



In the
Reserve Bank of India
Foreign Exchange Department
Central Vista, Sector 17, P.B.No.2
Chandigarh-160017

Present

Sh. Vinod Kumar
Deputy General Manager

Date: June 20, 2019
CA No. CHA 47 /2019

In the matter of

M/s Open Access Technology India Pvt. Ltd.
H. No. 1139, Sector 33-C
Chandigarh – 160020
(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 there under, I pass the following

Order

The applicant has filed a compounding application dated 08.05.2019 for compounding of contravention of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded pertain to (i) delay beyond 30 days in reporting receipt of foreign inward remittance towards subscription to equity shares, (ii) delay beyond 30 days in submission of Form FC-GPR to the Reserve Bank after issue of shares to a person resident outside India (iii) delay in issuance of shares beyond stipulated 180 days (iv) delay in filing of FLA returns; in terms of Paragraph 9(1) (A), Para 9(1) (B), Para 8 and Paragraph 9(2) of Schedule 1 respectively 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 3, 2000 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB) and (v) delay in filing of FLA returns in terms of regulation 13.1(3) of Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2017, notified vide Notification No. FEMA 20(R)/2017-RB dated November 07, 2017 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20(R)/2017-RB)



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

The applicant company was incorporated on July 02, 2006 under the Companies Act 1956. The applicant is engaged in information technology and computer service activities.

3. The applicant received foreign inward remittance towards investment in equity shares from non-residents as under:

Sr. No.	Date of Inflow	Indian Currency Amount	Date of reporting to RBI	Delay beyond 30 Days
1.	24.08.2006	5,73,661.88	13.12.2018	4464 Days
2.	06.12.2006	2,18,103.98	13.12.2018	4360 Days
3.	23.01.2007	4,13,570.98	13.12.2018	4312 Days
4.	13.03.2007	21,79,957.65	13.12.2018	4263 Days

The above remittances were not reported to Reserve Bank of India within the prescribed time period. The applicant reported the receipt of remittance to Reserve Bank of India with delay ranging from **4263 days to 4464 days**, in contravention of Para 9(1) (A) of Schedule 1 to Notification No. FEMA 20/2000RB dated May 3, 2000, in terms of which an Indian company issuing shares in accordance with these regulations should report to the Reserve Bank of India as per the prescribed procedure not later than 30 days from the date of receipt of the amount of consideration.

4. Further, the applicant company issued shares to the non-resident investor but filed the Form FC-GPR with delay as indicated below.

Sr. No.	Date of inflow	Amount	Shares issued on	Share Amount	Date of reporting to RBI	Delay beyond 30 Days
1	24.08.2006	5,73,661.88	26.07.2006	5,00,000.00	09.10.2018	4428 Days
2	24.08.2006	73,661.88	30.04.2007	15,00,000.00	09.10.2018	4150 Days
	06.12.2006	2,18,103.98				
	23.01.2007	4,13,570.98				
	13.03.2007	21,79,957.65				
3	13.03.2007	13,85,294	27.03.2014	13,85,200.00	09.10.2018	1627 Days

The applicant reported the allotment of shares to the Reserve Bank with delay ranging from **1627 days to 4428 days**. The delay in reporting to the Reserve Bank in Form FC-GPR, beyond the prescribed period of 30 days in respect of allotment of the above shares, is in contravention of the provisions stipulated in the Paragraph 9(1) (B) of Schedule I to FEMA Notification No.20/2000-RB dated May 3, 2000, in terms of which 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 the person resident outside India.

5. The company has not issued the shares within the scheduled time limit, as indicated below:

<u>Sr. No.</u>	<u>Amount</u>	<u>Date of inflow</u>	<u>Shares issued on</u>	<u>Delay in issuance of shares</u>
1.	13,85,294	13.03.2007	27.03.2014	2146 Days

As mentioned above, the company issued the shares with delay of **2146 days** beyond stipulated period of 180 days which is a contravention under **paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.**

6. The company has delayed in filing FLA Return (Foreign liabilities and Assets) from financial year 2010-2011 till 2016 -2017 as shown below:

<u>Sr. No</u>	<u>Particulars</u>	<u>Financial Year</u>	<u>Due date of filing</u>	<u>Date of actual filing</u>
1	FLA Return	2010-11	15-07-2011	07.05.2019
2	FLA Return	2011-12	15-07-2012	07.05.2019
3	FLA Return	2012-13	15-07-2013	07.05.2019
4	FLA Return	2013-14	15-07-2014	07.05.2019
5	FLA Return	2014-15	15-07-2015	07.05.2019
6	FLA Return	2015-16	15-07-2016	07.05.2019
7	FLA Return	2016-17	15-07-2017	07.05.2019

The applicant has filed FLA return from financial year 2010-2011 till 2016 -2017 with delay. Whereas, in terms of Para 9(2) of FEMA 20/2000-RB as then applicable and as amended, all Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year shall submit to the Reserve Bank of India, on or before the 15th day of July of each year, [a report titled 'Annual Return on Foreign Liabilities and Assets' (FLA) as specified by the Reserve Bank from time to time.

7. The company has delayed in filing FLA Return (Foreign liabilities and Assets) for financial year 2017 -2018 as shown below:

<u>Sr. No.</u>	<u>Particulars</u>	<u>Financial Year</u>	<u>Due date of filing</u>	<u>Date of actual filing</u>
1	FLA Return	2017-18	15.07.2018	07.05.2019



The applicant has filed FLA return for FY 2017 -2018 with delay. Whereas, in terms of Regulation 13.1(3) of Notification No. FEMA 20R/2017-RB dated November 07, 2017 as then applicable and as amended, all Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year shall submit to the Reserve Bank of India, on or before the 15th day of July of each year, [a report titled 'Annual Return on Foreign Liabilities and Assets' (FLA) as specified by the Reserve Bank from time to time.

8. The applicant was given an opportunity for personal hearing vide our letter No.FE.CG/FID/1213/03.01.584/2018-19 dated June 10, 2019 for further submission in person and/or producing documents, if any, in support of the application. Sh. Neelkant Garg and Sh. Sahil Kumar, Authorized representatives of the company appeared for the personal hearing on June 17, 2019. During the personal hearing, the representatives of the applicant admitted the contravention committed by them for which they have sought compounding. The representative submitted that the contraventions were due to lack of awareness of the procedural requirements and were not intentional and have requested for taking a lenient view in the matter. The application is, therefore, being considered on the basis of the averments made in the application, and documents produced.

9. It has been declared in the compounding application dated May 08, 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 been declared in the undertaking 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, 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.

10. I have given my careful consideration to the documents on record and submissions made by the applicant. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:

- a. **Paragraph 9 (1) (A) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000** due to delay in reporting of receipt of foreign inward remittance towards subscription of shares as detailed in paragraph 3 above. The



- contravention relates to an amount of **Rs. 33,85,294.49/- with the delay ranging from 4263 days to 4464 days.**
- b. **Paragraph 9 (1) (B) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000** due to delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India as detailed in paragraph 4 above. The contravention relates to an amount of **Rs. 33,85,200/- with the delay ranging from 1627 days to 4428 days.**
 - c. **Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000** due to delay in issuance of shares to foreign investor beyond stipulated time period as detailed in paragraph 5 above. The contravention relates to an amount of **Rs. 13,85,294/- with the delay of 2146 days.**
 - d. **Paragraph 9 (2) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000** due to delay in filing of FLA returns from the Financial Year 2010-11 to 2016-17 as detailed in paragraph 6 above.
 - e. **Regulation 13.1(3) of Notification No. FEMA 20(R)/ 2017- RB dated November 07, 2017** due to delay in Filing of FLA return for FY 2017-18 as detailed in paragraph 7 above.

11. 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 contravention is to be compounded and I consider that amount of penalty of **Rs. 2,69,607.00 (Rs. Two Lakh Sixty Nine Thousand Six Hundred and Seven only)** will meet the ends of justice.

12. Accordingly, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, I compound the admitted contravention committed by the applicant, namely contravention of Paragraph 9(1) (A), Para 9(1) (B), Para 8 and Paragraph 9(2) of Schedule 1 respectively 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 3, 2000 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB) and (v) delay in filing of FLA returns in terms of regulation 13.1(3) of Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2017, notified vide Notification No. FEMA 20(R)/2017-RB dated November 07, 2017 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20(R)/2017-RB) on the facts discussed above, on



FED, CEFA
Compounding of Contravention under FEMA, 1999
M/s Open Access Technology India Pvt. Ltd [CA No. CHA 47 /2019]

payment of an amount of **Rs. 2,69,607.00 (Rs. Two Lakh Sixty Nine Thousand Six Hundred and Seven only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Vista, Sector 17, Chandigarh-160017 by a demand draft drawn in favour of the “Reserve Bank of India” and payable at “Chandigarh” **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 of accordingly.

Dated: the 20th day of June 2019.

Sd/-
Vinod Kumar
Deputy General Manager