



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

Present

Smt. K S Jyotsna
General Manager

Date: January 23, 2020
C.A. BGL501/2017

In the matter of

M/s GCE India Private Limited
Ground Floor and First Floor, No 59,
Millers Road, Benson Town
Bengaluru 560046

(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 September 18, 2019, received at the office of Reserve Bank of India, Bengaluru, on September 27, 2019, and addendum to the application dated January 07, 2020, 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 beyond 180 days from the date of receipt of inward remittance, (iii) delay in submission of form FC-GPR 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), and



(iv) delay in refund of excess share application money to the non-resident investor/persons resident outside India, beyond 75 days from the date of receipt of the inward remittance in terms of Paragraph 2 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 20(R)/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 M/s GCE India Private Limited, was incorporated on February 11, 2011, under the Companies Act, 1956, as per the Certificate of Incorporation issued by the Registrar of Companies, Karnataka. The activity undertaken by the company is wholesale business of machinery, equipment and supplies. The applicant had received funds towards share application money, from the non-resident investors, namely, M/s GCE Holding AB, Sweden, and M/s Chotebor AB, Sweden, as shown below:

Table -1

Sr. No.	Date of Receipt	Total Amount (INR)	Date of Reporting to RBI / AD Bank
1	26-05-2011	99,990.00	21-09-2011
2	26-05-2011	10.00	27-09-2011
3	08-06-2011	59,99,724.00	15-07-2013
	Total	60,99,724.00	

The applicant reported receipt of remittances to the Reserve Bank / Authorized Dealer Bank, with a delay ranging from two months twenty seven days to two years and seven days, beyond the stipulated period of 30 days in respect of the remittances as indicated in 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 delayed allotting shares to the non-resident investor beyond the stipulated period of 180 days from the date of receipt of inward remittance, and allotted them without prior approval of Reserve Bank, in the below mentioned instance:

The company had received an inward remittance of ₹59,99,724.00, on June 08, 2011, from the non-resident investor M/s GCE Holding AB, Sweden, and allotted 6,00,000 equity shares worth ₹60,00,000.00, on April 04, 2012, to the said investor, with a delay, beyond 180 days from the date of receipt of remittance. The amount of contravention is **₹60,00,000.00**, and the period of delay is three months and thirty days.

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. Further, the company had allotted equity shares to the non-resident investor, in terms of Paragraph 2 of Schedule I to Notification No. FEMA 20(R)/2017- RB, dated November 07, 2017. However, in the instance mentioned below, the company had refunded the excess share application money, beyond 75 days from the date of inward remittance to the non-resident investor:

The company had received an inward remittance of ₹4,00,10,000.00, on November 10, 2017, from the non-resident investor M/s GCE Holding AB, Sweden, and allotted 39,99,993 equity shares worth ₹3,99,99,930.00, on January 06, 2018, leaving behind an excess of ₹10,070.00. The excess share application money of ₹10,070.00 was refunded to the non-resident investor, on December 17, 2019, with a delay, beyond 75 days from the date of receipt of remittance. The amount of contravention is **₹10,070.00**, and the period of delay is one year ten months and twenty three days.



Whereas, in terms of Paragraph 2 of Schedule 1 to Notification No. FEMA 20 (R)/2017- RB, dated November 07, 2017, if the 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 through banking channels or by credit to his NRE/ FCNR(B) accounts, as the case may be, within fifteen days from the date of completion of sixty days.

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

Table-2

Sl. No.	Date of Allotment	Number of shares allotted	Amount (INR)	Date of reporting to RBI/AD Bank
1	19-11-2011	9,999 Equity	99,990.00	10-05-2012
2		1 Equity	10.00	
3	04-04-2012	6,00,000 Equity	60,00,000.00	14-06-2013
		6,10,000 Equity	61,00,000.00	

The applicant filed form FC-GPRs, on allotment of shares, with the Bengaluru Regional Office of the Reserve Bank of India / Authorized Dealer Bank, with a delay ranging from four months twenty one days to one year one month and ten days, beyond the prescribed period of 30 days, in respect of the allotments as indicated 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 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 persons resident outside India.

6. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID (CEFA) No.1725/22.08.132/2019-20, dated January 16, 2020, for further submission in person and/or producing documents, if any, in support of the application. The applicant's authorized representative Mr. Girish Desai, Practicing Company Secretary, who appeared for the personal hearing on January 20, 2020, admitted the contraventions as stated in



paragraphs 2, 3, 4 and 5 above, committed by the applicant, for which compounding has been sought. During the personal hearing, the representative of the applicant requested that as the contraventions were not intentional or with a malafide intention, and was mainly due to inadvertence, a lenient view may be taken in disposal of the application. 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 and thereafter.

7. I have given my careful consideration to the documents on record and submission made by the applicant during the personal hearing. 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 **₹60,99,724.00**, and the period of delay ranges from two months twenty seven days to two years and seven days;
- (b) Paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, due to delay in allotment of shares, beyond the stipulated period of 180 days from the date of receipt of inward remittance, as detailed in paragraph 3 above. The total amount of contravention is **₹60,00,000.00**, and the period of delay is three months and thirty days;
- (c) Paragraph 2 of Schedule 1 to Notification No. FEMA 20(R)/2000-RB, as the applicant refunded the excess share application money to the non-resident investor with a delay beyond the stipulated period of 75 days from the date of receipt of amount of consideration, as detailed in paragraph 4 above. The contravention relates to an amount of **₹10,070.00**, and the period of delay is one year ten months and twenty three days; and
- (d) 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 persons resident outside India as detailed in paragraph 5 above.



The contravention relates to an amount of **₹61,00,000.00**, and the period of delay ranges from four months twenty one days to one year one month and ten days.

8. It has been declared in the compounding application dated September 18, 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, 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.

9. 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 **₹1,05,659.00 (One Lakh Five Thousand Six Hundred and Fifty Nine only)**, will meet the ends of justice.

10. 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, and Paragraph 2 of Schedule I to Notification No. FEMA 20(R)/2017-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 **₹1,05,659.00 (One Lakh Five Thousand Six Hundred and Fifty 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 Third day of January 2020.

Sd/-

(K S Jyotsna)
General Manager