



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

Present

Suman Ray
Chief General Manager

Date: August 27, 2019
C.A. 915/2019

In the matter of

S Namasivayam
2/45, 4th street
Thiruvalluvar Nagar, Alandur
Chennai – 600 016

(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 May 27, 2019 (received at Reserve Bank on May 29, 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) prior approval was not



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sought from Reserve Bank in transfer of shares from resident to non-resident by way of gift in terms of Regulation 10A (a)(i) of 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 as then applicable (hereinafter referred to as Notification No. FEMA 20/2000-RB) (ii) the face value of the shares transferred by way of gift exceeds 5% of the paid up capital of the Indian Company in contravention of Regulation 10A (a)(ii)(b) of Notification No. FEMA 20/2000-RB and (iii) the value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift in the calendar year exceeds the rupee equivalent of USD 25000 in contravention of Regulation 10A(a)(ii)(e) of Notification No. FEMA 20/2000-RB.

2. The relevant facts of the case are as follows: The applicant, an individual by name Shri S Namasivayam, is a resident shareholder in the company M/s. Iminight Software Pvt Ltd., a private limited company incorporated under the Companies Act, 1956 on April 23, 2003 with CIN U72200TN2003PTC050741.

3.a The applicant transferred by way of gift 82000 equity shares of face value ₹100/- each to the Non-Resident, Shri N Senthil Kumar at a notional share value of ₹190.93/- without Reserve Bank's approval as detailed below:

No of Shares	Notional share Value (₹)	Amount Involved (₹)	Date of transfer	Date of Regularisation
82000	190.93	1,56,56,260.00	16.05.2010	27.05.2019

Whereas in terms of Regulation 10A(a)(i) of Notification No. FEMA 20/2000-RB, a person resident in India who proposes to transfer to a person resident outside India any security by way of gift shall make an application to Reserve Bank for its approval.

3.b The transfer of 82000 equity shares of face value of ₹100 each by way of gift on May 16, 2010 exceeded 5% of the paid-up capital of ₹2,05,00,000.00 of the Indian company by ₹71,75,000.00 as detailed in table:



Face value of Shares transferred (₹)	5% of paid-up capital (₹)	Amount in contravention (₹)	Date of transfer	Date of Regularisation
82,00,000.00	10,25,000.00	71,75,000.00	16.05.2010	27.05.2019

Whereas in terms of Regulation 10A(a)(ii)(b) of Notification No. FEMA 20/2000-RB, a person resident in India who proposes to transfer to a person resident outside India any security by way of gift shall make an application to Reserve Bank and Bank may grant such approval on being satisfied of the condition that the gift does not exceed 5% of the paid-up capital of the Indian company.

3.c The transfer of 82000 equity shares of face value of ₹100 each by way of gift on May 16, 2010 exceeded the rupee equivalent of USD 25000 by ₹1,45,26,010.00 as detailed in table below:

Notional share Value (₹)	Rupee equivalent of USD 25000 (₹)	Amount in contravention (₹)	Date of transfer	Date of Regularisation
1,56,56,260.00	11,30,250.00	1,45,26,010.00	16.05.2010	27.05.2019

Whereas in terms of Regulation 10A(a)(ii)(e) of Notification No. FEMA 20/2000-RB, a person resident in India who proposes to transfer to a person resident outside India any security by way of gift shall make an application to Reserve Bank and Bank may grant such approval on being satisfied of the condition that the value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift in the calendar year does not exceed the rupee equivalent of USD 25000.

4. The applicant was advised about the contraventions vide memorandum dated May 14, 2019. The applicant has filed a compounding application dated May 27, 2019. It has been declared in the compounding application that the particulars given by the applicant in the application are true and correct to the best of his knowledge and belief. It



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has 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/him/her thereafter. 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.

5. The applicant was given an opportunity for personal hearing vide Reserve Bank's mail dated August 19, 2019 for further submission in person and/or producing documents, if any, in support of the application. The applicant vide email dated August 20, 2019 chose not to appear for the personal hearing scheduled on August 21, 2019. The applicant, in the compounding application, had admitted the contraventions as stated in paragraphs 3.a, 3.b and 3.c above for which compounding has been sought. 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.

6. I have given my careful consideration to the documents on record and submission made by the applicant in the compounding application. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:

(a) Regulation 10A(a)(i) of Notification No. FEMA 20/2000-RB, as prior approval of Reserve Bank was not sought for transfer of shares from resident to non-resident by way of gift as detailed in paragraph 3.a above. The contravention relates to an amount of ₹1,56,56,260.00 and the duration of the contravention being 9 years 11 days approximately.

(b) Regulation 10A(a)(ii)(b) of Notification No. FEMA 20/2000-RB, as transfer of shares from resident to non-resident by way of gift exceeded 5% of the paid-up capital of the Indian Company as detailed in paragraph 3.b above. The



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contravention relates to an amount of ₹71,75,000.00 and the duration of the contravention being 9 years 11 days approximately.

(c) Regulation 10A(a)(ii)(e) of Notification No. FEMA 20/2000-RB, as the value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift in the calendar year exceeded the rupee equivalent of USD 25000 as detailed in paragraph 3.c above. The contravention relates to an amount of ₹1,45,26,010.00 and the duration of the contravention being 9 years 11 days approximately.

7. In terms of Section 13 of the FEMA, if any person contravenes any provision of the Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank, he, upon adjudication, shall be liable to a penalty up to thrice the sum involved in such contravention. However, considering the circumstances which led to the delay and other relevant facts of the case, I consider that an amount of **₹10,01,560/-** (Rupees ten lakhs one thousand five hundred and sixty only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contraventions of Regulation 10A(a)(i), Regulation 10A(a)(ii)(b) and Regulation 10A(a)(ii)(e) of 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 **₹10,01,560/-** (Rupees ten lakhs one thousand five hundred and sixty only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 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.



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Dated this twenty seventh day of August, 2019.

Sd/-
Suman Ray
Chief General Manager