



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

Present
V. G. Sekar
Chief General Manager
Date: November 4, 2019
CA No. NDL 468/2019

In the matter of
Lephone Technology Private Limited
B-105, First Floor, DDA Sheds, Okhla Industrial Area, Phase-1, New Delhi - 110020
(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 June 7, 2019 (received at Reserve Bank of India, New Delhi on June 11, 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 remittances received for issue of shares, (ii) delay in filing Form FC-GPR after issue of shares, (iii) delay in refund of excess share application money, and (iv) 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 paragraphs 9(1)(A), 9(1)(B) and 8 respectively of Schedule 1 and Regulation 4 [read with paragraph 6.2 of Annex to A.P. (DIR Series) Circular No. 16 dated October 4, 2004] 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, and (v) delay in refund of excess share application money, in terms of paragraph 2(3) of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 notified vide Notification No. FEMA 20(R)/2017-RB dated November 7, 2017 (hereinafter referred to as FEMA 20(R)/2017-RB), as amended from time to time.

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

(a) The applicant company, incorporated on May 23, 2011, is engaged in the business of wholesale of telephonic mobile phone and communication equipment and parts.

(b) The applicant had reported receipt of foreign inward remittance on thirty nine occasions from April 2016 to November 2017. On thirty seven occasions, the applicant had reported the remittances received from its foreign investor, M/s Lephone (Hong Kong) Limited, Hong Kong, with delay ranging from 4 months and 29 days to 1 year, 9 months and 8 days beyond the prescribed period, as detailed below, 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	26.04.2016	6,638.95	08.02.2018
2	29.04.2016	17,59,864.80	09.03.2018
3	25.05.2016	10,03,178.78	09.03.2018
4	01.06.2016	6,647.40	09.03.2018
5	14.06.2016	12,64,374.04	09.03.2018
6	21.06.2016	37,11,778.97	09.03.2018
7	27.07.2016	6,638.50	09.03.2018
8	28.07.2016	57,62,603.76	06.04.2018
9	28.07.2016	9,56,837.66	07.04.2018
10	28.07.2016	27,97,639.90	07.04.2018
11	28.07.2016	13,90,923.61	07.04.2018
12	28.07.2016	7,13,319.17	07.04.2018
13	28.07.2016	16,47,735.22	07.04.2018
14	28.07.2016	7,55,065.05	07.04.2018
15	29.07.2016	1,21,438.34	09.03.2018
16	07.09.2016	92,008.46	07.04.2018
17	07.09.2016	1,48,37,475.47	07.04.2018
18	07.09.2016	9,16,098.56	07.04.2018
19	07.09.2016	7,78,998.79	07.04.2018
20	07.09.2016	1,96,248.25	07.04.2018
21	07.09.2016	15,16,048.52	07.04.2018
22	03.10.2016	18,24,852.27	07.04.2018
23	03.10.2016	7,74,937.43	07.04.2018
24	03.10.2016	26,01,005.20	07.04.2018



Sl. No.	Date of Receipt	Amount (₹)	Date of Reporting
25	03.10.2016	24,66,692.07	07.04.2018
26	03.10.2016	20,17,020.22	12.03.2018
27	03.10.2016	3,43,357.38	09.03.2018
28	03.10.2016	37,859.51	09.03.2018
29	14.12.2016	39,22,351.80	12.03.2018
30	20.01.2017	1,30,20,105.20	08.04.2018
31	08.02.2017	3,12,25,888.04	08.04.2018
32	14.03.2017	1,68,62,943.09	08.04.2018
33	03.04.2017	68,85,779.71	23.04.2018
34	14.08.2017	908.73	22.04.2018
35	16.08.2017	2,75,70,000.00	22.04.2018
36	06.09.2017	2,87,97,120.00	22.04.2018
37	23.10.2017	2,92,24,577.25	20.04.2018
	Total	20,78,16,960.10	

Whereas, in terms of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures or warrants in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of receipt of the amount of consideration received by Indian company for issue of shares or convertible debentures or warrants, a report in Advance Reporting Form as specified by Reserve Bank from time to time along with documents prescribed therein. Further, on two other occasions the delays were in contravention of the provisions of Regulation 13.1(1) of FEMA 20(R)/2017-RB, as then applicable, and the applicant paid Late Submission Fee (LSF) for the said contraventions as required in terms of Regulation 13.2 of FEMA 20(R)/2017-RB.

(c) The applicant had reported the issue of shares on fifteen occasions from April 2016 to November 2017. On fourteen occasions, the applicant had reported the issue of shares to its foreign investor, M/s Lephone (Hong Kong) Limited, Hong Kong, with delay ranging from 5 months and 13 days to 1 year, 10 months and 12 days beyond the prescribed period, as detailed below, in contravention of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, as then applicable.

Sl. No.	Date of Issue	Amount (₹)	Date of Reporting
1	29.04.2016	17,66,028.00	10.04.2018
2	25.05.2016	10,03,068.00	10.04.2018
3	21.06.2016	49,82,241.00	10.04.2018
4	29.07.2016	1,41,51,786.00	10.04.2018
5	07.09.2016	1,83,36,846.00	10.04.2018



Sl. No.	Date of Issue	Amount (₹)	Date of Reporting
6	03.10.2016	1,00,65,462.00	10.04.2018
7	14.12.2016	39,21,357.00	10.04.2018
8	20.01.2017	1,30,19,853.00	10.04.2018
9	08.02.2017	3,12,25,461.00	10.04.2018
10	14.03.2017	1,68,62,589.00	10.04.2018
11	03.04.2017	68,85,261.00	05.05.2018
12	16.08.2017	2,75,70,750.00	05.05.2018
13	06.09.2017	2,87,97,000.00	05.05.2018
14	23.10.2017	2,92,24,500.00	05.05.2018
	Total	20,78,12,202.00	

Whereas, in terms of paragraph 9(1)(B) of Schedule 1 to FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures or warrants in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of issue of shares or convertible debentures or warrants, a report in Form FC-GPR as specified by the Reserve Bank from time to time together with documents prescribed therein. Further, on another occasion the delay was in contravention of the provisions of Regulation 13.1(2) of FEMA 20(R)/2017-RB, as then applicable, and the applicant paid Late Submission Fee (LSF) for the said contravention as required in terms of Regulation 13.2 of FEMA 20(R)/2017-RB.

(d) The applicant sought approval of RBI for refund of the excess share application money amounting to ₹5,008.10 received from its foreign investor, M/s Lephone (Hong Kong) Limited, Hong Kong on fifteen occasions. Out of these, remittances received on fourteen occasions pertained to the period of FEMA 20/2000-RB, as then applicable. The said approval was sought by the applicant on December 17, 2018 through its AD bank, with delay ranging from 7 months and 26 days to 2 years, 1 month and 21 days beyond the prescribed period, as detailed below, in contravention of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable. Approval for refund was granted on March 5, 2019 and the excess share application money was refunded on March 12, 2019.

Sl. No.	Date of Receipt	Amount (₹)
1	29.04.2016	475.75
2	25.05.2016	110.78
3	21.06.2016	559.41
4	29.07.2016	415.21



Sl. No.	Date of Receipt	Amount (₹)
5	07.09.2016	32.05
6	03.10.2016	262.08
7	14.12.2016	994.80
8	20.01.2017	252.20
9	08.02.2017	427.04
10	14.03.2017	354.09
11	03.04.2017	518.71
12	16.08.2017	158.73
13	06.09.2017	120.00
14	23.10.2017	77.25
	Total	4,758.10

Whereas, in terms of paragraph 8 of Schedule 1 to FEMA 20/2000-RB, a company in India issuing shares or convertible debentures or warrants under this Schedule to a person resident outside India shall receive the amount of consideration for such shares or convertible debentures or warrants 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, or 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 or warrants are not issued within 180 days from the date of receipt of the inward remittance or date of 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) The applicant had refunded ₹250/-, received on November 21, 2017, as part of the total excess share application money amounting to ₹5,008.10 refunded on March 12, 2019 with delay of 1 year, 1 month and 8 days, in contravention of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable. Whereas, in terms of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, where capital instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance through banking channels or by credit to his NRE/ FCNR(B) accounts, as the case may be, within fifteen days



from the date of completion of sixty days.

(f) Shri Dinesh Kumar and Shri Suresh Mittal, resident shareholders of the applicant company transferred a total of 10,000 equity shares of the applicant company to M/s Lephone (Hong Kong) Limited, Hong Kong on June 25, 2012 and June 26, 2012 respectively for a total consideration of ₹1,09,400/-. The applicant company took on record in its books the transfer of shares 7 years, 2 months & 17 days and 7 years, 2 months & 18 days prior to obtaining Form FC-TRS duly acknowledged/ certified by the AD bank, 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	5,000	25.06.2012	54,700.00	12.09.2019
2	5,000	26.06.2012	54,700.00	12.09.2019
		Total	1,09,400.00	

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.

(g) Thus, there are contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule 1 and Regulation 4 [read with paragraph 6.2 of Annex to A.P. (DIR Series) Circular No. 16 dated October 4, 2004] of FEMA 20/2000-RB, as then applicable, and paragraph 2(3) of Schedule 1 to FEMA 20(R)/ 2017-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. Ms. Pooja Singhal, Company Secretary, appeared for personal hearing on November 4, 2019 on behalf of the applicant. The representative admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, she submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to oversight and lack of awareness about FEMA compliances. She 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 foreign inward remittance received for issue of shares as detailed in paragraph 2(b) above. The contraventions relate to an amount of ₹20,78,16,960.10 (Rupees Twenty Crore Seventy Eight Lakh Sixteen Thousand Nine Hundred Sixty and Paise Ten only) and the period of delay ranges from 4 months and 29 days to 1 year, 9 months and 8 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 ₹20,78,12,202/- (Rupees Twenty Crore Seventy Eight Lakh Twelve Thousand Two Hundred and Two only) and the period of delay ranges from 5 months and 13 days to 1 year, 10 months and 12 days.

(c) Paragraph 8 of Schedule 1 to FEMA 20/2000-RB, as then applicable, on account of delay in refund of excess share application money, as detailed in paragraph 2(d) above. The contraventions relate to an amount of ₹4,758.10 (Rupees Four Thousand Seven Hundred Fifty Eight and Paise Ten only) and the period of delay ranges from 7 months and 26 days to 2 years, 1 month and 21 days.

(d) 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 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 as detailed in paragraph 2(f) above. The contraventions relate to an amount of ₹1,09,400/- (Rupees One Lakh Nine Thousand and Four Hundred only) and the periods of contravention are 7 years, 2 months & 17 days and 7 years, 2 months & 18 days.

(e) Paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable, on account of delay in refund of excess share application money as detailed in paragraph 2(e) above. The contravention relates to an amount of ₹250/- (Rupees Two Hundred and Fifty only) and the period of contravention is 1 year, 1 month and 8 days.

5. It has been declared in the compounding application dated June 7, 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 June 19, 2019 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. 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 **₹9,78,774/- (Rupees Nine Lakh Seventy Eight Thousand Seven Hundred and Seventy Four 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 and Regulation 4 [read with paragraph 6.2 of Annex to A.P. (DIR Series) Circular No. 16 dated October 4, 2004] of FEMA 20/2000-RB, as then applicable, and paragraph 2(3) of Schedule 1 to FEMA 20(R)/ 2017-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 **₹9,78,774/- (Rupees Nine Lakh Seventy Eight Thousand Seven Hundred and Seventy Four 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 November 2019.

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