



In the
RESERVE BANK OF INDIA
Foreign Exchange Department
6, Sansad Marg
New Delhi-110001

Present
Ajay Kumar
Regional Director for Delhi and CGM, New Delhi

Date: September 11, 2019
CA No. NDL 451/2019

In the matter of
Mace Project and Cost Management Private Limited
No.703, 7th Floor, Vatika City Point, MG Road, Gurugram, Haryana - 122002
(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 May 07, 2019 (received at Reserve Bank of India, New Delhi on May 13, 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 refund of share application money against which shares were not issued, 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 applicant company was incorporated on February 15, 2011 and is engaged in the business of management consultancy activities.

(b) The applicant had reported receipt of foreign inward remittance from its foreign investors, M/s Mace International (UK) Limited, UK and Mr. Nicholas John Alford, UAE, on three occasions with delay ranging from 4 months and 1 day to 6 months and 10 days, as detailed hereunder, beyond the prescribed period in contravention of paragraph 9(1)(A) of Schedule I to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of receipt	Amount (₹)	Date of reporting
1	19.04.2011	59,75,333.12	29.11.2011
2	30.06.2011	77,80,773.00	01.12.2011
3	16.02.2012	99,980.00	22.08.2012
Total		1,38,56,086.12	

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 along with the documents prescribed therein.

(c) The applicant had allotted MoA shares for a consideration of ₹99,980/- to M/s Mace International (UK) Limited, on February 16, 2012 against the inward remittance received on February 16, 2012 and reported the same on November 03, 2016 with a delay of 4 years, 7 months and 17 days beyond the prescribed period, in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, 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 applicant could not issue shares to Mr. Nicholas John Alford, UAE against the remittances received and, therefore, sought approval for refund of share application money amounting to ₹1,37,56,106.12 (₹59,75,333.12 received on April 19, 2011 and ₹77,80,773/- received on June 30, 2011) through its AD bank's letter dated January 24, 2019. Approval was granted on February 13, 2019 and the applicant refunded the said amount on February 28, 2019 with a delay of 7 years, 3 months & 8 days and 7 years & 28 days in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB,



as then applicable. Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, a company in India issuing shares or convertible debentures under this Schedule to a person resident outside India shall receive the amount of consideration for such shares by inward remittance through normal banking channels, or by debit to NRE / FCNR(B) account of the person concerned maintained with an authorised dealer / authorised bank by debit to a non-interest bearing Escrow account (in Indian Rupees) maintained in India with an AD bank in accordance with Foreign Exchange Management (Deposit) Regulations, 2000. Provided that if the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of "debit to NRE / FCNR (B) / Escrow account" 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) / Escrow 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, 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 Sandeep Sehgal, Chartered Accountant and Ms Sakshi Dureja, Company Secretary, appeared for personal hearing on September 06, 2019 on behalf of the applicant. The representatives of the applicant admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, they submitted that contraventions were without any *malafide* or wilful intention but were mainly due to administrative reasons including change in the officials handling the related work and communication gap between the company and the AD bank. 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 of foreign inward remittance received towards subscription of shares as detailed in paragraph 2(b) above. The contraventions relate to an amount of ₹1,38,56,086.12 (Rupees One Crore Thirty Eight Lakh Fifty Six Thousand Eighty Six and Paise Twelve only) and the period of delay ranges from 4 months and 1 day to 6 months and 10 days.

(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 ₹99,980/- (Rupees Ninety Nine Thousand Nine Hundred and Eighty only) and the period of delay is 4 years, 7 months and 17 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, on account of delay in refund of share application money against which shares were not issued, as detailed in paragraph 2(d) above. The contravention relates to an amount of ₹1,37,56,106.12 (Rupees One Crore Thirty Seven Lakh Fifty Six Thousand One Hundred Six and Paise Twelve only) and the period of delay is 7 years, 3 months & 8 days and 7 years & 28 days.

5. It has been declared in the compounding application dated May 07, 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 also been declared in the declaration dated August 06, 2019 furnished as a 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. 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 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 **₹2,31,926/- (Rupees Two Lakh Thirty One Thousand Nine Hundred and Twenty Six only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of paragraphs 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 **₹2,31,926/- (Rupees Two Lakh Thirty One Thousand Nine Hundred and Twenty Six 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 11th day of September 2019.

Sd/-
(Ajay Kumar)
Regional Director for Delhi and CGM, New Delhi