



In the

Reserve Bank of India
10/3/8, Nrupathunga Road
Bengaluru-560001

Present

Shri Jose J Kattoor
Regional Director, Karnataka and
Chief General Manager, Bengaluru

Date: October 22, 2019
C.A. BGL 475/2019

In the matter of

M/s iMerit Technology Services Private Limited
#204A, Mittal Tower
6, M G Road
Bengaluru - 560001

(Applicant)

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

ORDER

The applicant has filed a compounding application dated August 09, 2019, received at this office of Reserve Bank of India, Bengaluru 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 receipt of foreign inward remittances towards subscription to equity, (ii) allotment of shares prior to the receipt of inward remittance, and (iii) delay in submission of form FC-GPRs to the Reserve Bank, after issue of shares to a person resident outside India, in terms of Paragraphs 9(1)(A), 8 and 9(1)(B), 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 03, 2000, and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).



2. The relevant facts of the case are as follows: The applicant, M/s iMerit Technology Services Private Limited, was originally incorporated as M/s Meritek Global Technology Services Private Limited on March 14, 2011, under the Companies Act, 1956, as per the Certificate of Incorporation issued by the Registrar of Companies, Karnataka. Subsequently, the company has changed its name as M/s iMerit Technology Services Private Limited, on February 22, 2012, as per the Certificate of Incorporation issued by the Registrar of Companies, Karnataka, consequent upon change of name. The company is engaged in the business of providing information technology and information technology enabled services. The applicant had received funds towards share application money from the non-resident investors, namely, Radha Ramaswami Basu, USA, M/s Omdiyar Network Fund INC, USA, M/s Khosla Impact I Mauritius, Mauritius and Michael Susan Dell Foundation, USA, as shown below:

Table – 1

Sl. No	Date of Receipt	Amount (INR)	Date of Reporting to RBI /AD
1	25-05-2012	7,700.00	10-07-2012
2	19-06-2012	1,66,78,610.00	11-07-2012
3	06-07-2012	1,388.75	11-07-2012
4	09-11-2012	2,45,90,860.50	03-12-2012
5	25-09-2015	6,59,99,934.00	13-11-2015
6	28-09-2015	9,50,00,094.00	04-11-2015
7	30-09-2015	6,29,99,937.00	11-11-2015
	Total	26,52,78,524.25	

The applicant reported receipt of remittances to the Reserve Bank of India / Authorized Dealer Bank, with a delay ranging from seven days to nineteen days, beyond the stipulated period of 30 days in respect of the remittances as indicated at serial numbers 1, 5, 6 and 7, in the Table-1 above. 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 had allotted equity shares to the foreign investors, in terms of Paragraph 8 of Schedule 1 to Notification No. FEMA.20/2000-RB, dated May 03, 2000. However, in the instance mentioned here below, the company had allotted shares to the non-resident investor, prior to receipt of amount of consideration, as detailed below:

The company had allotted 3675 equity shares worth ₹3,675.00 on September 03, 2015, to non-resident investor, Radha Ramaswami Basu, USA. However, the amount of consideration of ₹3,675.00 pertaining to the aforesaid allotment was received after allotment of shares, on February 02, 2018, with a delay of two years four months and thirty days from the date of allotment of shares.

Whereas, in terms of Paragraph 8 of Schedule 1 to Notification no. FEMA 20/2000- RB, dated May 3, 2000 and as amended from time to time, if the shares are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received shall be refunded to the person concerned, provided the Reserve Bank may, on an application made to it and for sufficient reasons permit to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt.

4. The applicant company had allotted shares and filed form FC-GPRs with Reserve Bank/AD as indicated below:

Table – 2

Sl. No.	Date of Allotment	Number of shares allotted	Amount (INR)	Date of reporting to RBI/AD
1	05-06-2012	770 Equity	7,700.00	23-03-2018
2	07-07-2012	50 Equity 1950 CCPs	1,66,79,980.00	14-08-2012
3	05-12-2012	50 Equity 2950 CCPs	2,45,90,850.00	27-12-2012
4	03-09-2015	3675 Equity	3,675.00	26-06-2018
5	05-10-2015	100 Equity 348206 CCPs	6,59,99,934.00	02-12-2015
		100 Equity 501646 CCPs	9,50,00,094.00	
		333333 CCPs	6,29,99,937.00	



	Total	4745 Equity; 1188085 CCPs	26,52,82,170.00	
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The applicant filed the form FC-GPR on allotment of shares with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank with a delay ranging from eight days to five years eight months and eighteen days, beyond the prescribed period of 30 days in respect of the allotment of shares as indicated at serial numbers 1, 2, 4 and 5, in the Table - 2 above. Whereas, in terms of Paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000, an Indian company issuing shares in accordance with these Regulations has to submit to the 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 person/s resident outside India.

5. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID (CEFA) No.1009/22.08.329/2019-20, dated October 17, 2019, for further submission in person, and/or producing documents, if any, in support of the application. However, the company sought to be exempted from the personal hearing with the Compounding Authority vide their email dated October 21, 2019.

The application is, therefore, being considered on the basis of the averments made in the compounding application and the documents submitted therein.

6. 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 I to Notification No. FEMA 20/2000-RB, due to delay in reporting of foreign inward remittances received towards subscription to equity as detailed in paragraph 2 above. The contravention relates to an amount of **₹22,40,07,665.00**, and the period of delay ranges from seven days to nineteen days;

(b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, due to allotment of shares prior to receipt of amount of consideration, as detailed



in paragraph 3 above. The amount of contravention is ₹3,675.00, and the period of delay is two years four months and thirty days; and

(c) 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 person/s resident outside India, as detailed in paragraph 4 above. The contravention relates to an amount of ₹24,06,91,320.00, and the period of delay ranges from eight days to five years eight months and eighteen days.

7. It has been declared in the compounding application dated August 09, 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 dated August 07, 2019, furnished as part of 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 is 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.

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 ₹57,469.00, (Rupees Fifty Seven Thousand Four Hundred and Sixty Nine only), will meet the ends of justice.

9. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1)(A), 8 and 9(1)(B), of Schedule I to Notification No. FEMA



20/2000-RB, by the applicant, based on the facts discussed above, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, on payment of an amount of **₹57,469.00, (Rupees Fifty Seven Thousand Four Hundred and Sixty Nine only)**, which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 2nd Floor, 10/3/8, Nrupathunga Road, Bengaluru – 560001, by a demand draft drawn in favour of the “Reserve Bank of India”, payable at Bengaluru, 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, the Twenty Second of October 2019.

Sd/-

(Jose J Kattoor)
Regional Director, Karnataka and
Chief General Manager, Bengaluru