of contravention/s of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are in respect of the following Regulations/ paras under 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 and as amended from time to time (hereinafter referred to as FEMA 20):
 - i)** Regulation 10A(b)(i) read with Para 5 of Schedule 1 to FEMA 20:: issuance of shares without adherence to the Pricing Guidelines



ii) Regulation 10A(b)(i) read with Para 10 of Schedule 1 to FEMA 20: delay in filing form FCTRS.

2 The applicant (Indian Resident) transferred 378 equity shares of M/s InfoCepts Technologies Private Limited, to Mr Rohit Bhayana (Non Resident). The remittance was received in the year 2005, however form FCTRS was not filed within the timelines prescribed under the applicable FEMA Regulations.

Delay in filing form FCTRS					
(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days, and LSF stands for : Late Submission Fees					
S.No	Amount Involved (in INR)	Date of transfer (DD-MM-YY) (2)	Remittance date (DD-MM-YY)	Date of filing Form FCTRS (DD-MM-YY)	Para 10 delay
1	38,371.00	14-10-05	14-10-05	21-10-15	9Y 10M 7D
2	800779	14-10-05	17-10-14	21-10-15	0Y 10M 4D
TOTAL	8,39,150.00				

The applicant filed form FCTRS with a delay ranging from 0Y 10M 4D to 9Y 10M 7D beyond the stipulated period of 60 days. Whereas, in terms of Regulation 10 A (b) (i) read with paragraph 10 of Schedule I to Notification No. FEMA 20, in case of transfer of shares or convertible debentures of an Indian company by way of sale from a person resident in India to a person resident outside India or warrants or vice versa, form FC-TRRS has to be submitted to the Authorised Dealer Bank within 60 days from the date of receipt or payment of the amount of consideration. The onus of filing form FC TRS is on the transferor/transferee Resident in India.

3 The Applicant transferred equity shares to a person resident outside India, but failed to comply with the Pricing Guidelines stipulated in Para 5 of Notification No. FEMA 20. The details of transfer wherein the pricing guidelines were not complied are stated in the table below:

S.No	Date of transfer (DD-MM-YY)	Date of bringing shortfall (DD-MM-YY)	Para 5 delay	shortfall
1	14-10-2005	17-10-2014	9Y 0M 3D	8,00,779.00

Whereas, in terms of Regulation 10A(b)(i) of FEMA 20 read with Para 5 of Schedule 1 to FEMA 20, when the shares are transferred by a person resident in India to person resident outside India, the price of such shares shall not be less than the valuation of shares done as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker where the shares of the company are not listed on any recognised stock exchange in India.



- 4 The applicant was given an opportunity for personal hearing, for further submission in person and/or for producing documents, if any, in support of the application vide e-mail dated September 13, 2019. The applicant appeared for personal hearing on September 17, 2019, during which Mr Ashish Fadnavis and Ms Vandana Gour, representatives of the applicant represented the applicant in the cabin of Shri Sunil Pethkar, Assistant General Manager, Mumbai Regional Office. The representatives of the applicant admitted the contravention for which compounding has been sought. During the hearing it was submitted that delay was inadvertent and unintentional. The representatives 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.
- 5 I have given my careful consideration to the documents on record and submissions 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:
- i) Regulation 10A(b)(i) of FEMA 20 read with Para 5 of Schedule 1 to FEMA 20, due to transferring the shares to a person resident outside India at a price less than the fair value determined in accordance with FEMA guidelines and the contravention amount relates to Rs. 8,00,779.00 (Rupees Eight Lakh Seven Hundred Seventy Nine Only) and the delay in bringing shortfall is 9Y 0M 3D approximately.
 - ii) Regulation 10A(b)(i) read with Para 10 of Schedule 1 to FEMA 20, due to the delay in submission of Form FCTRS after transfer of shares from person resident in India to Non Resident or vice versa and the contravention relates to total amount of Rs.8,39,150 (Rupees Eight Lakh Thirty Nine Thousand One Hundred Fifty and Zero Paise Only) and with a delay ranging from minimum 0Y 10M 4D to maximum 9Y 10M 7D approximately.
- 6 It has been declared in the compounding application dated July 16, 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 also been declared in a declaration attached to 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 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 I consider that an amount of Rs.76,839 (Rupees Seventy Six Thousand Eight Hundred Thirty Nine and Zero Paise Only) will meet the ends of justice.
- 8 Accordingly, I compound the admitted contravention/s namely, the contravention/s of Regulation 10A(b)(i) read with Para 5 of Schedule 1 to FEMA 20 and Regulation 10A(b)(i) read with Para 10 of Schedule 1 to FEMA 20, by the applicant, on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs. 76,839 (Rupees Seventy Six Thousand Eight Hundred Thirty Nine and Zero Paise Only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, Fort, Mumbai-400001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Mumbai 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.
- 9 The above order is passed only in respect of contraventions of Regulation 10A(b)(i) read with Para 5 of Schedule 1 to FEMA 20 and Regulation 10A(b)(i) read with Para 10 of Schedule 1 to FEMA 20 and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.
- 10 The application is disposed of accordingly.
dated: September 25, 2019

Compounding Authority

sd/-

(Sunil Pethkar)
Assistant General Manager