



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

6, Sansad Marg

New Delhi-110001

Present

Md. Shakir Hasan

Assistant General Manager

Date: July 31, 2019

CA No. NDL 421/2019

In the matter of

mykaarma.com India Private Limited

148 & 149, Third Floor, Gagan Vihar Extn., New Delhi-110051

(Applicant)

In exercise of the powers under Section 15(1) of Foreign Exchange Management Act, 1999 and the Regulations/ Rules/ Notifications/ Orders made thereunder, I pass the following Order.

ORDER

The applicant has filed the compounding application dated April 2, 2019 (received at Reserve Bank of India, New Delhi on April 11, 2019) and addendum dated June 10, 2019 for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are those of (i) delay in reporting foreign inward remittance received for issue of shares, (ii) delay in filing form FC-GPR after issue of shares, and (iii) allotment of shares to persons resident outside India prior to receipt of inward remittance, in terms of paragraphs 9(1)(A), 9(1)(B) and 8 respectively 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 May 3, 2000 (hereinafter referred to as FEMA 20/2000-RB), as amended from time to time.



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

(a) The applicant company, incorporated on May 23, 2012, is engaged in the business of providing software support and maintenance.

(b) The applicant had reported the remittances received on December 27, 2012 from its foreign investors viz. Shri Ujjual Nath, Canada, Shri Gaurav Sharma, Canada and Shri William Fletcher, Canada with delay of 5 years, 7 months and 5 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of receipt	Amount (₹)	Date of Reporting
1	27.12.2012	2,62,724.50	26.02.2019
2	27.12.2012	1,42,948.67	26.02.2019
3	27.12.2012	95,000.54	26.02.2019
	Total	5,00,673.71	

Whereas, in terms of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of receipt of the amount of consideration received by Indian company for issue of shares and convertible debentures, a report in form specified in Annex C to this Schedule along with documents prescribed therein. Reporting of receipt of foreign inward remittance for issue of capital instruments in Advance Remittance Form was dispensed with in terms of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Amendment) Regulations, 2018 with effect from September 1, 2018. Delay in reporting of foreign inward remittance has, therefore, been taken up to August 31, 2018.

(c) The applicant had allotted a total of 50,000 equity shares as subscription to Memorandum of Association to its foreign investors (26,250 equity shares to Shri Ujjual Nath, 14,250 equity shares to Shri Gaurav Sharma and 9,500 equity shares to Shri William Fletcher) on May 23, 2012 for a consideration of ₹5,00,000/-. The amount of consideration was received on December 27, 2012 and form FC-GPR for the said allotment was submitted on February 26, 2019 with a delay of 6 years and 1 month beyond the prescribed period in contravention of paragraph 9(1)(B) of



Schedule 1 to FEMA 20/2000-RB, as then applicable. Whereas, in terms of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of issue of shares, a report in form FC-GPR together with documents prescribed therein.

(d) The consideration of ₹5,00,000/-, for issuance of MoA shares, was received from its foreign investors on December 27, 2012 with delay of 5 months and 5 days beyond the prescribed period, as detailed below, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of allotment	Amount (₹)	Date of receipt
1	23.05.2012	2,62,500.00	27.12.2012
2	23.05.2012	1,42,500.00	27.12.2012
3	23.05.2012	95,000.00	27.12.2012
	Total	5,00,000.00	

Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, an Indian company accepting FDI has to receive the share application money from the non-resident investor prior to the allotment of shares, and the shares have to be issued/ amount to be refunded, in case shares have not been issued, within 180 days from the date of receipt of inward remittance.

(e) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable.

3. The applicant was given an opportunity for personal hearing for further submission in person and/ or by producing documents, if any, in support of the application. Shri Parveen Gulati, Director, appeared for personal hearing on July 30, 2019 on behalf of the applicant. The representative of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that contraventions were without any *malafide* or wilful intention but were mainly due to lack of awareness about FEMA compliances. He requested for a lenient view in the matter. The application for compounding is, therefore, being considered on the basis of averments made in the application as well as other documents and submissions made during the personal



hearing.

4. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. Accordingly, I hold that the applicant has contravened the following FEMA provisions:

(a) Paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in reporting foreign inward remittance received for issue of shares as detailed in paragraph 2(b) above. The contravention relates to an amount of ₹5,00,673.71 (Rupees Five Lakh Six Hundred Seventy Three and Paise Seventy One only) and the period of delay is 5 years, 7 months and 5 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in filing form FC-GPR after issue of shares as detailed in paragraph 2(c) above. The contravention relates to an amount of ₹5,00,000/- (Rupees Five Lakh only) and the period of delay is 6 years and 1 month.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of allotment of shares to person resident outside India prior to receipt of inward remittance as detailed in paragraph 2(d) above. The contravention relates to an amount of ₹5,00,000/- (Rupees Five Lakh only) and the period of delay is 5 months and 5 days.

5. It has been declared in the compounding application dated April 2, 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 also been declared in the declaration 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. 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 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. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to compound the contraventions, in line with the Guidance Note on Computation Matrix prescribed as part of Master Direction – Compounding of Contraventions, framed in accordance with the Foreign Exchange (Compounding Proceedings) Rules 2000. Accordingly, it stands to reason that payment of an amount of **₹74,590/- (Rupees Seventy Four Thousand Five Hundred and Ninety only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, by the applicant based on the facts detailed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹74,590/- (Rupees Seventy Four Thousand Five Hundred and Ninety only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 6, Sansad Marg, New Delhi-110001 by a demand draft drawn in favour of the “Reserve Bank of India” and payable at New Delhi 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 the 31st day of July 2019.

Sd/-
(Md. Shakir Hasan)
Assistant General Manager