



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 539/2019

In the matter of
Sparskills Technologies Private Limited
44E/9, 2nd Floor, Kishangarh, Akhara Road, Vasant Kunj, Sector A
New Delhi - 110070
(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 September 2, 2019 (received at Reserve Bank of India, New Delhi on September 6, 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, and (ii) delay in filing Form FC-GPR after issue of shares, in terms of paragraphs 9(1)(A) and 9(1)(B) 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 then applicable, and (iii) 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 then applicable.

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

(a) The applicant company, incorporated on April 21, 2017, is engaged in the business of development of computer software and mobile application.

(b) The applicant had received foreign inward remittance on ten occasions from May 2017 to January 2019. On three occasions, the applicant had reported the receipt of remittances from its foreign investors with delay ranging from 5 days to 2 months and 1 day 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	31.05.2017	25,00,000.00	22.08.2017
2	05.06.2017	20,00,000.00	06.09.2017
3	16.06.2017	32,50,000.00	21.07.2017
	Total	77,50,000.00	

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.

(c) The applicant had reported the issue of shares on five occasions from July 2017 to March 2019. On two occasions, the applicant had reported the issue of shares to its foreign investors with delay of 6 months and 25 days each 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	12.07.2017	1,15,68,500.00	08.03.2018
2	12.07.2017	34,85,000.00	08.03.2018
	Total	1,50,53,500.00	

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 two other occasions the delays were 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 contraventions as required in terms of Regulation 13.2 of FEMA 20(R)/2017-RB.

(d) The applicant had refunded the excess share application money to its foreign investors on two occasions with delay of 3 months & 23 days and 3 months & 6 days beyond the prescribed period, as detailed below, in contravention of paragraph 2(3) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable.

Sl. No.	Date of Receipt	Amount (₹)	Date of Refund
1	21.09.2018	1,341.00	28.03.2019
2	08.10.2018	22,903.50	28.03.2019
	Total	24,244.50	

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 paragraphs 9(1)(A) and 9(1)(B) of Schedule 1 to 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. Shri Naveen Narang, Company Secretary, appeared for personal hearing on January 23, 2020 on behalf of the applicant. The representative admitted the contraventions committed by the applicant for which compounding has been sought. During the personal hearing, he submitted that the contraventions were without any *malafide* or wilful intention but were mainly due to delay in receipt of KYC documents of the investors, procedural issues on FIRMS portal and lack of knowledge & professional guidance. He 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 ₹77,50,000/- (Rupees Seventy Seven Lakh and Fifty Thousand only) and the period of delay ranges from 5 days to 2 months and 1 day.

(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 ₹1,50,53,500/- (Rupees One Crore Fifty Lakh Fifty Three Thousand and Five Hundred only) and the period of delays are 6 months and 25 days each.

(c) 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 contraventions relate to an amount of ₹24,244.50 (Rupees Twenty Four Thousand Two Hundred Forty Four and Paise Fifty only) and the period of delays are 3 months & 23 days and 3 months & 6 days.



5. It has been declared in the compounding application dated September 2, 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 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 **₹1,01,821/- (Rupees One Lakh One Thousand Eight Hundred and Twenty One 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) and 9(1)(B) of Schedule 1 to 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 **₹1,01,821/- (Rupees One Lakh One Thousand Eight Hundred and Twenty One 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