



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

6, Sansad Marg

New Delhi-110001

Present

Devika Gowrishankar

Deputy General Manager

Date: January 25, 2019

C.A.NDL 306/2018

In the matter of

Beacon Analytics Private Limited

House No. 153, 1st Floor, Rishabh Vihar, Delhi 110092

(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 September 10, 2018 (received at Reserve Bank of India, New Delhi on September 11, 2018) for compounding of contravention 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, in terms of paragraph 9(1)(A) 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, and (ii) delay in refund of amount of consideration beyond 180 days and 75 days from the date of receipt of remittance in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB dated May 3, 2000 and paragraph 2 of Schedule 1 to to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 notified



vide Notification No. FEMA 20 (R)/ 2017-RB dated November 7, 2017, as amended from time to time, respectively.

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

(a) The company was incorporated on May 8, 2008 and is engaged in the business of Management Consultancy Services.

(b) The company had received foreign inward remittance of ₹13,80,000/- on October 31, 2017 and reported it on May 14, 2018 with a delay of 5 months and 14 days beyond the prescribed period of 30 days in contravention of paragraph 9 (1)(A) of Schedule 1 to FEMA 20/2000-RB dated May 3, 2000, as then applicable. Whereas, in terms of Paragraph 9(1) (A) of Schedule 1 to FEMA 20/2000-RB dated May 3, 2000, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report to 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 did not issue equity shares against the remittance received mentioned at (b) above as also against another foreign inward remittance of ₹16,17,500/- received on November 15, 2017, as agreement on share valuation could not be reached with the investor and, therefore, the company decided to refund the share application money. The company sought RBI approval for refund of the remittances so received through the AD Bank vide their letter dated July 6, 2018. The approval was granted by RBI on August 17, 2018 and the company refunded the total amount on September 13, 2018. There was delay of:

(i) 4 months and 15 days, beyond the prescribed period of 180 days from the date of receipt of inward remittance of ₹13,80,000/- (received on October 31, 2017), in refund of the amount of consideration in contravention of paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, as then applicable.

Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB dated May 3, 2000, an Indian company has to issue shares/convertible debentures/warrants 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 the capital instruments 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 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 of consideration is outstanding beyond a period of 180 days from the date of receipt.

(ii) 7 months and 15 days beyond the prescribed period of 75 days from the date of receipt of inward remittance of ₹16,17,500/- (received on November 15, 2017), in refund of the amount of consideration in contravention of paragraph 2 of Schedule 1 to FEMA 20 (R)/2017-RB dated November 7, 2017, as then applicable.

Whereas, in terms of paragraph 2 of FEMA 20 (R)/2000-RB dated November 7, 2017, an Indian company has to issue capital instruments within sixty days from the date of receipt of consideration. In case the capital instruments are not issued within sixty 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, within fifteen days from the date of completion of sixty days. Provided prior approval of the Reserve Bank shall be required for payment of interest, if any, as laid down in the Companies Act, 2013, for delay in refund of the amount so received.

(d) Thus, there are contraventions of paragraphs 9(1)(A) and 8 of Schedule 1 to FEMA 20/ 2000-RB dated May 3, 2000, and paragraph 2 of Schedule 1 to FEMA 20(R)/2017-RB dated November 7, 2017, 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 Mayank Premi, Director of the company appeared for personal hearing on January, 24, 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 delays were without any *malafide* or wilful intention but were mainly due to (i) lack of awareness about reporting of foreign inward remittance to RBI, for delay in filing of Advance Remittance Form and (ii) failure to reach at a consensus with the investor on the terms and conditions of the shareholders' agreement. 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 dated May 3, 2000, due to delay in reporting of foreign inward remittance received towards subscription of shares as detailed in paragraph 2(b) above. The contravention relates to an amount of ₹13,80,000/- (Rupees Thirteen Lakh Eighty Thousand only) and the period of delay is 5 months and 14 days.

(b) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB dated May 3, 2000, due to delay in refund of share application money beyond the permitted period of 180 days from the date of receipt as detailed in paragraph 2(c)(i) above. The contravention relates to an amount of ₹13,80,000/- (Rupees Thirteen Lakh Eighty Thousand only) and the period of delay is 4 months and 15 days.

(c) Paragraph 2 of FEMA 20 (R)/2017-RB dated November 7, 2017 due to delay in refund of share application money beyond the permitted period of 75 days from the date of receipt as detailed in paragraph 2(c)(ii) above. The contravention relates to an amount of ₹16,17,500/- (Rupees Sixteen Lakh Seventeen Thousand Five Hundred only) and the period of delay is 7 months and 15 days.

5. It has been declared in the compounding application dated September 10, 2018 that the particulars given by the applicant in the application are true and correct to the best of his knowledge and belief. It has been declared in the undertaking furnished by the company 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 contraventions are to be compounded and I consider that an amount of **₹1,20,548/- (Rupees One Lakh Twenty Thousand Five Hundred Forty Eight only)** will meet the ends of justice.

7. Accordingly, I compound the admitted contraventions of paragraphs 9(1)(A) and 8 of Schedule 1 to FEMA 20/2000-RB and paragraph 2 of Schedule 1 to FEMA 20 (R)/ 2017-RB dated November 7, 2017, 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 **₹1,20,548/- (Rupees One Lakh Twenty Thousand Five Hundred Forty Eight 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 25th day of January 2019.

Sd/-
(Devika Gowrishankar)
Deputy General Manager