



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

Present

K Ravi
Deputy General Manager

Date: August 27, 2019
C.A.913/2019

In the matter of

M/s. Haxakata Pvt Ltd.,
Type 2, No.8, Phase I, Dr. VSI Estate
Rajiv Gandhi Salai, Thiruvanmiyur
Chennai – 600 041

(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 04, 2019 (received at Reserve Bank on May 14, 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 delay in allotment of shares and delay in refund of excess consideration in terms of Paragraph 2(2) and



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Paragraph 2(3) respectively of Schedule I to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 notified vide Notification No. FEMA 20R/2017-RB dated November 07, 2017 and as amended from time to time (hereinafter referred to as Notification No. FEMA 20(R)/2017-RB).

2. The relevant facts of the case are as follows: The applicant company was incorporated on October 08, 2018 under the provisions of the Companies Act, 2013 (Registration No. U74999TN2018FTC125148) and is engaged in the business of providing software support and maintenance to the clients. The applicant received two foreign inward remittances of ₹33,01,456.69 and ₹1,11,109.20 on 09.11.2018 and 27.11.2018 respectively from M/s. Sivaxa LLC, towards subscription to equity shares. Against the above remittances the company allotted shares on 21.01.2019 and filed the FC GPR with Reserve Bank.

3.a The company allotted shares on 21.01.2019 against the remittances received as detailed in the table below:

Sl. No.	Date of receipt	Amount (₹)	Date of Allotment
1	09.11.2018	33,01,456.69	21.01.2019
2	27.11.2018	1,11,109.20	21.01.2019

The company allotted shares with a delay of thirteen days approximately, in respect of allotment at Sl.No.1, beyond the stipulated time of 60 days from the date of receipt of the consideration. Whereas in terms of paragraph 2(2) of Schedule I to Notification No. FEMA 20R/2017-RB, capital instruments shall be issued to the person resident outside India making such investment within 60 days from the date of receipt of the consideration.

3.b The company refunded the balance consideration after allotment of shares as detailed in the table below:

Sl. No.	Date of receipt	Amount (₹)	Date of refund
1	27.11.2018	12,665.89	05.08.2019



The company refunded the receipt of consideration with a delay of five months 26 days approximately beyond the stipulated time. Whereas in terms of paragraph 2(3) of Schedule I to Notification No. FEMA 20(R)/2017-RB, if capital instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance within fifteen days from the date of completion of 60 days.

4. The applicant was advised about the contravention vide memorandum dated April 02, 2019. The applicant has filed a compounding application dated May 04, 2019 wherein 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 their knowledge and belief. It 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 contravention which is 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.

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 additional documents, if any, in support of the application. The applicant appeared for the personal hearing scheduled on August 22, 2019 during which Shri Kumaran Govindan, Director, represented the applicant. The authorized representative of the applicant admitted the contraventions as stated in paragraphs 3.a and 3.b above for which compounding has been sought. During the personal hearing, it was submitted that the delay was unintentional. In view of the above, the applicant requested Reserve Bank to take a lenient



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view in the matter. 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 during personal hearing.

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

- a) Paragraph 2(2) of Schedule I to Notification No. FEMA 20(R)/2017-RB due to delay in allotment of shares as detailed in paragraph 3.a above. The contravention relates to an amount of ₹33,01,456.69 with the duration of contravention being thirteen days approximately.
- b) Paragraph 2(3) of Schedule I to Notification No. FEMA 20(R)/2017-RB due to delay in refund of excess consideration as detailed in paragraph 3.b above. The contravention relates to an amount of ₹12,665.89 with the duration of contravention being five months 26 days approximately.

7. 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 contravention is to be compounded and I consider that an amount of **₹67,115/-** (Rupees sixty seven thousand one hundred and fifteen only) will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, the contraventions of paragraph 2(2) and paragraph 2(3) of Schedule I to Notification No. FEMA 20(R)/2017-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 **₹67,115/-** (Rupees sixty seven thousand one hundred and fifteen only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Fort Glacis,



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No.16, Rajaji Salai, Chennai - 600 001 by a demand draft drawn in favour of the “Reserve Bank of India” and payable at Chennai within a period of **fifteen 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 twenty seventh day of August, 2019.

Sd/-

K Ravi

Deputy General Manager