



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

Present
V. G. Sekar
Chief General Manager
Date: January 27, 2020
CA No. NDL 536/2019

In the matter of
Etap Automation Private Limited
625, 6th Floor, DLF Tower, Jasola, New Delhi 110025
(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 August 28, 2019 (received at Reserve Bank of India, New Delhi on September 2, 2019) and addendums dated November 6, 2019 and January 9, 2020 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 in terms of paragraph 9(1)(A) 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 then applicable, (ii) delay in issue of shares to person resident outside after receipt of the amount of consideration and (iii) delay in refund of excess share application money, in terms of paragraphs 2(2) and 2(3) respectively 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 then applicable.

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

(a) The applicant company was initially incorporated on December 23, 2009 in the State of Maharashtra. The place of registered office of the company was changed to the State of Haryana on June 14, 2013 and further to Delhi on November 9, 2018. The company is engaged in the business of developing, selling, importing, exporting of computer software.

(b) The applicant had received inward remittance of ₹1,00,000.00 on August 16, 2010 from its foreign investor, M/s Operation Technology Inc., USA and reported the same on October 27, 2010 with a delay of 1 month and 12 days beyond the prescribed period, in contravention of paragraph 9(1)(A) of Schedule 1 to FEMA 20/2000-RB, as then applicable. 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 furnishing the details prescribed therein.

(c) The applicant had received eleven tranches of the inward remittances from its foreign investor, M/s Etap Automation DMCC, Dubai, against issue of 15601 equity shares on March 30, 2018. The shares were issued with delay ranging from 4 days to 18 days beyond the prescribed period in respect of eight remittances, as detailed below, in contravention of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable.

Sl. No.	Date of Receipt	Amount (₹)
1	11.01.2018	1,57,16,871.30
2	11.01.2018	1,57,16,871.30
3	15.01.2018	1,56,39,374.40
4	18.01.2018	1,57,01,871.90
5	23.01.2018	1,56,94,372.20
6	23.01.2018	1,56,94,372.20
7	23.01.2018	1,56,94,372.20
8	25.01.2018	1,56,73,220.80
	Total	12,55,31,326.30



Whereas, in terms of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, capital instruments shall be issued to the person resident outside India making such investment within sixty days from the date of receipt of the consideration.

(d) Further, the applicant had received ₹1,56,76,872.90 on January 25, 2018 from its foreign investor, M/s Etap Automation DMCC, Dubai. The applicant had utilized ₹1,56,73,220.80 out of the said amount at the time of issue of 15601 equity shares on March 30, 2018 along with other remittances received earlier. The applicant refunded the excess share application money amounting to ₹3,652.10 to its foreign investor with a delay of 7 months and 19 days beyond the prescribed period 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.

(e) Thus, there are contraventions of paragraph 9(1)(A) of Schedule 1 of FEMA 20/2000-RB, as then applicable, and paragraphs 2(2) and 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. Niti Bhatia, AGM-Finance and Admin, Shri Ashish Dhawan, Chartered Accountant and Shri Nitin Jaiswal, Company Secretary, appeared for personal hearing on January 23, 2020 on behalf of the applicant. The representatives 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 lack of awareness about FEMA compliances and late receipt of FIRC. 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 foreign inward remittance received for issue of shares as detailed in paragraph 2(b) above. The contravention relates to an amount of ₹1,00,000.00 (Rupees One Lakh only) and the period of delay is 1 month and 12 days.
- (c) Paragraph 2(2) of Schedule 1 to FEMA 20 (R)/2017-RB, as then applicable, on account of delay in issue of shares after receipt of inward remittance as detailed in paragraph 2(c) above. The contraventions relate to an amount of ₹12,55,31,326.30 (Rupees Twelve Crore Fifty Five Lakh Thirty One Thousand Three Hundred Twenty Six and Paise Thirty only) and the period of delay ranges from 4 days to 18 days.
- (d) 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(d) above. The contravention relates to an amount of ₹3,652.10 (Rupees Three Thousand Six Hundred Fifty Two and Paise Ten only) and the period of delay is 7 months and 19 days.

5. It has been declared in the compounding application dated August 28, 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 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 **₹6,88,072.00 (Rupees Six Lakh Eighty Eight Thousand and Seventy Two 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) of Schedule 1 of FEMA 20/2000-RB, as then applicable, and paragraphs 2(2) and 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 **₹ 6,88,072.00 (Rupees Six Lakh Eighty Eight Thousand and Seventy Two 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 27th day of January 2020.

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