



In the

Reserve Bank of India

Foreign Exchange Department

Pandit Jawaharlal Nehru Marg

Bhubaneswar-751 001

Present

Shri M.K. Mall

Regional Director (Odisha) and Chief General Manager (Bhubaneswar)

Compounding Authority

Date: January 11, 2019

C.A. No. BHU21/2019

In the matter of

M/s. PACT for Rural Livelihoods Private Limited

Plot No. 481/5257, Nageshwar Tangi,

Bhubaneswar, Odisha-751002

(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 has filed a compounding application dated November 30, 2018 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 are: (i) delay in submission of Form FC-GPR to the Reserve Bank after issue of shares in terms of paragraph 9(1)(B) of Schedule I 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 Notification No.FEMA 20/2000-RB) and (ii) violation of pricing guidelines for issue of shares in terms of paragraph 5 of Schedule I to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified, vide



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Notification No. FEMA 20/2000-RB dated May 3, 2000 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB) and Regulation 11 of Notification No. FEMA 20(R)/ 2017-RB dated November 07, 2017 issued under the Foreign Exchange Management Act, 1999.

2. The relevant facts of the case are as follows: The applicant was incorporated on August 23, 2013 and deals in Agriculture and food processing activities. The applicant received 11 foreign inward remittances for issue of Compulsorily Convertible Debentures (CCDs) to M/s. Agricultural Corporation Pte Ltd., Singapore and the report in form FC-GPR after issue of CCDs was submitted to Reserve Bank/ AD bank as indicated below.

Sr. No.	Amount of receipt of inward remittance (₹)	Value of CCDs Issued (₹)	Date of issue of CCD	Date of Reporting to RBI/AD bank	Delay in reporting beyond stipulated period of 30 days under para 9(1) B of erstwhile FEMA 20 and Reg. 13.1(2) of FEMA 20(R)
1	41,58,377	41,58,300	12.10.2016	01.02.2018	446 days
2	8,43,970	23,34,000	27.04.2017	07.02.2018	255 days
	14,90,125				
3	1,03,21,875	1,04,66,407	02.06.2017	10.09.2018	434 days
4	9,63,850	19,28,582	03.10.2017	10.09.2018	311 days
	9,63,850				
5	15,82,990	16,05,162	04.08.2017	10.09.2018	371 days
6	12,90,440	38,51,600	23.11.2017	10.09.2018	260 days
	12,82,059				
	12,77,120				
7	5,74,800	5,75,038	23.02.2018	10.09.2018	168 days



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The applicant filed the Form FC-GPR, on allotment of CCDs, with the Bhubaneswar Regional Office of the Reserve Bank of India / Authorized Dealer Bank, with a delay ranging from 5 months and 18 days to 1 year 2 months and 21 days approximately, beyond the prescribed period of 30 days, as indicated above. Whereas, in terms of Paragraph 9(1) B of Schedule I to Notification No.FEMA 20/2000-RB dated May 3, 2000, an Indian company issuing shares in accordance with these Regulations, has to submit to 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 persons resident outside India.

Further, shares were to be issued (upon conversion of CCDs) to the investors at a price

Sr. No.	Date of issue of CCDs	No. of CCDs issued	Proposed share price (₹)	share	Fair value of shares (₹)
1	02.06.2017	103219		1,000	1,014
2	03.10.2017	9706		1,986	1,987
3	04.08.2017	15830		1,000	1,014
4	23.11.2017	19384		1,986	1,987
5	23.02.2018	2894		1,986	1,987

below the fair value of shares as tabulated below:-

Whereas, in terms of Paragraph 5 of Schedule I to Notification No.FEMA 20/2000-RB dated May 3, 2000, and corresponding Regulation 11 of Notification No. FEMA 20(R)/2017-RB dated November 07, 2017, price of shares issued to persons resident outside India shall not be less than the valuation of capital instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Securities and Exchange Board of India



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registered Merchant Banker or a practicing Cost Accountant, in case of an unlisted Indian Company.

3. The applicant was given an opportunity for personal hearing vide the Reserve Bank's letter FED(Bhu)No.211/08.02.262/2018-19 dated December 27, 2018 for further submission in person and/or producing documents, if any, in support of the application. However, the applicant, vide its mail dated January 03, 2019 has opted out from appearing in personal hearing stating that they have already submitted all the documents to support their plea their application and that their case may be considered based on material already submitted. The applicant, in the compounding application, had admitted the contraventions as stated in para 2 above for which compounding has been sought. 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.

4. I have given my careful consideration to the documents on record and submission made by the applicant in the compounding application. Accordingly, I hold that the applicant has contravened the FEMA provisions issued in terms of (i) Paragraph 9(1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB and Regulation 13.1(2) of Notification No. FEMA 20(R)/ 2017-RB due to the delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India and the contravention relates to an amount of ₹ 2,04,92,451 (Rupees two crore four lakhs ninety two thousand and four hundred fifty one only) and delay ranging from 5 months and 18 days to 1 year 2 months and 21 days approximately and (ii) violation of pricing guidelines for issue of shares in terms of paragraph 5 of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000 and Regulation 11 of Notification No. FEMA 20(R)/ 2017-RB.

5. It has been declared in the compounding application dated November 30, 2018 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 dated November 30, 2018 furnished with the compounding application that the applicant was



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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 contravention which is being compounded in this Order is 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 the FEMA, 1999 if any person contravening any provision of the Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank, he, upon adjudication, shall be liable to a penalty up to thrice the sum involved in such contravention. However, taking into account the relevant facts and circumstances of the case as stated in the foregoing paras, I am of the view that an amount of ₹ 1,38,974/- (Rupees one lakh thirty eight thousand nine hundred seventy four only) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions namely, (i) the contravention of Paragraph 9(1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000 and (ii) violation of pricing guidelines for issue of shares in terms of paragraph 5 of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000 and Regulation 11 of Notification No. FEMA 20(R)/ 2017-RB dated November 07, 2017 issued under the Foreign Exchange Management Act, 1999 by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹ 1,38,974/- (Rupees one lakh thirty eight thousand nine hundred seventy four only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Bhubaneswar by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Bhubaneswar within a period of **15 days** from the date of this order. In case of failure to deposit the compounded



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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 this 11th day of January, 2019.

Sd/-

(M.K. Mall)

Regional Director (Odisha) and Chief General Manager (Bhubaneswar)