



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

Present

Shri Jose J Kattoor
Regional Director, Karnataka and
Chief General Manager, Bengaluru

Date: January 14, 2020
C.A. BGL476/2019

In the matter of

M/s Ather Energy Private Limited
3rd Floor, Tower D, IBC Knowledge Park
No. 4/1, Bannerghatta Main Road
Bengaluru 560029

(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 August 14, 2019, received at the office of Reserve Bank of India, Bengaluru, on August 16, 2019, and addendum to the application dated November 18, 2019, 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) delay in submission of form FC-GPR to the Reserve Bank, after issue of shares to a person resident outside India, and (iii) violation of pricing guidelines for issue of shares, in terms of Paragraphs 9(1)(A), 9(1)(B) and 5, 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).

2. The relevant facts of the case are as follows: The applicant, M/s Ather Energy Private Limited, was incorporated on October 21, 2013, under the Companies Act, 1956, as per the Certificate of Incorporation issued by the Registrar of Companies, Tamil Nadu. Subsequently the company shifted its registered office from the state of Tamil Nadu to Karnataka, with effect from May 31, 2016, as per the Certificate of Registration of Regional Director order for Change of State issued by Deputy Registrar of Companies, Karnataka. The activity undertaken by the company is manufacturing of electrical automobiles. The applicant had received funds towards share application money, from the non-resident investors, namely, Mr. Venkatachary Srinivasan, USA, M/s Internet Fund III Pte Ltd, Mauritius, Mr. Gurusankar Sankararaman, USA, M/s Volpi Cupal Family Trust, USA, Mr. Sagar M Pushpala, USA, and Mr. Jayaprakash Vijayan, USA, as shown below:

Table -1

Sr. No.	Date of Receipt	Total Amount (INR)	Date of Reporting to RBI / AD Bank
1	22-02-2014	25,00,000.00	21-03-2014
2	27-03-2015	75,33,63,676.80	08-04-2015
3	30-10-2016	2,34,039.00	Not reported in form ARF
4	21-07-2017	31,60,000.00	17-11-2017
5	21-07-2017	31,58,104.00	17-11-2017
6	07-08-2017	32,30,567.60	24-11-2017
7	08-08-2017	70,567.60	17-11-2017
8	08-08-2017	31,58,186.50	17-11-2017
9	18-08-2017	95,010.30	27-10-2017
10	23-08-2017	1,00,000.00	27-10-2017
11	06-09-2017	8,230.00	17-11-2017
12	29-09-2017	8,230.00	20-12-2017
	Total	76,90,86,611.80	



The company had not reported the inward remittance mentioned at serial number 3, in Table – 1 above, to AD/RBI. Since, reporting in form ARF was discontinued with effect from September 01, 2018, (date on which Single Master Form (SMF) reporting in FIRMS portal was implemented) the delay/contravention period for non-reporting of the said inward remittance has been considered till August 31, 2018. Thus, the delay would be one year nine months and nine days, beyond the stipulated period of 30 days in respect of the remittance as indicated at serial number 3, in the Table-1 above.

The applicant reported receipt of remittances to the Reserve Bank / Authorized Dealer Bank, with a delay ranging from one month five days to two months and twenty eight days, beyond the stipulated period of 30 days in respect of the remittances indicated at serial numbers 4 to 12, 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 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	15-05-2014	250000 CCDs	25,00,000.00	12-06-2014
2	30-03-2015	100 Equity ; 74732 CCPs	75,33,63,676.80	17-04-2015
3	16-10-2017	160 CCPs	32,32,337.60	22-01-2018
4	16-10-2017	160 CCPs	32,32,337.60	27-02-2018
5	16-10-2017	160 CCPs	32,32,337.60	27-02-2018
6	16-10-2017	160 CCPs	32,32,337.60	16-02-2018
		100 – Equity ; 75372 – CCPs ; 250000 – CCDs	76,62,93,027.20	



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 two months seven days to three months and twelve days, beyond the prescribed period of 30 days, in respect of the allotments indicated at serial numbers 3 to 6, 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.

4. The company had allotted 2,50,000 Compulsorily Convertible Debentures (CCDs) at issue price of ₹10.00, on May 15, 2014, to the non-resident investor Mr. Venkatachary Srinivasan, USA, during which the fair value, as provided by Chartered Accountant Certificate, was ₹7,745.00 per equity share. However, the company on October 20, 2014, converted the said 2,50,000 CCDs into 353 Equity Shares, at a price of ₹7,082.15, per equity, which is a contravention to Paragraph 5 of Schedule I to Notification No.FEMA.20/2000-RB, dated May 03, 2000. As the conversion price of converting CCDs into equity was less than the fair value as valued at the time of issuance of CCDs, the difference amounting to ₹2,34,039.00 was brought in on October 30, 2016, with a delay of two years and ten days from the date of conversion.

Whereas, as per Paragraph 5 of Schedule I to Notification No.FEMA.20/2000-RB dated May 3, 2000, the price of shares issued to persons resident outside India, shall not be less than the valuation of shares done as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker where the shares of the company are not listed on any recognized stock exchange in India.

5. The applicant was given an opportunity for personal hearing, vide Reserve Bank's letter FE.BG.FID (CEFA) No.1617/22.10.947/2019-20, dated January 01, 2020, for further submission in person and/or producing documents, if any,



in support of the application. The applicant's authorized representatives, Mr. Harish B.N, Company Secretary and Mr. Biswajit Ghosh, Practicing Company Secretary, who appeared for the personal hearing on January 09, 2020, admitted the contraventions as stated in paragraphs 2, 3 and 4 above, committed by the applicant, for which compounding has been sought. During the personal hearing, the representatives 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.

6. 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 **₹1,32,22,935.00**, and the period of delay ranges from one month five days to one year nine months and two days;

(b) 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 person resident outside India as detailed in paragraph 3 above. The contravention relates to an amount of **₹1,29,29,350.40**, and the period of delay ranges from two months seven days to three months and twelve days; and

(c) Paragraph 5 of Schedule I to Notification No. FEMA 20/2000-RB, due to violation of pricing guidelines for issue of shares to person resident outside India as detailed in paragraph 4 above. The contravention relates to an amount of **₹2,34,039.00**, and the period of delay is two years and ten days



6. It has been declared in the compounding application dated August 14, 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.

7. 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 **₹79,764.00 (Rupees Seventy Nine Thousand Seven Hundred and Sixty Four only)**, will meet the ends of justice.

8. Accordingly, I compound the admitted contraventions namely, contraventions of Paragraphs 9(1)(A), 9(1)(B) and 5 of Schedule I to Notification No. FEMA 20/2000-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 **₹79,764.00 (Rupees Seventy Nine Thousand Seven Hundred and Sixty Four 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 Fourteenth day of January 2020.

Sd/-

(Jose J Kattoor)
Regional Director, Karnataka and
Chief General Manager, Bengaluru