



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
Secretariat Road
Saifabad, Hyderabad 500 004

Present

Shri. P Kalyan Chakravarthy
Assistant General Manager

Date: August 23, 2019
C.A. HYD 437

In the matter of

M/s. Vitech Systems Asia Private Limited
MindSpace Cyberabad Project, Survey No. 64 (Part)
13th Floor, Unit 1301, Building No.12B
Madhapur, Ranga Reddy District, Hyderabad – 500 081

(Applicant)

In exercise of the powers conferred under sub-section 1 of Section 15 of Foreign Exchange Management Act, 1999 and the Regulations/ Rules/ Notifications/ Orders made there under, I pass the following

Order

The applicant has submitted the compounding application dated June 26, 2019 received by us on June 27, 2019 for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (FEMA) and the regulations issued there under. The contraventions sought to be compounded are (i) delay in reporting of receipt of foreign inward remittances towards subscription of equity and (ii) delay in submission of Form FCGPR to the Reserve Bank after issue of shares to a person resident outside India and (iii) violation of pricing guidelines for issue of shares in terms of Paragraph 9(1)(A), Paragraph 9(1)(B) and Paragraph 5 of



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 3rd May 2000 (herein after referred to as Notification No. FEMA 20/2000-RB) as then applicable.

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

- a) The applicant is a resident company originally incorporated as M/s Prevator Software India Private Limited under the Companies Act, 1956 on September 18, 2003. Later the applicant has changed its name to M/s Vitech Systems Asia Private Limited (CIN: U72200TG2003PTC041718) with effect from May 22, 2007. The company is engaged in the business of “Software development and computer consultancy services”.
- b) The applicant had received foreign inward remittances from the following foreign investors as indicated below:

Sl No	Name of Remitter	Amount (INR)	Date of Receipt	Date of Reporting
1	Vitech Systems Group Inc.	99,000	17.10.2003	03.07.2008
2	Vitech Systems Group Inc. on behalf of Mr. Frank Donald Vitiello	1,000		
3	Vitech Systems Group Inc.	1,00,000	11.06.2009	22.06.2009
Total		2,00,000		

The applicant reported receipt of remittances towards share subscription amounting to ₹ 2,00,000/- to the Regional Office of Reserve Bank of India, out of which remittance amounting to ₹ 1,00,000/- were reported with a delay of 4 years 7 months 17 days approximately as indicated above. Whereas in terms of Paragraph 9(1)(A) of Schedule 1 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.



c) The company allotted equity shares and filed form FC-GPRs as indicated below:

SI No	Name of investor	Date of allotment of shares	Number of shares allotted	Amount for which shares allotted (INR)	Date of reporting to AD or RBI
1	Vitech Systems Group Inc	18.09.2003	9,900	99,000	26.06.2019
2	Mr. Frank Donald Vitiello		100	1,000	
3	Vitech Systems Group Inc	07.12.2009	23	1,00,000	05.01.2010
Total				2,00,000	

The applicant filed form FCGPRs for the allotment of shares amounting to ₹ 2,00,000/- as indicated above, out of which shares amounting to ₹ 1,00,000/- were reported with a delay of 15 years 8 months 8 days approximately beyond the prescribed limit. Whereas in terms of Paragraph 9(1)(B) of Schedule 1 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 FCGPR along with documents prescribed therein within 30 days from the date of issue of shares to person resident outside India.

d) The applicant has issued 23 equity shares on December 07, 2009, of ₹ 10 each at a premium of ₹ 4,337.82 each which is lower than the fair value of ₹ 4,369.07 per share determined at the time of issuance of shares as per Chartered Accountant Certificate dated December 07, 2009, which has resulted in shortfall amount of ₹ 488.75. Subsequently, the applicant has brought back the shortfall amount on August 14, 2019. Whereas in terms of Paragraph 5 of Schedule 1 to Notification No. FEMA 20/2000-RB, Price of shares issued to persons resident



outside India under this Schedule, 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. Here, the amount of contravention is ₹ 488.75 and the period of contravention is 9 years 8 months 8 days approximately.

3. (a) The applicant was given an opportunity for personal hearing vide Reserve Bank's letter No. HY.FE.FID/ 426 /14.66.003/2019-20 dated August 21, 2019 for further submission in person and/or producing documents, if any, in support of the application.

(b) The applicant vide e-mail dated August 21, 2019 stated that they are foregoing appearing for the personal hearing and requested that the compounding application may be disposed off on the basis of merits in terms of the facts/submission made therein along with the compounding application. The application for compounding is therefore, being considered on the basis of the averments made in the application.

4. I have given my careful consideration to the documents on record. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:-

(a) Paragraph 9(1)(A) of Schedule 1 to Notification No. FEMA 20/2000-RB for delay in reporting the receipt of consideration towards issue of shares amounting to ₹ 1,00,000/- and the period of contravention is 4 years 7 months 17 days approximately.

(b) Paragraph 9(1)(B) of Schedule 1 to Notification No. 20/2000-RB for delay in submission of Form FC-GPR to Reserve Bank of India after issue of shares to persons resident outside India and the contravention relates to an amount of ₹ 1,00,000/- and the period of contravention is 15 years 8 months 8 days approximately.



(c) Paragraph 5 of Schedule 1 to Notification No. FEMA 20/2000-RB for violation of pricing guidelines for issue of shares. Here, the amount of contravention is ₹ 488.75 and the period of contravention is 9 years 8 months 8 days approximately.

5. It has been declared in the compounding application dated June 26, 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 declaration dated June 26, 2019 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.

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 contravention is to be compounded and I consider that an amount of ₹ 40,894/- (**Rupees Forty Thousand Eight Hundred Ninety Four Only**) will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions, namely, the contraventions of Paragraph 9(1)(A), Paragraph 9(1)(B), Paragraph 5 of Schedule 1 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 ₹ 40,894/- (**Rupees Forty Thousand Eight Hundred Ninety Four Only**)



Compounding of contraventions under FEMA 1999
M/s Vitech Systems Asia Private Limited
CA No. HYD 437

which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 1st Floor, Saifabad, Hyderabad - 500004 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Hyderabad 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 this 23rd day of August 2019.

Sd/-

(P Kalyan Chakravarthy)

Assistant General Manager