



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

Present
V. G. Sekar
Chief General Manager
Date: September 04, 2019
CA No. NDL 442/2019

In the matter of
Tenon Facility Management India Private Limited
Plot No. 13, Sector-18, Electronic City, Gurugram, Haryana – 122015
(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 April 29, 2019 (received at Reserve Bank of India, New Delhi on May 01, 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 issue of shares after receipt of inward remittance, 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 November 27, 2007 as M/s Tenon



Property Services Private Limited and is engaged in the business of providing facility management services. The name of the company was changed to M/s Tenon Facility Management India Private Limited on July 20, 2015.

(b) The applicant had reported the receipt of foreign inward remittance from its foreign investor, M/s Mortice Limited, Singapore on eight occasions. On three occasions the applicant reported the receipt of remittance with delay ranging from 7 days to 10 years, 6 months and 2 days, as detailed hereunder, beyond the prescribed period in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of receipt	Amount (₹)	Date of Reporting
1	30.01.2008	1,55,42,013.63	02.11.2018*
2	10.06.2008	7,19,54,086.91	17.07.2008
3	12.06.2009	3,91,94,562.25	04.02.2010
	Total	12,66,90,662.79	

* Reporting of receipt of foreign inward remittance for issue of capital instruments in Advance Remittance Form was dispensed with in terms of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Amendment) Regulations, 2018 with effect from September 1, 2018. Delay in reporting of foreign inward remittance has, therefore, been taken up to August 31, 2018.

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 together with the documents prescribed therein.

(c) The applicant had reported issue of shares to its foreign investor, M/s Mortice Limited, Singapore, on three occasions with delay ranging from 26 days to 10 years, 8 months and 4 days, as detailed hereunder, beyond the prescribed period in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of issue	No. of shares issued	Amount (₹)	Date of reporting in Form FC-GPR
1	30.01.2008	15,54,230	1,55,42,300.00	02.11.2018
2	01.12.2008	3,50,009	28,00,07,200.00	14.12.2018
3	10.12.2009	48,993	3,91,94,400.00	04.02.2010
			33,47,43,900.00	

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 the documents prescribed therein.

(d) The applicant had received foreign inward remittance of ₹3,91,94,562.25 on June 12, 2009 and allotted 48,993 shares amounting to ₹3,91,94,400/- on December 10, 2009 with a delay of 1 day in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB. 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 account of the person concerned maintained with an authorised dealer / authorised bank, 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) 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) 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 Gupta, CFO, Ms Rashmi Khandelwal, Company Secretary, Shri Vaibhav Kakkar and Shri Sahil Arora, both Consultants, appeared for personal hearing on September 03, 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 the contraventions were without any malafide or wilful intention but were mainly due to the absence of proper secretarial, filing and reporting systems in place in the company and lack of professional guidance on compliance matters to the company. 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, as then applicable, 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 ₹12,66,90,662.79 (Rupees Twelve Crore Sixty Six Lakh Ninety Thousand Six Hundred Sixty Two and Paise Seventy Nine only) and the period of delay ranges from 7 days to 10 years, 6 months and 2 days.

(b) Paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in filing Form FC-GPR after issue of shares as detailed in paragraph 2(c) above. The contraventions relate to an amount of ₹33,47,43,900/- (Rupees Thirty Three Crore Forty Seven Lakh Forty Three Thousand and Nine Hundred only) and the period of delay ranges from 26 days to 10 years, 8 months and 4 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in issue of shares after receipt of remittance as detailed in paragraph 2(d) above. The contravention relates to an amount of ₹3,91,94,400/- (Rupees Three Crore Ninety One Lakh Ninety Four Thousand and Four Hundred only) and the delay is of 1 day.

5. It has been declared in the compounding application dated April 29, 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 July 16, 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 **₹23,07,979/- (Rupees Twenty Three Lakh Seven Thousand Nine Hundred and Seventy Nine 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 **₹23,07,979/- (Rupees Twenty Three Lakh Seven Thousand Nine Hundred and Seventy Nine 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 4th day of September 2019.

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