



In the

Reserve Bank of India
Foreign Exchange Department
Fort Glacis, No.16, Rajaji Salai
Chennai 600 001

Present

K Dhamodhiran
Assistant General Manager

Date: November 11, 2019
C.A. 944/2019

In the matter of

M/s. Smartek21 Pvt Ltd.
SP Infocity, Block B, 2nd floor, No.40
MGR Nedunchalai, Kandanchavadi, Perungudi
Chennai - 600 096

(Applicant)

In exercise of the powers 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 July 31, 2019 (received at Reserve Bank on August 13, 2019) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) delay in reporting of inflow of funds to Reserve Bank received from a person resident outside India for allotment of shares (ii) delay in submission to Reserve Bank of Form FC-GPR on



allotment of shares and (iii) delay in receipt of consideration in terms of Paragraph 9 (1) A, Paragraph 9 (1) B and Paragraph 8 respectively, 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 then applicable (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts of the case are as follows: The applicant company was incorporated on April 22, 2016 under the provisions of the Companies Act, 2013 (Registration No. U74999TN2016PTC110006) and is engaged in the business of computer programming activities. The applicant received foreign inward remittances from (i) Smartek21 LLC, USA and (ii) Mr. Alkarim S Lalji, USA towards subscription to MoA shares and reported the same to the Reserve Bank as detailed below:

Sl. No.	Amount of Inward Remittance in ₹	Date of receipt	Date till contravention exists
1	3,11,715.00	17.04.2017	31.08.2018
2	655.00	27.06.2017	31.08.2018

The applicant reported receipt of remittances to the Reserve Bank as indicated above with delay ranging from one year one month four days to one year three months 14 days approximately beyond the prescribed period of 30 days. Whereas, in terms of paragraph 9 (1) A of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures 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.

3. The company allotted MoA shares and filed the FC-GPR as indicated below:

Sl. No	No. of shares allotted	Face Value (₹)	Amount (₹)	Date of allotment of shares	Reported to RBI on
1	31306	10	3,13,060.00	20.05.2016	07.06.2019



The applicant filed form FC-GPR as indicated above with delay of two years 11 months 19 days approximately beyond the prescribed period of 30 days. Whereas in terms of paragraph 9 (1) B of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to Reserve Bank a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident outside India.

4. The company allotted 31306 MoA shares on 20.05.2016. The consideration towards the above allotment was received by way of inward remittances as detailed below:

Sl. No.	Date of receipt	Amount of Inward Remittance in ₹	Date of allotment
1	17.04.2017	3,11,715.00	20.05.2016
2	27.06.2017	655.00	20.05.2016
3	07.05.2018	690.00	20.05.2016

The company received consideration towards allotment of MoA shares with delay ranging from 10 months 28 days to one year 11 months 17 days approximately. Whereas in terms of paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB, a company issuing the shares or convertible debentures under this Schedule to a person resident outside India shall receive the amount of consideration for such shares by way of inward remittance through normal banking channels or by debit to NRE/FCNR account of the person concerned maintained with an authorized dealer/authorized bank.

5. The applicant was advised about the contraventions vide memorandum dated June 24, 2019. The applicant has filed a compounding application dated July 31, 2019 wherein it has been declared 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 declaration furnished with the 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.

6. The applicant was given an opportunity for personal hearing vide Reserve Bank's mail dated November 04, 2019 for further submission in person and/or producing additional documents, if any, in support of the application. The applicant appeared for the personal hearing on November 06, 2019 during which Shri Asir Raja Selvan, Practising Company Secretary and Shri Basker Narayanan, Manager – Finance & Accounts, represented the applicant. The authorized representatives of the applicant admitted the contraventions as stated in para 2 to 4 above for which compounding has been sought. During the personal hearing, it was submitted that the delays were unintentional. 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 the personal hearing.

7. I have given my careful consideration to the documents on record and submission made by the applicant in the compounding application and during the personal hearing. 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 due to delay in reporting of receipt of inward remittances towards subscription of MOA shares as detailed in paragraph 2 above. The contravention relates to an amount of ₹3,12,370.00 with duration of contravention ranging from one year one month four days to one year three months 14 days approximately;

(b) Paragraph 9 (1) B of Schedule I to Notification No. FEMA 20/2000-RB due to delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India. The contravention relates to an amount of ₹ 3,13,060.00 with the duration of contravention being two years 11 months 19 days approximately; and



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(c) Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB due to delay in receipt of consideration. The contravention relates to an amount of ₹3,13,060.00 with the duration of contravention ranging from 10 months 28 days to one year 11 months 17 days approximately.

8. 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 **₹56,439/-** (Rupees fifty six thousand four hundred and thirty nine only) will meet the ends of justice.

9. Accordingly, I compound the admitted contraventions namely, the contraventions of paragraphs 9 (1) A, 9 (1) B and 8 of Schedule I to Notification No. FEMA 20/2000-RB, by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of **₹56,439/-** (Rupees fifty six thousand four hundred and thirty nine only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Fort Glacis, No.16, Rajaji Salai, Chennai - 600 001 by a demand draft drawn in favour of the “Reserve Bank of India” and payable at Chennai 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 eleventh day of November, 2019.

Sd/-
K Dhamodhiran
Assistant General Manager