



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

6, Sansad Marg

New Delhi-110001

Present

V. G. Sekar

Chief General Manager

Date: June 14, 2019

C.A.NDL 396/2019

In the matter of

Suse Software Solutions India Private Limited

U & I Corporate Centre 47, Echelon, Sector 32, Gurugram, Haryana -122001

(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 February 13, 2019 (received at Reserve Bank of India, New Delhi on February 26, 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) delay in allotment of shares, 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 company was incorporated on April 1, 2008 as Attachmate India Private Limited. The name of the company was changed to Suse Software Solutions India Private Limited on March 19, 2019 (after submission of compounding application). The company is engaged in other information technology and computer service activities.

(b) The company had received five inward remittances from its foreign investor M/s Attachmate Asia Pte Ltd., Singapore and reported them with delay ranging from 10 months to 1 year and 7 months 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.

S. No.	Date of receipt	Amount (₹)	Date of Reporting
1.	16.06.2008	60,00,000.00	15.02.2010
2.	09.09.2008	20,00,000.00	15.02.2010
3.	16.10.2008	20,00,000.00	15.02.2010
4.	14.01.2009	10,00,000.00	15.02.2010
5.	17.03.2009	10,00,000.00	15.02.2010
	Total	1,20,00,000.00	

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 to Reserve Bank, not later than 30 days from the date of receipt of the amount of consideration, a report in form specified in Annex C to this schedule indicating the details mentioned therein.

(c) The company allotted 10,000 equity shares to its foreign investor on July 14, 2008 for a consideration of ₹1,00,000/- and reported the same on March 27, 2017 with a delay of 8 years, 7 months and 14 days beyond the prescribed period in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB dated May 3, 2000, 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 to Reserve Bank, 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 company had allotted 11,90,000 equity shares for a consideration of ₹1,19,00,000/- on January 4, 2019 against the inward remittances received during



the years 2008 and 2009, as detailed below, vide RBI's approval dated December 7, 2018. Shares were allotted with delay ranging from 9 years, 3 months and 22 days to 10 years and 22 days beyond the prescribed period of 180 days from the date of receipt of inward remittances, as detailed below, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB dated May 3, 2000, as then applicable.

S. No.	Date of receipt	Amount (₹)	Date of allotment
1.	16.06.2008	59,00,000.00	04.01.2019
2.	09.09.2008	20,00,000.00	04.01.2019
3.	16.10.2008	20,00,000.00	04.01.2019
4.	14.01.2009	10,00,000.00	04.01.2019
5.	17.03.2009	10,00,000.00	04.01.2019
	Total	1,19,00,000.00	

Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, an Indian company has to issue shares or convertible debentures within 180 days from the date of receipt of the inward remittance or date of debit to NRE / FCNR(B) account as the case may be. In case shares or convertible debentures are not issued within 180 days, the amount of consideration so received shall be refunded to the person concerned by outward remittance through normal banking channels or by credit to his NRE / FCNR(B) account, as the case may be. Provided further that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an Indian company 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.

(e) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 to FEMA 20 /2000-RB dated May 3, 2000, 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 Sharath Babu R M, Company Secretary and Ms Vidhi Agrawal, Chartered Accountant appeared for personal hearing on June 11, 2019 on behalf of the applicant. The representatives of the applicant admitted the contraventions committed by the company for which compounding has been sought. During the personal hearing, they submitted that delays were without any *malafide* or wilful intention but were mainly due to certain administrative problems, including lack of officials to take care of compliances relating to FEMA. They 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, on account of delay in reporting foreign inward remittance received towards subscription of shares as detailed in paragraph 2(b) above. The contraventions relate to an amount of ₹1,20,00,000/- (Rupees One Crore and Twenty Lakh only) and the period of delay ranges from 10 months to 1 year and 7 months.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, 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 ₹1,00,000/- (Rupees One Lakh only) and the period of delay is 8 years, 7 months and 14 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, on account of delay in allotment of shares beyond the prescribed period of 180 days from the date of receipt of the inward remittances as detailed in paragraph 2(d) above. The contraventions relates to an amount of ₹1,19,00,000/- (Rupees One Crore and Nineteen Lakh only) and period of delay ranges from 9 years, 3 months and 22 days to 10 years and 22 days.

5. It has been declared in the compounding application dated February 13, 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 furnished with the 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. 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 **₹1,67,565/- (Rupees One Lakh Sixty Seven Thousand Five Hundred and Sixty Five only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraph 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 **1,67,565/- (Rupees One Lakh Sixty Seven Thousand Five Hundred and Sixty Five 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 14th day of June 2019.

Sd/-
(V. G. Sekar)
Chief General Manager