



In the

RESERVE BANK OF INDIA

Foreign Exchange Department

6, Sansad Marg

New Delhi-110001

Present

V.G. Sekar

Chief General Manager

Date: July 23, 2019

CA No. NDL 403/2019

In the matter of

Foresight IT Solutions and Consulting India Private Limited

904, 9th floor, Advant Navis IT Park, Plot No. 7, Sector-142, Noida Expressway

Noida, Uttar Pradesh-201305

(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 15, 2019 (received at Reserve Bank of India, New Delhi on March 1, 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 of taking on record in its books by the applicant company, the transfer of shares by residents to non-resident without obtaining certified form FC-TRS from the AD bank, in terms of Regulation 4 of 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, read with paragraph 6.2 of Annex to A.P. (DIR Series) Circular No. 16 dated October 4, 2004.

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

(a) The applicant company, incorporated on November 6, 2008, is engaged in the business of providing IT consultancy and Information Technology processing and services in the fields of customer management.

(b) Pursuant to a share purchase agreement dated October 1, 2009 executed between the three resident shareholders (the sellers) of the applicant company viz. Shri Pravin Nath, Shri Sandeep Maan and Shri Saurabh Khurana and M/s Foresight Group International AG (the non-resident buyer), the sellers transferred a total of 99,997 equity shares of the applicant company to the non-resident buyer on June 2, 2010. The applicant company took on record in its books the transfer of shares vide Board resolution dated June 2, 2010 without obtaining AD bank certificate acknowledging form FC-TRS for the said transfer, as detailed below, in contravention of Regulation 4 of FEMA 20/2000-RB, as then applicable, read with paragraph 6.2 of Annex to A.P. (DIR Series) Circular No. 16 dated October 4, 2004.

| Sl. No. | No. of shares | Date of taking on record the transfer of shares | Amount (₹) | Date of approval of form FC-TRS by AD bank |
|---------|---------------|---|-----------------------|--|
| 1 | 43,999 | 02.06.2010 | 51,94,961.93 | 19.09.2018 |
| 2 | 27,999 | 02.06.2010 | 33,05,841.93 | 19.09.2018 |
| 3 | 27,999 | 02.06.2010 | 33,05,841.93 | 19.09.2018 |
| | | Total | 1,18,06,645.79 | |

Whereas, in terms of Regulation 4 of FEMA 20/2000-RB, an Indian entity shall not issue any security to a person resident outside India or shall not record in its books any transfer of security from or to such person provided that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an entity to issue any security to a person resident outside India or to record in its books transfer of security from or to such person, subject to such conditions as may be considered necessary. Further, in terms of paragraph 6.2 of Annex to A.P. (DIR



Series) Circular No. 16 dated October 4, 2004, when the transfer is on private arrangement basis, on settlement of the transactions, the transferee/ his duly appointed agent should approach the investee company to record the transfer in their books along with the certificate in the form FC-TRS from the AD bank that the remittances have been received by the transferor/ payment has been made by the transferee. On receipt of the certificate from the AD, the company may record the transfer in its books.

(c) Thus, there are contraventions of Regulation 4 of FEMA 20/2000-RB, as then applicable, read with paragraph 6.2 of Annex to A.P. (DIR Series) Circular No. 16 dated October 4, 2004.

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 Prashant Prakhar, Legal Counsel, appeared for personal hearing on July 23, 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 the contraventions were without any *malafide* or wilful intention but were mainly due to inadvertent oversight of the regulatory requirements pertaining to the transactions. 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 provisions of Regulation 4 of FEMA 20/2000-RB, as then applicable, read with paragraph 6.2 of Annex to A.P. (DIR Series) Circular No. 16 dated October 4, 2004, on account of taking on record by the applicant, the transfer of shares by resident to non-resident without obtaining certified form FC-TRS as detailed in paragraph 2(b) above. The contravention relates to an amount of ₹1,18,06,645.79 (Rupees One Crore Eighteen Lakh Six Thousand Six Hundred Forty Five and Paise Seventy Nine only) and the period of



contravention is 8 years, 3 months and 17 days.

5. It has been declared in the compounding application dated February 15, 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 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, 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 **₹1,09,960/- (Rupees One Lakh Nine Thousand Nine Hundred and Sixty only)** will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound the admitted contraventions of Regulation 4 of FEMA 20/2000-RB, as then applicable, read with paragraph 6.2 of Annex to A.P. (DIR Series) Circular No. 16 dated October 4, 2004, 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 **₹1,09,960/- (Rupees One**



Lakh Nine Thousand Nine Hundred and Sixty 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 23rd day of July 2019.

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