



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 Sandeep Kulkarni
Assistant General Manager

October 31, 2019

CA No.MUM 944/2019

In the matter of
Shri Sunil Kantilal Dalwadi
2102, Heritage Hiranandani Garden,
IIT Powai,
Mumbai 400 076

(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 August 06, 2019, received at the Reserve Bank on August 09, 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):
 - a)** 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 5000 equity shares of M/s Esencia Technologies India Pvt Ltd, to M/s Esencia Technologies Inc (Non Resident). The remittance was received in the year 2016, however form FCTRS was not filed within the timelines prescribed under the applicable FEMA Regulations.

Delay in filing form FCTRS					
<u>(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</u>					
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	1,30,000.00	02-08-2016	22-06-2016	22-07-19	2Y 11M 0D
TOTAL	1,30,000.00				

The applicant filed form FCTRS with delay of 2Y 11M 0D 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-TRS 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 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 October 22, 2019. The applicant appeared for personal hearing on October 30, 2019, during which Mr Kartik Kumar, Consultant, Mr Nikhil Shintre, Consultant and Ms Ankita Gawankar, Consultant represented the applicant in the cabin of Shri Sandeep Kulkarni, Assistant General Manager, Mumbai Regional Office. The representatives of the applicant admitted the contraventions 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.
- 4 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:



- a) 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.1,30,000 (Rupees One Lakh Thirty Thousand and Zero Paise Only) with a delay of 2Y 11M 0D approximately.
- 5 It has been declared in the compounding application dated August 06, 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.
- 6 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.12,917 (Rupees Twelve Thousand Nine Hundred Seventeen and Zero Paise Only) will meet the ends of justice.
- 7 Accordingly, I compound the admitted contravention/s namely, the contravention/s of 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. 12,917 (Rupees Twelve Thousand Nine Hundred Seventeen 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.
- 8 The above order is passed only in respect of contraventions of 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.



- 9 The application is disposed of accordingly.
dated: October 31, 2019

Compounding Authority

(Sandeep Kulkarni)
Assistant General Manager