



In the
Reserve Bank of India
Foreign Exchange Department
Mumbai Regional Office
Main Building, 3rd floor
Shahid Bhagat Singh Marg, Fort
Mumbai 400 001

Present
Shri Sunil Pethkar
Assistant General Manager

September 25, 2019

CA No. MUM929/2019

In the matter of
M/s Seafoam Infosolutions Private Limited
209, 2nd Floor, 3,
Navsanjivan Society, Lamington Road,
Mumbai Central , Mumbai- 400008

(Applicant)

In exercise of the powers conferred under section 15(1) of the Foreign Exchange Management Act, 1999 and the Regulations/Rules/Notifications/Orders made thereunder, I pass the following

Order

- 1 The applicant has filed the compounding application dated May 22, 2019, received at the Reserve Bank on July 17, 2019, for compounding of contravention/s of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contravention/s sought to be compounded are in respect of the following Regulations/ paras under 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 as amended from time to time (hereinafter referred to as FEMA 20) and 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, as amended from time to time (hereinafter referred to as FEMA 20R):



- I Para 9 (1) (A) of FEMA 20 and Regulation 13.1 (1) of FEMA 20R: Delay in reporting receipt of foreign inward remittance towards subscription to equity
- II Para 9 (1) (B) of FEMA 20: Delay in filing Form FC GPR to Reserve Bank after issue of shares to person resident outside India
- III Para 8 of FEMA 20 read with Para 2 of FEMA 20R: Neither the equity instruments were issued, nor the money refunded to the foreign investor within 180 days or 60 days/ 75 days (as applicable) from the receipt of the inward remittance
- 2 Brief details of the applicant company are as follows:

Date of Incorporation	May 07, 2016
Its main activities are:	Computer consultancy and computer facilities management activities

- 3 The applicant received foreign inward remittances from non-resident investors towards equity shares / compulsorily convertible preference shares/ compulsorily convertible debentures and it reported the same to the Reserve Bank on dates as indicated below.

<u>Delay in reporting Foreign Direct Investment &/or delay in allotting the shares/ refunding the amount</u>						
<u>(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days, and LSF stands for : Late Submission Fees</u>						
Sr. No/ LSF	Date of inward remittance (DD-MM-YY)	Amount received (in INR)	Date of reporting to RBI (DD-MM-YY)	Para 9 (1) A/ Regulation 13.1 (1) delay	Date of allotment / refund (DD-MM-YY)	Para 8/ Para 2(2) delay
1	31-03-17	47,940.00	17-07-17	0Y 2M 16D	24-06-16	0Y 9M 7D
2	02-01-18	2,060.00	31-08-18	0Y 6M 29D	24-06-16	1Y 6M 9D
2	02-01-18	1,076.00	31-08-18	0Y 6M 29D	09-05-19	1Y 1M 21D
3	31-03-17	47,940.00	19-07-17	0Y 2M 18D	24-06-16	0Y 9M 7D
4	20-07-18	2,050.00	31-08-18	0Y 0M 11D	24-06-16	2Y 0M 26D
4	20-07-18	1,350.00	31-08-18	0Y 0M 11D	09-05-19	0Y 7M 3D
	TOTAL	1,02,416.00				

In terms of Para 9 (1) (A) of FEMA 20 and Regulation 13.1 (1) of FEMA 20R, 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. However the applicant reported receipt of remittances to the Reserve Bank of India on dates indicated above with a delay ranging from 0Y 0M 11D to 0Y 6M 29D. Further, the applicant company delayed in reporting in case of all the remittances.



- 4 In respect of remittances amounting to Rs.1,02,416/- (Rupees One Lakh Two Thousand Four Hundred Sixteen Only), indicated in the table above the company refunded the amount of Rs.2,426/- (Rupees Two Thousand Four Hundred Twenty Six Only) to the Non Resident investor, after 75 days from the date of receipt of investment with a delay ranging from 7M 3D to 1Y 1M 21D. Whereas in terms of para 2 of FEMA 20R, an Indian company is required to refund the amount within 75 days from the date of receipt of inward remittance. As regards the balance amount of Rs 99,990 (Rupees Ninty Nine Thousand Nine Hundred Ninty Only), the shares were allotted before receiving the foreign Investment and the delay in receiving foreign investment ranges from 9M 7D to 2Y 0M 26D. Whereas, the sequence of events as envisaged in Para 8 of FEMA 20 and Para 2 of FEMA 20R is that the Indian company has to first receive the inward remittance and then proceed with allotment of shares.
- 5 The company allotted equity shares/compulsorily convertible preference shares/compulsorily convertible debentures and filed FC-GPRs as indicated below:

Delay in filing Form FCGPR						
<u>(whereas, "Y" represents delay in number of years, "M" represents delay in number of months and "D" represents delay in number of days. LSF stands for : Late Submission Fees, IP stands for Issue Price and FV stands for Face Value</u>						
Sr. no/ LSF	Date of allotment (DD-MM-YY)	Number of shares	IP (FV+ premium) (in INR)	Amount (IP*no of shares) (in INR)	Date of reporting (DD-MM-YY)	Para 9 (1) (B) delay
1	24-06-16	9999	10.00	99,990.00	16-02-19	2Y 6M 23D
	TOTAL			99,990.00		

The applicant filed form FC-GPR as indicated above with a delay of 2Y 6M 23D. Whereas, in terms of Para 9(1) (B) of FEMA 20, an Indian company issuing shares in accordance with these Regulations has to submit to RBI a report in Form FC-GPR along with documents prescribed therein within 30 days from the date of issue of shares to Non Resident.

- 6 The applicant was given an opportunity for personal hearing, for further submission in person and/or for producing documents, if any, in support of the application vide e-mail dated September 13, 2019. The applicant appeared for personal hearing on September 17, 2019, during which Ms Sonal Shah, Company Secretary represented the applicant in the cabin of Shri Sunil Pethkar, Assistant General Manager, Mumbai Regional Office. The representative of the applicant admitted the contraventions for which compounding has been sought. During the hearing it was submitted that delay was inadvertent and unintentional. The representative of the applicant requested that in view of the foregoing 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 submissions made by the applicant during the personal hearing and thereafter. Accordingly, I hold that the applicant has contravened the following FEMA provisions issued in terms of:
- I** Para 9 (1) (A) of FEMA 20 and Regulation 13.1 (1) of FEMA 20R, due to the delay in reporting of receipt of foreign inward remittance towards subscription towards shares as detailed above. The contravention relates to total amount of Rs.1,02,416 (Rupees One Lakh Two Thousand Four Hundred Sixteen and Zero Paise Only) and with a delay ranging from minimum 0Y 0M 11D to maximum 0Y 6M 29D approximately.
- II** Para 9 (1) (B) of FEMA 20, due to the delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India and the contravention relates to total amount of Rs.99,990 (Rupees Ninety Nine Thousand Nine Hundred Ninety and Zero Paise Only) with a delay of 2Y 6M 23D approximately.
- III** Para 8 of FEMA 20 read with Para 2 of FEMA 20R, since the shares were neither issued nor the amount was refunded to the person resident outside India within the prescribed time from the date of receipt of the inward remittance. The contravention relates to total amount of Rs.1,02,416 (Rupees One Lakh Two Thousand Four Hundred Sixteen and Zero Paise Only) and with a delay ranging from minimum 0Y 7M 3D to maximum 2Y 0M 26D approximately.
- 8** It has been declared in the compounding application dated May 22, 2019 that the particulars given by the applicant in the application are true and correct to the best of their/his/her knowledge and belief. It has also been declared in a declaration attached to 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. 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 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.
- 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 Rs.22,185 (Rupees Twenty Two Thousand One Hundred Eighty Five and Zero Paise Only) will meet the ends of justice.



- 10** Accordingly, I compound the admitted contravention/s namely, the contravention/s of Para 9 (1) (A) of FEMA 20 and Regulation 13.1 (1) of FEMA 20R, Para 9 (1) (B) of FEMA 20 and Para 8 of FEMA 20 read with Para 2 of FEMA 20R, by the applicant, on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of Rs. 22,185 (Rupees Twenty Two Thousand One Hundred Eighty Five and Zero Paise Only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Mumbai Regional Office, Main Building, 3rd floor, Shahid Bhagat Singh Marg, Fort, Mumbai-400001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Mumbai 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.
- 11** The above order is passed only in respect of contraventions of Para 9 (1) (A) of FEMA 20 and Regulation 13.1 (1) of FEMA 20R, Para 9 (1) (B) of FEMA 20 and Para 8 of FEMA 20 read with Para 2 of FEMA 20R and does not restrict the right of any other authority to proceed against the Company for any other violations/contraventions noticed at any point of time.
- 12** The application is disposed of accordingly.
dated: September 25, 2019

Compounding Authority

sd/-

(Sunil Pethkar)
Assistant General Manager